

# European and External Relations Committee

## EU reform and the EU referendum: implications for Scotland Inquiry



### Submission by the European Movement in Scotland

The European Movement in Scotland (EMiS) is Scotland's oldest dedicated pro-European campaigning organisation, leading the campaign for our continued membership of the European Union (EU). It successfully led the campaign for our continued membership of what was then known as the European Economic Community in the referendum of 1975.

EMiS believes that in Scotland there is a great reservoir of goodwill towards Europe and aims to inform and mobilize this to counter Eurosceptic misinformation. We do this through working to ensure that the pro-European voice is heard by key stakeholders, such as the media and government.

EMiS is an independent, not-for-profit, non-governmental organization, funded exclusively by its members and receives no funding from any political party, nor from the UK, nor Scottish Government, nor from any institution of the European Union. We welcome members of all political parties as well as those without any affiliation.

In this capacity, EMiS welcomes the establishment of this inquiry and acknowledges the challenges of undertaking it against a moving background. We offer the following thoughts according to the framework set out in the Call for Evidence:

### 1 **The implications of an EU Referendum on Scotland**

#### 1.1 **What are your views on the implications of the EU Referendum Bill in relation to the timing of the referendum, the franchise for the referendum and the question to be put to the electorate?**

**Timing:** *The European Union Referendum Bill requires the referendum to take place by the end of 2017 and calls on the Secretary of State to indicate the date of the referendum by 31 December 2016.*

It is vital that such a plebiscite is held on a separate day from other elections. To hold this on the same day as other such votes would confuse voters and fail to allow enough focus on the significant issues which stem from the question.

As the Electoral Commission, which carried out a [report](#) into last year's Scottish independence referendum, said: "holding a poll on such an important constitutional issue on a separate day from any other elections helped both administrators and campaigners plan their activity more effectively and gave voters space to engage with the issues."

**Recommendation:** Like the independence referendum, the issues are complex, many and merit the electorate achieving a level of knowledge. In order to allow sufficient time for this EMiS recommends at least six months between the referendum legislation being finalised and the date of the poll.

**Franchise:** *The EU Referendum Bill states that the franchise will follow broadly the same rules as a General Election.*

Accordingly 1.5 million EU citizens resident in the UK, including 90,000 in Scotland, will be excluded from casting a vote on the future direction of the country in which they live and work.

Underlining that absurdity, it will not be true for those from the Republic of Ireland, Cyprus or Malta. Likewise UK nationals who have lived overseas for less than 15 years and Commonwealth citizens resident in the UK *will* be able to vote. By contrast, EU citizens who live in the UK, pay their taxes here and contribute more to the UK economy than they take out, will be excluded.

Quite apart from the unfairness of this to a constituency which stands to be disproportionately affected, this framing of the ballot suggests a battle between British people and those from the rest of Europe. The narrow nationalism it implies is not only to be regretted in its own right, but also implicitly endorses a divisive undercurrent which feeds a negative response.

By contrast, the Scottish referendum poll did not exclude those residents from the rest of the UK and the EU voting here as it was recognised that its outcome would have a clear relevance to their lives.

**Recommendation:** EMiS recommends that the franchise be extended to include EU nationals resident in the UK.

### **16 & 17 year olds**

As in the Scottish Independence Referendum, giving 16 and 17 year olds the vote would help re-engage this generation in the political process. EMiS is delighted to see the franchise for the Scottish Parliament elections extended to include this group and regrets that the same logic has not been applied to the EU Referendum. Young people travel more and are more likely to migrate to other EU countries for education, career and life opportunities. Given its long term implications for the entire lives of 16 & 17 years olds, it is surely reasonable for them to participate in this decision.

**Recommendation:** EMiS recommends that the Referendum franchise be extended to include 16 and 17 year olds. Young people are our future. They will be affected to greater extent and for longer than older generations. It follows that it is vital that they have a say.

**Question:** *The Electoral Commission has suggested revising the wording to "Should the United Kingdom remain a member of the European Union or leave the European Union?". While Westminster still has to vote on the matter, David Cameron appears minded to support the change.*

The revision has produced a more complex phrasing but has the considerable advantage of removing grounds for complaint after the poll. On balance EMiS believes it should be welcomed while noting that the design of the voting form will be critical to ensuring no ambiguity in the voting choice.

## **1.2 What does EU membership mean for Scotland's economy and its people? What are the implications for Scotland of the UK leaving the European Union?**

Over the last forty years Scotland's businesses, organisations and people have benefitted from being part of the EU, the world's largest economy and trading area, capable of competing with advanced economies across the globe.

Today the EU is the world's largest single market, comprising over 500 million people and 20 million businesses. Within the Single Market the free movement of goods, services, capital and people is addressed – the so-called "four freedoms". An ongoing programme, this already provides a massive boost for the Scottish economy, delivering jobs, investment and a huge market for our exports as well as enabling each individual to broaden their experiences and increase our potential as human beings.

As a member of the Single Market our companies can sell to any other EU country, without paying import or export tariffs or having to obtain regulatory approval, and can invest wherever they wish within its borders. The ability for time-critical transport to be only minimally obstructed by border formalities is vitally important in the delivery of Scottish fresh agricultural, fishing and other perishable products to markets around Europe.

We can also travel, study, live, shop, do business, work and retire in any EU country. Those coming here from other EU countries make a positive contribution to our economy and society, and are particularly important to the competitiveness of our agricultural, tourism and academic businesses.

Consumers benefit from access to the wider range of products available across the EU while greater competition between suppliers helps keep prices down ensuring best value for money.

• **336,000** Scottish jobs estimated as supported by exports to the EU <sup>1</sup> amounting to **13%** of the total Scottish workforce.

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<sup>1</sup> Source: [Centre for Economics and Business Research \(Cebr\)](#).

- **46%** of Scotland's exports went to EU countries in 2013 - worth **£12.9 billion** that year <sup>2</sup>
- **45p** - The cost of EU membership per day - less than half the cost of most people think <sup>3</sup>
- **£3,000** - The amount per household that EU membership is worth i.e. 4% - 5% of UK GDP, (or £62bn - £78bn, roughly the size of the economies of NE England and Northern Ireland combined). <sup>4</sup>

### **Inward Investment**

This is an area where Scotland has benefited strongly in recent years. Membership of the EU plays an important role in attracting foreign direct investment (FDI), not only from within the EU but also from further afield, by offering an English language base inside the EU.

### **EU Funding**

EU funding comes to Scotland through European Structural Funds, Common Agricultural Policy (CAP) direct payments and through winning competitive funding for research and infrastructure because of our expertise.

- **€1.9 billion** - The funding package for Scotland in 2014-2020 (€985 million of European Regional and Social Funding, matched by Scottish Government and partner funding) which will support the aspiration to deliver sustainable economic growth for all in Scotland.

### **Freedom of Movement**

The right to freedom of movement, through the Single Market, is of huge benefit to those from Scotland who want to live, study, shop, work, do business and retire – with full pension entitlements - elsewhere in the EU.

In turn, migration from the EU has contributed hugely to the diversity of our culture, the prosperity of our economy and the strength of our society.

- **171,000** individuals born elsewhere in the EU currently resident in Scotland.
- **19,200** students from the rest of the EU at Scottish universities/FE colleges, attracting top talent, contributing positively to the Scottish economy and supporting a broader life perspective for our younger people.
- **Over 1,400** students from Scottish universities supported by the Erasmus programme to study abroad in 2012/13. Students from Scotland can train and study in any EU country under the same conditions as that country's nationals. The new Erasmus+ programme will see an increase of over 40% in EU funding to an overall budget of €14.7 billion - providing grants for more than four million people to study, train, gain work experience or volunteer abroad in 2014-2020.
- **2.2 million** - The [estimated number](#) of those from the UK living in other EU countries, even more than the number from the rest of the EU who live in the UK. This ability provides opportunities for robust career progression, particularly among young people and rising stars while, for many, retirement to EU countries represents the culmination of a lifetime's effort and saving.
- **26 weeks** - The number of weeks of maternity leave guaranteed by EU rules. The EU has provided important social protections for workers in Scotland and across the continent, including four weeks paid holiday a year and protections from redundancy, amongst other things. The EU has also extended these benefits to workers on fixed-term temporary contracts.

### **The Environment**

Scotland has an extremely rich, well protected and beautiful environment, which is famous throughout the world and underpins our economy and society. It is vital to protect this valuable

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<sup>2</sup> Source: [Scotland Global Connections Survey \(SGCS\)](#).

<sup>3</sup> Source: Chatham House

<sup>4</sup> Source: [Confederation of British Industry \(CBI\)](#).

resource for present and future generations.

By its very nature the environment transcends political, legal and man-made boundaries. As a result, cooperation between EU Member States and between the EU and the rest of the world is essential if we are to tackle challenges which impact on us all. These range from droughts and floods, to pollution and threats to Europe's rich natural capital and biodiversity. As a result of our location on Europe's north western edge, our marine environment is particularly extensive with our Exclusive Economic Zone (EEZ) covering over five times the area of our landmass and more than half of the UK's EEZ. It is especially prone to cross-border impacts and therefore in need of coordinated international control.

Addressing environmental challenges requires collective action involving the EU, national, regional and local governments, businesses, Non-Governmental Organisations (NGOs) and ordinary individuals. It must include outreach to our international partners inside and beyond the EU so that action can be taken on a global scale.

As the world's largest economic bloc, the EU has led in this critical area by protecting our living environment. It has some of the world's highest environmental standards. Environment policy helps green the EU economy, protect nature, and safeguard the health and quality of life for people living in the EU.

Water, air pollution and chemicals are among people's top environmental concerns. To safeguard people from environment-related pressures and risks to health and wellbeing, EU policy aims to:

- Guarantee safe drinking and bathing water
- Improve air quality and reduce noise
- Reduce or eliminate the effects of harmful chemicals

Climate Change threatens catastrophic consequences for mankind. A major obstacle in countering its worst effects is achieving coordinated international agreement. Scotland has embraced renewable energy particularly by investing substantially in our wind and marine potential. Through the UK, it has been a key driving force behind EU climate diplomacy; setting high ambition at home, contributing significant international climate finance, and marshalling support from other progressive EU partners. We will achieve more from inside the EU than outside.

### **The EU and everyday benefits**

EU membership delivers numerous benefits evident in the day-to-day life of people in Scotland. When we go to work or university, go on holiday, make a phone call or buy a product online, we benefit from our membership of the European Union:

- Freedom of movement means that we can travel, live, study, shop, work and retire in the EU country of our choice.
- EU action has abolished roaming charges, and greater competition between suppliers has led, for example, to a cut in air fares through freedom of European skies thereby ensuring consumers get the best value for money.
- Consumers benefit in price, range and quality from access to the wider range of products available across the EU.
- If you fall ill or have an accident anywhere in the EU, you are entitled, through the European Health Insurance card, to public healthcare under the same conditions as you would receive in Scotland.
- Holidaying in the EU is easier than anywhere else in the world. With no visas, and often no passport controls either, traveling in Europe is largely hassle-free.
- Through the EU, Scotland is part of a union with some of the highest standards of food and product safety in the world - producers worldwide must match the EU's standards if they want to sell their products in Scotland.
- EU citizens are strongly protected when shopping online - you have the right to return products within 14 days if they are unsatisfactory, even when shopping outside Scotland.
- The EU has guaranteed that if your train, plane, bus or ferry is cancelled or delayed, you will receive compensation.

- If you get into difficulty whilst outside the EU, you can receive help from any EU Member State's embassy or consulate if there is no UK assistance available.
- Your job and prosperity is largely dependant on our continuing EU membership.

### **A Force for Good in the World**

Scotland has a particularly international history through its diaspora and the days of Empire. This enhances the importance we attach to international development and the EU helps us leverage our efforts. While the EU participates as a powerful force for good in almost all global financial, economic and political fora, it and its member countries constitute the world's largest humanitarian donor.

But this must not result in complacency. Current shameful events in the Mediterranean and to the east of the EU serves to illustrate what can happen when a policy area is relatively underdeveloped. The need for coordinated action by rich countries in managing refugees and economic migrants (and, arguably, foreign policy) is quite evident.

### **Worse off Out**

BREXIT would mean our no longer participating in the EU's legislative process and thereby influencing EU decisions, laws and regulations through direct participation in the Council of Ministers, European Parliament and Commission – and yet we would inevitably have to abide by any rules and regulations decided by the EU. Nor would we have a right of access to the EU Court of Justice to resolve disputes and unfair practices in trade, competition and other business related areas.

Withdrawal from the Single Market arrangement would have a greater impact on the Scottish economy than for the rest of the UK due to the fact that trade accounts for a larger proportion of the Scottish economy than is the case for the UK as a whole.

The implications for Scotland of the UK leaving the EU would depend on the nature of the relationship established post withdrawal. If the UK remains within the Single Market as part of the European Economic Area (EEA), this will be different from being a member of the European Free Trade Association (EFTA) or seeking to establish a bilateral series of arrangements with the EU. Any such arrangement implies acquiescing to the EU's rules, regulations and trading conditions but with minimal input into the setting up of such arrangements.

As a *member of the EEA*, Norway suffers from regulation without representation. It is part of the Single Market but, because it is not in the EU, has no power to influence the Single Market regulations that affect its economy. Norway applies 75% of EU laws yet still has to pay it for the privilege, and accept the free movement of people. It also contributes to EU programmes. While figures are not easily comparable, the cost for capita to Norway of its current arrangement appears to be about the same as that for the UK.

Switzerland's bilateral deal with the EU is unique, and messy. Switzerland has partial access to the Single Market, but not in financial services. It took the Swiss 50 years to get this partial access, and the EU has said it is not a model to be followed by other countries. The Swiss people voted to restrict EU immigration, but found that this was forbidden under their bilateral agreements.

Turkey's customs union is the worst of all worlds. If we followed Turkey's example, the UK would enjoy only the free movement of goods, meaning that 80% of our economy i.e. services, would not be covered. We would be completely shut out of the EU's global trade negotiations, and we would still have to apply tariffs on some imports.

Under the World Trade Organisation (WTO) rules, Scottish companies would face tariffs and be locked out of the Single Market. Our companies would have to pay tariffs, but we would still have to abide by EU standards in order to export to Europe.

EU membership makes Scotland richer and safer. It provides unmatched opportunities for our companies; allows us to trade around the world; helps keep us secure; and benefits us at work, on

holiday or when doing the weekly shop. No alternative form of membership would provide all those benefits. It is simply untrue that we would be able to keep them without paying the costs.

### **1.3 What would be the process for leaving the EU, including: the legal process with the EU and within the UK; withdrawal from the single market and EU trade agreements; the ending of free movement of persons; and transition arrangements?**

Leaving the EU is legally possible, but an assessment of alternatives must focus on how each would support British business and society in realising its global future.

The EU Treaty has an 'exit clause', first set out in Article 50 in the Treaty on European Union, which sets out the basic steps for a withdrawal.

1. The member state wishing to leave informs the other member states of its intention.
2. The other member states create guidelines for the negotiation between the EU and the leaving member state.
3. The leaving member state and the EU begin negotiating a treaty framework, a so-called 'withdrawal agreement,' which will regulate the time frame and details of the 'divorce'. The two parties have two years to finalise negotiations.
4. If the two parties agree, the country is allowed to exit the EU on the terms of the withdrawal agreement. If there is no agreement, after a two-year notice period, the leaving member state will simply then no longer be bound by the Treaties, and the other member states will not be bound by their various Treaty obligations to the leaving member state.

Leaving the EU is therefore a practical possibility for the UK but it is uncharted territory with no guarantees for a future relationship.

The 'withdrawal agreement' would set out the process and the practical realities of an exit (the transitional measures that would wind down the UK's EU obligations) and benefits. But the content of this agreement is not straightforward. It would, for instance, have to set out and solve the logistics of the UK's budget contributions while phasing out EU funding to UK regions and UK participation in various EU programmes, remove the UK as a signatory from free trade agreements, and determine under which rules UK airlines could operate flights to and from EU destinations. Nor is it "simply" a matter of solving the complexity. It would be a negotiation, often on details where previous agreement had taken years to hammer out in easier circumstances and there is no guarantee of securing a favourable future UK-EU relationship. As a former UK judge at the European Court of Justice, Sir David Edward, has noted, there would likely be a long negotiation period as the UK went about the "unravelling of a highly complex skein of budgetary, legal, political, financial, commercial and personal relationships, liabilities and obligations".

At first glance straightforward, leaving the EU would involve a number of uncertainties because the two parties would be dividing after a 40-year long relationship. No one can therefore describe with certainty how an exit would look and the impact it would have on the UK. The uncertainty would undoubtedly affect FDI and most probably domestic investment also.

The provision of the 2 year notice period after notifying intention to withdraw is a safeguard for both the EU and the leaving member to make sure that no party holds up negotiations. But there is a risk: failure to reach an agreement would mean that the UK would be automatically 'out' after two years even if the question of the future relationship remains unresolved. Were negotiations over the withdrawal agreement to fail or time simply run out, the UK could easily find itself outside the EU involuntarily with no access rights to its markets. Amongst other things, that would compromise nearly half of UK exports, directly affect the rights of all UK citizens and have an immediate practical impact on over 4 million EU citizens currently resident outside the country of their birth (including perhaps 400,000 in respect of Scotland).

Indeed it is highly doubtful, given other preoccupations of the remaining EU member states, that a resolution would be achieved within the statutory 2 years thereby significantly increasing the likelihood of huge uncertainty for Scottish businesses and citizens about their future prospects and status.

Moreover, it is not clear whether negotiations would include all necessary details about a future UK–EU relationship. The Treaty states only that the agreement has to 'take account of the framework for

the future relationship the country will have with the Union', but it has been argued that it does not in itself negotiate the new relationship. Instead, a prolonged period of uncertainty could result while the UK negotiated a separate agreement to set out its new relationship after the exit was completed.

## **2 EU reform - the implications of the UK's EU reform agenda on Scotland**

*The main areas which the European & External Relations Committee believes the UK Government will seek to change are -*

- *EU migrants and access to the UK welfare system*
- *A stronger role for EU national parliaments to block unwanted EU legislation*
- *An end to the "ever closer union" commitment in the Treaty on European Union*
- *Safeguarding the interests of non-Eurozone members*
- *Regulatory reform, expansion and preservation of the single market, and lower EU spending*

### **2.1 To what extent and in what policy areas is there a need for EU reform?**

Whilst EMiS accepts the policy areas listed above are important, we do not consider these to be the main challenges facing the EU at present. The perceived "need" for reform may therefore not be easily shared with consequences for how the renegotiation is received. Moreover, the conduct of the process itself may impact the UK's relationship with the rest of the EU.

The British Government is seeking marginal changes to existing rules governing the EU. However, the major weaknesses exposed within the EU by both the recent banking crisis, with its subsequent conversion into a sovereign debt crisis which severely damaged several countries, has made necessary a complete review of the future financial regulation of the Eurozone. This will, almost certainly, redirect the EU update process and will make it even more difficult for the present British Government both to achieve those changes it wishes and to agree with any future changes in the governance of the EU.

Most obviously, there is a need for ***closer financial, economic and social integration of the Eurozone***, possibly requiring a financial Commissioner responsible for the Eurozone, overseen by the European Parliament, or a subset of it. This has been proposed by the French Finance Minister.

During the first ten years of its existence, the Euro zone seemed to be functioning like a "true" currency union. Integration of capital markets accelerated, cross-border activities increased and differences in average income per head between Member States were reduced. Since the beginning of the Euro crisis, this integration has come to a halt and is now back to pre-Euro levels.

Since the euro was introduced the European institutions have been responsible for monetary policy, while the Member States remain in charge of their budgetary policy and coordinate their economic policy. That creates tensions. The Maastricht treaty, establishing the European Union and the euro, was built on a belief that the European Central Bank could provide the only common economic governance that monetary union required. The extreme economic difficulties experienced by, amongst others, Spain, Portugal and Ireland and the recent catastrophic breakdown in the economy and banking system of Greece, reveal this to have been incorrect.

The French Government clearly believes that the Euro-crisis has demonstrated that the currency union cannot continue in its present form and that without some form of transfer union the Eurozone as it is presently constituted cannot survive. In an interview with the Sueddeutsche Zeitung on 31<sup>st</sup> August 2015 the French Finance Minister outlined the developments the French Government would like to see as a Euro administration which would be directed by a Commissioner with wide ranging powers who would not only be a European finance minister but would also be involved in investment decisions and in labour market politics. This new EU body would have to be under Parliamentary control thus requiring the establishment of a new chamber made up of MEPs from the Eurozone countries. Such far-reaching changes would require a new treaty and would mean that Germany would have to step back from its present absolute resistance to any transfer union.

The other fundamental issue currently facing the EU concerns the ***management of refugees and economic migrants seeking to enter the EU***. It is evident that the current structures are failing. However, far from this being a failure of existing EU policy it is quite clear that the problems arise from

inadequate development of that policy, inconsistent application and inconsistency with other policies (notably Schengen). In short, the solution is more coordination not less. Yet the Commission's proposals in May this year for a framework of national quotas were rejected, largely by Eastern Europe but with the UK resorting again to stand on the sidelines by adopting an opt-out.

The mitigations which have been successful are Operation Triton and the "voluntary" relocation programme under which individual member states have offered to take a certain number of refugees. The former has seen the death rate in the Mediterranean plummet while the latter is now producing a chaotic patchwork of movements across the continent against a pattern of changing national commitments. If the earlier Commission proposals had been accepted, then certainly some of this chaos could have been avoided.

The need for coherent and complementary policies should not be underestimated. Member states' policies for managing immigrants once they have been accepted need to be fully thought through to avoid undesirable downstream consequences some of which may take decades to fully materialise. Integration of these new populations will necessitate positive and enlightened policy measures to overcome a natural tendency to cluster together in adversity resulting in longer term concentrations of poverty and disadvantage. Delaying asylum seekers' rights to work makes little sense yet is widespread. Targeting specific educational needs will shorten the period of disadvantage and bring forward the date at which an immigrant becomes a net contributor to the public purse (as the vast majority assuredly do). Good practice among member states should be recognised and promoted.

Moreover, simple analysis of the facts demonstrates that the UK's withdrawal from the EU would neither absolve it from its responsibilities nor reduce the human and political impacts. Along with Denmark and Ireland, the UK has an opt-out in this area. Yet it was still felt necessary to deploy the Royal Navy as part of Operation Triton. Nor has the opt-out prevented TV pictures reaching living rooms nor heavy criticism of the UK Government's position. It defies logic that non-membership of the EU would be any more successful in insulating the UK from such events. It would simply make it more difficult to achieve the level of coordinated response necessary.

Unwillingness to recognise such fundamental issues, prioritising instead relative detail, will surely reinforce the view of Britain as insular and further weaken the UK's longer term position within the EU.

Other possible headings with greater relevance might include a more co-ordinated foreign and defence policy and possibly a common external border police/unit.

Turning to the specific headings which are suggested as likely areas for negotiation:

#### **1. *EU migrants and access to the UK welfare system***

EMiS' interpretation of the term "EU migrant" here is that of a citizen of one member state (and therefore of the EU) moving to another member state. We believe it is vital to maintain the distinction between that and people attempting to enter the EU from outside its borders. EMiS deeply regrets the conflation of these two dimensions which is evident in some of the coverage.

Access to benefits is an issue on which several EU States agree. There have been some limited abuses (disproportionately publicised), despite EU legislation allowing Member States to adopt measures to avoid this. Stricter interpretation, or even legislative improvement, is being considered. This does not need any treaty change.

The principle of free movement of citizens within the EU is however, a cornerstone of the Treaty: its questioning would be a non-starter for most EU States and would remove a key right accorded to each UK citizen in their concurrent capacity as EU and national citizen.

#### **2. *An end to the "ever closer union" commitment in the Treaty on European Union***

Importantly "*the process of creating an ever closer union*" features a lower case "u" while both the Preamble and Article 1 state "*among the peoples*" (*not the States*).

These words are seminal. They were in the original Treaty of Rome to which we signed up in 1973 and subsequently approved in the 1975 referendum. A request to delete it would likely be opposed. But the precise phrasing means that the stated ambition does not imply the aim of establishing a Federal Union among member States. On the contrary, the Treaty obliges the EU to respect the history, culture and traditions of the peoples of Europe (Preamble and Article 3(3)) and

to respect the national identities of the member States, their fundamental structures, political and constitutional, as well as their essential State functions (Article 4(2)).

Perhaps a political Declaration, recalling this is needed? The most that might reasonably be hoped for is that such a Declaration assures that the process towards "ever closer union" will only take place within the constitutional parameters under which the EU operates.

### **3. Safeguarding the interests of non-Eurozone members**

Conventional wisdom is that, in the medium term, the Eurozone will integrate further, either through revision of an EU Treaty, or through a "Eurozone treaty" outside the EU Treaty. In that event, non-Eurozone EU members fear that the Eurozone might adopt decisions having a negative impact on them, especially concerning the single market. In order to reassure them, the Eurozone, or probably the Eurozone plus some other EU countries which intend to join the eurozone, could confirm in a new treaty their legal obligation, under the control of the EU Court of Justice, to guarantee the rights of non Eurozone countries, including on the integrity of the single market, to respect the "*acquis communautaire*" and the exclusive and exercised powers of the EU under the Treaties, as well as the EU Treaties' and EU's law primacy over the Eurozone treaty. On top of that, they might also accept the need to ensure openness of their activities and to give the right to participate in meetings for those willing to join the euro within a given period.

The impact on the UK of Eurozone regulation may not be direct but it will be highly relevant. Trade-offs will also be involved and a wider perspective needs to be taken. For example, the City of London derives much business from servicing offshore accounts while the UK Government has stated its desire to combat international corporate tax avoidance. It is, of course, a relevant consideration that outwith the EU, the UK would lose the status or right to expect such consideration from Eurozone member states.

### **4. Regulatory reform, expansion and preservation of the single market and lower EU spending**

No system is perfect and improvement should be continuously sought. But the EU's contribution is frequently misrepresented. EMiS feels it necessary to draw attention to three important facts:

- a) By construction, one EU legislation replaces 28 national laws (28 red tapes) and allows the single market to function better.
- b) Preventing EU legislation from creating red tape is day-to-day work, which is taken more seriously today by the member States and the EU institutions (see Program REFIT) and is currently a high priority.
- c) In many cases the EU prevents member states from imposing and implementing unilateral and discriminatory national legislation.

In practice, there is no simple legal option available to avoid red tape: this cannot be decided by a Treaty. A closer scrutiny of each Commission proposal by the EU institutions (in which the UK already participates but could do so more actively) and by *national* authorities is the pre-requisite. We would suggest also non legal mechanisms, such as seriously improving the current Impact Assessment system, developing performance indicators and regularly assessing some EU laws after a few years of implementation including possibly sunset or review clauses. (Source Jean-Claude Piris draft of 19<sup>th</sup> April 2014)

The most powerful way to preserve the Single Market would be to extend its coverage. The UK has the opportunity to build on its previous significant achievement of the 1993 Single Market legislation by taking a leadership role in progressing Single Market proposals including those which have already been proposed by the European Commission.

Two particular sectors stand out – Energy and Services. Concerns about improving pan-European energy security together with a wish to tackle Climate Change are already forcing some change in the former. Energy security and environment both mean that this is not a matter simply of deregulation.

The challenge in completing the Single Market in Services is different. Progress is widely identified as desirable but often held up by specific national concerns, including by the UK. The focus would likely be:

- Professional services – development and recognition of common standards and protections may be the enabling prerequisite. If this means that each country (incl UK) is obliged to tighten some of its standards it will be to the benefit of consumers generally.
- Financial services – There has been a need for tighter regulation over banking and finance activity in the EU, especially in, but not confined to, the Eurozone. Because of the ability of 21<sup>st</sup> century money to cross borders and the need for an economic bloc to have sufficient clout to influence offshore havens the appropriate level of rules and regulations needs to be agreed at the EU level and subject to scrutiny by the European Parliament

Foremost, concerning change negotiations, and while giving due attention to the need for a sufficient degree of labour market flexibility to ensure global competitiveness and therefore prosperity, EMiS considers it vital that “reform” is not used as a means to erode worker/citizen rights in favour of corporate advantage. As a supranational entity, the EU must, in the final analysis, continue to be the servant of its 500 million citizens and maintain and enhance their democratic rights.

## ***2.2 What are the implications of EU reform for Scotland both in relation to devolved and reserved policy areas?***

EU Reform will have implications for Scotland irrespective of whether the policy areas are reserved or devolved.

In principle, policies which are reserved to the UK Government and Parliament should be capable of mediation through established or modified UK constitutional arrangements, balancing the needs of different parts of the UK. Nonetheless, there may be some reserved policy areas where change may have a more substantial impact on Scotland than on some other parts of the UK.

Some of the areas where emphasis differs and where consequences might develop differentially are:

### *Migration into the EU*

At its most fundamental, the population density of Scotland is about half that of the EU as a whole, while that of England is more than three times the average. While accepting that there are physical and social infrastructure considerations, that difference, and the socio-political differences evidenced in the 2015 General Election point to a more welcoming climate north of the border.

### *EU migrants and access to the UK welfare system*

The contribution of EU migrants to our economy is significant. Polish has been the second language in Scotland for some years. The cultural effect has been to broaden the perspective of a country located on the fringe of a continent (much more so than England). Scottish demographic trends show a more rapid aging than for the UK as a whole, implying a greater need to rejuvenate our workforce.

### *A stronger role for EU national parliaments to block unwanted EU legislation*

This implies a level of disagreement between the UK and its European partners. Sooner or later occasions will arise when the Scottish interest will be better served by the European position than that of the UK e.g. social provisions. Unless UK intergovernmental arrangements are outstanding, tensions within the UK will correspondingly appear.

### *An end to the “ever closer union” commitment in the Treaty on European Union*

We have already commented on the greater symbolic importance of this phrase than its superficial interpretation might suggest. However, giving greater credence to the underlying wish to allow the UK to follow a divergent path would suggest that the occasions on which the other members might share a different view from that of the UK would multiply thereby exacerbating the potential for internal UK tensions.

### *Safeguarding the interests of non-Eurozone members*

Understandably, the UK wishes to protect its financial services industry. Scotland has a corresponding interest. EMiS would highlight however that this objective may be at odds with removing the phrase “ever closer union”.

### *Regulatory reform, expansion and preservation of the single market, and lower EU spending*

Scotland has major strategic investment and very specific interests as a major supplier of oil, gas and renewable energy and should be fully engaged at the forefront of any negotiations. A pan-European energy network of the type which is now emerging piecemeal could have very different repercussions for Scotland depending on how that develops.

It is in devolved policy areas that there are more significant implications for the UK's own institutional arrangements (see section 3 below). In the absence of governance arrangements typical of a federal structure such as we see in Germany or Belgium, it will be important to ensure that UK positions take proper account of its own internal "variable geometry".

### **2.3 What the role of national parliaments should be in relation to EU legislation and whether there should also be a role for substate legislatures?**

One of the areas which has been identified as a likely target for UK Government to seek change is for a stronger role for national parliaments to block unwanted EU legislation

Article 12 and Protocols 1 and 2 of the Lisbon Treaty conferred powers on national parliaments. According to the area concerned, either one third or one quarter of national parliaments may, based on the principle of subsidiarity, oblige the Commission to review a legislative proposal. It is true that it has rarely been used: excessively short deadlines are imposed on national parliaments, their cooperation is not well organised and their opinions are not binding (so-called "yellow card"). This could be improved by offering practical facilities to national parliaments, applying flexibility for delays, and agreeing on a political commitment to follow their decisions. A treaty change could of course go further, by conferring greater powers to national parliaments (effectively a "red card"), with special powers for national parliaments of the Eurozone.

But in truth the U.K. parliament (and House of Commons' EU Scrutiny Committee in particular) has been singularly ineffectual in pointing up problems with EU legislation. Given a commitment to get involved at an early stage in the EU's legislative process and to holding UK participants in the Council of Ministers to account, the UK Parliament could have a much more significant impact than is currently the case. This could also give time and opportunity to coordinate with other national parliaments to assemble a "yellow card" block.

A constitutional arrangement with strong devolved government means that there is a powerful argument for a direct say for devolved administrations (most especially for N Ireland with its land border to the Republic) and we expand more on this separately in this submission. Suffice it to say here that we believe more open and positive engagement of devolved administrations has the potential to significantly improve the quality of the UK's overall contribution to the scrutiny process.

A positive constructive approach like this might be contrasted with some of the self-serving parochialism expressed by some in Westminster about the democratic process at EU level and the European Parliament's increased real power and very effective scrutiny and democratic approval/disapproval/amendment of all EU legislation.

## **3 Intergovernmental relations**

### **3.1 To what extent do the current intergovernmental structures and arrangements provide for meaningful involvement of the Scottish Government on the UK's agenda for renegotiating the UK's position in the EU?**

The EU referendum will have clear implications for Scotland in both devolved and non-devolved matters.

Despite the UK's devolved constitutional arrangement there is currently no guaranteed role for any of the devolved governments (including Scottish Government) when it comes to renegotiating the UK's position in the EU.

There are mechanisms in place through a [Memorandum of Understanding](#) which includes a Concordat on Co-ordination of European Union Policy setting out the mechanisms between the UK Government and Scottish Ministers for the handling of EU business. The Concordat looks to involve devolved administrations in the formulation of UK policy on EU matters but is not-binding, stating that:

*"This Memorandum is a statement of political intent, and should not be interpreted as a binding agreement. It does not create legal obligations between the parties. The UK Government will involve the devolved administrations as fully as possible in discussions about the formulation of the UK's policy position on all EU and international issues which touch on devolved matters."*

## Recommendations

The European Movement in Scotland recommends that the Scottish Government and other devolved governments have a guaranteed role in establishing a common position in these negotiations. This might – inter alia - expressly permit the differential application of UK opt-outs and opt-ins, for example in the sphere of Justice and Home Affairs. Scotland's different legal system would certainly suggest a necessity for the Scottish Government's participation in any discussions and agreements in this area.

This could be through the establishment of a forum which gives the devolved governments a direct input to the reform negotiations to ensure that priorities are listened to.

So far as the poll itself is concerned EMI5 subscribes to the view that in order for a UK exit to be valid, all constituent countries of the UK must have a majority to leave and not simply the UK as a whole.

### 3.2 How could intergovernmental structures and arrangements be improved in the context of the Smith Commission agreement that the mechanisms for handling EU business should be improved?

In the Smith Commission report, the parties agreed that the implementation of the current Concordat on the Co-ordination of European Union Policy issues, should be improved by

- ensuring that Scottish Ministers are fully involved in agreeing the UK position in EU negotiations relating to devolved policy matters
- ensuring that Scottish Ministers are consulted and their views taken into account before final UK negotiating positions relating to devolved policy matters are agreed
- presuming that a devolved administration Minister can speak on behalf of the UK at a meeting of the Council of Ministers according to an agreed UK negotiating line, where the devolved administration Minister holds the predominant policy interest across the UK and where the relevant lead UK Government Minister is unable to attend all or part of a meeting

Ministers represent the UK in the Council of Ministers which is one half of the EU's co-legislature, with the European Parliament being the other half. The Council and the European Parliament jointly pass EU laws, coordinate broad economic policies of the Member States, sign agreements between the EU and other countries and develop the EU's foreign and defence policies. Scottish MEP's already participate directly in the European Parliament.

The Council is where UK Ministers ensure that collective decisions over EU law and policy properly take into account the national interest of their respective Member States. UK Ministers should be answerable and accountable to all their parliaments for positions taken and agreements made. Particularly in the case of devolved issues this should extend to the devolved parliaments.

The current position is that UK Ministers, under the scrutiny of the UK Parliament, have the final word over the line adopted by the UK in determining the shape of policy and legislation in devolved areas. Because the same Ministers are responsible for policy and legislation in relation to England, they face a serious potential conflict of interest. This can undermine the basis of the devolution settlement within the UK unless the arrangements for bringing Scottish influence to bear in determining the UK line operate effectively. Moreover, since Scottish Ministers bear no political accountability for the UK line in devolved areas, the Scottish Parliament may be unable to exercise effective scrutiny over EU legislation that impacts directly on the exercise of its own competence.

## Recommendations

The desire for guaranteed consultation by the UK Government of the Scottish Government in negotiations with the European Union is supported by 72% of the Scottish public polled by Panelbase (Sunday Herald, 'The powers struggle: poll reveals support for devo max', 5<sup>th</sup> October 2014).

EMI5 believes that there should be a statutory obligation for the UK Government to co-operate fully with the Scottish Government and the other devolved administrations in determining and representing common UK positions.

Scottish Ministers should be fully involved in determining the UK line and UK Ministers should be expressly required to take full account of Scottish views in relation to devolved matters, as well as on reserved matters impinging on Scottish Ministerial responsibilities.

In practical terms this could be organised by giving the Scottish Parliament (and its relevant committees) the right to call on UK ministers to appear before them to justify their position taken or to be taken. UK legislation should require UK Ministers to give effect to Scottish policy positions where it is feasible for Scotland to follow a different path from England in relation to matters where the UK enjoys opt-out and opt-in arrangements, whilst recognising that this may in due course require treaty change at EU level if it is to be given full effect.

The precise arrangements for implementing these statutory obligations could be laid down in a Cooperation Agreement. To some extent this might mirror the situation in Belgium in the 1990s whereby the Belgian regions and communities were given more powers (including for international relations), a Cooperation Agreement was drawn up in 1994 between the federal government and the regions and the communities which lays down the representation and the coordination of the Belgian position in the Council of the European Union. In 2003 the cooperation agreement was amended after the regionalisation of agriculture and fisheries.

One possible mechanism to facilitate this is for the shared cross-UK position to be established in advance of every Council meeting by strengthening and expansion of the Joint Ministerial Committee (JMC) on Europe to include relevant Council of Minister meetings such that it meets regularly and has a statutory duty to establish common UK positions.

Representation at the Council meetings themselves must necessarily remain primarily the responsibility of UK Government but Scottish Ministers should be encouraged to participate according to the contribution they can make to the agreed line. In turn that will reflect expertise and knowledge concerning the matters to be discussed. The arrangements should seek to maximise the abilities of the combined UK delegation in negotiations with team selection being a very practical matter. That will vary according to subject area and ultimately one might expect expertise/knowledge to reflect the relevance of the subject area to Scotland.

Efforts should be made to develop capacity accordingly. We would expect Scotland to have particularly strong interests in Agriculture/Fisheries, Energy, Environment and Financial Services.

The scrutiny powers outlined above should be used, among other things, to verify that the appropriate level of direct and indirect engagement is being achieved.