

HOUSE OF LORDS

European Union Committee

15th Report of Session 2010–11

Re-launching the Single Market

Ordered to be printed 29 March 2011 and published 4 April 2011

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£13.50

HL Paper 129

The European Union Committee

The Committee considers EU documents in advance of decisions being taken on them in Brussels, in order to influence the Government's position and to hold them to account.

The Government are required to deposit EU documents in Parliament, and to produce within two weeks an Explanatory Memorandum setting out the implications for the UK. The Committee examines these documents, and 'holds under scrutiny' any about which it has concerns, entering into correspondence with the relevant Minister until satisfied. Letters must be answered within two weeks. Under the 'scrutiny reserve resolution', the Government may not agree in the EU Council of Ministers to any proposal still held under scrutiny; reasons must be given for any breach.

The Committee also conducts inquiries and makes reports. The Government are required to respond in writing to a report's recommendations within two months of publication. If the report is for debate, then there is a debate in the House of Lords, which a Minister attends and responds to.

The Committee has seven Sub-Committees which are:

Economic and Financial Affairs and International Trade (Sub-Committee A)
Internal Market, Energy and Transport (Sub-Committee B)
Foreign Affairs, Defence and Development Policy (Sub-Committee C)
Agriculture, Fisheries and Environment (Sub-Committee D)
Justice and Institutions (Sub-Committee E)
Home Affairs (Sub-Committee F)
Social Policies and Consumer Protection (Sub-Committee G)

Our Membership

The Members of the European Union Committee are:

Lord Bowness	Baroness O'Cathain
Lord Carter of Coles	Lord Plumb
Lord Dear	Lord Richard
Lord Dykes	Lord Roper (Chairman)
Lord Foulkes of Cumnock	The Earl of Sandwich
Lord Hannay of Chiswick	Lord Teverson
Lord Harrison	Lord Tomlinson
Baroness Howarth of Breckland	Lord Trimble
Lord Jopling	Baroness Young of Hornsey
Lord Maclennan of Rogart	

The Members of the Sub-Committee which conducted this inquiry are listed in Appendix 1.

Information about the Committee

For information freely available on the web, our homepage is <http://www.parliament.uk/hleu>. There you will find many of our publications, along with press notices, details of membership and forthcoming meetings, and other information about the ongoing work of the Committee and its Sub-Committees, each of which has its own homepage.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>

Sub-Committee Staff

The current staff of the Sub-Committee is John Turner (Clerk), Michael Torrance (Policy Analyst) and Elaine Morgan (Committee Assistant).

Contacts for the European Union Committee

Contact details for individual Sub-Committees are given on the website. General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW. General enquiries 020 7219 5791. The Committee's email address is euclords@parliament.uk

CONTENTS

	<i>Paragraph</i>	<i>Page</i>
Summary		5
Chapter 1: Introduction	1	7
Chapter 2: The Single Market	9	9
The Origins of the Single Market	9	9
The White Paper and the Single European Act	11	9
Enlargement	16	10
The Impact of the Single Market	18	10
Outstanding barriers and bottlenecks	20	11
Box 1: Europe 2020 flagship initiatives		11
Has Europe lost confidence in the Single Market?	24	12
Chapter 3: Social Europe	28	14
Social Model vs. Anglo-Saxon Model	28	14
Box 2: European Social Model		14
Box 3: Monti Clauses		15
Posting of Workers Directive	38	17
Box 4: Posting of Workers Directive		17
The Services Directive	43	18
Box 5: Services Directive		19
Tax harmonisation vs. coordination vs. status quo	58	22
A role for the EU or Member States?	65	23
Chapter 4: Completion of the Digital Single Market	70	25
Box 6: Digital Agenda for Europe and Towards a Single Market Act		25
Broadband access and spectrum availability and new technology	74	26
Review of the e-Commerce Directive	78	27
Box 7: e-Commerce Directive		27
e-Procurement	85	28
Improving consumer confidence	88	29
Chapter 5: Enforcement and Implementation	93	31
Competition and State Aid	93	31
Reinforcing enforcement	96	31
Box 8: Infringement procedure		32
Figure 1: Number of pending infringement proceedings against each Member State as of 10 May 2010		33
The role of SOLVIT and EU Pilot	99	33
Box 9: SOLVIT & EU Pilot		33
Internal Market Scoreboard	102	34
Figure 2: Transposition deficit of the Member States relative to the 1 per cent target as of 10 May 2010		35
Figure 3: Average transposition delays in months for overdue Directives as of 10 May 2010		35
Internal market information system (IMI) and mutual evaluation	106	36

Box 10: Internal Market Information System (IMI) & Mutual Evaluation		36
Better and Smarter Regulation	108	37
Regulations vs. Directives	113	38
Chapter 6: Re-launching the Single Market	116	40
The role of Member States	117	40
Spreading the word	123	41
Chapter 7: Conclusions and Recommendations	127	42
Appendix 1: Sub-Committee B (Internal Market)		46
Appendix 2: List of Witnesses		48
Appendix 3: Call for Evidence		50
Appendix 4: The 50 Proposals <i>Towards a Single Market Act</i>		52
Appendix 5: Getting Europe Growing		60
Appendix 6: List of Acronyms and abbreviations		63

NOTE: Evidence is published online at www.parliament.uk/hleub and available for inspection at the Parliamentary Archives (020 7219 5314)

References in footnotes to the Report are as follows:

Q refers to the question in oral evidence;

EUSM 1 refers to written evidence as listed in Appendix 2.

SUMMARY

This report was produced in response to two documents published in 2010 with the aim of re-launching the Single Market. First, at the request of European Commission President Jose Manuel Barroso, Professor Mario Monti, a former European Commissioner, published a report in May 2010, *A New Strategy for the Single Market*. Second, in October the Commission published a consultation paper, *Towards a Single Market Act*. Based on that consultation, the Commission will publish a final Single Market Act in the near future.

We welcome both documents as evidence that steps are being taken to reignite interest in the Single Market. This report examines some of the ideas first explored by Professor Monti, and taken forward by the Commission.

We conclude that there should be no “package deal” whereby market liberalisation is traded against social measures in order to gain the approval of Member States with differing economic traditions: the case should be made for the benefits of each on their own merits. The Single Market should be regarded as an important means for all Member States to boost their economies, irrespective of their economic traditions. While there is a role for the EU to play in social policy, any action taken in this area must respect the subsidiarity principle. The Single Market should not be used as an excuse to avoid this important consideration.

More work needs to be done on the implementation of Single Market measures. Across the EU, transposition and implementation are too slow and inaccurate. The Services Directive, which has still not been implemented adequately two years after the deadline, is a case in point. Informal methods of ensuring proper implementation, such as the Internal Market Information System and the mutual evaluation process, should be extended beyond the Services Directive to be used in other Single Market legislation.

Both Professor Monti and the Commission advocated the creation of a common consolidated corporation tax base (CCCTB). We argue that the Government should approach this proposal with an open mind, always remaining vigilant with regard to the UK’s tax sovereignty.

We strongly endorse the Commission’s Digital Agenda for Europe. The digital Single Market should be a consideration in all areas of Single Market action, as all businesses now rely upon the internet to some degree. The digital Single Market will only grow with improved consumer confidence. The inclusion of digital goods within the Consumer Rights Directive should be given strong consideration. We welcome the proposed production of a Code of EU Online Rights as a means of increasing confidence without imposing extra burdens on business or undertaking further complex legislation.

The UK has always been one of the Single Market’s strongest supporters within the EU, and was influential in its creation. The Government should actively promote the benefits of the Single Market, both to other Member States, and to businesses and citizens within the UK. The UK should return to its position as a champion of the Single Market.

Re-launching the Single Market

CHAPTER 1: INTRODUCTION

1. In October 2009, the President of the European Commission, José Manuel Barroso, asked Professor Mario Monti¹ to investigate options for the re-launch of the Single Market. After conducting a wide-ranging inquiry and engaging with a number of stakeholders, his report, *A New Strategy for the Single Market* (“the Monti Report”),² was published in May 2010. It concluded that the Single Market was still characterised by a high number of bottlenecks and missing links and set out a number of ways of addressing those gaps, together with ways to enforce the laws underpinning it. Professor Monti argued that re-launching the Single Market would need both regulatory and non-regulatory reforms and observed that the Single Market was suffering from a mixture of “integration fatigue” and “market fatigue”, with a reduced confidence in the role of the Single Market. As a result of his recommendations, Professor Monti hoped that the Single Market could be revitalised as a means of creating growth in the European Union, thereby re-establishing trust and popular support for it among businesses and citizens.
2. Shortly after the publication of the Monti Report, the European Parliament also adopted a report by the Rapporteur, Louis Grech MEP, on the Single Market.³
3. In response to the Monti Report, on 27 October 2010, the Commission published a Communication, *Towards a Single Market Act*⁴, containing 50 proposals to improve and deepen the Single Market, which it hopes will be implemented by 2012 as a way of “celebrating” its twentieth anniversary. It also hopes that by releasing the Single Market’s remaining “untapped potential” the Act will help the EU to recover from the financial crisis and result in total extra growth of approximately 4 per cent GDP over the next ten years.⁵
4. This Committee launched its inquiry after the publication of the Monti Report in July 2010 and in anticipation of the publication of the Single Market Act. Following a review of the Single Market by the Commission in 2007⁶ the Committee published a report in 2008, *The Single Market: Wallflower or Dancing Partner*,⁷ which focused on three specific sectors: energy, telecommunications and financial services, as well as considering

¹ Professor Monti is an Italian economist who served as the Internal Market, Financial Services and Financial Integration, Customs, and Taxation Commissioner from 1995–1999 and as Competition Commissioner from 1999–2004. From 2005 to 2008 he served as the first chair of Bruegel, the Brussels-based think tank, and is now its honorary president.

² *A New Strategy for the Single Market*, Mario Monti, 9 May 2010

³ *Report A7–0132/2010 on delivering a single market to consumers and citizens*, Committee on the Internal Market and Consumer Protection, 3 May 2010

⁴ *Towards a Single Market Act*, COM (2010) 608 final, 27 October 2010

⁵ The GDP of the EU in 2009 was approximately €11,805 billion according to the IMF.

⁶ *A Single Market for 21st century Europe*, COM (2007) 724 final, 22 November 2007

⁷ European Union Committee, 5th Report of Session 2007–08, HL Paper 36

wider issues affecting the Single Market. These sectors will not be revisited in any detail in this report because they have been dealt with previously.

5. The inquiry was conducted by the Sub-Committee on the Internal Market, Energy and Transport, whose members, together with their declared interests, are listed in Appendix 1. The Committee heard oral evidence from a range of witnesses, beginning with Professor Mario Monti. It also received a number of written submissions. Witnesses are listed in Appendix 2 and we are grateful to them all.
6. We have reported after the Commission's consultation on the Single Market Act. Although it concluded on 28 February 2011,⁸ we hope that our comments will inform the preparation of the definitive version of the Act, alongside the adoption of an Action Plan for 2011–2012 to implement the priority proposals.
7. The creation of the Single Market has already provided significant benefits for consumers and businesses alike in the EU and reaching its full potential will take time and commitment; we hope that our conclusions will make a contribution to that effort.
8. **We make this report to the House for debate.**

⁸ The Government's response is available at:

<http://www.bis.gov.uk/assets/biscore/europe/docs/u/11-760-uk-response-single-market-act>

CHAPTER 2: THE SINGLE MARKET

The Origins of the Single Market

9. The Treaty of Rome, which established the European Economic Community (EEC) on 1 January 1958, had as its objective the creation of a common market⁹ through the elimination of internal trade barriers between Member States. The free movement of goods was to be accompanied by the free movement of persons, services and capital as the “four freedoms”.
10. Despite the subsequent removal of tariff barriers¹⁰, the free movement of goods and services continued to be hampered by non-tariff barriers such as national technical rules governing products and the requirement for service providers to comply with a wide range of national regulations in each Member State. Anti-competitive practices such as the use of state aids also continued. These barriers meant that the common market continued to exist in name only.

The White Paper and the Single European Act

11. By the late 1970s and early 1980s the failure to complete the common market was considered to have resulted in significant economic costs. In response, the European Council approved the aim of creating a fully-fledged internal market in March 1985 and asked the Commission to prepare a programme and timetable for implementation. A White Paper, *Completing the Internal Market*,¹¹ proposed by Lord Cockfield¹² was published in June 1985. It detailed 300 legislative proposals, including measures to eliminate a series of physical, technical and fiscal non-tariff barriers.
12. This approach was given added impetus with the signing of the Single European Act in February 1986. As well as setting a deadline for the completion of the Single Market by 31 December 1992, the Act also made Council decision-making more effective by introducing qualified majority voting (QMV) (removing the requirement for unanimity) in some areas, which had previously hindered the adoption of legislation. Alongside the greater use of the principle of mutual recognition¹³ rather than a strict reliance upon the harmonisation of national rules, this allowed the Community to overcome bottlenecks and make progress in completing the Single Market. For the first time the European Parliament also became involved in the legislative process through the co-operation procedure.
13. The drive to complete the Single Market initially lacked a social dimension. However, the Act included an article to achieve common standards in health and safety (subject to QMV) and it was under this provision that the EEC began to make an impact on social policy, most notably with the adoption of

⁹ The “Common Market” was the terminology used in the Treaty of Rome and it was not until the 1970s that the term “Internal Market” also became prevalent. In the late 1980s and 1990s the concept of the “Single Market” became the favoured nomenclature.

¹⁰ This was achieved, 18 months ahead of schedule, by 1 July 1968.

¹¹ *Completing the Internal Market*, COM (1985) 310 final, 14 June 1985

¹² A Member of this House until his death in 2007. Commissioner for the Internal Market, Tax Law and Customs from 1984 to 1988.

¹³ Under this principle, goods legally manufactured in one Member State can be legally sold in another unless there are compelling reasons to the contrary.

the Working Time Directive in 1993. In 1988 the Structural Funds were also consolidated, with a substantial increase in funding. Whilst the UK initially refused to participate in the Social Protocol¹⁴ to the Treaty of Maastricht in 1992, it agreed to participate when the Protocol was incorporated into the Treaty of Amsterdam in 1997.

14. The Single European Act was intended to be the beginning, rather than the end, of the process of completing the Single Market. Despite the fact that not all the necessary legislation was in place, the Single Market was formally launched on 1 January 1993.
15. Since that date, the Single Market has always been championed by the United Kingdom, including the former Prime Minister, Baroness Thatcher, who played a key role in its formation. In Chapter 6, we consider whether it should play a more prominent role in “re-launching” the Single Market.

Enlargement

16. On 1 January 1994 the European Economic Area (EEA) was established between the European Free Trade Association (EFTA)¹⁵ and the European Community (EC),¹⁶ which allowed Iceland, Norway and Liechtenstein¹⁷ to participate in the Single Market, with the requirement that they adopted the requisite EC legislation in this area.
17. The 1995¹⁸, 2004¹⁹ and 2007²⁰ enlargements also had a profound impact on the Single Market in terms of substantial increases in the number of consumers and expansion of EU GDP. The UK Government and this Committee have been consistently strong supporters of the enlargement process.

The Impact of the Single Market

18. 25 years after the adoption of the Single European Act, and 18 years after the launch of the Single Market, it has become the UK’s main trading forum. The EEA now contains 500 million citizens and over 20 million businesses.²¹
19. According to the Government eight out of the UK’s ten main export markets are in the EU and UK exports to the other 26 Member States account for 51 per cent of the UK’s overall exports of goods and services, worth more than £200bn. In comparison, the UK’s biggest trading partner outside the EU, the United States, accounts for only 13 per cent of UK exports. The EU is the

¹⁴ This set out the Community’s broadened competence in the social domain, including: promotion of employment; improvement of living and working conditions; adequate social protection; social dialogue; the development of human resources to ensure a high and sustainable level of employment; and the integration of persons excluded from the labour market.

¹⁵ The EFTA was established on 3 May 1960 as an alternative for European states who chose not to join the EEC. Seven countries, including the UK which was instrumental in its creation, initially joined but most subsequently left to join the EEC/EC/EU.

¹⁶ The EEC was renamed as the EC in 1993 after the Treaty of Maastricht.

¹⁷ Another member of the EFTA, Switzerland, is not a member of the EEA and instead chose to conclude bilateral agreements with the EC.

¹⁸ Austria, Finland and Sweden

¹⁹ Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia

²⁰ Bulgaria and Romania

²¹ EUSM 2

UK's single largest source of imports.²² The EU is also the UK's main source of foreign direct investment, with 49 per cent of the total coming from other Member States. Over 300,000 UK companies currently operate elsewhere in the EU and 78 per cent of business leaders consider that the Single Market has been helpful for UK business.²³ On an EU-wide basis, the Commission has stated that between 1992 and 2006 the Single Market increased EU GDP by 2.15 per cent and created approximately 2.75 million jobs.²⁴

Outstanding barriers and bottlenecks

20. During the 1990s, substantial progress was made in removing barriers and bottlenecks in the energy, aviation (which had hitherto been the subject of objections by the European Parliament), telecommunications and financial services sectors and most of the outstanding measures in the White Paper were also implemented. The Services Directive, which was intended to make it easier for businesses to establish themselves in other Member States and to provide services across borders on a temporary basis, was adopted in 2006²⁵, but it is still work in progress. Member States had been due to implement the terms of this Directive by December 2009. As the services sector accounts for 70 per cent of the EU's economic activities, the potential benefits from the proper implementation of the Directive were considered to be significant by the Commission.²⁶
21. The Europe 2020 Strategy²⁷, the EU agenda for economic growth, sees the completion of the Single Market as being essential to achieving its goal. Professor Monti also saw the Single Market as being integral to achieving Europe 2020's aim. As an explanation as to why it was not included as one of its flagship initiatives, he said, "The Single Market is not a flagship because it is neither a flag, nor a ship, but the Single Market is the sea and the wind which allows all the seven or eight flagship initiatives to sail and to navigate."²⁸

BOX 1

Europe 2020 flagship initiatives

- Smart growth
 - (i) *Innovation Union* to improve framework conditions and access to finance for research and innovation so as to ensure that innovative ideas can be turned into products and services that create growth and jobs;
 - (ii) *Youth on the move* to enhance the performance of education systems and to facilitate the entry of young people to the labour market;
 - (iii) *A digital agenda for Europe* to speed up the roll-out of high-speed internet and reap the benefits of a digital single market for households and firms.

²² See <http://www.statistics.gov.uk/pdfdir/bop1210.pdf>

²³ EUSM 7

²⁴ EUSM 11

²⁵ Directive 2006/123/EC, OJ L376 (27 December 2006) p 36

²⁶ Q 147 Jonathan Faull stated that the Commission had estimated that the EU-wide economic gains of the Services Directive could range between €60 and 140 billion, representing a growth in EU GDP of 0.6–1.5 per cent.

²⁷ *EUROPE 2020—A strategy for smart, sustainable and inclusive growth*, COM (2010) 2020, 3 March 2010

²⁸ Q 14

- Sustainable growth
 - (iv) *Resource efficient Europe* to help decouple economic growth from the use of resources, support the shift towards a low carbon economy, increase the use of renewable energy sources, modernise our transport sector and promote energy efficiency.
 - (v) *An industrial policy for the globalisation era* to improve the business environment, notably for SMEs, and to support the development of a strong and sustainable industrial base able to compete globally.
- Inclusive growth
 - (vi) *An agenda for new skills and jobs* to modernise labour markets and empower people by developing their skills throughout the lifecycle with a view to increase labour participation and better match labour supply and demand, including through labour mobility.
 - (vii) *European platform against poverty* to ensure social and territorial cohesion such that the benefits of growth and jobs are widely shared and people experiencing poverty and social exclusion are enabled to live in dignity and take an active part in society.

22. The publication of the Commission's Communication on a Digital Agenda for Europe (DAE)²⁹ in August 2010 also acknowledged that the EU had not kept up with technological developments, particularly of the internet, and as a result the completion of the "digital Single Market", and the potential economic growth in this sector, had yet to be achieved. The DAE is one of the seven flagship initiatives in the Europe 2020 Strategy and recommendations concerning the importance of the digital single market also formed a core part of the Monti Report.
23. **We agree that the Single Market has the potential to be of greater benefit to the businesses, citizens and consumers of the European Union if the remaining barriers and bottlenecks, which have been identified, are removed.**

Has Europe lost confidence in the Single Market?

24. The Single Market has recently returned to the top of the policy agenda of EU leaders. This revival of interest may have been prompted by the financial crisis, when some Member States were alleged to have sought refuge in forms of economic nationalism or protectionism. In 2009 the British Chambers of Commerce (BCC) surveyed its exporting members and, of the 43 per cent that believed that they had encountered a barrier to trade, 11 per cent had encountered protectionism.³⁰ The BCC also stated that the "slew of employment legislation" had turned some businesses off the Single Market.³¹ The crisis also reignited some of the long-running debates about the *raison d'être* of the Single Market, including the correct balance between market liberalisation and respect for the European social model.

²⁹ *A Digital Agenda for Europe*, COM (2010) 245 final, 26 August 2010

³⁰ Q 96

³¹ Q 94

25. Echoing Jacques Delors, Professor Monti argued that “today the Single Market not only is not loved. It is seen by many Europeans—citizens as well as political leaders—with suspicion, fear and sometimes open hostility.”³² The Monti Report develops this sentiment further and suggests that the financial crisis has served to discredit the liberal market philosophy that drove the EU since the 1980s. As a result public opinion tends to consider the market as unfair, having generated unacceptable inequalities, and inefficient, having attracted resources into the financial sector whose contribution to the real economy is questioned.
26. Malcolm Harbour MEP, Chair of the European Parliament’s Internal Market and Consumer Affairs Committee (IMCO), and Louis Grech MEP, a member of that Committee, and Lord Liddle³³ emphasised that the Single Market could not be taken for granted and that its construction was not an irreversible process. They urged the need for greater political vigilance among Member States to guard against complacency, which may lead to the Single Market receding or stagnating.³⁴
27. **We believe that the Monti Report and *Towards a Single Market Act* are both useful and timely documents which we hope will stimulate activity to realise and secure those benefits.**

³² Monti Report, p. 12

³³ A member of this Committee from November 2010 until March 2011, who gave evidence to this inquiry in his capacity as Chairman of Policy Network. He was also formerly a Special Adviser on European matters to Tony Blair (as Prime Minister); a member of Lord Mandelson’s cabinet when he was the Trade Commissioner and also a Principal Adviser to the President of the European Commission.

³⁴ QQ 30 & 54

CHAPTER 3: SOCIAL EUROPE

Social Model vs. Anglo-Saxon Model

28. The Monti Report suggested that there was a need for a “package deal” between countries with a “social market” approach and those with an “Anglo-Saxon” tradition. In Professor Monti’s view, Member States with social market economies would be more prepared to embrace the Single Market if Member States in the Anglo-Saxon tradition addressed some social concerns.³⁵ Professor Monti elaborated that “what would be needed is a new compromise where France and Germany and others, but mainly France and Germany, would again commit themselves seriously to moving forward with a set of deadlines in terms of completion of the Single Market, services, digital economy, and in terms of even stronger enforcement of Single Market rules, competition rules, state aid control rules ... if they were to see from the camp of the Anglo-Saxons some greater readiness to recognise some of their social concerns.”³⁶ He argued that these concessions to social interests did not need to be significant but that some limited movement in the areas of services of general economic interest³⁷, public procurement and tax coordination could enable Member States to move forward in order to reach a rapprochement.
29. In this chapter we discuss the general need for a rapprochement between the two approaches, and, more specifically, the impact or potential of the Posting of Workers Directive, the Services Directive and proposals for tax coordination.

BOX 2

European Social Model

Much of the debate around the re-launch of the Single Market has been concerned with the differences between the so-called “European Social Model” and the “Anglo-Saxon” model. There is no very clear definition of either term, and many commentators argue that there is more than one “European Social Model”. In his report, Professor Monti describes Social Model economies thus:

In these countries there tends to be a less central role attributed to the consumer as the intended primary beneficiary of the Single Market, than is the case for example in the Anglo-Saxon countries. The position of the worker and of the entrepreneur tend to be seen as deserving a perhaps higher priority. Manufacturing, more than services, is regarded as a particularly important component of the productive structure. Greater attention is given to social concerns in relation to the effects of market processes. Services of general economic interest are considered to be a key sphere for broad social policy, at the national, regional and local level.

Competition policy and particularly state-aid control have often been viewed more critically than in Member States attributable to the other groups.³⁸

Professor Monti told us that the Anglo-Saxon model was one which “has traditionally attached great importance to open markets, competition, relatively little state interference with market processes, some sort of benign neglect by Government on the composition of output in the economy as between manufacturing and services, again non-interference by the Government on foreign takeovers, let us say, on the nationality of manufacturing companies or financial institutions, and a few other things.”³⁹

³⁵ Monti Report, p. 34

³⁶ Q 7

³⁷ Services of general economic interest are those which public authorities class as being of general interest and subject to public service obligations. Services of general *economic* interest are those which are also offered on the market. These are contrasted with services of general *non-economic* interest.

³⁸ Monti Report, p. 28

³⁹ Q 7

30. In *Towards a Single Market Act*, the Commission has made a number of social proposals. These include: a series of measures on services of general interest; an analysis of the social impact of all proposed Single Market legislation in order to ensure that the rights guaranteed in the Charter of Fundamental Rights, including the right to take collective action, are taken into account; proposals to improve the implementation of the Posting of Workers Directive; proposals to remove the obstacles encountered by mobile workers⁴⁰ when making arrangements for their retirement; a consultation on the creation of a framework for the advance planning of industrial restructuring; and a Social Business Initiative.⁴¹ Jonathan Faull, Director General, Internal Market, of the European Commission, argued that it was “important that the European Union Single Market has the full support of the European public and that it be understood as an enormous opportunity for the citizens of the Member States of the European Union, rather than as a threat.”⁴²
31. The European Trades Union Confederation (ETUC) argued that without a social dimension support for the Single Market would recede and that without adequate social protection migrant labour would not be accepted in the host country. It argued that it was “important, too, that unions are not prevented from seeking equal pay and treatment for migrant workers; otherwise existing union support for the Single Market and free movement will be placed in jeopardy and protectionist forces will be strengthened.”⁴³ The ETUC has previously lobbied for the inclusion of a Social Progress Protocol (SPP) in the Treaties, but this attracted strong opposition from certain Member States, including the UK, and would require further Treaty change. Professor Monti’s proposed alternative is the inclusion of “Monti II” clauses in all Single Market legislation, to respect the fundamental rights of workers. The ETUC is now lobbying in favour of these, as a minimum requirement.

BOX 3

Monti Clauses

The original Monti Clause was introduced into the so-called “Monti Regulation” on the free movement of goods in 1998, when Professor Monti was EU Internal Market Commissioner. Article 2 of the Regulation on the free movement of goods reads “This Directive may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States, including the right or freedom to strike. These rights may also include the right or freedom to take other actions covered by the specific industrial relations systems in Member States.”⁴⁴

The ETUC’s position was for an Article modelled on this clause to be included in the Treaties. However, instead, Professor Monti has advocated the inclusion of such a clause in particular pieces of legislation. This has already been done in the Services Directive, and Professor Monti particularly supports its inclusion in any revision of the Posting of Workers Directive.

⁴⁰ Mobile workers are those who work at various times in more than one Member State.

⁴¹ Proposals 25, 29, 30, 31, 32 and 36

⁴² Q 151

⁴³ EUSM 8

⁴⁴ Council Regulation (EC) 2679/98, OJ L337 (12 December 1998), p 8

32. The City of London Corporation argued that a “package deal”, in which concessions were made by Anglo-Saxon economies towards greater social protection, and by Social Market economies towards greater liberalisation, would ignore the diversity of some Member States’ economies. It suggested that the Anglo-Saxon model was until recently widely praised for contributing to the success of the Single Market economy⁴⁵. However, Lord Liddle told us that, as a result of the financial crisis, the Anglo-Saxon model was “operating at a bit of a discount” and alternative European approaches to capitalism were definitely “on the up”⁴⁶.
33. The European Parliament Committee on the Internal Market and Consumer Affairs (IMCO) concluded that “Single Market policy should be based on a holistic and citizen based approach” and that the citizen “can be an entrepreneur, a consumer and a worker simultaneously”⁴⁷. It also argued that one way to guarantee social protection and to mitigate social exclusion was to assess the social impacts of Single Market proposals alongside economic, consumer and environmental impacts⁴⁸. Louis Grech, rapporteur of the Committee on the Internal Market and Consumer Affairs’ Report on delivering a single market to consumers and citizens⁴⁹, stated that for the re-launch of the Single Market to be successful it had to have a social dimension: “If we want it to be acceptable and have a citizens’ approach, obviously we have to look at the economic side and redefine the economics of the Single Market. At the same time, we have to ensure that the citizen has the necessary trust.”⁵⁰
34. The Committee on the Internal Market and Consumer Affairs did not consider that Professor Monti had made a convincing case regarding his “package deal” approach and speculated that he was trying to bridge divisions in the Council rather than attempting a reconciliation of competing economic approaches to the Single Market.⁵¹ Malcolm Harbour, Chair of the Committee on the Internal Market and Consumer Affairs, suggested that, in terms of his experience during the passage of the Services Directive, the polarisation of opinion had been between the old and new Member States, with the latter, whatever the political persuasion of their governments, being extremely enthusiastic about the measure.⁵² Mr Harbour also provided written evidence to us on behalf of the European Conservatives and Reformists Group (ECR) in the European Parliament. The ECR were not in favour of a package deal to “compensate” people for freer trade by introducing social legislation, arguing that this would hamper the effectiveness of the Single Market. They instead suggested that “the focus should be to encourage those with social market traditions to adapt, particularly given economic realities”⁵³.
35. The Government also argued that there was no need for a “package deal” and stated that “it is in the genuine self-interest of every Member State to

⁴⁵ EUSM 3

⁴⁶ Q 85

⁴⁷ EUSM 4

⁴⁸ EUSM 4

⁴⁹ Report A7-0132/2010

⁵⁰ Q 38

⁵¹ EUSM 4, Q 47

⁵² Q 47. See also the discussion of the Services Directive below at paragraphs 44-57.

⁵³ EUSM 5

promote the principles of the Single Market ... [which] is not only a driver for growth and prosperity, but also enables Member States to generate the resources to protect the most vulnerable members of society.”⁵⁴ Ed Davey MP, Minister for Employment Relations, Postal and Consumer Affairs, said that “to the extent that one is happy to continue to see a social dimension, we should be focusing on how we make the Single Market more relevant to small business and to individual citizens.”⁵⁵

36. **The relationship between the economic and social aspects of the EU is complex and politically charged. While the social aspect is important, we believe that it should not be seen as trade-off against market liberalisation. Any proposal on either aspect should be treated strictly on its merits. The case should be made separately for the economic benefits of the Single Market, especially given the urgent need for all Member States to stimulate growth in the aftermath of the financial crisis.**
37. **We believe a more fruitful approach is that advocated by the European Parliament Committee on the Internal Market and Consumer Affairs, in regarding citizens simultaneously as entrepreneurs, workers and consumers, and therefore as beneficiaries of the Single Market. Member States and the European Institutions should make the case strongly that it presents an opportunity rather than a threat.**

Posting of Workers Directive

38. The Monti Report considered the tension engendered by the application of the Posting of Workers Directive in the light of the Viking, Laval and other judgments concerning the right to take industrial action.

BOX 4

Posting of Workers Directive

The Posting of Workers Directive came into effect in 1999. The Directive aims to protect the pay and conditions of workers by preventing companies from other Member States posting workers and undercutting local terms. A “posted worker” is defined as “a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works”.⁵⁶ If minimum pay and conditions apply in a particular Member State, any company temporarily posting workers to that State must fulfil the minimum terms and conditions applicable in that State. If these are lower than conditions in the home State, the company must apply the higher terms.

Workers who are directly employed in the host country are not covered by the Directive, and there are also exemptions for, for instance, workers who are posted for an extremely short period. Member States can make exemptions to the terms which apply in their territory.

The *Viking and Laval* cases⁵⁷, on which the Court of Justice gave judgment in December 2007, have caused concern among trade unions as the Court appeared to give priority to the freedom to provide services rather than the right to join a trade union, negotiate and enforce collective agreements and take industrial action.

⁵⁴ EUSM 7

⁵⁵ Q 182

⁵⁶ Directive 96/71/EC, OJ L018 (21 January 1997) p 1, Article 2(1)

⁵⁷ C-438/05 and C-341/05

39. We have received conflicting evidence regarding the necessity of revising the Posting of Workers Directive. The CBI argued that a revision was unnecessary and that the current regulatory balance must be preserved. It stressed that labour market flexibility was a key determinant of a competitive economy and would lead to a growth in jobs, which were themselves a social benefit. The BCC agreed with this position and suggested the problem with the Directive concerned implementation, not substance. Its representative, Karen Clements, said “there are set rules, and with regard to the Posted Workers Directive, we don’t believe that the rules are badly framed. They haven’t been well implemented, however, and we would agree that that needs to be reviewed. You can’t have companies pretending to be based in another country so they can use those rules to apply to their supposed posted workers.”⁵⁸ The BCC’s general argument was that labour laws should not reduce levels of employment: their “Eight Ways to Make the Single Market Work”⁵⁹ states that all proposals should be judged by their impact on employment and rejected by the Commission unless they could be proved to improve and not worsen prospects for growth.
40. On the other hand the ETUC argued that the Directive should be revised to ensure that posted workers receive equal pay and treatment as local workers, rather than just the minimum, and the right to strike protected in the wake of the Viking and Laval cases. Lord Liddle reported the words of a past president of the ETUC: “I’m all in favour of enlargement, but what you have to remember is that in Vienna, my members are paid 10 times as much as people 50 kilometres down the road in Bratislava and 20 times as much as they are in Romania. So, therefore, there’s bound to be quite a lot of concern among people about the social impact of this.”⁶⁰
41. The Government were wary of a further tightening of labour rules. The Minister said that “what we need for growth is more flexible labour markets, and we do not want this particular agenda to go in the wrong direction in that area.”⁶¹
42. **We welcome the review of the Posting of Workers Directive as, in the wake of recent judgments of the Court of Justice, the intention behind the Directive needs further clarification.**

The Services Directive

43. Some of the social concerns regarding the Posting of Workers Directive have also been raised in relation to the Services Directive.

⁵⁸ Q 110

⁵⁹ These appear on a poster circulated by the BCC, available at http://www.britishchambers.org.uk/6798219246752294628/T11654_BCC_A1_Poster.pdf

⁶⁰ Q 52

⁶¹ Q 173

BOX 5**Services Directive**

The Services Directive⁶² was adopted in 2006, with an implementation deadline of December 2009. The Directive seeks to encourage cross-border trade in services by eliminating the obstacles to service providers establishing their businesses in any Member State, and to providing services between Member States. Certain services, for instance public health and social care services, are excluded.

The Directive requires Member States to establish “Points of Single Contact”, one-stop shops where service providers can obtain all relevant information and complete all procedures relating to their activities, and to ensure that all these procedures and formalities can be completed at a distance and by electronic means⁶³.

It requires Member States to abolish discriminatory authorisation schemes or requirements, such as nationality or residence requirements, or “economic needs” tests, where businesses have to prove that there is a demand for their services.

Early drafts of the Directive included a “country of origin principle” whereby a service provider could, temporarily, provide a service in one Member State on the basis of the law of its country of establishment. In our previous reports on the Services Directive and the Single Market, this Committee has expressed its concern about the dilution of the country of origin principle in the Services Directive, and the negative impact this was likely to have on businesses, especially SMEs, by denying them the benefits of a true internal market in services.⁶⁴

The principle raised fears that the Directive would be a mechanism for “social dumping”, with service providers establishing themselves in Member States with less restrictive laws. This principle was not retained in the final version of the Directive, and laws regarding the health and safety and pay of temporary workers are covered by the Posting of Workers Directive, the provisions of which apply in cases where they clash with the Services Directive. Another related Directive, on the recognition of professional qualifications⁶⁵, governs the right of certain professionals, such as doctors and architects, to practice in other Member States. This Directive retains a country of origin principle.

Many people were critical of the Directive at the time of its negotiation. During the referendum in France on the proposed Constitutional Treaty, a prominent line of argument used by the “no” campaign rested on fears of the “Polish plumber” undercutting local service providers.

44. Professor Monti cited the reception of the Services Directive as evidence of integration fatigue, saying it was “very troublesome in terms of consensus and falling short of the ambition that many had about it”.⁶⁶ However, in response to a more general suggestion that negative perceptions of the Directive had dampened enthusiasm for further Single Market measures, the

⁶² This Committee has produced several reports on the Services Directive and related matters: *Services of General Interest*, 29th Report of 2003–04, HL Paper 178; *Completing the Internal Market in Services*, 6th Report 2005–06, HL Paper 23; *The Services Directive Revisited*, 38th Report of 2005–06, HL Paper 215.

⁶³ The UK Point of Single Contact may be found at <http://www.ukwelcomes.businesslink.gov.uk>

⁶⁴ *Completing the Internal Market in Services*, 6th Report 2005–06, HL Paper 23

⁶⁵ Directive 2005/36/EC, OJ L255 (30 September 2005) p 22

⁶⁶ Q 1

Commission stated: “our assessment is that Member States have generally been extremely committed to the implementation of the Directive and have in many cases embarked on ambitious reforms of their regulatory framework in order to cut red tape, modernise public administration and boost the service economy.”⁶⁷

45. Lord Liddle argued that the Directive had been wrong in conception. Because it had attempted to set very general principles to liberalise the trade in services, “in the European Parliament it set every possible hare running about the dangers of service liberalisation and, particularly, a lot of arguments about liberalisation in public services”.⁶⁸ He went on to argue that liberalisation of business services, as proposed in *Towards a Single Market Act*, would be an area of great economic gain, without the contentious nature of the general Services Directive.
46. Malcolm Harbour described the Directive as “the most ambitious and wide-ranging programme Member States had ever undertaken to remove discriminatory legislation against service providers”.⁶⁹ He suggested that the debate in Europe was “that the new Member States, whatever the political persuasion of their governments, were extremely enthusiastic about it. Spain was also a very strong supporter of the Single Market, so I do not think it is an Anglo-Saxon issue at all. If anything, I think the principal problems and some of the challenges for us in trying to reach an acceptable compromise on the Services Directive were related particularly to France and Germany.”⁷⁰
47. The BCC was also supportive, welcoming the progress that has already been made with initiatives such as the rollout of Points of Single Contact, but stating that more needed to be done to ensure that they were all fully functioning. It also called for the launch of a targeted information campaign to boost awareness of the Directive and its benefits among businesses across the EU.⁷¹
48. The implementation of the Services Directive was criticised by a number of witnesses. Louis Grech told us there “has been a lot of lethargy and fragmentation within the Commission, and I think most Member States are not exactly on an even keel as to how it is being implemented ... whether through voluntary reluctance or not, it is not being implemented.”⁷² However, Malcolm Harbour was more sanguine, arguing that there had been substantial progress and that the Directive had “focused more attention on transposition than any other measure in recent times”⁷³
49. The Government were supportive of the Services Directive. The Minister told us that “the vast majority [of the UK’s output] is in services, and yet a lot of that is not traded. Within the wide definition of services, I think business-to-business services are something we will want to stress a great deal, making sure the existing Single Market agreements in this area, the Services Directive, are implemented more effectively”.⁷⁴

⁶⁷ EUSM 10

⁶⁸ Q 56

⁶⁹ Q 23

⁷⁰ Q 47

⁷¹ EUSM 9

⁷² Q 26

⁷³ Q 25

⁷⁴ Q 171

50. The Commission thought that its implementation had been “a mixed picture. It has not yet been fully implemented in all countries ... [but] some have done it properly and the signs are that we are gradually moving towards a leaner, more modern regulatory framework”.⁷⁵ A Communication following from the mutual evaluation of the Directive was published on 27 January 2011 and identifies several barriers which are still in place. It suggests that there is confusion as to the application of interacting laws regarding the provision of services (for instance, the Services Directive itself, the e-Commerce Directive and the Professional Qualifications Directive might affect a provider in a number of interacting ways), and that the situation regarding regulated activities is unclear. There are 800 regulated activities in the EU, ranging in different Member States from doctors and architects to photographers, barmen and chambermaids, though 25 per cent of them are regulated only in a single Member State. The Commission argues that this presents a barrier to service providers operating in other Member States.⁷⁶
51. With regard to implementation, a Presidency note to the Competitiveness Council of 10 December 2010⁷⁷ said that two Member States (Austria and Luxembourg) had yet to adopt legislation implementing the Directive. 19 Member States had indicated that they had completed relevant changes to specific legislation (seven only since May 2010, including the UK), and “first generation” Points of Single Contact (PSCs) had been established in 22 Member States, 17 of which allowed for online completion of procedures. The Commission intends to engage with Member States where there are strong indications of poor implementation in 2011, and will consider formal enforcement measures where necessary. Later in the year it will also carry out the first economic assessment of the Directive.
52. In addition, the Commission intends to carry out a “performance check” of the Single Market, in which it will perform case studies examining the impact of the Services Directive, the Professional Qualifications Directive, the e-Commerce Directive, and other legislation relating to business-to-business or business-to-consumer transactions. These are intended to assess how different pieces of EU legislation are applied and how they work on the ground.
53. **We note that the Services Directive contains a “Monti Clause”, and that the “country of origin principle”, which we strongly supported at the time, was removed from the final draft.**
54. **We welcome the progress that has been made with the implementation of the Services Directive, but it is not complete, and more must be done as a matter of urgency.**
55. **We welcome the work that has already been done on establishing Points of Single Contact. They are an important facility for businesses wishing to trade across borders.**

⁷⁵ Q 147

⁷⁶ *Towards a better functioning Single Market for services—building on the results of the mutual evaluation process of the Services Directive*, COM (2011) 20 final, 27 January 2011

⁷⁷ Council Document No. 17470/10—available on the Commission website:

http://ec.europa.eu/internal_market/services/docs/services-dir/implementation/20101206_council_note_en.pdf

56. **We welcome the Commission’s proposals to ensure adequate implementation of the Services Directive, in the light of the recent mutual evaluation process.**
57. **We welcome the proposed “performance checks” of Single Market legislation. It is too soon to determine how well they will work, but we look forward to seeing the results.**

Tax harmonisation vs. coordination vs. status quo

58. Within the EU, calls for the harmonisation of tax rates have been made from time to time. This could involve each Member State adopting and applying common rates of corporation tax to companies so as to equalise competition between them in terms of attracting inward investment. The matter recently arose because of the perceived unfairness of the low corporation tax rate (12.5 per cent) in the Republic of Ireland.
59. Although the Monti Report suggests that tax coordination might form part of a “package deal” between Anglo-Saxon and social market Member States, it explicitly rejects any move towards tax harmonisation on practical and political grounds. Nor is such a proposal contained in *Towards a Single Market Act*. However, both documents do make reference to a proposal for greater tax coordination in the form of a proposed Common Consolidated Corporate Tax Base (CCCTB), which concerns the basis on which corporation tax is levied in each Member State. This involves the removal of tax obstacles experienced by companies operating on a cross-border basis to reduce their compliance and administrative costs by providing them with the option of computing their group taxable income according to one set of rules. Member States would retain sovereignty over tax revenues and would continue to set their own tax rates. This proposal was first raised by the Commission in 2001 but was never adopted due to opposition from some Member States. Any tax proposals brought forward by the Commission must receive unanimous backing in the Council.
60. Professor Monti argued that tax coordination, as well as reducing burdens on businesses, could preserve the tax sovereignty of Member States. He argued that tax competition favoured more mobile tax bases, such as capital, and so Member States had to place the burden of taxation on less mobile bases, such as labour⁷⁸. Professor Monti reminded us that the UK had in the past been flexible in its approach to this issue; he cited the previous Government’s work on the Code of Conduct on Corporate Taxation.⁷⁹
61. There was no consensus on this point among our witnesses. The CBI stated that “EU-level harmonisation, particularly the creation of a CCCTB, is therefore not considered the best way of dealing with cross-border issues. The CBI instead supports greater international coordination to reduce compliance costs and double taxation, which will allow companies to optimise intra and extra-trade”.⁸⁰ The BCC told us that its members were “agnostic” about the proposal, and that it was not a priority.⁸¹ Lord Liddle considered that in areas such as financial services it did not make sense for

⁷⁸ Q 5

⁷⁹ Q 5

⁸⁰ EUSM 2

⁸¹ Q 103

the UK to impose a tax where it was not being done Europe-wide. He argued that “if it’s done on a European basis, you have some negotiating position with the Americans.”⁸²

62. The Commission said that the business community had told them tax coordination would make life easier, the advantage being that they would “know in advance on what basis they would be paying tax across borders without having to take 27 different sets of expensive legal advice”.⁸³
63. The Government recognised that there were some areas where informal tax coordination between Member States might be beneficial but stressed that they were committed to ensuring that any action at EU level in this respect had a clear Single Market justification, as well as being consistent with Member States’ tax sovereignty and the principle of subsidiarity⁸⁴. The Minister said that “the proposals in the Single Market Act in this area are at the moment relatively vague, and we approach them with a very cautious manner, particularly I think the proposals on corporation tax and on carbon tax”⁸⁵.
64. **The case for tax harmonisation measures has not been made and we recognise that no such proposal was contained in either the Monti Report or *Towards a Single Market Act*. There is merit in considering a limited degree of tax coordination and the Government should approach the forthcoming Commission proposal on CCCTB with an open mind, while remaining vigilant to any threat to the United Kingdom’s tax sovereignty. We note, however, that there is a difference between taxes intended to change behaviour, such as a carbon tax, and those designed purely to raise revenue. We would urge the Government to be alive to this distinction.**

A role for the EU or Member States?

65. The role to be taken by the EU in social affairs is, like all other EU action in areas of shared competence, subject to the principle of subsidiarity. The EU should act in preference to Member States only where there is added value in its doing so. Jonathan Faull emphasised that the EU had a role to play: it had been “the business of the European Union for many, many years ... to develop, side by side, the employment and the social policy side of public policy, as well as competition, trade and other Single Market policies”⁸⁶ and that Member States themselves typically pursued such an approach.
66. Many witnesses argued that welfare state and labour market issues were essentially national responsibilities, and that the EU’s role in this area was therefore difficult⁸⁷. Under the Lisbon Agenda, and its successor, the Europe 2020 Strategy, Member States were required to compare their progress against a set of common guidelines, through a system known as the “open method of coordination”. Lord Liddle argued that this had limitations,

⁸² Q 74

⁸³ Q 155

⁸⁴ EUSM 7

⁸⁵ Q 184

⁸⁶ Q 152

⁸⁷ Lord Liddle, Q 61; ECR, EUSM 5; and the Government, EUSM 7

although it influenced the “climate of intellectual and policy opinion”⁸⁸. He argued in favour of payments being made under the EU budget as a reward for reform in line with the goals of the Strategy, but acknowledged that this was politically unpalatable in many areas.

67. The Government stated that it was not within the EU’s competence to define Member States’ social policy and welfare systems, and that it should instead recognise their diversity⁸⁹. Furthermore, they contended 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.”⁹⁰
68. **While we believe that there is a role for the EU to play in developing the social dimension of the Single Market, this area should be primarily a matter for the Member States, in accordance with the principle of subsidiarity and respecting the division of competence between Member States and the EU. The Single Market should not be used as an easy justification to extend competence or override the subsidiarity principle.**
69. **However, there are cross-border social issues of direct relevance to the Single Market, for instance the issues of posted workers in order to ensure minimum standards. In such cases, EU action is to be welcomed where undesirable social effects are clearly related to or caused by the liberalising legislation, and EU action is the most effective means of addressing those effects.**

⁸⁸ Q 61

⁸⁹ EUSM 7

⁹⁰ EUSM 7

CHAPTER 4: COMPLETION OF THE DIGITAL SINGLE MARKET

70. The Digital Agenda for Europe (DAE), one of the seven flagship initiatives of the Europe 2020 Strategy, intends to deliver economic growth and social benefits through the completion of the digital Single Market. This will involve greater use of Information and Communications Technology (ICT) including more and faster broadband availability, a greater emphasis on research and innovation, interoperable applications, increased digital literacy and enhanced security.
71. The Monti Report argued that regulatory and social factors had hampered the development of a digital Single Market, and that Europe was lagging behind competitors such as the United States. It quoted research which suggested that the EU could increase GDP by 4 per cent by 2020 due to the fast development of a digital Single Market.⁹¹ Professor Monti highlighted five problems: the fragmentation of online markets, inadequate intellectual property legislation, the lack of trust and interoperability, the lack of high-speed infrastructure and the lack of digital skills.⁹²

BOX 6

Digital Agenda for Europe and Towards a Single Market Act

The following proposals first appeared in the Digital Agenda for Europe, and were subsequently included in Towards a Single Market Act:

- Framework Directive on the management of copyrights;
- Development of electronic commerce in the internal market, concentrating in particular on problems faced by consumers in the digital economy; Communication on e-Commerce;
- Legislative reform of the standardisation framework;
- Decision on the mutual recognition of e-Identification and e-Authentication, and revision of the Directive on e-Signatures;
- Decision establishing a European Radio Spectrum Policy Programme;
- Initiative on the use of alternative dispute resolution to deal with cross-border consumer disputes, and a proposal for a European system for the settlement of online disputes for digital transactions.

72. The evidence we received unanimously stressed the importance of the further development of the digital aspect of the Single Market. According to Malcolm Harbour, the “digital Single Market is the Single Market, because if you now look at every single business that accesses the Single Market one of its strong components will be the internet or an electronic-based offering.”⁹³ The CBI stated that “the creation of a Digital Single Market is central to the UK and Europe’s future economic success.”⁹⁴

⁹¹ Copenhagen Economics, *The Economic Impact of a European Digital Single Market*, Final Report, March 2010

⁹² The Monti Report, pp. 44–46

⁹³ Q 31

⁹⁴ EUSM 2

73. **We strongly endorse the Commission’s Digital Agenda for Europe. The digital Single Market is a priority area for the EU. It cannot be considered in isolation as all businesses within the Single Market now rely upon the internet to some degree in order to do business. The digital Single Market should therefore be “mainstreamed” through all aspects of the Single Market.**

Broadband access and spectrum availability and new technology

74. Microsoft considered that new technologies such as cloud computing⁹⁵ could provide significant economic and social opportunities for governments, business and citizens, but that the key bottleneck for the deployment of wireless technologies was the lack of available unlicensed spectrum.⁹⁶ The Commission warned of technical and legal challenges emanating from the development of cloud computing, arguing that “many of the public policy issues, such as privacy, access and copyright protection are similar to internet policy issues at large, but given the fact that the cloud is inherently global, policy solutions must be cross-jurisdictional.”⁹⁷ They argued that more research was required in this area in order to assess the implications of future EU measures.
75. The Commission has been active in addressing the issue of broadband provision through its Broadband Package.⁹⁸ The Broadband Communication sets targets based on the Digital Agenda for Europe for the roll-out of broadband to European citizens, aiming for speeds of 30 Mbps for all, and 100 Mbps for 50 per cent of the population by 2020. The Radio Spectrum Policy Programme aims to set the principles which should determine the use of spectrum, thus enabling a more efficient uptake of the wireless internet. This draft Decision is expected to receive political agreement in the middle of this year. Ofcom believes that the approach adopted by the Commission is the correct one⁹⁹.
76. **We welcome the Commission’s Broadband Package. Member States should support the Commission’s work in this area. It is particularly important that there is adequate spectrum for emerging technologies, and that as many users as possible are encouraged and able to access the internet.**
77. **We recognise the potentially significant contribution which cloud computing is bringing, and will in the future bring, to the Single Market and call on the Commission to adopt early initiatives—taking full account of potential technological developments—in this area in order to reap the full benefits of such technology once it becomes**

⁹⁵ Cloud computing relates to the provision of ICT services via the internet. Users can access storage, computing power or software as needed rather than investing in fixed infrastructure. An analogy is often made between cloud computing and the provision of utilities such as gas and electricity via transmission networks and grids.

⁹⁶ EUSM 1

⁹⁷ EUSM 11

⁹⁸ The Package was published on 20 September 2010 and included: *Communication on European Broadband: investing in digitally driven growth*, COM (2010) 472 final; *Proposal for a Decision of the European Parliament and of the Council establishing the first radio spectrum policy programme*, COM (2010) 471 final; and *Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA)*, SEC (2010) 1037 final.

⁹⁹ EUSM 6

more developed. We note that cloud computing raises important legal and regulatory difficulties which the Commission should address at the earliest opportunity.

Review of the e-Commerce Directive

78. The Digital Agenda for Europe included plans for a review of the e-Commerce Directive. This has not been followed up in *Towards a Single Market Act*, which merely proposes a Communication in the area.

BOX 7

e-Commerce Directive

The e-Commerce Directive¹⁰⁰ was adopted in 2000 and became law in the UK in 2002. The Directive established an internal market framework to provide legal certainty for consumers and businesses. It provided harmonised rules on transparency and information requirements for service providers, and limited the liability of intermediary service providers (providing, for instance, access to the internet). The Directive covers services such as online information (e.g. online newspapers), online selling of products and services (e.g. books, financial services and travel services), online advertising, professional services (lawyers, doctors, estate agents), entertainment services and basic intermediary services (access to the Internet and transmission and hosting of information).

In the DAE, the Commission identified a number of problems in the way the e-Commerce currently operates. For instance, it stated that online markets in the EU were fragmented; consumers and businesses had difficulty accessing online shops and services in other EU countries; some providers did not accept bank cards issued by other EU countries; and many providers did not deliver goods or services across the EU.

The Commission launched a consultation¹⁰¹ on the e-Commerce Directive in August 2010, with a view to preparing a review of the Directive in 2011.

79. The Monti Report contained proposals to end the fragmentation of consumer rules regarding delivery, warranty and dispute resolution, and suggested a simplification of the business environment with regard to VAT rules, recycling requirements for used electronic equipment, and copyright. Professor Monti told us that 60 per cent of cross-border internet transactions failed and that, apart from the effect this had on trade in general, it was particularly damaging to the reputation of the Single Market amongst the young: “If they hear that there should be a Single Market and they are unable to use it in their daily or nightly life at the computer then this discredits Europe very much.”¹⁰²
80. *Towards a Single Market Act* builds on this analysis, and identifies as particular obstacles a lack of consumer confidence, because of different contract law and consumer protection rules applying in each Member State, and varying intellectual property rights, meaning that there is no such thing as a pan-European service selling music digitally on the internet.¹⁰³ The

¹⁰⁰ Directive 2000/31/EC, OJ L178 (17 July 2000) p 1

¹⁰¹ See http://ec.europa.eu/internal_market/consultations/2010/e-commerce_en.htm

¹⁰² Q 19

¹⁰³ *Towards a Single Market Act*, Proposal No 5

Commission's Information Society Directorate argued that the market for online music was fragmented due to diverging national implementations of the Copyright Directive and the exclusive rights of authors, and suggested that the difficulty of obtaining legitimate digital content was a driver for the illegal market.¹⁰⁴

81. Several witnesses noted that the main companies operating digitally in Europe were of American origin, and that European companies seemed unable to compete. Jonathan Faull suggested the digital market at present was similar to the car market in the 1960s, where “the only car companies operating multinationally across Europe were Ford and General Motors. It was only after we had taken down, through long years of concerted effort, barriers to trade in cars between Member States that we ended up with a Single Market for the supply of cars and all that goes with them, and, by the way, good competitive European car companies capable of competing across the world as well.”¹⁰⁵
82. The BCC argued that the e-Commerce Directive should be reviewed as soon as possible, and was disappointed by the commitment in *Towards a Single Market Act* to produce only a general Communication about e-Commerce rather than the review suggested in the DAE. It described the current Directive as “woefully out of date”¹⁰⁶ and also argued that the e-Signature Directive needed to be reviewed as Member States were developing different kinds of electronic signatures which would not necessarily be compatible with each other.
83. **It is more than ten years since the adoption of the e-Commerce Directive, and the time is now right for its review. It is particularly worrying that so many cross-border electronic transactions fail, and we therefore believe that the review of the e-Commerce Directive should be expedited. The Commission's proposals for further work on e-Signatures and e-Authentication are to be welcomed in the context of providing a coherent platform for digital trade and as supporting measures to the e-Commerce Directive.**
84. **The fragmentation of intellectual property regimes across Europe presents a barrier to a true Single Market in online goods. We therefore welcome the inclusion in *Towards a Single Market Act* and the Digital Agenda for Europe of plans to improve the handling of copyright, though we note that this is a complex area which may be difficult to resolve.**

e-Procurement

85. The Commission recently issued a Green Paper on e-Procurement¹⁰⁷. No plans specifically on e-Procurement were included in *Towards a Single Market Act*, but the document noted that a robust e-Signatures regime would be needed to underpin such activity. Public procurement accounts for 17 per cent of the EU's GDP, but the Commission reports that cross-border procurement accounted for only 1.5 per cent of public contracts awarded in

¹⁰⁴ EUSM 11

¹⁰⁵ Q 164

¹⁰⁶ Q 99

¹⁰⁷ *Green Paper on expanding the use of e-Procurement in the EU*, COM (2010) 571 final, 18 October 2010

2009.¹⁰⁸ Malcolm Harbour argued that “the Single Market for public procurement is ... the most unexploited area of Single Market activity, not just because an insufficient number of public contracts are being advertised in the whole Single Market system but also because it is an underused tool to encourage innovative companies.”¹⁰⁹ He also argued that the bureaucracy concerning tendering was a barrier to small companies entering bidding for public procurement contracts.¹¹⁰ On the other hand, the BCC told us that SMEs accounted for 43 per cent of the public procurement market in the EU, compared to 23 per cent in the United States.¹¹¹

86. The Commission stated that more needed to be done to encourage Member States to open up their procurement markets across the EU. It identified three particular problems with the EU procurement regime: the rules were often not applied properly, particularly at a local level; there were wide-ranging exceptions; and they were complicated and difficult to apply.¹¹² It also argued that electronic methods were likely to help open the market, as it was easier to reach a diverse range of providers via the internet, and, additionally, that it believed e-Procurement would reduce administrative transaction costs by 15–18 per cent.¹¹³
87. **Public procurement represents a large proportion of the EU’s GDP and is therefore an important tool for driving the completion of the Single Market. This is an area where Member States can take the lead in ensuring that procurement rules are applied properly and to the benefit of the Single Market. e-Procurement has great potential to reduce administrative burdens and to open the market to SMEs, and we hope the Commission will place greater emphasis on the area.**

Improving consumer confidence

88. A consistent explanation for the lack of cross-border online trade in the EU was a lack of consumer confidence. Jonathan Faull suggested that the problem was part regulatory and part cultural. He described a “moment of hesitation” by consumers before they pressed the button to buy something from a foreign supplier, but noted that this hesitation also affected the suppliers themselves.¹¹⁴ He ascribed the problem with consumer confidence to concerns about what would happen if a purchase went wrong: “Can you use the rights of the courts in the country where you sat at your computer or do you have to go through the courts and the legal system of the foreign country in which the service was provided or even perhaps where the website was located?”¹¹⁵
89. As noted in Box 6 above, the Commission has included plans for enhancing alternative dispute resolution and for the settlement of online digital disputes in both the DAE and *Towards a Single Market Act*. There is no mention of the

¹⁰⁸ Towards a Single Market Act, p 15

¹⁰⁹ Q 28

¹¹⁰ Q 34

¹¹¹ Q 127

¹¹² Q 162

¹¹³ Q 161

¹¹⁴ Q 164

¹¹⁵ Q 165

current review of the Consumer Rights Directive in *Towards a Single Market Act*, and this was particularly regretted by the BCC.¹¹⁶ There are currently no plans to include the sale of digital goods within the Consumer Rights Directive. In recent evidence to our Sub-Committee on Social Policies and Consumer Protection, Ed Davey touched upon some of the issues involved, arguing that the concept of ownership of digital goods was fundamentally different from material goods, that trader liability in respect of faulty goods, for instance early issues of new software, would need to operate differently from the equivalent regime for material goods, and that the inclusion of such a concept might hamper innovation.¹¹⁷

90. The DAE includes plans for a Code of EU Online Rights by 2012. This Code would summarise the existing rights of digital users. A public consultation is planned for 2011 and a Communication for 2012.
91. **Consumer confidence is vital for the development of a digital Single Market. We have not considered the Consumer Rights Directive in detail during this inquiry but the exclusion of digital goods seems to be a mistake, as we have previously argued. We look forward to following the progress of negotiations on the Directive.**
92. **We welcome the production of a Code of EU Online Rights as a positive step to increasing consumer confidence. It is too early to assess its potential but we look forward to seeing the Commission's plans as they develop. We urge the Commission to produce its Communication as soon as possible.**

¹¹⁶ Q 99

¹¹⁷ EU Sub-Committee on Social Policies and Consumer Protection, one-off evidence session on the Consumer Rights Directive, 27 January 2011, Q 8. In 2009, this Committee published a report, *The Consumer Rights Directive: getting it right*, 18th Report 2008–09, HL Paper 126, which supported the inclusion of digital goods within the scope of the Directive (para 104).

CHAPTER 5: ENFORCEMENT AND IMPLEMENTATION

Competition and State Aid

93. In order to support the development of the Single Market, the Commission operates a dedicated competition policy which includes policing the market, the application of antitrust rules, the control of state aids and the liberalisation of regulated industries. It can impose fines on enterprises: the €497m fine levied on Microsoft for not sharing information about its Windows operating system with its competitors was one of the most visible in recent years.
94. The Commission's state aid powers were frequently deployed during the financial crisis, particularly in the banking sector, as Member States sought derogations from state aid rules when "bailing out" national banks. Lord Liddle told us that although the provision of state aid increased significantly in 2009, the Commission had not made many concessions to national protectionism, and on the whole the Single Market had held together reasonably well.¹¹⁸ Jonathan Faull stated that the Commission had been pleasantly surprised at how well the Single Market had weathered the storm in this respect.¹¹⁹ Professor Monti suggests that the Commission's state aid powers need to be modernised and strengthened¹²⁰ and the BCC also considered that the Commission should have greater enforcement powers.¹²¹ Jonathan Faull noted that the basic competition rules had remained largely unchanged since the creation of the EEC and considered that they had stood the test of time. He therefore saw no need for changes to the enforcement rules and instead suggested that a strong political will as well as a commitment to enforce these rules properly across the EU was instead required.¹²² The Minister broadly agreed with the Commission's position in this regard.¹²³
95. **We agree that the European Commission's existing enforcement powers regarding competition and state aids continue to be sufficient and that no fundamental review is necessary at this stage provided that they are applied robustly.**

Reinforcing enforcement

96. Ultimately, the Commission can also pursue infringement proceedings before the Court of Justice if a Member State is in breach of its Treaty obligations.

¹¹⁸ Q 53

¹¹⁹ Q 142

¹²⁰ Monti Report, pp. 95–98

¹²¹ Q 90

¹²² QQ 148 & 149

¹²³ Q 176

BOX 8**Infringement procedure**

As the guardian of the Treaties, the Commission is responsible for ensuring that EU law is correctly applied. Under Article 258, TFEU it may commence infringement proceedings against a Member State that it considers has failed to fulfil an obligation under the Treaties.

Anyone may lodge a complaint with the Commission against a Member State regarding any national measure which they consider incompatible with EU law. Once such a complaint is received, and if the Commission decides to pursue it, the Member State concerned may present its views regarding the complaint and the Commission's initial legal assessment, through a response to their "letter of formal notice". If no reply to the letter of formal notice is received, or the Member State's observations are considered unsatisfactory, the Commission will issue a "reasoned opinion" to the Member State. This expresses the Commission's view that an infringement exists, alongside a request that the Member State remedy the situation within a stated time.

If no reply, or an unsatisfactory one, is received from the Member State, the Commission will normally refer the case to the Court of Justice. The Court's ruling will have no impact on the rights of the complainant, since its role is not to resolve individual cases but to oblige the Member State to comply with EU law. As a result, individual claims for damages have to be brought before the national courts.

Nothing prevents the Commission from negotiating with the Member State at any stage during the procedure in order to reach a satisfactory resolution. Many infringement cases are resolved without proceedings in the Court.

97. The Monti Report discusses the importance of "reinforcing enforcement" and suggests that in the long term there is a need for a "more coherent enforcement system in which infringement procedures, informal problem solving mechanisms and private enforcement through national courts form a seamless web of remedies against breaches of EU law."¹²⁴ However, in the short term, it calls on the Commission to use its existing infringement powers with increased determination and to set maximum limits for the duration of infringement procedures. There were 1206 cases open at the end of 2009 and one out of five cases takes more than three years before being resolved or brought before the Court of Justice.¹²⁵ Professor Monti suggests a limit of six months for the non-notification of transposition measures and 12 months for the Commission to complete all other infringement procedures. He further suggests that the Commission should consider aligning its infringement powers with those it currently has under competition policy.¹²⁶ Some of our witnesses¹²⁷ spoke of the need to speed up infringement procedures and Jonathan Faull conceded that delays in infringement procedures were a challenge that was yet to be addressed.¹²⁸

¹²⁴ Monti Report, p. 97

¹²⁵ Our forthcoming report *The Workload of the Court of Justice of the European Union*, 14th Report, HL Paper 128, discusses delays in the process once it reaches the Court.

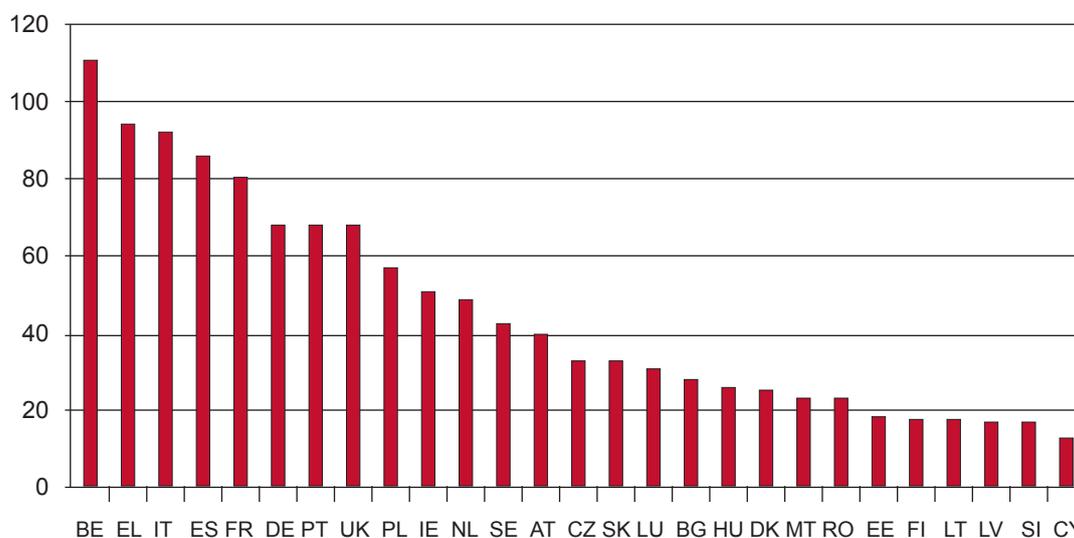
¹²⁶ Monti Report, pp. 95–98

¹²⁷ Including the BCC, EUSM 9

¹²⁸ QQ 148 & 149

FIGURE 1

Number of pending infringement proceedings against each Member State as of 10 May 2010



Source: *Internal Market Scoreboard (May) 2010 No 21, Commission*

98. **We believe that the Commission and the Member States should use their existing infringement powers more rigorously as these will continue to be crucial in supporting the further development of the Single Market. We strongly endorse the Monti Report’s recommendation that time limits should be adopted for infringement procedures.**

The role of SOLVIT and EU Pilot

99. As an alternative to the use of formal infringement procedures, the Commission has developed alternative dispute resolution mechanisms called SOLVIT and EU Pilot. Many witnesses agreed these should be developed and strengthened as a means of improving enforcement. The Government stated that “the European Commission should log more systematically and effectively the evidence of trade barriers reported by businesses, especially SMEs, through services like SOLVIT, teams like BIS’s EU Market Access Unit and business organisations. This evidence could be fed into the Commission’s enforcement work and taken into account in future policy formation”.¹²⁹

BOX 9

SOLVIT & EU Pilot

SOLVIT has been operating since July 2002 and is an online network which allows Member States to work together to solve, without recourse to legal action, problems caused by the misapplication of Single Market law by public authorities. There is a SOLVIT centre in each of the 30 EEA Member States, which can receive complaints from business and citizens. The service is free of charge and aims to solve problems within ten weeks. The Commission coordinates the network, provides additional facilities and support and refers any formal complaints it receives directly into SOLVIT. By way of an example, a British manufacturer of marine radio equipment was required to retest its products in Germany by the German authorities when they had already been tested and placed on the market in another Member State.

¹²⁹ EUSM 7

SOLVIT's intervention ensured that the products could be sold in Germany without any retesting. In 2010 SOLVIT helped 1,363 citizens and businesses who had reported problems—with an average resolution rate of above 90 per cent.¹³⁰

The EU Pilot scheme was launched by the Commission in April 2008. It is designed to improve communication and cooperation between the Commission and Member State authorities on issues concerning the application of EU law in order to correct breaches at an early stage and to avoid opening infringement procedures. Any enquiries or complaints received from businesses and citizens are initially considered by the Commission before they are forwarded to the Member State authority concerned with any questions or directions that are considered necessary. Responses are generally provided by the Commission to the business or citizen concerned within a 10-week deadline. The system is currently operating in 15 Member States, including the UK. By way of an example, after receiving a number of complaints about delays in the United Kingdom on issuing residence documents for EU citizens and their family members (to which they are entitled under EU law), the Commission contacted the UK Border Agency (UKBA) through the EU Pilot to seek a solution. The UKBA conceded that there was a problem and assured the Commission that action was being taken to issuing the documents on time in future. The complainants' situation was corrected and similar problems have been prevented from recurring.

100. The Monti Report recommends that the EU Pilot scheme should be extended to all 27 Member States and that SOLVIT should be strengthened by ensuring co-funding from the EU as well as providing it with a clearer legal basis.¹³¹ Towards a Single Market Act commits the Commission to consolidating and reinforcing the EU Pilot project and the SOLVIT network, with specific proposals concerning SOLVIT's mandate to be published in 2011. In the longer term, closer ties between the two systems will be developed. The Commission has already launched an initiative to extend the coverage of the EU Pilot from 24 to 27 Member States.¹³²
101. **We consider that informal systems such as SOLVIT and EU Pilot are beneficial as methods of alternative dispute resolution and that the strengthening of both should be prioritised in the Single Market Act.**

Internal Market Scoreboard

102. A number of other tools have been developed which rely upon publicity and peer pressure to bring pressure on Member States which have not implemented Single Market measures appropriately. The Commission has published regular Internal Market Scoreboards since 1997, which are designed to name and shame Member States with poor transposition records in order to reduce their “transposition deficits”.¹³³
103. The Monti Report considers that this has proved to be very effective in ensuring transparency and applying peer pressure and recommends that it should be expanded. While the transposition deficit has come down, Professor Monti argues that “... closer analysis points to a compliance deficit which is as persistent as alarming. The Single Market remains highly

¹³⁰ *Development and Performance of the SOLVIT network in 2010 Report*, Commission DG Internal Market and Services, 21 February 2011. Available at: http://ec.europa.eu/solvit/site/docs/solvit_2010_report_en.pdf

¹³¹ Monti Report, pp. 100–102

¹³² Towards a Single Market Act, Proposal No 50

¹³³ The percentage of Single Market measures not yet introduced into national legislation by Member States.

fragmented ... This “regulatory patchwork” is a serious threat to the credibility and reputation of the Single Market.” It reports that, on average, Member States take an additional 9 months to adopt implementing legislation after the deadline expires and in some cases more than 2 years. Overall, 55 per cent of EU directives are not implemented by every Member State by the deadline. Even when Single Market rules are transposed on time and correctly, there are still problems with uneven implementation. Perhaps surprisingly, the worst offenders in terms of transposition delays and attracting the highest number of infringement procedures are the Member States belonging to the Eurozone rather than those outside.¹³⁴ The Commission acknowledges that the transposition deficit is still too high and requests that Member States reduce their transposition deficit to 0.5 per cent.¹³⁵

FIGURE 2
Transposition deficit of the Member States relative to the 1 per cent target as of 10 May 2010

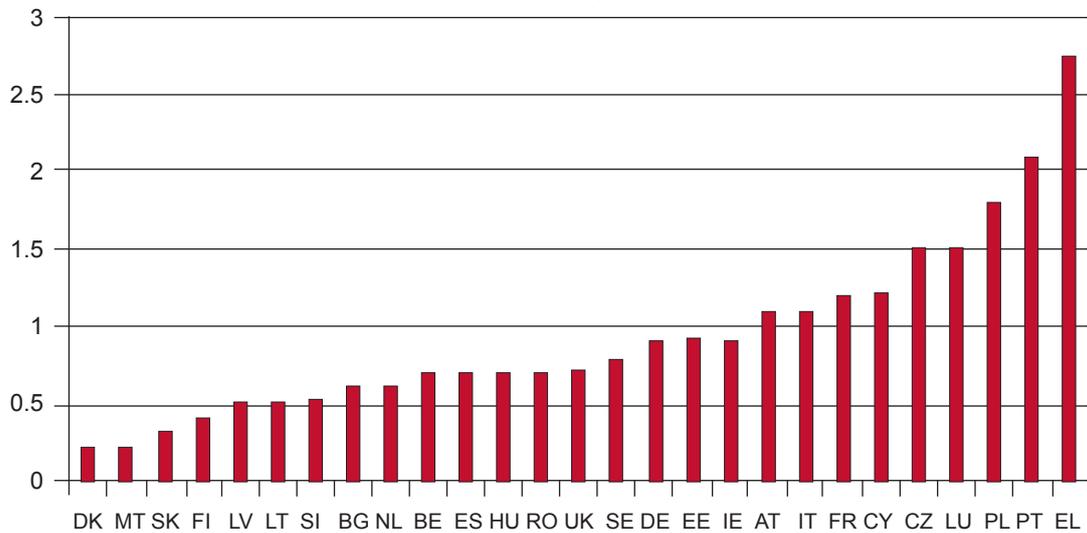
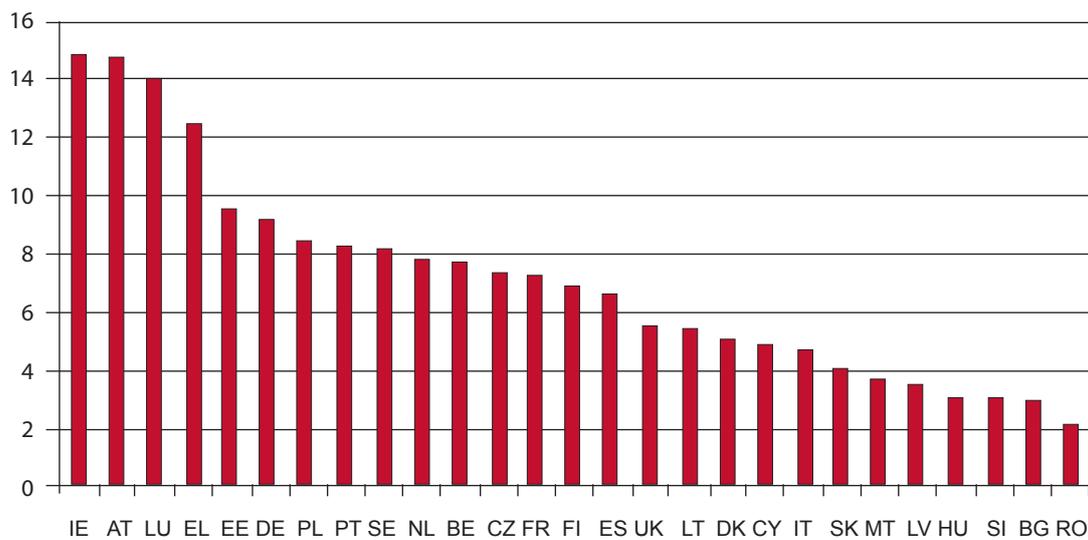


FIGURE 3
Average transposition delays in months for overdue Directives as of 10 May 2010



Source: Internal Market Scoreboard (May) 2010 No 21, Commission

¹³⁴ Monti Report, pp. 95–97.

¹³⁵ Towards a Single Market Act, Proposal No 47

104. The UK's transposition deficit is currently 0.7 per cent. However, this represented a continuous improvement on the two previous Scoreboard reports (in July and December 2009, respectively) and constituted their best ever result. The UK was also one of only five Member States which had managed to reduce their deficit in the last six-month period. In terms of transposition delays, the UK reduced their average to 5.1 months from 7 months in December 2009.
105. **Ongoing and vigilant monitoring of the Single Market is still required to ensure the correct and timely transposition and enforcement of Single Market measures. We note that there is still room for improvement in all Member States, including the UK, and endorse the Commission's call for the transposition deficit to be reduced to 0.5 per cent.**

Internal market information system (IMI) and mutual evaluation

106. The Services Directive made provision for the creation of an internal market information system and mutual evaluation to support the *ex-post* evaluation of the Directive. The Monti Report recommends that both the IMI and the mutual evaluation process should be extended to other areas of legislation. The BCC agrees with this recommendation.¹³⁶ Towards a Single Market Act suggests the Commission will present a strategy on the extension of the IMI to other legislative areas during 2011, as well as a draft Regulation to provide the system with a legal base, including data protection provisions.¹³⁷ The Commission published a Communication along these lines on 21 February 2011.¹³⁸ It also suggests that the Commission and the Member States might extend the application of the mutual evaluation process to other important Single Market legislation.¹³⁹

BOX 10

Internal Market Information System (IMI) & Mutual Evaluation

The IMI is a secure online application which allows national, regional and local authorities to communicate with their counterparts abroad to support administrative cooperation regarding Single Market legislation. It is available to public authorities in the 30 EEA countries in all EU languages. The IMI is currently being used to support the mutual assistance provisions of the revised Professional Qualifications Directive and the administrative cooperation provisions of the Services Directive. However, it is designed as a general system to support multiple areas of internal market legislation and its use is likely to be expanded to further legislative areas in due course.

During the three-year implementation period of the Services Directive, Member States were required to conduct a thorough analysis of their laws and regulations applicable to the services sector in order to ensure their compatibility with the provisions of the Directive, to be achieved through the modification or abolition of any offending rules. Since the beginning of 2010, the Commission and Member States have also engaged in a process of mutually evaluating a number of the

¹³⁶ Q 115

¹³⁷ Towards a Single Market Act, Proposal No 45

¹³⁸ *Better governance of the Single Market through greater administrative cooperation: A strategy for expanding and developing the Internal Market Information System ('IMI')*, COM (2011) 75 final

¹³⁹ Towards a Single Market Act, Proposal No 44

measures in those national evaluations. A concurrent consultation took place with relevant stakeholders about the process. The procedure is considered to be an innovative way of using peer pressure to improve implementation quality, facilitate the exchange of best practice and offer feedback to make adjustments to existing regulations. The Commission published a report in early 2011 detailing the results of the mutual evaluation process and the stakeholder consultation.¹⁴⁰

107. We believe that IMI and the mutual evaluation process are valuable tools and agree that their extension to other Single Market legislation would be beneficial and consider that the development of both should be prioritised in the Single Market Act.

Better and Smarter Regulation

108. The Monti Report recommends adopting a preventative approach by developing “enforcement-friendly” measures based upon impact assessments, as well as requiring Member States to produce correlation tables, which demonstrate the link between the provisions in Directives and national rules.¹⁴¹ It also urges Member States to refrain from “gold-plating” when transposing future Single Market measures.¹⁴² With regard to the suggestion that the UK Government were more inclined to do this than others, Karen Clements stated that the BCC had carried out a lot of work on gold-plating and they found no real evidence to suggest that this was the case. However, she considered that the publication of correlation tables should assist in ascertaining which Member States were doing so and whether this put them at a competitive disadvantage.¹⁴³
109. Following the previous Commission’s Better Regulation agenda,¹⁴⁴ which aimed to cut red tape, reduce administrative burdens and improve the legislative process by means of impact assessment, the present Commission published a Communication on Smart Regulation in October 2010,¹⁴⁵ which commits it to evaluating the impact of EU measures during the whole policy cycle—during their formulation, after they have been transposed and when they are revised.
110. The Commission considers that the production of transposition plans will help possible transposition difficulties to be identified at an early stage in the legislative process. In order to verify the conformity of national implementing measures with the Single Market measures adopted, systematic use will also be made of correlation tables, which should be accessible to citizens and

¹⁴⁰ *Towards a better functioning Single Market for services—building on the results of the mutual evaluation process of the Services Directive*, COM (2011) 20 final, 27 January 2011

¹⁴¹ Monti Report, pp. 98–100

¹⁴² Monti Report, p. 95. Gold-plating is the process by which Member States augment the content of Single Market measures with additional regulatory measures and requirements, which reflect domestic policy rather than the intention of the European legislation, when they transpose those measures into national law. The House of Lords Select Committee on the Merits of Statutory Instruments also considers any SIs implementing EU measures for evidence of gold-plating.

¹⁴³ QQ 115 & 117

¹⁴⁴ The Committee produced a report on this agenda: *Impact Assessments in the EU: Room for Improvement?*, 5th Report of Session 2009–10, HL Paper 61.

¹⁴⁵ *Smart Regulation in the European Union*, COM (2010) 543 final, 8 October 2010

businesses. They therefore undertake to produce both in *Towards a Single Market Act*.¹⁴⁶

111. Lord Liddle was sceptical about whether the various initiatives carried out by the Commission in this area had actually had a tangible or positive economic impact.¹⁴⁷ On the other hand, the BCC strongly supported the Commission's work, including the proposed "fitness check"—assessing a policy's regulatory framework to see if it is fit for purpose and identify any necessary changes—but cautioned that further burdens should not be added to businesses or to consumers as a result.¹⁴⁸ It also raised concerns that the "SME test"—a feature of the Better Regulation agenda which requires impact assessments to take account of a proposal's potential impact on SMEs—was being applied inconsistently. Lastly, it argued that the Commission should undertake systematic *ex-post* assessments of all business-related regulation using a standard methodology, as well as publishing correlation tables so that differences in implementation were exposed.¹⁴⁹ Malcolm Harbour and Louis Grech agreed and stressed that the Commission had to improve its "post-implementation audits."¹⁵⁰ The ECR called for the Commission to subject any future proposals for EU legislation to a "Single Market Test" to ensure that the measures would enhance the Single Market and could be properly enforced by all Member States.¹⁵¹
112. **We endorse the Commission's Better Regulation agenda and also welcome the substance of the Commission's Communication on Smart Regulation, which we believe has particular importance for the development of the Single Market. Methods of *ex-post* evaluation such as the production of correlation tables by Member States will be important methods of mitigating the risks of gold-plating.**

Regulations vs. Directives

113. The Monti Report states that the current *acquis* of Single Market measures includes 1521 Directives and 976 Regulations and that, currently, 80 per cent of the Single Market measures are set out through Directives.¹⁵² Professor Monti considered that there was a growing case for the greater use of Regulations as they would bring a greater degree of "clarity, predictability and effectiveness," as well as ensuring prompt entry into force and reduced transposition times, a level playing field and no possibility of gold-plating by Member States.¹⁵³ Malcolm Harbour and Louis Grech agreed with this approach.¹⁵⁴
114. However, while the BCC also agreed that such an approach would be beneficial in theory, it also suggested that it was, politically, unlikely to happen as it would take much longer to reach an acceptable compromise

¹⁴⁶ *Towards a Single Market Act*, Proposal No 47

¹⁴⁷ Q 62

¹⁴⁸ Q 116

¹⁴⁹ EUSM 9

¹⁵⁰ Q 40

¹⁵¹ EUSM 5

¹⁵² Regulations are directly applicable but Directives must be implemented by national legislation.

¹⁵³ Monti Report, pp. 93–95

¹⁵⁴ Q 44

among 27 Member States in the Council.¹⁵⁵ The Commission was cautious and stated that while there was a case to be made for the more widespread use of Regulations, because they would be immediately enforceable, Directives benefited from being more flexible, although they increased the risk of gold-plating and could be more time-consuming. It concluded that it was a “legal and political judgment” as to what was the best method in order to achieve results quickly across the EU.¹⁵⁶ On behalf of the Department for Business, Innovation and Skills, David Frost, their Director for Europe, Trade and International Affairs, did not state a preference and emphasised that the Government were more concerned about the proper implementation and enforcement of Single Market measures, whatever their legal form.¹⁵⁷

115. **With regard to future Single Market measures, we consider that the decision whether a Regulation or a Directive is used should be made on a case-by-case basis, where the type of instrument is not already determined by the Treaty base.**

¹⁵⁵ Q 121

¹⁵⁶ Q 150

¹⁵⁷ Q 177

CHAPTER 6: RE-LAUNCHING THE SINGLE MARKET

116. The publication of the Monti Report and the creation of a Single Market Act are evidence that the Commission is taking steps to re-launch the Single Market. Previous chapters have discussed specific ways in which the functioning of the Single Market could be improved. This chapter discusses more general measures which Member States and the EU Institutions could take to promote the Single Market.

The role of Member States

117. Louis Grech argued that governments tended to claim credit for policies which were progressing well, but that when something was wrong the same governments blamed the Single Market.¹⁵⁸ Malcolm Harbour told us that, in regard to the perception that companies were coming from other Member States to take jobs from local workers, governments “have [not] been very good at explaining why that is happening and how important it is.”¹⁵⁹ The BCC echoed this, telling us that governments “have got to stop using the EU as a scapegoat, and they’ve got to stand up for the decisions they take.”¹⁶⁰
118. Professor Monti suggested that the UK was affected by market or integration fatigue much less than most other Member States. However, he pointed to former Prime Minister Gordon Brown’s call for “British jobs for British workers” in 2007, and the later protests against foreign labour, for instance at the Lindsey Oil Refinery in Lincolnshire in 2009, as “unexpectedly strong having come within the context of the UK ... this is something that would have been definitely unexpected from the UK before the [financial] crisis.”¹⁶¹
119. Professor Monti has also argued that, due to the UK’s strong record of arguing for, and implementing, Single Market measures, the UK should be strongly involved with any re-launched commitment to achieving the Single Market. He suggested the UK should seek to pursue the argument in line with sympathetic Member States, and singled out Germany and Poland as likely allies.¹⁶²
120. The Government were non-committal. They stated that “the UK should lead by example—by cutting red tape, opening up new market opportunities and facilitating innovation” but also that it “should not be for the Government alone to try to generate the necessary momentum” in order to complete the Single Market.¹⁶³
121. We note that work appears to be taking place in this regard. On 18 March 2011, the Prime Minister, along with his counterparts from the Netherlands, Sweden, Denmark, Finland, Estonia, Poland, Lithuania and Latvia, issued a letter, *Getting Europe Growing*, to Presidents Barroso and Van Rompuy, in which they describe the Single Market as the “core foundation of the world’s largest economy”, and call for the proper implantation of the Services

¹⁵⁸ Q 32

¹⁵⁹ Q 32

¹⁶⁰ Q 109

¹⁶¹ Q 16

¹⁶² Q 17

¹⁶³ EUSM 7

Directive and the building of a “truly digital Single Market”. That letter is reproduced in full at Appendix 5.

122. **We believe that the UK should return to the position of strongly championing the Single Market and that the Government should actively promote the Single Market Act within the relevant Council configurations.**

Spreading the word

123. The BCC suggested that many UK businesses were still unaware of the opportunities available in the Single Market and argued that the solution was a targeted information campaign explaining the benefits of the Single Market to businesses across the EU,¹⁶⁴ which they explained had not occurred since 1992. It told us that there was a high degree of ignorance among the BCC’s members about the Enterprise Europe Network (EEN), which provides basic information on markets and legislation that applies in other EU Member States. This was “something [the BCC] have got to put right; that’s also something that the Commission has got to put right, and the Government has to take ownership of the EEN as well, since it actually puts money into it.” It also suggested that all the agencies operating in this area—Business Link, UKTI, EEN—should be brought together in the UK either physically or online and that the UK Point of Single Contact was a good platform on which to build.¹⁶⁵
124. Malcolm Harbour considered that the Single Market would work better if the quality of information available to consumers was improved, and he suggested the establishment of quality marks for service provision.¹⁶⁶ He also argued that Member States and the European Commission should help businesses to understand the level of information already there and how they could take advantage of it.¹⁶⁷ The Minister agreed: “we need to make sure that people know where to go to get that help, and particularly that it is geared and tailored to SMEs.”¹⁶⁸
125. **We believe that the Government should actively promote the benefits of the Single Market to UK business, especially to SMEs. This should involve a joined-up approach involving all relevant Government agencies and trade associations.**
126. **Information should be made available, in a straightforward format, to businesses and consumers on how best to take advantage of the Single Market. In this context, we again welcome the establishment of Points of Single Contact under the Services Directive, and conclude that such sources of business information should be more effectively promoted to make it easier for businesses considering trading across borders.**

¹⁶⁴ EUSM 9. This is also one of their “Eight Ways to Make the Single Market Work”.

¹⁶⁵ Q 126. Business Link is the Government’s website for businesses, which gathers together the different government information sources, including descriptions of the relevant regulations, as well as practical advice on various aspects of doing business, such as marketing; UK Trade and Investment (UKTI) reports to both BIS and the FCO, and aims to help UK companies seeking to invest abroad, as well as encouraging inward investment from foreign companies; The Enterprise Europe Network (EEN) is an EU organisation which brings together business support organisations from 47 countries in order to help small businesses take advantage of the EU Single Market.

¹⁶⁶ Q 47

¹⁶⁷ Q 27

¹⁶⁸ Q 196

CHAPTER 7: CONCLUSIONS AND RECOMMENDATIONS

Chapter 2: The Single Market

127. We agree that the Single Market has the potential to be of greater benefit to the businesses, citizens and consumers of the European Union if the remaining barriers and bottlenecks, which have been identified, are removed (paragraph 23).
128. We believe that the Monti Report and *Towards a Single Market Act* are both useful and timely documents which we hope will stimulate activity to realise and secure those benefits (paragraph 27).

Chapter 3: Social Europe

129. The relationship between the economic and social aspects of the EU is complex and politically charged. While the social aspect is important, we believe that it should not be seen as trade-off against market liberalisation. Any proposal on either aspect should be treated strictly on its merits. The case should be made separately for the economic benefits of the Single Market, especially given the urgent need for all Member States to stimulate growth in the aftermath of the financial crisis (paragraph 36).
130. We believe a more fruitful approach is that advocated by the European Parliament Committee on the Internal Market and Consumer Affairs, in regarding citizens simultaneously as entrepreneurs, workers and consumers, and therefore as beneficiaries of the Single Market. Member States and the European Institutions should make the case strongly that it presents an opportunity rather than a threat (paragraph 37).
131. We welcome the review of the Posting of Workers Directive as, in the wake of recent judgments of the Court of Justice, the intention behind the Directive needs further clarification (paragraph 42).
132. We note that the Services Directive contains a “Monti Clause”, and that the “country of origin principle”, which we strongly supported at the time, was removed from the final draft (paragraph 53).
133. We welcome the progress that has been made with the implementation of the Services Directive, but it is not complete, and more must be done as a matter of urgency (paragraph 54).
134. We welcome the work that has already been done on establishing Points of Single Contact. They are an important facility for businesses wishing to trade across borders (paragraph 55).
135. We welcome the Commission’s proposals to ensure adequate implementation of the Services Directive, in the light of the recent mutual evaluation services (paragraph 56).
136. We welcome the proposed “performance checks” of Single Market legislation. It is too soon to determine how well they will work, but we look forward to seeing the results (paragraph 57).
137. The case for tax harmonisation measures has not been made and we recognise that no such proposal was contained in either the Monti Report or *Towards a Single Market Act*. There is merit in considering a limited degree of tax coordination and the Government should approach the forthcoming

Commission proposal on CCCTB with an open mind, while remaining vigilant to any threat to the United Kingdom's tax sovereignty. We note, however, that there is a difference between taxes intended to change behaviour, such as a carbon tax, and those designed purely to raise revenue. We would urge the Government to be alive to this distinction (paragraph 64).

138. While we believe that there is a role for the EU to play in developing the social dimension of the Single Market, this area should be primarily a matter for the Member States, in accordance with the principle of subsidiarity and respecting the division of competence between Member States and the EU. The Single Market should not be used as an easy justification to extend competence or override the subsidiarity principle (paragraph 68).
139. However, there are cross-border social issues of direct relevance to the Single Market, for instance the issues of posted workers in order to ensure minimum standards. In such cases, EU action is to be welcomed where undesirable social effects are clearly related to or caused by the liberalising legislation, and EU action is the most effective means of addressing those effects (paragraph 69).

Chapter 4: Completion of the Digital Single Market

140. We strongly endorse the Commission's Digital Agenda for Europe. The digital Single Market is a priority area for the EU. It cannot be considered in isolation as all businesses within the Single Market now rely upon the internet to some degree in order to do business. The digital Single Market should therefore be "mainstreamed" through all aspects of the Single Market (paragraph 73).
141. We welcome the Commission's Broadband Package. Member States should support the Commission's work in this area. It is particularly important that there is adequate spectrum for emerging technologies, and that as many users as possible are encouraged and able to access the internet (paragraph 76).
142. We recognise the potentially significant contribution which cloud computing is bringing, and will in the future bring, to the Single Market and call on the Commission to adopt early initiatives—taking full account of potential technological developments—in this area in order to reap the full benefits of such technology once it becomes more developed. We note that cloud computing raises important legal and regulatory difficulties which the Commission should address at the earliest opportunity (paragraph 77).
143. It is more than ten years since the adoption of the e-Commerce Directive, and the time is now right for its review. It is particularly worrying that so many cross-border electronic transactions fail, and we therefore believe that the review of the e-Commerce Directive should be expedited. The Commission's proposals for further work on e-Signatures and e-Authentication are to be welcomed in the context of providing a coherent platform for digital trade and as supporting measures to the e-Commerce Directive (paragraph 83).
144. The fragmentation of intellectual property regimes across Europe presents a barrier to a true Single Market in online goods. We therefore welcome the inclusion in *Towards a Single Market Act* and the Digital Agenda for Europe of plans to improve the handling of copyright, though we note that this is a complex area which may be difficult to resolve (paragraph 84).

145. Public procurement represents a large proportion of the EU's GDP and is therefore an important tool for driving the completion of the Single Market. This is an area where Member States can take the lead in ensuring that procurement rules are applied properly and to the benefit of the Single Market. e-Procurement has great potential to reduce administrative burdens and to open the market to SMEs, and we hope the Commission will place greater emphasis on the area (paragraph 87).
146. Consumer confidence is vital for the development of a digital Single Market. We have not considered the Consumer Rights Directive in detail during this inquiry but the exclusion of digital goods seems to be a mistake, as we have previously argued. We look forward to following the progress of negotiations on the Directive (paragraph 91).
147. We welcome the production of a Code of EU Online Rights as a positive step to increasing consumer confidence. It is too early to assess its potential but we look forward to seeing the Commission's plans as they develop. We urge the Commission to produce its Communication as soon as possible (paragraph 92).

Chapter 5: Enforcement and Implementation

148. We agree that the European Commission's existing enforcement powers regarding competition and state aids continue to be sufficient and that no fundamental review is necessary at this stage provided that they are applied robustly (paragraph 95).
149. We believe that the Commission and the Member States should use their existing infringement powers more rigorously as these will continue to be crucial in supporting the further development of the Single Market. We strongly endorse the Monti Report's recommendation that time limits should be adopted for infringement procedures (paragraph 98).
150. We consider that informal systems such as SOLVIT and EU Pilot are beneficial as methods of alternative dispute resolution and that the strengthening of both should be prioritised in the Single Market Act (paragraph 101).
151. Ongoing and vigilant monitoring of the Single Market is still required to ensure the correct and timely transposition and enforcement of Single Market measures. We note that there is still room for improvement in all Member States, including the UK, and endorse the Commission's call for the transposition deficit to be reduced to 0.5 per cent (paragraph 105).
152. We believe that IMI and the mutual evaluation process are valuable tools and agree that their extension to other Single Market legislation would be beneficial and consider that the development of both should be prioritised in the Single Market Act (paragraph 107).
153. We endorse the Commission's Better Regulation agenda and also welcome the substance of the Commission's Communication on Smart Regulation, which we believe has particular importance for the development of the Single Market. Methods of *ex-post* evaluation such as the production of correlation tables by Member States will be important methods of mitigating the risks of gold-plating (paragraph 112).
154. With regard to future Single Market measures, we consider that the decision whether a Regulation or a Directive is used should be made on a case-by-

case basis, where the type of instrument is not already determined by the Treaty base (paragraph 115).

Chapter 6: Re-launching the Single Market

155. We believe that the UK should return to its position of strongly championing the Single Market and that the Government should actively promote the Single Market Act within the relevant Council configurations (paragraph 122).
156. We believe that the Government should actively promote the benefits of the Single Market to UK business, especially to SMEs. This should involve a joined-up approach involving all relevant Government agencies and trade associations (paragraph 125).
157. Information should be made available, in a straightforward format, to businesses and consumers on how best to take advantage of the Single Market. In this context, we again welcome the establishment of Points of Single Contact under the Services Directive, and conclude that such sources of business information should be more effectively promoted to make it easier for businesses considering trading across borders (paragraph 126).

APPENDIX 1: SUB-COMMITTEE B (INTERNAL MARKET)

The Members of the Sub-Committee which conducted this inquiry were:

Lord Bradshaw
 Lord Brooke of Alverthorpe (from 1 September 2010)
 Lord Clinton-Davis
 Lord Fearn
 Lord Haskel
 Lord James of Blackheath
 Baroness O’Cathain (*Chairman*)
 Lord Paul (until 1 September 2010)
 Lord Plumb
 Lord Rowe-Beddoe
 Lord Ryder of Wensum
 Baroness Valentine
 Lord Walpole

Declaration of Interests

Lord Bradshaw
Adviser, OXERA (economics consultancy)
President, Friends of the Ridgeway

Lord Clinton-Davis
Solicitor (non-practising and unremunerated)
President, BALPA; sometimes advice (unremunerated) is given on aviation-related issues

Lord James of Blackheath
Northern Flexihire and Rental Solutions Ltd (vehicle hire)
Chairman, Henleys Group plc
Chairman, Vidapulse Limited
Chairman, Demontford Holdings
Consultant, Cerberus Capital Management LP (New York)
David James Music Charitable Trust
Chairman, Amberley Football Club

Lord Paul (until 1 September 2010)
Chairman & Director, Caparo Group Ltd (UK-based industrial manufacturing company with operating subsidiaries in Europe and India)
Caparo Group Ltd, owned jointly with family
Caparo US Holdings, owned jointly with family
Caparo Engineering India Private Ltd, owned jointly with family
Caparo India Private Ltd, owned jointly with family
Caparo Group, owned jointly with family, through its subsidiary Caparo plc, has a 25% interest in Core Capital LLP, which manages five venture capital trusts, Core VCT I plc—Core VCT V plc
Core VCT plc
Core VCT IV plc
Farmland, Buckinghamshire, from which rental income is received
Two cottages, Buckinghamshire, from which rental income is received when tenanted
Apartment, London

Lord Plumb
Farming

Royal Agricultural Society of England
National Sheep Association
International Agricultural Training Programme
President, Campden Food Research Association

Baroness Valentine

Chief Executive, London First (a not-for-profit business membership organisation and pressure group to improve London's business environment; funded by subscriptions, London First's activity includes lobbying of Parliament from time to time, but not on behalf of specific clients; no personal clients). London First has members with an interest in infrastructure, both as users of it and as providers and advisers.

Lord Walpole

President, North Norfolk Orbital Railway

A full list of Members' interests can be found in the Register of Lords Interests:
<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at www.parliament.uk/hleub and is available for inspection at the Parliamentary Archives (020 7219 5314).

Oral Evidence

27 July 2010

Professor Mario Monti

15 November 2010

Malcolm Harbour MEP; Louis Grech MEP

Written evidence, European Parliament Committee on the Internal Market and Consumer Protection (IMCO) (EUSM 4)

Written evidence, Malcolm Harbour on behalf of the European Conservatives and Reformists, (ECR) Group (EUSM 5)

22 November 2010

Lord Liddle

13 December 2010

Karen Clements, British Chamber of Commerce

Written evidence, British Chambers of Commerce, (EUSM 9)

20 December 2010

Jonathan Faull, Director General for Internal Market and Services, European Commission

Written evidence (EUSM 10), (EUSM 11), supplementary written evidence (EUSM 12)

24 January 2011

Ed Davey MP, Minister for Employment Relations, Consumer and Postal Affairs, and David Frost CMG, Director for Europe, Trade and International Affairs, Department for Business, Innovation and Skills

Written evidence, Department for Business, Innovation and Skills (EUSM 7)

Written Evidence

Order of receipt

Microsoft Ltd (EUSM 1)

CBI (EUSM 2)

City of London Corporation (submitted by the Office of the City Remembrancer) (EUSM 3)

Committee on the Internal Market and Consumer Protection, European Parliament (EUSM 4)

Malcolm Harbour on behalf of European Conservatives and Reformists Group (EUSM 5)

Ofcom (EUSM 6)

Department for Business, Innovation and Skills (EUSM 7)

European Trade Union Confederation (ETUC) EUSM 8)

British Chambers of Commerce (EUSM 9)

European Commission Internal Market and Services Directorate (EUSM 10)

European Commission Information Society and Media Directorate (EUSM 11)

European Commission Internal Market and Services Directorate (EUSM 12)

Alphabetical order

British Chambers of Commerce (EUSM 9)

CBI (EUSM 2)

City of London Corporation (submitted by the Office of the City Remembrancer)
(EUSM 3)

Committee on the Internal Market and Consumer Protection, European
Parliament (EUSM 4)

Department for Business, Innovation and Skills (EUSM 7)

European Commission Information Society and Media Directorate (EUSM 11)

European Commission Internal Market and Services Directorate (EUSM 10);
supplementary evidence (EUSM 12)

European Trade Union Confederation (ETUC) EUSM 8)

Malcolm Harbour on behalf of European Conservatives and Reformists Group
(EUSM 5)

Microsoft Ltd (EUSM 1)

Ofcom (EUSM 6)

APPENDIX 3: CALL FOR EVIDENCE

The Internal Market, Energy and Transport Sub-Committee of the House of Lords European Union Committee is conducting an inquiry into the completion of the EU single market.

Written evidence is sought by 1 October and oral evidence will take place in October and November. The Committee aims to report to the House, with recommendations, in December. The report will receive a response from the Government and may be debated in the House.

The single market has recently returned to the policy agenda of EU leaders with the publication of Professor Mario Monti's report, "A New Strategy for the Single Market", and a forthcoming Commission Communication on the issue. Professor Monti argued that re-launching the single market would need both regulatory and non-regulatory reforms and observed that the single market was suffering from a mixture of "integration fatigue" and "market fatigue", with a reduced confidence in the role of the market.

In addition, the Europe 2020 Strategy, the EU agenda for economic growth, sees the completion of the single market as essential in achieving their goal that: "a stronger, deeper, extended single market is vital for growth and job creation."

The Commission is planning to produce its wide ranging review of the internal market in October 2010.

The inquiry aims to study four aspects of the subject:

The broad arguments surrounding the functioning of the single market, and a fundamental assessment of the issues determining the way forward for the single market.

- The potential role of the UK in strengthening the single market.
- The role of the EU institutions.
- The functioning of the single market in a few key sectors.

The Sub-Committee invites views on the following:

I *The need to re-launch the single market*

- Does the current economic environment require a re-thinking of the single market? How should confidence in the single market be restored?
- How should the objective of a "highly competitive social market economy", enshrined in the Lisbon Treaty, be achieved? Will the completion of the single market be achieved at the expense of the EU welfare and social dimension? Is there a need for a "package deal" between countries with a "social market" approach and those with an "Anglo-Saxon" tradition? The Committee will concentrate on the broad impact of the social dimensions on the single market, rather than the specific merits of particular policies.
- What role should the single market play within the context of Europe 2020 strategy? What is the significance of Europe 2020 in ensuring the completion of the single market project? To what extent can Europe 2020 address "the main bottlenecks [...] related to the working of the internal market and infrastructure"? The Committee will not seek to look in detail at specific policy areas within the Strategy, other than the Digital Agenda.

II *The role of the UK*

- Is the UK affected by market or integration fatigue?
- Should the UK drive the completion of the single market? If so, what sort of approach should the UK adopt to generate a new political momentum?

III *Institutional elements*

- In order to deliver the re-launch of the single market is there a need to refocus the way that the relevant measures are dealt with by the EU institutions?
- What role should be played by national parliaments?
- Should the President of the Council take more of a lead?
- How should the Commission exercise its enforcement role?

IV *Sectoral aspects*

The Committee would be interested in receiving more specific evidence on the following:

- The use of tax coordination as a mechanism for driving the completion of the single market.
- The role the Services Directive has played in completing the single market. Whether the perception of the Directive has dampened enthusiasm for further single market reforms.
- The Digital Agenda, and its and its plans for creating a digital single market.

You need not address all these questions.

The inquiry will not address in detail energy, transport or telecoms markets (other than those areas encompassed by the Digital Agenda), as these were covered in a previous report, *The Single Market: Wallflower or Dancing Partner?* (5th Report, 2007–08, HL 36), nor will it look at green growth.

APPENDIX 4: THE 50 PROPOSALS TOWARDS A SINGLE MARKET ACT

1. Sustainable and equitable growth for business		
1.1 Promoting and protecting creativity		
Proposal No 1	The European Parliament and the Council should take the necessary steps to adopt the proposals for the EU patent, its languages and the unified patent litigation system. The aim is for the first EU patents to be issued in 2014.	No deadline
Proposal No 2	In 2011 the Commission will submit a proposal for a framework Directive on the management of copyrights, with the aim of opening up access to online content by improving the governance, transparency and electronic management of copyright. The Commission will also be proposing a Directive on orphan works.	2011
Proposal No 3	In 2010 the Commission will propose an action plan against counterfeiting and piracy, including both legislative and non-legislative measures. Furthermore, in 2011 it will make legislative proposals, in particular to adjust the legislative framework to meet the needs generated by the development of the Internet and to enhance customs work in this area, and it will re-examine its strategy on the implementation of intellectual property rights in third countries.	2010/2011
1.2 Promoting new approaches towards a sustainable economy		
Proposal No 4	The Commission and the Member States will cooperate in continuing to develop the internal market in services on the basis of the 'mutual evaluation' process set out in the Services Directive and currently implemented by the Member States and the Commission. In 2011, the Commission will indicate specific measures to this end, including in the business services sector.	2011
Proposal No 5	By the end of 2011, the Commission will take initiatives to develop electronic commerce in the internal market. It will concentrate in particular on problems faced by consumers in the digital economy. These initiatives will include a Communication on the operation of electronic commerce and guidelines for the Member States to guarantee the effective application of provisions in the Services Directive to combat discrimination against recipients of services because of their nationality or place of residence.	2011
Proposal No 6	The Commission will propose a legislative reform of the standardisation framework in 2011 to make standard-setting procedures more effective, efficient and inclusive and to extend the scope of the procedures from goods to services.	2011

Proposal No 7	In 2011 the Commission will adopt a White Paper on Transport Policy, which will propose a series of measures intended in particular to remove the remaining obstacles identified between means of transport and between national systems of transport.	2011
Proposal No 8	In 2011, the Commission will be adopting a proposal to revise the Energy Tax Directive so as to better reflect the EU's climate and energy objectives in the fiscal context, by lowering the minimum duty rates on CO2 emissions and on energy content.	2011
Proposal No 9	The Commission will propose an initiative to establish a High Level Group on services to businesses in order to study deficiencies in the market and issues of standardisation, innovation and international trade in sectors such as logistics, installations management, marketing and advertising.	
Proposal No 10	Before 2012, the Commission will look into the feasibility of an initiative on the Ecological Footprint of Products to address the issue of the environmental impact of products, including carbon emissions. The initiative will explore possibilities for establishing a common European methodology to assess and label them.	2012
Proposal No 11	The Commission will present, in early 2011, an energy efficiency plan to exploit the potential for significant energy savings by complementing existing policies in all sectors where energy is consumed.	2011
1.3 For small and medium-sized enterprises		
Proposal No 12	The Commission will adopt an action plan for improving SME access to capital markets in 2011. This will include measures to make investors more aware of SMEs, to develop an efficient stock exchanges network or specific regulated markets focussing on SMEs and to make listing and disclosure requirements more adapted to SMEs.	2011
Proposal No 13	The Commission will assess the Small Business Act by the end of 2010 with the aims of ensuring that the 'Think Small First' principle is implemented in both policy and the legislative procedure and linking the Small Business Act closely with the Europe 2020 Strategy.	2010
Proposal No 14	The Commission will propose a review of the accounting Directives in 2011 to simplify financial reporting obligations and to reduce the administrative burden, especially for SMEs.	2011

1.4 Funding innovation and long-term investment		
Proposal No 15	The Commission will consider encouraging the creation of project bonds to finance European projects.	
Proposal No 16	The Commission will explore measures with the potential to encourage private investment—particularly in the long term—to make a more active contribution towards achieving the objectives of the Europe 2020 strategy. These measures might concern the reform of corporate governance and create incentives for the long-term, sustainable and responsible investment required by smart, green and inclusive growth. Moreover, by 2012 the Commission will ensure that venture capital funds set up in any Member State can operate and invest freely in the European Union (if necessary by adopting a new legislative framework). It will endeavour to eliminate any tax treatment that disadvantages cross-border activities.	2012
Proposal No 17	After the currently ongoing assessment of European public procurement legislation, and based on wide-ranging consultation, the Commission will make legislative proposals in 2012 at the latest with a view to simplifying and updating the European rules to make the award of contracts more flexible and to enable public contracts to be put to better use in support of other policies.	2012
Proposal No 18	In 2011 the Commission will adopt a legislative initiative on services concessions. Clear and proportionate rules will improve market access for EU undertakings by ensuring transparency, equal treatment and a level playing field for economic operators. They will also promote public/private partnerships and boost the potential for delivery of better value for money for users of services and for contracting authorities.	2011
1.5 Creating a business-friendly legal and fiscal environment		
Proposal No 19	The Commission will take steps to improve the coordination of national tax policies, notably by proposing a Directive introducing a common consolidated corporate tax base (CCCTB) in 2011.	2011
Proposal No 20	The Commission will publish a new VAT strategy in 2011 on the basis of a Green Paper conducting a fundamental review of the VAT system, planned for 2010.	2011
Proposal No 21	In 2011 the Commission will propose legislation to introduce the linking of company registers.	2011
Proposal No 22	By 2012 the Commission will propose a Decision to ensure mutual recognition of e-identification and e-authentication across the EU based on online authentication services to be offered in all Member States. In 2011 the Commission will propose a revision of the Directive on electronic signatures with a view to providing a legal framework for international interoperability and recognition of e-authentication systems.	2012

1.6. Being competitive in global markets		
Proposal No 23	The Commission will further develop regulatory cooperation with its main trading partners, both bilaterally, in the form of regulatory dialogues, and multilaterally, for example within the G20. The twofold objective is to promote regulatory convergence, including promoting equivalence of third-country regimes where possible, and to push for wider adoption of international standards. On this basis it will pursue negotiations for international trade agreements (both multilateral and bilateral) with a focus on both market access and convergence on regulatory issues, particularly for services, IPR and subsidies.	In progress
Proposal No 24	In 2011, the Commission will present a legislative proposal in favour of a Community instrument drawing on the implementation of the European Union's international commitments in order to enhance its capacity to ensure improved symmetry in access to public procurement in the industrialised nations and the major emerging economies.	2011
2. Restoring confidence by putting Europeans at the heart of the single market		
2.1 Improving public services and infrastructure of general interest		
Proposal No 25	The Commission undertakes to adopt, by 2011, a Communication and a series of measures on services of general interest.	
Proposal No 26	In 2011 the Commission will adopt a revision of the Community guidelines for the development of the trans-European transport network, and a proposal on a global framework for the funding of transport infrastructure.	2011
Proposal No 27	The Commission will adopt a Communication on energy infrastructure priorities up to 2020/2030 in order to contribute to the development of a fully operational internal energy market by tackling missing infrastructure links and facilitating the integration of renewable energy. The tools necessary for implementation will be proposed in a new European instrument for energy security and infrastructure, to be tabled in 2011.	2011
Proposal No 28	The Parliament and the Council should adopt the proposed Decision establishing a European Radio Spectrum Action Programme for more efficient management and use of the radio spectrum.	No deadline

2.2 Increasing solidarity in the single market	
Proposal No 29	Pursuant to its new strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, the Commission will ensure that the rights guaranteed in the Charter, including the right to take collective action, are taken into account. The Commission will first of all conduct an in-depth analysis of the social impact of all proposed legislation concerning the single market.
Proposal No 30	In 2011, the Commission will adopt a legislative proposal aimed at improving the implementation of the Posting of Workers Directive, which is likely to include or be supplemented by a clarification of the exercise of fundamental social rights within the context of the economic freedoms of the single market.
Proposal No 31	The Commission will re-examine the Directive on the activities and surveillance of pension funds in 2011 and will develop other proposals based on the July 2010 Green Paper on pensions, <i>inter alia</i> in order to remove obstacles encountered by mobile workers when making arrangements for their retirement.
Proposal No 32	The Commission will launch a consultation with the social partners in order to create a European framework for the advance planning of industrial restructuring.
2.3 Access to employment and lifelong learning	
Proposal No 33	In 2012 the Commission will propose a legislative initiative to reform the systems for the recognition of professional qualifications, based on an evaluation of the <i>acquis</i> in 2011, in order to facilitate the mobility of workers and adapt training to current labour market requirements. As part of this proposal, the possibility of a professional card will be evaluated.
Proposal No 34	The Commission will develop, in cooperation with the Member States, a 'Youth on the Move card' helping all young people to move to another Member State to study. It will expand its 'Youth on the Move' Internet site by providing information on distance learning and opportunities to study and train in Europe.
Proposal No 35	The Commission will implement the European qualifications framework in partnership with the Member States. It will propose a Council Recommendation to promote and validate training outside the classroom (non-formal and informal learning). It will also propose the creation of a 'European Skills Passport' enabling individuals to record the knowledge and skills they have acquired throughout their lives. <i>It will establish a bridge between the European Qualifications Framework and the nomenclature of occupations in Europe.</i>

2.4 New resources for the social market economy	
Proposal No 36	In 2011 the Commission will propose a Social Business Initiative in order to support and accompany the development of socially innovative corporate projects within the single market by means of in particular social ratings, ethical and environmental labelling, public procurement, the introduction of a new investment fund regime and the use of dormant savings.
Proposal No 37	For several reasons relating mainly to the nature of its financing and the preference of shareholders or stakeholders who support projects with a strong element of social, economic and sometimes technological innovation, the market economy is structured around a variety of different types of legal status (foundations, cooperatives, mutual associations, etc.). The Commission will propose measures enabling the quality of the legal structures concerned to be improved in order to optimise their functioning and facilitate their development within the single market.
Proposal No 38	The Commission will launch a public consultation (Green Paper) on corporate governance. It will also launch a public consultation on possible ways to improve the transparency of information provided by businesses on social and environmental matters and respect for human rights. These consultations could lead to legislative initiatives.
2.5 A single market serving consumers	
Proposal No 39	In 2011 the Commission will draw up a multiannual action plan for the development of European market surveillance. In addition, in relation to the customs services and the market surveillance authorities of the Member States, the Commission will draw up guidelines for customs controls in the area of product safety in 2011. The Commission will also propose a revision of the general product safety Directive in order to ensure a coherent and effective framework for the safety of consumer goods in the EU.
Proposal No 40	The Commission will adopt a legislative initiative on access to certain basic banking services at the start of 2011. It will also call on the banking sector to submit a self-regulatory initiative geared towards improving the transparency and comparability of bank charges by the end of 2011.
Proposal No 41	By February 2011 the Commission will propose a Directive geared towards the creation of a single integrated mortgage market with a high level of consumer protection.

Proposal No 42	The Commission will adopt a Communication by the end of 2010 aimed at identifying and eliminating the tax obstacles still facing European citizens.	2010
Proposal No 43	In 2012 the Commission will adopt a proposal amending the regulation on the rights of air passengers, particularly in the light of the crisis triggered by the recent volcanic eruption in Iceland, and—should the legislative proposal on the road transport sector (buses and coaches) be adopted—a Communication on the rights of passengers using all means of transport.	2012
3. Dialogue, partnership, evaluation: The keys to good governance of the single market		
Proposal No 44	The Commission and the Member States will cooperate in continuing to develop the internal market by stepping up the procedure for evaluating the acquis, in particular using the ‘mutual evaluation’ process set out in the Services Directive and currently being implemented by the Member States and the Commission. The experience gleaned from the mutual evaluation process of the Services Directive will also be applied to other key single market legislation.	
Proposal No 45	In early 2011 the Commission will present a strategy on extending the Internal Market Information system (IMI) to other legislative areas during 2011, with a view to creating a genuine face-to-face electronic network for European administrations. This strategy will be the subject of a legislative proposal. This strategy will be the subject of a legislative proposal.	2011
Proposal No 46	In 2011, the Commission will be submitting an initiative on the use of alternative dispute resolution in the EU. It will also be adopting a Recommendation in 2011 on the network of alternative dispute resolution systems for financial services. The aim of these two initiatives is to ensure that simple, reasonably priced out-of-court settlement procedures are established to deal with cross-border consumer disputes. By 2012, the Commission will be proposing a European system for the settlement of on-line disputes for digital transactions. It will also carry out a public consultation on a European approach to collective redress in 2010–2011, in order to identify arrangements which could be introduced into the legal framework of the European Union and the legal systems of the Member States.	2011
Proposal No 47	The Commission will work in partnership with the Member States to develop a more resolute policy to enforce the rules of the single market. The Commission undertakes to prepare transposition plans and draft correlation tables for the legislative proposals provided for in the Act and to reduce the average time taken to deal with infringement files. The Commission calls on the Member States to reduce their transposition deficit of the single market directives to 0.5% and to provide their correlation tables with the implementing measures.	2011

Proposal No 48	The Commission will increase consultation and dialogue with civil society in the preparation and implementation of texts. Particular attention will be paid to taking into account the points of view of consumers, NGOs, trade unions, businesses, savers, users and local authorities in the consultations prior to the adoption of proposals and, in particular, with regard to the work of expert groups.	2011
Proposal No 49	In 2010, the Commission will continue to promote a one-stop shop to provide citizens and businesses with information and support concerning their rights in the single market, on the internet, by telephone or in person, by developing the 'Your Europe' internet portal and improving its coordination with 'Europe Direct'. The Commission will also strengthen its partnerships with the Member States with a view to ensuring that information on national rules and procedures is also available through this one-stop shop.	2010
Proposal No 50	The Commission, in partnership with the Member States, will strengthen informal problem-solving tools, specifically by consolidating and reinforcing the EU Pilot project, the SOLVIT network and the networks of European Consumer Centres. Based on an assessment in 2010, it will make specific proposals concerning SOLVIT in 2011. In the longer term, it will examine the conditions for potential further development of these tools and of the other alternative dispute-resolution mechanisms by forging closer ties between them, with a view to ensuring that they will eventually be able to better deal with all of the problems associated with the single market.	2011

APPENDIX 5: GETTING EUROPE GROWING

A joint letter by nine EU Prime Ministers to Herman van Rompuy and José Manuel Barroso.

The world is emerging from one of the greatest economic shocks of modern history. In countries the world over, citizens and businesses continue to feel the consequences of the deepest global recession since the 1930s. In Europe, the pain has been particularly acute. Across the EU as a whole, four years of annual growth have been wiped out. Unemployment has risen to double digits. And with one in five young persons unable to find a job—more than 5 million people in total—we risk a lost generation of European workers.

We ignore these risks at our peril. For while reform is underway, recovery has begun, and some countries have experienced a robust return to growth, the European economy as a whole faces major challenges from other developed regions. Last year, while world growth reached pre-crisis levels, EU average growth was little more than half its pre-crisis rate. According to the IMF, the EU overall is expected to grow more slowly than most other advanced economies and all of our major competitors over the next five years. Tellingly, the excellent Annual Growth Survey of European Commission puts Europe's growth potential at just 1.5 per cent a year over the next decade, and just 1.25 per cent in the Euro-zone. Events in financial markets underscore the urgency of our growth and competitiveness challenge.

Europe has many economic assets—a skilled and able workforce; the world's largest consumer market; an open, trading culture; a proud record of invention. But at this critical point in our history we face major economic challenges. Despite the efforts we have made, without stronger ambition and fundamental reform—to unleash enterprise, open markets and promote innovation, including in green technologies—we face a future of low productivity, high unemployment, lost investment and relative economic decline.

Each of us believes firmly that we can achieve strong and dynamic growth in Europe—that with common purpose and resolve we can overhaul our outdated growth model and tear down the barriers to future prosperity. We have recognised in the Europe 2020 strategy that there is much the Member States can do to stimulate long-term growth. It is essential that all of us rise to the challenge with ambitious and far-reaching national programmes of reform.

We have recognised too that growth will not come for as long as national finances remain in a perilous state. Putting public finances on a sustainable footing and promoting growth are not alternatives. We cannot delay the first to achieve the second—without fiscal discipline we will not lay the foundations for strong and sustainable growth in the future. And so tough decisions are needed—to cut back on waste, spend more wisely, and reduce our debts while investing in growth. We need swiftly to reach agreement on a stronger Stability and Growth Pact. Above all, we must stick to the course that we have set, recognising that growth will be supported, not in spite of these decisions, but because of them.

So the actions we are taking at home are essential to the EU's prospects for growth. It is to our collective benefit that they should succeed. But it is vital too that we make full use of the instruments of the European Union to achieve competitiveness and growth. We need an EU budget which addresses the challenges of tomorrow. And at our meeting in Brussels later this month we must begin to set a new direction for Europe and agree to take action on four key priorities.

First, we must deliver the full and untapped potential of the Single Market. The Single Market is Europe's greatest economic achievement—the core foundation of

the world's largest economy encompassing 500 million consumers and €12 trillion of economic activity. But it is far from finished business.

Services now account for almost four fifths of our economy and yet there is much to be done to open up services markets on the scale that is needed. While significant efforts have been made to put in place the provisions of the Services Directive, many sectors still remain closed off by opaque, disproportionate and disparate regulation. Restrictive practices are rife. And implementation overall falls far short of what is needed to open up markets fairly to competition. So we must do for services markets what we have done for markets in goods—removing the restrictions that hinder access and competition, reducing the number of regulated professions, and making a firm commitment to implementation and enforcement, building on and extending the mutual evaluation process and publishing scorecards of national performance. Succeed and we could add €140 billion to the European economy. We welcome the commitment given by the Commission in its Annual Growth Survey to take action in this area and invite the Commission to report at the earliest opportunity on the steps needed to realise these gains.

And because growth in the future will depend more and more on the effective exploitation of information technology, we must also build a truly digital Single Market. The digital economy is expanding rapidly but cross-border online trade remains stubbornly low. So we must act to provide businesses and consumers with the means and the confidence to trade on-line, including by overhauling the current arrangements for e-commerce, building an efficient cross-border framework for copyright and establishing clear and transparent consumer rights. We ask the Commission to table rapidly bold and ambitious proposals to achieve these aims so that a fully functioning digital Single Market is in place by 2015.

Finally, we must also complete the internal energy market, put in place smart, upgraded and fully interconnected transport and energy infrastructure, and strengthen our efforts to develop common EU standards and labelling requirements for energy and environmental products.

As we build a genuine Single Market in Europe, our second priority must be to open up and connect European and global markets. There is no greater prize in world trade than the conclusion of the Doha round. We must all now recognise that 2011 is the make or break year for Doha and the EU must do all it can to facilitate a deal. We urge all of the main negotiating countries to intensify their efforts in order to finalise the round.

But there is much more we can do at the same time. Last year the EU signed a Free Trade Agreement with South Korea, worth more than €30 billion to European exporters. We must now show the same level of commitment and ambition to conclude deals with India, Canada, Japan, Mercosur and the ASEAN nations. We believe that these deals can and should be completed by the end of the current Commission term and we call on the Commission and the European Council to take all steps necessary to ensure that this happens. Closer to home, deeper economic integration and wider market access between the EU and countries in the Eastern Partnership and the Southern Mediterranean would not only benefit the EU, but would support and encourage sustainable economic and political development within those countries too. We urge that progress should be made on the basis of a differentiated and incentive-based approach.

The third priority is a new drive to support business and unleash enterprise. We need to make it easier for businesses to start up, develop and prosper. And we need to start by recognising a simple fact—our economies cannot and will not be

competitive if we continue to load ever greater regulatory costs onto the shoulders of business.

What is needed is a change of mindset and of culture—a new approach to regulation, which builds on but extends significantly what we have achieved with the support of the Commission to date. So we should set a target to reduce the overall burden of EU regulation over the life of this Commission, building on the steps we have taken to reduce administrative costs. We should seek to ensure that new burdens on business are offset by savings elsewhere. We should give small businesses exemptions from regulatory burdens when they face disproportionate costs of compliance. And we must demand that all impact assessments are clear on the implications for growth and competitiveness. We should also improve the efficiency of EU budget programmes. We ask that all institutions unite in helping to deliver these steps and invite the Commission to present proposals by the summer for putting them into practice.

Our fourth priority is innovation. A strong and competitive European economy must be built on creativity, new ways of working and the ability to capitalise on new market opportunities, such as those in low emission technology. A well functioning internal market is a prerequisite for innovation, but there is more we must do. We must take full advantage of Europe's intellectual capital to drive innovative activity. And we must increase access to finance as we seek to create a larger, more fully integrated European venture capital market capable of supporting greater investment in new and innovative products. To be truly successful, however, we must also break the deadlock on an EU patent to ensure that firms have access to affordable, continent-wide intellectual property protection in a system free of all unnecessary legal complexity. We look forward to receiving a proposal from the Commission and hope that a new system can be agreed by the end of the year.

To conclude, Europe stands at a junction. Before us lie two very different paths—a path of least resistance, built on the policies of the past and reinforcing economic decline; and a new direction for Europe, based on the priorities described here, and leading to stronger growth and prosperity. We welcome the action already taken in these areas and the commitment of the Commission to drive progress, and urge you and the European Council to endorse these priorities. We support the forthcoming Polish and Danish Presidencies in enforcing this growth agenda for the benefit of the whole of Europe.

We are copying this letter to colleagues on the European Council and to the President of the European Parliament.

David Cameron, Prime Minister of the United Kingdom

Mark Rutte, Prime Minister of the Netherlands

Fredrik Reinfeldt, Prime Minister of Sweden

Lars Løkke Rasmussen, Prime Minister of Denmark

Mari Kiviniemi, Prime Minister of Finland

Andrus Ansip, Prime Minister of Estonia

Donald Tusk, Prime Minister of Poland

Dalia Grybauskaitė, President of Lithuania

Valdis Dombrovskis, Prime Minister of Latvia

18 March 2011

APPENDIX 6: LIST OF ACRONYMS AND ABBREVIATIONS

BIS	Department for Business, Innovation and Skills
BCC	British Chambers of Commerce
CBI	Confederation of British Industry
CCCTB	Common Consolidated Corporate Tax Base
DAE	Digital Agenda for Europe
EC	European Community
ECR	European Conservatives and Reformists Group, European Parliament
EEA	European Economic Area
EEC	European Economic Community
EEN	Enterprise Europe Network
EFTA	European Free Trade Association
ETUC	European Trade Union Confederation
EU	European Union
GDP	Gross Domestic Product
ICT	Information and Communications Technology
IMCO	Internal Market and Consumer Affairs Committee, European Parliament
IMI	Internal Market Information System
MEP	Member of the European Parliament
PSC	Point of Single Contact
QMV	Qualified Majority Voting
SMA	Single Market Act
SMEs	Small and medium-sized enterprises
SPP	Social Progress Protocol
TFEU	Treaty on the Functioning of the European Union
UKTI	UK Trade & Investment
VAT	Value Added Tax