

From the Office of the Minister



Department of  
**Enterprise, Trade  
and Investment**

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The Rt Hon Vince Cable MP  
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Dear Vince

## **REVIEW OF BALANCE OF COMPETENCES**

Thank you for your letter of 21 October to the First Minister and deputy First Minister.

The First Minister and deputy First Minister have passed the Calls for Evidence in respect of The Single Market: Free Movement of Services and The Competition and Consumer Policy Reviews to me to reply.

Questionnaires have been completed in relation to the following:

The Single Market: Free Movement of Services review – Appendix A; and  
The Competition and Consumer Policy review – Appendix B

These have been emailed to [balanceofcompetences@bis.gsi.gov.uk](mailto:balanceofcompetences@bis.gsi.gov.uk) as requested.

In completing the questionnaires I have taken the views of other relevant Northern Ireland Departments.

Yours sincerely

**ARLENE FOSTER MLA**  
Minister of Enterprise, Trade and Investment

## BALANCE OF COMPETENCES REVIEW: FREE MOVEMENT OF SERVICES

### Call for Evidence questions

1. What do you see as the advantages and disadvantages of EU action on the free movement of services? How might the national interest be served by action being taken at a different level (for example, at the World Trade Organisation level, or at the national level), either in addition to or as an alternative to EU action?

*The Department for Enterprise, Trade and Investment (DETI) is not aware of any research to show advantages or disadvantages of EU action on the free movement of services.*

2. To what extent do you think EU action on the free movement of services helps or hinders UK businesses?

*DETI is not aware of any research to show how EU action on the free movement of services helps or hinders UK businesses.*

3. To what extent has EU action on the free movement of services brought additional costs and/or benefits when trading with countries inside and outside the EU? To what extent has EU action on the free movement of services brought additional costs or benefits as a consumer of services?

*DETI is not aware of any research to show how EU action on the free movement of services has brought additional costs or benefits.*

4. How well, or otherwise, have the EU's mechanisms for delivering the free movement of services worked?

*DETI is not aware of any evidence to show how well, or otherwise, the EU's mechanisms for delivering the free movement of services have worked.*

5. In your experience do Member States take a consistent approach to implementing and enforcing EU rules, or not?

*DETI is not aware of any evidence to show this.*

6. Do you think the UK's ability to effectively regulate cross-border provision of services would be better, worse, or broadly the same, as the result of more or less EU action?

*DETI does not have a view on this.*

7. What future challenges/opportunities might we face in the free movement of services and what impact might these have on the national interest? What

impact would any future enlargement of the EU have on the free movement of services?

*DETI does not have a view on this.*

8. Is there a case for more EU action to ensure that assessments for proportionality and necessity are more consistently interpreted? [see paragraphs 22 and 27 for more detail]. Or should the competence to assess these remain with member states as is the case now?

*DETI does not have a view on this.*

9. Should decisions affecting the integrity of the Single Market be taken by all Member States and apply equally to all, or do you believe it is possible to take further liberalising action either unilaterally or with a selection of other Member States, whilst maintaining the integrity of the Single Market?

*DETI does not have a view on this.*

10. What do you see as the advantages and disadvantages of EU action on the **mutual recognition of professional qualifications (MRPQ)**? To what extent do you believe that the cost of existing or future European rules in this area is proportionate to the benefits?

*The Department for Employment and Learning (DEL) has advised that it was fully engaged with the UK Response to the European Commission's Green Paper on the modernisation of the MRPQ Directive. DEL co-ordinated the final Northern Ireland response to the Department for Business, Innovation and Skills in September 2011, which was supportive of the approach being taken.*

*Northern Ireland is unique in the UK in that it has a land border with another EU member state, namely the Republic of Ireland, which makes the MRPQ Directive particularly relevant here.*

*DEL believes that the movement of qualified professionals across EU member states does bring significant benefits, and that anything that can be done to remove difficulties encountered by UK professionals who wish to work in other member states is to be welcomed.*

*DEL is therefore strongly supportive of the modernisation of the MRPQ Directive which will continue to facilitate the mobility of professionals across the EU, provide for easier and faster recognition of qualifications and remove unnecessary administrative burdens, whilst also guaranteeing protection for consumers and citizens by ensuring that high standards are maintained in the recognition process.*

*The Department for Regional Development (DRD) has advised that it understands that Accountancy, Economist, Statistician, Internal Audit and Civil*

*Engineering qualifications (which are the professional specialisms within DRD) are already mutually accepted within the EU. DRD believe that this practice is both advantageous and proportionally beneficial and have no specific Departmental comments to make.*

11. What do you see as the advantages and disadvantages of EU action on **company law**? To what extent do you believe that the cost of existing or future European rules in this area is proportionate to the benefits?

*Company Law generally operates on a UK wide basis. DETI is not aware of any specific NI concerns.*

12. What do you see as the advantages and disadvantages of EU action on **public procurement**? To what extent do you believe that the cost of European rules in this area is proportionate to the benefits? What is your view of the effect on the **defence sector**?

*The Department of Finance and Personnel lobbied for the reform and modernisation of the EU Directives making strong representations to Europe, through the Cabinet Office, for a reduction in the levels of bureaucracy and a simplification of procurement processes. This had been a long standing issue within Northern Ireland particularly in relation to promoting SME access to public procurement opportunities.*

*For lower value contracts we had already taken measures to substantially reduce the inputs required from tenderers and shorten the time taken to award contracts. Northern Ireland was keen to see these measures apply to contracts with values above the EU threshold and I am pleased to note that the new procurement directives incorporate key changes along these lines.*

*Formal adoption of these draft directives concerning procurement is expected in early 2014 and in the meantime the Central Procurement Directorate is taking forward informal consultation with key Northern Ireland stakeholders. It will present the overall view to Cabinet Office.*

*The impact of the proposed changes can only be measured once they are implemented.*

*As the new public procurement directives have been subject to considerable negotiation we do not believe that any further action is needed at present.*

*Finally in relation to Defence, the legislation will have a very limited application and impact in Northern Ireland and we would not press for further action in this area.*

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

*With assistance from BIS, the, Northern Ireland, Department for Enterprise, Trade and Investment has been working closely with Northern Ireland LAs and CAs to ensure they are aware of their obligations under the Services Directive.*

*However there have been some difficulties with the implementation of the EU Services Directive with the majority of the LAs and CAs not wholly ready to accept online applications by 28 December 2009. Anecdotal evidence from some NI Authorities would suggest that there are limited perceived benefits in implementing the Services Directive and feel that the cost of doing so has been much higher than any rewards that may be gained. We do not keep statistical data with regards to the number of online forms received by NI Authorities compared to hard copy forms received however we are aware that the numbers involved for many of the NI Authorities are very small.*

*The EU Services Directive doesn't necessarily lend itself to the devolved nature of the UK. By way of an example, the European Commission has issued a Letter of formal notice – Infringement No 2013/2188 on 17 October 2013 to the United Kingdom for failure to implement the EU Directive 2006/123/EC on Services in the Internal Market ('the Directive'), and the UK's implementing legislation, the Provision of Services Regulations 2009 ('the Regulations').*

*The infraction proceedings relate to the national applicability of authorisations, or licences, to provide services. Article 10 (4) of the Directive requires that licences enable service providers to operate throughout the national territory of a Member State, unless there are overriding reasons relating to the public interest. This requirement is implemented by regulation 15(5) of the Regulations. However, regulation 15(6) contains a derogation from this requirement which states that a licence issued by a licensing body (referred to as a 'competent authority' in the Regulations) whose functions relate to only a 'part' of the UK, will only apply to that 'part' of the UK. The Commission claims that this derogation contravenes Article 10(4) of the Directive.*

*This issue has highlighted a number of areas where the national applicability of licences would not be appropriate, a prime example of which is the separate and distinct regulatory regimes which operate for gas and electricity in Great Britain (GB) and in Northern Ireland, which reflect not just the devolution settlement but the particular structure of the two energy markets. Each regulatory authority imposes its own system of regulatory requirements in line with the different market and legislative arrangements in place in GB and NI. Regulatory requirements are enforced through the licences issued for different market activities, as licence conditions and industry codes.*

*If the Commission do not accept that there are overwhelming public interest reasons why the current separate regulatory arrangements should remain in place, not least the principle of devolution of energy matters and the benefit to energy consumers in both GB and NI, then significant issues in relation to devolution principles will arise with the potential need to review and amend the entire energy market arrangements and all underpinning legislation, licences and industry codes in Northern Ireland and GB.*



## REVIEW OF THE BALANCE OF COMPETENCES: COMPETITION AND CONSUMER POLICY REVIEW

### Call for evidence: Questions

#### Impact on the national interest

1. What evidence is there that EU action in the area of Competition, including State Aid, and Consumer policy advantages the UK?

*The Department for Enterprise, Trade and Investment (DETI) is not aware of any research that suggests EU action in the area of State Aid advantages the UK.*

2. What evidence is there that EU action in these areas disadvantages the UK?

*DETI is not aware of any evidence that suggests EU action in the area of State Aid disadvantages the UK.*

3. Are there any other impacts of EU action in these areas that should be noted?

*The main impact of EU action in the area of State aid is that economic development projects are often delayed unnecessarily. The European Commission's 2014 – 2020 State aid rules for Regional aid for large companies in 'c' areas are also likely to impact negatively on Northern Ireland's attractiveness as an investment location.*

4. To what extent is EU action in these areas necessary for the operation of the single market?

*DETI supports the UK position that EU Action in the area of State aid is necessary but is concerned that much more work still needs to be undertaken by the European Commission to ensure that its State aid rules are better targeted at the Commission's and the Member States' economic policy objectives.*

*DETI is aware that many of the State aid rules are currently being reviewed by the Commission, as part of its modernisation initiative, but to date DETI has been very disappointed that many of the changes proposed by the Commission simply don't go far enough. At present, DETI expects the outcome of the Commission's modernisation initiative is likely to be that the 2014 – 2020 State aid rules will still be unnecessarily complex and imprecisely targeted and, as a result, will make it difficult for Member States to achieve their and the Commission's economic policy objectives.*

*For example, one of the Commission's main targets in EU 2020 is to raise the EU employment rate to at least 75%, yet the European Commission's decision that Regional aid cannot be provided to large companies in 'c' areas for 'expansion' projects will make it much harder for regions like Northern Ireland to contribute to the achievement of this target.*

*In Northern Ireland the employment rate is just 65.3% and Invest Northern Ireland's Selective Financial Assistance (SFA) programme is one of the main policy levers for increasing the employment rate. Significantly, around 40% of the jobs promoted in Northern Ireland by the SFA programme are as a direct result of large company 'expansion' projects. However, post 30 June 2014, for reasons that are loosely related to the lack of an 'incentive effect' present in many large company projects, according to the EC's economic analysis, rather than ensuring Member States undertake a more rigorous incentive effect test, the Commission has simply decided that these 'expansion' large company projects will not be eligible for Regional aid. While the EC has exclusive competence in this area to take this decision, the decision was not taken in agreement with the majority of Member States and is a clear example of an area where it might have been better if the competency was shared or supporting.*

*DETI is also concerned at the slow pace of the Commission's proposed streamlining of its processes. For example, while there is an acceptance within the Commission that the scope of its exemption regulations should be widened, the Commission seems unwilling to widen the scope until it has sufficient casework experience, which it may take many years to acquire. This will mean that too many projects will still be subject to a lengthy notification process and, in the vast majority of these cases, since the Commission is almost certain to give its approval, all the notification process has done is unnecessarily delayed the implementation of the project.*

5. How does the EU's competence in these areas impact upon the UK's global competitiveness?

*DETI is not aware of any research that suggests the impact the EU's competence in the area of State aid has had on the UK's global competitiveness. DETI is aware that investors are often frustrated about the need for State aid approval and the amount of time it takes to get a 'no objection' decision out of the Commission. DETI is not aware of any investment project being lost to Northern Ireland solely because of the State aid rules.*

#### **Scope and effect of particular powers**

6. How have the EU's mechanisms for delivering a single market worked in these areas of competences?

*The EU's mechanisms do not work as well as they could. As noted above, the State aid rules are often too complex, yet do not target the policy objective accurately enough. The scope of its exemption regulations is not wide enough and, when projects have to be individually notified, it simply takes the Commission far too long to arrive at a no objection decision. On average, over the past ten years, it is DETI's experience that a fully notified project takes around 140 days to obtain Commission approval. This is often after all necessary UK approvals have been obtained and a decision has been taken by the UK to fund the project.*

## Differences in implementation

7. To what extent has the EU created more or less consumer protection provisions for UK consumers compared to the UK's domestic agenda? What are the effects of this?

*DETI is not aware of any NI specific concerns. Content with the UK negotiating position and relationship with EU in consumer policy matters and many of the core issues around competition are UK wide.*

8. To what extent is the UK more or less rigorous in enforcing its consumer and/or competition, including State Aid, rules compared to other Member States? What are the effects of this?

*DETI is not aware of any research that suggests the UK is more or less rigorous in enforcing the State aid rules than other Member States. The UK is one of the Member States with the least number of State aid recovery cases, which would suggest that levels of State aid compliance in the UK may be amongst the highest amongst Member States. However, it is more likely that this high level of compliance is due to levels of awareness in the UK than levels of enforcement.*

## Future options and challenges

9. How might the UK benefit from the EU taking more action in these areas?

*As noted above, increased action by the EU in the area of State aid would result in better targeted and more streamlined rules, less need for lengthy complex notifications and quicker decisions by the Commission and the benefit to the UK would be a greater pace of economic development.*

10. How might the UK benefit from the EU taking less action in these areas, or from more action being taken at the national rather than EU level?

*Less action by the EU would probably mean the UK taking on greater responsibility for ensuring compliance with the State aid rules nationally. From a Northern Ireland perspective, this may not make that much of a difference to the length of time it takes to obtain a no objection decision.*

11. How could action in these areas be undertaken differently e.g.

*Are there ways of improving EU legislation in these areas, e.g. revision of existing legislation, better ways of developing future proposals, or greater adherence to the principle of subsidiarity and proportionality?*

*In the area of State aid, the EU should adhere more closely to the principle of proportionality when assessing whether State aid is compatible. This should result in fewer projects having to be notified and quicker no objection decisions.*

*EU legislation should also be improved to ensure Member States adhere more closely to the principle that all aid should have an incentive effect. As*



*noted previously the Commission's decision to deny Regional aid to large company 'expansion' projects in 'c' areas, because of an apparent lack of incentive effect, is a poor policy decision, since it prevents a number of good projects from happening that would contribute to the achievement of the EU's 75% employment rate target.*

12. What future challenge/opportunities might we face in these areas of competence and what impact might these have on the national interest?

*The main challenge the UK faces is that the EU has exclusive competence in the area of State aid, which means that the Commission does not have to agree the State aid rules with Member States. Whilst it is probably necessary that the Commission has an exclusive competence for the implementation and policing of the State aid rules, possibly it should not have the exclusive competence to adopt these without the agreement of a majority of the Member States.*

#### **General**

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

*No further comments*

