

Free Movement of Persons Balance of Competences Report Evidence (Part 2)

[Submission 43 - Liberal Democrats Home Affairs Justice and Equalities
Parliamentary Party Committee](#)

[Submission 44 – Trades Union Congress](#)

[Submission 45 – David Broucher](#)

[Submission 46 – New Europeans](#)

[Submission 47 - David Petrie, Chair, ALLISI, Association of Foreign Lecturers in Italy](#)

[Submission 48 - Professor Michael Dougan, Dr Nuno Ferreira, Ms Stephanie
Reynolds and Dr Samantha Currie, University of Liverpool](#)

[Submission 49 – UK Chamber of Shipping](#)

[Submission 50 – Convention of Scottish Local Authorities \(COSLA\)](#)

[Submission 51 – Russell Group](#)

[Submission 52 – Research Councils UK](#)

[Submission 53 – The Freedom Association](#)

[Submission 54 – SSAFA France](#)

[Submission 55 – SSAFA France](#)

[Submission 56 – NASSCOM](#)

[Submission 57 – The Law Society of England and Wales](#)

[Submission 58 – Business for New Europe](#)

[Submission 59 – The City UK](#)

[Submission 60 – Romanian Business Association](#)

[Submission 61 – John Wastnage, British Chambers of Commerce](#)

[Submission 62 – National Farmers Union \(NFU\)](#)

[Submission 63 - UK Higher Education International Unit and Universities UK](#)

[Submission 64 – European Commission](#)

[Submission 65 – Port of Dover](#)

[Submission 66 – HS1 Limited](#)

[Submission 67 – IET France Network](#)

[Submission 68 – Migrants' Rights Network](#)

[Submission 69 – British Influence](#)

[Submission 70 - Jeff Cuthbert, Minister for Communities and Tackling Poverty,
Welsh Government](#)

[Submission 71 – Confederation of British Industry](#)

[Submission 72 – Centre for European Reform](#)

[Submission 73 – Council of British Chambers of Commerce in Europe \(COBCOE\)](#)

[Submission 74 – David Ford, Justice Minister, Department of Justice for Northern
Ireland](#)

[Submission 75 – Fenland District Council](#)

[Submission 76 – Suffolk County Council](#)

[Submission 77 – Robin Sissons, Operations Inspector, Cambridgeshire
Constabulary](#)

[Submission 78 – Robin Sissons, Operations Inspector, Cambridgeshire
Constabulary](#)

[Submission 79 – Scottish Government](#)

[Submission 80 - Sarah Melton](#)

[Submission 81 – Stakeholder Event Note – 24 June 2013](#)

[Submission 82 – Stakeholder Event Note – 26 June 2013](#)

[Submission 83 – Stakeholder Event Note – 3 July 2013](#)

[Submission 84 – Stakeholder Event Note – 8 July 2013](#)

Submission 43

Name	Home Affairs, Justice and Equalities Parliamentary Party Committee
Organisation/Company (if applicable)	
Job Title (if applicable)	
Department (if applicable)	
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Organisation Type (if applicable)	<i>Please mark / give details as appropriate</i>	
NGO/Civil Society	<input type="checkbox"/>	
Public Sector	<input type="checkbox"/>	
Retail Sector	<input type="checkbox"/>	
European bodies/institutions	<input type="checkbox"/>	
Business/Industry/Trade Bodies	<input type="checkbox"/>	
Other (please give details)	<input checked="" type="checkbox"/>	Parliamentary Party Committee

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

Internal Market: Free Movement of Persons

Introduction

1. The Liberal Democrats Home Affairs, Justice and Equalities Backbench Committee is the primary forum for MPs, Peers and Liberal Democrat stakeholders involved in Home Affairs, Justice and Equalities issues to exchange information and ideas. The views expressed here are those of individual members and the committee as a collective, but are not necessarily formal Liberal Democrat policy. We have decided to respond to the general principles and questions raised in the call for evidence rather than each question individually. Any oversight reflects only our decision to structure our response under main headlines, rather than responding to each question separately.
2. In a world where interconnectedness is growing by the day, links with other states is a must – particularly those geographically close to us. The Liberal Democrat Home Affairs, Justice and Equalities Parliamentary Party Committee strongly believes that the creation and development of the internal market is one of the most progressive steps Europe has taken to ease the way we connect with others.
3. The Four Freedoms of goods, capital, services and people has been much more than that. It has been the foundation on which to build further freedoms of ideas, exchange and mutual understanding. The measures in place work both ways. The Free Movement Directive has allowed Britons to venture onto the mainland to work, study or settle, as well as allowing citizens from other Member States to add value to the UK's economy, society and culture.

Britons on the Mainland

4. The advantages of closely cooperating with our European partners in this area are immeasurable. Recent figures show that 1.4m UK nationals have settled in other EU countries. This does not take into account the significant numbers of British citizens who have taken part in the European Union's Erasmus program. Over its 25 year history it has seen over 100,000 British nationals study abroad. In 2011/12 alone 13,662 Brits took part in Erasmus learning new skills, developing language competences and broadening their horizons – thereby making them more employable in what is now an undeniably global job market.
5. Retirement migration in the European Union has also been steadily rising with British pensioners escaping to warmer climes either for some winter sun or on a more permanent basis. The coordinated social security system and the

practicable principle of freedom of movement have made this possible. Leaving the co-ordinated social security system would mean that British nationals who had spent time living and working abroad could have their pension rights significantly reduced.

6. Nevertheless, the number of EU citizens who live elsewhere than their home state remains relatively low, reaching only 3.1% in 2011. However, the number of UK nationals who holiday in other Member States is significantly higher. The internal market allows us to travel across borders with ease, ensuring we remain protected. The European Health Insurance Card, which approximately half of the British population have for example, means that if an individual falls unexpectedly sick during a temporary stay abroad they will have the same right to statutory health care as people insured in the country they are in. Measures such as this have made travel easier, safer and less expensive.

Schengen

7. Those who have taken the decision to abolish their borders (by participating fully in Schengen) have boosted their prospects for trade and tourism. Britain has remained isolated. Tourists from outside the EU – particularly from Asian countries such as China are choosing to apply for Schengen visas – allowing them to holiday, spend money and invest in all 26 European countries. Only a small minority also reach Britain which requires a separate application. With restrictive measures such as a ten-page visa application form, compared to Schengen's four-page form we are effectively driving away tourism that could strengthen the UK economy. This year, saw business and industry leaders lobby for entrance into the Schengen. Estimates indicate that the UK is missing out on £1.2bn of potential income and as many as 20,000 jobs after evidence pointed to the fact that only 7% of travellers to Europe from China were prepared to apply for more than one visa.
8. Liberal Democrats believe that the UK Government, without compromising a high standard of pre-entry checks, should create a streamlined, fast-track process for those applicants who have already been issued a Schengen visa.
9. Successive Governments have already acknowledged the importance of cooperation as evidenced by the UK's opt-ins to elements of the Schengen agreement. In March 1999, the United Kingdom asked to cooperate in some areas, namely police and judicial cooperation in criminal matters, the fight against drugs and the SIS. The Council Decision 2000/365/EC approving the request by the United Kingdom was adopted on 29 May 2000.

10. The UK's cooperation and participation in the Schengen Information System (SIS) demonstrates how Schengen works for Britain. It enables European countries to maintain and distribute information on individuals and pieces of property of interest. The intended uses of this system are for national security, border control and law enforcement purposes. The single market, the benefits of which will have been explored in other review submissions, prerequisites the need for both freedom of movement and cross-border cooperation.

EU Immigration to the UK

11. The European Union's commitment to freedom of movement, and the UK's participation in it, does mean that EU immigration to Britain can still add value and build the UK's economy. While the Daily Mail lambasts EU workers for stealing 'British jobs' evidence-based research concluded that EU migration has no such effect. In fact studies into the question of EU migration to the UK often conclude that those who come to the UK from other EU Member States, who have resided in the country long enough to become eligible for benefits are net contributors to the public purse and low users of public services.
12. Only, 91,310 EU-nationals claimed benefits in 2012 – that is a miniscule 1.6% of all working age benefit claimants. In fact, in the boom years new EU citizens were seen as giving the UK a competitive edge. This was due to their willingness to do jobs that UK citizens would not and to work anti-social hours. A 2012 Institute for Fiscal Studies Report concluded that "While A8 migrants work mostly in lower wage occupations; they have high labour force participation rates and employment rates, a fact which offsets the impact of their lower wages."
13. Moreover, many of those who come from Member States to Britain are professionals who come here to work. Freedom of movement makes the UK attractive to EU professionals and boosts the UK's output, helping to support the development of new industries and creating new jobs.
14. Nevertheless, the numbers generally given for EU migration are often wildly exaggerated damaging the ability to have a sensible and responsible discussion on the topic. Provisional data from the Office for National Statistics (ONS) show that in 2010 "net migration to our country from EU nationals was just 27,000." This discredits the opinion that the UK's welfare provisions are acting as an enormous pull-factor for other EU citizens, particularly those from poorer EU Member States.
15. Moreover, the UK already has a number of mechanisms in place to deter and stop abuses of our system. The Habitual Residence and Right to Reside tests

respond directly to concerns around 'benefit tourism' in order to secure that only those EU migrants who are economically active can access benefits. While it is understood that the European Commission is pursuing infringement proceedings over the 'Right to Reside' test, the government is reported to be robustly contesting them.

Conclusions

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16. Freedom of movement after a cost-benefit analysis we benefit. It furnishes British nationals with the ability to travel across Europe. It eases the processes by which retirees can move to warmer European climes and relieves some of the pressure on our tax system.
17. Freedom of movement is also necessary from a trade perspective underscoring the other three fundamental freedoms – services, goods and capital. The balance the UK has negotiated ensures that whilst we remain in control of our borders we are able to share information and best practice with our European partners.
18. Given the fact that the majority of those questioned in regular Eurobarometer surveys choose freedom of movement as the most important achievement of the European Union it would be inexplicable were the UK to withdraw even further.

Submission 44

**TUC submission to Home Office/DWP
Balance of Competences review
August 2013**

TUC Submission to Home Office and DWP on Free Movement of Persons Balance of Competences Review

Introduction

The Trades Union Congress (TUC) has 54 affiliated unions, representing almost six million members, who work in a wide variety of sectors and occupations. The TUC welcomes the opportunity to respond to the Home Office and Department for Work and Pensions' Call for Evidence on the Internal Market: Free Movement of Persons.

The Call to Evidence document repeatedly makes reference to 'national interest'. In its submission to this Call for Evidence, the TUC interprets 'national interest' as the protection of rights, safety and quality of life of those working and living in the UK. From this perspective our concern with the free movement of persons is that EU nationals moving to other countries within the EU to study or work have their rights respected.

This submission will consider questions in the Call to Evidence document of particular concern – they are regrouped by theme below.

Call for Evidence: Questions

- 1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK nationals; and b) the UK as a whole?**
- 5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons?**
- 6. What is the impact of this area of EU competence on employment sectors, such as “distribution, hotels and restaurants”, “banking and finance”, agriculture, or other sectors?**
- 7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?**

It is difficult to quantify the economic benefits of citizens from member states exercising their right of free movement to study in the UK whilst it is almost impossible to quantify the economic impact of citizens from EU-17 countries entering the UK to work as no mechanism was put in place to monitor their behaviour in the labour force. It is possible to assess the impact of citizens from A8 countries in the labour force, however, due to the requirement between 2004 – 2011 for A8 migrants to register with the Workers Registration Scheme (WRS) within a month of joining a new employer in the UK. The fact self-employed people were exempted from the WRS meant it did not provide a complete portrait of the impact of A8 migrants, however, significant conclusions could be drawn from the data collected. The most exhaustive study of the WRS data is provided by Chistine Dustmann et al (2010). It concludes:

'A8 immigrants are unambiguously net fiscal contributors... [they are] highly educated, young people, entering the UK predominantly to work, with subsequent positive net contributions to the tax system.'¹

Lemos (2010) also finds that A8 migrants had a positive impact on wages.

Certain sectors of the UK economy depend on migrant labour, particularly 'hard to fill' and low-skilled jobs. Migrants also make up a significant share of those employed in elementary plant, processing, cleaning, construction and food preparation jobs.² Employers in the care sector, which is vital to support the UK's aging population, have also made frequent calls to the EURES job mobility portal to source staff.

The TUC is concerned that the free movement of A8 migrants did not match a migrant workers' skill level with job vacancy, as was the intention of the Freedom of Movement directive (2004/38/EC). Rather migrant workers from poorer Eastern European countries were being recruited to work in jobs in the UK that were far below their skill level³ due to the fact they were willing to work for low wages and often did not have a sufficient level of English. Thus UK employers have greatly benefitted from cheap labour from A8 countries, however, migrant workers gained little reward for their contribution to the UK economy. The TUC believes all EU workers should have decent job opportunities, English language provision and a recognition of qualifications from other EU states so migrants can make proper use of their skills.

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

The rules governing the European Market mean that social support is provided to aid mobile workers to receive the same support in another member state as they would in their home state. The Office for National Statistics estimates there are 286,000 UK citizens working in other member states. EU competences meant that these citizens have the right to claim sickness and unemployment benefit and have free access to public services in their country of residence.⁴

Meanwhile, UK citizens also benefit from supports provided by the EU in retirement. Over 103,000 British retirees currently live in Spain and 56,000 in France⁵ - they

¹ <http://www.ucl.ac.uk/~uctpb21/Cpapers/DustmannFrattiniHalls2010.pdf>, p.29

² <http://www.migrationobservatory.ox.ac.uk/briefings/migrants-uk-labour-market-overview>

³ <http://www.ucl.ac.uk/~uctpb21/Cpapers/DustmannFrattiniHalls2010.pdf>

⁴ <http://blogs.ec.europa.eu/ECintheUK/getting-the-facts-straight-eu-rights-to-reside-in-another-member-state-eu-benefit-claimants-and-nhs-treatment-entitlement/>

⁵ <http://www.britishinfluence.org/stats-and-facts/item/british-retirees-living-in-the-eu>

have free access to health and care provision due to European legislation on the common market and benefit provision.⁶

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

For the foreseeable future social security will be a function of national governments. The aims of social security and the values it embodies are so heterogeneous that an international system of benefits is unlikely. In France, natalist aims are deeply embedded; in the UK, the overwhelming goal is poverty amelioration; Germany focuses on social insurance and pays much less attention to social assistance. A single system that embodies these diverse values is a distant dream. However, in a world where more and more workers spend part of their careers in other countries, we cannot just leave matters there. It would be unfair if workers found that their social security rights were reduced merely as a result of having worked in more than one country.

The co-ordination of social security for migrant workers is one of the key functions of the European Union, and legislation on this dates back to 1959. These laws have been updated by Regulations 1408/71, 574/72, 883/2004 and 987/2009. This reflects the development of new patterns of employment; especially the phenomenon of workers working abroad more frequently and for shorter periods - such as managers working in offices in other countries and pan-European temporary work labour market. The original legislation followed the (then reasonable) assumption that migrant workers worked for long blocks of time in each country.

That having been said, the objectives of European social security legislation have been much the same for half a century:

- Providing agreed rules for determining the applicable national social security legislation in each particular case.
- Making sure no migrant worker is left uncovered, with no social security rights.
- Making sure that no migrant worker is able to claim under more than one system for rights accumulated with respect to the same period of employment.
- Non-discrimination – where British workers spend part of their careers abroad, we do not wish to see them being treated less favourably than workers who differ from them only in being nationals of the country where they have worked, and vice versa.
- Where social security rights depend upon completing a number of years' work or paying a certain level of contributions, we wish to see all their work or contributions - in whatever country - counting towards their rights. This is especially important for pensions.

The export of benefits is controversial in some quarters, but we think it is an important right. Where, for instance, a Polish national works for many years in the

⁶ See Art 17, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0038:20110616:EN:PDF>

UK and then, on retirement, wishes to return to Poland, it would be most unfair if they could not continue to receive the pension they had worked for all their life. Similarly, a British worker, who spent many years in France or Germany, should be able to retire to their home town in the UK.

We think it is important that the EU continues to carry out this valuable work. We do not want these powers to be repatriated to the UK - if they were, we would be left with two alternatives. One is that workers would lose important rights to pensions and other benefits, which would undoubtedly impede the European single market. The other is that co-ordination would have to be re-created by a series of bilateral treaties, which would be unnecessary and inefficient.

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

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

The TUC does not believe that migrants are naturally more prone to use benefits or that benefit claims are the reason for their relocation to the UK in the first place – migrants reside abroad predominantly because of work and/or because they are completing their studies or have joined family members who moved because of work related reasons. Indeed the majority of benefits can only be accessed by migrants who can demonstrate they are working or studying in the UK.

The TUC believes that there is little evidence of so called ‘benefit tourism’. In 2012, DWP-commissioned research⁷ found that, among people of working age, 83.4 per cent of UK nationals were not claiming a working age benefit; for non-UK nationals, this figure rose to 93.4 per cent. Census data⁸ show that 59.7 per cent of those not born in the UK are employed compared with 58.5 per cent of those born in the United Kingdom. This is largely because a much smaller proportion of the non-UK born are retired. Furthermore, figures from Pollard et al (2008) show that only 2.4% of all A8 workers registering for National Insurance numbers between May 2004 and December 2007 claimed benefits.⁹

In 2009, Dustmann, Fratini and Halls, in the most comprehensive study¹⁰ so far of the costs and benefits of migration to the UK, used the Labour Force Survey and other official data sources to study A8 immigrants with at least one year’s residence (to take account of the fact that they were unable to claim benefits before this). This research found that, far from being ‘benefit tourists’, the A8 migrants paid in more

⁷https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/196677/nat_nino_regs.pdf

⁸<http://www.nomisweb.co.uk/query/construct/summary.asp?mode=construct&version=0&dataset=679>

⁹ http://www.bnegroup.org/images/uploads/publications/files/floodgates_or_turnstiles.pdf

¹⁰ http://www.cream-migration.org/publ_uploads/CDP_18_09.pdf

than they received. Members of this group were 60% less likely than natives to receive benefits or tax credits, and 58% less likely to live in social housing. In each fiscal year after EU enlargement in 2004, A8 immigrants to the UK made a net contribution to the public finances because they were more likely to be in employment, paid more in taxes and were less likely to use public services.

More recently, research by the National Institute for Economic and Social Research¹¹ calculated that migrants' share of education expenditure is "slightly greater" than their share of the population, but migrants account for 11.8 per cent of spending on personal social services compared with 13 per cent of the population, and migrants account for 10.8 per cent of spending on health, compared with 13 per cent of the population. NIESR has also pointed out¹² that migrants account for 7 per cent of out-of-work claimants but about 13 per cent of workers.

Submission 45

Name	David Broucher
Organisation/Company (if applicable)	██████████
Job Title (if applicable)	
Department (if applicable)	

¹¹ http://niesr.ac.uk/sites/default/files/publications/100112_105822.pdf

¹² <http://niesr.ac.uk/blog/migrants-benefits-and-public-services-what-does-new-research-evidence-tell-us>

Address	██████████
Email	██████████

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

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

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

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

There is a wealth of evidence that free movement within the EU is beneficial both for individuals and for the UK as a whole. This is not to deny that there may have been some problems of adjustment after the A10 enlargement, but these should not be allowed to obscure the overall positive effects, which include not only economic benefits but cultural, political and diplomatic gains as well. Free movement across borders reduces the salience of these borders in national life, which can only be a good thing, since borders restrict freedom and encourage excessive state interference in individual activities. I suggest that we should go further, join the Schengen common travel area and abolish controls on EU nationals at the UK border. Frontier checks to reduce cross border crime and terrorism should be replaced by control in depth, which would be more efficient in the long run.

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

EU competence in this area underlines the point that EU citizens have rights that go beyond their national borders. This makes it more difficult for national administrations to place obstacles in the way of free movement between member states, and that benefits UK citizens seeking work and social services in other member states. Without EU competence these freedoms would either not exist at all or would have to be negotiated bilaterally, which would prove difficult if not impossible.

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

While the influx of migrants from new EU member states has placed some pressure on public services in the short term, this needs to be balanced against the overall benefits to the UK economy, plus the wider benefits in terms of overcoming the divisions of the past, promoting peace, stability and economic development in Europe as a whole. The UK could, like other countries in the EU, recycle some of the economic benefits it gets from EU membership to offer support to communities that experience temporary disruption due to free movement. The private as well as the public sector could play a part in this.

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

The level of EU action in this area is probably about right, but since the system is based on reciprocity it is important that the EU continues to monitor compliance and intervene when reciprocity is denied. My impression is that most other EU member states are quite forthcoming in allowing UK nationals to exercise free movement rights, though there may well be language barriers. Perhaps for this latter reason, UK workers appear to be less mobile than those from some other countries and so do not take advantage of the opportunities.

Questions in relation to the labour market.

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

The evidence suggests that free movement of persons has contributed to economic growth in the EU as a whole and in the UK in particular. On the assumption that free movement would not survive without EU competence, because national controls would soon reassert themselves, one can conclude that EU competence in this area has had a positive economic impact. In some areas of Europe there is evidence that it has also had positive political and cultural effects, especially by reducing the salience of borders that divide regions and isolate minorities.

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

Free movement has probably contributed to driving down wage costs and increasing productivity in these sectors.

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

The influx of EU migrants may have made employment conditions more difficult, especially at the margins. However, this can't be seen in isolation from other sources of immigration, especially from the UK's former colonies.

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

There appears to be a trade off here between economic benefits overall but labour market disruption at the margins. The balance is a political decision, but it would seem fair to envisage some degree of redistribution to those worst affected.

Questions in relation to social security coordination.

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

Mutual social security recognition is probably not essential to facilitate an EU labour market, but it almost certainly is essential to support free movement of EU citizens, which is a wider concept than just the movement of labour.

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

If changes are needed to prevent benefit tourism or exploitation then it would seem best to try to agree these at the European level. The problem is not with the balance of competences but with the rules and the way they are administered.

Questions in relation to Immigration.

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

Immigration from EU countries, and especially from Eastern Europe, peaked before the recession, but its impact is still evident in areas where Polish migrants have settled. Observation suggests that cultural affinities between European countries make it easier for the UK to assimilate migrants from Europe than from other continents. It's also the case that migrants from Eastern Europe are more likely to return home in the longer term than those from further away. EU competence has not been the main cause of negative consequences from immigration.

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

See question 11.

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

The problem is not that free movement rights are abused. Rather the problem is that law makers may seek to present the exercise of these rights as an abuse, so that they can then curtail them to satisfy the need for short term political gains while ignoring the wider benefits that free movement can bring. The UK still does not offer the same degree of freedom that is normal between most other EU member states because it insists on operating perimeter controls. Not only does this discriminate against other EU citizens; it also imposes restrictions on people from the UK. One adverse effect of opting to continue perimeter control may be that we lack the internal control in depth that can limit illegal employment and prevent fraud.

Questions relating to future options and challenges.

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

From the beginning of next year when the TP ends there will be an increase in immigration from Romania. If we continue to portray this in the media and in Parliament as a problem, then it will be a problem; but if we treat it as an opportunity, we may find that it brings some advantages, as indeed was the case with previous waves of immigration. In any case we accepted a treaty obligation towards Romania 7 years ago, and we are, or used to be, a country that stands by its treaties. Romania was the country that suffered worst under Communism, and we have a once-in-a-generation opportunity to turn it round. It is also a country of significant opportunity for British business and investment, as well as a strategic partner in an area of potential instability. These factors need to be weighed carefully against the short term temptation to over-react to Romanian immigration, which is in any case more likely to target countries with greater cultural affinity to Romania like Italy and Spain.

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

We would have to offer free movement to the citizens of the new member states, subject to an appropriate transitional regime. The largest potential new member would be Turkey, but Turkish membership still seems distant, as there is significant opposition from other members of the EU, some of whom are a more traditional target for Turkish immigrants than the UK. Other smaller countries, such as Serbia or Macedonia, could be accommodated under the current regime and are not large enough to cause serious immigration problems.

General questions

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

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

The binary choices in this questionnaire (EU competence: good or bad) hide a more complex reality. Free movement issues are interwoven with the UK's political, diplomatic and commercial objectives and can't be considered in isolation. In an area of shared sovereignty, there are bound to be trade-offs between swings and roundabouts. The current free movement regime reflects complex interactions with an enlarging EU over many years. One can't ignore the negotiating history, or the trade-offs that brought benefits to the UK in other areas. Also one shouldn't use the debate about free movement as a proxy for the debate we need to have in Europe but don't, because it's too difficult, about the assimilation of minorities.

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

Submission 46

Name	██████████
Organisation/Company (if applicable)	New Europeans
Job Title (if applicable)	Chair
Department (if applicable)	
Address	██████████
Email	██████████

Organisation Type (if applicable)	<i>Please mark / give details as</i>
--	--------------------------------------

<i>appropriate</i>		
NGO/Civil Society	<input checked="" type="checkbox"/>	
Public Sector	<input type="checkbox"/>	
Retail Sector	<input type="checkbox"/>	
European bodies/institutions	<input type="checkbox"/>	
Business/Industry/Trade Bodies	<input type="checkbox"/>	
Other (please give details)	<input type="checkbox"/>	

In compiling our responses to your questionnaire, we have sought to gather the views of members and supporters of New Europeans (who are generally non-British EU citizens resident in the UK and UK nationals who have first-hand experience of living and working in other EU countries). Views have been canvassed at an open meeting of around 80 members and supporters, in social media debate, and in the

sharing of draft responses. Our responses reflect the outcome of that process, and include specific issues that individual members have experienced in exercising their free movement rights.

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

a) The number of UK nationals who do exercise their rights to free movement (currently some 1.5 million¹³, and many more millions since those rights have been available) is evidence that there is positive value to them as individuals, to their families (in terms of financial gain, social, cultural and sometimes health enrichment), and to the UK businesses for which many of them work. Without those free movement rights, the difficulty and cost of their living and working in other EU member states would be considerably higher such that a significant proportion would be unable or unwilling to make the effort.

b) Our members tell us that the benefit accruing to the UK as a whole is greater the more those rights are exercised:

- UK businesses often feel better able to export to other EU countries if UK nationals employed by them are based in those countries;
- UK businesses are more willing and better able to invest in those countries (often more profitably than in the UK) if UK nationals are based there to oversee those investments;
- UK nationals in other EU countries benefit the UK **financially**, through remittances; **economically**, through lower unemployment; and **culturally**, when they return enriched to the UK.
- UK students benefit from being able to study at universities in other EU countries (the fact that so many choose to do so rather than continue their

¹³ The IPPR estimate that there are 2.2 million UK nationals living in other EU countries (principally in Spain, France, Ireland and Germany). This suggests that a growing number of UK “migrants” may be coming broadly into balance with a declining number of non-British EU nationals in the UK, underlining the importance of looking at the two phenomena together. EU “migration” is not a one-way street.

studies in the UK is evidence of their perception of benefit).

- UK universities are able to attract students from across the EU. This is of benefit to those universities in terms of academic standing and opportunities for collaboration, and to the nation in terms of added value to the economy, reputation, as well as spreading knowledge of English and adherence to British culture and values. Those students are then available to UK businesses to employ in their investments in the student's home country.

- Non-British EU nationals exercising their free movement rights in the UK benefit the nation in any number of ways:
 - **financially**, from higher tax revenues;
 - **economically**, filling skills gaps, boosting drive and aspiration, and through the keener competition deriving from increased labour mobility;
 - **internationally**, through knowledge and reputation of the UK;
 - **socially**, through their participation in the UK's civic society, educational system and family life;
 - **culturally**, from greater diversity and the boost to UK achievement in the arts and sports (eg Lithuanian world champion swimmer Ruta Meilutyte, living and training in Plymouth).

There is evidence that free movement throughout Europe boosted GDP by 0.4%, and that the inflow of labour from A8 countries led to the UK's GDP being boosted by 1.2%, during the period 2004-09. This increase occurred because, with more EU workers, the UK was able to produce additional goods and services that we would not otherwise have been able to produce¹⁴.

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

Our members tell us that without the treaty right to live and work in another EU country it would be much more difficult (costly, time-consuming and frequently legally impossible) to work and to access benefits and services to do so. Prompted by protectionist motives, each EU country would be able to impose its own rules and procedures (eg based on proficiency in the local language) without challenge from a higher authority (eg the European Commission or ECJ). They might favour domestic suppliers over imports; put up barriers to FDI; impose obstacles to the employment

¹⁴ Employment and Social Developments in Europe 2011, pp274-278

of foreign workers, to the establishment of a business which might compete with domestic rivals, or to the acquisition of leave to remain; deny access to benefits and services free to domestic nationals at the point of delivery; and deny the right to vote in local elections. British Embassies in the EU are often called upon to take up such cases on behalf of UK nationals.

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

The evidence we have suggests, to the contrary, that non-British EU nationals make proportionately less demand on welfare provision and public services in the UK than other nationals. Most are of an age that has less need for health and other social services. They are often unaware of the existence of these services or of how to access them. Most do not remain in the UK long enough to develop conditions that might require such support¹⁵.

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

Our members believe that EU competence in this area should be strengthened to make freedom of movement easier (less expensive and time-consuming) and to bolster enforcement of existing rights.

We have listed typical obstacles in answer to Q 2 above. Amongst our members are UK nationals living in another EU country who have experienced denial of the right to establish a business, to acquire residency/permanent leave to remain, to access welfare benefits, to access public services at the same cost as domestic nationals, or to vote in local or European elections.

¹⁵ Impact of migration on the consumption of education and children's services and the consumption of health services, social care and social services
Anitha George, Pamela Meadows, Hilary Metcalf and Heather Rolfe
December 2011, National Institute of Economic and Social Research

The case law of the ECJ contains numerous examples of UK nationals seeking legal redress to denial of their free movement rights (eg denial of the right to set up English language schools in Italy). Legal action is dauntingly expensive. Simpler means of redress should be available via the European Commission.

There should be standardized requirements for obtaining the necessary permits for living in another EU country regardless of habitual residency tests which vary from country to country within the EU.

There should be more EU action to facilitate the voting rights of EU citizens.

- EU citizens from 24 member states living in the UK face more bureaucratic procedures in order to register to vote in European elections in the UK than do citizens from the UK, Ireland, Cyprus and Malta.
- UK citizens living in other European countries lose their voting rights in UK elections after 15 years, an arbitrary cut-off date. Our members have found it difficult to register to vote in European elections in other EU countries.

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

The benefits to the UK economy described above are evidenced by, eg Tesco's growing investment and high returns in several other EU countries. As managers of their investment in those countries Tesco deploy both UK nationals and local nationals who have been educated and trained in the UK. Tesco's workforce in the UK comprises a high proportion of non-British EU nationals.

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

Our experience is that the labour mobility underpinned by free movement rights for EU citizens benefits the three UK sectors you list by supplying a source of skilled labour at more competitive prices that might otherwise not be available. UK businesses will benefit more economically the bigger the pool of labour on which they are able to draw.

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

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

Our members believe that by doing more, UK nationals in other EU countries could make greater use of (and benefit from easier enforcement of) the rights laid down in the Treaties.

By doing less, those rights would be degraded and their enforcement further hindered.

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

Our members believe that an effective EU labour market is one in which labour moves freely around the EU. It follows that where social security provisions are not coordinated between member states, labour mobility will be frustrated. That degrades the EU labour market.

10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security

coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system

Our members ask where the evidence is to be found that EU social security provisions have a “disproportionate impact” on the UK benefits system? Or that they “undermine public confidence” in that system? The government could act to bolster any apparent undermining of public confidence by making more use of the evidence referred to in answer to Q 3 above.

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

Our members believe that EU citizens moving between one country and another in the EU should not be termed “migrants”. UK nationals living in other EU countries are rarely if ever referred to as migrants; but Poles or other Central Europeans living in the UK are frequently termed “East European immigrants”.

EU competence in the field of asylum and immigration has provided the UK with several layers of protection against illegal immigration by non-EU nationals which it would not otherwise enjoy. For example, the UK’s first line of defence has moved thousands of miles out to the external Schengen border; and the Dublin II Convention requires asylum applications to be considered in the EU country of first arrival - which is less likely to be the UK.

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

The experience of our members is that there has been an impact, and that this impact has been beneficial.

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

This is a leading question, presupposing that widespread abuse occurs (where is the evidence?) and that it can only be countered by a transfer of powers in this area away from the EU back to the nation state (what is the basis for this assumption?).

Our members reject an approach which would discriminate against non-British EU nationals living and working in the UK.

Our members also reject any attempt to see free movement rights as being a one-way street. These rights affect equally UK nationals in other EU countries, and any move to reduce EU competence in this area would adversely affect the position of such UK nationals.

We support moves to make the EU's single market work better. And the labour mobility that results from free movement of persons is necessary to make the EU's single market work effectively. Removing competences from the EU in this area would therefore undermine the single market as common basic standards and requirements would be replaced by a free for all among member states resulting in new obstacles to labour mobility to the detriment of economic growth.

Future options and challenges

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

Our members believe that the challenge will continue to be that member states impose barriers to the free movement of persons which are contrary to both the spirit and the letter of EU law and that procedures for securing remedies or redress are too costly and/or cumbersome. UK nationals in other EU countries are frequently the victims of such barriers. The European Commission should therefore be given adequate powers to police the smooth functioning of free movement.

Our members further believe that the UK has least to fear from any enhancement of EU competence this might require. The society, culture and bureaucratic administration of the UK is better attuned to the benefits and opportunities brought about through diversity and free movement. The UK can be at the forefront of a campaign to remove elements of protectionism that persist in other member states.

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

Enlargement has always been viewed favourably by British governments which have historically, and with good reason, spearheaded efforts to see the EU expand, not least to embrace Turkey. Our members see no objective rationale for departing from that approach. The EU needs to continue to enlarge, to increase the size of its single market including by expanding its labour force if it is to remain competitive in the global marketplace. Turkey, a country with which UK nationals are well acquainted, offers a large, skilled and competitive workforce. We welcome the prospect of its accession to the EU once the criteria for membership have been met. Much the same applies to Ukraine as well as to the countries of the Western Balkans.

Our members point out that neither the EU (including the UK) nor the acceding countries will be what they are today when the latter eventually accede. So it makes little sense to prescribe measures today to mitigate a potential problem several years down the line by which time much will have changed. Transition periods might be put in place to prevent a sudden and unmanageable influx of workers to existing member states. But this should be equitable, mindful of the benefit to UK nationals and businesses of free movement in the opposite direction, and honest about the distinction between free movement of labour (which might be limited on a temporary basis) and persons (which cannot).

General

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

See response to Q 17 below.

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

Our members believe that your questions fail to address the social and cultural contribution that EU citizens of one member state can make to another member state in which they live and/or work. We in the UK are quick to claim credit for the positive influence our culture and values have historically had on other countries (and the British Council is testimony to the UK government's long adherence to the belief that spreading culture and values brings economic benefits); it would be perverse to deny that greater diversity including the diversity gained through free movement within the EU has not also had a positive influence on the UK. Cultural influence from abroad was very apparent at the London 2012 Olympics (which might never have come to London had the UK not embraced free movement). Those Olympics underlined how openness to other cultures brings economic (as well as sporting) benefits.

Many of our members are students who have studied in another EU country. Their link with, and contribution to, the UK typically persists long after they have graduated, not just academically, but socially, culturally and economically. British university education is currently one of this country's most valuable exports. We believe that nothing should be done to undermine its success.

And many of our members come from families in which the partners originate from different EU member states. These relationships have become an engrained and enriching element of the fabric of British life. Degrading the operation of free movement within the EU would risk undermining the basis on which those partnerships depend.

There are a number of other points not captured in the questionnaire, eg:

- What more can the UK government do, by itself or through the EU, to promote EU citizenship rights, eg through a voter registration campaign for EU

nationals, in the UK?

- What more can the UK government do to encourage UK nationals to exercise their free movement rights in other EU countries? Those that already do so find it an enriching experience; it follows that greater good would be derived from more UK citizens enjoying the experience.
- What more can the UK government and, by extension, the EU do to support UK nationals living in other EU member states so that they do not lose their UK entitlements, eg the right to vote in UK elections?

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

The mission statement of New Europeans (reproduced below) sets out the approach of our members:

NEW EUROPEANS

Mission Statement:

We are New Europeans, citizens of one of 28 European states able to live, study, work or to do business in another - thanks to the EU. Wherever we have been, we have made a valuable contribution, exercising our rights as EU citizens responsibly and to the benefit of everyone on our continent. The prospect of a referendum on Britain's continued membership of the EU directly affects the rights of over 2.5 million of us currently based in the UK as well as 1.5 million British citizens living on the continent. We intend to make ourselves heard on the value of EU citizenship, giving New Europeans a voice in the unfolding debate about the future of Europe and about Britain's place in the EU.

Our goals are:

- To promote the value and benefits of EU citizenship.
- To promote the interests of New Europeans, particularly in respect of their political and social rights.
- To promote the participation of New Europeans in all aspects of civic life wherever in the EU they may live.
- To promote the involvement of New Europeans in articulating the future direction of the European Union.

Motivation:

1. The right to live and work anywhere in the EU is at the heart of what it means to be a citizen of Europe today. The growing number of “New Europeans”, EU citizens exercising this right, represents a transformational moment in our continent’s history.
2. New Europeans value the protections we enjoy in the workplace and as consumers as a result of legislation made in Brussels, scrutinized in Westminster and applied by our local authorities. We believe that the recognition of our educational and other qualifications across the EU has benefited not just us but everyone. We want to draw attention to these harmonised rights and to what it means to be an EU citizen.
3. After two world wars and decades of destructive totalitarianism, we’re proud that the EU has helped win the peace, bringing stability and prosperity to our continent, acting as a civilizing influence on all our countries, including Britain. We want our children and our children’s children to identify with the Europe we have helped construct. In a similar show of solidarity with New Europeans of the future, we support the EU’s further enlargement - extending

the benefits of EU citizenship and making Europe stronger in the increasingly competitive global economy.

4. We don't underestimate the trouble the EU is in as a result of the financial and economic crisis. We don't deny its flagging popular support. And we are the first to accept that it needs reform. But we are fearful of where its opponents may take us, and we reject absolutely the resurgence of extreme nationalism in some parts of Europe that threatens its achievements as well as the values that we as citizens are determined to uphold – democracy, human rights, equality, fairness and the rule of law.
5. Even in Britain, this process of building Europe through the free movement of its citizens seems now to be in jeopardy. Whatever the merits of the proposed referendum on the UK's continued membership of the EU, a vote to leave would severely curtail the rights we currently enjoy, rights we are anxious not to lose.
6. Our party allegiance, if any, ranges across the political spectrum. But as New Europeans we are often overlooked in Britain's feverish debate about national sovereignty and the cost of EU membership. If we are not from the UK we are made to feel that we have no voice. Yet the outcome of any referendum will have a direct impact on our lives and those of our families. Now is the time for all of us who can attest to the value of EU citizenship, whether we originate from the UK or elsewhere in the EU, to stand up, to be heard, and to be counted.
7. We are angry that the social and political rights enjoyed by non-British EU citizens in the UK are already threatened. The fear of migration from Romania and Bulgaria when transitional restrictions on free movement are lifted next year has prompted the British government to look at measures that might have a negative impact on our lives - introducing compulsory ID cards for EU nationals living in the UK, for example, or restricting access to the

National Health Service. Furthermore, Britain leaving the EU would disenfranchise us: thanks to the Maastricht Treaty, EU citizens enjoy the right to vote in local and European elections wherever they live in the EU. In the UK we also have the right to vote in London, Scottish, Welsh, and Northern Irish elections, these rights deriving directly from UK rather than EU law.

8. So our first priority as New Europeans is to give a voice to EU citizens in the arguments already underway about our rights here in the UK. Though we speak with passion, we are determined to demonstrate integrity with facts.
9. Secondly, EU citizenship must mean participating as equals in the local and national communities where we choose to live. So we mean to help New Europeans participate in all aspects of the civic life of the country in which we find ourselves. By holding meetings in Westminster, we will assist the integration of EU citizens from across Europe into the social and political fabric of the UK. And when visiting politicians or civil society figures visit from other EU countries, we will facilitate meetings and dialogue with EU citizens living in the UK.
10. Thirdly, we want to spur a drive to empower EU citizens to help shape the way in which the EU moves forward, to address the yawning gap between the institutions of the EU and its citizens. It has long been clear that those achievements – peace, stability and prosperity – that led to the EU rightly being awarded the Nobel Peace Prize fail to resonate as they once did and no longer suffice as a rationale for the European project in the 21st Century. Our European Union must now become the construct, not of elites acting for the states of Europe, but of its citizens. It must become more accountable, and more responsive, to the needs of the citizen.
11. As New Europeans, and just like the EU's detractors, we will articulate the interests, the needs, and the demands to which we require a response from those governing us - at whatever level. We will take up issues like ethical

banking, youth unemployment and the green economy that cut across both EU and national policy-making. In this, we will engage with local and national politics and politicians just as much as those in Brussels.

.....

Submission 47



Associazione Lettori di Lingua Straniera in Italia
Association of Foreign Lecturers in Italy

"Equal citizens, equal rights, equal treatment"



5 August 2013

Home Office
Department of Works and Pensions
Review of the Balance of Competences
Internal Market: Free Movement of
Persons Call for evidence - May 2013

FOREIGN LECTURERS “LETTORI” IN ITALIAN UNIVERSITIES
DISCRIMINATION BASED ON NATIONALITY
FREE MOVEMENT OF WORKERS

The undersigned is chair of ALLSI, a trade union founded in 1997 to help mother tongue lecturers (known as “*lettori*” – literally “readers”, employed to teach language, literature, translation, English for Special Purposes, etc, and as examiners) working in Italian universities achieve equal treatment under EU single market rules.

INTRODUCTORY REMARKS

I will address this report in the light of the questions asked at page 51, paragraph 41, of the Call for Evidence questions.

The evidence presented here is grounded on Treaty rights that prohibit discrimination based on nationality – the Court of Justice of the European Union (CJEU), was satisfied that *lettori* are non-Italian nationals.

A quote from **The Irish Times**, 5 February 1999, provides a synthesis of the discrimination:

“The persistent refusal of the Italian university authorities to pay foreign lecturers on the same scale as Italian lecturers, to recognise continuity of employment and their refusal to hold fair competitions for full academic posts have been found to be in breach of European law and are, without doubt, the clearest mass systematic breaches of the treaty”.

In addition I would refer the committee to ALLSI, July 2013 press pack – in particular to the front page article published in European Voice, 18 July 2013 and to the EV editorial “**Italy’s disrespect for rule of law hurts all of EU**” of the same date. (annex 1)

For a comprehensive overview, see the three academic essays published on the subjectⁱ (annexes 2, 3 and 4). A forthcoming book, with the *lettori* as a case study: Professor Brad Blitz, Migration and Freedom: Mobility, Citizenship, and Exclusion is to be published by Edward Elgar Publishing in 2014.

These articles cite cases of abuse and mobbing, and, taken together with the six judgmentsⁱⁱ of the CJEU deal comprehensively with the discrimination

regarding duration of contract, access to jobs and equal pay (including pension and social security contributions)

2) EMPIRICAL EVIDENCE from 6 UK CITIZENS.

For the purpose of this report I solicited comments from UK citizens. Six representative statements are attached (annex 5). Names have been removed for privacy. The respondents were asked to give their nationalities, age and gender, to comment on their experiences as migrant workers and to say whether they would advise young UK workers to migrant to Italy.

3) BRIEF ANALYSIS and EXPLANATION of the *LETTORI* CASE

As a “map” of the discrimination complained of, attached is a “timeline” of the successive Italian laws and CJEU decisions. (annex 6).

The timeline stretches from 1980 to 2011 and cites the 6 CJEU rulings, the 1980 Italian law used to recruit *lettori* and subsequent modifications in 1995, 2004 and 2011

A short narrative summary will be useful.

Lettori were recruited using a 1980 norm offering annual contracts, renewable 5 times. The first two CJEU rulings found the renewability clause illegitimate: since Italian teaching staff enjoy open-ended contracts, non-Italians should enjoy the same rights.

Italy modified its legislation in 1995 with the stated intention of bringing its law into line with these CJEU judgments.

The 1995 law merely offered the *lettori* new contracts as *collaboratori ed esperti linguistici (CELS)* . However, this post as *CEL* was for technicians not teachers. Its aim was clear enough to journalist, Mark Whitaker who asked Fernando Gentilini of Italy’s permanent mission to the European Union in Brussels:

“How would you feel if you had been doing your job for several years and then your bosses suddenly say – actually your job isn’t that, we are now going to call it something else and we’re going to pay you 50% less?” **BBC File on Four, 3 June 1997**

Those refusing to be downgraded to technicians were subjected to mass sackings, the worst being in Bologna, Naples and Verona. Some of these

lettori left Italy, others, many with families sued and were reinstated by the Italian courts, a process that took up to three years.

Subsequently, the CJEU, on 26 June 2001, ruled that this 1995 law was illegitimate since it did not guarantee the acquired rights of the *ex-lettori*.

The CJEU cited a 1962 Italian employment law that stipulates: workers who have a plurality of contracts are entitled to have their contracts unified into **one single contract** dating from the first day of employment. It follows that UK workers are entitled to the same.

The effect would be that the *lettori* - in line with other Italian teaching staff - were entitled to bi-annual increments for years of service as well as arrears in wages for the previous unpaid increments.

Italy modified its legislation yet again, in 2004, and the CJEU ruled in 2006 that this law **did** provide a framework for removing the illegal discrimination. However, the 2004 law did not provide an adequate **budget** for the universities to compensate the *lettori* or guarantee their salaries for the future.

Successive Italian governments passed the buck – saying that each individual university had to find the money to settle the *lettori* cases. The universities replied that they were broke and passed the buck back to the state. This cat and mouse game has resulted in over 1,000 court cases in Italian courts as *lettori* seek implementation of the CJEU ruling.

In a nutshell: the Italian universities “can’t pay” and the Italian state “won’t pay”.

Some *lettori* have received recompense through the Italian courts, but only at the cost of putting enormous strain on the universities budgets.

Once compensated the *lettori* have to go back to court again and sue for the **next** unpaid amount of arrears in wages. This whole process obviously has a knock-on effect on each person’s pension, since pensions are calculated on contributions, the contributions in turn being inferior to what they ought to have been.

An example will be useful, on 29 January 2010 the Vice-Chancellor of the University of Padua, sent a letter to all his staff and students saying he can’t pay arrears on salaries to 14 *lettori*.

The back-pay with interest amounts to 5 million 112.828 euros and was ordered by a Padua Labour court and subsequently confirmed by the Court of Appeal and the Supreme Court of Cassation.

Perhaps fearful that the Padua ruling would be replicated throughout Italy, the Berlusconi government passed a new law in December 2010 that came into force in January 2011, the “**Gelmini**” law.

This law re-interprets the judgments of the CJEU and renders pending lettori court cases “**extinguished**” (the actual word used in the law).

The audacity and scope of this law requires reflection.

The CJEU is the only body that can rule on the interpretation of the Treaty and its rulings are binding. The responsibility for implementing falls to the member state. The Italian state, instead of implementing this CJEU ruling, now uses the Gelmini law **retroactively** to deny UK and other EU citizens the Treaty right of due process of law – the right to have one’s complaint adjudicated by a court of law.

In a nutshell: Italian **Gelmini** law cancels a ruling of the Court of Justice of the European Union.

For an analysis of this law see Professor Avvocato Lorenzo Picotti’s report to the European Commission dated 24 January 2011. (annex 7)

4) MUTUAL RECOGNITION of QUALIFICATIONS and the BOLOGNA PROCESS

It is an established principle of Community law that qualifications gained in one member state must be recognized for the purpose of access to employment in another member state.

Three British citizens were excluded from a selection process for a promoted teaching post by an administrative decision of the University of Verona. The CJEU in conjunction with the Venice Regional Tribunal annulled this administrative decision and the plaintiffs were awarded symbolic monetary damages. However the process took years and in the meantime the plaintiffs careers were damaged irreparably. Despite the CJEU judgment one of the plaintiffs (the undersigned) again applied for a teaching post in the University of Verona and again had the application excluded from the recruitment process.

Some *lettori* felt that the choice of Bologna as the city to host and to give its name to the **Bologna Process** provided a smokescreen from the worst abuses taking place in any Italian university.

A ministerial telex, 2 November 1993 was sent to all universities saying that pursuant to the CJEU judgment of 2 August 1993 new *lettori* contracts were to be postponed – Bologna University, and this university alone, took this as a cue to fire all its *lettori*. One of the worst hit was UK citizen Linda Armstrong (whose American husband and colleague was also fired) who had an infant son to provide for. This case was attracting widespread interest in the media, particularly **The Guardian** and the **Times Higher Education**. Mrs Armstrong was seething at the refusal of Baronesses **Blackstone** and **Scotland** to meet us in the run-up to the signing of the **Bologna Declaration**. She complained of politicians only wanting to listen to people who would tell them things they wanted to hear.

5) COMPETENCES – UNITED KINGDOM, COURT OF JUSTICE OF THE EUROPEAN UNION, EUROPEAN COMMISSION - IN PROTECTING THE TREATY RIGHTS OF CITIZENS

In this section I will show how the inter-twined relationships between citizen, member states, host-state, Commission and CJEU do not and indeed cannot protect free movement – in the face of an intransigent member state.

The UK, or any member state, may intervene in a case brought by the European Commission to the CJEU where the Commission alleges that a member state is failing to uphold its Treaty obligations. In practice, however, member states are very reluctant to do so. The UK government did intervene in *Commission v Italy*, (C-212/99) adjudicated by the CJEU on 26 June 2001. However, for this to happen, at a meeting in the FCO in London, the undersigned had to give an undertaking to a Special Adviser to keep the name of the late Foreign Secretary, **Robin Cook** out of *The Daily Telegraph*.

In that judgment Italy was duly found to be failing in its Treaty obligations, and we were very grateful for the UK's intervention.

However, when the Commission sought enforcement (fines) in the CJEU the UK Minister for Europe, **Denis McShane**, rejected our request for the UK to intervene. He stated that it was not the government's normal practice to do so. This reply was fatuous, in so far as CJEU had only been asked to rule on fines twice its history and was also pusillanimous given the length of time the *lettori* had been bounced from Italian domestic courts to the CJEU over a period of twenty years. It is also difficult to understand why a member state would support infringement but not enforcement.

One Commission lawyer was bitterly disappointed by the UK's decision. It put out the wrong signal, he said.

While infringement proceedings are ongoing, correspondence between the Commission and the member state are secret.

However, the undersigned received documents pertaining to the evidence and the Commission's pleadings in law, sent anonymously to his address.

Any citizen will be dissatisfied by proceedings held behind closed doors, that affect that citizen's rights. We were furious when we read the contents and sought advice from Professor *Avvocato* Lorenzo Picotti, who represents ALLSI and hundreds *lettori* throughout Italy. He wrote:

"...the Commission accepted the deliberately instrumental, unfounded and unproved justifications which have been presented as facts in defence arguments by the Italian Government on the basis of partial information, obvious omissions and at times complete and utter falsehoods [and] has taken a position which is from a legal perspective incomplete, imprecise, unclear and also contradictory." (Petition to President of the European Parliament, Romano Prodi, 6 July, 2000)

ALLSI took a complaint of maladministration to the European Ombudsman, who rebuked the Commission for *'fundamentally alter[ing] the basis on which it was dealing with the complainant's case, in a way which the complainant considered highly damaging to his interests'* ⁱⁱⁱ (Decision of the European Ombudsman on complaint 161/99/IJH against the European Commission, 2000: para. 4).

We welcomed the decision it provided a rap on the knuckles to the Commission and to the wider public, it showed that our concerns were neither unfounded or vexatious.

The CJEU, 18 July 2006, whilst finding that Italy had again been in been guilty of failing to uphold Treaty obligations declined to impose fines (as recommended by the Commission's Advocate General) saying that it had insufficient evidence to allow it to conclude that the infringement was ongoing on the date that the case was heard.

Law Professor, the late Sir **Neil MacCormick** MEP QC was scathing and issued the following statement:

It is a scandal that Italy has been yet again found in breach of its Community obligations to a group of European citizens, but yet again suffers no sanction. What trust can we citizens place in our rights under the treaties if a cosy club of Commission, Court and member state can agree that wrong has been done yet fail to ensure the wrong is righted. The Commission in this case failed to put forward a sufficient case to show that Italy's default continued up to the time of the hearing. Did the Commission really try to win its case? If the Court needed further evidence from the Commission, why did it not direct the Commission to adduce such evidence before proceeding to final judgment?

Professor MacCormick was not a lone voice. Judge Colneric, one of the 15 judges who adjudicated in the case said, at a law seminar held at the University of Trento on 13 February 2007:

“The problem of that case in the end was the enforcement proceedings, linked to procedural rules [...] that the Court has to apply...a French tradition, I often thought it highly difficult to accept. So the Court is linked to what is put forward by the parties. It cannot do its own research on what happened even if you see that something has gone seriously wrong. You are stuck, you are confined to the pattern of arguments put forward by the parties ... the Commission had not challenged that material in detail. That’s why we had to proceed from the basis of what the Italian state had said. Our hands were ... bound by these procedural rules. The Court has to have the courage to change its procedural rules and if you compare it with the rules of French administrative law, you see that in French administrative law things have developed. The Court in that sense are like immigrants: it’s very, very hard to change the basic procedure of the Court. The litigants must have been very, very disappointed.”

A Supreme Court, composed of “immigrant” judges bound by archaic French administrative law, hardly inspires confidence.

One disappointed UK citizen, **John Young**, stated at a press conference hosted by European Parliament Vice-President **Edward MacMillan-Scott** MEP in the European Parliament on 29 May 2013:

“To some extent I could be said to be a model European: born in the UK, but I speak four European languages fluently, I’ve travelled throughout the continent and for more than half my life I’ve lived in Italy.

Of those thirty years in Italy, I’ve spent twenty-five in costly and burdensome litigation over the discrimination practised by Italy’s university system against myself and other foreign-language lecturers. Without some intervention from the EU institutions, there is no end to that discrimination in sight: the Italian State’s policy is quite clearly to put us to trial by endurance in its own dysfunctional legal system until we give up, retire or die – as indeed many of us already have.

Now, I haven’t lived in Italy for thirty years without learning – like all honest, hard- working Italians – not to expect much from Italy’s politicians. But when I began this long legal battle, I believed in the EU and its institutions. I believed that the EU would bring Italy to book over its blatant discrimination and its persistent violation of the most sacred of Community principles: the free circulation of European citizens. I believed that my, our rights as European citizens would eventually be respected because they were just that: rights.

So I had faith in Europe, in my rights as one of its citizens. But that faith has been shaken by the abject failure of the institutions of the European Union to uphold and protect those rights. That failure is tantamount to collusion in my mind. What else can one call thirty years of flouted Community law, thirty years of unheeded resolutions by the European Parliament, thirty years of toothless infringement procedures, but this: thirty years of the EU letting Italy get away with it?

In 2006 the latest of those procedures brought about the usual condemnation of Italy by the European Court of Justice, which however failed to impose fines – notoriously the only language that recalcitrant States understand – despite the fact that the Italian State was a repeat offender. The Commission eventually closed the procedure, observing that it had –

and I quote – “received firm assurances from the Italian authorities that national legislation for former foreign language assistants (“Lettori”) in Italian universities is effectively applied”.

“Firm assurances”? From a country which for years has held the unenviable record of Member State with the highest number of infringement proceedings open, the Member State with the worst record for application of Community law? I can tell you how much those “firm assurances” were worth. Milan University has not paid a single eurocent of the arrears owing to me or to my colleagues since 1994 under the Italian legislation which the Court of Justice and the Commission found so convincing. Milan University even refuses to pay arrears which have been ordered by Italy’s domestic courts, claiming that the so-called Gelmini Law has cancelled any foregoing legal entitlement for foreign-language lecturers.

Today, after 28 years of service, my take-home pay is less than 1200 euros per month – the same as it was in 2006. No Italian university teacher of similar length of service was or is in that position. Like the European Court of Justice, the Commission knew that. Yet they preferred to accept those “firm assurances”, and leave me and my colleagues – I quote again – “to be dealt with by the relevant Italian administrative or judicial authorities”. I know what that means. I think they did, too. It means that we were stitched up.

After a quarter of a century of fighting for my rights as a European citizen, I do not just feel disappointed by the European Union. I feel betrayed by the European Union. The EU and its institutions have forfeited my trust – and I was a convinced European. For that trust to be restored, at a time when euroscepticism is rife, I need to see a European Union that works on behalf of its citizens, not as a hugely expensive, chummy club for politicians and governments”.

Regarding the failure to put forward evidence, it should be noted that whereas governments may intervene in cases brought by the Commission, lawyers representing the interests of EU citizens may not. This is highly unsatisfactory, it being a basic right that any aggrieved citizen should be able to have the grievance presented by a lawyer in any legal process which affects that citizen.

Finally, the European Commission is currently considering opening infringement proceedings concerning the Gelmini law. In the best of hypothesis, this would take 3 years to reach the CJEU and its effects, if any, decades to be implemented, by which time most of the plaintiffs will be dead, although their heirs stand to gain.

Furthermore, the Italian state, having circumvented 6 judgments of the CJEU, must now feel that it has sufficient expertise to circumvent a seventh.

THANKS

I take this opportunity to express my deep appreciation and thanks to officials in the FCO in London and those in the British Embassy in Rome, their commitment and patience has been exemplary.

My thanks also to ex-Minister for Europe **Chris Bryant** MP who had the courage and decency to “put his head above the parapet” and receive us in at the FCO in London.

My thanks also to the current Minister for Europe, **David Lidington** MP, who also invited us to meet him in the FCO and issued a statement saying that Italy’s treatment of *lettori* was both “immoral and illegal”.

CONCLUSION

The above submission shows clear cut flouting of the Treaty by one member state against citizens of all other member states.

In a nutshell: The Italian state refuses to submit to the authority of the Court of Justice of the European Union.

It is difficult to find any disagreement with **European Voice** in its editorial, 18 July 2013:

*“What has been missing in Italy for so long – and latterly in the EU institutions – is a proper appreciation of the significance of the Lettori case.... After so many years of contempt by successive governments, **this case has become a test of whether or not the rule of law applies in the EU**”.* (my bolding)

It is incumbent on the Prime Minister of each member state – at least those who continue to see Europe as a sustainable project - to refer this matter to the Council of Ministers.

Yours sincerely,

[David Petrie](#)

Chair

Attached:

annex 1 Press Pack July 2013

annex 2 Blitz, The Resistant Guild

annex 3 Blitz, Fractured lives
annex 4 Petrie, (Dis)integration
annex 5 statements from 6 UK citizens
annex 6 Timeline of laws and CJEU judgments
annex 7 Picotti, report to European Commission on Gelmini law

ⁱ (Dis) Integration of Mother Tongue Teachers in Italian Universities: Human Rights Abuses and the

Fractured Lives and Grim Expectations: Freedom of Movement and the Downgrading of Status in the Italian University System, Prof Brad Blitz , Kingston University, Bulletin of Italian Politics, Vol. 2, No. 2, 2010, 123-140.

The Resistant Guild: Institutional Protectionism and Freedom of Movement in the Italian University System, Brad Blitz, Volume 4, Issue 1, 1999 South European Society and Politics.

ⁱⁱ 30 May 1989 (CJEU C-33/88), 2 August 1993 (CJEU C-259/91), 27 November 1997 (CJEU C-90/96), 26 June 2001 (The CJEU (C-212/99)), 18 July 2006, The CJEU (C-119/04), 15 May 2008 (The CJEU (C-276/07))

ⁱⁱⁱ Decision of the European Ombudsman on complaint 161/99/IJH against the European Commission, 2000: par. 4).

Submission 48

Name	Professor Michael Dougan, Dr Nuno Ferreira, Ms Stephanie Reynolds and Dr Samantha Currie
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Organisation Type (if applicable)	<i>Please mark / give details as appropriate</i>	
NGO/Civil Society	<input type="checkbox"/>	
Public Sector	<input type="checkbox"/>	
Retail Sector	<input type="checkbox"/>	
European bodies/institutions	<input type="checkbox"/>	
Business/Industry/Trade Bodies	<input type="checkbox"/>	
Other (please give details)	<input type="checkbox"/>	University research group.

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

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

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

a) An EU competence in the field of the free movement of persons (FMP) has the positive effect of substantially facilitating for UK nationals the possibility to seek employment or study in other EU Member States, visit those countries or join family.

From an employment perspective, free movement rights allow UK nationals access to a broader job market by opening a gateway to 27 other Member States, offering them opportunity to find employment which suits their skills in areas for which there might be less demand in the UK.

Free movement can also improve the skills, knowledge, and experience of UK nationals, ultimately allowing them to make an even greater contribution to their workplace. This can be through employment abroad – introducing them to new models of working, improving their language and cultural skills, or forging new business links - or through more structured initiatives aimed at students, and in some instances workers, which allow for the exchange of good practice or other experiences, such as the Comenius, Erasmus, and Leonardo da Vinci programmes. It is estimated that approximately 22,000 UK students currently study abroad, and this opportunity to build new skills and experiences in a different geographical context enhances, and adds value, to the expertise and abilities.¹⁶

b) The UK as a whole benefits from the EU's competence on FMP by using the experience that UK nationals acquire during their sojourns in other EU Member States: the range of skills and competences that can be acquired during professional, academic and ludic experiences in other EU countries enriches the UK social and labour fabric. This prepares the UK nationals and companies to face challenges of all orders (economic, technological, etc) and interact more intensively with non-UK nationals and companies on a long-term basis, which enhances cultural, academic and business links.

Free movement also allows the UK to attract workers from other Member States to plug gaps in its own work force. Furthermore, by endowing the EU with this competence and being a Member State of the EU, the UK is generally perceived by non-EU Member States, especially other Commonwealth countries, as a gateway to An additional general point can be made here about how the historic focus of the EU on *economic* free movement means that many of those assisted by free movement rights are already economically engaged, with Union involvement often honing the skills of the linguistically able and financially confident EU citizen. Whilst EU citizenship and programmes like the Comenius exchange potentially contribute to untapping the potential of less-advantaged citizens, more could be done at UK and EU level to ensure that free movement rights can be enjoyed by more UK citizens to enrich the UK's own knowledge economy.

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

¹⁶ Findlay, A.M. and King, R., *Motivations and Experiences of UK Students Studying Abroad* (2010) Department for Business Innovation and Skills: <http://www.bis.gov.uk/assets/biscore/corporate/migratedD/publications/B/BIS-RP-008> (31/7/2013).

In the absence of such EU competence, UK nationals would certainly be more reluctant or face additional difficulties in seeking employment or studying in other EU Member States, visiting those countries, or joining family. This would considerably reduce their career prospects, limit their experiences abroad, and in some cases jeopardise their family life.

Primary and secondary law, and the case law of the Court of Justice, have done much to alleviate obstacles which might prevent or discourage UK nationals from living and working in other Member States. For instance:

- Member States/employers within Member States are not permitted to discriminate directly against UK nationals in favour of their own nationals on the national job market (Articles 45 and 18 TFEU, *Commission v France*),¹⁷ except in very specific circumstances;
 - Arbitrary rules which make it harder for UK nationals to get jobs in other Member States have been prohibited. For instance, in *Angonese*¹⁸ the Court held that a certificate of bilingualism did not have to come exclusively from one region of Italy.
 - Similarly, decisions of the Court have ensured that rules do not result in indirectly discriminatory tax assessments or less advantageous pensions (*Zurstrassen*).¹⁹
 - UK certificates and qualifications will generally be recognised in other Member States (*Bologna Agreement*).
 - Directive 2004/38 ensures that UK nationals are able to take certain family members with them when they move to another Member State making it easier for them to exercise their free movement rights.
 - Regulation 492/2011 ensures that UK workers employed in other Member States have access to the same social and tax advantages as national workers. This includes any advantages to family members which may be indirectly beneficial to the worker; the same access to benefits in relation to housing; and the same access to vocational training. The Regulation also ensures that the children of UK nationals working in another Member State can attend state schools. Accordingly, EU activity has addressed many of the practical issues associated with movement which might have otherwise discouraged a UK national from working in another Member State, ensuring that they are not left 'worse off' by their move.
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- Free movement rights ensure that UK nationals have access to healthcare as nationals of Member States whilst the European Health Insurance Card provides emergency healthcare.
 - Coordinating measures and case law have also prevented EU citizens losing out on pension or other social contributions due to movement and have prevented double payment of tax.
 - EU initiatives such as the European Job Mobility Portal (EURES) provide important information about job vacancies as well as advising on employment status and the applicability of legislation in the host Member State making it easier for businesses and workers to engage with the rest of the Union.

¹⁷ Case 167/73 [1974] ECR 359

¹⁸ Case C-281/98 [2000] ECR I-4139

¹⁹ Case C-87/99 [2000] ECR I-3337

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

In terms of the legal detail, to reside in the UK, a non-national EU citizen must either qualify as a worker for the purposes of Article 45 TFEU or, if they do not work, they must have sufficient resources and sickness insurance to ensure that they do not become an unreasonable burden on the host State.

As economically active Union citizens, workers are entitled to the same welfare provision and access to public services as UK nationals.

Through a combined reading of Articles 18 and 20 TFEU, whilst lawfully resident in the UK, economically inactive non-national EU citizens are also entitled to access to certain welfare provision and public services. However, recourse to social welfare might, although not automatically, indicate that they no longer have sufficient resources to remain lawfully in the UK. This is determined using a proportionality assessment which asks whether the EU citizen has become an 'unreasonable burden' and may include considerations such as the temporariness of the citizen's financial situation (*Grzelczyk*).²⁰

Job-seekers fall under Article 45 TFEU concerning the free movement of workers. However, non-national EU citizen job-seekers are only entitled to equal access to benefits of a financial nature, which facilitate access to employment, if they demonstrate a 'genuine link' with the employment market of the UK. Conditions for demonstrating a 'genuine link' must be proportionate and non-discriminatory but can include a residence requirement or a requirement that work is genuinely sought in the UK for a reasonable period (*Collins*).²¹ Other types of social assistance are limited by Article 24(2), Directive 2004/38.

²⁰ Case C-184/99 [2001] ECR I-6193

²¹ Case C-138/02 [2004] ECR I-2703

Accordingly, whilst a certain level of financial solidarity is expected between the Member States, the introduction of Union citizenship has nevertheless coincided with safeguards against the placing of unreasonable pressures on the Member States.

In empirical terms, estimates indicate that only around 6% of foreign nationals claim working age benefits, compared to around 15% of UK nationals.²² Also, migrants are less likely to claim a range of benefits, including unemployment benefit, than UK-born nationals.²³ More generally, it has been acknowledged that immigrants contribute more towards the economy than what they take.²⁴ It is therefore safe to assert that whatever pressure FMP may put on welfare provision and access to public services, it is largely compensated by the benefits that FMP brings to the UK economy and social welfare system.

Please note that our response to question 16, in which we consider the impact of Union citizenship on the free movement rights of economically inactive persons, also addresses the issue of the impact on welfare provision.

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

²² Department for Work and Pensions, *Nationality at point of National Insurance number registration of DWP benefit claimants: February 2011 working age benefits* (2012): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/196677/nat_nino_regs.pdf (23/7/2013).

²³ Department for Communities and Local Government, *Identifying social and economic push and pull factors for migration to the UK by Bulgarian and Romanian nationals* (2011): <http://webarchive.nationalarchives.gov.uk/+http://www.communities.gov.uk/documents/corporate/pdf/1997160.pdf> (23/7/2013).

²⁴ Home Office, *The Economic and Fiscal Impact of Immigration* (2007): <http://www.official-documents.gov.uk/document/cm72/7237/7237.pdf> (23/7/2013).

Amongst the main obstacles that UK nationals face when exercising free movement rights are the derogation grounds existent in the EU legal framework and applicable to any EU citizen wishing to exercise their free movement rights, including public policy, public security and public health. For example, UK nationals residing in Spain have been expelled for having been convicted for a crime against public health,²⁵ violating public order back in the UK,²⁶ and on grounds of concomitantly violating public order and public security.²⁷ Cases of expulsion of EU citizens have generally become less and less frequent, as domestic courts across the EU become more and more familiar with the privileged status of EU migrants (as compared to the status of non-EU migrants). To again use the case of UK nationals residing in Spain, courts have been known to increasingly accept to annul (or uphold the annulment of) decisions of expulsion,²⁸ and suspend such decisions (especially if only formalities are in question).²⁹

More EU action in this area could be useful to facilitate the recognition of foreign qualifications and diplomas, enhance social security coordination, and reduce formalities (such as registration).

In respect of the recognition of academic qualifications (as distinct from the recognition of professional qualifications addressed under Directive 2005/36), the Bologna Agreement aimed to match-up tertiary qualifications across the European Member States, offering mutual recognition of degrees. The impact of this on the ground, however, remains uncertain. UK graduates still struggle to compete on the European job market, and remain under-represented in the Union institutions. This is due to more than one reason. For example, in the case of law graduates:

- To work as a lawyer in the European institutions, candidates must have a good command of at least two European languages. UK graduates can find it difficult to compete in the European job market where other candidates often have a good command of English as well as their own mother tongue and often other languages. The Union has only complementary powers in the area of education and accordingly, whilst schemes like Erasmus can assist with this problem, it should principally be tackled at national level, perhaps through greater focus on modern foreign languages;

²⁵ With eleven years of imprisonment: Supremo Tribunal (Supreme Court), STS 2032/2000 (14/3/2000).

²⁶ Namely, having been convicted with 10 years of imprisonment for covering up an assassination in 1969 and with 2 years of suspended sentence for intended sale of prohibited drug in 1982: Supremo Tribunal (Supreme Court), 13677/1993 (29/1/1993).

²⁷ Including, not respecting legal formalities regarding the residence permit and possessing a criminal record abroad which had not been cancelled: Supremo Tribunal (Supreme Court), 16452/1990 (=7613/1990) (24/10/1990).

²⁸ Supremo Tribunal (Supreme Court), 6394/2000 (20/7/2001), confirming a decision not to expel a UK national suspected of breaking and entering, partially due to being married with a Spanish citizens and living with her and a common daughter; 13474/1993 (30/4/1993), confirming a decision not to expel a UK national with a criminal conviction, for having showed his intention to live and work in Spain on permanent basis (partially by marrying a Spanish citizen).

²⁹ Supremo Tribunal (Supreme Court), (ATS) 6685/1997 (20/1/1997); (ATS) 1442/1994 (=4495/1994) (11/7/1994); 20515/1994 (=12286/1994) (31/5/1994); (ATS) 3056/1994 (=1848/1994) (24/1/1994).

- In many other Member States, legal graduates are educated to Masters Level and this is often the minimum requirement for entry-level jobs. The Legal Practice Course, certificated training completed by UK solicitors, is often not recognised as a Masters qualification. Consequently, many UK graduates are considered under-qualified in the European job market. A top-down approach to tackling this could see the European Union recognise these qualifications as Masters level although this could suffer from the same drawbacks as the Bologna Agreement as mentioned above, or a bottom-up approach which sees Masters education encouraged and supported within the UK.

In relation to more practical aspects, more could be done to highlight websites and other available sources that provide crucial information on the practical aspects of moving to another Member State: for instance, registration requirements and different healthcare systems. Anecdotally, understanding of the difference between health insurance systems and the National Health Services by UK contact points can be a source of real frustration to those trying to settle in another Member State.

Questions in relation to the labour market.

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

In the context of EU8 migration following the 2004 enlargement, there is no doubt that a considerable number of EU8 citizens initially took advantage of the Worker Registration Scheme (WRS), although numbers started to reduce from 2008-9. For example, from March 2007-2008 there were 215,000 WRS applications; whereas, from March 2008-2009 there were 141,000. Evidence suggests that the migrants were predominantly young and contributed to the economy by taking hard-to-fill jobs, whilst placing few demands on the welfare system.³⁰ Moreover, the workers were frequently very skilled / qualified and took jobs in lower-skilled sectors than they had worked in at 'home'. In some instances, de-skilling occurred as a consequence of EU8 migrants finding it difficult to have their qualifications recognised by UK employers. Similarly, it would seem that there was some confusion about the process of qualification recognition on the part of some employment agencies, based in both the EU8 and the UK, which resulted in workers being directed into certain less-skilled position and roles (such agencies played an important role in arranging post-accession migration and work). For many of the (highly skilled) EU8 workers who came to the UK, the motivation for exercising free movement rights was clearly economic. Essentially, the possibility of earning a comparatively higher salary, albeit in a lower-skilled position than they would ordinarily have been expected to occupy, led them to take a temporary trade-off in professional investment for economic gain.³¹

At the time of the 2004 accession the economy was clearly in a healthier state than it is today and the very premise of the UK government's decision to allow labour market access to citizens of the EU8 was that there were vacancies to fill. Even as the economic landscape changed the evidence does not suggest that migrants from the EU8 imposed any significant burdens on the UK labour market or welfare state. As the figures above demonstrate, migration from the EU8 states started to lessen from 2008, most likely as a direct result of the recession in Europe.

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

³⁰ Home Office UK Border Agency, *Accession Monitoring Report May 2004-March 2009*, 2009

³¹ The points made here are based on a doctoral research project carried out at the University of Liverpool between 2003-2007 on the status and experiences of Polish migrant workers in the UK (by Samantha Currie). The research was socio-legal and included qualitative empirical work. Further information is available if it would benefit the Review: Samantha.Currie@liv.ac.uk.

The lower-skilled sectors of the UK labour market have benefitted from free movement, particularly of workers from the EU8 and Romania and Bulgaria. The restriction of the Seasonal Agricultural Workers Scheme (SAWS) and the Sectors Based Scheme (SBS) to Romanian and Bulgarian nationals demonstrate the important role such migrants have played in agriculture and food manufacturing. More generally, EU8 and EU2 workers have been very visible in sectors such as hospitality and transport, helping to support businesses in the areas concerned.

Construction is another sector with a high presence of EU migrants. Construction is a particularly difficult sector to 'police' and enforce due to flexible, and complex, subcontracting chains. Problems also arise due to the difficulties in determining the status of workers (for example, whether they are employed, self-employed, or posted as part of a cross-border provision of services and so forth). It would also seem that migrant workers are particularly at risk of experiencing poor working conditions, under-payment and long working hours, in the construction sector.

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

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

Questions in relation to social security coordination.

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

Social security coordination is essential to ensure that EU citizens feel confident about the protection of contributions they have already made to social security should they embark on economic activity in another Member State. Thus, social security coordination ensures that EU citizens are not left 'worse off' by exercising their free movement rights. It also contributes to financial solidarity between the Member States, helping to ascertain which Member State is responsible when different citizens move between Member States.

Please note that the response to question 16, below, also picks up on the issue of social security coordination.

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

Questions in relation to Immigration.

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

The EU legal framework certainly makes it easier for EU citizens to live and work in other Member States, for instance by removing visa requirements; ensuring access to healthcare and social security; and making it possible for EU citizens to bring family members with them to a host Member State under specified conditions. However, cultural, linguistic, financial, social and family barriers to movement continue to mean that permanent movement between Member States is comparatively low.³² The economic recession may also have had a limiting impact on the extent of movement into the UK, as the EU8 context demonstrates (above).

As previously mentioned, the EU legal framework also imposes safeguards to ensure that EU citizens do not become an 'unreasonable burden' on the UK.

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

Following the accession of the EU8, and later Romania and Bulgaria, workers from these countries carried out quite substantial work in the agricultural sector (e.g. fruit picking). This was both a response to labour market demand and as a consequence the restriction of the SAWS to Romanians and Bulgarians. As a result, such workers have been supporting the economies of rural areas.

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

³² European Commission, *Freedom to move and live in Europe* (2010): http://ec.europa.eu/justice/policies/citizenship/docs/guide_free_movement_low.pdf (31/7/2013).

Avoiding abuse of the free movement rights seems to be more a case of enforcement and implementation of the current legal framework, rather than a case of amending the legal framework itself (let alone reducing the competence that allowed the creation of that legal framework). Even if reducing the competence (and consequently the rights of free movement) could reduce the scope for abuse (in the light of a more systematic and comprehensive control at border and other points), such change would also cause significant damage at economic, social and individual levels (with inevitable costs and detriment to the labour market, border control system, and family / private life of a significant number of individuals).

Furthermore, any change to the balance of competence between the UK and the EU should bear in mind the reciprocal impact on UK nationals who currently enjoy free movement rights in the other EU Member States. It is important that any changes do not serve to increase inequality between those who do and those who only *might* decide to exercise their free movement rights. This could be the case if changes result in a reciprocal reduction in UK nationals' access to healthcare, education, housing support, and social security. This would especially be the case if Member States were permitted to discriminate either directly or indirectly against UK nationals on the European job market.

Questions relating to future options and challenges.

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

Social security coordination is an economic and social imperative, as budgets tighten and population ages. With time these pressures will only increase across the EU. Facilitating FMP may actually alleviate such problems: by maintaining a relatively young and dynamic labour market, pressure on the social security would diminish.

The fact that FMP rights derive from Member State nationality, and that this is determined by each Member State autonomously, leaves one piece of the FMP equation outside the scope of EU competence and control of all other Member States altogether. Despite predictable resistance, one could envisage some sort of coordination at EU level on this matter. This could help avoid loopholes and problematic policies regarding the concession of nationality, as identified in *Micheletti*³³ and *Saldanha*.³⁴

It is also noteworthy that the free movement of persons and its accompanying legal framework has been exploited by universities in other EU Member States to attract non-national EU citizens. Many EU universities now offer undergraduate and postgraduate courses entirely in English, positioning themselves in competition with UK institutions both for UK and non-UK students.

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

³³ Case C-369/90, *Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria*, 7/7/1992.

³⁴ Case C-122/96, *Stephen Austin Saldanha and MTS Securities Corporation v Hiross Holding AG*, 2/10/1997.

Transitional arrangements on FMP will apply to Croatian citizens in the UK following the accession of Croatia. The accession of Turkey, albeit unlikely in the near future, would inevitably raise concerns about a potential 'influx' of migrants moving to the established EU Member States. As is standard practice, a FMP transition period would most certainly be negotiated, so such impact could be satisfactorily managed.

Interestingly, in the EU8 context there is some evidence that those Member States imposing the strictest transitional restrictions have actually gained substantial numbers of CEE migrants with an irregular employment status (COM (2008) 765 final). In this regard, the unavailability of lawful migration routes for EU8 and EU2 citizens may have served to divert people into the shadow economy. From this perspective, lawful routes to free movement for new EU citizens may represent a more sensible way forward than the application of blanket restrictions.

More generally, the accession of new Member States is often portrayed as a risk to the UK, but the actual figures, either in respect of the EU8 or Romania and Bulgaria,³⁵ do not appear to justify such fears. Also, having borders with less stable countries (for example, the border Turkey/Syria) has been seen as a risk, including migration wise, but it may also be seen as an opportunity to better control the EU's 'external borders', bring more stability to those areas, and therefore manage efficiently free movement (or at least prevent excessive migration).

General questions

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

The Impact of Union Citizenship on the Free Movement Rights of Economically Inactive Persons

The Call for Evidence rightly observes (first) that Union citizenship, as introduced under the Maastricht Treaty, has had a substantial impact upon the broad policy context governing the free movement of persons within the EU; and (secondly) that the legal framework underpinning the free movement of persons is now provided by two main legislative instruments, i.e. the Citizenship Free Movement Directive 2004/38 and the Social Security Coordination Regulation 883/2004.

In this evidence, we highlight in more detail the impact that the creation of Union citizenship (as construed by the ECJ) has had upon not only policy choices adopted autonomously by each Member State, but also the operation of the common systems established by Directive 2004/38 and Regulation 883/2004, particularly with regard to economically inactive migrants (such as students, retired persons and the unemployed).

Our starting point is to observe that the right to free movement derives directly from the Treaties themselves – not least the general right to free movement for all Union citizens as provided for under Article 21 TFEU. The latter provision, which is most

³⁵ Office for National Statistics, *Migration Statistics Quarterly Report*, May 2013: http://www.ons.gov.uk/ons/dcp171778_309123.pdf (31/7/2013).

relevant to economically inactive migrants not otherwise covered by the Treaty provisions on the free movement of workers or freedom of establishment, has been the subject of considerable jurisprudence from the ECJ particularly in the period since 1998.

In particular, the Court's interpretation of Article 21 TFEU, which focuses on identifying and scrutinising any "barriers to movement" created by national law, has resulted in the creation of a whole series of "second-order rights" covering fields as diverse as the language in which criminal proceedings are conducted,³⁶ the individual's freedom of choice over his / her surname,³⁷ and the collection and retention of personal data for security purposes.³⁸ Most importantly, perhaps, the Court's "second-order rights" extend to the provision of welfare support by the host or home society for the benefit of economically inactive Union citizens who are not, or may not be entirely, capable of supporting themselves and their families.³⁹

Setting aside for a moment the interaction of that caselaw with the legislative framework now contained in Directive 2004/38 and Regulation 883/2004, and focusing solely on national rules which create "barriers to movement" independently from Union secondary legislation, one can identify two key principles developed by the ECJ under Article 21 TFEU itself:

³⁶ Case C-274/96 *Bickel and Franz* [1998] ECR I-7637.

³⁷ Case C-148/02 *Garcia Avello* [2003] ECR I-11613.

³⁸ Case C-524/06 *Huber* [2008] ECR I-9705.

³⁹ Case C-85/96 *María Martínez Sala* [1998] ECR I-2691; Case C-184/99 *Grzelczyk* [2001] ECR I-6193; Case C-413/99 *Baumbast* [2002] ECR I-7091.

- **the importance of a “real link” between migrant and society, i.e. the ECJ has developed an approach whereby, the stronger the economic, social and personal ties between a migrant citizen and the relevant Member State, the greater the legitimate expectation of benefiting from some degree of welfare support in times of need.**

Free movement right for the economically inactive have developed upon the assumption that the creation of Union citizenship by the Maastricht Treaty implied a willingness on the part of the Member States to accept a degree of mutual cross-border social solidarity. In particular, as regards relations between an economically inactive migrant and his / her host state, the inevitable compromise between (on the one hand) the desire to offer meaningful benefits to Union citizens regardless of their economic or financial status and (on the other hand) the need to respect the Member State’s limited willingness to pay for the upkeep of foreign nationals who might otherwise present an unreasonable burden upon its public finances, has gradually manifested itself in the task of identifying a “real link” between migrant and host society. The closer the bond between the individual claimant and the Member State, the more secure should be the claimant’s right to reside within the territory, free from the fear of expulsion on economic or financial grounds;⁴⁰ and the more extensive should be his / her expectation of equal treatment within the host society, as regards welfare and other social benefits.⁴¹

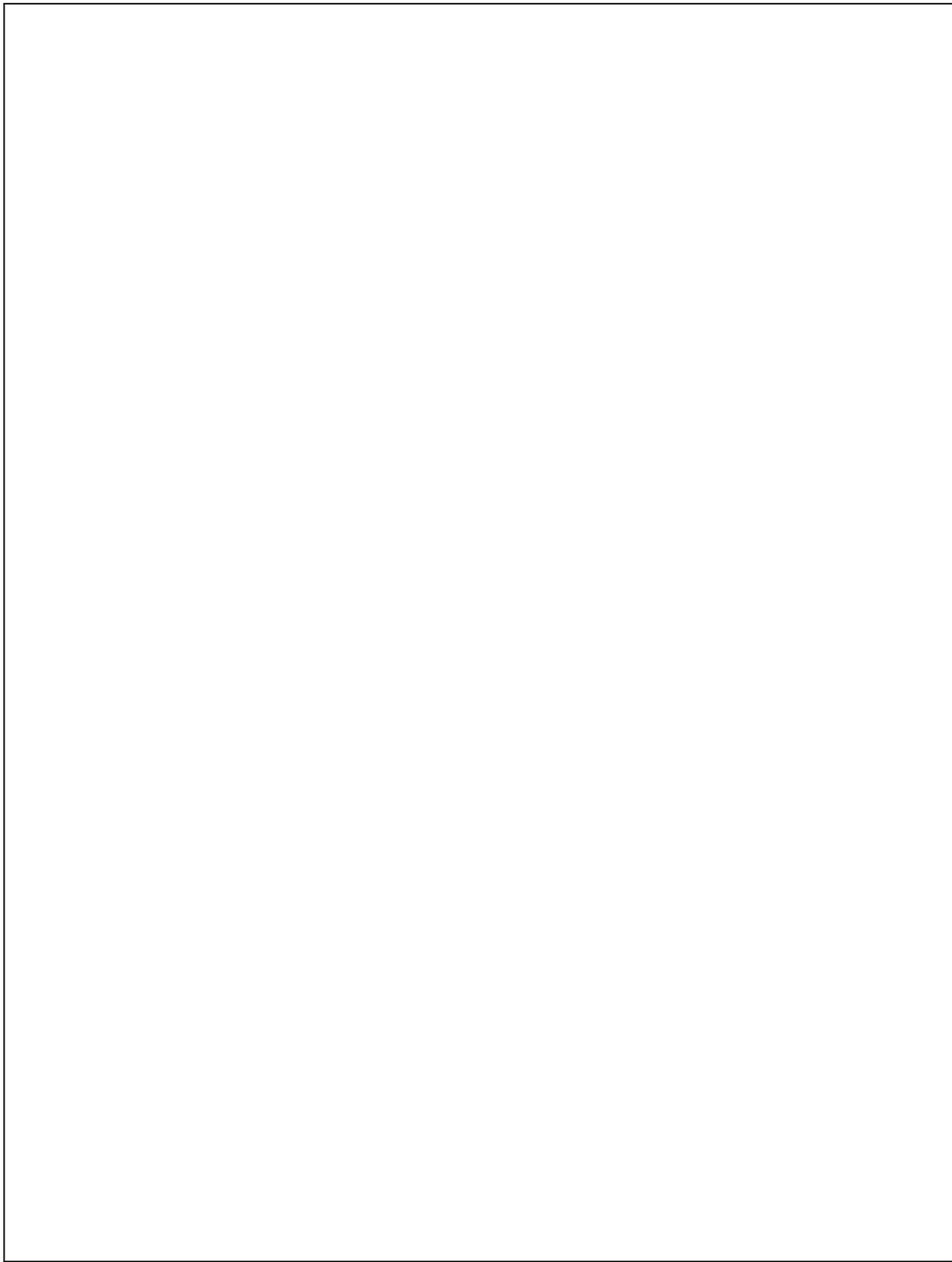
A similar approach emerged as regards relations between a migrant Union citizen and his / her **home state**. The tension between (on the one hand) the desire not to hinder the movement of Union citizens who may be dependent upon some form of public support and (on the other hand) the political, financial and practical constraints that favour respect for the territorially bounded nature particularly of non-contributory welfare provision, has also been resolved through resort to a “real link” principle. In this context, the stronger the relationship between a given welfare benefit and the domestic system of social solidarity, the weaker the force of the argument for severing the cord connecting payment of benefits to residence within the national territory.⁴² In addition, however, the Court examines the degree to which the individual claimant may assert membership of his / her home state’s welfare community, even after having left the national territory, on the basis of past or present links other than residence alone, which are nevertheless sufficient to warrant an expectation of continuing access to the relevant benefits.⁴³

⁴⁰ Case C-184/99 *Grzelczyk* [2001] ECR I-6193; Case C-413/99 *Baumbast* [2002] ECR I-7091; Case C-456/02 *Trojani* [2004] ECR I-7573.

⁴¹ Case C-85/96 *María Martínez Sala* [1998] ECR I-2691; Case C-184/99 *Grzelczyk* [2001] ECR I-6193; Case C-224/98 *D’Hoop* [2002] ECR I-6191; Case C-138/02 *Collins* [2004] ECR I-2703; Case C-209/03 *Bidar* [2005] ECR I-2119; Case C-258/04 *Ioannidis* [2005] ECR I-8275.

⁴² Case 313/86 *Lenoir* [1988] ECR 5391; Case C-43/99 *Leclere* [2001] ECR I-4265; Cases C-396/05, C-419/05 and C-450/05 *Habelt* [2007] ECR I-11895; Case C-228/07 *Petersen* [2008] ECR I-6989.

⁴³ Case C-192/05 *Tas-Hagen* [2006] ECR I-10451; Case C-287/05 *Hendrix* [2007] ECR I-6909; Cases C-11-12/06 *Morgan and Bucher* [2007] ECR I-9161; Case C-499/06 *Nerkowska* [2008] ECR I-3993.



- **the importance of a “personal circumstances” assessment of the link between migrant and society: for the purposes of identifying whether a “real link” exists between migrant and Member State, the Court often instructs the relevant public authorities (administrations and courts) to take into account all the circumstances of the dispute rather than rely upon purely generalised selection criteria.**

For these purposes, the Court relies primarily upon the proportionality principle. Even where it is legitimate in principle for the (host or home) authorities to expect a “real link” between a given claimant and the relevant welfare community, evidence to support that “real link” cannot be gathered exclusively on the basis of generalised criteria (such as past or continuing residency). The Member State must also give due consideration to the “personal circumstances” of each individual claimant, even if this implies taking into account factors or circumstances not recognised as relevant or compelling under the applicable domestic legislation.⁴⁴

It should be stressed that the Court’s application of this “personal circumstances” test is stronger in some cases than in others. On the one hand, consider the ruling in *Nerkowska*.⁴⁵ Polish rules under which the payment of civilian war benefits was limited to resident nationals were found to breach the Union citizen’s right to free movement, and could not be objectively justified where an overall assessment of the claimant’s personal circumstances indicated that, despite being non-resident, he / she could nevertheless demonstrate a certain degree of connection to the relevant society. On the other hand, consider the ruling in *Förster*.⁴⁶ There, the Court upheld Dutch rules requiring five years’ residence within the Netherlands before migrant students could qualify for the grant of maintenance assistance – without any expectation that the national authorities would investigate the claimant’s full personal circumstances for factors that could still demonstrate a degree of integration into the host society by other means.

So much for how the Court responds to national rules creating “barriers to movement” for economically inactive migrant Union citizens. How does the caselaw developed under Article 21 TFEU relate to the detailed rules on free movement and equal treatment laid down by the EU itself in measures such as Directive 2004/38 and Regulation 883/2004?

⁴⁴ Case C-224/98 *D’Hoop* [2002] ECR I-6191; Case C-138/02 *Collins* [2004] ECR I-2703; Case C-209/03 *Bidar* [2005] ECR I-2119; Case C-258/04 *Ioannidis* [2005] ECR I-8275; Case C-287/05 *Hendrix* [2007] ECR I-6909; Cases C-11-12/06 *Morgan and Bucher* [2007] ECR I-9161; Case C-499/06 *Nerkowska* [2008] ECR I-3993.

⁴⁵ Case C-499/06 *Nerkowska* [2008] ECR I-3993.

⁴⁶ Case C-158/07 *Förster* [2008] ECR I-8507.

The key point here is that not only Member State action but also Union secondary legislation itself, when it regulates the right to free movement, will remain amenable to scrutiny in accordance with the caselaw developed directly under Article 21 TFEU. In particular, when dealing with Union measures such as Directive 2004/38 and Regulation 883/2004, the Court has developed the idea that Union secondary legislation which purports to restrict the migrant's opportunities for free movement is nevertheless amenable to a form of "indirect judicial review" intended to guarantee that it does not unduly prejudice the existence or exercise of the Union citizen's rights, i.e. whereby Member States are obliged to apply Union legislation which appears to limit the rights of Union citizens in accordance with the general principles of Union law, so that the relevant Union rules may not be enforced against an individual where that would exceed what is necessary to protect the Member State's legitimate interests.⁴⁷

Again, however, it should be stressed that the Court's application of this "indirect judicial review" varies across the caselaw – with a marked tendency in the more recent rulings to accept that the Court should not lightly question regulatory choices expressed by the Union legislature and implemented by the Member States, simply by employing Article 21 TFEU as some sort of "parallel legal regime" that can contradict the outcomes envisaged under Union secondary legislation. On the one hand, consider the ruling in *Hendrix*. Here, the Court was employed the primary Treaty provisions as a means of permitting the exportation of a special non-contributory cash benefit, based on the particular situation of the claimant in question, despite the fact that such benefits fall within the scope of Regulation 883/2004 and the latter instrument expressly rules out their extra-territorial application.⁴⁸ On the other hand, rulings such as *Petersen* clearly suggest that, although parallel application of Article 21 TFEU and Regulation 883/2004 may, in particularly compelling circumstances, result in divergent approaches, Member States whose social security legislation complies with the obligations imposed by the Union legislature will not be subject to a significantly more probing analysis by the Court on the basis of the Union citizenship provisions.⁴⁹

Against that background, what has been the overall contribution of Union citizenship to the judicial interpretation of Union law governing the free movement of persons? Some developments particularly in the early caselaw have been interpreted as an exercise in judicial policymaking – seeking to expand the rights of economically inactive persons, particularly as regards welfare provision, in the face of choices expressed not only by the Member States but also the Union legislature itself. However, with the passage of time, it has become apparent that the Court's caselaw offers only a modest layer of additional rights, over and above those already

⁴⁷ Case C-184/99 *Grzelczyk* [2001] ECR I-6193; Case C-413/99 *Baumbast* [2002] ECR I-7091.

⁴⁸ Case C-287/05 *Hendrix* [2007] ECR I-6909.

⁴⁹ Case C-228/07 *Petersen* [2008] ECR I-6989.

provided for under Directive 2004/38 and Regulation 883/2004, and even those additional rights can be viewed as primarily procedural in nature, i.e. the right to have one's case considered and all relevant circumstances taken into account.

There is certainly no general "right to welfare" for economically inactive migrant Union citizens. They remain bound by the requirement laid down in Directive 2004/38 to be self-sufficient as regards basic expenditure and health insurance, unless and until they acquire permanent residency status, or can otherwise make a compelling case (for example) on the grounds that their link to society is strong enough to justify the temporary provision of some degree of public support.

Of course, the Court remains capable of delivering interpretations that raise more or less legitimate concerns among the Member States: one thinks primarily of the ruling in *Metock*,⁵⁰ extending entry and residency rights for third country national family members of migrant Union citizens.

However, one issue which does remain controversial concerns the "wholly internal situation rule", i.e. the assumption that the benefits attached to Union citizenship apply only to situations with a cross-border element rather than situations which are confined to a single Member State. Many commentators have criticised that long-held position on the grounds that it creates an unsustainable inequality of treatment between the migrant minority and the static majority. Other commentators point out that the cure to that inequality – extending the benefits of Union citizenship to all Member State nationals regardless of their mobility status – would be worse than the illness itself, since it implies a significant transfer of competence from the Member States to the Union particularly in the context of family reunification policy.

Expectations of a major change in the law here were raised by the Court's new doctrine of scrutinising national rules which deprive Union citizens of the genuine enjoyment of the substance of a right conferred by virtue of their status as Union citizens.⁵¹ In particular, in the ruling in *Zambrano*, the Court used that test in a very broad manner so as to override Belgium's refusal to grant a right of residence and a right to work in favour of the third country national carer of minor Union citizens, within their Member State of nationality and absent any actual or potential intra-Union cross-border element, based on the assumption that those minor citizens might otherwise be forced to leave the Union territory altogether.⁵² That ruling created much speculation that the Court was poised to reverse its position on "wholly

⁵⁰ Case C-127/08 [2008] ECR I-6421

⁵¹ Cf. Case C-135/08 *Rottmann* [2010] ECR I-1449.

⁵² Case C-34/09 *Zambrano* (Judgment of 8 March 2011).

internal situations". However, the Court in *McCarthy* refused to recognise that an equivalent "deprivation of genuine enjoyment" arose from the UK's refusal to recognise a right of residence for the third country national spouse of a dual British-Irish national who had always resided within the UK.⁵³

The reasoning used to achieve that outcome seems rather unconvincing: the Court argued that McCarthy was not deprived of the genuine enjoyment of her rights as a Union citizen because the family could choose to go and live elsewhere within the Union; yet one might rightly query why the same choice was not (in principle) open also to the Zambrano family, who could have chosen to move to a Member State other than Belgium and there exercised their Union right to family reunification under Directive 2004/38. Nevertheless, the Court in *Dereci* affirmed that the "deprivation of genuine enjoyment" test refers to a specific and indeed exceptional category of situations, i.e. those in which the effect of the disputed national measure would be to force a Union citizen to leave the territory not only of his / her own Member State but of the entire Union.⁵⁴

In the light of those developments, whereby certain disputes which have no cross-border element might still, exceptionally, become subject to scrutiny under the primary Treaty provisions on Union citizenship, it might seem preferable to refer less to situations which are "wholly internal" to a single Member State than to situations which are "altogether outside the scope of Union law". In any event, it appears again that the impact of Union citizenship in this field has been relatively marginal in terms of the balance of competences between the Union and its Member States in the fields covered by free movement law.

⁵³ Case C-434/09 *McCarthy* (Judgment of 5 May 2011).

⁵⁴ Case C-256/11 *Dereci* (Judgment of 15 November 2011).

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

The free movement of persons has had a positive impact on a range of other aspects. This includes:

- the development of a European research and academic area, which facilitates the pooling of resources (particularly human) to develop better technological and policy results;
- the protection of migrants' children's long-term integration in the host state, as well as family and private life more generally;
- the protection of the rights to freedom, personality development, work, education, etc, of those exercising their rights to free movement, which places FMP in a particularly privileged position to act as fundamental rights' catalyser.

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

Submission 49

Balance of Competences Review
Home Office
2 Marsham Street
London SW1P



BY EMAIL ONLY:

FreeMovementofPersonsBoC@homeoffice.gsi.gov.uk

5 August 2013

Dear Sirs

BALANCE OF COMPETENCES REVIEW: FREE MOVEMENT OF PERSONS

The UK Chamber of Shipping, the trade association for the UK shipping industry, is pleased to respond to your call for evidence to your review of the Balance of Competences relating to Free Movement of Persons. Our membership comprises 140 companies, who operate a total of nearly 1,000 ships across all shipping sectors.

The UK Chamber of Shipping is keenly interested in the free movement of persons within the Internal Market, and submitted evidence on 25 July to your Asylum and Immigration Review about how the free movement of ferry and cruise passengers within the EU is currently being obstructed by UK border controls. Our submission also noted that controls on ships' crew must be outside the scope of this review, since they are derived from international Conventions adopted by UN bodies and are therefore not affected by the balance of competences between the UK and the EU.

It is odd that your call for evidence in respect of the free movement of persons is narrowly focussed on questions of employment, and is not concerned with the much greater incidence of the exercise of rights of free movement for the purpose of travel. The UK Chamber of Shipping offers brief answers below to the three questions that have a bearing on seafarers, but would emphasise that the free movement of persons is about much more than the absence of restrictions on employment.

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

In relation to shipping, Free Movement of Persons for work it is only capable of affecting trades that are subject to work permit restrictions. Its impact on these has been unimportant.

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

Ensuring that social security contributions paid in one Member State count for benefits in another is essential to ensure the proper functioning of an EU labour market.

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

The EU does not have competence over national social security schemes.

A copy of this letter goes to the Department for Transport, for their information. Yours faithfully

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**Free Movement of Persons – Home Office Review of the Balance of Competences
between the UK and the EU – COSLA Response**

Introduction

1. The Convention of Scottish Local Authorities (COSLA) is the national and international voice of the 32 Scottish Local Authorities. Given the role of Scottish councils in delivering services for and supporting the integration of migrants in Scotland, we welcome the opportunity to provide a local government perspective to this helpful and thorough review by the UK Government on the distribution of powers between the UK and the EU.

General Principles

2. COSLA is a keen advocate of the principle of subsidiarity and the position that European Union (EU) legislation should fully respect the local competences and autonomy of councils in organising and providing local services. We have also recently agreed a *Vision* for Scottish local government which aims to: empower local democracy; foster local integration rather than the centralisation of decision making and services; focus on better outcomes rather than inputs; and put local democracy at the heart of improvement and accountability. It is in this context, and the wider context of our call for constitutional protection for local government in Scotland, that we respond to this consultation on the balance of competences between the UK and the EU.
3. We recognise that the Treaty on the Functioning of the European Union (TFEU) (specifically Articles 18, 20, 21, 45-48 and 49-53) defines shared competence between the UK and the EU on the free movement of persons and means that EEA migrants, (unlike their non-EEA counterparts) do not require a visa to enter the UK. COSLA appreciates that EU migration, like trade, is a fundamental feature of the European Single Market that came into full effect in 1993. Whilst COSLA understands that matters concerning the European Single Market are inherently international and that decisions in this regard involve national and supranational governance, we wish to emphasise that decisions made at the EU and the UK levels have an impact on local government and the services they deliver. It is important therefore that the interests of local government are reflected in these decision making processes. This is particularly crucial around planning services for migrant populations and how best to target resources and initiatives to integrate migrants into local communities.

Migration to Scotland

4. Despite migration being a 'reserved' policy area, successive Scottish Governments have encouraged migration to Scotland, recognising it as a vital means of tackling the country's demographic problems, as well as a means of delivering economic growth. This contrasts with the approach of the current Westminster Government which has introduced various policies in order to bring migration levels down in the UK as a whole. Scotland continues to wish to position itself as an open, welcoming place to live, work, study and do business.

5. Scotland has historically been a country of net out-migration. However, this pattern has been reversed in recent years and since 2002 the country has consistently experienced net in-migration; in 2010-11 the net migration gain was 27,000, the highest since these estimates started in 1951.¹ Whilst the numbers of people emigrating out of Scotland has decreased and the birth rate has increased, the biggest determinant of this net migration trend is migration into Scotland; around half of which is from overseas - 42,300 in 2011 (the remainder being from rest of UK)². This demonstrates the vital role of migration in delivering the increases in population that Scotland requires for economic growth. Indeed the Migration Observatory attributes a significant proportion of the change to a positive trend in net migration to the UK, from the 1990s onwards; to the EU enlargement (23% of migrants were from A8 countries since 2004).³ Moreover, Scotland has a high share of EU migrants compared to many other UK regions; an NIESR report on local geography of migration to UK in 2011 demonstrated that almost a third of all migrants born outside the UK in Scotland in 2009 were from the EU compared to around a sixth of migrants in London⁴.

Impact of EU Migration on Local Government in Scotland

6. While COSLA views EU migration as having broadly positive impacts on Scotland's communities, we also recognise the importance of local decision making in addressing these impacts. For instance, the high inward migration flows experienced in some urban areas will be quite different to those faced in more rural communities. That is not to say that rural impacts are any less significant but that it is local government and its partners who are best placed to understand and act upon them. It is only through ensuring local actors set priorities to meet the distinctive needs of their populations that we ensure local accountability and the best outcomes for migrants and the communities in which they live. Such local decision making is at the heart of democracy and is a perfect illustration of the importance of the principles of subsidiarity and proportionality that are fundamental to the functioning of the EU.

¹ National Records Scotland (July 2012). High Level Summary of Statistics: Population and Migration. [Online] (URL: <http://www.gro-scotland.gov.uk/files2/stats/high-level-summary/j11198/j1119806.htm>). (Accessed 29 July 2013).

² National Records Scotland (24 July 2012). In, out and net migration between administrative areas and overseas, 2006/07 to latest. [Online] (URL: <http://www.gro-scotland.gov.uk/files2/stats/migration/overseas-mig-flows-adminareas-2006-latest.pdf>)

³ Vargas-Silva. C. (8 January 2013). Briefing, Long-Term International Migration Flows to and from the UK. Migration Observatory. [Online] (URL: http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Briefing%20-%20Long%20Term%20Migration%20Flows%20to%20and%20from%20the%20UK_0.pdf)

⁴ Rincon-Aznar. A. and Stokes, L. (2011). Local Geography of International Migration to UK. National Institute of Social and Economic Research. Pp. 49. [Online] (URL: <http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/corporate/pdf/2002121.pdf>)

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

7. Our analysis of the evidence in relation to the impact of free movement on UK nationals and the UK as a whole suggests that effects are, broadly speaking, either neutral or positive. For instance, in terms of the impact on UK nationals, despite a common misconception that UK nationals are displaced in the labour market by EU nationals coming to work in the UK, the Migration Advisory Committee's Analysis of the Impact of Migration (January 2012) reported that, even accounting for the recession, "*working-age EU migrants to the UK have no negative impact on native employment*"⁵. What is more, a comparison of the net fiscal contribution of EU migrants with that of individuals born in the UK showed that each fiscal year since enlargement in 2004, irrespective of the way the net fiscal contribution is defined, EU8 migrants made a positive contribution to the economy.
8. Much of the literature also concludes that the overall economic effects of migration to UK are at worst weak or ambiguous. For example, evidence from the NIESR⁶ on the impact of migration from the 8 Eastern European countries that acceded to the UK in 2004 found that, after adjusting for the age structure and the education level of migrants, there was a small but positive impact on the long run level of potential output of up to 0.8%. Looking at migration more broadly, there is evidence that an overall reduction in migration from both within and outwith the EU would have a significant negative effect on the UK economy. Indeed, the Office of Budget Responsibility's latest Fiscal Sustainability Report⁷ shows that if there was zero net migration, instead of their assumed figure of 140,000 per year, Britain's borrowing as a proportion of GDP would rise in 2062 from a projection of 99 to 174 per cent (by 57%).

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

9. Research from the Migration Observatory tells us that the UK is the fifth biggest sender of migrants to other EU countries, with about 1.4 million British people living in other EU countries in 2010⁸. Wider research from the International Passenger Survey covering all

⁵ Migration Advisory Committee (January 2012). Analysis of the Impacts of Migration. Pp. ii. [Online] (URL: www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/27-analysis-migration/01-analysis-report/analysis-of-the-impacts?view=Binary)

⁶ NIESR Discussion Paper 379 (August 2011). Labour Mobility within the EU - Impact of Enlargement and Transitional Arrangements. Pp. 5. [Online] (URL: http://niesr.ac.uk/sites/default/files/publications/050811_152043.pdf)

⁷ Office for Budget Responsibility (July 2013). Fiscal Sustainability Report. Pp. 153. [Online] (URL: <http://cdn.budgetresponsibility.independent.gov.uk/FSR2012WEB.pdf>)

⁸ Migration Observatory (29 June 2012). The EU Shuffle [Online] (URL: <http://www.migrationobservatory.ox.ac.uk/press-releases/media-advisory-role-eu-uk-net-migration>) (Accessed August 2013)

migration from the UK has highlighted that *“British citizens...most frequently said their main reason for emigrating was to take up a definite job. Most were planning to be away for four years or more.”*⁹ We would suggest that this indicates that significant numbers of UK nationals are able to take advantage of the ability to work in other member states.

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

10. EU migrants to Scotland make up a small percentage of the total population (less than 3% in 2001¹⁰) and, it is assumed, an even smaller percentage of those who claim benefits. While Scotland-specific research in this area is limited, a study by Dustmann et al in 2010¹¹ assessed the fiscal consequences of migration to the UK from the EU8 countries during the period 2004-2008. It showed EU8 migrants who arrived after enlargement in 2004, which had at least one year of residence and were therefore legally eligible to claim benefits, were 59% less likely than natives to claim state benefits or tax credits and 57% less likely to live in social housing. Furthermore, even if they had the same demographic characteristics as natives, they would still be 13% less likely to receive benefits and 29% less likely to live in social housing. Similarly, Wadsworth, in a study for the Centre for Economic Performance at the London School of Economics in 2010, concluded that: *“Immigrants are less likely to be in social housing than people born in the UK, even when the immigrant is from a developing country. Only immigrants who become UK citizens are neither more nor less likely to be in social housing than UK individuals.”*¹²

11. In terms of Scotland-specific evidence, an NIESR study in December 2011¹³ reported that in health, a review of evidence by the Scottish Parliament concluded that *“there is little evidence of increased demand for health services resulting from migration into*

⁹ Murray, R. Harding, D., Angus, T., Gillespie, R. and Harsimran, A. (November 2012). Emigration from the UK (2nd edition), Home Office, Research Report 68. Pp. 3. [Online] (URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/116027/horr68-report.pdf)

¹⁰ General Register Office for Scotland (25 January 2005). Scotland's Census 2001, Statistics on Migration, Occasional Paper No. 11. From Table on page 53. [Online] (URL: <http://www.gro-scotland.gov.uk/files2/stats/occasional-papers/op11-migration-stats.pdf>)

¹¹ Dustmann, C., Frattelli, T. and C. Halls (2010). Assessing the Fiscal Costs and Benefits of A8 Migration to the UK, *Fiscal Studies*, Vol. 31. Pp. 1-41 [Online] (URL: <http://www.ucl.ac.uk/~uctpb21/Cpapers/DustmannFrattiniHalls2010.pdf>)

¹² Wadsworth, J.(April 2010) Immigration and the UK Labour market: The Evidence from Economic Research, Centre for Economic Performance, London School of Economics. [Online] (URL: <http://cep.lse.ac.uk/pubs/download/ea006.pdf>)

¹³ George, A., Meadows, P., Metcalf, H. and Rolfe, H. (2011). Impact of Migration on the Consumption of Education and Children's Services and the Consumption of Health Services, Social Care and Social Services, NIESR, pp. 9 and 21-22. [Online] (URL: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/27-analysis-migration/02-research-projects/impact-of-migration?view=Binary>),

Scotland". Focusing on the impact of A8 migration, the report cites evidence provided by NHS Lothian that "migrants are mostly in their 20s and 30s with low healthcare needs." The same NIESR study states that, in school education, "it is frequently asserted that the presence of significant numbers of non-English speaking children will put pressure on schools and local educational authorities, resulting in reduced performance for all children, including native English speakers. However, while research on education and migration, as well as anecdotal reporting, has focused on the demands placed on schools by migrant pupils, statistical data on attainment, and recent research, suggests that migration has, if anything, a positive effect on school and pupil performance (DfES, 1999)." COSLA is currently engaged in research in conjunction with the University of Glasgow and Glasgow City Council to assess such impacts in a number of Glasgow schools and would hope to have further evidence in this regard in the near future.

What evidence do you have on the impact on the UK economy of EU competence on the free movement of persons? What evidence do you have of the impact on local communities and their economies, including rural areas? What is the impact of this area of EU competence on employment sectors such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?

12. There are potential economic benefits of migration in terms of filling labour gaps in the UK economy where there are shortages of workers. OECD research in 2012 on the macroeconomic effects of migration concludes however that the scale and nature of the effects on the UK economy are "unclear but probably small"¹⁴. Research on the Scottish economy and migration tends to focus on population decline and the role of migration in counteracting this. In this regard, research by NIESR in 2009¹⁵ helpfully summarised a range of published and unpublished sources including datasets, surveys and qualitative studies, across the two main areas of economic and employment impacts and social impacts. It found that Scottish employers tend to value migrants for their "positive traits of reliability, flexibility and productivity". The report also found that certain sectors of the Scottish economy, such as the agricultural sector are "highly dependent on migrant labour, particularly students, and experience difficulties recruiting outside of the main holiday period". The report outlines that finance, tourism, agriculture and construction are all sectors which attract high levels of migrant workers – to varying degrees in different regions and often subject to seasonal highs and lows. Scotland has a vibrant tourism sector, independently valued at £11billion (Deloitte 2011)¹⁶ and given that around a

¹⁴ OECD (2012), Free Movement of Workers and Labour Market Adjustment: Recent Experiences from OECD Countries and the European Union. [Online] (URL: http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/free-movement-of-workers-and-labour-market-adjustment_9789264177185-en)

¹⁵ Rolfe, H. and Metcalf, H. (2009). Recent Migration into Scotland: the Evidence Base, Scottish Government. pp. i. and 23. [Online] (URL: <http://www.scotland.gov.uk/Publications/2009/02/23154109/0>)

¹⁶ Visit Scotland (January 2013). Tourism Development Plan for Scotland: Delivering the Visitor Economy, Geddes Consulting. [Online] (URL: http://www.visitscotland.org/pdf/Tourism%20Development%20Plan%20for%20Scotland_VisitScotland_efile.pdf)

quarter of all workers in the distribution, hotels and restaurants sector were EEA nationals in 2012¹⁷ we would suggest that EU migration is particularly important to certain sectors of the Scottish economy.

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

13. Although the NIESR¹⁸ research outlined above concluded that “*increases in net migration increase output and employment and there is little evidence of any major impact on wages and unemployment*” it did find that “*EU migrants are employed predominantly in low skilled, low paid work...[and]... pay at the minimum wage is common*”. In agreement with much of the other literature, this report also found that there is evidence of poor employment practice in relation to migrant workers, including “*temporary contracts, exploitation by agencies, breach of regulations on working hours and sexual discrimination.*” Furthermore, the study finds that many migrants are over qualified for the low skilled and low paid work they do yet are restricted by language and lack of training opportunities. Looking at options to develop migrants’ language and skills could be important means of resolving the skills shortages and declining population levels faced by a number of local authorities in Scotland.

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

14. The main future challenges and opportunities from our perspective relate primarily to the forthcoming referendum on Scottish independence and the planned referendum on whether the UK should remain part of the EU. COSLA has not taken a formal position on either but is obviously following the debates around both with great interest. We would however reemphasise that we view EU migration – and indeed migration as a whole – as having a positive impact on Scotland’s communities and as an important means of addressing Scotland’s economic and demographic needs.

Conclusion

15. While not wishing to comment directly on the current balance of competences between the UK and the EU, COSLA would wish to emphasise the importance of continued dialogue between local government, the UK Government and European counterparts to ensure that the principle of partnership is respected and that UK and EU legislation enhance the ability of local communities to take their own decisions on matters of local competence in a fair, open, inclusive yet autonomous way. We would also wish to highlight the current pressures faced by local authorities in the light of the global financial

¹⁷ ONS cited in Review of the Balance of Competences, Internal Market: Free Movement of Persons, Call for Evidence (May 2013). Pp.14. [Online] (URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200497/Free_Movement_of_Persons_-_Call_for_Evidence.pdf)

¹⁸ Ibid. Pp. 27.

crisis and the austerity cuts that have been introduced as a result, and emphasise that any changes in competence must not place any additional unfunded burden on local government.

**COSLA Strategic Migration Partnership
August 2013**

For more information please contact [REDACTED] Telephone: [REDACTED]

Submission 51

Russell Group response to the Government Review of the Balance of Competences between the UK and EU: Free Movement of Persons

Introduction

The purpose of The Russell Group is to provide strategic direction, policy development and communications for 24 major research-intensive universities in the UK; we aim to ensure that policy development in a wide range of issues relating to higher education is underpinned by a robust evidence base and a commitment to civic responsibility, improving life chances, raising aspirations and contributing to economic prosperity and innovation.

We welcome the opportunity to comment on the balance of competences between the UK and the EU in relation to the free movement of persons. This is a key issue for UK universities in enabling them to recruit staff and students from elsewhere in the EU easily, as well as to collaborate and cooperate with EU institutions.

We are also providing a response to the Asylum and Immigration consultation particularly focusing on the impact of the UK opting out of the border and visa aspects of the Schengen Protocol. It may be useful for the Home Office to read the responses in tandem.

The impact of EU competence in the free movement of persons for the UK (Question 5)

The EU and UK have ‘shared competence’ in relation to the free movement of persons meaning that where the EU has enacted legislation, the UK does not have the competence to act. The legislation which has been enacted by the EU⁵⁵ to ensure that not only ‘economically active’ citizens, but also students, have the right to move and reside freely within the territories of Member States has had a significantly beneficial impact for the UK higher education sector and for research-intensive universities in particular.

The strength of the UK higher education sector internationally lies in its quality and diversity, including the ability to attract the most talented staff and students from within and outside the EU. Prominent non-UK EU nationals such as Professor Andrea Ferrari at the Cambridge Graphene Centre and Professor Erkkko Autio, Chair in Technology Venturing and Entrepreneurship and Director of the Doctoral Programme at Imperial College London Business School, are involved in cutting-edge research at Russell Group universities, generating the innovation that will create the jobs of the future for the UK. The ability of universities to recruit EU nationality (excluding UK)⁵⁶ staff and to attract EU nationality students

⁵⁵ Articles 18, 20, 21, 45-8, 49-53 of the Treaty of the Functioning of the EU and secondary legislation under Directive 2004/83/EC

⁵⁶ Where ‘EU nationality’ is referred to throughout the document, this relates to non-UK nationalities only.

without having to negotiate the UK visa system, with the attendant expense and administrative burden for both parties, is incredibly valuable.

Russell Group universities employ more EU nationality staff as a proportion of total staff than other UK higher education institutions (HEIs), and attract a greater number of EU nationality students as a proportion of total students than other UK HEIs:

- ***The proportion of academic staff with EU nationality at all UK HEIs in 2011/12 was 13.4% rising to 18.7% at Russell Group universities.***
- ***The proportion of EU nationality staff at all non-Russell Group universities is 10.1%.⁵⁷***
- ***7% of all students at Russell Group universities are EU nationality students compared to 5% across all UK HEIs.***
- ***30% of all EU nationality students, including undergraduates, post-graduate taught and research students at UK HEIs are at Russell Group universities (40,400 out of a total of 132,550 students).⁵⁸***

Although relatively small in number, the 24 Russell Group universities are vital to the success of the UK higher education sector as a whole, contributing a total economic output of over £30 billion per annum, which represents 45% of the total economic output for the whole university sector. They are responsible for supporting over 270,000 jobs UK-wide and lead in the cutting-edge research that will create the jobs of the future knowledge economy⁵⁹ Russell Group universities make up 14 of the top 50 universities in Europe on Framework Programme 7 participation.

The free movement of persons within the EU is therefore not only of critical importance to the Russell Group, but to the UK's higher education sector as a whole.

The attractiveness of Russell Group universities and their local areas to major international companies seeking access to cutting-edge research, knowledge networks, and a highly-educated workforce is of great importance to the UK economy.

Microsoft established its European research centre adjacent to the University of Cambridge and AstraZeneca looked across the whole of Europe before deciding to relocate its Global R&D centre and corporate headquarters to the Cambridge biomedical campus.

Boeing is a partner in the University of Sheffield's Advanced Manufacturing Research Centre, which has been in operation for 11

⁵⁷ Higher Education Statistics Agency (HESA) data

⁵⁸ Ibid, 2011/12

⁵⁹ Figures for 2011/12, using multipliers from Universities UK report on the economic impact of universities (2009)

years and forms part of the UK's first Catapult Centre in High Value Manufacturing.

TATA and Jaguar Land Rover (JLR) investment with the University of Warwick has created a £92 million National Automotive Innovation Campus, which is now also attracting inward investment from JLR's supply chain partners, including the powertrain division of Germany's ZF.

It is highly unlikely that international companies such as these would choose to locate in the UK if the decision were made to opt out of the free movement of persons within the EU.

As well as the significant contribution to the UK economy, there are social benefits to the free movement of persons within Member State territories, including cultural exchange and knowledge transfer. Over 4 million people will benefit from EU grants for education and training opportunities abroad from 2014 to 2020 under Erasmus+. Students at Russell Group universities benefit in particular from Erasmus, as they make up 50% of all students from UK HEIs taking part in the programme.⁶⁰

Similarly, the ability of European Research Area researchers to move freely between Member States encourages transnational cooperation to tackle global challenges, with positive impacts on research capabilities and excellence within Europe.

The impact of provisions for social security coordination between Member States (Question 9)

As with the free movement of persons, the coordination of social security schemes is a shared competence between the EU and the UK, meaning that the UK cannot act where the EU has already done so. Regulation 883/2004 coordinating social security systems of Member States including cash benefits, such as pensions and sickness pay, and benefits in kind, such as healthcare, is important for UK universities in being able to attract talented staff in particular, and students, from other Member States to the UK.

Changing the EU competence in this area so that Regulation 883/2004 no longer applied could act as a disincentive for EU nationality staff to come to the UK as they could potentially lose out financially compared to the current situation. This would have a disproportionately negative impact for Russell Group universities as they employ a greater proportion of EU nationality staff, as explained above.

However, European Commission proposals on solvency requirements for pension funds could have a negative impact on UK nationality staff at UK HEIs. They would seriously damage the viability of the Universities Superannuation Service (USS) and other defined benefit pensions. The proposal that occupational pension schemes would have to operate to a 'holistic balance sheet', closely based on the insurance industry's Solvency

⁶⁰ British Council data, 2011/12

It funding regime, could require a dramatic – and unsustainable – increase in pension scheme funding requirements.⁶¹

The European Commission has decided to postpone taking a decision on the insolvency issue until more technical evidence has been gathered and we understand that proposals on insolvency will not be included in the revised Institutions for Occupational Retirement Provision Directive to be presented this autumn. However, we would encourage the UK Government to resist the proposals on insolvency as strongly as possible if they re-emerge under the new Commission in 2014.

August 2013

⁶¹ ***Research across a sample of National Association of Pension Fund (NAPF) members shows that it would increase the liabilities of defined benefit pension schemes in the UK by 27%. This would equate to a £291 billion increase in scheme funding requirements.***

Submission 52



GOVERNMENT REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION: FREE MOVEMENT OF PERSONS

RESEARCH COUNCILS UK (RCUK)

RESPONSE Introduction

1. Research Councils UK (RCUK) is a strategic partnership of the UK's seven Research Councils who annually invest around £3 billion in research. We support excellent research, as judged by peer review, which has an impact on the growth, prosperity and wellbeing of the UK. To maintain the UK's global research position we offer a diverse range of funding opportunities, foster international collaborations and provide access to the best facilities and infrastructure around the world. We also support the training and career development of researchers and work with them to inspire young people and engage the wider public with research. To maximise the impact of research on economic growth and societal wellbeing we work in partnership with other research funders including the Technology Strategy Board, the UK Higher Education Funding Councils, business, government, and charitable organisations. Further details are available at www.rcuk.ac.uk.

2. This evidence is submitted by RCUK and represents its independent views. The submission is made on behalf of the following Councils:
 - Arts and Humanities Research Council (AHRC)
 - Biotechnology and Biological Sciences Research Council (BBSRC)
 - Engineering and Physical Sciences Research Council (EPSRC)
 - Economic and Social Research Council (ESRC)
 - Medical Research Council (MRC)
 - Natural Environment Research Council (NERC)
 - Science and Technology Facilities Council (STFC)

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

Q1. What evidence is there that the ability to exercise free movement rights in another member state impacts either positively or negatively on a) UK Nationals; and b) the UK as a whole?

3. Today the global research environment is changing rapidly. Researchers and students are increasingly mobile, the latest research knowledge is more easily accessible, and more nations are investing in cutting edge research facilities, normally with support from other nations. Increasing investments in research are being made throughout the world. The European Research Area (ERA) is growing in size and strength and is expected to lead to deeper and more sustained collaborations between UK and other European researchers. These changes present many exciting new opportunities and challenges, and the UK is determined to make sure that it has the optimal research funding, regulatory regime, and science and innovation policies to maintain the UK's research excellence.
4. The free movement of researchers aligns well with UK ambitions and should support our national agenda. UK success in a European context allows for benchmarking and strengthens the research base and overall attractiveness of the UK to students, researchers and businesses. The UK has an excellent track record in science and research. Despite growing international competition, the UK research base is second in the world for excellence and the UK is the most productive country for research in the G8. The UK remains first or second in the world of research in most disciplines overall.
5. This world class standing is a key driver for economic growth; contributing to the economic competitiveness of the UK is a prominent part of the Research Councils individual strategies by improving the performance of existing businesses, delivering highly skilled people to the labour market, improving public services and policy making and by attracting Research and Development investment from global business.
6. It is worth noting that Associated Countries with active research bases, for example Norway, Israel and Switzerland, pay to participate in EU framework programmes for research and innovation, demonstrating the real value that they see arising from EU collaboration in research.
7. In the current economic climate, with increased demand on national funding, research funded at an EU level plays an important role, not only in the pan-European research landscape, but also to the benefit of the UK. It is important that this funding remains available to the wider UK research community and so care should be taken to ensure focus remains on areas of clear 'EU added value' and not seen as a means of replacing a national science budget. Any restriction of the free movement of persons competence, one of the central articles of EU membership, places at risk the UK's ability to attract researchers, collaborations and further funding; any significant drop in funding research and innovation activities would lead to a decrease in subsequent economic growth.
8. Across the Research Councils, EEA nationals from other member states make up over 11% of the current work force, with approximately 90% of these individuals involved in or supporting research.

Q2. What evidence is there that EU competence in this area makes it easier for UK nationals to work and access benefits and access services in another member state?

9. The Research Councils continue to support a number of talented researchers and scientists involved in international collaboration across other EU Member States. The ability granted by the free movement of persons to work on and influence these collaborations is of great benefit to the UK, the researchers and future collaborations; some brief examples of these collaborations are:
- Within CERN, the world's leading laboratory for particle physics.
 - With the Isaac Newton Group of Telescopes within the Canary Islands, undertaking world-class astronomical research.
 - The European Synchrotron Radiation Facility (ESRF) where UK scientists currently receive approximately 18% of the available beamtime.

Q3. What evidence is there of the impact on welfare provision and access to public services in the UK?

10. Intentionally left blank.

Q4. What evidence is there that a) more EU action; or b) less EU action would improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?

11. We have no evidence that this is an issue.

Questions in relation to the labour market.

Q5. What evidence do you have of the impact on the UK economy of EU competence on the free movement of persons.

12. In a global economy the EU competes for talent with other countries and regions.

The mobility of students and researchers promotes the flow of knowledge and ideas and benefits global economic development; the free movement of persons competence enables this mobility for these students and researchers from across the Member States. The ability for the brightest minds from both outside and within the EU to closely work together to address the challenges facing our societies is of immense importance; Member States have put increased emphasis on the internationalisation of their national research and education systems striving for ever higher levels of excellence.

13. The Research Councils are committed to funding excellent research wherever it is found. There are a number of areas supported by both FP7 and Horizon 2020 that are excellence-based, have high European added value, and are essential to the European Research Area (ERA). These also offer opportunities for all Member States to develop their researchers, research institutions and research infrastructures. The UK is a significant beneficiary of EU funding from these excellence-focused schemes: the European Research Council (ERC), Marie Curie Actions and Research Infrastructures.
14. The ERC provides grants to excellent researchers who, regardless of nationality, are carrying out their research in a Member State. The grants

support bottom-up, cutting edge research and do not require grant holders to collaborate with other Member States. The UK does spectacularly well and over the course of FP7 ERC grants based at host institutions in the host have received around €1.4bn in funding, the highest amount of funding going to any one country across the whole programme (Germany was second with around €862m). To put this in context, total funding for the ERC in FP7 was around €7.5bn, meaning that the UK has received almost 20 per cent of the total funding available. Out of 768 ERC grants currently in the UK, only 81 of those are held by researchers from outside the European Research Area.

15. EU research and innovation funding is important for the UK, which to date has received €5,025 million, 15.2 per cent of total Framework Programme 7 (FP7) funding, second only to Germany. In some areas the UK has been the most successful in attracting FP7 funding, for example in the FP7 health theme where as of March 2013 the UK was the top recipient of funding, receiving €652.75 million. This funding source also widens the opportunities for UK researchers to engage in globally competitive collaborative research, strengthening international links and building partnerships and in fact the UK is involved in more successful projects than either France or Germany, 40.7 % of all grant agreements in FP7 to date.
16. The UK also does well out of the Marie Curie Actions, which focus on mobility and training, and is seen as an attractive host country for the scheme. During FP7 the UK has received over €790 million in Marie Curie funding, by far the highest amount of all 72 countries benefiting from this funding stream (Germany is second with around €432 million). The UK has hosted 2953 projects (Germany is second with 1588), attracting 382 incoming fellows from outside the Members States and Associated Countries (France is second with 99) and 1170 incoming fellows from the Members States and Associated Countries (France is second with 363). Overall the number of people coming to the UK on Marie Curie funding in FP7 has been 3604. This bottom- up funding, where researchers can apply for fellowships to go anywhere in the world, or come to the UK from anywhere, is highly successful in supporting valuable knowledge exchange and building international collaboration.

Q6. What is the impact of this area of EU competence on employment sectors, such as 'distribution, hotels and restaurants', 'banking and finance', agriculture, or other sectors?

17. The free movement of persons competence greatly benefits both the UK and the wider European research community; the ability to easily engage with the brightest and the best researchers from across the EU helps drive research and development within UK Plc to the high standards we currently see. This freedom of movement encourages and enables collaborations to exist, with the associated funding benefits and longer term utilisation of research findings throughout the wider business community, which greatly benefit both UK infrastructure and provide further research opportunities. Overall, through the research package in the EU's seventh framework for research (FP7), the EU provides €763 million in research funding across the UK, not all of which would be available if the UK did not abide by this central competence of EU membership.

18. As Member Organisations of Science Europe, the Research Councils support the Joint Statement on the ERA Framework Communication objectives which Science Europe signed up to in 2012¹. This states that the direct involvement of research stakeholder organisations will strengthen the European Research Area and will contribute to building a unified research area, open to the world, in which researchers, scientific knowledge and technology circulate freely and through which the Union and its Member States strengthen their competitiveness and their capacity to collectively address grand challenges.
19. To receive certain EU funding, research infrastructures must apply an “Open Access” policy, part of which is to be open to all interested researchers based on open competition; any restriction of the free movement of persons would put this funding at risk. The ability to engage with the brightest and best researchers across the EU has enhanced research projects and collaborations throughout the UK, and has led to the development of various research infrastructures within the UK and across Europe. Further details of the impact of the relationship between the UK and EU within research & development may be found in the RCUK response to the Review of the Balance of Competences: Research and Development.
20. The following list provides a few examples of research infrastructure, with funding supported by the EU, which the research councils support and/or where UK researchers utilise the infrastructure to further their research:
 - Facility for Antiproton and Ion Research (FAIR) will provide a unique range of high- energy and high-intensity radioactive ion beams, high intensity anti-protons and high- energy heavy-ions. These beams will support a broad range of science including nuclear structure, hadronic, relativistic heavy ion, plasma and atomic physics. The UK Nuclear Physics community is part of the FAIR project and STFC will contribute to FAIR through support to the NuSTAR experiment.
 - INSTRUMENT Consortium, a structural biology hub providing pan-European access to state-of-the-art research facilities and expertise across Europe. The UK leads on this project, giving it a strong voice in influencing developments in this field across the European Research Area.
 - The Square Kilometre Array (SKA) will probe the gaseous component of the early Universe, thereby addressing fundamental questions in research on the origin and evolution of the Universe. The UK community, led by the Universities of Manchester, Oxford and Cambridge, together with UK industry, is fully engaged in the development of the project, supported by resources from STFC and the EU.

Q7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?

21. In accordance with the strict employment and recruitment policies adhered to by the Research Councils, along with the HM Treasury approved salary bands across the Research Councils, individuals, whether British, EU nationals or non-EEA nationals, are all paid commensurate to their roles.
22. When recruiting PhD level roles there is a deliberate attempt to recruit the brightest and the best, irrespective of nationality; however for all other roles there is a competitive recruitment process based on suitability for the role and

the individual's ability to evidence their right to work in the UK. Where appropriate, based on UK Government policy, EU regulations are embedded into the employment contracts of all employees.

Q8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?

23. Mobility of researchers is referenced in both the Horizon 2020¹ and ERA consultations but it should be clear that mobility is not an end in itself – it is the experiences and skills gained by the mobility experience that improve research. To assist with intra-European mobility other Member States should be encouraged to ensure that open recruitment for researchers becomes normal practice.
24. The UK would not want legislation in the Research Careers area, e.g. on open recruitment and professional status of researchers, as we already have an open system for recruitment of researchers. We ensure through the Concordat^{II} that researchers are recognised and valued by their employing organisation as an essential part of their organisation's human resources and a key component of their overall strategy to develop and deliver world class research.

Questions in relation to social security coordination.

¹ Can be found within pdf at [http://europa.eu/rapid/press-release MEMO-11_435_en.htm?locale=en#PR_metaPressRelease_bottom](http://europa.eu/rapid/press-release_MEMO-11_435_en.htm?locale=en#PR_metaPressRelease_bottom)

Q9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?

25. Intentionally left blank.

Q10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?

26. Intentionally left blank.

Questions in relation to Immigration.

Q11. What evidence do you have of the impact of EU competence in this area on immigration in the UK?

27. The free movement of persons competence enables the Research Councils to engage with EEA nationals in line with UK immigration rules. When recruiting for roles across the Research Councils there is a competitive recruitment process based on suitability for the role and the individual's ability to evidence their right to work in the UK; with regards to PhD level roles there is a deliberate attempt to recruit the brightest and the best, irrespective of nationality, in line with current UK immigration rules. As a result, the Research Councils adhere to the UK immigration rules and undertake advertisements and recruitment in line with current UK immigration requirements.

28. Across the research councils, EEA nationals from other member states make up over 11% of the current work force; approximately 90% of these individuals are involved in or support research. We have over a hundred students from Member States currently undertaking research in support of their studies across the various facilities managed by the Research Councils.

Q12. What evidence do you have of the impact on local communities and their economies, including rural areas?

29. Intentionally left blank.

Q13. What evidence is there that a change in the balance of competence is needed to minimise abuse of the free movement rights afforded to citizens under EU law?

30. Intentionally left blank.

Questions relating to future options and challenges.

Q14. What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact these have on the UK national interest?

31. The forthcoming Scottish referendum, along with the promise by the Conservative Party to undertake an EU “In/Out” referendum should they win the next General Election, have the potential to cause significant challenge to the competence within this area; the impact on research would be far reaching should both referendums result in the relevant departure from current state, though it is recognised that the full implications will not be known until such an event occurs. The run up to these events may have a detrimental impact on the development of future research and collaborations due to the uncertainty that exists over possible outcomes and therefore reluctance to commit until the future outcome/impact is made clear.
32. Furthermore, the impact on relationships across Member States due to the uncertainty of future UK membership may lead to a loss of influence in areas of research where the UK currently leads, which in turn may lead to a failure to attract the brightest and the best; this may lead to a downward spiral where the failure to attract the best researchers impacts on future research collaborations, which in turn leads to further issues in attracting researchers.

Q15. What impact would any future enlargement of the EU have on the operation of free movement?

33. As long as future enlargement is balanced by the continuing maintenance of the requirement to meet the high standards required by EU membership, the future expansion of the Member States will benefit research collaborations and development within the UK and the wider EU scientific community through the ability to engage with scientists from these Accession States. To avoid significantly affecting the quality of research and innovation funded at an EU level, it would be important to maintain the political emphasis on excellence throughout future Framework Programmes for research and innovation, both so that Europe can perform to the best of its ability in an international context, and to ensure that benchmarks for excellence exist across Europe.

General questions

Q16. Do you have any evidence of any other impacts resulting from EU action on free movement of persons that should be noted?

34. There has been situations where non EEA national family members of British Nationals have been impacted by the UK immigration regulations and have been unable to join their British spouse in the UK, while non EEA national family members of Member States nationals, due to the freedom of movement and subsequent immigration agreements put in place by the UK Government, have not had the same issues in joining their family members; this has been perceived by the impacted individuals as unfair for British nationals in respect to their EU counterparts.

Q17. Are there any general points you wish to make which are not captured above?

35. Whilst the Schengen Visa is covered under the Balance of Competences: Immigration & Asylum, due to the inter-relationship with attracting business and research opportunities and EU funding to the UK we believe it is worth comment.
36. Currently the UK short term visitor visas routes support the majority of our international mobility for non EU residents into the UK, however gaps do exist particularly in the academic, business and scientific definitions which adds pressures and in some cases restricts entry.
37. The mobility of Non EU national working within European States supports the success and delivery of European initiatives. For example cutting edge science involving the UK includes;
 - CERN, the world's leading laboratory for particle physics.
 - The Isaac Newton Group of Telescopes within the Canary Islands, undertaking world-class astronomical research.
 - The European Synchrotron Radiation Facility (ESRF) where UK scientists currently receive approximately 18% of the available beam time.
38. Currently the restrictions place on a Non EU collaborating in Europe under the Schengen visa are required to obtain an additional visa for the UK which can be seen as a detractor.
39. As part of this review a suggestion which might help would be if the current UK short term visa routes are reviewed or aligned with the current Schengen Visa rules in order to provide consistency when multiple visas are required.
40. In addition the potential introduction by Schengen of Biometric Centres consideration of alignment of UK centre across the world would help. In particular for China this might continue to be a detractor where we are currently seeing an increase of traffic to German and French institutes

Q18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?

http://www.scienceeurope.org/uploads/Public%20documents%20and%20speeches/joint-statement-17072012_en-2.pdf

² <http://www.vitae.ac.uk/policy-practice/505181/Concordat-to-Support-the-Career-Development-of-Researchers.html>

RCUK, August 2013

Submission 53

From: [REDACTED]

Sent: 05 August 2013 11:59

To: FreeMovementofPersonsBoC

Subject: Fwd: Balance of Competences Review: The Freedom Association's submissions concerning the free movement of persons

Dear Sir / Madam,

Attached are The Freedom Association's submissions to the Home Office's review concerning the free movement of persons for this semesters Balance of Competences Review.

In addition to the attached, The Freedom Association would like to submit that control over the movement of person into the UK from around the world should revert to the United Kingdom. We propose that a green-card or points-based system be implemented by the UK for individuals looking to come into the UK, wherever they originate from.

The Freedom Association's position is that the UK's immigration system should be based on a belief in meritocracy and we believe that a green-card or points system, set in the UK, would be a more preferable way to achieving this end than the current arrangements. It would also give the United Kingdom the ability to decide what skills are needed and allow this to be reflected accordingly within our immigration system.

In doing so the UK's system of immigration should be global and based on merit - not subjugated to any one regional preference.

Yours sincerely,

Rory Broomfield

Rory Broomfield

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The Freedom Association;

Director,

Better Off Out;

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Balance of Competences Review

Internal Market: Free Movement of persons

A 2004 European Union Directive enshrined the 'right of citizens of the Union and their family members to move and reside freely within the territory of the member states'.⁶² In fact, the origins of this particular feature of the Internal Market go back much further with the Treaty of Rome providing for 'the abolition, as between Member States, of obstacles to freedom of movement for persons'.⁶³ This fundamental right has become one of the defining features of European integration and, as such, has had several profound effects and consequences for the migration policies of member states. Doubtless some of these changes can be seen to have brought positive effects, yet in Britain this is not exclusively so. This review will assess the effects that the European Union's competence in the free movement of persons has had on Britain from a global economic perspective. It will do so through a systematic analysis of a range of academic and statistical evidence and will therefore seek to provide a factual and evidence based understanding of the impact the free movement of persons has had on the British economy as well as its effect on British interests and national migration requirements more broadly.

The primary aim of the free movement of persons has been to create an integrated European labour market with unrestricted movement rights across the continent. As Britain joined the European Economic Community in 1973, it was entering into an

⁶² Directive 2004/38/EC of The European Parliament and the Council of 29 April 2004; Journal Ref: L158 p.77-123

⁶³ Treaty of Rome, 25 March 1957, Article 3, (C)

economic bloc which, including Ireland and Denmark who joined at the same time, was to have a total population of some 257million people.⁶⁴ In 2012, after approaching 40 years of membership, the population of the European Union following expansion into Eastern Europe stood at 503.7million.⁶⁵ Put another way, the number of people with free movement rights across the European Union has almost doubled over the course of Britain's term of membership. Furthermore, over the same 40-year period the population of the United Kingdom also increased, from 55.9million in 1971 to 62.6million in 2011.⁶⁶ It is reasonable to assert that the latter increase is in a large part a consequence of the former.

The enlargement of the European Union through its expansion into Eastern Europe in 2004 saw the biggest ever increase in absolute terms to the population of the EU and thus the size of the European labour market; a process which saw the addition of 74million inhabitants to the population of the Union.⁶⁷ This process had several inevitable effects, the most important of which was the increase in the volume of migration flows across the member states of the Union. Indeed, the official statistics show that Britain in particular has become one of the key destination countries for European migrants.

The Migration Observatory at the University of Oxford has produced several reports into the effects of migration into the UK. Table 1 is taken from one of its 2013 briefing reports.

⁶⁴ Alain Monnier, *The European Union at the Time of Enlargement*, Population-E 2004, 59(2), 2004, p.318

⁶⁵ European Commission, *Population and Population change statistics*, 2012, http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Population_and_population_change_statistics#EU-27_population_continues_to_grow

⁶⁶ Office for National Statistics, *Population*, Social Trends no.41, 2011, p.3

⁶⁷ Monnier, 2004, p.315

Table 1 - Inflows and net flows by citizenship (thousands)

Year	British		EU (British not included)		Commonwealth		Other	
	Inflows	Net	Inflows	Net	Inflows	Net	Inflows	Net
Average 1991-1999	98	-45	60	14	87	53	86	43
Share	30%		18%		26%		26%	
Average 2000-2003	102	-72	62	9	155	101	178	120
Share	21%		13%		31%		36%	
2004	89	-107	130	87	215	162	155	104
Share	15%		22%		37%		26%	
2005	98	-88	152	96	180	120	137	78
Share	17%		27%		32%		24%	
2006	83	-124	170	104	201	135	143	83
Share	14%		28%		34%		24%	
2007	74	-97	195	127	174	116	131	88
Share	13%		34%		30%		23%	
2008	85	-87	198	63	165	100	142	87
Share	14%		34%		28%		24%	
2009	96	-44	167	58	171	105	132	79
Share	17%		30%		30%		23%	
2010	93	-43	176	77	187	135	135	83
Share	16%		30%		32%		23%	
2011	78	-71	174	82	179	119	135	85
Share	14%		31%		32%		24%	

Source: ONS, Long-Term International Migration Estimates, table 2.01a. Note that the sum of the shares may not add up to 100 due to

Table 1 show that the average inflow of EU migration into the UK over the 2000-2003 period was 62,000 per annum, whilst in 2004 - after eastern expansion - that figure had more than doubled to 130,000 and continued to rise until a peak of 198,000 in 2008, after which a small decrease took place.⁶⁸ Nevertheless, the figure in 2011 was still almost three times the average for the 2000-2003 period.⁶⁹ This is certainly a significant increase in inward European migration flows over a relatively short period of time. However, what is more significant for the purpose of this review are the comparative statistics for inward migration from countries outside of the EU, and therefore outside of the Free Movement of Persons competence. Those figures show that non-EEA migration into Britain increased over the course of the 1990's and early 2000's, but has declined since a peak in 2004-2006.⁷⁰ More specifically, Table 1 shows that the share of Commonwealth and non-EEA migrants as a proportion of total inflows, declined by 7% between 2004 and 2011, whereas over the same period, migration from inside the EU increased by 9%.⁷¹ Indeed, figures from the Office for

⁶⁸ Carlos Vargas-Silva, *Long Term International Migration Flows to and from the UK*, 2nd Ed, Migration Observatory, University of Oxford, 2013, p.4

⁶⁹ Ibid, p.4

⁷⁰ Scott Blinder, *Non-European Labour Migration to the UK*, Migration Observatory, University of Oxford, 2012, p.2

⁷¹ Vargas-Silva, 2013, p.4

National Statistics show that in 2001 the EU was the source of 17.4% of total inward migration to the UK, whereas in 2011 it accounted for 35.6%; more than a doubling over the course of a decade.⁷²

Clearly what has taken place therefore is a broad shift in inward migratory patterns from those outside of the EU, to those inside it and therefore under the EU's Free Movement of Persons Competence. That non-EU immigration into the UK increased year on year in the 1991-2003 period before suddenly entering into a pattern of decline at the same time as 74million new citizens of the EU were granted free movement rights cannot be dismissed out of hand.⁷³ Indeed, an objective assessment of the official data and statistics that have been quoted here may lead to the conclusion that the UK has taken a stricter approach to non-EEA migration in order to accommodate the growing pool of workers on the European continent. There is in fact much to support this thesis.

The process of decline in non-European Union immigration, in particular that from the Old Commonwealth countries, coincided with a period of several Government initiatives specifically designed to limit and control such immigration. The clearest example of this is the Points-Based system. *A Points-Based System: Making Migration Work for Britain* was presented to Parliament in March 2006 and was gradually phased in over the forthcoming years. It set out to determine 'more clearly who we allow to come into the country and on what basis they are let in'.⁷⁴ It spoke of the need to 'manage migration and secure our borders'.⁷⁵ In short, it specifically set out to adopt a stricter approach to the management of inward migration flows from those countries outside of the EU. Upon the Coalition Government taking office in 2010, this process of adopting stricter external immigration policies was taken yet further. In 2011, for the first time, an annual limit on the number of non-EU workers who can enter the UK came into force. Its stated intention, unlike the Points-Based system which merely spoke of managing migration, was to 'reduce immigration into the UK' from non-EU countries.⁷⁶ The effect of this legislation was to reduce the net flow of migrants to the UK to 153,000 in the year to September 2012, down from 242,000 the previous year; and that net migration had been reduced by more than a third since June 2010.⁷⁷ In addition to the Coalition Government's broader policy goal of reducing net immigration

⁷² Office for National Statistics, Long Term International Migration Time Series 1991-2011, Table 2.02, 29 November 2012

⁷³ Ibid

⁷⁴ Foreword to *A Points-Based System: Making Migration work for Britain*, Home Office, March 2006

⁷⁵ Ibid

⁷⁶ UK Border Agency, *First Annual Limit on non-EU workers comes into force to reduce immigration into the UK*, 6 April 2011, <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2011/april/07annual-limit-immigration>

⁷⁷ The Daily Telegraph, *Net migration to the UK falls by a third*, 23 May 2013, <http://www.telegraph.co.uk/news/uknews/immigration/10075761/Net-migration-to-the-UK-falls-by-a-third.html>

from outside the EU, a number of particular changes were also brought in to support this objective; specifically the stopping of the Tier one (General) route through which migrants could enter Britain under the Points-Based system.⁷⁸ Tier 1 was 'designed to bring into the UK those migrants with the very highest skills' and was ended by the Home Secretary in November 2010, in turn obliging potential migrants to apply through the more selective Tiers 2,4 and 5.⁷⁹ The abandonment of Tier 1 is further evidence of an increasingly restrictive UK immigration policy towards the rest of the world. In fact, all of these policies can only be seen as a direct response to the consequences of the Free Movement of Persons across the member states of the European Union.

If one takes into account all the evidence quoted here thus far; the substantial increase in the population of the European Union, the subsequent increase in migratory flows from inside the EEA and the concurrent decline in non-EEA migration achieved through a series of robust Government initiatives, it becomes quite clear that Britain, as a consequence of the Free Movement of Persons, has been forced to adopt an increasingly local migration system rather than a global migration system. In other words, UK immigration policy has been changed to fit the demands of the European Union, whilst potentially forgoing the requirements of the UK.

This change in focus in turn raises questions over the quality of the migrants Britain has been compelled to accommodate, as well as the potential quality of those Britain has had to turn away as a consequence of this accommodation. Britain should be seeking to attract high quality migrants with sought after skill sets, however the statistics show that this is increasingly not the case. A discussion paper by the Institute for the Study of Labor claims that a higher proportion of immigrants residing in Britain who have come from Europe, including those from both EU14 and EUA8 countries, claim social benefits than any other immigrant group.⁸⁰ If one looks more specifically at unemployment related benefits, the figures suggest that male migrants from within the EU have a higher claimant rate than any other immigrant group, whilst women from within the EU are the joint highest claimant group along with those from Africa.⁸¹

In January 2012 the Department for Work and Pensions published statistics showing the nationalities of working age benefit claimants as of February 2011. See Table 2.

⁷⁸ Home Secretary, *Immigration Limit Oral Statement*, 23 November 2010

⁷⁹ *A Points-Based System: Making Migration work for Britain*, Home Office, March 2006, p.21

⁸⁰ Drinkwater, Stephen and Catherine Robinson, *Welfare Participation by Immigrants in the UK*, Institute for the Study of Labor, Discussion Paper no.6144, November 2011, p.36

⁸¹ *Ibid*, p.36

Table 2: non-UK nationals at NINo registration: DWP working age benefit claimants by Client Group and world area, Feb-11, Great Britain

	Total non	Jobseeker	ESA and incapacity benefits	Lone Parent	Carer	Other Income Related	Disabled	Bereaved
Total non-UK nationals	371.02	121.66	130.43	53.90	33.50	10.93	14.09	6.51
Europe - EU excl. Accession	62.57 (17%)	25.01	23.46	5.59	3.48	1.40	2.43	1.19
Europe - EU Accession	28.74 (8%)	12.84	8.82	2.10	2.54	0.39	1.66	0.38
Europe - non-EU	21.99 (6%)	5.01	10.27	3.73	1.70	0.54	0.55	0.18
Africa	98.76 (27%)	35.64	27.71	24.58	4.82	2.42	2.57	1.02
Asia and Middle East	125.69 (34%)	33.85	47.23	13.55	18.63	4.45	5.20	2.79
The Americas	18.31 (5%)	6.04	5.59	3.74	1.22	0.37	0.79	0.55
Australasia and Oceania	2.08 (1%)	0.62	0.81	0.14	0.19	0.04	0.14	0.13

Source: DWP: Work and Pensions Longitudinal Study and HMRC National Insurance and Pay as you Earn System (NPS). See notes in technical annex.

It shows that in 2011 there were, in total, 371,020 benefit claimants who were non-UK nationals, of which those from the European Union accounted for 91,310, or 25% of the total.⁸² At first the 25% figure may not seem particularly striking, however, viewing this in conjunction with the ONS figures already quoted, which show that the EU accounts for 35.6% of inward migration flows, the relevance of this 25% figure becomes very much more significant. If in 2011 the EU made up 35.6% of total inward immigration, and in the same year made up 25% of foreign benefit claimants, this suggests that a significant proportion of EU migrants go on to claim welfare benefits in the UK. All of these data sources, taken together, demonstrate that there is a high tendency of EU migrants to claim social benefits and that, in general, it follows that such migrants are of a lower skill set than those from other parts of the world.

The question that arises therefore is; what type of migrants does the UK want to attract? Indeed more importantly, why should the UK be restricted in its efforts to attract those migrants whom it considers to be of higher value to the country as a whole? The European Union's competence in the free movement of persons has had the specific effect of undermining Britain's ability to attract high quality migrants by obliging the UK to accept migrants on the basis of proximity rather than on quality. As has been shown, the European Union's competence in the free movement of persons has placed the United Kingdom in a position of having to accommodate European migrants regardless of their skill set and in turn having to adopt stricter regulatory policies which have turned away an increasing number of migrants from elsewhere whom may potentially have more desirable skills and professions. Needless to say, whether or not those migrants who have been turned away do indeed have higher skill sets cannot ultimately be determined, however, why should Britain have to take the risk that they do? Britain should be free and entitled to attract those migrants that suit its

⁸² Department for Work and Pensions, *Nationality at point of National Insurance number registration of DWP claimants: February 2011 working age benefits*, January 2012, p.8

specific national economic requirements. In short, Britain should have the best of the world's migrants, not simply those who are closest. Ultimately, the European Union's competence in the area of free movement of persons has made such a prospect impossible.

Submission 54

Name	[REDACTED]
Organisation/Company (if applicable)	SSAFA France
Job Title (if applicable)	Chairman
Department (if applicable)	
Address	[REDACTED]
Email	[REDACTED]

Organisation Type (if applicable)	<i>Please mark / give details as appropriate</i>	
NGO/Civil Society	<input type="checkbox"/>	
Public Sector	<input type="checkbox"/>	
Retail Sector	<input type="checkbox"/>	
European bodies/institutions	<input type="checkbox"/>	
Business/Industry/Trade Bodies	<input type="checkbox"/>	
Other (please give details)	x <input type="checkbox"/>	Welfare support to former members of HM Forces and their Families

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

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

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

The principle of free movement for work, leisure or residence is well established between member states. No problems evident to us as an organisation. The UK has not signed up to the Schengen accord so minor delays in entering France from the UK.

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

Unless people speak French, life can be difficult for English speakers to obtain employment - this should not be confused with discrimination - if people wish to work in France (for a French organisation/have French clients) then a relatively high knowledge/ability in French is essential. In many cases British credentials/qualifications may not be recognisable by the French authorities. Access to French benefits usually requires the beneficiary to have contributed into the French system - can't argue with that. Transferable benefits is always a difficult area.

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

Once resident in France (tax resident - more than 6mths/yr) access to many UK services ceases - e.g free eye tests - is lost. Many people who come to France believe they continue to be entitled to full UK benefits TFN or that they can access immediately the same benefits in France. Loss of access to the UK NHS is not understood and restrictions on access to the French medical system is not clearly understood.

4. What evidence is there that a) more EU action; or b) less EU action would

improve the situation of UK nationals exercising free movement rights in other member states? What obstacles, if any, do UK nationals face when exercising their free movement rights in other member states?

There is not a suitable guide to those leaving the UK to live/work in France on, say, benefit transfer, privilege loss etc. The access rights by UK nationals arriving in France is not available in English on/before arrival. Much more needs to be done in both UK and France to better prepare those who move - the lack of preparation by some is astonishing.

Questions in relation to the labour market.

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

Have no evidence of any impact.

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

No comment

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

No comments

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

No comments

Questions in relation to social security coordination.

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

It remains very complicated on who pays for what concerning Soc Serv payments, particularly medical and sickness benefits.

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

As above

Questions in relation to Immigration.

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

No comments

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

No comments

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

Abuse of privileges/rights should be the subject of bi-lateral negotiations/policing by the countries involved.

Questions relating to future options and challenges.

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

Voting rights - currently lost in the UK after 15 yrs of move to France. No possibility of a national vote in France unless French (except local elections). This is not democratic - should have the right to vote either in the UK or France, particularly if one pays taxes in either or both countries.

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

No comments

General questions

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

See answer to Q 14

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

To have to re-establish UK residency for a returning UK taxpayer remains a misunderstood/unnecessarily strict condition for returnees - who may be in receipt of UK Govt pension or OAP.

To suggest that those living in France may lose Winter Fuel Allowance is discriminatory - it gets as cold, if not colder in France than in the UK. Those affected have generally contributed all their working lives into the UK system!

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

None

Submission 55

Name	██████████
Organisation/Company (if applicable)	SSAFA – France Branch
Job Title (if applicable)	Case Coordinator Central France
Department (if applicable)	
Address	██████████
Email	██████████

Organisation Type (if applicable)	<i>Please mark / give details as appropriate</i>	
NGO/Civil Society	<input type="checkbox"/>	
Public Sector	<input type="checkbox"/>	
Retail Sector	<input type="checkbox"/>	
European bodies/institutions	<input type="checkbox"/>	
Business/Industry/Trade Bodies	<input type="checkbox"/>	
Other (please give details)	x <input type="checkbox"/>	Welfare and support for former members of HM Forces & their families residing in France

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

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

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

As the UK government seemingly supported the principle of free movement of persons throughout the EU, one can perhaps assume that they also saw the advantages for UK nationals to have this freedom – be it for work, residence or leisure reasons!

I am aware of many UK nationals who have moved between continental European nations to France for both work and residence purposes and have experienced no problems with exercising that right.

Those that have chosen to come to France to work have done so, principally, as they were unable to find employment in UK or to 'improve their lot'. Thus it can be deduced that, for these individuals, the freedom of movement within the EU is a positive factor. Others have retired to France for access to better health care and a slower pace of life. They too have benefitted from the right of free movement.

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

I am aware of instances where UK nationals seeking employment in France have met with 'resistance/reluctance' from local authorities to employ them for various reasons [e.g. they are not French nationals or their qualifications, not being from French institutions, are not recognised by the authority] and, in some cases, where they have been employed, they have been paid at a lower pay scale to a French national in an identical post. An appeal to an EU 'body' [or even the suggestion of such an appeal] usually has the desired effect and a change of decision!

The right of access to benefits and services in France is, however, a moot issue. Acceptance of this right is 'patchy' and depends somewhat on the knowledge of the regulations by the department concerned. Recourse to EU documentation is often needed to convince a departmental benefit office that the individual qualifies. A frequently experienced problem is access to disability benefits; here we find that both the DWP in UK and the French equivalent are equally confused on who pays what!!

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

No Comment

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

There have been many instances where there has been a need to quote EU regulations to convince French Social Services that a UK national, resident in France, is entitled to a specific French benefit. Furthermore, as UK nationals in France also seem to be disqualified from claiming some benefits by both the UK and France [our caseworkers find this a recurring theme], I consider that more involvement by the EU is required to rule on disagreements between UK departments and their counterparts in other nations, on where responsibility rests to pay benefits.

Another area of concern relates to access to NHS facilities by UK nationals, normally resident in France. I was recently asked to assist a former RAF pilot who had lost cognitive powers following a cerebral episode and had also lost the ability to comprehend French. The patient had been refused access to NHS facilities for treatment despite the strong recommendation by the French consultant that he be returned to an English speaking environment if he was to have any chance of a recovery. As the NHS refused to accede to the request – despite the fact that the patient still paid income tax on his military pension in UK – charitable funds were obtained to place the patient in an UK clinic for treatment.

Questions in relation to the labour market.

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

No Comment

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

No Comment
7. What evidence do you have of the impact on UK nationals and non-UK nationals in the UK in terms of employment opportunities, wages, employment conditions or other factors?
No Comment
9. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area?
No Comment

Questions in relation to social security coordination.

9. What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate and effective EU labour market?
<p>An effective labour market also needs adequate protection for the ‘worker’ – particularly when an accident at work occurs. Thus there is a need for even clearer direction from the EU to nations on coordination on social security issues and specifically those regulations pertaining to the right of access to disability and sickness benefits. I have experience of many cases where both France and the UK deny that they have responsibility for paying such benefits with the result that the individuals receive no support from either nation and charitable funds have to be committed to avoid the individuals becoming destitute. The need for EU involvement in this arena has already been amply illustrated by the European Court of Justice ruling that the UK was responsible for continuing to pay Disability benefits to UK nationals residing elsewhere in the EU.</p>
10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits system, or undermine public confidence in that system?

Judging from my experience with casework here in France, I believe the need for more coordination on the issue of responsibility for paying benefits is required, either between Nations or under the auspices of the EU.

Questions in relation to Immigration.

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

No Comment

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

No Comment

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

There is clearly a need for more clarity on where responsibility lies between nations on the issue of access to social benefits. If this cannot be achieved on a bi-lateral basis between nations then it should be dictated by the EU.

Questions relating to future options and challenges.

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

No Comment

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

No Comment

General questions

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

No Comment

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

Another area of concern relates to the application by the UK of the residency rule to an UK national, previously resident in another country, who returns to live in the UK and has to re-establish UK residency before he/she qualifies for social service benefits. Some individuals have to wait months to satisfy this requirement – despite, in some instances, being in receipt of an UK government pension which is being taxed in UK.

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

No

Submission 56

NASSCO
M International Youth
Centre Teen Murti
Marg Chanakyapuri
New Delhi 110 021

Mark Hoban MP
Minister of State for Employment
Department for Work & Pensions

Dear Mr Hoban,

Thank you for the opportunity to respond to the call for evidence on ***'The Review of the Balance of Competences: Free Movement of Persons'***.

While we understand that this review is not intended to produce specific recommendations, NASSCOM believes it is an important opportunity to contribute to the UK government's deeper understanding of the significance of the UK's relationship with the EU. In particular, the international business models used by our members mean that we can offer insights to the final call for evidence on the following:

- What future challenges and/or opportunities might we face in relation to EU competence in the area of free movement of persons and what impact might these have on the UK national interest?
- Evidence of any other impacts resulting from EU action on free movement of persons that should be noted¹?

This submission focuses on these questions as well as some more general points that we would like to take the opportunity to make.

Introduction to NASSCOM:

NASSCOM is a global trade body with more than 1,400 member organisations, consisting of both Indian and multinational companies that have a presence in India. NASSCOM's members and associate member companies are broadly in the business of software development, software services, software products, consulting services, e-commerce and web services, engineering services offshoring, and animation and gaming. NASSCOM's membership base constitutes over 95% of IT industry revenues in India and employs around 3 million professionals worldwide.

NASSCOM in the UK:

NASSCOM has many strong and established links with the UK and our members tend to base their European headquarters in the UK. Anecdotal evidence suggests that our members appreciate the political stability, economic vibrancy, and familiar language and culture.

Our member companies include many UK based organisations such as BT, RBS, Barclays, HSBC, Tesco and Logica. Our priority is to promote the business capabilities of our members, and our focus is on trade, not migration. It is important for our members to be able to continue to transfer highly skilled workers between India, the UK and Europe on a temporary basis. NASSCOM has also worked with the UK government in the past to provide advice and information, for example, submitting evidence

¹ P21 Home Office 'Review of the Balance of Competences Call for Evidence'.

to the MAC on the *Review of Tier 2 Codes of Practice*, the *Review of the shortage occupation lists*, and on the *Level of an Annual Limit on Tier 2*.

NASSCOM in Europe:

Our members also have significant operations in other European countries such as Germany and the Netherlands. Therefore, many of our members choose the UK as a base because of their subsequent ability to work more freely with other EU countries. More than 80 per cent of Indian IT companies have their European HQs in the UK.

In a global economy it is extremely difficult to limit companies on a geographical basis. For example, an airline company or a car manufacturer may operate from the UK, Europe and in other countries across the world. It is important that geographical boundaries are not allowed to impact on their ability to operate efficiently and seamlessly.

The importance of available skills:

NASSCOM members operating in the UK tend to recruit significantly from the local labour market, and many of the senior managers and customer-facing staff that our members employ are UK nationals. However, in a dynamic and fast-paced industry such as IT, our members must have the flexibility to recruit the necessary skills and knowledge when needed. These skills can sometimes be found in nationals from other EU countries residing in the UK. We would therefore argue that the ability to exercise free movement rights impacts positively on the UK from an economic perspective. It is our view that the ability to do so enhances the UK's international competitiveness, stimulates domestic job creation and boosts trade.

The latest research figures by NIESR show that the UK has at least 270,000 digital companies, more than double that estimated by the government. It is important that the UK not only continues to provide the training and education to meet the skills demand, but also allows the digital economy to grow by making skills from other EU countries available in the UK.

According to CBI's most recent report, 39% of employers are struggling to recruit workers with the advanced, technical STEM skills they need. In fact, responses from firms in the engineering, IT and science areas show the highest proportion of current and future problems in recruiting skilled employees². Earlier this year, the National Audit Office report also forecast a significant IT skills shortage and gap³, and in April 2012, the Minister for Business, Innovation and Skills referred to 'a decade long' decline in ICT and computer science in schools and universities⁴.

More generally, international businesses seek the following from the trading framework between the UK and the EU (with regard to the free movement of people):

- The system must be fair in order to maintain credibility and confidence.
- Confidence is essential. Rigorous process builds confidence amongst users.
- Business needs certainty. Dates and timelines for any prospective changes to processes or requirements must be planned and clear.
- Business needs flexibility.

² http://www.cbi.org.uk/media/2119176/education_and_skills_survey_2013.pdf

³ <http://www.nao.org.uk/wp-content/uploads/2013/03/Cyber-security-Full-report.pdf>

⁴ Business Technology, Getting serious about security, 8 April 2012

Other impacts resulting from EU action on free movement of persons:

We would urge those carrying out this review to think about how the current framework impacts on the movement of people beyond the UK and EU and affects their relationship with international organisations based in other global locations. For example, the rules which apply to the movement of people within the EU, also impact on the ability of businesses which are based outside the EU, such as India, to move workers within the EU. This particularly applies to many of NASSCOM's members, who are international companies working in a number of countries both in the EU and beyond.

Language and perception:

Finally, we would ask that some thought be given to the language being used to frame this debate and the need to ensure that this language is framed positively in order to instil confidence within the international business community.

We appreciate the opportunity to provide feedback and would be very happy to provide you with further information. Please contact me or my colleague [REDACTED] if you have any other questions or comments.

Sincerely,

Ameet Nivsarkar
Vice-President, NASSCOM

Submission 57

Balance of Competences Consultation Response

Internal Market: Free Movement of Persons

August 2013

- I. UK membership of the EU has brought significant benefits to solicitors, law firms and their clients, most particularly through the ability to trade, provide services and establish across the EU and to seek effective redress to cross-border legal issues.
- II. The legal services sector plays a key role in the UK economy, the UK's competitive advantage and in improving the efficiency of doing business. Legal services directly contributed £26.8bn to the UK economy in 2011. This included almost £4bn of exports – a substantial volume of which was generated through trade with EU Member States.
- III. The UK legal services sector is globally focussed with offices and lawyers based throughout Europe and the world. Law firms exist in order to service the needs of their customers; these are commonly British businesses trading throughout the Internal Market and increasingly non-British clients doing business in the Internal Market.
- IV. The legal profession works day-to-day with clients throughout the EU dealing with a broad range of legal issues across a diverse range of fields ranging from commercial transactions, intellectual property and competition law to employment law, civil justice and dispute resolution.
- V. It is for these reasons that the Law Society and the legal profession have an interest in the stability of the UK's position within the EU and the future role of the UK at the heart of EU rule-making.
- VI. The Law Society nevertheless accepts that there is a debate as to the appropriate level of EU competence in various policy areas and will input into the other reviews of the balance of competences of most relevance to the legal profession.

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

1. The ability to exercise free movement rights allows UK nationals to access a much broader range of job opportunities. UK citizens, from teachers to accountants, and

lawyers themselves, benefit from free movement rights. People who have retired abroad also benefit from this right.

2. Working abroad brings not only the direct economic advantage of employment but also allows UK nationals to further their personal development, for example through new experiences, practising their language skills and building international networks.
3. The ability to exercise the right of free movement also benefits UK businesses looking to recruit workers from across the EU. The free movement rights allow them to recruit talent from a wider pool without the need to go through onerous and potentially expensive processes, for example to obtain visas or work permits for their employees. The EU system of freedom to go to another Member State for work is in great contrast to eg the "Green Card" you need to obtain to work in the United States.
4. The free movement of persons needs to be looked at from different viewpoints: the simple right to go to another EU state to work; the ease of being able to ensure social security and pension benefits across borders; and the need for further alignment of our professional qualifications.

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

5. Article 45 TFEU (ex Article 48 EEC Treaty) is particularly powerful because individuals can rely directly on it to work in another Member State.
6. Legal services are a prime example of a sector which has benefited enormously from the internal market. 76% of the UK Top 50 law firms have at least one office elsewhere in the EU. Opening new offices stems from freedom of establishment but this is underpinned by the possibility for firm employees to move to those new locations.

Practitioner comment:

"UK law firms have benefitted greatly from the EU internal market. The opportunity of providing services across the EU has been seized by the legal profession in the UK, with firms originating in the UK now playing a major role in the provision of legal services across Europe, and 76% of the UK top 50 law firms having at least one office elsewhere in the EU. This dramatic success is built on the EU freedom of establishment as well as the free movement of persons which

*enables lawyers and other staff to move freely between locations across the EU.*⁸³

7. The Law Society is not in a position to comment in general on access to benefits and services in other Member States. It may also be difficult to determine as different Member States operate their own systems which does not always allow for direct comparison from state to state.

8. In the case of legal aid, the Law Society understands that Directive 2002/8 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes⁸⁴ requires that, in cross-border cases, natural persons involved in a dispute covered by the Directive should be entitled to receive appropriate legal aid where it is available in order to ensure their effective access to justice without discrimination. This is a clear benefit to UK nationals abroad.

⁸³ The practitioner comments in the Law Society of England and Wales responses to the Balance of Competences consultation come from Committee members and other expert practitioners in the relevant fields.

⁸⁴ [Directive 2002/8 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes](#)

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

9. The Law Society does not have any information on the impact on welfare provision and access to public services in the UK.
10. It would, however, welcome the collection of accurate and detailed data to inform a proper debate on this issue.⁸⁵
11. It should be remembered that free movement means that citizens from other EU countries may access the UK welfare system and public services but in turn UK citizens moving to other Member States access those welfare systems and public services. The movement of people is not solely in one direction.

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

12. One area which has proven problematic for UK nationals wishing to move throughout the EU is pensions as it is often difficult to transport pensions between Member States or to continue contributing to pension schemes in home jurisdictions if the pension-owner is located elsewhere. Anecdotal evidence from UK lawyers who have worked in the European Offices of London law firms suggest that further work should be done on the transfer of social security and pensions, both in terms of contribution payments and benefits.

Question 5 - What evidence do you have of the impact on the UK economy of EU competence on free movement of persons?

13. Numerous studies have shown that diversity in a business or organisation proves advantageous. In this context properly managed immigration may be generally regarded as positive.

⁸⁵ Some research in immigration in an EU context already exists, see for example:

<http://www.emeraldinsight.com/journals.htm?articleid=17085869>;

<http://niesr.ac.uk/sites/default/files/publications/NIESR%20EU2%20MIGRATION%20REPORT.pdf>

14. Immigration also allows businesses flexibility. It enables firms, including law firms, to deal with fluctuations in business conditions and to benefit from a broad range of expertise and to control staffing levels.

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

15. The Law Society has no information on the impact of EU competence on employment in these specific sectors.

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

16. The Law Society has no information on these topics.

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

17. The Law Society has no comment on this question .

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

18. If people live and work, and therefore pay taxes, in a Member State they should have a right to also receive the benefits that those taxes pay for. A right to free movement but no coordination of social security and no portability rights means that persons do not, in fact, have genuine freedom of movement.

19. This is illustrated in the scenario below:

A person comes from country A where her parents pay taxes which paid for her healthcare, schooling etc. She then grows up and goes to study in country B for three years and at the same time works in the local coffee shop in the evening and weekends and pays taxes. She graduates and works there for five years until she is offered a new job in country C where she meets Y who is also from country A. They fall in love and start a family and after three years in country C decide they want to return to country A to live closer to their parents.

Without social security coordination she would have lost all her pension savings, any right to healthcare, and any right to unemployment benefit if she loses her new job in country A despite the fact that she has been a law-abiding taxpaying citizen for eleven years. Essentially no social security coordination would entail a barrier to free movement.

20. This is not to say that there are not difficulties to be overcome in ensuring coordination of social security. There may be variations in the different systems but this does not necessarily pose a problem as long as the system is fair and does not discriminate between nationals and other EU citizens. This issue, however, should be dealt with at a national level although Regulation 883/2004⁸⁶ regulation might still be improved.

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

21. The Law Society has no information in relation to this question.

22. As a general comment each Member State has different policy objectives and traditions and should be free to set independently its framework for social security, national insurance (or equivalent) and health cover.

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

23. The Law Society has no information in relation to this question.

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

24. The Law Society has no information in relation to this question.

⁸⁶ [Regulation 883/2004 on the coordination of social security systems](#)

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

25. The Law Society is aware that the *Metock*⁸⁷ migration case (Case C-127/08) has proved controversial. The Law Society with the Bar Council, commented in detail on this case in response to the House of Lords' EU Select Committee's inquiry on "EU police and criminal justice measures: The UK's 2014 opt-out decision".⁸⁸
26. As explained in the annex to the Law Society and Bar Council's supplementary evidence contributed by the Immigration Law Practitioners' Association (ILPA) and the AIRE Centre (Advice on Individual Rights in Europe), "[t]he judgment in *Metock* held that an Irish law, which imposed a requirement for prior lawful residence before EU rights of residence could accrue to an otherwise unlawfully present person on marriage to a national of Member State exercising a right of free movement, was incompatible with EU law."⁸⁹ The Bar Council and the Law Society have stated that "the judgment in *Metock* reflects an orthodox and entirely foreseeable view of EU law". In addition, the Bar Council and the Law Society made the following points:

"3. Further, again contrary to some statements that have been made, the judgment explicitly notes and endorses the right of Member States to protect themselves from conferral of rights by means of fraud, including by sham marriages (by Article 35 of Directive 2004/38) – see para 75.

"4. In addition, the CJEU explicitly recognises (at paras 77-78) the limits of its power; accepting that while it has jurisdiction in relation to Treaty rules governing freedom of movement of persons, the rules do not apply to issues "which are confined in all relevant aspects within a single Member State". Thus, any anomalous inconsistency in treatment between Union citizens who operate entirely within their own country and those who have exercised the right of freedom of movement "does not therefore fall within the scope of Community law". There is no attempt to extend the jurisdiction of the Court to interfere in domestic law..."

⁸⁷ Blaise Baheten *Metock*, Hanette Eugénie Ngo Ikeng, Christian Joel Baheten, Samuel Zion Ikeng Baheten, Hencheal Ikogho, Donna Ikogho, Roland Chinedu, Marlene Babucke Chinedu, Henry Igboanusi, Roksana Batkowska v Minister for Justice, Equality and Law Reform

⁸⁸ See Bar Council of England and Wales; Law Society of England and Wales—Supplementary written evidence. See page 101: <http://www.parliament.uk/documents/lords-committees/eu-sub-com-f/Protocol36OptOut/VolofevidenceP36final220413.pdf>

⁸⁹ Annex to the Bar Council of England and Wales; Law Society of England and Wales contributed by the Immigration Law Practitioners' Association (ILPA) and the AIRE Centre (Advice on Individual Rights in Europe)—Supplementary written evidence. See page 106: <http://www.parliament.uk/documents/lords-committees/eu-sub-com-f/Protocol36OptOut/VolofevidenceP36final220413.pdf>

27. As the annex points out: "We are not aware of evidence to support the claim that marriages of convenience have increased following the Metock judgment. Directive 2004/38, article 35, permits States to take necessary and proportionate measures to prevent the abuse of rights such as by marriages of convenience."

28. We would urge the Government to base its views on proper evidence than on press reports which may well be misleading.

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

29. The Law Society has no comment on this question.

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

30. The Law Society has no comment on this question.

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

31. The Law Society has nothing to note in relation to this question.

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

32. As mentioned previously the direct effect of Article 45 TFEU means it is a powerful legal instrument. If UK citizens were to rely on a similar right in an Association type agreement that provision could be revoked at any time. Its entrenchment in the EU Treaty means that in effect Article 45 cannot be changed - a great advantage for both UK businesses seeking skilled workers they can employ without bureaucratic formality and for UK citizens seeking to better themselves by working in other Member States.

33. A genuine internal market, and in particular free movement of services, goes hand in hand with facilitating the free movement of people. If you are allowed to offer your

services or establish in a different Member State, e.g. as a lawyer, then it is only logical that you are legally entitled to reside there also. Free trade in goods would be similarly ineffective if you were unable to set up a branch or subsidiary, say a local marketing or sales department, and post somebody from HQ to that Member State for the purpose of setting up such a subsidiary/branch.

34. The Internal Market is constantly changing to adapt to challenges or exploit opportunities with the aim of promoting growth. The collective success or otherwise of these measures will impact accordingly on our national interest. With this in mind the Law Society believes that the UK government should engage positively and proactively to ensure the continuing success and further development of the Internal Market in relation to free movement of persons. To date the UK has been an important voice in Internal Market negotiations and in influencing the proposals the Commission puts forward.
35. There would be a number of consequences for the UK if access to the Internal Market was not on the basis of EU Membership. At present the UK has a strong position as one of the larger Member States which allows it to participate in and inform negotiations. Involvement in the Internal Market along the same lines as Norway or Switzerland would still require the UK to comply with the vast bulk of EU legislation including those "wider" areas of legislation which the EU considered essential for the functioning of the Internal Market. However, there would be no UK Commissioner in the European Commission and UK citizens would not be able to elect Members of the European Parliament to represent their interests. While it is true that members of the EEA have access to some informal discussions and observer status, their influence cannot approach that of full Member States which participate in all relevant meetings, have representation in the Commission and all the other institutions, vote and exercise a power of veto.
36. As noted elsewhere, the CJEU (including General Court) fulfils a key institutional function in ensuring the smooth functioning of the Internal Market and the EU as a whole. In many cases the system works well but it is not wholly without problems. The capacity of the Courts is constrained by the numbers of both judges and Advocates General who are required to deal with an increasing case load as the body of European law grows and the EU itself expands. The Society is also aware that some thought needs to be given to the qualifications and competencies required of judges and Advocates General in both the General Court and the Court of Justice in order to make those bodies efficient and practical courts.

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

37. No further sources.

For further information please contact:

██████████ (EU Policy Assistant)

T: ██████████

E: ██████████

Submission 58

BUSINESS FOR NEW EUROPE

EVIDENCE FOR REVIEW OF THE BALANCE OF COMPETENCES - INTERNAL MARKET: FREE MOVEMENT OF PERSONS

05/08/2013

1. Taken from BNE publication [Migration – Making It Work. May 2013](#)
2. Taken from the Guardian [Eastern Europeans in the UK: are they arriving in hordes?](#) July 2013 (p.15)

BNE publication Migration – Making It Work. May 2013

MIGRATION IS GOOD FOR BRITAIN

Migrants are good for the UK's economy.

Between 2004 and 2009, migrants from the new EU member states added £5bn pounds. (1)

Migrants contribute more on average than native born UK citizens. Migrants from the eight members who joined in 2004 paid 37% more in taxes than they received in services in the UK between 2004 and 2009. (2)

Highly skilled migrants fill a gap in the UK economy. More than half of UK firms with over 50 employees are frustrated by the lack of skills of native born UK workers and require skilled migrants to fill positions. (3) Engineering UK has reported a need for 600,000 trained staff by 2017. (4)

Migration makes the UK more competitive. By helping to control inflation whilst keeping wage costs competitive. (5)

MYTHS

The EU is not to blame for most immigration.

Migrants from other EU countries accounted for just 30.7% of total UK migrant inflows in 2011.

Migrants from new EU member states are not 'benefit tourists.'

Only 1% of Polish migrants claim income support compared to 4% of the native-born British population. 8% of Polish migrants live in social housing compared to 17% of native born British citizens. (7)

Migrant workers are not 'stealing jobs.' There is a negligible link of 0.02% between migrant inflows and changes in native employment rate according to NIESR. (8)

EU law does not currently give all EU citizens the unconditional right to live freely or claim benefits in the UK.

After three months, European citizens have to prove they can support themselves, are in work or are looking for work with a real chance of getting it. (9)

A EUROPEAN IMMIGRANT IN THE LAST DECADE IS TYPICALLY...

Better educated. 40% of EEA migrant women and 32% of men have higher

woman and 18% of men. (10)

Young. 70% are between the age of 20 and 35. (11)

More likely to work. Have higher labour market participation than natives (95% for

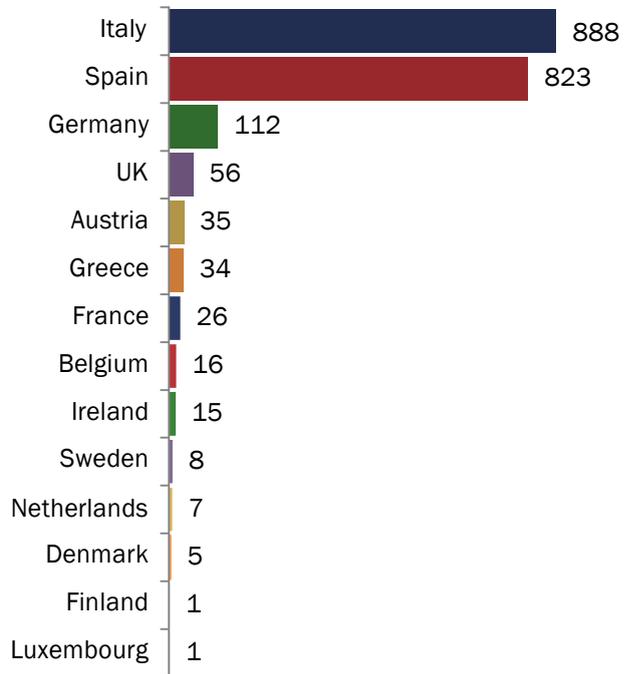
59% less likely to be in receipt of welfare benefits. (12)

Less likely to be a burden on NHS.

According to the National Institute of Economic and Social Research because

European migrants contribute 37% more to the public purse than they receive in services and are 57% less likely to live in social housing. (14) For sources see p. 18

ROMANIAN IMMIGRANT POPULATIONS (1,000's)



Source: National Institute of Economic and Social Research

BNE European Migration "Triple Lock"

1. BENEFITS AND WORK

Problem	EEA migrants can claim Job Seekers Allowance immediately on arrival.
Solution	Introduce a three month qualification period for JSA as part of the Habitual Residence Test.
Feasibility	This would have to apply to all. The vast majority of UK nationals would not be caught.

Problem	Abuse of Job Seekers Allowance by individuals unlikely to find work in reality.
Solution	Limit the period it is possible to claim JSA to six months.
Feasibility	EU law says EEA migrants must be able to support themselves, and the UK Border Agency already seeks to remove people on the basis of "economic inactivity."

Problem	It is currently possible to claim Child Benefit for children out of the country.
Solution	Call for a change in EU law to require children to be in the same country as claimants.
Feasibility	Requires change in EU law. Likely to have support in other hard-pressed member states.

Problem	Migrants are perceived to undercut locals in low-paid jobs on the black market.
Solution	Enforce minimum wage properly, with harsher fines for those that don't follow the rules.
Feasibility	This is a matter of better UK enforcement.

2. HEALTH AND HOUSING

Problem	Certain migrants can access NHS secondary care which should be charged back but isn't.
Solution	Require UK hospitals to record nationality and charge EEA secondary care to home states.
Feasibility	This is a matter of better UK enforcement.

Problem	Access to social housing is mainly based on need, giving many EEA families priority.
Solution	Seek to establish a six-month qualification period for subsidised social housing.
Feasibility	This could be implemented through government guidance to Local Authorities, but may require changes in EU law.

3. CRIME

Problem	Criminal offences committed by migrants.
Solution	Stay in any Justice and Home Affairs (JHA) opt-out measure that makes it easier to deport criminals.
Feasibility	The government has to decide whether to opt in or out of a range of European crime and security measures before 31 May 2014.

The “Triple-Lock” in detail

1. BENEFITS AND WORK

1.1 Impose a three month qualification period for JSA as part of Habitual Residence Test

The UK benefits and health system is based on residence and it is illegal to discriminate between UK and other EU/EEA nationals. Any EU/EEA national is free to come to the UK without a visa. If an EU/EEA national wants to stay longer than three months they have to show that they are one of the following:

- A worker – can claim benefits and tax credits
- Self Employed – can claim benefits and tax credits
- A student – can stay in the UK if they are self-sufficient and have private health insurance
- Self-sufficient – can stay in the UK if they are self-sufficient and have private health insurance
- A job seeker

People falling into these categories are “exercising a treaty right,” i.e. exercising their right to free movement under EU law.

A job seeker can come to the UK and claim certain benefits if they can show they are a genuine job seeker. That person has to show they are looking for work and they have a “genuine chance” of getting it. They have to register at Jobcentre Plus and sign on as being available for and seeking work and pass the “Habitual Residence Test”.

The Habitual Residence Test seeks to establish whether the person is looking to make their settled home in the UK. This test may include consideration of length and continuity of residence – this could be a few weeks, the person’s future intentions, employment prospects, reasons for coming to the UK and where the person’s “centre of interest” lies.

Once that test has been passed, the person has a right to Income-based Job Seeker’s Allowance (JSA) (which can give access to Housing Benefit and Council Tax Benefit), Child Benefit and Child Tax Credit. They are not entitled to Income Support (as they are not yet in work), income-related Employment and Support Allowance, or Pension Credit. The person also can’t claim housing or homelessness assistance from a local authority.

It would be possible to reform the Habitual Residence test by adding an element requiring an individual to have been in the country for at least three months before they can be deemed to be habitually resident.

1.2 Limit the period it is possible to claim JSA to six months

EU law says EEA migrants must be able to support themselves, and the Border Agency already seeks to remove people on the basis of “economic inactivity.” The recitals of the EU’s Free Movement Directive 2004/38/EC states that, “persons exercising their right of residence should not, however, become an

unreasonable burden on the social assistance system of the host Member State during an initial period of residence.”

Article 14 (1) of the Directive states that, “Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host Member State.”

1.3 Call for a change in EU law to require children to be in the same country as claimants.

It is currently possible to claim Child Benefit for children out of the country. This is set out in EC regulation 883/2004. Reform of this area requires a change in EU law, which is likely to have support in other member states.

1.4 Enforce minimum wage properly, with harsher fines for those that don't follow the rules.

HMRC must do more to enforce minimum wage requirements to protect British workers.

The courts are empowered to prosecute those in breach of the National Minimum Wage Act 2008. Under a ‘notice of underpayment’ the employer is currently required to repay arrears to the worker and is liable for a financial penalty of 50% of the total underpayment. The size of the penalty is a minimum of £100 with a maximum of £5,000.

Remarkably, there has not been a single prosecution for breach of the national minimum wage in the period 2011-2013. The failure to effectively regulate is evident by the fact that between 9% and 13% of direct care workers are currently paid at levels below the requirement.

Thus, it is vital that tougher penalties are enforced on British employers who have been consistently breaching the National Minimum Wage Act 2008.

If the law is not enforced effectively, there will be a continuation of illegally underpaid migrant workers that impact the lowest paid workers in the UK.

2. HEALTH & HOUSING

2.1 Require UK hospitals to record nationality and charge EEA secondary care to home states.

There are three tiers of health access. Emergency access is open to all regardless of nationality. Primary care, i.e. GP registration is likewise open to all. Secondary, i.e. hospital treatment however is not. Non-UK EU/EEA nationals that have not been in the country for more than five years should get the costs of this treatment charged back to the health service of their country of origin. At the moment this system of charging back is very poorly administered.

With these failings and costs evident; it is vital that hospitals begin to properly audit patient’s nationalities to prevent exploitation of the NHS and British taxpayer.

With the accession of Bulgaria and Romania in 2014, the NHS clearly cannot afford to subsidise the health care of other EEA members. These costs should be incurred by ‘country of origin’ within the EEA; the UK should not have to shoulder more than its fair share of the burden.

2.2 Seek to establish a six-month qualification period for subsidised social housing

The UK is suffering from a substantial and ever increasing housing shortage. With more than one-third of all new housing demands caused by immigration. It is evident that immigration levels have become a substantial element of the shortage.

Given that a housing shortage exists, it would be prudent to put measures in place to protect the interest of those currently resident and with links to specific areas.

There are currently three hurdles that individuals have to pass in order to secure social housing. First, they have to be eligible, second, they have to qualify and third, they have to have priority. EEA nationals have to have a relevant EU right to reside. If they work or are self-employed, they have to be treated the same as UK nationals. If they are self-sufficient they have to be habitually resident.

If an EEA national's only EU right to reside is as a job seeker, they do not have access to social housing.

Local Authorities have a new power since June 2012, under the Localism Act 2011, to set qualifying residency criteria as they see fit. Whether an individual or family has priority is also determined by the Local Authority and is currently generally based on need.

Many, e.g. Greenwich, have established a new residency test as part of new qualifying criteria from 2 to 5 years. Greenwich has five year period. The government could encourage others to follow suit.

A national measure that required all non-UK EEA nationals to wait six months before becoming eligible for subsidised social housing (the first hurdle), would likely require changes to EU law.

3. CRIME

3.1 Stay in any Justice and Home Affairs (JHA) opt-out measure that makes it easier to deport criminals.

Before 31 May 2014, the government has to decide whether to opt-out of about 130 crime and security measures. Some make it easier to remove EU/EEA nationals that have committed criminal offences from the UK, for example:

- The EU's Transfer of Prisoner rules (Council Framework Decision 2008/909/JHA) make it easier to deport individual's that have been sentenced to their home countries.
- The European Arrest Warrant (Council Framework Decision 2002/584/JHA) expedites the removal of non-UK nationals from the UK to other EU member states.
- EU measures to help prevent the entry of illegal immigrants into the EU (Council Framework Decision 2002/946/JHA.)
- The European Evidence Warrant (Council Framework Decision 2008/978/JHA) can be used by UK law enforcement agencies to expedite the process of gathering evidence against both UK and non-UK nationals involved in criminal activity, which in turn could lead to the more rapid removal of non-UK nationals convicted of criminal offences.
- The European Supervision Order (ESO) provides a mechanism for a person to be released on bail back to their Member State of residence and supervised there, while awaiting criminal proceedings in another Member State (Council Framework Decision 2009/829/JHA.)

What is the Situation in other EU member states?

Which EU countries impose restrictions for workers from Bulgaria and Romania?

Full Rights of Free Movement	Transition Periods end on 1 January 2014
Denmark	United Kingdom
Estonia	Belgium
Greece	Germany
Cyprus	Italy
Latvia	France
Lithuania	Ireland
Hungary	Austria
Poland	Luxembourg
Portugal	Holland
Slovenia	Malta
Slovakia	
Finland	
Sweden	
Czech Republic	

Note on Spain: Bulgarian workers enjoy full rights to free movement in Spain. Spain invoked the safeguard clause in relation to Romanian workers and re-introduced restrictions on their labour market access.

Sweden¹

You must be a resident or “domiciled” in Sweden to access healthcare². In order to be considered domiciled you must “be presumed to be intending to stay in the country for more than one year”. Everyone considered domiciled has entitlement to healthcare. There is no initial qualifying period.

Sweden’s healthcare system is organised on a regional basis, and is independent of the social insurance regime. Each county council (landsting), region or municipality (kommun), is required to ensure that everyone domiciled in their particular region has access to a high standard of health care.

The rules that govern welfare operate on a similar residence basis, i.e. one must have the intention to stay in Sweden for one year or more³.

There is no waiting or contributory period for entitlement to insurance benefits, but there are qualifying conditions attached to some. Parental and unemployment insurance are subject to conditions relating to the insurance period.

¹ European Commission, Employment, Social Affairs & Inclusion, Your rights country by country, retrieved on 15.3.2012 at <http://ec.europa.eu/social/main.jsp?catId=858&langId=en>

² Ibid.

³ Ibid.

The general social insurance regime is compulsory with all those in work required to contribute, except for the earnings-related aspect of unemployment insurance.

Germany⁴

There is a legal obligation on all German citizens to become affiliated with a state or private health insurance scheme in order to receive medical treatment – unless they are in a bracket of earners exceeding €49,950.

Before any medical treatment is received, it is necessary to present the doctor concerned with a health insurance card (Krankenversichertenkarte). It is, however, possible to receive emergency medical treatment without this card.

No qualifying period is required to receive welfare benefits. However, there is a practice whereby job seekers do not receive benefits for a three month period – if they have terminated their own employment. An unemployed individual will also be refused benefits if they fail to register with an employment office, or do not accept an offer of employment made through the employment office. This is a strict rule that could also be implemented in the UK.

France⁵

Those considered to be in employment or self-employed, and whom are resident on French territory on ‘a continuous and legal basis’, are entitled to healthcare.

Eligibility requires that those claiming must have achieved a quota for hours worked or have a certain level of contribution. Those no longer meeting the conditions can receive benefits based on their previous year’s entitlements, until they once again fulfil conditions under a compulsory scheme.

You must, when receiving treatment, present your ‘*Card Vitale*’, which will entitle you to future reimbursement of any fees paid initially by the patient.

In order to receive unemployment benefit you must produce evidence that you have been insured under the employment insurance scheme for at least 4 of the last 28 months. You must not be unemployed by choice. The period of entitlement is between 4-24 months, depending on the prior period of insurance.

⁴ Ibid.

⁵ Ibid.

The Business Case for Migration

There is a strong link between migration policy and what is good for business. A strong labour market underpins the success and growth of businesses, and depends on an immigration policy that reflects the needs of a flexible economy.

Policy-making in the field of immigration must recognise the imperative need to adapt to the constant flux of supply and demand in the labour market, at the same time as providing for the UK's economic long-term needs.

An IPPR report identified, “employers’ choices about which competitive strategies they adopt are informed by the nature of the market in question, existing workforce skills and the broader legal and institutional settings in which companies operate.”⁶

However, it is essential to recognise that the foundations created by an effective migration policy are grounded at different levels which collectively play a role in the business case for migration.

The Power of Portrayal

Discussions about whether the UK needs migrant labour are frequently clouded by considerations about the extent to which it negatively impacts the UK born workforce. For example, the debate on migrant labour tends to portray attracting high-skilled migrants as more important to a country's economy; however, the value of migrants lies more in the type of skill rather than the level. Moreover, countries that embrace open markets, from services to goods, are more likely to succeed in an increasingly globalised political economy.

The ability to recognise the opportunities made available by a more open, international society is crucial in the 21st century. In a speech⁷ hosted by Business for New Europe, Tony Blair gave an example of how, during his premiership, the US tightened its borders post-9/11. He encouraged his UK counterparts not to follow suit but keep borders open and take advantage of increased flows of people into the UK.

The government should engage with external push and pull factors as any migration policy that the UK implements will always be affected by realities largely beyond its control. Also, there are different types of migrants who will contribute to the UK economy in different ways.

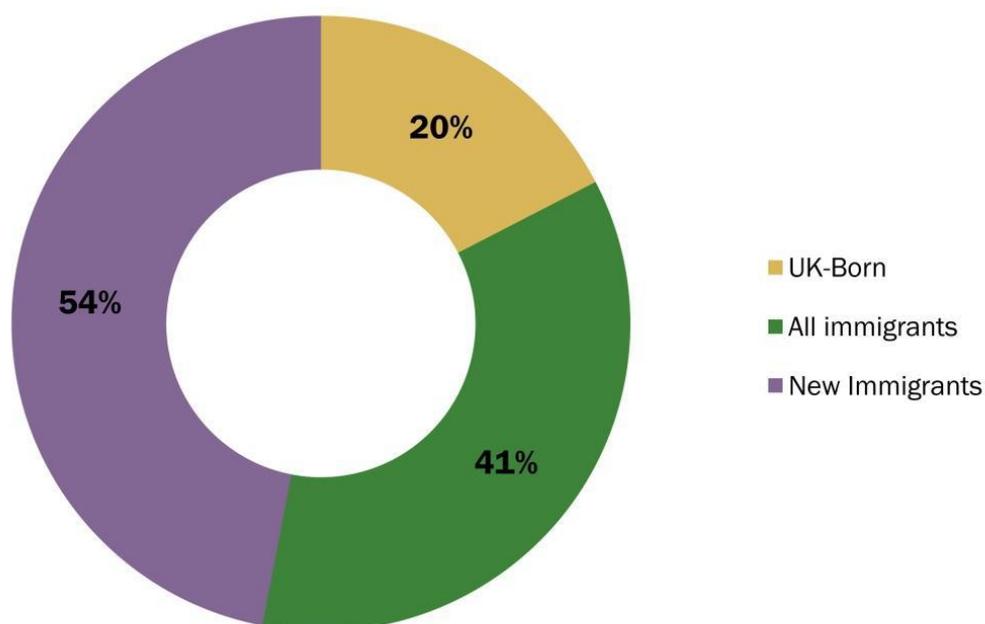
As a House of Lords report⁸ noted, “the economic impacts of immigration depend critically on the skills of immigrants.” There is demand from the business community for both high-skilled labour and low-skilled labour but arguably, the central task for legislators is identifying the type of skill required in the present and providing a framework to society that contributes to both the short term and the long-term needs of the labour market.

⁶ IPPR (2012) No train, no gain: Beyond free market and state-led skills policy. [Online]

⁷ Business for New Europe (2012) Text of Speech by The Rt Hon Tony Blair: Europe, Britain and Business - Beyond on the Crisis. [Online]

⁸ House of Lords (2008) The Economic Impact of Immigration. Volume I. [Online]

Education and Immigration Status: Age 21 and Older, 2012



Source: Immigration to the UK Labour Market, Centre for Economic Performance, 2012

It is also important to recognise the parallel relationship between economic prosperity and successful businesses alongside effectively constructed and implemented immigration policies. In particular, the link between unemployment amongst UK-born citizens and higher net migration has been proven to be very limited⁹.

Education

The UK's higher education sector is hugely important and relevant in the migration debate. The benefits to business are two-fold: firstly, it provides valuable skills to the labour market and secondly, it is a significant part of the UK economy in its own right.

As the above illustrates, the immigrant workforce tends to be better educated than the home workforce.

UK-born citizens who finished education at 21 or older make up 21% of the population compared to 41% of all immigrants and 54% of new immigrants¹⁰.

Policies have been put in place to boost national talent, such as apprenticeship training schemes, but the rewards will largely be deferred and there is demand right now for migrants to meet skills shortages. For example, a British Chamber of Commerce report demonstrated that only 28% of businesses believed that the UK workforce was as skilled as the workforce in fellow European countries and they were frustrated by the lack of skilled labour with nearly 60% of large firms employing migrants¹¹.

Skilled migrants play a significant role in making innovation happen. This is not only the case in the UK but with the UK's global competitors such as the USA, Australia and Canada. Google, Etsy, Youtube, EBay and Intel all boast an immigrant founder or co-founder; in fact, over half of high-growth firms - the largest job creators - are launched by migrant entrepreneurs.

⁹ For more information see: Lucchino, P., Rosazza-Bondibene, C. and Portes, J. (2012) Examining the relationship between immigration and unemployment using National Insurance Number registration data. NIESR, London [Online]; and Coats, D. (2008) Migration Myths: Employment, Wages and Labour Market Performance. The Work Foundation, London [Online]

¹⁰ Centre for Economic Performance (2012) Immigration to the UK Labour Market: The Latest Evidence from Economic Research. [Online]

¹¹ British Chamber of Commerce (2011) The Workforce Survey - Medium/Large Businesses. [Online]

UK migrant entrepreneurship is rising¹² with an increase of nearly 50% between 1998 and 2008. The relationship between business, the higher education sector and the UK's immigration policy is significant and this link is strongly evidenced by the OECD¹³ which recognised how many "skilled, migrant entrepreneurs do not come to the host country to start a business; they come to study."

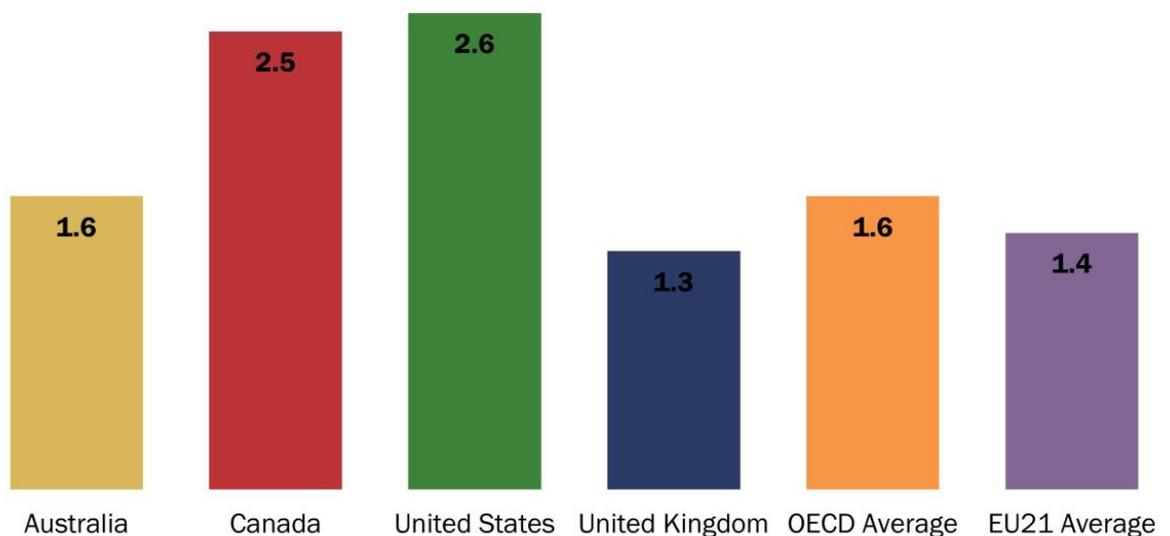
The UK is a global player in higher education. As a services export it is the UK's fifth largest, worth nearly 10% of the total exports in services. Analysis from the Higher Education Funding Council for England (HEFCE) showed that the total value of services provided to the UK is on the increase with a 7% annual rise, going from £3.1bn in 2009-10 to £3.3bn in 2010-11¹⁴.

The main benefit of international students coming to study at British universities is their positive impact on public finances by helping offset government costs. The OECD's "Education at a Glance" report (2012) showed UK public spending on higher education is 1.3% which, as demonstrated in the chart below, is lower than the OECD average (1.6%) and the EU 21 average (1.4%).

Private investment is now higher than public investment whilst at the same time, the spending per student rose over 70% between 2000-2008 in the UK higher education sector¹⁵. There are sectors where sustainable private investment is an asset and the factors which lead to its existence must be understood, especially when there is considerable pressure on public finances.

As the Mayor of London Boris Johnson said on a trip to India in November 2012, "it's very important for our higher education economy that you have foreign students who contribute £2.5 billion a year in fees ... that helps to subsidise the rest of the university sector."¹⁶

Percentage proportion of GDP investment in higher education, 2009



Source: Education at a Glance 2012, OECD, 2012

The UK boasts one of the "most advanced student support systems" in the world, according to the OECD's Deputy Director for Education. This mechanism encourages migrants and UK born citizens alike to contribute to the growth of the UK's knowledge economy with limited pressure on the public purse. The reason for this is the economic value brought in by overseas students annually; there were nearly 430,000 international students in the UK in 2010-2011 alone.

¹² OECD <http://www.slideshare.net/EESCsocsection/mr-mestres-oced>

¹³ OECD (2010) Entrepreneurship and Migrants. [Online]

¹⁴ HEFCE (2012) UK universities contribute to economic growth. [Online]

¹⁵ Morgan, J. (2012) English tuition fee regime gets thumbs up on mobility. [Online] Times Higher Education.

¹⁶ Boris Johnson calls on easing foreign students restrictions [Online]

Considering the UK education system was recently praised by the OECD for this support structure and the likelihood of valuable migrants contributing their skills and knowledge after their studies, the business perspective on the relationship between the higher education system and international students is clear.

The UK and the Global Battle for Talent

Non-EEA students, classed as Tier 4 in the UK visa system, make up the largest group of migrants in the UK. However the government is seeking to reduce net migration rates from “the hundreds of thousands to tens of thousands” by 2015 and to achieve this - or at least, narrow the gap - students are substantially affected by the government’s immigration cap and current developments across the sector are not encouraging to potential migrants considering coming to the UK for the purpose of study.

Firstly, in comparison to other types of migrants, such as asylum seekers and EU workers, higher education students from outside the EEA are, unfortunately, an easier group to target because existing legislation limits the government’s room for manoeuvre for other migrant groups.

The immigration cap also included overseas students who were in the UK for at least a year and major reforms to the student visa system were also extended to post-study; non-EEA graduates are no longer allowed to extend their visa to work unless they have secured a job that pays over £20,000 per annum.

Secondly, there is a risk of reputational damage for the UK. International students that would be otherwise drawn to the UK are already looking for alternatives in America or Australia. Whilst the UK remains a strong player in the global battle for talent, its reputation is suffering.

The issue of perception is of further concern with the government’s insistence on continuing to pursue a major reduction in net migration over the next two years and the well-trailed knowledge of institutional budget cutbacks in the UK. Against this backdrop, the decision in August 2012 made by the UK Border Agency (UKBA) to revoke London Metropolitan University’s visa sponsorship license for overseas students caused considerable concern.

The revocation was based on the UKBA asserting that problems were found with 61% of randomly select files during auditing at London Metropolitan. The decision was controversial because with just a few weeks until the new academic year, more than 2,000 international students at the university had sixty days to find a new course elsewhere or face deportation.

Days before the new academic year began the High Court granted a temporary reprieve to the university for these students¹⁷. The reputational damage, both directly and indirectly, was already done. The 1,385 remaining students were given the option of continuing their studies at London Metropolitan University but over 55% chose another university or abandoned their UK studies, according to The Guardian¹⁸.

Concern that fraudulent educational institutions exist for the sole purpose of providing visas to third country economic migrants is genuine and raises serious questions about the effectiveness of enforcement in this area.

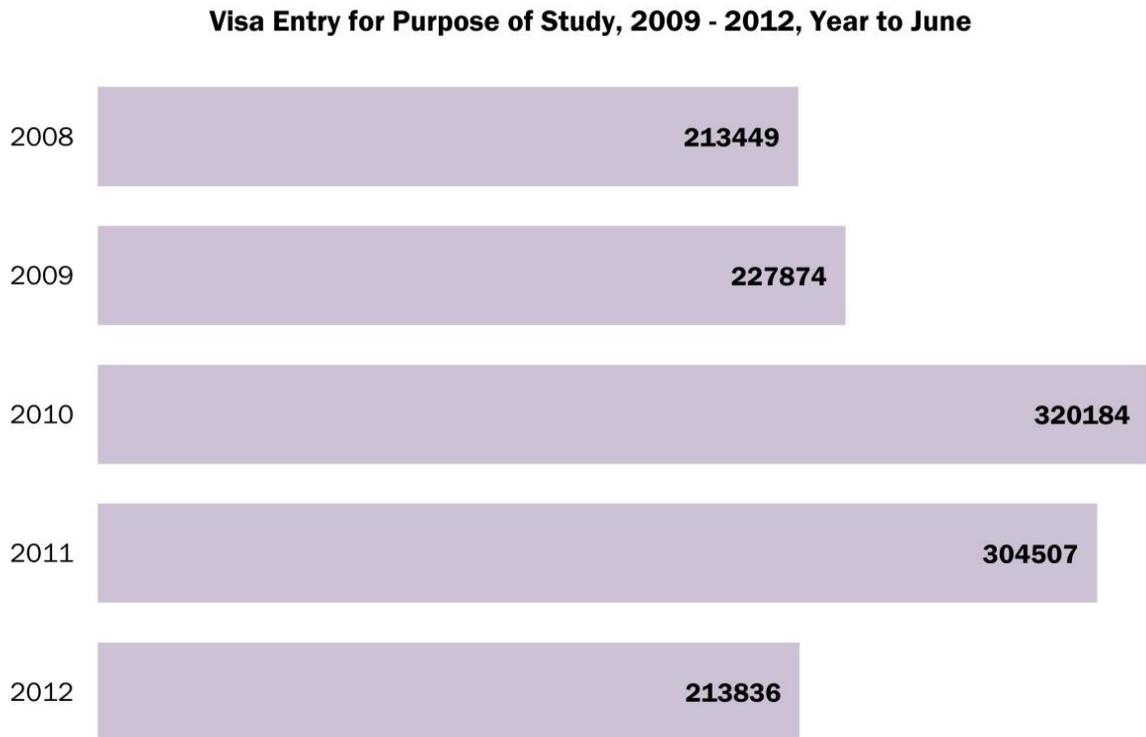
On his visit to India, Boris Johnson also voiced concern about the impact of the London Metropolitan visa revocation¹⁹. Recognising the wider value of migrants to the economy, Johnson noted how this case contributed to a more negative impression of the UK as a place to study for overseas students and said, “we need to see a strong statement of welcome to make sure the visa system is not a deterrent to international students.”

¹⁷ The temporary reprieve granted by high court judges nearly a month later on 21 September 2012 allowed for overseas students with full immigration status to remain at the university until the end of the academic year or the end of their course depending on which came sooner.

¹⁸ Ratcliffe, R. (2012) London Metropolitan University loses half of its international students. [Online]

¹⁹ Telegraph (2012) Video. Boris Johnson in India: London mayor calls for easing foreign student visa restrictions [Online]

In view of all this, it is perhaps unsurprising that statistics show that in the year to June 2012 there was a 30% decline in student visas²⁰. This is of further significance - and indeed further concern from a business perspective - when understood against the backdrop of the previous five years where student immigration steadily increased, peaking in 2010. It swiftly dropped over the following two years and this decline is set to continue according to provisional statistics²¹ from the ONS.



Source: Home Office, 2012

Sources

- [EEA nationals: the 'right to reside' requirement for benefits. Commons Library Standard Note, December 2011](#)
- [The Habitual Residence Test - Commons Library Standard Note, May 2011](#)
- [A survey of the UK benefit system. Institute for Fiscal Studies, November 2012](#)
- [HMRC webpage on Migrant workers: partner and children not in the UK](#) - retrieved on 13 February 2013. See also [HMRC page](#) on "complex cases" where children, children/partner being claimed for are living in another EEA country.

Sources for Why Migration is Good for Britain (p5)

²⁰ These statistics exclude visitor and transit visas; Home Office (2012) Immigration Statistics April - June 2012 Third Edition. [Online]

²¹ Office of National Statistics (2012) Statistical bulletin: Migration Statistics Quarterly Report November 2012 [Online]

1. [NIESR report](#), May 2011
2. Centre for Research and Analysis of Migration (CReAM), [UCL report , 2009, Dustmann and Frattini](#)
3. British Chamber of Commerce [Workforce Survey](#)
4. Engineering UK [research](#)
5. Office for National Statistics Quarterly Report ([February 2013](#))
6. The Migration Observatory, Oxford University, [Long Term International Migration Flows to and from the UK](#) , Jan 2013
7. IPPR Report, [Britain's Immigrants. An Economic Profile](#) , 2007
8. NIESR [Discussion paper, no 386, Jan 2012](#)
9. [EU Commission](#), Free movement and migration within the EU and rights to claim benefits – getting the facts right
10. Institute for Fiscal Studies, Dustmann and Frattini paper, vol. 31, no. 1, [Assessing the Fiscal Costs and Benefits of A8 Migration to the UK](#) pp. 1-41,
11. Ibid
12. NIESR Paper, Potential [impacts on the UK of future migration from Bulgaria and Romania](#), p.33
13. Ibid, [Dustmann and Frattini](#), pp 1-41

1. Migrants leave as well as stay

The think tank's claim that 1.5 million migrants have arrived here only works because they focused on what's known as the 'inflow' (which they conveniently rounded up from 1.32 million). If they would have also looked at 'outflow' statistics they would have noticed that 644,000 people who were born in the EU left the UK between 2004 and 2011.

The number of people leaving the UK has risen by 43% since 1997 to 332,000 in 2011. If immigrants can not find work in Britain, they do not necessarily become immediate 'benefit scroungers'. [A DWP study in 2012 concluded that](#) most claimants have worked in the past and want to do so in the future - if necessary, [migrants will leave the UK](#) to do so.

2. Migrants to Britain are not just coming from Eastern Europe, or from EU countries

The choice to focus on Eastern European migrants plays to common assumptions that aren't based on fact. In 2011, 168,000 long-term migrants arrived in the UK from the EU - but 329,000 arrived from outside of the EU. That's not a new trend - since 1975 non-EU migrants have far outnumbered EU migrants every single year.

Countries like Romania and Bulgaria are often quoted as the countries that will open the floodgates - despite a [Home Office commissioned study](#) that predicted 5,000-13,000 nationals would arrive from EU's new member states per year after EU enlargement.

When policy makers are discussing the 'strain' on services, what matters however is not immigration but net [migration](#) - the difference between the 'inflow' and the 'outflow' mentioned above. There too, the number of net migrants are consistently higher outside of the EU than inside it.

3. EU migrants are less likely to claim benefits

Of the [5.7 million adults](#) in the UK that claim benefits from the Department for Work and Pensions, 371,000 of them were born elsewhere - and of those, just 62,000 were from the EU.

So 16.6% of British nationals of working age are claiming support from the state - compared to 6.6% of working age adults born elsewhere.

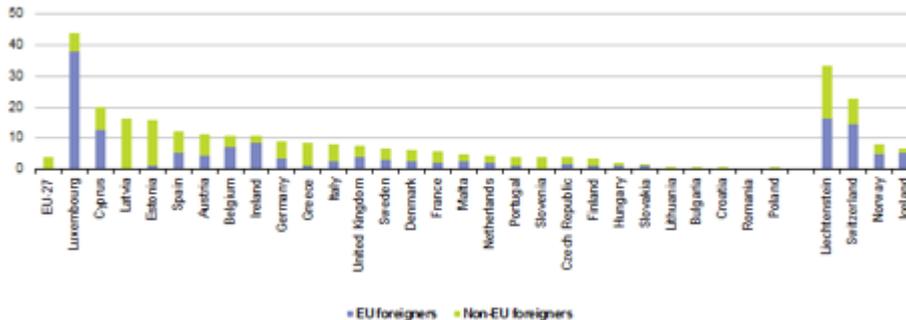
A [study](#) that investigated trends in 18 European countries from 1999 to 2007 backs this up. It found that "rates of people receiving benefits are statistically higher for non-EU migrants in just seven countries [none of which were the UK] and in none of them if only unemployment benefit is taken into account." As a % of GDP, we spent the 3rd lowest amount of all the countries on benefits for immigrants.

4. As a proportion of our population, the UK takes in less than 11 other EU countries

How do we [compare to our EU counterparts](#)? It's true that looking at immigrant numbers, in 2011, the UK took in more people than anywhere else (566,044), followed by Germany (489,422), Spain (457,649) and Italy (385,793).

But the UK also reported the second highest number of emigrants with 350,703 behind Spain which saw 507,742 leave.

In absolute terms, the largest numbers of foreigners living in the EU were found in Germany (7.4m) and Spain (5.5 million) - the UK had the same number as Italy in January 2012 with 4.8 million foreigners in the country. But once you take into consideration the size of the our resident population, the picture looks very different.

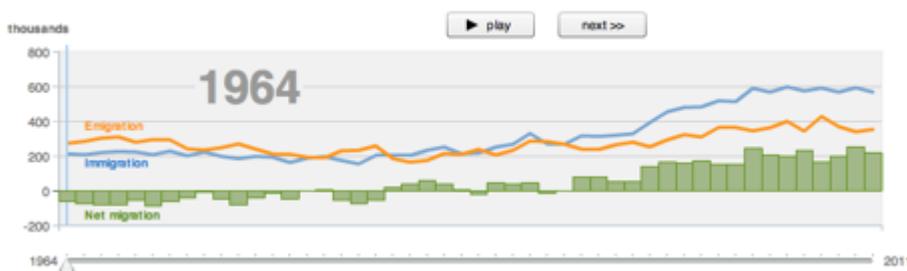


5. We only have UK data going back as far as 1964
Some might argue European history is a little longer. Anyway.

The [Office for National Statistics](#) use something called the [International Passenger Survey](#) to understand what really matters in these debates - long-term international migration.

What is true is that the ONS interactive *does* show that immigration has started to outpace emigration - meaning that net migration has risen since 1997 (not 2004).

Long-term Migration into and out of the United Kingdom, 1964 - 2011



6. Demos' certainty about the figures is not easy to justify
A committee of MPs published a [report](#) this week claiming that official migration statistics are "[not fit for purpose](#)". The report said that the government was at risk of creating "inappropriate" immigration policy if it based its target level of net migration on such uncertain statistics. If officials don't know what is going on, we should be careful about leaping to firm conclusions.

While it's true that there are large numbers of people arriving to the UK each year, without understanding how they compare to our population size, how many of them subsequently leave and how many rely on our benefits system, quoting numbers without the correct context does more harm than good.

Submission 59

TheCityUK

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

Trade and Investment

TheCityUK's response to the Government Review is appended. Further contributions will be made to future consultations, including the "Services" and "Capital" aspects of the Internal Market. Six themes arise from the current consultation and are worth highlighting:

1 Trade and investment policies and negotiations have tangible commercial value and are vital for business:

- They are core instruments for improving the EU's balance of advantage in global trade;
- They are vital links to global growth (90 % of which will come from outside EU over next 10-15 years);
- Policy success/failure is crucial to the EU's scope for engaging in the global economy on optimum terms.

2 UK financial and professional services stand to benefit from EU trade & investment policy:

- UK financial services exports account for more than half the surplus of all UK net exporting industries;
- The UK is unique in the EU in the scale of financial services in its international trade;
- 66% of the UK's trade surplus in financial services arises from extra-EU business;
- The UK attracts more FDI than any other EU member-state, and financial services attracts more FDI than any other sector;
- The EU as a whole is the world's largest net financial services exporter (with extra-EU exports of €59 billion).

3 The EU's Common Commercial Policy has been a success story for the UK:

- Trade partners want access to the entire EU Single Market: negotiating as a bloc gives the EU added power;
- The UK has successfully influenced EU trade policy's open markets objectives;
- The UK is no longer equipped to conduct its own trade negotiations, and would need to rebuild and re-skill resources before it could do so.

4 The UK's comparative and competitive advantage in financial and professional services is being enhanced through EU trade and investment policy objectives:

- The prospects are currently far better than through the UK's WTO membership alone;
- Multilateral agreements negotiated by the EU – including all the WTO Agreements – have secured gains for financial and professional services over two decades;
- A new generation of bilateral EU trade agreements is leading to new opportunities for UK financial and professional services in key Asian markets (e.g. South Korea, Singapore);
- Agreements under negotiation with the US, Canada and Japan will extend the gains.

5 Future policy will be successful, if it focuses on:

- A liberalising trade and investment policy, calibrated to enhancing jobs and growth;
- Capturing further market access and non-discrimination in new, high-growth markets;
- Working with the grain of “the new trade narrative” – the importance of global supply chains and value chains, and the role of financial and professional services within them;
- Maintaining policy “coherence” - domestically and world-wide - to align EU regulatory and trade policy practice to secure open market objectives seamlessly;
- Avoiding extraterritorial legal approaches that have the potential to damage relations with trading partners;
- Keeping Europe open to global opportunities and growth, given that 90% of global growth now takes place outside the EU.

6 Conclusion

- Maintenance of UK membership of the EU is a critical factor in the continued ability of the UK financial and professional services to generate foreign exchange earnings;
- Withdrawal from the EU would not only throw the UK's trade relations with the rest of the Single Market into doubt, but would also lead to the loss of trade and investment benefits in current EU trade agreements with third markets.

TheCityUK

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

Trade and Investment

Detailed Submission

This submission takes in turn the questions in the Call for Evidence. After offering some general comment on the issues it aims at responding to each question (to the extent relevant to TheCityUK and its member-businesses). It also aims to develop each question, where appropriate, to bring out further points that TheCityUK considers important.

This submission reflects the views of TheCityUK's Liberalisation of Trade in Services (LOTIS) Committee, whose membership covers all areas of UK financial and related professional services.⁹⁰

Background

Trade and investment policies and negotiations have tangible commercial value - vital for business. They are core instruments for improving the EU's competitive advantages in global trade by gaining new markets, opportunities and access. Trade and investment policies have make-or-break qualities based on whether they are effective, are sustainable over the long term, prosper business and contribute to growth and wealth-creation. Misdirected policies on the other hand can stunt overseas market opportunities for business and impede competitiveness and domestic structural change. . As the Commission has regularly emphasised, well-applied trade policies are low-cost in terms of the benefits they bring - they provide an "important means of achieving much needed growth and creating jobs without drawing on public finances"⁹¹.

Trade Policy (although not investment policy) has always been a European "common policy". That is to say, in EU terminology, it has been established under the Treaties (from the Treaty of Rome (1958) onward) as the Common Commercial Policy (CCP). Although the policy has evolved and some areas of competence have been extended, this means that the key concepts and features of the CCP in its present form, and most of how it is managed, have been in place since the UK's accession (and indeed since the EU's inception): for all practical purposes, the Community negotiates on behalf of the member-states; and the Commission is the negotiator. Where there have been changes, these have tended to be institutional (e.g. qualified majority voting, or the

⁹⁰ See www.thecityuk.com for a list of LOTIS Committee members

⁹¹ "Trade: a key source of growth and jobs for the EU" Commission contribution to the European Council of 7-8 February 2013

increased influence of the European Parliament) or changes in policy scope (e.g. the inclusion of services and investment as matters of EU competence).

Because it is coeval with the origins of the European Communities (EC) some sixty years ago, **the CCP dates back to a different era** when:

- the EC was smaller, more homogenous and more globally competitive than the EU is now;
- the EC's interest was much more in trade in goods than in services;
- it was more possible than nowadays to treat a country's merchandise exports as finished products largely or wholly originating in that country rather than "made in everywhere";
- the GATT (predecessor to the WTO) was concerned with trade in goods (excluding agriculture) not with services;
- trade negotiations mainly took the form of multilateral tariff "rounds";
- trade between advanced OECD countries took place against a background of fixed exchange rates;
- trade was less globalised (with less developed complex supply chains) and less in the hands of the recent breed of global companies;
- Asian "tigers" and other high-growth new economies (except for Japan) had yet to emerge;
- information technology (now accounting for significant flows of overseas business as virtual exchanges) was in its infancy; and
- the distinction between forms of trade confined to cross-border transfers and those requiring local direct investment overseas investment was far clearer than today (investment then being outside the CCP).

It also dates back to an era before the accumulation of huge global imbalances and other economic disequilibria, when trade policy was more easily isolated as a specialism and did not need to be as fully integrated as now into wider issues of economic governance at national, regional and global level.

These historic origins have led to certain **key questions affecting services** receiving attention from the EU's – and indeed other trade partners' - policymakers only relatively recently:

- Trade in Services: this was not trade policy subject-matter in the early days of the CCP, and is still subject to difficulties in formulating evidence-based policies that do not apply to goods (such as "servicification"⁹², problems in measuring services trade flows, and compiling EU statistics);
- "Services Trade Restrictiveness": there is an increasing recognition of the importance of analysing the degree of restrictiveness of different countries' barriers

⁹² See "Everybody is in Services – The Impact of Servicification in Manufacturing on Trade and Trade Policy" (Swedish National Board of Trade, November 2012)

to trade in services, so as to develop more reliable methodologies for comparing their effects and their implications both domestically and for trade partners;

- Complex supply chains in global trade: developments in this area affect both goods and services, and account for the existence of supply chains in which both are tightly interlinked;
- Trade in value added: Global value chains (GVCs) have become a dominant feature of today's global economy. As OECD research demonstrates⁹³, processes of international fragmentation - driven by technological progress, costs, access to resources and markets, and trade policy reforms - challenge conventional wisdom on recording gross flows of goods and services each and every time they cross borders, and therefore on how trade flows should be evaluated and interpreted.

This mix of questions – sometimes collectively called the “new trade narrative” - has a significant bearing on trade in services in general and in financial and professional services in particular. Unless and until the role of services trade (and restrictions on it) can be measured and evaluated, both as regards general trade flows and within complex supply chains and value chains, there is a risk of trading interests being misinterpreted, leading to misguided policy decisions being taken. **The right approach to these questions is integral to the exercise of EU competence for trade in services.**

The same historic origins have been reflected in the sorts of **competence issues** that have arisen. The long-standing and well-established nature of the CCP means that trade has tended to be a much less contentious area than many other fields of EU policy. This is not to say that there are no arguments over policy (e.g. open trade versus protectionism) or competence (e.g. allegations of “competence creep”). There have been cases in which competence was seen as divided (this applied to services throughout the GATT Uruguay Round, and to negotiations on financial services leading to the Fifth Protocol to the GATS (1998)), or as capable of accretion (in line with the AETR⁹⁴ principle that powers which, at the outset, have not been conferred exclusively upon the EU may become so progressively through the exercise of those powers by the Community), or as subject to change by ECJ ruling (this affected trade in services under certain GATS “Modes” in ECJ Case 1/94).

Competence questions about the CCP looks set to continue, particularly as regards the interpretation of negotiating outcomes. Given the wide range of matters covered in any EU trade agreement, and the volume, complexity and frequency of change of EC legislation, it is difficult, in any given case, to know whether a specific matter falls within the exclusive or mixed competence of the Community. Virtually no EU trade agreement can be taken as falling entirely within EU competence⁹⁵

⁹³ OECD-WTO Database on Trade in Value-Added (OECD and WTO websites)

⁹⁴ The AETR (Accord Européen sur les Transports Routiers) AETR, Case 22/70 (31 March 1971)

⁹⁵ See Alastair Sutton “EC Competence in External Economic Relations” (White & Case, 2006)

Taken together, all these factors need to be seen as a running theme in any examination of EU competence in trade and investment. **Do the policies and their institutional framework, originally devised so long ago, still meet the needs for which they were designed in the post-War era? Do they enable the EU to pursue trade policies optimally calibrated to the EU's present comparative and competitive advantage in the global economy?**

General Comment

The huge importance of the EU's trade policy is reflected in its importance to TheCityUK's member businesses. Its success or failure is a factor in the EU's scope for engagement in the global economy on optimum terms. In a submission to the European Council in February 2013⁹⁶ the Commission noted that "90 % of global economic growth in the next 10-15 years is expected to be generated outside Europe" and said:

"Trade has never been more important for the European Union's economy. In today's difficult economic circumstances, it has become an important means of achieving much needed growth and creating jobs without drawing on public finances. It is the conveyor belt that links Europe to the new global growth centres and is a unique source of productivity gains. The EU, which is benefitting much more from globalisation than is sometimes portrayed, is well positioned to benefit from this intensified international trade."

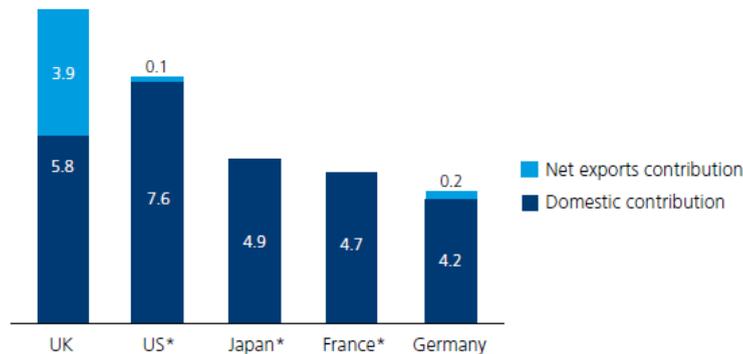
Studies support the Commission's contention that the EU is well positioned, at least for merchandise trade, and has held its share of global merchandise exports . But others point to the need for the EU's CCP to be re-orientated towards securing greater gains for EU services exports.

Within the EU – and indeed globally - the UK is unique in the role of financial services in its international trade. UK financial services exports account for more than half the surplus of all UK net exporting industries. The following chart offers a comparison with other major OECD economies:

⁹⁶ "Trade: a key source of growth and jobs for the EU" Commission contribution to the European Council of 7-8 February 2013

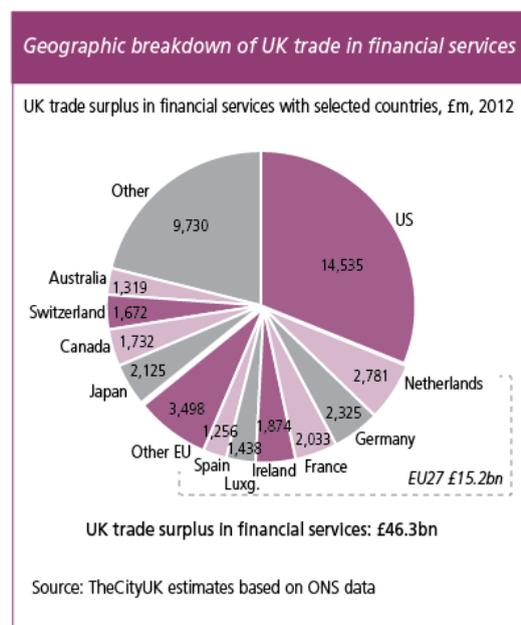
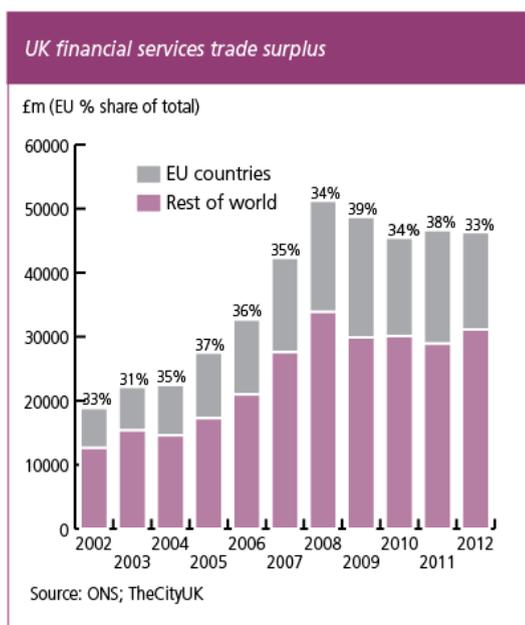
FINANCIAL SERVICES CONTRIBUTION TO GDP IN ADVANCED ECONOMIES

% share of GDP, 2011



*Contribution of financial services net exports to GDP is negligible
Source: National statistical organisations in each country

Below these headline figures, the UK's more detailed position is as follows:



The EU as a whole is also the world's largest net exporter of financial services, with extra-EU exports of €59 billion,⁹⁷ and a world leader in stock of FDI. For all these reasons, it is essential that UK's comparative and competitive advantages in financial and professional services are fully reflected in EU trade and investment policy objectives; and, in TheCityUK's view, no trade or investment agreement should be concluded without these interests being addressed fully and satisfactorily.

Against this background, **the EU needs to deploy trade and investment policies that are well calibrated to UK financial and professional services interests.** To be effective for these sectors, the policies will need to cater for traditional objectives in

⁹⁷ "Key Facts about EU Financial and Professional Services" (TheCityUK, August 2013)

market access and national treatment. For services, they will also need to reflect the following:

- Clear political will to open the EU to international competition: without this, the power of the EU's trade and investment policy stance will inevitably be reduced;
- A coherent approach to investment and investment protection (both pre- and post-establishment). This is far more important for trade in services than for merchandise trade; but it also relates to merchandise trade particularly taking into account the need for satisfactory conditions for FDI affecting both goods and services business in complex supply chains;
- A clear approach to regulatory issues, including both prudential regulatory questions and "21st Century Issues" such as data-protection and data transfer (on which the EU's domestic stance needs to be consistent with concessions sought from trading partners);
- A clearer approach than hitherto to the question of EU legislation extending extraterritorially to EU foreign direct investments overseas (the present random approach can gratuitously disadvantage EU-owned operations in third countries).

Specific Questions

1. ***What are the advantages and disadvantages of the EU's competence over trade and investment, particularly in relation to international trade and investment negotiations?***

When answering this question you may wish to consider:

- *the impact of acting as part of a bloc on the UK's global influence;*
- *the EU's capacity to deliver trade and investment policy effectively (e.g. its effectiveness in trade negotiations, including whether this varies across different regions);*
- *the resource implications of having competence at the EU level;*
- *the extent to which EU trade and investment policy offers benefits to the UK that go beyond those offered by WTO membership;*
- *the EU's priorities for trade and investment negotiations, for example in terms of negotiating partners and offensive and defensive interests (e.g. in market access), and the extent to which these align with UK priorities;*
- *the extent to which the UK's approach to trade policy is amplified or reduced by working through the EU (e.g. whether the UK, as a free trade advocate, succeeds in making EU trade and investment policy less protectionist);*
- *the extent to which EU trade policy has a trade facilitating or trade diverting effect for the UK.*

The EU's CCP has been a success story. As a highly advanced regional economic integration organisation (REIO), the EU combines a customs union with a common external tariff (CET) and common arrangements for imports from third countries. These features inexorably led the founding treaty-makers to favour a unified commercial policy, and a single negotiator representing all member-states, for negotiating terms of access to the customs union and changes in the CET –

arrangements that are now institutionalised under the Treaty on the Functioning of the European Union (TFEU)'s CCP provisions (within which investment generally now falls, following the Treaty of Lisbon). It is difficult to see how, for trade in goods, there could ever have been an alternative to this original approach. And it has worked to the member-states' advantage: given a unified Single Market, the EU as a whole carries the most negotiating weight, and can generally secure the best negotiating result, if it negotiates tough-mindedly *en bloc* from the strong position of being able to offer trading partners access to the entire EU market.

As regards services and investment, the arguments are generally similar, but with modifications. For services, the EU's Single Market is, overall, less harmonised than for goods. However, for financial services, a high degree of harmonisation is in operation (with provision for providers supervised in one member-state to "passport" to others), and access is valued, and sought, by third countries seeking new markets for their financial services. As for investment, the EU's position is still largely untried. It was agreed in the Treaty of Lisbon that investment would form part of the CCP. However, although a more coherent policy on investment is gradually being brought about (e.g. in mandates for negotiating on investment with the US (in the EU-US trade & Investment Partnership) and with China (in a free-standing EU-China Investment Agreement), the EU's investment policy has still to be completely worked out, and there is little experience, so far, of the EU's policy in practice; indeed member-states are still permitted, in certain instances, to negotiate their own bilateral investment treaties (BITs) or Investment Promotion and Protection Agreements (IPPAs) with third countries.

The impact of acting as part of a bloc on the UK's global influence

An assessment is not straightforward, not least because the counter-factual (pre-UK accession) is now so long ago. For financial services, however, the position is more defined. The UK's EU membership is integral to UK financial services. The forty years since UK accession have seen London's renewed pre-eminence as a global financial centre and huge progress in the development of the Single Market. Global financial services businesses now take for granted participation in the Single Market as a key factor in the continuing attractiveness of the UK as a destination for investment and as a base for undertaking financial services business, including euro business. As a result, the EU is the biggest individual market for UK exports of financial services. For the UK, acting as part of the EU bloc has twin impacts: first, through hosting the EU's financial centre, the UK is a global magnet for inward investment; secondly, through being the key channel for financial services trade with its EU hinterland (about 33% of the UK's total trade surplus in financial services (2012) came from trade with other member-states, compared with 31% from the US) the UK gains market influence and spokesmanship status as the pre-eminent EU member-state for financial services.

The EU's capacity to deliver trade and investment policy effectively (e.g. its effectiveness in trade negotiations, including whether this varies across different regions)

The EU's negotiating capacity and effectiveness varies (as with any entity conducting negotiations) depending on context and circumstances. It is not yet possible to make judgements on investment negotiations. But for services (the key concern for TheCityUK's members) various important factors can be in play, such as:

- “Soft” versus “hard” power: the EU’s strength is in “soft” rather than “hard” power: unlike the US, the EU usually cannot deploy “hard power” (e.g. in the defence or wider geopolitical fields) to secure trade policy results. This may partially account for the apparent phenomenon that EU FTAs contain more non-enforceable provisions than their US counterparts, on regulatory issues falling outside the WTO Agreements⁹⁸. While “soft power” may make the EU appear a weaker negotiator, it can also demonstrate negotiating sensitivity and garner respect: the EU stance on the need to cater for the ultimate multilateralisation of the Trade in Services Agreement (TISA) is an example;
- Negotiating sensitivities: all trade negotiators have to cater for domestic sensitivities. But the EU may be exceptional – particularly on services - in the degree to which these are made explicit in advance in negotiating mandates. The debate over the “cultural exception” in the TTIP mandate was only the most recent example: there have been other instances where certain member-states’ domestic policy conceptions of “public sector” services (e.g. educational services or social security provision) have tended to restrict the services fields in which the EU is ready to negotiate. This is not to say that such sensitivities are invalid; but they need to be carefully managed if the EU is not to forfeit the chance of securing negotiating gains for services sectors in which certain member-states may be highly competitive;
- Objective-setting: the EU has enjoyed some significant negotiating successes in cases where the US has already beaten a path: in the EU-South Korea and EU-Singapore FTA negotiations the EU objectives – for financial and professional services, at any rate - were very largely set in terms of securing “parity” with existing US FTAs; and it will be important for the EU to negotiate equally effectively under the “Global Europe” programme in cases where there is no pre-set “parity” objective.

That said, taking a longer view, there have been instances where the EU’s capacity to deliver trade policy in services can be truly classed as visionary, as in the Community’s tenacity in sustaining the GATS negotiations on financial services through to their final conclusion as the Fifth Protocol to the GATS (1998).

The resource implications of having competence at the EU level

For the EU’s member-states taken together, there must be an overall economy of scale in trade policy being an EU competence: member-states do not have to conduct individual trade negotiations with third countries, do not need to maintain the skills and resources to do so, and can – and do - rely on the Commission as the principal framer of trade policy and source of expertise on the WTO Agreements as the basis of the global rules-based system. When the UK joined the Community, it was still a major player in international trade negotiations conducted in the GATT. UK trade officials had technical expertise matching that of any other GATT member. With the transfer of competence those special skills have inevitably eroded. The UK no longer needs to maintain, let alone duplicate, the range of trade policy skills required by the Commission. It would not be equipped to undertake and manage its own trade policy.

⁹⁸ See Horn, Mavroidis and Sapir: “Beyond the WTO? An anatomy of EU and US preferential trade agreements” (Bruegel Blueprint 7, 2009)

There would need to be significant re-skilling and upgrading of capacity if the UK were, after four decades, to return to conducting trade negotiations.

That said, the EU framework creates its own demands on the resources of member-states and of their business sectors. For member-state governments, this reflects the need to decide on a negotiating mandate to guide the Commission; it also reflects the ongoing requirement to monitor (and ultimately approve) the progress and outcome of any EU negotiation. For business, it reflects the elongated line of communication between economic actors (in whose interest trade negotiations are undertaken) and the EU trade negotiators. For the UK, and for financial and professional services, these demands can be as follows:

- Government resources: for a member-state such as the UK, with (say) financial and professional services interests perhaps greater than those of any other member-state, substantial government resources are needed to gather evidence on the nature of UK interests in any particular negotiation, to ensure (e.g. via the EU Trade Policy Committee, the Committee of Permanent Representatives and the Council) that these interests are catered for by EU trade negotiators, and to keep domestic interests abreast of the progress of negotiations. The UK government might be able to economise slightly on these resources if there were an established EU system allowing cleared business representatives to have access to texts of proposals and negotiating documents (which, as in the United States⁹⁹, could be done while protecting the need for non-disclosure during negotiations);
- Private sector resources: these mirror government resources, particularly as regards the long line of communication between business interests and EU negotiators. Specific interests are co-ordinated at national sectoral level, national cross-sectoral level (e.g. TheCityUK's Liberalisation of Trade in Services (LOTIS) Committee, EU level (via EU "umbrella" organisations, notably the European Services Forum) and – sometimes – international level (e.g. the Global Services Coalition). The resultant system works reasonably well, but can suffer from poor co-ordination, lack of the right strategic alliances between businesses in different member-states or – contrariwise - lead to duplication of effort and "over-lobbying".¹⁰⁰

All in all, there must be a saving in UK government resources. The private sector, on the other hand, faces a need for more, and better-deployed, resources if it is to track and influence a multiplicity of trade negotiations (often on a basis of incomplete knowledge). That said, the private sector would be likely to have to deploy such resources whatever the negotiating system: in today's globalised world, the need to follow and influence developments on a global scale is paramount. And, for financial services, both the government and the private sector need to recognise that the increasing interplay of trade and regulatory issues (typified in the current debate over the how far financial services will be covered in the "regulatory coherence" chapter of

⁹⁹ For information on the system operated by the USTR, see:

<http://www.ustr.gov/about-us/intergovernmental-affairs/advisory-committees>

¹⁰⁰ For a detailed study, see Malcolm Levitt: 'Getting Brussels right: "Best practice" for City firms in handling EU institutions' (Centre for the Study of Financial Innovation, 2010)

TTIP) means that enhanced levels of resources are required, irrespective of where competence lies.

The extent to which EU trade and investment policy offers benefits to the UK that go beyond those offered by WTO membership

The UK's WTO membership, by itself, means that the UK has equal legal standing with each of the WTO's other 158 members, with the same rights and obligations under the WTO rules-based system. It is difficult to compare the benefits of WTO membership with those of participation in the EU's CCP, as the CCP is only one of many attributes of EU membership, which brings with it all the other strengths and membership features of a customs union, a Single Market, and an REIO with a high degree of regulatory convergence, policed by the Commission and the ECJ. Taking trade policy alone, it has been suggested that although the EU and the US jointly accounted (2007) for no more than 40% of world GDP (at purchasing power parities) and world trade, they could be viewed as the "regulators of the world", on the basis of estimates that, together, they account for around 80% of the rules that regulate the functioning of world markets¹⁰¹.

For financial and professional services, it can be said that if the UK, with its special interest in these sectors, had to rely on its WTO membership alone to enforce its trade rights, it would lack the negotiating strength that it enjoys as one of the EU's 28 members. Assuming that the UK were not an EU member it would also have to conduct all its own trade negotiations, taking its place in the WTO pecking order to do so. As regards financial services, it could not be taken for granted that the WTO and the GATS would offer an automatic means for the UK to enforce a right to its current trading advantages for financial services within the Single Market: the "prudential carve-out" under the GATS Annex on Financial Services would allow EU regulators to take whatever prudential measures they deemed necessary to intervene in trade in financial services between the UK and the EU so as "to protect investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system".

What is more, the WTO is only concerned to a limited degree with regulatory issues (to the extent that they affect market access and national treatment): WTO membership would not, by itself, provide a means of approaching regulatory disputes in the way that is offered in, for instance, a number of the EU's FTAs. True, the UK would be free, outside the EU, to negotiate its own FTAs which might contain similar provisions; but this would depend on substantial diplomatic effort with (probably) reduced negotiating weight.

All in all, the WTO is very important as guarantor of the global rules-based system, and as the world's most successful treaty-based dispute settlement forum. But it is not a substitute for EU membership, and the two cannot be compared on a like-with-like basis. What is more, the WTO has its own problems: it is no longer led (as it was during the GATT Uruguay Round) by the small "Quad" group of advanced countries (among which the UK was present as an EU member), nor has it succeeded in concluding the Doha Development Agenda. A critical test for the WTO will be whether

¹⁰¹ See A Sapir: "Europe and the Global Economy" in A Sapir (ed): "Fragmented Power: Europe and the Global Economy (Bruegel, Brussels, 2007)

the upcoming Bali Ministerial can reach accord on a Trade Facilitation Agreement – a matter of some interest to TheCityUK’s members, as the resulting increase in global economic activity would carry benefits for the global financial and professional services sectors, in which the UK is a leader.

The EU’s priorities for trade and investment negotiations, for example in terms of negotiating partners and offensive and defensive interests (e.g. in market access)

The extent to which these align with UK priorities; and the extent to which the UK’s approach to trade policy is amplified or reduced by working through the EU (e.g. whether the UK, as a free trade advocate, succeeds in making EU trade and investment policy less protectionist)

TheCityUK will try to take these two aspects together, and relate them to financial and professional services. As the data cited earlier makes clear, the UK’s unique level of interest in financial and professional services makes it something of an “outlier” in discussions of EU trade policy formation. That said, EU negotiators fully acknowledge that much of the EU’s economic future will depend on trade opportunities in high value added services; and TheCityUK has not encountered difficulty – indeed, the reverse – in getting a hearing for its views among EU negotiators. It is with the European Parliament, rather than with EU negotiators, that TheCityUK and its members have had to deploy the case against protectionism and make clear the role of high value added services in the EU’s economic future. The European Parliament’s consideration of the EU-South Korea FTA in 2010 was a recent case in point: the EU automobile industry lobbied hard against the FTA, and EU financial and professional services had to make clear to MEPs the large potential benefits (far in excess of the threat to the car industry) offered by the FTA.

On balance, TheCityUK has no doubt that UK membership of the EU has brought considerable benefits in shaping a more liberal EU trade policy, which is to the advantage of UK financial and professional services and to London as an international financial centre. This reflects strong and sustained efforts by the UK and certain other like-minded member-states to make the case for open markets: in turn, these efforts require the resources outlined in answer to Question 1.

The extent to which EU trade policy has a trade facilitating or trade diverting effect for the UK

For UK financial and professional services EU trade policy, when successful in opening third country markets, has a trade creating, not a trade-distorting, effect. For trade in goods (which is more directly affected by rules of origin) and agricultural products (where trade policy reflects the sector’s much-criticised subsidy regime), there are separate debates to be had about trade-creation versus trade-distortion.

2. *What are the advantages and disadvantages of having trade and investment promotion largely at the national level? How well has this delivered on UK objectives?*

The CCP’s existence emphatically does not mean that competition between the member-states for exports and investment is inhibited: this degree of healthy

competition is as true of financial and professional services (where the UK has a unique level of interest) as of any other sector. In TheCityUK's view, it is therefore logical to keep trade and investment promotion relating to these services sectors at national level. This is particularly so given the plethora of strong UK institutions (both public and private sector) devoted to promoting this area of the UK economy. We know of no example of trade or investment promotion activity conducted at EU level that has been of benefit to our sector.

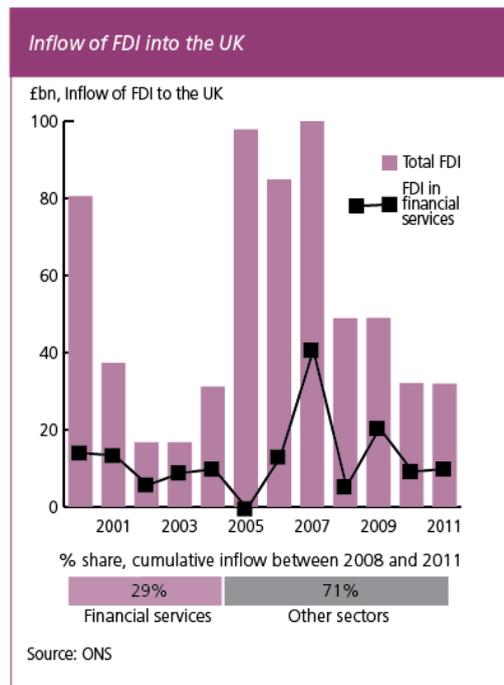
3. *What are the advantages and disadvantages of the current division of competence over export and import controls and export credits?*

On **Export and Import Controls** TheCityUK cannot offer a view based on detailed knowledge of the day-to-day operation of these controls: the controls very largely concern physical goods (often in a defence or security context) and TheCityUK's members have little direct experience of them. As regards export controls, even limited knowledge suggests that this is an area of detailed supervision which – as with much financial services supervision – needs to rely on member-states' authorities for deep knowledge of local market practice and practitioners, including knowledge of the service element (know-how and after-sales service) that goes with such exports (for import controls, see "trade defence" under Question 5).

As for **Export Credits**, these are currently co-ordinated through the machinery set up under the OECD Consensus (1976) and the OECD Arrangement (1978) on Guidelines for Officially Supported Export Credits, neither of which is comprehensive in scope. Within the EU there is coordination of EU member-states' Export Credit Agencies' policy statements and negotiation positions on long-term export credits, under Council Decisions 73/391/EEC and 76/641/EEC. In addition Regulation (EU) No. 1233/2011 requires member-states to follow the terms of the OECD Arrangement when providing export credit. The Berne Union (the International Union of Credit & Investment Insurers) has 49 members (mostly government-owned or controlled) and is linked to the Prague Club of new and maturing export credit insurers). The Union the Club combined have more than 70 member companies. TheCityUK has no reason to suggest any changes in existing arrangements.

4. *What are the likely advantages and disadvantages of moving from national to EU competence in relation to investment protection?*

For the reasons already referred to above, FDI is likely to be of growing importance to the EU and the global economy. The UK attracts more FDI than any other EU member-state, and financial services attracts more FDI than any other sector (see chart below). The EU's involvement in this policy area will therefore have significant implications for the UK, given the UK's interest in financial and professional services (where investment – both inward and outward - plays a significant role in service-delivery).



That said, the question of advantages and disadvantages for the UK is not easy to answer at this stage. Before the Lisbon Treaty, the UK national regime for IPPAs and BITs was largely orientated to the historic need to safeguard UK FDI in overseas markets against expropriation and to provide for compensation that would be adequate, effective and prompt. An updated investment protection policy – which EU member-states have yet to consider fully – will need to focus on a more rounded approach, covering not only pre- and post-establishment questions in third country markets but also the regime that the EU will be ready to apply to third country FDI into the EU market. Historically, third country FDI into the EU has come largely from OECD countries. But the rise of the BRICS (notably China and India as exporters of capital) means that EU will need to develop an investment regime that will take account of a wider spread of sources of incoming FDI. TheCityUK has noted that there are occasional references within the EU to greater use of controls on inward investment (including UK MPs’ suggestions that the Enterprise Act should be invoked on occasion). TheCityUK and its members have consistently argued for an open EU market for FDI, not least as the basis for seeking equal openness and non-discrimination from trading partners.

As long as EU investment policy continues to be at a formative stage, one point of principle will remain important for safeguarding UK business interests: overseas investments by UK business should continue to enjoy the best protection available under whatever investment agreement offers the highest standard of cover, whether an EU investment agreement, on the one hand, or a UK bilateral BIT or IPPA, on the other.

5. How well are UK objectives met and interests taken into account through a) EU trade defence investigations, and b) the EU representing the UK in

trade defence cases against the EU and more generally in trade disputes with other WTO members?

Up to now the EU's role in **Trade Defence** (as against trade dispute) activities has been almost wholly confined to investigations and measures affecting physical goods (anti-dumping measures, quotas and the like) whether imposed by the EU on imports from third countries or by third countries on EU exports. TheCityUK recognises that trade defence measures (of the kind involving physical goods) by the EU are sometimes justified. But TheCityUK notes that all such measures may be viewed as protectionist in intent (whether justifiably or not). TheCityUK's members have an overriding interest in global open markets, and consider that any such measures must be used sparingly if they are not to damage UK objectives and interests. TheCityUK also notes (from its members' interaction with their own clients in the goods economy) that all trade defence measures have two other types of effect in addition to their principal effect on foreign suppliers (whose exports are curtailed):

- Effects on intermediate consumers in the domestic market: these consumers include businesses (many of them clients of TheCityUK's member-businesses), which rely on the imports concerned and whose competitiveness is damaged by restrictions on their choice of industrial inputs;
- Effects on complex supply chains: similarly any trade measure affecting the supply of some intermediate good (and intermediate goods and materials are frequently involved) will have unpredictable (likely detrimental) effects on wider trade patterns and supply chains involving a range of goods and services, including financial and professional services.

It is not always clear whether these wider commercial effects are taken into account when the EU decides on a trade defence measure: it is essential that they are.

Over-use of trade defence measures would have wider anti-competitive effects on the EU's internal market. Like any other form of protectionist measure, they would, if over-used, have adverse effects on factor costs, affecting competition, productivity, innovation and market-openness generally. The UK cannot afford to allow this to happen in EU the internal market, which is the immediate hinterland for the UK's exporters. It will be important for UK policymakers to remain in a position to influence this aspect of the EU's external trade policy towards third countries.

Turning to **Trade Disputes** in the wider sense, some distinction should be made between the past and the future in considering how well UK objectives are met and UK interests taken into account through the EU representing the UK. In the past, trade disputes have been largely over trade in goods; and even since the General Agreement on Trade in Services (GATS, 1995) there have been few disputes (in the WTO or outside it) which have been centrally concerned with internationally tradable services. It follows that past experience relating to trade in goods (in which TheCityUK and its members have limited interest) is not necessarily a guide to the future. Suffice it to say that, in TheCityUK's observation, UK objectives and interests have generally

benefited from the EU representing the UK in trade disputes over goods in the last forty years.

6. *What future challenges/opportunities might we face on trade and investment policy and what impact might these have on the UK national interest?*

When answering this question you may wish to consider the impact of:

- *the institutional changes introduced by the Treaty of Lisbon (e.g. the increased role for the European Parliament and the creation of the European External Action Service) on EU trade and investment policy;*
- *any further internal developments in the EU (e.g. potential further integration of the Eurozone) on trade and investment policy;*
- *the increasing ambition of EU trade policies, and the implications that this might have for the UK's offensive and defensive interests;*
- *any further developments in EU law, including for example any effect of the EU's exercise of internal competence on its external competence and vice-versa.*

International trade negotiations may be entering a new era when the focus is on bilateral trade and investment agreements between countries, or between regional blocs and third countries or other regional blocs, rather than on the negotiation of multilateral agreements under the WTO's auspices. There are various possible reasons for this, including increased linkages between trade policy and wider economic regulatory and structural policies. In other words, trade policy is less amenable than previously to being conducted in isolation, and as a result trade negotiators face tricky challenges in securing acquiescence to their proposals from other parts of their own governments. These factors, plus the need to deal in greater depth with regulatory "behind-the-border" issues, all tend to militate in favour of bilateral negotiations with significant markets, rather than broader, but shallower, multilateral negotiations.

Bilateral negotiations may be less challenging in the sense of only negotiating with one country. But they may also be more difficult because of sensitivities over non-tariff barriers to trade – both inside the EU and in the third country. As regards EU sensitivities, a key question is the extent to which EU member-states will permit trade agreements to drive internal economic structural change within their own countries. If member-states cannot or will not make structural changes in such areas as services, labour markets and the role of the public sector, the EU will be inhibited from pursuing agreements with trade partners regarded as too competitive for EU domestic interests to accept as rivals. This would be damaging for the UK, which has generally tended to take a more open-market view than many other EU member-states.

The institutional changes introduced by the Treaty of Lisbon (e.g. the increased role for the European Parliament and the creation of the European External Action Service) on EU trade and investment policy

The European Parliament has been the principal beneficiary of the Lisbon Treaty, which has greatly enhanced MEPs role in trade policy. The greater involvement of the Parliament in trade policy may open the risk of trade policy outcomes being subject to populist campaigns led by entities with little direct involvement. However, as noted

above, the Parliament showed, in its consideration of the EU-South Korea FTA, that it was ready to take a balanced view. More generally, the role of the Parliament can be expected to become even more important for trade policy, the more so as trade policy becomes more integrated with other economic policies (environmental, regulatory, etc.) in which MEPs have wide-ranging interests. Larger resources (both public and private sector) will be needed to keep MEPs informed of the mix of interests affected by policy choices.

The creation of the European External Action Service does not yet seem to have had any visible effect on the conduct of EU trade and investment policy for financial and professional services.

Any further internal developments in the EU (e.g. potential further integration of the Eurozone) on trade and investment policy

The increasing ambition of EU trade policies, and the implications that this might have for the UK's offensive and defensive interests

Any further developments in EU law, including for example any effect of the EU's exercise of internal competence on its external competence and vice-versa

TheCityUK will try to take these three aspects together, and relate them to financial and professional services. Factors such as further integration of the Eurozone, or further developments in EU law (e.g. the development of EU financial services regulation into an EU common policy analogous to the CCP) could have effects on the EU's trade and investment policies, particularly as they apply to financial services. Both factors would probably come into play if the Single Market and its accompanying EU regulatory regime had to develop in ways that took greater account of the needs of the Euro area and the degree of economic and fiscal integration within it. The UK has sometimes tried to draw a distinction between the Single Market and the Euro, reflecting a concern to be in the one but not the other. But the Single Market and its legislative framework is integral to the Euro project (whatever its current problems). The benefits of the Euro project are unlikely to be fully achieved for its members and those whose economies depend on them without, ultimately, harnessing any further efficiencies that the Single Market makes possible. Members of the Euro area will therefore always have a particular interest in the functioning of the Single Market, including in financial services. If this led, ultimately, to some kind degree of deeper fiscal union within the Euro area, accompanied by the relevant legislation, this could, for instance, change the nature of the EU market offer that EU negotiators could make. EU trade negotiators would need to cater for this in the negotiating stance that they took vis-à-vis third country trading partners.

It is difficult to be more specific when the arguments are speculative. However, given that financial regulation will be a key component of any Eurozone development, significant Eurozone changes could have consequences for the EU's trade policy in relation to financial services.

7. *Are there any general points you wish to make which are not captured above? We would welcome any specific examples and quantitative evidence where possible.*

(1) Free Movement of Persons within the EU, and Temporary Presence under GATS Mode 4

Although the Call for Evidence on the Internal Market: Free Movement of Persons (Review, second semester) seeks views on free movement within the EU, the Call for Evidence on Trade and Investment does not seem to seek views on the analogous question of temporary presence under GATS Mode 4. For TheCityUK and its member-businesses **the twin fields of Free Movement of Persons and Temporary Presence under GATS Mode 4 raise closely related issues**: both within the EU Single Market and globally, UK financial and professional services providers are concerned to be able to establish in markets of their choice, freely recruit employees in the UK and elsewhere, and move their business personnel as business requires.

Within the EU, the principle of free movement of persons is of core importance in meeting this need. The internal market reflects the principle of free movement of goods, capital, people and services. All four elements combine to ensure the internal market's effectiveness; and all four need to be maintained. For business, free movement of persons enables firms to provide services in another member state without employing people there as existing UK employees can travel and work in other member-states there freely when necessary. Secondly, free movement of persons within the EU enables businesses in the UK to fill key vacancies with staff from any member-state when there are skills shortages. The government Background Brief to the Call for Evidence on the Internal Market: Free Movement of Persons cites figures showing the extent to which the UK is dependent on labour from other European Economic Area (i.e. the EU plus Norway, Iceland, Lichtenstein and also Switzerland) countries to fill professional posts as well as (more frequently highlighted) low-skilled and unskilled jobs. In answer to the questions in that Call for Evidence on whether the exercise of free movement rights in or from another member state has either positive or negative impacts on (a) UK Nationals and (b) the UK as a whole, it can be said:

- a) Free movement enables UK individuals to work in the rest of the EU. For senior UK executives and professionals careers may be enhanced by working for a period elsewhere in the EU; free movement of persons facilitates this.
- b) The UK as a whole gains a range of economic benefits from the free movement of people. The main economic benefits for financial and professional services are:
 - Recruitment: UK-based businesses can recruit from a wider pool, enabling them to meet skills needs, provide flexibility during periods of growth, and gain employees with the language skills necessary for an international financial centre;
 - Overseas deployment of staff: staff can be deployed in other EU markets without the need for work permits or visas, helping UK businesses to operate in or expand into other EU markets by enabling them to draw on existing UK staff;

- Education and training: UK professional training institutions represent a considerable UK business sector. Free movement of persons means they can recruit staff across the EU to help deal with critical skill shortages in specialist subjects, and work easily in partnership with other institutions (and businesses) in the EU.

Temporary presence under GATS Mode 4 provides the international trade policy analogue to meeting these core business requirements. In its Response to the Home Office Border Agency Consultation on Limits on Non-EU Economic Migration (2010) TheCityUK set out the reasons why negotiated arrangements on temporary presence under GATS Mode 4 were important to TheCityUK's member businesses.

TheCityUK's submission was particularly concerned with the status of non-EU intra-corporate transfers (ICTs) under the Home Office's then proposals. But the arguments in the submission are applicable not only to ICTs but also to contractual service suppliers (CSSs) and independent professionals (IPs), and are indeed of general application in connection with the need for UK international financial and professional services providers to be able to establish in markets of their choice, and transfer employees and move business personnel as international business requires. In trade negotiations the EU has been vigorous in its attempts to secure commitments from trading partners under GATS Mode 4, with varying degrees of success: for TheCityUK's members this remains an important ongoing objective.

TheCityUK's submission of 16 September 2010, with its legal annex, is attached.

(2) Extraterritorial EU legislation bearing on extra-EU business

As noted above, **extraterritoriality is an issue related to trade and investment on which there needs to be greater EU policy coherence**. It arises from the increasing complexity of the globalised markets and the EU policy response in terms of draft EU financial and other regulations purporting to govern business activities outside the EU.

Attempts to impose domestic rules on activities in third markets used to be largely a characteristic of US, not EU, regulation. Before the global financial crisis, most EU regulation applied only within the Single Market. Recently, however, the Commission has been much more aggressive in proposing measures (some of them directly applicable Regulations) with significant extraterritorial impacts of three main kinds:

- Access to the EU Market: some measures affect the ability of firms outside the EU to conduct business within the Single Market. For example, as originally drafted, the Commission's Alternative Investments and Financial Instruments (AIFM) proposals would have imposed a complete ban on the sale of third country funds and products into the EU unless they satisfied a "strict equivalence test". Had these proposals not been amended in the Council, they would have had a significant protectionist effect which would have damaged the supply and choice of instruments within the EU and, if reciprocated elsewhere, would have been very harmful to EU export interests;
- Designation of "approved" overseas markets: increasingly, however, the Commission also makes proposals which not only affect access to the EU market

but also prescribe the markets overseas in which EU financial institutions can operate, for instance by allowing overseas business only in markets subject to rules deemed “equivalent” to those within the EU. For example, Article 25 of the recent European Market Infrastructure Regulation (EMIR) means that EU entities can only buy and sell certain products in financial markets overseas which have been recognised by the European Securities and Markets Authority (ESMA) as meeting EU standards. Unsurprisingly, regulators in some Asian markets have already declined to seek EU “approval”, potentially excluding EU entities from these markets (similar issues have arisen over EU data protection rules);

- Conduct in Overseas Markets: extraterritorial requirements can also apply directly to EU entities operating in third countries, regardless of host country rules. For instance, new requirements on remuneration by banks within the EU must also now be applied to their non-EU subsidiaries in markets such as Hong Kong or Singapore. In such markets, competitors are free to follow local requirements. The result is a significant distortion damaging EU firms’ ability to locally on equal terms.

There has been a steady increase in EU financial regulatory proposals which seek either to restrict non-EU businesses’ access to the Single Market or to impose unilateral restrictions on EU firms’ subsidiaries in third markets. These can directly contradict the emphasis on open and non-discriminatory markets that has been the hallmark of the EU’s liberalising stance in international trade negotiations. They impose damaging jurisdictional conflicts – plus the risk of reciprocal action by trading partners - on UK and other EU operators seeking to compete in overseas markets.

There may be cases in which extraterritorial restrictions on trade and investment are genuinely justifiable on prudential grounds or to meet other defined market objectives. But present EU practice does not seem to reflect a coherent and coordinated policy approach to exercising EU competence in regulation, on the one hand, and in trade and investment, on the other. Any review of EU competence in trade and investment must therefore also consider the extent to which recent EU regulatory actions are introducing policy conflict and limiting gains available from successful trade and investment negotiations.

TheCityUK

6 August 2013

Submission 60

Trade and Investment

1. Companies funded through domestic capital are largely unaffected by EU regulations. The main producers are multinational companies. According to the National Institute for Statistics (2013), 15,000 multinational company groups operated in Romania in 2011, out of which only 100 were based in Romania, as opposed to approximately 5000 domestic capital companies.
2. Over 70% of Romanian exports are directed towards EU Member States, which in turn implies that global trade influence is “filtered” through the decisions of European multinational companies.
3. FDI in Romania is at a minimum level (see Eurostat 2013) and almost all investments come from EU states (at the same time, 60% of investments in the EU come from the United States). Most investments made in Romania have been speculative. Out of a total of 55 bn euro FDI (over the past 23 years), only around 17 bn euro have been invested in production capacities, mostly acquisitions of state companies (see the Bruegel&co report, January 2011). There is only a small number of investors from outside the EU (United States, Russia, Kazakhstan, Turkey, Israel).
4. Resource-related investments are affected by EU regulation. Investments in the energy and environment sectors are subject to Council decisions specific to each country and reflecting the interest of the EU-15. The oil and gas sector is a major example for this case, as Romania is required to take actions that do not apply to other EU states (regarding the single energy market and the “third way” adopted by France and Germany). The Council has not managed to obtain the disclosure of prices agreed between individual EU Member states and partners from outside the EU (Russia, Algeria). The request made by the Council was rejected by Germany, Austria, Italy and France. This has also been the case for the Council decision regarding the fourth set of measures concerning “the single railway transport market”, for which France and Germany have opted out until 2019.
5. Credits for Romanian exports cost at least twice as much as the costs supported by companies from the Eurozone due to the National Bank monetary policy (5.25% interest rate, whereas the Bank of England rate is 0.5%) and the lack of initiative coming from the banking sector, which is almost 90% foreign owned. The Council has prevented Romania from crediting Eximbank and CEC (two Romanian state-owned banks), considering this as “state aid”, whereas other EU states have financed failed banks with billions of euro during 2009-2013 (in addition to ECB interventions worth billions of euro at an interest rate of 0.5-1%). The Bank of England has been financing British SMEs with tens (hundreds?) of billions euro since 2011. Similar actions have been taken in France, Hungary, etc.

6. The banking union exclusively targets Eurozone banks, disregarding the fact that the Eurozone banks hold 70-90% of non-Eurozone bank assets.
7. The Council decision to withhold post-2004 EU Member States the right to create special facilities to attract investments (domestic or foreign) favours strong industrial countries (Germany and France) or countries with a highly sophisticated fiscal system (The Netherlands, UK, Luxembourg), allowing them to continue to attract investments.
8. The Council negotiates international agreements in the best interest of developed economies (Germany will double its exports to the US if the TTIP negotiations are completed successfully).

Free Movement of Persons

The 1 January 2014 will be a turning point for the free movement of persons.

Until now, Member States that have chosen to maintain restrictions (Germany, France, UK and others) admitted qualified workforce trained at the expense of new Member States (doctors, nurses, mechanical engineers, IT experts, etc.), and at the same time clearly and sometimes violently rejected citizens travelling for economic reasons from less developed countries (Romania and Bulgaria) and Roma ethnics (even after 20 years of Roma integration training provided by consultants and charities from more prosperous countries).

The Free Movement of Persons has been conceived as a way to manage the European Social Model which has become unsustainable as a result of globalization and, recently, the economic crisis.

Access to Schengen

Romania and Bulgaria are discriminated (Croatia has been admitted to the EU in July 2013 without CVM monitoring), even if Romania already carried out the necessary technical changes since 2010. Romanian transport and export companies have to endure the costs. The public statements coming from Germany, the Netherland, France, and recently Norway, are obviously political.

Generally speaking, the EU has probably exhausted its political and financial possibilities to aid new member countries to line up to the EU average. The policies that are being put forward ignore the necessity for new member states to gradually line

up their economies to EU regulations, along with the process of moving towards the European average. Ignoring these realities in turn generates social and economic situations which are difficult to administer (see the Bulgarian reaction to the liberalization of energy prices).

An important topic that should be discussed is the capacity of restructured economies in a brutal and chaotic way to create jobs, preferably highly qualified ones, in order to ensure earnings that sustain both consumption and the financing of public systems (education, health, pensions, etc.)

Submission 61



Review of the Balance of Competences between the UK and the EU: Internal European Market Synoptic Review

British Chambers of Commerce response

The British Chambers of Commerce (BCC) sits at the heart of a powerful network of 53 Accredited Chambers of Commerce across the UK, representing thousands of businesses of all sizes and within all sectors.

Introduction

The BCC welcomes the opportunity to respond to the Balance of Competences Review's call for evidence on the Internal Market: Free Movement of Persons. However, we are concerned that the unnecessarily complex questions included in the call for evidence could be preventing some key stakeholders from engaging in this process. We hope that this is taken into consideration for the remaining semesters.

The safeguarding of the interests of UK businesses is critical to the debate on the future of Britain's relationship with the EU. The BCC are leading the EU debate within the business community as the organisation that delivers both extensive trade support to British firms as well as representing the interests of British business.

This call for evidence rightly distinguishes between i) asylum and global immigration and ii) free movement of nationals of EU member states. This response therefore avoids any discussion of immigration and instead focuses on the costs and benefits of freedom of movement as a treaty right and the balance of competences between the UK and the EU.

The UK Benefits from European Mobility

Businesses value access to a flexible labour market and the free movement of persons across different parts of the EU adds to the flexibility of the UK's labour market, and the availability of skilled labour. The UK economy benefits from Europeans of other nationalities who come to the UK to work or study, as well as from those British workers who gain language skills, social connections and knowledge of another market during a period of work in another EEA State. The Government should invest more resources in promoting mobility among British workers and students, and in attracting and retaining more EU workers and students to the UK.

Our 2011 Labour Force Survey asked 1419 respondents who employed migrant workers why they do so. 36.2% cited a shortage of UK candidates with the necessary skills, 35.6% had failed to find UK workers with the right experience, and 32.1% had recruited them for their work ethic. Just 3.5% cited lower wage costs. London Chamber of Commerce and Industry interviewed members about EU migration and repeatedly heard evidence of businesses that found the right skills and attitude in workers from

other European countries that they struggled to find in British candidates.¹⁰² One employer explained “we tend to fast-track applicants from Eastern Europe because they tend to have a different attitude and outlook, which is they want to work and they want to get results.” Even in 2011 when high unemployment meant that employers should have found it easy to fill job vacancies, 45.4% of the 5919 members we surveyed reported that they found it quite or very difficult to recruit the ‘right’ staff.¹⁰³

Inward Investment

The UK remains the preferred location of European headquarters among multinational companies trading in the EU¹⁰⁴ (UKTI, May 2013), and continues to attract more Foreign Direct Investment than any other EU Member State. These successes are, in large part, dependent on access to the European Single Market, and the Freedom of Movement that underpins it.

The Single Market

The Internal Market provides our members with access to new markets, lower travelling costs and a wider pool of labour and suppliers which in many instances have also led to lower costs. The European economy is increasingly interconnected with firms able to expand their operations to other member states and benefit from competition between suppliers. The resulting European supply chains are largely dependent on the freedom of workers, suppliers and buyers to move around the Union at will. Likewise UK suppliers benefit from the ability to compete for contracts in other European countries. Their success is predicated on their ability to service clients and on their clients’ ability to visit their operations in the UK. The benefits of mobility will become even more important if and when the single market is made to work as well for services as for goods.

Demographic Challenges

The Office for Budget Responsibility has recently highlighted the role that immigration, including EU migration, can play in promoting economic growth and helping to pay for the costs associated with reductions in the ratio between workers and social security claimants, particularly those claiming pensions. The retirement of the baby boomer generation is also predicted to create large skills gaps, which will need to be filled through better training of UK workers and by attracting skilled workers from other countries.

Public services

Employers rely on well-functioning public services as part of the UK’s vital infrastructure. Although we do not have any evidence of public services put under

¹⁰² Help or hindrance? The value of EU membership to London business, April 2013 (pp 21-24)
<http://www.londonchamber.co.uk/docimages/11263.pdf>

¹⁰³ BCC Labour survey 2011

¹⁰⁴ The UK – A World of Advantages, UKTI, May 2013
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/204004/UK_European_Headquarters_Brochure.pdf

pressure as a result of EU migration to the UK, employers providing health and social care services have benefited from access to a larger pool of skilled workers. This has been particularly important due to this Government's attempts to reduce net migration to the UK down to the tens of thousands, which has resulted in these sectors losing access to sources of labour from non-EU countries.

There is some evidence that migrants live in more densely populated homes than is typical for UK residents, both due to larger family sizes and workers sharing bedrooms. This suggests that EU migration helps address the demographic challenges outlined above and contributes to taxation and demand in the economy while reducing the pressure on housing.

Social Security

Where there is evidence of people in the UK claiming benefits for which they are not entitled the Government should act, regardless of their nationality. In particular, the Department for Work and Pensions is right to support those who are claiming sickness benefits to move back into work if they are able, and to ensure that those claiming Job Seekers Allowance are doing everything they can to find work. We support the Government's cap on benefits and the move to Universal Credit, which will increase the incentive for most people to find more work. We also support the Government's drive to formalise the requirement for those with poor English language skills to attend classes. This must be accompanied by an increase to the budget for the English for Speakers of Other Languages (Esol) programme.

Social security coordination at a European level makes it easier for employers to recruit workers from other countries and ensures that their staff benefit from protection based on contributions made in previous jobs. It also supports British workers considering work opportunities in other Member States. These important advantages must be balanced against any cost derived from benefits tourism. In particular, some members have expressed a need for greater coordination relating to occupational pensions and the portability of private pensions, which can be a barrier to non-British workers accepting a job offer in the UK.

We are not aware of evidence showing the extent to which the rules on social security coordination have a disproportionate effect on the UK benefits system. If this evidence were to become available, and showed that the costs outweighed the benefits, we would support a renegotiation in this area. Without this evidence, or if the evidence shows the benefits of coordination to outweigh the costs, we would not support renegotiation in this area.

The EU free movement directive, enacting the treaty right, in principle provides adequate safeguards to the UK government in screening for access to assistance or benefits. The EU rules are complex and definitions are not always congruent with national definitions determining eligibility. This complexity combined with the role of the European Court as final arbiter illustrate that the balance of competences is tilted firmly in favour of the EU in a policy area which is linked to the core national competency for economic redistribution and thus inherently controversial. However, it is fundamentally

sound that the EU should be the guarantor of the right to free movement across EU borders. This also helps UK migrants when they seek work and settle in other EU countries.

Transitional Controls and Future Enlargement

Inflows from other Member States boost UK output growth and are positive for the UK economy as a whole since the new arrivals are usually of working age and have little or no need of UK public services such as expensive healthcare or pensions, nor have most used the UK education system.

There is a first mover advantage for countries that do not apply the full transitional controls that persists even after the period in which other countries are applying controls. The creation of social support networks among newly settled communities from a particular country will continue to benefit the host country in seeking to attract skilled workers of that nationality. A decision not to apply transitional controls is also likely to generate goodwill that can be used to foster trade with a new Member State. Decisions about whether to apply transitional controls for any future enlargement of the Union should be made on a case-by-case basis.

One possible safeguard which the UK could propose to the EU might be an 'anti-surge' clause to curb or mitigate the negative effect on UK public services of any disproportionate and sudden influx on EU migrants. Such a surge is unlikely in the future since no further group enlargements are planned (and assuming Turkey does not accede). However, a formal, legal safeguard clause of this kind might serve to reassure the UK public.

Government Estimates of Expected Inflows

The public has lost faith in the Government's ability to publish reliable estimates of likely inflows following a new accession and the end of any transitional controls. Future EU enlargements are unlikely to be anything like the 'big-bang' of 2004, but public support will nonetheless depend on their belief that the Government has calculated the effect on the UK of a new country joining the EU. For upcoming enlargements (and especially if one day Turkey were to accede) it is crucial that government makes cautious and considered estimates of likely inflows. If it does not, public trust will be lost and the issue will become a major controversy again. For businesses willing to employ EU migrants, this will in turn create unwarranted negative associations.

Britain's Opt-out of Schengen

Britain's opt-out from Schengen should be a part of the Free Movement of Persons element of the Review of Balance of Competences. This section covers some elements of non-EU visitor and immigration policy, but also highlights problems affecting free movement of goods and people. Given the ease with which visas can be obtained for countries within the Schengen Area, Britain's opt-out from Schengen is likely to have had a broadly negative impact on UK businesses and for goods and workers at UK border crossings. This must be balanced against the benefit for the UK of being able to set our own visa rules to reflect changing demands for labour and our ability to maintain control of our borders.

We have heard anecdotal evidence of UK border staff being deliberately obstructive at Schengen-UK borders, causing severe chocking and delays. This anecdotal evidence suggests a need for a proper study of the ease of travel between Schengen countries and the UK, and whether this is affecting UK businesses that rely on travel or trade with Schengen countries.

Businesses and investors visiting UK firms have to pay more than they would to visit a country in the Schengen Area. A current example of this impact is the negative impact on the attractiveness of the UK for commerce and trade with growing and dynamic countries like China. Chinese visitors are also put off by the indignity and hassle of visiting, as part of their visa application, a biometrics centre, which may require considerable travel from their home town. This inconvenience will be exacerbated when Schengen introduces a similar biometrics process unless the UK and Schengen can find a way to share facilities or biometric data, so that visitors wanting to visit the UK as part of a European trip do not have to travel to two differently located centres. In particular we are concerned about the effect on business travellers and investors, and on students and tourists, many of whom have, or will in the future have, responsibility for investment and purchasing decisions.

The BCC would be keen to engage further as this review progresses. The BCC will continue to poll our members on issues relevant to this review and we will communicate our findings as soon as they are available.

For more information please contact: John Wastnage, BCC Labour Markets Policy Adviser, [REDACTED]

Submission 62

To:
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The NFU represents 55,000 farmers and partners in England and In addition we have 40,000 countryside members with an interest in farming and the country.

Review of the Balance of Competences

Internal Market: Free Movement of Persons

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

A small number of UK businesses who farm in the UK also have farming operations in other member states. Investment in other member states benefits from the freedom of movement rights which allows UK nationals to work in other member states. This is because farm managers, many of whom are employees (and not owners/entrepreneurs), may work in both the UK and other member states under the freedom of movement of persons. Consequently, UK businesses operating throughout the EU benefit from their workers' ability to work throughout the EU under the freedom of movement of persons.

The NFU cannot quantify this because we only collect data on members' and their business operations in the UK, but it is estimated that the number of NFU members economically active in other member states is very small.

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

Because the NFU only collects data on our members' UK business activities, we have no evidence that EU competence makes it easier for UK nationals to work, access benefits and access services in another member state.

In our view however, were the freedom of movement of persons not an EU competence but to become a competence of member states, we would expect that obstacles to the exercise of the free movement of persons would soon develop. Our view is based on an assumption that many member states would fail to dismantle present obstacles and/or create new obstacles to the freedom of movement of persons.

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

The NFU has no evidence on welfare provision and access to public services in the UK.

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

The NFU has no evidence, either for more or for less EU action, to improve the situation of UK nationals exercising free movement rights in other member states. However, we would expect that less EU action would increase the obstacles faced by UK nationals to exercising their free movement rights in other member states. Our view is based on an assumption that many member states would fail to dismantle present obstacles and/or create new obstacles to the freedom of movement of persons.

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

UK agriculture and horticulture has benefitted greatly from the free movement rights of workers from other member states to participate in the UK labour market. These migrant workers have alleviated shortages of skilled and unskilled agricultural and horticultural labour in the UK since the 1986, 2004 and 2007 accessions and workers from other member states are well regarded by our members. The free movement of persons has consequently contributed to the competitiveness of our agricultural and horticultural sectors.

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

The impact of this area of competence on employment in the agricultural and horticultural sectors has been large and positive. It has alleviated skill shortages and provided a welcome source of energetic and motivated workers eager to undertake work that was not being filled by the resident labour force.

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

The NFU supports the widely held view that the recruitment of non-UK nationals has not negatively impacted on UK nationals in terms of employment opportunities. This is because non-UK nationals have been filling jobs that UK nationals do not want to undertake or are unskilled to undertake in the agriculture and horticulture sectors.

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

On-going EU efforts to create a common skill recognition system and the Eures network are welcome.

Overall, however, it is difficult to envisage increased EU intervention bringing positive benefits to the sector because the goal of achieving freedom of movement of persons appears to have already been achieved.

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

The NFU does not have a view on this.

10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a disproportionate impact on the UK benefits

system, or undermine public confidence in that system?

The NFU does not have a view on this.

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

Prior to 1 January 2007, the Seasonal Agricultural Worker Scheme recruited non-EU workers to undertake seasonal agricultural work in the UK. However, following the accession of Bulgaria and Romania (A2s) on 1 January 2007, 40% of the quota was granted to EU nationals from the A2s, and since 1 January 2008, 100% of the quota was granted to A2s. It is our understanding that once this quota is granted to EUs, it can no longer be granted to non-EUs due to the EU doctrine of 'Community Preference' and the application of the principle of shared competence. If this is correct it is unfortunate because it prevents the UK operating its own schemes to admit non-EU seasonal workers to undertake agricultural and horticultural work in the UK. This is all the more unfortunate as although the UK is not a member of the Schengen Agreement, it nevertheless suffers substantial restrictions on its jurisdiction to manage non-EU seasonal migration.

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

Rural economies have benefitted from the influx of economic migrants, particularly since 1 May 2004. These migrants have expanded the size and skills of the rural labour force available to agriculture and horticulture businesses in the UK, which has in turn benefitted our rural communities by improving the available pool of rural labour available to agricultural and horticultural businesses..

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

The NFU does not have a view on this.

Future options and challenges

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

There is an inherent tension due to nationality being in the domain of the member state, and the free movement of persons an EU competence. For example member states have the competence to issue member passports, but the holders of member states passports are then able to exercise freedom of movement of persons to work throughout the EU. It would be disappointing if this tension were to prevent the UK having control over non-EU workers entering the UK, to work in the UK, for periods of up to 9 months, and then return to their country of origin.

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

The comparative standard of living and comparative wages between the UK and other member states is an important driver of economic migration. Where there is a wide divergence in standards of living and wages, further accession treaties will require careful negotiation, and thoughtful transitional provisions, to ameliorate negative

impacts on both the UK and the other member states, and particularly on the countries of origin for economic migrants.

General

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

The NFU does not have a view on this.

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

The NFU does not have any further points..

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

We draw your attention to the UKBA Accession Monitoring Reports.

Submission 63

Joint response of Universities UK and the UK Higher Education International Unit to the UK Government Review of the Balance of Competences between the United Kingdom and the European Union – Research and Development

August 2013

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Universities UK

Universities UK (UUK) is the representative organisation for the UK's universities. Together with Higher Education Wales and Universities Scotland, its mission is to be the definitive voice for all universities in the UK, providing high quality leadership and support to its members to promote a successful and diverse higher education sector.

www.universitiesuk.ac.uk

UK Higher Education International Unit

The UK Higher Education International Unit (IU) represents all UK higher education institutions internationally and delivers a number of programmes and initiatives to support the development and sustainability of the UK HE sector's influence and competitiveness in a global environment. It supports the sector's engagement in European Union and Bologna Process policy debates.

The IU is funded by the Higher Education Funding Council for England, Higher Education Funding Council for Wales, Scottish Funding Council, Department for Employment and Learning (Northern Ireland), GuildHE, Universities UK, the Higher Education Academy and the Quality Assurance Agency for Higher Education. It is located at Universities UK.

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Contents

Introduction	4
Impact on the national interest	4
EU Research Funding in the UK	4
Benefits of EU Research Funding	5
The European Research Area	9
Other EU Policy Areas	10
Future opportunities and challenges	11
Possible Improvements	11
Enlargement	12
Associate Countries	13
Related balance of competences reviews	14
Internal market: Free movement of persons and Asylum and immigration	14
Trade and investment	15
Internal Market: Free movement of goods	16

Introduction

1. This document sets out the response of Universities UK (UUK) and the UK Higher Education International Unit (IU) to the UK Government Department for Business, Innovation and Skills' Call for Evidence on the Balance of Competences between the United Kingdom and the European Union (EU) in the field of Research and Development.
2. The response has been developed jointly by UUK and the IU, in consultation with higher education institutions, sector bodies and individual experts from across the UK higher education sector.
3. The division of competences between the EU and its Member States is set out in the Treaty of Lisbon, in effect since 2009. Article 4 of the Treaty on the Functioning of the EU (TFEU)¹ sets out that the EU and the Member States have shared competence in the field of research and space. However, for the field of research in particular, the Article sets out an exceptional definition of shared competence: 'the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.'² The TFEU therefore explicitly sets out that the exercise of the EU's competence in the field of research therefore is not limiting the competence of Member States; and the latter may take action on their own account.

Impact on the national interest

EU Research Funding in the UK

4. Article 4 of the TFEU explicitly refers to the activities the EU might carry out under its competence in the field of research as 'define and implement programmes.'³ The EU indeed has the greatest impact on UK research and technological development in the form of the Framework Programme (FP), which is the European Union's primary funding instrument for supporting collaborative, transnational research and development, with a primary focus on science and technology. The programme is currently in its seventh phase (FP7) which runs from 2007–2013, during which time it will distribute over €53.2 billion (£45.5 billion) to as many as 10,000 research projects.⁴
5. Thanks to the high quality of its research landscape, the UK has been a consistently strong player in the FP, securing a disproportionately large share of available funding and maintaining a leading position in terms of the share of all FP projects in which it is involved.

¹ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:EN:PDF>

² Article 4 TFEU (introduced by Lisbon), *Ibid.*

³ *Ibid.*

⁴ 'Interim Evaluation of the Seventh FP – Report of the Expert Group' (2010), p1

6. The UK has received €5,205 million in funding through the first six years of FP7 (2007-2012),⁵ which is greater than the spending power of five of the seven UK Research Councils. UK academia leads the way in FP7 accounting for 61.2 % of all UK participations and receiving 10.9 % of all FP7 funding (€3.708m).
7. Compared to other EU states, the UK receives 15.2% of the total FP7 funding; only Germany has received more funding overall. Due to its very high levels of participation, it is likely that the UK will continue to retain a significant share of FP funding. Thus far, UK institutions have participated in more FP-7 funded projects than any other EU member state.

Benefits of EU Research Funding

8. As an EU-wide funding scheme, the FP brings a number of opportunities and positive impacts, which in many cases differ from those provided by national sources of funding: it provides access to large, transnational, multi-disciplinary projects as well as access to collaborative networks, it offers flexible funding for areas that national funders might not support and has an industry focus. As such, it is a source of funding that is more accessible to a wider range of institutions, thus playing a significant role in supporting UK research capability. FP funding therefore represents a substantial investment in economic growth and enables international collaborations in a form rarely offered by domestic funding.

CASE STUDY 1

The IDEAL consortium researches the role of early life environment on aging with an international consortium of sixteen institutions across eight countries. Project Leader Professor Mark Hanson, Director of the Academic Unit of Human Development and Health at the University of Southampton, states that:

“The consortium has allowed a large study which has an element of ‘Blue Sky’ speculative research... that would otherwise be unlikely to be supported by conventional UK funding streams... IDEAL makes possible the integration of diverse data sets and expertise in a manner that no single member state would be able to support. This strength is of critical importance if the health challenges of global importance are to be met.”

Case study provided to IU/ UUK by the University of Southampton. Project website: <http://www.ideal-ageing.eu/>

⁵ e-CORDA FP7 grant agreements and participants database, Vs 14.0, released 1 July 2013

Fostering economic growth and employment

9. It is well established that investment in science and research offers substantial returns in terms of economic growth. The rate of return for publicly funded research usually exceeds 30%.⁶
10. FP funding has had an enormous impact on the economy and employment: for example, the long-term impact of FP7 is estimated at 900,000 additional jobs and a growth in GDP of nearly 1%. Across all member states, every €1 of FP7 funding has been calculated to lead to an increase in industry added value (contribution to growth) of €13 on average.⁷
11. In comparison to the government's ringfenced national grant funding for science and research (S&R), which stands at £4.6bn a year,⁸ this approximate annual income of £698m per year over the course of FP7 represents an additional 15% on top of national funding. Given that FP spending has continued to increase each year, and is likely to do so in the future, whilst the UK's S&R budget has remained frozen at £4.6bn (hence is decreasing in real terms with inflation), the FP represents an increasingly important component of research funding in the UK.
12. The TFEU provides the EU with the competence to adopt the FPs, and their funding levels, under the ordinary legislative procedure^{9 10}. The UK as a Member State has two means to influence the shape of the FPs: through the UK government's representation in the European Council and through MEPs representing the UK in the European Parliament.

Fostering international and cross-institutional collaboration

13. The benefits of international collaboration in research projects are profound and wide-ranging. They encourage excellence by bringing together the most outstanding researchers in the field, provide opportunities to share best practice across partner institutions, provide access to international facilities and large international datasets and tend to result in high publication and citation rates. Cooperation and collaboration among researchers are set out as one of the aims of EU research policy in the TFEU.¹¹
14. International collaborative research has a greater impact at a global level: citation rates tend to be significantly higher for papers published with multiple international authors compared to those with only domestic authors.¹² Using citation rates to calculate 'normalised citation impact' where 1.0 is the global average, it has been shown that in the UK, international

⁶ Horizon 2020 Impact Assessment Report, p7.

⁷ Horizon 2020 Impact Assessment Report, Annexes, p3

⁸ <https://www.gov.uk/government/publications/allocation-of-science-and-research-funding-2011-12-to-2014-15>. This figure does not include the £1.9bn allocated for capital expenditure on S&R, or any ad hoc additions announced in spending reviews.

⁹ Article 182 (ex Article 166 TEC) TFEU

¹⁰ The ordinary legislative procedure denotes the EU's legislative process in which the European Commission initiates the legislation through a proposal which is then negotiated and adopted by the European Council and the European Parliament.

¹¹ Article 179 (2) (ex Article 163 TEC) TFEU

¹² The Royal Society: 'Knowledge, networks and nations: Global scientific collaboration in the 21st century'. 2011, p59.

collaborative papers have an impact of 1.72, compared with 1.21 for papers with only domestic authors.¹³ The UK's citation impact is already high for single authored or nationally co-authored papers. International collaboration enhances this: the UK's citation rates stand at 11% of the global share and 46% of UK-authored papers in 2010 had at least one international co-author, leading to higher impact rates globally.¹⁴

15. Through providing funding for international research mobility, the FP facilitates the development of consequential and enduring partnerships overseas, making a substantial contribution to the UK's ability to attract Europe's best talent to its labs, with all that this means for scientific excellence and productivity, and to the country's reputation as a preferred international partner.¹⁵ Similarly, it provides UK researchers with the opportunity to work abroad, enhancing careers and building networks for future joint projects.
16. Researchers who have spent an extended time abroad tend to be significantly more productive in terms of articles published than those who have remained in the UK. The UK's leading position in terms of research efficiency is therefore in part due to its effectiveness in attracting productive and internationally mobile researchers, and providing opportunities for mobility amongst UK-based researchers.¹⁶
17. FP funding has "a positive impact on the nature and extent of collaboration between the UK academic and industrial communities and their counterparts abroad."¹⁷ Universities are at the heart of innovation and entrepreneurship. The World Economic Forum survey of businesses found the UK second in the world on university-industry collaboration in R&D, first in the EU and ahead of the USA.¹⁸ UK universities create more spin out companies relative to research expenditure than the US¹⁹ and UK university income from interactions with business and the community reached over £3,4bn in 2011-12, more than doubling in real terms since 2001.²⁰
18. The EU's competence in the field of research enables it to enhance its funding with unique benefits in terms of research collaborations. Because it has already established a common framework for collaboration, it offers a substantial simplification: institutions do not need to negotiate and re-negotiate the terms of collaborations every single time, as they do with other funding types.

¹³ Adams, Jonathan, 'The Fourth Age of Research'. In *Nature*, 30 May 2013, Vol. 497, p559

¹⁴ BIS 'International Comparative Performance of the UK Research Base – 2011', cover page 2.

¹⁵ 'The impact of the EU RTD FP on the UK' 2010, p85

¹⁶ Department of Business Innovation and Skills: 'International Comparative Performance of the UK Research Base – 2001'

¹⁷ 'The impact of the EU RTD FP on the UK' 2010, p87

¹⁸ The World Economic Forum competitiveness report 2012.

¹⁹ USA Research expenditure per spin-off is £44.5m, UK £31m based on AUTM and HESA data.

²⁰ HEFCE, Higher Education Business and Community Interaction Survey 2011/12, May 2013.

CASE STUDY 2

The BIOPTRAIN project looked at ways to interpret the vast amounts genetic data generated by the decoding of genomes, seeking to unlock the information coded into DNA for use in clinical science, received €2.1m from the Marie Curie Actions. According to Project Coordinator, Professor Jon Garibaldi (University of Nottingham), the most important result

was that it helped build a multidisciplinary knowledge base in the emerging bioinformatics field, and one that has already led to new careers in academia and industry, with one researcher working in Imperial College, London, another taking a research position in Luxembourg, while another moved to the US. "We brought together researchers from different backgrounds and perspectives and started to form a European approach to the problem, gaining new insights and spreading good practises," he says. "This is the new breed of scientist comfortable in different domains and with a new way of looking at problems that straddle different domains."

DG Research and Innovation database, <http://tinyurl.com/mfm4cba>

19. Similarly, the EU uses its competence to create access to common levels of research infrastructure across the EU. While one state on its own is endowed with the same competence, the expense of such an undertaking means it is unfeasible to do so. In this area, the EU's existing competence in the field of research therefore has a hugely positive effect. For science which tackles global challenges for example, such as health issues or climate change, this can take the form of providing access to large datasets, for instance public health statistics, through international collaboration.

CASE STUDY 3

The EARLYNUTRITION project involved 36 universities, research institutes and industry partners in studying the long-term effect of early nutrition on later health. Project Leader Professor Keith Godfrey (University of Southampton), explains:

"EARLYNUTRITION, has provided a significant expansion in the scope of expertise, disciplines and unique resources/data sets available to the Southampton Team.... The ability to bring together international academic, commercial, clinical and NGO players under a common project is significant for addressing the key research issues and seeing our work translated into public benefit."

Case study provided to IU/UUK by the University of Southampton. Project website: <http://www.project-earlynutrition.eu/>

20. The EU also has the competence to introduce new bodies, and has in the field of research exercised this competence to create the European Research Council (ERC), the Joint Research Centre and the European Institute for Innovation and Technology (EIT). The ERC is particularly valued in the UK. The ERC Starting Grant, for example, a 'fellowship' fund for early-career researchers, has proven a highly effective alternative to smaller and fiercely competitive national schemes, allowing HEIs to retain a larger proportion of the most talented academic researchers.²¹ The UK was the top country for the ERC's Starting and Advanced grants in 2012 receiving €244.42 million from this programme.²²

CASE STUDY 4

One now-famous recipient of a Starting Grant was Professor Sir Konstantin Novoselov, who worked in the Netherlands before coming to the University of Manchester under an FP6 grant, where he was to co-discover graphene, for which he, and his colleague, Professor Sir Andre Geim, have since been awarded a Nobel Prize and been knighted.

The FP has provided funding for a slew of projects researching the unique electrical, quantum and optical properties of this remarkable material and exploring its revolutionary potential in electronic applications. Most recently, the European Commission announced €1bn funding for a flagship graphene project under the Horizon 2020 programme, which will involve more than 100 research groups, 136 principal investigators and four Nobel Laureates.

21. The EIT is an example of the coordination across various policy areas which is continuously increasing and is more and more visible, in particular in the new programmes. The EIT brings research and industry together in its Knowledge and Innovation Centres (KICs). The Climate KIC that features UK participation is a particularly successful one. With EIT funding being dependant on the creation of a legal entity, this is an instrument that could successfully facilitate the research to innovation chain.

The European Research Area

22. The Treaty of Lisbon introduces a legal basis for the creation of a European Research Area.²³ The European Research Area (ERA) aims at the **free movement** of researchers, scientific knowledge and technologies. The Treaty further conveys competence on the European Parliament and the Council to 'establish the measures necessary for the implementation of'²⁴ the ERA under the ordinary legislative procedure.

²¹ 'The impact of the EU RTD FP on the UK' 2010, p87-8

²² UK Research Offices, Brussels.

²³ Article 179 (ex Article 163 TEC) TFEU

²⁴ Article 182 (5) (ex Article 166 TEC) TFEU

23. Economic success depends increasingly on the capacity to compete at the global level. The creation of a world class ERA, which promotes the open flow of information, knowledge and researchers, will allow Europe to compete with major economies such as the US and, increasingly, China. The large-scale, international projects enabled by the FP/ Horizon 2020 are an essential component of this.
24. The UK higher education sector supports the creation of the ERA and the drive to enhance research and development intensity, and strengthen research institutions. The UK research base will play a vital role in progressing towards the ERA.
25. Overall, the UK is well advanced in terms of meeting the ERA objectives. In a number of areas the UK sector has good practice that can be shared at a European level and take a leadership role in the process, in particular in areas such as HR excellence in research and research careers, research integrity and performance-based research funding.
26. However, as the TFEU is unclear about the precise competences it gives the EU regarding the progress towards the ERA, we are concerned that this competence might be exercised in a prescriptive way. For example, a legislative solution would run the risk of restrict the autonomy of HEIs and/or funders and ultimately be counterproductive through constraining high-performing HEIs and Member States such as the UK. This would not be an appropriate or effective route towards the ERA and would raise very serious concerns.

Other EU Policy Areas

27. Given the broad range of areas in which the EU has competences, actions in other areas might affect the area of research and innovation both intentionally and unintentionally – with the possibility of these effects being positive as well as negative. As the power of initiating legislation lies with the Commission only.²⁵ The Commission is divided into different Directorates-General (DGs) and the coordination between the different DGs in these cross-cutting areas is often not optimal. A particular DG will have established stakeholder groups and it is sometimes difficult to get other voices recognised by that DG.
28. Structural Funding is another area in which greater coordination with the field of research is sought. The EU aims to create 'synergies' between the different types of funding, and connects these in turn to improving the quality of Europe's research base ('stairways to excellence').
29. EU Data Protection legislation is another area that impacts on UK research, and one where the EU has power to act in a way that could seriously damage research. The removal of scientific research from the legitimate exemptions for the processing of personal data, as proposed by the European Parliament, would have a substantial negative impact on UK research

²⁵ Article 17 Treaty on European Union (TEU), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:EN:PDF>.

30. A further policy area where initiatives taken forward by one Directorate General (DG) will also impact on the area of research and innovation is copyright. It is the Internal Market and Services Directorate General that is responsible for copyright legislation at EU level, and not DG Research and Innovation. Here, there have been issues in the past of the former DG responding more to its established stakeholders in its policy-making. Overall, all of the Directorates-General involved (Internal Market DG, Research and Innovation DG, Connect DG and Education and Culture DG) need to cooperate more closely to reflect the cross-cutting nature of copyright.
31. In terms of copyright legislation, we see a non-exhaustive list of exceptions that have cross-border application, so as to allow for the incorporation of new technologies as they emerge and join up the copyright regime with the European Research Area (ERA), as necessary. Related to this, all exceptions made in reference to the research, education and cultural sectors should be mandatory at member state level, and not be over-ridable by private contract. As set out in the Hargreaves Review in the UK, an exception for text and data mining should allow for commercial as well as non-commercial uses.

Future opportunities and challenges

Possible Improvements

32. The EU's existing competence in the field of research is defined as not limiting the competence of Member States as they may also take action on their own account. This is as such positive. The EU could improve the exercise of its existing competences in a number of ways in different areas.
33. Maintaining and increasing the level of funding distributed via future FPs is within the EU's competence and this will be the biggest boost for scientific progress. Public investment in R&D encourages private investment: it has been shown that a 10% increase in university research increases private R&D by 7%.²⁶ If the EU was to spend the equivalent of its 2012 budget for agricultural subsidies on research instead, this would add 0.3%²⁷ to the EU gross domestic expenditure on research and development (EU-27 GERD) – with the EU-27 GERD average of standing at 2.03% of GDP in 2011²⁸, this would mean a third of the way to the Europe 2020 target of investing 3% of GDP in R&D.

²⁶ Jaffe, *Universities and Regional Patterns of Commercial Innovation*, 1989; and Jaffe and Trajtenberg, *Patents, Citations, and Innovations: A Window on the Knowledge Economy*, 2002.

²⁷ Based on the 2012 budget where 40.5bn were spent on CAP and the EU GDP was 12.449bn, see http://ec.europa.eu/budget/library/biblio/publications/2012/budget_folder/186978_2011_4429_EU_BU_DGET_201

[2 EN V2.pdf](#) and

http://epp.eurostat.ec.europa.eu/portal/page/portal/product_details/dataset?p_product_code=NAM_A_GDP_C.

²⁸ <http://www.ons.gov.uk/ons/rel/rdit1/gross-domestic-expenditure-on-research-and-development/2011/stb-gerd-2011.html>

34. Achieving this target could create 3.7 million jobs and increase annual GDP by close to €800 billion by 2025.²⁹ It is already within the EU's competences to do this.
35. The design of the rules of participation in FPs also falls within the EU's competence, under the ordinary legislative procedure, and it is vital that excellence is maintained as the main funding criterion, on the basis of international peer review. This presents the greatest value for money for EU taxpayers.
36. It would also be beneficial if the EU was to use its existing competence to reduce red tape and administrative overhead as this is essential to further promoting science and research across Europe. This also ties in with the aim of reducing barriers to completing the ERA without increasing bureaucracy.
37. An acceptance of national accounting practices used by institutions by the European Court of Auditors would be extremely beneficial to Member States' research sectors as it would relieve research institutions of having to accommodate for two different accounting systems.
38. More transparency, in the development of the FP Work Programmes, for example, and evidence-based policy-making would also enhance the EU's work within the competences it already has. The newly-created role of the Chief Scientific Adviser to the Commission could further this.
39. More investment in large research infrastructures, as part of the FP as well as under Articles 185 and 187 TFEU, would be valuable as it is here that the EU competence in setting these up can provide a critical mass and a scale that one state alone could never achieve.

Enlargement

40. Any further future enlargements will affect the composition of the European Council as well as that of the European Parliament and therefore the way the EU's competency to lay down the rules and regulations of the future FPs is exercised. Altering the EU's competences is only possible through Treaty change. If there was a potential future Treaty change, this would be negotiated by the Member States and enlargement could therefore also affect the competences as such.
41. The UK HE sector welcomes new partners and is looking forward to establishing enduring, mutually beneficial relationships under the appropriate policy and resource.

²⁹ European Commission, Communication on Europe 2020 Flagship Initiative Innovation Union, based on: P. Zagamé (2010) The Cost of a non-innovative Europe, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0546:FIN:en:PDF>

Associate Countries

42. It is worth noting that Associate Country status is by no means a given status for any country.

Other countries, such as Switzerland and Norway for example, that are able to participate in FP7 do so on the basis of individually negotiated science and technology cooperation agreements. These involve contributing to the FP budgets and are based on bi-lateral negotiations between the EU and the state in question.

43. There is no certainty or guarantee that any particular non-EU country would be able to secure such an agreement, even a former EU member; or what the terms and level of contribution would be.

44. Although they do take part in Committees at later stages in the policy process, Associate Countries have no influence at all in the initial shaping of the FPs' rules and budgets as this is the prerogative of the Member States.

Related balance of competences reviews

45. Universities UK and the UK HE International Unit would like to comment on the following

other balance of competences reviews as these contain some important cross-cutting themes between their area and that of research and innovation:

- Internal market: Free movement of persons – Home Office and Department for Work and Pensions
- Asylum and immigration – Home Office
- Internal Market: Free movement of goods – HM Revenue and Customs, BIS and Intellectual Property Office
- Trade and investment - BIS

46. We believe that the UK HE sector's perspective from the area of research and innovation will

have valuable insights to add to these reviews.

Internal market: Free movement of persons and Asylum and immigration

47. Both the Internal market: Free movement of persons and asylum and immigration reviews of the balances of competences are concerned with the ability to enter the UK as a non-UK citizen. The former looks at EU citizens and their ability to exercise free movement rights under the TFEU while the latter reviews non-EU citizens. As the UK research and HE base is dependent on the free circulation of talent both from within and outside the EU, the following comments apply to both reviews.

48. The mobility of researchers and students is of unequivocal importance for the UK research sector as the free movement of talent is fundamental to excellent research. The EU's competence to create free movement rights within the EU and remove barriers to mobility³⁰ has been extremely beneficial to the UK research sector in terms of attracting talent as well as offering UK nationals the opportunity to study and work abroad. This is a field where the EU's competence to create an overarching framework is beneficial as the multilateral coordination of free movement across European borders would be much more difficult and unfeasible.

49. One example of how the UK HE sector benefits is the range of EU mobility programmes. In the researcher one Marie Curie Actions, the UK is the top host country for mobile researchers: 3,604 researchers have come to the UK under FP7 so far.³¹ Correspondingly, 780 British researchers have been funded to work abroad and the EU budget allocated so far

³⁰ Article 20 (ex Article 17 TEC) and 21 (ex Article 18 TEC) TFEU

³¹ European Commission, *FP7 People Marie Curie Factsheet*, June 2013, http://ec.europa.eu/research/mariecurieactions/documents/funded-projects/statistics/eu-countries/marie-curie-actions-country-fiche-uk_en.pdf

to British institutes is €790.3 million.³² For student mobility, the Erasmus programme is of similar importance to the sector.

50. The strength of the UK sector means that the UK is a more attractive destination country than an active sending country within the EU. This is a huge competitive advantage for the UK as it has the means to attract the world-leading individuals into its academia and research. It is of fundamental importance that these researchers are able to enter the UK easily, regardless of whether they are EU or non-EU nationals.
51. The EU's competence in the field of immigration does not directly impact on the UK given its opt-out of the border and visa aspects of the Schengen Acquis.³³ The main advantage of the Schengen Acquis is that it has created an area of free movement for non-EU nationals once they have obtained a Schengen visa. In discussing the advantages or disadvantages of the UK opt-out, it is therefore worth pointing out that an excellent non-EU researcher employed by a German university could be more easily enticed away by a French or Norwegian university than by a UK one as coming to the UK would entail a new laborious visa application. The same applies to student mobility.
52. The freedom of movement in the Schengen Area is enhanced by the EU Blue Card Scheme which aims at making Europe a more attractive destination for highly- skilled and educated persons from outside the European Union by guaranteeing working and salary conditions equal to nationals, entitlement to a series of socio-economic rights and a permanent residence perspective. All Member States, except the United Kingdom, Denmark and Ireland, participate in the scheme. This might disadvantage the UK in the long-term.
53. We would also wish to highlight that the EU's common visa policy is more welcoming towards third country students than the UK's current approach.

Trade and investment

54. The EU has exclusive competence in the common commercial policy³⁴ of the Member States.

This affects the area of research and innovation in the form of the research to market-chain and the uptake of innovation. The sector supports the access to the single market, although less regulation would be beneficial here.

55. UK universities are truly global businesses. While they do gain from the European single market, they are also substantially engaged with all other markets around the globe. Internationalisation is an area where UK universities are particularly strong, from international student recruitment to student exchange, research collaboration and transnational education -

UK HE contributed £10.2bn to UK exports in 2011.³⁵

³² Ibid.

³³ Article 4 of Protocol (No 19) on the Schengen Acquis integrated into the framework of the European Union (OJ C 83, 30 March 2010, p. 290)

³⁴ Article 3 (1) TFEU

³⁵ HM Government, *Industrial Strategy: government and industry in partnership - International Education: Global Growth and Prosperity*, p.22

56. The UK has a global reputation both as a host country for international students and as a leader in the field of transnational education.
57. The UK higher education sector is keen to underline that EU activity must continue to respect the autonomy of higher education institutions and of Member States. Above all, an appropriate flexibility must be guaranteed in order to accommodate diverse national and institutional contexts. Multilateral and bilateral policy dialogues with the EU in particular must not undermine national policy dialogues and the ability to promote distinctive strengths with key international partners in the field of higher education.

Internal Market: Free movement of goods

58. UK universities are among the largest producers of copyright in the UK. A strong research and education sector is central to Europe's global competitiveness and that strength is dependent on a copyright regime that creates the lowest barriers to access, lawfully sharing and building on the work of others.
59. Copyright is a policy area where initiatives taken forward by one Directorate General (DG) will also impact on the area of research and innovation. It is the Internal Market and Services Directorate General that is responsible for copyright legislation at EU level, and not DG Research and Innovation. Here, there have been issues in the past of the former DG responding more to its established stakeholders in its policy-making. Overall, all of the Directorates-General involved (Internal Market DG, Research and Innovation DG, Connect DG and Education and Culture DG) need to cooperate more closely to reflect the cross-cutting nature of copyright.
60. In terms of copyright legislation, we see a non-exhaustive list of exceptions that have cross-border application, so as to allow for the incorporation of new technologies as they emerge and join up the copyright regime with the European Research Area (ERA), as necessary. Related to this, all exceptions made in reference to the research, education and cultural sectors should be mandatory at member state level, and not be over-ridable by private contract. As set out in the Hargreaves Review in the UK, an exception for text and data mining should allow for commercial as well as non-commercial uses.
61. We welcome the creation of unitary patent protection across the EU and the establishment of a Unified Patent Court. If successful, this will accelerate the provision of patent protection considerably which is vital to research commercialisation. With the single patent system not expected to come into force until January 2014, implementation remains to be evaluated.

Submission 64

UK Review of the balance of competences

II) Internal Market: Free Movement of Persons

1. Relevant legal framework including implementation monitoring documents

1.1 Right of Citizens to Free Movement

[Directive](#) of the European Parliament and of the Council 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

[Report](#) from the Commission to the European Parliament and the Council of 10 December 2008 on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

[Agreement](#) on the European Economic Area

[Agreement](#) between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons

1.2 Free Movement of Workers

[Regulation](#) (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

[Commission Decision](#) (2003/8/EC) of 23 December 2002 implementing Council Regulation (EEC) No 1612/68 as regards the clearance of vacancies and applications for employment

[Commission Implementing Decision](#) ((2012) 733/EU) implementing Regulation (EU) No 492/2011 of the European Parliament and of the Council as regards the clearance of vacancies and applications for employment and the re-establishment of EURES

Council [Directive](#) 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community

[REPORT](#) FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the Implementation of Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of

employed and self-employed persons moving within the Community (COM(2006) 22 final)

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS concerning the implementation by Bulgaria and Romania of Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community (COM(2009) 283 final)

Proposal for a Directive of the European Parliament and of the Council on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers

1.3 EU Co-ordination of Social Security

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R0883:20130108:EN:HTML>

Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2009R0987:20130108:EN:HTML>

Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010R1231:EN:NOT>

Follow-Up Report on the implementation of Regulations (EC)No 883/2004 and (EC) No 987/2009, Report prepared by Rapporteurs Jitka Konopaskova and Maja Saslin for DG Employment, Social Affairs and Inclusion, European Commission in conclusion of the April 2011 conference in Gödöllő on "Modernised EU social security coordination: one year on" (see in particular pages 14-18)

<http://ec.europa.eu/social/BlobServlet?docId=6772&langId=en>

1.4 Free Movement of Professionals

Evaluation of the Professional Qualifications Directive (2005/36/EC): assessment of the impact and importance of the directive

http://ec.europa.eu/internal_market/qualifications/policy_developments/evaluation/index_en.htm

Impact assessment of the proposal for a modernisation of the Professional Qualifications Directive

http://ec.europa.eu/internal_market/qualifications/docs/policy_developments/modernising/impactassessment_part1_SEC1558_en.pdf

http://ec.europa.eu/internal_market/qualifications/docs/policy_developments/modernising/impactassessment_part2_SEC1558_en.pdf

http://ec.europa.eu/internal_market/qualifications/docs/policy_developments/modernising/resumeimpact_assesment_SEC1559_en.pdf

2. Policy documents

2.1 Right of Citizens to Free Movement

[Communication](#) from the Commission to the European Parliament and the Council of 2 July 2009 on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2009) 313 final

[2010 Guide](#) to your rights as an EU citizen - Freedom to move and live in Europe

EU [Citizenship Report 2010](#) - Dismantling the obstacles to EU citizens' rights, COM (2010)0603 final

[2010 Report](#) under Article 25 TFEU - On progress towards effective EU Citizenship 2007-2010, COM (2010)0602 final

EU [Citizenship report 2013](#) - EU citizens: your rights, your future, COM (2013) 269 final

[2013 Report](#) under Article 25 TFEU - On progress towards effective EU Citizenship 2011-2013, COM(2013) 270 final

2.2 Free Movement of Workers

The European network on free movement of workers within the European Union publishes annual reports and specific studies in the field of FMOW

<http://ec.europa.eu/social/main.jsp?langId=en&catId=475>

The Communications of the Commission on the free movement of workers of 2002

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002DC0694:EN:NOT>

and 2010 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0373:EN:NOT>

Reaffirming the free movement of workers - Rights and major developments (2011)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0373:EN:NOT>

The study to analyse and assess the impact of possible EU initiatives in the area of freedom of movement for workers
<http://ec.europa.eu/social/main.jsp?catId=474&langId=en>

The Commission's 2011 Report on the Functioning of the Transitional Arrangements on Free Movement of Workers from Bulgaria and Romania <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0729:FIN:EN:PDF> and the annex thereto <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:1343:FIN:EN:PDF>

Report commissioned by the Commission on Labour Mobility within the EU – The Impact of Enlargement and the functioning of the transitional arrangements:
<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=1108&furtherNews=yes>

Report commissioned by the Commission on the Active Inclusion of Migrants
<http://ec.europa.eu/social/BlobServlet?docId=7305&langId=en>)

Staff working document (2012)100 – Reforming EURES to meet the goals of Europe 2020
<http://ec.europa.eu/social/BlobServlet?docId=7624&langId=en>

2.3 EU Co-ordination of Social Security

The European network on EU social security coordination (TRESS) publishes annual reports and specific studies <http://www.tress-network.org/tress2012/EUROPEAN%20RESOURCES/europeanReport.jsp>

The European Network on EU social security coordination (TRESS) glossary on EU social security coordination: <http://www.tress-network.org/TRESSNEW/PUBLIC/ELEARN/tool.jsp#>

"50 years of social security coordination: Past Present and Future" (DG Employment, 2010) <http://bookshop.europa.eu/en/50-years-of-social-security-coordination-pbKE3210218/>

"The Coordination of Healthcare in Europe" (DG Employment, 2011)
<http://bookshop.europa.eu/en/the-coordination-of-healthcare-in-europe-pbKE3211686/>

The EU provisions on social security: your rights when moving within the EU (European Commission, 2010)
<http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=486&visible=1>

2.4 Free Movement of Professionals

Study on reserves of activities linked to professional qualifications: focused on 13 Member States including the UK

http://ec.europa.eu/internal_market/qualifications/docs/news/20120214-report_en.pdf

http://ec.europa.eu/internal_market/qualifications/docs/news/20120214-annex_en.pdf

Study evaluating the Professional Qualifications Directive against recent educational reforms in EU Member States

http://ec.europa.eu/internal_market/qualifications/docs/policy_developments/final_report_en.pdf

3. Services to Citizens

[Your Europe Advice](#)

[SOLVIT Network](#)

Your Europe – [Citizens Portal](#)

EURES – [European Job Mobility Portal](#)

4. Financial instruments

Fundamental Rights and Citizenship [Funding Programme](#)

[Your First EURES Job](#) – preparatory action 2011-2013

5. EU data, information and scientific advice

[Report](#) on EU Citizenship

European Citizenship – Cross-border mobility [study](#)

[Report](#) on Public Consultation on EU citizenship

Committee of the Regions' [study](#) on obstacles to free movement and political rights

Eurobarometer on EU citizenship [Report](#)

Regulated professions [database](#)

Submission 65

BY EMAIL

hmrc.balance-of-competences@hmrc.gsi.gov.uk

FreeMovementofPersonsBoC@homeoffice.gsi.gov.uk

7 August 2013

Dear Sirs,

Balance of Competences – Free movement of Persons and Goods

The Port of Dover's response relates to the issue of border controls that affect our ferry and cruise passengers and the movement of trade. For the Port of Dover, the two are to some degree intertwined and so the Port's response covers both issues.

The Port handles over 12 million passengers every year as Europe's busiest international ferry port and the UK's second busiest cruise port. There are two key points that the Port of Dover wishes to raise here. Firstly, based on statistics provided by the Border Force, some cross-Channel passengers actually spend longer queuing at the UK checkpoint in Calais than crossing the Channel. This is not only inconvenient, but these delays can and do result in passengers missing the sailing on which they were booked. This is not acceptable for an internal border. It can cause additional cost to passengers and it can result in a ferry operator not being able to load to its full capacity in order to meet sailing schedules and not disrupt the rest of the ferry schedules at Dover and Calais.

Secondly, what must be understood is that the vast majority of the 12 million passengers using the Port of Dover are travelling by car, coach or lorry i.e. they are in vehicles. Therefore any delay to passengers means delays to other vehicles and queues of traffic. Border controls therefore interrupt the free movement of goods,

which whilst of course another issue it has a direct connection to this topic. Each ferry contains around 2 miles of traffic. It does not take much to cause significant delays if the traffic for one ferry is held up. The Port of Dover handles 100 miles of traffic every day (from Dover to the Houses of Parliament and beyond) as part of the vital £80 billion of trade handled by the port every year. Any delays not only impede passengers, they also impact on the UK economy.

Turning to cruise, in September 2012, the Home Office began stopping all cruise passengers coming ashore on day calls at UK ports and inspecting their passports, where it had never done so previously. This has the effect of depriving passengers of time ashore, causing the curtailment of excursions

which they had booked (and paid for), and reducing the benefits for local businesses from the influx of tourists into these ports. We cannot stress enough the impact this has on UK ports' abilities to attract high paying international cruise companies and their passengers to the UK. One cruise line has already decided to call it a day in the UK (including calls at Dover) and others may follow suit.

Specifically, the volume of information that is already made available by the cruise lines to Border Force and the checks that are carried out by the port agents and the cruise ships make these tourists an extremely low risk category. Cruise lines are already working with Border Force to ensure that any additional information that is required is supplied. Over the 2012 cruise season, low-risk day visitor to British ports were increasingly subject to full face-to-face document checks. This is extremely time consuming and can take up to four hours on a half day call or 11 hours on a full day call. This does nothing to promote the UK and is already losing us business by tarnishing the UK's reputation as an open and welcoming nation.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tim Waggott', with a stylized flourish at the end.

Tim Waggott
Chief Executive

Submission 66



Our Ref: L-MG-OW-00142-10-HSO Your Ref:

5th August 2013

Home Office
Direct Communications Unit
2 Marsham Street
London
SW1P 4DF

**Response from HS1 Ltd to the Review of the Balance of EU Competences:
Asylum and Immigration and Free Movement of Persons.**

HS1 is the 109 kilometre high speed rail line connecting London's St Pancras International station to high-speed commuter services throughout Kent, and international passenger destinations in Europe such as Paris and Brussels via the Channel Tunnel.

HS1 Ltd holds a concession through to 31 December 2040 to operate, maintain and renew the railway including St Pancras International and three other stations along the route - Stratford International, Ebbsfleet International and Ashford International. HS1 is a modern, high performance, high-speed passenger rail line and is the UK's only high speed railway. It forms the UK section of the Paris-Brussels- Koln-Amsterdam-London "(PBKAL)" trans-European transport network priority project.

HS1 Ltd was concessioned in November 2010. It is now wholly owned by a consortium comprising two major global infrastructure investors- Borealis Infrastructure and Ontario Teachers' Pension Plan.

International passenger services on HS1 are currently operated by Eurostar International Limited ("Eurostar"), predominantly servicing Paris and Brussels out of St Pancras International station. HS1 operates at world class levels of reliability, with a Moving Annual Average of less than 8 seconds delay per train from Infrastructure incidents. In addition the services have benefited from very high levels of punctuality, with Eurostar achieving over 90% punctuality (within 15 minutes of scheduled arrival times), which is significantly better than the average punctuality of airlines, estimated at approximately 81% on competing routes. International high-speed rail is a growth market across Europe, overtaking air travel on a number of major international

routes, with demand stimulated by journey time improvements and increasing challenges to the air market such as environmental considerations and airport congestion. Eurostar estimate that they have an 80% market share of point to point travel between London and Paris/Brussels.

However to ensure continued growth all aspects of travel need to be smooth and efficient. This cannot be said for the borders and security arrangements required at present across the EU. These are complex and time consuming.

Eurostar has been working on plans to serve 10 new cities in Europe over the next ten years. This summer it has trialled services to the south of France for example but is now being forced to make substantial capital investments in Lille station to allow for borders clearance for those services to be re-introduced on a full scale basis from 2015.

The arrangements governing train passengers in the EU are complex and depend in part on national regulations and in part on EU wide arrangements – as a single example, different member states take different views about who is responsible for checking passports on departure from the Schengen area.

In addition the physical and technical constraints on passport checking on arrival in St Pancras are significant – there up to 750 people on each Eurostar train arriving and platforms are not segregated between arrivals and departures.

As well as being a constraint on Eurostar's development these issues also constrain new prospective operators – the complexity and lack of transparency in these areas, mean that it can be almost impossible for them to understand the implications for their business models.

To illustrate how negative this is for development of new services, attached is a redacted letter from Deutsche Bahn to HS1 which sets out clearly that the borders and security arrangements are one of the barriers to entry.

In summary then the implications of the current arrangements are that:

- 1) Customers considering travel to the EU and the UK are dissuaded – the two visa system increases costs and complexity therefore tourism growth is likely to be restricted. In addition the extra time that the borders checks take on some services are significant – it can take up to an hour to clear a single train for example which adds 50% to a journey time from Paris or Belgium and would add 20% to the journey time from Frankfurt. Longer overall journey times make rail less competitive with air. Given the constraints on our London and the South East airport capacity this has even greater consequences for future travel across Europe; and
- 2) Train operators plans are complex, costly or even impossible to realise- in particular lack of clarity over processes and lack of agreement between member states about processes both increase development costs and, in some cases, may prevent business case approval.

Options we have considered which might help overcome these issues are:

- 1) For the UK to:
 - a. Introduce a new streamlined visa application process
 - b. Develop new technology to improve speed of passport checking – in particular we envisage checking on trains as they travel through the Channel Tunnel as being the approach most likely to facilitate the development of the rail market and to meet the requirements of all member states
 - c. Request improved consistency in application of the Schengen area. This could happen in parallel with the development of new technology – neither is expected to be a swift solution but both would be beneficial.
- 2) For the EU to ensure improved consistency in application of the Schengen area.

Together with London First and the Home Office we are undertaking our own review of the current arrangements across a range of member states. We hope that this will allow:

- 1) improved communication to prospective operators, and
- 2) work with other member states to remove barriers one by one

[REDACTED]

5. Requirements for check in procedures and safety

Currently a security check-in for all passengers travelling towards the Channel Tunnel is required which would result in important and cost intensive reconstruction work in German stations to establish security zones.

6. Border control

The process currently required with the exit and passport control of all passengers in Lille is a potential show-stopper for the project. Only the passport control upon arrival or departure in London or on the train would be a feasible solution for DB. Furthermore, for technical and data protection reasons the obligation to deliver all passenger data to UK border force prior to arrival is not currently possible.

Due to the above mentioned difficulties we are currently not in the position to communicate a concrete starting date of the services. Given the various technical and commercial uncertainties, we have temporarily reduced the number of staff working on the project. Nevertheless, DB still aims to introduce direct high speed train services from mainland Europe to London once the technical and commercial obstacles have been removed. Thus the London ICE remains on DB's strategic map.

If you need any further information please do not hesitate to either contact Martijn Gilbert of Ariva in London or our project directors Silke Kaulfuß and Wolfgang Merz in Frankfurt.

Best Regards

h. Weichold

DB Fernverkehr AG

Submission 67

Name	[REDACTED]
Organisation/Company (if applicable)	IET French Network (collated response)
Job Title (if applicable)	[REDACTED]
Department (if applicable)	
Address	
Email	[REDACTED]

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

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

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

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

My ability to live work and make a family in France since 1993 with absolutely no impediment other than the eligibility to vote (nevertheless I am have eligibility rights for local and European elections)

A large number of UK Nationals work in the European Aerospace business as expats and benefit from the free movement rights for themselves and their families in moving abroad, working and living. British participation in European Aerospace projects such as Airbus and ESA programmes requires UK Nationals to work in overseas locations and the UK economy and the UK's international prestige benefits from participation in these programmes

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

My life since 1993 (see 1)

Experience of working in the European Aerospace industry for many years allows to compare the situation many years ago (1970s) when there was no EU Competence and these days when there is. Basically it is much easier these days to live and work and do business in Europe as an expat. Some examples are; no residence permit requirement, getting driving licence, getting social security registration (green card in France), setting up business, hiring expat employees, transferring money, importing and exporting goods in Europe, cross border business including VAT, getting kids into school.

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

I hav not experienced any difficulty with access to health care services in the UK using my European health card.

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

Only obstacle I have ever encountered is in getting a visa for a business trip to China in 2002 whilst living in France with a UK passport. Apparently you should get it from the Chinese embassy in the UK... but I managed anyway to obtain it in France with some with help from the French administration.

Obstacles: Transferring pension rights and keeping track of pension rights from working in several countries with different schemes.

Questions in relation to the labour market.

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

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

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

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

Questions in relation to social security coordination.

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

Better coordination, or at least better information, is needed on the provision for pension rights of nationals working in more than one EU country.

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

Questions in relation to Immigration.

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

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

I have only experienced positive feedback from people in our local community of having English neighbours. There seems to be less fuss in France in spite of the fact that France has higher immigration than the UK.

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

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Questions relating to future options and challenges.

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

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

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General questions

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

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17. Are there any general points you wish to make which are not captured above?
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18. Are there any published sources of information to which you would like to draw to our attention for the purposes of this review?

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Submission 68



EU Balance of Competences:

PART ONE: SUBMISSION BY MRN ON ASYLUM AND IMMIGRATION

Migrants' Rights Network (MRN) was founded in 2006 with the mission of improving cooperation between organisations in the UK working to support the rights of migrants. It advocates a rights-based approach to immigration policy which would allow people newly arriving to quickly and effectively establish their position in relation to the labour market and business activities, access to public services and benefits, the establishment of family life, protection from discrimination, route to obtaining citizenship, and in all other matters that will aid their integration into life in the country.

We are critical of many aspects of law and policy in the UK in respect of all these matters. Our sharpest complaint arises from the sheer instability of a immigration regulation in recent years, with policy being made on the basis of poor evidence and producing tensions and conflicts across a range of overlapping concerns which have strained the capacity of the administrative structure to breaking point. The constantly poor evaluation of the work of the authorities intended by Parliament to administer immigration policy by the Home Affairs Select Committee, and the recent decision of the Home Secretary to scrap the UK Border Agency functioning as an executive body together provide clear examples of the chronic failings of the system. Stakeholder criticism of immigration policy, extending across business, higher education, tourism and recreation, and the scientific and arts community has become more intense in recent years as government measures cut across vital interests. Migrants themselves, confronting administrative ineptitude and impossibly dense and constantly changing regulation are increasingly obliged to protect their own legitimate interests by ad hoc means, which is now the main factor driving movement into irregular immigration status across the country. Finally, we see that in reaction to this often chaotic scene the law courts are frequently called upon to determine issues which ought to have been settled by better regulation and proper regard for basic rights.

It is from the standpoint of wanting to see a resolution of the current predicament which immigration law and policy is currently in that we approach this exercise in evaluating the balance of competencies between the EU and UK government institutions on matters concerning asylum, immigration and rights of freedom of movement. In doing so we express no opinions of the bigger issue of whether the UK should remain within or move out of the EU itself. On this point we limit ourselves to saying that, since so much of the chaotic state of immigration policy is driven by purely

indigenous factors, the outcome of further withdrawal from EU competence in this area will not in itself bring about any improvement in the situation. Having set out these comments to foreground our views, we now turn to the questions put in the balance of competence review.

THE EU AND THE UK BORDER

1. What are the advantages or disadvantages of the UK opting out of the border and visa aspects of the Schengen Protocol?

In respect of the good administration of immigration law and policy in the UK, opting out of the Schengen Protocol has brought no advantages whatsoever. The chaotic state of immigration management in this country, referred to above, has all its roots in poor policy advanced without any regard for a base in factual evidence. The opt-out has allowed the UK to maintain the full range of powers to check the status of all persons arriving at a port of entry and to apply the full rigour of the law to those subject to immigration control. The justification for this would be the orderly management of people moving into the country according to a set of principles which were warranted in the special circumstances of the UK in relation to the rest of the EU. However, we are of the view that the gains for orderly management from remaining outside of Schengen are negligible.

The effect of maintaining checks at the UK borders does mean that records can be kept of people arriving and the authorities retain the capacity to refuse entry to third country nationals travelling from other EU states if their presence is felt to be undesirable within the Schengen system. According to the Migration Observatory⁽¹⁾, around 16,000 people are refused entry and removed on detection at a UK port, though it appears not to be known how many of these were arriving from other EU countries. The effect of ending checks at the UK's frontiers with EU states would probably encourage some third country nationals currently living in other states to make the journey and a proportion of these might well be considered unwelcome by the authorities. Welcome or not, the point relevant to this discussion is the impact that such arrivals would have and whether this could be assessed as so negative as to justify the maintenance of controls.

Our concern about the rights people have on arrival at a border, and what is known about the way in which the power to interrogate and challenge is often used in an arbitrary manner inclines us to favour border management systems which operate with the presumption that individuals have a right to cross. The Schengen system more closely embodies this principle and that registers as another point in its favour from our standpoint.

We would argue that the retention of powers to prevent the entry of people considered undesirable by the authorities has to be weighed against the disadvantages of maintaining controls. In one area at least, the chilling effect on tourism, this appears to be considerable.

1 <http://www.migrationobservatory.ox.ac.uk/briefings/deportations-removals-and-voluntary-departures-uk>

The example of Chinese tourists alone has attracted a very high level of criticism because of the role the UK visa system plays in discouraging this group of nationals in including the UK in European itineraries that take in several other EU countries. It is likely that the current necessity to obtain a separate visa which would allow visitors to Europe to include the UK in their plans acts has a very large deterrent effect on what would otherwise be a very lucrative branch of tourism, generating revenue that has the potential to rise into millions of pounds.

In our view the value of retaining controls at the UK frontiers with other EU states is unproven whilst a great deal more is known about the costs. For this reason we would favour consideration being given to Schengen membership.

2. If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?

From the standpoint of immigration policy it would have meant that third country nationals travelling directly from another member state would be exempt from routine controls and entitled to enter the UK for the balance of a period that, did not exceed three months. The EU institutions would acquire the authority to monitor the procedures in place at UK ports to ensure that these conditions were observed. Whether or not this would have proven to be in the national interest depends on the likelihood that it would have produced a more effective system for managing immigration. Our view is that the system that the UK currently operates outside the purvey of the Schengen Protocol is not proving conspicuously successful and it is therefore plausible to suggest that the national interest would have been better served by being a part of the European system rather than remaining on the outside.

3. What future challenges do you see in the field of borders and visas and what impact might this have on the national interest?

The current mix of EU and UK sovereign policy which the UK has secured for itself through the exercise of its various opt-ins and opt-outs has arguably proven durable in the period since 2002, when pressure on the external borders was reduced by the ending the last major conflicts that had accompanied the breakup of Yugoslavia. Since that date border policy has enjoyed a period of stability which has largely come about from the success of the EU in obtaining cooperation from countries in the adjacent regions.

This stability is not likely to be assured on a permanent basis. Civil upheaval in the Eastern Mediterranean has the potential to pile up pressure, firstly on Turkey and then, in the event that governments in Ankara become disaffected with their relationship with the EU, directly on external borders of the Union. It is quite possible that similar scenarios will develop in North Africa with countries of the Maghreb also being less reliable as partners in holding back immigration pressures. The limited achievements within the EU of achieving solidarity pacts with member states experiencing heightened border pressures could well mean a breakdown of their capacity to hold recently arrived migrant and refugee communities on their territory and consequently a return to the situation which prevailed fifteen years ago of unregulated large scale secondary movements across the EU. This will increase

pressure at the UK border, but leave us without the assurance of cooperation across the EU region on burden sharing measures which would allow this pressure to be contained. We would expect that the result would be a sharp increase in refugee arrivals in the UK, producing a further crisis in public confidence that the system was under control.

If it was acting rationally the UK government would be aware that the current period of relative stability ought to be used to secure deepened cooperation across Europe, providing better burden sharing support and mechanisms to release the pressure that the EU states at the border will be coming under. We think it likely that any action taken by the UK government to alter the balance of competence between the national and EU authorities will be read as an attack on the level of cooperation which is needed and a steady worsening of the situation with regard to control at borders.

4. Could action be taken in a different way i.e. could the EU use its existing competence on borders and visa matters differently which would deliver more in the UK national interest?

Yes, but it would require a change of approach to the way in which the UK discusses these issues with its EU partners. This is widely seen across Europe as being a relationship in which the UK expects the EU to order its affairs in ways which secure British interests whilst walking away from important discussions which deal with the interests of its partners. A greater willingness to contribute to the effective management of migration across the whole of the EU region would, in our view, help secure better outcomes on issues which particularly affect the UK.

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

We have not further points to make on the issue of the EU and the UK border.

THE EU AND ASYLUM

6. What are the advantages or disadvantages of participating in a Common European Asylum System for the UK?

The main advantage relates to the fact that application of refugee law is an obligation common to all EU states involving identical standards with regard to definitions and the provision of protection. The CEAS potentially provides a framework for ensuring that the application of these standards is genuinely uniform across all the jurisdictions. With this in place the system of refugee protection in any one country will acquire greater legitimacy in terms of the fairness and objectivity of its protection measures.

The CEAS also provides an important means to protect both states and refugee communities against secondary movements induced by standards of protection in one country falling below the common benchmarks agreed by others. It also holds out the hope that there will be burden-sharing between states, preventing EU countries adjacent to troubled countries meeting a higher cost of refugee protection simply because of their geographical location.

We believe that the UK will benefit from this system being securely in place and providing a secure foundation of all other measures which are needed to ensure that the obligation to provide protection to refugees is in place across all the countries in its neighbourhood.

7. If the UK had used its opt-in differently in the area of asylum, what implications would this have had for the EU competences? Would this have been in the UK national interest?

If the UK had opted out of more of the CEAS measures we presume that the competence of bodies like the Commission and the European Parliament to maintain oversight and express a view on refugee procedures in this country would have been more dilute. However, the fact that the basic refugee legal instruments, namely the Geneva Convention and the European Convention on Human Rights form part of the *acquis* of common EU law means that EU competence would be asserted through the role of the European Court of Justice and the European Court on Human Rights. It would be regrettable if this was the sole means to ensure the application of common standards however, given issues of the length of time taken to hear cases and the political controversy that arises when judgements go against governments.

8. What future challenges do you think the EU will face in terms of asylum and what impact might this have on the national interest?

In terms of future challenges we feel that the European region is very vulnerable to new crisis brought about by social upheaval in adjacent regions in the Middle East and the Maghreb which will generate pressures at least comparable to those experienced during the break-up of Yugoslavia in the 1990s. Any reduction in the capacity of the EU to support cooperation between member states arising from rebalancing competence in favour of national governments might well leave the region exposed and poorly equipped to handle large-scale refugee crises in the future.

9. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?

Our view is that participation in the CEAS has already optimised the benefits of cooperation with the EU for British interests. The further strengthening of these benefits suggest deepening this process of cooperation.

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

We have no further points to make on EU asylum policy.

THE EU AND LEGAL MIGRATION

11. What are the advantages or disadvantages of the UK deciding not to opt into the EU competences around Legal Migration and returns and admissions?

The Legal Migration directive is an attempt on the part of the Commission to build on what it presumes is a consensus about the value of certain types of migration which is assumed are not contentious, namely highly skilled workers, seasonal workers, inter-corporate transfers and remunerated trainees. It lays down the principle that in cases there should be a requirement for a work contract in all these instances and that admission should be on the basis of an economic needs test. Aside from these matters the directive also points to the need for integration programmes and cooperation with countries of origin as components of a Legal Migration policy. We see these as fairly modest proposals which point policy in this area in what might prove to be a useful direction. It is intended to serve as a framework for the development of policies which will be substantively informed by national experiences. This ought to provide the UK government with the assurance that legitimate British interests will be safeguarded.

The advantage of agreement on this measure is that it would strengthen cooperation between EU countries around sets of policies which would benefit from being considered in a regional light. If progress could be made in this direction then one would hope that the EU and its member states would acquire confidence to tackle what is currently the more contentious issue of migration of workers for the purpose of low skilled employment.

The disadvantage of not building cooperation in this area is that states will continue to manage migration on the basis of their perceptions of their separate national interests. National management of migration has not been a conspicuous success until now and the pressures of living in an increasingly globalised world suggest that it will be more difficult for individual countries to achieve efficient regulatory systems by acting on their own in the future.

Returns and admissions policies and directives present a different set of issues. The greater progress the EU has made in this area shows that the member states find it easier to reach agreement on what are essentially enforcement measures than they do on the fundamental principles of good migration management. It should be clear that, in the absence of positive policies supporting the efficient management of migration, then there is likely to be a greater need for coercive measures of enforcement in order to force some order into an otherwise under-achieving system. In our view much of what the EU has achieved in the area of returns and admission is essentially palliative, aimed at patching up a chronically poor system which constantly generates new arrays of problems for which states have no proper solutions.

Our conclusion on this point is that the UK and the EU would be better served by more progress in the way of positive framework agreements along the lines of the Legal Migrations directive and less emphasis on the types of enforcement measures represented by the returns and admissions policies.

12. If the UK had used its opt-in differently in the area of legal migration what impact would this have had on the EU competences? Would this have been in the UK national interest?

If the UK had acknowledged its interest in seeing greater progress being made towards framework policies to support the better management of migration then it is possible the EU would be further down the line in solving what are currently intractable problems across the region. The CEAS provides a modest example of what progress might have been made, even though this area also urgently needs a new phase of development to tackle the problems looming on the EU's southern borders.

We regret to say that the UK has provided an example of the country least willing to support cooperation and progress in the areas most vital to progress and therefore has to shoulder a large share of the responsibility for the long-drawn out impasse of immigration policy across Europe at the present time.

13. What future challenges do you see in the field of legal migration and what impact might this have on the national interest?

As might be surmised from our comments above, we feel that the future challenges concern the development of policies for a region which plays a vital part in running a global economy which drives immigration across the world. For a long time Europe has been on a path of development which is underpinned by the movement of people, capital goods and services across borders and it is clear that this will remain the case for some time into the future. Indeed, in addition to the normal considerations of running market-based economies there is now the additional consideration of demographic change, with a marked change in the ratio of economically active to inactive people which is going to grow more severe over the next decades.

Well administered immigration policies are urgently needed in the European region which has the support and consent of the mass of citizens. Yet we currently have to live with policies which are clearly inadequate and which serve to stoke up contention and anxiety amongst the population. It seems to us that Europe has a critical role to play in addressing these issues and it would be helpful if national governments acknowledged this fact. Gaining this recognition from national governments is probably the key challenge of this period of time.

14. Could action be undertaken by the EU in a different way using existing competence that might provide better outcomes for the UK national interest?

Yes. However, such is the extent of the deep crisis within the EU and its member states in this area of policy that the initiative would have to come from one, or better more than one, national government showing sufficient leadership to lead the region in a different direction. As things stand at present it is clear that the UK government will not play this role. It appears to have chosen the opposite path of attempting to lead a group of countries in deeper challenges to the hope of a regional approach to migration management. We do not think it likely that this will serve the national interest in the long run.

15. Are there any other general points you wish to make that are not captured here?

We have not further points to make on this section.

PART TWO: SUBMISSION BY MRN ON INTERNAL MARKET AND FREE MOVEMENT OF PERSONS

The questions in this section seem to point to a desire to see quantitative evidence on the impact of EU free movement across the area of the UK economy and the EU internal market. MRN's area of concern, which is the experience migrants have of residing in the UK, has not led us to systematic research in across the range of issues considered below. However, our general view on these issues is shaped by the evidence considered in the collection of essays, *Who Needs Migrant Workers? Labour shortages, immigration and public policy*, edited by Martin Ruhs and Bridget Anderson.

The studies in this volume review in impact of migration – both EU and third country national – across the UK economy and in such sectors as health and social care, the hospitality sector, food businesses, construction and financial services. The theme of the studies is that the use of migrant labour inevitably involves trade-offs, with whatever disadvantages might be identified being set against benefits. On balance it can be shown that migration has contributed to higher rates of economic growth being achieved across the last decade and that this has made a positive contribution in terms of UK's fiscal position in relation to taxation and the provision of public services. The net effect of migration over this period is generally considered to have contributed towards faster earnings growth for the top 80% of wage earners and higher levels of employment. Most commentators believe that it has also contributed to some depression of wages for some workers in low skilled occupations, including young people seeking entry level jobs. These effects are broadly in line with what is reported to us by groups and stakeholders across the country who we are in contact with.

However MRN is not primarily concerned in conducting new research on these questions and will not claim to have evidence on the points raised in the questions in this section. Our responses are therefore limited to considerations which we think arise from the general issue of the exercise of free movement of persons in the EU in the recent period.

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

The exercise of rights of free movement for persons is part of a larger policy which concerns the construction of a single market across Europe which also promotes the movement of goods, services and capital across the region. An assessment of the benefits and harm that accrues to UK nationals and the UK as a whole from the EU therefore has to be situated within the total effect of this system rather than just one part of it.

There is a large literature on the role the EU and its single market has played in supporting prosperity in the European region in the latter half of the 20th century and it is not possible for us to reiterate this here. We would say that, in our view, if economic strategy is directed towards supporting the free movement of goods, services and capital, and the free movement of persons is also necessary in order

that the market is equipped with the full capacity to adjust for change in the distribution of the factors of production across the market area. If capital is permitted to move without restriction from one area to another then there needs to be a concomitant right of persons affected by this movement to adjust to changes in their circumstances through a similar right of free movement. Depriving people of this right would mean that regions deserted by capital would become congested with surplus, unproductive populations with no means to relieve their disadvantage. Our view is that the free movement provisions of the EU treaties have worked to the UK's advantage in that it has ameliorated the impact of economic change and development in the region since the second world war and has allowed a reasonably cohesive market to develop for goods and services produced by workers and businesses in the UK. Had free movement not been a factor in the single market it is likely that the European regional would have been marked by even greater disparities in the distribution of wealth and resources which would have impacted on growth rates. The fact that this has been avoided has worked to the advantage of UK citizens and the UK as a whole.

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

In the absence of EU competence supporting the right of free movement it is safe to presume that UK nationals would have encountered many more problems in relation to work, accessing benefits and services in other member states.

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

The best evidence on this is to be found in the relative success of the UK in its trading position in the EU single market. This has supported the growth in the UK economy which has been the basis for taxation policies which have allowed the provision of welfare and public services.

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

We are aware that UK nationals face problems of discrimination when accessing jobs and services in other member states. A proportion of this is likely to be contrary to existing EU law dealing with equality of treatment for people exercising free movement rights. It is clear to us that more action on the part of the EU aimed at enforcing law in this area would help improve this situation. Less action is likely to mean that the disadvantage would continue unchallenged.

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

The consensus across all credible studies of the impact of the free movement of persons on the UK economy has been that it is broadly positive. It can be assumed

that EU competence in this area has played a role in supporting the practical exercise of this right.

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

The evidence suggests that the impact of free movement on all these areas has been broadly positive so we would assume that that EU competence in supporting the exercise of these rights has to be considered satisfactory.

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

We presume that the following leading studies on these issues will be familiar to the government:

Examining the relationship between immigration and unemployment using National Insurance Number registration data, by Paolo Lucchino, Chiara Rosazza-Bondibene and Jonathan Portes, NIESR Discussion Paper No. 386 9th January 2012

The Effect of Immigration along the Distribution of Wages, by Christian Dustmann, Tommaso Frattini and Ian Preston, Centre for Research and Analysis of Migration Discussion Paper Series CDP No 03/08.

8. How would these sectors and UK nationals benefit from the EU doing a) more or b) less in this area? What evidence is there of the extent to which the current EU provisions on social security coordination are necessary to facilitate an effective EU labour market?

As long as there is a single market EU coordination of social security is necessary in order to ensure that contributions made by way of taxation and national insurance in one jurisdiction where a migrant has worked can be distributed to a second jurisdiction where a claim for welfare support is made. We consider that it is in the interests of the UK to support coordination in this area in order to provide migrants who have worked and made contributions on its territory with the option of returning to their place of origin when they become economically inactive.

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

We have not scrutinised evidence which establishes the necessity for current EU provision on social security coordination. We think that the need for coordination in some form can be deduced from practical concerns about the loss to states whose citizens go to live and work in other member states but then return at a later stage in their life and make claims on local social security systems. This points to the need to make social security benefits transportable.

10. What evidence is there that changes to the current balance of competences are needed to ensure that rules on social security coordination do not have a

disproportionate impact on the UK benefits system, or undermine public confidence in the system? What evidence do you have of the impact of EU competence in this area on immigration in the UK?

We are not aware of the existence of any evidence pointing to a need to reform social security coordination for the purpose of increasing public confidence in the system. We understand that public concern about matters in this area is temporarily heightened by media coverage which is critical of, for example, the rights EU migrants currently have to remit child benefits to the countries where their children are living. We are confident that whatever apprehension exists in this area could be dealt with by explanation on the part of the government that this is a modest and proportionate measure which arises from the fact that child benefit is a universal entitlement for all people residing in the UK with the care of children and is necessary to prevent unjustified pressure to take decisions on the residence of children which is not justified by considerations of their welfare.

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

We have practical experience of EU competence being required to resolve matters which, had they been left to national authorities, would have resulted in a significant loss of rights for the people concerned. Recent notable examples of such cases include:

People in *Zambrano*-type circumstances, where the effect of removing a non-EU national family member would have meant that EU national family members would not have been able to enjoy their treaty rights (see C-34/09 - *Ruiz Zambrano*);
The position of EU nationals who have served a term of imprisonment, and the effect this has on their residence rights (*Secretary of State for the Home Department v FV (Italy)* [2012] EWCA Civ 1199.);

Direction with regard to the interpretation of the CEAS Qualification Directive, establishing the proper ways to view asylum application which are based on persecution on the grounds of religion (*Germany v Y and Z* [2012] EUECJ C-71/11);
The circumstances in which an asylum seeker may be protected from return to another EU member state if this other state is not able or willing to provide reception and protection conditions as required under the terms of the CEAS directives (*NS v UK* (C-411/10));

The rights of EU citizens to move across all states of the EU accompanied by their non-EU national family members (*Blaise Baheten Metock and Others v Minister for Justice, Equality and Law Reform* (2008) C-127/08).

The competence of the EU in these matters has played the important role of securing the rights of migrants and refugees who would otherwise have been treated less favourably under the provisions of national law.

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

There is a pressing need for evidence on exactly this matter and we believe that the capacity of authorities in the UK to capture impacts has been reduced since the abolition of regional development agencies after 2010. The evidence which does exist is partial and has been reflected in the recent Home Office research *Social and Public Service Impacts of International Migration at the Local Level* by Sarah Poppleton, Kate Hitchcock, Kitty Lymperopoulou, Jon Simmons, Rebecca Gillespie, (Research Report 72, July 2013). This report made it clear that the evidence on impacts was generally poor and proceeded with an acknowledged second-best effort to obtain a sense of what the situation might be through sampling the viewpoints of people who were presumed to be well-informed in local areas. It is clearly the case that better evidence than this is needed to inform policy makers.

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

There is no evidence pointing to a need to change the balance of competence for this reason. The powers which currently exist for national authorities to tackle the types of abuse of free movement rights which have been identified are amply available under current arrangements.

SUBMISSION DATED 7TH AUGUST 2013

Submission 69

British Influence

Review of Balance of Competences

The Internal Market: Free Movement of Persons

British Influence is a cross-party, pro-European Union membership campaign organisation whose supporters hold that Britain should be exerting its influence through membership of the EU to secure the change Europe needs.

Introduction

Free movement in the EU

The principle of free movement is essential to the successful operation of a coherent Single Market. To remove free movement of persons from the four freedoms (of capital, goods, services and labour) would undermine the other freedoms. The Single Market is highly inter-related and interdependent with, for example, free movement of persons impacting significantly on the freedom to provide services. While free movement of persons is controversial at the present time, the direct benefit to the UK economy of free movement (set out below in answer to Q1) must not be ignored. But that does not mean that free movement has to mean a free for all, and that is not what either the treaties or the EU directive permit.

The Context

The timing of this review means that it takes place in the midst of a heated political debate within the UK about immigration in general and EU free movement in particular (although a similar debate is under way in several other Member States). Regrettably, the debate has often obscured the issue rather than brought clarity to it. The decision of the then government not to use the transitional provisions in the accession treaties for the A8 countries in 2004 but to allow full free movement from 1 May 2004 has set off a chain of events that has pushed immigration right up the political agenda in the UK.

However, the issue of free movement of persons needs to be seen in the context of the Single Market as a whole and not as an isolated topic. In addition, it also needs to be looked at over the whole period of the UK's membership and in the future and not seen entirely through the prism of events since 2004. A different decision by the UK Government in 2004 might have meant no major concern about free movement today.

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

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

(a) The exercise of free movement rights in other Member States is taken up by approximately 1.4 million UK nationals (2010 figures).¹ The other Member States with large numbers of UK nationals resident there include Spain, the largest number at 411,074, and Ireland with 397,465. There are also over 150,000 British citizens living in France and in Germany.² These figures demonstrate that a large number of UK nationals have taken advantage of their free movement rights to live, work, or study in another Member State. The free movement rights in the treaties enable EU nationals to cross borders in order to find employment, something of particular importance at the moment.

[b] While there are cultural and social benefits to free movement, the main benefits to the United Kingdom as a whole are economic. These can be summed up as the ability:

- of business to trade across borders easily as staff can work in more than one Member State without being subject to immigration controls;
- of businesses to recruit across borders both enabling them to appoint the best candidates but also addressing skills shortages within the UK; this latter point is illustrated in the background brief and also in business surveys, such as that published by the CBI in June 2013;³
- of British nationals to work, study or retire elsewhere in the EU;
- of British nationals to commute across borders to work (primarily in Northern Ireland);
- of the nationals of other Member States to exercise visa free travel to the UK for up to 90 days; the 20.5 million such visits a year are a major contribution to the UK's large and successful tourist sector;⁴ tourism is a

1 http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/EU%20migrant%20stocks_0.pdf

2 Oxford Migration Observatory briefing note, *ibid*.

3 <http://www.cbi.org.uk/media-centre/press-releases/2013/06/businesses-fear-skills-shortage-could-hold-back-growth/>

4 Figure for the number of EU nationals visiting the UK from the DCMS tourism call for evidence, p6

good example of the inter-dependence of Single Market freedoms as the free movement of capital has helped to facilitate tourism within the EU, as have Single Market measures such as the deregulation of air passenger services;

- of further and higher education institutions to enrol students and to recruit research staff from the whole of the EU – the latter being especially valuable to the research-intensive Russell Group of universities who employed around 14,000 staff from other Member States in 2009/10;⁵
- of investors elsewhere in the EU to invest in British businesses, uninhibited by immigration requirements.

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

There are several aspects to this point. In an area as complex as migration, it is necessary for the rules affecting free movement to be set down in EU law and enforced (if necessary) through the Court of Justice. As with other areas of the Single Market, a single set of rules makes the exercise of the freedom so much easier and more practical. The difficulties that some UK nationals have in exercising their free movement rights in practice demonstrate that, even with the benefit of EU competence, it is not always easy.

The social security aspect is also important because otherwise crossborder commuters or those routinely working in more than one Member State might face considerable complications in, for example, acquiring enough credits for a state pension. EU competence in this area ensures that a basic safety net is provided for those EU nationals who exercise free movement on the same basis as home country nationals.

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

⁵ <http://www.russellgroup.ac.uk/uploads/HoL-EU-Cttee-Inquiry-into-the-Modernisation-of-Higher-Education-in-Europe-the-EU-contribution.pdf>

The evidence of the impact on welfare provision and public services in the UK is hard to assess because of a lack of evidence. Ministers have, for example, told Parliament that there is no record of a social security claimant's nationality so accurate estimates of the cost of benefits paid to EU migrants (or indeed, other migrants) cannot be easily produced (but see the example in the next paragraph).⁶

A recent article in *Fiscal Studies* is one of a number of academic studies which show that EU migrants (in this case based on an examination of the A8 migrants) make a contribution to the public exchequer through taxation in terms of direct and indirect taxes of 30 per cent more than the cost of the public services they use or the benefits they received.⁷ This finding is not surprising given that most EU migrants are of working age, come to the UK to work and make fewer demands on public services because they are younger than the population as a whole, as the latter study identified. Department of Work & Pensions data shows that about five per cent of EU migrants are claiming an out of work benefit compared to 13 per cent of British citizens.⁸

The issue is not so much the facts about benefit claims by EU migrants but about the perception that, first of all Britain has a generous social security system, and secondly that people from other EU countries can easily come here and claim benefits, and are doing so. The lack of evidence to support the claims of benefit tourism – illustrated by the fact that the Department for Work & Pensions had to dramatically revise its first estimate of the additional cost of benefits for EU migrants if the habitual residence test were to be scrapped from £2 billion to £155 million - will not change public perception unless there is a serious effort to tackle this misunderstanding.⁹

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

⁶ Official Report [Hansard], House of Commons, 14.01.13, col. 466W.

⁷ 'Assessing the Fiscal Costs and Benefits of A8 Migration to the UK,' *Fiscal Studies*, Vol. 31, 2010, pp1-41, Christian Dustman.

⁸ Cited in, <http://www.theguardian.com/commentisfree/2013/mar/06/uk-benefits-eu-migrants-what-crisis>

⁹ http://fullfact.org/factchecks/eu_commission_migrants_benefits_151_million-28973

(a) The greatest difficulty for UK citizens living elsewhere in the EU is over their ability to enforce their free movement rights. The enforcement role of the Commission is necessary to ensure that the legislation is implemented effectively, not just in the transposition process but in its day-to-day application in Member States. The well-known examples of British citizens working as ski instructors in France, teaching in Italy or pensioners seeking healthcare in Spain all highlight the fact that the reality of free movement may be different from the theory.

(b) A reduction in EU action could not lead to any improvement in the position of British citizens exercising their free movement rights and might make them considerably worse.

Questions in relation to the labour market.

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

See answer to question 1.

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

We do not have this information.

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

The impact on the UK economy and society of free movement, and in particular, A8 migrants since 2004, has been the subject of intense (and often ill-informed) debate in recent years. Concern has been expressed particularly about the impact on the lower paid, that is unskilled workers. The report of the National Institute of Economic & Social Research on the potential impact of migrants from Bulgaria and Romania shows that at present they are younger and in higher skilled occupations than A8 migrants but this might change once free movement for Bulgarians and Romanians begins on 1 January 2014.¹⁰

¹⁰ *Potential impacts on the UK of future migration from Bulgaria and Romania*, NIESR, April 2013, p. 26.

The available evidence would seem to indicate that the greatest employment impact of the A8 migrants has been in low-skill or unskilled occupations and that it may have depressed wages in these sectors. However, evidence from employers, for example from the British Chambers of Commerce, does not suggest that wages *per se* were the most important factor leading them to recruit migrants; other factors including their availability for work, willingness to do jobs unpopular with UK born people and their skills.¹¹

It is important that the Migration Advisory Committee keeps these issues under review and reports regularly on the employment and other impacts of migrants so that the public debate on these issues can be based on fact and evidence rather than emotion and prejudice.

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

The principle of free movement should be maintained but it is entirely sensible for the UK Government to monitor the effects of EU migration on employment and society in the UK. The current debate is, as we have said, distorted by the impact of A8 migration and the salience of the issue may decline over time as A8 migrants return to their home countries.

Any attempt to reverse the change in the treaties to revert to free movement of labour only – i.e. the freedom as it was defined in the Treaty of Rome – would create substantial problems for EU nationals living in another Member State, including British citizens, could potentially lead to a rush of migrants anxious to enter the UK (or other Member States) before a deadline for change in the rules and would not necessarily address the concerns over free movement seen in recent years which have been about EU migrants entering the UK to look for work.

Questions in relation to social security coordination:

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

¹¹ British Chambers of Commerce survey, May 2013.

The rights established under EU competence enable British citizens to seek work, study or travel in other Member States in the knowledge that there is a basic safety net in place in terms of social security and healthcare. Withdrawal of all social security rights would weaken the single market because it would act as a disincentive to work across borders, impeding the operation of business, reducing travel and tourism and undermine the principle of free movement.

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

The key point here is about public confidence, which has been seriously undermined in the UK by claims of extensive benefit tourism, claims which as we explained in our answer to Q3 are not supported by the evidence. There is an important point about fairness when social security provision in the UK is being cut back for some claimants and it is never right to condone abuses of the social security system.

The future of EU social security regulation also needs to be considered, as the background paper suggests, in the light of the UK's planned adoption of Universal Credit. There will need to be clarity about the status of that system within the EU's social security rules.

Questions in relation to Immigration

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

None.

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

None that we have gathered ourselves. The absence of objective information on the impact on some communities, which have exceptionally high numbers of EU migrants living in them, is a serious issue when considering the policy implications within the UK of free movement. The Migration Advisory Committee inquiry is

currently carrying out an inquiry which will hopefully produce some useful information on this topic.

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

We are not sure that a change in the balance of competences is needed but possibly a reconsideration of the way the implementing regulations in the UK cover the circumstances in which an EU national's free movement rights can be withdrawn in this country.

It is not clear that the difficulty of only being able to exclude people for having committed minor offences, or for being unable to support themselves, for 24 hours before they can re-enter the UK for a further 90 days, is a result of the way EU law has been drafted or British law.

It would be valuable for the British Government to commission a comparative study of the way the other Member States have implemented the part of the EU directive dealing with exclusions as a matter of urgency to see whether a more effective alternative to the current system could be identified. The problem involves a small percentage of EU migrants in the UK, it generates bad feeling and undermines public confidence in free movement.

Questions relating to future options and challenges:

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

The major area of challenge will come in discussions about the implementation of Universal Credit in the UK and the way in which that will interact with the social security rights of EU migrants to the UK.

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

Transitional provisions on free movement of persons are now a standard part of accession treaties and it is unlikely that any future enlargements would take place without the UK Government deciding to make full use of such provisions.

General questions

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

No.

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

Developments since 2004 are a reminder that it is not just the principle of free movement that matters but also how it is implemented in Member States. This needs to be borne in mind as the debate continues about the potential impact of free movement involving Bulgarian and Romanian citizens from 1 January 2014.

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

Centre for Economic Performance

Immigration and the UK Labour Market: The latest evidence from economic research (June 2012)

<http://cep.lse.ac.uk/pubs/download/pa014.pdf>

Institute for the Study of Labour

New Labour? The Impact of Migration from Central and Eastern European Countries on the UK Labour Market (October 2008)

<http://ftp.iza.org/dp3756.pdf>

Office for Budget Responsibility

Fiscal Sustainability Report (July 2013)

NB Annex A (p 131 - The impact of inward migration in the long-term projections)

http://budgetresponsibility.independent.gov.uk/pubs/2013-FSR_OBR_web.pdf

Home Office

Social and Public Service Impacts of International Migration at the Local Level Research Report 72 (July 2013)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210324/horr72.pdf

Submission 70

Jeff Cuthbert AC / AM
Y Gweinidog Cymunedau a Threchu Tlodi
Min-ister for Communities and Tackling Poverty

Eich cyf/Your ref
Ein cyf/Our ref MB/JC/3617/13
Mark Harper
MP Minister for
Immigration
Home Office

20 August 2012

Balance of Competencies Review

Dear Mark

I am responding to you regarding the ongoing Balance of Competencies Review launched by the UK Government in July 2012. The Welsh Government has considered the two reports on the Free Movement of Persons and Asylum and Immigration and would like to offer the following comments.

It is important that the potential economic impact of any changes that may be proposed as result of this exercise is assessed very carefully.

Migrants to the UK have tended to be younger and more highly qualified than the UK population and have increased the supply of labour and helped address skill shortages. In particular, they have had a significant and beneficial impact in sectors such as food, construction, hospitality and health. There is little evidence of an overall negative impact on jobs or wages for indigenous workers although there may be costs to particular groups.

Migrants add to the level of demand in the economy through their expenditure on goods and services. Research by the Bank of England suggests that migrant inflows to the UK have had a slightly larger impact on supply than demand and this is likely to have depressed inflationary pressures in the UK economy.

While migrants may impose costs on the UK by increasing the demand for public services, they also contribute taxes and social security payments.

Estimates by the OECD suggest that, overall, migrants are net contributors to the UK public finances.

An important destination for migrants into Wales is higher education and in 2011/12 there were 4,295 undergraduates and 1,725 postgraduate students in Wales from EU countries (excluding the UK). Research has indicated that these students bring significant net economic benefit not only to the universities themselves but also to the wider region and the UK economy. Those students who remain in the country to work generate further benefits to the economy in terms of skills and GDP generation."

Wales has a proud history of providing refuge to people fleeing persecution and the Welsh Government is committed to the principles set out in the 1951 Convention relating to the Status of Refugees and to upholding its responsibilities under the Human Rights Act. The Welsh Government believes that integration for refugees and asylum seekers begins on day one. That is why we launched our Refugee Inclusion Strategy in 2008 and followed it with an updated Action Plan published in July 2011. In addition, our Programme for Government contains a commitment to promote community cohesion and support asylum seeking, refugee and migrant worker initiatives through our Community Cohesion Strategy and the Refugee Inclusion Strategy Action Plan.

I also feel that it is important to highlight the contribution asylum seekers and refugees make to life in Wales. They bring with them a wide variety of skills which benefit and enrich the communities in which they live and who have made them welcome. Many asylum seekers and refugees offer their time as volunteers in diverse unpaid work from charity shops and churches to mental health organisations and other third sector organisations.

I look forward to seeing the final analysis of the balance of competences in these two areas and to the Welsh Government being involved in the wider European debate about modernising, reforming and improving the EU.

Jeff Cuthbert AC / AM
Y Gweinidog Cymunedau a Threchu Tlodi
Minister for Communities and Tackling Poverty

Submission 71

Name	[REDACTED]
Organisation/Company (if applicable)	CBI
Job Title (if applicable)	[REDACTED]
Department (if applicable)	[REDACTED]
Address	[REDACTED]
Email	[REDACTED]

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

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

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

The CBI supports the principle of free movement of persons within the EU, which is necessary alongside the free movement of goods, services and capital to facilitate the operative functioning of the internal market, helping to raise the productivity and global competitiveness of UK-based companies.

The free movement of labour within the EU is important for business for many reasons. It facilitates the ability for companies to move skilled employees around the EEA without any visa or work permit requirements helping UK companies to deliver on overseas business opportunities. This can be essential for employees at all levels of the career ladder, including at executive level where integrated management structures across the EU are a modern day reality when a company has a business strategy to provide goods and services and win contracts in more than one EU country, as many UK companies currently do.

Notably, the ability of a UK national to work in another EU country is frequently regarded as an important opportunity for career progression and personal development, helping to improve understanding of other markets, global awareness, and to boost core skills like foreign languages. Restricting the free movement of labour in the EU would threaten the ability of some UK companies to succeed domestically and in overseas markets, because companies need to be able to plan with confidence that their key existing UK personnel can take up posts in other countries to the benefit of their overall business. The ability to exercise free movement rights in the EU enables UK nationals to realise economic opportunities in other Member States. According to Eurostat estimates, 330,000 UK citizens worked in another EU country in 2012 excluding cross-border workers (equal to 1.1% of total employment in UK, though it should be noted that the figure for non-UK EU nationals working in the UK is estimated to be much higher at 1.4 million).

The free movement of labour within the EU can also help to improve the way in which European labour markets function by easing the effects of structural market failures, particularly skills shortages. Addressing skill shortages and mismatch with the job market is a particularly big long-term issue in the UK that needs to be resolved domestically. The CBI has called for greater investment in skills to tackle long-term shortages and employers are actively seeking ways to boost the skills base of the domestic workforce to address this issue across the country so that UK nationals are in the best possible position to fill vacancies. Firms have coherent structures designed to do this through systems of internships, graduate schemes, apprenticeships, partnerships with universities and so on.

However, even with up-skilling and training programmes and progress towards a better overall education system in the UK, migrant workers will continue to play a role. Through the free movement of persons in the EU, the UK like other EU countries is able to recruit from a bigger workforce base, gaining access to non-UK workers that may have very specific, outstanding skills or to fill shortages where there are gaps in the domestic labour market.

Restricting the ability of UK companies to draw on this labour pool would put the UK at a competitive disadvantage to other EU countries, as well as key developed and emerging economies at the global level that have access to a vast labour base (e.g. China – total population 1.35 billion, India 1.23 billion, United States 316 million, Indonesia 237 million, Japan 127 million).

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

Our response to this question is covered in our response to Question 1.

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

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

Any additional EU action should focus on the enforcement of existing rights and responsibilities on freedom of movement for labour in order to facilitate the working of the free market, particularly through better matching of skills supply and demand. This would help address the market failure of around 2 million unfilled vacancies existing alongside high unemployment rates.

Questions in relation to the labour market.

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

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

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

There is a significant degree of consensus amongst labour market economists that immigration (both EU and wider) has had a limited impact on employment and pay (Migration Advisory Committee, 2012; *The UK Labour Market and Immigration*, Jonathan Wadsworth, National Institute Economic Review July 2010 vol. 213 no. 1). Wadsworth wrote “on average, it seems that immigration has not had much of an effect on either employment or pay. However, there may be some evidence of downward pressures on pay and jobs impact in the low skill sector, though these effects are not large.”

Dynamic effects of immigration on productivity and innovation, increased competition, human capital spill-over, transnational networks and o-ring effects – exist and may be large, but these are very difficult to account for in economic modelling.

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

Existing rights and responsibilities are sufficient - any additional EU action of the free movement of labour should focus on the enforcement of existing rights and responsibilities in order to facilitate the working of the internal market.

Questions in relation to social security coordination.

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

Coordination of tools at the European level is important, but it is vital that information and advice services, effective defence of existing rights and means of redress and right to representation work in accordance with national judicial systems, procedures and practices.

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

EU rules on social security coordination mean that those exercising their free movement treaty rights are, as a basic rule, subject to the legislation of the country where they work as an employed or a self-employed person. All countries are free to decide who is to be insured under their legislation, which benefits are granted and under what conditions. Rights differ for students, the retired or otherwise economically non-active people. It is for the government to look at how the domestic social security system operates to ensure that the impacts of free movement on public services do not outweigh the economic benefits.

Questions in relation to Immigration.

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

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

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

The treaty rights allow free movement for work purposes – if migrants are abusing these rights the government is free to take action, and effective enforcement on this point is important given public concern and migration targets. Under the current balance of competences, the Government is considering ways to reduce ‘pull factors’ to the UK – including asking migrants to leave Britain if they fail to secure a job after three months or cannot prove they have enough funds to support themselves in Britain for the first six months.

Questions relating to future options and challenges.

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

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

The CBI supported transitional controls on A2 nationals, and the decision to retain these controls for the maximum period, given the prevailing economic and labour market conditions. Decisions made should be taken on a case by case basis.

General questions

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

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

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

Submission 72

Name	[REDACTED]
Organisation/Company (if applicable)	Centre for European Reform
Job Title (if applicable)	[REDACTED]
Department (if applicable)	
Address	[REDACTED]
Email	[REDACTED]

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

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

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

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

There is a dearth of research on this issue as EU migration is difficult to disaggregate from migration generally and represents a minority of migration across the EU/EEA region (38 per cent). Estimates vary of the number of UK nationals taking up their right to move and reside in other EU/EEA countries: somewhere around 1.7 million seems to be the consensus (although official figures tend to under-estimate short-term movements). We know that a large number move to Spain and France as retirees and that their immediate medical needs are therefore catered for under health systems other than the NHS. (The European Commission has recently taken Spain to task over refusing free care to holders of a European Health Insurance Card, but UK and Irish tourists are still widely treated for free in most cases.) They pose a similar burden on other public services, too. In general, the UK receives young EU migrants seeking to work and sends older migrants looking to retire so the net impact on social services would appear to be in the UK's favour. Of course, there are other factors, such as the purchasing power of UK pensioners abroad etc

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

The existence of the EU's free circulation regime – the most far-reaching system of its kind globally – has transformed the rights of British citizens to work and access public services across the EU/EEA region. It is unlikely that these rights would be better protected under an alternative system of bi-lateral or multi-lateral agreements.

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

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

Questions in relation to the labour market.

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

The number of people in England and Wales who are born elsewhere in Europe stands at around 2.7 million. Of these, 1.6 million come from the old EU-15, Switzerland, and the European Economic Area countries – Norway, Liechtenstein and Iceland – (henceforth, ‘western Europeans’) whose citizens all enjoy freedom of movement rights. The remaining 1.1 million come from the A8 countries. (*Migration Observatory, ‘Migration flows of A8 and other EU migrants to and from the UK’, April 2013.*)

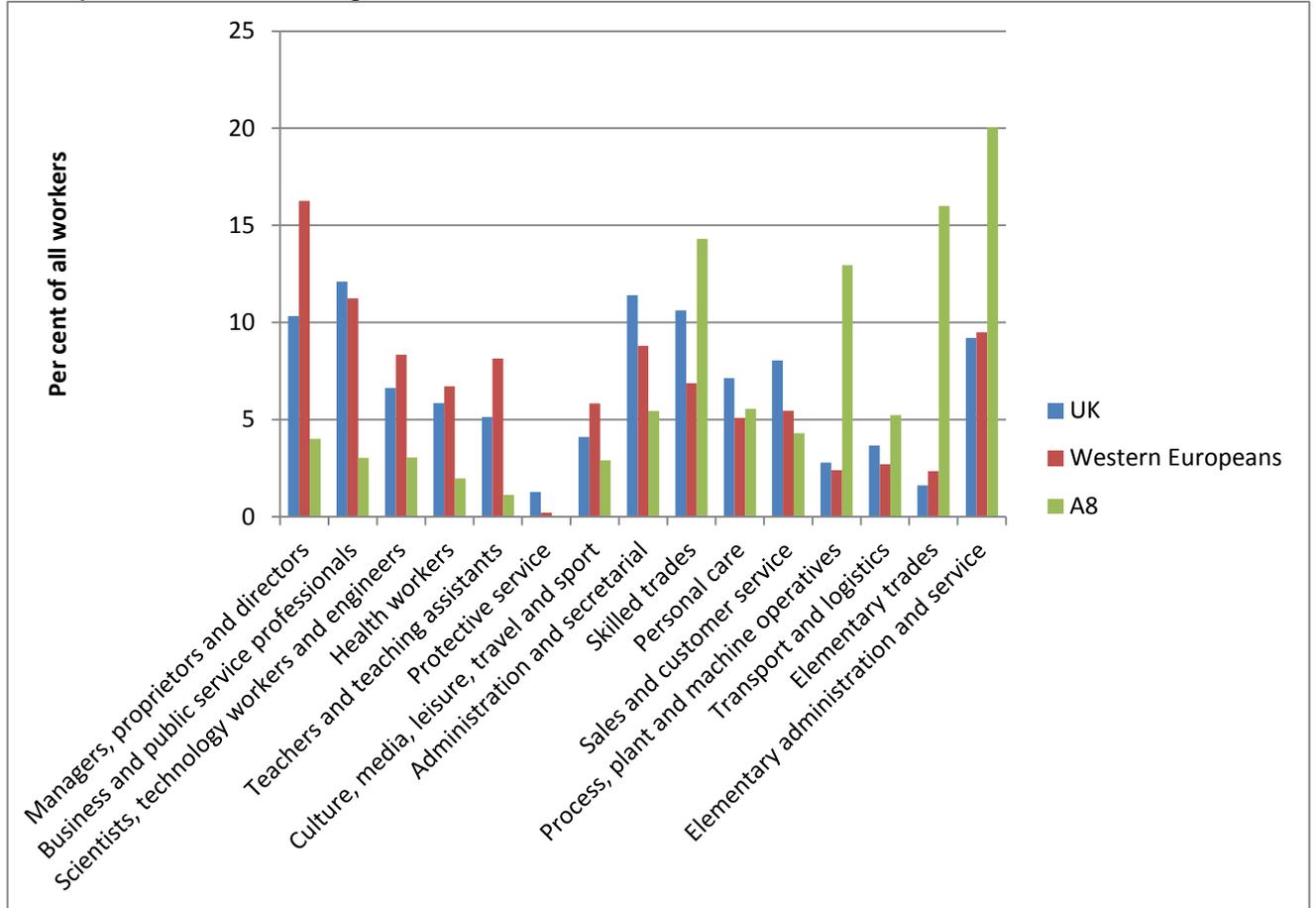
These two groups of immigrants have different average ages and levels of education. Age and educational attainment are two of the key determinants of employable skills, and therefore of wages. Western Europeans are slightly younger than the average Briton – 51 per cent are under 40 years old, compared to 49 per cent of British people. A8 immigrants are much younger: 53 per cent are under 30, and 85 per cent are under 40 years old. (*Office of National Statistics, Labour Force Survey, 2012 data.*)

Both western European and A8 immigrants are more highly educated than the average British worker – more have finished secondary education, and more have university degrees. (*Madeleine Sumption and Will Somerville, ‘The UK’s new Europeans: Progress and challenges five years after accession’, Equality and Human Rights Commission report, 2009.*) But their involvement in the British labour market is very different. A8 immigrants migrated to Britain in very large numbers from 2004, adding approximately 2 per cent to the labour force between 2004 and 2011. By comparison to western Europeans, many did not speak English well. A quarter had language difficulties which made it difficult for them to find or keep a job, compared to just 12 per cent of western Europeans. (*Office of National Statistics, Labour Force Survey, 2012 data.*) In other words, many lacked marketable skills in the British labour market, despite being comparatively highly educated. So the majority found jobs in low-skilled, low-paid work.

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

Western Europeans tend to be working in more highly skilled jobs than the average Briton, with a higher proportion directing or owning businesses; working in sectors such as science, technology and engineering; or as professionals such as doctors, teachers and nurses. By contrast, a higher proportion of A8 nationals work in skilled trades (especially construction) than do Britons, and an even higher proportion work in low-skilled manufacturing, construction and services jobs.

Occupations of EU immigrants



Source: Labour Force Survey, 2004-2012.

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

Various econometric studies, which are listed in the table below, have found little evidence that the large flows of A8 immigrants after 2004 increased unemployment among Britons. Similarly, little evidence has been found that A8 migration has reduced Britons' average wages, or the wages of the poorly paid: results are in the main not statistically different from zero. One study found that A8 immigration is associated with higher average wages, and increased wages for the 60th percentile of the distribution. Another found a small negative impact on employment of British nationals. But both are outliers. These findings are in line with studies that have examined the impact of both EU and non-EU immigrants, not just A8 workers, on Britons' employment prospects.

Study	Employment/wages	Estimated impact
Portes and French (2005)	Employment	A one percentage point increase in A8 Worker Registrations in local authorities is associated with a 0.09 per cent increase in native unemployment in that area.
Gilpin et al. (2006)	Employment	Not statistically significant
Lemos and Portes (2008)	Employment	Not statistically significant
Lemos (2010)	Employment	Not statistically significant
Migration Advisory Committee (2012)	Employment	Not statistically significant
Lemos and Portes (2008)	Average wages	Not statistically significant
Lemos (2010)	Average wages	A 1 percentage point increase in the A8 migrant-working age population ratio is associated with an increase in natives' average wage of approximately 3.4 per cent.
Lemos and Portes (2008)	Wage distribution	Not statistically significant
Lemos (2010)	Wage distribution	An increase of one percentage point in the A8 migrant-working age population ratio is associated with a 3.9 per cent increase in the wages of workers in the 60th percentile of the distribution.

Source: Migration Advisory Committee, 'Analysis of the impacts of migration', 2012.

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

Questions in relation to social security coordination.

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

Without a clear, emphatic and liberal set of rules that provide certainty of access to services and healthcare, the EU's free movement regime would be severely limited as a tool for supplying the needs of the single market. The current rules are generous to the migrant but have to be in order to provide the necessary freedom from doubt that must accompany a decision to voluntarily migrate. (It should be remembered that migrants take great risks when they move and may not be able to re-integrate back into their native job markets afterwards.) The current social security rules are based on the principle of non-discrimination between EU citizens and the citizens of their host member-state. The problem here is that such rules ensure that states with more generous welfare states will always be more attractive destinations than others. One alternative might be to replace the current system with a single set of social entitlements that apply to EU migrants wherever they are in the Union. But, as with remuneration of MEPs, such an approach would produce distortions of its own.

Another idea might be to create a special 'free movement fund' at EU level to help mitigate some of the costs that might be incurred by states catering for citizens exercising their free movement rights. Alternatively, EU countries could agree to make the Union's modest 'solidarity' funds – currently for the integration of non-European immigrants – available to those member-states where EU nationals account for over 40 per cent of the foreign-born population.

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

Despite the economic benefits, growing numbers of Britons are hostile to immigration (and hence to the principle of free movement within the EU). In one long-running poll, the proportion of Britons who believe that Britain's policy on immigration has 'gone too far' has hovered around 60 per cent for more than a decade. (*Migration Observatory, 'UK public opinion toward immigration', 23rd February 2012.*) Nearly six in ten believe that immigrants take jobs away from Britons. (*Transatlantic Trends survey, 2011.*) As A8 migrants arrived in Britain in large numbers, the public has become more hostile to EU migration. Sixty-five per cent would like to Britain to take back control over immigration from the rest of the EU. Fifty-eight per cent think EU migration harms the UK, while 26 per cent see it as a benefit. (*Sky News/Survaton survey, June 2013.*) This has led many to argue that something must be done to restore the legitimacy of free EU migration.

However, there can be little doubt that the fiscal arguments for restricting EU migrants' access to benefits are weak. They are net contributors to Britain's public finances. In its recently published International Migration Outlook, the OECD lists three factors that determine whether an immigrant is a net contributor to or net drain on the public finances. First, the age of immigrants: young immigrants of working age are likely to be net contributors until they are between 40 and 45 years of age, as they receive little health or pension expenditure (two of the three biggest expenditure items for most governments). Second, their employment rate: if the immigrant employment rate is higher than the native population's, they are less likely to receive welfare benefits. And if immigrants have come to work, rather than to be unified with family, they are more likely to be net contributors. And third, their skill level: if immigrants are highly skilled, they are more likely to be employed, pay more in taxes, and receive fewer benefits.

Western Europeans are on average slightly younger than Britons; they are more highly skilled; they are more likely to be in employment; and they are overwhelmingly in Britain to work rather than to join a family member. On average, therefore, they are net contributors to Britain's public finances.

A8 immigrants are also on average much younger than Britons. More work in low skilled jobs, but their employment rate is higher: 83 per cent participate in the labour market, compared to 77 per cent of UK nationals of working age. More are unemployed – in the third quarter of 2012, 8.2 per cent were unemployed, against 7.4 per cent of British citizens. But migrants are less likely to receive unemployment-related benefits: according to Labour Force Survey data, just 1.7 per cent are on Jobseeker's Allowance, half the rate of take-up among the host population. A far smaller proportion of A8 immigrants receive disability, pension, and child benefits than British people. Very few Central and Eastern Europeans live in social housing, and only 5 per cent receive housing benefit (compared to 8.5 per cent of Britons). So they too are net contributors.

Questions in relation to Immigration.

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

Even if all migration from EU countries were to cease tomorrow, Britain's annual net intake would still be nearer the 100,000 figure, according to the available data from Eurostat and the OECD. According to the latter sources, the numbers of new arrivals to the UK from China and India are growing faster than intra-EU migration. An analysis of the same figures by The Daily Telegraph acknowledged that "because of immigration to the UK, British taxes are lower, spending is higher and the deficit is smaller." (<http://blogs.telegraph.co.uk/news/jameskirkup/100221789/immigration-and-the-british-economy-the-awful-truth-is-revealed/>)

Britain could hardly wish for better migrants than those it receives from its European hinterland: in the main they are young, well-educated, hard-working, more likely to move back home than non-Europeans, less likely to be on benefits, far less likely to need social housing and exhibit relatively few integration or security-related problems of the kind that have recently been in evidence in Sweden, for example.

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

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

Despite public hostility, the balance of economic evidence suggests that EU free movement rules are beneficial, and may become more so as Britain's society ages. It is important to remember that EU free movement rights are reciprocal: if Britain were to send home its Poles, Spain would send back its British pensioners; Germany and Italy, their Romanians; and so on. The obligation to accept EU nationals is shared equally by all member countries. Any attempt to tinker with the existing rules to introduce restrictions on the right to move freely would be likely to upset the delicate political consensus on which the EU's unique achievement of free movement rests. Re-opening EU rules on free movement would not make sense because of the political obstacles involved and the dangers of diluting the rights of UK and other EEA citizens already resident abroad.

EU nationals can be expelled, but it must first be proven before an immigration tribunal that they pose a serious risk to the public. Welfare fraud involving EU nationals seems to be a more serious problem on the continent rather than the UK: In May 2013, the Dutch authorities uncovered a Bulgarian-Turkish organised crime ring which had been bussing Bulgarian villagers en masse to register for and collect benefits in the Netherlands. Anecdotal evidence suggests that similar fraud is also happening in Finland and Spain, albeit not as brazenly.

In April, Germany invited Austria, Britain and the Netherlands to join it in asking the Commission to make it easier to permanently kick out serial social welfare fraudsters. Some benefit thieves simply re-apply for welfare assistance after being caught. EU countries are reluctant to hand out jail sentences for such offences and therefore cannot permanently ban them from their territories. This is more a theoretical problem but still potentially a dangerous one because of the potential impact on public opinion. However, even if the European Commission did propose to revise the rules, such talks are likely to drag on for years without getting anywhere: the Mediterranean countries, for example, would see the move as an attempt to lock their citizens out of the labour markets of Northern Europe.

It is more likely that certain flanking measures are the right solution to help governments better manage the free circulation of people collectively and to alleviate public concerns about welfare fraud. EU governments should issue 'European Social Insurance Cards' to those of their citizens who wish to exercise their right to free movement. Such a system could be established relatively quickly, by integrating it with the existing European Health Insurance Card system. The new cards would make it easier to identify and track welfare cheats but more importantly provide solid information about migratory movements inside Europe by linking individual users of free movement with a single identity number, no matter where or how often they move around inside the EU. The new EU-wide system would provide a better basic infrastructure for dealing with the challenges of intra-EU migration.

Questions relating to future options and challenges.

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

Will Britain continue to wring benefits from EU immigration? To make such a judgement, some assessment of the future path of the demand for skills in the UK is needed.

Over the last three decades, the British labour market has, in the jargon, hollowed out. Most new jobs have been created at the upper end of the skills scale, and in low-skilled services work. Technological change is the main cause. The microchip has enormous disruptive power, replacing semi-skilled labour with information technology and machinery. For instance, employment in book-keeping and skilled manufacturing, which computers and computerised machinery can do more productively, have been in decline. Meanwhile, the number of high skilled jobs has been on the rise. So has services work – in personal care, retail and in hospitality, for example. These workers are not easily replaced by technology.

As demand for high-and low-skilled work has been growing, so has the demand for immigrants from the rest of the EU who can fill the jobs. Western Europe provides a supply of highly skilled managerial, financial and public services workers. The A8 supplies low-skilled workers in construction, manufacturing, and services.

Forecasting the future patterns of demand for skills is difficult. But there is little reason to believe that this pattern of demand for immigrant labour will change. If anything, it is likely to get stronger, if British demographic change is taken into account. The UK Commission on Employment and Skills estimates that 1.5 million jobs are going to be created by 2020 in management, business, science and technology, and in the public services – occupations in which western Europeans are highly represented. (*UKCES, 'Working futures, 2010-2020', 2012.*) The number of new low skilled jobs, apart from in caring for the increasing ranks of the elderly, will be in decline. But Britain's baby boom generation is on the verge of retirement, leaving behind a smaller working age population. Some of these jobs will have to be filled by immigrants. Demand for workers to replace retirees will be strong in elementary administration and service, in manufacturing, and in skilled trades, occupations in which A8 nationals are over-represented. Western Europe is one source of workers to replace highly-skilled retirees.

It is likely that the hollowing out of the British labour market will continue, raising demand for high-skilled workers, and some low-skilled work in the services sector. And increasing demand for high-skilled workers, coupled with a smaller working age population, will raise British demand for immigrants. These skills can be brought in

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

It is impossible to predict the precise impact of future enlargements on free movement but it cannot be doubted that the UK's relatively open labour market and benefits system will prove attractive to citizens of most new EU members and to citizens of Romania and Bulgaria for whom transitional work restrictions end in January 2014. (Arrivals of the latter have already started to increase in anticipation.) However there are good reasons to believe that such flows would be mitigated by the following factors. First, the EU is unlikely ever to embark on another 'big bang' enlargement such as that of 2004 which resulted in radical shifts in the free movement regime. Second, intra-EU migration has tended to follow a chain pattern where newly arrived migrants are much likely to seek out already existing communities of their compatriots rather than choose fresh destinations: thus far Spain and Italy have absorbed some three quarters of intra-EU migration from Romania and Bulgaria. Third, it is unlikely that the UK will ever choose again to eschew transitional restrictions on the free movement of labour when new member-states join, given the negative impact which the levels of immigration associated with the 2004 enlargement has had on public opinion. The use of transitional periods clearly does have an impact on subsequent migrant flows: France, for example, attracts only a very small percentage of migrants from the A8 today whereas prior to 2004, migrants from these countries were much more likely to go there rather than to Britain.

General questions

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

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

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

Submission 73

Council of British Chambers of Commerce in Europe

Public Affairs Commission
Balance of Competences Review
Free Movement of Persons – Response to Consultation
A. Preliminary Remarks

Founded in 1973, COBCOE is an independent non-profit association with a network that links over 80 British overseas chambers of commerce and business groups across the world. COBCOE represents a core membership of 40 British bilateral chambers of commerce and over 10,000 businesses across 38 countries in Europe, working together to advance international trade and business with the United Kingdom. Through the founding of the global British business network, British Business Worldwide and its Affiliate membership programme, COBCOE links its members and their business members to a further 50 partner chambers of commerce and other like-minded business organisations across the world. We also have a working links with the CBI, the IOD and the British Chambers of Commerce in the UK.

COBCOE's main office is situated in London but its Public Affairs Commission, which is tasked with collating responses to this consultation, is based in Brussels. We welcome the Balance of Competences review established by the British government . we believe that it can make a serious contribution to the on-going debate as to how the EU operates and how it should work in the future. Unlike most of the respondents to this consultation, since most of its members are located outside of the UK, COBCOE's response is from the perspective of businesses based outside of the UK and trading bilaterally with affiliates or independent companies in the UK and in other parts of the EU.

In taking opinions from our members, we have circulated to all of our member chambers the report and questionnaire provided to us as part of this consultation. The number of written responses back to us have been limited because, in the current economic climate, few businesses can spare the time to answer these detailed questions. We also know that consultations by email have a very limited response rate and that it is preferable to consult through discussions in person. With our assistance and encouragement, some of our member chambers have participated in local workshops and have fed back comments directly to HMG. Notes of these meetings have been sent back directly to HMG and we do not replicate these here.

B. Introduction

Before answering the specific questions, we should like to make some preliminary remarks:

About 50% of British external trade is with member states of the EU. What goes on in the EU matters, as has been clearly demonstrated by the knock-on effect in the UK from the Eurozone crisis and from the subsequent economic contraction within many parts of continental Europe. This comes at a time when it is vitally important for Britain to increase its export performance.

The internal market for goods and services within the EU is not only a key achievement of the European Union, but also its perfection is of vital interest to the UK. COBCOE fully supports the development and deepening of the internal market and shares HMG's concern that close integration in some parts of the EU, particularly the Eurozone, should not impact adversely the operation and development of the internal market.

It is also important to recognise that an efficient and seamless internal market within the EU, and Britain's unrestricted access to this market, is a highly significant factor in attracting inward investment into the UK from outside of the EU, as Britain is often regarded as a friendly business gateway into this market of 500 million citizens.

There are two other important points to make at the outset:

Firstly, the rules of the internal market cannot be viewed in isolation. For example, the operation of taxation, both direct and indirect, across the EU has an impact on the internal market. The ability to enforce commercial contracts in an efficient way and even on rules on insolvency also have an impact on intra-EU trade.

Secondly, it is difficult to analyse the operation of the internal market without at least addressing in outline some of the institutional issues which need to be considered in the context of how the EU works (and should work in future). New rules, intended to simplify, may sometimes result in more bureaucratic burdens for businesses.

The tendency of the EU to operate through Directives rather than Regulations, aside from complaints of local "gold plating", can result in uneven application of the rules intended to create a level playing field. We recognise that Regulations are more difficult to agree on at an EU level than Directives since, as a matter of EU law, they become directly applicable in each member state, and that there could be arguments for member states to have the freedom to implement EU decisions taking into account local legal structures and local circumstances. But we fear that much of the time member states use Directives since it is a way to disguise genuine disagreements between member states. If that is the case, then resorting to Directives can be counter-productive in the context of establishing a level playing field by actually creating opportunities for individual states to exacerbate and arbitrage differences in applicable rules.

At the same time, we consider that sunset clauses should be incorporated more frequently in new legislation so that policymakers and businesses have an opportunity to review the operation of particular legislation on a regular basis. Lastly, any comment on the operation of the internal market cannot ignore the clear choice that has to be made within the EU between mutual recognition and harmonisation. In practice, it can be very difficult to ascertain which is the best solution. To the extent that the EU is visualised as a seamless internal market, this would argue for harmonisation with common rules applying across the entire economic area but then only where these implemented predominantly through Regulations and not Directives as otherwise business has to bear a significant compliance cost without any certainty of the objective of a common standard being achieved. If this is not realistic, we would strongly argue for a system of mutual recognition of national standards. With these preliminary remarks, we now turn to the individual questions raised in the consultation.

C. Responding to the Consultation

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

In relation to both UK nationals and the UK generally, the free movement rights are definitely positive. They have proved particularly helpful in terms of bringing in needed unskilled, semi-skilled and skilled labour, where this is not always available in the UK. Particularly industry in the UK has benefited from this, not just in relation to the UK economy directly, but also supporting companies such as Jaguar as they successfully develop greater export markets for their products, both within and outside the EU.

There are two additional hidden benefits for the UK. To be successful as an exporter to other parts of the EU from the UK (especially for SMEs) often requires overcoming what is often a natural apprehension on going into alien business environments. In other words, by making it easier for business people to live in other countries across the EU, temporarily or permanently, it removes barriers to building business opportunities outside of the UK as the market and culture is better understood "on the ground".

Secondly, personal relationships are still very important in the way that business opportunities are developed. The easier it is for UK nationals to visit and to live in other countries within the EU and to build local relationships, often working through the networking possibilities provided by our member chambers, the more successful they will be in building those trading and investment opportunities.

There are some reservations. The British press does play up a perceived drain on public resources, where non-British EU nationals coming to the UK to take advantage of free healthcare at the point of delivery through the NHS and social security generally. But more transparency and statistics are required to establish the true facts, although we are reasonably clear that there is a strong net benefit to the British economy because of the free movement rights. The solution will be to look at reforming the rules at the EU level on access to social services and healthcare for incoming EU nationals and we believe that this process is already on-going. A second reservation is that since there is no requirement for EU nationals to register in the UK, it is open for many of these workers to work in a grey market, being paid cash and paying no tax or social security. Naturally, this can distort the market as well as deprive the UK Revenue of taxes to which it is entitled. Since the free movement rights operate in both directions, there is a risk that businesses in the UK lose qualified workers who are moving to other locations in the EU because of better conditions, taxes, lifestyle or other reasons. But in our view, this is no argument to restrict these rights; on the contrary, it should be an incentive for the UK to ensure that it makes the UK as attractive as possible for highly skilled workers.

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

There is a significant benefit for UK nationals where there are common rules in place across the EU concerning free movement of persons. The uniform policy together, gradually, with mutual recognition of qualifications and uniform access to benefits means that it is easy for UK nationals to work in other parts of the EU, both in advancing their own personal objectives as well as being able to support British business expanding into other EU member states.

COBCOE has thriving chambers operating in most member states within the EU as a result, at least in part, of the ease with which UK nationals can work in those other states since they form a significant component of the membership for our member British chambers across Europe, in turn representing British business interests there.

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

See above. We sense that the real cost is less than perceived and the press play up individual abuses. In addition, there has to be a differentiation between EU nationals coming to work in the UK, paying taxes and social security deductions, where they should be entitled to access to the NHS, etc. and those who are either working "black" or not at all.

Nonetheless, clearly net migration into the UK (176,000 for 2012 according to the Office for National Statistics) must impact welfare services. Assuming that immigrants are paying

social security deductions and taxes and are not working in the black economy, this also represents additional revenue for HMG and it is just up to government to ensure that sufficient resources are made available for these services.

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

By “free movement rights” here we clearly are not referring to the literal freedom to move from one country to another within the EU (where Britain’s exclusion from the Schengen agreement makes this more difficult) but the freedom of establishment in other countries.

Generally speaking, the freedom for EU nationals to work or live in any part of the EU is well respected as a fundamental premise of the European Union. But there are still areas where perhaps more thought can be given to making this easier where either there needs to be more EU action or at least coordination at an EU level. Labour laws are dramatically different in various parts of the EU. Where there are highly restrictive laws (for example, in France) this forms a hidden disincentive to moving employees into such jurisdictions within the EU, especially because employment law is carved out of the general “Rome” freedom for parties to contract in accordance with their chosen law. Again, using France as an example, French courts will not accept the applicability of English law or the jurisdiction of English courts to any type of employment relationship existing where the employee works in France. The UK would, it has to be said, apply a similar exclusive law/jurisdiction system if the situation were reversed.

Generally, we would argue for a much freer, and less prescriptive, labour law system across the EU, but we are particularly concerned where employees may be working for a company or group of companies in multiple jurisdictions across the EU as part of their role (for example, a European sales director). It is essential in that situation that business does not find itself bound up by internal conflict of law rules within the EU, particularly in relation to executive positions where the employee can generally be expected to understand the nature of the employment contract offered to him or her. Effectively, this becomes almost a protectionist charter for individual countries to protect employees in an individual jurisdiction from open competition from other jurisdictions within the EU and this surely should be reviewed carefully in the future. One option could be to establish a “double taxation treaty” for employment contracts where EU member states accept a de minimis exclusion from the mandatory application of local law (say up to 10% of working time in a specific jurisdiction) and then an acceptance of a reasonable splitting of contracts between the principal countries in which the assignment is performed, with different law/jurisdiction applying to the different contracts. Another possibility could be to exclude temporary contracts from these mandatory rules, say where someone is assigned to another country for up to two years. Best of all, however, would be

to allow executives working in multiple jurisdictions to choose a mutually acceptable law and one forum for any disputes for the employment relationship and this would be respected by local courts.

In addition, we are concerned as to different definitions being applied in practice across the EU in relation to self-employed status. We generally think that the EU should encourage self-employment and entrepreneurship. Restrictive rules, which are interpreted with a heavy touch by local administrations, and particularly tax administrations, seeing this status often as a mechanism to avoid taxes rather than to encourage this status, are doing damage to European competitiveness.

Taxation, generally, is also impacting UK nationals' ability to work in other parts of the EU. We have tried to impress on HMG in the past that there should be a difference between non-EU nationals working in EU member states, where there can be specific abuse, and EU nationals living and working in one member state where, because of differing definitions as to what constitutes tax residence between those member states, the result can actually be effective double taxation. In this regard, it has to be said that the UK operates one of the most restrictive systems defining tax residence, much more narrowly than most EU states. So we would advocate a common approach across the EU as to what constitutes tax residence (without impacting the rights of individual member states to tax those residents as it considers appropriate).

Lastly, one obvious barrier to free movement is language. Why not adopt a general principle in EU member states that an incoming worker from another member state should be able to deduct the cost of local language tuition against tax up to an agreed annual amount?

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

Generally, the impact is positive. The ability to bring in labour from other parts of the EU, where those skills are not available locally, can only assist the British business community. However, we do understand that it can be difficult to recruit skilled workers from other parts of the EU and possibly more work needs to be done here to make that recruitment process easier.

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

Generally, the impact has been beneficial. In the tourist industry, for example (but also in other industries), it can be a real plus having EU nationals with other language skills coming to work in the UK. But there remain some hidden restrictions as mentioned in our response to question 4 above.

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

Since most of our members are outside of the UK, we can only give a limited response here. But what we do see is a growing standardisation in terms of what needs to be offered to employees to attract them to specific positions in the UK as a result of creating a more transparent and fungible market.

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

As mentioned above, there may be scope for more EU action to ensure a true transparent employment market. But there may also be a strong argument for increased coordination and common rules on an EU level without this necessarily being bound up in the EU bureaucracy or EU legislation. Nonetheless, if the EU Commission refuses to enforce a more *laissez-faire* approach to employment laws across the EU, this can have a restrictive effect on intra-EU migration of employees. We would argue that the EU needs to do more in this area.

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

Our understanding is that social security coordination is a necessary pre-condition for an open labour market across the EU. On the other hand, it is important that this is not seen to be abused through so-called “benefits tourism”.

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

Please note our responses above. This is, of course, a difficult area since full harmonisation of social security benefits could impose a tremendous cost on various economies across the EU, whereas failure to harmonise always opens out countries such as the UK, France and Denmark, providing high level of social security support, to “arbitrage” by migrants from other parts of the EU.

There are a number of ways through this dilemma. One would be to agree an essential basic level of social security support in each EU country, beyond which EU nationals coming into other EU member states, which have a higher level of support, will either have to pay locally for accessing those benefits or will only be qualified to receive additional benefits beyond what is available in their home state after a specific period of time (say five years). But we do believe that it is essential that answers are found here quickly since the continuing perception of abuse is creating a well of discontent in a number of countries (not just the UK) which can have a long-term negative effect on the perception of the EU.

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

Our general view is that the impact of EU competence in this area is positive, giving British business access to a more diverse workforce and skills.

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

Again, being located outside of the UK, most of our members will not have a view on the impact on local UK rural communities. We do understand, however, that free movement of persons within the EU can create social problems in local tight-knit communities and the community is still an important component to the member state. Britain (and other countries across the EU) have a history of absorbing immigrant communities and dealing with the inevitable strains that that creates because, on balance, the net benefits to the community are clear. The proverbial "Polish plumber" in local UK communities may only be grudgingly recognised at times but there is, as we see it, still a general acceptance that these are jobs which local British inhabitants are not prepared to do and if the job is done well, honestly and cost effectively, this can only be a benefit for the community as a whole. What has to be curtailed at all costs is actual or perceived abuse of the system by incoming non-British EU nationals. We strongly deprecate the position taken by some parts of the political spectrum in the UK that this influx of workers is automatically a bad thing. This is prejudicial, in many cases not correct and, frankly, very close to racism.

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

We believe we have answered this above. We would not argue in favour of remitting the competence back down to member states, since this carries a danger of creating abuse on the local level where the fundamental freedom is restricted.

Future options and challenges

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

As mentioned above, the British media tends to play up egregious examples of abuse by incoming non-British EU nationals as well as the strain on NHS and other social services. But this needs to be combatted with the actual data which will surely demonstrate that incoming EU citizens have a very positive effect on the British economy as a whole. As long as proper provision is made for an expanded healthcare system where there is net legal migration, we see no reason for this perceived strain to continue. It is up to the British government to make sure that the provision is properly made for the workforce, whatever its nationality.

There are legitimate concerns, particularly in the area of social housing. This has to be managed very carefully and perhaps here there is more scope for a common position at an EU level to restrict incoming EU nationals from immediately accessing the social support systems which are available to (and sometimes with priority over) the local population. In addition, the UK should be enforcing EU law more carefully and make it a precondition to access to health and social services that the individual, or in the case of dependants, the individual on whom that person is dependent, is legally residing in the UK.

In short, inward migration is generally enriching society. This perception of strain on the healthcare and other social security systems from non-British EU nationals has to be confronted directly rather than reactively and sometimes in a xenophobic way.

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

On balance, it probably is correct to have a transitional period (as has been the case for Romania and Bulgaria) in relation to free movement of persons from new member states. But, generally, future enlargement must be a good thing for the community as a whole and, with English being a dominant language within the EU, can only open out more opportunities for British business to work dynamically and competitively across the EU. To the extent that new member states will result in a natural flow of migration into the more developed economies, this has to be taken into account at the time these states are considered for admission. In other words, it will be a consequence of admission if those economies are in a much worse state compared to the developed economies in the EU. This may argue for a longer induction period into EU membership but, we would argue, not for a restriction on the rules of free movement of persons from states once those states are within the EU family.

General

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

No.

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

We remain concerned that temporary immigration, particularly for the purposes of further education, is confused with the general issue of immigration, and particularly immigration of workers. The Erasmus programme and other general opportunities for young people to study in other parts of the EU is, in our view, a huge positive aspect of the requirement for free movement of persons. It should be encouraged, not questioned. Not only is it a potential source of revenue for universities and other educational institutions, but it creates a superb mechanism for exchanges of ideas and skills, linguistic development and general mutual understanding of social and business ethics. It is an essential building block for a future, more compatible, EU. Again, abuse should be discouraged (strongly) but otherwise this can

only be beneficial. So we would argue that students are separately considered in the overall debate about immigration and social services, with the emphasis on encouraging multilateral student exchanges at tertiary educational institutions across the EU.

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

Office for National Statistics (UK)

August 2013

Submission 74

Mark Harper MP
Minister for Immigration
Home Office
2 Marsham Street
London
SW1P 4DF

Mark Hoban MP
Minister for Employment
Caxton House
Tothill Street
London
SW1H 9NA

3 September 2013

Dear Mark and Mark

**CALL FOR EVIDENCE FOR ASYLUM AND IMMIGRATION AND THE FREE
MOVEMENT OF PERSONS**

Please find my response to the recent call for evidence on Asylum and Immigration and Free Movement of Persons. I have no comment on the Free Movement of Persons, so have provided a response on Asylum and Immigration only.

DAVID FORD MLA
Minister of Justice

Name	[REDACTED]
Organisation/Company (if applicable)	
Job Title (if applicable)	[REDACTED]
Department (if applicable)	[REDACTED]
Address	[REDACTED]
Email	[REDACTED]

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

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

The EU and UK Border

1. What are the advantages or disadvantages of the UK opting out of the border and visa aspects of the Schengen Protocol?

We believe that there may be advantages to the UK opting out of the border and visa aspects of the Schengen Protocol in that the UK can develop and set tailored and appropriate visa policy — in terms of controlling and preventing potential crime risks (eg in respect of the operation of organised crime gangs and trafficking of human beings).

However, we note that non participation limits UK access to some information sharing and databases, particularly in respect of combating fraud and abuse. We consider that the UK is disadvantaged by not having access to this information and therefore more vulnerable to crime risks.

We consider that the Frontex Regulation may offer additional protections and security and note that the UK may be disadvantaged as it is not a full participant, although we note that the UK is committed to a number of Frontex activities.

2. If the UK had decided not to opt out of the border and visa aspects of the Schengen Protocol, what impact would this have had on the EU competences? Would this have been in the UK national interest?

As noted above, whilst we recognise that the it may be in the UK national interest to develop its own visa policy, we consider that some of the consequences of opting out of these aspects of Schengen may not be in the national interest — for example, as noted, we believe that limiting access to the EU's Visa Information System and the UK's limited participation in Frontex may leave vulnerabilities in respect of crimes such as human trafficking.

3. What future challenges do you see in the field of borders and visas and what impact might this have on the national interest?

Tackling the trafficking of human beings across international borders is likely to continue to be an ongoing challenge. We consider that it can be tackled most effectively in cooperation with other Member States.

4. Could action be taken in a different way i.e. could the EU use its existing competence on borders and visa matters differently which would deliver more in the UK national interest?

It might be helpful to explore how the UK might be granted greater access to the Visa Information System as well as what further scope there is for the UK to benefit from the additional protections offered by Frontex.

Submission 75

In response to your enquiry please see the following ...

We have an established Diverse Communities Forum, made up of partners from the statutory, community and voluntary sectors.

Some of the key activities in which we are involved through the Forum include:

- Establishing a Tension Monitoring Group. Its early interventions helped minimise any adverse impact of a recent anti-immigration rally.
- Community advice and guidance sessions. Run by the King's Lynn Area Resettlement Service (KLARS) and the Rosmini Centre, these are helping more than 500 people per month access advice, information and services.
- 'Welcome to Fenland' pack, in various languages
- Working with community mediators to help to resolve misunderstandings in and between the settled and Eastern European communities.
- Teaching basic English. Eight sessions per week for people from an Eastern European background..
- Training people who have learned English to become community translators.
- Two Migrant Population Advisors at the Wisbech Fenland @ your service shop helping Eastern European families to access council services
- Thomas Clarkson Academy. Work going on there with both teachers and pupils includes 20 students in an 'Ambassador' scheme acting as language and cultural advisors (a two-way process).

OPERATION PHEASANT

In addition to the activities listed above, FDC is playing a leading role in the joint Operation Pheasant (working with the police, Home Office, Gangmaster Licensing Authority, HM Revenue and Customs, the Department of Work and Pensions and the UK Human Trafficking Centre).

Its work is focused on combating problems in the private rented sector (including, but not exclusively, HMOs), particularly widespread exploitation by rogue landlords.

Its continuing effectiveness is attracting increasing interest from beyond Fenland – including from the Metropolitan Police, the London borough of Newham and the

London Fire Service.

Its achievements over the past nine months include:

- Uncovering numerous shocking examples of overcrowding and numerous safety hazards.
- Assisting with 33 voluntary repatriations
- Taking action over at least six cases of human trafficking, with others currently being pursued
- Prosecuting several cases of sham marriages
- Weekly visits to targeted properties
- Producing an information pack with a range of advice leaflets, available in various languages

Regards



Submission 76

Impact of free movement of EU migrants in Suffolk

Number of migrants

The number of migrants in Suffolk has not been easy to quantify. Although over the years we have used NINo registrations, these numbers are only indicative as they only show who has registered in Suffolk, not those who have registered elsewhere and come to work in Suffolk. Nor do the numbers reflect family members coming with the person who has registered. Nor reflect people who have moved out of the county.

Experience of migrants

In 2010 Suffolk County Council commissioned a piece of research on the experience of migrants who had lived in Suffolk for less than 3 years. This looked into their experience on a range of areas including: finding work, housing, accessing services and intention to stay.

The report is on the Suffolk Observatory, called SCC – Survey of Migrants 2010

<http://www.suffolkobservatory.info/JSNASection.aspx?Section=33&AreaBased=False>

Overall, I would say that these findings would still be valid today.

Migrant drop-in service

Once larger numbers of EU migrants started arriving in Suffolk it was recognised that those with little or no English language skills were finding it difficult to access services, question their employment terms and conditions, avoid exploitation from landlords etc. First with Migration Impact Fund grant, and now through a Big Lottery grant, a migrant drop-in service was developed for Suffolk. This is run by the charity Migrant Help and employs local multi-lingual advisers to provide advice and information on any topic that an individual wants help with.

Here is a breakdown of the use of the service since October 2010:

<Attached separately in submission of evidence annexes folder>

Availability of this service helps to support migrants living and working in Suffolk to understand how to access services, fill in forms to access school places etc. The help provided in their own languages means that issues can get resolved and takes pressure off front-line statutory sector services.

Flyer for the service:

Supporting Migrants in Distress


Migrant Worker Advice Service

Migrant Help's Migrant Worker Advice Service provides advice and support to migrant workers on:

- Employment
- Health
- Housing
- Benefits
- Rights and Responsibilities
- Education Services

The Migrant Worker Advice Service can refer migrants to other agencies where appropriate. This may include employment and benefits agencies, legal agencies and education services.

Locations, Times and Languages

Saturdays		
<p>Brandon Library Community Centre Bury Road Brandon IP27 0BU</p>	<p>CSV Media 120 Princes Street Ipswich Suffolk IP1 1RS</p>	<p>Newmarket Library 1a The Guineas Newmarket Suffolk CB8 8EQ</p>
<p>10:00-12:00 Portuguese (2nd & 4th Saturdays)</p>	<p>10:00-12:00 & 14:00-16:00 Lithuanian, Polish, Portuguese & Spanish</p>	<p>10:00-12:00 Polish</p>
<p>14:00-15:30 Portuguese (1st & 3rd Saturdays)</p>		
<p>14:00-15:30 Polish (2nd & 4th Saturdays)</p>		

Русский	Polski
<p>Консультационная служба для мигрантов Migrant Help предоставляет консультации для рабочих-мигрантов по следующим вопросам:</p> <ul style="list-style-type: none"> • Трудоустройство • здравоохранение • Жилье • Льготы • Права и обязанности • Система образования 	<p>Europejskie biuro Konsultingowe do spraw Migracji udziela porad i wsparcia dla obywateli unii europejskiej w odniesieniu do:</p> <ul style="list-style-type: none"> • Zatrudnienia • Zdrowia • Edukacji • Zasiatków • Praw i obowiazków • Serwisów edukacyjnych
Lietuvių k.	Português
<p>Migruojančių darbuotojų paramos centras migruojantiems darbuotojams teikia paramą ir informaciją šiais klausimais:</p> <ul style="list-style-type: none"> • Darbo • Sveikatos • Apgyvadinimo • Pašalpų • Jūsų teisių ir įsipareigojimų • Švietimo paslaugų teikimo 	<p>O Serviço de Aconselhamento da Linha de Apoio ao Emigrante presta aconselhamento e apoio aos trabalhadores emigrantes relativamente a:</p> <ul style="list-style-type: none"> • Emprego • Saúde • Habitação • Benefícios • Direitos e responsabilidades • Serviços de Educação
<p>Registered Address: Migrant Helpline Limited (trading as Migrant Help), Charlton House, Dour Street, Dover Kent, CT16 1AT Tel: 01304 203977 Fax: 01304 203995 Website: www.migranthepline.org.uk Email: mhl@migranthepline.org</p> <p>Registered Charity: 1088631 Company No: 4172880 Registered in England Registered Charity: SC041022 Registered in Scotland</p>	
	

When the Migrant Impact Funding was coming to an end there was huge concern that this service would be lost and the impact that would then have on the migrant community and on statutory sector service providers. Fortunately, a bid to Big Lottery was successful, but that has only ensured survival of the service to September 2015.

Impact of migrants in Suffolk

Industries including agriculture, food processing, hospitality and health have all benefitted from migrants filling vacancies, which often have been difficult to fill from the indigenous population. Studies have shown that the contribution of the migrant population has had a net positive impact on the economy of Suffolk (after the provision of services and benefits have been taken into account).

Virtually all schools in Suffolk have pupils with English as an Additional Language. Schools have learnt how to adapt their provision for new arrivals and have worked hard to ensure that the pupils integrate into classes, develop their English skills and fulfil their potential. The limit on additional funding for the first 3 years after the arrival of EAL pupils poses some challenges, particularly for those pupils with SEN and young people arriving in the UK at high school age. Provision for pupils post-16 is also lacking for those pupils who have not had enough time to build English skills and gain GCSEs.

The vast majority of migrants access private rented housing when they first arrive. There are instances of landlords charging very high rents and houses of multiple occupation which are not suitable for the number of residents. Overcoming these issues is not easy.

The fact that the cheaper rented accommodation tends to be concentrated in small areas means that many nationalities live side by side. Once people can afford better accommodation they move on and new people come into the area. This mix of people and fluidity means there can be a lack of community and gives rise to some tensions. Agencies working with the communities endeavour to build understanding between people and build community relationships.

Overall, the impression I have from talking to community members and agencies who work with them is that the migrant community in Suffolk is welcomed; they work hard; contribute positively to the Suffolk economy and those that put down roots here settle well. Some people choose to mainly mix with members of their own communities, but that is not unlike many British people who live in other parts of the EU.

Submission 77

Progress of Operation Pheasant

Issue	Method	Progress
<p>Internet sites – advertising / enticing new victims - false promises an excessive amounts charged.</p>	<ul style="list-style-type: none"> • M.P to do a blog on “You Tube”/ internet. • ERSOU to use Lithuanian links to make their authorities aware. • Police Lithuanian FaceBook links to be made 	<ul style="list-style-type: none"> • Date of filming to be confirmed • Completed. • Completed with over 1,000 followers.
<p>When they arrive they are taken to a HMO where there is:</p> <ul style="list-style-type: none"> • Overcrowding 	<p>150 different locations have been visited by the Op Pheasant Team</p> <ul style="list-style-type: none"> • ██████████ – retired owners in Wales thought there was one family ██████████ • ██████████ – 22 persons (some known nominals) poor state with hole in upstairs floor. 	<p>Residents packs have been distributed at the same time with leaflets from FDC, GLA, Fire and others. They are also to be distributed to factories, community centres etc. ASB issues such as street drinking prevention is to also be included once translated.</p> <ul style="list-style-type: none"> • Owners taking a civil case against ██████████. House has now a reduced amount of persons. • FDC pressure resulted in house emptied and now being refurbished. • Owners taking business

<ul style="list-style-type: none"> • Overcharging 	<ul style="list-style-type: none"> • [REDACTED] – London owner (owns 5 others) unaware as thought there was just the one family in each ([REDACTED]). • [REDACTED] – 3 bed house with 10 adults and 2 children in it, no boiler or heating in it. • [REDACTED] – visit showed that the property was in fact 3 properties (no planning permission) with a capability of holding 30+ persons. • Persons are charged 50-60 pounds a week no matter how many people they share with. Families pay full amount for children even though they share the same room. 	<p>away from Rental Company.</p> <ul style="list-style-type: none"> • Police and GLA have warned [REDACTED] re offences that they are committing and they are now being very proactive in reducing the problem. • FDC pressure has resulted in the owner agreeing to reduce numbers. • FDC have now dedicated one planning enforcement officer to this Operation, which has resulted in 25 live cases being progressed. • Over 750 “Alternative Lifestyle” handouts have been distributed. These have been designed to demonstrate what an average accommodation costs and what a minimal standard should be. • Positive feedback was received from a family who discovered it was cheaper for them to rent their own place (as paying full price for their children). They have since done this.
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	<ul style="list-style-type: none">• Workers have told officers that labour providers get them to sign a form stating rent will be the legislative rate but then inform them what the real rate is.• FDC visits are followed up with telephone calls and official letters to house owners.• FDC has supplied emergency light bulbs.	<ul style="list-style-type: none">• Properties are not closed on Ecins until all matters are resolved so there is a gradual improvement in standards.• HMRC now attend our monthly Pheasant meetings and are giving us updates on 7 identified rent collectors. They have estimated 1.24 million pounds a month is being missed in unclaimed revenue.• GLA are looking into these allegations.• FDC have monitored the properties to ensure they are brought up to standard.
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<ul style="list-style-type: none"> Poor and Dangerous conditions <p>Properties have been found with no light bulbs in the hallways,</p> <p>Smashed plug sockets (adapted for EU plugs)</p> <p>No smoke alarms.</p> <ul style="list-style-type: none"> Mould in bedrooms 	<ul style="list-style-type: none"> Fire have conducted safety visits. Fire has supplied 25 emergency smoke alarms prior to hard wire alarms being fitted. FDC have purchased addition fire alarms as we soon run out of the above. Bad ventilation means that mould is very prevalent with so many people living in one place. This has an impact on their health. The result of no planning permission being given means that they are not safe places in which to live as there are no fire doors, people sleeping in garages that haven't been insulated etc Op Pheasant letter informs owners of the risks of no action. It highlights that there is a breach in the owners mortgage and house insurance. Op Pheasant "Alternative Lifestyle" handouts highlight the pitfalls, sign post agencies that can help and give examples of alternatives. These are in the victim's 	<ul style="list-style-type: none"> FDC have now dedicated one officer to this Operation, which has resulted in 25 live cases being progressed. Poor letting agents have received a warning from the Constabulary and GLA. This has had a positive impact. FDC have linked in with Peterborough City Council and both are looking at a licensing system for all rented properties.
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<ul style="list-style-type: none"> • Sub Letting Phenomenon • Forced Eviction 		
<p>Exploitation of labour</p> <ul style="list-style-type: none"> • On arrival they are starved of labour so that they fall into debt. • The standard of the transport used is very poor. 	<ul style="list-style-type: none"> • The “Alternative Lifestyle” handout highlights support that can be given. • Op Darley has been taking place once a month (UKBA, GLA, RPU, VOSA etc) 	<ul style="list-style-type: none"> • Positive feedback has been received. • FDC have repatriated 22 b persons who showed a desire to return to their country of origin. • Headline figures – action taken against 30 vehicles with 57 offences being identified. 8 given prohibition notices, 17 drivers reported for various offences ranging from failing to maintain tachographs to not keeping records of work. 10 drivers have been reported for no insurance and minor vehicle defects. The bus driver who was riving a 18 seater on a provisional licence will be prosecuted. • A positive e-mail was sent from a legitimate gangmaster [REDACTED] stating that they had

<ul style="list-style-type: none"> • “First There” card 	<ul style="list-style-type: none"> • Labour providers use this as they are on commission. However, the victim is charged for looking at their balance, for withdrawing money as well as a monthly admin fee. • Labour providers do not inform the victims of their hourly rate so that they are unaware of the amount they are due. They are also vulnerable to not being paid after working a whole week. • Labour providers deduct amounts as fines that are not legitimate or add on charges such as transport costs, food stops (even if it is a free soup kitchen) etc. 	<p>heard of the action being taken and supported it.</p> <ul style="list-style-type: none"> • This now features on the “Alternative Lifestyle” form. • Warnings have been given on our Lithuanian Facebook site. • Local banks have been informed and state that they will assist with the opening of legitimate accounts. • GLA are aware of this practice. During an Op Pheasant visit in [REDACTED], 4 victims were identified, statements have been taken and offenders are to be arrested. • As above. • HMRC are interested in examples of drivers charging for transport as undeclared earnings. • MP is aware of this issue. • Voluntary Sector have offered to arrange a fortnightly interpreter day at the job centre to impact on this.
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<ul style="list-style-type: none"> • Temporary National Insurance Number • Theft of wages • Legislation with regards to holiday pay are never honoured. 	<ul style="list-style-type: none"> • The system is being abused. Contributions are being taken and then not passed onto HMRC. • The factories often give the wages to the labour provider for distribution. He in turn opens the packet and takes out monies for fines etc. The payslip is also removed so that the original amount is not known to the worker. • Workers are not informed of their rights to holiday pay and do not receive it. 	<ul style="list-style-type: none"> • Visits to factories need to be organised so that this practice can be prevented. • HMRC are interested in any of these cases. • Engagement with factories is taking place to advertise this better.
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<p>Low levels of intelligence and of a poor standard</p> <ul style="list-style-type: none"> • Use Voluntary Sector to increase information (to overcome uniform issue). • Increase intelligence 	<p>This is a hard to reach section of the community, as they have no easily identifiable leaders; they are accustomed to exploitation and have vulnerable relations in their origin countries.</p> <ul style="list-style-type: none"> • [REDACTED] in Peterborough have a number of Lithuanian followers and are willing to participate in the visits for us. • During the visits the occupants have completed voluntary questionnaires. These have increased our intelligence picture. • As a result of a visit a 	<ul style="list-style-type: none"> • Joint visits have commenced and they are now looking to do solo visits. • They are offering to take victims to letting agencies to assist with documentation etc. • They have set up a website where people can get advice - http://www.europeansos.com/ • Analytical maps are now starting to develop thanks to the increased intelligence items. • This is all being shared on Ecins. • System have been set up to allow CIB to feed Op Pheasant intel to the GLA Intelligence cell. • This person has been put forward as potential CHIS.
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<ul style="list-style-type: none"> • Non Duty Cigarettes 	<p>person in a HMO has come forward giving details of drug supply from the address.</p> <ul style="list-style-type: none"> • One resident told police of a stolen m/cycle at another HMO. • Constabulary officers and partner agency workers are now feeding intelligence in under the Op Pheasant banner when they attend unrelated incidents eg parking issues, noise complaints etc • Visits have led to an intelligence picture regarding ██████████ and ██████████. Two warrants have now been conducted on shops in ██████████ and seizures taken (6,000 cigarettes and 3k in cash at the last one). • During visits officers were told that prescribed drugs were being sold in local shops. Officers attended with our Lithuanian Pcs0 and this was found to be true. 	<ul style="list-style-type: none"> • A warrant was executed and the item found. It was being prepared for exportation. • This has resulted in increase intelligence. • Prosecutions are now being sought by Customs. • Drugs have been seized and we are liaising with the medical health board to see who the prosecuting agency is.
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<ul style="list-style-type: none"> • Prescribed drugs being sold in shops 		
<p>Human Trafficking</p>	<p>Two cases have been identified so far</p> <ul style="list-style-type: none"> • On 11.1.13 two persons were found in the Town Park sleeping under a bush. They had been in the country for 3 months. They used their savings to get here, had paid large amounts of money in rent but had not been paid for work they had done. When they were paid large amounts of money had been deducted in fines. Finally they were physically thrown out. They are in the UKHTC scheme. • On 1.4.13 a male attended the Police station (not known if this is as a result of Op Pheasant). In interview he stated that he was “locked in” at the address, that there was CCTV monitoring him constantly and that his wages were taken from him straight away. His passport and I/D was taken from him and locked in a safe. Contract phones and loans were taken out in his name without his permission. 	<ul style="list-style-type: none"> • Both persons are in the UKHTC scheme. They have now been video interviewed and 4 offenders identified. 3 offenders have been arrested and are on bail. [REDACTED] is preparing the advice file and requested a CPS meeting. The request is that a SPOC CPS lawyer is identified. • This male is currently in the UKHTC scheme. The offender has been arrested and is on bail. This case is again awaiting the above CPS meeting. • All offenders have been referred to [REDACTED] (Financial Investigator) so that the Proceeds of Crime Act powers can be used.

	<ul style="list-style-type: none"> We are aware of two other cases (involving 8 persons (one family of 6 and 2 females)) who were victims of Human Trafficking but who have been able to get out of the cycle on their own (the family did a midnight flit to the Manchester area / the females received Charity help to return home). 	
Community Cohesion	<ul style="list-style-type: none"> Op Gillard is in response to a planned demonstration (18.5.13) against the government's immigration policies. It is a reflection of the feelings of some sections of the community. 	<ul style="list-style-type: none"> The Operation will be policed proportionately but long term cohesion issues remain a concern. A community Tension Monitoring Group has been set up consisting with all partner and voluntary sections who have dealings with this section of the community. FDC facilitate a Diverse Communities Forum. A positive media strategy has been formulated so that positive outcomes are shared to all media outlets. The MP and other key persons are also informed.
Street Drinkers – street interviews have revealed that the street drinkers were once accommodated in HMO's. However when they failed to be fit to	<ul style="list-style-type: none"> A cycle of free accommodation (through a night shelter), free hot food from a local charity and benefit claims (spent on alcohol) allowed a group of persons to have a 	<ul style="list-style-type: none"> The cycle was broken by the night shelter placing a limit on the amount of time they allowed their facilities to be use, the charity giving support in another way and partner agencies bringing their

<p>work they were evicted.</p>	<p>disproportionate ASB impact on the community</p>	<p>intelligence systems together to ensure there was a legitimate reason for stopping the benefits. This then allowed the Boarder Agency to proceed with their deportation procedures. This has resulted in 3 very prolific ASB perpetrators being deported.</p>
<p>Suicides (Hangings)</p>	<ul style="list-style-type: none"> Two high profile suicides by hanging (one in the centre of [REDACTED] and one outside [REDACTED]) were by persons from HMO's. 	<ul style="list-style-type: none"> It has been identified that there is no engagement from the NHS or mental Health Teams.
<p>Crime</p> <ul style="list-style-type: none"> Red Diesel Theft From M/V's 	<ul style="list-style-type: none"> Officers found cans of Red Diesel in the hallway. On examination it was found that the vehicles outside were running on it. [REDACTED] – Officers discovered a White Diesel garage. Persons were stealing diesel (it is believed from Lincolnshire) and taking it back to this address. Over 800 litres were found with a pumping system. CCTV showed that between 12 and 15 cars a day were attending the address and filling up. Debt sheets show they were 	<ul style="list-style-type: none"> Customs instructed police to seize the vehicle which was subsequently crushed and the owner fined. Persons arrested and are currently on bail. All diesel and equipment was seized.

<ul style="list-style-type: none"> • Abstracting Electricity 	<p>being charged 80 pence per litre.</p> <ul style="list-style-type: none"> • Intelligence is now coming in stating that Sub tenant landlords are now abstracting electricity. Once this has been done they make the boiler inoperative and give the residence electrical heaters. The rent remains the same. 	<ul style="list-style-type: none"> • This intel has been passed onto the Electricity Board and officers have been briefed.
<p>Driving in the UK on Foreign Plates</p>	<ul style="list-style-type: none"> • Drivers are meant to register their foreign vehicle with DVLA after 6 months. However this is not done so that they do not have to pay for road tax or get it MOT'ed to the UK standard. Vehicles are not logged when they come into the country and so there is no automatic system in place to know when it has been here for 6 months. 	<ul style="list-style-type: none"> • Officers are using the CLE29 system to log when a car is in the area. A system has then been set up with [REDACTED] (CIB DVLA liaison officer) for this to be logged with DVLA. If the vehicle is stopped after another 6 months and has not been registered then a prosecution will be sought. The idea of being able to seize the vehicle has been deferred until we have some more guidance from DVLA.
<p>Agencies working together</p>	<ul style="list-style-type: none"> • National Agencies are starting to formulate co-ordinated work with Local agencies through a monthly Task Force meeting. 	<ul style="list-style-type: none"> • Task and finish logs are generated at a monthly meeting which is attended by 28 people from all agencies. • Op Compliance was a joint Immigration, Hidden Economy, Trading Standards and

		<p>Police Operation. 12 business's visited in Wisbech Town Centre resulting in VAT avoidance offences being discovered, 4 Over stayers arrested and 50 K of unpaid duty Tobacco discovered.</p>
<p>Sham Marriages – Operation Cleo (19-05-2013to24-05-2013)</p>	<ul style="list-style-type: none"> • Suspected Sham Marriages Between Lithuanian Females and Non E.U. Nationals. (Mainly Egyptian) 	<ul style="list-style-type: none"> • During a recent investigation of a Sham marriage between a Lithuanian Female and an Algerian Male in Cardiff on the 22nd January 2013 further evidence of sham marriages was discovered. A number of females in the Wisbech area were arrested for this offence.

Submission 78

Balance of Competences Report on Free Movement of Persons

Telephone Interview with Robin Sissons, Operations Inspector, Cambridgeshire Constabulary.

This note is a record of the telephone interview conducted with Mr. Sissons by Rebecca Murphy (Home Office) on 12th September 2013.

Rebecca Murphy explained that the purpose of the telephone interview was to clarify a number of points following the submission of the progress update document on Operation Pheasant in response to the Call for Evidence on the Free Movement of Persons Report.

Mr. Sissons agreed that Rebecca would take a written record of the interview to be submitted as evidence to the report.

RM: The document you submitted refers to the experiences of migrants Wisbech, could you clarify whether the nationals referred to include EU nationals, and if so what proportion of the migrants are EU nationals?

RS: The majority of the people we encounter as part of this operation are Lithuanian nationals, who make up approximately 80% of the group. The remainder of the migrants involved are mainly Latvian and Polish. We also encounter a small number of migrants who we suspect to be non-EU migrants who are fraudulently claiming to be EU nationals.

RM: Could you summarise the evidence you have on the impact on the local community?

RS: The local community has been very tolerant of the new European migrants in the area, it is a very tolerant community and in my view, the issues we are addressing through this operation may have caused more problems had they happened in another, less tolerant, community. The new European residents are becoming more of a settled part of the community, children from this group are now going through schools and in my view this group of migrants will continue to integrate.

RM: Do you have any views or evidence on whether the impact on local communities and services could be better managed by more or less action from (a) the EU and (b) the UK?

RS: The main thing I would say is that the EU nationals we have encountered as part of this operation are victims in this situation. There needs to be more information available to them about coming to the UK. There is lots of information available in, for example, Lithuania, and much of this comes from the recruiting organisations

facilitating their journey to the UK, who have an interest in portraying the UK as a 'promised land'. The migrants are encouraged to pay vast amounts of money to these people and end up being exploited when they arrive in the UK.

There could be some legislative process put in place to deal with the organisations who are operating in Lithuania, for example under fraud provisions. There could also be media/information campaigns in Lithuania highlighting the issue.

For example, migrants should be given information about what they need to do when they get to the UK, that they should apply for a UK bank account so that they can have their wages paid directly, how to apply for a national insurance number, how to look for accommodation etc. Because the migrants have no knowledge about this, they rely on the recruiting organisations for information, which makes them vulnerable to exploitation.

The Lithuanian government should act on this, but there is also no effective mechanism in the UK to provide advice for new migrants. The UK could produce a leaflet nationally welcoming migrants to the UK and advising them amongst other things about issues which affect local communities and services, and giving some publicity to the rules that will apply to them. Many of the migrants who are arrested for offences such as littering, antisocial behaviour and public defecation state that they are not aware of the laws or the penalties that exist.

RM: Is there anything else you would like to raise in relation to Free Movement of Persons?

RS: One issue I would like to raise, which is a big loophole we face, relates to foreign number plates and the requirement for UK registration of vehicles. Owners of vehicles with foreign licence plates are required to register the vehicle with the DVLA if it is in the UK for more than 6 months. However, there is currently no effective system in place to log vehicles entering the UK, and the 'clock' doesn't start until the vehicle is stopped by the police.

This means that unregistered vehicles can be driven in the UK for an extended period provided that the car is not stopped by the police, without being subject to checks on road tax, insurance, MOT requirements. Also, when these cars are stopped, there is no 'marker' that the car is subject to the requirement to register. The current system is easy to exploit, so anything that could be done to improve this would be helpful.

Submission 79

BALANCE OF COMPETENCES REVIEW SCOTTISH GOVERNMENT RESPONSE

FREE MOVEMENT OF PERSONS

1. The Scottish Government welcomes the opportunity to contribute to the call for evidence. We are aware that key Scottish stakeholders, including CoSLA have provided a response as part of this exercise. We ask that, where possible, any Scottish-specific issues raised by respondents are reflected in the final Free Movement of Persons and Asylum & Immigration reports.

Free Movement of Persons

2. As is detailed throughout this response, there is evidence that the ability to exercise free movement rights in another member state impacts positively on UK nationals and the UK as a whole.

3. Net migration has been the main contributor to population growth in Scotland in recent years and Scotland benefits from being its citizens being part of the EU. The Scottish Government has taken a positive and welcoming approach to migrants as they can contribute to improvements in Scotland's economic growth performance and to help address the demographic challenges that Scotland faces. The mid-year population estimates published on 8th August 2013 show that in mid-2012, Scotland's population was at its highest – 5,313,600, a rise of 18,200 people since Census Day on 27 March 2011. The rise was due to over 6,000 more births than deaths and also a net migration in-flow of 15,200 people, 14,300 of which were from overseas (the other 900 were from the rest of the UK). The Scottish Government has set a target to match average European population growth over the period 2007 to 2017 and the new population figure shows that Scotland is continuing in the right direction to meet that target [source: '*Scotland's population at its highest ever*', National Records of Scotland, 8 August 2013].

4. Figures from the International Passenger Survey, produced by the Office of National Statistics, provide a very rough estimate of EU migration in and out of Scotland. They have estimated that over the last 10 years, covering mid-2001 to mid-2011, there has been a net gain of between 36,000 and 83,000 EU migrants in to Scotland. These migrants accounted for around half of the estimated non-British people added to Scotland's population over the period. Of these EU migrants, an estimated 28,000 to 53,000 who entered Scotland were citizens of A8 countries. Between 5,000 and 17,000 of A8 citizens left, leading to a net gain of between 15,000 and 43,000 A8 citizens. These accounted for around half of the EU citizens added to Scotland's population over the period and around a quarter of the total non-British people added.

5. With the right of free movement, Scottish and UK nationals do not have to obtain permission to live and work in other EU member states and they also have access to a common market in which to provide services. Through pension arrangements, they are able to work in other EU countries and accrue rights to a state pension based on that work. Furthermore, Scottish and UK nationals who move to other member states may bring developed experience and skills back to the UK. This will in turn contribute to the Scottish and rest of UK economy. Around a quarter of in-migrants and half of out-migrants moving between Scotland and overseas are British citizens, leading to net outward migration of between 28,000 and 78,000 people over the last ten years. We do not have specific estimates for Scotland but for the UK as a whole, migration both to and from EU countries is common for British citizens. France, Switzerland, Spain and Germany were among the top ten destination countries for British migrants from across the UK in 2011.

6. There is evidence to suggest that EU migrants impact positively on the public finance in the UK although these studies tend to focus on the net fiscal impact within a given year or a relatively short time period and do not generally focus on estimating the long-term impacts on the public finances. In particular, a study on the fiscal effects of A8 migration found that in each fiscal year from enlargement in 2004 to 2009, A8 immigrants made a positive contribution to the UK public finance. During the year 2008-2009, A8 immigrants paid 37% more in direct or indirect taxes than they received in public goods and services. In contrast, during 2008-2009, UK-born individuals contributed 20% less to the Exchequer than they received in terms of public goods and services. [source: *The fiscal effects of A8 migration to the UK*, Christian Dustmann, Tommaso Frattini, Caroline Halls, 8 August 2009, VOX: Research-based policy analysis and commentary from leading economists, www.voxeu.org/article/fiscal-effects-a8-migration-uk].

7. As will be seen in this response, economic theory and empirical evidence suggests that the benefits of immigration outweigh the costs and Scotland benefits from EU freedom of movement.

Access to and impact on Social Security and Public Services

8. EU competence protects the rights of Scottish and UK nationals exercising their right to free movement in other member states within the EU. EU competence also provides for equal access to welfare benefits across the EU, thereby facilitating the rights of Scottish and UK nationals to work and access benefits and services in other member states.

9. Under social security co-ordination of systems arrangements (Regulation (EC) No 883/2004) Scottish and UK residents are able to access necessary state healthcare throughout the EEA during short-term visits, in the event of illness or accident, using the European Health Insurance Card scheme. They can also travel for planned state treatment, in certain circumstances, under the S2 scheme. Scottish and UK State pensioners who decide to retire to another part of the EEA are also entitled to access state healthcare on the same basis as a person who is resident in that country under the S1 scheme. The schemes facilitate freedom of movement and are administered by the DWP, who would be best placed to provide figures on the uptake by Scottish nationals / residents.

Impact on Social Security and Public Services in the UK

10. There is considerable evidence that suggests that EU migrants do not negatively impact on welfare provision and public services in the UK.

11. A study of the fiscal effects of A8 migration to the UK published in July 2009 found that A8 immigration has not been a burden on the welfare system and has instead contributed to strengthen the UK's fiscal position. [source: *Assessing the Fiscal Costs and Benefits of A8 Migration to the UK*, Christian Dustmann, Tommaso Frattini, Caroline Halls, (2009), Centre for Research and Analysis of Migration Discussion Paper No. 18/09] The study found that A8 immigrants are about 60% less likely than natives to receive state benefits or tax credits, and to live in social housing. Even if A8 immigrants had the same demographic characteristics of natives, they would still be 13% less likely to receive benefits and 28% less likely to live in social housing. The study found that A8 immigrants make much lower use of benefits and public services than UK-born workers.

12. The study also came to the view that there is little reason to believe that in the longer term, A8 immigrants who came to the UK between 2004 and 2008 will constitute a net burden to the welfare system. This view is in line with the study's results of the analysis on the probability of welfare claims, which showed that even if they were identical in a large number of characteristics to natives, like age, education, number of children and disability, A8 immigrants would still be less likely to claim benefits.

[source: *The fiscal effects of A8 migration to the UK*, Christian Dustmann, Tommaso Frattini, Caroline Halls, 8 August 2009, VOX: Research-based policy analysis and commentary from leading economists, www.voxeu.org/article/fiscal-effects-a8-migration-uk].

13. Furthermore, a March 2012 Guardian newspaper article noted that according to figures from the Department of Work and Pensions (DWP), of the roughly 1.8 million people from elsewhere in the EU of working age, about 90,000 (around 5%) are claiming an 'out of work benefit'. This compares to around 13% for natives. The article also noted that although there are already at least 140,000 Bulgarians and Romanians in the UK, neither nationality is in the top 20 countries of origin for foreign benefit claimants, which suggests that the numbers are minimal [source: *A crisis over the UK's benefits bill for EU migrants? What crisis?*, Jonathan Portes, 6 March 2013, The Guardian <http://www.theguardian.com/commentisfree/2013/mar/06/uk-benefits-eu-migrants-what-crisis>].

14. In relation to Scotland in particular, analysis on the Impact of Recent Migration into Scotland (covering migration from the 2005 Accession countries), published in 2009, suggested that recent migration had not resulted in as large an increase in demand for services as had been expected and there was little evidence of an increase in the demand for health services [source: *Recent Migration into Scotland: The Evidence Base*, NIESR, March 2009, <http://www.scotland.gov.uk/Publications/2009/02/23154109/0>]

15. The Scottish Government would be concerned by any changes to EU competence in this area that acts as a barrier to the Scottish Government's policy of encouraging skilled migrants to work and study in Scotland. However, we note that the UK Government has recently made representations to the European Commission about the failure of a number of Spain's state hospitals to recognise the EHIC when providing treatment to foreign nationals, and agree that it is important that all Member States play by the rules.

Access to the Labour Market and impact on the economy, wages and employment

16. Migrants who move from the EU to Scotland and the UK are making a positive contribution to the economy. For example, figures from the Annual Population Survey show that employment rates for EU nationals (aged 16-64) living in Scotland are higher than for UK nationals (see table below).

Table: Employment Rates for UK, and EU Nationals Living in Scotland

	Employment Rate (16-64)	
	UK Nationals	EU Nationals
2007	74.0%	76.9%
2008	73.7%	77.6%
2009	72.4%	74.0%
2010	71.1%	76.1%
2011	70.8%	76.4%
2012	71.0%	71.8%

Source: APS, January-December dataset, ONS

An overview of the evidence on the economic impact of migration on the UK was produced by the House of Lords, as a result of an enquiry conducted by the Select Committee on Economic Affairs (House of Lords, 2008).

17. At the macro-economic level, an increase in net immigration may affect output, inflation, unemployment, wages and the return to capital. Evidence suggests that the increases in net immigration, from A8 countries and more widely, has been found to increase output and employment (Riley and Weale, 2006). There is also evidence that consumers may have benefited through reduced prices (House of Lords, 2008). [source: Recent Migration into Scotland: The Evidence Base, NIESR, March 2009, <http://www.scotland.gov.uk/Publications/2009/02/23154109/0>]

18. The ability to exercise rights of free movement to access the labour market benefits Scottish and UK nationals. EU action which further protects the rights of economic migrants is a positive development as it provides for better protection of Scottish and UK nationals who wish to exercise their right of free movement throughout the EU.

19. The empirical evidence suggests that in aggregate, immigration does not significantly impact upon the overall labour market outcomes of native workers.

20. However, the impact can vary across different groups. For example, some studies have identified that immigration can negatively impact upon labour market outcomes for lower skilled workers - although this is likely to be in the short-run only if workers can retrain or find alternative employment – whilst there is evidence to suggest that immigration benefits higher skilled workers. [source: evidence summarised in *The Economic Impact of Immigration*, House of Lords Select Committee on Economic Affairs 1st Report of Session 2007-08, April 2008]

21. Analysis by the Migration Advisory Committee (MAC) – published in January 2012, suggests that immigrants from EU member states do not have a negative impact on the employment outcomes of native workers. [source: *Analysis of the Impacts of Migration*, Migration Advisory Committee, January 2012]

22. Previous assessments of the impact of A8 immigration to the UK have found no evidence that the enlargement of the EU in 2004 led, on average, to a setback of wages of workers born in the UK and has not detected any effect for natives' wages or unemployment. [source: '*New Labour? The Impact of Migration from Central and Eastern European Countries on the UK Labour Market*', Sara Lemos and Jonathan Portes, October 2008, <http://ftp.iza.org/dp3756.pdf>]

23. In relation to Scotland, previous evidence has shown that employers in Scotland have valued migrant labour and, in general, view migrant workers positively. Employers in the low skilled, temporary work and hospitality sectors have frequently reported that they could not function without migrant labour and would not have been able to grow. [source: *Recent Migration into Scotland: The Evidence Base*, NIESR, March 2009, <http://www.scotland.gov.uk/Publications/2009/02/23154109/0>]

24. The Scottish Government welcomes the brightest and best migrants to work and study in Scotland in order to advance Scotland's skills and stimulate the Scottish economy.

25. The Scottish Government views EU competence in protection of employment opportunities, wages and employment conditions positively. Protection of wages and employment conditions contribute to strengthening standards of employment in Scotland and the UK more widely, thereby stimulating the economy and benefitting Scottish and UK nationals.

Impact of this area of EU competence on varying sectors in Scotland

26. Evidence illustrates that EU competence on the free movement of people has a positive impact on various sectors in Scotland.

27. Many Scottish Life Sciences companies work in a niche area which demands a multi-disciplinary skillset. Although employers tend to be satisfied with candidates' qualifications, they can face challenges finding senior candidates with the right blend of skills, knowledge and experience of Life Sciences markets and products. This creates a need to recruit outside of Scotland which can bring challenges, especially for small companies who do not have a dedicated HR function. It also means that Life Science companies may have to look outside of the EU for the staff that they need.

28. To address these issues, Scotland encourages employers to invite any high quality candidates who have applied for jobs with them to join TalentScotland. This will ensure that they are not lost from the talent pool, even if they are unsuccessful for a particular role within one company.

29. We promote Scotland (on an international level) as a Life Sciences careers destination and seek to deliver a European careers event for Life Sciences, and other key sectors, to attract skilled engineers. We also seek to make it easier to recruit outside of Scotland. This will involve the delivery of short seminars to introduce SMEs to the UK immigration system. Immigration advice and support will also be offered to Life Science employers on a one-to-one basis where appropriate.

[source: Life Sciences Skills Investment Plan (SIP), produced by Skills Development Scotland (SDS) 2013]

30. Research carried out in Scotland by the Financial Services Skills Gateway in 2011/12 found that employers across all Financial Services subsectors found it challenging to source technical and specialist roles in risk and compliance, actuarial, investment specialists, change management, technology and IT. These were all deemed to be 'can't do without' roles in the next 5 years. If employers are unable to fill technical & specialist roles from within Scotland, they commonly explore other options. The most commonly reported were recruiting from the rest of the UK, offshoring and recruiting globally (including sourcing staff globally from within the organisation). The Financial Services Skills Investment plan has a specific action to work with partners such as Talent Scotland to define and promote a clear 'Scottish Offer' aimed at attracting top talent from outwith Scotland [source: Financial Services Strategy Refresh presentation prepared and delivered by Scottish Enterprise (sourced as ONS)].

31. In relation to the education sector, according to a 2011 analysis carried out by London Economics, on behalf of the Department for Business Innovation and Skills, EU domiciled post-graduate students brought to the Scottish economy an estimated £12.4 million in tuition fees in 2008-2009. Furthermore, undergraduates and postgraduates brought an estimated £146.8 million in non-tuition fee expenditure (including accommodation and other day-to-day expenses). This illustrates the level of financial income the Scottish economy receives from EU students. [source: <http://www.bis.gov.uk/assets/biscore/higher-education/docs/e/11-980-estimating-value-of-education-exports.pdf>]

32. Furthermore, the hotel and restaurant trade, including the tourism market more generally, is dependent on a skilled but adaptable workforce, particularly due to the seasonal nature of this important and growing employment sector. EU migration has brought benefits to this sector through the provision of a motivated, skilled and enthusiastic workforce. The ability to maintain free migrant worker movement rights between other member states and Scotland is also important for agricultural sectors as it helps fulfil labour needs, particularly in hard to fill areas.

33. Finally, the UK oil and gas sector reports that the shortage in skilled personnel is cited as one of the biggest challenges for the UK's offshore oil and gas industry. In 2012, 82.8% of the personnel who travelled offshore were of British nationality. Out of the remaining nationalities, 8 out of the top 10 were EEA (European Economic Area) nationals, the other two being Canadian and American nationals, which illustrates the importance of the sector's access to EEA migrants [source: '*UK Continental Shelf Offshore Workforce Demographics Report 2013*', Oil & Gas UK, <http://www.oilandgasuk.co.uk/cmsfiles/modules/publications/pdfs/EM012.pdf>].

Impact of this area of EU Competence on local communities

34. The Scottish Government encourages skilled migrants to work and study in Scotland to share and develop skills. Immigration by way of this EU competence benefits the Scottish economy, allows employers to employ skilled migrants and fill labour gaps and develops businesses and employment sectors, stimulating the economy.

35. Migration of EU nationals to Scotland's communities increases the sharing of skills and experience, which in turn stimulates and encourages growth in the economy. Migration can also assist with strengthening community sustainability,

particularly in those areas facing acute demographic challenges. Inward migration to rural areas plays a pivotal role in offsetting natural population decline and in maintaining birth rates in rural Scotland. [source: Skerratt et al, 2012, *Rural Scotland in Focus*]

36. A Guardian newspaper article from April 2013 noted that evidence to date suggested that migrant children did not have a negative impact on school performance.

[source: '*Bulgarian and Romanian immigrants – how much impact will they really have?*', 5 April 2013, The Guardian, <http://www.theguardian.com/commentisfree/2013/apr/05/bulgarian-romanian-immigrants-impact-numbers>]

37. The Guardian article makes reference to a 2012 study of primary schools in England which found that an increased presence of children who did not speak English as their first language was not detrimental to the educational attainment of native English speakers. The study found that following the EU's eastern enlargement in 2004, there was evidence that the increase in some Catholic schools of white non-native English speakers resulted in native English speakers benefiting to a small extent in their maths results. It was suggested that possible reasons for this result were that firstly, immigrants from East European countries are better educated and also are more attached to the labour market than the native population.

[source: '*Children whose second language is English do not have a negative impact on education outcomes of native English speakers*', Nuffield Foundation, 20 March 2012 <http://www.nuffieldfoundation.org/news/children-whose-second-language-english-do-not-have-negative-impact-education-outcomes-native-en>]

38. There is also evidence to suggest that since EU enlargement in 2004, rural areas in Scotland have experienced an increase in migrant workers, who have played a key role in addressing labour market shortages in sectors such as food processing, agriculture, hospitality and tourism, health and social care. [source: De Lima and Wright, 2009 – *Welcoming Migrants? Migrant Labour in Rural Scotland*]

Future options and challenges

39. The Scottish Government considers that the continuation of EU competence in this area will strengthen the common market and free movement rights to increase

opportunities for employment, economic growth, communication, sharing of skills and experience, and the protection of workers' rights across the EU. This benefits the national interest of Scotland and the UK more generally. The Scottish Government is not aware of any evidence to illustrate that there is abuse of free movement rights under EU law.

40. Future enlargement of the EU would provide further opportunity for Scottish nationals to exercise their right of free movement throughout a broader range of EU member states. Likewise, future enlargement will provide the opportunity for individuals from other EU member states and cultures to work and study in Scotland, sharing their skills and experiences and contributing to Scotland's society and economy.

41. The Scottish Government welcomes EU migrants who exercise their rights of free movement to work and study in Scotland and as per the evidence provided in this response, considers economic migrants to have a positive impact in developing and sustaining Scotland's economic growth.

Submission 80

I am nobody, but recently I had a thought I should like to share with your consultation on Europe.

Presently, EU migrants can come and work here and take advantage of our benefits system when things go wrong.

Any restriction on the free-movement of people/workers/companies is currently disallowed.

Might I suggest a change?

Any EU migrant should remain under the benefits system of its home member state unless they become an official UK citizen.

This would stop people coming to the UK purely for the benefits system (and would no doubt appeal to the French and German people too). Any earnings in the host member state would be taxed under the home state's taxation policy and the home state's national insurance policies. Any health-care accessed in the UK by EU migrants will be billed to the individual's home member state including families of an EU migrant either with them in the UK or in the home state (ie, UK standard family allowance type benefits going to a migrant's family in their home state - putting them at a fiscal advantage).

Of course if an EU migrant decides to apply for UK citizenship then that person (and family) would be taxed and pay national insurance on earnings like any other UK citizen. Perhaps there can be a cap on what tax goes where.

This should stop the "UK benefits" to an EU migrant being used to finance a better economic life in the home member state, which is particularly applicable to the near 3rd world countries currently entering the EU. It doesn't affect the right to a family life either.

I should like to see the whole thing turned on its head and the host state not be responsible when a migrant requires benefits. This does not put any kind of restriction on the free movement of workers etc; it just makes it fairer for everyone.

Any migrant to the UK will be given 6 months to find alternative employment in the UK in the event of redundancy, thereafter it should be more appealing for an EU migrant to return to their home state, where benefits provided cover the home country's cost of living, but not the UK's. In essence, a home country's benefit system (in Poland for example) is unlikely to cover the cost of living for an employed EU migrant in the UK.

Whilst a migrant is in the UK they will be paying VAT and housing at UK rates, but with home state benefits, not UK benefits.

As much as I would wish to see the UK out of the EU, it may take some time and this possibility to reduce the burden of economic driven migration.

Asylum cases would be exempt.

Submission 81

Balance of Competences Roundtable Event 24th June 2013

Business, Industry and Educational Representatives

HMG Attendees

- Minister for Employment Mark Hoban
- Isobel Stephen (Director, DWP)
- Fiona Kilpatrick (DWP)
- Richard Given (DWP)
- Simon Peters (DWP)
- Ashleigh Gray (Home Office)
- Hazel Roberts (Home Office)
- Mark Lomas (Home Office)
- Rebecca Murphy (Home Office)

Delegates

- Peter Lambert (BAE Systems)
- Anne-Marie Martin (COBCOE)
- Tobias Verlende (COBCOE DE)
- Jenna Quinn (RIBA)
- Wendy Spinks (Highspeed1)
- George Anastasi (PCG)
- Naadiya Rawat (English UK)
- Rob Wall (Confederation of British Industry)
- Martin Carroll (BMA)
- Gareth Williams (Eurostar)
- Marcia Longdon (Ernst & Young)
- John Wastnage (British Chambers of Commerce)
- Marie-Madeleine Kanellopoulou (EU Representation to the UK)
- Margaret Burton (Deloitte)
- Jeremy Fern (City of London)
- Alaina MacDonald (Register Larkin for NASSCOM)
- Keith Sharp (TATA)

Notes

This meeting was held as part of the evidence gathering process for the Balance of Competence Review report on the Internal Market: Free Movement of Persons and Asylum and Immigration. They do not necessarily represent the views of the Government.

The meeting was held under Chatham House rules.

The following points were made in the discussion:

General Points

- The view was expressed that there is an overall problem in the press around immigration – the current language used around this issue sends out a hostile message to potential students or entrepreneurs that they are not welcome in the UK.
- There is a lack of information from the government on the impact of certain decisions made on immigration and free movement, for example, transitional arrangements vs. no transitional arrangements, impact of Schengen vs. no Schengen.
- Several contributors expressed the view that there is a public lack of understanding of the contributions made by migrants with shortage skills.
- The impact of individuals who come from the EU or outside of the EU can create employment or opportunities for others in the UK. It is not just the role of the individual that is relevant, but the ‘economic footprint’ they leave – for example, persons travelling to the UK for business will create business for taxis, hotels, catering services etc.

Free Movement of Persons

Impact on the UK economy

- From an educational point of view, Free Movement of Persons (FMOP) was helpful because it meant that people from the EU who wished to attend a short course in the UK could do so without needing to apply for visas. This helps to recruit people onto short courses from within the EU.
- FMOP was considered positive for business, as it reduces the burden of applying for visas and/or work permits for EEA employees. This is of particular importance as work permit fees are high.
- Global businesses will always need to move people around. Loss of FMOP would have a hugely damaging impact on business.

- In terms of the domestic labour market, the UK or any other country cannot expect to have all necessary skills within the domestic labour market at any one time. However, while immigration is one tool in this area, this should also be addressed within the domestic market through education.
- The point was made that Free Trade Arrangements between EU and other countries/groups of countries are welcomed as they bring greater understanding between the blocs. Free Movement elements can be negotiated into such agreements. Changes need to be made in terms of, for example, US trade regulation. There is a feeling that a lot of the benefits of agreements with US fall on the US side, and that US regulations can cause problems with trade and movement of persons.

Impact on the UK Labour Market

- FMOP was thought to be helpful for businesses in that it helps fill skills shortages. The Annual Survey of Skills showed that there is a shortage of high level skills, and businesses therefore need to be able to attract talent from within the EU and wider. One organisation engaged with members on this subject, one third of whom reported difficulty in recruiting scientific and technical experts.
- In terms of productivity, it is clear that having the appropriate skill levels in labour force impacts on productivity
- One organisation suggested that immigration of skilled workers has not solved the problem of the skills gap in the UK and cannot be relied upon in isolation. Organisations are doing a lot to address the skills gap, for example training in basic skills for graduates. UK education sector must also do more.
- One organisation welcomed the free movement of doctors in the EU/EEA, especially in regard to the rich exchange of skills. However, there are concerns that more could be done regarding safety, primarily with regard to language testing and sharing records of disciplinary action or malpractice. This could be achieved through a revised Mutual Recognition of Professional Qualifications (MRPQ) Directive.
- It was noted that concerns have also been raised regarding the minimum length of training – the UK offers 5 year training format and a failure to recognise this would cause problems for UK trained medical professionals. It is important that safeguards are put in place for patient safety.

- It was suggested that the rules around labour in some EU countries create difficulty in rationalising workforce or terms and conditions. For example, any changes affecting workers in Germany must go through the workers' council for that employer. The UK is more flexible in this area. This means that when multinational companies consider where to close a plant, branch or operation, the comparatively flexible UK may appear an easier option. There is also more of a culture of consultation in labour relations in some EU member states.

Experience of UK Nationals in other EU Member States

- It was reported that for overseas staff employed in the UK, there can be a problem in travelling to other EU member states for meetings or short term business trips due to the fact that the UK does not participate in Schengen. Similarly, if a meeting is held in the UK it can be difficult to arrange for permission to enter for non-EEA overseas staff. If there could be an expedited visa process for short-term business travellers this would be helpful.
- Contractors have varying experiences in travelling to other Member States. Their experience and their ability to provide services depends on the structure and ability of Member States. Experiences will vary depending on sector and the Member State to which the contractor travels.

Accession and Expansion

- Participants noted that transitional controls on workers from new member states give rise to challenges, such as long waits for work permits for Bulgarian and Romanian nationals. It was suggested that this causes bad feeling in new member states and is bad for cultural relations. The language of the discussion around accession countries, especially the EU2 states, means that Bulgarian and Romanian nationals often feel uncomfortable saying where they are from, and feel unjustly treated.
- Sensationalism around migration from Bulgaria and Romania poisons the debate.
- There are concerns that if no transitional arrangements were put in place for Croatian nationals, and if there was subsequently a lot of inward migration, that this would have a knock-on effect on the public debate and on government policy.
- It was argued that delays by Home Office in issuing work permits for EEA nationals subject to transitional arrangements has a serious impact and

causes bad feeling amongst such nationals. Obtaining a permit may take up to 6 months.

- It was suggested that possible further expansion of the EU causes worry amongst citizens of Member States – the EU is now far larger than when the UK joined. Public debate on EU and Immigration is leading policy. Further expansion may lead to further public concern on the issues, and have a further knock-on impact on non-EU labour route. However, future enlargement of the EU was seen as inevitable.

Asylum and Immigration

Borders & Visas:

- The group discussed the impact that the UK's non-participation in the border and visa aspects of Schengen can have on where non-EU nationals choose to go for business and leisure. There is seen as three main impediments to people choosing to visit the UK:
 - Delays / inefficiencies in the UK visa application process;
 - The inconvenience of having to apply for separate UK and Schengen visas; and
 - The language of the debate around immigration in the UK
- Several attendees highlighted in detail the issue that for non-EEA staff employed in the UK, there can be a problem in travelling to other EU member states for meetings or short term business trips due to the fact that the UK is not in Schengen and a separate Schengen visa has to be applied for. Similarly, if a meeting is held in the UK it can be difficult to arrange to arrange a UK visa for non-EEA staff working in the EU.
- Coordinated visa requirements with Schengen would help solve some of these issues e.g. the same form, same costs, etc. This would at least minimise the disruption caused by having to apply for 2 visas. Alternatively, an expedited visa process for short-term business travellers this would be helpful.
- Additionally, the UK's absence from the border and visa aspects of Schengen impacts on EU train operators. The requirements on them and information on who is allowed to travel where is often unclear. There is a need for good communication and clarity in this area for the rules to be enforced effectively.

Legal Migration:

- Many attendees felt that the UK did not necessarily lose out by not following the same legal migration rules as the EU. Ultimately it does not matter which set of rules businesses have to work to, as long as the rules are simple, clear, are applied effectively, and allow UK industry to get the necessary skilled people in to the country. It is when the legal migration rules provide unnecessary barriers to UK businesses that issues arise.
- A constantly changing legal migration framework just leads to confusion for businesses. Clarity of rules and process is key, regardless of who makes the rules and processes.
- The question was raised as to why the UK had not signed up to the EU 'Blue Card' scheme. There are concerns that being outside of certain EU measures (i.e. Schengen, Blue Card) gives mixed messages regarding the globalisation of British businesses. There is a changing perception of the UK - it used to be perceived as open for business, but is not as open any more, especially when compared to other EU countries.
- Some of the perceived benefits and flaws of the Blue Card Directive were discussed by attendees. Individual Member States are implementing the Directive in a variety of manners for example, and the result depending on how you view it is either welcome flexibility for Member States or a severe undermining of what was supposed to be a common immigration policy.
- The group discussed Intra-Company Transfers (ICTs). They welcomed that the UK has no set limits on ICTs, but thought that the more intense restrictions e.g. on cooling off periods, minimum salaries, etc, have been causing some difficulties.
- More broadly, it was suggested that free movement of persons within the EU has had an impact on non-EU legal migration into the UK. As the government cannot control EU migration, it has taken strict action on non-EU migration, particularly economic migration (Tier 2) and student routes (especially when students are coming for a short, non-degree level course). This is not in the interest of UK business.
- Attendees argued that the UK must continue to ensure that it can get and develop the right skilled individuals into the country as necessary, both for the long and short term.
- Many felt that the current language in the debate around immigration is causing offence in some countries, for example India. There is a feeling that Indian students in particular are not welcome in the UK and that the drop in

net migration figures has largely been achieved by stopping Indian students from coming to the UK.

- Some attendees argued that it would be useful for headline net migration figures to be broken down into categories of migrants. The public generally don't acknowledge or appreciate the range of distinctions which the net migration statistics incorporate.

Home Office and Department for Work and Pensions

Monday 24th June 2013

Submission 82

Balance of Competences Roundtable Event, 26th June 2013

Free Movement of Persons

HMG Attendees

- Christophe Prince (Chair, UKRep)
- Mayerling O'Regan (Chair, UKRep)
- Tania Celani (UKRep)
- Miriam Houlton-Bennett (UKRep)
- Samantha Hill (UKRep)
- Ashleigh Gray (Home Office)
- Hazel Roberts (Home Office)
- Simon Peters (DWP)
- Mark Lomas (Home Office)
- Rebecca Murphy (Home Office)

Delegates

- Timothy Kirkhope (UK MEP)
- Claire Dheret (European Policy Centre)
- Alexander Lazarowicz (European Policy Centre)
- Pawel Nalewajko (Council General Secretariat, Directorate-General for Justice)
- Michel Stavaux (Euclid Network)
- Morten Jorgensen (JHA Counsellor, Permanent Representation of Denmark to the EU)
- Howard Rosen (Council of British Chambers of Commerce in Europe)
- Elizabeth Collett (Migration Policy Institute)
- Robert Boyle (Parliamentary Assistant to Phil Bennion MEP)
- Patrick Bourke (Brussels Representative, Isle of Man Government)
- Rossi Mandzhukova (Council General Secretariat, Directorate-General for Employment, Social Affairs and Inclusion)
- Matthijs Groeneveld (Permanent Representation of the Netherlands to the EU)
- Kasper Paulig (Permanent Representation of Sweden to the EU)

Note

This meeting was held as part of the evidence gathering process for the Balance of Competence Review report on the Internal Market: Free Movement of Persons. They do not necessarily represent the views of the Government.

The meeting was held under Chatham House rules. Delegations from the Permanent Representations spoke in a personal capacity based on their own experiences and should not be considered to represent the official positions of their governments.

The following points were made in the discussion:

Record of the discussion

General

- It was suggested that the Free Movement of Persons (FMOP) is applicable in EU countries, but wider associated freedoms such as the right to be treated equally in all Member States, is not applied in all.
- FMOP is a right and one of the basic principles of the European Union. We need to consider what is the value to EU citizens?
- It was highlighted that in a Gallup Europe poll¹ amongst the Danish public regarding membership of the EU:
 - 39% of responders were in favour of leaving the EU vs. 45% in favour of staying in
 - 40% of responders considered that the EU was 'moving in the wrong direction', vs. 30% who thought it was going in the right direction.
- There is a general support for the concept of FMOP, and one contributor commented that it is one of the biggest successes of the EU. Several contributors agreed that it enriched Member States societies as well as the EU as a whole.
- There is a question as to whether an EU citizen has a right to travel within the EU despite a lack of revenue – we would consider that this is part of the definition of EU citizenship. This was discussed at the time of the Maastricht Treaty.

¹ "EU Election 2014 countdown: One year to go", Gallup Europe, June 2013 ([link](#))

Impact on the Economy

- There are substantial worries in some older Member States regarding FMOP, including economic concerns. An example was given from Denmark - a recent court ruling had determined that the generous financial support given to Danish students should now be available to EU students as well. This would be very expensive for the Danish system and was a source of concern.
- It was noted that some Member States had not put transitional arrangements in place for nationals of accession countries. In some Member States there was no evidence of 'benefit tourism', although concerns on this point remained. However, in some Member States migration from non-EU countries is of greater concern.
- It was suggested that the current debate around FMOP centres on reducing costs rather than maximising benefits. The UK could engage more and get more back, for example on the Mutual Recognition of Professional Qualifications (MRPQ).
- There are widespread macroeconomic benefits arising from free movement. The costs associated are generally microeconomic and it is important they are managed so that they do not undermine FM.
- It was argued that the UK did not help itself in terms of FMOP with prescriptive tax residency laws. The result of this is that EU citizens could be considered resident in more than one country at the same time, which put a bureaucratic burden on them. While the statutory residence test is a good idea in theory, the implementation of it is not good.
- Several contributors asserted that FMOP is vital for the UK economy. The commercial sector cannot survive without FMOP.

Impact on the Labour Market

- The European Policy Centre have published a report on labour mobility and completing the single EU labour market, which has three main objectives;
 - to shed light on mobility trends
 - to undertake a cost/benefit analysis
 - to consider the differences between sending and receiving countries

This report was produced as an objective review in response to the political context and negative discourse around FMOP and migration.

- Other comments note concern about the social effects of the exploitation of migrant workers, for example long hours, low pay, expensive but low quality housing. There are concerns that this creates an unfair playing field for EU workers across the EU.
- For manufacturers, it was suggested that there is a need for skilled workers to be available when expanding. Relying on the domestic market leads to delay, for example if there are not enough domestic workers with the required skills for a new production line, it can take years to train new workers up to the required skill level. Access to the EU labour market helps manufacturers to recruit skilled workers quickly.
- The Isle of Man (IOM) is not part of the EU but has a relationship with it (subject to free movement rules under Protocol III). IOM grants access to citizens of Member States, but with some restrictions (for example, the requirement to apply for a work permit). There is also a residency requirement of 5 years for access to services/benefits. EU citizens constitute 5% of the population of IOM, and applications for work permits from EU citizens have a high level of success.
- IOM wants more FMOP rather than less, because the population is currently too small to realise IOM's potential. However, there is a bias in IOM towards employing Manx applicants.
- There is a need to strike the right balance between high and low skilled migrants and ensure that the balance is right.
- FMOP can lead to a fear of employers 'shipping in cheap labour' to the detriment of local workers.
- Impact assessment of FMOP – who are the 'free movers'? While long term movers are 3.1%, it is important to remember that this misses temporary moves. The number of citizens that have exercised a right at some point is likely to be significantly higher. It is important to consider the indirect benefit of short-term movement of workers.
- It was asserted that FMOP has 10% added to UK workforce – 50% of this is in senior roles.
- For the Isle of Man, some resentment has been seen, but this is not at a high level as unemployment in IOM is low.

- From the point of view of business, FMOP assists businesses to employ EU nationals, the appropriate reaction to high unemployment such as that seen in southern Europe is more liberalisation of the labour market and not less.
- There are concerns in some countries at the loss of trained people at a cost to one EU country to the benefit of another.
- Some contributors made the point that they did not think it was fair to blame the receiving state for the policies of the home state – people will go where their skills are most valued.
- For small- and medium-sized enterprises (SMEs), human resources managers will generally recruit in the local labour market. It is of benefit to employers and citizens that ‘free movers’

Business Experience of Free Movement of Persons

- Further comments noted that within the EU, FMOP is vital. It is a fantastic resource for British business in the UK. ‘One of the most important advantages of EU membership’.
- The view was given that FMOP is also a resource for British business to go out to Europe to create a market for their business, and give flexibility to move their staff around the EU. From a business point of view, public concerns about abuse can have the effect of limiting FMOP. Abuse discredits the system. Need to look carefully at abuse, for example: benefits; and nationality/passport rules.
- Business does not work in a binary way. Within continental Europe, a business may operate in all different parts of the EU.
- One example was cited of a large manufacturing employer in the UK wanted to recruit British Citizens who have experience of working abroad, for example, skills, language, experience of different working styles etc.
- The ability to send staff to work in another part of the EU for development/training was considered to be a huge benefit. FMOP helps to fill labour shortages.
- The Council of British Chamber of Commerce in Europe (COBCOE) operates successful networking platforms in the EU, but simple attendance at events is

not sufficient. It is important to spend time in other countries to build networks/contacts for trade. FMOP facilitates this.

- For business culture, businesses have to understand how business in other EU countries work.
- A lot of companies refuse to do business outside of their own country/area because they are frightened. The EU facilitates businesses to trade in EU countries, and takes away some of that fear.
- The ability to set up businesses and to familiarise yourself with another country, to immerse yourself in that country and build your business there is helpful.

Experience of UK Nationals in other Member States

- The local labour laws of different Member States can restrict the ability of staff to enter a country. Bureaucracy in Member States other than the UK can mean that workers/self employed persons need to 'jump through hoops' to claim their right to be (and work) there.
- It was noted that aggregate costs of FMOP are difficult to accurately work out. In Spain, there has been an estimated 50% increase in resident British Citizens.

Social Security Coordination

- Concerning social benefits for families, this was another area of concern for some Member States regarding which social benefits should be available immediately to EU national workers in another Member State, and which should be subject to qualifying periods.. This debate was seen as influencing the domestic political discourse and leading to discussions about the future of domestic social assistance systems – did they need to be reformed as a consequence? An example of an entire village of EU migrants fraudulently claiming social security benefits on the basis of forged employment contracts in one Member State was cited. This was said to have caused a lot of negative feeling. As a consequence it was important to focus on fighting fraud, and this should be done at an EU level and must be enforced.
- Others noted that it was important to highlight that there is no empirical evidence of benefit tourism.

- In terms of benefits, some contributors gave the view that the problem is often how national governments construct policies to fit within the framework of FMOP.
- It was argued that UK statistics on FMOP are poor, this is not helped by the lack of compulsory registration cards. This has a knock on effect for local services such as schools, who are unable to plan effectively due to lack of data – UK should look at what other Member States have done on this.
- Looking at the social aspect, this has created problems in some Member States. For example, the politician Geert Wilders in the Netherlands had set up a website where people can ‘report’ their Polish neighbours. There is a potential for social conflict, particularly if Member States have to adjust social policy due to FMOP fraud. If this happens there is a risk of less societal support for FMOP.
- There is a misperception regarding social security, in that some people think an individual ought to have ‘equity’ in it, that is, you pay in and *then* you are entitled to take out, whereas in reality this is not the case.
- It should be noted that this works both ways. For example, there are many British pensioners in Spain. Some stakeholders asked what would happen if the Spanish government limited their access to services such as healthcare?
- The issue of changes to social security systems to address the abuse of FMOP was raised, particularly concerning non-contributory and contributory models. Some asked if, in the absence of FMOP, would adjustments to the benefits system not be made anyway in response to domestic fraud? If the domestic benefits systems need reforming anyway, why not do it in the context of FMOP, it was posed.
- It was suggested that there is always a small section of the population that looks for loopholes in any system and which may commit fraud. Broadly speaking, social security systems in MS need to change over the next 10 years or so for more compelling structural reasons. On the positive side, negative perceptions of fraud and abuse could provide a catalyst for change.

Abuse of Free Movement of Persons

- There are political differences regarding definitions within FMOP. Do we need to start making definitions for example of what is self-employment, what is fraudulent self-employment? For example by looking at tax, national

insurance contributions? We need a more harmonised view of what is self-employment.

- The point was made that in terms of competence [with regards abuse], there is no reason for the ECJ to interfere, as long as the treatment of EU citizens is equal.
- It was noted that when looking at how to prevent abuse of the system, or 'benefit tourism', Member States can't discriminate, but could look at residence requirements, connection to country etc. to limit access to particular benefits, such as in the case of the Danish student support.

Accession and Expansion

- It was noted that there are concerns regarding the EU2 states [Bulgaria and Romania] with regards the domestic situation in those countries, for example concerning corruption,
- It was suggested that FMOP is valued highly by business interests, but is not 'free' in all aspects. For example, transitional restrictions on Romanian and Bulgarian workers are not standardised across the Union. Treatment of accession state workers varies greatly between Member States.
- When we talk about FMOP it is relative freedom – it is not a decisive situation.

Long-term Immigration

- Concerning 'cost/benefit analysis': there were some British studies on migration flows between receiving and sending countries, which found that people move primarily for work or economic reasons.
- It was highlighted that in the Bordeaux region, much of the produce is made by British nationals. FMOP should be looked at in terms of regional impact as well as national.
- Any assessment of the impact on the UK should be compared with the statistics for similar country. We would suspect that there is a bigger impact in terms of immigration for the UK.

- It was suggested that the UK experience of FMOP is uneven in terms of region. There have been large inflows in the South East, for example, whereas the Scottish economy demands more.

Impact on Local Areas and Services

- There is a need to take into account both the economic and social effect of FMOP.
- It was argued that the public perception in the UK of FMOP is often that 'someone at the end of the street is getting a free ride'. There is a strong perception of inherent unfairness that is forced on people by Brussels – this is not necessarily a reality but is a popular perception.

Home Office and Department for Work and Pensions

Wednesday 26th June 2013

Submission 83

Balance of Competences Roundtable Event 3rd July 2013

Think Tanks and Academics

HMG Attendees

- Minister for Immigration Mark Harper
- Philip Duffy (Director of Immigration and Border Policy Directorate, Home Office)
- Fiona Kilpatrick (DWP)
- Richard Given (DWP)
- Ashleigh Gray (Home Office)
- Hazel Roberts (Home Office)
- Mark Lomas (Home Office)
- Rebecca Murphy (Home Office)
- Joe Rifaat (Home Office)

Delegates

- Marie-Madeleine Kanellopoulou (EU Representation to the UK)
- Prof. Christian Dustmann, University College London
- Prof. John Salt, University College London
- Prof. Ian Preston, University College London
- Hugo Brady, Centre for European Reform
- Dr. Scott Blinder, Migration Observatory
- David Goodhart, Demos
- Stephen Lee, Centre Forum
- Dr. Alan Manning, London School of Economics
- Tim Harrison, Migration Advisory Committee
- David Metcalfe, Migration Advisory Committee
- Michael Keith, Centre on Migration Policy and Society (COMPAS)
- Alp Mehmet, Migration Watch
- Matthew Pollard, Migration Watch

Note

This meeting was held as part of the evidence gathering process for the Balance of Competence Review reports on the Internal Market: Free Movement of Persons and Asylum and Immigration. They do not necessarily represent the views of the Government.

The meeting was held under Chatham House rules.

The following points were made in the discussion:

- The Minister for Immigration welcomed delegates and provided a short introduction. He set out the scope and nature of the Reports and encouraged delegates to provide written submissions.

Record of the discussion

General Points

- Contributors made the argument that debate shouldn't focus on whether free movement is 'good or bad', and that instead we need to focus on the current issues, e.g. levels of free movement to the UK, the need for public services to adjust to the demands of free movement.
- It was suggested that the European Court of Justice (CJEU) seem to be pulling back from the more aggressively integrationist approach they have taken in the past.
- It was argued that it is hard to measure the benefit of free movement to the resident population.

The Labour Market

- The question was raised whether, within the context of free movement, employers should be able to give preference to UK citizens. It was argued that the free movement of persons ruled this out, but it was noted that this could lead to problematic perceptions, particularly regarding own citizens who have difficulty in the labour market. It was argued that if the government wanted to introduce a job guarantee to, for example, for the 16-25 age group in areas of high unemployment, they would not be able to do so. Some participants thought that most British people would find this ridiculous.
- There was a question about the economic argument for free movement within the internal market. The point was made that without free movement of workers the internal market will not work. It was considered to be essential for sectors such as manufacturing and financial services. For example, the

German economy is more reliant on the manufacturing sector and the UK economy is more reliant on the financial services sector.

- It was stated that free movement doesn't work without an open labour market and that EU migrants are contributing more to the UK than they are taking out. Some groups suggested that Member States do have the ability to close the labour market in an emergency – and that the Government should explore this further.
- It is very clear that the debate about migration is a debate about labour markets – the difference between liberal and closed labour markets within the EU.
- It was argued that employers liked free movement in that it provides a flexible labour force. One participant suggest that in London and the South East of England, four or five migrant workers sharing accommodation can 'out price' a worker who houses their family in the same accommodation, meaning that their living costs are lower, which impacts on the level of wage they require.
- Those in Britain who benefit from free movement are not the same people who face difficulties finding employment or housing shortages. One contributor argued that the point above cuts both ways, and could be an argument for greater labour market regulation as it demonstrates the disadvantage to workers with families who are already resident in the UK.

Social Security Coordination

- It was stated that the 'export' of benefits under EU law is controversial, such as claiming child benefit for children not residing in the UK, It was pointed out that qualifying periods for benefits, or the lack of them, is a big issue in the public debate.
- There was a discussion on statistics concerning free movement and benefit abuse. It was argued that DWP should produce better statistics on the levels of abuse of benefits by persons exercising free movement rights. According to one delegate, the level of technical abuse is low, but the UK is a magnetic country due to the open labour market and accessibility of public services and benefits.
- Some contributors asserted that the Habitual Residence Test carried out by Job Centre Plus and local authorities can produce different results – the applicant can pass one and fail the other at the same time. On a similar point, some attendees thought that subsidising the wages of low-paid migrant

workers through working tax credits, for which there is no residence test, increases the incentive to migrate.

- It was noted that conducting an accurate cost-benefit analysis of migration is not straightforward. Child benefit was raised as an example; migrants are generally educated when they arrive in the UK, so the UK has not had to bear the cost of educating that person. However, they may use the public education system if they have children. Fixed costs, such as the military, do not increase with inward migration to the UK, but migrants contribute to this cost through their taxes and thus reduce the overall burden on the native population.
- Some participants argued that EU migrants have always contributed more for tax, NI, etc. that they have taken out in the form of benefits and use of public services.
- There was a discussion on the free movement of workers. Delegates noted that the CJEU had clearly set out in its determinations that free movement is for citizens. This gives rise to complex issues around different social security systems. For example some member states' systems require a person to hold a job contract in order to access contributory benefits.

Abuse of Free Movement

- The Surinder Singh judgment was raised as an example of a way in which the free movement of persons could undermine immigration control.
- Concerning abuse of free movement, it was suggested that if all EU countries agree on the need to tackle abuse, the solution could be 'more EU' – harmonised rules on social security, for example. EU ID cards would solve a lot of problems with regards to abuse but would be politically unpopular in the UK.
- One delegate noted a study that was being conducted into the benefit situation regarding EU nationals. There is currently an evidence gap on benefit fraud.
- It was pointed out that concerns about benefits were not just issues of fraud, but also a question of fairness. The design of the UK system makes it more of an issue here than in some other EU countries.
- The large number of additional immigration routes created by the CJEU created difficulties. The *Zambrano*, *Chen* and *Metock* cases were cited as

examples. It was argued that the Metock judgement had opened the door to more bogus marriages, as there is no requirement to have resided in the EU previously, or to have had legal residence in the EU.

Free Movement of Persons and Immigration

- The point was made that lurking above the free movement debate was a rise of BRIC countries (Brazil, Russia, India and China) and a rise in international migration. It was argued that the UK tends to look back when considering migration policy, not taking into account what is likely to happen in 10 years, for example with greater globalisation.
- We need to look at migration in 'streams', for example students, visitors, employment.
- One contributor stated that the government's stated aim to reduce inward migration is not possible with free movement
- There was a discussion on statistics and the numbers of EU nationals in the UK and UK nationals exercising free movement rights in other Member States. Some contributors referred to statistics which state that there are 407,000 British citizens working in other EU countries, and 1.4 million EU workers here. The statistics referred to also state that in total there are 2.3 million EU citizens here (taken from Eurostat and ONS data) and 930,000 UK citizens in total in other EU member states.
- One delegate suggested that as far as the UK is concerned, the key movement of EU nationals is from Ireland, due to the special relationship the UK has with Ireland. Irish nationals are entitled to reside in the UK under domestic law aside from their free movement rights.

Accession and Expansion

- It was argued that there was virtually no 'free movement' before 2004. However, the UK acquired a huge amount of free movement following the arrival of new countries with lower income levels, which led to mass immigration.
- One contributor made the comment that if the income disparities between the new and existing members states in 2004 did not exist we would have not had a problem, it would have been a small issue relative to the gain. There is a

feeling that the balance of benefits is not right. A great achievement would be cementing democracy in new EU countries and improving living standards.

- Another contributor agreed that the wage disparity between EU countries is an issue, but asserted that there is also a disparity in benefits which are often not available or not easily accessible in other EU countries.

Future Options and Challenges

- One delegate argued that it would not be possible to open the Free Movement Directive, however the regulations around social security coordination may be a route to tackle abuse. Others argued that if the Free Movement Directive were to be amended it would need all 28 EU Member States to agree. A fundamental change to free movement would require going back to the Treaties.
- However, one delegate was clear that the discussion had not concluded that change is needed. It was important to look at the economic benefits of free movement. The UK's open labour market puts it in a better position than other EU countries to attract skilled workers.
- It was argued that the prohibition against discrimination based on nationality in the Treaties was not absolute. Member States were in fact able to discriminate in certain circumstances, for example with regards voting in national elections.

Asylum and Immigration

Opening Remarks

- Philip Duffy gave some background on the current balance of competences between the UK and the EU on asylum and immigration issues, as detailed in the Call for Evidence.

Borders & Visas

- The advantages and disadvantages of the UK opting out of the border and visa aspects of the Schengen acquis were discussed in detail.
- The group commented that the Schengen zone has undergone significant improvements in the last 2 years, and in particular noted that the Schengen border was becoming increasingly secure. While it was agreed that it was currently politically impossible for the UK to join Schengen, there exists the

possibility of increasing cooperation with Schengen countries on border and visas issues (for example in data sharing).

- The issue of an emerging Chinese middle class was raised, and the expected rise in tourism to Europe that this is expected to generate. In order to take advantage of this rise, the UK may have to be increasingly flexible in regards to recognising Schengen visas. Similarly, businessmen want a visa system and border controls that are convenient and fast.
- The Home Office dedicates a lot of time and effort into protecting the border. The group discussed the cost to the UK of managing the border, and whether the current commitment to a highly visible, uniformed border represents value for money. If the UK were in the Schengen acquis, money spent on border controls could be reduced and an increasing amount in theory could be directed towards enforcement work. However, the UK would be required to contribute to the costs of managing the Schengen external border.
- Border work is increasingly driven by the need to tackle criminality and terrorism rather than just manage immigration. A significant proportion of immigration work is done away from the border, and therefore in considering the value of the UK retaining its own border controls, it is important to remember the functions it performs beyond immigration work.

Asylum

- The group discussed the UK's involvement in a Common European Asylum System (CEAS). It was suggested that while those Member States bound by all the European directives on asylum have generally seen an increase in their asylum numbers in recent years, asylum continues to work better and better for the UK.
- By remaining a signatory to the Dublin Regulations, the UK is able to stay engaged and influential in the European asylum debate.
- It was also noted that most people who claim asylum are overstayers rather than clandestines.

Legal Migration & Returns

- The EU's laws on labour migration for non-EEA nationals are relatively basic, covering mainly issues such as intra-company transfers and the Blue Card system. It is therefore difficult to make an effective comparison between the 2 legal migration systems.
- The key to a successful legal migration regime is flexibility. It was suggested that limiting of non-EEA migration to skilled workers was a sensible policy.

- Opting in to the Blue Card system would have minimal benefits for the UK. Countries are interpreting the system differently; it is unattractive to migrant workers, and very few cards have been issued.
- On returns, the group discussed the UK's decision not to sign up to the Returns Directive. This Directive has extended the rights of illegal migrants, so in this case the UK may have made the right decision in opting out.

Home Office and Department for Work and Pensions

Wednesday 3rd July 2013

Submission 84

Balance of Competences Roundtable Event 8 July 2013

Migrants Rights, Legal and Voluntary Groups

HMG Attendees

- Fiona Kilpatrick (DWP)
- Richard Given (DWP)
- Hazel Roberts (Home Office)
- Rebecca Murphy (Home Office)

Delegates

- Hugo Tristram (British Red Cross)
- David Rhys-Jones (Helen Bamber Foundation)
- Don Flynn (Migrants Rights Network)
- Deborah Rowan (Migrant Help)
- Dorothea Baltruks (Bail for Immigration Detainees)
- Mark Hilton (London First)
- Virag Martin (National Council for Voluntary Organisations)

This meeting was held as part of the evidence gathering process for the Balance of Competence Review reports on the Internal Market: Free Movement of Persons and Asylum and Immigration. They do not necessarily represent the views of the Government.

The meeting was held under Chatham House rules.

The following points were made in the discussion:

Record of the discussion

Asylum and Immigration

- One organisation gave the view that a common asylum framework can be good to help the UK meet its international obligations; it can raise standards, or conversely it can lower the level if the framework sets standards lower than that in the UK. Where it serves to raise standards this is clearly a good thing as far as the beneficiaries are concerned. However, the worry is whether it would work in this way.
- Another organisation stated that opt-ins, for example over reception conditions for asylum applicants, would be a positive step. There should be a

limit to the use of detention and anything which improved the standards for 'fast track' would be welcomed.

- One contributor commented that a consideration of whether something is 'in the public interest' is a difficult question, as there will be differing opinions as to what is in the public interest. The commenter felt that, in terms of the general public, it is possible that measures which would improve conditions for asylum seekers are not seen as 'being in the UK national interest'. However, the contributor took the view that measures which improve conditions for asylum seekers are in the public interest. This view was the consensus view of the attendees.
- Some contributors considered that in the past, the UK has benefitted from the shared experience of asylum in Europe. However, some thought this was beginning to unravel – for example, the situation for asylum in Greece. One contributor asked whether the Common Asylum Framework suitable for the current situation, or the near future, considering the likely higher movement of refugees.
- Some thought that If the UK had been more involved in the Common Asylum Framework the EU may have been better prepared for the future.
- One organisation state that in their view, there is increasingly 'beggar my neighbour' approach to co-operation. The collaborative process has come to a halt, and there is a mistrust in the Mediterranean countries..
- Some contributors raised concerns that there is an element of a 'race to the bottom' in terms of the conditions for asylum seekers. New EU countries are worried that if they make a high level of positive asylum decisions, or open their labour markets, they risk creating 'pull factors'.
- Regarding the Greek problem in dealing with asylum, some feel that they are not getting enough support for this. There is no movement within the CEAS to look at burden sharing.
- One contributor expressed the view that the UK needs to get to grips with the fact that Asylum is a Europe-wide issue. The fact that the UK is at the 'end' of the journey should not be relied upon, we should look at it as something we are all part of, and raise standards across the board so that people do not want to move within Europe to claim asylum.
- An example is Sangatte – the evening up of reception conditions means that migrants are now more likely to expect to be treated as well in France as in the UK. This could be the case for Greece in the future.

- With regards the Dublin Regulation – some contributors felt that the principle of determining the country responsible has broken down. The EU Commission consider that asylum seekers' interests should be taken into account, for example family reasons.
- One organisation gave the view that the Dublin Regulation runs counter to efforts to look after victims of trafficking, because it allows victims to be re-trafficked across the EU several times.
- Several contributors agreed that the rise of far right and anti-immigration sentiment tends to get wrapped up with asylum issues. When coupled with the general economic difficulties this leads to an increase in hostility towards migrant communities.
- This is common issue across the EU. It is difficult to know how best to address it. However, some organisations felt that to become stricter and more hostile may not be the best approach in dealing with this.
- On contributor state that the UK should take the moral high ground regarding the right to international protection in the EU.
- The issue of detention – the UK has not agreed to set a time limit on immigration detention. Some contributors gave the view that this is not of benefit to the individual, and that UK's approach of opting out is concerning.

EU Funding

- Organisations advised that they do have access to EU funding. Partner agencies get a lot of support. For example, the 'Positive Images' project benefitted from EU funding.
- One organisation considered it unfortunate that the UK has placed the refugee fund with the Home Office. This prevents some organisations from accessing the funding as their constitution prevents them from taking government money (to avoid conflict of interest).

Visas and Schengen

- One contributor stated that the big issue in terms of non-participation in the Schengen visa system is the impact on non-EU tourists, for example Chinese and Nigerian tourists. It was stated that it is a barrier that people need a separate visa if they wish to visit the UK while they are in Europe. It impacts on the flow of tourists to the UK via Europe.

- Some organisations gave the view that the difficulty of getting into the EU as a result of Frontex means that migrants to the EU make dangerous crossings to reach the EU. It was thought that the UK's non-participation in Schengen creates another dangerous journey from the continent to the UK.
- One organisation advised of the need to assess what is the cost to the UK of maintaining separate controls at EU borders. This contributor gave the view that joining Schengen would avoid issues of queuing such as those seen at Heathrow.
- Several contributors advised that they would have confidence in the EU visa system. Contributors felt that the concern of politicians around these issues is of no practical value to UK citizens at all.
- It was also suggested that if the UK had taken a different approach and joined Schengen, UK Borders would not be so cluttered, travelling between UK and the rest of the EU would be the same as, for example, travelling between Spain and France.
- One contributor gave the view that Schengen doesn't seem to have caused significant problems for countries currently in the Schengen visa system.

Legal Migration

- Students are classed as 'migrants' for net migration purposes. Some contributors felt that students aren't migrants and should be treated as visitors. It was stated that the organisations recognise that immigration data is flawed.
- One contributor made the point that 'we don't have a good sense of who is coming and going', and stated that there needs to be a better understanding of migration flows, who is here etc, to better inform immigration policies.
- Several contributors agreed that a common EU system, measurement of immigration flows and data sharing would lead to improvements.
- Most of the attendees agreed that it would be useful to have a better sense of what would be required of the UK were we to opt in to legal migration measures. It was stated that the problem is that the UK doesn't ever enter into that debate, so the questions are not properly explored.
- An example is the worker's Directive – this does not seem to deal with numbers specifically, it is simply facilitating legal migration of non-EU workers.

- It was stated that progress in other EU states has also been slow. This is down to national governments determining what is in their national interest.
- One contributor asked what are the main blockages to the e-Borders system, whether is it an IT issue, or is it an issue of shared data? If it is data sharing, they felt that we should be positive on opting in as the use of E-Borders would address a lot of our concerns.

Returns and Readmissions

- One contributor reported that in Morocco there is a high level of resentment towards what they see as 'bullying' from the EU, many feel that there is an assumption that people have entered the EU illegally via Morocco. The return of illegal migrants to Morocco is tied up with threats on economic ties, aid etc.
- Another contributor referred to the EU-funded returns project for refused asylum seekers, and stated that there is tension between the interests of the EU and the receiving countries. For example, the intention to build up services for returned asylum seekers in receiving countries was not always seen as a priority by services in the receiving country. The idea is to have a package for reintegration, but such returnees are often returning to countries with huge unemployment, and this can be very difficult for the receiving countries to accommodate.
- One contributor also made the point that mind concerns around human trafficking with regards to returns must be taken into consideration.

Additional points

- One contributor raised the concern that human trafficking did not appear on the agenda for this event. The contributor acknowledged the explanation that human trafficking was due to be covered in the Police and Criminal Justice report by the Home Office in semester four of the review.
- The same contributor gave view was that human trafficking was a migrants' rights matter as much as a criminal justice matter, and expressed the concern that this important issue may be missed between the two reports.

Free Movement of Persons

Transitional arrangements

- One organisation pointed out that although they did not know whether the imposition of transitional arrangements on accession state nationals was

correct, they did have a fund to help destitute migrants, for example those from A8 and A2 countries, who have difficulties in accessing support when subject to transitional arrangements.

- Often the problems faced by these migrants were that they had lost their jobs, were unable to find work or their arrangements had otherwise fallen through.
- Several contributors felt that there is often confusion around entitlements and access to support amongst EEA nationals from accession states. The simpler the rules and arrangements are for accession state nationals the better. Some contributors felt that the current Transitional provisions and arrangements for support are very confusing.
- The UK government's interpretation of the right to reside (residence test) is going through the courts – one organisation suggested that two thirds of EU nationals are currently refused access to benefits.
- One organisation suggested that transitional periods for accession state nationals create 'employment ghettos' – during the 7 year transition there are a lot of interest groups working with these migrants. Once this system is in place there are huge difficulties in breaking with that. This issue causes difficulty in terms of integration – this group of migrants tend to be limited to lower income jobs, ghettoised housing, not learning English as generally working with other accession state nationals etc. They are doing the jobs that no one else wants to do.
- It was asserted that employment ghettos have strong links to the exploitation of migrants. Wherever private sector agencies control access to the labour market there are problems in terms of social mobility and integration. This varies according to location, for example there are a lot of issues in Hull, where access to the labour market is controlled to a large extent by these agencies, as opposed to Bristol, where the labour market is more open.
- One contributor stated that as a result of the points made above, Bulgarian and Romanian nationals didn't have a choice in terms of employment – gangmasters and employment agencies put them where they want them, not where the migrants want to go.
- There are concerns in Bulgarian and Romanian organisations regarding the ability for nationals of these countries to move out of low paid, low skilled employment.
- It was suggested that the 1st January 2014 date for the lifting of transitional arrangements for Bulgarian and Romanian nationals coincides with the run in

to an election – there is a risk of a negative tabloid campaign against Bulgarians and Romanians.

- It was also suggested that for Croatia, the small population and relatively prosperous economy may be the reason why there has not been a lot of negative publicity around Croatian accession – there may be an understanding that anyone making noise on the risk from Croatia would risk looking silly.

Social Security

- In the discussion it was suggested that there is a gap produced by Free Movement. Individuals who are trafficked within the EU, and who are recognised as victims of trafficking, are not provided for in terms of access to support or benefits. Because such people are often traumatised by their experience they may not be able to work, and as no provisions are made for EU national victims of trafficking they are unable to access the necessary support.
- There has been an improvement in terms of recognition of EU/EEA nationals as potential victims of trafficking, but the problem is what one then does in terms of them staying in the UK because they are helping police with their investigation/prosecution, or are unable to return home for safety reasons, there is a gap in the support for these individuals unless they are able to work.

Labour Market

- One organisation noted that they benefitted from free movement for their staff. There were an international movement and free movement was therefore hugely helpful. It was also helpful in terms of recruiting EU workers with varied language skills.
- Anecdotal evidence was noted that the cap on non-EU workers has led businesses to shift to EU rather than UK workers.
- Networking effect of free movement means that businesses become better equipped with native speakers of EU languages.
- The discussion noted that SMEs had been said to report that recruitment of 1 or 2 key workers with language skills or local knowledge can give a competitive advantage.
- The discussion noted a court case against Spain regarding the restricting of access to healthcare by EU nationals in Spain. Restrictions on free movement

rights and the social security rights of EU nationals in other Member States works both ways.

- It was suggested that free movement from the UK to the EU is not as great as the reverse. Language skills make a difference as many EU citizens speak English, which makes it easier for them to come to the UK.

Home Office and Department for Work and Pensions
Monday, 8th July 2013