



Response to Foreign and Commonwealth Office Review of the Balance of Competences

Call for Evidence on Internal Market

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NCVO: National Council for Voluntary Organisations giving voice and support to civil society

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1. Introduction

- 1.1. NCVO is the largest general membership body for voluntary and community organisations (VCOs) in England. Established in 1919, NCVO represents over 10,000 organisations, from large 'household name' charities to small groups involved in all areas of voluntary and community action at a local level. Our members include national and local infrastructure organisations, thereby extending our reach still further.
- 1.2. NCVO champions volunteering and civil society. Our vision is of a society in which people are inspired to make a positive difference within their communities. A vibrant civil society deserves a strong voice and the best support, which we work to provide. We therefore welcome the opportunity to respond to the Review of Balance of EU Competences Call for Evidence on Internal Market issued by the Foreign and Commonwealth Office in November 2012, to represent the sector's views on social aspects of the Single Market.
- 1.3. Structure of the consultation paper:
 - A summary of NCVO activities of national and European affairs
 - Recommendations and specific examples with respect to Procurement and Social entrepreneurship

2. NCVO activities

Through our Chief Executive's role on the European Economic and Social Committee, we contribute regularly to EU policy reviews, including key opinions on the review of State Aid rules, and exploring social entrepreneurship; evaluating the role of procurement in better service delivery outcomes; and facilitating the growth of the social investment and enterprise markets.

NCVO has been involved in many opportunities to influence the evaluation of the procurement regulations. In January 2012, we submitted a Procurement Policy Note to the Cabinet Office. Additionally, we produced a Report outlining recommendations for the review of the European Procurement Directives which was submitted to the European Commission in 2011¹.

¹ <http://www.ncvo-vol.org.uk/policy-research/european-international/european-union/social-service-reform>

In July 2012, NCVO Roundtable brought together UK Government officials, the Big Lottery Fund, the Big Society Capital and UK-based social investment experts to evaluate the UK's potential benefit in the EU's Social Business Initiative².

3. **Key recommendations for the Call for Evidence on Internal Market**

NCVO believes in economic growth rooted in social inclusion. It works to encourage an enabling legislative environment that supports civil society and local communities to participate in decision-making and implementation of social policies. Only through social inclusion and a committed civil society can long-term solutions to a strong market economy be achieved.

The European Union has recognised the importance of societal participation to re-start growth in Europe. By considering social aspects in the key recommendations on renewing the Single Market, the vision of sustainable economic growth is seen to be central to the future of the EU. Internal Market regulations address the economic, social and environmental challenges and should work towards long-lasting economic success of the Member States. The EU's Social Business Initiative, led by Internal Market Commissioner Barnier, focuses on driving growth through innovative solutions and developing new forms of social enterprise to deliver local needs.

It is crucial for the UK to engage in the drafting of EU legislation so that it is well-positioned to shape policies. Many challenges facing this country require international solutions, so Britain's presence in shaping policy-making and EU legislation, provide the country with opportunities to form new markets, attract business partners and put forward the national interest in a strong regional forum, thereby shaping global priorities that meet our needs.

4. **Response to specific proposals**

Q1. What are the essential elements of an Internal Market and against what criteria should we judge its economic benefits? How deep does it need to be to be effective?

The Internal Market, in which social, political and economic dimensions are interlinked, facilitates economic growth efficiently. Market integration increases trading opportunities and widens cooperation at international levels. Likewise, greater prospects help British markets. Shaping these terms and conditions, is in the UK's interest.

² http://www.ncvo-vol.org.uk/sites/default/files/UploadedFiles/sbi_background_and_key_points_briefing.pdf

Giving weight to social dimensions of the functioning of the Internal Market is crucial. To bring long-term solutions to economic stability, the following factors need to be taken into consideration:

- empowerment of civil society organisations in social service delivery through favourable procurement and state aid regulations;
- development of social entrepreneurship to reach those who are the furthest away from the labour market;
- investment in social innovation to modernise new methods of smart public spending.

By focusing on elements of the social market economy, we create preventative solutions that ultimately help avoid future financial instability.

The Europe 2020 strategy aims to complete the “single market in services, energy and digital products, and invests in essential cross-border links”. It recommends that “obstacles at national level must be removed ... if these efforts are combined and coordinated they will have the desired impact on growth and jobs”³. As a recognition of the need for the social dimension of economic growth and its relations to the Internal Market, the European Commission launched the Single Market Act⁴ to create jobs and stimulate economic growth. The Act aims to strengthen confidence and exploit untapped potential benefits for small enterprises, and supports citizens and local communities by reviewing public procurement and encouraging social cohesion.

In line with the Union’s views, the UK’s Social Value Act⁵ came into force in January 2013. The legal document recognises the added social value of economic, social and environmental benefits. Sir Stuart Etherington said: “This little gem of an Act has the power to radically transform our public services. It gives commissioners the green light to take into account the extra value charities bring”⁶. This has the potential to achieve better value for taxpayers and better outcomes for society.

What we clearly see is that both the UK and EU are working in the same vein towards common goals: to strengthen social values in market economies and establish purchasing power of local communities.

³ http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/index_en.htm

⁴ http://ec.europa.eu/internal_market/smact/index_en.htm

⁵ <https://www.gov.uk/government/publications/procurement-policy-note-10-12-the-public-services-social-value-act-2012>

⁶ <http://www.ncvo-vol.org.uk/news/public-services/social-value-act-has-potential-transform-public-services>

Q2. To what extent is EU action in other areas – for example, environment, social, employment – necessary for the operation of the Internal Market, as opposed to desirable in its own right?

The EU already plays an active role in setting legal frameworks that affect UK organisations, and provides funding for environmental, social and employment programmes in the UK. Therefore, it is essential that the UK maintains a strong voice in Europe, to influence these decisions.

We will make some further comments here on the EU's influence on UK procurement and development of the Social Business Initiative.

Procurement is a cross-cutting issue in a range of policy agendas and initiatives, including aspects which affect competition, social and environmental targets, and innovation.

The voluntary sector has been involved in public service delivery for many years. As such, we have extensive experience of the UK Government and the EU's procurement policies and practice.

25% of voluntary organisations receive funding from one or more Government sources. Over the period since 2000, the voluntary sector's statutory income has grown faster than total public spending, suggesting that the voluntary sector has become a more important contributor to GDP and a notable player in the provision of UK public services⁷.

Over the past ten years, there has also been a shift towards service delivery contracts - worth £10.9bn in 2010, up from £4.3bn in 2000 (inflation-adjusted) - with a reducing number of grants available - worth £3bn in 2010, down from £4.4bn in 2000 (inflation-adjusted).⁸ As a result of this shift towards contracting, procurement rules have had more of an impact on the UK voluntary sector than previously. In some cases, the move towards the use of commission mechanisms such as pre-qualification questionnaires and invitation to tender has presented changes to the sector particularly to those that have a turnover of less than £500,000.

Furthermore, a review of UK priorities demonstrated a direct link between the sector's activity and the Europe2020 objectives. For example, 46% of the sector's main areas of work were in training, education, employment and poverty.

UK context

The Coalition Government's 'Big Society' agenda⁹ is the latest mark of strong political commitment for public service reform in the UK, with its emphasis on supporting civil society organisations to have much greater involvement in the running of public services, and creating a diverse market to drive choice and empowerment of users.

⁷ <http://data.ncvo-vol.org.uk/>

⁸ <http://www.charity-commission.gov.uk/>

⁹ Cabinet Office (2010) Building the Big Society
http://www.cabinetoffice.gov.uk/sites/default/files/resources/building-bigsociety_0.pdf

The UK Government has adopted David Freud's blueprint¹⁰ to tackle unemployment and welfare reform. This aims to stimulate development of a new welfare-to-work service industry, and requires CSOs to work with 'prime contractors' to deliver defined welfare outcomes in a 'payments by results' scheme. It is clear that this diversified approach presents opportunities and challenges for civil society organisations.

1. Procurement practice in the UK often shows a lack of understanding of the voluntary sector: we are particularly concerned that voluntary organisations are being shut out, as contract opportunities become larger, pass on too much financial risk and require too much capital.
2. For the next programme of Common Strategic Framework Funds 2014-2020 in the UK the voluntary and community sector is advocating for a greater role for civil society organisations in the delivery of the Funds as well as a blend of funding/delivery mechanisms and payment systems (grants, contracts, community-led local development) to increase flexibility to deliver the key priorities particularly under social inclusion.
3. Addressing poor procurement practice is crucial to create an effective public services market in the UK. The UK Government has taken steps to improve practice: launching a Commissioning Academy, and passing the Social Value Act.
4. Another area of concern in the UK is misinterpretation of EU rules. The Government should do more to provide local authorities and other commissioners with clear guidance on EU regulations and counter common myths, for example on pre-procurement dialogue with service providers and on disclosure of TUPE liabilities.

EU context

The European Procurement Directives (The Directives) are underpinned by the EU Treaty principles to set out a legal framework for public procurement, to which all public contracting authorities in Member States must adhere.

With 17% of the EU's GDP acquired from public procurement activity, contracting authorities have a duty to ensure that their decision-making and spending power is used not only to attain best market rates for public goods and services, but also to serve the immediate and long-term social needs of their constituents.¹¹

The Directives protect against corruption, open up procurement market, and ensure free movement and quality in purchase of supplies and services. By this, the European Commission promotes a highly competitive social market economy.

¹⁰ <http://www.dwp.gov.uk/docs/welfarereview.pdf>

¹¹ A7-0326/2011, European Parliament A series, commission report, seventh parliamentary term (2009-2014), no.326 of 2011.

NCVO represents the interests of UK voluntary organisations, when we lobby the EU regarding its procurement and state aid regulations. Our key concerns are:

1. Simplification of EU and UK procurement rules to ensure more flexibility, reduced red-tape and administrative costs in implementation at local level
2. Raising current EU procurement thresholds to make it easier for UK public authorities to contract with civil society organisations (this would apply equally to other EU member states)
3. Exemptions of Part B services and not-for-profit service providers to ensure less risk-averse and more appropriate practice so contracts are considered on the basis of type rather than size (changes do not affect competition and cross-border interests)

In December 2012, the European Parliament and Council adopted amendments in line with our recommendations at point 2 and 3 above. We welcome these most recent procurement developments.¹²

Social entrepreneurship, social innovation and social investment have been promoted by the EU in recent years. It may be helpful to explain what we understand by these terms in the UK:

- Social innovation covers 'new ideas (products, services and models) that simultaneously meet social needs and create new social relationships or collaborations.'¹³
- Social entrepreneurship is about creating viable businesses that meet social needs. Many charities would also consider themselves to be 'social enterprises', where they are able to generate revenue to deliver services (i.e. not relying wholly on donations).
- Social investment is an emerging approach to the financing of voluntary organisations and social enterprises – through the provision of loans, equity investment and other types of investment in which the investor can expect a return.

These terms are often used differently by the EU or other EU member states. Sometimes interchangeably, or grouped under the EU phrase 'social business', to refer more generally to any organisations that deliver social benefits, and any type of funding or support providing to those 'social businesses'.

UK context

In 2010, the UK voluntary sector included 163,000 charities, employing 765,000 people in the UK, with a combined income of £36.7bn and expenditure of £36.3bn (Source: NCVO). Social enterprises are less clearly measured, as they can take a range of legal forms. However, it is estimated that there are 68,000 social enterprises in the UK, employing

¹²

http://www.europarl.europa.eu/document/activities/cont/201301/20130110ATT58822/20130110ATT58822E_N.pdf

<http://register.consilium.europa.eu/pdf/en/12/st16/st16725-re01.en12.pdf>

¹³ <http://www.socialinnovationeurope.eu/directory/united-kingdom/social-innovation-united-kingdom>

800,00 people (Source: Annual Survey of Small Businesses UK 2010). Also, there are 5,950 co-operatives in the UK employing 230,000 people (Source: Co-ops UK, 2012). There will be some overlap between these figures.

A significant proportion of all civil society organisations focus on improving people's lives – tackling root causes of disadvantage and focussing on earlier intervention to prevent negative social and economic outcomes. Their contribution to the UK economy is far more significant than simply their existence as employers, important though this is. Civil society organisations constitute an important sector of the economy creating jobs and economic value as well as social and environmental benefits (Source: Schmuecker and Tehrani, 2010).

The main sources of funding for these organisations remain: individual donations, Government sources, and trading income. These funding approaches remain the most important.

Some UK voluntary organisations and social enterprises also need access to repayable finance: loans, mortgages, growth and working capital. Because they can find it hard to access finance from commercial markets, the social investment market has developed to meet this need. UK-based social investment activity estimated at £190m in 2010. Experts estimate that the UK social investment market could be worth £1bn or more within the next five years.

The UK Government has taken steps to promote the development of this new social investment market. In 2012, it established Big Society Capital, a wholesale funding body, to provide capital to the social investment market. Big Society Capital successfully achieved EU state aid clearance in order to support this nascent market.

Innovative forms of social investment have emerged in the UK, such as the Social Impact Bond.

UK Case Study – The Social Impact Bond

The social impact bond has been developed as a new way to commission public services from voluntary organisations.

The first Social Impact Bond funds the One* Service working with short-sentence prisoners discharged from HMP Peterborough over the next six years.
http://www.socialfinance.org.uk/sites/default/files/SF_Peterborough_SIB.pdf

Through a Social Impact Bond, private investment is used to pay for interventions, which are delivered by service providers with a proven track record. Financial returns to investors are made by the public sector on the basis of improved social outcomes. If outcomes do not improve, then investors do not recover their investment.

'Social Impact Bonds provide up front funding for prevention and early intervention services, and remove the risk that interventions do not deliver outcomes from the public sector. The

public sector pays if (and only if) the intervention is successful. In this way, Social Impact Bonds enable a re-allocation of risk between the two sectors'. (Source; Social Finance)

The UK has led the way in developing the Social Impact Bond, and shared learning with other countries including the US, which has now developed similar 'pay for success bonds'.

EU context

EU Case Study – The Social Business Initiative

The Social Business Initiative aims to “create a favourable climate for social enterprises, key stakeholders in the social economy and innovation”¹⁴.

Launched in November 2011, this initiative indicates the European Union’s commitment to placing the civil society and social innovation at the heart of its concerns, as part of the wider Single Market agenda and the EU 2020 strategy, to meet EU economic, social and environmental policy targets by aligning finance and commerce activities with ‘ethical’ and ‘social’ principles.

The SBI action plan includes 11 key actions to support social entrepreneurship in Europe, in order to:

- Improve access to funding, including social investment
- Increase the visibility of social entrepreneurship
- Improve the legal environment for social investment and new forms of businesses

What the EU’s SBI offers is:

- Opportunity to raise level of exemptions from state aid and procurement
- Opportunity for social innovation through better access to funds
- Opportunity to shape design at a strategic pan-European level
- Opportunity for exchange of knowledge and creation of a new definition of social enterprise
- Opportunity for new forms of match funding

Engaging with this new EU initiative, UK officials and UK stakeholders such as NCVO are able to safeguard UK interests and support development of the UK social investment market. The UK is also able to exchange good practice with other countries at the EU level, enhancing collaboration across borders and attracting new investors to Britain.

NCVO believes that the EU Social Business Initiative has the potential to support growth of the social economy in the UK. Not only by increasing supply of social investment capital, but by supporting the profile and role of social enterprises and charities in delivering public services.

Q3. How have the EU’s mechanisms for delivering an Internal Market worked? In particular, what do you believe is the right balance between harmonisation and mutual recognition? What

¹⁴ http://ec.europa.eu/internal_market/social_business/index_en.htm

evidence is there that harmonisation has worked well or badly? What are your views on the scope and effect of the EU's powers under Articles 114 and the use of Article 115 for non-tax measures?

With reference to this question, we would like to express our strongest support for CFG's short response to HM Treasury's Balance of Competences Review on taxation. Please see the letter in attachment.

Q4. Why is the Internal Market so much deeper in some areas than others? How effective has implementation of the Internal Market been, and what do you feel has helped or hindered implementation of Internal Market rules?

Services are the engine of the European economy. On the one hand, the Services Directive¹⁵ enabled a large-scale Internal Market integration. From civil society's perspective, regulations strengthened the quality of services (for instance via voluntary certification of activities or drawing up quality charters), the European Code of Conduct gave the opportunity to all the stakeholders to take part in decision-making from the agenda-setting phase, they clarified information, strengthen citizens' rights as service users, and prohibited any discrimination based on nationality or the residence of the service beneficiary.

On the other hand, there has been limited opportunity for cross-border movement and cooperation by civil society organisations. This is due to lack of awareness in each country of the basic rules regarding not-for-profit and charity law in other EU countries. This is why we welcome the EU Foundation Statute Proposal¹⁶ which intends to improve foundations' cross-border operations, to establish recognition of foundation status in any Member State, and to set out that any new foundation would be required to prove public benefit.

We encourage a step-by-step change to enable greater understanding and awareness-raising around the issue, for civil society to build an information campaign and develop a 'charter' that is recognised by the EU. This ensures national legislation can be compared and a gradual improvement of mutual recognition that could lead to more explicit legislation.

The Foundation Statute proposals focus on mutual recognition of not-for-profit and charity law and will set out a core set of public benefit objectives that can be shared across Europe, thereby clarifying the similarities that exist across the EU and enabling greater understanding of each system. The statute would not work if it seeks to impose a single regulatory system for the not-for-profit sector and it should not shift the tax regulation power in this area from member states. This would enable foundations to operate more easily across borders, reduce the bureaucratic burden for cross-border giving and thereby increase the potential resources available to the sector in each country.

¹⁵

http://europa.eu/legislation_summaries/employment_and_social_policy/job_creation_measures/l33237_en.htm

¹⁶ http://europa.eu/rapid/press-release_IP-12-112_en.htm?locale=en

Q6. Has the Internal Market been helped or hindered by UK involvement in other groupings, such as the G20, the G8, the OECD, or the Commonwealth?

Economic challenges require international solutions.

The internal market has enabled the UK to group together key recommendations and bring a stronger united voice at wider global forums. Many current challenges are global in nature, such as economic turbulence, climate change, human rights, demographic shift and migration; these therefore require international solutions. The UK position in international negotiations is much stronger if the UK position has already been recognised within the Internal Market. The EU can set standards and enable agreement in key areas which can then be promoted to wider international partners, such as at the G8 and G20.

From the other perspective, the UK can bring a wealth of international expertise, through its historic links with many other partners, including Commonwealth countries that will enrich the Internal Market. These links enable inclusion of many other perspectives and bring new opportunities for exchange and expertise that will ensure that the Internal Market remains competitive in an increasingly globalised world.

Q8. To what extent has the UK kept requirements over and above the EU minimum, and what effect has that had on the UK's place in the Internal Market? Have other Member States done so, and if so with what consequences?

The UK is perceived to implement EU regulations correctly and is often regarded as a diligent partner.

However there is some evidence in the area of public procurement regulations to suggest the UK does at times go beyond EU requirements and is involved in so-called gold-plating. Gold-plating refers to over-implementation when national application goes beyond the minimum necessary to comply with an EU directive.

There is a strong culture of risk-averseness and inflexibility in public contracting authorities when applying the Directives. Procurement officers seem to have become more preoccupied with applying rules and fulfilling EU requirements rather than assessing service delivery outcomes, and in turn the potential for vast innovation in services.

This is a costly exercise for the contracting authority and wastes economic resources which could be used for social and more economically advantageous purposes.

Lack of clarity on Part A and Part B services, results in contracting authorities placing the same reporting and accounting obligations for both Parts, regardless of reduced legal requirements for Part B services. This disproportionate practice hinders opportunity for innovation and service provision from voluntary and community organisations, which often deliver Part B services.

The UK is recommended to raise awareness of the core requirements of EU regulations to avoid over-implementation which can reduce opportunities and place civil society organisations in a disadvantaged position. There is anecdotal evidence to suggest that other Member States take the opportunity of flexible implementation and will be taking up the new priority for social innovation. This can result in a more efficient application of public procurement rules.

Q9. What future challenges/opportunities might we face in the Internal Market and what impact might these have on the national interest? What impact would any future enlargement of the EU have on the Internal Market?

Demographic change requires political and economic alterations into compound strategies. Shifts in human records, ages and location, affect long-term supply of human capital, influencing the lot from labour and pension costs to the accessibility of people. An ageing population, changes in female participation in the labour market, family fragmentation and urbanisation have serious impacts on citizens' accountability and needs, in particular in terms of childcare and care for the elderly. Furthermore, from 2012, the working-age population has started to decline. To guarantee sustainability of national and European welfare systems, more people have to work. Consequently, there has already been an increase in demand for public services. In order to reform social service delivery that favours CSOs, it is essential to simplify procurement rules and develop new and innovative solutions.

Since social inequalities have increased, the balance of social and market dimensions has been disrupted. For some citizens, social exclusion and poor working conditions are still a reality. Economic efficiency needs to go hand in hand with innovative social policies.

The EU can enhance the growth process by further developing the internal market, e.g. in the area of social service delivery, social innovation and social entrepreneurship. Unnecessary barriers to labour and businesses must not strangle the growth of dynamic and innovative service production while entrepreneurship and risk taking especially in procurement should be encouraged. Our shared idea is that globalisation and ageing populations call for urgent structural reforms with a view to enhancing flexibility, competitiveness and vitality.

General

Q10. Are there any general points you wish to make which are not captured above?

- Clearer definition of State Aid: - State aid rules need revisiting and clear guidance should be issued to UK providers. At present different public sector organisations interpret the rules in different ways.