



## **EU REFORM**

Detailed proposals for a more competitive Europe

June 2015

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## TheCityUK

TheCityUK represents the UK-based financial and related professional services industry. We lobby on its behalf, producing evidence of its importance to the wider national economy. At home in the UK, in the EU and internationally, we seek to influence policy to drive competitiveness, creating jobs and lasting economic growth

Financial and related professional services are the UK's biggest exporting industry. We make a £67bn contribution to the balance of trade, helping to offset the trade in goods deficit. TheCityUK creates market access for its members through an extensive programme of work on trade and investment policy. To achieve this, we work closely with governments and the European Commission to represent member views and help deliver the best outcomes in international trade & investment negotiations. Allied to this, we have a country-focused programme to build relationships and to help open markets where our members see significant opportunities. We also have a strong focus on ways of influencing and delivering regulatory coherence through dialogue with regulators, governments & industry bodies internationally.

## FOREWORD

The City is Europe's financial centre and the UK's membership of the European Union (EU) is of strategic importance to the financial and related professional services industry. Business opinion both within and beyond our industry is that continuing membership is important to Britain's competitiveness, but reform is essential.

We are not alone in calling for the EU to work better for all of its 28 Member States and 500 million people. The British Government is committed to negotiating reforms ahead of a referendum; other Member States have also made clear their support for reform. The Juncker Commission has acknowledged the need for reform by its re-organisation of the Commission's work and the aim to be 'big on big things and small on small things'. It is also timely to reflect on the meaning of 'ever closer union' in a Europe much changed since that ideal was first espoused.

TheCityUK has produced the detailed proposals in this paper as practical measures to support the process of EU reform. In particular, we have focussed on the Single Market, the economic cornerstone of the Union. More detailed comment has been made elsewhere on the Capital Markets Union, but a Single Market for capital is central to the ability of our industry to be competitive in the global economy and deliver the jobs and growth which Europe needs.

The reforms proposed here are both achievable and cumulative; some of the individual measures are small in themselves, but taken together, they will enable Europe to do less, but in a more efficient and effective manner and create a deep and strong Single Market, open to the world. The equal treatment of Member States, regardless of which currency they use, and getting the balance of regulation right to enable growth are also central to our argument. In the previous EU mandate, the focus was on stabilising the financial system; in the current five year term there is an opportunity to create a strong and focused European Union able to compete successfully with the rest of the world. The test of any reform proposals must be that they encourage economic growth, prize competitiveness, bolster Europe's ability to foster global trade and investment and underpin the principle of subsidiarity and proportionality.

**Chris Cummings**

Chief Executive, TheCityUK



# 1.0 INTRODUCTION

TheCityUK believes that the European Union stands in need of reform, both to encourage a focus on pro-competitive, growth-orientated policies and to ensure that these policies are devised and carried out with the optimum combination of EU and Member States' powers and resources. The European Single Market, open to the world, provides the most secure way to support economic growth, which is so vital for the future prosperity of Europe and individual Member States. However, the Single Market needs to be fit for purpose, covering only those areas where common rules are necessary for the common good and constructed so as to deliver the results that are intended. There are shortcomings in the present arrangements, both of omission and commission and in the institutional processes used to construct and develop them. The dynamics and complexities of the EU have also changed since the original design of its current architecture and of the relationships of its institutions with Member States and with each other. Now is the time to modernise, refresh and update the EU to make it more relevant to citizens and put it on a more efficient footing.

In the debate as to whether 'more Europe' or 'less Europe' is needed in the field of financial and related professional services, TheCityUK rests firmly on the side of a 'better, more thoughtful Europe' that provides the deep pools of capital needed by business to lift levels of investment and hence growth in jobs and prosperity. This requires activity at EU level only where necessary and appropriate and considered, complementary action at Member State level. In short: 'Europe where necessary, national where possible'.

The reforms which are needed are numerous but are in many cases modest rather than revolutionary. It is through these numerous but necessary small reforms that real change will be achieved. The current Commission has undertaken to reform itself in ways which seem likely to further the changes that are needed. However, for Member States to achieve the goals they have set themselves, real progress needs to be made by all players involved, whether public or private. TheCityUK hopes and expects that the opportunities brought about by current debate on the future of the EU and how it works will now be exploited in order to meet the requirement by the people of Europe and their Governments for reform.

# 2.0 EXECUTIVE SUMMARY

## A deep and strong Single Market, open to the world

R1	Reaffirmed commitment to the completion of the Single Market
R2	Review of the implementation of the Services Directive
R3	Formation of a Single Market Council to replace the Competitiveness Council
R4	Completion of the Single Market in Financial Services
R5	Development of a Single Capital Market
R6	Completion of the Digital Single Market
R7	Maintenance of access to global talent

## Better regulation agenda

R8	Reformed organisation of the European Commission, Council of the European Union and European Parliament
R9	Impact assessments for all EU institutions by an independent Regulatory Scrutiny Board
R10	Greater respect for subsidiarity and proportionality
R11	Mandatory post-implementation reviews
R12	Assessment of cumulative cost of regulation

## A European agenda for jobs, growth and competitiveness

R13	A European Commissioner for Growth
R14	Eurogroup Chair to be a permanent member of the European Council
R15	Encouraging long-term investment into the EU's economy
R16	Development of a Code of Conduct for the EU's Commercial Policy
R17	Resources for negotiating trade deals
R18	Increased spending on research and innovation
R19	Harmonisation of the EU's third country regime
R20	Third country access to the EU and effective communication and agreement between Commission Directorates-General

## Fair and equal treatment of all Member States

R21	Strengthening the involvement of national parliaments
R22	Protecting the integrity of the Single Market
R23	The ESAs' role and encouraging their alignment with the Single Market
R24	Strengthening of the ESRB's cross-sectoral approach
R25	Transposition and enforcement of European legislation

# 3.0 THE IMPORTANCE OF THE SINGLE MARKET FOR FINANCIAL AND RELATED PROFESSIONAL SERVICES IN THE EU

Europe needs economic growth for its citizens and for its businesses, for jobs and for a high standard of living; financial services are vital to delivering that growth. All economic activity makes demands on the financial system and is supported by it. It is therefore critical that the financial system is allowed to play its full role in enabling job creation and growth.

The years of the financial crisis saw the financial sector weakened and unable to play its full supporting role in the wider economy. Numerous measures have been taken to remedy earlier shortcomings and much has been done to establish the regulatory framework necessary for a strong, stable and supportive financial system. Financial stability is the basis for sustainable growth. However, high unemployment rates and weak economic growth also pose a risk to financial stability. The regulatory architecture needs to enable, rather than inhibit, growth by providing a seamless and effective conduit for capital to reach businesses. TheCityUK therefore supports the focus on jobs and growth, subsidiarity and better regulation adopted by President Juncker and his Commission. Regulation needs to be proportionate and tested for its effect on the Commission's agenda for jobs and growth. The Commission's Investment Plan and associated measures to promote long-term finance as well as the Capital Markets Union (CMU) initiative are also welcome. It is important that the EU builds on these initiatives and works with the financial services industry and others to achieve their delivery.

A number of EU Member States have put forward ambitious proposals for EU reform. The EU can only be made to work better if support for reform is broad. TheCityUK will work with the financial and related professional services industry across the EU to develop the proposals put forward in this report and build alliances to deliver a better, more competitive EU.

The Single Market in Financial Services must facilitate the creation of jobs and growth and provide support for reform to make Europe more dynamic, flexible and globally competitive. Each part of the financial system has its role to play – including banking, insurance, asset management, long-term savings and market-based finance. Much has been done to reform financial regulation but a healthy financial system needs all its constituent parts to function well. It also needs to cater flexibly for new approaches to financing business, in the interests of enhancing European firms' ability to invest in new opportunities and compete in expanding global markets. The share of intermediation performed by banks is unlikely to match that experienced in the past. While smaller firms will continue to show a preference for bank finance, high growth companies and larger firms would benefit from a richer eco-system. It will therefore be increasingly important that the provision of market

**11 MILLION**  


**FINANCIAL AND RELATED PROFESSIONAL SERVICES FIRMS EMPLOY OVER 11 MILLION PEOPLE ACROSS THE EU. THERE ARE OVER 2 MILLION EMPLOYEES OF FINANCIAL AND RELATED PROFESSIONAL SERVICES FIRMS IN EACH OF GERMANY AND THE UK.**

**€77 BN**  


**THE EU IS THE LEADING EXPORTER OF FINANCIAL SERVICES WORLDWIDE, WITH EXTRA-EU EXPORTS OF €77 BILLION ACCOUNTING FOR ABOUT A QUARTER OF GLOBAL FINANCIAL SERVICES EXPORTS.**

finance, both short and long-term, can play its full role in the years ahead. Practices already vary across Member States and businesses will no doubt continue to show a variety of financing models in the future. The important feature, from the point of view of the financial sector's contribution to the EU's competitiveness, is that all forms of European enterprise – large and small – should be free to choose the financing that works best for them, without artificial constraints distorting business choices. The focus on CMU by the new Commission recognises this.

The Commission has suggested that '90% of global economic growth in the next 10-15 years is expected to be generated outside Europe'.<sup>1</sup> It is important for the EU to be open to growth around the world and be able to draw on it and profit from it. The need for CMU to enshrine an open capital market – open to inflows of capital from the rest of the world and encouraging overseas investment – is one key corollary of Europe's reliance on growth in other regions, notably Asia. Another is the need for the EU to maximise the benefits to be derived from Europe's growing suite of bilateral trade and investment agreements with trading partners. The Commission's strategy "*Global Europe – Competing in the World*"<sup>2</sup> set the scene for a programme that has resulted in a series of bilateral trade agreements that are both broad (extending over all sectors of goods and services) and deep (covering matters such as regulatory cooperation). Agreements with Canada, South Korea and Singapore are already in place. There is the promise of future agreements. First among these is the Transatlantic Trade and Investment Partnership (TTIP), which will bring the EU and the US, as the world's two largest trading partners, into a closer trade and investment relationship than ever before. Agreements with Japan and with members of the Association of Southeast Asian Nations (ASEAN) are also important components of the strategy. There are also negotiations for the plurilateral Trade in Services Agreement (TISA) which offer the prospect of removing barriers to high-added-value services trade between the EU and some of its most significant markets, including the whole of North America (the US, Canada and Mexico) as well as a range of other partners.

In concluding these agreements Europe will gain new markets for the products of EU enterprises operating in the Single Market. It goes without saying that Europe's trading partners will in turn expect an open market within Europe. The Single Market as it has been realised today represents huge progress. But there is still more to be done in removing barriers – particularly in services business – between Member States<sup>3</sup>. To do so will help services businesses to achieve the economies



**BANKS IN EU MEMBER STATES HOLD AROUND 45% OF GLOBAL BANK ASSETS. OVER HALF OF THE CROSS-BORDER INTERNATIONAL BANK LENDING, A TOTAL OF OVER €16 TRILLION, ORIGINATES FROM BANKS IN THE EU.**



**THE EU ACCOUNTS FOR 30% OF THE GLOBAL INSURANCE MARKET, WHILST 6 OF THE TOP 10 GLOBAL INSURERS ARE HEADQUARTERED IN EU MEMBER STATES.**

<sup>1</sup> *Trade: a key source of growth and jobs for the EU* European Commission (2013)

<sup>2</sup> *Global Europe – Competing in the World: A Contribution to the EU's Growth and Jobs Strategy* European Commission (2006)

<sup>3</sup> TheCityUK/ Independent Economist Group *The Economics of Trade in Services* (2015)

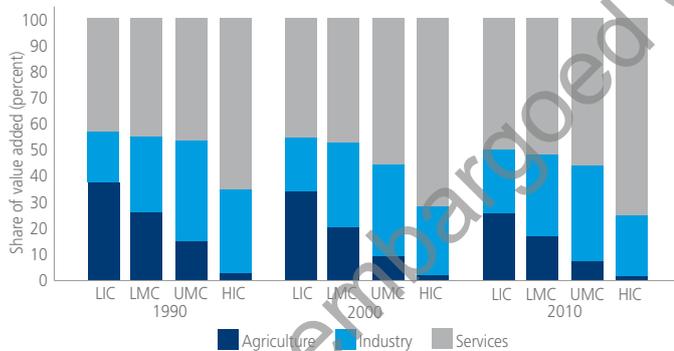
of scale that will enable European service providers to compete globally more powerfully than at present and to use the opportunities that the EU's programme of trade and investment agreements will bring, not least to boost jobs and prosperity across the EU.

**Trade in goods and commercial services 2013, € billions**

Country or region	Imports	Exports
EU	2188	2415
United States	2079	1688
China	1716	1817
Japan	750	648
South Korea	468	506

Source: Eurostat, WTO

**Growth in Added Value of Services for EU Member States, as High Income Countries**



Source: World Development Indicators  
 Note: LIC = Low-income country; LMC = Lower-middle-income country; UMC = Upper-middle-income country; HIC = High-income country. Data for 2009 instead of 2010 were used for high-income countries.

As High-Income Countries (HICs), EU Member States stand to benefit most from expanding their services sectors and the growing added value to be gained from them.

**Share of world foreign direct investment (FDI) in 2012 (%)**

Country or region	Outward stock	Inward stock
EU	45.5	34.2
United States	35.7	26.5
Latin America	4.1	11.9
China	3.5	5.6
Japan	7.2	1.4

Sources: Eurostat, Unctad

The EU economy accounts for the highest global shares of both inward and outward FDI.

**TOGETHER, THE EUROPEAN UNION'S 28 MEMBERS ACCOUNT FOR 16% OF WORLD IMPORTS AND EXPORTS.**



# 4.0 EU REFORM PRINCIPLES

This report builds on TheCityUK's previous work and in particular on *EU Reform – A View from TheCityUK*. It suggests detailed reform proposals that are needed to improve the EU's global competitiveness and facilitate sustainable growth.

These reforms should be coupled with the core principles of subsidiarity and proportionality: 'Europe where necessary, national where possible'. TheCityUK supports President Juncker's ambition for the EU to be 'big on big things and small on small things'.

The Single Market is the EU's flagship project. It represents the world's largest market with 500 million customers, worth £14 trillion annually. A renewed focus on a deep and strong Single Market, with fair and equal treatment of all Member States, small and large, both within and outside the euro area, needs to be at the centre of any reform agenda.

The time is ripe for action; there is a clear opportunity to work on the reform agenda in the context of the Commission's renewed focus on growth and to develop a regulatory architecture that furthers this ambition. It is crucial to recalibrate existing legislation and strike the right balance between consumer protection, jobs and growth. In advancing a better regulation agenda, greater respect should be paid to subsidiary and proportionality.

Many Member States have produced reform proposals and are calling for change. It is in the interest of all Member States that the EU should work better and TheCityUK welcomes the opportunity these national and European initiatives create to work together towards delivering a coherent programme.

If the EU is to serve the interests of its people better, the reform agenda needs to focus on change that can be delivered quickly, while not losing sight of more long-term and strategic goals. The most urgent reforms can be achieved within the existing treaty framework and concerted efforts should focus on incremental reform across a broad spectrum of initiatives. A lot of little things need to be done much better. Cumulatively these can amount to a major step forward in terms of outcomes. This alone will not suffice in the long-run and there is a debate to be had about a long-term vision for the EU. This paper also puts forward some ideas to be considered as part of that debate.

These proposals do not ask for more Europe, but for a better Europe, combining long-held beliefs about the importance of subsidiarity and proportionality with the opportunity to create jobs and economic growth.

## SUBSIDIARITY AND PROPORTIONALITY

The principle of subsidiarity as defined in Article 5 of the Treaty of the European Union (TEU) sets out when the EU is competent to legislate. Similarly, the principle of proportionality (Article 5 TEU) limits the institutions to act only to the extent that is needed to achieve the objectives of the Treaties.

The application of both principles is laid down in the Protocol on the application of the principles of subsidiarity and proportionality which was reformed by the Lisbon Treaty to improve monitoring. The Protocol, *inter alia*, sets out that the Commission is obliged to prepare a Green Paper and a statement demonstrating compliance with the principles of subsidiarity and proportionality.

# 5.0 PROPOSALS FOR EU REFORM

## 5.1 A deep and strong Single Market, open to the world

The freedoms conferred by the European internal market have played a critical role in advancing prosperity in Europe for over five decades. The economies of scale for the continent as a whole would not have emerged without the free cross-border movement of goods, services, labour and capital. Each Member State would have been less well-equipped to play its economic role on the global stage. The advantages which the Single Market has delivered need to be preserved and, where agreed and necessary, extended.

The core role of financial and related professional services is to support the efficient operation of the economy, finance business and help meet the aspirations of individuals. If the market in financial services does not perform as well as it could, then it will be unable to fulfil its critical function of providing the finance for investment which helps businesses to grow and provide jobs. The EU's political, economic and social model cannot exist without the support of a well-functioning financial services sector. This can only be achieved through competitive provision of financial services within a framework of smart and proportionate regulation.

### THE FOUR FREEDOMS

The four freedoms – the free movement of people, goods, services and capital – are the founding principles and cornerstones of the Single Market. They were first set out in the Treaty of Rome in 1957. With the Single European Act of 1987 the institutions gave themselves a deadline for completion of the Single Market by 1993. However, even today the Single Market remains incomplete in important areas.

### R1 *Reaffirmed commitment to the completion of the Single Market*

In the aftermath of the financial crisis, the EU rightly concentrated on bringing stability to the financial system. This has allowed the 2014-19 term to concentrate on economic growth with a renewed focus on the completion of the Single Market. TheCityUK believes that Member States should reaffirm their commitment to the completion of the Single Market, including in financial services, while acknowledging that a top-down harmonisation approach is not always the most efficient solution.

### THE ROAD TO THE SINGLE MARKET

- 1957:** Treaty of Rome and founding of European Economic Area
- 1968:** European Customs Union
- 1987:** Single European Act
- 1992:** Completion of the Cockfield Single Market programme
- 1995:** first enlargement of the Single Market (Finland, Sweden and Austria)
- 2004:** second enlargement of the Single Market (10 new Member States)
- 2006:** Adoption of Services Directive
- 2007:** third enlargement of the Single Market (Romania and Bulgaria)
- 2013:** fourth enlargement of the Single Market (Croatia)

The external component of the Single Market, facilitating relations with international markets outside the EU, is equally important as it enables the EU to maximise the benefits from its relationship with the rest of the world.

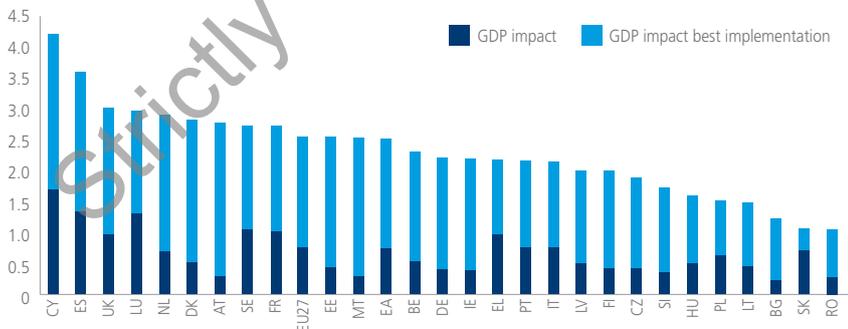
The Single Market Acts I and II<sup>4</sup> highlight areas where the Single Market is still incomplete. The Single Market Act II identifies twelve areas for action to fully exploit the potential of the internal market. Non-tariff and technical barriers remain significant, as are the home bias, a preference for trade within national borders, and delays in transposing and implementing rules.

The European Commission should produce an action plan<sup>5</sup>, setting out specific proposals to eliminate non-tariff barriers along with an implementation timeline. The European Council should commit to the completion of this programme by an agreed deadline.

## R2 Review of the implementation of the Services Directive

The European Services Directive was adopted in 2006 and aims to establish a competitive internal market in services and facilitate growth and job creation. The EU's services sector accounts for around 70% of its gross domestic product (GDP) and 9 out of 10 jobs in the EU. It has been estimated that liberalisation of services in the EU could lead to an increase of 0.3-0.7% of GDP<sup>6</sup>. The graph below illustrates the potential impact of further implementation of the Services Directive.

GDP impact of further implementation of the Services Directive (%)

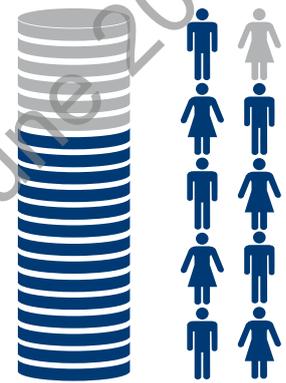


Note: European Commission, First Assessment of economic impact of the Services Directive, June 2012  
Source: Booth et al (2013)

<sup>4</sup> Single Market Act Twelve levers to boost growth and strengthen confidence "Working together to create new growth" European Commission (2011) and Single Market Act II Together for new growth European Commission (2012)

<sup>5</sup> This action plan should be similar to the White Paper proposed by Lord Cockfield in 1985.

<sup>6</sup> De Bruijn et al *The trade induced effects of the Services Directive and the country of origin principle* (2006)



**THE EU'S SERVICES SECTOR ACCOUNTS FOR AROUND 70% OF ITS GDP AND 9 OUT OF 10 JOBS IN THE EU. IT HAS BEEN ESTIMATED THAT LIBERALISATION OF SERVICES IN THE EU COULD LEAD TO AN INCREASE OF 0.3-0.7% OF GDP.**

Delayed and partial implementation has kept the Services Directive from delivering its full benefits. According to a recent European Business Test Panel survey the diversity of national rules remains the main obstacle to cross-border trade in the Single Market<sup>7</sup>. Article 15 of the Directive, which allows countries to maintain pre-existing restrictions if judged necessary to protect the public interest, has also acted as a restraint on full and consistent implementation. While some consumers and market participants have demonstrated a preference for national and local products in many areas of services, a new impulse to the liberalisation of services within the EU could be given by applying the Directive more consistently across the EU and encouraging the Commission and national competition authorities to be more active in examining critically the concept of public interest in existing regulations. The focus should be on better and more consistent implementation rather than re-opening the Directive or further rule-making.

### R3

#### *Formation of a Single Market Council to replace the Competitiveness Council*

A new Single Market Council for Member States' Economic Ministers should be created and tasked with bringing strategic focus to the completion of the Single Market and increasing the EU's international competitiveness. This Council should have a permanent Chair who should be appointed by the European Council for a two and a half year term. The Chair should be invited to attend European Council meetings for appropriate agenda items relevant to the remit of the Single Market Council. The Single Market Council should learn the lessons from the Internal Market Council and build on and absorb the capacities of the existing Competitiveness Council, which already deals with internal market issues as well as industry, research and innovation and space, but would bring greater focus and a strategic direction to the Single Market. The Economic and Financial Affairs Council would continue to be responsible for specific dossiers on economic policy, taxation matters, financial markets and capital movements, and economic relations with countries outside the EU.

### R4

#### *Completion of the Single Market in Financial Services*

The Single Market in Financial Services remains incomplete in important respects, with insufficiently developed provision of cross-border services in insurance, pensions, capital market products and banking. In part this is intrinsic to the

**€5,300<sub>BN</sub>**

EUROPEAN NON-FINANCIAL COMPANIES HAD LOANS OUTSTANDING OF AROUND €5,300 BILLION FROM EUROPEAN BANKS AT THE END OF 2012.

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<sup>7</sup> Help us identify business obstacles in the internal market European Business Test Panel (2011)

products themselves so that in insurance, for example, the local nature of retail insurance products means that cross-border sales will be the exception for the foreseeable future and firms will typically offer their services through the right to freedom of establishment. This local nature derives from a lack of adequate actuarial information across borders, poor infrastructure for cross-border claims management and fragmentation in the arrangements for taxation of insurance premiums. These arrangements will be complex to harmonise and harmonisation in some areas may not pass the subsidiarity and/or proportionality tests. Nevertheless a new focus on the removal of non-tariff barriers should be part of the work programme to broaden and deepen the Single Market in Financial Services.

In order to be clear where further reform is needed it is important that there should be a shared vision as to what the market in financial services should aspire to be. If the EU is to maximise its potential in the face of global competition there is no place, subject to tests of subsidiarity, proportionality and better regulation, for barriers which unnecessarily impede the cross-border flow of finance. TheCityUK believes that the following describes what the overarching vision for the Single Market in Financial Services should be:

*The Single Market legal framework should result in an innovative and competitive financial marketplace within which borrowers, issuers of securities and insurance policies, and providers of pensions and of financial market services, will interact freely, on a non-discriminatory basis, with lenders, investors, policy holders and pension beneficiaries. They will do this on the basis of common and proportionate prudential regulation and investor or customer protection, on a cross-border basis if they choose, and have access to all necessary market infrastructure, wherever located, without necessarily requiring a local presence. The market for corporate ownership will safeguard the interests of investors and operate within a framework of sound, proportionate corporate governance and takeover arrangements, and be subject to high quality financial reporting and auditing standards.*

## **R5** *Development of a Single Capital Market*

Post-crisis deleveraging and the shift towards more stringent capital requirements have contributed to constraints on the availability of finance, particularly for small and medium-sized enterprises (SMEs). This means that increased finance for investment must come from non-bank providers, including capital markets, private equity and innovative forms of finance such as crowdfunding. The diverse range of existing and potential instruments and related markets under this umbrella is generally underdeveloped and fragmented across the EU. The Commission's



# 10,500

**OVER 10,500 COMPANIES ARE LISTED ON STOCK EXCHANGES OF EU MEMBER STATES, DOUBLE THE NUMBER IN THE US. COMPANIES RAISED €98 BILLION IN NEW EQUITY ISSUES ON STOCK MARKETS OF EU MEMBER STATES IN 2012.**

# €120<sub>BN</sub>

**INTERNATIONAL AND DOMESTIC BOND ISSUANCE BY EU COMPANIES RAISED AN ESTIMATED €120 BILLION IN 2012.**

ambition to create a Capital Markets Union is therefore to be welcomed. Enabling jobs and growth should be the main test of any reforms, rather than harmonisation or centralisation for their own sake.

Developing and integrating European capital markets will require action by European authorities, Member States, issuers, intermediaries and investors. Non-legislative and market-based solutions should be used wherever possible. Post-crisis regulatory reform should be calibrated so that the implementation of these pieces of legislation contribute to, rather than detract from, the goals of CMU. In addition, more robust enforcement of Single Market rules and competition policy will help to deliver a Single Market for capital. Capital markets development can work in tandem with other policy priorities, such as Energy Union, and attention should be given to maximising the complementarity of these policy areas.

The Commission, the European Supervisory Authorities (ESAs) and Member States should study the functioning of retail investment across the EU, with a particular focus on investor outcomes and issues like quality of guidance and advice. Such a study might particularly look at competition and best execution.

For all these reasons TheCityUK welcomes the Commission's CMU initiative. As part of its response, TheCityUK will identify the steps necessary to ensure the development of market finance. This work will extend beyond purely financial regulation and will be coordinated across disciplines. It will encompass recommendations for legislative or rule changes and support the establishment of private sector structures where there is evidence of market failure.

## R6

### *Completion of the Digital Single Market*

Studies estimate that the EU could gain up to 8% of GDP in ten years by advancing the completion of the Digital Single Market (DSM)<sup>8</sup>. For CMU to succeed it also needs a well-functioning DSM to allow for innovative and efficient financial markets and make optimal use of the transformation in traditional models of intermediation brought about by new technologies. These include, inter alia, new platforms for investors, peer-to-peer lending, crowd funding and supply-chain finance.



**DATA-BASED INNOVATION  
IS EXPECTED TO  
LEVERAGE €330 BILLION A  
YEAR IN THE EU BY 2020.**

<sup>8</sup> *Economic rationale for a Digital Single Market* Fabian Zuleeg and Robert Fontana-Reval, EPC (2010)

The capital markets framework should allow for consumers of financial services to enjoy the benefits of innovation and consequent efficiency gains. As part of CMU, the European Commission and the ESAs should collaborate on a new framework ('regulatory sandbox') to facilitate innovative and collaborative discussion between firms and authorities about how new technologies and distribution channels can develop. In addition, European policymakers should embed future-proofing in financial regulation to account for technological development.

Improved EU-wide digital infrastructure, including far wider broadband access, will be a prerequisite for a DSM. However, infrastructure alone will not suffice and the creation of a DSM implies aligning, at least to some extent, Europe's consumer protection and data protection regimes. Additionally, lack of consumer trust in cross-border services also prevents the completion of the DSM. While cultural and language barriers are contributing factors that will only slowly diminish, a clear and aligned set of rules on privacy and consumer protection will likely go some way to addressing these factors.

The draft EU Data Protection Regulation, which will replace the existing EU Data Protection Directive 95/46EC, is aimed at strengthening citizens' data protection rights and ensuring, through the mechanism of a Regulation, a consistent approach to data protection across the 28 Member States. Data Protection is firmly grounded as a fundamental human right in the proposed Regulation. This means that the compliance burden for organisations under the draft Regulation will increase considerably with the introduction of:

- breach notification;
- fines of €100 million or 5% of global turnover (as proposed by Members of the European Parliament (MEPs));
- explicit consent provisions to allow processing of personal data;
- appointment of data protection officers;
- a one stop shop for data controllers;
- an enhanced role for the new European Data Protection Board;
- privacy by default and design;
- a strengthening of the restrictions on transferring personal data outside of the EU; and
- an evolving concept of accountability for data controllers.

The draft Regulation looks set to change the privacy landscape in the EU and beyond for both individuals and corporates. This first overhaul of data protection



**AN INCREASE IN THE BROADBAND PENETRATION RATE BY 10 PERCENTAGE POINTS IS EXPECTED TO INCREASE ANNUAL PER-CAPITA GDP GROWTH BY 0.9 TO 1.5 PERCENTAGE POINTS.<sup>9</sup>**

<sup>9</sup> BUSINESSEUROPE *The digital economy is crucial for growth* (2014)

legislation since 1995 is overly prescriptive and not fit for a modern, digital economy. It will negatively affect the EU's ability to use data innovatively and exploit the opportunities provided by disruptive technologies. In making changes to the draft regulation, it will be important to cater for the increasing significance of digital data in all areas of international commerce. Trade necessarily involves international transfers of data, whether for storing customer files, using cloud computing, or processing in global hubs, or complying with requirements of regulators in foreign jurisdictions, or even the transmission of basic trade documentation in electronic form. Safeguarding the data protection rights of individuals is of utmost importance in this environment, but must be achieved in a balanced and non-trade-restrictive way that will allow international commerce to function efficiently.

**R7**  
*Maintenance of access to global talent*

The Single Market can only deliver its full benefits to individuals and companies if there is free movement of labour across the entire EU. This is as true of the provision of financial and related professional services as of any other sector. Financial services providers cannot provide a deep pool of capital to business or deliver the services needed in their most effective and efficient form unless they can deploy people with the right skills in whatever location across the EU those services are required. Without the availability of the right technical skills in the right language in the right location, consumers and enterprises will not receive the services they need in order to maximise their own economic opportunities. During the continued debate about the free movement of labour it will be vital to ensure that its critical role in the cross-border provision of financial services remains fully recognised.

There are increasing concerns among citizens about 'benefit tourism' and the pressure that intra-EU migration puts on public services. There is a need to respond to these concerns. However, it is difficult to tackle a problem that cannot accurately be measured. That is why the EU's Interior Ministers should ensure that reliable data on intra-EU migration is made available in cooperation with Eurostat. In light of the recent European Court of Justice (ECJ) ruling which confirmed Member States' power to tackle welfare domestically, there is only a coordinating function for the EU to play.

**THE EU COUNTRIES HOSTING THE LARGEST NUMBER OF EU MIGRANTS IN 2010<sup>10</sup>**

**GERMANY – 3.7 MILLION**  


**SPAIN – 2.5 MILLION**  


**FRANCE – 2.4 MILLION**  


**THE UK – 2.2 MILLION**  


**ITALY – 1.2 MILLION**  


<sup>10</sup>EU Migrants in other EU Countries: An Analysis of Bilateral Migrant Stocks Centre on Migration, Policy and Society (COMPAS) at the University of Oxford (2012)

## 5.2 Better regulation agenda

The years following the financial crisis saw a spate of fresh regulation at the global, European and national level. The crisis itself and the scrutiny of the behaviour of financial firms revealed weaknesses in previous regulatory arrangements. A comprehensive, speedy response was demanded, with the pre-eminent need to preserve financial stability in the face of the scale and magnitude of the shocks to which the financial system and its users were exposed.

Doing so much in such a short time militated against taking the necessary steps to ensure the rules which emerged catered for the needs of users of financial services and did not prevent financial firms and markets from meeting them. Now is the time to take stock and check that the regulation that is in place, or in preparation, meets what is required. It is time for a fresh look at the right regulatory design principles and the best processes to help determine the key features of good regulation and how it can best support the growth agenda.

In retrospect there were shortcomings in the way that legislative proposals were brought forward. Some of the pieces of legislation are now seen as problematic, whether because of their impact on the economy and on users of financial services or on the financial services industry. Legislative processes have sometimes taken inadequate account of the treaty principles of subsidiarity and proportionality. Such shortcomings should not be repeated as fresh legislation is considered.

### R8

#### *Reformed organisation of the European Commission, Council of the European Union and European Parliament*

TheCityUK welcomes the reforms in the Commission's structure and working practices being undertaken by President Juncker. The institutional reforms which President Juncker has brought about in restructuring the Commissioners' roles, and the enhanced coordination which will result from the Vice-Presidents' responsibilities, are highly creative and desirable. In particular, the designation of a Vice-President for Jobs, Growth, Investment and Competitiveness and the First Vice-President for Better Regulation, Inter-institutional Relations, the Rule of Law and the Charter of Fundamental Rights, provide an important opportunity to increase policy coherence across key Directorates-General (DGs). There should be comparable reforms in the Council and Parliament to match the ambitions for more coordinated and effective policy-making.

## R9

### *Impact assessments for all EU institutions by an independent Regulatory Scrutiny Board*

Impact assessment, compliance cost assessment and cost-benefit analysis need to be central to the legislative and rule-making process. No legislation should go through the College of Commissioners, Council of Ministers or European Parliamentary Plenary without an adequate impact assessment having been published beforehand.

Many of the concerns which are widely held among Member States about EU legislation derive from previous failures in this area. Reform here would contribute to restoring confidence in the EU.

There are a number of institutional reforms which would help achieve this goal. Partly this relates to the quality of the resources devoted to making policy and how they are organised. The Better Regulation Package recently published by the First Vice-President responsible for Better Regulation, including a proposed new Inter-institutional Agreement on Better Regulation, revised Better Regulation Guidelines and an updated Better Regulation Toolbox, are welcome. Regular reviews of the tests which need to be applied to any legislative or rule-making proposal and the resources devoted to this work should be central to the First Vice-President's mandate. Member States also need to commit themselves to equally sound Better Regulation processes, whether implementing EU legislation or devising their own. Improving the assessment of proposals during Level I must also address how best to involve the ESAs and proper scrutiny and testing of amendments to the initial proposal.

The First Vice-President's plan to transform the current Impact Assessment Board (IAB) into a Regulatory Scrutiny Board with a wider remit is a step into the right direction. Building on these developments, the Regulatory Scrutiny Board should be made an independent body accountable to the European Parliament. It should serve all EU institutions and scrutinise amendments by the Council and the Parliament. Currently these are being assessed separately by the Council and the Parliament as they see fit.

## R10

### *Greater respect for subsidiarity and proportionality*

The main features of Better Regulation which require particular focus are proportionality and subsidiarity. The impact of regulation needs to be proportionate to the market failure or opportunity for liberalisation that is being addressed; and regulation needs to be precisely targeted in both cases to ensure that unintended consequences are minimised.

In addition to the critical Better Regulation principle of proportionality, there also needs to be a proper balance between what is regulated at the European level and what is regulated by Member States. The scope of action at the EU level, whether in financial and professional services or more widely, should be confined, as the Treaty says, 'if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or regional and local level'<sup>11</sup>. Both principles need to be tested and considered by the Regulatory Scrutiny Board before new legislation can be proposed.

## R11

### *Mandatory post-implementation reviews*

No new piece of regulation should go un-reviewed, including by Member State parliaments. There should be a requirement to examine ex-post the actual impact of each piece of legislation on the market: whether it has achieved its desired result and, if not, how it should be recalibrated. This should include reviewing the interaction with other legislation and rules and provides an excellent opportunity for the involvement of Member State parliaments. The manner of the post-implementation review should be agreed as a compulsory part of the rule-making process, as should the deadline by which the review should be completed. This builds on and universalises the processes already agreed in some instances. Reviews would not necessarily have to lead to legislative changes.

## R12

### *Assessment of cumulative cost of regulation*

When impact assessments and cost-benefit exercises are being conducted the individual costs associated with each piece of legislation should be examined alongside the cumulative cost of regulation as it affects a particular sector rather than simply being assessed on a stand-alone basis. This is to address the risk that individual pieces of legislation might appear cost-justified in isolation but not if the overall cumulative impact on the market concerned is taken into consideration. This assessment should be incorporated into the Regulatory Fitness and Performance Programme (REFIT) to which the Commission is committed and which has already achieved a lot of progress.

The European Council has already agreed that regulatory fitness should remain a priority which demands both regulatory simplification and better use of cost-benefit analysis at all governance levels and stages of the legislative process. Member States have been encouraged to use the flexibility provided to decrease the burden for SMEs as they implement European legislation.

<sup>11</sup> Consolidated Version of the Treaty on European Union Article 5(3) – Official Journal of the European Union (2012)

### 5.3 A European agenda for jobs, growth and competitiveness

The full realisation of Europe’s economic potential was being impaired by its loss of global competitiveness even before the financial crisis. Returning to long-term economic growth is an essential part of the EU’s ability to deliver on the promise of peace and prosperity. Unemployment, particularly amongst the young, is a major social issue throughout much of the EU. The twin tasks of creating jobs and encouraging faster growth represent the most important current challenges for Europe. Reform of the EU and the way it delivers for all its people is a vital part of securing future economic prosperity and delivering Europe’s potential.

#### R13

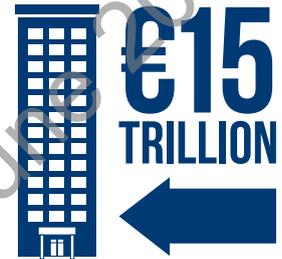
##### *A European Commissioner for Growth*

TheCityUK welcomes the new role of the Vice-President for Jobs, Growth, Investment and Competitiveness and the commitment to jobs and growth in Europe that it signals. This portfolio should be continued in all future Colleges of Commissioners. Additionally, the Growth Commissioner should be tasked with testing all new proposed legislation for its impact on jobs, growth and competitiveness and in cooperation with the Vice-President for Better Regulation, Inter-Institutional Relations, the Rule of Law and the Charter of Fundamental Rights ensure the results of this testing are featured prominently in all impact assessment reports.

#### R14

##### *Eurogroup Chair to be a permanent member of the European Council*

A strong and stable Eurozone is in the interest of all Member States. But it is the Single Market which both underpins the economy of every Member State and can enable the EU’s ambitions for competitiveness, investment, jobs and growth to be realised. The governance of the Eurozone must thus both serve the principle of non-discrimination between Member States and support the Single Market. This could be facilitated by permanent membership of the Eurogroup Chair in the European Council. The Eurogroup Chair would be a non-voting participant.



**THE TOTAL VALUE OF FINANCE PROVIDED TO EU COMPANIES AMOUNTED TO OVER €15 TRILLION AT THE END OF 2012. THIS FUNDING IS MAINLY BASED ON EQUITY CAPITAL RAISED ON STOCK EXCHANGES AND BANK LENDING, ALTHOUGH PRIVATE EQUITY AND DOMESTIC AND INTERNATIONAL BONDS ALSO PLAY A KEY ROLE.**

**R15*****Encouraging long-term investment into the EU's economy***

Long-term investment is a central part of Europe's competitiveness, jobs and growth agenda, particularly given the increasing financing demand from infrastructure projects and from growth companies. The European Commission acknowledges the need to improve access to financing for both infrastructure and growth companies in its Investment Plan.

On 4 March 2015 the International Regulatory Strategy Group (IRSG), which is co-sponsored by TheCityUK and the City of London Corporation, published *Long-term Finance for Infrastructure and Growth Companies in Europe*. The report looks at long-term investment in infrastructure and growth companies, identifies obstacles to investment and makes recommendations on how to remove these barriers. It also quantifies the positive impact of additional spending on infrastructure on employment and GDP. Recommendations include the development of infrastructure pipelines and databases, the provision of refinancing guarantees, setting up central credit registers and creating national information and education resources for growth companies. The report can be accessed via our website.<sup>12</sup>

**R16*****Development of a Code of Conduct for the EU's Commercial Policy***

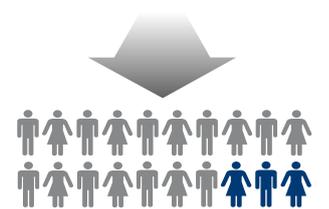
The EU does not function in isolation from the rest of the world and the international context always has to be taken into account in decision-making, especially in terms of the impact that decisions have on the EU's international competitiveness.

In negotiating trade and investment agreements the EU has far greater clout than even its largest Member States acting individually. With access to a market of 500 million consumers, the EU should continue to use its negotiating power to deliver improvements in market access, securing remedies where disputes occur, addressing non-tariff barriers, achieving regulatory coherence and responding and defining new or emerging issues such as data collection, intellectual property, forced local content requirements and the emergence of global value chains.

But the EU cannot rely on size alone in achieving results in trade and investment negotiations. As trade and investment barriers become more complex – particularly regulatory barriers in other countries – the Commission, which negotiates on behalf of Member States in keeping with the rules of the Single Market, needs to

**INCREASED SPENDING ON  
INFRASTRUCTURE WOULD  
CREATE AN ADDITIONAL  
125,000 JOBS IN A YEAR  
IN THE EU.**

€€€€€€€€€€€€



**125,000**

<sup>12</sup> <http://www.thecityuk.com/research/our-work/reports-list/long-term-finance-for-infrastructure-and-growth-companies-in-europe/>

draw more efficiently on the experience of Europe's businesses competing in global markets. It also needs to harness Member States' knowledge of their businesses' trade and investment experience. To do this more effectively the procedures within which trade and investment policies operate need to be improved to reflect both Commission and Member State competences and the changing features of international business, including the need to understand complex value chains. The Commission's current work towards a new trade and investment strategy for jobs and growth is therefore welcome. As part of this, TheCityUK proposes that a code of conduct be agreed for how the Common Commercial Policy (CCP) can best be run, involving the private sector, Member States and other stakeholders. This should not compromise the effectiveness of the European Commission's ability to act as the single point of contact for our trading partners during negotiations. As future trade agreements will be significantly more complex than past agreements, Member States, the private sector and other parties need to be involved in a transparent and timely manner. This would represent a vital step if the EU is to maximise its competitive advantage by negotiating market opening trade and investment agreements that play to EU commercial strengths to the maximum extent possible.

## R17

### *Resources for negotiating trade deals*

Europe will not succeed economically by looking inwards. Using the negotiating strength of the EU to make the global economy more fair and open will benefit people, businesses and states in every part of the world. Formerly the key focus was on multilateral negotiations towards global agreements liberalising trade worldwide. But the failure of the Doha Development Agenda over a decade and a half has inevitably led to a more sophisticated mix of bilateral, plurilateral and multilateral agreements. For financial and related professional services, these also have the advantage of offering scope for a far deeper regulatory component. All of this, however, requires a greater level of resources than in the past. Key current examples are the negotiations for TTIP and the TiSA: TTIP will be an unprecedented agreement between the world's two largest economies, while TiSA is being negotiated by nearly a third of the members of the World Trade Organisation (WTO), accounting for 70% of world trade in services. The Commission represents the EU in these negotiations which include financial services, telecoms, e-commerce and aspects of maritime transport.



**THE EU REMAINS THE  
WORLD'S LARGEST  
EXPORTER, IMPORTER,  
FOREIGN DIRECT INVESTOR  
AND RECIPIENT OF FOREIGN  
DIRECT INVESTMENT.**

There is an urgent need to complete ongoing trade and investment negotiations, especially with the US, Japan and India. In particular the completion of the TTIP negotiations would enable the EU to set the standards for future international services sector trade liberalisation. The EU is currently negotiating a large number of trade and investment agreements, but with very limited resources. Although the Commission is rightly giving priority to those negotiations with the greatest prospects of success, consideration should be given to moving further resources to the Commission's Trade Directorate-General and putting in place a more transparent prioritisation process, to maximise the EU's opportunities to access the economic growth that is taking place in the rest of the world.

## R18

### *Increased spending on research and innovation*

Only 13.1% of the EU's Multiannual Finance Framework (MFF) is spent on 'competitiveness for growth and jobs', which includes research, innovation, education and training.<sup>13</sup> The proportion should be increased to reflect the crucial role Research and Development (R&D) spending plays in encouraging economic growth. The EU's 2020 strategy further sets national combined private and public sector R&D spending targets at 3%, a goal which the EU28 has not reached yet. Even though R&D spending as percentage of GDP grew from 1.87% to 2.06% from 2002 to 2012 in the EU28<sup>14</sup>, more should be done to reach the 3% target.

There is a strong link between direct government funding, tax incentives and private sector R&D spending. Increasing national R&D subsidies and building on best practice in many Member States will thus play an important role. Public policy should also aim to improve public-private research collaboration and encourage the formation of innovation clusters where companies and public sector institutions jointly work on research projects and seek funding.

#### R&D spending, % of GDP

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
EU 28	1.87	1.86	1.82	1.82	1.84	1.84	1.91	2.01	2.00	2.04	2.06
Euro area	1.88	1.87	1.85	1.84	1.87	1.88	1.96	2.06	2.07	2.12	2.14

Source: Eurostat

<sup>13</sup> Multiannual financial framework 2014-2020 and EU budget 2014 – The figures – European Commission (2013)

<sup>14</sup> Gross domestic expenditure on R&D, 2002–12 (% of GDP) Eurostat (2014)

**R19***Harmonisation of the EU's third country regime*

Third country access to the Single Market is in the European economy's best interest and should be facilitated for those countries that demonstrate rules equivalent to the EU's. The regime applied to third countries needs to be revisited in order to minimise the costs resulting from inconsistent approaches in different directives. Japan is a good example in this context. The European Securities and Markets Authority (ESMA) and the European Commission have granted equivalence to Japan on a number of issues in the European Market Infrastructure Regulation (EMIR) including with regard to Central Counterparties (CCPs). However the European Banking Authority (EBA) has given a non-equivalence determination to investment firms from third countries including Japan's securities firms. The lack of consistency in such decisions makes the EU a less attractive destination for firms from outside the EU.

As a part of the Commission's cumulative impact assessment of post-crisis regulatory reform, a rigorous and impartial study of third country regimes across the legislative framework should be undertaken. The results of this study should be the basis for beginning a political dialogue aimed at reshaping the European Union's approach to third countries and achieving international regulatory coherence in financial services. A new consistent approach to transitional periods to allow ESAs and the European Commission sufficient time to conduct third country reviews before confirming equivalence urgently needs to be agreed.

**R20***Third country access to the EU and effective communication and agreement between Commission Directorates-General*

Reflecting the need for the EU to be open to the many benefits in terms of jobs and growth from embracing flows of investment by international businesses, fund managers and other investors, care should be taken to ensure the maintenance of third country access to the EU as agreement is sought to deliver CMU. Equally, third party equivalence issues bring into sharp focus the requirement for effective and timely consultation procedures within the Commission so that the relevant Directorates-General are involved and engaged at arriving at an agreed approach having taken into account all the potential impacts. The DG for Financial Stability, Financial Services and Capital Markets Union (DG FISMA), for example, may lead on equivalence but DG Trade has a deep interest because it affects investment. The risk is that trade and investment negotiations open markets but the equivalence rulings can undermine that.

## 5.4 Fair and equal treatment of all Member States

Within the Single Market legal framework it should be a matter of indifference where either providers or users of financial services are located. There is already treaty provision to this effect (Article 18 TFEU). In order to secure the maximum advantage for users of financial services it should rather be a matter for the interplay of competitive forces between providers wherever located.

The maintenance of financial stability in the euro area is a vital interest for all Member States whether within the Eurozone or outside. It follows that all Member States should be recognised as having that interest whether they belong to the Eurozone or not. The boundary between the euro and non-euro areas is completely permeable, not just for goods and services, but especially for financial services firms, with very many goods and services businesses active in each discipline active both within and outside the Eurozone. There is no reason why this should change.

Equally there is no inherent reason why regulatory requirements should be different for Euro and non-Eurozone establishments or activities. Decision-making on regulation should however be kept separate from decision-making on supervision where Member States are more differentiated, as has already been agreed in relation to banking under the arrangements surrounding the establishment of the Single Supervisory Mechanism (SSM).

The institutional arrangements for both regulation and supervision should continue to reflect both this interdependence and community of interest, with no place for discrimination on the basis of domicile within the EU, whether in terms of the transactions which may be undertaken or the location of activities or infrastructure.

### R21

#### *Strengthening the involvement of Member State parliaments*

One of the most important steps in making the EU work better would be to strengthen the relationships between national parliaments and EU legislators. Increased and effective scrutiny by the relevant national legislators at the correct stages in the legislative process would both enhance the quality of legislation and improve the likelihood of subsequent political and public acceptance. While the Commission and European Parliament need to engage more energetically with national parliaments, it will also be necessary for national parliaments to put in place the processes and resources to enable this scrutiny to be real and effective,

A SIGNIFICANT  
CONTRIBUTOR TO  
ECONOMIC OUTPUT:



**€636<sub>BN</sub>**

THE EU FINANCIAL SERVICES SECTOR ACCOUNTED FOR €636BN OF GROSS VALUE ADDED IN 2013, NEARLY 6% OF TOTAL EU ECONOMIC OUTPUT. TAKING PROFESSIONAL SERVICES INTO ACCOUNT, THIS RISES TO AROUND 10%.

so that they can better link in EU and national activity. These processes and structures will vary between different EU Member States taking account of often long-standing national traditions.

In a second step, inter-parliamentary cooperation also could be improved to enable national parliaments to play their proper role in the European policy-making process. The Conference of Parliamentary Committees for Union Affairs (COSAC) which brings together national parliaments' EU committees with MEPs appears to be the appropriate vehicle to promote this cooperation. COSAC currently meets twice a year. This should be increased and each national parliament should commit to being represented by at least two Members of Parliament (MPs) at each meeting. Additionally, the use of Interparliamentary Committee Meetings in between COSAC meetings should be increased to discuss draft legislation or other specific issues.

## R22

### *Protecting the integrity of the Single Market*

Although Treaty protection for the Single Market is well established, European legislation for financial services has only recently begun to protect explicitly the integrity of the Internal Market and emphasise the principle of non-discrimination. Provisions that ensure fair and equal treatment for all Member States should be incorporated where appropriate in all future legislation. An example where this has already happened is the Markets in Financial Instruments Directive II (MiFID II) which contains a provision that no action can be taken by any regulator or by ESMA and the other ESAs that discriminates against any Member State as a location for the provision of investment services and activities in any currency.

## R23

### *The ESAs' role and encouraging their alignment with the Single Market*

Following the introduction of the SSM and the Single Resolution Board (SRB), the need for the ESAs to protect the integrity of the Single Market is gaining increasing importance. They play a key role in promoting supervisory convergence and ensuring that new structures, such as Banking Union, do not unintentionally fragment the Single Market. Over the past six years, the ESAs have mainly focused on regaining financial stability through more regulation, with many measures still having to be implemented. The Commission has estimated that over 400 Delegated and Implementing Acts (e.g. relating to MiFID II, Solvency II, Bank Recovery and Resolution Directive and the Capital Requirements Directive IV (CRD IV)) remain to be adopted.

## THE CONFERENCE OF PARLIAMENTARY COMMITTEES FOR UNION AFFAIRS

Article 10 of the Protocol (No 1) on the Role of National Parliaments in the European Union (TFEU) establishes COSAC's mandate:

A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudice their positions.

The ESAs also work with the European Systemic Risk Board (ESRB) to ensure financial stability and to strengthen and enhance the EU supervisory framework. They aim to improve coordination between national supervisory authorities and raise standards of national supervision across the EU. TheCityUK does not believe that the ESAs should be given more powers, but they should be empowered to cooperate more in order to better fulfill their current mandate while respecting the role of national supervisors.

Within their supervisory role the ESAs should be given a clear responsibility to focus on the implications of how they perform their functions for jobs, growth and competitiveness. They should play a more prominent role in safeguarding the Single Market by using peer review to identify divergent application and interpretation of rules and enforcing the consistent application of rules through opinions and recommendations as set out in the Single Rulebook. They should focus on the rules for which they are responsible, and not be tempted to expend energy in trying to expand their competence.

In order to enable the ESAs to do this, they need to be more reliably resourced and where necessary be given easier access by national regulators to data on the institutions they supervise and regulate. This will enable them to interact more fully with stakeholders and improve their cooperation with National Competent Authorities (NCAs) in the formulation of the Single Rule Book through improving their consultation processes, both in terms of timetable and transparency. The data must continue to be provided by national supervisors to avoid unnecessary duplication and cost to firms. ESAs need to be more fully engaged by the Commission at the various stages of the policy-making process, while not prejudicing their independence in any way.

It is crucial that ESAs are resourced more reliably and independently, in accordance with their remit, in a manner that introduces greater accountability to stakeholders. A lack of resources for the ESAs has practical implications, as they are constrained in their legal and analytical capacity, their ability to meet legislative deadlines, to undertake sufficient peer reviews, and fulfil effectively their consumer protection obligations. The inclusion of ESA funding as a separate line in the EU Budget is therefore desirable and it is appropriate that the industry should contribute to the running costs through NCAs.

ESAs should be involved better in consultations and impact assessments relevant to their legislative work. Their expertise should be made available to Level 1 decision-making by submitting an opinion on Level 1 proposals as the ECB does, with a particular focus on jobs and growth. The ESAs' involvement in the development of Commission Impact Assessments could be systematised, as well as in ex post

assessments. More time should also be allocated to the ESAs to ensure effective consultation in relation to their Level 2 responsibilities, such that delays in Level 1 should not result in rushed rule-making in Level 2. Further work on ESAs reform and their role in protecting the integrity of the Single Market will follow.

### Regulatory activities

	2011			2012			2013		
Draft regulatory technical standards**	EBA 0	EIOPA 0*	ESMA 4	EBA 1	EIOPA 0*	ESMA 39	EBA 36	EIOPA 0*	ESMA 36
Draft implementing technical standards**	EBA 0	EIOPA 0*	ESMA 0	EBA 0	EIOPA 0*	ESMA 10	EBA 21	EIOPA 1*	ESMA 3
Guidelines and Recommendations	EBA 4	EIOPA 0	ESMA 2	EBA 6	EIOPA 1	ESMA 8	EBA 6	EIOPA 6	ESMA 10
Technical advice requested from Commission	EBA 0	EIOPA 3	ESMA 5	EBA 0	EIOPA 3	ESMA 6	EBA 1	EIOPA 13	ESMA 18
Other	EBA 17	EIOPA 42	ESMA 4	EBA 25	EIOPA 29	ESMA 11	EBA 45	EIOPA 10	ESMA 29

\* Pending the final adoption of Omnibus II and Solvency II EIOPA had no legal powers to adopt technical standards

\*\* As submitted to the European Commission

### Common supervisory culture

	2011			2012			2013		
Colleges established	EBA 82	EIOPA 89	ESMA 0	EBA 87	EIOPA 91	ESMA 0	EBA 135	EIOPA 92	ESMA 6
Colleges visited in % of invitations	EBA 68%	EIOPA 87%	ESMA -	EBA 82%	EIOPA 82%	ESMA -	EBA 93%	EIOPA 89%	ESMA 100%
Training sessions	EBA 16	EIOPA 18	ESMA 9	EBA 13	EIOPA 21	ESMA 11	EBA 20	EIOPA 17	ESMA 28
Peer reviews completed	EBA 0	EIOPA 0	ESMA 2	EBA 0	EIOPA 0	ESMA 2	EBA 1	EIOPA 4	ESMA 2

Source: European Commission

**R24***Strengthening of the ESRB's cross-sectoral approach*

The ESRB is an important institution operating at the level of the EU28. The ESRB's role has been widening during the continuing integration of financial markets and it should ensure that it has adequate and specific expertise to provide opinions on non-bank (including capital market) activity. The recommendations made by the Commission and the European Parliament in relation to improvement of its performance should be assessed and the necessary action taken.

To that end, the ESRB's autonomy and independence from the ECB should be enhanced to ensure its work is truly cross-sectoral. The introduction of a two-tier managerial structure should be considered, to allow for the Steering Committee and the General Board to be co-chaired by the ECB President and a new Executive Director, so as to address the perception of the ESRB's current 'bank bias'. The Executive Director should be appointed and accountable to the General Board. This should be done within remit of Article 20 of the Regulation on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, which tasks the European Parliament and Council to 'review the modalities for the designation or election of the Chair of the ESRB' by 17 December 2013. This review has been completed and reforms are currently under consideration.

**R25***Transposition and enforcement of European legislation*

The Single Market can only work efficiently if its rules are completely and correctly transposed into Member States' national law in a timely manner. The European Commission's Single Market Scoreboard monitors Member States' enforcement performance. It contains data on both Member States' transposition deficit (the gap between the number of Single Market directives adopted at EU level and those in force in Member States) and compliance deficit (number of incorrectly transposed directives). The average transposition deficit currently lies at 0.7% while the compliance deficit for the EU28 stands at 0.6%.<sup>15</sup>

Even though the average transposition deficit has decreased gradually since 1997, the proper transposition and enforcement of EU law needs to remain a priority, especially as Internal Market and Services is the policy area with the second greatest number of cases of late transposition (198 cases in 2011) as well as infringements (Internal Market: 15%). However, these numbers do not reflect

<sup>15</sup> *Single Market Scoreboard* European Commission (Reporting period: 05/2014 – 11/2014) (2015)

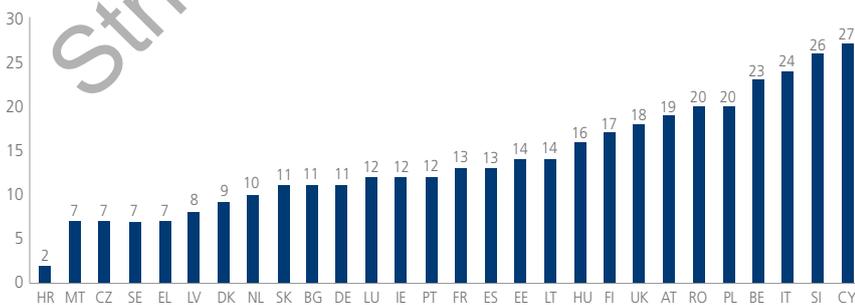
the full costs of these failings for the EU's economy as they only capture the most serious breaches.<sup>16</sup>

In the first instance, better adherence to the principles of proportionality and subsidiarity should reduce these delays and allow Member States to focus on the most important issues. Secondly, like all enforcement agencies, the European Commission has to prioritise cases of strategic importance and can only pursue a limited number of breaches. This power of 'selective enforcement' enables the European Commission to remain effective but also raises questions about fairness and politically motivated decision-making. The Commission has made public the criteria it uses in the selection of cases. These are however not legally binding and their application should be formalised and made more transparent.

There is concern that 'gold-plating' (when Member States exceed the minimum requirements when transposing EU laws) puts market participants in certain Member States at a competitive disadvantage and promotes divergent implementation of EU law. National authorities should provide clearer guidance on European rules to their firms and explain their rationale for gold-plating or front-running better.

The European Commission should enhance cooperation with its different agencies and relevant national actors and make proper use of new technologies, as demonstrated by the introduction of the EU Pilot tool. Prior to the adoption of new legislation, the Commission should encourage Member States to involve their officials tasked with the transposition and implementation of that particular piece of legislation and develop transposition and implementation plans. If desired the European Commission and its agencies should support Member States in these processes.

**Late transposition of directives in the EU-28 (31 December 2013)**



Source: European Commission

<sup>16</sup> 29th Annual Report on Monitoring the Application of EU Law European Commission (2012)

## 5.5 Long-term EU reform proposals

The imperative for reforming the EU should be to promote economic growth and secure Europe's competitive position in the global economy by focusing on well-scoped 'quick wins' that have the potential to bring tangible, immediate benefits to Europe's people. These are likely to be policy reforms that can be achieved without treaty change. These reforms are described in sections 5.1 – 5.4.

However, in order to harness the EU's full potential, constitutional reforms also need to be considered in the long-run. Bearing in mind that not all Member States are willing or able to move forward at the same speed or even on the same track, most EU Member States agree on the need for reform but have different priorities and ideas how this might be achieved. Proposals that should be considered are:

- Banking Union and any other policy or legal developments not involving all EU Member States should adopt the safeguards of the enhanced co-operation procedure;
- A provision that non-Eurozone Members have permanent observer status at Eurogroup meetings;
- Expansion of the time-frame during which the yellow card<sup>17</sup> can be used by national parliaments from eight to twelve weeks and lowering of the threshold to a quarter of all national parliaments;
- Re-examining the commitment to 'ever closer union' and emphasising the principles of subsidiarity and proportionality as well as the context of taking decisions as closely as possible to the citizens;
- Any treaty needs to deliver certainty as a key operative element. The legal basis for all legislation, including Banking Union, needs to be certain and the treaty framework needs to be clarified;
- Basing European decision-making processes on more genuine cooperation between European institutions and Member States and paying greater respect to the inter-institutional balance set out in Article 13(2) TEU; and
- Introducing stronger incentives for Member States to ensure the implementation of pro-competitive structural reforms.

<sup>17</sup> The yellow card procedure is an early warning mechanism giving Member State parliaments the opportunity to submit a reasoned opinion outlining why a specific proposal does not comply with the principle of subsidiarity. This right is enshrined in the Protocol (no.2) on the application of the principles of subsidiarity and proportionality, annexed to the TEU, TFEU and TEAEC under the Treaty of Lisbon.

## BIBLIOGRAPHY

Stephen **Booth**, Christopher **Howarth**, Mats **Persson** and Vincenzo **Scarpetta** *Continental shift: Safeguarding the UK's financial trade in a changing Europe* Open Europe (2011)

BUSINESSEUROPE *The digital economy is crucial for growth* (2014)

The Rt Hon David **Cameron** MP *EU speech at Bloomberg* Cabinet Office, Prime Minister's Office, 10 Downing Street (2013)

Damian **Chalmers**, Simon **Hix** and Sara **Hobolt** *Designing a new UK-EU relationship and how it could be achieved* London School of Economics (2013)

Grégory **Claeys**, Mark **Hallerberg** and Olga **Tschekassin** *European Central Bank accountability: how the monetary dialogue could be improved* Bruegel (2014)

**Committee on Economic and Monetary Affairs** *Enhancing the coherence of EU financial services legislation* European Parliament (2013)

Ian **Cooper** *The story of the first 'yellow card' shows that national parliaments can act together to influence EU policy* London School of Economics (2015)

Jon **Cunliffe** *Evidence to the House of Lords EU Select Committee Euro area crisis: an update* House of Lords (2014)

Zsolt **Darvas** and Guntram B. **Wolff** *Should non-euro area countries join the Single Supervisory Mechanism?* Bruegel (2013)

Zsolt **Darvas** and Pia **Hüttl** *The long haul: debt sustainability analysis* Bruegel (2014)

Zsolt **Darvas** *Banking system soundness is the key to more SME financing* Bruegel (2013)

Roland **De Bruijn**, Henk **Kox** and Arajan **Lejour** *The trade induced effects of the Services Directive and the country-of-origin principle* European Network of Economic Policy Research Institutes (2006)

Jacques **de Larosière** *High-level group on financial supervision in the EU report* European Commission (2009)

Swati **Dhingra**, Gianmarco **Ottaviano** and Thomas **Sampson** *Should the UK stay or go? The economic consequences of Britain leaving the EU* London School of Economics (2015)

**European Business Test Panel** *Help us identify business obstacles in the internal market* (2011)

**European Commission** *Better Regulation Guidelines* Commission Staff Working Document (2015)

**European Commission** *Better regulation for better results – An EU agenda* Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (2015)

**European Commission** *Communication on the long-term financing of the European economy* (2014)

**European Commission** *Global Europe – Competing in the World: A Contribution to the EU's Growth and Jobs Strategy* European Commission – External Trade (2006)

- European Commission** *Green Paper Long-term financing of the European economy* (2013)
- European Commission** *High Level Expert Group on SME and infrastructure financing* (2014)
- European Commission** *Multiannual financial framework 2014-2020 and EU budget 2014 – The figures* (2013)
- European Commission** *Proposal for an Interinstitutional Agreement on Better Regulation* Communication from the Commission to the European Parliament and the Council (2015)
- European Commission** *REFIT – Commission making EU law lighter, simpler and less costly* European Commission Press Release Database (2014)
- European Commission** *Single Market Act Twelve levers to boost growth and strengthen confidence “Working together to create new growth”* Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions (2011)
- European Commission** *Single Market Act II Together for new growth* Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions (2012)
- European Commission** *Single Market Scoreboard* (Reporting period: 05/2014 – 11/2014) (2015)
- European Commission** *Staff Working Document on long-term financing* (2014)
- European Commission** *Trade: a key source of growth and jobs for the EU* Commission contribution to the European Council of 7-8 February 2013 (2013)
- European Commission** *29th Annual Report on Monitoring the Application of EU Law* (2012)
- European Council** *Conclusions 26-27 June 2014 Summit* (2014)
- Europe Economics** for Business for Britain *EU Financial Regulation* (2014)
- Eurostat** *Gross domestic expenditure on R&D, 2002–12 (% of GDP)* Eurostat Statistics Explained (2014)
- Fresh Start Project & Open Europe** *Strategies for Fundamental EU reform – How to Achieve Treaty Change without Changing the Treaties!* (2014)
- Charles **Grant** *How to build a modern European Union* Centre for European Reform (2013)
- HM Treasury** *Call for Evidence, Financial Services and the Free Movement of Capital* (October 2013)
- House of Lords**, EU Sub-Committee for Economic and Financial Affairs *European Banking Union* (2012)
- Mugur **Isărescu** *Relations between euro and non-euro countries within the Banking Union* Bank for International Settlements (2014)

Jean-Claude **Juncker** *My priorities* European People's Party (2014)

Christine **Lagarde** *Jobs and Growth: Supporting the European Recovery* IMF (2014)

Malcolm **Levitt** *Getting Brussels right: "Best practice" for City firms in handling EU institutions* Centre for the Study of Financial Innovation (2010)

The Rt Hon David **Lidington** MP *Minister for Europe sets out UK approach to EU reform* Foreign & Commonwealth Office (2014)

Gerard **Lyons** *evidence to the House of Lords EU Select Committee Euro area crisis: an update* House of Lords (2014)

Kieran **McMorrow** and Werner **Roeger** *EU's growth prospects in the globalised economy* European Commission (2014)

Anand **Menon** *The next UK government must not let talk of a Brexit undermine its attempts to influence EU decision-making* London School of Economics (2015)

**Ministerie van Buitenlandse Zaken** *Testing European legislation for subsidiarity and proportionality –Dutch list of points for action* Government of the Netherlands (2013)

Dr Robin **Niblett** *The Future of the European Union: UK Government Policy* Chatham House (2012)

Jean-Paul **Nicolai** et Natacha **Valla** *Quelle France Dans Dix Ans?* France Stratégie (2014)

**Official Journal of the European Union** *Consolidated Version of the Treaty on European Union* (2012)

**Official Journal of the European Union** *Consolidated Version of the Treaty on the Functioning of the European Union* (2012)

**Open Europe blog team** *Dutch government: "Time of 'ever closer union' in every possible area is behind us"* Open Europe (2013)

Bahar **Öztürk** and Mico **Mrkaic** *SMEs' Access to Finance in the Euro Area: What Helps or Hampers?* IMF (2014)

Jacques **Pelkmans** and Marta **Simoncini** *Mellowing Meroni: How ESMA can help build the single market* CEPS (2014)

Sebastian **Saez**, Daria **Taglioni**, Erik **van der Marel**, Claire H. **Hollweg** and Veronika **Zavacka** *Valuing Services in Trade: A Toolkit for Competitiveness Diagnostics* World Bank Group (2015)

Dr. Ulrich **Schoof et al** *Brexit – potential economic consequences if the UK exits the EU* Bertelsmann Stiftung (2015)

Nemat **Shafik** *Europe: Toward A More Perfect Union* IMF (2013)

John **Springford** *Will the Eurozone gang up on Britain?* Centre for European Reform (2014)

John **Springford** and Philip **Whyte** *The consequences of Brexit for the City of London* Centre for European Reform (2014)

**TheCityUK** *EU reform – A view from TheCityUK* (2014)

**TheCityUK** *Key facts about EU financial and related professional services* (2014)

**TheCityUK** *Key facts about the UK as an international financial centre* (2014)

**TheCityUK** *The City Listens* (2014)

**TheCityUK** *The City Speaks* (2013)

**TheCityUK** *UK and the EU – A mutually beneficial relationship* (2013)

**TheCityUK/ Analitically Driven** *Analysing the Case for EU Membership: How Does the Economic Evidence Stack Up* (2014)

**TheCityUK/ Clifford Chance** *A Legal Assessment of the UK's Relationship with the EU – a Financial Services Perspective* (2014)

**TheCityUK/ Independent Economist Group** *The Economics of Trade in Services* (2015)

**TheCityUK/ IRSG/ The City of London Corporation** *Balance of Competences Review – Single Market: Financial Services and the Free Movement of Capital* (2014)

**TheCityUK/ IRSG/ The City of London Corporation** *Finance for Jobs and Growth in Europe* (2014)

**TheCityUK/ IRSG/ The City of London Corporation** *IRSG High Level Position Paper on Global Data* (2014)

**TheCityUK/ IRSG/ The City of London Corporation** *Long-term finance for infrastructure and growth companies in Europe* (2015)

Simon **Tilford** *Evidence to the House of Lords EU Select Committee Euro area crisis: an update* House of Lords (2014)

Dr. Carlos **Vargas-Silva** *EU Migrants in other EU Countries: An Analysis of Bilateral Migrant Stocks* Centre on Migration, Policy and Society (COMPAS) at the University of Oxford (2012)

Fabian **Zuleeg** and Robert **Fontana-Reval** *Economic rationale for a Digital Single Market*, EPC (2010)

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