



HM Government

Review of the Balance of Competences between the United Kingdom and the European Union Culture, Tourism and Sport

February 2014

Review of the Balance of Competences between the United Kingdom and the European Union

Culture, Tourism and Sport

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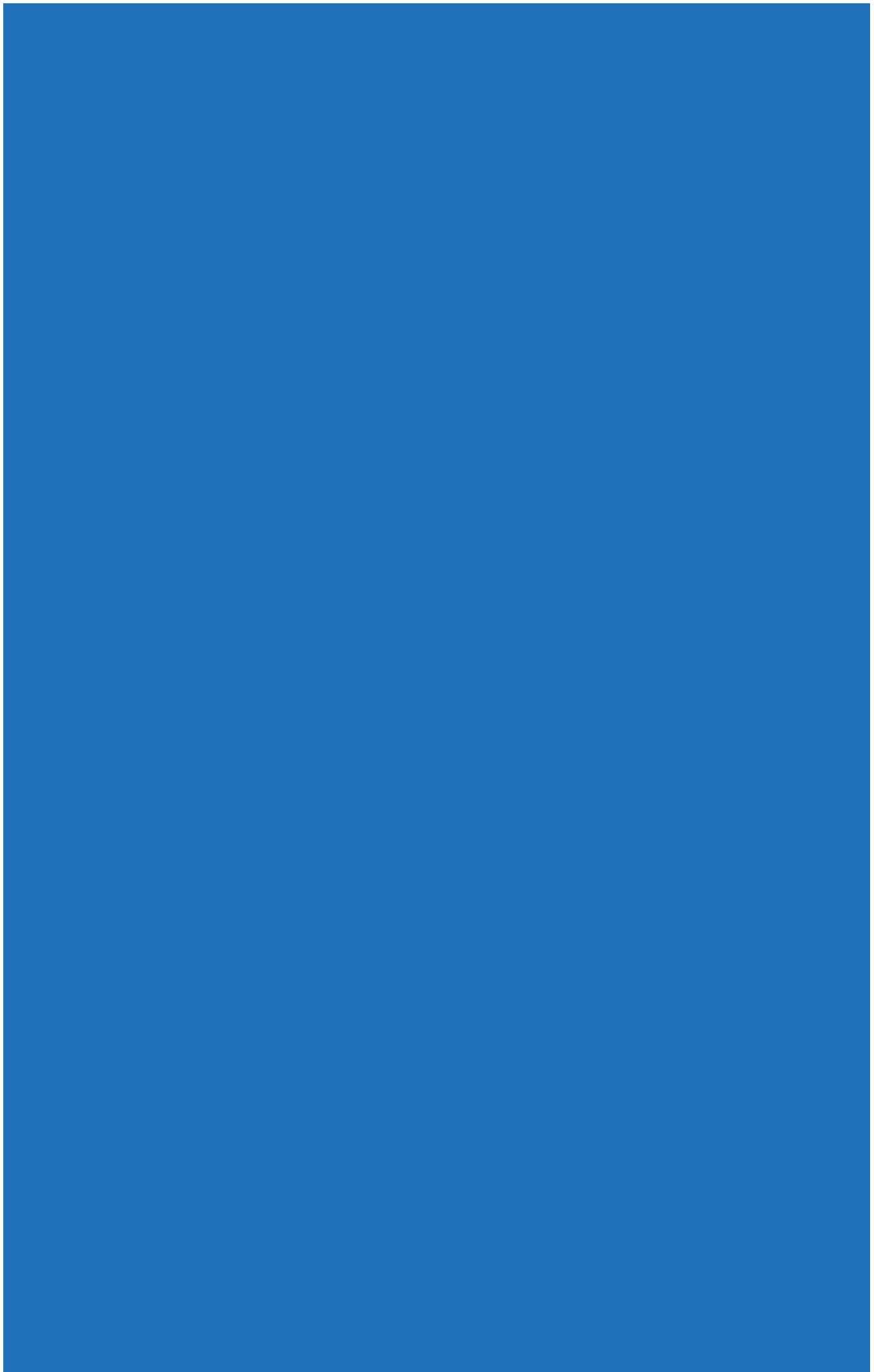
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Executive Summary

This report examines the balance of competences between the European Union (EU) and the United Kingdom (UK) in the areas of culture, tourism and sport, and is led by the Department for Culture, Media and Sport. It is a reflection and analysis of the evidence submitted by experts, non-governmental organisations, businesspeople, Members of Parliament and other interested parties, either in writing or orally, as well as a literature review of relevant material. Where appropriate, the report sets out the current position agreed within the Coalition Government for handling this policy area in the EU. It does not predetermine or prejudge proposals that either Coalition party may make in the future for changes to the EU or about the appropriate balance of competences.

It is one of 32 reports that will together analyse what membership of the EU means for the UK's national interest. They aim to deepen public and parliamentary understanding of our relationship with the EU.

This report covers the sectors of Culture, Tourism, and Sport, drawing on 52 submissions received in response to a call for evidence which was distributed widely in the UK, to selected European organisations and members of the European Parliament. It was also made available online.

This report covers the scope of the EU's competences as they affect the UK, how they are used, how they impact on our national interest, and future challenges.

All the contributors who submitted evidence for this report held the view that the current EU's supporting competences in culture, tourism and sport were on balance either beneficial to the future development of these sectors and UK national interest or had the potential to be so.

But none of the contributors argued in favour of extension of the EU's competences in these areas, and a number of contributors warned of the need to remain vigilant against moves by the EU to extend its competence.

The EU's competence in relation to culture dates back to the Maastricht Treaty in 1992. Of the three sectors covered by this report, contributors from the culture sector were the most satisfied that the balance and exercise of the EU's supporting competence operated in the national interest. On the whole the EU's culture competence, the longest standing of the three, is seen by contributors as an important source of funding for the sector, as a driver for new creative partnerships, and as a vehicle for promoting the UK's 'soft power'.

The EU's competences in relation to tourism and sport are relatively new, dating back to the Lisbon Treaty of 2009. The EU is yet to legislate under either competence, although various

policy initiatives have been announced. Contributors were more balanced in their assessment of the benefit to the UK national interest of EU activity in these areas. In sport, contributors saw signs of optimism that the new competence may lead to a more coherent application of broader EU policy on sport. In tourism, contributors were more equivocal, conscious that the rigorous competition between Member States for visitors makes assessing the benefits to the UK of community action complex, and wary that the competence could be used to impose greater regulation.

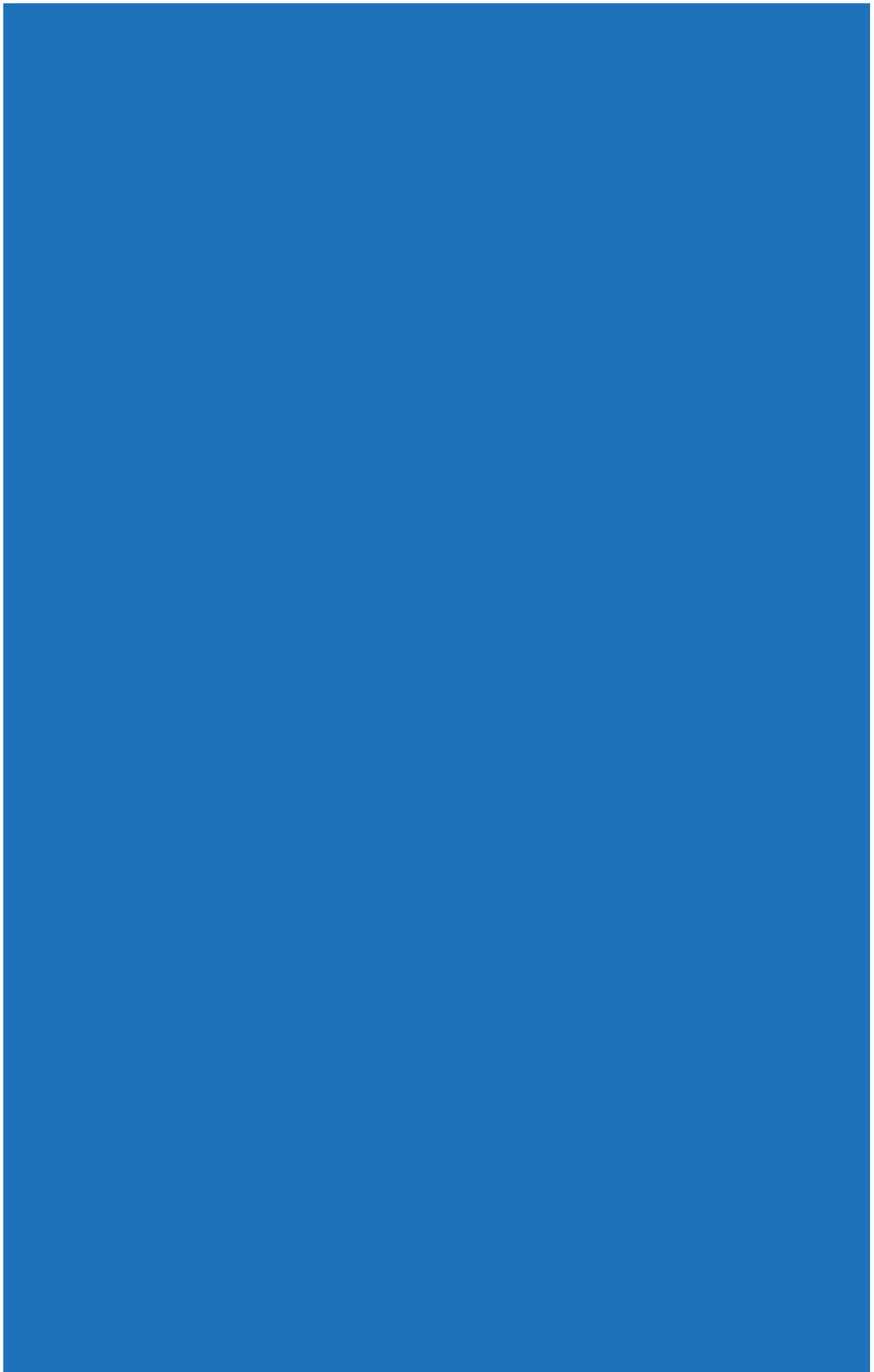
Contributors from all three sectors also commented on the very significant impact of the EU's activity on their sectors under competences not covered by this report, in particular in relation to State aid, immigration, the Single Market (free movement of persons, goods and services) and Structural Funds. As stated in the call for evidence, this report is not intended to address those other competences. This valuable evidence is reflected in other reports.

Looking ahead, none of the contributors to this report identified substantial challenges to the future UK national interest in the current balance of competence between the UK and EU in relation to culture, tourism or sport. Nor did any of the contributors advocate radical options for change in the balance of these competences.

Those challenges that were identified relate to the EU's operation, and administration, of its existing competence. These fall into three main categories:

- Challenges to the sectors' ability to maximise benefit to the UK due to bureaucracy of the EU;
- Challenges presented by the future, potentially burdensome action of the EU under its competences; and
- Challenges presented by the EU's potential failure to use its competences in culture, tourism and sport to influence action under other competences that impact on these sectors.

A further theme to emerge is that in all three sectors the UK is considered by its stakeholders to be a leader in best practice, international relations and policy development compared with other Member States. This brings opportunities in terms of the UK's ability to drive the EU agenda for culture, tourism and sport, but also challenges, in that other Member States may stand to gain more from EU support under these competences than the UK.



Introduction

This report is one of 32 reports being produced as part of the Balance of Competences Review. The Foreign Secretary launched the Review in Parliament on 12 July 2012, taking forward the Coalition commitment to examine the balance of competences between the UK and the EU. It will provide an analysis of what the UK's membership of the EU means for the UK national interest. It aims to deepen public and Parliamentary understanding of the nature of our EU membership and provide a constructive and serious contribution to the national and wider European debate about modernising, reforming and improving the EU in the face of collective challenges. It has not been tasked with producing specific recommendations or looking at alternative models for Britain's overall relationship with the EU.

The Review is broken down into a series of reports on specific areas of EU competence, spread over four semesters between 2012 and 2014. More information about the Review, including a timetable of reports to be published over the next two years, can be found at <https://www.gov.uk/review-of-the-balance-of-competences>.

The analysis in this report is based on evidence gathered following a call for evidence. It draws on written evidence submitted, notes of seminars or discussions held during the call for evidence period and the results of an online survey. It is a reflection and analysis of the evidence submitted by experts, national funding bodies and institutions, the devolved administrations, professional and governing bodies, small grassroots organisations and other interested persons or organisations. A list setting out those who contributed evidence can be found in Annex 1.

For the purposes of this review, we are using a broad definition of competence. Put simply, competence in this context is about everything deriving from EU law that affects what happens in the UK. That means examining all the areas where the Treaties give the EU competence to act, including the provisions in the Treaties giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action. But it also means examining areas where the Treaties apply directly to the Member States without needing any further action by the EU institutions.

This report does not cover the entire scope of the work of the Department for Culture, Media and Sport (DCMS). This report does not include consideration of telecommunications and media sectors. This is because the EU has not been conferred with specific competences for these sectors but acts under a wide range of shared and exclusive competences which have a very significant impact on our sectors, including the regulation of telecommunications and audio-visual content under the Single Market for services. This will be covered in the Single Market: Services report. DCMS's equalities brief will be covered in the report on Social and Employment.

Definition of EU Competence

The EU's competences are set out in the EU Treaties, which provide the basis for any actions the EU institutions take. The EU can only act within the limits of the competences conferred on it by the Treaties, and where the Treaties do not confer competences on the EU they remain with the Member States.

Types of competence:

Exclusive: Only the EU can act in areas where it has exclusive competence, such as the customs union and common commercial policy.

Shared: In areas of shared competence, such as the Single Market, environment and energy, either the EU or the Member States may act, but the Member States may be prevented from acting once the EU has done so.

Supporting: In areas of supporting competence, both the EU and the Member States may act, but action by the EU does not prevent the Member States from taking action of their own.

In all three cases the EU must act in accordance with fundamental rights as set out in the Charter of Fundamental Rights (such as freedom of expression and non-discrimination) and with the principles of subsidiarity and proportionality. Under the principle of subsidiarity, where the EU does not have exclusive competence, it can only act if it is better placed than the Member States to do so because of the scale or effects of the proposed action. Under the principle of proportionality, the content and form of EU action must not exceed what is necessary to achieve the objectives of the EU treaties.

EU competence in relation to Culture, Tourism and Sport is supporting.

What Do We Mean by Culture, Tourism and Sport?

There is no precise EU definition of the tourism sector. The EU Commission's Communication on the future of EU Tourism of 13 November 2001 noted that it is 'a service sector with a particularly complex product dependent on an extremely fragmented supply. Each link in the chain (travel agencies, tour operators, carriers, hoteliers, restaurateurs etc) offers one element in the overall product'.¹

That product is extremely diverse. Natural and cultural resources, tourist facilities, the communications infrastructure, accommodation and restaurants are the basic resources of the tourist destination. The combination of local tourism resources and the services offered determines the type of tourism to which a destination belongs: such as coastal or mountain tourism, sport or religious tourism, thermal or gastronomic tourism, and of course business tourism.

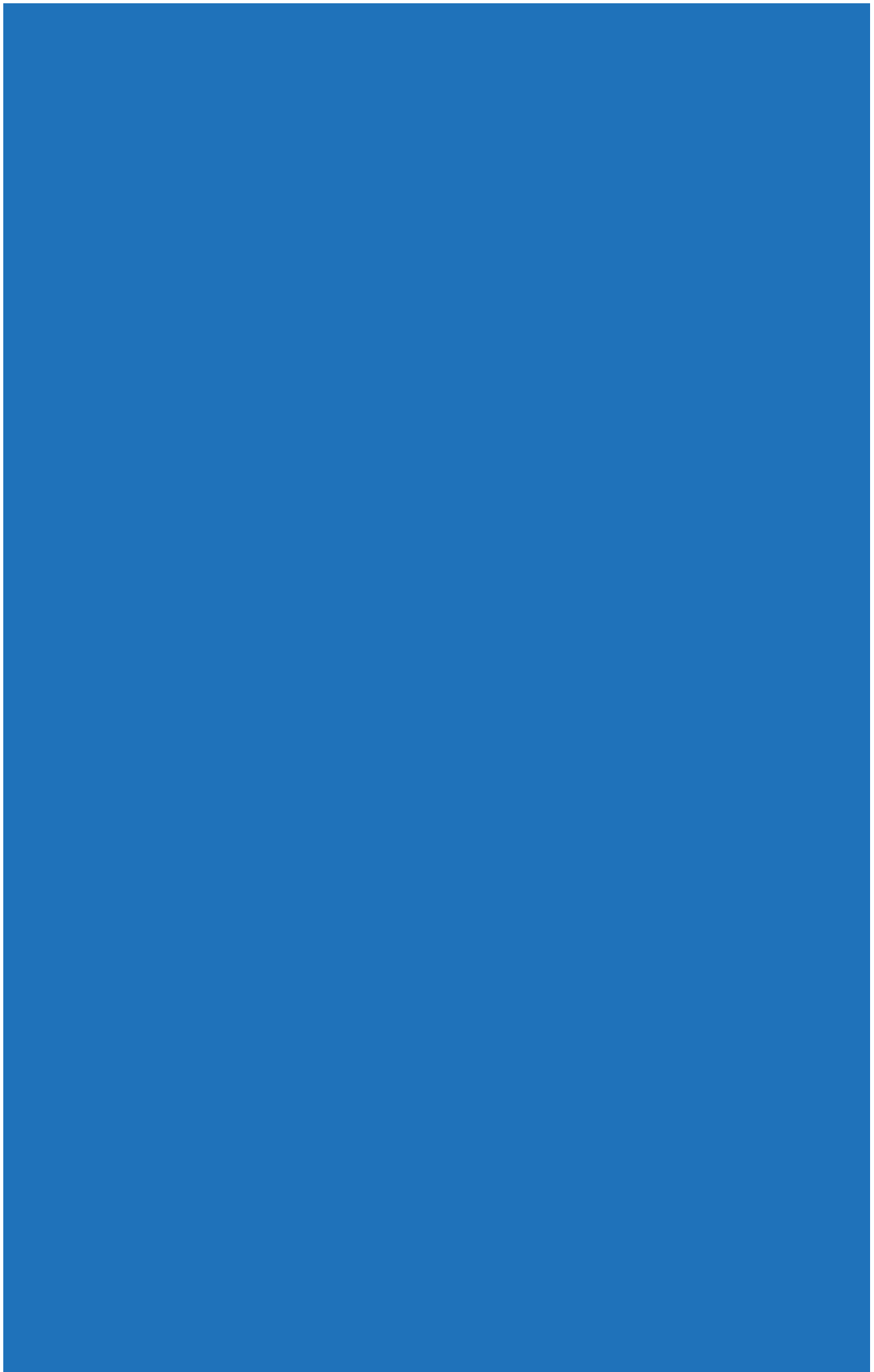
For the purpose of the EU's competence in culture, the Commission defines it 'as a sector of activity which involves some form of creativity in its production: is concerned with the generation and communication of symbolic means: and has output potentially embodying at least some form of intellectual property'.² While the regulation of audio-visual services is not covered by this report, the funding of programmes to support and fund some audio-visual content falls within the EU's culture competence (the MEDIA fund) and so will be considered here.

¹ Commission Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, *Working together for the Future of European Tourism*, COM (2001) 665 final, November 2001.

² DG Education and Culture, *The Economy of Culture in Europe* (2006).

For sport the EU uses the definition established by the Council of Europe (CoE), which encompasses 'all forms of physical activity which through casual or organised participation aim at expressing or improving physical fitness and mental well-being, forming social relationships, or obtaining results in competition at all levels'.³

³ Council of the European Union, *European Manifesto on Young People and Sport* (1995).



Chapter 1:

The Development of Competence and the Current State of Competence

Overview

- 1.1 The EU's competences in relation to culture, tourism, and sport are relatively new. Article 6 Treaty on the Functioning of the European Union (TFEU) provides that they are supporting only. Articles 165 (sport), 167 (culture) and 195 (tourism) then provide the legal base for possible EU action. This means that both the EU and the Member States may act, but action by the EU does not oblige the Member States to change their laws and does not prevent the Member States from taking action of their own. The EU is also expressly given external competence; that is, the capacity of the EU to act internationally on its own behalf, including by concluding or being a party to international agreements with third countries – in respect of sports and culture. While there is no express external competence in respect of tourism, external competence can arise under Article 216 TFEU where, for example, the conclusion of an agreement is provided in EU legislation or where an agreement is likely to affect EU rules or alter their scope.¹
- 1.2 However, in all three areas, and particularly prior to the conferral of specific competences, the EU acted under other competences, some of which are shared or exclusive, in ways that impact on these sectors. Where the EU has competence under these general areas to act in relation to an aspect of culture, tourism or sport, it is not limited by the fact that its specific competence is supporting only.
- 1.3 A more detailed legal analysis of the development and current state of EU competences and relevant case law is provided in our Call for Evidence.

Culture

- 1.4 While the cultural dimension has always played a fundamental role in the nation-formation process, culture started to gain more importance on the political agenda of intergovernmental organisations of Europe after World War II. The United Nations Educational, Scientific and Cultural Organization (UNESCO) was established in 1946 with the aim of contributing to peace and security by promoting collaboration among the nations through education, science, and culture. Founded in 1949, the CoE designated culture to be an essential component of its mission to advance respect for human rights, the practice of democracy, and the rule of law.²

¹ Please see: www.gov.uk/review-of-the-balance-of-competencies for a glossary of terms used in this report.

² Euroacademia, *The Governmentalities of Cultural Policy in Europe: The Actors, Discourses and Formulations* (n.d.). Available at: euroacademia.eu, accessed on 3 February 2014.

- 1.5 While the CoE had already promulgated the European Convention on Culture in 1954, the first instance when cultural policy was articulated within the EU was in the Treaty of Rome (1957), which described it as a factor capable of uniting people and promoting social and economic development. The cultural dimension has been prevalent since then in the political, social, and economic landscape of Europe. The CoE, UNESCO, and the EU have become the key players affecting cultural policy discourses, practices, and actions in Europe. While national cultural policies both affirm and translate the principles and values of cultural policy in Europe, cultural policy-making and discourses are inextricably interwoven with the policies of these transnational institutions.³
- 1.6 Culture as a specific EU competence was introduced with the signing of the Maastricht Treaty (TEU) in 1992, which established the European Economic Community (TEC) to provide a limited competence in culture. The Treaty also gave the EC external competence; a competence to act externally by co-operating with third countries and international organisations, in relation to culture. Importantly the Maastricht Treaty also provided a new specific route for approval of State aid in relation to culture and heritage preservation.⁴

Institutions

The information contained in this text box is public source information from UNESCO and Council of Europe (CoE).

UNESCO is an intergovernmental organisation that operates at the international level with a specific interest in protection and promotion of sites of outstanding universal importance (World Heritage Sites). UNESCO believes that no development can be sustainable without a strong cultural component. Indeed only a human-centred approach to development based on mutual respect and open dialogue among cultures can lead to lasting, inclusive and equitable results. Yet until recently, culture has been missing from the development equation. To ensure that culture takes its rightful place in development strategies and processes, UNESCO has adopted a three-pronged approach: it spearheads worldwide advocacy for culture and development, while engaging with the international community to set clear policies and legal frameworks, and working on the ground to support governments and local stakeholders to safeguard heritage, strengthen creative industries and encourage cultural pluralism.⁵

³ Euroacademia, *The Governmentalities of Cultural Policy in Europe: The Actors, Discourses and Formulations*. Available at: euroacademia.eu/presentation/the-governmentalities-of-cultural-policy-in-europe-the-actors-discourses-and-formulations/, accessed on 3 February 2014.

⁴ By the insertion of what is now Article 107(3)(d) TFEU.

⁵ Please see information taken from the UNESCO office in Santiago, *Culture* (n.d.), entries available at: www.unesco.org/new/en/santiago/culture/, accessed on 3 February 2014.

CoE

COE is an intergovernmental organisation operating at the wider European level, with 47 Member States, and has competence in the field of culture and cultural heritage. The conventions of the CoE are not statutory acts of the organisation. They owe their legal existence to the consent of those Member States that sign and ratify them. Adopted on 19 December 1954, the Cultural Convention is the foundation for European co-operation in the fields of culture, education, youth and sport. Its aim is to encourage cultural co-operation in all its manifold forms, to foster understanding and knowledge between European countries, and to preserve their cultural heritage and treat it as an integral part of a broader European heritage.

Co-operation between the CoE and the EU is currently governed by the 2007 Memorandum of Understanding (MoU) between the two organisations. The MoU confirms the role of the CoE as the benchmark for human rights, the rule of law and democracy in Europe, stipulates the need for coherence between the two organisations' legal norms in the fields of human rights and fundamental freedoms, and encourages the CoE and the EU to work together even more closely in the future.

The CoE and the EU co-operate in order to develop intercultural dialogue and cultural diversity with a view to promoting respect for human rights and mutual understanding among cultures in Europe. This dialogue is an important element in the fight against all forms of discrimination, racism, and xenophobia.

Both the CoE and the EU promote ideas and values fostering cultural diversity both among their respective Member States as well as in relevant international fora. In this spirit, the CoE promotes the ratification and implementation of the UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expression by its Member States. The CoE and the EU promote its ratification and implementation by their international partners.⁶

- 1.7 This new role was nevertheless limited to promoting co-operation between the cultural operators of the different Member States, or to complementing their activities in respect of promoting both national and regional diversity, as well as highlighting a shared European cultural heritage.
- 1.8 A further step was taken in 1999, when the Treaty of Amsterdam extended the cultural competence by requiring the EC to take cultural aspects into account in its actions under other provisions of the TEU, in particular in terms of respecting and promoting cultural diversity.
- 1.9 One of the main mechanisms the EU uses to attempt to promote Europe's diverse culture is through funding programmes. For example, over the last 20 years a Media Programme has supported some highly acclaimed British films including *This is England* (Shane Meadows, 2006), *The King's Speech* (Tom Hooper, 2010) and *The Iron Lady* (Phyllida Lloyd, 2011). In 2010, UK companies received €8.7m to support the production, distribution and screening of films in the UK, and over €6.7m was invested to boost the European cinema releases of over 40 British films. The programme has also provided funding to support a pan-European network of cinemas including Chapter in Cardiff, Eden

⁶ Please see information taken from the CoE, *European Cultural Convention* (n.d.), available at www.hub.coe.int, accessed on 3 February 2014.

Court in Inverness, Watershed in Bristol and Showroom in Sheffield. The programme supported the 2012 Bristol Encounters International Film Festival and Edinburgh Napier University's ENGAGE training course. MEDIA distributes roughly €100m a year.⁷

MEDIA and the Culture Programme

In 2011, UK companies received over €7.4m in MEDIA grants to support the production, distribution and screening of films in the UK, and over €6.8m was invested to boost the European cinema releases of over 40 British films. Recently funded UK projects include Ken Loach's *The Angels' Share*, the Mark Cousins –narrated *The Story of Film: An Odyssey*, and the 2012 edition of BRITDOC's *Good Pitch*.⁸

The programme supported the 2012 Bristol Encounters International Film Festival and Edinburgh Napier University's ENGAGE training course. MEDIA distributes roughly €100m a year.

This has been supplemented by the EU's Culture Programme. Between 2007 and 2011 over 200 UK participants in 176 transnational projects received funding from this programme. These include ACT Community Theatre, Bristol; Belfast Queen's Festival; Battersea Arts Centre, London; Norfolk Music Services; and Spearfish, Manchester.

In 2011, 43 UK cultural organisations participated in the programme, with five UK-based European organisations receiving an estimated €5.7m in grants.

- 1.10 In 2013, the European Commission proposed rolling the Media and Culture funding programmes into a new *Creative Europe* programme dedicated to funding Small and Medium-sized Enterprise (SME) projects in the cultural and creative sectors, on the grounds that they contribute to economic growth, employment, innovation and social cohesion. €1.3bn has been allocated for this programme across Europe for the period 2014-20. The UK Government welcomed this move alongside the introduction of greater transparency on grant giving and more robust monitoring of the programme.
- 1.11 In 2009, TFEU made clear that, in the area of culture, the EU did not have any powers of harmonisation of national laws and regulations of the Member States in respect of culture, and that the competence remained a supporting competence only. TFEU also provided that the Council should take decisions on culture under qualified majority voting (QMV), rather than by unanimity, thus removing the national veto. The ordinary legislative procedure applies. The relevant legal base for action in the field of culture is Article 167 TFEU.
- 1.12 In recent years there has also been growing attention paid to the potential for digitisation and electronic communications to facilitate both the preservation of cultural heritage, and raising awareness amongst EU citizens.
- 1.13 In January 2011, a high-level reflection group delivered a report on the digitisation of Europe's cultural heritage.⁹ It urged EU Member States to step up their efforts to put online the collections held in all their libraries, archives, and museums, stressing the benefits of making such material more easily accessible, and pointing to the benefits for such sectors as education, research and tourism.
- 1.14 The report's recommendations fed into the EU's broader strategy under the *Digital Agenda*

⁷ MEDIA is a sub-programme of *Creative Europe* which supports the EU film and audiovisual industries.

⁸ For more information please see: www.bfi.org.uk/film-industry/media-programme-funding, accessed on 3 February 2014.

⁹ Comite Des Sages, *A New Renaissance* (2011).

for Europe, and proposed that the *Europeana* portal should become the central reference point for Europe's online cultural heritage.¹⁰ The European Commission subsequently adopted a recommendation on Digitisation and Digital Preservation in October 2011 which sets targets for minimum content contribution by 2015 – with a view to receiving a balanced set of contributions from across the EU.¹¹

Europeana is the common access point to the collections of European libraries, archives and museums from all around Europe.

On 27 October 2011, the Commission adopted a *Recommendation on Digitisation and Digital Preservation*. The Recommendation asked Member States to step up their efforts, pool their resources and involve private actors in digitising cultural material and make it available through Europeana.¹²

Europeana, which started out with 2m items when it was launched in 2008, currently holds more than 23m objects, which are now accessible through a more intuitive and interactive interface. It aims to provide a balanced set of contributions from across Europe.

Since 2008, many UK organisations (such as the British Library and National Maritime Museum) have delivered information about their Collections through Europeana, and there are now almost 1.5m digital assets from the UK available through the system.

Other Areas of EU Competence Affecting Culture

- 1.15 In addition to actions under the specific culture competence, the EU has adopted important measures under other competences which impact on the culture sector. For example, the Cultural Objects Directive 93/7/EEC, adopted under the free movement of goods competence, provides for a cooperation mechanism and a procedure for returning national treasures which have been unlawfully removed from a Member State. Also, the Cultural Exports Regulation 116/2009/EEC (adopted under the common commercial policy competence) establishes a harmonised system for export of cultural goods outside the EU.^{13 14} There are currently proposals for the Cultural Objects Directive to be amended, notably in respect of the categories of goods which it covers. This is presently under negotiation.
- 1.16 The European Council has also adopted a set of Conclusions on preventing and combating crime against cultural goods, citing not only the EU's competence in respect of culture and the free movement of goods, but also its competence in relation to the prevention, detection and investigation of criminal offences.¹⁵ There are also proposals to bring together law enforcement officials with expertise in cultural goods. Please see the Balance of Competences report on the free movement of goods, which will be published alongside this report.¹⁶

¹⁰ European Commission, *Europeana – A Single Access Point to Europe's Cultural Heritage* (n.d.). Available at: ec.europa.eu/information_society/activities/digital_libraries/europeana/index_en.htm, accessed on 3 February 2014.

¹¹ Commission Recommendation 2011/711/EU on the *digitisation and online accessibility of cultural material and digital preservation*, October 2011.

¹² Idem.

¹³ Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State, 1993.

¹⁴ Council Regulation 3911/92/EEC on the export of cultural goods, 1992.

¹⁵ European Council, conclusions on Preventing and Combating Crime Against Cultural Goods, EU (2011).

¹⁶ HMG, *The Balance of Competences Between the UK and the EU, Single Market: Free Movement of Goods Report*, published in parallel.

- 1.17 EU rules on copyright are of relevance to the library sector. The Rental and Public Lending Directive enables libraries to lend out books to the public, subject to certain safeguards and payments for authors.¹⁷
- 1.18 The Transatlantic Trade and Investment Partnership (TTIP) currently being negotiated by the EU and United States has revealed some tension between the EU's trade and cultural agendas. The free trade agreement could add as much as £100bn to the EU economy (£10bn annually to the UK economy) and the UK has consistently pushed for as comprehensive and ambitious a mandate as possible. However, a number of Member States successfully argued, as with all previous EU trade agreements, that it is necessary to exclude audio-visual services from the agreement in order to protect European culture. The UK maintains that it is wrong to limit the agreement's scope at this stage. The European Commission is able to propose the inclusion of audio-visual at a later stage of negotiations and the Government will work with the sector to identify potential benefits to doing so. The exclusion of audio-visual does not include intellectual property. Please see the Balance of Competences report on trade and investment, which will be published alongside this report.¹⁸

Tourism

- 1.19 It was not until 2009 that TFEU conferred on the EU a specific supporting competence in relation to tourism. As with culture, harmonisation in this sector was excluded, and whilst both the EU and national governments could act, action by the EU did not prevent national governments from acting as well. The EU has not yet adopted any regulatory or legislative measures under Article 195 TFEU. However, it has launched a number of policy proposals with the objectives of supporting and promoting EU tourism.
- 1.20 The EU's 2010 *Communication on Tourism* identified four priorities for action:
- Stimulating competitiveness;
 - Promoting sustainable, responsible and high-quality tourism;
 - Consolidating Europe's image as a collection of sustainable, high-quality destinations; and
 - Maximising the potential of EU financial policies for developing tourism.¹⁹
- 1.21 In 2012, the EU published an implementation plan for these priorities, and to capitalise on Europe's common heritage.²⁰ Plans included an ICT and tourism platform to support the tourism sector in using new information technology, and the development of a Consumer Markets Scoreboard to measure consumer satisfaction with services such as transport, accommodation, travel and package tours.
- 1.22 The EU is also keen to encourage an extension to the tourist season, improve professional skills and provide up to date, comparable data on tourism across the EU.
- 1.23 In July 2012, the Commission consulted on the development of a European Tourism Label for Quality scheme.

¹⁷ Directive 2006/115/EC of the European Parliament and of the Council on rental right and lending right and on certain rights related to copyright in the field of intellectual property, 2006.

¹⁸ HMG, *The Balance of Competences Between the UK and the EU, Trade and Investment Report*, published in parallel to this report.

¹⁹ Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Europe, *The World's No 1 tourist Destination – A New Political Framework for Tourism in Europe* COM (2010) 352, June 2010.

²⁰ Commission Communication, *Ensuring a Successful Implementation of the Tourism Communication* COM (2010) 352 final, updated 26 September 2011.

- 1.24 In the international field the EU cooperates with international organisations, including the European Travel Commission, the World Tourism Organisation and the Organisation for Economic Co-operation and Development (OECD), and with non-EU countries to promote European Tourism under implied exclusive competence powers. The EU is currently working on a draft joint statement with the Chinese National Tourism Administration.

Other Areas of EU Competence Affecting Tourism

- 1.25 While the EU's new specific competence on tourism is of relatively short standing, the EU has acted in the field of tourism for a number of years. For example, in 1986 a Council decision established a consultation and co-operation procedure in the field of tourism under which Member States exchange information and co-operate in the provision of services to tourists.²¹ This was adopted using the residual legal base (now Article 352 TFEU), on the basis that tourism contributed to general Community objectives such as economic activities. A further decision in 1992 set out the *Community Action Plan to Assist Tourism*. This had a budget of €15m which was adopted under the same legal base, recognising that tourism makes a contribution to the progress of the idea of European citizenship.²²
- 1.26 There are also a wide range of EU competences, outside the specific tourism competence, that have a very significant impact on the tourism sector, including free movement, immigration, the Single Market and transport. For example, the Court of Justice of the European Union (ECJ) case law has long recognised the right of EU citizens to travel to other EU countries as tourists and as recipients of services.²³ This has now been enshrined in the Free Movement Directive 2004/38/EC as a right for all EU citizens to enter and stay in another EU Member State for up to three months.²⁴
- 1.27 In relation to non-EU visitors, the UK has adopted a special position under the EU Treaties, meaning it can choose whether or not to participate in EU measures relating to justice and home affairs, including immigration. Although most EU countries have signed up to the Schengen Agreement, which includes arrangements whereby a non-EU national issued a visa by one Schengen country can travel to other Schengen countries on that visa, the UK has not opted into the areas of the Schengen Agreement concerning visas and border control. Successive UK governments have believed that in the interests of national security and of controlling immigration, the UK is best served by maintaining its own independent border checks and visa systems. This means that non-EU visitors must apply for a separate visa if they wish to visit the UK. The benefits – and costs – of this decision are discussed in further detail in the Balance of Competences report on asylum and immigration.²⁵
- 1.28 The EU has a shared competence in relation to transport and harmonised laws affecting, for example, air travel, which will impact the Tourism sector. For example, the Denied Boarding Regulation protects air travellers in the event of delays. There is similar legislation

²¹ Council Decision 86/664/EEC establishing a consultation and cooperation procedure in the field of tourism, 1986.

²² Council Decision 92/421/EEC on a Community action plan to assist tourism, 1992.

²³ *Luisi and Carbone v. Ministero del Tesoro*, Cases 286/82 and 26/83 [1984] E.C.R. 377.

²⁴ Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, 2004.

²⁵ HMG, *The Balance of Competences Between the UK and the EU, Asylum and Immigration Report*, published in parallel to this report.

for rail, bus, coach and ferry travel.²⁶ Please see the Balance of Competences report on transport which will be published alongside this report.

- 1.29 Some measures under the freedom to provide services provisions of the Treaties apply directly to the sector, and include, for example, the 1990 Package Travel Directive, which protects consumers booking pre-arranged package holidays so that, for example, they will always be able to return home even if a tour operator goes into liquidation. Over the years, the development of the internet and the emergence of low-cost air carriers have revolutionised the way in which people organise their holidays. A growing number of people now arrange their holidays themselves. These changes in the travel market mean that less people are booking traditional package holidays, and so the numbers protected by the Directive have fallen. The EU is currently reviewing its legislation on package holidays. Please see the Balance of Competences report on the Single Market: Services, which will discuss this further.²⁷

Sport

- 1.30 As with tourism, it was not until the 2009 Treaty of Lisbon that a specific supporting competence in relation to sport was conferred on the EU. However, the Declaration on Sport annexed to the 1997 Amsterdam Treaty emphasised the social significance of sport, and in particular its role in forging identity and bringing people together. Like culture and tourism, harmonisation in this sector is excluded under Article 165 TFEU, so whilst both the EU and national governments can act, action by the EU does not prevent national governments from acting as well. The EU has not yet adopted any regulatory or legislative measures under this specific competence, but has developed a series of priority actions in this area.
- 1.31 In 2011, the EU issued a Communication on developing the European Dimension in Sport and since 2009 has made funding available to support studies, conferences, seminars, networks and best practice on the basis of the priorities set out in the EU Commission's 2007 White Paper on Sport.^{28 29}
- 1.32 The Communication established the EU's interest in developing activity in the following areas:
- The societal role of sport including anti-doping, training and qualifications, enhancing health and social inclusion;
 - The economic dimension of sport including sustainable financing, the application of EU State aid rules to Sport and regional development and employment; and
 - The organisation of sport including the promotion of good governance, the specific nature of sport, the free movement and nationality of sports persons, transfer rules and activities of sports agents, co-operation with third countries and the CoE.

²⁶ Regulation 261/2004/EC of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, 2004.

²⁷ HMG, *The Balance of Competences Between the UK and the EU, Single Market: Services Report*, published in parallel to this report.

²⁸ Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Developing the European Dimension in Sport* COM (2011) 18 January 2011.

²⁹ European Commission, *White Paper on Sport* (2007).

- 1.33 Under the Treaty of Lisbon, the EU was expressly given external competence in relation to sport. For example, the CoE is working on a Convention against the Manipulation of Sports Competitions, to help tackle match-fixing. The UK is participating alongside the European Commission and others in the negotiations.³⁰

Other Areas of EU Competence Affecting Sport

- 1.34 Long before the development of the new specific competence on sport the EU was active in this area and there are a wide range of other EU competences that impact on the sector.
- 1.35 This is particularly true of the field of professional sport, which has been influenced by ECJ case law relating to the free movement of persons. The landmark case of Bosman changed the way in which sport club teams signed footballers and other professional sports players from other EU countries.³¹

The Bosman Case

In the Bosman case, the ECJ ruled that transfer fees for out-of-contract players, directly affecting a footballer's access to the employment market in another EU country, were an obstacle to the free movement of workers, and thus unlawful. Footballers are therefore free to move on to other clubs once their contracts have expired. The Court also ruled against limits on fielding EU footballers from other Member States in club teams meaning that football clubs in the EU can sign any number of European players.

- 1.36 In addition to the Bosman ruling, various judgments have ruled on the interaction between sport in the context of free movement rights and competition law. So while the ECJ has applied free movement principles to the sector, it has nonetheless recognised that in certain circumstances – such as where sporting activity is wholly non-professional, or national teams are competing in national events – Member States may impose certain restrictions.³² Similarly, competition law has been applied to national sports associations and international bodies in respect of their economic activities, such as selling tickets or broadcasting rights, while taking into account the social significance of sport in the need to ensure fair sport competitions and the need to ensure reasonable access to tickets for everybody.
- 1.37 The sports sector is also subject to EU rules on broadcasting, under the services chapter of the Single Market. In particular, the Audiovisual Media Services Directive contains specific provisions enabling Member States to ensure that specified events of national

³⁰ The Commission is participating under negotiating mandates given in two decisions of the Council: the first decision was based on the elements of the Convention relating principally to freedom of establishment and freedom to provide services under Articles 50 and 56 TFEU (where the EU shares competence with the Member States) as well as those dealing with sport under Article 165 (where the EU only has supporting competence). The second decision was based on Articles 82(1), 83(1) and 87(2) TFEU, which relate to judicial cooperation, criminal offences and police cooperation. These articles all fall within Title V of the TFEU in respect of which the UK (as well as Ireland) has an opt-in. The UK has not chosen to opt-in, meaning the UK has not authorised the EU to negotiate in those areas of the Convention on its behalf.

³¹ *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman* (Bosman), Cases C-415/93, [1995] E.C.R. I-04921.

³² KEA-DCES, *Economic and Legal Aspects of Transfers of Players* (2013).

importance are free to air, meaning anyone can watch them on terrestrial TV.³³ For the UK, the listed events are all sport related.

Listed Events

Group A (Full Live Coverage Protected)

The Olympic Games
 The FIFA World Cup Finals Tournament
 The European Football Championship Finals Tournament
 The FA Cup Final
 The Scottish FA Cup Final (in Scotland)
 The Grand National
 The Wimbledon Tennis Finals
 The Rugby World Cup Final
 The Rugby League Challenge Cup Final
 The Derby

Group B (Secondary Coverage Protected)

The World Athletics Championship
 6 Nations Rugby Matches (Home Countries)
 All Other Matches in the Rugby World Cup Finals Tournament
 The Commonwealth Games
 Non-Finals play in the Wimbledon Championships
 The Ryder Cup
 The Open Golf Championship
 Cricket Test Matches played in England
 The Cricket World Cup – the Final, Semi-finals and Matches Involving Home Nations' Teams

³³ Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), 2010.

The Transformation of the Football Sector

The information contained in this text box is public source information from UEFA.

By the 1970s, football was enjoying tremendous mass public appeal. The old Inter-Cities' Fairs Cup came under the full control of the Union des Associations Européennes de Football (UEFA) and was renamed the UEFA Cup in 1971. The UEFA Super Cup, involving the winners of the European Champion Clubs' Cup and UEFA Cup Winners' Cup, came into being in 1973. Three years later, a European competition for Under-21 players replaced the Under-23 competition and in 1977, the number of participants in the European Championship final round doubled from four to eight teams.

From the start of the 1990s, European football underwent a series of dramatic changes. The game became more commercially-oriented, and there were considerable developments in political, social and legal terms. Football was now not only an important social phenomenon – the game had become extremely big business, with huge sums of money at stake, and many stakeholders and interest groups involved.

In the 1990s and new millenium, European football experienced explosive growth and development. Aspects such as television, business and finance, marketing, sponsorship and global communication changed the face of the game, and political upheavals altered the map of Europe.

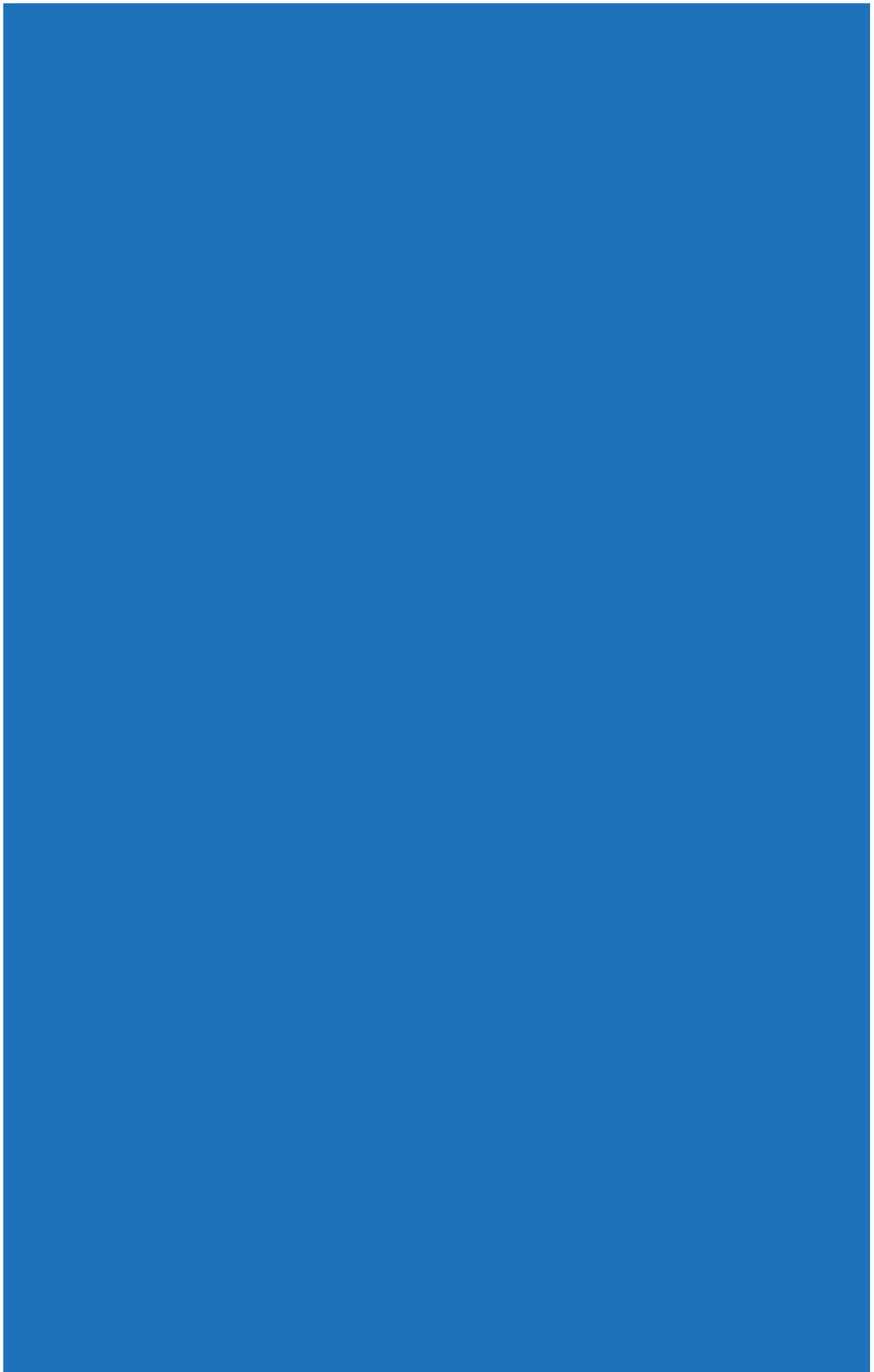
During the 1990s, the integration process within western Europe brought about the intensification of contacts between UEFA and the European Union on a host of matters, including cross-border television broadcasts. The Bosman ruling in 1995 obliged UEFA (and European football as a whole) to make wide-ranging changes to regulations and policies on international transfers, as well as on the fielding by clubs of foreign players. In 2001, following intensive negotiations, UEFA and FIFA joined forces to reach agreement with the European political authorities on a mutually-accepted international transfer system which was aimed at stabilising player/club relations, particularly from a contractual point of view, and protecting the smaller clubs, many of whom discover, train and develop the superstars of today and tomorrow.³⁴

Competition Law and State Aid

- 1.38 Culture, tourism and sport are all affected by EU competition law, which is an exclusive competence of the EU. Perhaps the most relevant element of competition law for culture, tourism and sport is State aid, that is the intervention of the State to aid a particular sector, including by tax reliefs, lottery funding or local authority funding.
- 1.39 There are specific provisions for some State aid measures in relation to culture. This still requires approval by the Commission, but if a Member State can successfully argue that the aid is necessary to protect cultural diversity then aid is permissible. The UK has introduced tax reliefs for British films, animation and high-end TV, all of which were approved by the Commission on these grounds.
- 1.40 There are no specific provisions in the TFEU in relation to tourism or sport. However, the Commission has proposed considering amending its General Block Exemption Regulation to permit block exemptions in the areas of culture, heritage conservation and amateur sports.³⁵

³⁴ Please see information from UEFA, www.uefa.org/aboutuefa/organisation/history/chapter=2/index.htm, accessed on 3 February 2014.

³⁵ Council Regulation 733/2013/EC, 2013, amending Regulation 994/98/EC on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid, 1998.



Chapter 2:

Impact on the National Interest

- 2.1 Culture, tourism and sport in the UK support and reinforce each other as drivers for enriching society and boosting economic growth. The UK's unique culture and heritage draw tourists from across the EU and the globe, boosting our economy, as does our reputation for world class sport, and for hosting major sporting events. This was demonstrated by the enormous success of the 2012 Olympic and Paralympic Games. UK culture is hugely important in defining what it means to be British. It is a core part of our national identity and underpins how we see ourselves. It also defines how the world sees the UK. UK culture is our hallmark, and makes the UK distinctive in a globalised world. The world was watching the UK during our Olympic year and British confidence, creativity and flair is more in demand than ever. Our culture, tourism, and sport help define both national and regional identities, and are a vital component of the UK's capacity to promote itself abroad and our use of 'soft power'.
- 2.2 In terms of their economic contribution, the arts and culture had a turnover of £12.4bn, and a Gross Value Added (GVA) of £5.9bn in 2011.¹ The sector provided employment for over 110,000 full-time equivalent employees in the UK during the period 2008-2011.²
- 2.3 One of the great attractions for visitors to the UK is the range of its cultural offerings and rich heritage. At least £856m per annum of spending by tourists visiting the UK can be attributed directly to arts and culture.³
- 2.4 The inbound tourism market overall is the eighth biggest in the world, with 31m inbound visits per year.⁴ Its GVA economic output is expected to increase by 3.5% annually through to 2020. This is an important demand stimulus for the economy. The UK Tourism Satellite Account shows that, in 2011, tourism directly contributed GVA of over £50bn to the UK economy (4%).⁵ Economic analysis by Deloitte suggested that if indirect economic effects are also included, GVA could be as high as £115bn (9%).⁶ Tourism also makes a substantial contribution to employment in the UK with 2.7m employees working in

¹ Centre for Economics and Business Research (CEBR), *The Contribution of the Arts and Culture to the National Economy* (2013).

² Idem.

³ Idem.

⁴ Please see information from VisitBritain. Available at: http://www.visitbritain.org/Images/Overseas%20Visitors%20to%20Britain_tcm29-14708.pdf, accessed on 3 February 2014.

⁵ Office of National Statistics, Tourism Satellite Account.

⁶ Deloitte, *The Economic Case for The Visitor Economy* (2008).

tourism associated industries in 2011, or 9% of all employee jobs, with a further 0.5m self-employed. 1.7m of this employment is directly related to tourism.⁷

- 2.5 The sport sector was estimated to have generated just over £20bn GVA in 2010 in England, in addition to over £11bn in health benefits, and to have provided employment for more than 400,000 people.⁸ The UK's thriving professional and amateur sports inspire people to lead more active and healthy lifestyles, raise self-esteem and bring communities together.
- 2.6 Recent major events such as the 2012 Olympics and the Queen's Diamond Jubilee celebrations have contributed to promoting the UK 'brand' internationally. This has been actively supported by the GREAT campaign which is designed to raise the UK's profile overseas, particularly in new developing markets such as Brazil, China, and India.
- 2.7 Sporting events can also be a significant tourist attraction: with the outstanding example being the 2012 Olympic Games, which attracted 685,000 visitors, with an average spend of £1,510 – double the amount of an average tourist trip.⁹



- 2.8 Apart from attracting visitors, the Olympics also generated £10bn in inward investment and exports in the year following the games.
- 2.9 It is therefore in the national interest to ensure that the balance of competence between the national Government and the EU supports and promotes the development of culture, tourism and sport in the UK.

The Views of Contributors

- 2.10 All 52 contributors who submitted evidence to this report held the view that the EU's supporting competences in culture, tourism and sport were on balance either beneficial to the future development of these sectors or had the potential to be so.
- 2.11 It was notable that none of the contributors argued in favour of extension of the EU's competences in these areas, and five contributors warned of the need to remain vigilant against moves by the European Union to extend its competence.
- 2.12 Contributors from all three sectors also commented on the impact of the EU's activity on their sectors under competences not covered by this report, in particular in relation to State aid, immigration, the Single Market (free movement of persons, goods and services)

⁷ Please see information from UNWTO, *Tourism Highlights* (2013). Available at: mkt.unwto.org/en/highlights, accessed on 3 February 2014.

⁸ Sport England, *The Economic Value of Sport* (2010).

⁹ HMG, *Post Games Evaluation: Meta-Evaluation of The Impacts and Legacy of the London 2012 Olympic and Paralympic Games, Report 5* (2013).

and Structural Funds. This valuable evidence will be reflected in the reports that cover these issues later in the Review period.

Culture

- 2.13 The 30 contributors from the culture sector were the most unequivocal in their support of EU activity under its competence. The key focus for these contributors was funding from EU Culture programmes, which they saw as an important source of financial support for UK culture.

Between 2007-11, more than 200 UK participants in 176 transnational projects received funding from the EU Cultural Programme. The Culture Programme has supported a wealth of new artistic work which would not otherwise have been created. Arts Council England.

The Media Programme makes a vital financial and cultural contribution to the UK's audio-visual sector [...] From 2007-2012 UK companies received €48,269,500, while a further €38,516,019 supported releases of several hundred British films on the continent. British Film Institute.

- 2.14 A number of the contributors, including the British Council and Arts Council England, stressed the comparative success – almost double the average – of UK cultural organisations in securing EU funding despite the fact that we submit fewer applications per capita.

Over the past decade UK arts organisations have had a high success rate in applications to the Culture programme. In 2010/11, the UK had the “highest number of successful projects of any applicant country in the most popular strand” [the Culture Programme]. Arts Council England.

- 2.15 In its contribution the Independent Music Companies Association (IMPALA), representing over 4,000 cultural Small and Medium Enterprises (SMEs) across Europe, also made this point, referring to a May 2013 article in the *Guardian newspaper* highlighting the high success rate of UK applications for EU funding for the cultural and creative sectors – 46%, almost double the overall average success rate of 24%.¹⁰
- 2.16 All contributors from this sector stated that EU funding programmes offered an alternative source of public funding during a period of sustained fiscal constraint at national level. It could be argued therefore that the national interest could equally be served by the UK Government investing money it currently contributes towards Europe, directly into the sector.
- 2.17 The sums involved also need to be kept in perspective. In the case of the film industry, for example, the largest source of public funding to the sector was UK film tax relief, which provided £214m in 2011/12 (58.5% of the total). This was followed by the National Lottery (£52m, 14% of the total) and grant-in-aid (£42m, 11% of the total) to the British Film Institute (BFI) and the National Film and Television School (NFTS) via the DCMS. Film4 contributed £15m and BBC Films £12.5m. The EU contributed £6.6m, of which £5m came from the MEDIA Programme – 2% of the total.
- 2.18 Contributors including IMPALA and Arts Council England noted that there were benefits to the sector derived from this funding being directed through Europe that could not be achieved through national spending, and which enhanced the benefit of these programmes beyond their monetary value.

¹⁰ Yvette Vaughan Jones, ‘UK success rate is high and yet we put in fewer applicants per capita’, *The Guardian* (May 2013).

The UK's cultural and creative sectors are one of its strongest assets, and EU funding, which already benefits the UK, could further contribute to its growth. Simultaneously, as some applications for EU funding require partnering up with other countries, this process helps build bridges and further expand across various EU markets, outside the UK. IMPALA.

The opportunities provided by EU funding have facilitated partnerships across national boundaries which have encouraged the valuable exchange of knowledge, skills, work and ideas, as well as expanding audiences. Arts Council England.

- 2.19 These contributors argued that the emphasis of the EU's cultural funding programmes, namely bringing together cultural communities across Member States provides an incentive for collaboration which delivers multiple benefits, which are not achievable at a national level.

For some contributors this additional value derives from a wider networks of collections, knowledge and creativity and access to wider audiences.

Innovative, risk-taking work is often created by emerging artists and smaller-scale organisations. Without opportunities to join together at a larger, pan-national scale this work would not reach wider audiences and bigger markets, limiting both its potential and its impact. Arts Council England.

There are vital networks of like institutions which provide mutually beneficial professional development, the lending and borrowing of objects between institutions, joint scholarship, exchanges, education programmes and touring exhibitions. National Museum Directors' Council.

- 2.20 For others it was about achieving a critical mass which allows the UK, with European partners, to compete on the global stage and project 'soft power' abroad:

The different cultures of Europe will have increasing difficulties to be heard globally in an environment that will be dominated by players of the size of the US, China and Brazil. An increasing co-ordination of European cultural initiatives and support of collaboration within the EU is highly desirable. The Wallace Collection.

Domestic governments alone cannot provide funding at the scale of investment needed to enable cultural organisations to compete with their rivals in faster growing international economies such as China and India. Arts Council England.

- 2.21 The British Council, a key player in the UK's projection of 'soft power', recognised the contribution EU funding programmes can make where they support UK institutions to export our culture internationally, but was clear that, 'national and devolved governments and national cultural institutions remain the best placed level of government to support and champion the internationalisation of their national arts and cultural sectors'.

- 2.22 The National Museum Directors' Council also argued that EU cultural programmes provided an 'entry point for museums that may then go on to consider later collaborative projects once they have established a network of suitable partners. This could not be replicated by a single Member State – the pool of possible partners is larger and the funding necessarily less prescribed, creating the opportunity for innovative projects'.

- 2.23 Other contributors were keen to stress the value in EU funding programmes which support UK citizens to better understand and experience their own cultural heritage, as well as reap economic benefits:

The greatest visible benefits of EU action in culture have been the European Heritage Open Days initiative and the European Cities of Culture, which have provided a focus for investment and lead to wide scale regeneration. Open Days have increased local interest in heritage by allowing people to explore some of the fabulous built heritage that makes up our towns and cities. The Prince's Regeneration Trust.

Another major programme is The European Heritage Days [...] They increase public participation on a massive level [...] Large countries support smaller ones with their expertise on evaluating success / volunteering etc so it is also an example of diplomacy/development. Sarah Wolferstan, University College London.

The European Capitals of Culture programme is very successful and the UK has derived significant benefit from its participation in this initiative. Both UK cities – Glasgow and Liverpool – [...] have reaped significant cultural and economic benefits. British Council.

Glasgow was selected as a European City of Culture in 1990, and the Scottish Government would take the view that this initiative has left a long-standing and meaningful legacy for the city. Glasgow used the opportunity that the ECC initiative afforded to successfully demonstrate how culture can be used to address a range of economic and social objectives as well as promoting community development and participation. The UK is scheduled to host a European Capital of Culture in 2023. The Scottish Government recognises the great benefits that the Capitals of Culture programme can bring to a city and, indeed, the recent UK City of Culture programme and our support for the city of Dundee is predicated on an understanding of those benefits. Scottish Government.

- 2.24 Indeed, the UK Government has embraced the *Capitals for Culture* programme, supplementing EU funding with national support to great effect. Based on the success of Glasgow and Liverpool the UK has introduced its own national Capital of Culture programme.

Liverpool – European Capital Of Culture 2008

Liverpool's year as European Capital of Culture generated an £800m boost to the regional economy and welcomed 3.5m first time visitors to the city.

Impacts 08 – The Liverpool Model is an initiative commissioned by Liverpool City Council to evaluate the social, cultural, economic and environmental effects of Liverpool's year as European Capital of Culture. The final report, published in March 2010, shows the very significant benefit to Liverpool, Merseyside and the wider North West region.¹¹

Liverpool 2008 is now perceived as an important reference point for future European *Capitals of Culture* and is presented as an exemplar by the European Commission in areas such as its volunteering, community involvement and research programmes.

- 2.25 Contributors from larger cultural organisations felt there was value in the EU's emphasis on Member States' shared cultural heritage:

The EU's focus on shared cultural heritage is very important – an audience cannot appreciate the history of the UK without understanding the history of Europe. National Museum Directors' Council.

¹¹ University of Liverpool, *Creating an Impact: Liverpool's Experience as European Capital of Culture* (2010).

The EU is the obvious framework for cultural activities and commemorations on many issues. Over the next years, the First World War commemorations, the anniversary of 1714 and of the Battle of Waterloo are obvious examples of topics that can best be celebrated, commemorated and analysed when seen in the European context. The Wallace Collection.

- 2.26 Others from the culture sector were keen to stress the importance of the EU's recognition of the value of cultural diversity, and the importance of EU activities under its culture competence for smaller cultural organisations, and for those outside the South-East:

We, as a small performing arts organisation and charity have benefitted both from an EU culture grant, and from the Youth in Action programme. Without their support, the work that was achieved in the Balkan Region and in West Dorset would not have been possible. Their programmes are far reaching and adaptable to many different areas of culture and the arts. Anonymous contributor.

The way in which the EU recognises diversity as well as shared elements of the European Union's cultural and linguistic diversity is valuable... The role of culture in encouraging cultural diversity and intercultural dialogue – through improving citizens' knowledge and appreciation of other European cultures – is at the very heart of European cultural policy [...] From a Welsh perspective, being a bi-lingual nation, this focus is very welcome. Welsh Government.

The EU's focus on a shared cultural heritage is beneficial as it recognises the cultural diversity of the EU. This opens culture up and helps make it more accessible and inclusive for everyone. Museums Galleries Scotland.

An understanding of its history is of great importance to retaining a Cornish identity, and in turn the maintenance of distinctive customs and culture. Our experience is that currently these wishes are better understood and appreciated in the wider Europe than is evident nearer home. Centre for European Research within Cornwall.

- 2.27 As set out in earlier chapters, the supporting nature of the EU competence for culture means that no action taken by the EU under this competence can prevent or require any action by the UK Government. The EU can however offer complementary programmes which UK cultural organisations can choose to participate in or not. In the area of culture these programmes largely comprise of funding. It is not perhaps surprising therefore that overall contributors from the culture sector felt the balance of competence between the UK and EU in relation to culture is correct. No contributors argued either for the removal of EU competence in this area, nor that it should be extended:

NMDC would support the present balance of competences in respect to culture [...] This has a net positive cultural and economic benefit for the UK because it allows the museums to produce better public programmes and continue to attract increasing visitor numbers. National Museum Directors' Council.

Overall we believe the opportunities for cultural organisations and bodies are strengthened by the availability of funding and partnership programmes and expertise from Europe. Scottish Government.

The EU responsibility for culture on the supporting level is highly appropriate for [helping UK compete globally]. The Wallace Collection.

While we agree that the European Union should have a supporting competence in this area, it would be unnecessary and counterproductive for this to be extended. British Council.

2.28 That is not to say that contributors were universally satisfied with the EU's operation of its competence for culture. Four of the contributors from the culture sector raised concerns about the complex, slow and overly bureaucratic nature of the EU's funding programmes.

In general, European schemes are too bureaucratic and funding cycles are very slow, the decision making process needs to be significantly sped up to be effective for busy companies, often with tight cash flows. British Film Institute.

The disadvantages are some of the restrictions on what funding can be used for and the bureaucracy. Hampshire County Council.

For a small organisation it is incredibly difficult and time consuming to provide the financial evidence required, a lot of it unnecessary we believe [...] Many people we know have lost part of their original grants due to misunderstanding of the financial reporting and its excessive demands. Anonymous contributor.

The disadvantages of directing funding through the EU is that the requirement for monitoring and evaluation systems for EU projects can be overly complex and this can deter potential applicants, and favour larger organisations. Anonymous contributor.

Tourism

2.29 The EU's specific competence in relation to tourism dates back only to TFEU and it has yet to adopt any regulatory or legislative measures. However, tourism is a complex industry which is impacted by EU activity across a range of competences outside the scope of this report. In particular, contributors stressed the impact of EU competences in relation to transport, immigration, taxation, the Single Market and Structural Funds.

For all the recent developments and initiatives such as the Virtual Tourism Observatory (VTO), the EU's specific tourism competence has limited impact [...] Far more important have been other legislation and initiatives in other policy areas that touch on tourism, including free movement, immigration, market and transport. VisitBritain and VisitEngland.

2.30 For example, the UK issues UK-only visas for non-EU visitors, while most other Member States issue visas under the Schengen arrangements which allow visitors to travel to other Schengen countries. This arises out of the UK's special position under the EU Treaties in respect of the Schengen area. The European Tour Operators Association noted that this may lead the UK to be dropped from multi-country itineraries, although VisitBritain and VisitEngland also noted that the UK's physical location as an island may impact on its ability to benefit from EU action.

2.31 Equally, some contributors noted the benefits, both to incoming and outgoing holidaymakers, of consumer protection measures such as the Package Travel Directive, or the Denied Boarding Regulation.

2.32 Issues relating to the free movement of persons, the single market for services, immigration, and transport will be dealt with in other Balance of Competences reports.¹² Evidence submitted to this report relevant to those reports has been forwarded to the authoring department.

¹² HMG, *Review of The Balance of Competences Between the UK and the EU, Single Market: Services*, published later in the review. HMG, *Review of The Balance of Competences Between the UK and the EU, Asylum and Immigration*, published in parallel with this report. HMG, *Review of The Balance of Competences Between the UK and the EU, Transport*, published in parallel to this report.

2.33 A number of contributors also reflected on the potential for the new competence for tourism to drive greater coherence in the EU's application of its wider competence to the tourism sector. These issues will be considered in Chapter 3.

2.34 As well as commenting on these broader competences, ten contributors also commented specifically on the new supporting tourism competence. Of these, eight agreed with the joint submission from Visit Britain and Visit England that the new tourism competence was yet to have an impact:

We have not yet seen any significant impact from article 195 of the TFEU. British Hospitality Association (BHA).

While the functions of the state in providing for or supporting tourism are also subject to EU State Aid considerations, there is very little direct legislative control by the EU on tourism specifically. Scottish Government.

We aren't aware of any evidence that the actions under the EU 2010 Communication on Tourism... have made a significant difference to the UK's tourism economy. The actions struggle to address the priorities in a substantial way. Hampshire County Council.

2.35 However, Phil Bennion MEP took a more positive view, asserting that 'co-ordination endeavours at EU level can help the UK fulfil its ambitions, though limited to non-legislative activities such as marketing and information sharing'.¹³

2.36 There was disagreement between contributors about the effectiveness of specific EU measures under the tourism competence. Phil Bennion MEP again saw reasons for optimism. Unlike VisitBritain and VisitEngland, Phil Bennion MEP believed the VTO will soon facilitate the valuable acquisition and sharing of insights on tourism, noting that 'the platform will include a collection of best practices that are to serve as a toolbox for future UK policy initiatives'.¹⁴

The Virtual Tourism Observatory (VTO)

In 2010 the Commission announced the implementation of a VTO to provide socio-economic data on Tourism across Europe. The VTO is intended to become the central data reference point for European policy-makers. The UK's Office of National Statistics won the VTO contract to manage this project.

2.37 Phil Bennion MEP also saw benefit in the EU's first legislative proposal on tourism to create a voluntary European Tourism Label for Quality which he argued would help increase the competitiveness of European tourism against non-EU markets.¹⁵

2.38 However, the BHA remained to be convinced, fearing it may lead to greater bureaucratic imposition on Member States, while the European Tour Operators Association warned 'the current trend towards the standardisation of services may be misguided'.¹⁶

2.39 The European Tour Operators Association also believed it was too early to tell whether initiatives such as the *CALYPSO: Low Season Tourism Initiative* has brought benefits, but suggests the EU should devote greater energy to helping the sector evolve products that suit emerging markets.

¹³ Phil Bennion MEP, *submission of evidence*.

¹⁴ *Idem*.

¹⁵ *Idem*.

¹⁶ BHA, *submission of evidence*.

- 2.40 For nine contributors the highly competitive nature of the tourist industry – with Member States in direct competition for visitors, both from inside and outside Europe – was a major challenge to EU activity benefiting the UK national interest. In 2012, the UK was ranked eight in the World Tourism Organisation (UNWTO) league tables for international tourism.¹⁷ More than half of the countries ranked higher than the UK were European Member States.

United Nations World Tourism Organisation (UNWTO)

The information contained in this text box is public source information from UNWTO.

This is the United Nations agency responsible for the promotion of responsible, sustainable and universally accessible tourism. As the leading international organisation in the field of tourism, UNWTO promotes tourism as a driver of economic growth, inclusive development and environmental sustainability and offers leadership and support to the sector in advancing knowledge and tourism policies worldwide. UNWTO's membership includes 156 countries, six Associate Members and over 400 Affiliate Members representing the private sector, educational institutions, tourism associations and local tourism authorities.¹⁸

- 2.41 While none of the contributors suggested there should be no EU co-operation in relation to tourism, this highly competitive market makes consideration of the value of co-ordinated EU level action finely balanced.

The EU Member States are in direct competition with each other for inbound visitors. EU co-operation initiatives in tourism must recognise this competition. This is not to say there is no scope for co-operation. Visit Britain and Visit England.

- 2.42 The question of whether the UK would benefit from EU attempts to market Europe as a destination to the rest of world occupied a number of contributors. The European Tourist Operators Association was perhaps the most bullish of our contributors, 'to the extent that the EU can catalyse interest in "brand Europe" that is welcome. "Europe" is seen as a destination and there is no reason why it should not have a voice alongside national voices. The EU's activities related to tourism do not, in our view, prejudice the efforts of [National Tourism Organisations]'.¹⁹
- 2.43 Visit Britain and Visit England, in their joint submission, also recognised this argument: 'Figures from ONS show that 19% of visitors to Britain come as part of a multi-country trip. For some key long-haul markets such as China and Australia, Britain is an attractive destination to include as part of a multi-country European itinerary'.
- 2.44 However, they make the point that there are a number of factors that make the UK different from other Member States, including the existing strength of our 'brand', our visa arrangements, and our island status. In their view, this means that the UK is unlikely to benefit from an increase in EU action to the same extent as other EU states, with weaker tourism markets, who are also our competitors:

Robust evaluation has shown that the cross-Government GREAT campaign has been successful building Britain's image overseas [...] Whilst common European branding or marketing might be appealing to accession countries or the smaller states of Europe, we would likely gain minimal benefit. Visit Britain and Visit England.

¹⁷ Please see information taken from UNWTO, *Tourism Highlights*, (2013). See: mkt.unwto.org/en/highlights, accessed on 3 February 2014.

¹⁸ Please see information taken from UNWTO, www.unwto.org, accessed on 3 February 2014.

The GREAT Campaign

The GREAT campaign – the first ever integrated Government campaign – is promoting Britain in key markets around the world and has already helped boost the economy by £1bn.



- 2.45 The BHA was also sceptical: ‘is there a “distinctive European brand”?’ This seems doubtful’. However, the BHA also recognised that, due to the supporting nature of the competence, it remained a national decision as to whether to participate in such EU programmes. The danger here of course was that, while we are not participating, our competing Member States may be getting benefits. This might suggest that the UK national interest would be better served if these programmes did not exist.
- 2.46 However, no other contributors went that far. Phil Bennion MEP noted that ‘marketing Europe as one destination encompassing highly diverse countries would generate a new competitive model. Such a branding programme could harness both Europe’s similarities and differences. Selling Europe as a unified product could increase the attractiveness of EU destinations to international tourists whilst recognising Europe’s diversity could allow the product to be easily tailored to each market [...] these promotional efforts would enhance UK competitiveness in this sector’.¹⁹
- 2.47 It was perhaps this complexity, and an agreed need for national flexibility, that led those contributors who expressed a view to conclude that a supporting competence in tourism was the right level. While some contributors, notably the European Tour Operators Association and Phil Bennion MEP, were positive about the potential for the EU to increase activity under this competence, several of the British based organisations who responded were more cautious:

I also think it important that tourism remains an EU supporting competence to allow actions to be taken independently at localised levels rather than being pressured to follow a more generalised blueprint. Institute for Tourism Research, University of Bedfordshire.

We are concerned that the tourism competence might lead to increased regulation of what is already a heavily regulated sector. BHA.

A number of geo-political factors [...] mean that we do not benefit from current EU tourism action to the same extent as our competitors, nor would we benefit from any considerable increase in EU action. Visit Britain and Visit England.

Sport

- 2.48 As with tourism, the EU’s specific competence in relation to sport dates back only to TFEU and no legislative or regulatory measures have yet been adopted.
- 2.49 Professional sport is also a complex industry which is impacted by EU activity across a range of competences outside the scope of this report. In particular, contributors stressed the impact of EU competences in relation to the Single Market and State aid.

¹⁹ Phil Bennion MEP, *submission of evidence*.

- 2.50 Issues relating to the free movement of persons, the single market for services and cohesion (including State aid) will be dealt with in other Balance of Competences reports.²⁰ Evidence submitted to this report relevant to those reports has been forwarded to the authoring department.
- 2.51 A number of contributors also referred to the potential for the new competence for sport to drive greater coherence in the EU's application of its wider competence to the sports sector. These issues will be considered in Chapter 3.
- 2.52 Unlike tourism, sport also comprises a large grassroots and amateur movement, and sports contributors (professional and amateur alike) were more unequivocal in their view that the EU's new specific competence in relation to sport was a positive development for both professional and grassroots sport in the UK.

The Premier League believes that the European Union has played a positive role since the adoption of the Lisbon Treaty, and indeed before, in promoting the social and educational functions of sports [...] This is where there is clear added value for an EU intervention. The Premier League.

The adoption of [the sports competence] raised expectations that the EU would treat sport more sympathetically and it would be able to respond in a more coherent manner to a number of threats and challenges facing both modern sport and Member States. Professor Richard Parrish, Edge Hill University.

- 2.53 In particular, unlike the majority of those contributors who commented on tourism, sports contributors noted early signs of a positive impact the new competence was asserting, and the strong role played by the UK.

The implementation of the EU Work Plan has led to a positive outcome. Indeed, we consider that setting up expert groups... helped to improve the dialogue between the EU institutions, the Member States representatives and sports organisations. The Premier League.

The overarching priorities of the work plan are the right ones. Welsh Government.

The UK Government should be congratulated on its proactive work in ensuring that each of the working groups had UK representation and many are chaired by UK representatives. The Football Association.

Not only is the UK extremely well represented through its three chairmanships of these groups, but they have operated in a more effective manner than the previous incarnations... the quality of the recommendations has been generally high. If the EU can start to implement some of these recommendations then the sports movement in Europe will be stronger for it. Sport and Recreation Alliance.

UK Chaired Expert Groups

Of the six EU Expert Groups on sport, the UK chairs three: Good Governance in Sport; Sustainable Financing of Sport; and Education and Training in Sport. These groups aim to produce recommendations that will guide the action of sports organisations across the EU, taking into account the evidence and good practice derived from projects funded through the 2011 Preparatory Actions.

²⁰ HMG, *Review of The Balance of Competences Between the UK and the EU, Single Market: Services*, published later in the review. HMG, *Review of The Balance of Competences Between the UK and the EU, Cohesion*, published later in the review.

- 2.54 Two of the contributors highlighted new opportunities for learning and sharing best practice the competence for sport has brought:

Scottish delegates have been able to participate and exchange learning with senior colleagues across the EU [...] this has brought access to evidence of policy implementation for sport and physical activity in a range of other EU countries that would not otherwise have occurred. Scottish Government.

The sports competence strengthens political co-operation between the Member States and contributes to a better shared understanding of the problems facing both sport and Member States, and an awareness of potential solutions. Professor Richard Parrish, Edge Hill University.

- 2.55 The inclusion of a funding programme for sport in the Erasmus Plus programme was also welcomed by contributors:

The Welsh Government welcomes the new sports sub-programme within Erasmus Plus and is pleased it will prioritise grassroots sport. Welsh Government.

- 2.56 For the Sport and Recreation Alliance, the primary benefit of the new competence for sport is 'that EU funding can be used to create new networks and deliver larger projects'. However, the Alliance also warned that 'application and auditing processes are extremely bureaucratic', and that the EU should focus on 'fewer projects and removing the need for them to have at least five Member States represented' to ensure a more effective use of resources. The Alliance also accused the EU of having a preoccupation with professional sport, at the expense of grassroots, with the majority of EU engagement with the sector focussed on the largest organisations.

- 2.57 The Rugby Football League was more specific and characterised the EU as having a preoccupation with professional football at the expense of other sports.

- 2.58 All of the contributors who expressed a view concluded that the supporting competence for sport was appropriate, and while there were calls for greater activity under this competence by some, none believed the competence should be extended:

We believe that the current balance of competences in the field of sport is the correct one to support the continued success of the Premier League and other UK sports organisations in the international arena. The Premier League.

The FA believes this supporting role is appropriate for the EU [...] it should only take action when Member States request support. The UK Government should ensure that it holds the EU to account to this effect; but also recommend EU intervention in specific areas where the EU's action would be helpful for sport in the UK. The Football Association.

[The EU] – quite rightly – does not have the authority to harmonise national legislation relating to sport. While the effectiveness of these mechanisms certainly varies considerably, the EU has not (yet) imposed itself on the sector in the way that perhaps some may have feared. Sport and Recreation Alliance.

Bilateral and Multilateral Engagement

- 2.59 We conclude this chapter with a consideration of what contributors told us about whether actions might be better undertaken at bilateral or multi-lateral levels other than through the European Union.
- 2.60 As the EU's competences for culture, tourism and sport are supporting, Member States are free to engage bi-laterally and multi-laterally with other nations and organisations outside the EU as best serves their national interest.
- 2.61 The majority of contributors noted that on the whole engagement at EU level was complemented by participation in other multi-lateral organisations such as the CoE, the Commonwealth, OECD, and the United Nations, whether that is by the UK directly, or via the EU. No other external multi-lateral organisation has study or funding programmes available to the culture, tourism and sport sectors in the UK on the scale of the EU. Contributors did not see engagement with these organisations as an alternative to EU engagement.

Culture

- 2.62 In his evidence, Steve Green, a member of the Selection Panel for the European Capitals of Culture and formerly of the British Council, said that culture in the EU's external relations played a key role in its international standing, and that the UK benefitted in two ways, 'strategic through emphasising the consistency of engagement explicit in its own objectives and secondly in specific projects'.

The UK and its cultural organisations gain more from participation in multi-lateral EU projects and programmes than the specific extra funds gained. It sends a clear message of being a partner... it runs both in parallel to and in mutual support of the specific bilateral objectives of a cultural relations organisation. Steve Green.

- 2.63 The European Commission led negotiations on behalf of Member States for the UNESCO *Convention on Diversity of Cultural Expression* in 2005 and it made representations on the role of culture in the Millennium Development Goals. The UK too engaged directly in these negotiations.

- 2.64 Cultural operators also engage directly with UNESCO:

In a way I consider our UNESCO link as a new form of twinning. We have new collaborative projects emerging with India and China and potential projects with a number of European cities. David Wilson, Bradford UNESCO City of Film.

- 2.65 Four of the contributors on culture also referred to the benefits to be gained through cultural organisations developing their own network: the EU National Institutes of Culture (EUNIC). The British Council plays a leading role in EUNIC and has been able to leverage partnerships through EUNIC to win EU projects in Belarus, Mexico, South Africa and Armenia, thus arguably extending the UK's 'soft power'.

EUNIC

The information contained in this text box is public source information from EUNIC.

According to EUNIC, ‘in recent years the cultural diplomacy and cultural relations organisations in Member States have developed their own network: European Union National Institutes of Culture (EUNIC). This brings together organisations such as the Goethe Institute, Institut Français, Cervantes Institute etc; currently there are 32 members from 26 Member States. The network encourages its members in cities around the world to work together on joint projects (currently these clusters are active in over 80 cities worldwide) as well as a few regional (e.g. developing creative industries in Jordan, co-financed by the EC) and centrally driven projects. Full membership is limited to organisations in Member States. Participation in projects is voluntary. The UK, through the British Council, plays a major role as one of the largest of the cultural institutes.²¹

‘Through working in partnership with its counterparts in EUNIC it is able to win EU projects; recent examples include in Belarus, Mexico, South Africa and Armenia’. Steve Green.

- 2.66 Sarah Wolferstan, a consultant for Heritage Management at University College London, stressed the important role of UK engagement in the CoE: ‘the CoE and its conventions are MUCH more influential outside the UK. Our involvement with them increases our relevance or status with these countries’.

Tourism

- 2.67 Within the UN, the UNWTO is responsible for the promotion of responsible, sustainable, and universally accessible tourism. It also promotes the sector as a driver of economic growth, inclusive development, and environmental sustainability, disseminating knowledge and tourism policies worldwide.
- 2.68 Visit Britain and Visit England also supported engagement with the World Travel and Tourism Council (WTTC), the World Tourism Association and OECD.

The World Travel & Tourism Council (WTTC)

The information contained in this text box is public source information from WTTC.

This is the forum for business leaders in the travel and tourism industry. With Chief Executives of some one hundred of the world’s leading travel and tourism companies as its Members, WTTC has a unique mandate and overview on all matters related to travel and tourism. WTTC advocates partnership between the public and private sectors, delivering results that match the needs of economies, local and regional authorities and local communities with those of business. The Council regularly sets Strategic Priorities with a view to identifying those issues which most impede the operation or development of the sector.²²

- 2.69 In addition to this engagement, Visit Britain has signed Memoranda of Understanding with the tourist boards of non-EU countries, including Mexico and Russia. The supporting nature of the EU competence does not prevent these bi-lateral relationships.

²¹ Please see information taken from EUNIC, available at: www.eunic-online.eu, accessed on 3 February 2014.

²² Please see information taken from WTTC, available at: www.wttc.org, accessed on 3 February 2014.

Sport

- 2.70 In the sports sector there are some parallels with culture in terms of the impact of the Council of Europe, which promotes European co-operation in the field of sports. In 1985 it adopted the European Convention on Spectator Violence, and in 1989 an Anti-Doping Convention.

World Anti-Doping Agency (WADA)

The information contained in this text box is public source information from WADA.

This was created against a background of growing concerns about the use of drugs in international sporting competitions at a time when major sporting events were being transformed by increased commercialisation, greater media coverage, and the payment of significant sums of money to top-ranked players.

The First World Conference on Doping in Sport held, in Lausanne, Switzerland, on February 2-4, 1999, produced the Lausanne Declaration on Doping in Sport. This document provided for the creation of an independent international anti-doping agency to be operational for the Games of the XXVII Olympiad in Sydney in 2000.

Pursuant to the terms of the Lausanne Declaration, WADA was established on November 10, 1999, in Lausanne to promote and coordinate the fight against doping in sport internationally. WADA was set up as a foundation under the initiative of the International Olympic Committee (IOC) with the support and participation of intergovernmental organizations, governments, public authorities, and other public and private bodies fighting doping in sport.

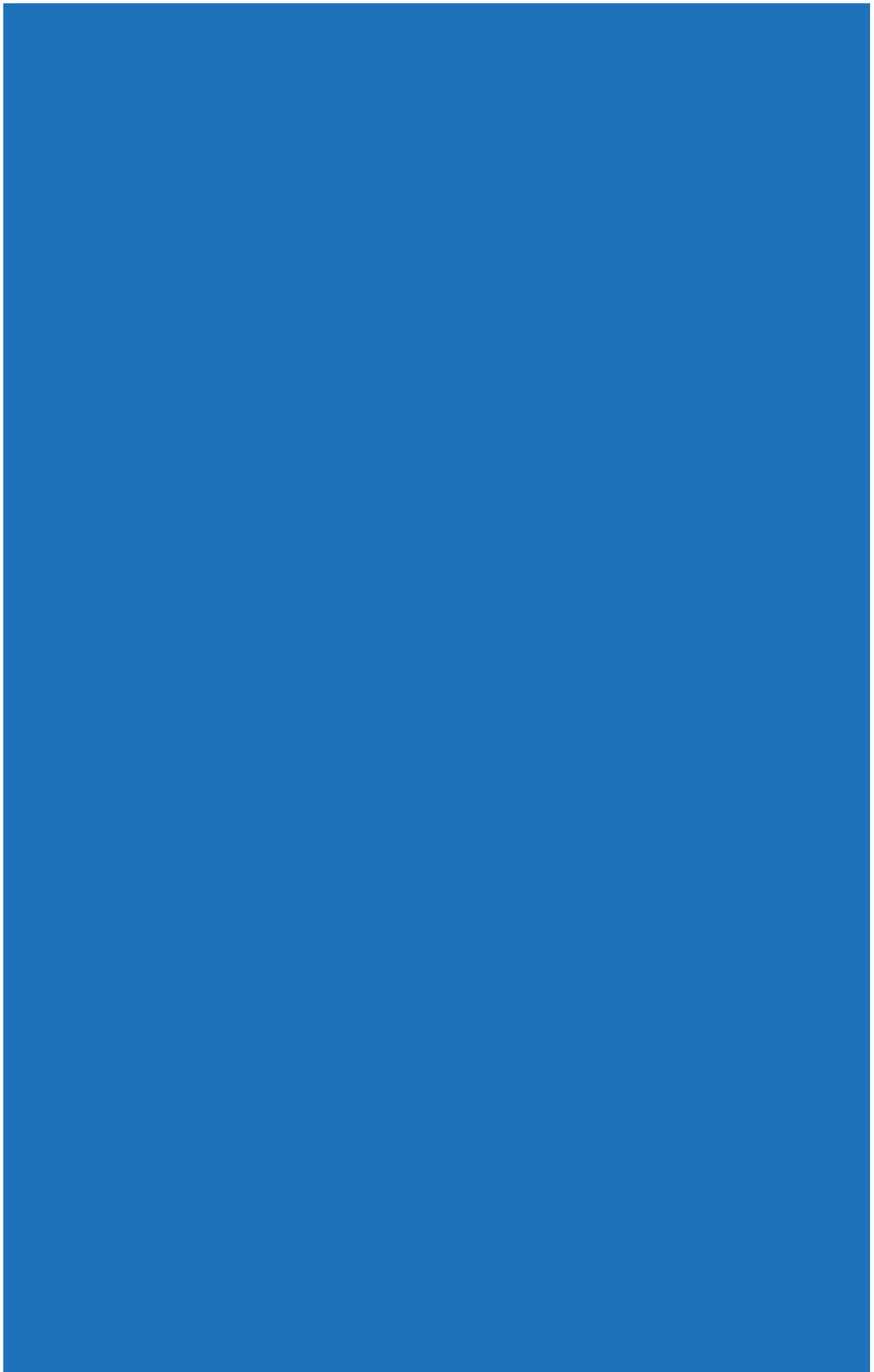
The Agency consists of an equal number of representatives from the Olympic Movement and public authorities.²³

- 2.71 TFEU expressly gave the EU external competence in relation to sport and the EU will be a party to negotiations, alongside individual Member States, for the Convention on the Fight Against Match-Fixing. We will refer to this again in chapter 3.
- 2.72 Amongst others, the UK sports sector engages bi-laterally with the World Anti-Doping Agency, numerous sports governing bodies and the European and International Olympic Committees. However, due to the nature of their relationship with their members, these should also be seen as complementary to, rather than alternatives to, the EU.

International Olympic Committee (IOC)

This is a Swiss non-profit, non-governmental organisation based in Lausanne, Switzerland. Acting as a catalyst for collaboration between all parties of the Olympic family, from the National Olympic Committees (NOCs), the International Sports Federations (IFs), the athletes, the Organising Committees for the Olympic Games (OCOGs), to the TOP partners, broadcast partners and United Nations agencies, the IOC shepherds success through a wide range of programmes and projects. On this basis it ensures the regular celebration of the Olympic Games, supports all affiliated member organisations of the Olympic Movement and strongly encourages, by appropriate means, the promotion of the Olympic values.

²³ Please see information taken from WADA, available at: www.wada-ama.org/en/About-WADA/History/WADA-History/, accessed on 3 February 2014.



Chapter 3:

Future Options and Challenges

- 3.1 None of the contributors to this report identified substantial challenges to the UK national interest in the current balance of competence between the UK and EU in relation to culture, tourism or sport. Nor did any of the contributors advocate radical options for change in the balance of competence.
- 3.2 Those challenges that were identified relate to the EU's operation, and for the most part the administration, of its existing competence. These fall into three main categories:
- (a) Challenges to the sectors' ability to maximise benefit to the UK due to bureaucracy of the European Union;
 - (b) Challenges presented by future potential action of the EU under its competences; and
 - (c) Challenges presented by the EU's potential failure to use its competences in culture, tourism and sport to influence action under other competences that impact on these sectors.

Culture

- 3.3 Perhaps due to the long-standing nature of the culture competence, the contributors to this report did not identify major challenges under (b) and (c) above. However, there was considerable concern expressed in relation to (a), particularly in respect of overly burdensome application and monitoring processes, as set out in Chapter 2, which were seen to favour large, well-resourced organisations. However, even relatively well-resourced national organisations expressed concern:

In general, European schemes are bureaucratic and funding cycles are very slow, the decision making process needs to be significantly sped up to be effective for busy companies, often with tight cash flows. British Film Institute.

- 3.4 The Creative Guild, the Association of Creative professionals, noted in the evidence it submitted that 'the seven cents per citizen per year the EU devotes to culture means that the competition for money is so fierce that applying can be a destructively exhausting process. This is compounded by the accounting procedures put in place which mean that compliance is discouragingly onerous for small arts organisations.' It went on to observe that 'a more relaxed attitude would both lower the Commission's workload and enable far more flexibility in the projects funded'.¹

¹ Creative Guild, *submission of evidence*.

- 3.5 There is of course a tension between applicants for funding wanting a process that is simple and timely, and those responsible for ensuring that public funds are only awarded to the best deserving projects via a process that is rigorous and comprehensive. The UK Government has often argued in Europe for more robust monitoring and accounting processes.
- 3.6 As the Arts Council England (ACE) observed, UK-based arts organisations take an increasingly cross-sectoral approach to arts, creativity, new technology and entrepreneurship. In an increasingly digital world, such developments are a welcome sign that the arts in particular are both keeping abreast of and incorporating the technological developments in the societies in which they flourish. However, ACE also voiced some concern that the welcome recognition by the EU that culture is a significant contributor to economic growth, and the arts embracing innovation, should not lead to a more utilitarian approach to the sector, with funding diverted away from those projects where there is not an obvious short term link to economic benefit.
- 3.7 The UK Government's policy is that 'arts and culture strengthen communities, bringing people together and removing social barriers. Involving young people in the arts increases their academic performance, encourages creativity, and supports talent early on'.²
- 3.8 ACE also considered that the new *Creative Europe* programme for the 2014 – 2020 funding cycle will provide a more effective mechanism for delivery by integrating the MEDIA, culture, and trans-sectoral strands which are separate in the current programme. However, they went on to note that 'the direct links from the new programme through to the Europe 2020 economic strategy should not, however, overshadow the continued societal and cultural value that international artistic exchange brings'.
- 3.9 In his evidence, Christopher Gordon, formerly an independent adviser to the European Parliament's Committee on Culture, and to UNESCO, also identified a prevailing ambiguity about the EU's definition of culture leading to unrealistic expectations about what it can achieve. Mr Gordon explained this ambiguity with several reasons: '1) the imprecise wording in the Treaty Article 152, 2) the legacy of political deals underlying 151's original agreement, 3) the failure properly to define what is meant by 'culture' in differing EU contexts, 4) ignorance about the respective authority and influence of the EU's component parts, 5) inability or unwillingness by Member States to distinguish between intrinsic and instrumental values of culture in pursuit of other policies, and 6) misunderstanding about the different capacities of the Council of Europe and of the EU'.

Tourism

- 3.10 As mentioned in Chapter 2, contributors were divided on the impact of EU action under its new competence in relation to tourism. While all acknowledged there was a role for EU activity, Visit Britain and Visit England remained concerned that this activity could disproportionately benefit Member States with weaker tourist markets, with whom the UK is in direct competition.³
- 3.11 Unlike Phil Bennion MEP, those organisations saw a potential threat to UK national interest in greater information sharing whether between Member States or third party nations, and urged caution, asserting that while there is a benefit to sharing best practice, 'it should be a case of attaining mutual benefits and sharing experience rather than a one-way process of giving away best practice models freely to others'.⁴

² Statement of UK Government policy on supporting vibrant and sustainable arts and culture: www.gov.uk/government/policies/supporting-vibrant-and-sustainable-arts-and-culture, accessed on 3 February 2014.

³ Visit Britain and Visit England, *submission of evidence*.

⁴ Phil Bennion MEP, *submission of evidence*.

- 3.12 The tourism competence does not confer on the EU an explicit external competence to negotiate on behalf of Member States with third parties. However, the EU does have implied external competence powers. The EU is, for example, currently working on a draft joint agreement with the Chinese National Tourism Administration. The relative value of such agreements to the UK against the value to competing Member States remains to be seen.
- 3.13 The BHA was concerned that tourism competence could lead to increased regulation. For example, they were concerned that in relation to the proposed EU Tourism Quality Label, 'there seems to be some uncertainty over the requirement this Regulation could impose on Member States to set up a board to assess applications from quality schemes to be included in the label scheme'.
- 3.14 Visit Britain and Visit England were also concerned that the EU would not properly exercise its new competence to assess the impact of measures under other competences on the visitor economy:

While not specifically intended for the tourism sector a number of [...] provisions impact businesses and those employed in the tourism sector. Visit Britain and Visit England question whether the EU undertakes sufficient research on the impact of new cross-cutting competencies [...] on the visitor economy before introduction.

- 3.15 Referring to these wider measures their evidence went on to say, 'there comes a time when the legislative burden begins to stifle growth and we need to take care that we do not commit ourselves further to raising standards the market can no longer afford [...] Not all these changes have necessarily negative impacts, but the role of the EU in everyday life for tourism stakeholders has increased, creating tensions in some areas'.
- 3.16 Part of this relates to the consideration that, if the tourism sector in the UK is already mature and an exemplar of best practice, it would not benefit from EU engagement which took the form of regulatory obligations as opposed to the encouragement of best practice: the issue of EU as 'cheer leader' as opposed to 'policeman'.
- 3.17 This gives rise to a further consideration going forward: namely that if the UK is successful in maintaining the status quo as far as the current level of EU engagement is concerned, there may be a risk that it will miss opportunities by not engaging in initiatives in which participation is voluntary.

Sport

- 3.18 As noted in Chapter 2, a number of contributors from the sports sector, again while overall in favour of the supporting competence, remained wary of the potential for an extension of EU activity:

While it is fair to say that this influence is still evolving, much of it has been positive, although there are clearly areas which can be improved and refined moving forwards. This influence is wide-reaching, and the sports movement and national governments must be careful that it does not spill over and become something detrimental which hampers – rather than supports – sport in the UK and Europe. Sport and Recreation Alliance.

- 3.19 The Premier League believed the EU's priority should be promoting the social and educational value of sport, which might be interpreted as a message to stay out of the professional game.

3.20 Those who responded from the professional sports were also concerned that the EU should not miss the opportunity to use its new competence to strive for greater coherence in the wide range of EU activities that impact professional sport, but saw greater cause for optimism than the tourism sector appeared to:

Its existence represents a success story for those sports governing bodies who wanted a provision in the European Treaty to counterbalance the perceived dominance of internal market values. Professor Richard Parrish, Edge Hill University.

The supporting competence afforded to the EU through the Lisbon Treaty seems not to have had a marked effect. This is mainly because it is non-sporting (economic) policy which impacts sport the most. What should have an effect is how the EU treats sport; the chance to help national federations develop sport using this specificity should be encouraged and developed. The Football Association.

There has clearly been an upturn in interest and activity since the adoption of the Lisbon Treaty, and the European Sports Unit [...] is to be commended on the important role it plays in promoting and defending sport with the Commission services and ensuring the impacts on sport are taken into account on a wide range of policy issues. The Premier League.

3.21 Perhaps unsurprisingly, for the Football Association a key challenge was how to ensure the EU involves national federations in its discussions on sports policy. The FA are keen to ensure that the EU not only recognises sport as a national competence for Member States, but also as a legitimate competence for sports federations, and the EU should respect their role.

3.22 For grassroots sport the issues were somewhat different. The NOC and Sports Confederation of Denmark was concerned that the formalisation of the EU's competence for sport in the Lisbon Treaty meant that sport 'is now part of the whole EU bureaucratic machinery [...] This whole bureaucratic process has been challenging especially for the minor EU Member States to participate in'. This in turn hands greater power to the Commission, who always have a seat at the table.

3.23 The Sport and Recreation Alliance made a similar point in relation to the dominance of bigger players, 'the EU should make a more concerted effort to enable grassroots organisations at national, regional, and local level to engage in the development of sport in Europe. At present there is little scope for them to be able to do this and it is only the largest organisations and stakeholders who are involved'.

3.24 In more general terms, it is in UK interests to maintain its capacity to influence the development of the EU's involvement in the sports sector. As far as the Work Plan for the 2011-14 period is concerned, it has the chair of three of the six Council expert groups.⁵

⁵ Sport and Recreation Alliance, *submission of evidence*.

The United Nations Office on Sport for Development and Peace (UNOSDP)

The information contained in this text box comes from the UNOSDP.

This works to promote sport as an innovative and efficient tool in advancing the United Nations' goals, missions and values. Through advocacy, partnership facilitation, policy work, project support and diplomacy, UNOSDP strives to maximize the contribution of sport and physical activity to help create a safer, more secure, more sustainable, more equitable future. In order to effectively implement their mandate, the Special Adviser and UNOSDP act as the gateway to the UN system in the field of Sport for Development and Peace, and actively engage with an extensive network of stakeholders, including UN entities, civil society organizations, governments, sports federations, academia, the private sector and the media. Since 2009, UNOSDP has also been hosting the Secretariat of the reconstituted Sport for Development and Peace International Working Group (SDP IWG), an inter-governmental policy initiative established in 2004 whose aim is to promote and support the integration of Sport for Development and Peace (SDP) policy and programme recommendations into the national and international development strategies of governments.⁶

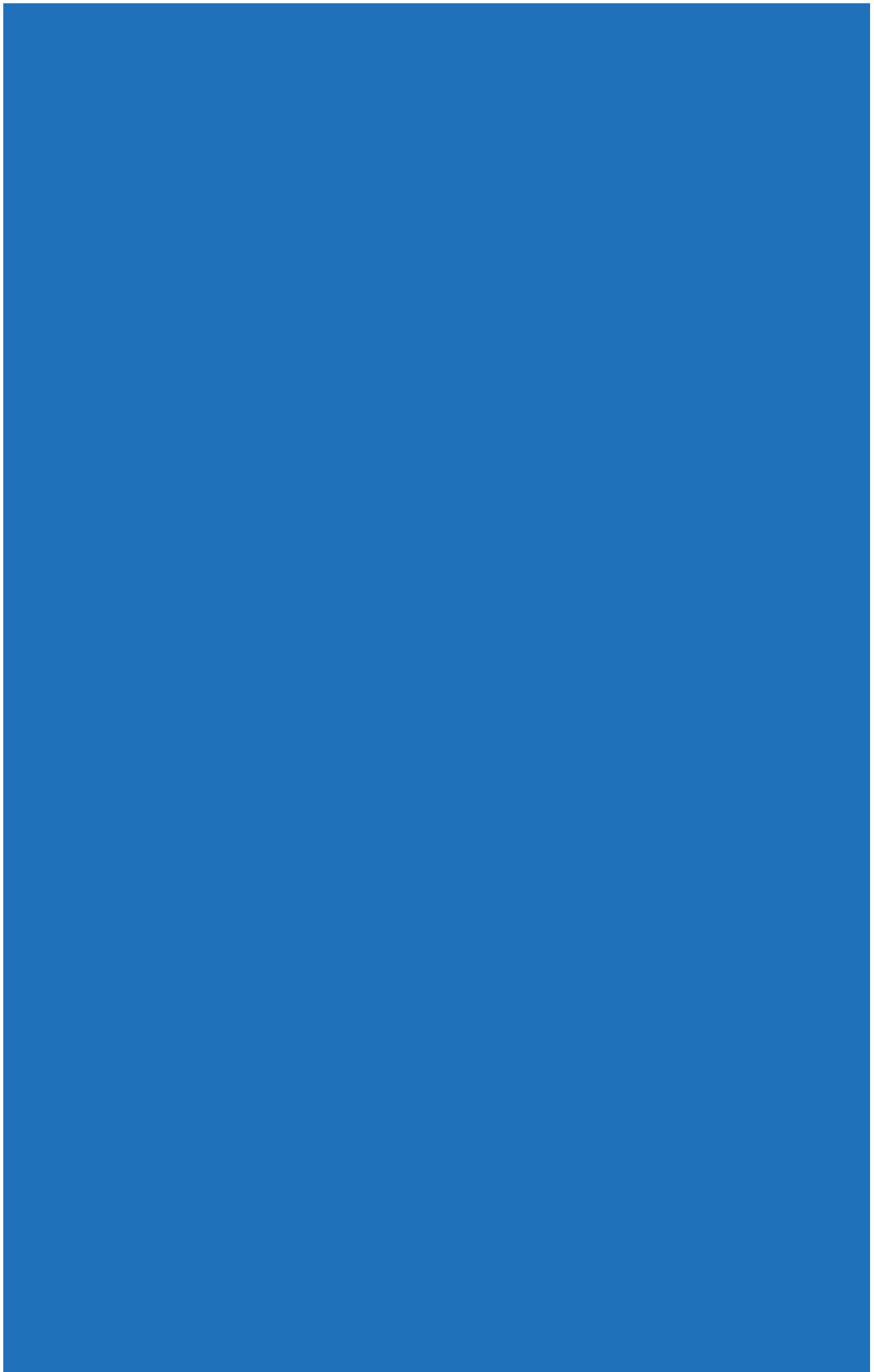
- 3.25 Professor Richard Parrish also noted that the new sports competence strengthens the EU's ability to act externally and enter into negotiations and commitments with third countries and international organisations to conclude international agreements. Again, it remains to be seen what benefit this would have for the UK, where we are already negotiating bilaterally, and in many cases may continue to wish to do so.

Summary

- 3.26 This report is intended to provide an objective look at the impact of EU law on the sectors of culture, tourism, and sport, with the goal of informing the debate on the EU, both here in the UK, and in other Member States. It is based on the evidence submitted by 52 organisations or individuals, including the devolved administrations, national funding bodies and institutions, professional and governing bodies, small grassroots organisations, and academics. We are grateful to all those who contributed, including in written form, via an online survey, and during the course of meetings and discussions.
- 3.27 All the contributors who submitted evidence for this report held the view that the current EU's supporting competences in culture, tourism and sport were on balance either beneficial to the future development of these sectors and UK national interest or had the potential to be so.
- 3.28 None of the contributors argued in favour of extension of the EU's competences in these areas, and a number of contributors warned of the need to remain vigilant against moves by the European Union to extend its competence in culture, tourism or sport.
- 3.29 Contributors from all three sectors also commented on the impact of the EU's activity on their sectors under competences not covered by this report, in particular in relation to State aid, immigration, the Single Market and Structural Funds. This valuable evidence will be reflected in the other reports that cover these issues.

⁶ For more information please see: UNOSDP www.un.org/wcm/content/site/sport/home/template/news_item.jsp?cid=36400, accessed on 3 February, 2014.

- 3.30 Looking ahead, none of the contributors to this report identified substantial challenges to the future UK national interest in the current balance of competence between the UK and EU in relation to culture, tourism or sport. Nor did any of the contributors advocate radical options for change in the balance of these competences.
- 3.31 Those challenges that were identified related to the EU's operation, and administration, of its existing competence. These fall into three main categories:
- Challenges to the sectors' ability to maximise benefit to the UK due to bureaucracy of the European Union;
 - Challenges presented by future, potentially burdensome action of the EU under its competences; and
 - Challenges presented by the EU's potential failure to use its competences in culture, tourism and sport to influence action under other competences that impact on these sectors.
- 3.32 A leitmotif to emerge is that in all three sectors the UK was considered by its stakeholders to be a leader of best practice, international relations and policy development compared with other Member States. This brings opportunities in terms of the UK's ability to drive the EU agenda for culture, tourism and sport, but also challenges, in that other Member States may stand to gain more from EU support under these competences than the UK. Any engagement at EU level needs to take these national specificities into account.
- 3.33 The evidence supports the view that the culture, tourism and sport sectors are significantly inter-related, with the UK's exceptional cultural and sporting offer being a strong attraction for tourist visitors, which in turn increase both the level and diversity of participants in those activities.
- 3.34 In considering how the EU can become more effective, there may be scope for further analysis of what these inter-dependencies might imply for the EU's exercise of its competences in culture, tourism and sport and the potential leverage to be gained from taking a more complementary approach. This should be balanced against the risk identified by respondents across the three sectors, of the EU's tendency towards overly bureaucratic and resource intensive procedures and operating models.
- 3.35 On the basis of the evidence received, getting this balance right, between leveraging maximum support from the EU, while resisting threats of stifling bureaucracy or competence creep, will be crucial to serving the UK's national interest in these sectors.



Annex A:

List of Evidence Received (including oral evidence)¹

Culture

Anonymous Contributors (four)

Arts Council England

Association of Creative Professionals Ltd

Bertelsmann SE & Co. – Brussels Liaison Office*

Bradford UNESCO City of Film*

British Art Market Federation

British Council

British Film Institute

British Petroleum – as sponsor of UK Arts and Culture*

Compendium of Cultural Policies and Trends in Europe

Christopher Gordon, former adviser to the European Parliament's Culture Committee

Creative Guild: The Association of Creative Professionals Ltd

English Heritage

European Union Baroque Orchestra: Paul James, Chief Executive*

European Union Youth Orchestra: Marshall Marcus, Chief Executive*

Independent Music Companies Association (IMPALA)

Museums Galleries Scotland

National Museums Directors' Council

Natural History Museum*

Public Lending Right

¹ There were four anonymous contributors to this report. Those who provided oral evidence are marked with an asterisk (*).

Reviewing Committee on the Export of Works of Art

Sarah Wolferstan, Centre for Applied Archaeology, University College London

Steve Green, member of the selection panel for the European Capitals of Culture programme

St. James's Theatre: Lady Lucy French, Development Director*

The Prince's Regeneration Trust

Visiting Arts

Tourism

British Hospitality Association (BHA)

Campaign for Reduced Tourism VAT

Centre for European Research Within Cornwall

Civitas

European Tour Operators' Association

Institute for Tourism Research

InterContinental Hotels Group*

Port of Dover

Visit Britain

Visit England

The Wallace Collection

Sport

Premier League

Professor Richard Parrish, Professor of Sports Law, Edge Hill University

Rugby Football League

Sport and Recreation Alliance

UK Sport

Devolved Administrations

Arlene Foster, Minister of Enterprise, Trade and Investment, Northern Ireland

Huw Brodie, Director, Culture and Sport, Welsh Government

Scottish Government

Local Authorities

Hampshire County Council

MEPs

Phil Bennion, ALDE Group, and Liberal Democrat spokesman on Transport

Emma McClarkin, ECR Group, Member of Committee on Culture and Education*

Evidence from Other Member States

National Olympic Committee and Sports Confederation of Denmark

Annex B: Other Sources

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