



The Law Society
of England and Wales

Balance of Competences Review: Internal Market Synopsis

March 2013



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The Law Society of England and Wales is the independent professional body, established for solicitors in 1825, that works globally to support and represent its 166,000 members, promoting the highest professional standards and the rule of law.

Introduction

- 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 £26bn 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 are the essential elements of an Internal Market and against what criteria should we judge its economic benefits? How deep does it need to be to be effective?

1. The basic premise of the Internal Market is free trade. The UK has traditionally been a liberalising force working to open up markets on a global level. This is equally true within a European context where the UK has been a key player in the creation and success of the Internal Market to date.
2. The UK must continue its involvement to ensure that the Internal Market continues to grow and adapt to today's business environment. Access to the Internal Market is vital to UK businesses and the UK economy as a whole. Solicitors play an important role in facilitating the smooth operation of the economy. They seek to ensure that the rights of consumers, employees and businesses are protected. The Society seeks a legal environment in the EU that is certain, clear as to rights and duties, and effective as to

means of redress. The competitiveness of the EU and therefore the UK, ultimately depends on this.

3. Law and legal services underpin every aspect of the functioning of the Internal Market. The founding freedoms upon which the Internal Market is based apply to lawyers and legal firms directly enabling them both to work and to establish in other European countries and to provide legal services across borders. In this last respect in particular, access to the Internal Market provides access to a very broad client base which has allowed London to establish itself as one of the main legal hubs within the Union for UK-based businesses seeking to trade or establish cross-border as well as businesses based in other European countries and across the globe seeking advice on EU cross-border issues.
4. The freedom to supply goods and services requires the establishment of a level playing field, both in terms of equal access and in terms of fair competition. Trade barriers must be abolished which in practice often necessitates introducing an EU-wide set of rules. This is of significant importance to many of the Society's members and their clients in that it eases access, provides legal clarity and brings down the cost of doing business.
5. Furthermore, the Internal Market is unique in the sense that it has built a legal framework that allows individuals and businesses to enforce their rights in a much more efficient manner than would be available in a free trade area. This includes the possibility of relying directly on the Treaty provisions.¹ There are also a variety of legal instruments securing individuals' and businesses' access to justice through the promotion of alternative dispute resolution and mediation, the free movement of judgments, and common rules on choice of law.²
6. There are a number of direct benefits which it may be possible to quantify such as:
 - 6.1. the value of export or cross-border sales of goods within the Internal Market;
 - 6.2. the value of export or cross-border provision of services within the Internal Market;
 - 6.3. investment from other EU countries; and
 - 6.4. the number of jobs estimated to be dependent on the Internal Market
7. However, this is only part of the economic picture and to gain a full picture account should also be taken of the wider benefits to businesses and citizens and ultimately the UK. For instance, free movement allows for businesses to grow by establishing themselves in multiple jurisdictions bringing further economic benefits through job creation and tax receipts although these may not be directly recorded in the UK's EU trade balance.
8. The Internal Market also allows the UK a greater say in global trade. The combined power of the EU trading bloc is a major asset in negotiating Free Trade Agreements

¹ See further in relation to question 3 below.

² The choice of law rules can be found in the Rome I and Rome II Regulations. The fact that there is also free movement of judgments (made much easier by the Brussels I Regulation and Lugano convention) with enforcement of English judgments across the Member States and EEA states, also serves to make the English court system in the UK more attractive to EU and non-EU litigants.

(FTAs) with countries across the globe in turn multiplying the effect of the Internal Market.³

9. A certain level of integration is necessary to ensure a reasonably level playing field if the Internal Market is to function properly. However, different issues arise in ensuring such level playing field across the various sectors of the Internal Market and as such the appropriate level of integration is not the same across the board. Furthermore, the integration can be deep but the rules themselves must be proportionate. In some areas it is also possible to achieve integration without necessarily imposing prescriptive rules.

Question 2 - To what extent is EU action in other areas - for example, environment, social, employment - necessary for the operation of the Internal Market, as opposed to desirable in its own right?

10. The extent to which EU action in "other" areas is required for the operation of the Internal Market is difficult to determine in the abstract: again it depends upon the specific factors and context where action is being considered.
11. In some cases action in such areas may be inextricably linked to the Internal Market freedoms. Where a company is exercising its freedom of establishment, for example by using the provision on cross border mergers or the Societas Europaea (SE), it is necessary to consider what effect, if any, this has on employees and any protections afforded to them by the law of their country of origin or destination. The Cross Border Merger Directive⁴ and SE Regulation⁵ therefore have provisions dealing with the treatment of employees.
12. The extent to which EU action in such matters is necessary for the smooth functioning of the Internal Market also relates back to the concept of a level playing field. A certain level of standardisation across these additional areas is needed to prevent Member States from introducing national provisions that indirectly favour national businesses and *de facto* create new trading barriers. Furthermore, the level playing field does not relate solely to equal access: but also to preventing competition in the Internal Market being skewed by overly large differences in legislation that directly and/or indirectly affects the costs of running a business. However, there may be practical difficulties in ensuring the genuine achievement of a level playing field, not least because the implementation of Directives inevitably leads to inconsistency of approach – not deliberately so as to favour one nation against another – but because the very concept of an all-embracing regulatory “law”, couched in general terms will inevitably be interpreted, and thus implemented, differently by each Member State.⁶
13. In addition to creating a level playing field for businesses, common rules are particularly important in the context of ensuring consumer protection and trust in the market. The assurance that the end-user benefits from a given set of rights or knows that there is a minimum quality requirement makes it more likely that cross-border offerings will be taken up. This may help businesses by broadening their customer base, and indeed it is

³ See further in relation to question 7 below.

⁴ Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies

⁵ Regulation 2157/2001 on the Statute for a European Company

⁶ Examples of this include, for example, the Environmental Impact Assessment Directive (Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment) and the Habitats Directive (Directive 1992/43/EEC of the Council of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora), where geography, climate and circumstance will lead to a difference in interpretation. In a number of cases this is interpreted as either incorrect implementation (which all too often leads to infringement proceedings) or deliberate conflict within the Internal Market. This will be discussed further in future responses.

the lack of confidence and trust of consumers that remains one of the main challenges to furthering the Internal Market in services and e-commerce.

14. One of the most important considerations is not whether the EU takes action in "other" areas but whether the measures which are put in place in relation to the Internal Market are proportionate and fit for purpose. As the EU's competence is not exclusive in these areas, measures adopted must respect the principle of subsidiarity. Action in these other fields allows the UK to encourage best practice in areas where it has particular expertise or concerns. It can also ensure that British businesses do not have to comply with a higher national standard, from which businesses in other Member States would be exempt.

Question 3 - How have the EU's mechanisms for delivering an Internal Market worked? In particular, what do you believe is the right balance between harmonisation and mutual recognition? What evidence is there that harmonisation has worked well or badly? What are your views on the scope and effect of the EU's powers under Articles 114 and the use of Article 115 for non-tax measures?

15. The Internal Market is widely acknowledged as one of the foundation stones of the EU and one of the UK's most important contributions to the EU.
16. EU mechanisms can already be said to have successfully delivered an Internal Market, albeit that further steps remain along the path to full implementation. The current system is also, of course, open to modifications and improvements in line with market developments. BIS's own study from 2011 estimated that fully completing the Internal Market would bring the UK a national income gain of around 7 % of GDP.⁷ by further liberalising and integrating national markets in services and e-commerce.
17. One of the most important mechanisms in creating the Internal Market has been the potential for direct applicability and enforceability of the Treaty itself. The direct effect of Articles 34, 49, 56 and 63 Treaty on the Functioning of the European Union (TFEU) has proven to be effective in preventing attempts by one Member States at discrimination or protectionism against suppliers in other Member States.
18. An important aspect of creating an effective system is the availability of effective dispute resolution mechanisms.
19. One of these mechanisms, particularly apparent from a private international law perspective, is the system for the mutual recognition of judgments. The enforcement of UK judgments across Member States and EEA states has been made much easier under the Brussels I Regulation and Lugano Convention. This assists both EU and non-EU clients that choose to litigate before UK courts and makes the English court system more attractive to litigants. This is also an important benefit for UK natural and legal persons seeking redress in other Member States.
20. Similarly the Society regards adoption of uniform governing law rules⁸ as an integral and important aspect of the Internal Market. This has made it easier to assess with more certainty which law will be applied by Member State courts⁹. The provisions go hand in hand with the uniform jurisdictional and enforcement rules under the Brussels I Regulation and Lugano Convention. Both instruments increase legal certainty by

⁷ <http://www.bis.gov.uk/assets/BISCore/economics-and-statistics/docs/E/11-517-economic-consequences-of-completing-single-market.pdf>

⁸ In respect of choice of law in contractual and non-contractual obligations under the Rome I and Rome II Regulations, respectively. This is touched upon in the answer to question 1 above.

⁹ With the exception of those in Denmark.

providing a uniform set of rules to be applied by courts on questions of jurisdiction and enforcement of judgements. This is of benefit to both lawyers and their clients and can consequently reduce the cost of transaction or when enforcing judgement.¹⁰

21. It is also important that alternative dispute resolution mechanisms are offered which allow parties to avoid recourse to the courts. The recent agreement on the proposal for an Alternative Dispute Resolution Directive is an important aspect of this, in addition to the Mediation Directive.
22. The role of the Court of Justice of the EU (CJEU) is crucial in ensuring consistent application and interpretation of EU law throughout the Internal Market. This facilitates the smooth functioning of the Internal Market, promoting access to justice and redress in situations where problems arise from cross border commercial relations. The mechanism for sending preliminary references has assisted national courts of the Member States, often the "newer" States in particular, in ensuring the correct interpretation and implementation of EU law.
23. Although successful and efficient in many respects, the CJEU is not wholly without problems. The resources of the EU Courts have been constrained and this has led to a longer duration for court proceedings than desirable (although this is today more a feature of the General Court, which is less directly involved in the Internal Market than the CJEU). Concerns have also been raised about the output of the CJEU in certain technical but important areas of law where EU law interacts with complex sets of rules and case-law at national level, for example taxation and intellectual property. The Society believes that such concerns are not unique to the United Kingdom, but may be more widely shared by European practitioners in the fields concerned.
24. Broadly speaking the Society considers that the right balance between harmonisation and mutual recognition has been achieved. The principle of mutual recognition has been an important driver of the Internal Market since the "Cassis de Dijon" case¹¹ where the court concluded that the requirements which the Member State was attempting to impose "[did] not serve a purpose which [was] in the general interest and such as to take precedence over the requirements of the free movement of goods, which constitutes one of the fundamental rules of the Community." Where all EU Member States have the same minimum safety and quality levels, there are therefore no objective reasons for adopting national provisions. However, mutual recognition needs to be supplemented by some degree of harmonised rules, (minimum or maximum) dependent on the policy area to ensure a level playing field and consumers' trust in the market. To this end it should be noted both that the EU has adopted a number of different approaches to harmonisation and that the Internal Market *acquis* establishing common rules for standards, quality and safety of products and services more often than not replace 27 sets of national rules and they are thus not 'new'. In fact, this increases legal clarity for cross-border businesses and brings down costs as such businesses need only comply with one set of rules instead of 27.
25. The development of competition law at EU level has been one of the great successes of the Internal Market. It is regarded as an essential feature and brings with it many practical benefits.¹² This applies both to the rules directed at commercial undertakings

¹⁰ Similarly, other legislation such as the European Payment Order and Small Claims Procedure facilitate access to justice for contracting parties which in turn strengthens the Internal Market. The Society notes that these procedures, although available, may need to be more widely publicised in order to achieve their full potential.

¹¹ Case C-120/78 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein*.

¹² (a) What is now Article 101 TFEU has been very effective at breaking down intra-EU and global cartels, where in the past national industries often ran "no-poaching" understandings with their competitors in other Member States;

themselves and to the rules on State Aid. The latter, in particular, are viewed as having greatly reduced the practical ability of Member States to subsidise their national champions and thus as having made a significant contribution to the ability of UK business to take advantage of the Internal Market. The EU competition rules are not, however, perfect, and further work may need to be done, for example, on when Member States can control mergers to ensure freedom of expression, financial stability (banking, insurance, etc) or to cover national defence.¹³

26. As noted above one of the Society's primary roles is to represent the interests of solicitors and solicitors' practices. The EU has enabled an enhanced framework for freedom of provision of legal services and freedom of establishment for lawyers and law firms which has been key to the development of many London-based law firms.¹⁴ Although this system is susceptible to further improvements, it has enabled the solicitors' profession to thrive. Furthermore it has been a liberalising force, opening other legal professions and professional markets throughout Europe. The direct applicability of some of the Treaty provisions has been key in enabling law firms to expand their businesses into other EU Member States (and those of other Member States to establish here) by relying on the Treaty rights without any need for detailed harmonisation of the rules and ways in which each profession is organised.¹⁵ In turn, this has helped to ensure that the UK's voice is heard as the Internal Market is developed: UK law firms and UK lawyers are now one of the most prominent constituents of the legal community in Brussels, and they are closely involved with legislative and policy developments within the EU institutions.

27. Another benefit of the Internal Market is the opportunity to attract investment.¹⁶ Practitioners have seen significant investment flows into and within the EU over the last 40 years, since the UK joined. The influence of the EEC Treaty, and its successor treaties today, in removing restrictions on the flow of capital (and in the UK's case the lifting of UK Exchange Controls) has led to significant investment into the UK both from other EU Member States and from non-EU States (the latter for example using the UK as a hub to supply the Internal Market) and investment from the UK into other Member States - although the pattern of UK investment into other EU Member states is by no means evenly spread between such States. It is outside the scope of this response to assess the economic level and value to the UK of those investment flows, but

(b) The EU Commission has operated as an efficient enforcement body, with strong powers to detect and deter restrictive practices at EU level;

(c) Competition law is now accepted as a key tool of economic development in its own right across the EU; all EU Member States now have national legislation mirroring the EU competition rules;

(d) The EU merger control rules are effective at controlling larger mergers with an EU wide impact; a patchwork of national merger controls showed itself less well able to deal with large mergers affecting several EU markets;

(e) Further, the rule that the effect of a merger on competition is the only criterion used at EU level to decide whether to approve a merger has greatly reduced the practical ability of individual Member States to block mergers on protectionist grounds or to favour their "national champion". (In line with this approach, the UK's powers to control mergers on the grounds of national interest under the Industry Act have been revoked).

¹³ The Society will wish to develop the views of the profession on this in future responses.

¹⁴ The UK joined the EEC in 1973 at a time which coincided with the collapse of the UK commercial property market and after that the fall in the Stock Market which lost half its value in 1974. London law firms, in particular, were forced in a sense to go out and look for work. Some of them did so by establishing what became very successful practices, first in Paris and then in Amsterdam, Madrid and elsewhere. Dealing first with property work, they then moved into banking, corporate deals and general commercial work. These initiatives coincided with setting up offices in the Arabian Gulf, Hong Kong and Singapore. The development of these London based worldwide businesses was based not only on the use of English law and UK legal expertise but also our ability to be able to provide services across the EU including from offices based in other EU Member States.

¹⁵ See for example the judgment in Case C-309/99 *CJ Wouters, JW Savelbergh and Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten*, intervener: *Raad van de Balies van de Europese Gemeenschap*

¹⁶ See also in response to Question 1 above.

practitioners have certainly advised on, and have benefited from, commercial legal work resulting from those investment and trade flows within the EU, resulting from the treaty rules to ensure the free movement of capital.

28. Some of the specific policy areas and instruments mentioned display varying degrees of harmonisation and mutual recognition. Competition law is almost completely harmonised as opposed to measures under civil judicial cooperation. Both policy areas are important to the functioning of the internal market but as they are very different in nature and scope they need to be regulated in different manners.
29. There is not a blanket answer as to where the axis between mutual recognition and harmonisation should be placed. This depends on a number of factors, not least the relevant sector, whether it is goods or services and the existing circumstances in, and variations between, Member States in any given field. While in some policy areas harmonisation constitutes the largest share of legislation, and vice-versa for mutual recognition, generally there will be a combination of the two modes of legislation as the two are complementary. It is difficult to imagine either technique standing entirely alone as even in areas where there is mutual recognition a common minimum level is necessary to genuinely create a level playing field and ensure consumers trust in the market. Technical standards, or standards to protect EU citizens, for example in the fields such as health and safety, are a good example of one of those areas where some level of harmonisation is needed.
30. It could be argued that EU legislative competence is somewhat imprecisely defined by the TFEU in respect of Article 114. Although a number of years have now elapsed since the first *Tobacco Advertising*¹⁷ judgment, the choice of legal basis on which the EU decides it has competence to act has many times been the subject of judicial challenge at EU level, and this is particularly likely to be the case where an additional legal basis may be cited in conjunction with Article 114. There is a question as to whether the use of Article 114 should be monitored more strictly to ensure that it is only used as a legal basis for legislation which truly fulfils the objective set out in Article 26^{18 19}.

Question 4 - Why is the Internal Market so much deeper in some areas than others? How effective has implementation of the Internal Market been, and what do you feel has helped or hindered implementation of Internal Market rules?

31. The Internal Market is the result of an evolutionary process. Variations in "depth" between subject areas are the result of a number of factors:
 - 31.1. political and cultural considerations or sensitivities;
 - 31.2. the extent to which similarities already existed among Member State systems; and
 - 31.3. the need for modernisation of rules to reflect, for example, changing social attitudes, developments in technology and changes in the way business functions which have prompted change in different areas at different times.
32. The Law Society considers that the implementation of the Internal Market has been reasonably effective.

¹⁷ Case C- 376/98 - Germany v European Parliament and Council of the European Union

¹⁸ Article 26(1) sets out that "The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties."

¹⁹ For example the Society has questioned the competence of adopting the proposed regulations on a Common European Sales Law and considers that Article 114 is not an appropriate legal basis in this context.

33. The possibility of bringing private enforcement actions, and consequently the CJEU, has been key in furthering effective implementation. Both preliminary references and proceedings lodged with the Court itself have contributed positively in this regard. The power of the Commission to bring enforcement proceedings in the CJEU has helped ensure that Member States honour their obligations in properly implementing and observing agreed legislation. However, as mentioned earlier, further improvements to the CJEU do need to be made.
34. The most obvious factor hindering the implementation of the Internal Market rules, at least in the UK context, has been time. In some instances there has not been sufficient time to carry out proper consultation within the UK, subject draft UK legislation to detailed scrutiny or put in place the mechanisms needed to operate new systems. Carrying out these processes properly helps to ensure that measures can be implemented effectively.
35. Another factor is that directives are still unevenly implemented in the Member States both in terms of time and content. These differences can skew competition and have a negative impact on businesses in countries with a strong implementation record, such as the UK, and increases legal uncertainty. In that sense, sometimes the problems that arise from the application of EU law relate to the implementation rather than the law's substantive matter. It should also be noted that the EU itself adopts various different approaches to harmonisation which may leave greater or lesser discretion to the Member States.²⁰

Question 5 - To what extent do you feel that the Internal Market has been positively or adversely affected by other forms of integration of which the UK is not part, for example the Eurozone or the Schengen Area?

36. The Society does not wish to comment on this question.

Question 6 - Has the Internal Market been helped or hindered by UK involvement in other groups such as the G20, the G8, the OECD, or the Commonwealth?

37. The Society notes the significant differences between these various groupings or organisations.
38. The Law Society believes, at least in the context of the G20 and the G8, that the two are complementary. From the UK perspective, membership of the G20 and G8 has had a positive effect on UK impact in the EU, and membership of the EU has raised the UK's status in the context of the G20 and the G8.
39. On a related note, membership of international groupings such as the G20 and G8, or even the Commonwealth, could not replace UK membership of the Internal Market.
40. The Society does not offer any comments as to whether UK involvement in the OECD and Commonwealth has affected the Internal Market.

Question 7 - To what extent has the Internal Market brought additional costs and/or benefits when trading with countries outside the EU?

²⁰ Sometimes diverse national rules are replaced with a single EU rule, sometimes directives might provide a harmonised standard which manufacturers can choose to follow (but this is optional) and sometimes the EU simply sets down minimum standards, but Member States can adopt stricter measures.

41. The Law Society does not consider that the Internal Market has brought any additional costs when trading with countries outside the EU. On the contrary, it considers that it has resulted in significant benefits.
42. Membership of the EU brings advantages to the UK in a wider international context. The combined economic power of all 27 Member States is a valuable asset in negotiating major FTAs with countries throughout the globe. The EU trade protection measures (anti-subsidy, anti-dumping rules, and the operation of the customs union etc) are a good example of where EU action is more effective than action by the UK alone would have been.²¹ While it may be difficult to quantify or assess these benefits in monetary terms, it remains an important factor which should be taken into account in assessing the economic benefit of the Internal Market.
43. From the domestic perspective, it should also be remembered that the UK is often used as a gateway to the rest of Europe. A number of practical and pragmatic elements feed into this including the accessibility of English language, the reputation of English law and the perception of the UK as a whole, and London in particular, as a global hub for all things trade-related, from financial services and investment opportunities to the daily activities of the companies themselves. This "gateway" function is inextricably linked to the UK's position within the Internal Market and the EU as a whole.
44. As noted above, a particular example of a benefit of the Internal Market from the perspective of parties outside the EU is that English judgments involving a non-EU party may be enforced in other Member States or EEA states. This reinforces the attractiveness of England and Wales as jurisdiction of choice.

Question 8 - To what extent has the UK kept requirements over and above the EU minimum, and what effect has that had on the UK's place in the Internal Market? Have other Member States done so, and if so with what consequences?

45. The UK has traditionally been one of the Member States which tends towards higher regulation. There have therefore been cases where requirements have remained in place over and above the EU minimum: a good example of this can be seen in the implementation of the Anti Money Laundering Directive where the UK imposes more stringent requirements. There have also been cases where, in adopting EU legislation, the UK has in fact put in place a higher standard of regulation than that called for in the EU measures. As a general rule, this type of approach can distort the competition in the Internal Market by imposing stricter and more burdensome demands on UK businesses than their European counterparts in turn potentially driving business out of the UK. In certain cases it could have a positive impact if it can be used as a competitive advantage but this depends on the particular sector and how price sensitive the product/service is.
46. In 2010 the Government announced an end to the gold plating of EU regulation.²² It pledged instead to follow the "copy-out" principle except where it would adversely affect UK interests, such as putting UK businesses at a competitive disadvantage, and not to implement early unless there are compelling reason to do so. The Law Society believes that there are cases where a "copy out" approach is not attractive. This may be because the UK wants to apply higher standards than an EU Directive imposes - because it is considered desirable for the UK - or because the Directive is not clear in the way it is worded, and it is helpful for business to be clear about what is required of them to avoid having to incur costs caused by the uncertainty.

²¹ As a specific example, the EU has been far more effective in the aircraft anti-subsidy dispute with the US than any one EU member state could have been on its own.

²² <https://www.gov.uk/government/news/government-ends-goldplating-of-european-regulations>

47. The Law Society does not have sufficient data to form a view on the practices of and subsequent consequences in other Member States.

Question 9 - What future challenges/opportunities might we face in the Internal Market and what impact might these have on the national interest? What impact would any future enlargement of the EU have on the Internal Market?

48. 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. To date the UK has been an important voice in Internal Market negotiations and in influencing the proposals the Commission puts forward. The UK has been particularly successful in areas such as company law and corporate governance: for example, the comply or explain approach to corporate governance has been adopted in the EU. If the UK were to cease to be a member of the EU, it would lose this influence.
49. As the EU enlarges it becomes more difficult for Member States to reach agreement. This can prevent the EU introducing enabling provisions which could be beneficial to businesses, e.g. because they allow a company to exercise its freedom of establishment.
50. There has been much talk recently of the potential adverse effects on non-eurozone countries from the increased political and economic integration of eurozone countries. This particularly entered the spotlight during negotiations over the establishment of a Single Supervisory Mechanism (SSM). While the Society recognises that it is important to be aware of the unique situation of the eurozone countries, the experience of the SSM indicates that it is possible to ensure appropriate safeguards are put in place, thus avoiding a negative impact on non-eurozone countries.
51. The Society believes that there are significant future opportunities, in particular sectors such as services, e-commerce, telecommunication, pharmaceutical, high-end engineering and energy where the UK is particularly strong.
52. Future enlargement would also provide the opportunity for UK businesses to provide goods and services more widely. UK consumers could also benefit from a more open market. The Law Society advocates market opening, both in the context of provision of legal services and in furthering the interests of its members' clients.
53. The Society observes that an efficient CJEU and General Court are important to the functioning of the Internal Market. Any further enlargement would need to take into account the corresponding impact on the volume of casework. The Society takes the view that there is already an urgent need for additional judges to tackle the workload of the General Court. This issue would need to be looked at carefully in the case of further enlargement.

Question 10 - Are there any general points you wish to make which are not captured above?

54. 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. Although, following the example of those non EU countries with Internal Market access, it would be possible for the UK to participate in Council discussions, its influence would be severely weakened as it would have no voting power and no power of veto.

55. 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, as noted above, 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.
56. The Law Society would also like to note that much public discontent and adverse press comments about recent decisions of the "European Court" were in fact aimed at decisions of the European Court of Human Rights (ECtHR) rather than the CJEU. The ECtHR is separate from the EU and involves a greater number of European countries. The Society is concerned that the public confuses the Courts in Luxembourg and EU Law with the requirements of the European Convention on Human Rights and rulings from the ECtHR in Strasbourg. The Society would suggest that future consultation aims to explain to the public the differences between the CJEU and the ECtHR.

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