

BIS | Department for Business
Innovation & Skills

UK GOVERNMENT RESPONSE

European Commission
Consultation on the Single
Market Act

FEBRUARY 2011

Contents

Foreword	3
Executive Summary	4
Introduction – Prioritising Single Market Reforms	7
Chapter 1: Improving the Single Market in Services	12
Making the Services Directive Work	12
Building on the Services Directive to Improve the Business Environment.....	13
The Regulation of Business to Business Services.....	14
Mutual Recognition of Professional Qualifications.....	16
Financial Services.....	17
Chapter 2: Modernising the Single Market	19
The Digital Single Market.....	19
Supporting Innovation within the Single Market.....	21
A Single Market in Energy	23
Facilitating Trade with the Rest of the World	24
Chapter 3: Supporting SME Growth and Making the Single Market Work for Citizens	25
Ensuring that the Single Market Supports SME Growth	26
Implementation and Enforcement	28
Problem-Solving and Redress	29
Chapter 4: Non-Priority Proposals	31

Foreword



By removing barriers to trade and facilitating the free movement of goods, services and people, the EU has established itself as the world's largest market with 500 million consumers generating €11 trillion in economic activity. The EU and its 27 Member States should be proud of this achievement - but we must not be complacent. It is through the single market that we have the best opportunity for all 27 Member States to generate jobs and growth, both within their own boundaries and across the EU. We must work together to ensure that this happens.

Four years of annual growth have been wiped out as a result of the economic crisis. Unemployment has risen sharply across the EU and the EU's growth potential is now forecast at just 1.5% a year over the next ten years. As the economy recovers from the worse crisis for decades, it is essential that the EU develop and implement an ambitious strategy for growth. Revitalising and reinforcing the single market must be part of this. In the single market, the EU has at its disposal an unparalleled resource which, operating at its full capacity should provide a platform for growth and job creation. However, much more needs to be done to ensure that the single market operates at its full capacity.

I welcome the Commission's decision to prioritise reforms to the single market and am grateful for the opportunity to comment on its communication *Towards a Single Market Act – For a Highly Competitive Social Market Economy*. I believe that the Single Market Act provides the EU with an opportunity to develop a road map for the future of the single market and agree a set of ambitious proposals that will support efforts to stimulate growth. This must be complimented by real political commitment from Member States, the Commission and the European Parliament and we must show all Europeans that we are serious about making our economies work again. I believe that ambitious reforms to the single market are essential if we are to continue our recovery from the economic crisis and stimulate growth across the EU.

A handwritten signature in black ink, consisting of a large, sweeping curve that starts on the left, dips down, and then rises to the right, ending in a small hook.

The Rt. Hon. Dr Vince Cable MP

Secretary of State for Business, Innovation, and Skills

Executive Summary

Introduction

1. This document sets out a strategy for reforming the single market and is the UK's response to the consultation on the Commission Communication *Towards a Single Market Act – For a highly competitive social market economy* (the Single Market Act).
2. With the European Union just emerging from the financial and economic crisis of 2008-2009, it needs to develop an ambitious plan to encourage growth. With limited resources available at Member State or EU level to stimulate the economy, the EU must look to reforms that cost little, while also having the greatest positive effect on growth and job creation. Improving the functioning of the single market is one such measure.
3. The Single Market Act provides an opportunity to agree to a set of ambitious actions that will remove barriers to trade within the EU, modernise the single market and ensure that the EU achieves economic recovery and its full growth potential. However, if the Single Market Act is to have a quick and positive effect on the functioning of the single market, we must ensure that it prioritises the right reforms. The EU should only prioritise those reforms that make a significant contribution to growth; make the single market work for SMEs and citizens when they make use of it; are based on evidence of existing barriers to the single market; and require action at the EU, as opposed to the national or bilateral level. In addition, reforms must be complemented by proper implementation and enforcement.
4. Recommendations that will boost competitiveness in services; modernise the single market so that it supports developments in new areas of the economy and efforts to compete globally; support SMEs growth; and make the single market work for citizens would comply with each of these requirements.

Chapter 1: Improving the Single Market in Services

5. Recent evidence suggests that there is significant untapped potential in EU services, both in terms of productivity and employment. Reforms that improved the single market in services could have a big impact on growth within the EU. The Commission should, therefore, prioritise the full implementation of the Services Directive by all Member States. This could generate economic gains of approximately €140 billion.¹ A more transparent business environment should also be created through the introduction of fully functioning Points of Single Contact and consideration should be given to extending their scope to certain areas of the economy not covered in the Services Directive.
6. The Commission should also: clarify the relationship between the Services Directive and the Directive on the Mutual Recognition of Professional Qualifications so as to facilitate the free movement of professionals across the EU; identify and remove disproportionate

¹ *Expected economic benefits of the European Services Directive*, Netherlands Bureau for Economic Policy Analysis (CPB), 2007

regulations that inhibit the provision of services within the single market; and reduce the number of regulated professions within the EU.

Chapter 2: Modernising the Single Market

7. The Single Market Act should be used to prioritise actions that will modernise the single market so that it enables businesses and citizens to take advantage of advances in digital technology; supports the development of a single market in energy; facilitates innovation; and helps businesses trying to trade with the rest of the world.
8. The Commission should prioritise: further development of the EU's digital infrastructure; further development of electronic commerce within the single market; the development of proposals on the management of copyright and orphan works; the adoption of proposals on the EU patent; reform of the standardisation framework; the development of the single market in energy; further development of regulatory cooperation with the EU's main trading partners; and the reduction of trade regulations at EU borders.

Chapter 3: Supporting SME Growth and Making the Single Market Work for Citizens

9. The best way to restore confidence in the single market is by ensuring that the single market works for the majority of Europeans. It is, above all, through practical experience that citizens confidence in the Single Market is shaped. This is also true for those seeking to create and grow SMEs within the EU, if they are not to be permanently discouraged from ambitions to operate across national borders as a result of problems experienced when first trying to access EU markets.
10. Given the economic importance of SMEs specific action should be taken to ensure that the single market supports their growth. The Commission should deregulate and reduce the cumulative burden of EU regulation through the introduction of a "one-in, one-out" system and through a target to reduce the total regulatory burden over the life of this Commission. In addition, the Commission should ensure that the impact on SMEs of new single market legislation is fully considered through the use of the 'Think Small First' principle; identify, in consultation with SMEs, the top 20 barriers preventing their access to the single market and work with Member States to prioritise their removal; exempt SMEs from the most burdensome EU regulatory requirements; simplify the EU rules governing public procurement with the specific aim of easing SME access to procurement contracts across the EU; and review the Accounting Directives to simplify financial reporting obligations and reduce the administrative burdens imposed on SMEs.
11. Specific action should also be taken to ensure that the single market works for citizens. Many barriers encountered by citizens result from poor implementation or enforcement of existing single market rules. The Commission should, therefore, improve the implementation of single market rules through greater use of 'mutual evaluation' procedures and the use of evidence from problem-solving networks during the development of new single market policies, and develop a more resolute policy to enforce the rules of the single market. The Commission should also strengthen problem-solving and redress mechanisms by acting more proactively when working with Member States in solving problems created by barriers in the single market and the creation of a

legal base for SOLVIT. This should be complemented by more effective communication between authorities within the single market.

Chapter 4: Non-Priority Proposals

12. Some proposals in the draft Single Market Act that will not make a significant contribution to growth or make the single market work for SMEs and citizens. For others there is insufficient evidence to justify action or else action at the EU level is not appropriate. These include proposals to: address taxation issues; improve symmetry in public procurement in emerging and advanced economies; and embed fundamental rights into new single market legislation. These proposals should not be included in the Single Market Act.

Introduction – Prioritising Single Market Reforms

1. The European Union is currently emerging from the worst economic crisis for over a generation. It is predicted in the Annual Growth Survey that growth in the EU will be around 1.5% per annum over the coming decade.² This is significantly lower than the rates observed in the EU in the past twenty years and much lower than the EU's global competitors. The World Bank predicts that GDP growth in 2012 will be 3% in the United States and 8.2% in China. If the EU is to quickly recover from the recession, robust policy changes must be made. The EU must develop an ambitious action plan to encourage growth, as experience of the economic crisis shows that we can no longer rely purely on traditional sectors to secure our long-term prosperity. The EU must look in new directions, such as actions to promote the green economy, which can create new jobs and investment, and a more sustainable economy which is less prone to the effects of volatile energy markets and global uncertainty. With limited resources available at Member State or EU level to stimulate the economy, the EU must look to reforms that cost little, while also having the greatest positive effect on growth and job creation. Improving the functioning of the single market is one such measure.
2. The single market is a central foundation of the EU's economic success. As a result of its implementation, the EU is now the world's largest economy, with 500 million consumers generating €11 trillion in economic activity. The single market drives growth within the EU, with Member States trading twice as much with each other as they would do if the single market was not in place. The single market has also contributed to increased growth of at least 1.85% and the creation of 2.75 million new jobs across the EU since 1992. However, in spite of the evident benefits of the single market, numerous barriers to trade still exist and the single market is a long way from achieving its full economic potential.
3. In the past 18 months, the UK Department for Business, Innovation and Skills has handled nearly 100 cases where businesses have encountered barriers to the single market. These range from the use of prohibitive requirements that can only be met by domestic suppliers and poor implementation of EU laws, to the use of national standards and testing regimes that disadvantage foreign suppliers.
4. Research undertaken by UK Trade and Investment (UKTI) shows that despite the single market, 31% businesses trying to trade across the EU still encounter legal or regulatory barriers to trade and only 44% of businesses report the existence of no barriers to trade within the EU (Table 1).³ While it is still easier to trade within the single market than it is to trade within most external markets, these figures show that much more needs to be done to open markets up across the EU. The economic benefits of improving the functioning of the single market are also likely to be significant. The Commission predicts that completing, deepening and making full use of the single market could

² *Annual Growth Survey*, Annex 2 – Macro-Economic Report, http://ec.europa.eu/europe2020/pdf/2_en_annexe_part1.pdf

³ *UKTI International Business Strategies, Barriers and Awareness Survey*, OMB, 2010, <http://www.ukti.gov.uk/uktihome/aboutukti/item/115739.html>

produce growth of approximately 4% of GDP over the next ten years.⁴ Recent research undertaken by the UK Department for Business, Innovation and Skills suggests that removing all the remaining barriers to trade within the EU could result in even greater economic benefits, including a 14% rise in per capita income at the EU level.⁵ It is clear, therefore, that the EU must prioritise actions that would improve the functioning of the single market.

Table 1 Barriers experienced by UK exporters			
	High Growth Markets ⁶	European Economic Area	Other Markets
<i>Base: All exporters</i>	184	290	384
Types of Barriers			
Legal and regulatory	57%	31%	40%
Customs	43%	14%	27%
Contacts	36%	25%	24%
Information	24%	11%	16%
Resource	28%	13%	21%
Language & cultural	30%	15%	18%
Bias	20%	20%	14%
Number of Barriers			
At least one barrier	83%	56%	64%
One barrier	16%	19%	16%
Two barriers	20%	12%	16%
Three barriers	12%	11%	12%
Four or more barriers	34%	15%	21%
No significant barriers	17%	44%	36%

⁴ *Towards a Single Market Act – For a highly competitive social market economy* (COM(2010) 608), 2010, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0608:REV1:EN:PDF#page=2>

⁵ *The Economic Consequences for the UK and the EU of Completing the Single Market*, BIS Economics Paper No. 11, 2011, <http://www.bis.gov.uk/assets/biscore/economics-and-statistics/docs/e/11-517-economic-consequences-of-completing-single-market.pdf>

⁶ Brazil, China, GCC countries (Saudi Arabia, the UAE, Kuwait, Bahrain, Qatar & Oman), India, Indonesia, Mexico, Russia, South Africa, Turkey, Malaysia, Singapore, South Korea, Thailand and Vietnam are considered to be high growth for the purposes of this survey, <http://www.ukti.gov.uk/uktihome/aboutukti/item/115739.html>

5. The Single Market Act provides a valuable opportunity to drive forward essential reforms to the single market and agree to a set of ambitious actions that will remove barriers to trade and ensure that the single market achieves its full growth potential in support of the economic recovery. However, if the Single Market Act is to have a quick and positive effect on the functioning of the single market, the EU must ensure that it prioritises the right reforms. The UK believes that any proposed reforms should, therefore, observe five principles that are fundamental to delivering the full growth potential of the single market:
 - i. **Growth** - Proposals for single market reform should make a significant contribution to growth within the EU;
 - ii. **SMEs and Citizens** - Proposals for reform must prioritise policies that make the single market work for SMEs and citizens when they make use of it;
 - iii. **Evidence** - Proposals for reform must be based on evidence of existing barriers to the single market faced by businesses and citizens, and effectively targeted at their removal;
 - iv. **Added EU Value** - Proposals for reform must be targeted at those areas where actions at the EU, as opposed to the national or bilateral level are necessary to ensure the effective functioning of the single market and must respect the principles of subsidiarity, proportionality and Member State sovereignty;
 - v. **Delivering on Promises** - Member States and the institutions of the EU must meet their responsibilities under the existing rules of the single market and be held accountable for a failure to do so, particularly through effective enforcement of current single market rules.
6. If the Single Market Act is used to prioritise only those actions that comply with **all** of the first four principles and is complemented with proper implementation and enforcement, it will make a real and positive difference to the functioning of the single market at a time when it must deliver on its economic potential.
7. There are a number of proposals in the Single Market Act that meet all of the single market principles. These fall into three main categories and ambitious proposals, not confined to those in the Communication, are possible in each area. The UK, therefore, suggests that the following proposals be included in the Single Market Act:
 - i. **Recommendations that will boost competitiveness in services:**
 - a. The complete implementation of the Services Directive by the end of 2011, including the introduction of fully functioning Points of Single Contact (PSC);
 - b. The extension of the scope of PSC to cover certain areas that are currently out of the scope of the Services Directive;
 - c. The development of an interpretative Communication on the interaction between the Services Directive and the Directive on the Mutual Recognition of Professional Qualifications;

- d. The development of a ‘proportionality test’ to identify disproportionate regulations that inhibit the provision of services and the removal of these regulations, using a new legislative proposal if necessary;
 - e. The reduction of the number of regulated professions within the EU.
- ii. Recommendations that modernise the single market so that it supports developments in new areas of the economy and efforts to compete globally:**
- a. The adoption of proposals to establish a European Radio Spectrum Action Programme for more efficient management and use of the radio spectrum (Proposal 28, Single Market Act);
 - b. The development of electronic commerce within the single market with a view to facilitating the purchase of goods and services online (Proposal 5, Single Market Act);
 - c. The development of proposals on the management of copyright and orphan works within the EU (Proposal 2, Single Market Act);
 - d. The adoption of proposals on an EU patent, including proposals on the language regime and the unified patent litigation system (Proposal 1, Single Market Act);
 - e. Legislative reform of the current European standardisation framework in 2011, so as to make standards-setting procedures more effective, efficient and inclusive, and to extend the scope of the procedures from goods to services (Proposal 6, Single Market Act);
 - f. The development of a fully operational single market in energy (Proposal 27, Single Market Act);
 - g. Further development of regulatory cooperation with the EU’s main trading partners (Proposal 23, Single Market Act);
 - h. The reduction of trade regulations at EU borders through a targeted simplification programme.
- iii. Recommendations that support SME growth within the single market and make the single market work for citizens when they make use of it:**
- a. The introduction of a system of “one-in, one-out” and a target to reduce the total regulatory burden over the life of this Commission;
 - b. The use of the ‘Think Small First’ principle to ensure that the impact on SMEs of new single market legislation is fully considered (Proposals 13, Single Market Act);

- c. Identifying, in consultation with SMEs, the top 20 barriers preventing their access to the single market and working with Member States to prioritise their removal;
- d. Exempting SMEs from the most burdensome EU regulatory requirements;
- e. Simplifying the EU rules governing public procurement with the specific aim of easing SME access to procurement contracts across the EU (Proposal 17, Single Market Act);
- f. Reviewing the Accounting Directives to simplify financial reporting obligations and reduce the administrative burdens imposed on SMEs (Proposal 14, Single Market Act);
- g. Improving the implementation of single market rules through greater use of 'mutual evaluation' procedures and the use of evidence from problem-solving networks during the development of new single market polices (Proposal 44, Single Market Act);
- h. Developing a more resolute policy to enforce the rules of the single market (Proposal 47, Single Market Act);
- i. Facilitating more effective communication within the single market (Proposals 45 and 49);
- j. Strengthening problem-solving and redress mechanisms including through the introduction of a more proactive role for the Commission in working with Member States in solving problems created by barriers in the single market and the creation of a legal base for SOLVIT (Proposals 50, Single Market Act).

20. The rationale for prioritising these proposals is set out in chapters 1, 2 and 3.

Chapter 1: Improving the Single Market in Services

1. Services account for 78% of Europe's economic output and have been the source of all net job creation in recent years.⁷ The competitiveness and productivity of businesses depends on the ability of those businesses to access high-quality, competitively priced services in key sectors, such as transport, distribution, finance, telecoms, and professional services. With about 70% of trade in services relating to the supply of services from one business to another, a more effective single market in business services would enhance the competitiveness of the EU's economies as a whole.
2. Recent evidence suggests that there is significant untapped potential in EU services both in terms of productivity and employment. McKinsey estimated that the productivity gap in business services between the EU and US was 43%, often due to complex regulatory frameworks at the national level that restrict competition.⁸ The Services Directive's mutual evaluation programme - a 'peer-review' exercise run by the Commission whereby Member States challenged each other on the regulatory requirements they had retained despite the Services Directive - highlighted that restrictive regulatory frameworks are particularly prevalent among regulated professions. This suggests that Member States still need to be held accountable for the Service Directive's robust implementation across the EU, especially if the EU is to enjoy the level of liberalisation foreseen in the Directive. The removal of illegitimate barriers to service provision would also assist SMEs in their efforts to access the single market and provide consumers with greater choice. Strengthening the single market in services would, therefore, comply with all the principles for prioritising reforms of the single market.

Making the Services Directive Work

3. The Services Directive, which covers 40% of EU GDP, seeks to introduce liberalisation and competition into EU and local markets, and when implemented fully, could generate economic gains of approximately €140 billion.⁹ The Services Directive has begun an important process of deregulation and simplification of the regulatory framework governing services through removing of hundreds of discriminatory, unnecessary or disproportionate requirements in sectors such as retail, construction or tourism. However, despite this considerable progress and a transposition deadline of December 2009, full implementation and compliance by local regulators is still some way off in many Member States.

⁷ *Beyond Austerity: A path to economic growth and renewal in Europe*, McKinsey Global Institute, 2010, http://www.mckinsey.com/mgi/publications/beyond_austerity_europe/pdfs/MGI_Europe_growth_and_renewal_full_report.pdf

⁸ *Beyond Austerity: A path to economic growth and renewal in Europe*, McKinsey Global Institute, 2010, http://www.mckinsey.com/mgi/publications/beyond_austerity_europe/pdfs/MGI_Europe_growth_and_renewal_full_report.pdf

⁹ *Expected economic benefits of the European Services Directive*, Netherlands Bureau for Economic Policy Analysis (CPB), 2007

4. The first priority for boosting competitiveness in services must, therefore, be to **ensure the proper implementation of the Services Directive by all Member States by the end of 2011**. Particular attention should be paid to ensuring that Member States deliver on three crucial obligations:
 - i. To create a more transparent business environment through fully functioning Points of Single Contact (PSC). Each Member State must set up an online 'one-stop shop' through which a service provider can find comprehensive information about the requirements they need to comply with in order to do business in that Member State. Service providers should also be able to apply for licences and authorisations through the PSC. There has been good progress in setting up PSC but there is still much more to be done in some Member States, and the overall level of service needs to be improved before SMEs, in particular, feel the full benefits;
 - ii. To continue to simplify the regulatory framework through the removal of regulations that are disproportionate, unnecessary or discriminate against non-domestic service providers; and
 - iii. To use the evidence gained from the innovative 'mutual evaluation exercise' to identify areas, such as professional and business services, which should be further liberalised to create a more integrated single market.

Building on the Services Directive to Improve the Business Environment

5. The implementation of the Services Directive has highlighted just how different regulatory requirements across Member States can be. Even within Member States, federal, devolved or local authorities sometimes take different approaches to regulating, which can create additional difficulties for businesses. Transparency is crucial if the single market in services is to work effectively. Comprehensive PSC, as required by the Services Directive, ideally in English as well as the Member State's official languages, would considerably simplify transactions between businesses and public authorities. This would allow service providers to access information quickly and to complete all the necessary requirements to do business within the EU online. This would be particularly beneficial to SMEs and **Member States must introduce fully functioning PSC as a matter of priority**.
6. Member States and the Commission should also consider **extending the use of PSC to sectors that are currently out of the scope of the Services Directive**, for example transport and financial services. Many of these are high growth areas and widening the use of PSC in this way could facilitate business access to new markets. Furthermore, in order for SMEs to reap the benefits of these PSC, they should also include provision for completing tax and social security requirements online. However, the range of services covered **should not** extend to Member State's healthcare systems.

The Regulation of Business to Business Services

7. Evidence from the 2008 OECD product market regulation index, which was nearly twice as high for the EU average in professional services as for the US, suggests that the EU market in business and professional services is not as competitive as it might be.¹⁰ The mutual evaluation exercise has shown that Member States retained nearly 3000 regulatory requirements, specifically for professionals and business services, which inhibit access to the single market, shield sectors from competition and undermine growth. These barriers include the use of:
- **Fixed tariffs** - 24 Member States still employ fixed tariffs. For example, four Member States have fixed tariffs for architects, at least one has fixed tariffs for certified translators and another uses these for building surveyors. Two more Member States have minimum prices for lawyers; and
 - **Legal form or shareholding requirements** - Restrictions on the legal form a company can take may dissuade a professional from setting up in another Member State and limit the possibility of third-party investment in the company. In spite of this, several Member States place legal form or shareholding requirements on specific industries and others limit multidisciplinary activities. Seven Member States, for example, have legal form requirements for architects.

Case Study

Restricting business models

In 2010, UK SOLVIT¹¹ dealt with a case where a UK architect was not allowed to register as a company in another Member State. They have subsequently been required to operate as a sole trader, thereby reducing their choice of business model.

In another case, the Department for Business, Innovation and Skills was contacted by an individual wishing to establish a small internet sales business in another Member State. They were told that they could not operate as a sole trader, meaning that their choice of business model was restricted.

- **Capital requirements** – Some Member States continue to use capital ownership requirements which can act as a barrier to new businesses trying to enter the market, as well as restrict the choice of business model. The provision of recruitment services in one Member State, for example, is restricted by a requirement for employment agencies to open a minimum of four branches and hold capital worth €600,000.
- **Restrictions on employee numbers** – Some Member States require businesses in particular sectors to employ a minimum number of staff. This is the case for

¹⁰ McKinsey Global Institute – ‘Beyond Austerity: A path to economic growth and renewal in Europe’ October 2010

¹¹ SOLVIT is an on-line problem-solving network in which EU Member States work together to solve without legal proceedings problems caused by the misapplication of single market law by public authorities, http://ec.europa.eu/solvit/site/index_en.htm

insolvency practitioners, travel agencies and building contractors in some Member States.

- **Geographic Restrictions** - Territorial or quantitative restrictions are still present in the single market limiting the possibility for providers to grow their businesses and for new providers to enter the market. In one Member State lawyers may only operate one legal business. In another, a land surveyor cannot set up an office in the area where they trained or where they have worked for another such survey. Some Member States also insist on businesses setting up an office in their country before they are allowed to operate there.
- **Restrictive Insurance Rules** – Despite the provisions in the Services Directive for the recognition of insurance cover obtained in another Member State, there continue to be examples of insurance requirements inhibiting the provision of cross-border services.

Case Study

Insurance as a barrier to cross-border service provision

In 2009, the Department for Business, Innovation and Skills handled a case involving a UK construction company that had been awarded a contract to build a hangar and found that the Member State's law required that it obtain decennial insurance, which would cover the hangar for ten years. The company was unable to obtain this as the majority of insurance companies in the Member State will not provide decennial insurance to companies registered outside the Member State and decennial insurance is not available in the UK. As a result, the company lost out on a contract worth £1.2 million.

8. The existence of these barriers reflects the fact that in many Member States, the Services Directive has not had the liberalising effect that was intended, particularly with regard to regulated professions, for example, accountants, architects, surveyors and insolvency practitioners.
9. One reason for this is that there was considerable confusion among Member States regarding the scope of the derogation relating to the Services Directive governing reserved activities and issues of professional competence. These issues are governed by Directive 2005/36 on the Mutual Recognition of Professional Qualifications (MRPQ Directive). If the EU is to boost free movement of professionals across Member States and strengthen the competitiveness of the services sector, these two Directives must work well together.
10. The Commission should, therefore, **bring forward an interpretative communication on how the Services Directive and MRPQ Directive fit together** so as to clear up any remaining misunderstanding. The Commission should also conduct further analysis on how the two Directives work together from the perspective of the service provider. In this context, the UK strongly endorses the recommendations in the Commission's communication on the Mutual Evaluation Exercise on the performance check, to examine the effect of different pieces of EU legislation from the bottom up.

11. The Services Directive also allowed Member States to retain many of the restrictive practices outlined above, provided they could be justified on the grounds of necessity, non-discrimination and proportionality. However, the UK considers that too many national requirements have been retained which cannot be considered to be proportionate – particularly for business and professional services. The Commission should, therefore, **develop a ‘proportionality test’** or further guidance against which these regulations could be judged. Where a regulation fails to meet this test, Member States should be encouraged to strip out these restrictions as soon as possible.
12. If the proportionality test and existing enforcement measures are not sufficient to encourage Member States to tackle these restrictions, the Commission should come forward with a new legislative proposal targeted at banning such restrictive practices.

Mutual Recognition of Professional Qualifications

13. The existing EU legislation for the recognition of professional qualifications has helped to encourage cross-border mobility among professionals. 200,000 citizens have benefited from the MRPQ Directive. The Single Market Act proposes that the Commission should come forward with a proposal to amend the MRPQ Directive in 2012. The UK supports this recommendation. The amendment of the MRPQ Directive presents an opportunity to simplify the regulatory regime governing the recognition of professional qualifications. It also provides an opportunity to address whether reserving certain business activities for specific professions has restricted the free movement of professionals and hindered choice, competition and innovation in the services sector.

Case Study

The recognition of professional qualifications

In 2010, UK SOLVIT dealt with a case of a qualified tax adviser and member of a leading professional body for taxation specialists, who was unable to register as a tax adviser in another Member State. The relevant authority refused to register him because he did not have a degree in economics and would not recognise qualifications he had obtained in the UK.

14. There are more than 4600 regulated professions in the EU which are reserved for people with specific professional qualifications and the approach taken by Member States varies considerably. For example, in some Member States being a tour guide is a regulated profession, whereas in others it is self-regulating. In areas such as construction, many sub-specialisations exist which introduce further complexity, so an electrical technician in one Member State may not be qualified in another to install electrical equipment. Given that 25% of regulated professions are only regulated in one Member State there is significant potential to simplify the number of regulated professions.¹²

¹² Commission consultation on the Mutual Recognition of Professional Qualifications, http://ec.europa.eu/internal_market/consultations/docs/2011/professional_qualifications/consultation_paper_en.pdf

15. The MRPQ Directive is essentially concerned with easing the recognition of professional qualifications and does not address the fundamental question about whether Member States should be allowed to reserve activities to a group with a particular professional qualification in the first place. Reserving an activity to a group with a particular qualification can act as a significant barrier to free movement, particularly for citizens seeking to move from Member States with a stronger tradition of self-regulation to Member States with tighter regulatory regimes. The Commission should, therefore, work with Member States to **reduce the number of regulated professions within the EU**.
16. In many cases, for example healthcare professionals or architects, the justification for regulating access to a profession is self-evident. However, the wide variety in the number and profile of regulated professions across the EU suggests that this is an area that is ripe for review. The Services Directive required Member States to screen the requirements placed on service providers to see if they were necessary and then peer review the requirements that had been retained. The UK recommends that similar legal provisions should be included in the amended MRPQ Directive to require Member States to review whether regulating access to particular professions is necessary or justifiable. Where it is not, Member States should be encouraged to deregulate the professions. If a review is not sufficient to bring about deregulation, the Commission should consider further tightening the provisions for 'reserved activities'. Any such review, or legislative action, should exempt health-care professionals.

Financial Services

17. The re-launch of the Single Market is an important opportunity for **financial services** where uncompetitive practices and market fragmentation persist. There is a continuing need for the Commission to promote reform in various areas:
 - **Competition:** Financial services legislation such as the Markets in Financial Instruments Directive (MiFID) has been successful in increasing competition in the Single Market, to the benefit of businesses and consumers alike. **The Commission should take further steps to strengthen this internal competition in financial services.** Regulation must not increase barriers to competition or promote individual national agendas. The Commission must ensure measures are rigorously enforced across Member States, in areas such as revisions to the State Aid framework and their close links to wider work on crisis management tools. Where appropriate, requirements on small firms should be proportionate so as not to damage firms that are the future of the EU's economic prosperity. We must ensure competition is enhanced to give consumers and investors access to the best possible products.
 - **Open markets:** EU citizens and businesses need access to the full range of markets and products across the single market. Therefore open markets must be supported and protectionist policy avoided. It is essential that activity can take place anywhere in the single market, irrespective of currency zone or other criteria such as geographical location. Entry to markets should be facilitated, particularly in areas of cross-border retail financial services. All EU citizens should benefit from the presence of foreign banks on the local high street, as already happens in the UK. As agreed by the G20, **the Commission must ensure discrimination and**

protectionism within the Single Market and towards other jurisdictions are resisted in dossiers such as European Market Infrastructure Regulation.

- **Transparency:** We welcome the work the Commission is doing to increase transparency, for example by in derivatives markets and by the decision to publish the CEBS stress-test results. Increased information sharing and transparency to markets and regulators builds the confidence needed for growth and investment. We are keen to see greater transparency of bank balance sheets as well as risk management procedures and in capital markets. We look forward to **the Commission ensuring that increased transparency in the Single Market is a theme common to all financial services dossiers**. The Commission must ensure that Member States sign-up to this and that momentum is maintained.

Chapter 2: Modernising the Single Market

1. The Single Market Act should be used to prioritise actions that will modernise the single market so that it:
 - Enables businesses and citizens to take advantage of advances in digital technology;
 - Supports the development of a single market in energy;
 - Facilitates innovation; and
 - Helps businesses trying to trade with the rest of the world.
2. There is strong evidence of the need for action in each of these areas and that EU level action will have a positive effect on growth and support SMEs and citizens in their efforts to enjoy the benefits of the single market. Action here is, therefore, consistent with the principles for prioritising single market reforms.

The Digital Single Market

3. The digital economy is quickly expanding. For example, online retail is one of the fastest growing markets in the EU and its value has grown from £40bn in 2003 to £128bn in 2009.¹³ The internet provides an unprecedented opportunity for businesses and consumers alike by giving them easy access to larger markets, increasing choice and lowering prices.
4. However, while the value of online retail is growing, cross-border online trade within the EU remains low. Recent research has shown that approximately half of all the people who are online in the EU buy goods or services on the internet. However, only 8% of this online trade is cross-border. This is despite the fact that a third of consumers say they are willing to buy cheaper or better products via the internet from another Member State¹⁴ and consumers can save up to £560 a year by buying cheaper goods online.¹⁵ This suggests that cross-border online trade remains low within the EU not because of a lack of demand or potential benefits but because the necessary framework is not in place to facilitate it.
5. The Single Market Act must be used to prioritise actions that will provide businesses and citizens with the means and the confidence to buy and sell goods online across the EU. This would not only provide consumers with the choice that they desire and

¹³ Source: Online Retail Trends 2010 Research Report, Centre for Retail Research, Nottingham. 22 December 2009.

¹⁴ Source: Commission Press Release "Consumers: Online shopping increasingly popular in the EU, but development "held back" by barriers to cross-border trade" 5 March 2009 available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/354>

¹⁵ *Manifesto for a Networked Nation*, Race Online, http://raceonline2012.org/sites/default/files/resources/manifesto_for_a_networked_nation_-_race_online_2012.pdf

open further markets for businesses, but would also have considerable economic benefits, including a likely 4% rise in EU GDP by 2020.¹⁶ The creation of an effective digital single market would have the additional benefit of helping restore confidence in the single market, especially amongst the generation of Europeans who have grown up with the internet and experiences frustration when it encounters barriers to the single market online. It is essential that the EU demonstrates to this group of citizens that the single market works in the digital age.

6. The UK recommends that action be prioritised in the following areas so as to create an effective digital single market:
- **Infrastructure** – A fully functioning digital single market requires comprehensive access to the internet. The UK is investing over half a billion pounds in super-fast broadband so as to increase access to the internet. Similar steps must be taken across the EU, so the UK welcomes the recent Commission Communication on Broadband and its commitment to work with bodies like the European Investment Bank to leverage funding for broadband investment where it is clear the market either cannot, or will not offer commercial services. The UK also welcomes the inclusion in the Single Market Act of a commitment to **adopt the proposed decision establishing a European Spectrum Action Programme** for more efficient management and use of the radio spectrum (Proposal 28, Single Market Act). This is essential if remote areas of the EU are to be connected to the internet.
 - **Electronic Commerce** – Whilst the E-Commerce Directive has provided a substantial degree of legal certainty for businesses and consumers seeking to buy or sell goods online since its adoption in 2000, the Directive has been applied unevenly across the EU. This undermines the functioning of the digital single market, as well as the confidence of consumers when purchasing goods and services online. The UK, therefore, welcomes the Commission's commitment to **develop electronic commerce within the single market with a view to facilitating the purchase of goods and services online across the EU** (Proposal 5, Single Market Act). Any communication on the functioning of electronic commerce within the EU should, in particular, address the need for consistency on liability provisions for internet intermediaries where national courts have made conflicting judgements regarding where liability rests in relation to unlawful content.
 - **Consumer Rights and Protection** – Efforts to improve the E-Commerce Directive should be complemented by the swift and effective adoption and implementation of the Consumer Rights Directive which will update the current rules on distance selling to make them fit for purpose in a digital age. The Commission should also consider how to clarify consumer protection in relation to the purchase of digital products such as online music.
 - **Copyright** – Music and audiovisual content is increasingly distributed online, for example through downloads or streaming. If this growing market is to be fully exploited, access to online content must be opened up by reviewing and reforming

¹⁶ *The Economic Impact of a European Digital Single Market*, European Policy Centre, 2010, http://www.epc.eu/dsm/2/Study_by_Copenhagen.pdf

the manner in which copyright is managed within the EU. The UK supports the **development of a cross border licensing framework** which would, if a business wished to trade throughout the single market: facilitate the online sale and delivery of content; remove barriers to entry for businesses developing and distributing such material; and enable the roll out of services across the EU, allowing businesses to sell in all Member States.

- **Orphan Works** – A recent Commission report has demonstrated that a significant number of orphan works (cultural materials that are protected by copyright, but where the owner of the rights cannot be identified or found) exist within the EU.¹⁷ A conservative estimate of the number of orphan books in the EU, for example, puts the number at 3 million books, or 13% of the total number of in-copyright books. Approximately 129,000 film works can be categorised as orphan works while, in one example in the UK, the British Library acknowledged that a significant proportion of their sound recordings are classified as orphan works. The UK believes that the Commission should **develop proposals on the management of orphan works** (Proposal 2, Single Market Act) that would facilitate access to orphan works on a basis that is both fair to creators and users of works, and is not unduly restricted as to the type of work involved or the uses to which they may be put.

Supporting Innovation within the Single Market

7. Innovation drives growth. In the UK, for example, 64% of average labour productivity growth between 2000 and 2008 was due to investment in innovation. However, the EU is failing to close the innovation performance gap with its main international competitors, notably the US and Japan. The Commission recognises that, while trends in most Member States are promising, progress is not fast enough and emerging economies are quickly catching-up with the EU.¹⁸ The EU must ensure that the single market supports the development and sale of innovative products, so the Single Market Act should prioritise action on the following matters:

- **Patents** – The EU must create an effective patents regime that supports innovation. The UK believes that the **adoption of proposals for an EU patent**, including proposals on the language regime and the unified patent litigation system should be prioritised, and therefore supports its inclusion in the Single Market Act (Proposal 1, Single Market Act).
- **Standardisation** – Clear and effective standards, developed in partnership with business and in consensus with the relevant stakeholders, are essential to the functioning of the single market. For example, the rapidly growing market in low-carbon goods and services would benefit from economies of scale that industry-led standards setting would achieve. The EU can lead the world in the drive towards a low carbon economy and secure market share for EU companies by forging a single European market based on ambitious standards and using its market power to secure their adoption across the world. The UK believes that the EU should

¹⁷ *Assessment of the Orphan Works Issue and Costs for Rights Clearance*,

http://ec.europa.eu/information_society/activities/digital_libraries/doc/reports_orphan/anna_report.pdf

¹⁸ *Innovation Union Scoreboard*, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/114>

reduce the time it takes to introduce standards in order to establish a more efficient, market-led system which is congruent with an effective international structure and which will help EU businesses to compete more successfully in global markets. The UK welcomes the Commission's commitment to **reform the current European standardisation processes** to help speed up the standards-setting procedures to make them more effective, efficient, and inclusive (Proposal 6, Single Market Act). Particular attention should be paid to: standards that can support policy delivery and help build market capacity in key technologies, for example, standardised billing systems for electricity use; standards that will help to ensure interoperability, for example, for the charging infrastructure for electronic vehicles; and the Commission's forward programme for products such as boilers and heating systems. The Commission and Member States must also ensure that where standards are agreed they are implemented and enforced across the EU.

Case Study

Burdensome testing requirements

In 2009, UK SOLVIT assisted a company that was unable to sell a micro-sewage system in one Member State due to costly testing requirements which failed to take into account tests based on harmonised EU standards that the product had already passed. This prevented the company from entering new markets that could have resulted in up to €160million in extra turnover.

- **Procurement** - Public procurement represents an important market, particularly in areas such as transport and energy and provides important opportunities to drive innovation. Setting up a European Small Business Research Initiative programme to enable technology-based SMEs to develop innovative solutions would have numerous benefits, including: (i) driving improvements in the quality and cost-effectiveness of public services and helping solve policy challenges; (ii) accelerating the commercialisation of technology and filling a damaging gap in innovation financing; and (iii) supporting the growth of small companies and consequently economic growth and recovery.
- **Venture Capital** – Currently, for every euro invested in venture capital within the EU, five times as much is invested in the US. If the EU is to close the innovation gap, more must be done to incentivise investment in new innovative products.¹⁹ The Commission should, in particular, support the development of an integrated venture capital market that facilitates pan-EU investment in new products.

¹⁹ BVCA Investment Data, 2009

8. The Commission and Member States should also ensure that existing legislation like the Mutual Recognition Regulation is effectively implemented and enforced. This requires Member States to allow goods that are legally sold in one Member State to be sold in theirs and is essential if the single market is to facilitate the sale of innovative goods across the EU.

Case Study

Non-Recognition of EU standards

In 2009, the authorities in one Member State demanded that a type of protective clothing manufactured by a UK company be removed from their market. This was in spite of the fact that the product had been tested to the relevant EU standard and had been placed on the EU market for many years. Following the intervention of SOLVIT it was agreed that the product could be sold legally in both the UK and the Member State in question.

9. As well as supporting innovation more broadly, all of these measures would have the additional benefit of supporting innovative developments within the low-carbon economy and the sale of new low-carbon products across the EU. Green growth must be a key component of a wider EU growth strategy, by helping to decouple growth from carbon emissions, creating new jobs and investment opportunities, and reducing the risk to economies of the damaging effects of volatile fuel prices. The low-carbon economy already generates an estimated turnover of €300 billion and provides nearly 3.5 million jobs, so actions that support this have the potential to significantly contribute to growth.

A Single Market in Energy

10. The UK welcomes the Commission's commitment to **establish a fully functioning single market in energy** and tackle missing links in the EU's energy infrastructure (Proposal 27, Single Market Act). EU action needs to be taken to promote investment in infrastructure, to facilitate the integration of EU energy markets and the penetration of renewables and to improve security of supply. In its recent communication on Energy Infrastructure, the Commission estimated that infrastructure investment of €1 trillion is required in the EU energy sector. This demonstrates the scale of the challenge that lies ahead.
11. Most of the tools required to facilitate the integration of the EU's energy markets already exist within the Third Package of Energy Market Liberalisation, which must be implemented in all Member States by March 2011. However, more must be done to promote private sector investment in the EU's energy infrastructure and to ensure that the EU has a stable and predictable regulatory framework to facilitate this. In addition, there will be cases where infrastructure in one Member State may have significant EU-wide benefits, and the EU must develop effective mechanisms that will allocate the costs of these infrastructure projects across all beneficiaries. The UK believes that these issues must be at the forefront of the Commission's efforts to tackle missing links in the EU's energy infrastructure.

Facilitating Trade with the Rest of the World

12. The UK set out its detailed approach to global trade in the Government's White Paper "Trade and Investment for Growth", published on 9th February 2011.²⁰
13. The rapid development of emerging economies has radically reshaped global patterns of production and commerce. So it is essential that the EU works collectively to drive down barriers to trade across the globe and ensure that the single market supports the efforts of businesses seeking to export beyond the EU.
14. In this context, the UK strongly supports the progress that has been made under the EU Market Access Strategy in identifying the most important market access barriers in the EU's priority export markets. This has led to a number of barriers faced by EU exporters being successfully removed. However, more could be done to build on this, and the Commission and Member States must ensure that they systematically press for the removal of protectionist measures during their contact with third countries.
15. This should be complemented by a concerted effort to develop stronger economic relations with third countries. The UK therefore welcomes the Commission's commitment to **further develop regulatory cooperation with the EU's main trading partners** (Proposal 23, Single Market Act) and **the ongoing efforts to negotiate ambitious free trade agreements** (FTAs). However, the EU's overarching goal should be conclusion of the Doha Development Round which could be worth up to £110 billion to the global economy.
16. The EU should also take steps to **simplify trade regulation at its borders** so as to reduce the costs faced by firms trading across the EU's external frontier. The UK estimates that EU-sourced regulation affecting businesses trading across the EU's external frontier amounts to €1 billion per year for UK businesses and €8 billion per year across the whole of the EU. A 25% reduction in these costs could result in annual savings of approximately €2 billion for EU businesses. The Commission should, therefore, launch a targeted simplification programme to address those regulations that impose the greatest cost on businesses trading beyond the EU.

²⁰ *Trade and Investment for Growth*, 2011, <http://www.bis.gov.uk/assets/biscore/international-trade-investment-and-development/docs/t11-717-trade-investment-for-growth>

Chapter 3: Supporting SME Growth and Making the Single Market Work for Citizens

1. The Commission's consultation on the Single Market Act suggests that confidence in the single market is now lower than it has ever been and it argues that this can only be addressed by placing citizens at the heart of the single market. The EU should certainly endeavour to restore confidence in the single market. But the best way to do this is by ensuring that the single market works in practice for the majority of Europeans. It is, above all, through practical experience that citizens' confidence in the Single Market is shaped. This is also the case for those seeking to create and grow SMEs within the EU, who may be permanently discouraged from ambitions to operate across national borders as a result of problems experienced when first trying to access the single market.
2. Current evidence demonstrates that SMEs frequently find that access to the wider opportunities offered by the single market is blocked in practice, often by barriers that should have been removed as part of previous EU legislative initiatives. SMEs exporting within the EU, for example, are only slightly less likely to report barriers than those exporting to other markets.²¹ UK businesses also state that legal and regulatory barriers are the first obstacle to their development within the European Economic Area (EEA), with 31% experiencing difficulties.²² This will have a major effect on the EU's economic prospects since SMEs are a major contributor to the EU's economies, representing 99.8% of EU enterprises and employing almost 90 million people, over two thirds of the EU's private sector workforce. The number of SMEs in the EU increased by 2.4 million from 2002 to 2008 and SMEs created 9.4 million new jobs over the same period (over 80% of all new job creation in the EU).²³ In addition, 30% of investors believe that future EU growth will be driven by SMEs.²⁴ So, given the economic importance of SMEs and their potential as engines of future growth and employment, it is essential that action is taken to remove those barriers that block their access to the single market.
3. Like SMEs, citizens also find that access to the single market is inhibited by the continuing existence of barriers. This is demonstrated by the fact that citizens increasingly turn to informal problem-solving services for assistance in overcoming barriers within the single market. For example, the majority of SOLVIT cases are brought to it by individual citizens.²⁵

²¹ *Annual Small Business Survey, 2007/2008*, <http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/whatwedo/enterprise/enterprisesmes/research-and-statistics/research-evaluation/business-surveys/page38370.html>

²² *International Business Strategies, Barriers and Awareness Monitoring Survey*, OMB Research, 2010, <http://www.ukti.gov.uk/uktihome/aboutukti/item/115739.html>

²³ Eurostat data for 2002 – 2006. Data for 2007-2008 are estimates made by the Department for Business, Innovation and Skills.

²⁴ *Waking Up to the New Economy*, Ernst and Young, 2010,

[http://www.ey.com/Publication/vwLUAssets/Attractiveness_survey_2010_EU/\\$FILE/Attractiveness_survey_2010_EU.pdf](http://www.ey.com/Publication/vwLUAssets/Attractiveness_survey_2010_EU/$FILE/Attractiveness_survey_2010_EU.pdf)

²⁵ *SOLVIT Annual Report, 2009*, http://ec.europa.eu/solvit/site/docs/solvit_2009_report_en.pdf

4. The Single Market Act provides an opportunity to prioritise proposals where EU level action is necessary to remove the most significant barriers to SMEs and citizen access to the single market. Action here is consistent with the principles for prioritising single market reform.

Ensuring that the Single Market Supports SME Growth

5. Given the economic importance of SMEs, specific action should be taken to encourage their access to the single market. Evidence shows that exporting can provide an opportunity for SMEs to expand and develop. In the UK evidence shows that exporters perform better than non-exporters - they are more productive, pay higher wages, have a stronger financial performance and a 10% higher probability of survival.²⁶ However, levels of SME cross-border activity remain low. If more of the EU's 20 million SMEs accessed the single market and use this as a catalyst for their own expansion, it would have a significant positive effect on growth within the EU. The UK, therefore, backs those proposals in the Single Market Act that will support SMEs, including the commitment to **use the “Think Small First” principle when developing new single market rules** (Proposal 13) and to **reduce the administrative burdens placed on SMEs by financial reporting requirements** (Proposal 14).
6. The UK welcomes the work the Commission has done to date to reduce regulatory burdens, but more must be done to reduce the regulatory burdens placed on SMEs by EU legislation. These burdens significantly hinder SME growth, with SMEs spending €10 on regulatory compliance for every €1 spent by a big business. The time has come for the EU to take bold and ambitious action to address this and ensure that SMEs are free to achieve their growth potential. Specifically, the Commission should:
 - **Exempt SMEs from the most burdensome regulatory requirements** – The Commission has already taken steps to limit the burdens placed on SMEs by new legal requirements. For example, under the REACH Directive, simplified procedures for registering chemicals apply depending on the size of the business. However, more should be done to systematically exempt SMEs from EU legislation and the Commission should ensure that new obligations are only imposed on SMEs where a robust and compelling case can be made for their inclusion within the scope of a legislative proposal. The Commission should also **exempt SMEs from existing regulatory requirements wherever possible**. As part of this, Member States and the Commission should provide exemptions for micro-entities from the 4th Accounting Directive as a matter of priority. This could result in savings for EU businesses of up to €6.3 billion;
 - **Deregulate and reduce the cumulative burden of EU regulation** – It is essential in the current economic climate that the EU does not load more costs on businesses. The Commission must deregulate wherever possible and ensure that the cumulative burden of EU legislation is decreased. The Commission should, therefore: **introduce a system of “one-in, one-out”** whereby any new regulatory cost is compensated by cuts to the cost of old laws that are equivalent to the cost

²⁶ Harris and Li, 2007

of the new regulation; and set a new **target to reduce the total regulatory burden over the life of this Commission.**

7. In addition to these measures, more should be done to understand the barriers experienced by SMEs and to use evidence of the barriers that they experience to take targeted and timely action to improve the single market. The Commission should, in consultation with SMEs, **identify the top 20 barriers preventing them from exporting to EU markets and work with Member States to prioritise their removal.**
8. More could also be done to simplify and update the EU rules governing public procurement with the specific aim of easing SME access to contracts across the EU. Public procurement accounts for about 17% of the EU's GDP. Total public expenditure on works, goods and services exceeds €2 trillion per year and this represents a huge opportunity for SMEs across nearly every sector. However, the vast majority of procurement contracts continue to be awarded to domestic firms²⁷ and many SMEs find that poor information, bureaucratic barriers and a false assumption that bigger is always better prevents them from winning procurement contracts. The UK is already taking steps to address this and has introduced the aspiration that 25% of government contracts will be awarded to SMEs. Even taking into consideration the specific nature of public procurement, more could be done to make improvements at the EU level so as to ensure the efficient functioning of the public procurement market, secure greater value for money, encourage competitiveness amongst firms and contribute to the growth of the EU economies.

Case Study

Barriers to public procurement contracts

The Department for Business Innovation and Skills has been made aware of several instances where UK companies have found it difficult to tender for public procurement contracts in EU Member States due to complex or unclear requirements. Examples include: a requirement to submit a document only issued to companies that are registered in the Member State undertaking the procurement; the need to supply details of VAT registration, when such regulation is not required below a certain threshold in the UK; and, the requirement for an “electronic signature”, which appeared to restrict tendering to companies registered in the Member State undertaking the procurement.

9. The UK supports the Commission's aim to **simplify and update the Directives on public procurement so as to make the award of contracts more flexible** (Proposal 17, Single Market Act). The Commission should pay particular attention to amending lengthy and burdensome procurement processes that add considerable cost to business and are a significant barrier to SMEs, and support measures that will enhance SME access to public procurement. The Commission should also ensure that the relevant measures set out in the European Small Business Act (a package of proposals adopted in 2008 to support SMEs) are implemented quickly, including proposals to increase transparency of public procurement opportunities.

²⁷ The Commission estimates that only 1.6% of all procurement contracts in the EU are directly awarded to firms from other Member States.

Implementation and Enforcement

10. Many barriers encountered by SMEs and citizens relate to poor or uneven implementation and enforcement of single market rules. In 2010, for example, the Department for Business, Innovation and Skills assisted a business that was told that it could only operate in a particular Member State if it set up an office there. In this case, it was clear that single market rules, namely the Service Directive, had not been properly implemented or enforced.
11. If the single market is to work effectively, it is essential that Member States and the Commission work together to ensure that legislative action at the EU level actually results in the removal of barriers to the single market on the ground. The UK, therefore, welcomes the Commission's commitment to work in partnership with Member States to **develop a more resolute policy to enforce the rules of the single market** (Proposal 47, Single Market Act).

Case Study

Failure to enforce single market rules

A company based in the EU was found to be producing counterfeit Scotch whisky and selling this to the Middle East. The counterfeit production has ended but it seems that the Member State's national legislation is failing to enforce the relevant single market rule and protect the Geographical Indication (a type of intellectual property, which identifies a product as originating in a region or locality in a particular country) for Scotch whisky. As a result, this problem may recur.

12. More effective enforcement should be complemented by more active cooperation between Member States and the Commission during the implementation of single market rules. This would facilitate the exchange of best practice and consistency of approach. The UK, therefore, welcomes the Commission's commitment to improve the implementation of single market rules through **greater use of 'mutual evaluation' processes across single market legislation** (Proposal 44).
13. The Commission should also **make greater use of evidence from problem-solving mechanisms** when developing new single market legislation. SOLVIT, for example, has amassed a valuable bank of evidence on the functioning of the single market and, in particular, of the barriers encountered by SMEs and citizens.²⁸ By using the evidence gathered by SOLVIT, services that support SMEs such as the Enterprise Europe Network and Member States the Commission can not only target its work at those areas where single market initiatives can provide the greatest assistance to SMEs and citizens, but also ensure that that new rules are easy to implement, thereby removing the possibility that barriers persist despite the introduction of legislation to remove them. The Commission and Member States should work together to develop a procedure for gathering evidence from the work of its assistance services and feeding this into policy development.

²⁸ Approximately a third of the cases submitted to the UK SOLVIT centre relate to SMEs and the majority are citizen's cases relating to either residency requirements or social security, where four times as many citizens as businesses report barriers.

Case Study**Using evidence in the development of single market policies**

In 2009, the Department for Business, Innovation and Skills received a complaint regarding regulatory approval for particular fuel dispensers in the UK. It was established that the problem related to poor provisions in the Measuring Instruments Directive rather than incorrect implementation and enforcement and it became clear that there was a specific issue around the approval of point of sale equipment. This evidence, and evidence like it, should usefully inform any future policy development. In this case, it should be used to inform efforts to ensure that suppliers can access markets without undermining the integrity of national metrology frameworks.

Problem-Solving and Redress

14. Efforts to improve the implementation and enforcement of EU rules should be complemented by the provision of quick, cheap and effective problem-solving mechanisms that assist those trying to overcome barriers in the single market. This is particularly important for SMEs and citizens who are often the least equipped to do this on their own.
15. In problem-solving and redress services such as SOLVIT the EU already has in place a network of support for anyone struggling to access the single market. The Commission should strengthen this network so as to ensure that SMEs and citizens have easy access to services that have the resources and the authority needed to quickly and effectively help them to overcome barriers within the single market. The UK, therefore, welcomes the Commission's commitment to **strengthen problem-solving mechanisms like SOLVIT** (Proposal 50, Single Market Act). The Commission should, in particular, take a more proactive role in difficult SOLVIT cases, providing preliminary views so as to facilitate a swift resolution and consider giving SOLVIT a legal base so as to create a more powerful tool for SMEs and citizens seeking to exercise their single market rights.

Case Study**Using SOLVIT to assist with market access**

A tariff classification problem impeded access to an EU market for a UK company exporting cider. SOLVIT established that the relevant authorities were in breach of the European Directive on the harmonisation of excise duties on alcohol and alcoholic beverages. Following SOLVIT's intervention, the European Commission contacted the Member State in question who amended their legislation to bring it in line with EU law, by reclassifying cider. This enabled the company to import it in viable quantities and opened up a market worth approximately £150,000 per annum.

16. The Commission should also **improve communication within the single market**. Effective mechanisms should be put in place for authorities in different Member States to communicate with each other and work together when assisting businesses and citizens trying to access the single market. The Internal Market Information System

(IMI) already provides a useful mechanism that supports collaborative working between Member State administrations, and the UK welcomes the Commission's proposal to extend its use, particularly to facilitate the recognition of professional qualifications (Proposal 45, Single Market Act).

17. SMEs and citizens should also have easy access to the information that they need to access the single market. The Commission should raise awareness amongst businesses and citizens by providing a one-stop shop with information and support concerning access to the single market. In this context, the UK welcomes the Commission's commitment to develop "Your Europe" and "Europe Direct" (Proposal 49, Single Market Act) and believes that it should focus on consolidating and rationalising its websites where possible.

Chapter 4: Non-Priority Proposals

1. There are a number of proposals in the draft Single Market Act that do not comply with one or more of the principles for prioritising single market reforms and are unnecessary for strengthening the single market. These actions should not, therefore, be prioritised as part of the Single Market Act. These include proposals to:
 - **Address taxation issues** - The UK does not see tax as a primary barrier to growth in the single market. If tax proposals are taken forward as part of the single market agenda, they must be a matter for Finance Ministers, and should focus on work to modernise and strengthen the VAT system (Proposal 20). The Single Market Act should not prioritise proposals that could limit Member States' flexibility to shape their tax systems to meet their individual economic circumstances, or undermine sovereignty or subsidiarity. In particular, the UK does not believe that there is single market justification for revision to the framework for EU energy taxation to include a mandatory pan-EU carbon tax (Proposal 8). The key issue from a single market perspective is the rate of taxation of energy products and not the way individual Member States choose to structure those taxes. Significant work would also be required to establish a clear single market case for a common consolidated corporate tax base (Proposal 19). The UK is willing to engage with the Commission in this process but is not convinced that it should be a priority for the Single Market Act.
 - **Improve symmetry in public procurement in emerging and advanced economies** (Proposal 24) – The UK believes that in the current economic environment, it is important that suppliers can obtain value for money. The content of any Commission proposal concerning tenders from third countries will need to be examined carefully to make sure it is not protectionist. Any proposal that prevented suppliers from considering bids from third countries would be likely to run counter to a value for money approach and the UK would oppose these.
 - **Embed fundamental rights into new single market proposals** (Proposals 29 and 30) – The UK does not believe that there is a trade-off between market liberalisation and social objectives. Liberalisation opens borders for goods and services, delivers greater choice and lower prices to consumers, opens up new business opportunities for companies, and ultimately creates jobs. It also plays a key role in retaining and developing the global competitiveness of European businesses. We believe that the right way of strengthening the social dimension of the single market is to allow Member States to regulate their labour market and their social systems according to their needs and political priorities. Whilst EU action may complement and support Member States the UK view is that it is not the role of the European Union to define Member States' social policy and welfare systems, but to recognise this diversity. The UK would not, therefore, support measures that could negatively impact on the flexibility of the EU's labour markets as this could risk undermining efforts to encourage renewed growth within the EU. In this context the UK could not support any proposals for improved enforcement of the Posting of Workers Directive that did not respect individual Member States' employment and enforcement framework or that sought to guarantee the right to take industrial action in any new single market legislation.

© Crown copyright 2011

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk.

This publication is also available on our website at <http://www.bis.gov.uk>

Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.

URN 11/760