

Balance of Competences Review  
Department for Business Innovation and Skills  
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Submitted by email: [balanceofcompetences@bis.gsi.gov.uk](mailto:balanceofcompetences@bis.gsi.gov.uk)

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Dear Sirs

### **ICSA response to Call for Evidence: Single Market: Free Movement of Services review**

We welcome the opportunity to provide evidence for your review of the Balance of Competences between the UK and EU in relation to the Single Market: Free Movement of Services. The Institute of Chartered Secretaries and Administrators (ICSA) is the international professional body that qualifies Chartered Secretaries and represents Company Secretaries as a whole. We frequently engage with relevant new legislative proposals at both EU and UK level on behalf of our members.

As ICSA represents the views of Company Secretaries, we have confined our response to the section on Company Law and Question 11 of the consultation questions, as this is our area expertise.

#### **Q11 What do you see as the advantages and disadvantages of EU action on company law? To what extent do you believe that the cost of existing or future European rules in this area is proportionate to the benefits?**

We agree that some level of harmonisation of company law and corporate governance is important in facilitating the establishment of companies across the EU (as noted in paragraph 31 of the consultation document). However we would also highlight the critical need to recognise the widely differing legal frameworks, business practices and ownership structures of member states (paragraph 36 of the document). We have concerns that these differences are sometimes overlooked, and the effects on different member states not understood, when proposals for changes in EU law are being drafted.

Paragraph 6 of the consultation document highlights that the EU must act in accordance with the principles of subsidiary and proportionality but our experience is that proposals on company law and corporate governance do not always appear to apply these principles. In particular we find that many proposals go beyond what is necessary to achieve the objectives of the EU treaties (proportionality).

We also have concerns that timely cost/benefit analyses and impact assessments are not always completed. It is our view that a cost/benefit analysis and impact assessment should be carried out when proposals are being formulated. However, it is our experience that these seem either to be carried out too late in the process, or not at all, and do not seem to be sufficiently rigorous.

It can sometimes be difficult to see clear benefits from EU proposals that are not thought through sufficiently at the outset, and where there is a lack of clear understanding about the issues, or substantiation of a claimed need for action at EU level. The impact of proposals on individual member states is not always understood sufficiently and evidence of the benefits to be achieved can sometimes be lacking. Proposals that are not sufficiently thought through can result in unintended consequences and/or a substantial amount of time, effort and cost spent by all those involved in negotiating amendments and finding a workable position. The recent proposals on Audit Reform are an example of this.

In our view, there are clear advantages to a level of harmonisation and appropriate EU action on company law; however it is important that proposals for EU action comply fully with the principles of subsidiarity and proportionality. It is also important that the benefits of proposed action outweigh the costs, and that a thorough and rigorous impact assessment is carried out at an early stage. It is our experience that, when this is not the case, the outcome is often costs that are disproportionate to the perceived benefits.

If you would like to discuss our comments in more details, please contact me.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Swabey', written in a cursive style.

Peter Swabey  
Policy & Research Director