



WASHINGTON

BUSINESS
for
BRITAIN

Change, or go

How Britain would gain influence and prosper outside an unreformed EU

COMMON LAW
BIGGEST NATIONAL MARKET
LOVE
ALL EQUAL BEFORE THE LAW
JURY
ADAM SMITH WEALTH OF NATIONS
ENLIGHTENMENT IDEAS
TRADE
DIGITAL

ENGLISH THE OFFICIAL LANGUAGE IN 59 COUNTRIES
55% OF WEBSITES CONTAIN ENGLISH
1.75 bn SPEAK ENGLISH

FREE TRADE = SWISS AUSTRALIA ICELAND NORWAY PAKISTAN CHILE

UK 5TH LARGEST ECONOMY IN THE WORLD

2000 2010

BRITISH TALENT

THE BEATLES

TRUST

79% SERVICE ECONOMY

22% UK WEALTH

ADDED VALUE

LONDON

WWW

CONNECT

€180 bn

DEAL

ONE SIZE FITS ALL

DIG

Change, or go

How Britain would gain influence and prosper outside an unreformed EU



Part 1:
Why the EU
needs to
Change



Part 2:
The Change
we need



Part 3:
How Britain
would gain
influence
outside an
unreformed
EU



Part 4:
How Britain
would
prosper
outside an
unreformed
EU



Part 5:
Conclusion

About 'Change, or go'

With an EU referendum before the end of 2017 now a certainty, 'Change, or go' sets out what changes should be sought from the renegotiation, and what the impact of a looser relationship with the EU would be for Britain.

This new publication explains how Britain is in a win-win situation as it seeks to agree a better deal with our fellow EU member states. The report's authors also show how remaining in the EU on the present terms, given the push towards greater political integration, represents the worst of all worlds.

In part one, 'Change, or go' discusses how the EU is likely to evolve in the near future, with the expansion of the Eurozone and the possibility that, in the absence of fundamental reform, Britain may end up being continuously outvoted by Eurozone members with a more integrationist agenda. Part two explains what a better deal between Britain and the EU could look like, while parts three and four show how Britain would gain both influence and prosperity outside an unreformed EU.

I would like to thank the Editorial Board, who have provided extremely valuable guidance throughout the production of 'Change, or go', the ECU Group for their economic insights and all others who have provided feedback on the document. Oliver Lewis, William Norton and Lee Rotherham also deserve a special commendation for their dedication and hard work.

I would also like to express my gratitude to the Telegraph Media Group, whose generous sponsorship has made this work possible. The conclusions of the publication are ours alone, but we are grateful that they recognised the great appetite among voters for an informed assessment of this major turning point for the country.

I hope that 'Change, or go' will prove to be an important contribution to the ongoing debate about Britain's future relationship with the European Union, both during the renegotiation process and the forthcoming referendum campaign.



Matthew Elliott
Chief Executive, Business for Britain

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Introduction

Britain has reached a crossroads. The Conservative Party's victory in the General Election means that an In/Out referendum on Britain's EU membership is now guaranteed before the end of 2017. The choice each of us will have to make about our country's destiny on referendum day will be one of the most important decisions of our lives.

The EU question has divided the British public for over 40 years, and it is unsurprising that three camps are already emerging ahead of the referendum: those who believe that Britain should be 'in at all costs'; those who believe that Britain should be 'out all costs'; and a third group (which includes us) who believe it is too early to decide.

For those who occupy this middle ground, who believe that staying in the EU with no change is not acceptable but that leaving at all costs is premature, the obvious guiding principle should be 'Change, or go'. Were the EU to agree to introduce fundamental changes to the terms of Britain's membership, we would be willing to vote to stay. However, if such changes fail to materialise, we would vote to leave.

Fortunately, before the referendum takes place, David Cameron has pledged to renegotiate the terms of Britain's EU membership. We must ask ourselves what we want our relationship with the EU to look like in the future, and must ensure that the terms on which that renegotiation is conducted are such that a future agreement can be supported. The scale and significance of this assessment is comparable to the choice that faced the British people when we joined the EEC in the early 1970s.

Part One of 'Change, or go' sets out the context in which these decisions must be made. It presents the findings of a major new study which shows that, rather than bringing countries 'ever closer', the euro is in fact creating ever greater divergences between economies and exacerbating the underperformance of 'sub-prime' EU members. The EU's political model does not work. The moment when the EU constituted a world economic super-power is passing as it is overtaken by more dynamic emerging countries. The Eurozone is reaching a point at which it must either integrate or disintegrate. Either outcome would radically transform the costs and benefits of Britain's membership of the EU.

The politics of 'ever closer union' have always taken priority over economic needs and realities. Over six decades the EU has morphed from a primarily Franco-German reconciliation project into a 'Common Market', and from a partnership of member states to a political union. For many European politicians, European integration remains a relentless, ongoing process and goal.

This objective has led the EU to introduce policies that have caused economic instability, and has resulted in the creation of undemocratic and ineffective political structures. The trading benefits which Britain has received in return have been far less than we were promised. Unless there is a substantial change, the UK may soon find itself as one of only four member states that have not joined the euro, trapped in a situation where it risks being continuously outvoted in the EU's institutions, with fundamentally different objectives to those of the Eurozone's member states.

Part 2 explains how we can improve the current situation and change our terms of membership. If we are to remain in the EU, Britain needs a new relationship that resolves these problems, a relationship which allows the UK to be in the EU, but not embroiled in the project of 'ever closer union'. This is not a radical view: the need for such fundamental changes is recognised across the political landscape, from the Prime Minister, who has made it clear that he wants a "*flexible union*", secured through "*proper, full-on Treaty change*", to some of the EU's own leaders who now recognise the need for fundamental change and openly talk of having a 'two tier Europe'.¹

Crucially, Britain's relationship with the EU needs to change so that it is based on trade, not political union. In the 1975 referendum on Britain's membership of the then EEC, this is what people thought they were voting for: a 'Common Market'. But if we are to reach that end goal, the EU's rules need to be reworked so that they promote free trade in goods and services, they return to Britain control of its borders, and they restore Parliament's right to have the final say over the laws that are implemented in our country. Reform on this scale will require a rewriting of the EU Treaties: anything less will not be permanent and could not be relied upon.

The election result makes the prospect of such changes brighter. Before 7th May, people thought that there could only be limited reform, as a future Government would be restrained by the limitations of coalition. Now that the electorate has awarded an overall majority to the Conservative Party, which is committed to pursuing a renegotiation, we can look forward to the new Government securing fundamental changes ahead of its promised referendum. Mr Cameron will be dealing with EU leaders who also recognise the need for change. Even the former President of the European Commission, Jacques Delors, now says that Britain "*could be offered a different form of partnership*".²

This would, in addition, give our leaders a chance to address the concerns of the nearly 4m voters who cast their ballot for UKIP candidates at the General Election, and whose views are not adequately represented in Parliament.

While our proposals are reasonable and achievable, there is a possibility that these reforms will not be secured. Should the EU refuse to offer such a deal then, as an increasing number of political and business leaders now argue, Britain should vote to leave. It is clear that, with the EU embarked on ever-greater integration, leaving an unreformed EU would be better than having to live with an unacceptable status quo.

Contrary to what some incorrectly argue, however, leaving would not entail a loss of British influence on the world stage. Part Three is one of the most comprehensive overviews of the key policy areas where the EU has competence. It shows decisively that the EU is increasingly not at the top of the food chain when it comes to the formulation of the regulations it then imposes on Britain. More and more often, these rules are being made at international bodies. Instead of having its position represented by the EU at these organisations, after leaving, the UK would be able to have a direct say over these international standards rather than hope that the EU takes its interests into account. Certainly Britain would have more influence from the outside than it could expect inside a further-integrated EU, in a permanent minority against a Eurozone bloc.

Part 3 also shows that, while Britain once had a positive influence over EU policies in areas such as financial services, liberalising markets and breaking down barriers to trade, its voice is increasingly being ignored. EU institutions

1 David Cameron, "EU speech at Bloomberg", accessed 21/05/2015 at: <www.gov.uk/government/speeches/eu-speech-at-bloomberg> and BBC "Andrew Marr Show".

2 Daily Telegraph "Jacques Delors: Britain could leave the European Union", B. Waterfield (28 December 2012).

are pushing through reforms that are damaging the City of London, driven in large part by a divergence in the aims of non-Eurozone member states like Britain and Eurozone countries desperate to shore up their failing currency union. Lacking a veto over financial services policy, the protections Britain has secured against this happening have been shown to be increasingly unreliable.

Conventional assessments of the costs and benefits of UK membership of the EU, and its alternatives, fail to take into account how the condition of the Eurozone will completely overturn 'Business As Usual'. Part 4 explains how Britain has more to gain from participating in globalisation rather than persisting with a 'regionalisation' project like the EU. Unlike most of its European partners, the UK has the scalable industries able to compete on the global stage and has already begun to re-orientate towards the growth markets of the future. The fears of any shocks to foreign direct investment and financial services that might occur were the UK to be outside the EU have been exaggerated.

The world has moved on in other ways too since we joined the EEC in the 1970s. Those who think that a UK departure from the EU would result in our companies facing penal tariffs have failed to recognise this. In many ways, the World Trade Organization and its efforts to reduce barriers to trade has, today, given every other country the sort of relationship with the EU that we were promised in 1975. With tariffs falling globally, and the World Trade Organization willing to tackle countries that unfairly restrict access to their markets, the UK could enjoy a 'Common Market' relationship with the EU even if it did not sign a special deal after exit.

Indeed, Part 4 includes a major new line-by-line analysis of British exports, and the likely tariffs that would be imposed upon them if the UK is not able to secure a new deal with the EU after leaving (itself a highly unlikely scenario). It therefore uncovers what membership is really worth considering the UK's large net annual contribution to the EU Budget. The finding is that Britain is over-paying for the trade benefits of being in the EU by at least £4bn per year.

Part 4 shows how the UK would prosper outside the EU in other ways. The key drivers of British prosperity do not depend upon EU membership, but that prosperity is being put at risk by the costs and burdens that membership entails. Regulation could be cut, or made more appropriate to the UK's needs, without jeopardising our international commitments or access to EU markets. Furthermore, by analysing regulations and policies that could be realistically repealed or reformed, we have calculated a figure for the annual cost saving for the average household from leaving the EU: £933 per year – new money that could go directly into the pockets of British citizens.

This means that David Cameron has a strong hand in the coming negotiations. The changes we recommend are both viable and reasonable. However, were the EU to refuse to offer the fundamental reform that the UK needs, the Prime Minister can in good faith present a departure from the EU as not just viable, but as a far more attractive alternative.

The EU is also at a crossroads. Our European partners know that the outcome of the renegotiation will be put to the voters in a referendum. Only by offering substantial and attractive reform can the EU ensure that the UK remains a member. Otherwise, the EU will undergo the even more fundamental change of a British departure. It is now impossible to defend the status quo, because that status quo is coming to an end. The question is not whether to change, but how much change is good enough.

Britain is, quite simply, in a win-win situation: Change, or go.

We would like to thank the many colleagues, academics, policy makers and officials who have read this work and offered their feedback. We welcome additional comments, criticisms and alternative views as we aim to develop our research and deepen our analysis over the coming months.

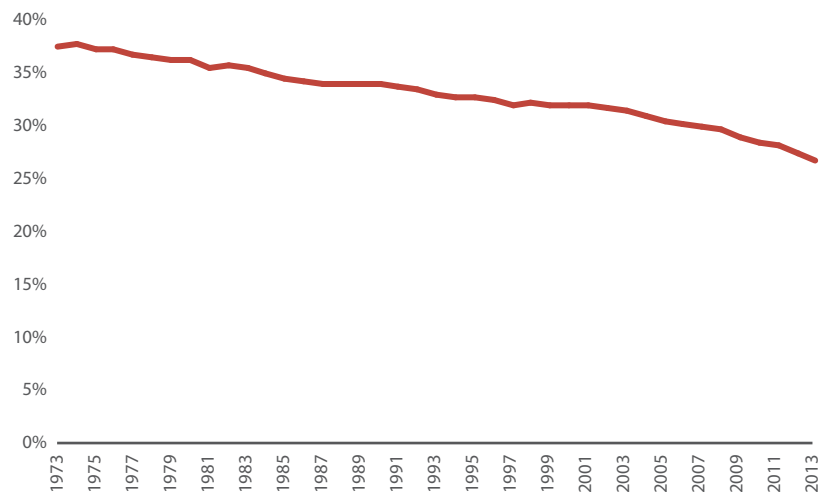
Executive summary

Part 1: Why the EU needs to change

1 The EU's economic performance is unsatisfactory

- The EU is in relative economic decline compared to the rest of the world. When Britain joined in 1973, the EEC accounted for 37 per cent of world GDP. Today it only accounts for 26 per cent.

Figure 1: The EU's share of world GDP



Source: US Government³

- In the EU, the politics of 'ever closer union' has always overridden economic considerations. The Eurozone was launched without the participating countries comprising an 'optimal currency area'. A major study commissioned for this report indicates that the euro has acted to encourage and exaggerate divergences between member states. Tensions within the single currency reflect stark underlying cultural differences between EU members that have not been resolved.
- Protectionist measures, and a flood of money into the periphery after the euro was launched, allowed EU countries to evade the need for structural reform to maintain their competitiveness. The 2008 financial crisis exposed the underlying weaknesses in Eurozone economies. Without a free-floating exchange rate, under-performing Eurozone countries have been forced into a process of 'internal devaluation' which is inflicting severe social and economic damage upon them.

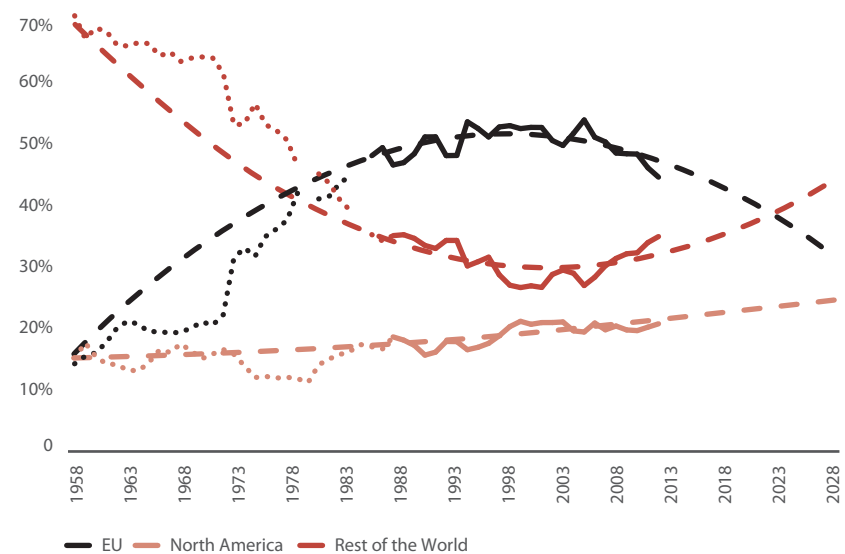
³ Sources for graphs and tables are cited with the item or in the corresponding chapter.

- The Eurozone has now reached the point where it will either integrate, with more centralised and coordinated mechanisms to support weaker members, or disintegrate, inflicting a severe shock on the world economy. Either of these courses will involve Treaty change if the EU is to be preserved.
- Whichever outcome occurs will completely transform the position of the UK within the EU. In turn, this completely transforms the debate about British membership and reframes the context in which renegotiation will take place.
- The UK would be better placed to withstand the consequences if it had a looser relationship with the EU.

2 The UK's current trading relationship with the EU is unsatisfactory

- Throughout the period of its membership, the UK has been a consistent net importer from the EU. The trading gains that were predicted when Britain joined in the 1970s have not materialised in the form expected.
- When the UK joined, there was an increase in exports to the original EU-6 (and an even larger increase in imports from them), but this was a consequence of specific circumstances in the 1970s, when world tariffs were much higher than today. The main increases in British exports to the EU as a whole are explained by the enlargement process, with the EU absorbing countries which were already buying British goods and services. In many cases, countries have become less significant buyers of UK exports after they have joined the EU.
- Currently, the EU buys around 45 per cent of British exports. However, the proportion of UK exports going to the EU-28 peaked in 1992 and has since been in long-term decline. This reflects the long-term decline in the relative global importance of the EU economy. If current trends continue, in the near future, the EU will become an even less significant market for UK exporters.

Figure 2: Projected trend lines for UK export destinations 2013–2030



Source: ONS

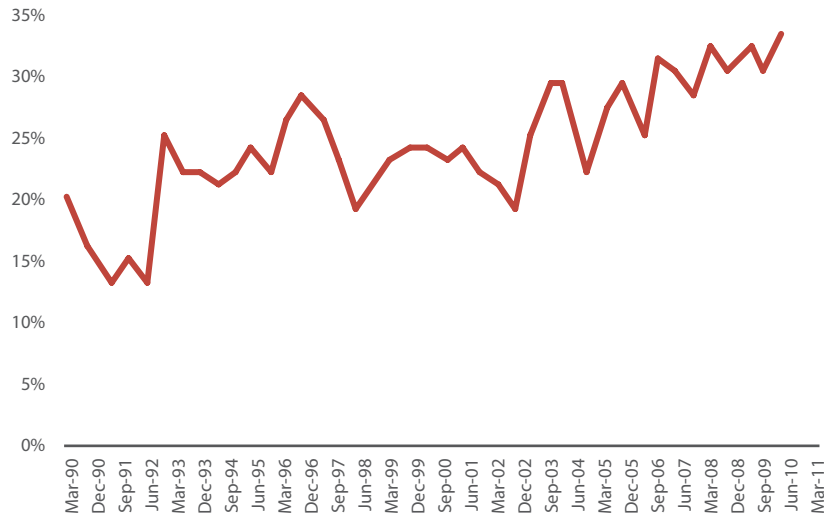
- The EU underperforms at managing trade policy on behalf of the UK. The Commission pursues a political agenda which makes it less effective at securing beneficial trade objectives than a more focused medium-sized country such as Canada. Since the structure of Britain's economy is significantly different to the EU-28 as a whole, the one-size-fits-all approach of the EU does not give priority to the UK's commercial needs. For example, agriculture is of far greater relative importance to other EU member states' economies. This means that they are far less willing to liberalise trade rules in this area than Britain.
- Outside the EU, countries like Iceland and Switzerland have managed to secure trade deals with China, something that the EU has failed to do.
- Britain could be similarly successful. The UK would also be able to sign replacement trade deals with countries that the EU has negotiated with on its behalf. Britain already has 1,720 civil servants working on trade policy even though it does not currently have the legal right to negotiate its own agreements.
- The claim that 3m/4m jobs depend on EU membership is incorrect. These jobs depend on trade with EU member states, which does not require formal membership.
- Increasingly, the WTO and other international bodies have more fundamental significance for UK trade than the EU. Were the UK to regain the right to speak for itself in these organisations, it would be better positioned to exert influence on international trade policy.

3 The UK's current political relationship with the EU has become increasingly unsatisfactory

- The EU started in the 1950s as a contract between France and Germany. It has failed to substantially reinvent itself and its political structures are unaccountable and opaque.
- The EU aspires to be a federal political state and secure 'ever closer union'. This aim has been promoted by the EU's institutions, which are inherently integrationist. The European Commission, for example, disproportionately attracts staff who are in favour of integration, and pushes proposals that – step by step – push the centre of gravity towards the pooling of power at the EU level.
- Popular opposition has been overridden. Since 1972, there have been 10 referendums across the EU that have resulted in people voting against 'ever closer union' and, in five of these, the results have been ignored.
- Some member states, especially the UK, have resisted this drive but without lasting success. Failure to understand Britain's position can be partially explained by the lack of representation of UK nationals within the Commission itself: of its 23,534 staff, only 1,008 (4.3 per cent) are British, while the UK makes up 12.8 per cent of the total EU population.

- The UK now has an unsatisfactory political relationship with the EU. The British people have become increasingly disaffected with the EU, as reflected in both polling and in the declining number of people voting in European elections.

Figure 3: Percentage of British public saying EU membership is a 'bad thing'



Source: Eurobarometer – latest figures available.

Part 2: The Change we need

5 Proposals for change

- There is a cross-party consensus on the need to change Britain’s relationship with the EU. Even noted EU federalists like Jacques Delors and Valéry Giscard d’Estaing have argued that Britain should not have to accept greater political integration.
- Both the Conservative Party and the Labour Party, in particular, have identified specific issues that need to be resolved.
- The Fresh Start Group of Conservative MPs has put forward a large list of proposed reforms, many of which would require Treaty change.
- Business for Britain has put together a list of proposed changes, based on both business needs and the Government’s priorities, some of which need Treaty change, some of which do not.

Figure 4: Analysis of proposals for change

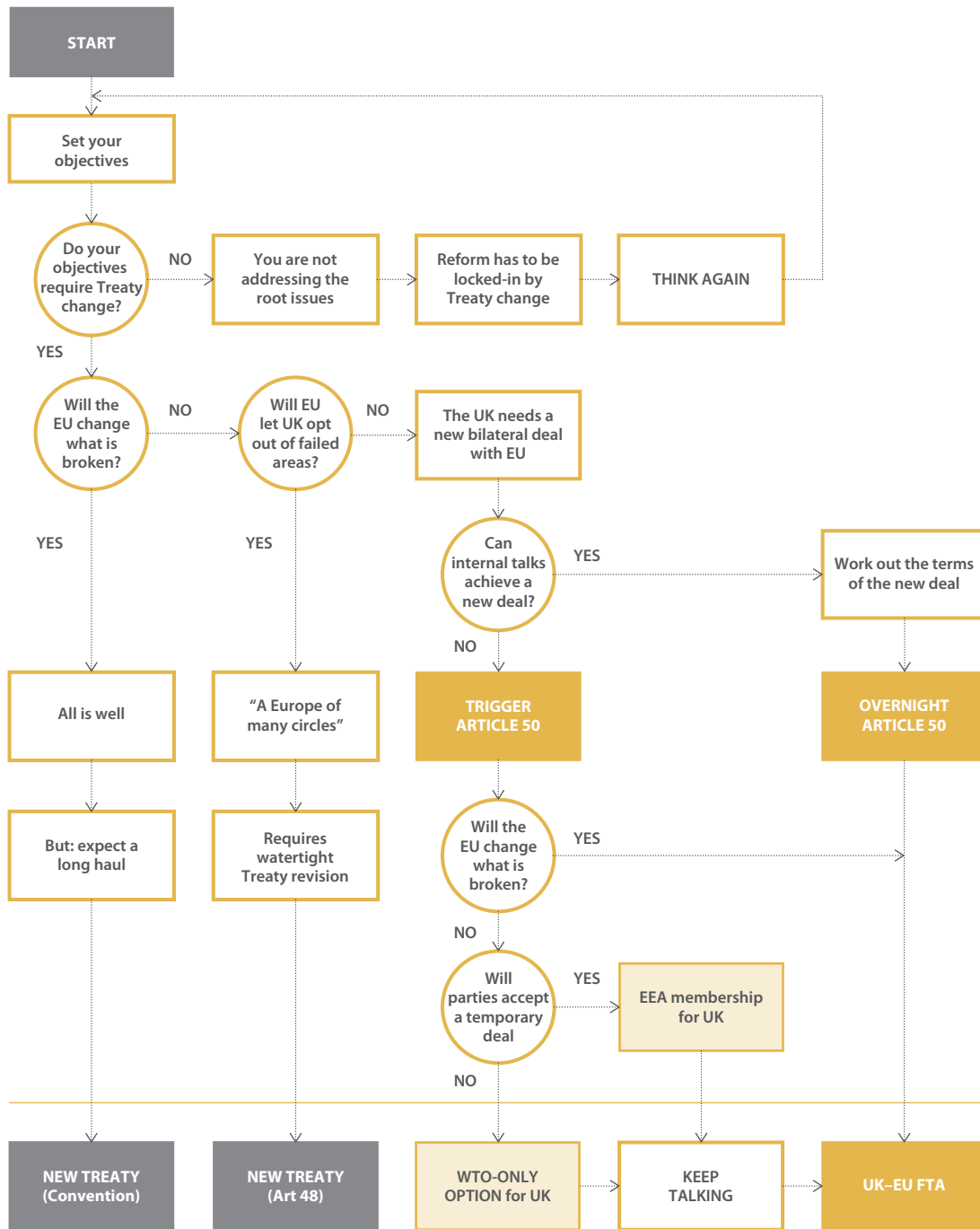
Changes that have been proposed	Requires Treaty change?
End 'ever closer union'	Yes
Cut EU red tape for SMEs and start-ups	No
Return control of social and employment laws	Yes
Protect the City and financial services	No
Protect the UK from Eurozone meddling	Yes
Fast track international trade deals	No
Cut EU Budget to save taxpayers' money	No
Add UK transparency laws to the EU	No
Give member states control over migration policy	Yes
Restore Britain's right to veto EU laws	Yes

- Unless Treaty change is secured, there will always be a risk that even minor reforms will be undone over time by the EU institutions and courts.
- The Prime Minister has made clear that he supports these reforms and has made clear that he wants “*full on*” Treaty change.
- These are substantial changes, but are essential if Britain is going to remain a member of the EU.
- The need for radical change has been recognised across the political spectrum, including Jacques Delors, who has said that Britain could be offered “*a different form of partnership*”.

6 The renegotiation process

- The range of problems the UK faces with the EU is so significant that it requires fundamental Treaty change. This might be possible within the EU or it might not.
- In the coming renegotiation, the UK will have negotiating strengths and weaknesses, as will the EU itself. The EU will be particularly concerned about the potential loss of Britain’s large net annual contribution to the EU Budget.
- Were the EU to refuse to agree to such changes, the UK would have nothing to fear from leaving. As London Mayor Boris Johnson has said, we are in a win-win situation.

Figure 5: The renegotiation process



Source: Business for Britain

Part 3: How Britain would gain influence outside an unreformed EU

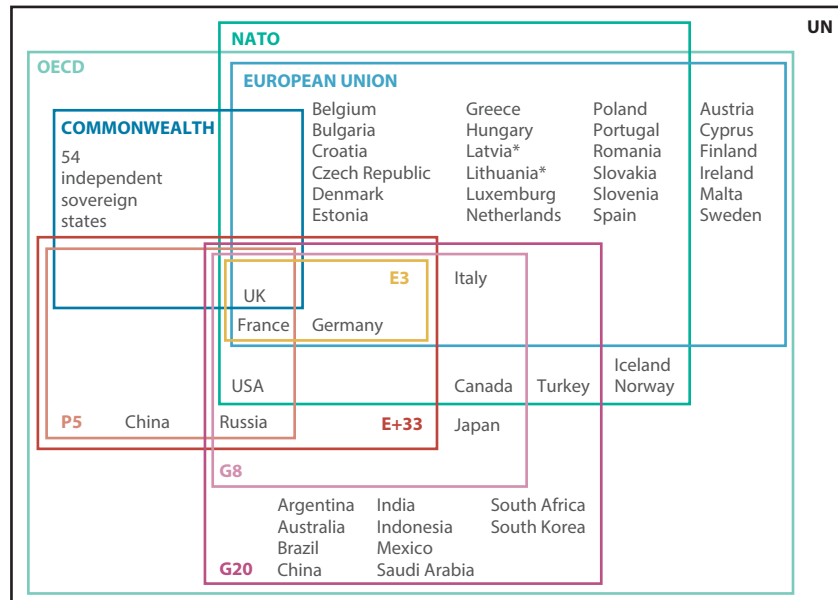
Further integration of the EU, perhaps to shore up the Eurozone, which does not address the inherent flaws of the basic ‘EU model’ is not the genuine reform which Britain needs. It would leave the UK with even less influence than it has at present. In contrast, across a wide range of topics, Britain could have more genuine influence on the outside.

8 Foreign affairs

Outside an unreformed EU:

- The UK would gain the chance to engage in key international bodies that it currently has no voice in.

Figure 6: The UK's greater overall diplomatic reach and options



Source: HM Government

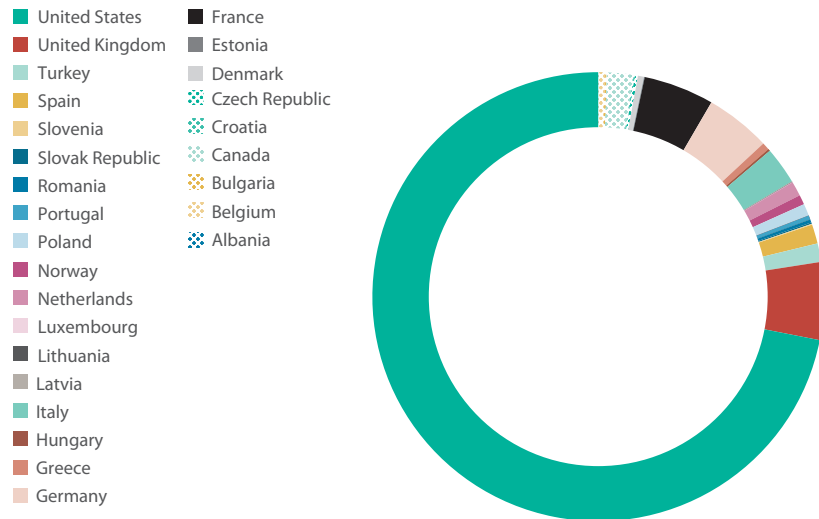
- The Foreign Office would regain the power to push for new trade deals with the rest of the world.
- The UK would be better placed to exert its soft power.

9 Defence

Outside an unreformed EU:

- UK participation in EU procurement integration and technical cooperation would end, safeguarding UK businesses and jobs as well as its defence capability.
- The UK would be better placed secure its privileged intelligence cooperation with the United States.
- The UK would remain a major contributor to NATO forces and would continue to cooperate with other European nations on security issues.

Figure 7: NATO spending by member state



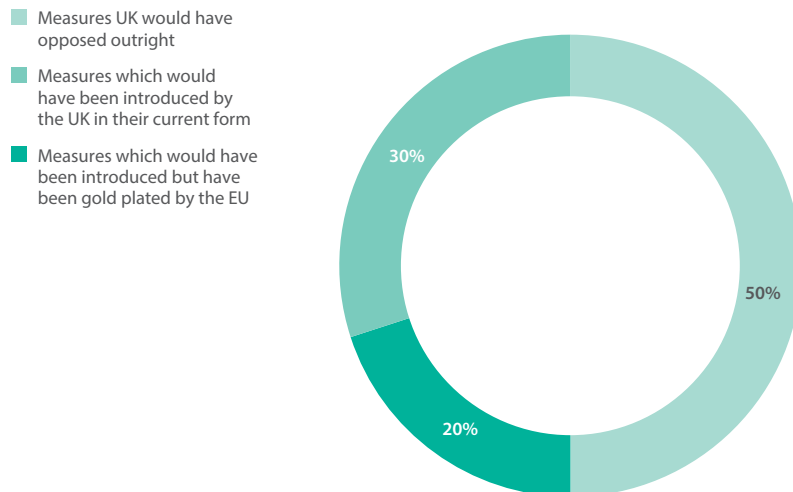
Source: NATO

10 Financial services

Outside an unreformed EU:

- The UK Parliament would gain the power to repeal unwanted and damaging EU financial laws, such as the ‘bonus cap’ and the ‘short selling ban’. If it remains inside, Britain risks being a permanently out-voted minority, with the Eurozone imposing unwanted rules on the City of London.

Figure 8: Share of EU financial laws the UK would have accepted/rejected had it been outside the EU



Source: Europe Economics

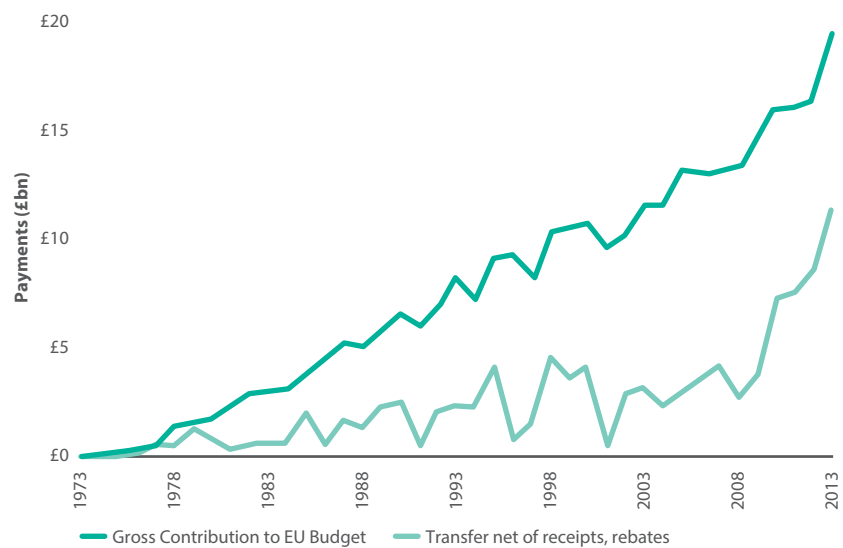
- If the UK chose to join the European Economic Area (EEA) it could also retain ‘passporting rights’ for its financial institutions (it may be able to keep these rights even without being a member of the EEA).
- The UK would remain a member of the key international organisations that deal with financial services, including the Basel Committee on Banking Supervision, the Financial Stability Board and the OECD. It would be able to impose global standards and regulations in a way that suited its interests.
- The UK would continue to be able to access the EU’s capital markets. If the UK adopted an equivalent regulatory system, it could also retain passporting rights.
- Talented Europeans would still be able to come to the UK and work in the financial sector.
- The UK Parliament would be able to add more regulation or deregulate the financial industry outside the EU, if it chose to.

11 EU Budget

Outside an unreformed EU:

- The UK would save a considerable amount of money. In recent years, the UK has received back from the EU less than 50p for every £1 it has paid in. This means that, out of its own resources, the UK could still fund all the programmes (farms, agencies and others) that currently receive EU funding.
- The UK is a consistent net contributor to the EU. In only one year (1975) has Britain received more back than it paid into the EU. Britain made a net contribution (i.e. its contribution minus what it received back) of around £11bn in 2013.

Figure 9: UK transfers to the EU 1973–2013



Source: ONS

- The UK would retain the right to fund (and benefit from) EU programmes it wished to continue participating in. It would, however, have much more control over where its funds went.

12 Migration

Outside an unreformed EU:

- UK nationals who currently live in other EU countries could continue to live and work there, owing to international 'grandfather rights'. The same would be true of EU nationals living and working in the UK.
- A new agreement could be developed to address the imbalance in UK migration policy since 2004, for example through the introduction of Canadian-style visa rules. This could help to address concerns about migration flows into the UK.

Figure 10: Migration flows into and out of the UK by EU citizens



Source: ONS

- UK immigration policy could be tailored towards filling employment shortfalls, with skills drawn from a global pool. Given free movement of people within the EU, Britain's efforts to reduce net migration have resulted in particularly tight restrictions on non-EU students and workers. This could be rebalanced to ensure that the best and brightest could come to the UK, wherever in the world they are from.
- Britain could still allow overseas students to study in its world-leading higher education sector and universities. However, universities would be able to charge EU students full international rates.
- Benefit entitlements to EU migrants could be reformed.
- A new policy might also include giving easier access to countries with which the UK shares a Head of State.

13 Agriculture and rural communities

Outside an unreformed EU:

- The UK would no longer be forced to subsidise farmers in other EU countries. UK consumers currently get a very bad deal out of the Common Agricultural Policy (CAP): Britain is a major net food importer from the EU, but the CAP subsidises the UK's continental competitors and adds a substantial regulatory cost.
- The costs of the CAP can be brought down. Today the CAP adds around £400 to each family's living costs per year. Outside the EU, the UK can make these savings while continuing to subsidise UK farmers.
- Farming subsidies and food standards could continue as they do today. Or Britain could choose to follow the example of New Zealand and deregulate its agricultural sector, allowing its farmers to fully compete on the world market.
- Leaving the EU offers the prospect of fairer trade for third world exporters.

Figure 11: Growth in UK food prices under the CAP

Item	Proportionate change 1970-2015
Cheese (cheddar)	1,882%
Lamb loin, imported	2,425%
Back bacon	1,213%
Imported butter, 250g	1,594%
Granulated sugar	964%
Carrots	1,055%
Pork sausages	1,210%
Instant coffee, 100g	1,203%
Pasteurised milk, pint	830%
Rump steak, British	1,301%
Flour, per 1.5kg	889%
Bananas	512%
Onions	627%
Tomatoes	670%

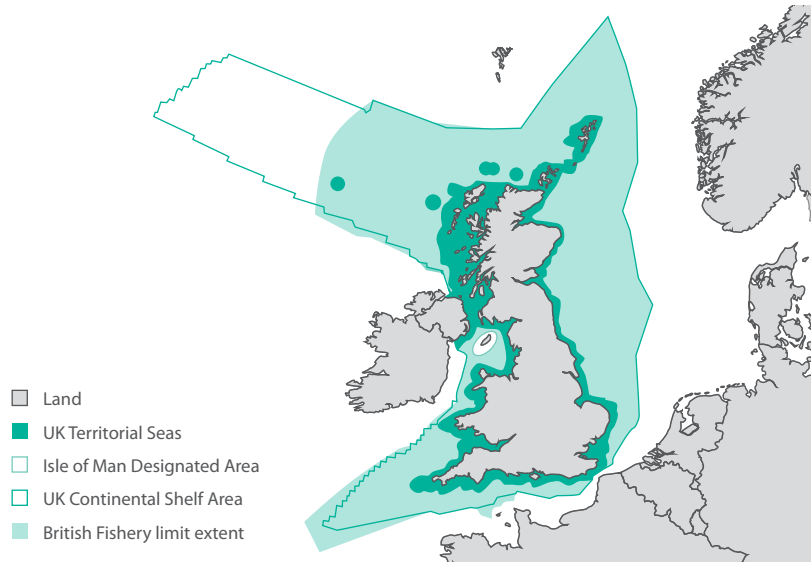
14 Fisheries

Outside an unreformed EU:

- The UK could leave the Common Fisheries Policy (CFP) and would no longer be subject to EU plans for a Common Maritime Policy. This would allow the UK to take back control over fisheries and devolve this power to local communities.

- The UK could make significant savings and long-term economic gains as UK waters are restored. The CFP has caused unemployment in fishing communities, and the total annual end cost for Britain of being in the policy has been estimated to be £2.81bn.
- Britain would continue to cooperate with international bodies on fisheries issues, and would be better able to reverse the damage done to stocks due to disastrous EU fisheries policies.

Figure 12: Surrendered UK fishing waters (light green)



Source: JNCC

15 Human Rights

Outside an unreformed EU:

- Britain would still protect human rights, and would continue to cooperate with both the EU and other international bodies on human rights issues.
- The examples of Australia, New Zealand, Canada and the United States demonstrate how Common Law legal systems have in-built human rights safeguards without having to sign up to an external court, and indeed run fewer risks from doing so.
- The UK could avoid being subject to new obligations decided in European courts which do not enjoy popular support.

Figure 13: Selected countries inside and outside the ECHR

Outside ECHR	Inside ECHR
Australia	Russia
Canada	Serbia
New Zealand	Turkey

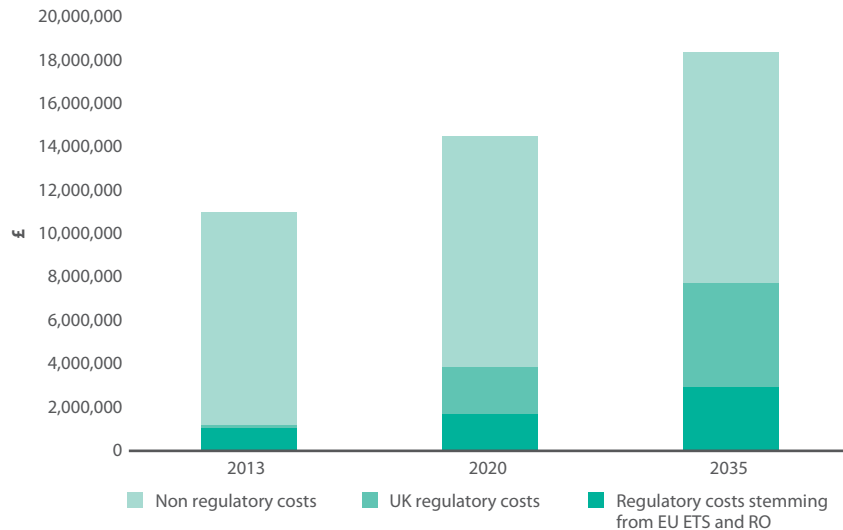
Source: ECHR

16 Energy

Outside an unreformed EU:

- Britain could take action to stop companies leaving for countries with lower energy costs. The future net cost of current EU energy directives is estimated to be between £86.5bn and £93.2bn for the UK.

Figure 14: Estimated average energy bills paid by an energy intensive user consuming 100,000MWh each of gas and electricity (2012 prices)



Source: DECC

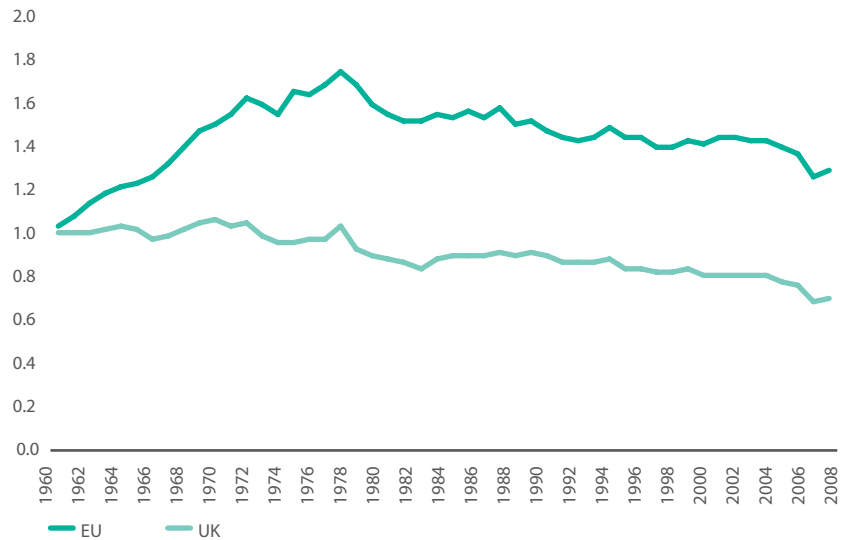
- Leaving the EU would also allow the UK to address key issues that are threatening 1.5m jobs in UK Energy Intensive Industries.
- The EU has extensive energy connections with its neighbours. Were the UK to leave, it would remain connected to the EU's energy grids and would not face the prospect of power cuts due to connection problems.
- The UK would be better placed to stop the closure of power plants due to EU energy regulations, helping to ensure its energy security. Leaving would also remove the risk of the EU potentially overregulating Britain's nascent shale gas industry in the future.

17 Environment

Outside an unreformed EU:

- There would not be lower environmental standards. The UK has led the way in curbing emissions and would continue to do so outside the EU. In fact, it could be even bolder.

Figure 15: Relative increase/decrease CO₂ emissions, (1960=1)



Source: World Bank

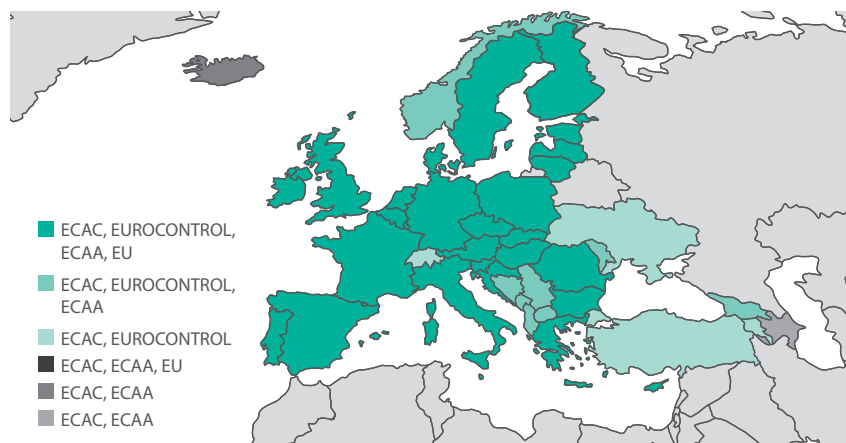
- Britain would continue to cooperate with the EU on international climate change issues.
- The UK would have a stronger say over globally-decided laws that govern how the local environment can be better protected.
- Britain would no longer be forced to comply with EU laws that inadvertently damage the environment, like its ban on some pesticides.

18 Transport

Outside an unreformed EU:

- The key EU transport programmes and schemes, such as the Single European Sky, are open to non EU members. Cooperation on aviation, maritime, rail and other transport could continue between the UK and the EU. There would be no significant disruption or inconvenience for UK firms or passengers.

Figure 16: Membership of European Common Aviation Area



Source: Various

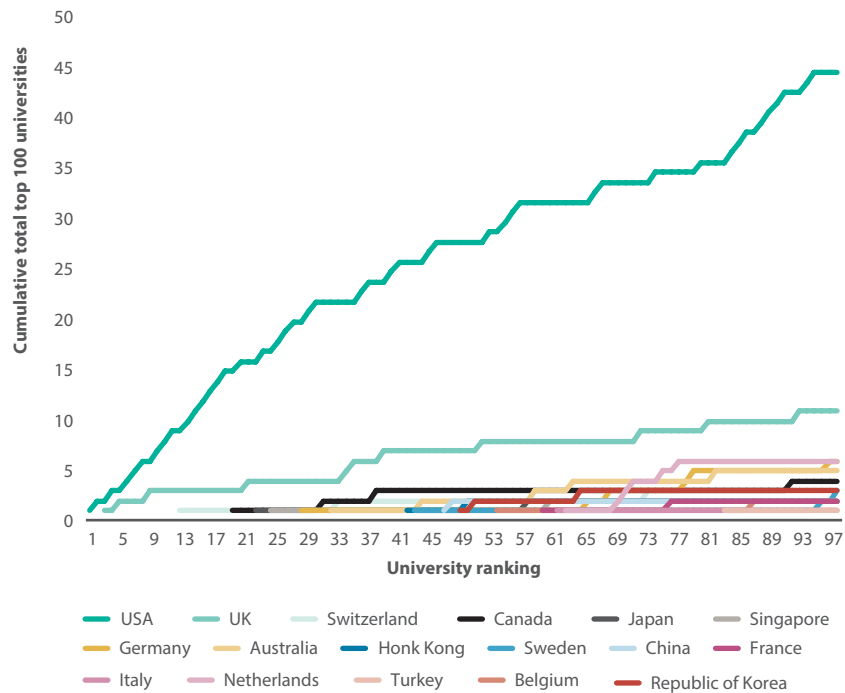
- Passenger rights would not be undermined by a vote to leave the EU. The UK would retain legal standards that it considers worthwhile.
- In some respects, it would be easier for a future UK Parliament to reintroduce nationalisation.
- The UK would be able to introduce national-flagged driving licenses and restore its old passport designs.

19 Education

Outside an unreformed EU:

- Universities could continue to cooperate with their EU counterparts and students could continue to study abroad.
- As home to numerous pre-eminent educational establishments, Britain will remain a key education partner of choice for the EU.

Figure 17: Relative national excellence in university gradings, 2014–15



Source: Times Educational Supplement

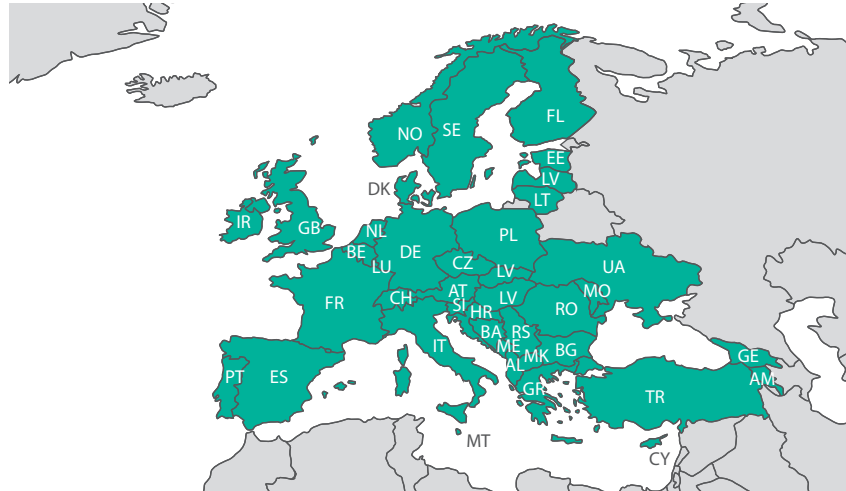
- Mutual recognition of qualifications would continue.
- The UK could step away from the Jean Monnet programme, which funds 1,500 professors to promote EU studies, and stop EU institutions from targeting the young with integrationist PR campaigns in schools.
- The Scottish Government would no longer have to subsidise free university tuition for EU nationals. Leaving an unreformed EU would also end the obligation on Britain to provide EU students with (often unrecoverable) student loans.

20 Technology and research

Outside an unreformed EU:

- The UK would retain the ability to cooperate with the EU on research programmes and with member states on technological matters.
- UK firms would still be able to apply for Europe-wide patents, and Britain could choose to retain EU consumer protections.

Figure 18: Member states of the European Patent Office



Source: European Patent Office

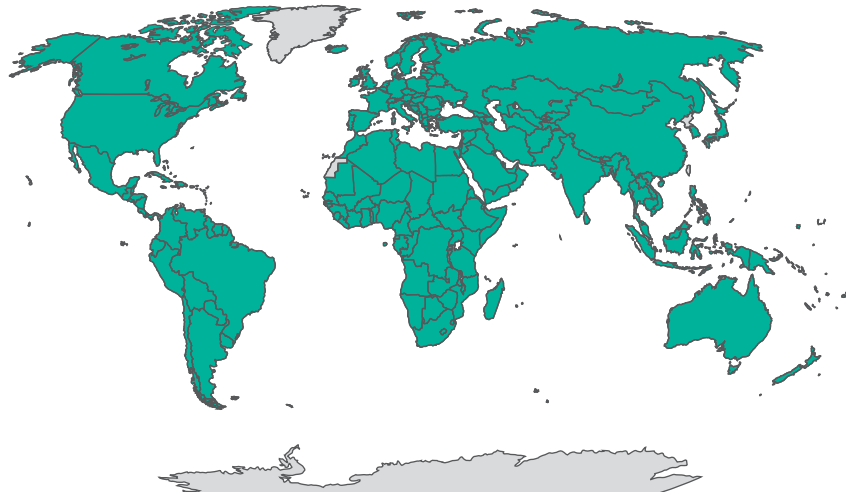
- EU funding would continue to flow to UK institutions, so long as the UK chose to continue supporting the relevant budgets.
- British consumers could continue to benefit from positive EU initiatives like its drive to lower roaming charges.
- Britain would be free to repeal EU restrictions on emerging technologies and products like e-cigarettes, if it chose to do so.

21 Justice

Outside an unreformed EU:

- The UK would no longer be bound by EU legal integration, which constitutes a long-term threat to Common Law principles and is a threat to UK civil law.
- While EU extradition rules would need to be revisited if the UK left the European Arrest Warrant, the current system is in any event flawed. Greater controls could also be introduced to stop EU criminals from entering or staying in the UK after conviction.
- Outside the EU, justice cooperation would still continue. Interpol provides one example of the global networks in play.

Figure 19: Interpol member states



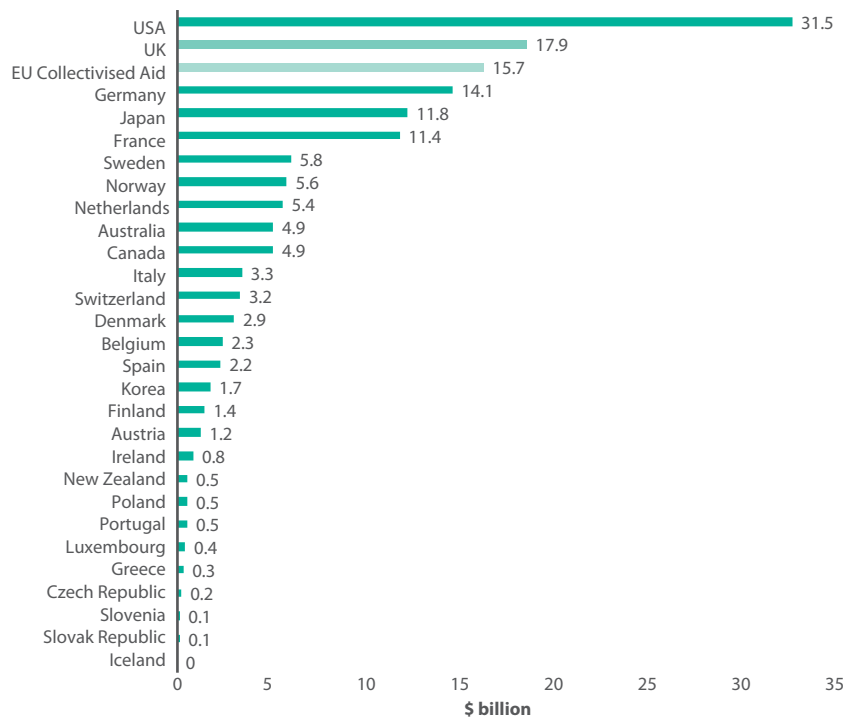
Source: Interpol

22 International development

Outside an unreformed EU:

- The UK could continue to cooperate with the EU on disaster relief and areas of joint value.

Figure 20: Total UK level of development aid (including EU-managed elements) vs the OECD norms and the total collectivised EU Budget, 2013



Source: House of Commons

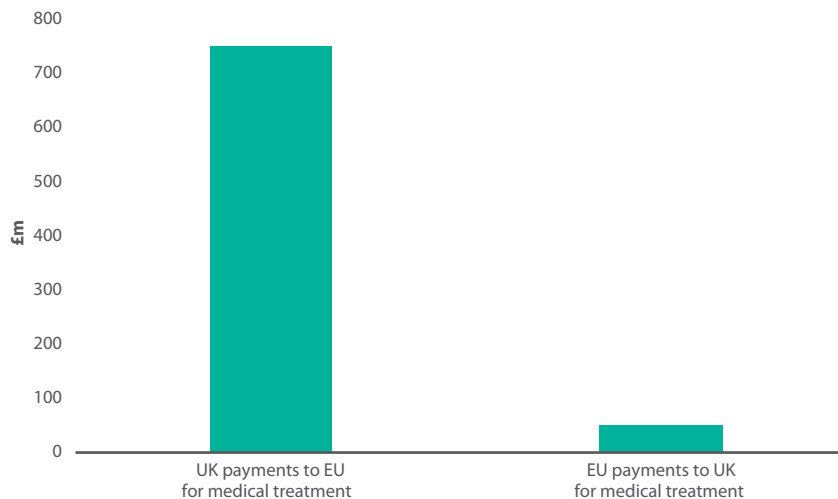
- Britain would continue to spend the same amount on international aid, but would have full control of its development budget (rather than passing a significant proportion through the EU). A fully national-run system would avoid the problems associated with poor oversight and limited accountability at the EU level, and would reduce the risk of fraud and mismanagement.
- A fully UK-flagged development budget would be a boon for British soft power.

23 Health

Outside an unreformed EU:

- Leaving would not compromise the UK's ability to cooperate with the EU on health related matters. The European pharmaceutical patent system, for example, is open to non-EU members. Mutual recognition of professional qualifications would continue, allowing EEA nationals to continue to work in the NHS.
- The UK's membership of the World Health Organization ensures that the UK would continue to be at the forefront of international efforts to address medical concerns.
- The UK could continue to participate in the European Health Insurance Card, allowing healthcare to continue for UK nationals overseas.
- Britain would be able to address the impact of the Working Time Directive on NHS staff. In 2010, 80 per cent of consultant surgeons said that patient care had deteriorated under the Directive.
- Health tourism could be brought under control.

Figure 21: Payments between the UK and EU for medical procedures



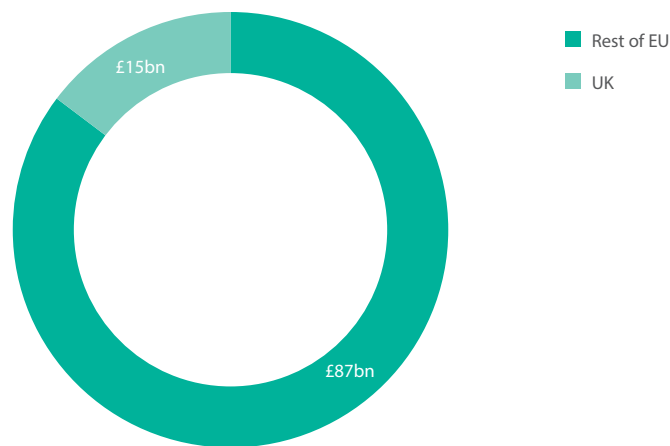
Source: Department of Health

24 Taxation

Outside an unreformed EU:

- The UK would be protected from EU ‘mission creep’ over tax policy, which threatens to erode Britain’s sovereignty over taxation matters.
- Britain would still be able to cooperate with the EU to stop double taxation and tackle tax evasion.
- UK policy-makers would have much greater control over the VAT rates that apply in this country.
- The UK will no longer be obliged to send VAT revenue to the EU (it currently accounts for a disproportionate amount of the EU’s VAT income). Between 2007 and 2013, the UK made a contribution of £15.4bn in VAT payments to the EU, or a total contribution of £246 for each British citizen.

Figure 22: Sources of EU VAT revenue



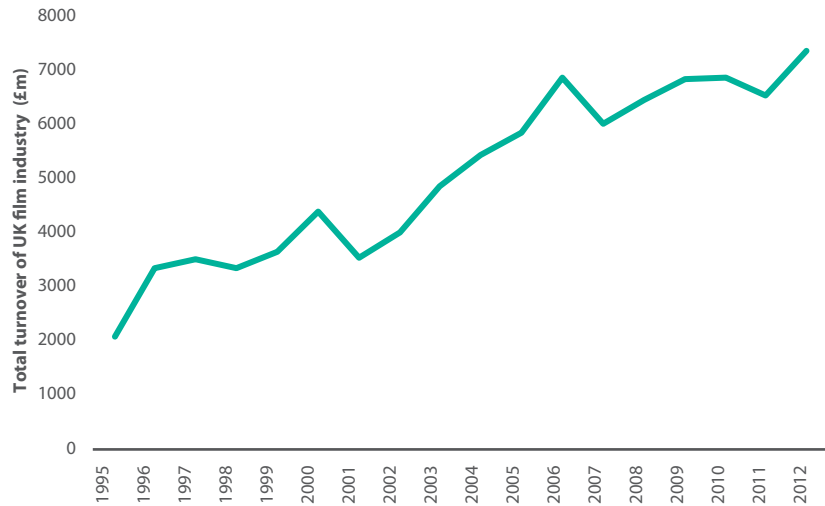
Source: European Commission

25 Culture

Outside an unreformed EU:

- Cultural cooperation could continue. Non-EU states like Ukraine, for example, are involved in European town twinning, and sporting contests would continue as before. The Eurovision Song Contest is not run by the EU and is not limited to member states.
- It would be easier to develop a British brand outside the EU, rather than push a weak European identity.
- Grants and tax incentives to the cultural industries could continue.
- Britain would still be able to participate in EU schemes to preserve the cultural identity of foodstuffs (like Orkney Cheddar and Anglesey Sea Salt). China has 10 products registered.

Figure 23: Total turnover of UK film industry 1995–2012 (consolidated)



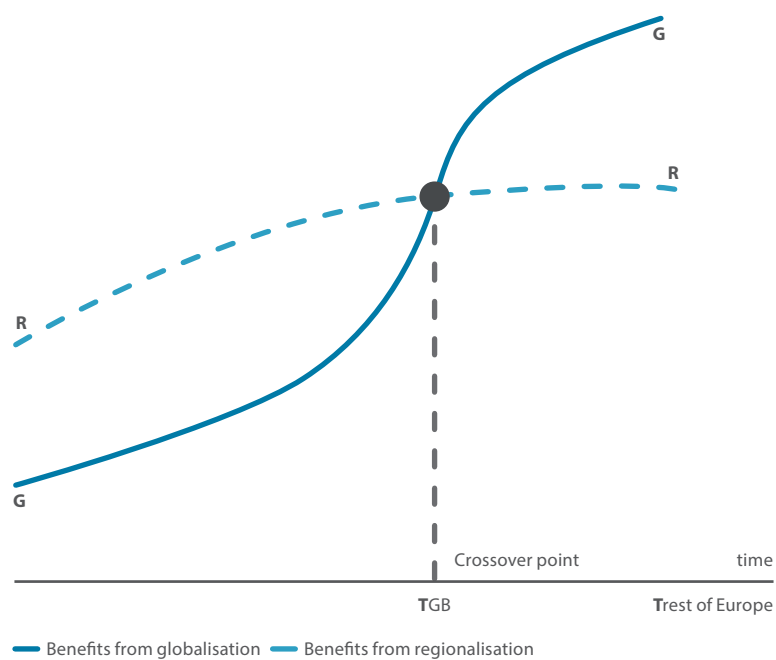
Source: BFI Statistical Yearbook 2014

Part 4: How Britain would prosper outside an unreformed EU

27 The source of Britain's future growth lies outside the EU

- The British economy has reached a stage where it has more to gain from participation in 'globalisation' than from participating in 'regionalisation' through a body like the EU. It has scalable industries able to compete on the global stage and has already begun to re-orientate towards the growth markets of the future. Fears of any negative shocks to foreign direct investment and financial services from Britain leaving the EU have been exaggerated.

Figure 24: Comparison between globalisation and regionalisation strategies



Source: SLJ Macro Partners

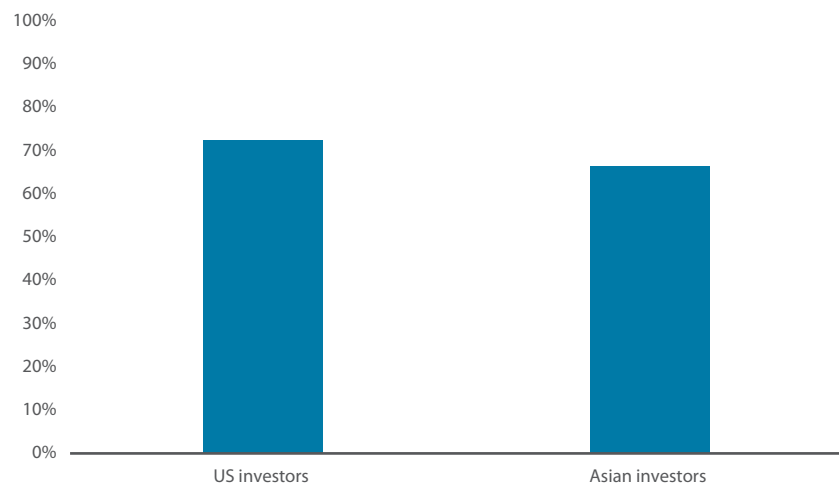
- In contrast, an unreformed EU is poorly placed to exploit the opportunities of globalisation. The social and economic costs of the EU model, and a sense of 'Eurosclerosis', impair the ability of member states to compete. Institutionally, the EU is driven by short-termism and is ill-suited to prepare its members for the global stage.
- The systemic flaws of the Eurozone, and their consequences for the future of the EU, transform the assessment of the costs and benefits of British membership. Most conventional analyses of the options open to the UK are rendered irrelevant because they do not take full account of this factor.
- A looser relationship with the EU would provide Britain with the 'least worst' outcome in the event of the Eurozone either integrating or disintegrating. It would also allow the UK to better exploit trading opportunities with the rising areas of the world outside Europe, where the most vigorous growth will occur in the future.

28 Investment opportunities would be stronger

- When the UK joined the EU it was predicted that membership would lead to a significant increase in the investment rate, from the economies of scale that would come from operating in a much larger market. These hopes have not materialised.
- EU countries have not been major investors in the UK compared to the USA and the rest of the world. Hopes of a sharp rise in foreign direct investment from EU member states following the launch of the euro have long since disappeared with the onset of the Eurozone crisis.

- In contrast, the UK has been a consistent net investor, making more direct investments abroad than it has received from overseas. Since the creation of the EU, in only three years (1996, 2000, 2002) have British businesses invested more in EU countries than in other locations. The UK has been dis-investing from the EU since the onset of the Eurozone crisis.
- The Government produces an official brochure setting out reasons why overseas businesses should invest in the UK. Few if any of these motives are dependent upon British membership of the EU. Some of these arguments would be even stronger if the UK had a looser relationship with the EU, with correspondingly lower regulatory burdens, and was better able to avoid the costs of the Eurozone crisis.
- Inward investment into the UK by overseas businesses is driven by the strength of the British economy and its prospects for growth. Therefore, negotiating a looser relationship with the EU, which carried lower costs but maintained access to its markets, would make the UK an even more attractive place to invest.
- International investors have made it clear in surveys that they want a looser relationship between Britain and the EU.

Figure 25: Percentage of international investors saying they want a looser relationship between Britain and the EU

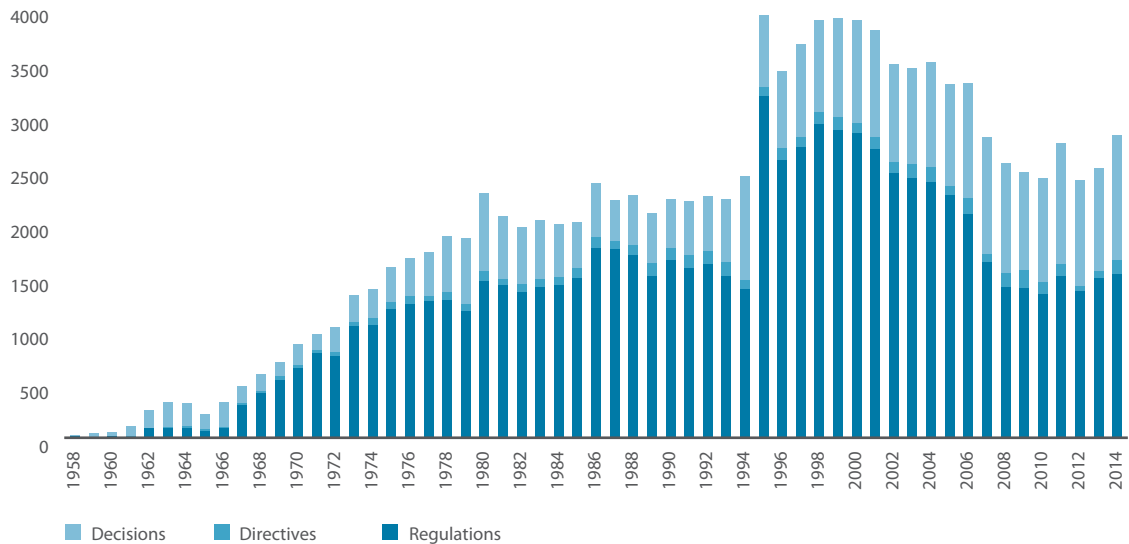


Source: EY

29 How the cost of regulation could be cut

- A vote to leave the EU would allow the UK to remove up to £33.3bn per year of baseline regulatory costs (gross). Britain could review social and employment laws to see if they could be designed to be more appropriate to its particular needs.

Figure 26: EU legislative activity 1958–2013



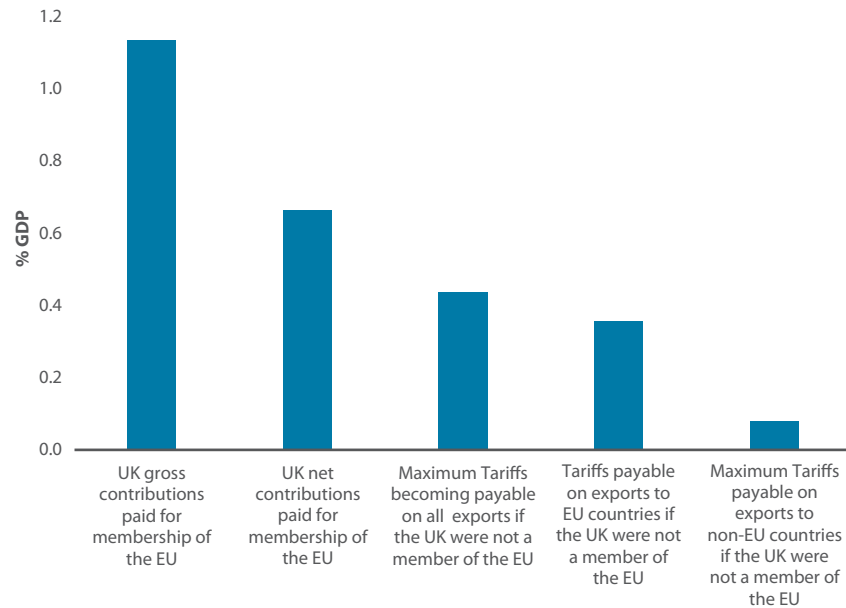
Source: European Commission

- The ability of the UK to make such savings will be limited by both political realities and its international legal obligations. It is very unlikely that effective laws that protect holiday pay, for example, will be repealed.
- Leaving the EU would also give the UK a much stronger say in the international bodies that develop global regulatory standards.

30 Tariff costs on exports are manageable

- Membership of the EU provides UK exporters with tariff-free access to the Single Market and favourable entry to other countries under trade treaties negotiated by the EU. However, as a result of successive international rounds of negotiations, and the pioneering work of the World Trade Organization (WTO), tariffs are much lower now than they were when Britain joined the EEC. Services, in which Britain is strong, are not subject to tariffs at all. So the value of EU membership is correspondingly less than it was when the UK first joined.
- A major study undertaken for this report shows that, had Britain been outside the EU in 2013, its exports to the EU and other third countries would have incurred tariff costs of £7.4bn. This is far lower than the net contribution which the UK paid to the EU Budget in that year (£11.3bn). So Britain would have been able to compensate exporters for all tariff costs with the savings it made from no longer having to contribute to the EU Budget, and it would still have a £3.9bn net saving. The UK is over-paying for the trade benefits of EU membership.

Figure 27: Cost and trade benefits of UK membership of the EU



Source: Business for Britain

- Our study also shows that the average tariff which British exporters would have paid to gain access to the Single Market is 4.3 per cent. This additional cost would have less impact than the fluctuations in the sterling-euro exchange rate. Since the euro was launched in 1999, there has only been one year in which there was not a more than 5 per cent deviation from the average exchange rate.
- Some exporters would be affected more by tariffs than others. The area affected most would be ‘agricultural products’, not just farm produce but also food and drink such as chocolates and spirits. However, there is sufficient flexibility within the WTO rules for a UK Government to institute measures that would provide a complete financial ‘compensation’ for exporters, as well as continuing the existing EU regime of support for farmers.
- The WTO rules on other products are more stringent. There is still flexibility for a UK Government to establish a transitional assistance programme, with a package of measures that would ‘compensate’ other sectors, such as fisheries, plastics, motor cars, chemicals and pharmaceuticals. Critically, this flexibility does not force the Government to adopt any particular political policy mix.

31 How households could be £933 better off through lower prices

- Outside the EU, each UK household could be £933 better off per year.

Figure 28: Potential savings per household from leaving the EU

Saving	Variable	Potential annual saving per household
Net national payment to EU Budget	Continuing to pay current level of EU grants; support businesses pound for pound over all new tariffs that might be levied	£145
CAP	Global food price; extent of liberalisation	£361
CFP	Time	£186
20% VAT issues	Short-term tax hit for long term tax gain	Variable
Landfill tax	UK civil service itself a global driver	£70
EU burdens passed on through council tax	Lack of official audit: savings highly speculative but likely to be higher	£20
Product shelf price	Lack of official audit: savings highly speculative but likely to be much higher	£5
Cheaper clothing	Extent of market liberalisation; variable tariff application by country of origin	£146
Total		£933

Source: Various

Part 5: Conclusion

- Britain is at a crossroads.
- The forthcoming EU referendum will be a vital decision for our country.
- Our current terms of EU membership are unacceptable and are holding Britain back.
- Renegotiation offers a once in a lifetime opportunity to secure meaningful Treaty changes that will exempt Britain from political union and return us to a trading relationship.
- Should we fail to secure such Treaty change, leaving an unreformed EU offers the prospect of greater influence and prosperity. The decline in international tariff rates means that Britain cannot be held to ransom by the EU.
- We are in a win-win situation: Change, or go.



Part 1: Why the EU needs to Change

Chapter

1 The EU's economic performance is unsatisfactory	60	3 The UK's current political relationship with the EU has become increasingly unsatisfactory	164
2 The UK's current trading relationship with the EU is unsatisfactory	107	4 Conclusion	184

“The EU offers the UK only limited economic opportunities.”

There are fundamental problems with the current terms of the United Kingdom’s EU membership. Despite being reassured at the time of accession that they were only joining a ‘common market’ which would reverse the country’s economic ills, the British public have found themselves members of a political union which has limited their trading opportunities and placed unacceptable constraints on the democratic process. The tendency of the EU towards ‘ever closer union’ has always been a key part of the EU’s Treaties but, until recently, this was not widely advertised. On those occasions when it was initially questioned, ministers dismissed it as a distant prospect that future governments would overcome.

Part 1 summarises the key problems that currently blight Britain’s EU membership.¹ A Prime Minister considering the UK’s future EU policy should be aware of these fundamental issues and the need to address them in the coming renegotiation. To best analyse the current situation, we break up Britain’s problems with the EU into three parts: economics, trade and politics.

Our analysis of the economic situation (Section 1) highlights the fundamental issue: the defects of the Eurozone. We present the findings of a major new study that confirms that, contrary to fostering ‘ever closer union’, the euro has in fact encouraged damaging divergences between the participating countries. The Eurozone was never an ‘optimal currency area’ before the euro was launched, and it is even less of one now. This has reinforced cultural differences between the participants and exacerbated the underperformance of ‘sub-prime’ EU members.

At the same time there has been no attempt at structural reform of the underlying defects of the EU model. As more vigorous emerging economies overtake the EU, membership has increasingly less and less to offer the UK. Fundamental flaws in the EU’s economic system, ranging from the implications of uncompetitive social costs to the lack of Eurozone political mechanisms to facilitate fiscal transfers, mean that the EU is locked in a cycle of, at best, low growth and, more likely, periodic crisis.

Our examination of the trade situation (Section 2) builds on this analysis, and shows that the current terms of EU membership have not brought the gains we were promised for the United Kingdom’s trading position. It demonstrates that the steady growth of EU competence has delivered a sub-standard service for the UK’s trading opportunities, and that the argument that we should ‘stay in the EU for trade’ lacks credible foundations. In fact, the share of British exports going to the EU has been in long-term decline since at least 1992, and the headline figure has been boosted artificially by EU enlargement.

Finally, our analysis of the political situation (Section 3) shows that there are fundamental problems with the EU’s political bodies, which are characterised by a lack of democratic legitimacy, a consistent demand for additional powers, and a stubborn refusal to adapt and change. Today, the UK lacks either the level of representation or the constitutional devices necessary to ensure it can protect its interests.

These issues, while surmountable, represent a serious challenge for the UK. The EU is in long-term relative economic decline and remains vulnerable to future economic shocks, to which the UK would be directly exposed. In addition, the EU has shown itself to be unwilling to change throughout its history, refusing to either return powers or to exercise its competence in different ways. From where it stands today, the Eurozone will either integrate or disintegrate.

¹ Throughout this work the terms ‘United Kingdom’ and ‘Britain’ are used interchangeably, notwithstanding obvious geographic accuracies.

Whichever outcome occurs will profoundly transform the costs and benefits of Britain's membership of the EU.

Taken together, these problems show that there is a clear and present need for a substantial change in the terms of the UK's relationship with the EU, change which we examine in Part Two.

1 The EU's economic performance is unsatisfactory

1.1 In the EU, the politics of Economic and Monetary Union has always outweighed economic reality	62	1.2.2 The introduction of the euro has led to serious divergences that threaten EU stability	80
1.1.1 The EU has dysfunctional economic governance	63	1.3 The structural differences within the EU are cultural, not just economic	86
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1.1.3 Economic and Monetary Union was always primarily a political project that ignored underlying economic realities	68	1.3.2 The Eurozone has wide disparities in education, research and technology	88
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“The Eurozone must either integrate or disintegrate.”

Discussion of the economic aspects of Britain’s membership of the EU has generally been of a very low quality. Supporters of the EU believe that UK withdrawal would be ‘unthinkable’, and that, since there is no alternative, the British will have to be satisfied with whatever is on offer. People who wish to leave the EU anyway, meanwhile, have no interest in whether renegotiation could result in terms that would make it acceptable to remain inside. The two camps have quoted their own preferred statistics at each other and there has been little constructive engagement.

The true In/Out argument is: ‘In what?’, i.e. what form of EU would be best for British interests; and ‘Out on what terms?’, i.e. what should Britain’s relationship with the rest of the world, including the EU, be after leaving. The Conservative Government’s policy of renegotiation has shifted the focus towards these questions, but even so the debate has somewhat missed the point. The discussion has revolved around an assumption of ‘Business As Usual’, that a change in the UK’s relationship with the EU will (according to taste) either add or subtract a few basis points to its GDP performance. Very few have asked what ‘Business As Usual’ means in the aftermath of the global financial crisis.

The EU’s overriding objective has always been political. Commentators who discuss the EU in exclusively economic terms miss the point that economic considerations have always taken second place. The Eurozone was not an ‘optimal currency area’ when the euro was launched, and it is even less optimal today. Indeed, not only are EU member economies diverging but the euro is causing this divergence to increase. The Eurozone is separating into ‘Euromark’ and ‘Eurodrachma’ groups. This is not a short-lived consequence of the 2008 financial crisis but a fundamental structural flaw. Even within the Eurozone there already exists a ‘two tier Europe’, and the EU’s own institutions are strengthening this division.

Clearly, the EU is not functioning well. If it does not reform, it is condemned to at best a future of low growth. At worst, the endemic Eurozone crisis will mature into a comprehensive meltdown. Were that to occur, the UK would not be insulated from the consequences whether it was a full member of the EU or not. The entire world economy would be disrupted. Meltdown could only be avoided by significant institutional change which would have radical implications for the UK as a non-euro member of the EU.

The Eurozone must either integrate or disintegrate. This is the context in which ‘Business As Usual’ must now be seen. The challenge facing British policy-makers is more likely to be how they can secure the least-worst consequences of a dysfunctional Eurozone. And the UK would be better able to withstand the consequences of a Eurozone meltdown if it were to adopt a looser relationship with the EU now.

1.1 In the EU, the politics of Economic and Monetary Union has always outweighed economic reality

When the EU was founded in 1958 as the European Economic Community, the aim was to build a customs union and a common market for agriculture. This limited arrangement was extended to also cover goods and services in a single market, largely reaching its present form by 1993. Subsequent Treaties have increased the central powers of the Commission.

Economic and Monetary Union is an advanced step in the process of eventual full integration. The process as it has evolved can be simplified in six distinct steps:

“Unfortunately, politics has been allowed to trump economic reality at every turn.”

- 1 Preferential trading area (with reduced customs tariffs between certain countries);
- 2 Free trade area (with no internal tariffs on some or all goods between the participating countries);
- 3 Customs union (with the same external customs tariffs for third countries and a common trade policy);
- 4 Single market (with common product regulations and free movement of goods, capital, labour and services);
- 5 Economic and monetary union (a single market with a common currency and monetary policy);
- 6 Complete economic integration (all the above plus harmonised fiscal and other economic policies).

Today, the EU has reached the fifth stage of this model. Progressive economic integration did not start with the decision to create economic and monetary union, but this was seen by its architects as representing a major step in the integration of the member states. It involved the coordination of economic and fiscal policies, a common monetary policy, and a common currency, the euro.

Unfortunately, politics has been allowed to trump economic reality at every turn. This has left the EU with a dysfunctional system of economic governance, presiding over a largely dysfunctional economy. The politics of the euro have hijacked all other considerations, to the extent that it is almost misleading to think in terms of ‘the EU’ as something distinct from the Eurozone. British policy-makers, and their electorate, need to address this political reality.

At some point in the foreseeable future, the Eurozone as it was erroneously constructed will either integrate or disintegrate. Either there will be significant fall-out for all EU members, or the EU will seize upon this crisis as an opportunity to press on even further with political unification. Britain should be taking steps now to insulate itself against either outcome.

1.1.1 The EU has dysfunctional economic governance

The decision to form an Economic and Monetary Union was taken by the European Council in the Dutch city of Maastricht in December 1991, and was later enshrined in the Treaty on European Union (the Maastricht Treaty). Economic and Monetary Union (EMU) takes the EU one step further towards the political elite’s vision of political, fiscal, monetary and economic integration. The belief was that economic integration would bring the benefits of greater size, internal efficiency and robustness to the EU economy as a whole and to the economies of the individual member states. This, in turn, was expected to offer opportunities for economic stability, higher growth and more employment – outcomes of direct benefit to EU citizens.

In practical terms, EMU means:

- Coordination of economic policy-making between member states;
- Coordination of fiscal policies, notably through limits laid down in the Stability and Growth Pact on government debt and deficits (set at 60 per cent and three per cent of GDP, respectively);
- An independent monetary policy run by the European Central Bank;
- The single currency and the euro area.

While all 28 EU member states participate in the economic union, some countries have taken integration further and adopted the euro. At present, 19 countries have done so. Together, these countries make up the Eurozone. But membership of the EU comes with a presumption of adopting the euro. A further

“Within EMU, there is no single institution responsible for economic policy.”

seven EU members are obliged to adopt the euro at some point, although one of them (Sweden) is in an anomalous position as the proposal was rejected in a public referendum. Only Denmark and the UK have the formal right to opt out. All new members of the EU are required to transition to the euro at some point, and there is no mechanism for a country to leave the single currency without also leaving the EU.

Within EMU, there is no single institution responsible for economic policy. Instead, the responsibility is divided between member states and the EU institutions. The main actors involved in EMU policy-making and enforcing adherence to its rules are:

- The European Council – which sets the main policy bearing;
- The Council of the EU (the ‘Council’) – which coordinates EU economic policy-making and decides whether a member state may join the euro;
- The Eurogroup – which coordinates policies of common interest for the Eurozone member states;
- The member states – which set their national budgets within agreed limits for deficit and debt, and determine their own structural policies involving labour, pensions and capital markets;
- The European Commission – which monitors performance and compliance;
- The European Central Bank (ECB) – which sets monetary policy, with price stability as the primary objective;
- The European Parliament – which shares the role of formulating legislation with the Council, and provides a measure of democratic scrutiny, in particular through the new Economic Dialogue.

The official mission of the ECB is set out as follows:

The European Central Bank and the national central banks together constitute the Eurosystem, the central banking system of the euro area. The main objective of the Eurosystem is to maintain price stability: safeguarding the value of the euro.

The European Central Bank is responsible for the prudential supervision of credit institutions located in the euro area and participating non-euro area Member States, within the Single Supervisory Mechanism, which also comprises the national competent authorities. It thereby contributes to the safety and soundness of the banking system and the stability of the financial system within the EU and each participating Member State.

We at the European Central Bank are committed to performing all our tasks effectively. In so doing, we strive for the highest level of integrity, competence, efficiency and accountability. We respect the separation between our monetary policy and supervisory tasks. In performing our tasks we are transparent while fully observing the applicable confidentiality requirements.¹

Regardless of the above, the ECB has found itself (at the behest of the political elite) having to recalibrate its mission to one of doing “whatever it takes” to preserve the single currency.² In the absence of a political, fiscal and banking union to underpin and complement EMU, price stability (the ECB’s primary objective) has been shambolic within the individual member states. The ‘one size fits all’

1 ECB “The mission of the European Central Bank”, accessed 26/05/2015 at: <www.ecb.europa.eu/ecb/orga/escb/html/mission_eurosys.en.html>.

2 Speech by Mario Draghi, President of the ECB, to the Global Investment Conference, London (26 July 2012), accessed 26/05/2015 at: <www.ecb.europa.eu/press/key/date/2012/html/sp120726.en.html>.

“Safeguarding ‘the existence of’, rather than ‘the value of’, the euro has taken over as the actual primary objective.”

approach from the outset encouraged and facilitated loose levels of consumer and government spending whose consequences have bedevilled the stability of the European financial system ever since.

Safeguarding ‘the existence of’, rather than ‘the value of’, the euro has taken over as the actual primary objective. Arguably, one goal achieves the other but the new unspoken objective has blurred the line of the ECB’s independence, transparency and accountability as it battles to hold monetary union together. The methods followed may not in fact be in the long-term best interests of the euro area or in accordance with its original mandate and stated mission.

Insanity is doing the same thing, over and over again, but expecting different results.³

The lessons of history have simply not been learned. The root causes of the troubles that plague EMU and threaten the survival of the single currency (in its present form at least) are, first, political dissension; and second, down to economic divergences. Other than defeat in war, these two factors have been the causes of the demise and ultimate break-up of every failed monetary union and/or currency peg.

Through tireless dexterity, imagination and conjuring acts, the ECB has fought one crisis after another. This has bought time for national governments to enact appropriate reforms to facilitate a more level playing field within the Eurozone and resolve the deficiencies such that EMU could be sustained over the longer term. So it is now time for the politicians to take the critical actions needed to preserve long-term financial, economic and social stability in Europe, without which EMU will fail and, potentially, break up the EU as we know it in the process.

1.1.2 In attempting Economic and Monetary Union, the EU ignored the lessons of history

In a monetary union, the same currency serves as a unit of account, medium of exchange and store of value. Thus, a monetary union has one exchange rate towards the rest of the world. However, hard currency pegs are usually associated with sharp slowdowns and greater variability in economic growth. The authorities end up having to manage the economy to maintain a fixed exchange rate, rather than responding to its intrinsic needs. This generally proves to be an unsatisfactory arrangement. Periodic crises are familiar. Consider, for example, sterling’s experience in the Exchange Rate Mechanism (ERM), when currency rate targeting became incompatible with domestic economic objectives.

In a national monetary union, political and monetary sovereignty go hand-in-hand. The borders of the nation state are the borders of the monetary area. For example, within the UK monetary union comprising England, Scotland, Wales and Northern Ireland, Scottish commercial banks still issue bank notes. These notes are perfectly interchangeable for Bank of England notes. In the United States, each of the Federal Reserve Banks issues dollar bills perfectly acceptable in every reserve district – a \$5 bill issued by the Federal Reserve Bank of Richmond is always perfectly interchangeable with a \$5 bill issued by any other Federal Reserve Bank. As a rule, national monetary unions have a single monetary authority, commonly a central bank.

In a multinational monetary union, international monetary cooperation between independent states is based on permanently fixed exchange rates

³ Remark usually attributed to Albert Einstein (1879–1955) but most probably coined by Narcotics Anonymous in the US around 1980.

“We should not expect a peripheral country, and thus a minor voice, to have a major influence on the decision-making process.”

between their currencies. Multinational monetary unions emerge when independent nation states link their currencies together through a fixed exchange rate so that one country's money is perfectly exchangeable with that of another member country at a fixed price. An extreme example is where all member states use the same currency.

Examples of previous attempts at currency union, and the causes of their dissolution, are discussed in Annex A.

Is EMU a national or a multinational monetary union? The answer is not obvious. The EMU project is unique in history. A group of monetary and politically-independent countries have surrendered their national currencies to form a common monetary union based on a new unit of account under the leadership of a common monetary authority – while still retaining their political independence. Previously, monetary unification has always followed political unification, or has been adopted as part of a break-up process between countries that were formerly united politically. With EMU, the sequencing of events has been reversed. Monetary unification has been used as a means of accomplishing the final aim of political unification. Political backing and support for EMU may be substantial at present but has to remain so in the future as well. The political imperative may remain strong as a result of the huge commitment already made to ‘ever closer union’.

Political unity as a rule also entails a centrally-coordinated tax and expenditure system, thus allowing for central fiscal policies. EMU is unique in the sense that monetary coordination within the Eurozone is stronger than political and fiscal coordination. The durability and flexibility of historic monetary unions has been a consequence of their established political unity. EMU has been created by a strong will for political unity, despite a number of primarily ‘economic’ objections to the project.

EMU is based on a commonly accepted, politically decided, commitment – as opposed to the metallic standards of yesterday, which had gold convertibility as a common focal point and commitment mechanism. The statutes of the ECB set out price stability as its *“principal objective”*. A precondition for EMU to succeed and be stable in the future is that the individual members of the Eurozone must display forever a similar commitment to this common goal, as did the advanced nations to the gold standard rule more than a century ago. This is the major challenge facing EMU.

Major idiosyncratic disturbances and crises will hit the Eurozone sooner or later. Judging from the record, national monetary unions survive such events unless they lead to a collapse of the underlying political unity. A Eurozone break-up would most likely be caused by a major exogenous shock that hits the members of the EMU asymmetrically. If political will is lacking on the part of one or a group of EMU-countries to adjust to the common policy of the Eurozone, the union will come to an end.

Centre-periphery tension has implications for the future working of the Eurozone. An obvious compensation for the loss of monetary sovereignty for a small or minor country from joining EMU is that it will take part in policy formation within the ECB. But judging from monetary history, we should not expect a peripheral country, and thus a minor voice, to have a major influence on the decision-making process.

The political economy of the Eurozone will be primarily determined by the major powers among the members of the monetary union. If tension develops between, for example, Germany and France, the risk that EMU becomes unstable will increase. EMU requires one dominating player or a strong coalition to function well.

“The people of the EU are clearly diverging from the EU’s political elite.”

A major lesson from history is that monetary unification is an evolutionary process. EMU will evolve in the future in a way different to the existing plans for the Eurozone. This process, allowing the Eurozone to adapt and adjust to future disturbances, should properly be regarded as a policy-learning process, where policy-makers learn to cope with the shortcomings that emerge. This process will continue as long as the political will to maintain the union is present. Once it disappears, the EMU may break apart and threaten to break the EU along with it. Judging from history, such an outcome appears likely only under extreme circumstances, but a cursory look at current events does indeed suggest that, for some at least, ‘extreme circumstances’ are here and increasingly so. The people of the EU are clearly diverging from the EU’s political elite and this trend is a strong and exponential one.

Jean Monnet was a French political economist and diplomat. He is regarded by many as the chief architect of European unity and the founding father of the European Union. He is famously quoted as saying:

L’Europe se fera dans les crises et elle sera la somme des solutions apportées à ces crises.

Europe will be forged in crises, and will be the sum of the solutions adopted for those crises.⁴

In an excellent working paper from the National Bureau of Economic Research entitled “Monnet’s Error?” (Working Paper 21121), Luigi Guiso, Paola Sapienza and Luigi Zingales consider whether the needs of the currency union will force political integration (as anticipated by Monnet) or whether the tensions will create a backlash.

From Kaldor⁵ to Friedman,⁶ most economists predicted that a currency union was not sustainable without a political union. In spite of this consensus, in 1992 the Maastricht Treaty was signed and in 1999 the euro was introduced. These choices were not made out of ignorance about the necessary conditions for a currency union to work, but out of a strong conviction that integration would force further integration. In the words of Romano Prodi, one of the euro’s founding fathers:

I am sure the euro will oblige us to introduce a new set of economic policy instruments. It is politically impossible to propose that now. But some day there will be a crisis and new instruments will be created.⁷

As Guiso, Sapienza and Zingales point out, the integration ‘chain reaction’ predicted by Monnet can take place for two reasons. Integration can create the political consensus for further integration, where crises provide the catalyst to transform existing political arrangements into action. Alternatively, the chain reaction can be the result of a ‘scorched earth’ strategy. By burning bridges

4 Jean Monnet (1888–1979). First Secretary-General of the League of Nations, 1919–1923. Member of General de Gaulle’s National Liberation Committee 1943–45. First President of the High Authority of the European Coal and Steel Community 1952–1955. Founded the Action Committee for the United States of Europe, 1955. Never held elected public office. Regarded as the ‘Founding Father of Europe’. The quote comes from: “Mémoires” (Fayard, 1976).

5 New Statesman “The Dynamic Effects of the Common Market”, N. Kaldor (12 March 1971), reprinted in “Further Essays on Applied Economics”, Vol 6.

6 Milton Friedman (1912–2006): Letter to the Times, 19 November 1997.

7 Romano Prodi, President of the European Commission (1999–2004) and Prime Minister of Italy (1996–1998 and 2006–2008). The remark comes from an interview reported in the Financial Times, 4 December 2001.

“Essentially, it is about forming a United States of Europe.”

behind, integration might be able to force further integration simply because there are no alternatives. Thus, further integration can occur in spite of growing political opposition, not because of rising political support. Even under this second route, crises can be a catalyst, not to transform a political consensus into action, but to force unpopular choices upon reluctant voters.

So far, history seems to have vindicated Monnet’s theory. Before the 2010 sovereign debt crisis, nobody would have anticipated a common supervision of the European banking sector any time soon. Since November 2014, this has been a reality. Yet was this move triggered by a rising consensus toward more integration or was it forced upon reluctant voters? Answering this question is crucial to the future of the euro and of Europe in general. If integration increases the demand for further integration, political integration is just a question of when, not if. By contrast, if integration forces further integration against voters’ will, the integration process is more at risk.

But as with all chain reactions, there is the risk of a runaway meltdown.

1.1.3 Economic and Monetary Union was always primarily a political project that ignored underlying economic realities

Monetary union is essentially a political project, though in public discourse the emphasis is mainly on the economic objectives. Indeed, there seems to be a reluctance in some quarters to acknowledge the intrinsic political nature of monetary union. Essentially, it is about forming a United States of Europe.

Many researchers support the conclusion that the political process is the major determinant for the future of EMU, for example Cohen,⁸ Corden,⁹ Goodhart¹⁰ and Obstfeld.¹¹ Indeed, as the economist Paul de Grauwe has said:

*The euro is a currency without a country. To make it sustainable a European country has to be created.*¹²

The theoretical study of currency unions relies on the work of the economists Robert Mundell,¹³ Ronald McKinnon¹⁴ and Peter Kenen.¹⁵ Together, they devised a list of conditions that would constitute an ‘optimal currency area’, i.e. a geographical region across which a single currency would maximise economic efficiency. The four key criteria they identified are:

- 8 Benjamin J. Cohen, Professor of International Political Economy, University of California, Santa Barbara: “Beyond EMU: The Problem of Sustainability” *Economics and Politics* 5:2 (July 1993), pages 187–203, and also “The Geography of Money” (Cornell University Press, 1998).
- 9 W. Max Corden, Distinguished Professor of International Economics at the Schools of Advanced International Studies, Johns Hopkins University: “Monetary Integration, Essays in International Finance,” *International Finance Section No. 93* (Princeton University, Department of Economics, 1972).
- 10 Charles A.E. Goodhart, Professor of Banking and Finance, London School of Economics and member of the Bank of England Monetary Policy Committee (1997–2000): “The Two Concepts of Money: Implications for the Analysis of Optimal Currency Areas” *European Journal of Political Economy* 14 (1998), pages 407–432.
- 11 Maurice Obstfeld, Professor of Economics, University of California, Berkeley: “A Strategy for Launching the Euro” *European Economic Review* (May 1998).
- 12 P de Grauwe, Professor European Political Economy and Head of the European Institute, London School of Economics: “The Eurozone’s Design Failures: Can They Be Corrected?” (public lecture, 28 November 2012).
- 13 Professor of Economics at Columbia University since 1974. Winner of the 1999 Nobel Memorial Prize in Economics.
- 14 Professor of Economics at Stanford University 1961–2014.
- 15 Professor of Economics and International Finance at Princeton University 1971–2004.

“A ‘successful’ monetary union requires the existence of fiscal union, banking union and ultimately political union.”

- Labour mobility: there should be no barriers to the free movement of workers across the area, whether physical (e.g. the need for a work permit), cultural (e.g. inability to speak the same language) or institutional (e.g. loss of pension rights when moving);
- Open markets with capital mobility and price/wage flexibility: there should be no barriers to the free transfer of resources across the region in response to market forces;
- Risk-sharing mechanisms: there should be no barriers to the transfer of resources from successful to less successful regions or sectors (which usually means a common redistributive fiscal system);
- Similar business cycles: to permit a central monetary authority to adopt a common policy with broadly the same effects in each participating country.

Other factors that have been cited are the diversification of production (i.e. that highly-specialised countries would not fit together well), and that people across the area should have broadly similar preferences and share a sense of common solidarity.

When the EU leaders devised the Stability and Growth Pact, which set the ‘convergence criteria’ that determined eligibility to adopt the euro, it contained somewhat different measures:

- The national inflation rate averaged over one year should not be more than 1.5 per cent above the average for the three countries with the lowest inflation rates;
- The Government budget deficit should not exceed three per cent of GDP for at least three years;
- Government debt should not exceed 60 per cent of GDP – or, if it did, should be falling and on course to meet the target “*at a satisfactory rate*”;
- Exchange stability: the country’s independent currency should not have fluctuated by more than the permitted limits under the ERM for at least two years (although the EU Commission was entitled to accept a shorter period, or insist upon a longer one);
- Long-term interest rate stability: for at least one year, the average yield on a country’s 10 year government bonds should not be more than two per cent above the average yield on 10 year bonds issued by the three governments whose countries had the lowest inflation.

The merit of the convergence criteria is that they are at least objective and, in principle, straightforward to measure (although there have always been suspicions, to put it no stronger, about the ‘accuracy’ of the statistics prepared for Greece). The five tests could be defended as an assessment of whether candidate countries had similar business cycles, on the assumption that, under the EU Treaties, they already shared the Four Freedoms of movement of goods, labour, capital and services. Under the criteria, 11 countries qualified to adopt the euro in 1999 (Austria, Belgium, France, Finland, Germany, Ireland, Italy, Luxembourg,

“Germany has not learnt the lessons of economic history when it comes to the adjustment process inside the Eurozone.”

Netherlands, Portugal, Spain). They have been joined subsequently by Greece (2001), Slovenia (2007), Cyprus and Malta (2008), Slovakia (2009), Estonia (2011), Latvia (2014) and Lithuania (2015).¹⁶

Unfortunately, the convergence criteria all measured aggregate effects, and did not track the underlying factors within an economy on which the concept of an ‘optimal currency area’ are based. The assumption that the EU Treaties guaranteed the essential mobility of capital and labour was remarkably complacent. On one critical point, the candidate countries clearly failed the test for an ‘optimal currency area’. The EU Treaties prohibit the bail-out of a member state government and so prevent the sharing of risk through coordinated fiscal policy. Residual sovereignty within the EMU meant that there would be limited tolerance for large fiscal subsidies between the member countries. Notwithstanding transfers for developmental reasons, there is little support, especially from the ‘creditor’ countries, for large fiscal transfers mainly because of the moral hazard problem these transfers might create. Furthermore, setting a fiscal deficit ceiling of three per cent of GDP significantly restrains the abilities of member countries to cope with shocks, as has been clearly demonstrated following the global financial crisis of 2008.

Thus, a ‘successful’ monetary union requires the existence of fiscal union, banking union and ultimately political union. From an economic perspective, its ‘success’ depends on the type of economic policies implemented as well as the mix between them (for example, ‘tax and spend’ or ‘austerity’, quantitative easing and/or negative interest rates).

In any modern economy, the balance between monetary and fiscal policy is important for determining the outcomes for economic growth and inflation. In the specific case of the Eurozone, there is also another consideration which relates to the design mechanism and the underlying adjustment mechanism between surplus/creditor economies and the deficit/debtor economies.

The adjustment mechanism determines who bears the cost of adjustment. Unfortunately, the way EMU has been designed bears all the hall-marks of earlier monetary systems such as the 1930s Gold Standard or post-1945 Bretton Woods arrangement. In those cases, the surplus/creditor economies failed to facilitate a smooth and orderly adjustment process between creditors and debtors. As a result, the outcome was essentially misaligned and imposed the burden of economic adjustment on the deficit/debtor economies. Deflation, mass unemployment and economic stagnation were the outcome in the 1930s. Those countries that left the Gold Standard early on, such as the US and UK, had the quickest economic recovery. Those that stuck to the Gold Standard, like France for example, endured prolonged recession.

In the current situation, Germany has not learnt the lessons of economic history when it comes to the adjustment process inside the Eurozone. As a result the deficit/debtor economies have suffered a forced ‘internal devaluation’, given the absence of the ability to use the national exchange rate as an adjustment mechanism. Germany, the surplus/creditor economy, has benefited from EMU in that the absence of different national currencies encouraged German capital to flow, free of exchange rate risk, into the periphery.

16 Through parallel monetary agreements, the euro is also the currency of Andorra, Monaco, San Marino, the Vatican City and a number of overseas territories not incorporated into the EU, such as St Pierre et Miquelon. Kosovo and Montenegro have unilaterally adopted it as their national currency, presumably to pave the way for future EU membership. These are not part of the formal Eurozone.

“Across the Eurozone as a whole, it is possible to see a differentiation between ‘winner’ and ‘loser’ members.”

That flood of German (and also French) capital initially resulted in a convergence of interest rates, on the assumption that monetary union would also result in a convergence of economic growth rates, productivity and competitiveness. This did not last long for reasons which have since become well-documented, but which particularly relate to issues of fiscal transparency (or lack of it) and a failure to implement structural reforms.

When the Eurozone debt and banking crisis broke in 2010, it was because of the ‘discovery’ by the new Greek Government that its budget deficit level and debt levels were much higher than previously thought. Of course, from the onset of monetary union there have always been breaches of the so-called Maastricht budget targets, including by France and Germany, though many of these breaches were known and overlooked presumably on the basis that the imperative of political union superseded any fiscal concerns.¹⁷ All of this took place against a wider backdrop of easy money and excess leverage which sponsored an unsustainable credit and real estate boom that imploded in 2007.

The operation of monetary union has placed too much of the burden of economic adjustment on to the deficit/debtor economies. Fiscal ‘austerity’, the deliberate tightening of fiscal policy, has resulted in deflation and mass unemployment. Economic growth in the Eurozone has been stagnant. Policy settings have forced a severe retrenchment in domestic demand which has resulted in a decline in nominal GDP, i.e. the total spending of an economy unadjusted for inflation. Indeed, in several cases, nominal GDP is lower than it was in 2007, or has barely increased. Monetary union has actually shrunk the size of these countries’ economies. Across the Eurozone as a whole, it is possible to see a differentiation between ‘winner’ and ‘loser’ members. Table 1.i shows the nominal GDP figures on a per capita basis.

Table 1.i: Nominal GDP per capita in Eurozone members, 2007 and 2013

Country	2007 (€)	2013 (€)	
Austria	34,000	38,100	+12%
Belgium	32,500	35,600	+10%
Cyprus	22,700	21,000	Worse off
Estonia	12,100	14,200	+17%
Finland	35,300	37,100	+5%
France	30,400	32,100	+6%
Germany	30,500	34,200	+12%
Greece	20,900	16,500	Worse off
Ireland	44,700	38,000	Worse off
Italy	27,400	26,500	Worse off
Latvia	10,300	11,600	+13%
Lithuania	9,000	11,800	+31%
Luxembourg	74,800	83,100	+11%
Malta	14,200	17,900	+26%
Netherlands	37,200	38,300	+3%
Portugal	16,600	16,200	Worse off

¹⁷ This issue is considered further in Appendix A.

Country	2007 (€)	2013 (€)	
Slovakia	10,400	13,600	+31%
Slovenia	17,400	17,500	+1%
Spain	23,900	22,500	Worse off
Euro area (19 countries)	28,200	29,300	+4%

Source: Eurostat

The aftermath of financial crises are characterised by debt deleveraging, sub-par economic growth and an explosion in public debt.¹⁸ The global financial crisis has imposed costs on governments in terms of bank bail-outs. The ensuing severe recession has imposed further costs, as well as a socialisation of risk from the private to the public sector. But declining nominal GDP makes it almost impossible for countries to reduce these accelerating debt burdens. As Table 1.ii details, the current government debt-to-GDP ratio is higher than before the crisis in most advanced economies. Again, however, in the EU some members have been affected far more than others. That exacerbates the specific tensions within the Eurozone.

Table 1.ii: Debt-to-GDP ratio for advanced economies, 2007 and 2013

Gross Debt as proportion of GDP			
Country	2007	2013	Change
Eurozone			
Austria	65%	81%	16%
Belgium	87%	105%	18%
Cyprus	54%	102%	48%
Estonia	4%	10%	6%
Finland	34%	56%	22%
France	64%	92%	28%
Germany	63%	77%	13%
Greece	103%	175%	72%
Ireland	24%	123%	99%
Italy	100%	129%	29%
Latvia	7%	35%	28%
Lithuania	17%	39%	22%
Luxembourg	7%	24%	16%
Malta	62%	69%	7%
Netherlands	43%	69%	26%
Portugal	68%	130%	61%
Slovak Republic	30%	55%	25%
Slovenia	23%	70%	47%
Spain	36%	92%	57%

18 “This Time is Different: Eight Centuries of Financial Folly”, C.M. Reinhart and K. Rogoff (Princeton University Press, 2009).

Gross Debt as proportion of GDP			
Country	2007	2013	Change
EU non-Eurozone			
Czech Republic	27%	44%	17%
Denmark	27%	45%	18%
Sweden	38%	39%	0%
United Kingdom	44%	87%	44%
Non-EU euro			
San Marino	11%	22%	10%
Others			
Australia	10%	31%	21%
Canada	67%	88%	21%
Hong Kong SAR	5%	7%	2%
Iceland	27%	86%	59%
Israel	74%	68%	-6%
Japan	183%	243%	60%
Korea	29%	34%	5%
New Zealand	17%	36%	19%
Norway	50%	30%	-19%
Singapore	85%	102%	17%
Switzerland	53%	47%	-6%
Taiwan Province of China	32%	39%	7%
United States	64%	103%	39%

Source: IMF World Economic Outlook Database (April 2015)

German policy-makers have failed to appreciate that their country needs to spend more and save less if they wish to maintain a monetary union with some of the peripheral Eurozone member states. Their obsession with 'balanced budget fundamentalism', and their implied view that the right way forward is for all Eurozone members to become 'mini-Germans', is misguided.¹⁹ It is a recipe for deflation and economic stagnation. The surge in Germany's current account surplus to 7–8 per cent of GDP is a major imbalance, not just inside the Eurozone but also globally. Indeed, Germany's current account surplus and China's excess investment capacity are key sources of global deflationary pressure. Unfortunately, there is little significant pressure at a G20 level to address these imbalances, especially with regard to Germany. As a result, the G20 aim of raising global GDP by two per cent above its previous trajectory by 2018²⁰ looks demanding should Germany fail to change its policy settings.

The attitude of Greece during the Eurozone crisis, especially the opposition to austerity, has been criticised as selfish and irresponsible for endangering the survival of the euro. Perhaps Greek voters, in common with the anti-euro movements in other countries such as France, Spain and Italy, understand that exit, whatever the short-term costs, is better than the current situation of being stuck

19 A fuller discussion of this debate is given in Appendix A.

20 "The Brisbane Action Plan", accessed 30/05/2015) at: <https://g20.org/wp-content/uploads/2014/12/brisbane_action_plan.pdf>.

“It is of little comfort to listen to strictures on the need for structural reforms at a time when an economy like Greece is on the floor.”

in a debt trap alongside what seems to be never-ending economic misery and double-digit unemployment. Being in monetary union no longer looks like a sensible long-term economic option for some nations. Why would any country want to stay in a system, or join a system, where deflation, unemployment and economic stagnation is all that it has to offer?

It is of little comfort to listen to strictures on the need for structural reforms at a time when an economy like Greece is on the floor. In any country, structural reforms have a much better chance of success when the economy is healthy and growing. Should Greece eventually exit monetary union, it is by no means clear that any ‘contagion’ might be easily confined. International investors might then assume, understandably, that monetary union is not irrevocable after all, but simply just a hard fixed exchange rate system that is vulnerable to members, perhaps even at the core, deciding that there are superior reasons to leave.

The outcome seen today represents a stark contrast to the hopes expressed at the time the euro was launched. Rather than increasing the burden on member states, the EU Commission predicted that the mere existence of a single currency would save transaction costs equivalent to 0.5 per cent of GDP.²¹ Yet whether the Eurozone represented an optimal currency area was a source of contention quite early on. Outside the core of the EU, other economies had different industrial structures, different levels of unionisation in their labour markets, poor labour mobility, and different levels of productivity and competitiveness. The Eurozone has lower cross-border mobility than previous currency unions.²²

Many US economists, such as Martin Feldstein and Milton Friedman, proved prescient in pointing out the fundamental flaws in the European monetary union and in suggesting that its longer-term viability would be open to question.²³ But a successful monetary union is much more than a reduction in transaction costs. Far larger costs are involved in surrendering national sovereignty over economic policy, for example decisions over an inappropriate ‘one size fits all’ interest rate policy; absence of a national exchange rate release valve/shock absorber; and control over national fiscal policy.

A single interest rate for the Eurozone exacerbates ‘booms and busts’, so long as there are any differences between the economies of each member state. Compared to a scenario of no monetary union, a single rate set with respect to ‘average’ conditions across the zone as a whole will not represent a sufficient restraint for growth countries (hence, giving them a stronger boost) but will be too severe for recession countries (hence, applying too severe a brake). Likewise, variations in inflation rates between Eurozone economies implies variations in real interest rates that result in capital flow volatility as international investors seek differences in real returns.

Mark Carney, the Bank of England Governor and Chairman of the Financial Stability Board, notes that being in a currency union can amplify financial

21 EU Commission “One Market, One Money: An evaluation of the potential benefits and costs of forming an economic and monetary union” (European Economy Paper 44, October 1990), Chapter 3, accessed 26/05/2015 at: <http://ec.europa.eu/economy_finance/publications/publication7454_en.pdf>.

22 Ironically, there has been greater labour mobility out of the Eurozone (e.g., to the UK) than there has been within it.

23 Feldstein: “The Case Against the Euro” (Economist, 1992) and “EMU and International Conflict” (Foreign Affairs, November/December 1997); Friedman: Letter to the Times, 19 November 1997. The EU Commission Directorate-General for Economic and Financial Affairs has published a helpful summary of American commentary, on the unfortunate assumption that it was mistaken, in “The euro: It can’t happen. It’s a bad idea. It won’t last. US economists on the EMU 1989–2002”, Economic Paper 395 (December 2009), accessed 30/05/2015 at: <http://ec.europa.eu/economy_finance/publications/publication16345_en.pdf>.

“EMU has not been an economic success.”

stress and increases the risks of financial instability. He says that “*adverse fiscal dynamics*” could create the possibility of self-fulfilling runs on bank and sovereign debt.²⁴

The ECB has turned to Quantitative Easing (QE) and negative interest rates to deal with the Eurozone crisis, but even Mario Draghi, the ECB President, has acknowledged the limits of the effectiveness of unconventional monetary policies in the absence of structural reform to improve competitiveness.²⁵ In April 2015, 25 per cent of Eurozone sovereign debt carried negative yields.²⁶ This creates dysfunctionality in Eurozone money markets and bond markets and creates potential dislocation in longer-term savings and investment decisions.

According to the Bank of England, the banking systems of peripheral European countries experienced outflows of between 10 and 85 per cent of total deposits from elsewhere in the Eurozone in the three years following June 2010.²⁷ This creates the risk of ‘zombie’ money markets, reducing market liquidity and amplifying potential market shocks.

The success of a currency area hinges on whether its advantages mitigate the loss of flexibility offered by independence. Beneficial features generally promote the alignment of economic cycles, and the maintenance of price and financial stability. On that basis, EMU has not been an economic success.

1.1.4 The Eurozone is too inflexible to withstand the stress exerted by global currency markets

The euro was launched in 1999 amid a wave of optimistic euphoria. The history of international monetary systems over the past 100–150 years has seen sterling, gold and the US dollar at some point each being the centrepiece of global trading arrangements. History shows that changes in political and economic hegemony are a major factor in determining which currency takes on the central role of the leading reserve currency. It was only natural that supporters might hope that the EU represented the new economic super-power of the future, and that the euro might also be the new reserve currency. When Gordon Brown ‘modernised’ the reserves of the Bank of England by selling off its gold stocks (at the bottom of the market in 1999–2002), the proceeds were used to acquire euros, among other foreign currencies.²⁸

The current international monetary system is still dominated by the US dollar. Changes in the global economy, and the growing importance of emerging market economies, place a question mark over its continued role. So far, however, the dollar has managed to shrug off attempts from other currencies, latterly the euro, to displace it.

- 24 “The economics of currency unions” Speech to the Scottish Council for Development & Industry (29 January 2014), accessed 26/05/2015 at: <www.bankofengland.co.uk/publications/Documents/speeches/2014/speech706.pdf>. He was talking about the position of an independent Scotland continuing to use sterling, but his remarks obviously have wider application.
- 25 For example: his introductory remarks to the European Parliament Economic and Monetary Affairs Committee (22 September 2014), accessed 31/05/2015 at: <www.ecb.europa.eu/press/key/date/2014/html/sp140922.en.html>.
- 26 Yahoo Finance “Eurozone Government Bonds are Cozying Up to Negative Yield”, S. Johnson (14 April 2015), accessed 03/06/2015 at: <<http://finance.yahoo.com/news/eurozone-government-bonds-cozying-negative-221000393.html>>.
- 27 “The economics of currency unions” Speech to the Scottish Council for Development & Industry (29 January 2014), accessed 26/05/2015 at: <www.bankofengland.co.uk/publications/Documents/speeches/2014/speech706.pdf>.
- 28 Bank of England “Historic Gold Sales”, accessed 26/05/2015 at: <www.bankofengland.co.uk/markets/Pages/forex/reserves/goldsales.aspx>.

“Many independent observers alluded to a number of serious shortcomings in the construction of the Eurozone.”

But the process of change tends to be long-term rather than necessarily abrupt. For the US dollar to retain its dominance, a number of factors need to remain in place e.g. military superiority; technological supremacy; international confidence in the country's economic policy; and financial stability. In spite of worries about the sustainability of US fiscal policy, the dollar still accounts for 60–65 per cent of global foreign exchange reserves and the bulk of commodity prices are denominated in dollars.²⁹

From the very inception of EMU and the introduction of the single currency, many independent observers alluded to a number of serious shortcomings in the construction of the Eurozone. These included the absence of a central lender of last resort; the lack of a central authority supervising the financial systems of the zone; inconsistent policy guidelines for the ECB; the absence of central coordination of fiscal policies between member states; and unduly strict and inflexible convergence criteria for domestic debt and deficits in the face of asymmetric shocks. Above all, many doubted that the Eurozone constituted an optimal currency area.

These doubts were drowned out by the euphoria. Yet with the passing of time, the crisis in the Eurozone has exposed the design flaws. Monetary union cannot succeed unless it is complemented by fiscal union (which implies political union). The Eurozone crisis has revealed imbalances within the Eurozone where the adjustment process (in the absence of currency devaluations) puts the burden on the trade deficit economies to achieve competitiveness through cuts in real wages. This increases social and political tensions which can undermine the political legitimacy of monetary union and which might lead to its fragmentation (and maybe ultimate collapse).

The disappearance of national European currencies to be replaced by one currency, the euro, was originally hailed as reducing foreign exchange and investment risk. A bigger trade zone would result in stronger economic growth and many other good things. This has not proved to be the case. Monetary union is now in what is called an ‘existential’ phase, where severe economic downturns and an obsession with fiscal austerity has resulted in the Eurozone crisis becoming a major downside risk for global economic prospects.

EU labour markets are rigid and labour mobility within the EMU members is limited, principally due to language and cultural impediments. Under these circumstances, asymmetric shocks have, and will continue to, set off an adjustment process that is agonisingly slow and more costly than would otherwise have been the case. Rising unemployment (especially among the young), and requests for fiscal transfers and for protection, has undermined the credibility of EMU and the political cohesion required for a well-functioning monetary union.

Imbalances in trade (a persistent feature of the current international monetary system) have the potential to create periodic financial crises. It is a basic accounting identity that a country's current and capital accounts have to balance. Where a country buys more in imports than it sells abroad in exports, this has to be financed by either selling foreign assets or by borrowing. Trade deficit economies can therefore become trapped in a vicious spiral where they accumulate debt because they are sustaining a persistent trade deficit. To turn a trade deficit into a surplus typically requires some combination of currency depreciation and/or changes in economic policy to curb domestic demand and so reduce purchases of imports.

The abolition of domestic currencies, and thus the ability to adjust nominal exchange rates and domestic interest rates when faced with asymmetric or country-specific shocks, therefore threatens the stability of EMU. Underperforming

29 Source: Datastream.

“The Eurozone is too inflexible to withstand these pressures as it is presently constituted. It is not, and never has been, an optimal currency area.”

countries have been deprived of two main mechanisms for preventing the continuous bleeding away of their money.

Likewise, it is better if trade surplus economies complement the adjustment process by allowing their currency to appreciate and domestically spend more and save less. Unfortunately, this does not always happen as national governments typically put domestic economic considerations first. Reducing unemployment and/or delivering economic growth has domestic political advantages, whereas correcting trade deficits or over/under valuation of currencies becomes a ‘second-order’ consideration. The problem is that, if imbalances persist, ‘currency wars’ and protectionism can surge to the detriment of world trade and the global economy. The periodic disputes between the US and China over foreign exchange policy are an example of this.

The Eurozone is too inflexible to withstand these pressures as it is presently constituted. It is not, and never has been, an optimal currency area, so it was always going to be poorly placed to cope with a major systemic shock. The institutional mechanisms to allow underperforming members to adjust are defective. The dominant surplus/creditor member, Germany, has refused to voluntarily adopt a leadership role to assist fellow members in their adjustment to the shock – and in fact, politically, has forced the deficit/debtor members down a punishing road of internal devaluation and a refusal of any debt write-downs that would impose costs on the German banking system.

At some point, one of two things will happen. Either the Eurozone will implement reforms to cure these defects (imposing costs ultimately on German taxpayers, and amounting to much closer political union that radically alters the balance of power even further within the EU), or individual Eurozone members will decide, as Britain did with the ERM in 1992, that the gain is no longer worth the pain and exit the arrangements (which in theory involves exit from the EU itself under the present Treaties). Whichever outcome occurs, it is likely to require Treaty change. In this light, it makes little sense to consider Britain’s position within the EU in terms of ‘Business As Usual’.

In other words, the Eurozone will either integrate or disintegrate.

1.2 The EU economy exhibits alarming divergence which threatens the survival of the Eurozone and ultimately the EU itself

A decade or so ago, considerable academic attention was directed to the study of economic convergence in Europe. The dominant opinions were that (i) European countries had indeed already been gradually converging (most European commentators drew this conclusion), due to increased intra-regional trade and greater overall integration in the 1980s and the 1990s; and (ii) that, even if they were not converging (as some American commentators found), they would converge endogenously over time, i.e., the institutional structures being put in place then would force the member economies to converge by the very fact of being within the same currency area.

Research on this topic essentially came to a halt about a decade ago, presumably because of the overwhelmingly strong consensus opinion on what would happen in Europe. However, when the question is revisited today, using more recent data, this appears to have been a complacent attitude. While the Eurozone countries had indeed exhibited economic convergence prior to 1999–2000, contemporary calculations suggest that they have actually diverged quite sharply since then. In fact, the absolute measures of economic divergence, from both demand (temporary) and supply (permanent) shocks, show that the members of the EMU are more divergent now than they were in 1982.

“This process has not yet played itself out in full.”

This finding has several implications.

(1) The structure of EMU itself may have caused greater economic divergence. The combination of a common monetary policy, fixed exchange rates, and limited scope for member countries to conduct their own fiscal policies, may have led to weak economies weakening further and strong economies strengthening.

(2) Globalisation in the past decade may have had vastly different effects on the performances of Eurozone countries. Diversity of the industrial make-up and different specialisations in production and services means that some countries (like Germany) may have thrived in a globalised world, while others (e.g., some of the peripheral countries) may have become marginalised. Trade between different industries may have become a more powerful driving force than trade within any given industry.

(3) Thus, the complex situation in Greece could be a result of not only the legacy debt (i.e. the Greeks have borrowed more than they could possibly afford) and any lack of willingness and ability to reform. There is also the possibility that the Greek economy, as currently configured, simply does not have scalable industries and activities that could allow it to be competitive in this globalised world.

(4) The durability of EMU (and even the EU) is in question, if the member countries continue to diverge economically. However sub-optimal the Eurozone was as an ‘optimal currency area’ in 1999, it has become even less optimal now. Sheer political will to keep EMU intact may not be sufficient to guarantee the survival of the Eurozone as it is currently constituted.

Since the start of the Greek crisis in 2010, Europe has grabbed much attention from investors and policy-makers. Underwhelming economic growth and a worrying decline in inflation have finally forced the ECB to launch an aggressive QE programme, after an extended period of attempting to maintain confidence by promising action without actually undertaking any. Further, Greece continues to struggle, and several other member countries have delayed the implementation of structural reforms.

In absorbing the shock of the global financial crisis, the Eurozone can be expected to go through four phases of crisis:

- 1 financial,
- 2 economic,
- 3 political, and finally
- 4 social.

This process has not yet played itself out in full. The period 2008–12 was mainly a financial (debt) crisis, with problems in, first, the national banking systems and then in national finances addressed in the short term through a process of bail-outs. The ECB was successful in pacifying the sovereign bond markets with its Outright Monetary Transactions (OMT) programme in 2012, whereby its President Mario Draghi declared his readiness to make direct market purchases of distressed bonds issued by Eurozone members – but then never had to actually buy any, the announcement by itself achieving a restoration of confidence. Despite this, Europe has fallen into an economic crisis. All along, there have been bouts of political crisis, as the governments of the member countries disagreed on how to deal with the past problems while minimising moral hazards.

The real political crisis will arise when Eurozone leaders are forced to confront the dilemma of the single currency’s inflexibility: integrate or disintegrate. But there still remains the potential for a social crisis. What has happened in Greece is one example of how the situation in Europe is degenerating. No one

“To these optimists, the current difficulties are transitory.”

should believe that Greece will be the only member country that struggles to remain in the Eurozone.

These troubles in Europe are complex but familiar to many. Advocates remain optimistic about these European projects (both EMU and the EU itself), partly because of their belief that there will be continued economic convergence between the member countries. To these optimists, the current difficulties are transitory. Europe’s ultimate destiny is not in doubt: in the long run, there will be peace, economic prosperity, equality, and civility across the continent, which in turn will give the EU greater political clout and moral authority when facing the outside world.

This optimism rests upon a lynchpin assumption: that the Eurozone members, if not those in the EU as a whole, are indeed becoming ‘ever closer’ simply by virtue of being members of the same system. (By implication, the present difficulties are nothing more than the normal consequences of a severe recession.) When the evidence is examined, however, this is found to be untrue.

1.2.1 Before the launch of the euro, Europe was experiencing economic convergence

Prior to 1999, economic convergence was an essential assumption for the political leaders of the EU. If EU membership was not bringing the member states ‘ever closer’, then what was it for?

First, the EU as a free trade zone was built on the notion that it would be a ‘Pareto-improving’ proposition for all of its members, i.e. that it would improve the position of some participants without making any of them worse off. The rich countries would prosper, and the poorer countries would catch them up, through free trade.

Second, there was the issue of whether the Eurozone was an ‘optimal currency area’ due to its de facto labour immobility (language and cultural barriers) and capital immobility (due to remarkably strong ‘home biases’), notwithstanding the enshrinement of the Four Freedoms in the EU Treaties.

Economic theory did not provide a clear-cut verdict on whether the economies in the EU/EMU would exhibit economic convergence or divergence. In broad terms, Continental European commentators tended to believe there would be economic convergence within the Eurozone. Indeed, this has been the prevailing view for much of the last 15 years. With greater economic, institutional, and policy integration, member countries should gradually become more aligned with each other.

On the other hand, there has been somewhat more scepticism among American and British academics and policy-makers. EU member states were so different in many ways. Crucially, the lack of a federal government and the policy constraints of being in a monetary union would encourage divergence, not convergence.³⁰

An interesting argument was also put forward by Paul Krugman. In contrast to the opinion of the European Commission, that intra-industry trade should grow and lead to greater economic convergence, Krugman argued that inter-industry trade would be more important and that would lead to economic divergence over time, because the demand shocks would become increasingly asymmetric.³¹

30 “Shocking Aspects of European Monetary Unification”, T. Bayoumi and B. Eichengreen, NBER Working Paper No 3949 (January 1992).

31 “On the Asymmetry of Shocks in EMU: Is it that Shocking?”, B.A. Verhoef (2002), De Nederlandsche Bank, Research Memorandum WO no 715, December.

In so far as there was a consensus opinion, it would have been that the first prospective Eurozone members had indeed converged economically. After all, had they not all satisfied the ‘convergence criteria’?

1.2.2 The introduction of the euro has led to serious divergences that threaten EU stability

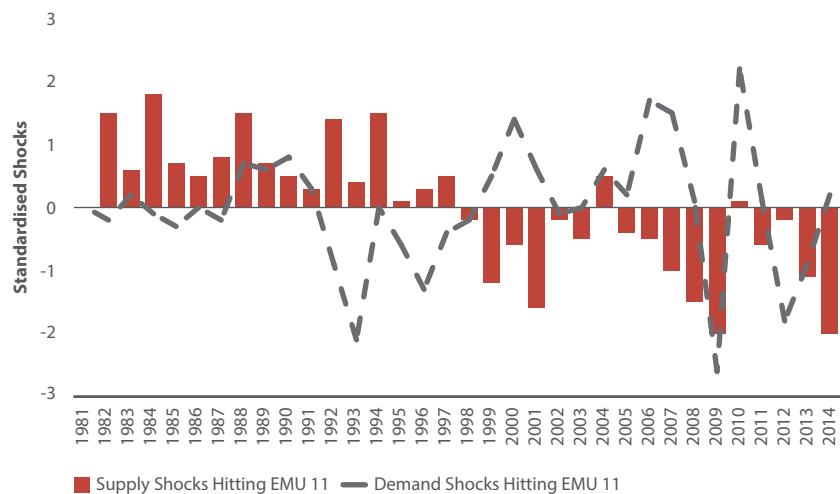
The euro was supposed to herald a new era of stability and prosperity within the EU, and be so successful that every EU member would wish to join, and nobody would ever want to leave.

1.2.2.1 There is strong evidence of economic divergence within the Eurozone since 1999

Soon after the establishment of the Eurozone in 1999, research on the topic of economic convergence came to a halt, as if everyone was resigned to the prevalent view that convergence would come about ‘endogenously’, i.e. simply by virtue of the countries being in the same currency union. Also, with the launch of the euro, the debate on the merits and demerits of the concept of EMU was rendered moot, as the political elite in Europe were forging ahead regardless.

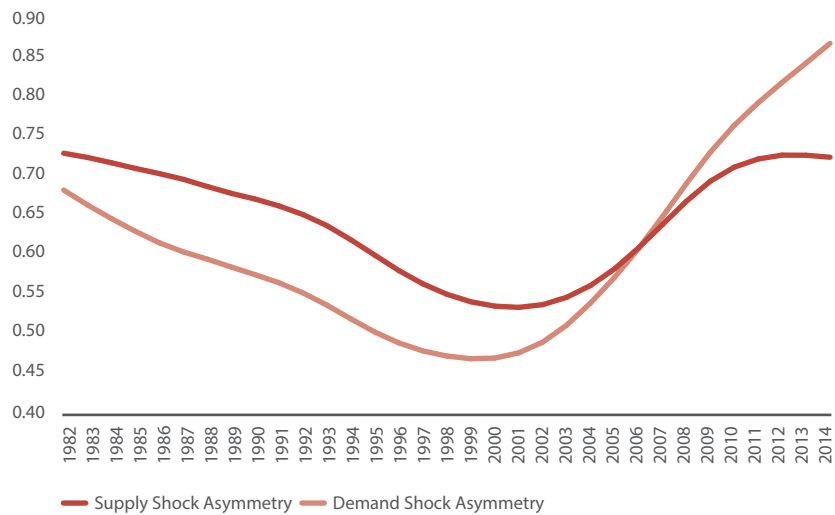
When the proposition is tested, however, the findings are that, rather than converging, the Eurozone members are actually becoming more divergent – although they were indeed converging beforehand. Our study covers the period from 1981–2014, allowing a comprehensive assessment to be made of both the ‘pre-EMU’ and ‘post-EMU’ experiences. It examines a sample group of ‘EMU-11’ countries: Austria, Belgium, France, Finland, Germany, Greece, Ireland, Italy, Netherlands, Portugal and Spain. Further details, including about the basis of selection, are given in Annex B. The findings can be summarised in three charts.

Figure 1.iii: Estimated Demand and Supply Shocks for the EMU-11



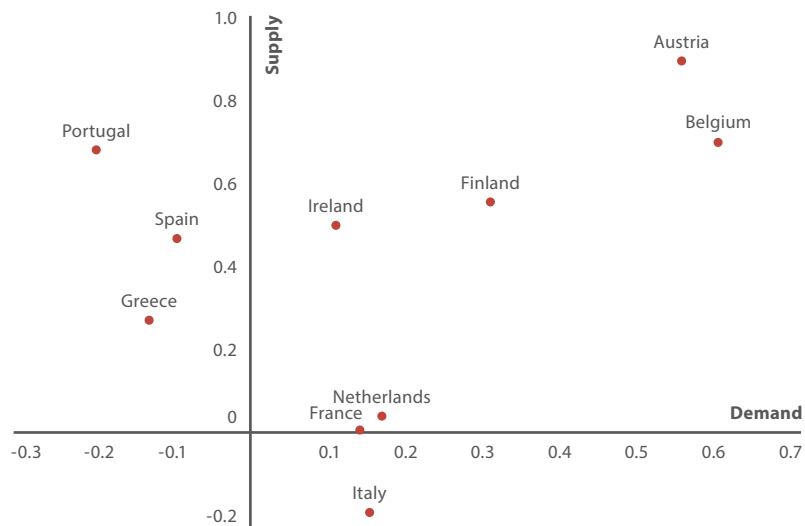
Source: SLJ Macro Partners

Figure 1.iv: Estimated Asymmetry of Demand and Supply Shocks across the EMU 11



Source: SLJ Macro Partners

Figure 1.v: Correlation of Demand and Supply Shocks of the EMU-11 with Germany



Source: SLJ Macro Partners

Figure 1.iii plots the estimated demand and supply shocks hitting the EMU-11 economies, collectively. The negative demand shocks, such as during the ERM Crisis in the early-1990s, the 2009 post-global financial crisis, and the EMU debt crisis in 2011-12 can be seen clearly in the declines in the dotted red line.

What is perhaps more important and remarkable in Figure 1.iii is the persistence of the negative supply shocks that have impinged on the EMU economy since the launch of the euro. These supply shocks are shown by the red bars in Figure 1.iii. These simulations suggest that events like the rise of emerging markets, and particularly China, which joined the WTO in 2001, have been very consequential for the EMU. The decline of production costs and the expansion of these consumer markets appear to have affected the EMU economies in very different ways. While some German firms successfully capitalised on the

“The trend for both types of shock has reversed and increased significantly in magnitude.”

opportunities arising from globalisation, other firms and countries in the EMU region faced increasing competitive pressures.

Figure 1.iv plots a measure of the asymmetry of the demand and supply shocks across the EMU-11 countries. A rise in economic divergence (or asymmetry of shocks) is shown as an upward movement in this chart.³²

These results indicate, first, that both the demand and supply shocks significantly declined from the 1980s until around 2000. This coincides with the findings of many research papers published around the time of the launch of the euro. However, after that point the trend for both types of shock has reversed and increased significantly in magnitude.

The demand asymmetry measures are now significantly higher than the estimated levels in the 1980s and the supply asymmetry measures have also continued to deteriorate (i.e., showing more divergences) since the global financial crisis in 2008. Furthermore, the point at which the lines ‘flip’ on the chart can be dated to the period 2000–2002, so the findings cannot be dismissed as transient effects of the credit crunch since the phenomenon predates that event.

Figure 1.v compares how the individual member countries perform in response to shocks. The various demand and supply shocks for the other 10 countries are correlated with those in Germany, chosen as the ‘benchmark economy’. The analysis is confined to the last 15 years, to provide a measure of the impact of being within the euro for non-benchmark economies. A correlation score of 1.0 would indicate that the country in question had an economy whose movements were perfectly synchronised with those of Germany, whereas a score of 0.0 would indicate that the movements of the two economies were completely random in respect of each other. A score of -1.0 indicates perfect ‘negative correlation’, i.e. that the other economy reacts in an exactly opposite way to Germany.

If the euro were really bringing all of the participating countries ‘ever closer’ then the results for every country ought to fall in the top right-hand corner of Figure 1.v. However, the results are quite widely scattered. Eurozone members are not becoming ‘mini-Germanies’.

While the demand shocks for some of the Northern European economies still remain positively correlated to Germany (such as Austria, Belgium and Finland), for many peripheral countries, their demand shock correlations with Germany are very poor or negative (in particular, Spain Portugal and Greece). The average demand shock correlation with Germany is around 0.2. There is limited demand-cohesion between the individual member economies in the Eurozone. The ‘average score’ for the Eurozone is surprisingly close to the outcome that would result from a completely random sample of countries.

The average supply shock correlation with Germany, interestingly, is around 0.4 and Italy is the only country exhibiting a negative supply shock correlation with Germany.

If the member countries of the EMU are becoming increasingly more divergent, responding to demand and supply shocks in very different or even opposite ways, then maintaining a single monetary policy becomes more challenging: how should the ECB react to shocks?

The implication of these findings is that, contrary to general expectations, adopting the euro has been accompanied by a divergence of the economies of the EMU-11. Furthermore, the degree of divergence has increased over time, and the start of this process can be traced back to the time that the euro was

32 Country-specific demand and supply shocks were estimated separately. The cross-sectional standard deviations of these shocks were then calculated across the 11 selected EMU countries for each year. Figure 1.iv plots the smoothed (noise filtered) version of this asymmetry measure over time for both types of shocks.

“Member countries are deprived of three of the four key variables in dealing with idiosyncratic shocks.”

launched. These results are the exact opposite of what adopting the euro was meant to achieve.

1.2.2.2 EMU itself is a source of economic divergence

What was in theory a one-size-fits-all monetary regime has turned out in practice to be one-size-fits-none. With the benefit of hindsight, and the findings of the above EMU-11 divergence study, it is now possible to resolve the academic arguments over the launch of the euro.

The argument that the euro would lead to convergence within the Eurozone assumed, in essence, that it would encourage an ‘averaging out’ among the member states. There would be a single interest rate and exchange rate applying across each participating country. With a uniform base cost for capital, resources could be moved to exploit local pricing differences. Over time, competitive forces would cause those advantages to be ironed out as prices and other factors converged towards the mean. The end result would be a more integrated, single economy.

The argument that the euro would lead to divergence assumed, in essence, that it would exaggerate and reinforce discrepancies between member states. The interest rate would reflect the ECB’s judgement of average conditions across the whole Eurozone. Suppose a negative demand shock arose in Spain, with a deflationary effect. All other things remaining equal, the effect would be to increase the real interest rate in Spain, amplifying the local downturn. Conversely, another country that at the same time was running ‘hot’, such as Ireland, would enjoy a real interest rate that was too low, fuelling the inflationary trend. The end result would be that countries would drift further away from the mean.

The findings of the above study bear out the divergence hypothesis. The convergence theory assumed that the Eurozone was already an ‘optimal currency area’, with the flexibility to transfer resources from one part to another, in making its prediction that this was what the euro would bring about. But the Eurozone countries never introduced the structural reforms that would have created such flexibility.

Further, member countries are deprived of three of the four key variables in dealing with idiosyncratic shocks: under the EMU, there is no monetary independence, no scope for an exchange rate policy, and the scope for fiscal stimulus is limited. This leaves structural reforms as the only lever for making adjustments. It is a lever that Eurozone members have found difficult to use.

From Figure 1.iv, it can be seen that the trough in the demand asymmetry index occurred in 1999 – the year the Eurozone was established. The EMU countries have steadily and sharply diverged from the very year when EMU was established. The theoretical explanation given above indicates that this is more than coincidental.

1.2.2.3 Globalisation is still exerting pressures on Europe

It is far too easy to discuss the problems of ‘Europe’ from a wholly inward-looking perspective, for example by comparing Spain’s competitiveness vis-à-vis Germany, or Greece’s fiscal prudence relative to the Netherlands. It is rare for anyone to ask if Spain is competitive relative to South Korea.

This tendency is related to another concept: that the EU is a ‘regionalisation’ project, distinct from the idea of ‘globalisation.’ Although, on the surface, both globalisation and regionalisation appear to be opposed to ‘national differences’, in fact, the two may lead to contradictory pressures, for instance if the EU protects some uncompetitive member countries, industries, or companies from the full forces of global competition. Again, from Figure 1.iv, it can be

“Germany is not behaving as a senior surplus/creditor ought to.”

seen that the trough of the supply asymmetry index occurred around 2001. That was a watershed year for the global economy because it was when China was accepted into the WTO as a full member.

Globalisation has exposed the diversity in the industrial, technological, and strategic characteristics of Eurozone member countries. Germany has thrived in a globalised world, for familiar reasons. Other countries in Europe have not, for reasons that will become familiar. Figure 1.iii, which shows steady and consistent negative supply shocks hitting Europe since 1998–99, prompts the question of whether European countries are still lagging behind in structural reforms.

The pressures stemming from globalisation are ‘dynamic’. They have been strong year after year and they require a continuous response. The mentality across Europe towards reform is more ‘static’, involving one-off snapshot judgments (e.g. does Country X fall below a certain threshold in its debt-to-GDP ratio? Is Country Y’s labour market sufficiently flexible?) requiring one-off set-piece responses (e.g. launching a new currency; passing a new directive).

A ‘static’ mind-set towards structural reforms is inadequate for coping with ‘dynamic’ and powerful supply-side shocks. The EU – with its protectionist bias – may provide some temporary shelter against foreign competition and, in turn, hide the structural weaknesses of some of its member countries. Over time, however, these weaknesses will be exposed. That is what seems to be happening now.

1.2.2.4 The German leadership is refusing to accommodate the needs of weaker economies

In a globalised world, it is difficult to suggest that Germany is not a model for emulation. The debate on whether it should loosen its fiscal stance or reduce its savings rate is possibly misplaced:

- Germany is a country that has done more ‘right’ than ‘wrong’. Other countries that are struggling to grow should focus on the right path, rather than the wrong one.
- In a ‘one-size-fits-all’ monetary policy, loosening of the fiscal stance could trigger a consumer boom which undermined price stability in Germany, as well as creating asset bubbles and exacerbating debt imbalances in the Eurozone once again. Problems in Germany simply have too much impact on everyone else.

However, ultimately, Germany may have to compromise or moderate in some way that is more helpful to its ‘partners’ if it wants monetary union to survive with its current constituents. The EU and the EMU are facing severe pressures to reform. These are institutions that were designed to perform in the environments of the 1980s and the 1990s. They were not designed for, and are certainly not functioning well with, the competitive pressures of an increasingly globalised world.

While not all countries in the world can or should act like Germany, the EU as a whole would do better if it converged toward the German model rather than forcing Germany to conform to its current mean. However, the current intransigence of the German leadership towards under-performing Eurozone members such as Greece, and in particular its insistence upon ‘internal devaluation’ in preference to fiscal transfers, is exacerbating and encouraging divergence within the Eurozone. Germany is not behaving as a senior surplus/creditor ought to if it genuinely intends for the currency area to remain intact.

A defender of Germany might ask why it should be incumbent on the country to take the pain of adjustment, when its economy has performed so well,

“Greece may be only the first of several Eurozone members which has a systemic vulnerability of this kind.”

in order to support badly-run partners. That is a perfectly reasonable point to make, and is essentially the position of the German leadership. But when a resident of London, say, queries why their region has to be taxed in order to finance transfers to less successful regions, the answer is that this is part and parcel of being inside the UK, and ensuring the success of the UK as a whole. That is what it means to be part of the UK. To ensure the continuation and success of the UK, transfers have to be made by London.

Similar issues arise here. From a German perspective, it is clearly nonsense to suggest that the country should curb its export success, or that it should subsidise under-performing potential competitors. That stance can be justified, but in taking it Germany is implicitly confirming that the continuation and success of the Eurozone is not a priority.

The purpose of this report is not to prescribe the action which Germany should take towards the EU. It is to suggest the action which the UK ought to take towards the EU, in the light of the circumstances – which include German attitudes towards the Eurozone. The particular pressures surrounding the position of Germany within the Eurozone and the wider EU are discussed more fully in Appendix A. The implications for the durability of the EU as presently constructed are considered in Appendix B.

1.2.2.5 Greece (and possibly other Eurozone members) is falling behind the rest of the world

The discussions over Greece thus far have been focused on Athens’ complaint that its legacy sovereign debt is unsustainable and needs to be restructured, and Berlin’s insistence that Greece’s own behaviour is key, and that the Greeks must regain trust through reforms as a precondition for further financial support. In other words, the Greek Government is fixated by problems caused yesterday, while the German Government is fixated on preventing new problems occurring tomorrow.

There is a third possibility. Could Greece simply not have what it takes to compete in the world of today? Some European countries have scalable industries that could thrive in a globalising world. It is only reasonable to ask what Greece has to offer.

If there is no obvious answer to this question, then the problem with Greece could be much more fundamental than just debt sustainability or Greece’s own past and present behaviour. Greece may be only the first of several Eurozone members which has a systemic vulnerability of this kind.

Even if a magical deal could be struck that would resolve all of the disputes and deficiencies with the Greek economy, it would not resolve the internal flaws of the Eurozone. In a similar way as during the 2008 financial crisis, when one bank failed after another, if the problems with Greece disappeared, the Eurozone crisis would simply move on to the next domino in the line.

This is at the core of the problems within the EU. They are less about Germany versus Greece or the core versus the periphery. The issue is the EU in the 21st Century, in a globalised world.

Some countries in the EU have managed to keep up with the rest of the world, while others have lived in its protective cocoon for too long and have suddenly discovered that they can no longer compete. The countries that have been left behind by globalisation still do not appear to understand the root cause of their troubles and the absolute urgency of reforms. At the same time, the institutions in Europe are caught between respecting the sovereign decisions of their members and the collective good of the Union itself. The EU is a 1990s solution to a 1950s problem that cannot cope with the 21st Century.

“Structural differences among EU members are just as stark in non-economic areas.”

1.2.2.6 There are serious questions about the durability of both the Eurozone and the EU

‘Europe’ has become an even less optimal currency area than it was in 1982, and certainly compared to 1999, when the euro was launched.

Figure 1.v shows that some EMU economies have had positive demand and supply shock correlations with those of Germany. That suggests that a smaller Eurozone Lite, centred on Germany as the core constituent of a ‘Euromark’ group, might be more durable in theory. Such an analysis leads to the related question of whether the Eurozone, and perhaps by implication the EU, is already ‘too large’. Despite all of the troubles in Europe, both economic and geopolitical, it is still planned that the enlargement of the Eurozone should continue. The time has come to ask whether the virtually unconditional enlargement of the Union is appropriate, given that this might only lead to even more economic divergences over time.

The conventional ‘Business As Usual’ theory assumes that, once the EU has weathered the (presumably temporary) problems with sovereign debt within the Eurozone – themselves assumed to be short-term consequences of the global financial crisis (and in turn assumed to be avoidable in the future through better EU regulation) – then everything will return to normal and prosperity will resume. That view relies upon a belief that EMU member countries have broadly converged and most likely will continue to converge because of institutional arrangements and increasing integration. As presently constituted, the institutional assumption of the EU is that all new members, and (however far-off) potentially all existing members, will engage in EMU.

The conclusion that Eurozone economies have experienced substantial economic divergence since 1999–2000, coinciding with the establishment of the euro and the rise of China, is in total contrast with this prevalent view. If the present Eurozone is diverging and has become unstable, it raises questions not just about the viability of enlargement for the Eurozone, but also about the durability of the wider EU itself. Once the Eurozone reaches a point where it must either integrate or disintegrate, then either outcome will have profoundly destabilising consequences for the EU as it is presently constructed. This dilemma can only be addressed through Treaty change. ‘Business As Usual’ is the one thing that will not result from that process.

1.3 The structural differences within the EU are cultural, not just economic

Structural differences among EU members are just as stark in non-economic areas. The problems go beyond any temporary consequences of the 2008 financial crisis.

Despite their geographical proximity and supposed historical and cultural commonalities, the members of both the Eurozone and the wider EU are radically different in many ways. These inherent structural differences will likely continue to work to prevent the Eurozone from ever becoming an ‘optimal currency area’. So long as the EU continues with policies skewed toward protecting the idiosyncratic needs of the member countries, it will prevent the Eurozone/EU from adopting a more dynamic posture to cope with globalisation.

First, the member countries remain so different, in their economic structures, in their philosophies, and in their cultural preferences, that they have had vastly different approaches to dealing with the pressures of globalisation. Some member countries have adopted a proactive and aggressive approach while others have been rather oblivious to such matters. In the past decade, the countries in the latter camp have failed to develop their economies in ways that

“Policies have been torn between maintaining regional cohesion and pacifying member-specific demands, on the one hand, and adopting an outward-oriented posture to embrace the economic opportunities offered by the rest of the world.”

would better allow their industries to capitalise on globalisation, or prepare their workers to deal with rising competition.

Second, this contradiction has been reflected at the ‘higher’ EU level. Policies have been torn between maintaining regional cohesion and pacifying member-specific demands, on the one hand, and adopting an outward-oriented posture to embrace the economic opportunities offered by the rest of the world on the other.

The cultural divergences within the EU may be examined using 25 indicators in five groups:

- structural economic indicators;
- education, research and technology indicators;
- governance indicators;
- general wellbeing and environmental indicators; and
- health indicators.

The indicators are then applied to the EMU-11 sample group (as described in Annex B). When the evidence is examined, it can be seen that the economic disparities between them mirror a wider cultural divide. EMU is degenerating into a ‘Euromark’ and a ‘Eurodrachma’ group.

1.3.1 The Eurozone has wide disparities in economic structure

The first measure of ‘cultural divergence’ is an attempt to assess ‘structural economic factors’ through a combination of four indicators:

- ‘Economic structure’: the ratio of capital expenditure (‘capex’) and industrial value relative to consumption and service values – this is important because it is a measure of the productivity of the country (higher levels of capital per worker) and its competitiveness (industrial value, as opposed to services value, reflects the ‘tradeable’ sector of the economy, i.e., the production of goods which can be exported and imported and are subject to competition; thus a strong ‘tradeable’ sector, particularly in industrial production, suggests that a country has an edge relative to foreign competition).
- ‘Infrastructure quality’: as measured by the Logistics Performance Index compiled by the World Bank – this is important because it is based on survey results from actual users (global freight forwarders and express carriers) and higher levels of infrastructure improve productivity through many different channels, especially by reducing production costs.
- ‘Savings behaviour’: the national gross savings rate – this is important because it captures the attitude of each country towards ensuring the long-term sustainability of its consumption relative to its investment.
- ‘Export orientation’: the contribution to national GDP of exports sold outside the EU – this is important because it captures the openness of the economy to influences from outside its own region and its ability to compete with foreign products.

Ordinal rankings can be assigned among the selected countries. The results are set out in Table 1.vi.

Table 1.vi: 'Structural Economic Factors' Indicators

EMU-11	Economic Structure	Infrastructure	Gross Savings Rate	Extra EU Export/GDP	Overall Rank
Germany	41%	4.1	25%	14%	1
Finland	38%	3.9	27%	13%	3
Netherlands	34%	4.0	27%	14%	1
Austria	40%	3.8	26%	11%	5
Belgium	32%	4.0	25%	22%	4
Ireland	36%	3.8	22%	21%	6
France	31%	3.8	22%	8%	7
Italy	30%	3.7	19%	9%	9
Spain	33%	3.7	21%	6%	8
Portugal	27%	3.5	14%	5%	10
Greece	19%	3.0	13%	4%	11

Source: The ECU Group plc, SLJ Macro Partners, IMF, World Bank, UNCTAD, Datastream. "Economic structure" is the ratio of (Capex + Industry Value Added) to (Consumption + Service Sector Value Added). "Infrastructure" measures logistics performance index scores compiled by the World Bank

Perhaps more interesting are the absolute differences in the results of each indicator. The laggards have particularly low extra-EU export-to-GDP ratios, suggesting poor competitiveness vis-à-vis the rest of the world. Greece and Portugal have very low savings rates and poor infrastructure. On the first measure, 'economic structure', the Northern European countries have values about twice as high as that of Greece. This indicates a quite extraordinary spread in the industrial contribution to Eurozone member economies. They are completely different countries.

1.3.2 The Eurozone has wide disparities in education, research and technology

The second measure of 'cultural divergence' is an attempt to assess the 'knowledge exploitation ability' of a country's economy through five indicators:

- 'Educational Attainment': the percentage of persons in an age group reaching the highest level of education - this is important because it is a simple proxy for the stock of 'human capital' in an economy, i.e. the available skills among the labour force.
- 'OECD Pisa scores': the country's general skill level in mathematics, science and reading - this is important because it indicates a country's reserves available for exploitation in the modern global economy.
- The proportion of GDP spent on research and development: this is important because it captures a country's commitment to improving its technological capacity.
- The number of patents registered per thousand residents: this is important because it captures a country's ability to develop potentially valuable new ideas.

- ‘High Technology Exports’: the proportion of export sales coming from ‘high technology products’ – this is important because it captures a country’s ability to exploit its new ideas commercially and to compete with foreign products on the high end of the value chain.

Ordinal rankings can be assigned among the selected countries. The results are set out in Table 1.vii.

Table 1.vii: Education, Research and Technology Indicators

EMU-11	Educational Attainment	OECD PISA Scores	R&D % GDP	Patents	High Tech Exports	Overall Rank
Germany	86	515	2.9%	0.59	16%	1
Finland	84	529	3.3%	0.29	7%	2
Netherlands	72	519	2.0%	0.14	20%	4
Austria	82	501	2.8%	0.25	14%	3
Belgium	71	510	2.3%	0.06	11%	7
Ireland	73	515	1.6%	0.03	22%	6
France	72	500	2.2%	0.22	26%	4
Italy	56	490	1.3%	0.14	7%	8
Spain	54	489	1.2%	0.07	8%	10
Portugal	35	488	1.4%	0.06	4%	11
Greece	67	466	0.8%	0.15	8%	9

Source: The ECU Group plc, SLJ Macro Partners, OECD, World Bank, UNCTAD. “Educational Attainment” results derived from OECD. “Pisa Scores” are from OECD and measure maths, science and reading skills of students. “R&D” is research and development as a proportion of GDP. “Patents” is the number of patents registered by residents per thousand people in the population. “High Tech Exports” is the proportion of exports represented by manufactured goods

Germany, again, ranks at the top, and Portugal, Spain, and Greece rank at the bottom. Greece’s R&D has been particularly low, and Ireland, Portugal, and Spain have been remarkably unsuccessful at registering patents. Portugal’s educational attainment is very low.

These scores can be placed in an international context. For comparison, the OECD Pisa scores are 613 for Shanghai, China, 573 for Singapore, 554 for South Korea, and 536 for Japan, respectively. All of these ‘Asian challengers’ are therefore educating their children to a far greater degree than the Eurozone. On the other hand, the US does not perform that well, with a Pisa score of 481, yet still manages to deliver strong economic performance.

This indicates that it is unwise to focus on one particular ‘educational’ indicator, and why the EMU-11 divergence study uses a basket of measures to derive an impressionistic judgement. What comes out most strongly from these ‘knowledge exploitation’ results is the wide disparity across the Eurozone members.

1.3.3 The Eurozone has wide disparities in governance standards

The third measure of ‘cultural divergence’ attempts to assess general quality of governance through six indicators taken from the World Bank’s Worldwide Governance Indicators project:

- ‘Corruption’: the Control of Corruption Index, which captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as ‘capture’ of the state by elites and private interests.
- ‘Government Effectiveness’: the Government Effectiveness Index, which captures perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government’s commitment to such policies.
- ‘Political Stability’: the Political Stability and Absence of Violence Index, which measures perceptions of the likelihood of political instability and/or politically-motivated violence, including terrorism.
- ‘Regulatory Quality’: the Regulatory Quality Index, which captures perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development.
- ‘Rule of Law’: the Rule of Law Index, which captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.
- ‘Accountability’: the Voice and Accountability Index, which captures perceptions of the extent to which a country’s citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media.

These indicators are derived by the World Bank using survey data from households and firms, commercial business information providers, non-governmental organisations and public sector organisations for 215 countries covering the period 1996–2013. The resulting individual index score is marked out of 100, with the higher numbers indicating higher standards.³³

Ordinal rankings can be assigned among the selected countries. The results are set out in Table 1.viii.

33 Further details are given on the World Bank website covering these datasets, accessed 31/05/2015 at: <<http://info.worldbank.org/governance/wgi/index.aspx#doc-sources>>.

Table 1.viii: Governance Indicators

EMU-11	Corruption	Gov Effectiveness	Political Stability	Regulatory Quality	Rule of Law	Accountability	Overall Rank
Germany	94	91	77	93	92	94	4
Finland	98	100	97	99	99	97	1
Netherlands	96	97	90	97	97	97	2
Austria	90	93	97	91	98	96	3
Belgium	92	93	75	88	89	93	5
Ireland	91	89	74	94	94	92	6
France	88	89	62	85	88	89	7
Italy	57	67	64	75	62	76	10
Spain	75	83	47	79	81	77	9
Portugal	79	86	69	76	83	80	8
Greece	56	67	39	73	64	67	11

Source: The ECU Group plc, SLJ Macro Partners, World Bank

Given the factors being measured here, the existence of numerous EU-wide juridical institutions, a tradition of public elections since 1945 and, not least the prominence which the EU itself attaches to the furtherance of democratic values, it might be expected that all of the EMU-11 sample would display the same, very high scores. It is reassuring that, on the whole, that is indeed the case.

But only on the whole. Even on a fundamental aspect of the EU project, the EMU-11 countries still display a spread of scores, and there is evidence of a separation into two distinct sub-groups. On most measures in this category, Greece ranks the lowest in the group, followed by Italy.

1.3.4 The Eurozone has wide disparities in the general wellbeing of its citizens

The fourth measure of ‘cultural divergence’ attempts to capture the general well-being of the citizens and the quality of their living environment through six indicators:

- ‘Life Satisfaction’: measured by the OECD Life Satisfaction Index, derived from a survey of individuals in each country by reference to the ‘Cantril Self-Anchoring Striving Scale’ (in which people assess whether their life is the best possible it could be on a scale of 0 to 10).
- ‘Gini Index’: a measure of income distribution, with a score of 0 indicating perfect equality and a score of 1 indicating maximal inequality.
- ‘Human Development Index’: a composite statistic of life expectancy, education and per capita income pioneered by the UN, with a score between 0 and 100, where higher scores indicate a greater level of ‘human development’.
- ‘Water Quality’.
- ‘Air Pollution’.

- ‘Road Fatalities’ – worth tracking because road traffic injuries are the eighth leading cause of death worldwide, and the leading cause of death among people aged 15–29.³⁴

Ordinal rankings can be assigned among the selected countries. The results are set out in Table 1.ix.

Table 1.ix: Wellbeing and Environment Indicators

EMU-11	Life Satisfaction	Gini Index	Human Dev Index	Water Quality	Air Pollution	Road Fatalities	Overall Rank
Germany	7.0	0.30	91	94	25	41	4
Finland	7.4	0.26	88	95	19	48	1
Netherlands	7.4	0.29	92	94	26	34	1
Austria	7.5	0.26	88	95	25	53	3
Belgium	7.1	0.26	88	84	26	65	6
Ireland	6.8	0.29	90	84	15	41	5
France	6.7	0.29	88	85	27	50	7
Italy	6.0	0.34	87	80	37	57	9
Spain	6.2	0.32	87	75	29	36	8
Portugal	5.2	0.35	82	87	28	62	9
Greece	4.7	0.31	85	66	44	79	11

Source: The ECU Group plc, SLJ Macro Partners, WHO, OECD, UN, ETSC. “Gini Index” is adjusted for taxes and transfers. “Air Pollution” is the annual mean PM10 ug/m3. “Road Fatalities” are per 1m people

These measures provide a convenient basket of indicators for general ‘quality of life’ issues. The precise values are of less importance than the spread across the entire sample. Again, it can be noted that the sample breaks down into two distinct sub-groups. Quality of life varies considerably across the Eurozone.

1.3.5 The Eurozone has wide disparities in the general health of its citizens

The final measure of ‘cultural divergence’ assesses the overall state of health of the citizens through four indicators:

- ‘Health Expenditure as a proportion of GDP’: as a general measure of the importance attached to the health of the citizens.
- ‘Smoking’: measured by the average number of cigarettes smoked by each adult in a year – this is important because smoking is considered one of the major causes of cancer, which in turn is a significant health weakness within a nation and a drag on growth prospects.
- ‘Obesity Rate’ – this is important because clinical obesity is another major cause of health problems in later life, and so a further indicator of chronic weakness.

34 World Health Organization “Number of road traffic deaths”, accessed 31/05/2015 at: <www.who.int/gho/road_safety/mortality/number_text/en/>.

- ‘Fertility Rate’ – this is important because, to the extent that the number of births within a country falls, the average age will rise leading to long-term fiscal weakness and other social problems.

Ordinal rankings can be assigned among the selected countries. The results are set out in Table 1.x.

Table 1.x: General Health Indicators

EMU-11	Health Exp % GDP	Smoking	Obesity Rate	Fertility Rate	Overall Rank
Germany	11.3%	1045	14.7%	1.4	4
Finland	9.1%	671	15.8%	1.8	5
Netherlands	11.8%	801	12.0%	1.7	1
Austria	11.1%	1650	12.4%	1.4	5
Belgium	10.9%	1455	13.8%	1.8	3
Ireland	8.9%	1006	23.0%	2.0	8
France	11.6%	854	14.5%	2.0	2
Italy	9.2%	1475	10.4%	1.4	7
Spain	9.3%	1757	16.6%	1.3	10
Portugal	9.5%	1114	15.4%	1.3	9
Greece	9.3%	2995	19.6%	1.3	11

Source: SLJ Macro Partners, OECD, WB, UN. “Smoking” is cigarettes smoked per adult per year. “Obesity Rate” is the % among adults OECD

The results under this heading are suggestive of a generally poor standard of health, although on individual scores the countries are not at third world levels. The stand-out figures are those relating to the fertility rate. A ‘replacement fertility rate’ is the level at which women give birth to just enough babies to sustain population levels. Its precise value will vary between countries depending on, for example, mortality rates for females of child-bearing age, but for a developed industrial nation it is usually taken to be around 2.1. None of the EMU-11 sample is above that threshold, and only two barely reach it. Quite literally, the Eurozone is dying out.

1.3.6 In summary, the Eurozone is fundamentally fractured

Table 1.xi below gives overall rankings for the ‘cultural’ results of the EMU-11 sample. There is a clear separation, with a northern ‘Euromark’ group out-ranking the southern ‘Eurodrachma’ countries. Many of the ‘prejudices’ outside observers have seem to be confirmed by these data, although perhaps it may come as something of a surprise that Germany is not the runaway winner among the sample. The narrative is clear: the differences between the EMU-11 reflect very fundamental and core differences that cannot be fixed easily or offset through fiscal transfers, training, or monetary easing.

Table 1.xi: Structural Ranking of the EMU-11 Countries

EMU-11	OVERALL RANKING	Structural Economics	Education, Research and Technology	Governance Indicators	Wellbeing and Environment	Health Indicators
Netherlands	1	1	4	2	1	1
Finland	2	3	2	1	1	5
Germany	3	1	1	4	4	4
Austria	4	5	3	3	3	5
Belgium	5	4	7	5	6	3
Ireland	6	6	6	6	5	8
France	7	7	4	7	7	2
Italy	9	9	8	10	9	7
Spain	8	8	10	9	8	10
Portugal	10	10	11	8	9	9
Greece	11	11	9	11	11	11

Source: combined results for Tables 1.vi-x.

Intriguingly, France represents a borderline case. This study provides an empirical illustration of the policy dilemma facing the country at this time. Does it listen to the strident denunciations of globalisation of the Front National of Marine le Pen (itself in part a revival of the Poujadism of the 1950s) or attempt a belated reinvention of itself equivalent to that carried out in Britain by Margaret Thatcher in the 1980s? So far, the French political class has been unable to decide.

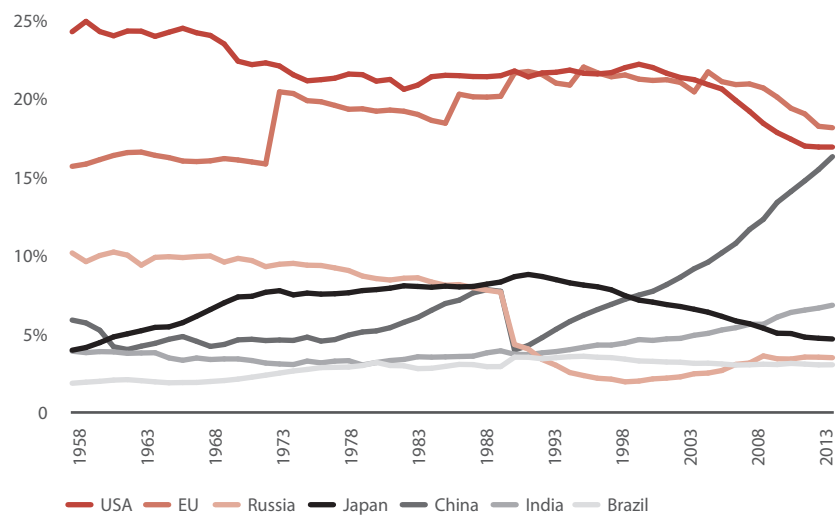
Not only is EMU failing to create ‘ever closer union’ in the economic arena, it is failing in ‘cultural’ fields too. Precisely because Table 1.xi tracks non-economic factors, the growing divergence cannot be blamed upon the 2008 financial crisis and treated as a temporary phase. A ‘two-tier Europe’ is already a fundamental reality, even within the Eurozone itself, and the institutions of the EU are exacerbating it.

Although the EMU-11 sample represents a minority of EU countries, it does represent the best evidence basis for assessing the impact of the single currency. More significantly, it is the official policy of the EU that, in time, all member states (with the possible exceptions of the UK and Denmark) will adopt the euro and come within EMU. So the results of this divergence study set out what can be expected for the wider EU. That future does not look good.

These issues are considered further in Appendix B.

Collectively, the EU must decide how to deal with these tensions. In essence, it must either turn itself into a fully integrated country, founded around the euro, with fiscal transfers from successful to less successful regions, or it should abandon the attempt at ‘ever closer union’. Failure to decide will eventually lead to meltdown. Either choice has radical implications for ‘Business As Usual’ and the position of the UK.

Figure 1.xii: Shares of world GDP measured at purchasing power parity, 1958–2013



Source: 1958–1988: The Maddison-Project, <www.ggdc.net/maddison/maddison-project/home.htm>, 2013 version; 1990–2013: World Bank

1.4 The EU is a serial economic underachiever

Not only does the EU represent an out-dated model of economic management, its best days are already in the past. Its economic model is unfit for the 21st Century global economy and condemns participating countries to a future of underperformance. This is not a model a forward-thinking economy should be strengthening its ties with.

1.4.1 The EU's moment as an 'economic super-power' is passing

The EU is fond of regarding itself as an economic 'super-power', comparable in status to the USA and China. At the time Britain decided to seek membership of the then EEC, policy-makers were greatly influenced by the view that the EU-6 had experienced dynamic growth, which was attributed to moves towards economic integration and tariff abolition between the member states. Among other motives, there was a sense that, in order to retain its influence and standard of living, the UK had to join the rising new economic power-house on its border.³⁵

Figure 1.xii charts the progress which the EU has made since its formation in 1958 until 2013. It compares this progress against the economic super-power of the time, the USA; Japan, which genuinely rose to such status over that period; and also the four countries which are often cited as the next wave of rising powers, the so-called BRIC countries (Brazil, Russia, India and China).³⁶ Economic significance is measured by share of world GDP calculated in terms

35 The economic case for joining the EU set out in the Government's 1971 White Paper is considered more fully in Section 2.

36 In Figure 1.xii, the data for 'Russia' prior to 1990 relates to the Soviet Union, and afterwards to the Russian Federation. That accounts in part for the apparent precipitous drop in the share attributable to 'Russia', but that fall also reflects a genuine decline in economic output around the time of the dissolution of the Soviet Union.

“Instead of the UK gaining strength from joining a larger club, the process may have been the other way round.”

of purchasing-power parity, to give a fairer assessment of the relative worth of output in different parts of the world.³⁷

At first sight, the record of the EU could be considered quite successful, as it eventually overtook the USA and has maintained its relative strength while that of Japan has faded. Although the emergence of China as a new force is undeniable, a Eurocrat looking at Figure 1.xii might regard the immediate threat from the other BRICs with some complacency.

However, Figure 1.xii does not really compare like with like. In 1958, of course, ‘the EU’ was represented by the original EU-6, whereas by 2013 it had become the EU-28. When this is taken into account, the progress of the EU’s share of world GDP takes on a different complexion. The trajectory of ‘the EU’ is a series of upward spurts, followed by immediate periods of gradual decline. Almost all of those spurts coincide with an enlargement of the EU to absorb other countries, which brought an additional slice of world GDP with them. Rather than a successful economy expanding relatively, the closer analogy for the EU would be a bloated conglomerate which buys market share by acquiring leaner, more competitive subsidiaries.

The downward declines in the share of world GDP after the absorption of new member states is a better guide to the quality of the EU’s economic performance over time than the upward trend after 1958. It is reasonable to expect that being part of a tariff-free trading area ought to have a positive effect on economic growth, i.e. that the total would be greater than the sum of its parts. But the record suggests that the other costs attributable to ‘ever closer union’ erode these gains.

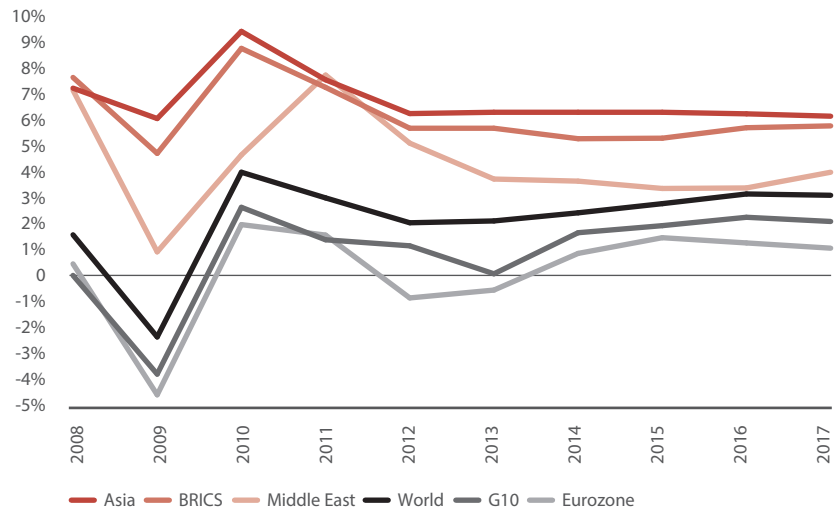
There may be another explanation for the apparently spectacular growth observed in the original EU-6. Thomas Piketty regards it as a process of catch-up growth following the destruction suffered during the Second World War, which naturally gave the defeated countries above-normal headline growth rates.³⁸ Although his judgement may be shaped by a dismissive attitude towards the ‘conservative revolution’ of the 1980s, and a desire to ridicule the sense of decline in Britain and the US which inspired it, he highlights a very relevant point. Starting from a lower base, recovery in the ‘defeated’ countries was bound to see a more vigorous rebound. That effect has long since dissipated. The question must be: why has such an effect not yet been observed across the EU following the 2008 financial crisis?

Ironically, the largest single injection of economic power into the EU came when Britain decided to join in 1973 (along with Denmark and Ireland). Instead of the UK gaining strength from joining a larger club, the process may have been the other way round.

37 Figure 1.xii combines two separate datasets, with the second starting in 1990. These sets match up reasonably well, but it is possible that the apparent fall in the share of world GDP attributed to China is caused by the different methods on which the two underlying sources have been compiled (or the difficulty of obtaining reliable data about pre-1990 China).

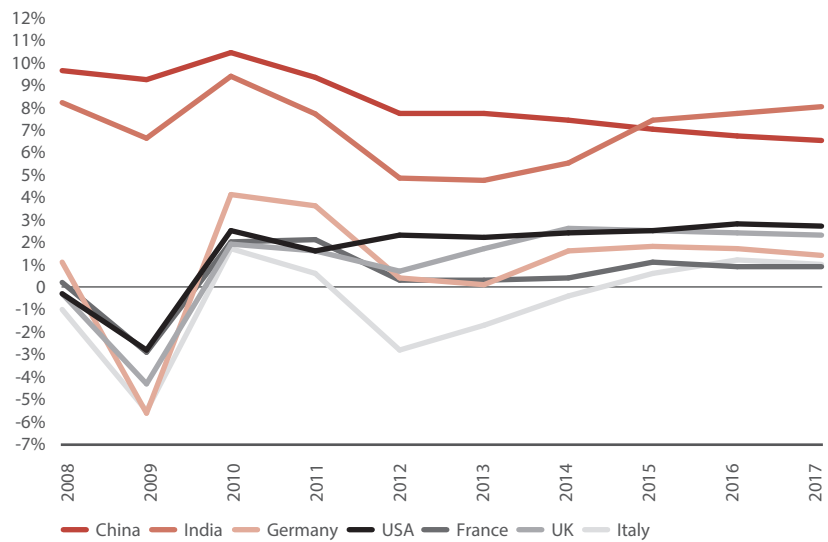
38 “Capital In The Twenty-First Century”, T. Piketty (Harvard, 2014), Chapter 2 “Growth: Illusions and Realities”, pages 96–99.

Figure 1.xiii: Forecast economic growth rates for selected regions and groupings to 2017



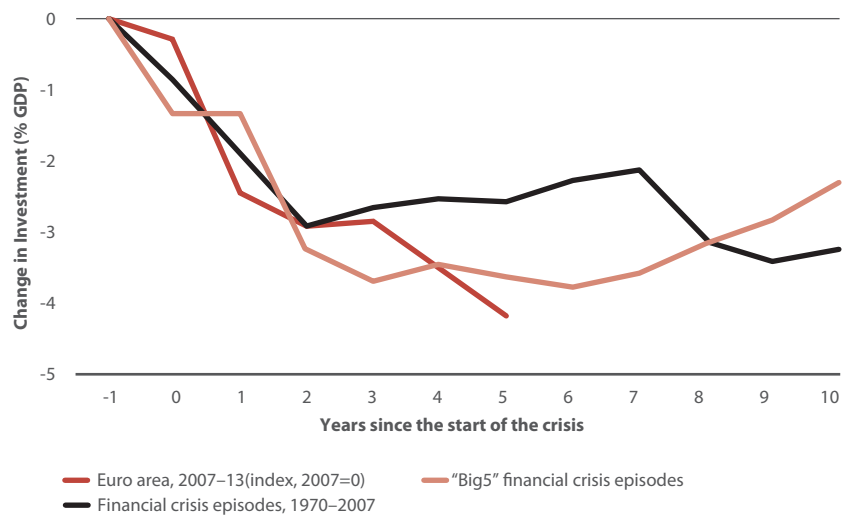
Source: The ECU Group plc, Private Sector Forecasters, Bloomberg LLP

Figure 1.xiv: Forecast economic growth rates for selected economies to 2017



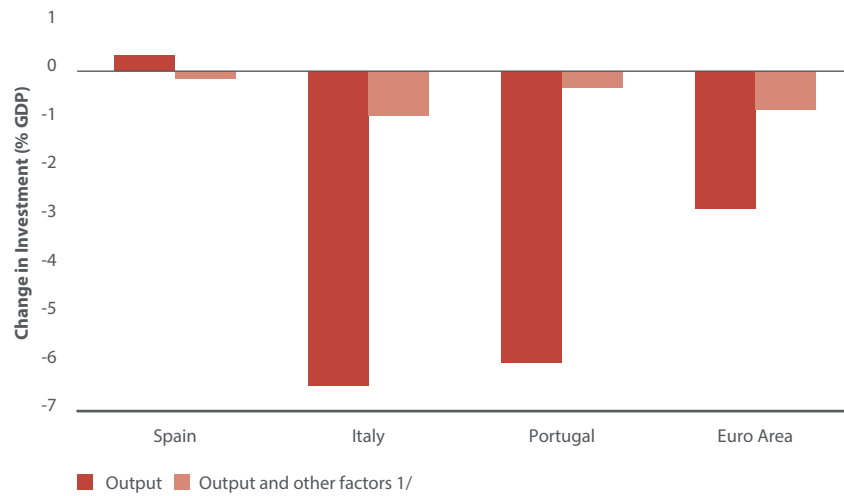
Source: The ECU Group plc, Private Sector Forecasters, Bloomberg LLP

Figure 1.xv: The investment slump in the Eurozone compared to previous crises



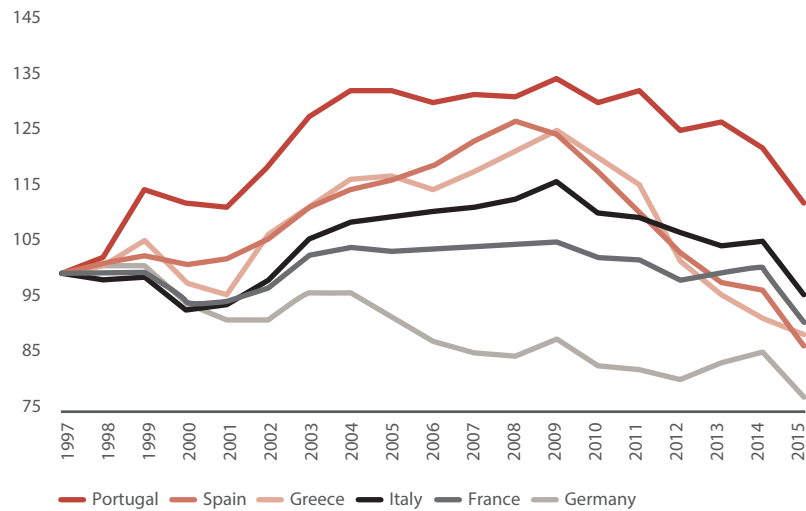
Source: ECU Group

Figure 1.xvi: The cumulative 'Unexplained Investment shortfall' in the Eurozone



Source: ECU Group

Figure 1.xvii: Relative unit labour costs in the Eurozone, 1997–2015



Source: ECU Group

1.4.2 If the EU attempts to stick to 'Business As Usual' without reform it will continue to fall behind

The latest forecasts for growth in the key regions and economies are set out in Figures 1.xiii and 1.xiv. The EU, and especially the Eurozone members, can at best expect only an anaemic recovery while rival countries continue to go from strength to strength.

This cannot be explained away as the consequence of a severe financial crisis, or solely by the overhang of public debt incurred in order to prop up the global banking system. Other countries which were affected just as severely, and which undertook bail-outs of their own, such as the USA or even the UK, can expect a better immediate future than the Eurozone.

As Figure 1.xv indicates, the slump in Eurozone investment has already been more prolonged than in the aftermath of any other financial crisis. Across the Eurozone as a whole, there is an accumulating 'unexplained' shortfall in investment, compared to what would be expected from previous crises. The position for the most significant shortfall countries, and the Eurozone as a whole, is summarised in Figure 1.xvi. This shortfall impairs the EU's ability to stage a recovery, causing it to fall even further behind the growth regions of the world economy.

Perhaps the capacity of domestic business to invest has been curtailed by the financial crisis? But the EU Single Market is supposed to be a great magnet for inward investment. The single currency was supposed to bolster this, by making it easier to invest, and by reducing transaction costs across the euro area. Where are the overseas investors, queuing up to gain access to this market?

As a rule of thumb, the GDP growth rate and stable or strengthening exchange rates affect inflows of real foreign direct investment (FDI) positively, while exchange rate volatility, inflation volatility and distance affects inflows of real foreign direct investment negatively. Exchange rate stability and price stability were indeed achieved in the Eurozone countries after the establishment of EMU, and the single currency contributed by reducing transaction costs. So Eurozone member countries initially achieved significant economic growth.

However, this was only shown to be the case in the first few years of EMU. Overall, EMU has had a statistically negative effect on FDI inflows to Greece,

“The strength of Germany is actively degrading the quality of the weaker member economies.”

Portugal, France, Belgium and Spain. Germany and Ireland have had statistically insignificant negative correlations and Finland and Netherlands had a statistically insignificant positive correlation between the launch of the euro and inward FDI.

Overseas investors have passed their own verdict on EMU. The reason for past, and more significantly, future underperformance lies in an out-dated economic model. The EU is not fit for purpose in the 21st Century. This issue is considered at greater length in Appendix B, but the core of the problem may be illustrated by Figure 1.xvii.

This charts the movement in relative unit labour costs (ULC) for six of the Eurozone countries: the ‘Big Three’ (Germany, France and Italy) compared to the ‘Bad Three’ (Greece, Portugal and Spain). The early part of Figure 1.xvii, up to the outbreak of the financial crisis in 2007, represents the time when the Eurozone was enjoying benign monetary conditions. With the exception of Germany, this opportunity was squandered by being allowed to run into a rise in labour costs instead of being used to undertake the long-term structural reforms which the EU requires. The recession which followed the financial crisis has had a downward effect on labour costs, but in many cases they have only returned to the starting position, if that. Meanwhile, the rest of the world has moved on and become even more competitive.

1.4.3 The long-run prospects for the EU are being partially concealed by short-term asset bubbles

Recent upturns in some economic indicators for EU countries should not obscure the underlying reality. At best, they represent a rally in a bear market. Notwithstanding the overall state of the EU economy, it contains many companies with a global brand and a global market, of a quality sufficient to attract investors. The rest of the equity market will benefit from the bubble effects of unconventional policies such as QE.

Germany’s competitive advantage in the single currency union will not go away. Driven by investment, innovation, work ethic and training, Germany’s economic prowess will continue to dominate now that it is locked into a competitive advantage through the single currency (see the discussion in Appendices A and B). The divergences discussed previously have not been addressed, and ECB reliance upon unconventional policies such as QE will not eliminate them. The implication is that stronger Eurozone economies like Germany will continue to flourish, while the weaker ones risk being ‘hollowed out’ over time until they reach the point that they can tolerate the process no further.

The 2008 financial crisis was triggered by a problem with ‘sub-prime’ debt. Mortgages were bundled together and repackaged as collateralised debt obligations, sliced into tranches carrying different priority for receiving payments from the ultimate borrowers. The senior tranche was rated by analysts as being of acceptable quality, obscuring the fact that the junior tranches were of extremely low quality, and stood to incur considerable losses in the event of a downturn in the market.

Similarly, the EU had a fundamentally sub-prime economy, but the euro allowed the member states to be bundled together and passed off as having German quality. The difference with sub-prime debt, however, is that through the divergences fostered by EMU, the strength of Germany is actively degrading the quality of the weaker member economies.

“Globalisation has increased the disparities among the EMU/EU members.”

1.5 Britain used to be the ‘Sick Man of Europe’ – but now Europe is the ‘Sick Man of the World’

Notoriously, Britain decided to enter the EU in 1973, and voted to remain inside in 1975, out of a fear of the alternative fate it would suffer as a weak, anaemic economy – ‘the Sick Man of Europe’. The EU-6 represented a dynamic and successful model worthy of emulation and association. UK membership of the EEC was seen as vital, both as prop and as protection. Although made due to a self-perception of weakness, this choice nevertheless required a courageous re-invention of Britain’s traditional trading stance and relationships.

In 2015 the position is radically altered. Now it is the EU as a whole which is backward, under-performing and inefficient compared to other more vibrant and expansionary regions of the world. The question which British policy-makers and citizens alike need to address is whether they still see their country in terms of its 1973 condition – or whether they are prepared to make a 1973-style imaginative reorientation towards the growth regions of tomorrow.

1.5.1 Structural reforms are urgently needed in Europe

Notwithstanding the fixation on central bank policies and reactions in the equity and bond markets across the EU, the underlying structural challenges remain daunting. The one-size-fits-all monetary and currency policy framework has turned into a one-size-fits-none proposition. Low interest rates have added to monetary stimulus for Germany while being insufficiently easy for the weaker members. Further, globalisation has increased the disparities among the EMU/EU members.

Unlike the NAFTA (North American Free Trade Agreement), where much of the intra-zone trade is ‘intra-industry’ trade, in the EU, much of the intra-zone trade is ‘inter-industry’ trade. This characteristic makes the EU more fractured than NAFTA, and impedes the ability of the EU to embrace globalisation and liberalise its economy because of concerns about its weaker members’ ability to deal with competitive shocks.

The UK’s frustration and Greece’s struggles are in fact derivatives of the same big problem Europe faces, and are far from idiosyncratic issues particular to the UK and Greece.

1.5.2 The EU has a strange fixation on aggregate measures

In policy, investment, and business circles, there has been a fixation on GDP growth rates, inflation, and fiscal and current account deficits. While these are obvious ‘macro’ variables to track, policy-makers in Europe cannot afford to neglect the underlying factors that have driven these aggregate results.

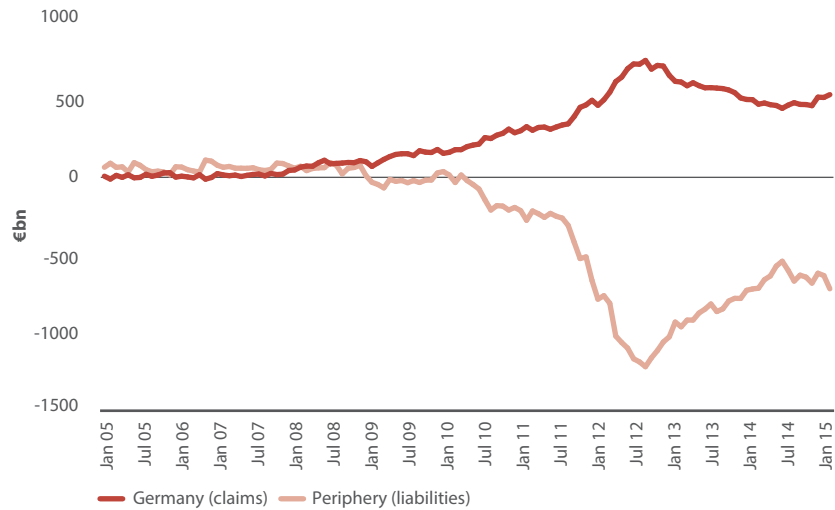
Fixating on the Stability Pact, the inflation target, wage inflation, and tax collection without addressing the underlying structural issues is counterproductive in the long term. Investors, too, should be more aware of these stark features of the member countries in order to understand the pent-up tensions beneath the surface and the factors which degrade the capacity for future economic growth.

1.5.3 If the EU does not reform it will be condemned to a future of low growth

The members of the EMU/EU remain very divergent, on economic and non-economic measures. The competitive pressures of globalisation have driven these economies further apart.

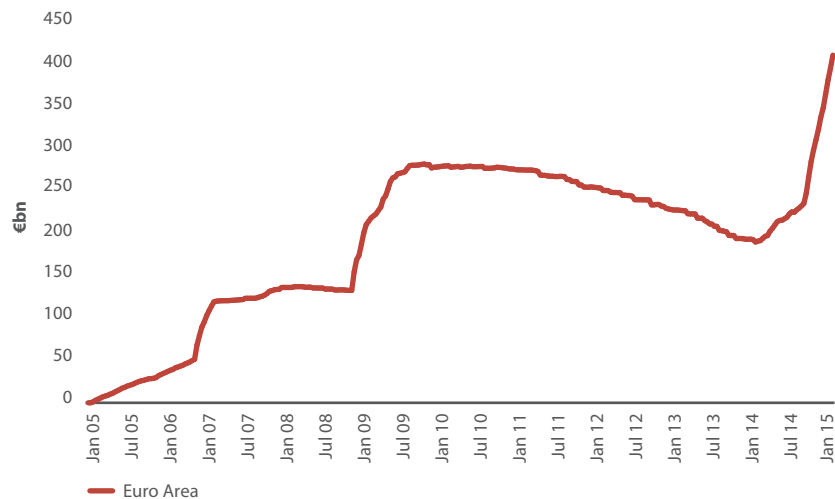
In addition, if the weaker members of the Eurozone do not reform fast enough, they will increasingly jeopardise the structural integrity of both the EMU and the EU. These structural problems are becoming increasingly visible and better understood by investors, and are increasingly reflected in investment trends, both within the Eurozone and from abroad.

Figure 1.xviii: Selected Target-2 balances, 2005–2015



Source: Institute of Empirical Research, Osnabrück University

Figure 1.xix: ECB balance sheet: Euro area securities held for monetary policy purposes, 2009–2015



Source: ECB Statistical Data Warehouse

1.6 Britain would be better placed to withstand a Eurozone meltdown if it had a looser relationship with the EU

If the EU does not reform, it is condemned to a future of low growth at best. At worst, the endemic Eurozone crisis will mature into a comprehensive meltdown. Were that to occur, the UK would not be insulated from the consequences, whether it was a full member of the EU or not. The entire world

“It is small wonder then that Eurozone policy-makers have tried to put off the day of reckoning for as long as possible.”

economy would be disrupted. Meltdown could only be avoided by significant institutional change which would have radical consequences for the UK as a non-euro member of the EU.

In any actual break-up of the Eurozone, disentangling a nation or nations could pose a serious threat to the ECB's capital base and that of the EU banking system. Germany stands to lose the most. “Target 2” is the Eurosystem's inter-bank payment system for the real time processing of cross-border transfers within the EU. Traders deal with their own national central banks, which take on the settlement role between themselves, in order to facilitate euro transactions.

Figure 1.xviii illustrates the growth in selected balances under the Target-2 system over recent years. ‘Periphery liabilities’ represents the net amount which could be regarded as the collective ‘overdraft’ of the national banks of Greece, Ireland, Italy, Portugal and Spain. ‘German claims’ indicates what could be seen as the corresponding ‘credit’ standing to the German Bundesbank. There is some controversy about the exact relevance of the Target-2 balances to the risk of a Eurozone meltdown.³⁹ Although there may not be a direct read-across, the balances indicate the amounts which are potentially at stake in the event of a Eurozone default or break-up. The announcement of the ECB's Outright Monetary Transactions (OMT) calmed markets from 2012 and the gap has narrowed. But as at the end of March 2015, Germany's Target-2 claims were still over €531bn, and they have continued to rise.

Figure 1.xix further illustrates the amounts at stake by depicting the impact of monetary policy transactions on the ECB's balance sheet. The ECB is acquiring ever-escalating values of securities as a result of its transactions to prop up the Eurozone, a process that accelerated in March 2015 once it adopted a formal QE programme to acquire government bonds as part of an injection of €1.1 trillion up to September 2016. To place this in context, securities acquired in furtherance of monetary policy are already now valued at more than the GDP of 20 of the EU-28 members. Although there are ‘quality thresholds’ in place, purchases have extended to periphery countries' debt. If the value of these assets were to collapse, the repercussions would be severe.

However this tragedy unfolds, the immediate costs for any one country of a euro exit are going to be enormous. A total break-up and reversion to national currencies would be immensely disruptive and costly for all parties over the first few years. In a ‘complete’ break-up, deficit countries would have to default on debts, public and private, and be forced to cut public expenditures below current revenues and imports below exports. Surplus countries, like Germany, would be in grave danger of finding their banks becoming insolvent, as their assets collapsed in value relative to their mark-to-market liabilities. Freed of the deadweight of the weaker Eurozone members, the newly-liberated German currency (whatever form it took) would likely appreciate to such an extent against its EU neighbours that it risked triggering a recession in its own right.

It is small wonder then that Eurozone policy-makers have tried to put off the day of reckoning for as long as possible. On balance, it is more likely that they would follow the Jean Monnet prescription and use the dire potential consequences as a motive for undertaking further political integration. The implications and consequences of the Eurozone's structural weaknesses are considered more fully in Appendix B.

39 See, for example, Project Syndicate “Varoufakis's Great Game”, H-W Sinn (29 May 2015), accessed 05/06/2015 at: <www.project-syndicate.org/commentary/varoufakis-ecb-grexit-threat-by-hans-werner-sinn-2015-05>; and Coppola Comment “Oh Dear Professor Sinn”, F. Coppola (3 June 2015), accessed 05/06/2015 at: <<http://coppolacomment.blogspot.co.uk/2015/06/oh-dear-professor-sinn.html>>.

“If someone standing next to you falls off a cliff, it helps not to be chained to them.”

Self-evidently, Britain would be unable to avoid catching some adverse fallout in the event of a full Eurozone meltdown. But it is also self-evident that those consequences would be lessened if Britain had looser ties to the EU at the time it came to pass. If someone standing next to you falls off a cliff, it helps not to be chained to them. It is also self-evident that there is no appetite in Britain for further political integration, either as a participant or as a bystander within a New EU-4, where one of those four is an amalgamation of 25 euro participating member states.

Britain should therefore position itself now to minimise those consequences. For example:

- If the UK were less dependent upon the EU as an export market, it would suffer less damage from a collapse of the Eurozone economy;
- If the UK had a more beneficial budget settlement, it would be less exposed to bearing the cost of any use of the EU Budget to mount rescue packages – or rather, it would have greater flexibility over the form and structure of any rescue package in which it decides to participate;
- If the UK were able to lighten the compliance cost of EU regulation, it would be better placed to remain competitive against any post-euro EU countries seeking a price advantage through a new devalued currency;
- If the City of London had greater freedom of action, it would be better placed to capitalise on the disappearance of any continental European banks.

ANNEX A: Historical examples of monetary unions

Several monetary unions have collapsed and been dissolved in the 20th Century, both multinational unions and national monetary unions. The main cause of the break-up of the Latin Monetary Union was the need to pay for World War I. The sharp increase in military expenditures left its members with no choice but to issue large quantities of paper money, which remained in circulation after the end of hostilities. As paper money was not recognised as a legal means of payment in any country other than the issuing one, the union was in effect terminated. Belgium was the first member to act formally, declaring in 1925 that it would leave the union at the start of 1927. The other countries followed and the Latin Monetary Union was dissolved. The process was easy to carry out as each member had a central bank and a domestic currency of its own. The monetary separation did not create any major problems. It had de facto dissolved during World War I.

The Scandinavian Monetary Union also collapsed as a result of World War I. With the outbreak of war, Scandinavian notes were declared non-convertible into gold. At the same time, the export of gold was prohibited. The growth of the money supply thereby ceased to be tied to the supply of gold, and the basis for the exchange of Scandinavian notes at par was eliminated. Monetary policy was more expansive in Denmark and Norway than in Sweden. In 1915, the official exchange rates changed accordingly, with one Swedish krona buying more than one Danish or Norwegian krona. The dissolution of the Scandinavian monetary union was a gradual one. It occurred in several steps. First, Scandinavian notes were not traded at par. Then, Scandinavian gold coins were prevented from circulating freely within Scandinavia. Finally, coins were no longer traded at the one-to-one rate.

Table 1.xx: The fate of selected previous currency unions

National Monetary Union:	Founded	Dissolved	Cause of dissolution
Austria-Hungary	Originally 1754, then replaced by gold standard 1892	1919-27	Defeat in war Creation of new nations
Russia	Before 1710	1918-20	Revolution Creation of new nations
Yugoslavia	1918	1991-94	Civil war Creation of new nations
Soviet Union	1922	1992-94	Political unrest Creation of new nations
Czechoslovakia	1919	1993	Political divergences Creation of new nations
Multinational Monetary Union:	Founded	Dissolved	Cause of dissolution
Latin Monetary Union (Belgium, France, Italy and Switzerland; later Greece, with associated status for Bulgaria, Columbia, Finland, Peru, Serbia, Venezuela)	1865	1914-27	Divergent monetary policies
Scandinavian Monetary Union (Denmark and Sweden; then Norway)	1873	1914-24	Divergent monetary policies
Belgium-Luxembourg Economic Union (Belgium, Luxembourg)	1921	1998	Requirement of entry into the euro (technically, the original union remains in force)
Sterling Area (Britain and most of the British Commonwealth, but not Canada; its dependencies; Bahrain, Burma, Iceland, Ireland, Jordan, Kuwait, Libya, Qatar, South Africa, Southern Yemen, and the United Arab Emirates)	1931	1973-79 (Never formally ended)	British entry to the EU British abolition of exchange controls
British-Irish currency peg	1928	1979	Ireland decided to join the European Monetary System

Other multinational unions were dissolved during the 20th Century. The Sterling Area developed as a consequence of Britain's departure from the gold standard in 1931, as a group of countries that either pegged their own currency to the pound, or used sterling directly. It was never formally ended, although gradually countries dropped out over time. The UK agreed to run down the system as part of its entry into the EEC and the arrangements were de facto terminated by the decision to abolish exchange controls in 1979. The British-Irish currency board arrangement was a form of multinational monetary union in which a notionally independent Irish currency was de facto pegged to sterling (and the notes and coins were produced in Britain). The arrangement was terminated in the 1970's because Ireland decided to enter the EMS, while Britain opted-out. Luxembourg established a central bank when it joined the European Central Bank system, ending the monetary union with Belgium that had lasted since the 1920s. These break-ups occurred with no major political tensions or repercussions.

To sum up, the dissolution of multinational monetary unions has been easy to carry out when each member country maintained a central bank of its own during the monetary union. The central banks of the nation states could rapidly re-establish the domestic 'national' monetary union.

ANNEX B: The EMU-11 divergence study

The test countries are the 'EMU-11', i.e. Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Portugal and Spain. This group represents the original adopters of the euro in 1999, with Greece substituted for Luxembourg. Prior to 1998, Luxembourg was in a mini-economic union with Belgium, so before that time there is inadequate comparable standalone data. Greece, having joined the euro in 2001, represents a fair test country with a significant experience of using the single currency. In contrast, the next countries to adopt the euro (Cyprus, Estonia, Latvia, Lithuania, Malta, Slovakia and Slovenia) did not do so until 2007 at the earliest, by which point any assessment of performance could be distorted by the effects of the global financial crisis – and in any event, meaningful data on the economic performance of all of them in the 1980s is not available.

Economic Divergence (Section 2)

To detect whether there has been economic convergence or divergence, the data is subjected to transitory and permanent shocks. The constituent economies, as well as the aggregate EMU economy, are then tracked to investigate how well they respond to these shocks.

Two variables are used to describe the system of each economy: GDP and unemployment.

To recover the demand and supply shocks hitting the EMU-11 economies, a traditional SVAR (structural vector auto-regression) approach has been used. This follows the model developed by Blanchard and Quah (1989 AER).⁴⁰

The model used employs real GDP growth and unemployment rates, and makes the standard assumption that demand shocks do not have permanent effects on economic growth in the long term, while supply shocks do. Further details, including the filtering of 'noise' are as given in the technical appendix to the Blanchard and Quah paper.

Cultural Divergence (Section 3)

The sources of underlying data are as described in the relevant parts of Section 3.

40 "The Dynamic Effects of Aggregate Demand and Supply Disturbances", O. Blanchard, and D. Quah (1988), NBER Working Paper No. 2737, October.

2 The UK's current trading relationship with the EU is unsatisfactory

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“Being prepared to walk away is the most effective means of getting the best terms for staying put.”

That Britain joined a Common Market but found itself in a political union is a common complaint. By implication, the only interest which the British have ever had in the EU centres on hard-headed commercial benefits involving trade.

Although it is now often advanced as the principal reason for Britain’s membership, however, the opportunity for an expansion of trade with other EU members was only an incidental part of the Government’s economic case for entry in the 1971 White Paper, and the economic case itself took second place to geo-political arguments.⁴¹ More weight was placed on the incentives for improved investment and productivity, which were treated as two sides of the same coin.⁴²

There are three principal trade-related assertions made by those who argue that Britain should remain in the EU:

- The ‘Blackmail Argument’: that Britain has to remain inside the EU and tolerate the non-trade political aspects because, if we tried to leave, the costs would severely damage our economy;
- The ‘Dependency Argument’: that because ‘50 per cent of our exports go to the EU’, Britain cannot afford not to be a member with full access to the Single Market;
- The ‘Leadership Argument’: that as a global trading nation Britain gains a great deal from pooling sovereignty in an EU which takes the lead on trade, and we would be worse off if we had to handle such matters on our own.

The Blackmail Argument is best considered in the context of the renegotiation process, and will depend on the strengths and weaknesses of each side in that renegotiation.⁴³ It is surprising that commentators who believe Britain should remain inside the EU at all costs seem relaxed at the prospect of being blackmailed by the Commission to do so, yet do not countenance the idea of pressure being applied in the other direction. Being prepared to walk away is the most effective means of getting the best terms for staying put.

This Section considers the remaining two arguments against reform. When the evidence is examined, they are found to be unconvincing and misleading. Britain may indeed derive considerable benefits from trade with the EU. However, membership of an ‘ever closer union’ is not necessary in order to achieve them. Trade conducted from outside the EU would not come without costs and challenges, but it would be far from impossible and in some circumstances would leave the country better off.

2.1 The Dependency Argument

The claim that Britain cannot survive without the EU because ‘it buys 50 per cent of our exports’ relies on two false premises.

The first is that the EU is principally a trading arrangement designed to maximise economic gains for its member states. Most people are now aware that the EU is a political project with the long-term objective of creating ‘ever closer union’ between members.⁴⁴ However, discussion of the merits or otherwise of

41 It is true that ‘trade’ in its widest sense took up a greater amount of parliamentary time in the debates on what became the European Communities Act 1972, but even then a significant amount was devoted to aspects such as the impact upon New Zealand’s farmers.

42 HM Government “The United Kingdom and the European Communities” (1971), pages 12–14.

43 See Section 6.

44 See Section 3.

“The EU passed its peak as a buyer of British goods and services two decades ago.”

the trading dimension still tends to be conducted without realising that the EU frequently allows politics to override the trading interests of the member states.

The second, more pernicious assumption is that ‘the EU’ has always bought 50 per cent of Britain’s exports and will continue to do so, and that our trading relationship with the EU should therefore be treated as the permanent foundation of our economic policy. In fact, the high share of British exports that go ‘to the EU’ is something of a historical accident, and the EU passed its peak as a buyer of British goods and services two decades ago.

2.1.1 The EU’s competence over trade has increased drastically

The EU was established as a customs union, i.e. a grouping of countries that agree to reduce (ideally eliminate) the tariffs charged on each other’s products and the barriers to their movement, while maintaining a common tariff barrier against the outside world. The Four Freedoms now regarded as the bedrock of the EU Project were present in the 1957 Treaty of Rome in a much more rudimentary form. While this early Treaty gave the member states a number of exemptions, these would disappear with time as the EU pursued the goal of ‘ever closer union’.

Initially, the free movement of goods was subject to a transitional period of up to 12 years, with special rules for agricultural produce.⁴⁵ The free movement of workers was also subject to a 12-year transitional period.⁴⁶ The free movement of services was expressed as an aspirational agreement to ask the new Commission to come up with a plan, with member states in the meanwhile committing themselves not to introduce new restrictions.⁴⁷ That did not amount to much more than the freedom to establish businesses in other member states, with the Commission asked to devise a programme for liberalisation.⁴⁸ The free movement of capital was in practice limited to removing discrimination against member state nationals in making investments and obtaining exchange licenses, with member states obliged to “endeavour to avoid” introducing new exchange controls on member state nationals and potentially submit to EU-wide capital controls in an emergency.⁴⁹ At the time of British entry, the EU was merely in a position of “progressive abolition of restrictions on movements of capital” rather than having achieved it.⁵⁰

Such an arrangement fell far short of being a Single Market, and the customs union itself only came into full operation in 1968. From the outset, the EEC was subject to the overriding provisions of the General Agreement on Tariffs and Trade (GATT), the predecessor of the World Trade Organization (WTO), as all of the original EU-6 were signatories:

By establishing a customs union between themselves the member states intend to contribute, in conformity with the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on

45 Treaty Establishing the European Economic Community (Treaty of Rome), Articles 9, 18–37.

46 Treaty Establishing the European Economic Community (Treaty of Rome), Article 48.

47 Treaty Establishing the European Economic Community (Treaty of Rome), Article 62.

48 Treaty Establishing the European Economic Community (Treaty of Rome), Article 54.

49 Treaty Establishing the European Economic Community (Treaty of Rome), Articles 67, 68, 71 and 73.

50 HM Government “The United Kingdom and the European Communities” (1971), page 33.

“The integration-ist tendencies of the system began to assert themselves from 1975.”

international exchanges and the lowering of customs barriers. The common commercial policy shall take into account the favourable incidence which the abolition of customs duties as between member states may have on the increase of the competitive strength of the enterprises in those states.⁵¹

A customs union requires a common commercial policy, to police the enforcement of the tariff provisions. At first, this competence was limited to trade in goods, in line with the fact that international trade then chiefly involved finished products:

After the expiry of the transitional period, the common commercial policy shall be based on uniform principles, particularly in regard to tariff amendments, the conclusion of tariff or trade agreements, the alignment of measures of liberalisation, export policy and protective commercial measures including measures to be taken in cases of dumping or subsidies.⁵²

The integrationist tendencies of the system began to assert themselves from 1975, with a European Court of Justice (ECJ) ruling that the EU had exclusive competence over an international agreement with the OECD governing export credits.⁵³ The most significant development came in 1978. A proposed trade deal brokered through the UN involved the EU contributing to a buffer stock to control the world rubber market, and also had provisions covering research programmes, labour conditions and consultation on tax policies. This gave rise to an internal dispute over competence. In considering the deal, the ECJ found that the common commercial policy should be interpreted dynamically.⁵⁴ To keep pace with developments in international trade, the EU could not be constrained by what was actually written in the Treaties:

As an increasing number of products which are particularly important from the economic point of view are concerned, it is clear that a coherent commercial policy would no longer be practicable if the Community were not in a position to exercise its powers also in connexion with a category of agreements which are becoming, alongside traditional commercial agreements, one of the major factors in the regulation of international trade.⁵⁵

Nor, despite the express linkage in the Treaty between the common commercial policy and trade liberalisation, was the EU prohibited from agreements that actually restricted trade:

Although it may be thought that at the time when the Treaty was drafted liberalisation of trade was the dominant idea, the Treaty nevertheless does not form a barrier to the possibility of the Community's developing a commercial policy aiming at a regulation of the world market for certain products rather than at a mere liberalisation of trade.⁵⁶

51 Treaty Establishing the European Economic Community (Treaty of Rome), Article 110.

52 Treaty Establishing the European Economic Community (Treaty of Rome), Article 113.

53 Understanding on a Local Cost Standard, Opinion 1/75 [1975] E.C.R. 1355.

54 International Agreement on Natural Rubber, Opinion 1/78 [1979] E.C.R. 2871.

55 International Agreement on Natural Rubber, Opinion 1/78 [1979] E.C.R. 2871, “Grounds”, para 43.

56 International Agreement on Natural Rubber, Opinion 1/78 [1979] E.C.R. 2871, “Grounds”, para 44.

“There is nothing like a genuine Single Market in services across the EU.”

This was in many ways a continuation of an emerging triangulation strategy, where European integration was sold as a tool for both trade liberalisation and trade protection.

When the WTO was established in 1995, with a wider remit than the GATT covering trade in services and intellectual property rights, the ECJ concluded that the EU’s common commercial policy ought to expand also – provided the matter was sufficiently similar to the trade in goods over which the EU actually had written jurisdiction.⁵⁷ Thus, the EU had exclusive control of the cross-border supply of services and counterfeit goods, but had to share competency in the other new WTO areas with member states.⁵⁸

The free movement of services within the EU did not receive serious attention until the Single European Act 1986. This was almost certainly because, historically, services have represented a relatively small component of Continental European economies (cross-border services even less) and, politically, greater importance was attached to the manufacturing and agricultural sectors. In the main, the EU has concentrated its efforts on harmonisation of service provision rather than liberalisation.⁵⁹ The conclusion of the Balance of Competences Review undertaken for the Government was that *“it is not possible to establish a clear division between Member State and EU competence in the Single Market area”*.⁶⁰

One point is unequivocal. Despite the Single European Act dictating a target of *“completing”* the Single Market by 31 December 1992, and notwithstanding the Four Freedoms enshrined in the Lisbon Treaty, there is nothing like a genuine Single Market in services across the EU.⁶¹ In the restrained language of Whitehall, the Balance of Competences’ assessment of the situation was that:

*Twenty years of liberalisation have produced a deeply integrated, but not perfect, Single Market. The high hopes of 1992 have not been wholly delivered upon. Much liberalisation remains to be done and many barriers, formal and informal, still remain.*⁶²

An economy which is weighted towards the services sector, such as Britain, might be thought to have much to gain from liberalising the freedom to provide services and the freedom to establish businesses across the EU. However, that line is unlikely to be pushed hard for the foreseeable future:

57 WTO Agreement, Opinion 1/94 [1994] E.C.R. 5267.

58 This is not the way that courts are generally thought to work. For example, it would be surprising if the Supreme Court of either Britain or the USA were to declare that the police ‘must have’ the right to detain people indefinitely without charge in order to keep pace with developments in international terrorism. As the Government tacitly admits, in many ways Treaty changes since 1957 have been an attempt to catch up with, and make workable, rulings from the ECJ. See HM Government *“Review of the Balance of Competences between the United Kingdom and the European Union: Trade and Investment”* (2014), page 21 and page 25..

59 See the entirety of HM Government *“Review of the Balance of Competences between the United Kingdom and the European Union: The Single Market: Free Movement of Services”* (2014).

60 HM Government *“Review of the Balance of Competences between the United Kingdom and the European Union: The Single Market”* (2014), page 31.

61 Single European Act Article 13, inserting a new Article 8a into the Treaty of Rome. Free movement of goods: Article 28; free movement of workers: Article 45; free movement of services: Article 56; free movement of capital: Article 63.

62 HM Government *“Review of the Balance of Competences between the United Kingdom and the European Union: The Single Market”* (2014), page 16.

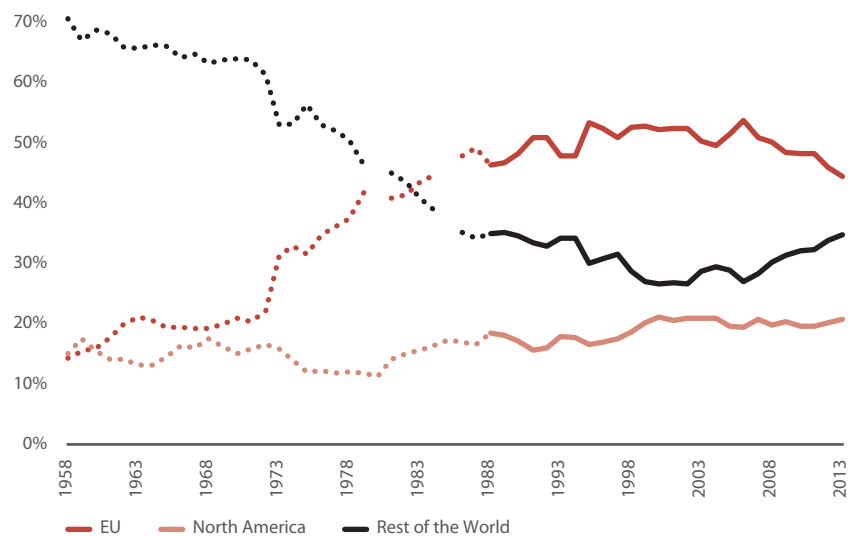
The Government, along with other Member States, is in favour of reform of the Single Market, and, in particular, completing the single market in services. However... pursuing Single Market reforms might actually weaken the negotiating clout of the EU in bilateral negotiations and in multilateral fora because, as Single Market barriers are lowered through reforms, the benefits flow to trading partners, in addition to Member States, without having to give anything in return.⁶³

Thus, reform of the EU economy is being held back so as not to compromise potential trade deals with other countries.

In an attempt to rationalise the confusing thicket of competences, the Lisbon Treaty further expanded the EU’s common commercial policy to cover all trade in services, “*the commercial aspects of intellectual property*” and foreign direct investment.⁶⁴ Transport services are excluded from this, and the requirements for unanimity allow member states to protect cultural and audio-visual services (i.e. French language films), and social, education and health services.⁶⁵

The European Commission now has more powers than it needs to oversee a simple common market. Those powers are principally used to further the political dimension of ‘the project’. Not only has the attempt to boost trade through a Single Market in services been abandoned, but even the British Government has stopped pretending that such trade maximisation is a primary concern of the exercise.

Figure 2.i: Destination of UK exports 1958–2013



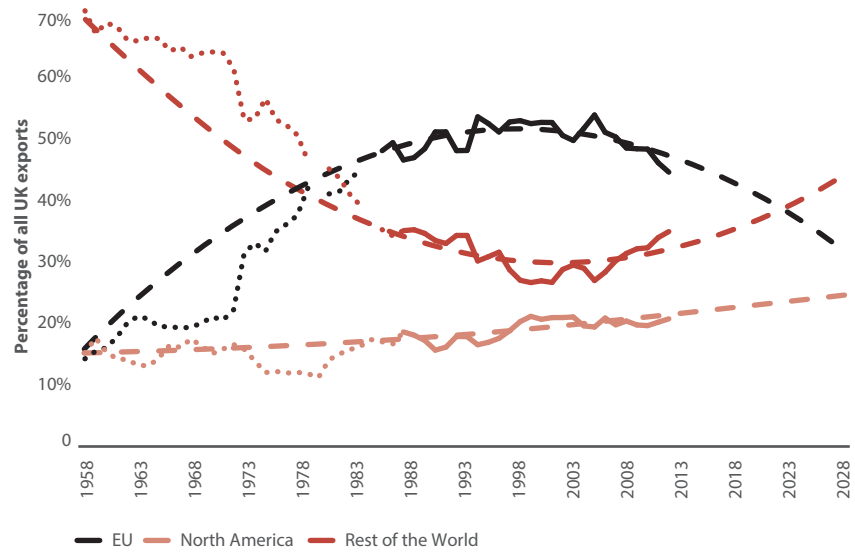
Source: see Annex C

63 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Trade and Investment” (2014), page 67.

64 The Treaty on the European Union (The Lisbon Treaty), Article 207.1.

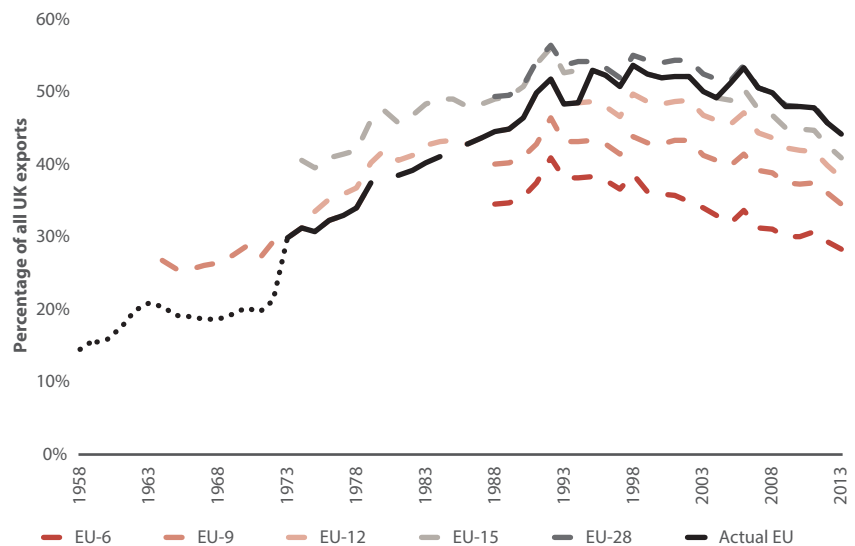
65 The Treaty on the European Union (The Lisbon Treaty), Articles 90 and 207.4.

Figure 2.ii: Projected trend lines for UK export destinations 2013–2030



Source: see Annex C

Figure 2.iii: Proportion of UK exports going to the EU 1958–2013



Source: see Annex C

2.1.2 The EU was the future of UK exports, but not any more

One claim made by advocates of EU membership is that ‘around 50 per cent of British exports go to the EU’. By implication, it would be foolish for Britain to even consider withdrawal from a trading arrangement on which it depends so heavily.⁶⁶

However, such statistics merely present a single snapshot. It is far more important to see how British exports have changed over time. Figure 2.i reconstructs, as far as is now possible from ONS data, the destination of exports of goods and

⁶⁶ For example, the BBC used to use this statement in its coverage a great deal (as an example see <www.bbc.co.uk/news/uk-politics-22440886>) although it has been seen less often since the EU proportion of exports started going down.

“The true proportion of exports going to EU countries is probably slightly overstated in UK official statistics.”

services over the period from 1958 (the first year of operation of the EEC) to 2013 (the most recent available year). This shows that there has been, until recently, a substantial shift in British exports towards the EU and that this has come at the relative expense of exports to the rest of the world. The true proportion of exports going to EU countries is probably slightly overstated in UK official statistics due to what is commonly called ‘the Rotterdam/Antwerp Effect’, where goods categorised as leaving Britain for Belgium and the Netherlands (i.e. to the EU) are immediately re-exported elsewhere. The phenomenon is well-known and difficult to quantify. The real impact of the Rotterdam/Antwerp Effect on trade with the EU-28 is not certain. It has therefore been decided to use the original ONS data without introducing a downward adjustment that includes an element of uncertainty.⁶⁷

Even allowing for this impact, however, the remarkable change in British trading patterns during the first 20 years of EU membership cannot be denied. In the 1960s, the new EEC was the dynamic emerging market of the future – the 1971 White Paper discussed in awestruck terms how the EU-6 had outperformed Britain in terms of employment, manufacturing productivity, economic growth, average real wages, investment and the balance of payments.⁶⁸

But the dramatic realignment in British exports that took place cannot be described as a triumph of Whitehall policy-making for four very simple reasons. First, it is exactly what the 1971 White Paper did not expect to happen:

But this in no way implies that in joining the Communities we should become increasingly ‘inward-looking’ and trade and invest only with the member countries. It is the declared objective of the Six that the formation and enlargement of the Community should lead to increasing overseas trade and investment, and their experience bears this out.⁶⁹

This reflected a long-standing view among the British political class, irrespective of party. In the Commons debate over the original decision by the Macmillan Government to apply for admission, Roy Jenkins MP (then in the Labour Party) made this contribution:

We think – and I put it no higher than that at present – that the advantage which we would get is that we would become part of a large, unified and rapidly growing market. On the basis of that, we would see not a vast diversion of our own exports to Europe – it is irrelevant to say that only 14 per cent of our exports go into Europe and therefore that market is unimportant – but, as a result of becoming part of a large, rapidly growing unified domestic market, we ought to achieve greater adaptability, greater specialisation and a greater ‘edge’ – all the things which British industry is now so notably lacking.⁷⁰

In 1961, when 14 per cent of UK exports went to EU members, Roy Jenkins claimed that membership would not increase our dependence on the EU. After the proportion had risen and he had become Lord Jenkins, he changed his argument, claiming that the UK’s dependence on the EU meant we could not afford to leave. The obvious corollary is that, if policy-makers were wrong in the past when they believed that membership would not cause a massive shift of

67 Annex B discusses the Rotterdam/Antwerp Effect further.

68 HM Government “The United Kingdom and the European Communities” (1971, Cmnd. 4715), pages 14–15.

69 HM Government “The United Kingdom and the European Communities” (1971, Cmnd. 4715), page 11.

70 Hansard “House of Commons Debates” (2 August 1961), Vol. 645, col. 1583–1584.

“It is a bad commercial strategy to be wholly dependent on a single customer.”

British exports towards the EU, why should their modern successors continue to frame policy on the assumption that the EU will always take up 50 per cent of Britain’s exports?

Second, it is a bad commercial strategy to be wholly dependent on a single customer. The 1971 White Paper explained carefully why it was not possible for Britain to continue to rely on trade with the Commonwealth, a group of countries that, before 1973, was as significant a buyer of British exports as the EU is today.⁷¹ Once a country places 50 per cent of its eggs in a single trading basket, it loses economic freedom of action. Indeed, it is widely accepted that the UK’s sluggish recovery from the 2008 crash has been caused, in part, by the problems of the Eurozone, even though Britain is not a member:

*The UK is one of the most open economies in the world, with significant trade and financial links with other countries. UK exports performance is highly dependent on the economic performance of the euro area, the UK’s largest trading partner, and weak euro area growth has meant goods exports to EU countries have been subdued.*⁷²

A better commercial policy would be to diversify.

Third, Figure 2.i suggests that, while a significant proportion of UK exports do go to EU countries, this proportion was actually higher in the past. The EU share of the total has peaked and appears to be on the decline. Figure 2.ii tests this further by projecting the trend-line forward. If current trends continue, the EU share of total British exports is set to decline by 2030 to roughly the level enjoyed when we first joined the EU in 1973. The dominance of European markets in British trade may represent a moment which is already passing.

Figure 2.ii does not represent, in and of itself, a forecast or prediction. The chart merely extrapolates the trends contained within past data to make them more explicit. Nor should it be read as implying a fall in the likely absolute value of exports to other EU members (although there has been such a fall in value since 2011). As with the increase in significance of the EU as a market to Britain since the 1970s, it is more likely that any shift away from the EU would come through the faster rise in importance of the rest of the world as buyers. Some commentators may claim that Figure 2.ii gives an unrepresentative weight to the recent, allegedly temporary, problems of the Eurozone. Yet the chart indicates that the trend peak in exports to the EU occurred before the euro was implemented.

The importance of the EU as a trading partner is already falling quite naturally, and there is no justification for tightening our links to a partner that is only going to buy proportionately less of our goods and services in the future. The UK should have the discretion to shift geographic market focus according to changing trading opportunities.

Fourth, it is misleading to claim that ‘about 50 per cent of British exports go to the EU’. No British exports go ‘to the EU’: they go to countries which are members of the EU, which is a rather different matter. It is only possible to say that any exports go to ‘the EU’ if it is regarded as a single homogenous bloc. But Britain has very different trading relationships with each member of the EU-28.

More detailed information is required. Figure 2.iii analyses British exports of goods and services to the EU since its creation in terms of constituent member

71 HM Government “The United Kingdom and the European Communities” (1971, Cmnd. 4715), pages 10–11.

72 HM Government “Autumn Statement 2014” (2014, Cm 8961), page 17.

“We sell about the same proportion of our exports to the EU-9 today as we did in 1980.”

states, so far as is now possible within the limitations of the available ONS data. From this, a number of observations can be made:

- A major reason why a significant proportion of British exports go ‘to the EU’ is that, through enlargement, the EU has given membership to countries which were buying our exports anyway;
- Almost half of British exports were already going to the EU-15 by the early 1980s, i.e. well before five of those countries had joined the EU;
- Most exports to Europe have always gone to the EU-9 that Britain joined in 1973;
- The genuine shift in export sales occurred in the 1970s, towards the EU-6;
- The headline proportion of British exports going to countries that were EU members at the time (then the EU-12) only reached 50 per cent in 1991;
- The proportion of British exports going to the EU-28 peaked in 1992 (i.e. before some of them were actually EU members);
- Since then, the proportion of British exports going to all sub-groupings of the EU has been falling;
- The so-called ‘completion’ of the Single Market thus marks the precise point at which the importance of the EU-28 as trading partners for Britain began to be diluted;
- This started before the introduction of the euro and so cannot be attributed to more recent problems with the Eurozone (whether they are temporary or systemic).

The point is worth repeating: the relative significance of the EU-28 as a trading partner for Britain peaked before the Maastricht Treaty came into force. We sell about the same proportion of our exports to the EU-9 today as we did in 1980, before Greece joined the EU.

Table 2.iv provides a simple before/after comparison of the significance of different EU members as trading partners, within the limitations of the available data. This provides some illustration of how the overall shift in British exports of goods and services has taken place.

Table 2.iv: Average share of UK exports to EU countries

Grouping	Before EU entry	After EU entry	Verdict
Belgium, France, Germany, Italy, Luxembourg, Netherlands	1963-72 19.9%	1988-97 37.4%	Positive
Denmark, Ireland	1964-72 7.4%	1988-97 5.3%	Negative
Greece	1973-79 0.9%	1988-97 0.7%	Negative but trivial
Portugal, Spain	1975-84 2.1%	1988-97 4.7%	Positive
Austria, Finland, Sweden	1985-94 4.6%	1995-2004 3.7%	Negative
Cyprus, Czech Republic, Estonia, Hungary, Malta, Lithuania, Poland, Slovenia, Slovakia	1994-2003 1.5%	2005-2013 2.7%	Positive but trivial
Bulgaria, Romania	1997-2006 0.2%	2007-2013 0.4%	Positive but trivial

Source: see Annex C

“The headline figure for exports ‘to the EU’ has been artificially inflated by the process of enlargement.”

The falling lines for the EU-6, the EU-9, the EU-12 and the EU-15 in Figure 2.iii confirm the impression that the significance of the EU for British exporters is undergoing a secular decline. Within this trend, membership of the EU has, broadly, increased the purchase of British goods and services by the core EU-6, and Portugal and Spain, but proportionately reduced it by Austria, Denmark, Finland, Ireland and Sweden.

The headline figure for exports ‘to the EU’ has been artificially inflated by the process of enlargement. It is difficult to see how this could be continued – there isn’t a lot left of Europe still to be incorporated into the EU.

The reason for the shift of British exports into the EU lies in the circumstances of the time. Tariffs have fallen world-wide in the time since Britain joined the EEC. It is quite difficult to compare tariff regimes between countries and over time, because of the large number of product lines subject to different rates, and because countries might strike preferential rates in bilateral deals. Meaningfully comparable data is only readily available from 1989. Nevertheless, Table 2.v provides a sufficient snapshot.

Table 2.v: Selected tariffs on manufactured goods

	1960s	1970s	1989	1996	2012
EU	11%	8%	5.8%	5.0%	3.4%
USA	12%	9%	4.8%	4.0%	2.3%
Japan	16%	12%	2.8%	2.3%	1.5%
Canada	11%	10%	7.8%	5.5%	2.7%
Australia		21%	11.9%	9.7%	3.4%
Average developed		9.8%	5.7%	4.8%	3.0%
India			76.3%	20.5%	8.5%
China			36.4%	18.4%	6.8%
Brazil			38.0%	16.4%	13.2%

Source: see Annex C

When the decision to seek admission to the EEC was first made, by the Macmillan Government in 1961, tariffs were generally still quite high. The attractions of access to a wholly tariff-free zone were therefore much greater – particularly since this was not on offer from our then major trading partners, as Duncan Sandys MP, the Commonwealth Secretary, pointed out while winding up the debate over the Macmillan application:

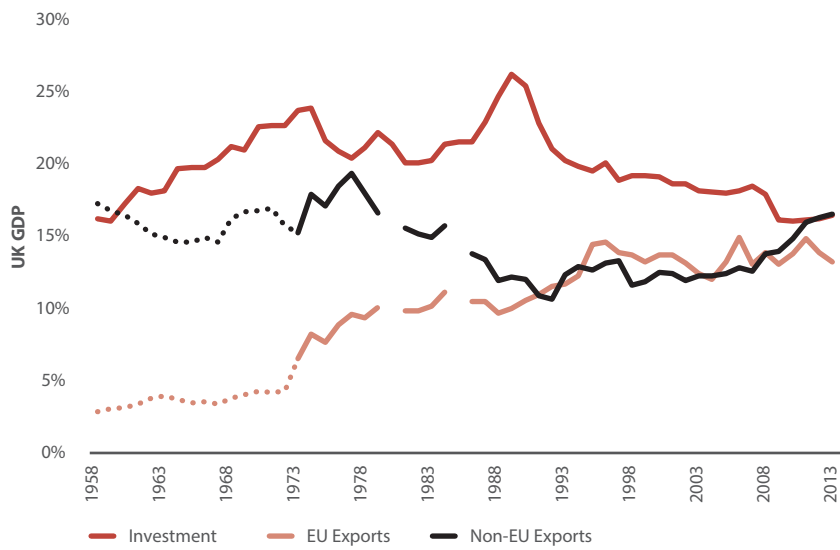
If we join the Common Market our manufacturers will be able to offer their goods over a wide area without any tariffs on any item; in other words, exactly as they sell them at home today in the British market... It is this fact that gives the opportunities of specialisation, large-scale production, and all the economies of scale that an industrial society like ours needs in order to be fully efficient. If the Commonwealth – believe me, nobody is more attached to the Commonwealth than I am – is to afford us these advantages, it can only be by means of a Commonwealth customs union or a free trade area... Nothing would suit us better than Lord Beaverbrook’s great concept of Empire Free Trade. Of course it would suit us in every way. The trouble is that it would not suit anybody else at all.⁷³

73 Hansard “House of Commons Debates” (3 August 1961), Vol. 645, Col. 1774.

Britain joined the EU just as the Kennedy Round of tariff negotiations came into effect, but there was still a relative advantage to membership. In 1973, the world economy was convulsed by the impact of the Oil Price Shock and the Great Inflation. A temporary window opened in which British exporters could sell into the EU-9 at a zero tariff, considerably below the charges prevailing in their other major markets (which were then subject to turbulence of their own). Naturally, a shift in trading patterns followed.

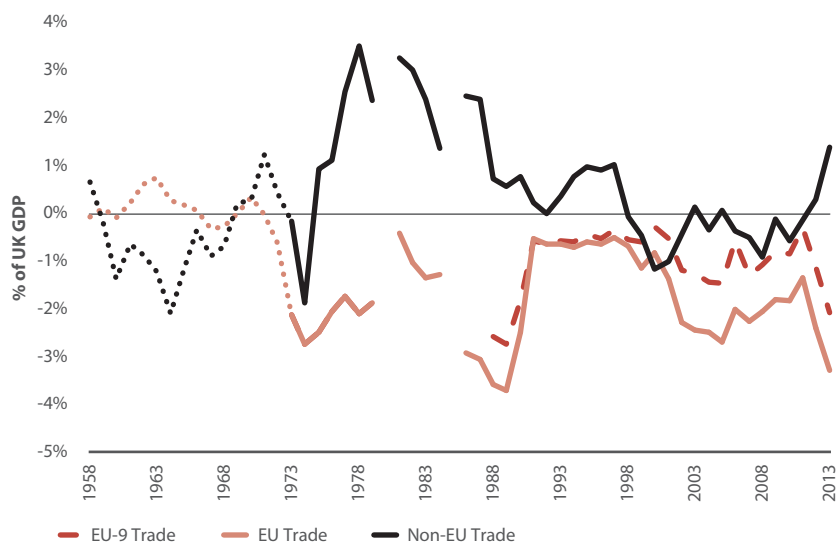
But that window has now closed. While Britain has been an EU member, tariffs world-wide have come down because of the 'Tokyo Round', the 'Uruguay Round' and the conversion of the GATT into the WTO. The average tariff in developed countries is now below the external level levied by the EU. The growing markets of the future still charge high tariffs, but the direction of travel is clearly downward. In the meantime, Britain has locked itself into the EU's regulatory system. With the benefit of 40 years' hindsight, that looks to have been a very short-term judgment.

Figure 2.vi: Gross contribution to UK GDP 1958–2013



Source: see Annex C

Figure 2.vii: Net contribution of trade to the UK GDP 1958–2013



Source: see Annex C

“The jumps in the gross contribution by the EU that occur in 1973–4, 1995 and 2006 are not the result of organic growth.”

2.1.3 Trading with the EU has not brought the success we expected

Figure 2.vi converts the export figures previously cited into a measure of their economic value to Britain by how much they have contributed to GDP. Comparable figures are given for the contribution to GDP from investment (another area in which Britain is generally considered to underperform).

Certainly, the combined gross contribution from all exports compares very favourably with that of investment and has increased over the period, from 20 per cent in 1958, through 22 per cent in 1973, to 30 per cent in 2013. But to place this in context, the equivalent contribution of exports to the economy of the Netherlands is consistently over 70 per cent, which is the sign of a genuine trading nation.⁷⁴

Nevertheless, exports of goods and services clearly make a material contribution to the British economy. Since, in recent history, most exports have gone to the EU, the relationship with Europe has contributed the bulk of the benefits of trade. This conclusion should be treated cautiously, however. The jumps in the gross contribution by the EU that occur in 1973–4, 1995 and 2006 are not the result of organic growth. Instead, they follow enlargements of the EU to encompass more countries, with a consequent shift of value out of the non-EU category. Genuine value was added during the 1970s, immediately after Britain joined the EU. During the great globalisation that followed the end of the Cold War, the value delivered by EU trade has been static and has now been overtaken by non-EU trade.

First, this confirms the judgement that the shift in British trade towards the EU was a result of a temporary tariff advantage in the 1970s. The 1971 White Paper did anticipate something of the sort (if not the long-term impact on trading patterns):

The effects of membership on British industry will stem principally from the creation of an enlarged European Market by the removal of tariffs between the United Kingdom and the Community countries, and, less importantly, from other tariff changes... Manufacturers will be operating in a ‘domestic market’ perhaps five times as large as at present, in which tariff barriers cannot be put up against them however well they do. There will in consequence be a radical change in planning, investment, production and sales effort.⁷⁵

Second, what comes out clearest from Figure 2.vi is the steady decline in the gross contribution of investment to UK GDP since 1973. This experience has confounded the hopes of the Heath Government, but also those of the CBI:

In the light of the experience of the Six themselves, and their conviction that the creation of the Community materially contributed to their growth, and of the essential similarity of our economies, the Government are confident that membership of an enlarged Community will lead to much improved efficiency

74 See the website established by the Netherlands Enterprise Agency: <<http://hollandtrade.com/media/features/special-reports/investiture/?bstnum=5227>> (accessed 20/05/2015). The latest figures, for 2014, have Netherlands GDP at €655.4bn and Exports at €544.9bn, or 83 per cent of GDP. Only once in the period 2007–2013 did the gross contribution of exports to Netherlands GDP fall below 70 per cent, in 2009 immediately after the global down-turn (when the level was 64 per cent). Source: Statistics Netherlands website: <www.cbs.nl/en-GB/menu/home/default.htm> (accessed 11/05/2015).

75 HM Government “The United Kingdom and the European Communities” (1971, Cmnd. 4715), para 44, page 13.

*and productivity in British industry, with a higher rate of investment and a faster growth of real wages. The studies, mentioned earlier, made by the Confederation of British Industries show that this belief is shared by a substantial majority of British industry, whose own interests are at stake, and who are in the best position to judge.*⁷⁶

While discussion of Britain’s relationship with the EU is usually couched solely in terms of exports, it is not enough to consider one side of the ledger alone. Figure 2.vii shows the net contribution of trade, i.e. after treating imports as a deduction against GDP. The impressive gains brought about by the leap in exports to the EU have entirely evaporated due to an even greater jump in imports.

Britain had a trading surplus with the EU-6 (and a deficit with the rest of the world) in the 1960s, when policy-makers made the decision to apply for membership and were grappling with balance of payments crises and other economic problems. How much this influenced them at the time is unclear. It is apparent, however, that Britain has not run a trade surplus with the EU since we joined. Perhaps wisely, the 1971 White Paper refused to estimate the impact of membership on the balance of trade, claiming that it was too difficult to quantify. *“They are confident that this effect will be positive and substantial, as it has been for the Community”* was the most they would say – as it happens, wrongly.⁷⁷

Table 2.viii illustrates how misplaced the Government’s confidence was by giving snapshot figures for the trade balance at regular intervals spanning the period of Britain’s EU membership.

Table 2.viii: UK trade balance with the EU in selected years

	1972	1982	1992	2002	2013
	EU-6	EU-10	EU-12	EU-15	EU-28
Exports £m	2,024	29,101	72,864	147,334	227,699
Imports £m	2,479	32,131	77,659	172,739	283,871
Balance £m	- 455	- 3,030	- 4,795	- 25,405	- 56,172
Balance as a proportion of GDP	-0.7%	-1.0%	-0.7%	-2.3%	-3.3%

Source: see Annex C

Where ONS data allows a consistent comparable estimate for the EU-9 to be drawn, from 1988 onwards, it shows that our deficit with the countries we joined in 1973 is smaller. But the implication is that, rather than expanding the scope of countries to which we could sell, EU enlargement has made it easier for us to buy their exports. This cannot be attributed to economic malaise. Figure 2.vii demonstrates that, throughout this period, Britain has been quite capable of achieving a surplus with the rest of the world. On the whole, the pre-1973 position has reversed.

Extreme interpretations should be avoided. It is too simplistic to say that, because we have run a persistent trade deficit with the EU, Britain’s membership has had a wholly negative impact. Trade is a good thing, and if British people are buying foreign goods and services then it is because these represent something they want and cannot obtain at home. Imports can raise standards of living.

76 HM Government “The United Kingdom and the European Communities” (1971, Cmnd. 4715), pages 15–16.

77 HM Government “The United Kingdom and the European Communities” (1971, Cmnd. 4715), page 13.

“The trade gains from membership expected in 1971 have not materialised.”

Britain has been running a current account deficit for many years, but the root causes lie at home, and not in the EU. Equally, however, the data does not bear out apocalyptic predictions of the effects of withdrawal. We cannot know how things might have turned out if we had not joined the EU. All we can say with the benefit of hindsight is that, while EU membership has made a significant contribution to the British economy, the uniformly optimistic expectations of the 1971 White Paper have not materialised.

2.1.4 The impact of trade with the EU on UK jobs has been exaggerated

The claim that ‘x million jobs depend on the EU’ has to be seen in the context of the fact that the trade gains from membership expected in 1971 have not materialised.

The first serious study of this issue, by the European Institute at South Bank University, found that 3,445,000 jobs were supported by EU exports in 1997.⁷⁸ This represented 2,500,000 jobs in direct employment and the balance of 945,000 supported by the spending of the earnings of those employees. The most recent study, by the Centre for Economics and Business Research (CEBR), giving the position for 2011, updates this research using the same methodology.⁷⁹ The CEBR concluded that the total had increased to 4,175,000 jobs, or 13.3 per cent of the British workforce.⁸⁰ Both studies also included analyses of the totals across different employment sectors and regions of the UK.

It is important to distinguish between jobs which are ‘supported by’ the EU and jobs which are ‘created by’ or ‘dependent upon’ the EU. In crude terms, both studies convert the gross contribution of EU exports to GDP (Figure 2.vi) into an equivalent number of jobs.⁸¹ Since the British economy and workforce grew between 1997 and 2011, the number of British jobs ‘supported by’ exports to the EU would also have increased anyway. The EU Commission had nothing to do with this. More to the point, over that period there was an enlargement from the EU-15 to the EU-27, shifting exports from the non-EU to the EU category and artificially increasing the number of ‘supported’ jobs – as the CEBR report noted.⁸² Over the period 1958–2013, the gross contribution of EU exports to the British economy has fluctuated (as Figure 2.vi indicates), so we can assume that the number of British jobs ‘supported by the EU’ has done so too.

If, in 2011, every exporter in Britain that traded with the EU had instead sold identical goods and services to non-EU customers for the same value, it would have had zero effect on Britain’s GDP and zero impact on the number of Britons in work – but it would have meant that zero per cent of British jobs were ‘supported by’ the EU. Studies of this nature merely provide a snapshot of current trading conditions. They give no indication of how many jobs genuinely ‘depend upon’ the EU in the sense that businesses could not provide employment by making sales elsewhere. Again, this is a point that the CEBR made in its report:

This piece of research does not imply that the estimated jobs would be lost if the UK were to leave the EU; it is an analysis of demand arising from UK exports to the EU. This piece of research does not take a position on United Kingdom

78 European Institute “Jobs dependent on the EU”, Ardy, Begg and Hodson (2000).

79 CEBR “Jobs supported by exports to the EU” (2014).

80 CEBR “Jobs supported by exports to the EU” (2014), Executive Summary, page 3.

81 Strictly, most of these ‘EU Jobs’ studies work off the Input/Output figures in the UK National Accounts, but the principle is the same.

82 CEBR “Jobs supported by exports to the EU” (2014), page 10.

“The actual proportion of British businesses exporting to the EU alone is no more than 5 per cent.”

EU withdrawal but rather seeks to inform the debate with robust, quantitative evidence based on publicly available data.⁸³

The proportion of total British exports going to the countries which are now in the EU-28 has been falling steadily since 1992. So, the proportion of British jobs ‘supported by’ exports to the EU-28 has also been falling steadily since 1992. Furthermore, since the EU share of Britain’s exports is undergoing a long-term secular decline, we could expect the proportion of British jobs ‘supported by’ exports to the EU to also decline – even if Britain remains inside the EU. The best safeguard for British jobs, in 1971 as now, is a thriving British economy.

2.1.5 Most British businesses do not export

Policy-makers are right to focus on the importance of trade. The theoretical advantages (the ability to acquire resources not available at home; the opportunity for countries to pursue their comparative advantages and increase overall consumption; diversity of supply; greater efficiency through wider competition; the incentive to improved productivity) are undeniable – and often demonstrable in practice. The gains from trade represent the top-slice of a country’s income and, as Britain has experienced while the Eurozone crisis has curbed the appetite of buyers within the EU, such gains could make the difference between prosperity and stagnation.

But gains from trade are not shared evenly. Most obviously, comparatively few businesses engage in exporting. The ONS has begun compiling data on this issue only recently (almost certainly because policy-makers want to know why exports did not expand as expected in the recovery after the financial crisis). Table 2.ix reproduces the official estimates for the proportion of UK businesses engaged in export and import, i.e. those that would benefit most directly from EU membership. It contains an analysis of both exporters and importers by reference to employment, sector, ownership, turnover and age.

About 223,000 enterprises based in Britain engage in some form of export activity. That makes exporters very untypical of British business generally, which comprises 1,979,600 enterprises surveyed by the ONS. A business is most likely to export abroad if it is more than 20 years old, is operating in the Production & Agriculture sector, has more than 250 employees and a turnover exceeding £10m – and especially if it is the UK subsidiary of a foreign parent company. In so far as there is a ‘typical’ British business, the figures suggest that it is less than 10 years old, operates in Non-Financial Services, has fewer than 10 employees and a turnover below £1m – and is UK-owned.

For all the rhetoric attached to the trading advantages of EU membership by groups which represent business, a mere 11 per cent of British businesses export abroad, and at most only 16 per cent engage in trade in either direction.

Furthermore, the ONS figures in Table 2.ix refer to companies that export to any foreign market. The actual proportion of British businesses exporting to the EU alone is no more than 5 per cent.⁸⁴ Yet the one-size-fits-all approach of the EU Single Market means that the regulations which have to be followed to gain access to that market must be obeyed by 100 per cent of businesses.

Britain’s export profile is disappointing, and groups such as the CBI, the British Chambers of Commerce and the Institute of Directors, not to mention the Government, are right to pursue campaigns to encourage greater efforts in this area. But:

83 CEBR “Jobs supported by exports to the EU” (2014), Important Notes, pages 3–4.

84 Business for Britain “Setting Out the British Option: Liberating 95 per cent of UK businesses from EU red tape”, M. Elliott and O. Lewis (2014), page 14.

- The bulk of Britain's economic performance – and hence of jobs and standard of living – derives overwhelmingly from businesses which do not export to the Single Market, and which tend to be on the smaller size;
- Both the immediate and the long-term costs of membership are borne by all British businesses, irrespective of size;
- The immediate benefits of membership are enjoyed by perhaps only 10 per cent of businesses, and these tend to be the largest.

Of course, there are second-order spill-over benefits from trade for domestic-market businesses, and above all for consumers, which should be neither ignored nor downplayed. But when an organisation such as the CBI claims that *“the benefits of EU membership to British business have significantly outweighed the cost”*, in practice it is largely two different groups that are reaping the benefits and bearing the costs.⁸⁵

Table 2.ix: Exporters and Importers of Goods and Services, 2013

	Number of					%			
Detailed employment	Enterprises	Exporters	Importers	Exporter and Importer	Exporter and/or Importer	Exporters	Importers	Exporter and Importer	Exporter and/or Importer
1	804,600	70,100	59,300	32,500	96,900	8.7	7.4	4.0	12.0
2-9	942,500	99,500	93,800	52,500	140,800	10.6	10.0	5.6	14.9
10-19	125,600	22,700	24,900	16,300	31,300	18.1	19.8	13.0	24.9
20-49	66,600	16,600	17,700	12,900	21,500	24.9	26.6	19.3	32.2
50-99	21,200	6,800	7,400	5,500	8,600	32.2	34.8	26.2	40.8
100-249	11,400	4,300	4,700	3,800	5,200	37.5	40.9	33.0	45.4
250+	7,600	3,100	3,700	2,800	4,000	40.7	48.6	36.7	52.7
Total	1,979,600	223,000	211,500	126,300	308,300	11.3	10.7	6.4	15.6
	Number of					%			
Sector	Enterprises	Exporters	Importers	Exporter and Importer	Exporter and/or Importer	Exporters	Importers	Exporter and Importer	Exporter and/or Importer
Production & Agriculture	145,100	32,900	32,200	22,500	42,600	22.7	22.2	15.5	29.3
Construction	253,400	3,500	8,000	1,800	9,600	1.4	3.1	0.7	3.8
Distribution	349,600	62,500	82,400	43,600	101,300	17.9	23.6	12.5	29.0
Non Financial Services	1,231,500	124,200	89,000	58,400	154,800	10.1	7.2	4.7	12.6
Total	1,979,600	223,000	211,500	126,300	308,300	11.3	10.7	6.4	15.6
	Number of					%			
Ownership	Enterprises	Exporters	Importers	Exporter and Importer	Exporter and/or Importer	Exporters	Importers	Exporter and Importer	Exporter and/or Importer
UK	1,957,600	211,100	198,500	116,000	293,600	10.8	10.1	5.9	15.0
Foreign	22,000	12,000	13,000	10,300	14,700	54.3	59.0	46.6	66.7
Total	1,979,600	223,000	211,500	126,300	308,300	11.3	10.7	6.4	15.6

85 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Chapter 3, page 57.

Turnover £'000s	Number of					%			
	Enterprises	Exporters	Importers	Exporter and Importer	Exporter and/or Importer	Exporters	Importers	Exporter and Importer	Exporter and/or Importer
<1000	1,807,000	161,700	143,800	77,300	228,200	8.9	8.0	4.3	12.6
1000-4999	127,900	38,700	42,800	29,200	52,300	30.3	33.5	22.8	40.9
5000-9999	21,400	9,700	10,700	8,100	12,300	45.5	49.9	38.0	57.4
10,000-24,999	12,900	6,800	7,300	6,000	8,100	52.8	56.9	47.0	62.6
25,000-49,999	4,800	2,800	3,100	2,600	3,300	58.0	64.7	53.5	69.2
50,000-99,999	2,500	1,500	1,600	1,400	1,800	59.3	64.8	54.3	69.8
100,000-249,999	1,900	1,100	1,300	1,100	1,400	61.8	69.5	57.2	74.2
250,000-499,999	700	400	400	400	500	58.2	67.3	54.2	71.4
500,000 +	600	400	400	300	500	58.6	71.3	54.7	75.1
Total	1,979,600	223,000	211,500	126,300	308,300	11.3	10.7	6.4	15.6

Age (years)	Number of					%			
	Enterprises	Exporters	Importers	Exporter and Importer	Exporter and/or Importer	Exporters	Importers	Exporter and Importer	Exporter and/or Importer
<2	374,200	29,300	29,100	14,700	43,600	7.8	7.8	3.9	11.7
2-<4	251,000	26,100	23,300	12,900	36,500	10.4	9.3	5.1	14.5
4-<10	510,400	55,400	51,500	29,900	77,000	10.8	10.1	5.9	15.1
10-<20	448,500	54,800	51,300	31,800	74,200	12.2	11.4	7.1	16.5
20+	395,500	57,600	56,400	37,000	77,000	14.6	14.3	9.4	19.5
Total	1,979,600	223,000	211,500	126,300	308,300	11.3	10.7	6.4	15.6

Source: see Annex C

Table 2.x: Top export destinations 1988 and 2013

Export of Goods					Export of Services				
1988		2013			1988		2013		
1	USA	13.3%	USA	13.2%	USA	23.2%	USA	24.2%	1
2	Germany	12.0%	Germany	9.9%	Germany	8.3%	Germany	6.0%	2
3	France	10.3%	Netherlands	8.4%	France	6.5%	France	5.3%	3
4	Netherlands	6.9%	France	6.9%	Japan	4.5%	Netherlands	4.8%	4
5	Belgium/Luxembourg	5.3%	Ireland	6.2%	Netherlands	3.5%	Switzerland	4.7%	5
6	Italy	5.1%	Belgium	4.6%	Italy	3.4%	Ireland	3.8%	6
7	Ireland	5.0%	China	4.3%	Australia	2.8%	Italy	2.9%	7
8	Spain	3.5%	Italy	2.9%	Belgium/Luxembourg	2.7%	Australia	2.6%	8
9	Sweden	2.7%	Spain	2.9%	Ireland	2.7%	Japan	2.4%	9
10	Canada	2.5%	India	2.0%	Saudi Arabia	2.5%	Spain	2.3%	10
11	Switzerland	2.3%	Switzerland	2.0%	Canada	2.4%	China	2.1%	11
12	Japan	2.1%	Sweden	1.9%	Spain	2.3%	Sweden	1.9%	12
13	Saudi Arabia	2.1%	Hong Kong	1.8%	Hong Kong	2.3%	Canada	1.7%	13
14	Australia	1.7%	Russia	1.7%	Switzerland	2.1%	Belgium	1.5%	14
15	Denmark	1.5%	South Korea	1.7%	Norway	1.7%	Norway	1.4%	15
16	India	1.3%	Japan	1.6%	South Africa	1.6%	Luxembourg	1.4%	16

Export of Goods					Export of Services				
1988		2013		1988		2013			
17	Norway	1.3%	Australia	1.4%	Sweden	1.5%	Saudi Arabia	1.2%	17
18	South Africa	1.3%	Singapore	1.4%	Singapore	1.1%	Denmark	1.2%	18
19	Hong Kong	1.2%	Turkey	1.3%	Greece	1.1%	Russia	1.1%	19
20	Finland	1.0%	Canada	1.3%	Denmark	1.0%	Singapore	1.1%	20
21	Portugal	1.0%	Poland	1.3%	India	0.9%	India	1.0%	21
22	Singapore	0.8%	Saudi Arabia	1.1%	Malaysia	0.8%	Hong Kong	0.9%	22
23	Austria	0.6%	Norway	1.1%	New Zealand	0.8%	South Africa	0.9%	23
24	Turkey	0.6%	Denmark	1.0%	Israel	0.6%	South Korea	0.8%	24
25	Israel	0.6%	Brazil	0.9%	Thailand	0.6%	Greece	0.6%	25

Source: see Annex C

Table 2.xi: Top import sources 1988 and 2013

Import of Goods					Import of Services				
1988		2013		1988		2013			
1	Germany	17.0%	Germany	13.7%	USA	17.9%	USA	16.7%	1
2	USA	10.3%	Netherlands	8.5%	Germany	11.3%	France	9.6%	2
3	France	9.0%	China	8.1%	Spain	9.6%	Spain	7.5%	3
4	Netherlands	7.9%	USA	6.6%	France	8.3%	Germany	7.3%	4
5	Japan	5.9%	France	5.9%	Netherlands	3.7%	Netherlands	4.7%	5
6	Italy	5.5%	Belgium	4.9%	Greece	3.0%	Ireland	3.9%	6
7	Belgium/Luxembourg	4.7%	Norway	4.2%	Italy	2.9%	Italy	3.2%	7
8	Switzerland	3.8%	Italy	3.7%	Belgium/Luxembourg	2.5%	Switzerland	2.9%	8
9	Ireland	3.7%	Ireland	3.0%	Canada	2.3%	Belgium	2.0%	9
10	Sweden	3.2%	Spain	3.0%	Japan	2.1%	Japan	1.9%	10
11	Norway	3.0%	Poland	1.9%	Hong Kong	2.1%	Australia	1.8%	11
12	Spain	2.4%	Switzerland	1.9%	Ireland	2.0%	India	1.8%	12
13	Canada	2.0%	Sweden	1.8%	Australia	1.9%	Greece	1.5%	13
14	Denmark	1.9%	Japan	1.8%	Portugal	1.8%	Portugal	1.4%	14
15	Finland	1.7%	Hong Kong	1.8%	Switzerland	1.6%	Sweden	1.4%	15
16	Hong Kong	1.6%	Russia	1.7%	Norway	1.5%	Hong Kong	1.2%	16
17	Taiwan	1.0%	India	1.7%	Austria	1.4%	Canada	1.2%	17
18	South Korea	1.0%	Turkey	1.5%	Singapore	1.3%	Poland	1.2%	18
19	Portugal	0.9%	Denmark	1.4%	Sweden	1.2%	Turkey	1.1%	19
20	Austria	0.8%	Canada	1.4%	Turkey	0.9%	Singapore	1.1%	20
21	South Africa	0.7%	Czech Republic	1.1%	Denmark	0.9%	China	1.1%	21
22	Australia	0.7%	Taiwan	0.9%	India	0.8%	Norway	1.0%	22
23	Brazil	0.7%	South Korea	0.8%	South Africa	0.7%	Luxembourg	1.0%	23
24	Saudi Arabia	0.5%	Thailand	0.7%	Russia	0.5%	Denmark	0.8%	24
25	Singapore	0.5%	Singapore	0.7%	Thailand	0.5%	Austria	0.8%	25

Source: see Annex C

“The debate has been framed by supporters of the EU on two false premises.”

2.2 The Leadership Argument

There is a superficial attractiveness to the theory that Britain gains additional clout on the world economic stage by being a member of the EU. It involves the claim that the collective might of 28 countries can gain a more favourable outcome in trade negotiations than one country acting alone. Yet the debate has been framed by supporters of the EU on two false premises. The first is that there is some inherently superior quality to the trade negotiations conducted by the EU on our behalf. Second is a ‘Post-Suez Mindset’ that assumes that Britain is a small and powerless country unable to achieve anything on its own.

When the record is examined, it is clear that the EU is overrated as a manager of trade policy. The political agenda of the EU distorts its trade objectives. Even when the EU is not acting ineptly, because Britain’s economy is untypical of the EU economy more generally, the trade objectives being pursued do not always dovetail with the UK’s needs. Although the EU is capable of delivering major trade deals, its record compares very unfavourably with other negotiators, including some countries with economies much smaller than Britain’s. Ultimately, the WTO has a more fundamental significance for British trade, but membership of the EU has neutralised Britain’s ability to exploit its membership of the WTO and denies us a genuine seat at the top table.

Regaining sovereignty over trade policy would come with some challenges. The UK has lost the experience of negotiating trade matters on its own account. It would have to learn to exercise a different form of ‘influence’ and contend with new challenges such as tariffs, quotas and other compliance rules. Such challenges would not be insurmountable, however, as the experience of smaller countries demonstrates. Against them must be balanced the question of how much ‘influence’ Britain would have trapped inside an EU which is dominated by a unified Eurozone.

Rather than automatically accepting the one-size-fits-all stance determined by the EU, the first step is to decide which trading outlook best suits Britain.

2.2.1 Globalisation has had less impact on British trading patterns than might have been expected

If being a member of the EU has brought immense benefits to Britain in trading terms, the impact should be obvious. A simple test can be devised. Britain’s major trading partners in the present day and before the onset of the era of globalisation can be compared to see how they differ.

Table 2.x ranks the top 25 destinations of UK exports of goods and services in 1988 and 2013, and Table 2.xi gives the corresponding rankings for imports. These show the changes in British trading patterns over time and demonstrate that, from a British perspective, not all EU partners are equal. Individual countries display very different tendencies as buyers and sellers of goods and services. The results are summarised in Table 2.xii.

Table 2.xii: Summary of British trading patterns

	Exports				Imports				
	Goods		Services		Goods		Services		
	1988	2013	1988	2013	1988	2013	1988	2013	
Top 10 buying countries	67%	61%	60%	59%	Top 10 selling countries	71%	62%	64%	60%
How many in EU-28	8	7	6	6	How many in EU-28	7	7	7	7
Top 25 buying countries	86%	83%	81%	78%	Top 25 selling countries	91%	83%	83%	78%
How many in EU-28	12	10	10	11	How many in EU-28	12	11	11	14

Source: see Annex C

Seen in aggregate, the changes over 25 years appear not to be very dramatic. Despite the era of globalisation, in which the UK has supposedly benefited from having the EU to negotiate trade policy on its behalf, Britain is still selling to the same customers. There has been a slight diversification in the market for our goods, and China’s emergence has caused a reshuffle in the rankings, but pretty much the same major EU partners are present in the Top 10 across the period.⁸⁶ On the other hand, as a nation, we appear to have become more diversified as buyers.

As the CBI points out: “The UK needs to maximise its export offering to both new and existing export partners in order to drive the recovery.”⁸⁷ So why haven’t we taken more advantage of globalisation?

2.2.2 The EU has a mixed record in its handling of trade policy

Supporters of the EU are keen to stress the vital importance of the EU as an agent for conducting trade policy on our behalf. Increasingly, more emphasis is attached to the accrued benefits that would be lost through withdrawal than the rewards to be expected in the future:

Given the scale of the UK’s trade ties with the EU, it seems unlikely that the UK would be able to negotiate simultaneously bilateral trade deals with enough of its remaining partner countries to offset the loss of this market. This is particularly the case as the EU already has trade deals in place with several of the UK’s key trade partners, or is already in negotiations with them...⁸⁸

This presupposes that the EU is able to deliver a superior trade policy. However, the UK’s loss of sovereignty over trade policy has subjected it to an EU agenda. That agenda has not always placed purely trading issues at the forefront.

A good example of this is the ‘Banana War’. Prior to July 1993, member states were more or less free to follow their own line on bananas, ranging from zero tariffs to highly restricted imports. After that date, however, a mandatory new regime (‘the COMB’) was set by the EU which guaranteed 12 African, Caribbean and Pacific countries (‘ACP’) a tariff-free quota, with the next preferential quota going to other countries which had acceded to the Lomé Convention with the EU. Third-country bananas were hit with a progressive tariff. The official justification was that this represented a form of development assistance to the

86 The comparison is slightly complicated by the fact that the ONS data for 1988 combines Belgium and Luxembourg as a single trading entity (‘the Belgium-Luxembourg Economic Union’), but the contribution of Luxembourg on its own is unlikely to have been material and the figures are treated as referring to Belgium.

87 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), page 37.

88 TheCityUK “Analysing the Case for EU Membership” (2014), page 33.

“It looks like a display of agri-diplomacy by the EU.”

beneficiaries, although since they were mainly former European colonies it looks like a display of agri-diplomacy by the EU (French overseas departments also benefited). Austria, Finland and Sweden were obliged to adopt this tariff structure when they entered the EU in 1995.

Bananas are not a major commodity for any EU member, but collectively the EU represents one of the two top importers globally, buying about a quarter of the world total, and this new regime distorted the world market. It was also obviously in violation of the WTO rules, as was swiftly confirmed by WTO rulings following complaints filed by the penalised banana-exporting countries. However, the EU response was confined to minor tweaking of the quota provisions, and these changes were still not compliant with the rulings. As a result, the dispute escalated into a major trade war with the US and Latin America involving retaliatory sanctions on other EU exports. Eventually, in 2009, the EU surrendered. What had been achieved?

Due to the formerly heterogeneous banana market, the welfare effects of the EU's common organisation of the market in bananas vary widely among EU member states... France and Greece benefited from the banana market regime shift, whereas the two other banana-producing countries - Portugal and Spain - lost marginally. Considered from an aggregate European view, the results show that the aggregate welfare loss by the consumers in the EU totals ecu 2073m over the period 1993-2000. The gain for the international traders on the EU market and the EU producers amounts to ecu 937m. The national budgets of the EU member states gained ecu 1036m due to the increase in tariff income. Consequently, in total about ecu 100m (or 0.001 per cent of GDP) welfare were lost in the European Union, due to the COMB which was not in conformity with WTO law from the beginning.⁸⁹

The EU is still pursuing a form of ‘banana boat diplomacy’ through the EU-CARIFORUM Economic Partnership Agreement of 2008. Because the preferential deal it offers to Caribbean banana exporters is part and parcel of a wider development package, it falls outside the WTO rules that led to the original Banana War.⁹⁰ (The wider context of such trade is discussed further in Section 13).

The EU regards its competence over trade policy as a vital element in establishing its presence as a major world power. Commission documents are apt to talk about ‘our exports’ and ‘our firms’, even when not being explicit about the underlying motive:

Our aim is for the EU to play a role in foreign affairs and global management commensurate with our economic weight. Trade policy has its own distinct economic logic and contribution to make to the external action of the Union. Trade and trade policy reinforce the EU's international influence and concerted action at EU level should pursue and support EU economic interests in third countries. So the Union's trade and foreign policies can and should be mutually reinforcing.⁹¹

89 Journal of Common Market Studies, Vol 40, No 3 “Welfare Effects of the EU's Common Organisation of the Market in Bananas for EU Member States” (2002), Badinger, Breuss and Mahlberg, page 524.

90 Journal of Contemporary European Research, Vol 10, No 2 “The EU-Caribbean Trade Relationship Post-Lisbon: The Case of Bananas” (2014), C. LaForce, pages 266-279 at page 271.

91 COM(2010) 612 “Trade, Growth and World Affairs: Trade Policy as a Core Component of the EU's 2020 Strategy”, page 15.

“Everything had an idealistic tint. Trade policy was not solely about something as vulgar as trade.”

In the immediate aftermath of the end of the Cold War, EU trade policy ostensibly concentrated on ‘development’, i.e. bringing less-developed nations up to standard so they could participate fully and fairly in a globalised economy. Everything had an idealistic tint. Trade policy was not solely about something as vulgar as trade, as the then EU Trade Commissioner Pascal Lamy explained:

We believe in trade – indeed our economy depends on it. But we also need to harness the enormous power of globalisation in the interests of all, because our complex trade policy is not an end in itself. We want to improve our quality of life and promote European values, and we are (there is a consensus on that in Europe) determined to avoid a stark choice between economic growth on the one hand, and environmental and social protection, for example, on the other. Indeed, that is the basis to the model of sustainable development which we support, not just for Europe, but also for the world as a whole.⁹²

This approach followed two lines. The first was an attempt to persuade less-developed nations to adopt the EU’s standards:

Although developing states could perhaps benefit from more trade, EU measures aimed to improve regulatory systems, ensure compliance with TRIPS,⁹³ standards and safety measures, in other words, exporting its preferred regulatory system and in essence ensuring developing producers had to face similar regulatory constraints as EU producers, and that EU investments would be protected by stable legislation (material interests).⁹⁴

Less-developed nations were supposed to develop without a cost advantage in the international market. At the same time, and somewhat in contradiction, the EU also tried to encourage the formation of regional blocs, on the grounds that this provided economies of scale and stability.⁹⁵ What happens if the less-developed countries, flexing their new might as a regional bloc, decide that they do not want to follow the EU’s rules? A good example here is MERCOSUR, the Mercado Común del Sur (Common Market of the South).⁹⁶ The EU did a great deal to foster its formation.⁹⁷ But despite signing a Framework Agreement in 1995, the EU has still not managed to conclude a trade deal with its Latin American counterpart.

When Peter Mandelson was the EU Trade Commissioner, he launched the ‘Global Europe’ policy in 2006, linking trade deals to improving competitiveness at home. That is similar in objective to Edward Heath’s motive for taking Britain into the EU in the first place. The Mandelson approach remains at the rhetorical heart of EU strategy:

92 “Is the enlarged EU an economic superpower?” Speech by Pascal Lamy at St Anthony’s College, Oxford, 10 March 2004.

93 ‘TRIPS’ are Trade Related Intellectual Property Rights.

94 Journal of Contemporary European Research, Vol 9, No 4 “From Idealism to Realism? EU Preferential Trade Agreement Policy” (2013), García, pages 521–541 at page 530.

95 Journal of Contemporary European Research, Vol 9, No 4 “From Idealism to Realism? EU Preferential Trade Agreement Policy” (2013), García, pages 521–541 at page 530.

96 Original members (1991): Argentina; Brazil; Paraguay; Uruguay. Paraguay’s membership was suspended in June 2012 for alleged breach of the requirement for democratic government following the impeachment of the President by the Senate. This removed a veto on Venezuela becoming a full member in July 2012. Bolivia, Chile, Columbia, Ecuador and Peru are associate members. Mexico and New Zealand have observer status.

97 Journal of Contemporary European Research, Vol 9, No 4 “From Idealism to Realism? EU Preferential Trade Agreement Policy” (2013), García, pages 521–541 at page 528.

“The EU has shown greatest interest in negotiating with other parties just after they have been contacted by the US.”

The over-riding aim of European economic policy is faster growth. Only sustained economic growth can create more jobs and safeguard our welfare state. But lifting the growth potential of our economies will be a major challenge... Open economies tend to grow faster than closed economies. Trade raises EU growth by fostering our efficiency and innovation. It boosts foreign demand for our goods and services. Open trade also gives EU consumers access to a wider variety of goods at lower prices. Europe’s openness to foreign direct investment (FDI) increases our competitiveness. Equally, the ability of our firms to invest abroad enables them to grow globally and create jobs both at home and abroad.⁹⁸

This was supposed to be a more pragmatic, realist stance. Greater impetus has been given to striking separate trade deals since the collapse and stalling of the multilateral Doha Round talks organised by the WTO. Of course, a contributory factor in that collapse has been EU intransigence over agriculture. It is also noticeable that the EU has shown greatest interest in negotiating with other parties just after they have been contacted by the US.⁹⁹

So the EU has pursued a policy of negotiating trade deals with the emerging economic powers of the world, in the expectation that this would deliver a form of shock therapy for Europe. It is recognised that, for the foreseeable future, the EU will be a low-growth region and trade is a simple mechanism for delivering growth while public finances are constrained following the Eurozone crisis.¹⁰⁰ Yet this policy is just as much about asserting the EU’s standing, against home governments as well as outsiders. It is not a coincidence that the latest trade policy document is entitled “Trade, Growth and World Affairs” or that it is aimed at an internal, as well as external, audience:

Despite the same trade policy, the same external conditions and, for many of them, the same currency, the trade performances of member states are extremely diverse... Competitiveness must therefore begin with the right policies at home... The solution often lies in domestic reforms in education, labour market, innovation, and more broadly all policies that influence the business environment. This is the aim of the Europe 2020 strategy, an aim that can certainly be achieved: those countries that have undertaken structural reforms have already seen a rebalancing of their current account.¹⁰¹

The Commission has taken to publishing documents written in a petulant tone: “Those countries that do not have preferential access to our market stand to see their competitive position eroded if they do not take action by negotiating and signing free trade agreements with us.”¹⁰² Quite how persuasive foreign governments find this is unclear. For all its self-proclaimed new, ruthless streak, the EU is still pursuing mixed objectives in its trade negotiations.

It is also failing to pursue them with much competence. An obvious example is the negotiations with India. Here, one might have thought, was a market

98 COM(2010)612 “Trade, Growth and World Affairs: Trade Policy as a Core Component of the EU’s 2020 Strategy”, page 4.

99 Journal of Common Market Studies, Vol 51, No 4 “European Union–India Trade Negotiations: One Step Forward, One Back?” (2013), Khorana and Garcia, pages 684–700 at page 695.

100 EU Commission contribution to the European Council of 7/8 February 2013 “Trade: a key source of growth and jobs for the EU”, page 1.

101 EU Commission contribution to the European Council of 7/8 February 2013 “Trade: a key source of growth and jobs for the EU”, pages 2–3.

102 EU Commission “Why the European Union is an essential trade partner” (2012), page 9.

“The EU has insisted on negotiating for a ‘deep’ free trade agreement embracing a far wider range of topics than any Indian government has been prepared to concede.”

to which the EU would be keen to agree favourable access. Various policy documents have identified India as an example of the “*large emerging economies*” with which the Commission wants to sign free trade agreements.¹⁰³ Supporters of the EU like to cite the benefits that an EU deal with India might bring Britain as an argument against exit.¹⁰⁴ The links between the two sides are already quite strong: the EU is India’s largest export destination, buying about 15 per cent of its goods and services, and is the source of 25 per cent of its foreign direct investment. The Indian economy is already mainly orientated towards services, which make up 57 per cent of its GDP.¹⁰⁵

Equally, however, India and Europe are at very different levels of development. There is a considerable range of subjects on which the two parties could disagree: the Indian tradition of protectionism in services, agriculture and foreign investment; the European demands for protection of intellectual property rights (restricting Indian production of generic drug substitutes and alcohol), more transparent public procurement and stricter employment conditions (particularly to stop Indians moving to Europe to work on short-term contracts).¹⁰⁶

This is a situation where the obvious way forward would be to agree a short, ‘shallow’ agreement covering limited areas of common ground. This would serve as a starting point for future cooperation. Not least, because as successive governments have made plain, that is the only type of agreement in which the Indians have any interest.¹⁰⁷ Yet the EU has insisted on negotiating for a ‘deep’ free trade agreement embracing a far wider range of topics than any Indian government has been prepared to concede. Furthermore, the negotiators have sought to expand this wide field to include issues such as human rights, labour law and environmental standards. The European Parliament has used the trade discussions as an opportunity to instruct India to negotiate with Pakistan over Kashmir.¹⁰⁸ A decision to ban the import of Indian mangoes, aubergines and cooking leaves in May 2014 after the discovery of fruit flies in a consignment of vegetables did not do much to win friends either, given that half of India’s fruit exports go to EU countries (the edict on mangoes was lifted in January 2015, but the other bans remain in place.¹⁰⁹)

The EU’s policy on human rights does not look joined-up. The EU has both tried to impose sanctions on Burma/Myanmar and defended the interests of French companies that invested in the country while it was run by a military junta. It demanded human rights provisions in its dealings with the Association of Southeast Asian Nations (ASEAN) and then backed down completely. A harsh critic from Delhi might point out that there is a higher turnout in elections to

103 EU Commission contribution to the European Council of 7/8 February 2013 “Trade: a key source of growth and jobs for the EU”, page 7.

104 For example: TheCityUK “Analysing the Case for EU Membership” (2014), page 28.

105 The Diplomat “What’s Holding Back The India-EU FTA?” (17 June 2014), Singh and Priya, accessed 16/02/2015 at: <<http://thediplomat.com/2014/06/whats-holding-back-the-india-eu-fta/>>.

106 Indian distillers produce something they call ‘whisky’ but because it is not made in Scotland and is made from molasses, not grain, it falls foul of the EU’s ‘geographical indicators’.

107 Journal of Common Market Studies, Vol 51, No 4 “European Union–India Trade Negotiations: One Step Forward, One Back?” (2013), Khorana and Garcia, pages 684–700, at pages 690–695.

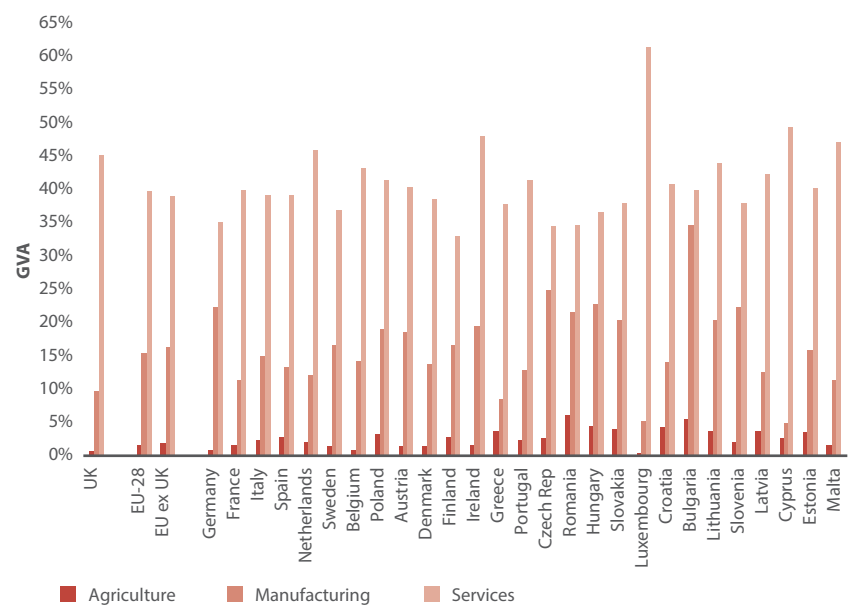
108 European Parliament resolution of 11 May 2011 on the state of play in the EU-India Free Trade Agreement negotiations.

109 BBC News “Ban on Indian mango imports to EU to be lifted”, accessed 17/02/2015 at: <www.bbc.co.uk/news/business-30898966>.

the Lok Sabha than to the European Parliament – and might also ask who ever voted for the EU Commission.¹¹⁰ It would not be unreasonable of the Indian Government to wonder how seriously the EU wants a deal. Discussions began in 2007 and at least four deadlines have been missed since then.¹¹¹

Some commentators might applaud the EU’s linkage between trade policy, human rights and other social protection issues such as the environment. The EU stance could be cited as an excellent example of how to use hard economic power to make the world a more civilised place. Those points are valid. Unfortunately, it is not the argument which supporters of the EU generally make, at least not to British business. The CBI does not tell us that Britain has to cede sovereignty over trade to the EU in order to solve the Kashmir dispute or to bestow democracy on the Burmese. Besides, the hard economic might of the EU looks a little soft when we remember that it was forced to back down and delete any mention of human rights when a 1998 summit was threatened with a boycott from Malaysia.¹¹² (Malaysia was then the world’s 32nd largest economy.)¹¹³

Figure 2.xiii: Gross value added by sector for EU-28 countries, 2013



Source: see Annex C

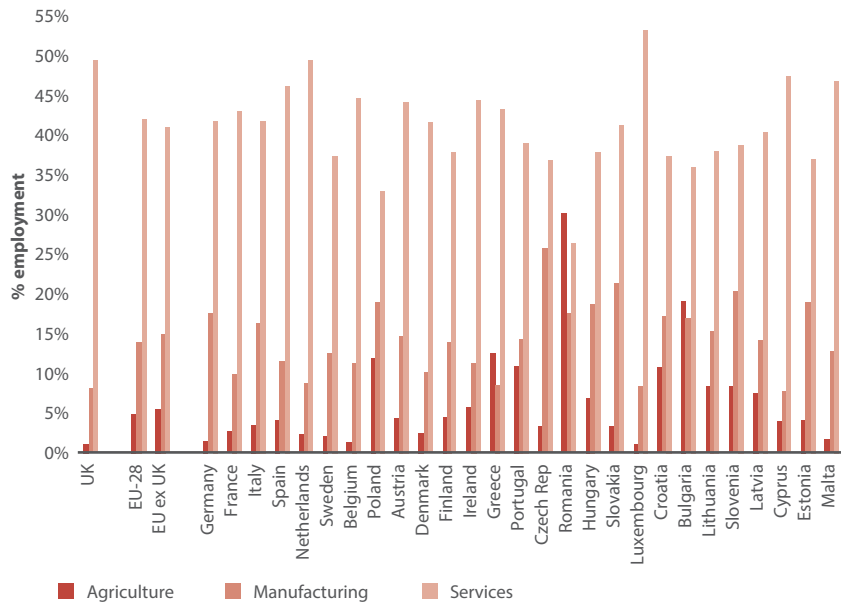
110 In the 2014 Indian general election, average turnout was 66.38 per cent, the highest ever in the history of an Indian general election. By contrast, turnout at the 2014 European Parliament election was just 42.54 per cent, an all time low.

111 Journal of Common Market Studies, Vol 51, No 4 “European Union–India Trade Negotiations: One Step Forward, One Back?” (2013), Khorana and Garcia, pages 684–700, at pages 690–695.

112 Journal of Contemporary European Research, Vol 6, No 4 “Fears and Strategies: The European Union, China and their Free Trade Agreements in East Asia” (2010), Garcia, pages 496–513 at page 499.

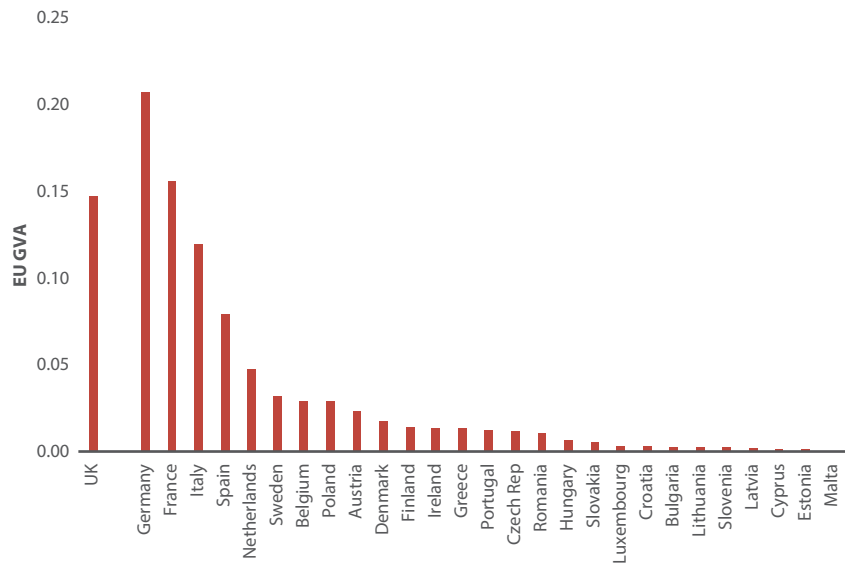
113 IMF data at purchasing power parity.

Figure 2.xiv: Employment by sector for EU-28 countries, 2013



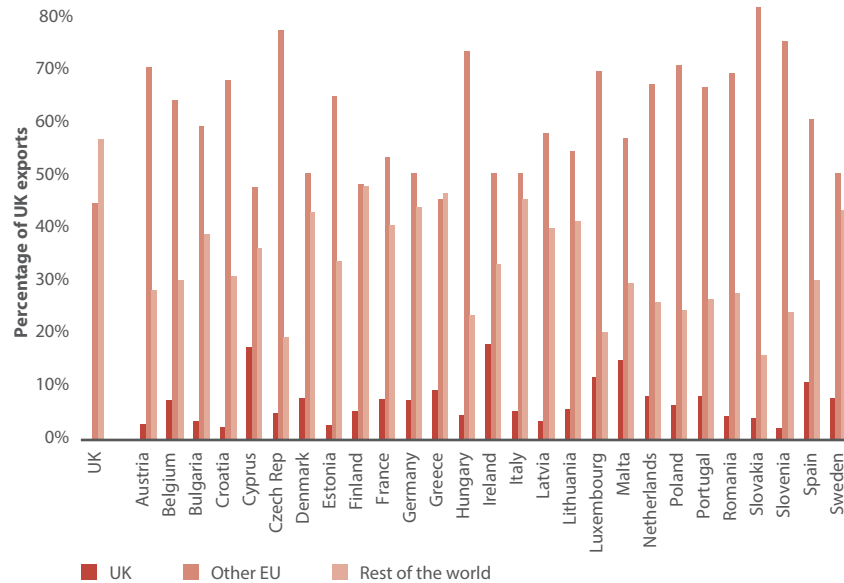
Source: see Annex C

Figure 2.xv: Contribution of EU-28 countries to EU gross-valued added, 2013



Source: see Annex C

Figure 2.xvi: Destination of exports for all EU members, 2012



Source: see Annex C

2.2.3 The advantages of EU trade leadership have been exaggerated

When Britain joined the EEC in the 1970s, it was told that its economy had an “essential similarity” with those of the EU-6.¹¹⁴ Ignoring whether that was true at the time, it is worth comparing the basic structure of the 28 member economies today.

Figure 2.xiii analyses each country for the importance of three sectors, agriculture, manufacturing and services, measured in terms of the share of national Gross Value Added (GVA) they deliver. Figure 2.xiv makes the same comparison in terms of the proportion of the national workforce they employ. Notional combined equivalents are given for the EU-28 and the rest of the EU excluding Britain. To round off the analysis, Figure 2.xv provides a crude measure of the bargaining power of each country in the EU based on the proportion it contributes to the aggregate EU-28 Gross Value Added.

From these charts it can be seen:

- Agriculture is far more important to the other EU members in relative terms than it is to Britain, employing six times as much of their workforce, and contributing two times as much in GVA (factors which could also be taken to imply that British agriculture makes more efficient use of labour);
- Although agriculture might be small in absolute terms, the stakes involved are much higher for other member states than for Britain, so when trade in agricultural products is under discussion, they have a greater incentive to have their way;
- Manufacturing is more valuable to all of the EU-28 than agriculture in absolute terms, and somewhat more important to other EU members than it is to Britain in relative terms, employing two times as much as their workforce,

114 HM Government “The United Kingdom and the European Communities” (1971, Cmnd. 4715), pages 15–16.

“Their priorities would not coincide with an ideal standalone wish-list for Britain.”

and contributing about 1.5 times as much in GVA (again, the proportions suggest that British manufacturers punch above their weight);

- This suggests that other member states would be likely to give greater weight to manufacturing in trade negotiations than Britain;
- The British economy has a far greater dependence on services than the rest of the EU in aggregate;
- The other EU members with a similar services dependence to the British have negligible influence in terms of their GVA contribution – the other big hitters have a relatively greater dependence upon agriculture and manufacturing.

This is significant because agriculture, manufacturing and services are the three major battle grounds in any free trade treaty. Negotiators would represent ‘the EU’ as an amorphous bloc. Their priorities would be set by what constitutes the overall EU average, and by the bargaining power of any country influential enough to dictate what would be on their agenda. Figures 2.xiii–xv suggest that their priorities would not coincide with an ideal standalone wish-list for Britain.

There is another, far more basic, reason why the EU may not be in complete sympathy with British objectives. Figure 2.xvi compares the destination of the exports of all EU members for the most recent available year. Thus far we have discussed Britain, which sells around 44 per cent of its exports to other EU members, and have queried the commercial wisdom of such high dependency. Yet Britain has one of the lowest proportions of exports sold within the EU of any member state. Even Germany, the great exporter, derives most of its overseas trade from other EU members. On average, including the UK, 63 per cent of EU member exports stay within the EU. That proportion falls only slightly to 57 per cent if the UK is treated as a non-member.¹¹⁵ The Czech Republic, Luxembourg and Slovakia sell over 80 per cent of their exports to other EU states.

If you add what Britain sells to the EU to sales to countries with which the Commission is handling trade negotiations, it comes to over 80 per cent of our total exports of goods and services.¹¹⁶ However, the claim that ‘over 80 per cent of exports depend on deals delivered by the EU’ has to be taken with some scepticism.

The largest component is, of course, the 44 per cent of exports which go direct to the other EU-28 – a not inconsiderable amount, but hardly a reflection of the brilliance with which European officials negotiate deals on Britain’s behalf. The total only exceeds 80 per cent if we include exports to countries with which the EU has commenced, but not managed to complete, trade deals. That segment covers around 25 per cent of British exports.

So, in reality, the added-value of EU trade deals, over and above what is achieved by the mere fact of membership of the EU, comes to around 10 per cent of British exports. Somehow, without the benefits of EU trade negotiators, British businesses are managing to sell about 45 per cent of their exports to third countries without a current free trade deal being in place – about the same as they sell to the EU.

There is further reason to be sceptical about this ‘unfinished business’ category, negotiations with countries which buy around 25 per cent of British exports. Almost all the British exports covered in fact go to the USA, a country which we have always managed to sell to.

115 Source: Underlying data for Chart 2.xvi.

116 TheCityUK “Analysing the Case for EU Membership” (2014), page 28.

“Somehow, without the benefits of EU trade negotiators, British businesses are managing to sell about 45 per cent of their exports to third countries without a current free trade deal being in place.”

At present, the added-value of EU trade negotiation consists of three potential deals:

- The Trade in Services Agreement (‘TiSA’) being negotiated by the EU-28 and 22 countries, between them responsible for 70 per cent of world trade in services – the discussions have only recently started and there does not appear to be an estimate of the value of a successful deal, but it would obviously be considerable;
- The Transatlantic Trade and Investment Partnership (‘TTIP’) being negotiated between the EU-28 and the US – studies suggest that this could add as much as €119bn (0.9 per cent) to the GDP of the EU¹¹⁷ or £10bn (0.35 per cent) to the GDP of the UK;¹¹⁸
- The Comprehensive Economic and Trade Agreement (‘CETA’) now concluded between the EU-28 and Canada – studies suggest that this could add around €12bn (0.1 per cent) to the GDP of the EU¹¹⁹ and the Government estimates that this is equivalent to £1.3bn (0.1 per cent) for the UK.¹²⁰

These deals would indeed deliver worthwhile benefits for British business, but only CETA has been signed (albeit not ratified). All three negotiations have run into controversy.

The European Parliament has already vetoed a number of international trade treaties, having rejected ACTA (the Anti-Counterfeiting Trade Agreement) in 2012. That agreement intended to harmonise international standards for the enforcement of intellectual property rights, including (but not limited to) the internet. Intense lobbying and some public demonstrations followed from a number of pressure groups. Opposition was motivated by a belief that ACTA violated human rights, such as freedom of expression and privacy, and also because the Commission had been secretive over its involvement in the negotiations. Online ‘hacktivist’ groups were at the forefront of the campaign.¹²¹

TiSA has been attacked for the secrecy in which it is being negotiated. The suggestion is that it represents a covert attempt to both deregulate the financial sector and force the privatisation of public services.¹²² TTIP has also been criticised as secret diplomacy and on the same grounds as ACTA (often by the same

117 Centre for Economic Policy Research “Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment” (March 2013).

118 Centre for Economic Policy Research “Estimating the Economic Impact on the UK of a Transatlantic Trade and Investment Partnership (TTIP) Agreement between the European Union and the United States” (March 2013).

119 EU/Government of Canada Joint Study “Assessing the costs and benefits of a closer EU-Canada economic partnership” (2008).

120 See Downing Street press release (18 October 2013), accessed 18/02/2015 at: <www.gov.uk/government/news/government-welcomes-historic-eu-canada-free-trade-agreement>.

121 See for example: Free Knowledge Institute “ACTA: A Global Threat to Freedoms (Open Letter)” (December 2009), accessed 19/02/2015 at: <<http://freeknowledge.eu/acta-a-global-threat-to-freedoms-open-letter>>.

122 The process has been accompanied by a release of information through Wikileaks. See comments by a New Zealand law professor, accessed 19/02/2015 at: <<https://wikileaks.org/tisa-financial/analysis.html>>. For example, the Australian Fair Trade & Investment Network, accessed 19/02/2015 at: <<http://aftinet.org.au/cms/the-drum-tisa-leak-dr-ranald-2014>>. See Public Services International, a lobby group for trade unions, accessed 19/02/2015 at: <www.world-1psi.org/sites/default/files/documents/research/en_psi_tisa_policy_brief_july_2013_final.pdf>.

“That is hardly a ringing endorsement of the competence of the EU in handling trade negotiations on Britain’s behalf.”

lobbying groups).¹²³ Principally, opposition has focused on the investor-state dispute settlement provisions, alleging that these would allow ‘corporations’ to ride roughshod over democracy and veto legislation that affects their shadowy financial interests.¹²⁴ The fear has been expressed that, by encompassing government procurement, the treaty opens a back-door to the privatisation of the NHS in Britain and that it would foist both fracking and genetically-modified food on the UK.¹²⁵ Although attracting less publicity, CETA nevertheless risks being derailed by a separate row over visa rights for Bulgarian and Romanian workers.¹²⁶

Mostly, these objections are motivated by a simple opposition to ‘globalisation’ and in some quarters even paranoia about a presumed ‘neo-liberal agenda’ (not something traditionally associated with the EU). The rage directed at ‘undemocratic’ investor-state dispute tribunals overlooks that these are, in the main, quite standard elements of any trade deal, to handle the occasional tendency for governments to expropriate the assets of foreigners. It is sensible to establish an international code of conduct to govern these situations. For that reason, the EU generally requires investor-state dispute settlement provisions in all of the trade agreements which it negotiates. As does everyone else. If the complaint is about unelected tribunals overturning democratic parliaments, the anti-globalisation protesters have not noticed that the ECJ has been doing that for at least 50 years.

The European Commission has defended itself against such attacks.¹²⁷ For the immediate purpose of our discussion, it is irrelevant whether the criticisms are valid. The fact that such accusations are being made, however, is a shocking reflection of how remote and out-of-touch the EU has become – and of how bad it is at explaining its activities. That is hardly a ringing endorsement of the competence of the EU in handling trade negotiations on Britain’s behalf.

In many ways the EU has only itself to blame for this mess. It has persistently followed a corporatist social model that has tried to ‘engage’ with special interest groups. So-called ‘civil society organisations’, NGOs, pressure groups and campaigners have been involved directly in the decision-making process to lend a form of pseudo-accountability. The EU has often been funding groups

123 For example: The Guardian “The lies behind this transatlantic trade deal”, G. Monbiot (2 December 2013), accessed 19/02/2015 at: <www.theguardian.com/commentisfree/2013/dec/02/transatlantic-free-trade-deal-regulation-by-lawyers-eu-us>. See also: Electronic Frontier Foundation “Transatlantic Civil Society Declaration: Leave Copyright and Patent Provisions Out of TAFTA” (18 March 2013), accessed 19/02/2015 at: <www.eff.org/deeplinks/2013/03/transatlantic-declaration-leave-copyright-patent-issues-out-tafta>.

124 For example: Guardian “The TTIP deal hands British sovereignty to multinationals”, O. Jones (14 September 2014), accessed 19/02/2015 at: <www.theguardian.com/commentisfree/2014/sep/14/ttip-deal-british-sovereignty-ukip-treaty>.

125 See for example: The New Statesman’s Stagers blog “How the EU is making NHS privatisation permanent”, B. Cooper (2 December 2013), accessed 19/02/2015 at: <www.newstatesman.com/politics/2013/12/how-eu-making-nhs-privatisation-permanent>, The Huffington Post Green blog “The TTIP: A Very Scary Proposal” (29 October 2014), C. Lewis, accessed 19/02/2015 at: <www.huffingtonpost.com/courtenay-lewis/the-ttip-a-very-scary-proposal_b_6069532.html>.

126 For example: The Huffington Post “Romania Threatens To Scuttle Canada-EU Trade Deal Over Visas” (25 October 2013), accessed 19/02/2015 at: <www.huffingtonpost.ca/2013/10/25/romania-canada-eu-trade-deal_n_4163328.html>.

127 On CETA see European Commission “CETA questions and answers”, accessed 20/02/2015 at: <<http://ec.europa.eu/trade/policy/in-focus/ceta/questions-and-answers/>>; on TTIP see European Commission “TTIP questions and answers”, accessed 20/02/2015 at: <<http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/questions-and-answers/>>; and on TISA see European Commission “TISA questions and answers”, accessed 20/02/2015 at <<http://ec.europa.eu/trade/policy/in-focus/tisa/questions-and-answers/>>.

“The US appears to be able to conclude negotiations faster than the EU. That cannot be explained by any supposed ‘neo-liberal’ ideology which is said to ignore wider social issues.”

to enable them to lobby the Commission itself.¹²⁸ It is hardly surprising that some of these groups have started to take themselves seriously and have turned round and bitten the hand that feeds them.

The experience of ACTA, CETA, TiSA and TTIP raises serious questions about the ability of the EU to deliver major high-value trade deals in the future. Appendix C provides a comparison of the trade policy effectiveness of three sets of negotiators: the USA, the EU and Canada. Strictly, a judgement of how ‘economic super-powers’ behave should have involved China, but the Government of the People’s Republic does not operate with quite the same checks and balances, so that would not be a fair comparison. The economies of the US and ‘the EU’ are about the same size and, in both cases, trade deals have to be ratified by an elected assembly which may not necessarily share the same political outlook as the administration. Canada is a useful comparison precisely because it is a much smaller economy, and in terms of cultural tradition it falls mid-way between the two.¹²⁹

The immediate impression gained from Appendix C is that all three negotiators appear to have reached deals with much the same counter-parties, including each other. Perhaps more importantly, they have failed to reach deals with the same countries, China and India being conspicuous by their absence. If it were true that being part of the EU-28 leads to more effective trade negotiations, Appendix C ought to show that the EU is providing us with a superior ‘gold standard’ service – and at the very least, delivering better results than Canada manages on its own. This does not seem to be the case.

The US appears to be able to conclude negotiations faster than the EU. That cannot be explained by any supposed ‘neo-liberal’ ideology which is said to ignore wider social issues. All three powers (the US, EU and Canada) include requirements as to labour conditions and environmental standards in their trade treaties (although the Canadians prefer to place them in parallel agreements, presumably for the sensible reason that this prevents a dispute in one area holding up progress on the others). These issues have an obvious impact on the competitiveness of products entering their markets. Further, speed of agreement does not necessarily translate into a trade deal coming into force any earlier. The Democratic Party has become increasingly influenced by ‘anti-globalisation’ arguments, and this has made it harder for an administration of either party to get a treaty through Congress.

One other observation is worth making: the EU has not concluded any investment treaties. Prior to the Lisbon Treaty, the EU’s competency over investment was unclear. (That did not, of course, prevent the *acquis* from being used to override investment treaties signed by member states prior to their accession.)¹³⁰ There is clearly some value in having investment treaties, because otherwise the US and Canada would not have devoted so much effort to negotiating them. Supporters of the EU might say that it would be beneficial to have more EU involvement in this area, with more investment treaties potentially signed. Equally, it could be cited as an area where Britain could have lost out in the past by ceding sovereignty over trade to the EU, divorcing it from investment. The EU has now begun to negotiate stand-alone investment deals, initially with China.

It would be convenient to reduce the long list of treaties in Appendix C to a simple quantitative comparison. But not all trade deals are equal. A quick

128 See Institute of Economic Affairs “Euro Puppets: The European Commission’s remaking of civil society”, Snowdon (2013) for a detailed account of how the EU has sought to construct a clientele of friendly pressure groups.

129 In 2013 it ranked 16th for GDP, measured in current international dollars at purchasing power parity (Source: World Bank).

130 See Appendix C.

measure would be to rank all countries by their GDP at purchasing-power parity and award the most ‘points’ for a treaty reached with the largest economy, the next most ‘points’ to the second-largest and so on through all 188 countries and territories which have a detectable economy. A deal between Country A and Country B would award points to Country A based on Country B’s ranking and vice versa. To avoid unfairly handicapping the EU, and because they are genuinely less valuable, investment treaties would be scored at half the equivalent points of a full free trade agreement. Investment treaties with individual EU members are also left out, as is the WTO Agreement itself.

Table 2.xvii presents such a comparison. If attention is confined solely to free trade agreements currently in force, it confirms the line from supporters of the Commission that the EU has managed to land a large number of treaties with outside countries. But that misses the wider perspective. Canada emerges as the ‘overall winner’, with the most effective negotiating team.

Table 2.xvii: Comparison of trade negotiations conducted by the US, the EU and Canada

	US	EU	Canada
Investment Agreements in force			
Countries	31	-	21
Points	1,460	-	1,190
Free Trade Agreements in force			
Countries	18	30	14
Points	2,347	3,351	1,785
Subtotal			
Countries	49	30	35
Points	3,807	3,351	2,975
Agreements reached but not yet in force			
Countries	8	5	49
Points	1,286	581	5,538
Total			
Countries	57	35	84
Points	5,093	3,932	8,513

Source: see Annex C

A supporter of the EU might object that such an ordinal ranking unfairly penalises the EU by undercounting the true value of its negotiations. Certainly, the approach provides no assessment of each separate tariff line in any individual treaty and its economic importance to the parties. Yet, if anything, Table 2.xvii is too kind to the EU. A significant proportion of its score derives from agreements with small economies in its close vicinity.¹³¹ For example, if every one of the 15 countries or territories in the ‘Euro-Mediterranean Free Trade Area’, which the EU has been trying to construct since 1995, were to sign a free trade agreement, they would have a combined GDP at purchasing-power parity roughly equivalent to Germany.¹³² That achievement would still be dwarfed

131 Source: Appendix C.

132 Source: World Bank data.

“US and Canadian negotiators seem to take a more focused approach to why they are there and what they can expect to achieve.”

by the value to Canada of its membership of the North American Free Trade Agreement (NAFTA), a single deal. The EU has chiefly used trade negotiations as a mechanism for assisting its own enlargement and as a means of playing power-politics, to bolster its regional influence. In contrast, US and Canadian negotiators have been more interested in striking deals with economic merit. Which team has best served its own citizens?

The trade agreements entered into by the US, the EU and Canada contain very similar provisions and often identical wording. That is because each power has its own preferred pro forma text for a treaty and these are, in turn, based on templates drafted by the OECD. The serious and distinctive content of a treaty is generally confined to schedules to the main text which describe:

- What categories of goods are covered by special provisions (invariably agricultural produce);
- The rate at which tariffs on different categories of goods will be reduced or eliminated;
- The quota of goods in each category which the parties would be allowed to export at the new lower tariff before attracting the old higher charge (typically, the quota rises over time as the tariff falls, to dampen the impact of foreign competition on domestic industries and give them time to adjust);
- Which services fall outside the general opening up on equal terms to operators in either country (financial services is always reserved for special treatment, and the EU likes to include specific rules for ‘audio-visual’ i.e. protection of French films).

Negotiation largely consists of haggling about the answers to these four bullet points. Where the EU is unusual is that its preferred stance is to aim for a ‘deep and comprehensive’ agreement, i.e. one which not only covers the widest possible range of goods and services but which also includes strictly non-mercantile matters. This goes beyond the usual symbolic trappings of discussion fora and cultural exchange, and strays into serious strategic issues such as whether the other party would sign up to the Nuclear Non-Proliferation Treaty or accept the jurisdiction of the International Criminal Court.¹³³ The irony is, of course, that the EU is unable to sign either arrangement itself. US and Canadian negotiators seem to take a more focused approach to why they are there and what they can expect to achieve.

2.2.4 The WTO is of more fundamental significance than the EU

One other point apparent from any review of free trade agreements is that they are all expressed to be supplemental to the WTO Agreement of 1994, and its sector-specific annexes, and to be applied subject to WTO rules. Those rules lay down a number of strict principles:

¹³³ For example: EU-Central America Association Agreement (2012) Part II, Article 15 and the EU-Moldova Association Agreement (2014) Title II, Article 6.

“Whatever arrangements are reached remain subject to policing by the WTO.”

- Non-discrimination (1): every WTO member must grant ‘most favoured nation’ (MFN) treatment to the goods, services and intellectual property of every other WTO member;¹³⁴
- Non-discrimination (2): every WTO member must grant imported goods and services the same treatment as domestic products (to prevent non-tariff barriers impeding trade);¹³⁵
- Bindings: once a WTO member has committed itself to a particular tariff level for a particular category of product, it cannot subsequently charge above that level on the products of a WTO member without their agreement;¹³⁶
- Transparency: all WTO members are required to publish their trade regulations and be subject to periodic review from the WTO;¹³⁷
- Reciprocity: WTO members are permitted to enter ‘regional trade agreements’ to create customs unions or free trade areas among themselves provided that, inside the wall, there is no discrimination and all countries outside the wall are treated equally – which covers both blocs such as the EU and free trade agreements in general;¹³⁸
- Preference: WTO members are permitted to establish ‘preferential trade arrangements’ which confer unilateral advantages on less developed countries;¹³⁹
- International standards: WTO members are obliged to recognise the regulations issued by international standard-setting bodies as sufficient qualification for MFN treatment for imported goods, in order to prevent technical standards (including over hygiene matters) being used as a covert barrier to trade;¹⁴⁰
- State Aid: other than in specific sectors covered by their own agreements, such as agriculture,¹⁴¹ WTO members are not allowed to operate ‘prohibited subsidies’ or ‘actionable subsidies’ which create injury to a domestic industry of another country, nullify the benefits of WTO membership or cause ‘serious prejudice’ to the interests of another WTO member (the WTO rules on subsidies are considered in more detail in Section 30);¹⁴²

134 GATT 1947, Part I, Article I, incorporated into GATT 1994 as Annex 1A to the WTO Agreement 1994.

135 GATT 1947, Part II, Article III, incorporated into GATT 1994 as Annex 1A to the WTO Agreement 1994.

136 Understanding on the Interpretation of Article II.1(b) of GATT 1994, incorporated into GATT 1994 as Annex 1A of the WTO Agreement 1994.

137 Annex 3 to the WTO Agreement 1994.

138 GATT 1947, Part III, Article XXIV, incorporated into GATT 1994 as Annex 1A to the WTO Agreement 1994.

139 GATT 1947, Part IV, Article XXXVI, incorporated into GATT 1994 as Annex 1A to the WTO Agreement 1994.

140 Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade, both made binding by Article II of the WTO Agreement 1994.

141 See the WTO Agreement on Agriculture, incorporated into GATT 1994 as part of Annex 1A to the WTO Agreement 1994.

142 See the WTO Agreement on Subsidies and Countervailing Measures, incorporated into GATT 1994 as part of Annex 1A to the WTO Agreement 1994.

“Britain is, in theory, a member of the WTO in its own right, but this is somewhat meaningless given that we are obliged to follow a common EU line.”

- WTO members are allowed to diverge from these principles in the case of retaliatory action against breach by another country,¹⁴³ measures to safeguard public health, animals and plants and in an emergency to protect their economy.¹⁴⁴

This leaves a country considerable flexibility in framing its trade policy, but only in the direction of reducing tariffs, increasing quotas or granting greater access to its markets in favour of another country prepared to reciprocate. Whatever arrangements are reached remain subject to policing by the WTO.

Britain is, in theory, a member of the WTO in its own right, but this is somewhat meaningless given that we are obliged to follow a common EU line (in contrast to our membership of, for example, NATO). This leads to some rather odd results, as one commentator noted while reporting on the failure of talks at a WTO Conference in Seattle in 1999:

Much may be made of the UK having the world's fourth largest economy and being a member of the G7 group, a permanent member of the United Nations Security Council and a leading member of NATO. But seldom is it mentioned that the UK, as a member of the EU customs union, has no independent standing at all in world trade negotiations. The UK ministers present, Stephen Byers, Clare Short and Michael Meacher (but unaccountably not Nick Brown) stood three square behind the EU Trade Commissioner, Pascal Lamy, on almost every issue, including the Common Agricultural Policy that our government has elsewhere professed itself keen to reform... Mr Byers firmly resisted any suggestion that the UK's own interests might have differed from those of the rest of the EU 15.¹⁴⁵

Another, apparently less-powerful, country seems to have had more real clout:

By contrast, Canada had a central role to play at Seattle: as a member (along with the USA, the EU and Japan) of the Quad group of countries which work closely together on many trade issues; as a leading member of the Cairns Group of countries, which argued cogently that trade in agricultural products should be no different from trade in industrial goods; and through holding the chair of the WTO's Implementation and Rules Working Group, one of six established to focus on key areas of negotiations.¹⁴⁶

This claim that Britain lacks direct influence at the WTO cannot be dismissed as a partisan slur. It is certainly the view of the European Parliament:

The EU's Common Commercial Policy is one of the areas in which the Union as such has full and direct competency. In other words, when acting in the WTO, the EU works as a single actor and is represented by the Commission rather than by the member states.¹⁴⁷

143 Understanding on Rules and Procedures Governing the Settlement of Disputes, Annex 2 to the WTO Agreement 1994.

144 GATT 1947, Part II, Article XX and XIX, incorporated into GATT 1994 as Annex 1A to the WTO Agreement 1994.

145 Global Britain “Eurofacts” (7 January 2000) “Sidelined in Seattle”, R. Stewart-Brown.

146 Global Britain “Eurofacts” (7 January 2000) “Sidelined in Seattle”, R. Stewart-Brown.

147 European Parliament briefing note “The European Union and the World Trade Organisation”, accessed 22/02/2015 at: <www.europarl.europa.eu/ftu/pdf/en/FTU_6.2.2.pdf>.

“By joining the EU, Britain has become shackled to the Common Agricultural Policy (CAP). This has been a major obstacle in every attempt at trade reform.”

More to the point, it is the view of the WTO itself:

The EU is a single customs union with a single trade policy and tariff. The European Commission – the EU’s executive arm – speaks for all EU member states at almost all WTO meetings.¹⁴⁸

By joining the EU, Britain has become shackled to the Common Agricultural Policy (CAP). This has been a major obstacle in every attempt at trade reform, whether under the auspices of the GATT or later of the WTO. One of the main reasons that the Uruguay Round lasted from 1986 to 1994 was the intransigence of the EU:

The negotiating position of the EC was originally premised upon protection of the CAP in the face of perceived threats from other countries. As the inefficiencies of the CAP became manifest in the later 1980s and in the early 1990s the EC implicitly recognised the need for reform, but wished to perform critical analysis of the CAP in domestic fora, rather than in the Uruguay Round... The CAP has been one of the cornerstones of EC political and economic unity... As a result, the EC negotiating position was essentially defensive, seeking to maintain the status quo or to permit some modification, as opposed to reduction, of agricultural import barriers.¹⁴⁹

The great achievement of the Uruguay Round was to replace a system of agricultural protection which limited foreign imports of foodstuffs to fixed quotas, with one based on tariffs, which could then be progressively eliminated over time. The view of the European Commission at the time was that *“basing protection exclusively on customs tariffs and envisaging, after a transitional period, the reduction of these tariffs to zero or a very low level would lead to trade in agricultural products on a totally free and chaotic basis.”*¹⁵⁰ This was not a constructive approach to take during negotiations aimed at creating trade in agricultural products on a totally free basis by reducing tariffs.

During the Uruguay Round, the EU put forward a variety of counter-proposals about the baseline for calculating tariff reductions; for aggregating all agricultural imports instead of treating each product as a separate tariff line; for allowing countries to earn credit for cutting tariffs on some crops which could be set against restrictions on others; and for a vague power to ‘adjust’ permitted import levels to reflect movements in exchange rates and commodity prices. A rear-guard action was fought over a plea that the EU should be allowed to set stringent hygiene standards. It is difficult to disagree with the judgement:

The EC’s opposition to attempts to dismantle the CAP reflected the collective power of the farm lobbies in the constituent nations, as well as the recognition that the plan was the result of hard-fought compromises within the Community. Responses to proposals for reform of the CAP as the negotiations proceeded exemplified the serious divisions among the various countries’ agricultural lobbies.¹⁵¹

148 WTO “The European Union and the WTO”, accessed 22/02/2015) at: <www.wto.org/english/thewto_e/countries_e/european_communities_e.htm>.

149 “The GATT Uruguay Round: A Negotiating History 1986–1992” Vol I: Commentary (Kluwer Law and Taxation Publishers) ed. Stewart, page 178.

150 EU Position Paper “Global Proposal of the European Community on the Long-Term Objectives for Multilateral Negotiations of Agricultural Questions” (1989), page 2, ref: GATT Doc No. MTN.GNG/NG5/W/145.

151 “The GATT Uruguay Round: A Negotiating History 1986–1992” Vol I: Commentary (Kluwer Law and Taxation Publishers) ed. Stewart, page 180.

“It would be wrong to argue that the UK, before joining the EU, lacked influence.”

Twenty years previously, during the Kennedy Round, the position had been completely different. Britain (having been vetoed in its application to join the EU) was then the pivotal power, responsible for the success of the first major effort to liberalise world trade:

US policy and tactics changed on issues of vital interest to the United States, and affected the outcome of each stage. Britain influenced crucial American decisions in both the non-grain agricultural and industrial negotiations, with the greatest influence occurring during the formative stage. The evidence shows that these shifts followed British demands and suggestions...

Without these shifts in US policy, the Kennedy Round would almost certainly have failed at the formative stage.

In the details stage of the negotiations, agriculture remained a critical issue for the United States... Again, Britain influenced the United States on three issues... These three instances of British influence prevented complete deadlock in the agricultural negotiations and avoided the collapse of the whole Kennedy Round.¹⁵²

It is important to recognise the limitations of a ‘middle power’ in these circumstances:

While shifts in US policy on non-grain agriculture were influenced by the British, Britain had little to do with US shifts in grains and industrial products... When Washington saw vital US interests at stake, even the most skilful British diplomats could not influence American decisions.¹⁵³

So what was Britain’s secret during the Kennedy Round?

British influence on the United States at the Kennedy Round was not simply that of a broker between the United States and the Six because Britain lacked sufficient bargaining power with the Community to perform this role. Instead, it played the more expansive and creative role of soliciting consensus by providing tactical and policy advice to the Americans... The evidence of this study lends support to the idea that diplomatic skills are likely to be most effective in the formative stages of negotiations. British influence is most apparent in this stage of the Kennedy Round.¹⁵⁴

It would be wrong to argue that the UK, before joining the EU, lacked influence. As can be seen in Section 3, today Britain has extremely little power within the EU’s institutions themselves.

2.2.5 Regaining British sovereignty over trade policy would not come without new challenges

It is often claimed that, with the ‘collapse’ of the Doha Round of WTO talks, the world has turned its back on globalisation and is instead descending into regionalism, with the emergence of local trading blocs that deal with each

152 “Middle Powers and Commercial Diplomacy: British influence at the Kennedy Trade Round” (Macmillan, 1999), Lee, Conclusion, pages 138–139.

153 “Middle Powers and Commercial Diplomacy: British influence at the Kennedy Trade Round” (Macmillan, 1999), Lee, Conclusion, pages 139–140.

154 “Middle Powers and Commercial Diplomacy: British influence at the Kennedy Trade Round” (Macmillan, 1999), Lee, Conclusion, page 140.

“What matters most of all in winning exports is producing goods and services that somebody else wants to buy.”

other directly.¹⁵⁵ Perhaps it is more accurate to say, that after joining the WTO in 2001, China has pursued a policy of striking trade deals in Asia to assert its new status, and that this has prompted other powers into a defensive scramble of their own.¹⁵⁶ Furthermore, with a very recent breakthrough in discussions between the US and India, the Doha Round may have been written off a little prematurely.¹⁵⁷

Nevertheless, it is still argued that the world is becoming a more hostile place, and that this is not the time to loosen the protective shelter which EU membership affords Britain.

The challenges and costs of regaining sovereignty over trade are real and should not be under-estimated. Yet there are still grounds for guarded optimism, as provided by the CBI:

It is worth noting that the UK’s global trade and market penetration does not rest exclusively on the existence of FTAs. For example, UK trade with China and Russia currently takes place without an EU FTA, meaning that market access would not be directly harmed through dislocation by the UK withdrawing from EU. However, given German export performance to China – selling four times more than the UK – under the same de facto market access parameters as the UK, there is little to suggest that leaving the EU would immediately result in an uplift in trade to these nations.¹⁵⁸

In the above text, the CBI is primarily seeking to downplay the idea that British exporters are being held back by the EU’s commercial policy, and that the UK would enjoy a massive surge in overseas sales just by leaving the EU. It may be right. Equally, of course, UK sales are not being sustained by the fact that the EU has negotiated free trade agreements with third countries on Britain’s behalf. Concentrating the debate too heavily on the question of what happens to EU-led trade deals may encourage the false belief that exports overseas are not possible where such a deal does not exist.

What matters most of all in winning exports is producing goods and services that somebody else wants to buy.

2.2.6 The challenge of trade negotiations could be surmounted by the UK

There would be an administrative cost in having to negotiate replacement arrangements if Britain left the EU. As the CBI has said:

In practical terms, to begin to pursue its independent trade agenda, the UK would first have to build up national capacity to replace its current predominant reliance on the European Commission for trade negotiation expertise; it is more than 40 years since the UK itself negotiated a bilateral trade deal, and FTAs have become increasingly complex to negotiate in that time. Moreover,

155 The argument is canvassed in Journal of Common Market Studies, Vol 45, No 2 “Why Bother with Inter-Regionalism? Negotiations for a European Union–Mercosur Agreement” (2007), Doctor, pages 281–314.

156 That argument is canvassed in Journal of Contemporary European Research, Vol 6, No 4 “Fears and Strategies: The European Union, China and their Free Trade Agreements in East Asia” (2010), Garcia, pages 496–513.

157 Guardian “India strikes deal with US over food, breathing new life into Doha trade talks”, L. Elliott (13 November 2014), accessed 22/02/2015 at: <www.theguardian.com/business/2014/nov/13/wto-food-security-us-india-trade-talks-doha-round>.

158 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Chapter 6, page 136.

“Canada and many other small countries have been able to manage their own trade policy.”

the government would face significant pressure during the first few years given the sheer number of trade agreements necessary to avoid interruption in trade for businesses.¹⁵⁹

In these terms, this is a weak argument. Canada and many other small countries have been able to manage their own trade policy.¹⁶⁰

Nevertheless, we should give serious consideration to the claim that, after 40 years' interruption, Britain no longer has the civil service capability to handle trade policy on its own. What level of bureaucratic resource would an independent trade policy require? The obvious place to start is to examine a country which, as we have seen, is able to run its own negotiations quite successfully, Canada; where trade policy is handled by the Federal Government's Department of Foreign Affairs, Trade and Development Canada.

According to the Government of Canada's online directory, in 2014 it employed the following staff to handle “Trade Agreements and Negotiations”:¹⁶¹

- Six people in the offices of two Assistant Deputy Ministers;
- 19 people in a Business Management Office, apparently responsible for Bilateral and Regional Trade policy;
- Two people in the office of the Chief Air Negotiator, handling Intellectual Property and Services Trade;
- One Chief Trade Negotiator working on the Canada-India Comprehensive Economic Partnership Agreement;
- 19 people in the office of the Chief Trade Negotiator European Union, of whom 17 constituted the secretariat working on CETA;
- 84 people working on Market Access (14 in Procurement, Trade & Environment; 23 in Tariff and Goods market Access; 16 in Trade Negotiations, General; 16 in Trade Policy Negotiations, Asia; eight in the office of the Deputy Chief Negotiator, Trans-Pacific Partnership; seven in the Trans-Pacific Partnership Division);
- 45 people working on North America and Investment (18 in Investment Trade; 19 in Softwood Lumber; eight in Trade Remedies & North America Trade);
- Nine people in Trade Agreements & NAFTA Secretariat;
- 78 in Trade and Export Controls (two in the Director General's office; 25 on Export Controls; nine on Sanitary & Phytosanitary Measures; 15 in Technical Barriers & Regulations; two in Technology & Administration Services; 25 in Trade Controls);
- One Director General of Trade Negotiations.

159 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Chapter 6, page 136.

160 See Appendix C.

161 See the Government of Canada Government Electronic Directory Services, accessed 12/04/2015 at: <<http://geds-sage.gc.ca/en/GEDS?pgid=017&dn=OU%3DTFM-TFM%2COU%3DDFATD-MAECD%2CO%3Dgc%2CC%3Dca>>.

“Although we are often told that Britain has no capacity to handle its own trade policy, nobody has told the civil servants in these departments.”

This total of 264 employees (which includes at least 30 support or clerical staff and three people described in the directory as ‘students’) in 2014 looked after 15 bilateral negotiations with other countries (including a successful investment treaty with China), negotiations with two regional trading blocs (including the EU), and engaged in two multilateral negotiations embracing 50 other countries (in some cases, the same countries being counted twice as they were involved in both).¹⁶² It is likely that at least some of the staff engaged in Trade and Export Controls have bureaucratic/administrative roles rather than being front-line negotiators.

Britain’s affairs in the same remit are handled by three departments of state: the Foreign & Commonwealth Office (FCO); the Department for Business, Innovation & Skills (BIS); the Department for International Development (DFID); together with one quango, UK Trade & Investment (UKTI), which for accounting purposes is treated as part of BIS. Although we are often told that Britain has no capacity to handle its own trade policy, nobody has told the civil servants in these departments, because they appear to be undertaking quite a lot of work on it.

The FCO is pleased with the fact that it now pursues what it calls ‘economic diplomacy’:

*Ambassadors and Prosperity teams at Post continue to work closely with UKTI colleagues to achieve our economic diplomacy objectives – lobbying host governments, providing advice and information for businesses and influencing in support of trade and commercial deals. We also work to break down barriers to trade, counter protectionism, promote reform and market Britain as a great place to do business, to study and to visit.*¹⁶³

BIS seems keen to claim credit for something that looks very like trade negotiation:

*The Economics and Markets Group continues to promote effective trade that will benefit UK firms. BIS played a significant part in the Landmark trade deal between the EU and Canada that will benefit the UK economy and businesses by over £1.3bn a year and was central to the agreement reached in Bali on the first World Trade Organization package in 20 years. Finally, negotiations were launched over the Transatlantic Trade and Investment Partnership (TTIP).*¹⁶⁴

DFID even believes that it engages in trade negotiations on behalf of other countries, with a section of its Annual Report entitled “Facilitating trade and knowledge transfer”:

The joint DFID/Department for Business, Innovation and Skills (BIS) Trade Policy Unit (TPU) ensures that the UK Government’s development objectives are fully integrated into trade policy. TPU supports developing countries to increase their participation in global trade by improving their market access and strengthening their capacity to trade. For example, there has continued to be strong demand for the work of the Trade Advocacy Fund, which is now active in more than 20 developing countries. In December 2013, the Bali package was agreed through the World Trade Organization (WTO), the first multilateral trade deal reached in 20 years, and the UK has also continued its

162 See Appendix C.

163 FCO Annual Report and Accounts 2013–14 “How we have performed”, page 14.

164 BIS Annual Report and Accounts 2013–14, “Review of 2013–14”, page 39.

“The British Government appears to be employing 1,720 civil servants to work on trade policy.”

*work to deliver development outcomes through the EU, for example negotiating greater market access for Pakistan and encouraging progress on Economic Partnership Agreement negotiations between the EU and regional blocs in Africa and the Pacific.*¹⁶⁵

In fact, in addition to helping Pakistan in this way, DFID staff are engaged in improving the trade position of Kenya, Rwanda, Somalia, South Africa, Tajikistan and Uganda, not least by promoting the formation of EU-style regional trading blocs.¹⁶⁶

It is possible to compile an equivalent headcount estimate for the UK from the annual reports of each department. As at 31 March 2014, these departments employed the following staff:

- The FCO had a total of 15,525 permanent employees, of whom 870 in the UK and 4,054 overseas were engaged in ‘Britain’s Prosperity’.¹⁶⁷ The accounts provide no further breakdown, but it would not be unreasonable to count the 870 people in London as ‘economic diplomats’;
- BIS had a total of 22,108 permanent employees, of whom 1,199 were engaged in the Economics & Markets Group and 500 were employed directly by UKTI.¹⁶⁸ The Economics & Markets Group remit covers Labour Market, Business Environment and Consumer Rights & Competition as well as Trade Policy.¹⁶⁹ The annual report states that 787 staff are employed in the quango ACAS (which deals with labour relations) and 123 are employed by Financial Reporting Council Limited (an accounting standards body), leaving 345 in the Core Group.¹⁷⁰ These figures do not tally exactly with the audited staff numbers at the back of the annual report, presumably because they aggregate temporary and permanent employees. However, since the Business & Local Growth Group of BIS also claims 285 staff working on competition and consumer rights, and ACAS will lead on labour relations, it is not unreasonable to regard the 345 members of the Core Group, together with the 500 UKTI staff, as being engaged mainly on ‘trade policy’.¹⁷¹
- DFID had a total of 2,912 permanent employees, of whom 507 were engaged on ‘Policy and International Relations’.¹⁷² The accounts do not give any further breakdown for 2014, but state that, in 2013, the Trade Policy Unit was responsible for 1 per cent of the costs of the Policy Division (£8.6m out of £824.4m).¹⁷³ It would be reasonable to estimate, then, that one per cent of the staff of the current Policy Division, or five employees, were engaged in trade negotiations. The actual total of DFID staff engaged in negotiating with foreign governments is far larger, but their focus may not be exclusively on improving

165 DFID Annual Report and Accounts 2013–14, para 5.23, page 121.

166 DFID Annual Report and Accounts 2013–14, Chapter 3 “Results in DFID priority countries and regions”, pages 55–89.

167 FCO Annual Report and Accounts 2013–14, Note 3 to the accounts (Staff numbers and related costs), table on page 101.

168 BIS Annual Report and Accounts 2013–14, Note 3 to the accounts (Staff numbers and related costs), table on page 140.

169 BIS Annual Report and Accounts 2013–14, “Economics and markets”, page 38.

170 BIS Annual Report and Accounts 2013–14, table on page 38.

171 BIS Annual Report and Accounts 2013–14, table on page 27.

172 DFID Annual Report and Accounts 2013–14, Note 3.2 to the accounts (Average number of persons employed), page 191.

173 DFID Annual Report and Accounts 2013–14, Annex A, table on page 235.

“The problems associated with conducting an independent trade policy have been exaggerated.”

trading access to those markets (or at any rate, not for the benefit of the British taxpayer who pays them).

Thus, although Britain now has no legal competency to run its own trade policy, and supporters of the EU tell us that Britain has nobody with the necessary skills and experience to carry one out on our behalf, the British Government appears to be employing 1,720 civil servants to work on trade policy.

Furthermore, although Britain has not been able to handle its own trade policy for over 40 years, it does have over 40 years' experience of being a member of the EU. Whitehall will already contain most (if not all) of the people with technical knowledge and practical experience of trade negotiation. They have been doing the job for four decades – except that, since 1973, it has not been called 'trade negotiation' but 'working with our European partners'.

The problems associated with conducting an independent trade policy have been exaggerated. There might be a workload issue if Britain were suddenly faced with the task of negotiating new trade treaties with the 50-plus countries covered by existing EU arrangements. But such a situation is unlikely to ever arise. Of those countries, the largest group, 27, would be handled as part of any exit negotiations from the EU, which would last over two years in a process that would also allow for the accommodation of relations with third countries. It would depend on the mechanism by which any exit from the EU took place. That is a process over which Britain would have control.

2.2.7 The claim that the UK would 'lose influence' is overstated

An associated issue that is often raised to highlight the value of Britain being able to piggy-back off treaties arranged by the EU is the fear of a loss of 'influence'. This comes in two-forms. First, influence in the outside world:

The UK would speak for itself rather than through the EU in a number of global bodies – including the WTO – so in theory would be able to exert influence on the EU and global trading rules unilaterally. However, the UK's absolute influence in those forums would, in practice, likely decrease; it may be able to voice its objections more noisily alone, but it would be less able to achieve concrete results in shaping the agenda in these institutions, in part because it would lose its large voting weight that allows it to currently anchor alliances and push UK interests more widely.¹⁷⁴

Second, influence on the rules of the EU:

Being outside would mean a loss of influence over Europe's future and its rules. But the UK would no longer have any influence over the rules and standards that ultimately companies would have to apply to sell and operate in the EU. As many UK companies would still be dependent on trade with the EU... this lack of influence would be a disadvantage.¹⁷⁵

This objection is based upon a simple misunderstanding. The influence which Britain has in the world does not derive from the EU – it derives from Britain. Whatever influence the UK has through membership of the EU comes from its

174 CBI "Our Global Future: The Business Vision for a Reformed EU" (2013), Chapter 6, page 138.

175 CBI "Our Global Future: The Business Vision for a Reformed EU" (2013), Chapter 6, page 139.

“Their response to the euro crisis will be further integration.”

ability, as Britain, to gain control of the Commission’s agenda. If the CBI believes that there are no obstacles to the UK influencing that agenda, why are they calling for the relationship to be reformed?

Whatever the truth of British influence today, there is a problem hurtling towards Britain in the near future. The 19 members of the Eurozone collectively hold an in-built voting majority in the EU Council of Ministers.¹⁷⁶ It is quite likely that their response to the euro crisis will be further integration. The legal safeguards for non-euro members depend upon there being at least five EU members that do not use the euro.¹⁷⁷ How long would that last?¹⁷⁸ To its credit, the CBI has noticed this, but it regards the threat of further EU integration as a non-problem. Such a non-problem, in fact, that it devotes a chapter of its report to dismissing it, and two of its reform recommendations are designed to protect Britain’s position against having regulations imposed upon the UK.¹⁷⁹

It is true that, outside the EU, British exporters to the EU would still have to obey the EU’s rules in order to sell into their market. Any exporter has to abide by the rules of any foreign market into which it sells. Britain exports to over 100 countries around the world and has no direct influence over the rules of at least 72 of those markets, yet is able to continue selling into them. The rules of the EU have particular significance for Britain because a very significant slice of its exports go to EU countries. That is not an argument for continuing to accept an unacceptable relationship – it is an argument for reducing Britain’s dependence on the EU.

The advantage of having a diplomat in the room when the rules are decided seems obvious, but it presupposes that the room in question is in Brussels. However, regulations are now more often being set at a global level. The Agreement on Technical Barriers to Trade and related treaties on sanitary and phytosanitary (plant health) requirements, for example, make it mandatory for WTO members to follow “*relevant*” guidelines and regulations issued by recognised international standards-setting bodies unless they would be ineffective or inappropriate e.g. because of “*fundamental climatic or geographical factors or fundamental technological problems*”.¹⁸⁰

Once a WTO member participates in a standards-setting body, it is practically obliged to incorporate those standards in its own laws. Yet if a WTO member stays away, it risks losing that ‘influence’. There is not a definitive list of the bodies which have the power to issue binding international standards. However, at present 164 national standards-enforcing bodies have acceded to the WTO Code of Practice, and 35 of them are based in the EU.¹⁸¹ The Code requires national bodies to use a higher organisation’s rules “*where international*

176 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Exhibit 56, page 125.

177 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Exhibit 58, page 127.

178 Financial services is a good example of where further integration of the Eurozone members is already directly impacting on an issue of crucial national importance to the UK. See Section 10 for an analysis of why both the current situation is damaging the City of London and why, outside the EU, the UK would have greater influence over the global financial services regulatory agenda.

179 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Chapter 5, pages 109–130, 170–172.

180 Agreement on Technical Barriers to Trade 1994 Article 2.4. The obligation is slightly more relaxed for a developing country.

181 Source: WTO explanatory guide “The WTO Agreements Series: Technical Barriers to Trade”, page 15 accessed 23/02/2015 at: <www.wto.org/english/res_e/publications_e/tbttotrade_e.pdf>. Data on individual acceptance of the Code available from the WTO Database at: <https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S005.aspx>.

“Britain’s weak position at the WTO risks being replicated across many more international organisations.”

standards exist or their completion is imminent”.¹⁸² The number of international organisations in which they are engaged means that the initiative over rules and standards is not only passing out of the hands of national governments, it is also escaping from the clutches of regional trade blocs too:

*As DEFRA Secretary, I was only too well aware of how these changes affect us. Many of the Single Market food standards my former department has to implement are no longer made in Brussels. They have gone up a level and are now made by the Codex Alimentarius, which reports to the UN’s Food and Agriculture Organisation (FAO), in Rome. Yet we would often learn of them only after they had been handed down to Brussels and when it was too late to change anything. This is no small matter. As well as Codex, the FAO hosts two other standard-making organisations, the Office International des Epizooties (OIE), which deals with animal health, and the International Plant Protection Convention (IPC). Both fix standards which are adopted by the EU as Single Market legislation, only then for it to be passed back down to us. Once they are set at international level, Brussels does not have any power to change them.*¹⁸³

Britain’s weak position at the WTO risks being replicated across many more international organisations. The choice may not be a simple one of ‘influence’ in the EU versus no influence outside it, but between (a) trying to influence the EU to influence an international body on our behalf and (b) trying to influence that body directly.

2.2.8 The challenge of the Rules of Origin is exaggerated

One issue cited frequently involves Rules of Origin for goods. When Country A and Country B sign a trade deal to grant preferential access to each other’s products, there need to be rules to prevent goods being brought in from Country C and being passed off as originating from a party to the deal. Typically these rules specify a maximum permitted third-source content for goods to qualify for preferential access. The rules of the EU customs union, however, mean that British exporters do not need to worry about Rules of Origin when selling into any of the other EU-28. This is held to be a great benefit of EU membership, especially given that modern finished products are constructed from components sourced from many different countries. Having to comply with Rules of Origin if Britain left the EU, it is said, would be a disincentive to export:

*In practice, Rules of Origin are often complex, and can include the need to meet more than one criteria. This is particularly true for [trade treaties] involving the EU or NAFTA, where rules can run to over 200 pages. Furthermore, the rules will differ depending on the trade deal, meaning that firms will not necessarily be able to rely on their experience of other trade deals to know whether their products will qualify. Rules of Origin are therefore particularly cumbersome for small or medium enterprises, for example requiring the use of sophisticated accountancy systems to keep track of inputs. In practice therefore, many firms that would theoretically be eligible for a tariff reduction do not take advantage of this option.*¹⁸⁴

182 Agreement on Technical Barriers to Trade 1994, Annex 3, Paragraph F.

183 Business for Britain “An Optimistic Vision of a Post-EU United Kingdom” Speech by Owen Paterson MP, 24 November 2014, accessed 23/02/2015 at: <www.uk2020.org.uk/wp-content/uploads/2014/10/Owen-Paterson-Europe-Speech-24-November-2014-Online.pdf>.

184 TheCityUK “Analysing the Case for EU Membership” (2014), Box 2, page 31.

“Our sales of goods have performed far better to countries where British business has to either pay tariffs or fill in complicated forms.”

There are distinct limitations to this argument:

- 1 **British exports to third countries not currently covered by an EU-negotiated trade treaty:** since we currently have no preferential access, withdrawal from the EU would make no change to the compliance burden for exporters to these countries. According to TheCityUK’s estimates, this covers about 38 per cent of our exports in goods for 2012.¹⁸⁵
- 2 **British exports to third countries currently covered by an EU-negotiated trade treaty:** according to TheCityUK’s estimates, this covers about 12 per cent of our exports in goods for 2012.¹⁸⁶ However, TheCityUK also says that Britain on its own would not be able to secure replacement trade deals with these countries and would have to endure tariffs on its exports.¹⁸⁷ So without preferential access, the problem of the Rules of Origin would not emerge. Instead, we would face a problem of tariffs – and, as TheCityUK notes, many firms already prefer to pay the tariffs instead of compiling the paperwork necessary to obtain the preferential access.
- 3 **British exports to the EU-28:** according to TheCityUK’s estimates, this covers about 50 per cent of our exports in goods for 2012.¹⁸⁸ This looks to create a significant impact on Britain’s ability to trade. Yet the same points arise. Rules of Origin would only become relevant if the EU granted a post-departure UK preferential access on terms that amounted to less than a full customs union – which TheCityUK does not believe the EU would be willing to grant.¹⁸⁹ So British exporters would again have to endure EU tariffs.

Despite the advantages of a customs union in which our exporters are exempt from the Rules of Origin, our sales of goods have performed far better to countries where British business has to either pay tariffs or fill in complicated forms. Table 2.xviii provides the figures.

Table 2.xviii: Exports of goods by the UK, £m

Destination	2003	2013	Growth
EU	112,311	154,914	38%
Non-EU	77,178	151,896	97%

Source: see Annex C

In practice, the Rules of Origin issue is likely to be less decisive than is sometimes claimed. The specific context of the EU’s Rules of Origin are considered further in Appendix D.

185 TheCityUK “Analysing the Case for EU Membership” (2014), Figure 1, page 28.

186 TheCityUK “Analysing the Case for EU Membership” (2014), Figure 1, page 28.

187 TheCityUK “Analysing the Case for EU Membership: How Does The Economic Evidence Stack Up?” (2014), Section 5.5, page 62.

188 TheCityUK “Analysing the Case for EU Membership” (2014), Figure 1, page 28.

189 TheCityUK “Analysing the Case for EU Membership” (2014), Section 3.7, page 36.

“Paying foreign tariffs would allow Britain to escape the heavy burden of contributing to the EU Budget.”

2.2.9 The challenge of tariffs and other barriers to trade could be overcome

If Britain were to recover control over its trade policy, even at the cost of losing any preferential access to third markets, those markets are not going to react by closing their doors to UK businesses. British products and services would not be any the less worthwhile than before.

Withdrawal from the EU without negotiating any post-exit rights of access to the Single Market would remove British exporters’ current toll-free entry to the EU-28 and their ability to piggy-back on trade deals negotiated by the Commission. The impact of withdrawal would not be felt evenly, as it would depend upon the product being exported to each country, and the applicable local tariff (if any).

In Section 30, this specific question is examined in detail. Exports to 56 countries are matched up with the tariffs they would have borne if Britain were outside the EU and lacked the benefit of any EU-negotiated trade treaty. The headline conclusion reached is that the tariffs likely to be levied on British exports would be cheaper than the current cost of EU membership.

This finding cannot be stressed enough. The debate is usually framed in terms of the benefits of EU membership in allowing British exporters to escape the heavy burden of foreign tariffs. In narrow financial terms, however, it would be more accurate to say that paying foreign tariffs would allow Britain to escape the heavy burden of contributing to the EU Budget. Whatever may have been the case in the past, gaining tariff-free access to overseas markets is no longer an argument for automatically submitting to EU control of trade policy.

In addition to the financial impact of tariffs, it is necessary to consider non-tariff barriers (NTBs), i.e. direct or indirect limits or hindrances to the distribution of goods, such as import quotas. Paradoxically, the strength and success of the WTO in curbing tariff wars has increased the difficulties created by these other barriers:

In a way, the successful elimination of many of industrialised countries’ tariffs may have played a role in promoting NTBs in the same way that arms agreements may at times promote the development of new weapons systems. Unless there is an honest intent to disarm, there is a strong incentive to develop new systems that bypass agreed on restrictions. So, too, if the commitment to trade liberalisation is less than sincere, there is an incentive to surrender tariff protection while adopting new trade regulations that are even more effective.¹⁹⁰

NTBs are an unpredictable quantity. In the specific context of Britain’s dealings with the EU they are considered in Appendix D, which concludes that in practice the critical factor would be the relationship which Britain chooses to adopt in any post-EU role. This reminds us again that the fact of membership is secondary in importance to the terms of access to the Single Market (and whether those terms are arrived at through renegotiating membership from the inside, or negotiating a new treaty from the outside).

Tariffs and NTBs present obstacles for British exporters selling into third country markets, whether Britain is inside the EU or not. The question therefore is whether they would be easier to overcome as a member of the EU. Thus, although they would give rise to important problems for any independent

190 Northwestern Journal of International Law & Business, Vol 8, Issue 2, “Changing Patterns of Protectionism: The Fall in Tariffs and the Rise in Non-Tariff Barriers Symposium: The Political Economy of International Trade Law and Policy” (1987), Ray, pages 285–327, footnote 61 at pages 305–306.

“There is a widespread consensus that the status quo of Britain’s trading relationship with the EU cannot be sustained.”

British trade policy, by themselves they are not a decisive factor. The critical question is whether Britain is better off submitting to EU leadership on trade in the first place. Since Britain’s priorities are unlikely to always coincide exactly with those of the wider EU as it is currently constituted, that must be open to doubt.

Conclusion

There is a widespread consensus that the status quo of Britain’s trading relationship with the EU cannot be sustained. Hardly anyone is prepared to argue in public that the solution requires greater EU integration.

Consider the recommendations put forward by the CBI as its *“reform agenda that supports the UK’s global trading future”*:

- 1 Putting trade at the heart of the EU’s strategy;¹⁹¹
- 2 Continuing the push for global solutions at the WTO;¹⁹²
- 3 Protecting the market openness of the EU;¹⁹³
- 4 Making further progress on unlocking the Single Market for services;¹⁹⁴
- 5 Focusing on sensible progression of the Digital Single Market¹⁹⁵
- 6 Regulating for a modern, globally competitive EU (i.e. regulation that is *“competitive, commensurate and considered”*);¹⁹⁶
- 7 Ensuring the EU works for all its members;¹⁹⁷
- 8 Respecting the boundaries set by member states;¹⁹⁸
- 9 Creating a better functioning EU that prioritises growth and competitiveness;¹⁹⁹
- 10 Reforming how the UK engages with EU institutions;²⁰⁰
- 11 Improving engagement with EU issues at home to underpin influence in Europe.²⁰¹

It is difficult to disagree with this list. It might also be easy to interpret it as an admission by the CBI that the EU as it stands:

- Does not put trade at the heart of its strategy;
- Has turned its back on the WTO and is pursuing an insulated, fortress-style approach;

191 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Chapter 7, page 163.

192 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Chapter 7, page 164.

193 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Chapter 7, page 164.

194 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Chapter 7, page 166.

195 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Chapter 7, page 167.

196 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Chapter 7, page 168.

197 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Chapter 7, page 170.

198 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Chapter 7, page 171.

199 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Chapter 7, page 172.

200 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Chapter 7, page 172.

201 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Chapter 7, page 173.

“What lies in the UK’s power is to decide what sort of ideal trading relationship it wants with the other EU countries.”

- Is not committed to market openness (a fear which would be supported by the figures that EU member states mainly buy exports from each other²⁰²);
- Has given up on trying to establish a genuine Single Market in services;
- Does not have sensible plans to create a Digital Single Market;²⁰³
- Enacts uncompetitive, overbearing and ill-considered regulations;
- Does not work for all of its members (and so presumably works for the benefit of a privileged core group);
- Does not respect the boundaries set by the member states;
- Is malfunctioning and does not prioritise growth and competitiveness.

The CBI wants Britain to stay in the EU because it believes “*membership of the EU’s single market remains fundamental to our economic future.*”²⁰⁴ It does not explain why the EU is going to concede all these reforms if Britain rules out in advance the possibility of leaving.

In truth, membership of the EU is a second-order issue. The real dividing line is between those who believe Britain should leave the EU unless the UK is offered particularly attractive terms for staying, and those who believe that, on balance, it is better to remain inside unless conditions deteriorate even further. Where that line falls would be set as much by how the EU and the Commission behaves towards Britain as by anything the UK does.

What lies in the UK’s power is to decide what sort of ideal trading relationship it wants with the other EU countries. As the CBI found, it is nothing like the relationship we currently enjoy. So it becomes a practical matter of how to go about renegotiating the best possible deal from the EU. The moment the UK receives counter-offers from our partners is the time to worry about whether it is worthwhile staying inside the EU, or moving on instead to negotiate for a new free trade arrangement. Renegotiation can only proceed on the premise that, if it is unsuccessful, Britain should leave the EU.

ANNEX A: The EU and international trade treaties

The EU itself has an international legal personality which is distinct from that of its member states. The European Economic Community has had an international legal personality since the original Treaty of Rome, having the legal right to conclude international agreements in its own name. This developed after a combination of both Treaty changes and European Court of Justice rulings (that held that the EU had “*implied*” competence to conduct international trade agreements). The Lisbon Treaty confirmed many of the ECJ’s rulings. This means that trade treaties agreed between the EU and third countries would, in theory, cease to apply to the UK were the country to leave the Union. However, there would be strong political pressure on both the UK and the third country to agree to a duplicate trade agreement that mimicked all the provisions of the former EU agreement. The UK would remain a party to all trade agreements if it is a party and the EU is not.

202 See Figure 2.vi.

203 It is unclear from its report whether this means that the CBI does not believe that the EU has any plans in this area at all, or whether the EU does have plans but the CBI thinks little of them.

204 CBI “Our Global Future: The Business Vision for a Reformed EU” (2013), Foreword, page 6.

ANNEX B: The Rotterdam/Antwerp effect and the Netherlands distortion

The effect of the re-export of goods shipped from the UK to Belgium and the Netherlands in distorting official trade statistics is widely recognised, not least by the compilers of those figures themselves:

*'The Rotterdam/Antwerp effect' is a particular issue with the UK because of exports routed through Rotterdam in the Netherlands and Antwerp in Belgium. No information is available on the value of UK exports that are subsequently shipped on to other countries, although investigations are taking place. The principal data source for trade in goods is HMRC.*²⁰⁵

It is unlikely that investigations will come to a conclusion anytime soon: an identically-worded paragraph has been included in every Pink Book since 2005. The ONS has even refused to answer a Freedom of Information request, on the grounds that it has no information to disclose on the subject.²⁰⁶

A similar phenomenon is known as the 'Netherlands Distortion'. This refers to capital and income being funnelled through intermediate entities located in either the Netherlands, Belgium or Luxembourg, in order to exploit tax planning opportunities. This, it is said, also 'artificially' inflates the significance of those countries.

The think tank Global Britain produced an estimate of the combined impact of both.²⁰⁷ This compared per capita UK 'exports' for 2009 to France and Germany (averaging around £565) to those for Belgium (£1,612), Luxembourg (£29,420) and the Netherlands (£2,756). On the assumption that citizens of these latter countries were unlikely to have a greater propensity to buy British than the others, the 'surplus exports' were attributed to the two distortive effects. An arbitrary 50 per cent of the surplus was reallocated to non-EU exports from the UK. The result was that the share of UK exports going to the EU for 2009 fell from 48.0 per cent to 42.6 per cent.

One reason why the Global Britain adjustment is so large is its definition of 'exports'. It counts not just goods and services, but every credit on the current account i.e. including investment income, the compensation of employees, and all other current transfers such as bilateral aid, insurance claims etc. It is difficult to see how services or insurance claims could be re-exported from Rotterdam on a boat. Everything in the 'surplus exports' which is not related to the sale of goods is being attributed to the Netherlands Distortion rather than the Rotterdam/Antwerp Effect. But the greater bias towards financial services and related sectors of the Netherlands, Belgium or Luxembourg which gives rise to the Netherlands Distortion means that they might quite legitimately buy higher per capita 'exports' of these categories than the French or Germans.

The 'surplus export' adjustment also depends on one conceptual assumption. Suppose the UK Government were to abolish corporation tax. We might expect in response that a number of EU businesses would relocate to Britain to take advantage of this. That would have some positive impact on the headline statistics which measure the UK economy. Yet nobody would argue that the

205 HM Government "United Kingdom Balance of Payments: The Pink Book 2012", Methodological Notes, page 242.

206 See ONS website at: <www.ons.gov.uk/ons/about-ons/business-transparency/freedom-of-information/what-can-i-request/previous-foi-requests/travel-and-transport/rotterdam-antwerp-effect/index.html>.

207 Global Britain Briefing Note 64 "The Rotterdam-Antwerp Effect & the Netherlands Distortion" (2011).

British National Accounts or Balance of Payments ought to be recalculated to reverse out the impact of this ‘artificial’ enhancement. Tax policy is as much a facet of national competitiveness as, say, the convenient geographical location of a port as a transshipment point. When all is said and done, real money does move in the way the statistics report.

In contrast, the think tank Global Vision used a similar methodology but confined itself solely to adjusting the export of goods.²⁰⁸ Concentrating only on the Rotterdam/Antwerp Effect resulted in the share of UK exports going to the EU for 2010 falling from 48.1 per cent to 45.2 per cent. That smaller adjustment is obviously more defensible. However, it still relies on an arbitrary 50–50 division of the ‘surplus exports’.

Since 2010, the Banque de France has provided two geographical breakdowns of inward investment: a conventional analysis by location of the actual investor and an alternative version organised by the location of the ultimate controlling parent. These adjustments lead to a downward revision in the capital flows from the three Benelux countries – and the interesting result that one of the largest external investors in France is France.²⁰⁹ This provides some guidance as to the likely impact of the Netherlands Distortion, but it is still not a rigorous adjustment of the trade figures. Ultimately, this provides a very telling commentary on the French corporate tax system, but not much else.

In 2007, the Dutch Centraal Planbureau (CPB) investigated the Rotterdam/Antwerp Effect.²¹⁰ Its main concern was whether the heavy level of re-exports was leading to an over-optimistic picture of the Dutch economy – and, to its credit, it thought it was, with the growing earnings from on-shipping other countries’ goods masking a loss of market share for home-produced products.

Incidentally, the CPB provided some data about where these re-exports were coming from and going to. Around half of all Dutch exports were re-exports from elsewhere and 12.2 per cent of re-exports came from the UK.²¹¹ Although the analysis is not precisely divided between EU and non-EU members, 83.7 per cent of the re-exports were destined for ‘Europe’ and it is reasonable to assume that at least three-quarters stayed within what is now the EU-28.²¹² The largest single destination of Dutch re-exports was Germany. Unfortunately, it is not easy to reconstruct the data in the CPB document from the Statistics Netherlands website. It would therefore be very difficult to devise an accurate adjustment for the Rotterdam/Antwerp Effect at the present day. But there is no reason to doubt the data that the majority of British exports to the Netherlands still stay within the EU-28.

Although the Rotterdam/Antwerp Effect clearly has a major impact on the ‘real’ state of bilateral UK-Netherlands trade, the overall significance for the level of UK-EU-28 trade appears to be much lower. The ‘real’ level of British

208 Global Vision “Britain and Europe: a new relationship” (2012), Lea and Binley, section 1.4, pages 7–8.

209 Banque de France “The French Balance of Payments and International Investment Position” Annual Report 2009, Box 3.1 pages 53–55; Annual Report 2010, Box 2, pages 39–40; Annual Report 2011, Box 3, pages 42–43; Annual Report 2012, pages 35–36; Annual Report 2013, Box 6, page 33.

210 Despite their title, CPB do not actually do any economic planning and prefer their name to be translated in English as “Netherlands Bureau for Economic Policy Analysis”. Part of the Ministry of Economic Affairs, they fulfil a similar role to the old British Central Policy Review Staff or ‘Think Tank’. CPB Document No 149 “Re-exports: international comparison and implications for performance indicators” (July 2007).

211 CPB Document No 149 “Re-exports: international comparison and implications for performance indicators” (July 2007), Table 2.3, page 20.

212 CPB Document No 149 “Re-exports: international comparison and implications for performance indicators” (July 2007), Table 2.2, page 19.

exports to EU member states in aggregate is lower than the official statistics indicate, but the correct adjustment is probably not material. Certainly, it is unlikely to alter two fundamental facts: first, that, in aggregate, exports to the EU-28 constitute just under half of the total; and second, that this proportion has been falling and is likely to continue falling for the foreseeable future. For these reasons, it is not here worthwhile to adjust the official British trade figures to take into account either the Rotterdam/Antwerp Effect or the Netherlands Distortion.

ANNEX C: Data sources for this section

The main data source is the annual ONS publication “United Kingdom Balance of Payments”, colloquially known as “The Pink Book”.

Figure 2.i: Destination of UK exports 1958–2013

The ONS does not provide a single data set which covers the period 1958–2013. Figure 2.i represents the combination of five separate data sets. Where data for years cannot be obtained from the ONS website, it has been sourced from the last published edition of the Pink Book which included information for that year. Where data cannot be obtained for a year, it has been omitted as a break in the graph. This is preferable to manufacturing a synthetic value to cover any gaps in the genuine data. Percentages are calculated by reference to the global total exports for a year as stated in the publication from which they are derived. Figures for the rest of the world are a balancing item to make the total up to 100 per cent after calculating the shares for the EU and North America.

1958–1972

The Pink Book does not provide comparable data for all forms of trade. Instead, the visible trade in goods has been used as a proxy for all exports (and for that reason on the chart the values are represented by dotted rather than solid lines). On the assumption that Sterling Area countries are more likely to have had a propensity to buy services from the UK, it is possible that this may slightly over-estimate the true proportions for North America and the EU, but it is not considered to be a material difference. Figures for the EU are derived from “Visible trade (f.o.b.) – analysis by area” in Pink Book 1969 (Table 6), Pink Book 1970 (Table 9), Pink Book 1971 (Table 8), Pink Book 1972 (Table 7) and “Visible trade – geographical analysis” in Pink Book 1963–73 (Table 7). Figures for North America derived from the same or equivalent tables in Pink Books 1969 to 1983.

1973–1987

As with period (a), the visible trade in goods has been used as a proxy for all exports (and for that reason the values are represented by dotted rather than solid lines on the chart). Figures for the EU-9 up to 1979 are derived from Table 2.3 (Geographical analysis) in Pink Book 1980. There is no EU-9 figure for 1980 because the Pink Book 1981 was published at a time when Greece had joined and so reported trade data for previous years on the basis that it had always been a member state. Figures for the EU-10 are derived from Table 2.2 (Geographical Analysis) in Pink Book 1985. There is no EU-10 figure for 1985 because the Pink Book 1986 was published at a time when Portugal and Spain had joined and so reported trade data for previous years on the basis that they had always been member states. Figures for the EU-12 up to 1987 are derived from Table 2.2 (Trade on a balance of payments basis: geographical analysis) in Pink Book 1995. Figures for North America are derived from the same or equivalent tables in Pink Books 1984 to 1996, with figures for 1980 and 1985 omitted.

1988–1991

Figures for the EU-12 and North America assembled by summing the values for each constituent country reported in Tables 6.4 (Trade in goods credits) and 6.7 (Trade in services credits) in Pink Book 1997.

1992–1998

Figures for the EU-12, EU-15 and North America assembled by summing the values for each constituent country reported in Tables 9.3 (Trade in goods and services) in Pink Book 2001.

1999–2013

Figures for the EU-15, EU-25, EU-27, EU-28 and North America assembled by summing the values for exports of each constituent country downloaded from the ONS website from the dataset associated with Table 9.3 (Trade in goods and services) of the Pink Book. The 10 countries which joined the EU in May 2004 (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) are counted within the EU from 2005. The data downloaded included the revisions to previously published figures released by the ONS on 20 January 2015.

Figure 2.ii: Projected trend lines for UK export destinations

1958–2013

The same data as for Figure 2.i. The trend-lines are drawn by Microsoft Excel as second order polynomials with the intercept on the y-axis set to equal the actual percentage values used in Figure 2.i.

Figure 2.iii: Proportion of UK exports going to the EU

1958–2013

The ONS does not provide a single data set which covers the period 1958–2013. Figure 2.iii represents the combination of five separate data sets, compiled on the same basis as Figure 2.i.

1958–1972

Figures for the EU-6 are derived from “Visible trade (f.o.b.) – analysis by area” in Pink Book 1969 (Table 6), Pink Book 1970 (Table 9), Pink Book 1971 (Table 8), Pink Book 1972 (Table 7), “Visible trade – geographical analysis” in Pink Book 1963–73 (Table 7). Figures for the EU-9 are derived from “Visible trade – geographic analysis” in Pink Book 1964–74 (Table 5), Pink Book 1965–75 (Table 5), Pink Book 1966–76 (Table 2.3), Pink Book 1967–77 (Table 2.3), Pink Book 1979 (Table 2.3) and Pink Book 1980 (Table 2.3).

1973–1987

The Pink Book provides comprehensive data for transactions between the UK and the countries that were members of the EU in the year the report was published, generally carried back for 10 years or to 1973, whichever is later. As a consequence there is no information on actual exports to the EU for 1980 and 1985 (the years before new members joined the EU). From these tables, figures for the sum of exports of goods and of services have been derived. Figures for the EU-9 taken from Pink Book 1980 (Table 13.1). Figures for the EU-12 taken from the Pink Books for 1986–1990 (Table 10.1), and the Pink Books for 1991–1995 (Table 9.1). Figures for the EU-15 taken from Pink Book 1996 (Table 1.4).

1988–1991

Figures for EU groupings assembled by summing the values for each constituent country reported in Tables 6.4 (Trade in goods credits) and 6.7 (Trade in services credits) in Pink Book 1997.

1992–1998

Figures for EU groupings assembled by summing the values for each constituent country reported in Tables 9.3 (Trade in goods and services) in Pink Book 2001.

1999–2013

Figures for EU groupings assembled by summing the values for exports of each constituent country downloaded from the ONS website from the dataset associated with Table 9.3 (Trade in goods and services) of the Pink Book. The ten countries which joined the EU in May 2004 (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) are counted within the EU from 2005. The data downloaded included the revisions to previously published figures released by ONS on 20 January 2015.

Table 2.iv: Average share of UK exports to EU countries

The data is derived from the same sources as Figure 2.iii.

Table 2.v: Selected tariffs on manufactured goods

Data for the EU, USA and Japan: figures for 1960s and 1970s derived from Table 1.5 “Average MFN tariff on manufactured goods” (1962 and 1970 respectively) in The World Bank Policy and Research Paper 21 “European Integration and Trade with the Developing World” (1992) by Pohl and Soursa, page 13; figures for 1989, 1996 and 2012 taken from World Bank World Development Indicators “Tariff rate, most favoured nation, weighted mean, manufactured products” using France as a proxy for the EU.

Data for Canada and Australia: figures for 1970s derived from World Bank “World Development Report 1978”, Table 44 “Industrialised countries: Average Tariff levels”, page 58, figures for finished manufactures in 1973; figures for 1989, 1996 and 2012 taken from World Bank World Development Indicators “Tariff rate, most favoured nation, weighted mean, manufactured products”, with the 1991 and 2011 values used as proxies for Australia 1989 and 2012.

Data for ‘Average Developed Country’: figure for 1970s derived from World Bank “World Development Report 1978”, Table 44 “Industrialised countries: Average Tariff levels”, page 58, figures for finished manufactures in 1973; figures for 1989, 1996 and 2012 taken from World Bank World Development Indicators “Tariff rate, most favoured nation, weighted mean, manufactured products” for the value ‘OECD members’.

Data for India taken from World Bank World Development Indicators “Tariff rate, most favoured nation, weighted mean, manufactured products” with the values for 1990, 1997 and 2009 used as proxies for 1989, 1996 and 2012 respectively.

Data for China taken from World Bank World Development Indicators “Tariff rate, most favoured nation, weighted mean, manufactured products” with the values for 1992 and 2011 taken as proxies for 1989 and 2012 respectively.

Data for Brazil taken from World Bank World Development Indicators “Tariff rate, most favoured nation, weighted mean, manufactured products”.

Figure 2.vi: Gross contribution to UK GDP 1958–2013

The data for EU Exports is derived from the same sources as Figure 2.iii. The data for Non-EU Exports is a balancing item calculated as the difference between the value of EU Exports and the annual figure for “Exports: Total Trade in Goods and Services at Current Prices” downloaded from the ONS website (series KTMW). Investment derived from the annual figure for “Total Gross Fixed Capital Formation at Current Prices” downloaded from the ONS website (series NPQS), the one available data series covering the entire period. Figures calculated as percentages of GDP derived from “Gross Domestic Product at Market Prices: Current Price” downloaded from the ONS website (series CDID), which is most compatible with balance of payments items. Where data cannot be obtained for a year, it has been omitted as a break in the graph. This is preferable to manufacturing a synthetic value to cover any gaps in the genuine data.

Figure 2.vii: Net contribution of trade to UK GDP 1958–2013

The data for EU Trade is derived from the same sources as Figure 2.iii and calculated as the export value minus the corresponding import value for trade in goods and services. The data for Non-EU Trade is a balancing item calculated as the difference between the value of EU Trade and the annual figure for “Total Trade in Goods & Services: Balance” downloaded from the ONS website (series KTMV). Figures calculated as percentages of GDP derived from “Gross Domestic Product at Market Prices: Current Price” downloaded from the ONS website (series CDID), which is most compatible with balance of payments items. Where data cannot be obtained for a year, it has been omitted as a break in the graph. This is preferable to manufacturing a synthetic value to cover any gaps in the genuine data.

Table 2.viii: UK trade balance with the EU in selected years

Data for 1972: Pink Book 1963–73, Table 7 (Visible trade – geographical analysis), figures for goods only; no data available for services. Data for 1982: Pink Book 1985, Table 12.1 (United Kingdom Transactions with Countries and Institutions of the European Community: Summary Account), sum of figures for visible trade in goods and services elements of invisibles. Data for 1992: Pink Book 2001, Table 9.3 (Trade in goods and services). Data for 2002 and 2013: figures for Current Account: Goods and Services, Exports and Imports, downloaded from the ONS website. The data downloaded included the revisions to previously published figures released by the ONS on 20 January 2015.

Table 2.ix: Exporters and Importers of Goods and Services, 2013

Data derived from the ONS publication “Exporters and Importers in Great Britain, 2013” released 13 November 2014 using the results of its Annual Business Survey. Figures cover the Great Britain business economy excluding insurance and reinsurance sectors. ‘Enterprises’ include only those registered for either VAT or PAYE, so the actual result may over-estimate the true proportion of all businesses engaged in overseas trade.

Table 2.x: Top export destinations 1988 and 2013

Data for 1988 derived from Pink Book 1997 Table 6.4 (Trade in goods credits) and Table 6.7 (Trade in services credits). Data for 2013 derived from Pink Book 2014 Table 9.4 (Trade in goods) and Table 9.5 (Trade in services). The data includes the revisions to previously published figures released by ONS on 20 January 2015.

Table 2.xi: Top import sources 1988 and 2013

Data for 1988 derived from Pink Book 1997 Table 6.5 (Trade in goods debits) and Table 6.8 (Trade in services debits). Data for 2013 derived from Pink Book 2014 Table 9.4 (Trade in goods) and Table 9.5 (Trade in services). The data includes the revisions to previously published figures released by ONS on 20 January 2015.

Table 2.xii: Summary of British trading patterns

Data derived from Tables 2.x and 2.xi.

Figure 2.xiii: Gross Value Added by Sector for EU-28 countries, 2013

Data downloaded from the EUROSTAT website. All values are for 2013. All underlying figures calculated in euros. Definitions for each sector follow NACE Rev. 2 as reported by EUROSTAT: 'Agriculture' is Class A; 'Manufacturing' is Class C; and 'Services' is the aggregate of the values for Classes G-I (wholesale and retail trade, transport, accommodation and food service activities), J (information and communication), K (financial and insurance activities) and M-N (professional, scientific and technical activities; administrative and support service activities).

Gross Value Added data for each country taken from the EUROSTAT Table "Gross Value Added and Income by A*10 industry breakdowns", with the exceptions of the GVA values of the manufacturing sectors for Bulgaria, Romania and Spain because in that Table the manufacturing values for those countries are amalgamated in the values reported for the combined industry (except Construction) sector. GVA values for Romania and Spain taken from the EUROSTAT Table "National Accounts aggregates by industry (up to NACE A*64)". The GVA value for Bulgaria is derived as the balancing figure to reach the reported EU-28 total after including the alternative values for Romania and Spain.

Figure 2.xiv: Employment by Sector for EU-28 countries, 2013

The data is derived from the same source as for Figure 2.xiii. Employment data for each country taken from the EUROSTAT Table "Employment by A*10 industry breakdowns", with the exception of Spain which is derived as the balancing figure to reach the reported EU-28 employment total because that Table does not report a value for Spain. Employment measured by the total employment domestic concept.

Figure 2.xv: Contribution of EU-28 countries to EU Gross Value Added, 2013

The data is derived from the same source and on the same basis as Figure 2.xiii.

Figure 2.xvi: Destination of exports for all EU members, 2012

The data is derived from the EUROSTAT website. Figures for exports of goods taken from the database "EU Trade Since 1988 by Broad Economic Categories" [DS-032655], supplemented for omissions with data from "International trade of EU, the euro area and the member states by SITC product group" [ext_lt_intertrd]. Figures for exports of services taken from the database "Total services, detailed geographical breakdown by EU member states (since 2002)" [bop_its_tot], supplemented for omissions with data from "International trade in services (since 2010)" (BPM6) [bop_its6_det].

Table 2.xvii: Comparison of trade negotiations conducted by the US, the EU and Canada

Data concerning treaties derived from Appendix C and ultimately derived from the websites of the Office of the United States Trade Representative, the EU Commission Trade webpages and the website of Foreign Affairs, Trade and Development Canada.

Country rankings based on data downloaded from the World Bank website, GDP at PPP (current international dollar) code: NY.GDP.MKTP.PP.CD, supplemented in the event of absences by IMF data.

Table 2.xviii: Exports of goods by the UK, £m

Data taken from the Pink Book 2014, Table 9.4 “Trade in goods”.

3 The UK's current political relationship with the EU has become increasingly unsatisfactory

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“The EU was designed to fulfil a purpose agreed in the 1950s, in pursuit of an ideal first devised in the 1920s and 1930s.”

The EU was designed to fulfil a purpose agreed in the 1950s, in pursuit of an ideal first devised in the 1920s and 1930s. Today, the EU is a very different organisation to what was originally conceived, defined by bureaucracy and a lack of regard for the democratic process. During the 2002 Convention on the Future of Europe, the failures of the EU were openly acknowledged:

Many speakers... pointed to the weaknesses and shortcomings of present-day Europe. Europe did not listen to its citizens enough. Citizens did not feel they could hold to account those in positions of power who took decisions on Europe's behalf. The fact that the European Parliament was elected by universal suffrage, that the ministers sitting around the Council table represented their governments and that the European Commissioners were appointed by the member states' governments and accountable to the European Parliament did not dispel the view that Europe was not democratic enough. Europe's citizens had to be directly able to choose and remove those at the helm of its affairs. Public opinion often regarded the institutional mechanisms of the Union as laborious, complex and difficult to understand. Inside the Union, Europe was perceived as abstract and distant. Outside, it was perceived as not effective enough, failing, for instance, to respond rapidly and adequately to the challenges posed by globalisation and cross-border developments. A number of speakers thought that Europe tended to be too prominent at the expense of the independence and freedom of nation states.²¹³

Ten years on, little has changed. The EU remains bureaucratic and intrusive. As Pope Francis said in 2014:

In recent years, as the EU has expanded, there has been growing mistrust on the part of citizens towards institutions considered to be aloof, engaged in laying down rules perceived as insensitive to individual peoples, if not downright harmful... In many quarters we encounter a general impression of weariness and ageing, of a Europe that is now a 'grandmother', no longer fertile and vibrant. As a result, the great ideas that once inspired Europe seem to have lost their attraction, only to be replaced by the bureaucratic technicalities of its institutions.²¹⁴

UK participation in the project originated in a policy first attempted in the 1950s, and pursued politically in the 1960s and 1970s. It is thus legitimate to ask whether the model is entirely appropriate for contemporary UK needs and, projecting ahead, to Britain's mid twenty-first century requirements.

Debate in the UK over the EU has been hindered by two key misconceptions.

First, the concept of 'winning the argument in Brussels' has become a Whitehall press release trope. Any audit of any competence over any length of time demonstrates that, while policy gains can be made, these come after extensive periods of campaigning; are associated with concessions elsewhere; and they come at a long-term risk, as the competence itself is never returned to national management.

Second, 'reform of the EU' is promised within the framework of the UK remaining a member. Significant reform demands Treaty change, as acknowledged by David Cameron when he said he would be *“more comfortable if the Treaty specifically said”* that the UK should be exempted from the idea of 'ever

213 The European Convention: The Secretariat "Note on the plenary meeting" (2002), page 2.

214 The Times "Pope condemns the EU as inhumane, selfish, decadent", C. Bremer (26 November 2014).

“It is easier to reach an agreement for more integration than it is to remove competences that have failed when run at EU level.”

closer union’.²¹⁵ This, in turn, requires 28 member states to agree to any change, with everyone having a veto. In several cases, agreement over reform also triggers a national referendum. Amending the Treaties, under the Article 48 rules, is now a more complex and time consuming process (see Section 6) that discourages potential participants from even contemplating anything substantial enough to cross this threshold. Any change that is not substantial is a matter of procedure rather than Treaty, and thus not secure in law.

The Treaties themselves now contain ‘*passerelle*’ clauses allowing go-ahead groups an easier mechanism to integrate further, and reducing the ability of a member state to seek to reduce the *acquis* by getting a *quid pro quo* deal in exchange for removing a veto.²¹⁶ Overall, this has generated a negotiating imbalance, as it is easier to reach an agreement for more integration than it is to remove competences that have failed when run at EU level. Unless a government is prepared to make EU reform a central issue, and threatens to leave the EU if meaningful and enduring reform is not met, only marginal administrative reforms can be achieved. Such reforms are not anchored within the main Treaties and are therefore at risk of being overturned over time.

The European Union (as the ECSC, EEC, EC and now EU) is an old age pensioner. Its contemporaries in the international arena, such as the UN and NATO, have recognised that they need to adapt to changing times or perish, even if they are still struggling to achieve this. The EU is proving less flexible.

While this publication is forward-looking, a brief review of how the EU has developed will contribute considerably to our understanding. This analysis can:

- Identify the strategic end goals, and thus the national end state;
- Put individual surrenders of competence, debated at the time in isolation, into a wider context;
- Foresee future direction in individual competence areas;
- Place current democratic debate and individual pledges into an accurate setting;
- Predict long-term effects and costs.

3.1 The EU has been committed to ‘ever closer union’ since it was founded, despite UK opposition

European integration was embarked upon after World War II as a mechanism for avoiding future wars in Europe, generating solidarity between the states of mainland Western Europe whose neighbours lay under Soviet rule, and securing economic advancement in an era where world tariffs were still high.

France gained continued protection for its farmers. Germany and Benelux, whose markets were already integrated, gained increased access to those of other member states. Italy gained association with more advanced economies. Central to the deal was that it locked in the country that had been behind three major wars with France over the previous three generations: Germany. France had tried the alternatives of political union with Britain as a counterweight (1940, 1956; rebuffed) and seizing Germany’s industrial heartland (Occupation of the Rhineland, 1919; failed support for separatists and reoccupation, 1923–24; Occupation Zone and failed Saar referendum, 1945–1955). Consequently, in

Acquis communautaire

The *acquis* is the accumulated legislation, legal acts, and court decisions which constitute the body of EU law.

215 HM Government “EU speech at Bloomberg” (2013), accessed 01/05/2015 at <www.gov.uk/government/speeches/eu-speech-at-bloomberg>.

216 ‘Go-ahead groups’ are small groupings of member states committed to further integration in certain areas without the participation of all member states.

“The Schuman Declaration contained unambiguous pointers as to what the ECSC was intended to do.”

the aftermath of the Suez Crisis, Paris pursued the same policy with Bonn that London followed with Washington.

3.1.1 The founders of the European Union were committed to creating a single European state

The launch of the first incarnation of today's EU – the European Coal and Steel Community, or ECSC – came in the wake of a statement by France's then Foreign Minister on 9 May 1950 (later chosen as Europe Day for the EU).²¹⁷ His short speech subsequently became known as the Schuman Declaration. It contained unambiguous pointers as to what the ECSC was intended to do:

- *Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity;*
- *The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe;*
- *By pooling basic production and by instituting a new High Authority, whose decisions will bind France, Germany and other member countries, this proposal will lead to the realisation of the first concrete foundation of a European federation indispensable to the preservation of peace.*

Thus the preamble of the ECSC came to include this objective (in the French version: there were no English language signatories):

RÉSOLUS à substituer aux rivalités séculaires une fusion de leurs intérêts essentiels, à fonder par l'instauration d'une communauté économique les premières assises d'une communauté plus large et plus profonde entre des peuples longtemps opposés par des divisions sanglantes, et à jeter les bases d'institutions capables d'orienter un destin désormais partagé.

Subsidiarity

Subsidiarity involves the principle of decision making being moved away from the centre wherever possible. It is a principle of good federal government as well as devolved power structures. It can also be problematic as it has come to involve powers being first subsumed from national controls in order for local government, working alongside EU-funded 'civil society' and lobbyists, to manage policy while directly responsible to Commission-level oversight. A devolution concept thus becomes a tool for undermining sovereignty.

In the more ambitious European Economic Community (EEC) founding treaty, this became the commitment:

DÉTERMINÉS à établir les fondements d'une union sans cesse plus étroite entre les peuples européens.

This was subsequently retained in the English language version by the time of Maastricht as:

RESOLVED to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity.

This provides a commitment to a federal state. The text of the Treaties is thus unambiguous. There has been a suggestion that removing this protocol removes the motivation to pursue ever closer union. However, this presupposes that both the Commission and the Council of Ministers are not occupied by staff and delegates who themselves share in the 'European Ideal'.

²¹⁷ The Council of Europe selected a different May date.

*“Times have changed.
UK decline has been reversed.
COMECON in Eastern Europe has fallen.
However, the EU’s bloc mentality remains.”*

3.1.2 The European Union was created to act as a bloc in the Cold War

The commitment to ever closer union was widely shared by the ‘founding fathers’ of the future EU.²¹⁸ What was to become the EU was, however, envisaged as a necessary bloc. Member states collectively would negotiate as equals with the two superpowers, the United States and the Soviet Union, and the emerging power of Maoist China. In a world of tariffs and trade walls, proxy wars and ICBMs, the Iron Curtain and the Cuban standoff, the declining colonial states of Europe would together hold their own against these hostile competitors.

UK accession fell into this context. By 1972, it had surrendered the majority of its Empire. Still smarting from the Suez debacle, it had seen the Baghdad Pact unravel, had retired from East of Aden, and had conceded supremacy in the Persian Gulf to Washington. The British Army on the Rhine faced off against Soviet armour. Chia Chia and Ching Ching were yet to set off to London Zoo, but ‘panda diplomacy’ was underway. The British economy faced a troubled decade and was being written off as the irredeemable Sick Man of Europe. Closer affiliation with the European bloc provided a prop for a beleaguered and seemingly isolated state in freefall.

Times have changed. UK decline has been reversed. COMECON in Eastern Europe has fallen.²¹⁹ However, the EU’s bloc mentality remains.

3.1.3 The British public were not fully aware of this direction in 1975

Given this context, it is hardly surprising that there was widespread support for Britain joining the EEC in 1973, or that the referendum held two years later saw over 67 per cent of the public vote to remain in. At the time it made sense to join.

The emerging public record now makes increasingly clear the extent to which advocates of EEC membership deliberately made light of its political dimension. It is untrue to say that the British Government was not aware of this aspect. But the prospect of political union was deliberately and substantially downplayed:

- Ministers when pressed in Parliament admitted that other countries supported this direction, but stressed the need for unanimity, implying it would be vetoed;
- Foreign and Commonwealth Office (FCO) staff admitted internally that this was the direction, and saw this as a strategic necessity, but did not state so outside their department;
- Negotiators agreed with their counterparts that this was the direction, but did not declare this;
- Individual broad brush policy commitments entered into, such as the principle of having a single currency, were claimed to be still areas for future decisions;
- Prime Minister Edward Heath did make speeches supporting closer European integration, but he made them abroad or to small party gatherings;

218 Churchill excepted. His occasional flashes on how a consortium of powers might operate feature within the diaries of Sir John Colville, along with references to both French proposals of union. Churchill’s complex views on the UK’s future association with a European state are occasionally nuanced but certainly not enthusiastic: see “Controversies from Brussels and Closer to Home”, L. Rotherham (EU Referendum Campaign 2011).

219 COMECON was founded in 1949 as the Communist economic bloc. It had very limited success.

“The parliamentary debates on accession, estimated at the time to run to a million words, barely focused on these potential costs.”

- Official vocabulary that did reference the prospect of closer integration was ambiguous and even contradictory;
- Official material, including the Government’s own White Paper, emphasised the positives and failed to raise the long-term issues;
- Politicians received support from sources of ‘grey’ political propaganda, prior to this being banned in the late 1970s.²²⁰

Consequently, the parliamentary debates on accession, estimated at the time to run to a million words, barely focused on these potential costs, and where they did these were dismissed as future bugbears that would be blocked. This correspondingly constitutes the earliest example in UK politics of the principle of the *Inherited Abrogation*: the concept that blame for the ultimate results of a decision can be passed on to another future minister, ideally of a different party, while requiring of Parliament that the EU commitment entered into still stands.

3.1.4 Most other EU member state governments today either follow the track of ‘a bit more union’ or sign up to ‘ever closer union’

From the 1980s onwards, the UK attempted to weaken the drive towards ‘deepening’ the EU by encouraging its ‘widening’. The idea was that, by enlarging the EU (especially if Turkey were brought in), there was little prospect of the EU accelerating towards its end goal quite so easily.

This has proved to be a mixed success:

- Not all accession countries proved to be Eurosceptic, though some were;
- The enduring Euroscepticism of accession countries proved to be dependent on individual leaders and political parties remaining in power, was tempered by net EU Budget receipts, and was affected by asymmetric shocks (such as Malta coping with a surge of illegal migrants);
- Under Tony Blair, the UK itself adopted a conciliatory diplomatic approach rather than maintaining a Treaty brake, which came at the price of conceding three new integrationist Treaties within a decade;
- Politically, the Conservatives attempted conciliation with integrationists through alliance with the European People’s Party (EPP). This came at the price of losing incoming allies such as Spain’s Partido Popular to the new grouping, and thus generating a dominant mass of integrationist centrist groups within the European Parliament;
- Accession countries shifted the balance of power between the EU and the European Free Trade Association (EFTA), reducing the appeal of the latter as an alternative;
- The launch of the euro rendered wider integration by Eurozone states inevitable for it to work;
- Individually, European-level politicians are motivated by narrow areas where they are campaigning to see further EU integration; collectively, these add up to a patchwork of wider integration;

220 On the remarkable history of CIA engagement 1949–1975, see “Controversies from Brussels and Closer to Home”, L. Rotherham (EU Referendum Campaign 2011).

- The default setting in the event of any major crisis is increasingly to turn to a collective response at the EU level.

A measure of changing attitudes can be gained by looking at two French Presidents. Charles de Gaulle's arrival meant an early brake on initial integration, most notably expressed during his time 'empty chairing' meetings and thus deploying an automatic veto. His successor-but-one Valéry Giscard d'Estaing, by contrast, ended up in retirement chairing the Convention on the Future of Europe that generated the draft for the Treaty of Lisbon. Modern Gaullists are today divided between those who continue to see the EU as a threat, and those who consider it a mechanism for extending French nationalism by leaning on German power.²²¹

In any event, support for the concept of 'less Europe' is restricted, as the following table shows:

Table 3.i: National trends in EU capitals

Country	Trend	Motivation	Votes in Council (total 352) ²²¹
Austria	Integrationist	Eurozone	10
Belgium	Integrationist	Eurozone, Rhineland economy, national unity, high levels of employment in EU institutions	12
Bulgaria	Integrationist	EU net receipts	10
Croatia	Integrationist	History	7
Cyprus	Integrationist	Eurozone, economy	4
Czech Republic	Mixed	Party politics, EU net receipts	12
Denmark	Eurosceptic	Party politics	7
Estonia	Integrationist	Eurozone, Russia, party politics	4
Finland	Mixed	Eurozone, history, party politics	7
France	Integrationist	Eurozone, Rhineland economy, Germany, power projection, CAP	29
Germany	Integrationist	Eurozone, Rhineland economy, war guilt	29
Greece	Integrationist	Eurozone, economy, Turkey	12
Hungary	Mixed	Party politics	12
Ireland	Integrationist	Eurozone, UK history	7
Italy	Integrationist	Eurozone, confidence in government	29
Latvia	Integrationist	Eurozone, Russia	4
Lithuania	Integrationist	Eurozone, Russia	7
Luxembourg	Integrationist	Eurozone, geography/history, Rhineland economy	4
Malta	Integrationist	Migration pressures	3

221 This approach depends on Berlin remaining acquiescent, which is less likely as the age of war guilt recedes.

222 The voting pattern is currently transitioning; the new format is locked in from April 2017. There is a weighting block also in play (this means a calculator is needed in meetings). However, only the UK of the 'big four' EU countries, alongside potentially Poland of the 'bigger six', constitute anti-integrationist large population blocs and certainly not enough to generate by themselves the 35 per cent veto threshold by population.

Country	Trend	Motivation	Votes in Council (total 352) ²²¹
Netherlands	Cautious	Eurozone (but Atlanticist, economically more liberal), Rhineland economy	13
Poland	Mixed	Party politics, EU net receipts	27
Portugal	Integrationist	Eurozone	12
Romania	Integrationist	EU net receipts	14
Slovakia	Integrationist	Eurozone	7
Slovenia	Integrationist	Eurozone	4
Spain	Integrationist	Eurozone, CFP, economy	27
Sweden	Eurosceptic	History	10
United Kingdom	Eurosceptic	History	29

Source: Internal Research

Different motives are in play, though the end result tends towards alliances that are more likely to support Commission proposals (albeit while accepting amendments) rather than block them.

Eighty per cent of all EU legislation is now adopted via Qualified Majority Voting in the Council.²²³ The Eurozone bloc alone constitutes 223 votes, and this figure is set to grow. A list of countries broadly inclined to support more EU integration generates a tally (depending on governments) of at least around 248 votes. The Schengen bloc consists of 281 votes. The QMV threshold requires 260.

This means that the centre of balance of the EU lies towards integration rather than in supporting powers being restored to governments. That in turn means that membership costs for a globally minded, lightly regulated country such as the UK will inevitably rise over time.

3.1.5 The UK and other member states have campaigned against this direction but are usually obstructed

Proposals to change the way QMV is counted, or to add future safeguards for non-Eurozone countries, do not entirely inspire confidence when case history is considered. There have been a number of occasions where the Community has been less than *communautaire*.

Examples include:

- The imposition of aspects of the Social Chapter, despite the UK opt-out, onto the UK under Health and Safety Clauses;
- The repeated misapplication of EU cost-benefit audit clauses to act as justifications;
- Default use of 'rubber articles' (former 94, 95, 308 TEU) to justify EU activity where there has been no actual legal authority;²²⁴
- Use of the Disaster Clause of the Lisbon Treaty to oblige UK financial support for the first Eurozone bail-out;
- The selection of Jean-Claude Juncker as Commission President, a power grab by MEPs.

²²³ See <www.consilium.europa.eu/en/council-eu/voting-system/qualified-majority/>.

²²⁴ These article were added as catch-all closes to complete the Single Market and fill legal gaps in agreed areas; they became more readily cited by the Commission than intended.

“The Commission abandoned its initial willingness to return powers that were not working at the EU level back to nation states.”

These might be considered to be individual blips. However, there is also the clear example of the Convention on the Future of Europe. Following evident loss of public confidence in the EU (as evidenced by a spate of lost referenda), in December 2001 EU leaders met at Laeken and produced a declaration. They commissioned a convention to review what was wrong, to identify why public support for the EU had plummeted, and to produce a solution.

The Convention, however, turned out to be packed with European integrationists (membership on several levels proved to be almost self-selecting). By the end of the first week, the Commission had abandoned its initial willingness to return powers that were not working at the EU level back to nation states, and the road to the Lisbon Treaty was begun.

This represented a massive lost opportunity as the following statement demonstrates, with Convention members drawing upon the Laeken Mandate and comparing it with the end result. It would be no exaggeration to say that, if any country withdraws from the EU, it will be as a direct consequence of the Convention on the Future of Europe abandoning the Laeken Mandate in favour of a quest for a European Constitution and increased integration.

Box 3.ii: Press Release from the Democracy Forum, Close of the European Convention

As members of the Convention on the Future of Europe, we cannot endorse the draft European Constitution as presented to the European Council. It does not meet the requirements of the Laeken Declaration of December 2001, which set up the Convention and established its terms of reference.

Laeken describes the Union as “behaving too bureaucratically”. The draft Constitution fails to address the 97,000 pages of the *acquis communautaire*, and proposes a new legal instrument, the ‘Non Legislative Act’, whereby the Commission can pass binding laws.

Laeken says “the Union must be brought closer to its citizens”. The transfer of more decision-making from member states to the Union, concerning criminal justice matters and new areas of domestic policy, will make the Union more remote.²²⁵

Laeken adds that “the division of competences be made more transparent”. But the new category of ‘shared competences’ gives no assurance about how power is to be shared, particularly as member states will be forbidden to legislate in these areas if the Union decides to act.

Laeken calls for the “European institutions to be less unwieldy and rigid”. But the Constitution gives more power to all the existing EU institutions and creates a Europe of Presidents, with more jobs for politicians and less influence for the people.

Laeken highlights the importance of national parliaments, and the Nice Treaty “stressed the need to examine their role in European integration”. National Parliaments lose influence relative to the Commission and the European Parliament. Their proposed new role in ‘ensuring’ compliance with the subsidiarity principle is in reality no more than a request which the Commission can ignore.

Laeken calls for “more transparency and efficiency” in the Union. The Constitution concentrates more executive and budgetary power in the very EU institutions which have been the subject of repeated and continuing scandals over mismanagement, waste and fraud.

Laeken emphasises simplification: “if we are to have greater transparency, simplification is essential”. The draft constitution runs to over 200 pages. The institutional provisions are the result of contorted compromises. It is hardly a document of clarity and inspiration.

225 The Convention did not embrace this principle when drafting the Constitution.

Laeken suggests the possibility of a constitution: “The question ultimately arises as to whether this simplification and reorganisation might not lead in the long run to the adoption of a constitutional text of the Union.” The concept of the Treaties as an inter-governmental construct being transformed into a monument for European ambition was rapidly seized upon, but without any study of either the alternatives on offer or the long-term consequences of such an act.

Lastly, Laeken’s overriding aim was a Democratic Europe. The draft Constitution creates a new centralised European state, more powerful, more remote, with more politicians, more bureaucracy, and a wider gap between the rulers and the ruled.

Source: Democracy Movement²²⁶

As the cross-party and international nature of the Democracy Forum shows, all European politicians who have sought to maintain national sovereignty have been marginalised, not just the UK. The most striking and outrageous examples have been when an entire national electorate has been consulted, and what subsequently happened when they have then ‘voted the wrong way’.

Since 1972, there have been 10 referendums that have resulted in the people of Europe voting against ‘ever closer union’. While referendum results which reject EU measures that only affect a single member state are accepted by the European Commission, when a referendum ends with the rejection of an EU-wide initiative to introduce a new Treaty, the popular result is either dismissed or the people of the offending country are asked to vote again.

Table 3.iii sets out the votes, with those in which the result was ignored marked in red.²²⁷

Table 3.iii: Referendum results against EU integration

Country	Referendum motion	Result	Date	Result
Norway	Membership application	53.5% against	25/09/1972	Norway stayed outside the EEC, but was asked again in 1994.
Greenland	Membership of the EU	53.0% against	23/02/1982	Greenland was allowed to leave the EEC. ²²⁵
Denmark	Treaty ratification	50.7% against	02/06/1992	Denmark was asked to ‘vote again’ (and did so in 1993).
Norway	Membership application	52.2% against	28/11/1994	Norway stayed outside the EU.
Ireland	Approving the Nice Treaty	53.9% against	07/06/2001	Ireland was asked to ‘vote again’ (and did so in October 2002).
Denmark	Joining the single currency	53.2% against	28/09/2000	Denmark was allowed to stay outside the euro.
Sweden	Joining the single currency	56.1% against	14/09/2003	Sweden was allowed to stay outside the euro (though remains pledged to join).
France	Approving the European Constitution	54.9% against	29/05/2005	Constitution relaunched as Lisbon Treaty. Introduced without referendum.
Netherlands	Approving the European Constitution	61.5% against	01/06/2005	Constitution relaunched as Lisbon Treaty. Introduced without referendum.
Ireland	Approving the Lisbon Treaty	53.2% against	12/06/2008	Ireland was asked to ‘vote again’ (and did so in October 2009).

226 Recorded in The Bruges Group “Plan B for Europe”, L. Rotherham, pages 67–68, accessed 23/05/2015 at: <www.brugesgroup.com/Plan-B-For-Europe.pdf>.

The Democracy Forum comprised the Eurosceptic members of the Convention, who cooperated to produce the official Minority Report.

227 A fig leaf involving a localised opt-out or a minor clarification may be added. The national government then may seek to repeal it subsequently.

228 The Faroes were allowed by Copenhagen to opt out of Danish accession after a consideration period. Their Løgting unanimously chose to do so in 1974.

“Integration might be opposed by skilful political opposition. But this depends on a succession of Prime Ministers fighting the national corner.”

This doesn't account for the 'near misses'; for example, in France only 51.1 per cent voted for the Maastricht Treaty. It is also worth noting that referenda tend to be stacked to encourage a domino effect, by holding those more likely to produce a vote in favour first, and by pushing ratification by other states ahead of any tough votes in order to increase the pressure on remaining non-ratifying states. In addition, questions have repeatedly been raised about activity involving EU funds in support of pro-EU campaigns.

Two countries have left the EU/EEC. Algeria gained its independence from France in 1962. Prior to this it had been considered an 'integral part' and, as such, had been a quasi-member state.²²⁹ Greenland voted to leave in a referendum. In both cases, these were successor states to member states rather than countries that had, in their own right, applied to join. It is notable that both countries have since managed to secure deals with the EU, and neither is inclined to once again affiliate particularly closely.²³⁰

3.2 The EU's institutions are geared towards integration

Integration might be opposed by skilful political opposition. But this depends on a succession of Prime Ministers fighting the national corner, given the nature of the *acquis* which only requires member states to make one concession once. It also overlooks how integrationism is structurally built into the system.

3.2.1 The European Commission is inherently integrationist

The EU's civil service acts as an inbuilt motor to integration. While individual opinions vary considerably, and there are staff who are to varying degrees critical of the integrationist approach, structurally the collective acts as a boiler room of further union.

There are a number of reasons for this. Some include:

- The Commission is the guardian of the Treaties. The Treaties endorse keeping the *acquis* rather than the principle of returning powers;
- Europhiles are more likely to be interested in looking for a job at the Commission;
- Those empathically in line with the 'EU way of doing business' are more attuned to the precursor networking needed to get selected;
- Europhiles are more likely to be endorsed by credible referees who work in the broader EU environment;
- Civil services are inherently inclined to generate new ideas and new laws;
- Federal systems are inherently inclined to draw more powers towards the centre, particularly in times of crisis and in relation to emerging technologies;
- Supporters of integration consider that there is no alternative to the process; its failure is perceived to be the precursor to cataclysm;
- Pay and benefits are very good, maintaining morale and 'buy-in' (even after retirement);

229 More precisely, the populated northern littoral provinces were considered to be French départements; the interior comprised territories. Had things worked out differently and France's other African colonies opted for similar status as they sidled towards independence, all of its African possessions (other than Guinea, a quick leaver) might otherwise have similarly been temporarily part of the EEC. The other five EEC members might, however, have expressed more of an opinion on the matter (particularly given relative numbers of *pièdes noirs*).

230 Algeria's status post-independence was peculiar in that it maintained informally an unofficial back-door status, until trade talks were opened in the 1980s and arrangements formalised. In this regard it mirrored East Germany's back-door status into the EEC market, only heading in the other direction.

“The Commission disproportionately attracts staff who are in favour of integration.”

- The lesson from whistle-blowers is that dissent is dealt with ruthlessly while transgressions are tolerated more than they should be: a culture of omerta discourages reform and reflection, and encourages acceleration upon encountering obstacles.²³¹

The Commission disproportionately attracts staff who are in favour of integration compared with national populations, and is psychologically inclined to push proposals that – individually, step by step – advance the centre of gravity in the national sovereignty debate towards increased ‘pooling’ at the developing federal level. Similar processes can be seen in how staffing operates within the other recruiting European institutions.

3.2.2 The European Parliament is inherently integrationist

Political parties have long tended to send their more pro-European members to the European Parliament, since these are the politicians more interested in making the commute.²³² It is only relatively recently that the more Eurosceptic parties have started to catch up, such as UKIP and AfD.

It might be argued that, as the only directly-elected body of the EU, the European Parliament could act as a break on the integrationist tendencies of the other institutions. But low turnout in European Parliament elections, alongside the widespread use of the list system which offers parties much more power in placing MEPs, has added to a distancing of MEPs. This is exacerbated by the end of the direct link with the voter, which was a characteristic of the UK’s old individual MEP constituency structure.

The growth of the MEP ‘supergroup’ structure has been encouraged by rules allowing for national political parties that team up to get additional parliamentary rights, extra group funds, and significant financing for their think tanks. While this suits centrist integrationist political groups (the PES, EPP, and ALDE), anti-integrationist political parties by definition are not inclined to integrate with each other.²³³ This also puts political opponents of integration at a starting disadvantage.²³⁴

3.2.3 The European Court of Justice (ECJ) (and wider Court of Justice of the European Union (CJEU)) is inherently integrationist

European integration can be measured by milestones set by judgments made by the Luxembourg Court. Indeed, a key element in the assessment of potential recruits to the Commission is to test their memory of them.

231 See the submission by whistle-blowers to the Convention on the Future of Europe, included in the collection of submissions set out in The Bruges Group “Plan B for Europe”, L Rotherham, accessed 23/05/2015 at: <www.brugesgroup.com/Plan-B-For-Europe.pdf>.

232 Exceptions have included politicians seeking diplomatic immunity in a hurry (this avenue has been largely closed down), young politicians seeking to start their careers by campaigning for EU laws to address a national concern, and senior politicians seeking a well-paid sinecure before retirement.

233 The acronyms stand for the Party of European Socialists, the European People’s Party, and the European Liberal Democrat and Reform Party.

234 This is not to argue that in many countries the public mood is not indeed in favour of closer European cooperation. It is to say however that (i) the system ends up with statistical underrepresentation by MEPs of those who oppose integration (ii) collectively, the EP ends up aggregating deeper integration by endorsing individual acts of integration pushed in isolation, and (iii) the level of public support for this aggregated direction (ie voters who do want a fully federal Europe) is a definite minority view.

“The practitioner in European law is by trade more likely to be associated with a level of bias.”

The role of the Court is to interpret the Treaties. As the Treaties are predicated upon further integration, and as most judges come from legal traditions that encourage rulings to interpret the intent of the Treaties’ drafters (unlike Common Law), it is hardly surprising that rulings often disappoint British and other lawyers arguing against the Commission’s more inventive interpretations of the rules.

Just as when European Court of Human Rights (ECHR) judges are picked (see Section 15), the EU’s judges almost inevitably have a back history that makes them more likely to be sympathetic to arguments pursuing the direction of integration. (This also helps to explain why the Commission is keen to fund the training of legal practitioners so that they are fully cognisant of Luxembourg views on what EU law entails, since these are the future ECJ judges.)

Just as with the Commission, being a practitioner in European law – and therefore a likely candidate to end up as a judge – is self-selecting. This, in itself, is hardly objectionable: it is a life choice, just as a lawyer might elect to specialise in criminal law or copyright law. However, it means that the practitioner in European law is by trade more likely to be associated with a level of bias, in the same way as a human rights lawyer is more likely to have a positive view of the Human Rights Act, or for either to have a particular view on whether there should be cuts to Legal Aid.

The alternative would be to select judges from among non-specialists in EU law who are steeped more constantly in Common Law practice. Given the massive corpus, such an approach would carry different difficulties (it would, in any event, be opposed by most current professionals for obvious reasons of professional self-interest).²³⁵

3.2.4 The Council’s working practices are inherently integrationist

Around 80 per cent of decision-making is now done through QMV. That means that deals are now made by barter. When the UK has a problem with a proposal and cannot find a blocking minority, the best it can achieve is to push for a temporary derogation, or to mitigate the damage by partly watering it down.

This leads to a range of problems: the temporary nature of derogations; opt-outs remain subject to further pressure at a later stage; opt-outs can be challenged in the European Courts if they generate differential treatment for other EU nationals or companies; and the fact that anything that is successfully blocked can still be put on the table at a future point. Meanwhile, any partial improvement is still not a full block on a bad and costly law.

The UK has around eight per cent of the vote at the EU Council, and around 10 per cent of the vote at the European Parliament (even assuming all UK MEPs turn up and all agree). However, with only one issue in five now subject to unanimity, the ability of the UK to trade off one veto for another has been dramatically reduced.

This becomes more significant with go-ahead groups of member states cooperating in set areas. As further integration in certain fields is greenlighted for these countries, this further reduces the ability of an uninvolved state to cast a veto. The outsider state thus loses a bartering chip that it could otherwise have deployed to protect unconnected vital interests that lie elsewhere.

How much influence does Britain have in the Council of Ministers?

Every time the UK has voted against a motion in the Council of Ministers it has been outvoted.

²³⁵ ECJ resumes are set out at <http://curia.europa.eu/jcms/jcms/Jo2_7026/>. Our comments are not meant as a personal criticism to be applied to every practitioner in European or for that matter human rights law, but we would certainly invite readers to review what the UK’s European judges (past and present) have said of their level of belief in the European ideal.

“The Court of Auditors has not given a clean bill of health to the Commission’s accounts for the past 20 years.”

3.3 The EU’s current institutions have serious failings and are undemocratic

Simple monitoring of the work of two EU institutions demonstrates that the operational activity of the EU is not without its problems. By late 2014, the Court of Auditors had still not given a clean bill of health to the Commission’s accounts for the past 20 years, identifying spending errors running latterly in the order of 4.7 per cent (€6.98bn) of the total annual Budget. As the UK is a net contributor and generally runs its own net receipts correctly (though there have been notable exceptions), this is disproportionately concerning for UK taxpayers.

Second, there is the ongoing work of OLAF, the office that conducts anti-fraud investigations into the use of EU funds. OLAF has to prioritise its work. This means it is obliged to write-off areas of identified fraudulent activity from the outset (see Box 3.iv below).²³⁶

Box 3.iv: Investigation Policy Priorities (IPP) as set out by OLAF

The Investigation Policy Priorities (IPPs) are used by OLAF to decide on the opening of investigations. These priorities come into play after the competence of OLAF and the necessary level of suspicions have been established.

The five policy priorities are: proportionality, efficient use of investigative resources, subsidiarity/added value, special policy objectives and financial impact.

The five policy priorities will all be taken into consideration in order to decide whether or not to open an investigation. No single policy priority will operate as a *conditio sine qua non*. The Unit charged with the selection of cases will check whether the facts meet the five criteria and propose the opening of an investigation, whenever the IPP are considered to be fulfilled.

Proportionality

OLAF should focus on cases where it can expect a fair return for its efforts. The expected results need to be balanced against the human and material resources that will be needed to bring a case to a successful conclusion.

This entails formulating a reasonable forecast of the manpower required and other foreseeable costs (e.g. due to missions) in connection with the investigation while also taking into account:

- Likelihood of financial recovery;
- Likelihood of prosecution – for example, whether there is sufficient time to investigate before time-barring;
- Possible high deterrent value: for example action is taken in a high value area where little action has been taken before.

Efficient use of investigative resources

An efficient use of resources means inter alia that once opened, investigations should be dealt expeditiously. This will entail checking whether:

- The workload of the relevant Unit will permit to begin investigative activities soon after the case has been opened;
- The workload of the relevant unit will permit to carry out work continuously as required by Regulation 1073/99;
- Investigations underway and whose priority is higher are not slowed down;
- Expertise required in order to carry out the investigation is available (language/sectoral/technical/legal knowledge).

²³⁶ Reform proposals are set out for example in The Freedom Association “Manning the Pumps”, L. Rotherham, accessed 23/05/2015 at: <www.tfa.net/wp-content/uploads/2014/10/ManningThePumps.pdf>.

Subsidiarity/added value

OLAF will prioritise cases where it is the only authority with competence in a specific situation or when it can clearly add value to the actions of others. This will entail checking whether:

- OLAF has sole competence (in certain matters in relation to EU staff) or whether there is an identifiable authority that can act;
- One or several authorities have requested the assistance of OLAF in a complex case and OLAF is therefore in a position to add value;
- An OLAF investigation could add value in terms of recovery, prosecution or deterrence to the control activities already carried out by other EU or national bodies.

Special policy objectives for 2012

OLAF will prioritise investigations on relevant sectors and/or geographical areas decided by the Director-General, and based on concerns/priorities expressed by the European Institutions and on the outcome of OLAF's own risk analyses, based also on information from member states. Priorities will be updated, at regular intervals, in the Management Plan. For 2012, they will be:

- Double funding in external aid;
- Smuggling of cigarettes and alcohol along the EU eastern border;
- Cohesion funds;
- Pre-accession funds in current accession and candidate countries;
- Suspected corruption or links to organised crime.

Financial impact for 2012

This indicator comes into consideration only when there are resources at risk because of the alleged frauds.

The level of EU Resources at risk is a relevant indicator of the seriousness of fraud. Sectoral financial parameters for the opening of investigations guarantee OLAF's commitment to focus on the more serious cases.

This will entail checking whether:

- In the Customs sector, the likely financial impact is over €1m (estimated illegal diminution of the resources);
- In the Agriculture sectors the likely financial impact is above €100,000 for SAPARD and above €250,000 for Agriculture (estimated misappropriation or wrongful retention of funds);
- In the Structural Funds, €500,000 in the European Social Fund and Cohesion Fund, and €1m in ERDF (estimated misappropriation or wrongful retention of funds);
- In the external aid and centralised expenditure sectors, €50,000 (estimated misappropriation or wrongful retention of funds);
- In the EU staff sector, €10,000 (estimated misappropriation or wrongful retention of funds).

Source: OLAF²³⁷

Over half the cases adopted by OLAF are dropped at the outset. Two-thirds of the 'tip offs' received by OLAF in 2013 arrived from private sources, whether known or anonymous. But only about 10 per cent of these cases led to the opening of an investigation or coordination case.²³⁸ This figure ran at 44 per cent even for information from public sources in 2013.

It is hardly surprising, given the media coverage of both outright fraud and governments mismanaging the funds they get from the central EU Budget, that there is a sense of outrage among taxpayers in the net contributing countries. But the reality is that there is no sense of ownership of these grants. Viewed at the point of receipt, these funds are masked by two intermediary sources, with

237 OLAF "Management Plan 2012", pages 20–21, accessed 23/05/2015 at: <http://ec.europa.eu/atwork/synthesis/amp/doc/olaf_mp.pdf> (subject to further modifications following a review process undertaken in 2013–4).

238 OLAF "The OLAF Report 2013", page 13, accessed 23/05/2015 at: <http://ec.europa.eu/anti_fraud/documents/reports-olaf/2013/olaf_report_2013_en.pdf>.

“UK Government ambitions for the future direction of the EU have failed to coincide with those held by the integrationists.”

the administering national authority and the EU lying between the recipient and the taxpayer in the foreign country who is paying for it.²³⁹

The finances are just one example of the credibility gap in the system. The EU suffers from a serious ‘democratic deficit’ in the way it is run:

- The system is opaque;
- Civil servants rather than elected politicians settle the majority of the work. ‘A Points’ are rubber stamped by ministers and only ‘B Points’ discussed. Ministers even end up signing off decisions on behalf of other ministers’ departments;²⁴⁰
- It largely functions through comitology, which is very obscure;
- Participation, where it is opened up more widely, is self-selecting by an emerging ‘Eurocracy’ of ‘quangocrats’;²⁴¹
- Lobbying is fundamental to the system, and this relies on ‘favoured insiders’;
- These insiders are treated as the collective representatives for all affected groups, and other interests are ignored;
- There is no accountability for failure;²⁴²
- Political blame nationally is passed on to preceding ministers and previous governments;
- It operates at a distance from the voter: MPs are obliged to accept decisions made elsewhere;
- Supportive media (reporters) gain favoured status; as outsiders, critical media find it more difficult to spot controversial laws and thus put problem issues on the agenda while they can still be improved or blocked.

This system consequently carries a measure of innate bias towards bad decision-making.

3.4 The UK has been continuously on the defensive during its time in the EU

The fundamental and enduring problem of UK membership since the departure of Prime Minister Edward Heath has been that UK Government’s ambitions for the future direction of the EU have failed to coincide with those held by the integrationists. Even the more engaged government of Tony Blair, which surrendered 100 vetoes, expended much of its political energy in securing caveats and opt-outs.²⁴³ The subsequent compromise between the two positions generates partial integration. Repeated partial integration in turn generates long-term integration. Powers transferred to the EU cannot then be returned as they are cemented in as *acquis*. The UK position is consequently strategically untenable.

The opposing strategies of UK governments and integrationists can be attributed to differences in perception, very different historic starting points, and

239 More properly, there are at least three intermediaries (assuming the revenue is taxed at source) but the third is the national government in question and this provides a sense of ownership at source.

240 The precise share of decisions taken without ministerial review is difficult to assess as some A Points might in previous meetings have been B Points, but the figure seems to fall somewhere between half and two thirds of dossiers.

241 For example, the UK selection process for the European Economic and Social Committee requires interested parties to persistently monitor over months or years a website on public appointments.

242 The annual report of the disciplinary committee of the Commission, which covers criminal activity rather than policy calamity, reveals a sluggish and seemingly reticent system even here. It historically has required an MEP to request its release.

243 An example is UK agreement to introducing an EU fundamental rights charter, and the UK attempt then to limit its application.

variable starting strengths (economic or military, for example) that can either be bolstered or undermined by EU institutions. To some extent, differences between the sides might also be exacerbated by the UK's under-representation within the EU's civil service – as Table 3.v shows. As context, the UK accounts for over 12 per cent of the EU's population.

Table 3.v: Staff by Directorate General, by nationality²⁴⁴

DG	Responsibility	UK/EU staff	UK share
COLLEGE	Commissioners	24/456	5.3%
SG	Secretariat-General	27/483	5.6%
SJ	Legal service	20/392	5.1%
COMM	Communication	30/603	5.0%
EPSC	Policy strategy centre	1/22	4.5%
ECFIN	Economic and financial affairs	13/613	2.1%
GROW	Internal market, SMEs	35/944	3.7%
COMP	Competition	20/735	2.7%
EMPL	Employment, social affairs, inclusion	21/629	3.3%
AGRI	Agriculture and rural development	16/943	1.7%
MOVE	Mobility and transport	16/437	3.7%
ENER	Energy	23/492	4.7%
ENV	Environment	34/454	7.5%
CLIMA	Climate action	10/137	7.3%
CNECT	Communications networks	38/776	4.9%
RTD	Research and innovation	42/1,043	4.0%
JRC	Joint Research Centre	79/1,807	4.4%
MARE	Maritime and fisheries	17/275	6.2%
FISMA	Financial services, capital markets	11/294	3.7%
REGIO	Regional and urban	23/587	3.9%
TAXUD	Taxation and Customs	8/439	1.8%
EAC	Education and Culture	15/411	3.6%
SANTE	Health and food safety	30/657	4.6%
HOME	Migration and home affairs	11/295	3.7%
JUST	Justice and consumers	18/396	4.5%
FPI	Service for Foreign Policy Instruments	2/73	2.7%
TRADE	Trade	31/552	5.6%
NEAR	Neighbourhood and enlargement	19/415	4.6%
DEVCO	International development	33/1,033	3.2%
ECHO	Humanitarian aid and civil protection	12/221	5.4%
ESTAT	Eurostat	26/600	4.3%
HR	Human resources and security	29/586	4.9%
DIGIT	Informatics	10/470	2.1%

244 European Commission “Staff demographics for Commission on 01/05/2015”, accessed 23/05/2015 at: <http://ec.europa.eu/civil_service/docs/europa_sp2_bs_nat_x_dg_en.pdf>.

DG	Responsibility	UK/EU staff	UK share
BUDG	Budget	9/407	2.2%
IAS	Internal audit	7/122	5.7%
OLAF	Fraud investigation	19/351	5.4%
SCIC	Interpretation	58/736	7.8%
DGT	Translation	134/2,260	5.9%
OP	Publications	20/616	3.3%
OIB	Infrastructure and logistics, Brussels	6/347	1.7%
PMO	Administration and payment	4/152	2.6%
OIL	Infrastructure and logistics, Luxembourg	0/124	0%
EPSO	Recruitment	7/112	6.3%
CdP-OSP	Personnel	0/36	0%
TOTAL		1,008 / 23,534	4.3%
APPROXIMATE SHARE BASED PROPORTIONALLY ON EU POPULATION			12.8%

Despite being one of the most populous member states, the share of Commission staff holding UK passports lags behind those hailing from Belgium (17.5 per cent), Italy (10.5 per cent), France (9.6 per cent), Germany (8.3 per cent), Spain (7.1 per cent), and Poland (4.9 per cent). By comparison, Ireland has 2.6 per cent.

This will have an impact, and might explain the occasional failure within the Commission to understand British attitudes. It also helps explain the Commission's repeated inability to grasp how UK systems, particularly Common Law, may differ and thus generate difficulties.

Given the nature of the Commission itself, lack of UK representation can hardly feature as a major explanation for the institution's integrationist zeal. Regardless of the nationality of the staff (and the Commission prides itself on supposedly dropping national affiliations), support for deeper Europe is an enthusiasm that to some extent 'goes with the job'.²⁴⁵

3.5 The UK has consistently failed to secure meaningful reform

Examining the history of the EU as a whole, it becomes more noticeable that each Treaty adds to, rather than reduces, integration. There is invariably more integration at the end of a given Parliament than at the start, even if no new Treaty is signed.

When Edward Heath took Britain into the EEC, the Common Fisheries Policy (CFP) was introduced and the UK's net loss from the Common Agricultural Policy (CAP) was cemented in. The Budget deal that was secured was seen as being a concession on the UK's part, as it would become increasingly detrimental to the nation's interests.

In 1975, following a much-vaunted 'renegotiation', the then Prime Minister Harold Wilson claimed that the UK had secured new terms of membership. In fact, very little had changed beyond an agreement to recognise New Zealand

²⁴⁵ This also may account for comparatively high engagement by UK nationals within the DGs involved in climate change action, suggesting a particular (and misplaced) priority focus from Whitehall. By contrast, however, the past lack of UK nationals within fisheries (at one point, 0.4 per cent) has improved significantly. The reasonably high figure for interpretation is inevitable given the need for native language speakers. But otherwise the share is a third of what one might expect given relative population levels.

“Even this success proved to have a limited shelf life.”

as a traditional supplier of dairy products, and the introduction of a sub-par Budget correcting mechanism. Even in the words of the then Assistant Under-Secretary for European Community Affairs, *“The renegotiation was billed as being a lot more than it was and the results, though satisfactory, were not very important.”*²⁴⁶

The one exemption to this history of failure came in 1984, when Prime Minister Margaret Thatcher was able to secure a Rebate from the EU. It is worth noting, however, that this deal did not come from constructive engagement. Her early attempts to secure a Rebate had been unproductive and in her memoirs she describes being *“in despair”* at the refusal of the other member states to offer a fair deal.²⁴⁷ Instead, the Prime Minister and her advisers had to use dogged determination, hijacking and dominating European Council proceedings until a deal was struck at the Fontainebleau Summit in 1984. She was granted an ongoing Budget Rebate, but only because of this famous ‘handbagging’.

However, even this success proved to have a limited shelf life. In what is perhaps the most notable recent UK failure to reform the EU, in December 2005 Prime Minister Tony Blair agreed to end the UK’s right to a Rebate on non-agricultural spending in member states that joined the EU after 2004. The Prime Minister had made it clear in his speeches that, in return, he wanted to see CAP spending fall. This ‘abatement disapplication’ meant that the amount of money the UK was entitled to would decline dramatically over the next few years.²⁴⁸ Research by Business for Britain has shown that, as a result of Tony Blair’s changes, the value of the Rebate to the UK dropped by £10.4bn between 2005 and 2013, however, the level of EU spending on the CAP did not change, an embarrassing setback for the British Government.²⁴⁹ What compounded this failure was the fact that the UK’s proposals had been comprehensively rejected, with then President of the European Commission Jose Manuel Barroso declaring, *“As it is, the UK presidency proposal is unacceptable. It is simply not realistic. This proposal amounts to a budget for a ‘mini Europe,’ not the strong Europe that we need.”*²⁵⁰

The French Government has identified the UK Rebate as an enduring strategic weakness, and it will require constant defence by future UK Governments whenever Treaty reform is on the agenda. The UK Government has, only latterly, adopted the tactic of using the site of the Strasbourg Parliament as a counter-chip, but this comes as other European capitals which support increased EU spending have also identified the Rebate as a potential easy hit. This does not bode well for the negotiating hand of British delegates in the future, as long as the UK remains one party among many within a common Treaty structure.

246 Historians for Britain “Lessons from the 1975 EU renegotiation”, O. Lewis (2014), accessed 23/05/2015 at: <http://forbritain.org/bfb060-historians-report-mr_r.pdf>.

247 “The Autobiography”, M. Thatcher (HarperPress, 2013), page 548.

248 Tony Blair had been critical of the rebate, describing it as an “anomaly that has to go”

249 Business for Britain “Briefing Note Number 4”, accessed 23/05/2015 at: <http://forbritain.org/140518_eu_rebate_blair.pdf>.

250 BBC News “In quotes: UK’s EU Budget plan” (6 December 2005), accessed 23/05/2015 at: <http://news.bbc.co.uk/1/hi/uk_politics/4488164.stm>.

“The EU was intended from its inception to be a long-term project. It is only proper that its end destination is considered.”

Conclusion

The EU was intended from its inception to be a long-term project. It is only proper that its end destination is considered when reflecting on what the UK’s future place in, or alongside the EU, should resemble.

The intent inherent in the EU project is that member states should gradually merge. Overarching laws and a new political framework will govern them. They should become economically more interdependent, and continentally rather than globally bound.

Whatever the merits of this idea, following this model comes at a high cost that only comes into full display as the years progress. It is a price that its advocates should fully acknowledge, defend and explain. Fundamental reform of the EU is required to change this unsatisfactory arrangement, and this reform has to include changing the text of the Treaties.

4 Conclusion

There are clearly deep problems with Britain's current relationship with the European Union. It exposes the UK to the fallout from systemic economic crises within the Eurozone, fails to provide the trading opportunities that a global power like Britain needs, and curtails the democratic process within the country itself.

It is important to appreciate that these are not transitory or superficial flaws, but fundamental problems that stem from the EU's central philosophy, its format, and its key policies. The absolute commitment to 'ever closer union', to cite one example, has led the EU's institutions to introduce a number of harmful policies, most notably creating a single currency without either the genuine convergence of an 'optimal currency area' or the political infrastructure needed to manage fiscal transfers between participants. The result is that the Eurozone is at a point where it must either integrate or disintegrate, posing a fundamental challenge to British policy-makers. Attempts to resurrect the EU's faltering economy, including the injection of €1.1tn of liquidity by the European Central Bank, have failed to address the fundamental flaws with the single currency. It is telling that, today, commentators from across the political spectrum argue that the euro is 'running out of road'.²⁵¹ At the same time, a refusal to accept democratic votes cast against integration has resulted in the perverse outcome of voters being instructed to vote again 'to get the right answer'.

The idea that EU membership is an unequivocal and overwhelming net gain for the UK is a legacy presumption, and fails to stand up to scrutiny. Within Whitehall, the question itself is taboo, presumably because it means rejecting decades of established policy. Far from offering all consumers and businesses a wider domestic market, after 40 years of membership less than five per cent of UK businesses directly export to the EU, yet all are forced to comply with the burden of EU regulation. Far from connecting the UK to a set of economic powerhouses, EU membership has made the UK overly dependent on trading partners that are caught in a perpetual economic crisis, brought on by the euro. At the same time, by being trapped in the EU customs union, the UK has lost the ability to develop its own trading relationship with countries outside the Union.

These are all issues that need to be resolved. Comprehensive plans for addressing the economic, trading and political problems that EU membership generates must be recognised as absolute prerequisites for the coming renegotiation to be considered satisfactory. The flaws that lie in the current terms of EU membership make the status quo unacceptable. Fortunately, it is quite possible to secure the necessary changes, and detailed proposals for doing so are set out in Part 2.

Addressing the problems that arise from Britain's EU membership will require considerable political skill and gritty determination. A reforming Government needs to show that it understands all the current problems with the EU and appreciates that fundamental structural changes are needed.

251 See Guardian "The Guardian view on the euro: running out of road" (5 January 2015), and CityAM "Eurozone will not likely survive its own Japanese-style lost decade", P. Artus (14 November 2014).

‘Tinkering around the edges’ would fail to address any of the issues that we currently face. To quote David Cameron, nothing short of “*full on*” Treaty change would lead to the type of relationship the United Kingdom could accept.²⁵²

252 Talking of the nature of the changes required, David Cameron stated on the record “*they do involve Treaty change, and proper full-on Treaty change for that matter.*” Andrew Marr Show, BBC, 4 January 2015.



Part 2:

The Change we need

Chapter

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In Part 1, we established that there are major problems with the current terms of Britain's EU membership. These fundamental issues must be addressed in the coming renegotiation. But what exactly should that renegotiation look like? UK policy-makers need to know both what changes are required and the best approach for obtaining them.

Part 2 sets out the modifications that the UK needs to secure to its EU membership terms. It explains how Britain can go back to a relationship that is much closer to the 'Common Market' that voters thought they were joining in 1975, and which removes Britain from the unwanted constraints of political union. It assesses the need for change and the specific problems that would have to be fixed before renegotiation can be deemed successful. To do this, it looks at two specific areas:

- First, it assesses the proposals for reform that have been put forward by various parties and groups, and distils 10 clear problems that must be addressed;
- Second, it assesses the current Treaty flaws and explores what alternative relationships with the EU could look like.

It concludes that EU reform is a surmountable task, though it would require substantial alterations to Britain's relationship with the EU. For renegotiation to be deemed a success, Treaty change is absolutely essential, including the removal of serious fault lines that exist within the text. There need to be substantial new mechanisms introduced to protect the UK's vital national interests. If those talks fail – and the actual appetite for genuine reform will quickly become apparent – then negotiators need to pursue wider options.

5 Proposals for change

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“It is possible to come up with a list of 10 clear problems that need to be addressed in discussions with the EU.”

It is clear that there are fundamental problems with the EU and that the UK needs to see a substantial change in the terms of its membership. Numerous proposals have been put forward for reforming the EU, raising questions about what the UK should seek to achieve in the coming renegotiation. Today, the need for change is recognised across the political spectrum – even within the EU, with noted EU federalists such as Jacques Delors arguing: *“If the British cannot support the trend towards more integration in Europe, we can nevertheless remain friends, but on a different basis. I could imagine a form such as a European economic area or a free-trade agreement.”*¹ Even Valéry Giscard d’Estaing has gone on the record as saying that *“We need to work out with the UK some practical arrangement... The approach could be as follows. In everything to do with the market economy and intergovernmental cooperation, the British would be involved. When it comes to political integration, the British, if they wanted, could stay on the fringes.”*²

Three major contributions to the debate over what renegotiation should seek to secure have been made by the Labour Party, the Conservative Party and the Fresh Start Group of Conservative MPs. By reviewing these proposals, it is possible to come up with a list of 10 clear problems that need to be addressed in discussions with the EU.

5.1 Labour Party proposals

Under its former leader, Ed Miliband, the Labour Party made it clear that it believes in remaining part of the EU, and previously stated that it did not want an In/Out referendum on UK membership. However, Labour has also said that it wants to see changes in Britain’s relationship with the EU and listed a number of clear reform objectives in its 2015 manifesto.³ These included:

- Tougher Budget discipline;
- Reform of the Common Agricultural Policy (CAP);
- A Commission-led zero-based review of spending on EU agencies to reduce waste and inefficiency;
- EU rules to protect the interests of non-euro members;
- The introduction of measures at EU level to protect the rights of British workers;
- Reforms to immigration and social security rules, alongside pushing for stronger transitional controls, which will enable member states to manage the flow of workers for longer when new countries join (including a two year waiting period for in-work benefits);
- The opening up of EU decision-making, and the implementation of institutional reforms to help build levels of trust among European citizens;
- Strengthening the influence of national parliaments over European legislation, by arguing for a ‘red-card mechanism’ for member states, providing greater parliamentary scrutiny;⁴

1 Daily Telegraph “Jacques Delors: Britain could leave the European Union”, B. Waterfield (28 December 2012).

2 Eurofacts “The British have undergone a profound change of attitude, says Giscard” (27 July 2007).

3 Labour Party “Britain can be better: Manifesto 2015” (2015), pages 76–77.

4 A ‘red card’ principle was presented as a proposal during the Convention on the Future of Europe (2002–2003) and then dropped by Labour ministers. This eventually morphed into the ‘yellow card’.

“David Cameron has made it clear that he wants to see ‘full on Treaty change’.”

- Legislating for a lock that guarantees that there could be no transfer of powers from Britain to the European Union without the consent of the British public through an In/Out referendum.⁵

While these policies offer some potential, they fail to address the institutional problems within the EU (with the possible exception of the ‘red card’ proposal and the protection of non-Eurozone states), and will do little more than maintain the unsatisfactory status quo. It is also unclear what precisely Labour means when it refers to a ‘red card’.

5.2 Conservative Party proposals

The Conservative Party has, under David Cameron, been much bolder on the issue of EU reform, criticising the Union for being “*too bureaucratic and too undemocratic*”.⁶ The Party has also, at a UK level, introduced more democratic accountability by legislating for a referendum to be held if and when a future Treaty change takes place. In addition to calling for an end to ‘ever closer union’, the Conservatives have also offered an In/Out referendum by the end of 2017 as a means of securing change.

While the Party did not provide full details on the ‘renegotiation’ ahead of the 2015 General Election, David Cameron has made it clear that he wants to see “*full on Treaty change*”.⁷ The Party also provided a summary of some of its aims in its manifesto.⁸ These are detailed below:

- An end to the EU’s commitment to ‘ever closer union’;
- No to a constant flow of power to the EU. Allow national parliaments to be able to work together to block unwanted European legislation;
- No to unnecessary interference;
- No euro membership;
- No participation in Eurozone bail-outs;
- Ensure that defence policy remains firmly under British national control. No participation in a European Army;
- Not to let the integration of the Eurozone jeopardise the integrity of the Single Market or in any way disadvantage the UK;
- Scrap the Human Rights Act and introduce a British Bill of Rights;
- Preserve the integrity of the Single Market, by insisting on protections for those countries that have kept their own currencies;
- Resist EU attempts to restrict legitimate financial services activities;
- Press for lower EU spending, further reform of the Common Agricultural Policy and Structural Funds.

In addition, in an article for the Daily Telegraph in 2014, David Cameron outlined seven ‘targets’ for EU reform:

- 5 A ‘referendum lock’ was introduced in the European Union Act 2011, which requires a referendum to be held on amendments to the TEU or TFEU (ie the central Treaties). However, it currently only provides for a referendum on the Treaty amendments, not the UK’s EU membership.
- 6 Conservative Party “Strong leadership, a clear economic plan, a brighter, more secure future” (2015), pages 72–73.
- 7 BBC, Andrew Marr Show, 5 January 2015.
- 8 Conservative Party “Strong leadership, a clear economic plan, a brighter, more secure future” (2015), pages 72–73.

“More information is required on what institutional changes the Conservatives would like to see introduced.”

- *Powers flowing away from Brussels, not always to it.*
- *National parliaments able to work together to block unwanted European legislation.*
- *Businesses liberated from red tape and benefiting from the strength of the EU’s own market – the biggest and wealthiest on the planet – to open up greater free trade with North America and Asia.*
- *Our police forces and justice systems able to protect British citizens, unencumbered by unnecessary interference from the European institutions, including the ECHR.*
- *Free movement to take up work, not free benefits.*
- *Support for the continued enlargement of the EU to new members but with new mechanisms in place to prevent vast migrations across the Continent.*
- *Dealing properly with the concept of ‘ever closer union’, enshrined in the Treaty, to which every EU country now has to sign up.⁹*

While these go further than the Labour Party’s proposals, they are still not entirely satisfactory. Several of the proposals simply maintain the status quo (such as keeping Britain out of the euro) and there is a lack of detail about how the non-Eurozone states could be better protected.

While the manifesto rightly identifies the problem of ‘ever closer union’ and also highlights the need for protections, more information is required on which specific failures will be addressed and what institutional changes the Conservatives would like to see introduced.

5.3 Fresh Start Proposals

In July 2012, the Fresh Start Group of Conservative MPs put forward a number of proposals for renegotiating Britain’s relationship with the EU. The Fresh Start Project was set up to research and propose a new relationship for the UK within the EU, and has become one of the most vocal and notable groups in the EU debate.

In its green paper “Options for Change”, the Fresh Start Group put forward a number of proposals which sought to address both the short-term impact of the EU on the UK economy and consider the long-term importance of the EU to the UK. Fresh Start suggested three types of changes: ‘green’ (which involved domestic changes), ‘amber’ and ‘red’ (which would both require Treaty change). By far the most important proposals were those classed as either amber or red. As the authors noted in their report:

It is clear that any attempt to renegotiate or repatriate powers will be a significant challenge, given that in most cases this will require agreement from other national governments and, in some policy areas, a comprehensive approach will require re-negotiation of the EU Treaties or a new EU Budget deal.¹⁰

The following sections list all of Fresh Start’s ‘amber’ and ‘red’ proposals for renegotiation in different policy areas. It provides one of the more comprehensive and compelling lists of proposals for addressing the key failures in today’s EU.

9 Daily Telegraph “The EU is not working and we will change it”, D. Cameron (15 March 2014).

10 Fresh Start “Options for Change” (2012), page 16.

5.3.1 Fresh Start trade proposals

- *The UK Government could seek a unilateral brake on EU financial services regulation through a legally binding protocol attached to the Treaties. This would assert the special circumstances that are the UK's stake in financial services, requiring the Commission to reconsider proposals that impact disproportionately on the UK, and would give the UK a right of appeal for any proposal before it had been agreed by the Council and European Parliament. This would give the UK a veto, because unanimity applies at the European Council level.*
- *The UK could negotiate changes to the Treaties to allow member states to pursue their own bilateral deals on investment.*
- *If the EU bureaucracy and regulation prevents the UK from developing global reach and makes the intra-EU trade no longer attractive, each of the alternative models described above would constitute withdrawing from our existing EU Treaty obligations.*

5.3.2 Fresh Start Budget proposals

- *The UK could negotiate to stop using the Strasbourg seat of the European Parliament or to remove a number of quangos, such as the Committee of the Regions and the Economic and Social Committee.*
- *The UK could repatriate EU international development monies to DFID.*
- *The UK could refuse to pay any contributions until significant progress towards reform is achieved.*

5.3.3 Fresh Start regional development policy proposals

- *Negotiate to abolish the Structural (and Cohesion) Funds, taking development aid to poorer EU countries out of the EU's hands. This would require amendment of the EU Treaties, which would need the approval of all member states. Some poorer EU countries would probably be fiercely opposed, though the UK could offer bilateral development aid to them instead of trying to support them through the EU Budget.*
- *Refuse to pay the relevant contributions to the EU Budget until adequate reform of the Structural Funds is achieved, should initial attempts at change fail. This would be a breach of the UK's EU Treaty obligations, in international law. Other member states might take countermeasures under international law. However, this action might help force a meaningful negotiation if other member states had previously refused to take the UK seriously.*

5.3.4 Fresh Start social and employment laws policy proposals

- *Obtain a new EU Treaty provision creating a 'triple lock' arrangement. The first 'lock' would be for the UK to opt out completely from the 'Social Policy' section of the EU Treaties – the principal part of the Treaties used to produce social and employment legislation. The second lock would give the UK the ability to opt out of any EU legislative proposal it believed would impact intolerably on its social and employment law. The third lock would allow the UK to determine that a piece of EU law unacceptably affected social*

and employment policy or law in the UK; and, in making this determination, the UK would be entitled to disapply the relevant law from itself. This would be a radical change to the EU Treaties, and would need to be agreed by all EU member states. However, the UK has some negotiating leverage. For instance, Germany would still like to incorporate into the EU Treaties the 2012 agreement on fiscal integration between various EU countries, something that would require UK approval.

- *Unilaterally disapply EU social and employment law in the UK, through an Act of Parliament. This would be a clear breach of the UK's EU Treaty obligations in international law. Under general international law, the other member states might be able to suspend obligations they owe to the UK internationally, including but not limited to EU Treaty obligations. In short, this unilateral action would not provide a sustainable long-term solution. It could, though, create the conditions to force a meaningful negotiation if other member states had previously refused to take the UK seriously.*

5.3.5 Fresh Start financial services proposals

- *A 'single market protocol' could be sought that would codify better regulation objectives, establish a one-in-one-out system for regulation, and restate the need for pro-growth measures. It would be possible to seek changes to qualified majority voting rules.*
- *The Prime Minister's use of the veto demonstrated his commitment to defending financial services. He could continue to negotiate for the protections he sought that led to the veto.*
- *The UK Government could seek a unilateral break on EU financial services regulation. Open Europe outlines a possible UK emergency break or 'double lock' approach, embodied in a legally binding protocol attached to the Treaties. Lock One would assert the special circumstances that are the UK's stake in financial services, requiring the Commission to reconsider proposals that impact disproportionately on the UK. Lock Two would give the UK a right of appeal for any proposal at any stage during the decision-making process before the proposal has been agreed by the Council and European Parliament. This would give the UK a veto, because unanimity applies at the European Council level.*
- *In a more drastic move, Parliament could refuse to accept, via a sovereignty vote, jurisdiction of the European Union over financial services measures that are against our national interest.*

5.3.6 Fresh Start environment policy proposals

- *The UK could negotiate fundamental reform of the REACH regime, or an opt-out for the UK, as part of wider renegotiation of its relationship with the EU.*
- *On EU ETS, the UK could negotiate through appropriate international bodies, such as through the International Civil Aviation Organization (ICAO) in the case of aviation, in order to obtain a global agreement, and ensure a level playing field.*

- *The UK could unilaterally refuse future compliance with existing provisions on REACH, 2020 renewables targets, and/or the EU ETS.*

5.3.7 Fresh Start police and criminal justice proposals

- *Seek EU Treaty change that allows the UK to opt out of those EU laws not under the block opt-out that currently exist. This includes the proposed European Investigation Order.*
- *Seek EU Treaty change that limits or excludes ECJ jurisdiction over these laws in relation to the UK, while the UK is bound by them.*
- *Seek EU Treaty change that makes reversible all past and future UK decisions to become bound by EU laws in this area.*
- *Refuse to apply EU policing and criminal justice laws that bind the UK under the EU Treaties, where these are deemed unacceptable. This could be done in the UK legal order with an Act of Parliament. However, this action would breach the UK's EU Treaty obligations in international law, which may prompt countermeasures by other member states.*

5.3.8 Fresh Start immigration policy proposals

- *Seek EU Treaty change to allow member states to impose a skill/income threshold on immigrants from other EU countries. Such a threshold would be likely to reduce significantly the number of EU immigrants coming to the UK, and help ensure that they increased UK prosperity and did not become a fiscal burden. It would also protect against the risk of EU immigrants depriving British citizens of jobs in the low-skilled end of the labour market. This Treaty change could also allow the UK to reverse decisions to opt in to EU laws on non-EU immigration. EU Treaty change would require the agreement of all member states, though not the Commission or European Parliament. This would be a radical change in the EU and many member states are likely to be opposed, at least at first. However, the UK will have negotiating leverage if, as seems likely, EU Treaty change is sought as a result of the Eurozone crisis.*
- *Limit EU immigration despite EU free movement rules. If the UK believed EU immigration was having an adverse impact upon it, and it was not able to get agreement to its desired reforms to EU free movement rules, it could unilaterally cease applying those rules to one extent or another. The UK could, for instance, stop at least some immigrants from other EU countries entering at the border, or refuse to pay out benefits to them. Such actions would be possible in the UK legal order through an Act of Parliament, but would breach the UK's EU Treaty obligations in international law. Such action would provoke a major row with other EU countries, which would be likely to impose similar restrictions on British immigrants. However, it could bring other member states back to the negotiating table over EU rules.*

5.3.9 Fresh Start defence proposals

- *CSDP initiatives which require assent of the Council through the unanimity voting procedure could be vetoed. The UK could also make a non-binding political declaration, publicising its intention to take a non-participatory role in CSDP and to apply its energies to revitalising NATO.*

- *A Treaty amendment may be sought, delivering an opt-out from CSDP, on the lines of that applying to the Kingdom of Denmark, but, as a full EU member state, the UK could retain the right to attend all meetings, in the same way as France previously acted in relation to the integrated military structure of NATO. Any attempts at further integration and strengthening the CSDP by Treaty amendment could be vetoed and the UK could seek a complete opt-out from any such provisions while insisting that no steps be taken under CSDP which jeopardise or inhibit the UK's full access and engagement in the single market.*
- *The UK could invoke Article 50 (TEU) and negotiate a relationship with the EU which does not include any defence element. And such negotiation could include opt-outs from defence procurement regulations and directives, but may include opt-ins where this is in the national interest.*

5.3.10 Fresh Start Common Agricultural Policy (CAP) proposals

- *Obtain the removal of Pillar 1 subsidies after an appropriate phase out period, with accompanying reform of Pillar 2 to focus on the delivery of 'public goods'. Pillar 1 subsidies would be phased out, initially through a national co-financing requirement, and with a focus on short-term payments designed specifically to gear farmers towards the market. Accompanying measures would include country of origin labelling, a focus on the marketing of quality products which meet high standards and steps to improve the bargaining position of farmers in the food chain. Pillar 2 would focus primarily on agri-environment schemes with the possibility of tradeable environmental payments, which farmers could pass onto other farmers if they did not wish to carry out the environmental measures. This would be a radical change to the CAP, and would need the UK to expend significant political capital in order to be obtained. The UK would have to prioritise CAP reform above other issues and would probably have to be prepared to give up the rebate to achieve the benefits of reform.*
- *Unilaterally withdraw from the CAP and its budgetary implications in an attempt to force change. This would be a clear breach of the UK's EU Treaty obligations and any agreement on the EU's multiannual financial framework in force at the time. In addition, as the UK contributions to the CAP cannot easily be differentiated from its contributions to other parts of the EU Budget, such a move is unlikely to be possible without withdrawing from all elements of the EU Budget. Farmers, who would face losing all their payments in the short term, could also be temporarily excluded from the internal market in agricultural products.*

5.3.11 Fresh Start Common Fisheries Policy (CFP) proposals

- *The UK could push for genuine regionalisation of the CFP. Under this scenario, the Commission would still set out a number of 'framework' objectives, while day-to-day management would be handled by regional groupings of member states surrounding a specific sea basin. Contrary to what the House of Commons' EFRA Committee recently argued, the European Commission has stated this would require a Treaty change. Fishing quotas would also be managed at a 'sea basin level'. In theory, the Commission could propose long-term targets for fish mortality over a period of ten years. Regional groupings of member states would then fix and adjust annual quotas by unanimity. The Commission could be given the power to intervene if a group of EU member states fails to strike a deal.*

- *Should the UK be unable to achieve satisfactory reform of the CFP through negotiations, it could ultimately opt for unilateral repatriation of fisheries management by withdrawing from the CFP altogether. As the UK would no longer take part in the CFP, the Government could potentially negotiate an additional rebate from the EU Budget, equivalent to the UK's annual contribution to the CFP. However, this option would be both very difficult to achieve politically and hard to put into practice. The UK could only withdraw from the CFP by violating the EU Treaties.*

There is no doubt that this is a considerable list of proposals. The Fresh Start Group goes further than the main political parties, and is willing to demand bolder changes in the Treaties.

Table 5.i: Different positions on an EU renegotiation

	Labour Party	Conservative Party	Fresh Start Party
Reducing the size of the EU Budget	Yes ¹¹	Yes	Yes
Reform CAP management	Yes	Yes	Yes
Protection for non-euro members	Yes	Yes	Yes
Reform immigration legislation and migrant entitlement to benefits	Yes	Yes	Yes
Limit EU immigration	No	No	Yes
Introduction of a veto/'red card'	Yes	Yes	Yes
End 'ever closer union'	Yes	Yes	Yes
Protection from Eurozone bailouts	Yes	Yes	?
No development of EU defence proposals	Yes	Yes	Yes
Blocks on EU financial legislation	Yes	Yes	Yes
Allow UK to pursue bilateral investment deals	?	?	Yes
Stop using Strasbourg Parliament	Yes	Yes	Yes
Disapply EU social and employment legislation	No	Yes ¹²	Yes
Establish a one-in-one-out system for laws	?	?	Yes
Reform of REACH	No	?	Yes
Opt out of EU police and criminal justice laws	No	No ¹³	Yes
Refuse to cooperate with the EU ETS	No	No	Yes
An opt-out from the CSDP	No	?	Yes

5.4 A benchmark for the renegotiation

There is clearly widespread desire for fundamental reform of the EU across the political spectrum, although there is little agreement on the specific changes that are needed. This raises a key question: what issues have to be addressed before any renegotiation could be considered satisfactory? A review of the areas in which the parties agree on the need for reform, as well as a review of the current problems facing the UK, provides a starting list of 10 issues that a UK negotiation team should seek to address in the coming renegotiation for it

11 Labour voted against the EU Budget in 2012.

12 This was a promise made by David Cameron in 2005 and 2008.

13 The Conservatives did opt out of a large number of police and criminal justice laws, but not the European Arrest Warrant.

“This philosophy has inspired the constant transfer of powers from the member states to the EU.”

to be deemed satisfactory. Crucially, these would require some fundamental changes to the EU, and this would require Treaty change.

5.4.1 The EU must have exempted Britain from the commitment to ‘ever closer union’

Today, the Treaty on the Functioning of the European Union (TFEU) commits the member states, in its very first line, to greater integration. This says that the leaders of the EU’s member states are *“determined to lay the foundations of an ever closer union among the peoples of Europe”*. The federalist ambitions of the EU have a long history. Jean Monnet, widely regarded as the ‘founding father’ of the European Union, never hid his hopes that the nations of Europe would merge: during the darkest days of World War II, the entrepreneurial and highly-gifted French official proposed an Anglo-French union. He also made clear that his European project was set to replace the nation states of Europe: *“The sovereign nations of the past can no longer solve the problems of the present: they cannot ensure their own progress or control their own future. And the Community itself is only a stage on the way to the organised world of tomorrow”*.¹⁴

While the legal weight of the passage in the preface is debatable, what is not in doubt is that this philosophy has inspired the constant transfer of powers from the member states to the EU. During the discussions for the Maastricht Treaty, this philosophy was exposed, when Article A of the draft treaty, dated 18 June 1991, stated: *“This Treaty marks a new stage in a process leading gradually to a union with a federal goal.”*¹⁵ During the attempts to launch a European Constitution, the then Prime Minister of Belgium Guy Verhofstadt announced that *“the Constitution is the capstone of a European federal state”*, and the German Europe Minister Hans Martin Bury announced that *“the EU Constitution is the birth certificate of the United States of Europe.”*¹⁶

In addition, leading figures within the European Court of Justice (ECJ) have made it clear that it has a political bias in favour of European integration, telling the European Commission that it needs to defeat Euroscepticism.¹⁷ Academic studies have also highlighted the role of the ECJ in the integration process.¹⁸ There is no doubt that, so long as ‘ever closer union’ remains within the Treaties, the EU’s institutions are doubly incentivised to uphold this objective. Removing it would be a clear acknowledgement by the EU that the UK is no longer bound to the principle of greater integration. In addition, mechanisms such as a veto and safeguards from ECJ judgments are needed to ensure that the UK would not be forced towards a United States of Europe. Other mechanisms for forcing ever closer union, such as the ‘ratchet clauses’, must also be discarded. In order to be effective, renegotiation has to deal with both the symbolic aspects of ‘ever closer union’ and remove the tools that are used by the EU to realise this aim.¹⁹

The Government’s agenda for an EU renegotiation can be found at: <http://businessforbritain.org/2015/05/31/the-governments-plans-for-an-eu-renegotiation/>

14 Jean Monnet, cited in 2011, accessed 20/04/2015 at: http://ec.europa.eu/dgs/health_consumer/library/speeches/speech102_en.html.

15 “The EU and Federalism: Politics and Policies Compared”, Laursen (Ashgate, 2011), page 14.

16 “What the EU constitution does: a 14 point critical summary”, accessed 20/04/2015 at: www.europarl.europa.eu/inddem/docs/papers/14%20point%20summary.pdf.

17 Daily Telegraph “EU judge gives Jean-Claude Juncker the ‘key task’ of defeating Euroscepticism”, B. Waterfield (10 December 2014).

18 Harvard Law Review Vol 6. No. 1 “The Role of the European Court of Justice in the Integration Process: A Contemporary and Normative Assessment” (2010).

19 From a mechanical viewpoint, requiring that every state agrees to future Treaty change, even for go-ahead states, allows countries to regain powers in the future. The ‘passerelle’ clause, allowing for changes without further Treaty signatures, weakens the hand of supporters of nation state rights.

“Between David Cameron becoming Prime Minister and 30 September 2014, the EU introduced 4,751 laws that affected British business.”

5.4.2 The EU must have introduced mechanisms which would reduce the burden of regulation on businesses

The burden of regulation on UK businesses is one of the more familiar negatives of EU membership. EU laws and regulation have become all-pervasive and have imposed high costs on many businesses (estimates of costs are provided in Section 29). The EU has, to date, failed to show due regard for the principles of ‘subsidiarity’ or ‘proportionality’, which are meant to constrain its tendency to legislate. Evidence of this can be found by consulting the *acquis communautaire* which, as of 16 June 2014, had 16,526 documents amounting to around 154,130 pages.²⁰ In addition, Business for Britain has found that, between David Cameron becoming Prime Minister and 30 September 2014, the EU introduced 4,751 laws that affected British business.²¹ Given that less than five per cent of British businesses directly export to the EU (see Section 2), it is clear that this is a highly unsatisfactory situation. Even Nick Clegg, one of the most pro-EU politicians of recent years, has argued that *“we need to end any unnecessary meddling. For instance, let’s make sure that small firms which don’t export, such as hairdressers and newsagents, are exempt from EU regulation unless there’s a cast-iron reason.”*²²

The EU has promised numerous times to introduce deregulation, yet has repeatedly failed to deliver satisfactory results. In 2002 the Commission proposed a plan for *“simplifying and improving the regulatory environment”*.²³ After this scheme failed to deliver results, it introduced a new proposal for *“reducing administrative burdens in the European Union”* though, again, there is no evidence to date that this has succeeded.²⁴ If there is going to be a satisfactory change to this situation, it would require much more than another promise by the Commission to *“cut red tape”*. Substantial safeguards are needed that would protect businesses that do not export to the EU. One possible mechanism could be a ‘one in one out’ rule.²⁵ The universal applicability of Single Market legislation would need to be reviewed as well.

The UK should also push for a substantial decrease in the legislative burdens that currently define the CAP and CFP. Radical corrections to the regulatory regime also offer an opportunity to reform some of the EU’s more burdensome programmes and bolster the UK’s economic output in key sectors. In addition, a comprehensive review of the existing *acquis* is needed.

5.4.3 Control over social and employment laws must have been returned to the member states

The EU increased its remit beyond the narrow needs of a purely common market into *“the social dimension of Europe”* many years ago.²⁶ While there were vague aspirations towards EU competency over health and safety at work in the original Treaty of Rome, these powers expanded over the years thanks to successive Treaty changes and activism by the ECJ. This has resulted in the EU having

20 Freedom of information request from Business for Britain to Eur-Lex. Even from this source it was warned that this figure may not be completely accurate.

21 Business for Britain “Cutting red tape: is the EU g.,” Oliver Lewis (2014).

22 Guardian “Where would you rather live – Great Britain or little England?,” N. Clegg (21 April 2014).

23 European Commission “Action plan “Simplifying and improving the regulatory environment” (COM(2002) 278 final) (2002).

24 European Commission “Action Programme for Reducing Administrative Burdens in the European Union” (COM(2007) 23 final) (2007).

25 Business for Britain “Setting out the British Option”, M. Elliott and O. Lewis (2014).

26 A phrase popularised by Jacques Delors when he was President of the Commission 1985–1995.

"It is clear that EU social and employment rules have generated problems, especially in the NHS."

extensive jurisdiction to enforce explicit social objectives without having to justify them by reference to the needs of the Single Market.²⁷ It has been estimated that the cost of EU social law to the UK economy in 2011 was £8.6bn, up from £4.2bn in 2002. Were the burden of EU social and employment legislation to be halved, it would lead to the creation of 60,000 new jobs.²⁸

While successive British governments have affirmed their belief in comprehensive social and employee protections, it is clear that EU social and employment rules have generated problems, especially in the NHS (see Section 23). Taking back powers in this area would not lead to a decline in employee protection, but would be a chance to make current laws more effective.

Following the introduction of the Lisbon Treaty in 2009, the EU has gained the right to combat discrimination of almost any form; to set minimum requirements for working conditions, including not only health and safety but also employment protection and consultation; to require member states to coordinate their employment strategies; and it has also set itself the "essential objective" of delivering "constant improvements of the living and working conditions of their peoples".²⁹

EU social and employment legislation has had a particularly burdensome impact on the UK since 1997, when the then Prime Minister Tony Blair signed Britain up to the Social Chapter (which John Major had secured a UK exemption from). David Cameron identified the problem in his Bloomberg Speech when he announced that the EU's role over social affairs had to be re-examined. Any satisfactory renegotiation would have to see the UK, once again, exempt from the Social Chapter, and the UK Parliament free to adapt social and employment laws to meet its own social needs.

5.4.4 Damaging EU financial laws must have been reversed

EU laws have become extremely expensive and damaging for the UK's financial sector. While, for many years, there has been an accepted view that EU rules that affected the financial sector benefited the UK and helped to ensure that British standards of openness were exported across the EU, this is clearly no longer the case. There is now a general consensus that the UK's influence over financial laws has declined dramatically since the 2008 financial crisis. The European Commission has made it clear that it is moving away from traditional UK views on financial regulation and has introduced 41 new laws that have caused significant problems for the UK (see Section 10). This new divergence between the UK and the EU is reflected in the way the Coalition Government was forced to lodge legal cases against the European Commission in four different areas:

- The Financial Transaction Tax
- The Bonus Cap
- The Short Selling Ban
- Clearing Houses Proposals

27 HM Government "Review of the Balance of Competences between the United Kingdom and the European Union: Social and Employment Policy" (2014) Chapter 1, pages 13–23.

28 Open Europe "Repatriating EU social law: The best choice for jobs and growth?" (2015), accessed 03/04/2015 at: <<http://openeurope.org.uk/intelligence/economic-policy-and-trade/eu-social-law/>>.

29 Treaty on the Functioning of the European Union, Preamble and Articles 19, 145, 141, 142, 143, 144, 153, and 157.

“There is a strong argument for the UK to have a veto over new EU financial laws in the same way that France has a veto over any changes to the CAP.”

Only one of these cases was won by the British Government (the clearing houses proposal, though this was not won on principle but on a question of competence). This raises serious questions for the UK; clearly it has too little influence in an area of incredible importance to the economy. Estimates of the costs of these new financial laws vary, but it has been calculated that the Financial Transactions Tax would cost the UK £3.6bn, while the Solvency II Directive (Directive 2009/138/EC) alone is estimated to have cost the UK insurance industry £1.9bn.³⁰

Unless these directives and regulations have been fully repealed and new safeguards have been introduced, allowing the UK to protect its financial services industry, remaining in the EU is not in the UK’s strategic or economic interests. There is a strong argument for the UK to have a veto over new EU financial laws (in the same way that France has a veto over any changes to the CAP, allowing it to protect its priority industry: agriculture). In an essay for Open Europe, the influential commentator Janan Ganesh argued that there should be a veto for the UK in this area.³¹

5.4.5 A permanent mechanism for protecting the non-Eurozone states must have been introduced

Thanks to the changes introduced by the Lisbon Treaty, the Eurozone has, since November 2014, had enough votes in the Council of Ministers to win any vote under Qualified Majority Voting (QMV). Clearly, the Eurozone countries, with their common currency and (emerging) common monetary and taxation regime, have shared economic interests, and these are often in stark contrast to those of the non-Eurozone states. As an example, a recent EU proposal called for clearing houses that deal primarily in euro-denominated bonds to be based solely in the Eurozone – something which would have put the City of London at a clear disadvantage. This situation raises the dire prospect of the Eurozone forcing the non-Eurozone states to adopt laws that they disagree with.

In 2012, George Osborne was able to secure a ‘double majority lock’ in the European Banking Authority which forced laws passing through that institution to go through two rounds of voting: Eurozone states and non-Eurozone states. This system allows a majority of non-Eurozone countries to effectively vote down laws that would harm their interests. While this appears to be a satisfactory solution on the surface, it has subsequently emerged that – were the number of non-Eurozone states to fall to four or lower – the ‘double majority lock’ would expire. In his report for Business for Britain, Andrew Lilico, the Executive Director of Europe Economics, noted that:

Although such measures may offer some protection in the very short term (up to around 2018) they are unlikely to be sustainable over the longer term because almost all current non-Eurozone members of the EU intend to join the euro by 2020, meaning ‘double majority voting’ would become very close to a UK veto on any new financial regulation – and thus unacceptable to Eurozone members.³²

30 Statistics taken from City of London Corporation, accessed 20/04/2015 at: <www.cityoflondon.gov.uk/business/economic-research-and-information/research-publications/Documents/Research-2014/Effects-of-a-financial-transaction-tax-on-european-households-savings.pdf> and FSA, accessed 20/04/2015 at: <www.fsa.gov.uk/pubs/cp/cp11_22.pdf>.

31 Open Europe “From a Reluctant European: a memo to the Prime Minister”, J. Ganesh (2015), page 16.

32 Europe Economics “EU Financial Regulation” (2014), page 1.

There is clear evidence that the number of non-Eurozone states is set to drop in the coming years. In 2012, the former European Trade Commissioner and British Government Minister Lord Mandelson claimed in a public lecture that:

*I believe there will be an inevitable gravitational pull of decision-making towards the inner Eurozone core. Britain will be invited to support this evolution but if we refuse we will be ignored... It is certainly not inconceivable – indeed I think it is likely – that Britain will find itself a decade from now the only state in the EU, certainly the only large state, outside the Eurozone. Effectively the EU will have been rebooted, with the UK on the outside.*³³

History suggests that Lord Mandelson is right. Since its inception, and notwithstanding the single currency's crisis, the Eurozone had continuously expanded. It started with 11 members in 1999. Greece joined in 2001, Slovenia in 2007, Cyprus and Malta in 2008, Slovakia in 2009, Estonia in 2011, Latvia in 2014 and Lithuania in 2015. Croatia is set to join in 2019 and Hungary in 2020. The Czech Republic presently aims to join in 2017 and Romania in 2020.³⁴ Bulgaria has also stated it has plans to join the single currency.³⁵

Considering the likelihood of the number of non-Eurozone states falling to four or fewer in the coming years, the life expectancy of the 'double majority lock' seems short at best. This raises serious problems for the UK, as George Osborne noted in 2014:

*If we cannot protect the collective interests of non-Eurozone member states then they will have to choose between joining the euro, which the UK will not do, or leaving the EU.*³⁶

Reform of the 'double majority lock', ensuring that it is both permanent and is recognised in the Treaties, is understandably considered a very important renegotiation aim. Unfortunately, despite the British Government stating that it considered the 'double majority lock' a useful basis for further EU reform and something to build upon, the new European Commissioner for financial matters, Lord Hill, who was nominated by David Cameron, has ruled it out.

5.4.6 The EU must have shown that it is capable of securing comprehensive free trade deals

The EU has a very poor record at securing trade deals with other countries. When Peter Mandelson was the EU Trade Commissioner, he launched the 'Global Europe' policy, linking trade deals with outsiders to improving competitiveness at home. Today, the EU is still pursuing mixed objectives in its trade talks; an obvious example is the negotiations with India. Here, one might have thought, was a market to which the EU would be keen to agree favourable access. Various policy documents have identified India as an example of the 'large emerging economies' with which the Commission wants to sign free

33 The Hands Lecture by the Rt. Hon. Lord Mandelson Mansfield College, Oxford, May 4 2012.

34 Europe Economics "EU Financial Regulation" (2014), page 34.

35 EurActiv "Bulgaria says it will start talks to join the euro", (16 January 2014), accessed 21/05/2015 at: <www.euractiv.com/sections/euro-finance/bulgaria-says-it-will-start-talks-join-euro-311331>.

36 Open Europe "Chancellor's speech to the Open Europe Conference" (15 January 2014).

“Countries outside the EU have had much greater success than the EU in securing trade agreements.”

trade agreements.³⁷ Supporters of the EU like to cite the benefits that a deal with India might bring Britain as an argument against reform.³⁸ The links between the two sides are already quite strong: the EU is India’s largest export destination, buying about 15 per cent of its goods and services, and is the source of 25 per cent of its foreign direct investment. The Indian economy is already mainly orientated towards services, which represents 57 per cent of its GDP.³⁹ While the obvious way forward would be to agree a short, ‘shallow’ agreement covering limited areas of common ground, the EU has insisted on negotiating for a ‘deep’ free trade agreement, embracing a far wider range of topics than any Indian Government has been prepared to concede. The result is stagnation.

By contrast, countries outside the EU, in the European Free Trade Association (EFTA), have had much greater success than the EU in securing trade agreements – and have secured these deals much faster than the EU. EFTA took only one year to secure a free trade agreement (FTA) with South Korea (it took two and a half years for the EU to secure such a deal) and the EU has not yet started discussions with China for a FTA (Iceland, by contrast, already has such a deal). While some have complained that the trade deals secured by these countries are not very good, there is no evidence for this – and it doesn’t take into account that the EU’s deals are limited too. The proposed TTIP agreement between the EU and the USA, for example, has already had cultural products exempted. It is also worth pointing out that having a trade deal is better than not having a trade deal. Evidence of the EU’s poor record compared to its neighbours can be seen in Figure 5.ii.

Figure 5.ii: Swiss and EU FTAs with selected countries

	Canada	South Korea	China	Hong Kong	Japan	Morocco	Saudi Arabia
Switzerland	Yes	Yes	Yes	Yes	Yes	Yes	Yes
EU	Yes	Yes	No	No	No	No	No

Source: European Commission and SECO⁴⁰

The evidence suggests that European states outside the EU are far more successful at securing free trade deals. For any renegotiation to be satisfactory, there must be clear evidence that the EU has made substantial steps towards improving this situation. Comprehensive trade deals with the US, India and China should be secured or, at the very least, be clearly en route to be secured by the time the renegotiation is over.

5.4.7 There must have been a permanent, lasting reduction in the EU Budget

Over the last 10 years, the UK’s contributions to the EU have increased dramatically. According to the Pink Book, which is produced by the UK’s Office for National Statistics (ONS), between 2003 and 2013 the UK’s net contributions to

37 European Commission contribution to the European Council of 7/8 February 2013 “Trade: a key source of growth and jobs for the EU”, page 7.

38 For example see The CityUK “Analysing the Case for EU Membership” (2014), page 28.

39 The Diplomat “What’s Holding Back The India-EU FTA?” (17 June 2014), Singh and Priya, accessed 16/02/2015 at: <<http://thediplomat.com/2014/06/whats-holding-back-the-india-eu-fta/>>.

40 EFTA, accessed 20/04/2015 at: <www.efta.int/free-trade/free-trade-agreements>. SECO, accessed 20/04/2015 at: <www.seco.admin.ch/themen/00513/00515/01330/04619/index.html?lang=en>.

“Examples of EU funds being poorly spent include spending on Tiffany jewellery and a fitness centre for dogs.”

the EU have increased from £3bn to £11bn. It is important to stress that the UK is a net contributor to the EU Budget: it puts in far more than it gets back in the form of subsidies and grants. While there is a chance that the UK’s contributions may fall slightly over the next few years, its net contribution would remain relatively high compared to its early 2000s contributions.

At the same time, the UK has been exposed to the possibility of Budget ‘surcharges’, being asked to pay large sums (up to £1.7bn) at short notice. This has been widely recognised as a very unsatisfactory situation, and politicians across the political spectrum have agreed that the EU Budget needs to be cut. Ed Miliband, for example, said in 2012 that the EU’s Budget was antiquated, arguing that *“it’s a European Union Budget that seems to owe more to the 1950s than the 21st century”*.⁴¹

For any renegotiation to be deemed satisfactory, there would have to be substantial changes to the EU Budget: a clear ongoing commitment to a real terms fall in the UK contribution, back towards 2003 levels. In addition, the Rebate changes that were secured by Tony Blair in 2005, which have resulted in a £10.4bn drop in the value of the UK’s Rebate, should be reconsidered.

5.4.8 UK transparency laws must have been introduced in the EU

The EU is one of the most opaque and unaccountable political organisations in the western world, with its spending decisions lacking clear oversight and prone to scandals. Infamously, in 1999, the entire European Commission had to resign following revelations of serious corruption. Today, there remain many concerning practices that would have to be rectified in any renegotiation: in 2013 alone it was revealed that the EU had failed to spend €6.9bn in accordance with its own rules.⁴² Examples of EU funds being poorly spent include spending on Tiffany jewellery and a fitness centre for dogs.

While the EU does have some transparency laws (information on applying for grants, for example, is provided online), they self-evidently do not go far enough. The UK must seek to rectify these laws in any renegotiation. UK reforms, such as the requirement to publish information on all Government spending over £500 and Government contracts over £25,000, show that transparency laws can be developed. The UK’s laws should serve as a template for the EU in a future negotiation.⁴³

5.4.9 Control over migration policy must have been restored to the member states

Immigration is one of the most contentious elements of EU membership. Currently, the UK does not have full control over its immigration policy, thanks to the EU’s free movement rights. These have steadily grown over the last 60 years from a *“workers’ right”* to include those *“seeking work”*, students, retirees, and now all EU *“citizens”*.

The Maastricht Treaty in 1992 conferred free movement rights to all EU citizens rather than workers. Despite this change, EU immigration did not become

41 Guardian “Ed Miliband blames EU’s ‘real failings’ for growing Euroscepticism”, H. Mulholland (19 November 2012).

42 European Court of Auditors “2013 EU audit in brief” (2014). The Court of Auditors report says that, in 2013, the EU’s total expenditure was €148.5bn, but there was a 4.7 per cent ‘error rate’ (an *“estimate of the money that should not have been paid out because it was not used in accordance with the applicable legislation”*). This means that there were irregularities of up to €6.98bn (£5.92bn) of EU expenditure in that year.

43 Alternatively, Scandinavian laws could also be used.

“It is important to appreciate that most of the key changes recommended by David Cameron would require Treaty change.”

a political or social issue until 2004, with the A8 Eastern European nations joining. The spike in numbers from less economically developed countries into the UK has been the catalyst for significant dissatisfaction with EU immigration policy for over a decade. This was only exacerbated by the accession of the A2 nations. Today, the UK is not permitted to impose any restrictions on the number of EU migrants coming into the UK.

In 2014, David Cameron made clear that he found the current arrangement unsatisfactory, arguing that *“people want Government to have control over the numbers of people coming here and the circumstances in which they would come, both from around the world and within the European Union”*.⁴⁴ The Coalition Government sought to tackle the numbers by addressing the ‘pull factors’ which attracted EU migrants to the UK, by reducing housing benefits for EU jobseekers and limiting benefit claims to three months for EU migrants without a job. David Cameron also proposed changes whereby in-work EU migrants would not get benefits or social housing from Britain unless they have been in the country for at least four years. However, these proposals have already been rejected by the Polish Government, which threatened to veto the changes: *“There is a red line we cannot allow ourselves to cross and that is discrimination against EU citizens.”*⁴⁵

It is important to appreciate that most of the key changes recommended by David Cameron would require Treaty change, including requiring EU jobseekers who do not find a job within six months to leave, requiring EU migrants to have a job offer before they come to the UK and, probably, ending the right of non-EU family members to enter without restrictions.

These changes, at the very least, would have to be secured in any future renegotiation. The UK must also push for the Treaty to be reworded so that it refers to the free movement of workers rather than people (‘workers’ should be defined as skilled workers). Alternatively, the UK could seek to reach a new settlement where it could democratically control the number of people coming in.

5.4.10 A form of national veto must have been reintroduced

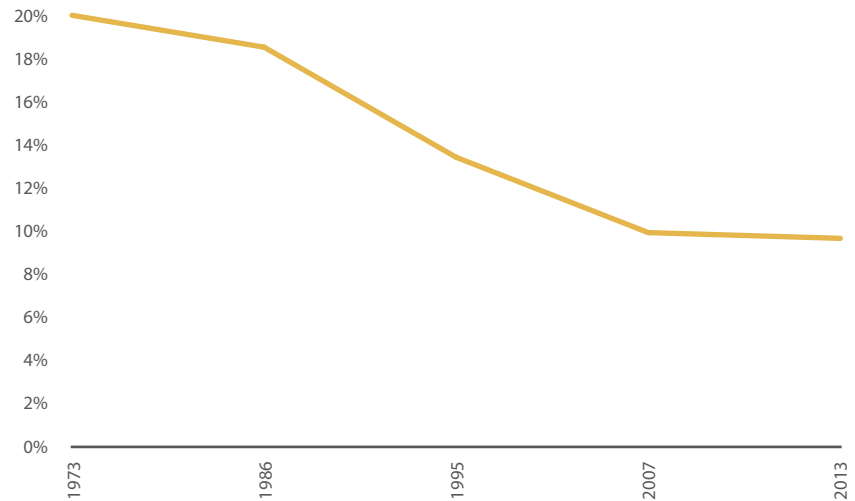
Today, the UK is trapped in a situation where it is being forced to introduce EU laws that it disagrees with. Every time the UK has voted against a motion in the Council of Ministers it has been outvoted, and while a majority of British MEPs voted against 576 motions in the European Parliament between 2004 and 2009, 485 still passed.⁴⁶ In addition, the UK’s representation in the EU’s key institutions has declined since Britain first joined in 1973. Between 1973 and 2014, the UK’s voting power in the Council of Ministers decreased from 17 per cent to eight per cent. With more and more decisions being taken by QMV, this decline in power has severely reduced Britain’s ability to block decisions that adversely affect its national interests (see Figure 5.iii)

44 BBC News “David Cameron’s EU speech: full text”, accessed 23/02/2015 at: <www.bbc.co.uk/news/uk-politics-30250299>.

45 The Independent “Poland threatens to veto David Cameron’s EU migrants benefits cuts plan”, A. Grice (18 December 2014).

46 Business for Britain “Britain’s influence in the European Parliament”, (2014).

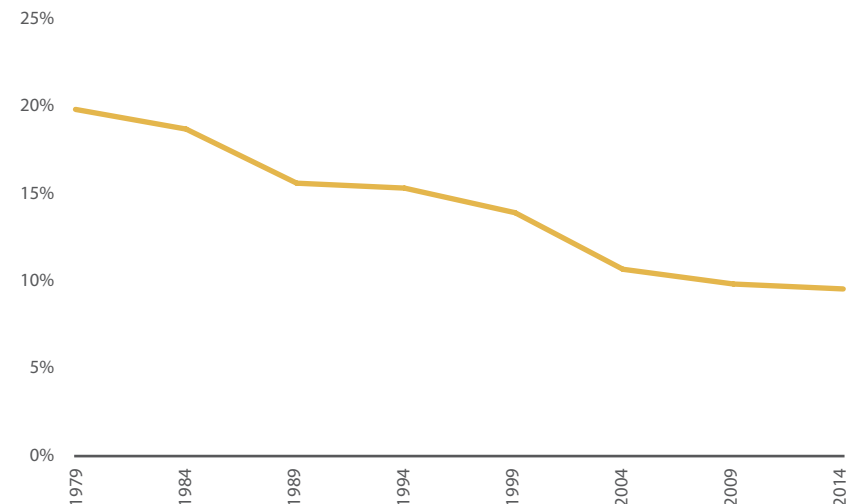
Figure 5.iii: Percentage of UK votes in the Council of Ministers 1973–2014



Year	UK votes	Total votes	Percentage
1973	10	58	17.2%
1986	10	63	15.9%
1995	10	87	11.5%
2007	29	345	8.4%
2013	29	352	8.2%

Britain’s declining influence isn’t limited to the Council. In 1979, the UK had 20 per cent of the seats in the European Parliament. Today it only has 9.5 per cent. While the number of MEPs has nearly doubled in 40 years, the number of UK MEPs has actually fallen (see Figure 5.iv).

Figure 5.iv: UK representation in the European Parliament 1979–2014

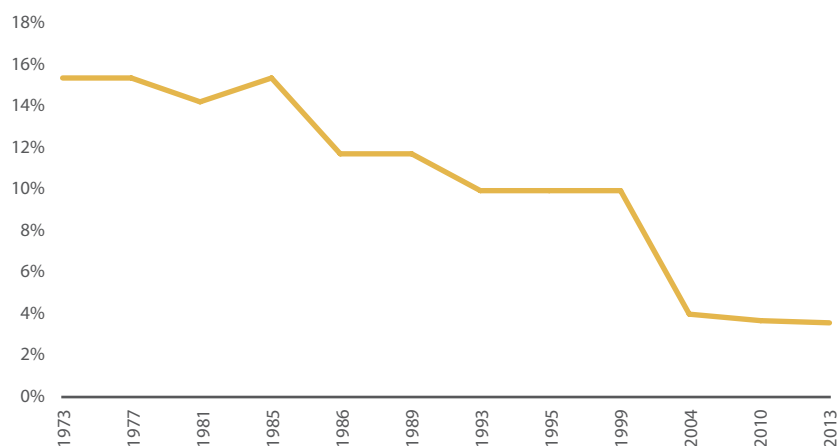


Voting weights
 The voting weights in the Council of Ministers changed in October 2014 to give the UK 12% of the vote. However, it is important to note that the former voting weights can still be used, bringing the UK’s weight down to 8%.

Year	Number of UK seats	Total number of seats	Percentage
1979	81	410	19.8%
1984	81	434	18.7%
1989	81	518	15.6%
1994	87	567	15.3%
1999	87	626	13.9%
2004	78	732	10.7%
2009	72	736	9.8%
2014	73	766	9.5%

There has also been an even more noticeable decrease in the percentage of British Commissioners. In 1973, 15 per cent of European Commissioners were British. Today less than four per cent are from the UK. Britain used to have two of 13 Commissioners in Brussels. Today it has only one in 28 (see Figure 5.v). There are even suggestions that member states could lose their automatic right to have a Commissioner.⁴⁷

Figure 5.v: British influence in the Commission



Year	British Commissioners	European Commissioners	Percentage
1973	2	13	15.4%
1977	2	13	15.4%
1981	2	14	14.3%
1985	2	13	15.4%
1986	2	17	11.8%
1989	2	17	11.8%
1993	2	20	10.0%
1995	2	20	10.0%
1999	2	20	10.0%
2004	1	25	4.0%
2010	1	27	3.7%
2013	1	28	3.6%

47 Spiegel Online "Commission Reduction", C. Schult, accessed 21/05/2015 at: <www.spiegel.de/international/europe/eu-leaders-to-sidestep-lisbon-treaty-article-on-commission-reduction-a-900993.html>.

“The expansion of QMV has resulted in the UK losing its vetoes in many different areas.”

What makes this declining level of representation so concerning is that the European Commission has a tendency to pass laws that do not take the member states’ concerns into appropriate consideration. Even pro-EU commentators have acknowledged that *“the Commission has a tendency to meddle in things best left to national governments...”* and that *“since 1986, QMV has been extended into areas where it is not necessary, especially social legislation... We should remedy the error if the Treaties are reopened.”*⁴⁸

The expansion of QMV has resulted in the UK losing its vetoes in many different areas. The Single European Act marked the effective end of the ‘Luxembourg Compromise’, the mechanism by which member states were able to effectively veto legislation in the Council of Ministers. Attempts to offer member states protections have proven ineffective: the current ‘yellow card’ system, for example, allows member state parliament chambers to group together and call for the European Commission to reconsider its policy. This has proven to be grossly ineffective. In one case, 14 parliaments in 11 member states expressed critical concerns about the proposal to establish a European public prosecutor office – warning that it did not comply with subsidiarity. This opposition was still overruled by the Commissioner Viviane Reding and introduced anyway.⁴⁹

Far more effective tools are needed to ensure that the UK could block measures that it fundamentally disagrees with, and these tools must be secured in any renegotiation. Examples of possible changes could be the securing of a genuine ‘red card’ (which would give legal weight to the parliaments’ opposition and would force the European Commission to drop proposals), the restoration of the Luxembourg Compromise, or an entitlement for national parliaments to revoke EU law in certain circumstances. These would, however, require Treaty change to have legal weight and to be permanent. The red card would also need a readily available trigger threshold.

Conclusion

As this Section has shown, many enticing recommendations for EU reform have been put forward by the various groups. The Conservative Party and the Fresh Start reforms go a considerable way towards meeting the level of change that is needed. It is also clear from a cursory glance at the parties’ positions, however, that even some of the most moderate proposed reforms (such as abolishing the Strasbourg Parliament) would require a rewriting of the Treaties. A summary of changes needing Treaty change is provided in Figure 5.vi

48 “The In/Out question”, H. Dixon (2014), pages 60–63.

49 Other problems include the difficulties facing legislatures in reaching the threshold. Short deadlines in submitting complaints also make it very hard to issue a yellow card, especially when the parliament is dissolved for elections or in recess.

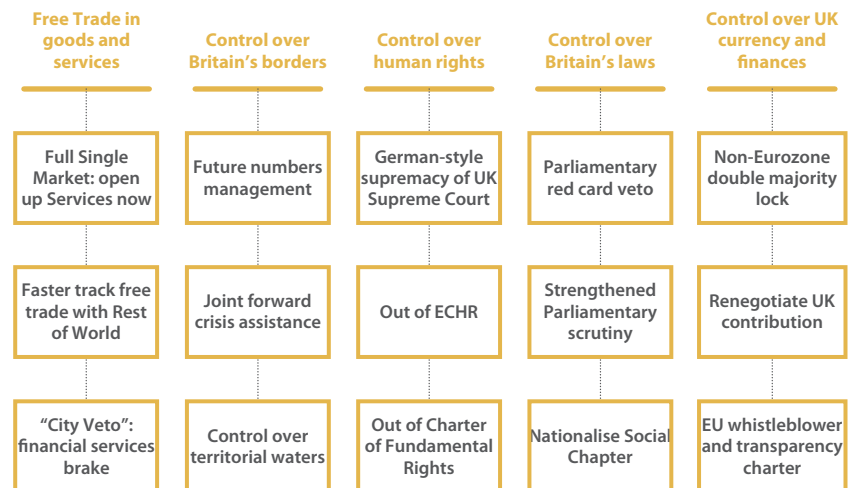
Figure 5.vi: Proposed changes to Britain’s EU membership

Changes that have been proposed	Requires Treaty change?
End ‘ever closer union’	Yes
Cut EU red tape for SMEs and start-ups	No
Return control of social and employment laws	Yes
Protect the City and financial services	No
Protect the UK from Eurozone meddling	Yes
Fast track international trade deals	No
Cut EU Budget to save taxpayers’ money	No
Add UK transparency laws to the EU	No
Give member states control over migration policy	Yes
Restore Britain’s right to veto EU laws	Yes

Unless Treaty change is secured, any reform agenda would amount to little more than the status quo. ‘Tinkering around the edges’ would not be good enough: the fundamental laws of the EU would need to be altered in several key areas, giving the UK and other member states substantial new powers and the ability to block harmful EU proposals. The 10 issues identified in this Section offer some idea of the scale of the problems that have to be addressed in the coming renegotiation – but even these should be seen as a starting point.

In short, a satisfactory deal must take Britain back towards the relationship the people voted for in 1975, to a common market not a political union. The ideas put forward in this Section offer a good guide for how to achieve such a relationship. A summary of these proposals is provided in Figure 5.vii.

Figure 5.vii: Proposals for taking Britain “back to a Common Market, not a political union”



6 The Renegotiation Process

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The new European Union treaty will mean “transfers of sovereignty” from Britain and Gordon Brown is right to hide the fact from the public, an EU leader admitted yesterday.

Jean-Claude Juncker, Luxembourg’s premier and leader of the bloc of 13 single currency members, spoke out as the Prime Minister faced rising calls for a referendum on the treaty drawn up following the rejection of the old EU constitution by French and Dutch voters in 2005.

Mr Juncker said he supported public debate on the treaty – except in Britain. “I am astonished at those who are afraid of the people: one can always explain that what is in the interest of Europe is in the interests of our countries,” he told Belgian newspaper Le Soir.

“Britain is different. Of course there will be transfers of sovereignty. But would I be intelligent to draw the attention of public opinion to this fact?”

Daily Telegraph, 3 July 2007

Jean-Claude Juncker has compared British membership of the EU to a doomed romance and suggested it is time for Britain to get a divorce from Europe.

It is the first time the president of the European Commission has publicly contemplated a British exit and he reinforced his message by insisting he would not get down on his knees to beg Britain to stay.

“People shouldn’t stay together if the conditions aren’t the same as when things started. It’s easy to fall in love and more difficult to stay together,” he said in Paris this weekend.

“I am for the respect of member states, respect between the institutions and member states. I am against all forms of grovelling.”

Mr Juncker, whose appointment to the EU’s top job was opposed by David Cameron, told an elite audience of French officials that he was ready to discuss British demands for Treaty change, but set out “red lines”.

In a blow to the Prime Minister, the commission president said the EU would reject, without debate, Conservative calls to change treaties to give national authorities more powers to stop-large scale inflows of migrants from Eastern Europe.

“When one mentions the end of the free circulation of workers, there can be no debate, dialogue or compromise,” he said. “We can fight against abuses but the EU won’t change the Treaties to satisfy the whim of certain politicians.”

Daily Telegraph, 18 January 2015

Renegotiation of the EU Treaties is inevitable. What is less clear is when it will happen. At some point, the Eurozone countries will want to modify the existing structures in order to try to make the euro work. But this may take time, and that process may not happen within the timeframe that has been mooted by Britain’s political leaders.

Consequently, it is up to the UK to call for fundamental renegotiation and not to piggyback on events. Any pledge that might be offered in the interim by EU leaders to address specific UK issues would not constitute either a guarantee (proven by the Blair deal on the Rebate and the subsequent failure to reform the Common Agricultural Policy (CAP)) or a safeguard (since the European Court of Justice (ECJ) would not be bound to base its judgments on anything other than existing Treaty obligations at the point of review).

So a change to the Treaties is needed as a guarantee. Furthermore, nothing short of Treaty change constitutes meaningful or enduring reform.

An easy route would be for political leaders to identify a few minor procedural changes, promise not to introduce some mooted proposals that are not yet signed off, and get rid of some directives that have been widely criticised. By

“It will take a major realignment of the competences to make the terms of UK association with the EU work in the national interest.”

tackling these, the EU could indeed be improved – marginally. But such tweaks would fail to address the immense bulk of failings within and across the system.

To correct these in a meaningful way, and to secure any reform against being overturned, requires a change in the Treaties themselves. Otherwise any gains are transitory, unguaranteed, and marginal.

If Britain fails to get the substantial changes it needs to thrive and prosper inside the EU – there are naturally very different opinions on how likely it is that this objective can be achieved – and the Union refuses to offer a new Treaty, the only other option is for the UK to leave and transfer to one of several ‘special deals’ that other countries have already secured with the EU. These ‘special deals’ are very different, and the associated costs and benefits vary.

Some commentators claim that these deals offer all of the problems of membership and few of the benefits of independence. This is a mischaracterisation. Each of the options described below have their own advantages and disadvantages. But in each case the overall benefits clearly outweigh the costs.

When the evidence is examined, there are excellent prospects for negotiating an improved relationship between Britain and the EU – principally, but not exclusively, based on trade arrangements. It is not inevitable that the process will end in a British exit. Indeed, two of the three likeliest outcomes involve the UK remaining in a form of membership. The routes and their triggers are set out at the close of this Section.

The priority, for the EU as much as for Britain, is to decide what the new relationship needs to look like, and then to negotiate for it in good faith. Whether that relationship is ‘inside’ a form of the European Union (perhaps one in which the Eurozone members have integrated further) – and in which the Treaty structures contain national opt-outs from entire chapters – or ‘outside’ and effected through a free trade agreement (FTA) becomes a secondary issue. But all sides need to be both aspirational and legally clear.

6.1 The context of renegotiation: fundamental change is required

It will take a major realignment of the competences to make the terms of UK association with the EU work in the national interest. That will self-evidently require amendment of the European Treaties.

There are three potential routes through which Treaty change could happen. It might mean:

- A major overhaul of what is broken within the current Treaty competences, including restoring key powers to member states (as subsidiarity is meant to achieve), through Treaty changes applied equally to all member states;
- Allowing the UK to opt out of key competences, and endorsing the principle of variable geometry instead of ever closer union;⁵⁰
- Seeking a new bilateral deal between the UK and the EU as a collective whole, with the UK leaving the current EU Treaties and obtaining a new form of association (of which there are around 40 models – see Appendix C).

The relative prospects for each depend on the willingness of the EU member states to engage. This dynamic will naturally be modified to some extent by the opinions expressed by the Commission and European Parliament. But if there is no appetite to reform broken systems as they operate across the EU, the

⁵⁰ As set out in “Europe of Many Circles”, R. Body (New European Publications, (1990)).

“Certain organisations have paid lip service to this idea of reform, but their definition of ‘reform’ has been meagre.”

negotiating emphasis then shifts to the easier bilateral route of changing what is not working.

6.1.1 The UK should only stay in the EU if it has substantially reformed

Closer integration within the Eurozone might, in the future, present an opportunity to create a new second tier of membership, a format which rejects ever closer union and the notion of more integration for its participants. This ‘ever closer union’ would permit countries in the periphery to remain outside the euro, safe in the knowledge that their interests would be respected and that they would not be outvoted continuously by the Eurozone.

This is an approach that has (as a ‘multi speed Europe’) been applied in the past, allowing states opt-outs as further integration has occurred for others. It has led to national opt-outs from the single currency, defence cooperation, and justice and home affairs.

The argument put forward by Eurosceptic politicians in the 1990s to make this a permanent structure has, however, not been accepted.⁵¹ An agreement to engineer this as a permanent part of the European construct would be a concession by integrationists, and would thus require unequivocal judicial and bureaucratic locks.

It would also require a clear and ambitious identification of those elements that need to be safeguarded. While certain organisations, notably the CBI and TheCityUK, have paid lip service to this idea of reform, their definition of ‘reform’ has been meagre at best, failing to address the key problems that define Britain’s membership of the EU.⁵²

Commentators who argue for such a piecemeal approach readily acknowledge that their reforms would change relatively little, and often confess that they deliberately shy away from radical changes which, in their view, are harder to secure:

Opting out [from social and employment legislation] again would require all 27 other governments to agree. That gives each of them a veto. It’s hard to see France, for one, accepting such an opt-out, as it would fear British business would have less burdensome rules and so enjoy an unfair advantage.⁵³

However, perceived short-term difficulties should not be allowed to trump essential long-term objectives. The problems that EU membership has caused are real and will not be solved by politicians and business lobbyists ignoring them in order to avoid awkward procedural difficulties. The fact that it is so hard to change the rules of the EU, despite avenues supposedly opened up by the Lisbon Treaty to restore powers to national control, shows in itself that the current system doesn’t work.

51 Even within the vocabulary used, the concept of ‘multiple speeds’ concedes different times of arrival at the same destination. Hence the UK opt out of EMU in fact meant signing up to Stages 1 and 2, and an ‘opt-in’ relating to Stage 3. This opt-in was politically only narrowly averted.

52 For example, see: TheCityUK “Analysing the Case For EU Membership: How Does the Economic Evidence Stack Up?” (2014), page 3; and CBI, “Our Global Future: The Business Vision For a Reformed EU” (2013), page 175.

53 “The In/Out question”, H. Dixon (2014), page 14.

“The view that Treaty change is needed is actually mainstream.”

6.1.2 Substantial reform can only happen if there is Treaty change

For a renegotiation to be deemed successful, the changes secured by the British Government would need to be enshrined in the EU’s Treaties. This will not only ‘lock in’ the changes but also reflects the scale of the reforms needed. Britain’s membership of the EU will not be fixed by ‘tinkering at the edges’. While some of the more pro-European commentators have suggested that this is a radical idea, the view that Treaty change is needed is actually mainstream: Prime Minister David Cameron stated several times in the last Parliament that renegotiation would require Treaty change, as did the then Shadow Chancellor Ed Balls, who said in October 2014 that *“I do not think we should say anything that requires Treaty change should be off the agenda”*.⁵⁴ Even organisations that have consistently argued that Britain should remain in the EU have recognised that reform requires EU Treaty change, as the CBI’s manifesto clearly states:

*EU leaders should adopt a declaration that explicitly calls for steps to be taken to ensure that further Eurozone integration does not undermine the Single Market and protects non-members from discrimination. This should then be formalised in any new Treaty... Procedural safeguards should be introduced to maintain the integrity of the Single Market for all members, and legal safeguards should be enshrined in any new Treaty.*⁵⁵

The UK has been a member of the EU for over 40 years. During those four decades, numerous complaints have arisen, ranging from questions of sovereignty and democracy to the inability (or unwillingness) of EU negotiators to secure comprehensive FTAs with countries beyond Europe’s shores. While hundreds of problems have been identified, it is clear that many concerns are broadly similar. The majority fall under 10 general categories:

- Concerns about EU integration and its ‘democratic deficit’;
- Concerns about the impact of EU regulation;
- Concerns about the cost of EU social and employment laws, as well as other competences – in particular the Common Fisheries Policy (CFP) and the Common Agricultural Policy (CAP);
- Concerns about the EU’s financial laws;
- Concerns about member states’ voting power (and conversely blocking power) within the EU;
- Concerns about EU trade policy;
- Concerns about the size of the EU’s Budget and spending priorities;
- Concerns about EU corruption;
- Concerns about migration within the EU;
- Concerns about the sovereignty of EU member states.

54 David Cameron’s speech to JCB Staffordshire (28 November 2008), accessed at: <www.gov.uk/government/speeches/jcb-staffordshire-prime-ministers-speech>; and The Guardian “Ed Balls: EU treaties on freedom of movement may have to change”, P. Wintour (15 October 2014), accessed 21/05/2015 at: <www.theguardian.com/politics/2014/oct/15/ed-balls-eu-treaty-change-free-all-labour-market>.

55 CBI “Our Global Future: The Business Vision For a Reformed EU”, Chapter 7, page 175.

As discussed in Section 5, for a renegotiation to be deemed successful, at the very least, the following criteria need to have been met:⁵⁶

- The Treaty has to be watertight in preventing more powers from being pooled;
- Regulatory impact assessments need to be much more credible;
- Specific powers need to be returned to national control, in the shape of entire competences;
- Poor EU financial laws must be revised;
- Parliaments should gain a red card power to block laws;
- Trade policy should be opened up to increased national debate and input;
- The EU Budget should be frozen, unspent unbudgeted commitments should be written off, and finances should be transparent;
- Whistle-blowers should be protected rather than institutionally oppressed;
- Free movement of unskilled labour should be subject to greater national controls;
- There should be a formal admission that a single European federal entity will not be created and is no longer the strategic objective.⁵⁷

6.2 The EU Treaties generate procedural tramlines

Two key mechanisms come into play thanks to the Treaty of Lisbon. The first relates to the in-built process for Treaty change (Article 48 TFEU). The second is the trigger clause for leaving the EU (Article 50 TFEU).

6.2.1 The Article 48 process is a potential brake to speedy change

Article 48 sets out the mechanisms by which the EU Treaties are to be changed in the future. As such it may prove to place key limitations on what can be achieved within the current multilateral Treaty structures. Given its importance, we set it out in full in Box 6.i below.

Box 6.i: Article 48, Lisbon Treaty

1. The Treaties may be amended in accordance with an ordinary revision procedure. They may also be amended in accordance with simplified revision procedures.

Ordinary revision procedure

2. The Government of any Member State, the European Parliament or the Commission may submit to the Council proposals for the amendment of the Treaties. These proposals may, inter alia, serve either to increase or to reduce the competences conferred on the Union in the Treaties. These proposals shall be submitted to the European Council by the Council and the national Parliaments shall be notified.

56 These are not modern, revolutionary and UK-centric ideas. See the highly international contributions to reform set out in Bruges Group “Plan B for Europe: Lost Opportunities in the EU Constitution Debate” (2006) ed. Rotherham, accessed 03/05/2015 at: <www.brugesgroup.com/Plan-B-For-Europe.pdf>.

57 If there could be any guarantee that attendees would be broadly representative of public opinion, the concept of a Convention to come up with a first draft of rewritten Treaty recitals (i.e. the opening lines setting out aspirations) might have some appeal. A ‘50 Year Vision’ would certainly put current developments in a strategic context, and add a level of honesty that has been too often lacking in the debate.

3. If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments, of the Heads of State or government of the Member States, of the European Parliament and of the Commission. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area. The Convention shall examine the proposals for amendments and shall adopt by consensus a recommendation to a conference of representatives of the governments of the Member States as provided for in paragraph 4.

The European Council may decide by a simple majority, after obtaining the consent of the European Parliament, not to convene a Convention should this not be justified by the extent of the proposed amendments. In the latter case, the European Council shall define the terms of reference for a conference of representatives of the governments of the Member States.

4. A conference of representatives of the governments of the Member States shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to the Treaties.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

5. If, two years after the signature of a treaty amending the Treaties, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.

Simplified revision procedures

6. The government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union relating to the internal policies and action of the Union.

The European Council may adopt a decision amending all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union. The European Council shall act by unanimity after consulting the European Parliament and the Commission, and the European Central Bank in the case of institutional changes in the monetary area. That decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

The decision referred to in the second subparagraph shall not increase the competences conferred on the Union in the Treaties.

Significantly, and for once contrary to the mechanics of ever closer union, the system does admit for powers to be removed from the Treaties. This is a significant positive, were such a proposal to gain the necessary unanimous support. But it is also clear from the text that the default procedure for Treaty change involves setting in motion the Convention process.

Rather than a full Convention, a majority in the Council could instead head straight to an Intergovernmental Conference (IGC), but the European Parliament has to express its “consent”. Rule 99 of the European Parliament Rules of Procedure explains that this is based on a simple Yes/No motion, and relies on a majority of MEPs present on the day agreeing to the motion (meaning that registered abstentions count against). An additional complication is the prospect of MEPs deciding to defer making a decision for up to a year. Even without that happening, the mechanism includes an inbuilt time-frame of up to six months. This is not a swift constitutional process.

The alternative version involves MEPs being consulted rather than required to consent, but can only be used for changes limited to Part 3 of the Treaty. This would cover a majority but not all of the reforms British negotiators would wish to see on the agenda. It would require other governments to accept this mechanism, or at least not object to it, and it runs the risk of MEPs, perceiving their role to be circumvented, seeking to challenge the Treaty mechanism used via the ECJ.

“British negotiators must be prepared for the worst.”

Although this shorter IGC route, described above, has a certain appeal, the full Convention route cannot be ruled out. There are, however, two problems involved with this particular system: membership and time.

There have been two Conventions called by the EU to date. One was set up for the Charter of Fundamental Rights, and it took 10 months to produce a draft. The other was the Convention on the Future of Europe, which had rather more to work on and took 19 months. The higher end of the range is likely to be the norm for anything featuring a wide-ranging assessment of the EU Treaties. Coupled with the time needed for ministers to then negotiate, followed by a lengthy ratification process (even assuming no states vote against), the timeline associated with achieving a significant reform applied across the EU Treaties, even with widespread support in Council, will not be short.

The membership of the Convention may prove an additional complication. The evident trend when calling a Convention is for it to involve either pro-integrationists or those who endorse individual small acts of integration (SAI) which collectivise over time into a greater act. The Convention on the Future of Europe resulted in an integrationist text, along with an anti-integrationist Minority Report; it was the former that was debated by heads of government. Any Convention-centred system, unless recruitment processes are modified, will likely generate a draft that fails to fulfil most – if any – of the UK’s requirements.

This is to pre-empt the system, and negotiation might take place more openly and positively than history would suggest. But British negotiators must be prepared for the worst.

6.2.2 The Article 50 route creates opportunities for delays while imposing a tight deadline

Article 50

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.
A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

“There are three principal ways in which the UK might transit out of the EU.”

There is only one defined Treaty mechanism for the UK to leave the EU: Article 50 (see insert above).⁵⁸ This gives any member state the legal mechanism to not only depart in an organised and mutually-manageable manner, but would also give the UK a window of up to two years, potentially extendable, during which it could strike a comprehensive agreement with the EU to define future relations with the Union.

There is another potential variable. It might be possible for negotiators on both sides to begin discussions ‘off the books’ without formally triggering Article 50 immediately. Provided all parties were in favour, which is by no means certain, and depending on the level of agreement and cordiality between the two sides, much of the new bilateral agreement could potentially be worked on and even drafted by committee before formally invoking Article 50. The likeliest range of possible paths is summarised in Figure 6.ii.

As the two-year transition period is a maximum, with good will on both sides and a clear appreciation of which issues needed priority settlement and which might wait for a second treaty after fuller negotiations, it is not only possible that, after talks, the transition from membership of the EU to a new free trade arrangement could take place overnight, but that Article 50 might only be invoked formally the day before.

Further, the subsequent deal would not necessarily be the permanent end state. The deal might lead to a working bilateral agreement that allows for smooth trade transition, perhaps with a sunset clause. Rather than generate a new text, it might simply involve agreement on the UK transferring to an existing multilateral alternative. Several advocates of the ‘European Economic Area (EEA) option’, for example, suggest that the UK could move to this agreement as a temporary stop-gap, an ‘off the shelf’ solution that would guarantee access to the Single Market until the negotiators settle a comprehensive deal. This is usually defined as a bilateral deal, but one that would take time to secure.

As we have seen from the above, time constitutes a significant variable and negotiators on both sides will have an eye on those mechanisms that allow for the smoothest transition available for their businesses. The EEA constitutes one such option.

But in total there are three principal ways in which the UK might transit out of the EU:

- It stays in the EU, with or without minor amendments to the UK relationship. As the EU over time continues to integrate, and due to the lack of important safeguards, at some point in the future it becomes universally clear that UK interests are no longer served by membership. Exit might perhaps be the result of a continental financial crisis increasing UK costs, aggregated regulatory burdens, and migratory pressures from high-unemployment Eurozone countries. This is a generational event beyond the parameters of our study, but would lead to a hurried and confrontational Article 50 trigger and low opportunities for reasonable FTA terms;

58 Some commentators suggest that Article 50 should be ignored and that the 1972 European Communities Act should simply be repealed. However, this is risky strategy, breaking not only international law but also a key diplomatic principle – *pacta sunt servanda* (treaties must be obeyed). Indeed, the UK is a signatory to the 1969 Vienna Convention on the Law of Treaties, which sets out what parties can and cannot do in such circumstances. In brief, the UK could unilaterally accelerate its withdrawal, but only if bad faith existed with the other parties (an example might be if UK net receipts from the EU Budget were slashed, or quota setting within UK waters was abused). The existence of this option renders such abuse less likely and in itself would encourage more stable transition.

“The time to get a better deal is now.”

- An attempt at renegotiation ends in rejection in a referendum. This triggers Article 50, and there is a two-year period of transition. The text permits less; agreement may permit prolongation; but the 24 month deadline could be usefully treated as the common guidelines;
- For whatever reason, negotiations do not lead to any proposal that could be put to a referendum, but instead open up informal bilateral talks that are kept ‘off books’ to avoid triggering the formal Article 50 procedure. This is conducted in good faith by both parties and leads to a new arrangement. Article 50 is then formally triggered so that the UK leaves the EU and transits immediately to the new settlement.

The likelihood of each of these happening is a matter for debate and contention. But it raises another question. Once Article 50 has been triggered, if the optimal arrangement is a deal that is more than World Trade Organization (WTO) default standards, what is the best route to get there?

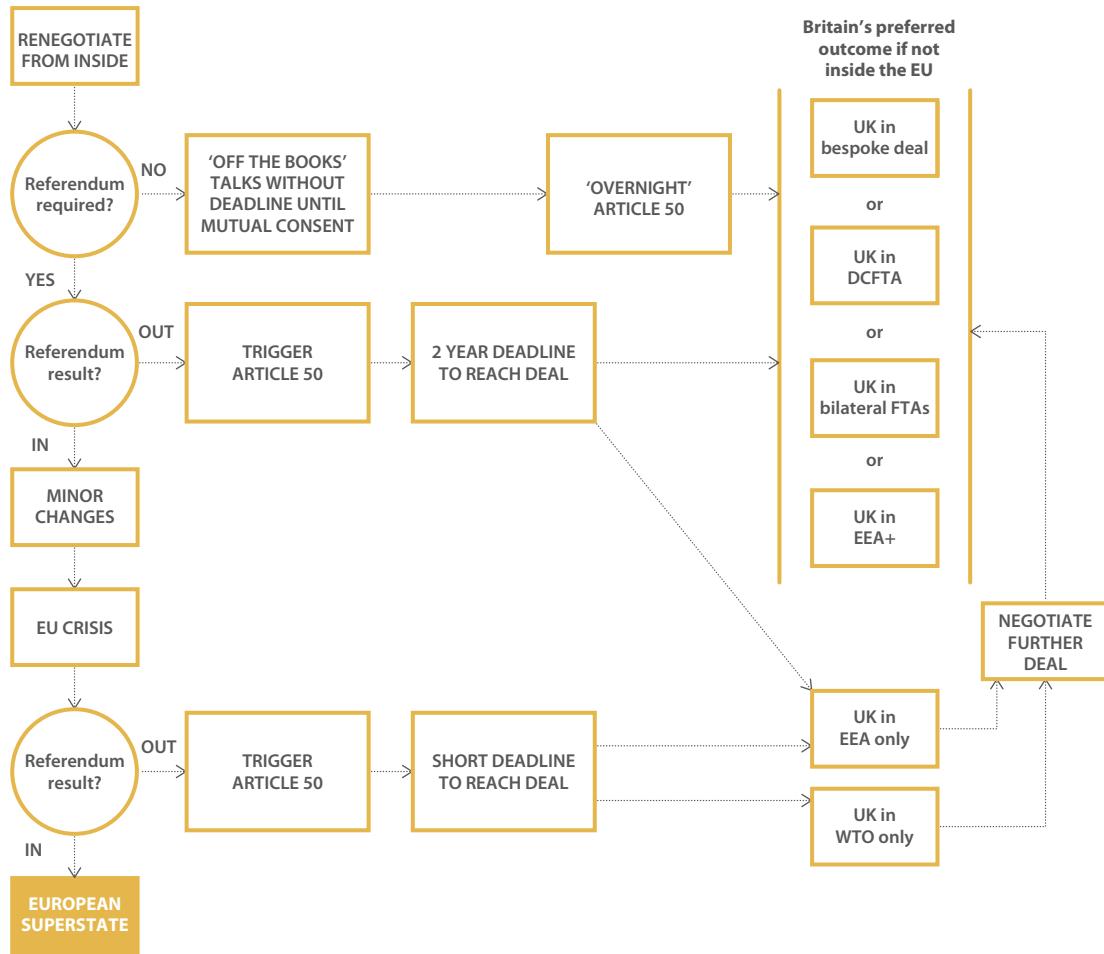
The EEA approach reduces the applicable *acquis* significantly, allowing for Parliament to start the slow process of reviewing and repealing a major proportion of unnecessary legislation while ensuring that it remains WTO-compliant. But it does not deal with much of the business red tape, and leaves the free movement of unskilled workers completely unaddressed. This route at best maintains what then amounts to transitory trade access into the EEA while FTA terms are arranged.

The key variable is how long it is anticipated that agreeing FTA terms might take. Serious blockages might be tackled by reaching a series of bilateral deals in achievable blocks, just as Switzerland has done. This may be untidy but it would secure an accelerated agreement on the majority of trade areas. Alternatively, it may indeed prove that a fuller TTIP or CETA⁵⁹ style deal may be achievable relatively quickly, given current levels of UK conformity with EU rules. Or it may not; in which case being parked inside the EEA, despite its faults, may prove transitionally useful in avoiding short-term disruptions for some sectors in moving via WTO terms.

The key lesson is that negotiators have several routes, requiring a combination of flexibility and aspiration. Negotiators that are ready from the outset to commit to non-descript and meaningless ‘reforms’ would only condemn the UK to have to revisit resorting to Article 50 in a number of years’ time, in effect leaving someone else to sort out their mess. This would then likely be in the middle of a crisis, at a moment when future EU leaders may be feeling resentful, populist and economically spiteful. The time to get a better deal is now.

59 The Transatlantic Trade and Investment Partnership (TTIP) is the proposed free trade deal between the USA and the EU. The Comprehensive Economic and Trade Agreement (CETA) is the free trade agreement negotiated between the EU and Canada.

Figure 6.ii: Routes to Article 50 and beyond – the three scenarios



Source: see Annex A.

6.3 The UK has negotiating strengths and weaknesses

It is very likely that a ‘special deal’ will be secured – even the pro-EU Prime Minister Tony Blair once acknowledged it: “Of course, Britain could survive outside the EU... We could probably get access to the Single Market as Norway and Switzerland do.”⁶⁰ However, securing such a ‘special deal’ cannot be immediately guaranteed.

While the EU cannot legally penalise the UK by singling it out in trade terms (were it to do so, the UK would be within its rights to lodge a case at the WTO), it is not obliged to single it out with favouritism either.

Thanks to the Lisbon Treaty, the EU does now have a Good Neighbour Clause (see Box 6.iii).

60 Tony Blair, Ghent speech, 23 February 2000.

“When the evidence is examined, the bargaining strengths of both sides are relatively even.”

Box 6.iii: Article 8 TEU

1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.
2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

This does not oblige the EU to set up particular types of FTAs. But for the first time, it recognises that not all of Europe is part of the EU, and accepts that bilateral arrangements are needed to cooperate with outside countries or trade blocs (like the European Free Trade Association (EFTA)). This has been a major development.

In recent years, the ‘Blackmail Argument’ has become extremely popular among supporters of unqualified EU membership. It is applied chiefly to dismiss the possibility of a British withdrawal from the EU:

In addition, one of the biggest risks that the UK faces is that the EU will have an incentive to punish it in any post exit negotiations, in order to preserve the perceived benefits of EU membership amongst other countries. This could, for example, take the form of restricting the sectors covered by any deal, and the financial services sector would be particularly vulnerable here.⁶¹

Increasingly, however, it is also being used to explain why Britain should not expect to be able to renegotiate its relationship with the EU. It says a great deal about how the UK’s relationship with the EU has deteriorated when one of the most persuasive arguments for remaining inside is fear: the UK should merely sit quietly, and try not to attract the bully’s attention.

When the evidence is examined, the bargaining strengths of both sides are relatively even. The greatest downside of being outside the EU, the tariffs which British exports would face without the benefit of EU trade treaties, is considered specifically in Section 30, where the conclusion is drawn that the position would be manageable. The issue of Non-tariff Barriers (NTBs) is also further addressed and disposed of in Appendix D. As such, any potential blackmail from the EU on trade grounds carries less force.⁶²

In these circumstances, the prospects for reaching an agreement are reasonably good, whether inside or out of the EU.⁶³ What cannot be predicted in advance is the exact form or the end terms of such an arrangement.

Britain should outgrow the ‘Post-Suez Mindset’ of seeing itself as weak and helpless, decide on the trading (and any wider) relationship with the EU which best suits its needs, and specifically negotiate for it.

What is unequivocal is that the current relationship is no longer tenable. Even supporters of the EU concede that reform is essential. Disagreement merely turns on whether that reform could be obtained without Britain’s own

61 TheCityUK “Analysing the Case for EU Membership: How Does the Economic Evidence Stack Up?” (2014), page 30.

62 This is not to say that different considerations might be applied by residents of other EU states facing different realities.

63 But only if the UK is serious about potentially leaving; otherwise this trade equivalence (indeed advantage purely on export volume grounds) counts for nothing.

‘blackmail’ threat to leave should only inadequate terms be offered by the other EU members. But it is surely naïve to suppose that Britain will obtain the best possible deal by not using the full range of available negotiating tactics.

6.4 The EU also has negotiating strengths and weaknesses

The situation might be succinctly summarised in a single phrase: the ‘Balance of Terror’ is evenly matched.

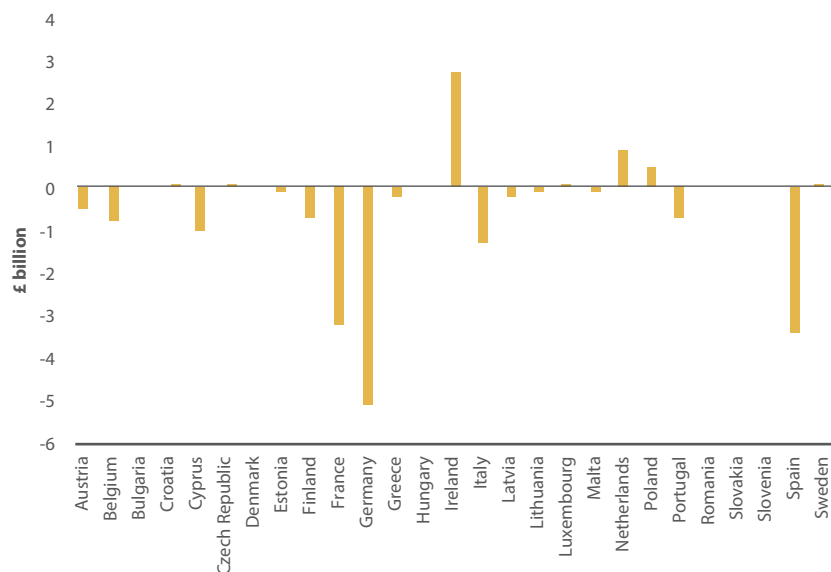
6.4.1 Commentators overstate the economic position and understate the financial situation

Britain’s trade deficit with the EU has often been cited as evidence that the EU is bound to concede a favourable new trading arrangement with the UK. They have more to lose than we do from a dispute, it is said.

Figure 6.iv gives the average trade balance with each of the other EU-28 countries over the years 1994–2003, and Figure 6.v presents this balance broken down between goods and services.

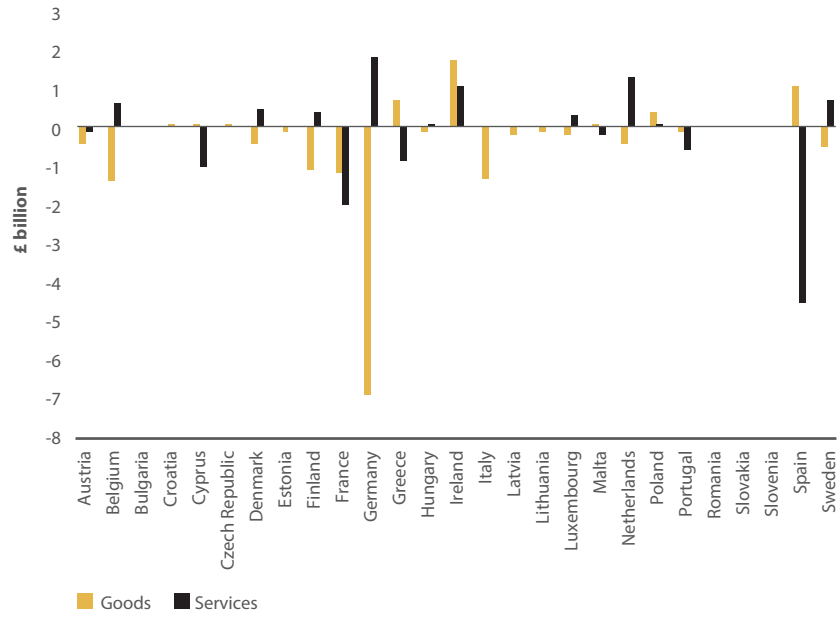
Figure 6.vi and Figure 6.vii give the equivalent figures for the period 2004–2013. For ease of comparison, all four charts are drawn to the same scale. Not all of the present EU-28 were members with Britain across the whole 20 year period (there were only 12 EU members in 1993), but that allows an inference to be made about the value to them of trading with a Britain that is inside the EU.

Figure 6.iv: Average UK trade balance with EU-28 for 1994–2003



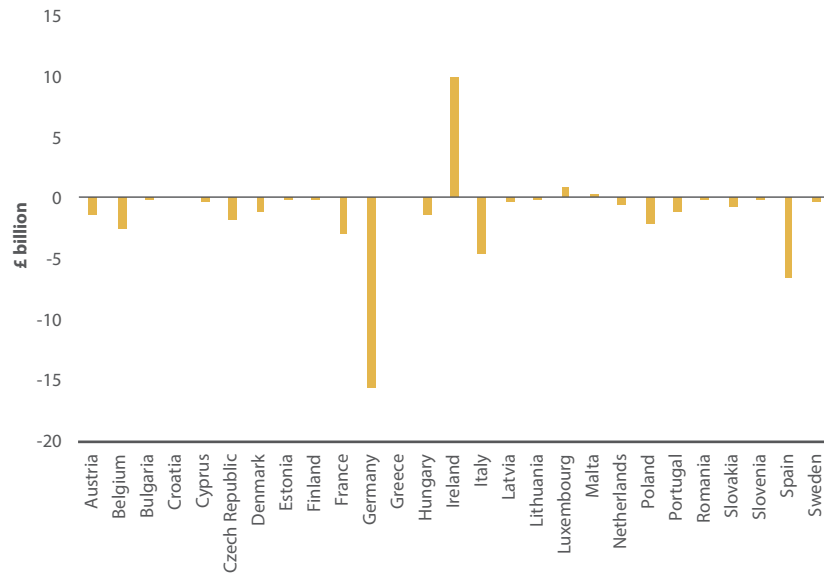
Source: see Annex A.

Figure 6.v: Average UK trade balances in goods and services with EU-28 for 1994–2003



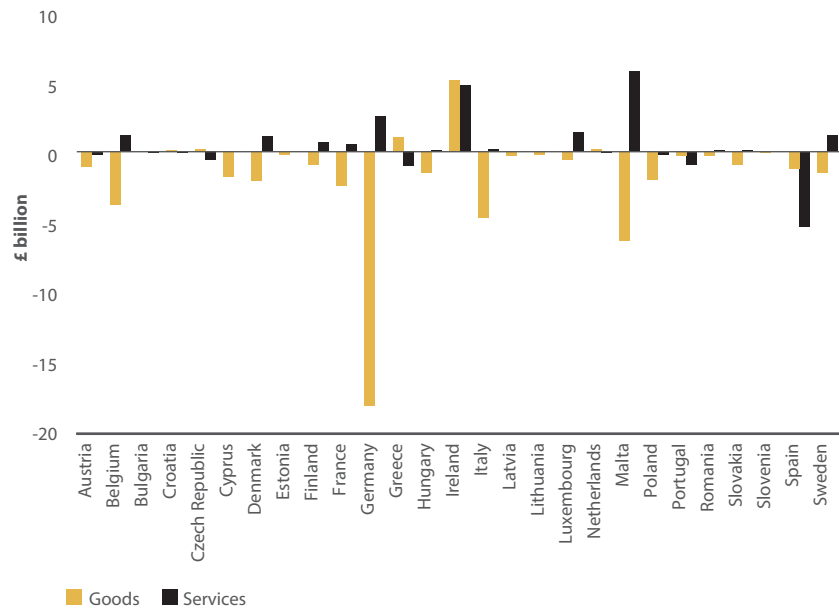
Source: see Annex A.

Figure 6.vi: Average UK trade balance with EU-28 for 2004–2013



Source: see Annex A.

Figure 6.vii: Average UK trade balances in goods and services with EU-28 for 2004–2013



Source: see Annex A.

Figures 6.iv and 6.vi confirm that Britain has run a persistent trade deficit with most of the other EU-28 for two decades, and that this has worsened as time has gone by. But they also reveal that our trade deficit with the EU is not distributed uniformly. Most EU members have only a comparatively modest trade surplus with the UK. Although these absolute amounts will be relatively more significant for some of the smaller economies, it would be fair to say that a number of the other EU members have a comparatively smaller incentive to make concessions to Britain.

The position is further complicated by considering how these net deficits are composed. Figures 6.v and 6.vii support the impression that Britain imports goods from the EU and in return sells services to the other member states. That might be thought to create room for give-and-take between the two sides. It could also be considered a weakness in the British position. Notoriously, the EU has failed to create a Single Market in services. Part of the reason must be attributed to the ability of local vested interests and lobby groups to prevent the opening up of domestic markets to EU-wide competition. Those groups are unlikely to have lost their influence. But it is not even consistently the case that a British deficit in goods is accompanied by a surplus in services. In some countries, the situation is reversed.

Each of the other EU-28 will approach any negotiations with Britain from very different positions. By the same token, obstructionism within the Single Market for services has reduced the actual losses a withdrawing UK would face in this sector. One of the key reasons why the Department for Business, Innovation and Skills (BIS) under Vince Cable argued for maintaining EU membership was in anticipation of further liberalisation, which two decades on from Maastricht has still to materialise.⁶⁴ This area might be considered an opportunity loss at best for a withdrawing state, assuming that opportunity indeed exists.

64 But see HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: The Single Market” (2014), page 16, where the Government admits that Single Market in services reform is more likely to be forced on the EU by outside negotiators as part of a trade treaty.

Unsurprisingly, Germany emerges from the four charts as the EU member state with the greatest interest in being able to continue to trade with Britain on favourable terms. Hence it is often argued that all a British Government needs to do is ‘get Germany on-side’ and a successful deal will follow automatically.

While Germany is undoubtedly a highly persuasive leader in the EU, that claim may also be exaggerated. Any renegotiation, or negotiated new deal, will require unanimity.⁶⁵ Renegotiation might be one of those rare occasions when a smaller member state can hold out against German ‘leadership’. Even a country with both a goods and a services surplus with Britain, and hence the maximum motive for avoiding any disruption to trade, such as Spain, might still take the opportunity to pursue other interests – for example, over Gibraltar, or over access to fishing waters.⁶⁶

We saw in Section 2 that, although EU members tend to trade among themselves rather than engage with the outside world, there is no individual member for which Britain is as significant an export market as the EU as a whole is for Britain. For convenience, Table 6.viii repeats the raw figures, and matches them with a crude measure of bargaining power at Brussels, the contribution of each country to the overall Gross Value Added of the EU. Those countries with the greatest need to keep trade routes open to the UK are smaller states with weaker bargaining weight in EU corridors.

Table 6.viii: Britain as a buyer of EU member exports, 2012

Country	Proportion of exports going to UK	Contribution of country to EU GVA
Ireland	17.8 %	1.3 %
Cyprus	17.2 %	0.1 %
Malta	14.9 %	0.1 %
Luxembourg	11.5 %	0.3 %
Spain	10.7 %	7.9 %
Greece	9.3 %	1.3 %
Netherlands	8.2 %	4.8 %
Portugal	8.1 %	1.2 %
Denmark	7.9 %	1.8 %
Sweden	7.8 %	3.2 %
France	7.4 %	15.7 %
Belgium	7.2 %	2.9 %
Germany	7.2 %	20.9 %
Poland	6.6 %	2.9 %

65 In theory, British negotiators might settle for some internal rule changes that could be forced through by Qualified Majority Voting among a favourable coalition. However any such concessions are unlikely to be sufficiently valuable to meet the criteria set out in this report (or indeed, anyone else’s) and anything short of amendment of the EU Treaties will be vulnerable to ambush by a similar coalition in the future.

66 For precedents merely applying to fisheries, see vetoes variously threatened to accession processes by France over the ‘Atlantic joiners’ of 1973 (over introducing the CFP), by Spain over the (entirely unconnected) Irish Box exemption at the time of A10 accession; and French and Spanish threats over Norwegian access. An alternative reading is that fisheries has become a low risk ‘acceptable’ strangle point within EU corridors, particularly for countries that have ‘marked’ it as a national priority.

Country	Proportion of exports going to UK	Contribution of country to EU GVA
Lithuania	5.7 %	0.3 %
Italy	5.4 %	12.0 %
Finland	5.3 %	1.4 %
Czech Republic	4.8 %	1.2 %
Hungary	4.5 %	0.7 %
Romania	4.4 %	1.1 %
Slovakia	4.0 %	0.6 %
Latvia	3.5 %	0.2 %
Bulgaria	3.4 %	0.3 %
Austria	3.0 %	2.4 %
Estonia	2.7 %	0.1 %
Croatia	2.5 %	0.3 %
Slovenia	2.0 %	0.3 %

Source: see Annex A

Britain has the balancing 14.8 per cent of contribution to EU GVA, making it potentially the third most influential member state, behind Germany and France.

Yet while the larger economies do not top the list, they do not fall at the bottom either. The UK does have a notable market importance to these economies, at precisely the level of export share that encourages EU member states to seek out FTAs with countries like the USA. It might be added that cutting off ready access to the UK market would be extremely damaging to several very unsettled Eurozone economies.

So while the balance of interests is not overwhelming, Britain does have considerable leverage. Table 6.ix compares the GDP of the leading world economies on a consistent basis. The order may be unfamiliar (i.e. Britain comes lower down than expected) but that is because the table is prepared on the basis of US dollars at purchasing-power parity, which gives a fairer comparison between countries at different stages of development, which will be relevant later. Since these are 2013 figures, the most recent available at the time of writing, Russia, Brazil and France are in 2015 less successful than Table 6.ix suggests.

Table 6.ix: World's largest economies, 2013, 'Dollar math' version

Territory		GDP at PPP, \$billion
	Notional NAFTA	20,303
	Notional EU-28	17,990
1	USA	16,768
2	China	16,162
	Notional EU ex UK	15,525
3	India	6,776
4	Japan	4,641
5	Germany	3,585
6	Russian Federation	3,460
7	Brazil	3,013
8	France	2,501
9	United Kingdom	2,465
10	Indonesia	2,389

Source: see Annex A

One obvious fact that jumps out from Table 6.ix is that, if Britain were to leave the EU, there is no larger economy which could join the EU and compensate for our absence. None of the USA, China, India, Japan and Brazil have ever indicated any desire to enter the Single Market and, although part of the Russian Federation is on the correct continent, an application by President Putin might be problematic at the moment.

This issue is significant because the EU Budget and the contributions of the member states are set by reference to the size of the economy. Even allowing for the complication of the British Rebate, the loss of 14 per cent of the EU-28's collective GDP will force either a material contraction in Commission expenditure or a material increase in member state contributions. Either outcome will be highly disruptive, especially for Eurozone members undergoing austerity.⁶⁷ In October 2014, considerable controversy was generated over a minor statistical recalculation of the British contribution involving £1.7bn. This can be scaled up to show the difficulty that an adjustment of £11.3bn (the British net transfer to the EU for 2013) would cause – let alone the impact on administrative arithmetic underpinning the gross figures.⁶⁸

Where might the EU find compensating output? Table 6.x lists the countries contiguous to the current EU with a combined GDP equal to that of Britain. There would be little point in including replacement countries which have already ruled out joining the EU (such as Norway) or where there is no realistic chance of admission (such as Belarus).

The threshold for inclusion in this list is low – in essence, that a country has a functioning government not engaged in a civil war and which hasn't executed

67 Strictly, the EU 'fourth own resource' is related to Gross National Product (GNP), not GDP, but the principle applies.

68 Such as the relative national share of receipts taken as a share of the new gross sum; or the rebate for Austria, Germany, Netherlands and Sweden which would then come under threat.

any journalists in the last few weeks.⁶⁹ As it happens, each of these countries has entered some form of trading agreement with the EU, and some are already candidates for membership, however remote the possibility.⁷⁰ Even then, finding countries which in combination equate to the GDP of the UK stretches the imagination of what is politically plausible. Furthermore, those that did join would in most cases likely qualify as net recipients rather than contributors to the Budget.⁷¹

Table 6.x: Fantasy football – Balancing the loss of the UK to the EU Budget

GDP at PPP, \$billion	
United Kingdom	2,465
Combined total:	2,469
Already ruled out:	
Iceland	14
Norway	333
Switzerland	457
Ruled out for the foreseeable future:	
Ukraine	400
Turkey	1,425
Unlikely to qualify:	
Russian Federation	3,460
Belarus	167
Saudi Arabia	1,546
Iraq	500
Libya	131
Syrian Arab Republic	Nil
Palestinian Territories	Nil
Represented by:	
Serbia	93
Bosnia and Herzegovina	37
Albania	29
Macedonia, FYR	24
Montenegro	9
Kosovo	16
Moldova	17
Georgia	32
Morocco	242
Algeria	522

69 Full membership qualifications are obviously higher, including a lack of territorial disputes (this did not stop Spanish accession but it did threaten Croatia's), ECHR affiliation including no death penalty, and application of the *acquis*.

70 See Appendix E.

71 Inclusion of the Palestinian Territories in this list should not be taken as a comment on statehood.

GDP at PPP, \$billion	
Tunisia	121
Israel	264
Jordan	76
Lebanon	77
Egypt, Arab Rep.	910

Source: see Annex A.

Table 6.x perhaps gives a better indication of Britain's negotiating position than the trade balances in Figures 6.iv and 6.vi. In order to compensate for a British departure, and simply return to an equivalent economic standing, the Commission would have to engineer the formation of an EU-42 – assuming that all of the potential new members wanted such an outcome. That is not going to happen any time soon.

The potential replacements in Table 6.x are all countries which would bring issues of their own with them. No one could credibly argue that, even taken together, they represent a counterweight to Britain by itself. Any putative EU-42 might well be 'the largest market in the world' but it would not be strategically stronger than the EU-28 with Britain inside. The whole would be very much less than the sum of its parts.

Of course, the prospect of the accession of these countries is nonsensical. The reality is that the UK will leave a financial void and the EU, unless transitional terms are reached, has only two years to fill it. This is politically explosive. The incentive to do a deal will take account of this reality.

If anything, these tables understate British influence. They have been compiled on the basis of purchasing power parity, because that is the fairest measure of the 'real' economic value being generated – or more precisely, how much EU grants would buy in the recipient state. However, a member state would contribute to the EU Budget in hard currency. At market exchange rates, Britain has a far more dominant position over its potential replacements.

This is the decisive factor pointing to a successful deal between Britain and the EU: we have the money.

6.4.2 There are limits to the EU's ability to penalise Britain

In theory, the EU has at its disposal a wide range of weapons which could be used to damage Britain's trading interests. Some elements within the EU might want to dissuade any one of several other states from following the UK. The precedent of a particularly successful departure might be disconcerting to federalist adherents of the unitary continental model.

But any punishment which singled out UK access to European markets would be, by definition, a barrier to trade. WTO rules provide a minimum threshold of expectations and commitments, and any action in excess of these would permit retaliation. Provided a British Government did nothing foolish to initiate trading hostilities (a move which would not be in its national interests anyway), there is a limit to the malicious harm that the EU could inflict.⁷²

72 Germany also has the historical burden of the trade war it engaged in with Poland over 1925–1930 (and particularly vigorously 1925–1926), which triggered a radicalisation of Polish politics. It was fuelled by a border dispute that, in turn, was subsequently used as a false flag excuse for invasion in 1939.

“Canada has shown that an economy smaller than that of the UK is more than capable of flourishing by navigating its own course through international trade.”

The Commission is also constrained in its ability to impose obstacles to British exporters by the role of international standards-setting bodies, whose regulations would apply to any EU member state and to Britain, whether it remained a member or not. These standards are guaranteed by British participation in international bodies, reducing the likelihood of the Commission seeking to engage in a proxy trade war by, for example, reviewing Technical Barriers to Trade.⁷³

The EU might seek to delay mutual recognition of standards, by trying to require that extra safety or quality checks are made. But this tactic also has its limits. For example, EU states already meet the standards of the Multilateral or Bilateral Agreements (MLA/BLA) of the European co-operation for Accreditation (EA). The UK is one of 35 full members of the EA. This non-EU body is an association of national accreditation bodies in Europe that are officially recognised by their national governments to assess and verify – against international standards – organisations that carry out evaluation services such as certification, verification, inspection, testing and calibration (also known as conformity assessment services).⁷⁴ It is in effect the quality control guarantee for those who provide quality control. Its scope falls beyond the Commission’s control.

Other non-EU organisations responsible for securing international standards include:

- ISO, the International Organisation for Standardisation;
- IEC, the International Electrotechnical Commission;
- CEN, the European Committee for Standardisation;
- CENELEC, its associated committee covering electrotechnical standardisation;
- ILAC, the International Laboratory Accreditation Cooperation;
- IAF, the International Accreditation Forum;
- OIE, the World Organisation for Animal Health;
- CAC, the Codex Alimentarius Commission.

Lastly, the tariffs levied on UK exports to the EU if it left the Union may actually be manageable. Section 30 examines the worst case scenario for the charges which British exporters would face outside the EU and without favourable trade treaty coverage. It finds that these new costs are significantly lower than the current cost to Britain of EU membership. Appendix D considers the Non-tariff Barriers which could arise to impede British exports in the same context. It concludes that there are perfectly satisfactory ways of handling them.

None of this can magic away the threat underlying the Blackmail Argument, but it does allow it to be seen in a realistic context. Canada has shown that an economy smaller than that of the UK is more than capable of flourishing by navigating its own course through international trade. This is despite being massively interlinked with and dependent upon the economy of its own neighbouring economic superpower.

73 See Appendix D.

74 See the EA website at <www.european-accreditation.org/about-us>.

6.5 The prospects for a successful deal are consequently high, but the terms and form cannot be predicted in advance and it may take time to achieve

A number of potential post-exit relationships between Britain and the rest of the EU have been floated by the advocates of withdrawal. These include (there are many more):

- The 'WTO Option': the default option if every one of the other 40 options is ruled out, in which Britain has no special arrangement and trades with the rest of the EU on a Most Favoured Nation basis under the WTO rules;
- The 'Norway Option': in which Britain becomes a member of the EEA, retains access to the Single Market, and regains sovereignty in some areas (but not necessarily the priority ones);
- The 'Swiss Option': in which Britain accepts EU regulation on a case-by-case basis through a wide range of bilateral agreements in return for access to EU markets on a case-by-case basis, outside of the EEA but in EFTA;
- The 'Turkey Option': in which Britain is exempt from EU tariffs, could arrange third party FTAs, but in exchange has to apply EU standards and its tariff schedule and (in effect) has very limited control over Single Market policy;
- The 'DCFTA option': combining an FTA with a series of policy areas in which bilateral cooperation could be developed;
- The 'FTA option': focusing on just increasing trade and investment access bilaterally;
- The 'CEFTA option', uniting several countries within an FTA and Technical Barriers to Trade-cutting framework.

Each proposed option has its advantages and drawbacks. But no one has really started asking what the genuine red lines for EU countries might be.⁷⁵

Just as opinions differ on the most appropriate route to take to achieve the target end state, there are nuances in views on what the optimal end target will be. Again these will depend on the willingness of the parties to reach agreement.

It might constitute a simple FTA, covering just trade issues. It might constitute an FTA+, bolting on issues of common concern. It might be something more structurally coherent than the Swiss model, a DCFTA, but without institutionalising the bilateral agreements within the EU web.

The only significant (though unfortunately limited) research into this can be found in the 'War Games' that were organised by Open Europe in December 2013.⁷⁶ The summary of the 'Brexit scenario' (which assumed that the British public had voted in a referendum to leave the EU and that the British Government had triggered Article 50) concluded that "*All other member states recognised the need to strike a new trade deal with the UK, with economic incentives trumping political rhetoric*".⁷⁷ This came with caveats about how quickly and how comprehensively that result might be reached.

75 Anecdotal evidence suggests FCO posts had not been properly tasked with sounding out governments by the time of the 2015 election, generating a credibility gap for the policy, in turn leading to a lack of consideration of the subject by foreign governments. The problem is therefore circular.

76 The process did not follow robust gaming methodology and appears to have been more of a role play.

77 Open Europe "Gaming Europe's Future: Simulating the negotiations that could determine Britain's place in Europe" (2014), page 5.

6.6 There are a number of 'special deals' that the UK could apply for

There are many 'special deals' the EU has already struck with countries around the world that the UK could look to replicate. None offer a perfect solution, though that is hardly surprising as bilaterals are tailored to the political realities and economic demands of the country in question.

However, analysis shows that the UK would generally find itself in a far better situation than it does now, with much greater control over the laws that are passed in this country, greater opportunities for striking trade deals beyond the EU, and comprehensive access to the EU's Single Market.

6.6.1 The UK could apply for EEA membership (the 'Norway Option')

One of the best known options for Britain outside the EU involves it reapplying for membership of the European Economic Area (EEA) and the European Free Trade Association (EFTA).

The EEA was established in 1994 and its members include Norway, Iceland, Liechtenstein and the 28 member states of the European Union. Membership excludes the Common Agricultural Policy and Common Fisheries Policy, the Common Foreign and Security Policy, the Common Trade Policy (i.e. FTAs with third parties), Justice and Home Affairs issues, and Economic and Monetary Union. It does include the Four Freedoms, but does not generate membership of the EU's Customs Union.

One of the more attractive features of the EEA option is that members are free to develop trade deals with the rest of the world. EFTA's own track record in reaching FTAs suggests that it is operating a gear higher than the EU machinery.⁷⁸

The terms of EEA membership are also flexible enough to permit Norway to opt into a number of EU-orientated organisations and groupings. These include:

- Europol;
- Monitoring of Drugs and Drug Addiction;
- The Dublin Agreements (over asylum seekers);
- Mutual Assistance in Criminal Matters;
- Association with Eurojust, the EU body for judicial cooperation;
- The European Arrest Warrant;
- CEPOL, over police training;
- The Lugano Convention on jurisdiction and the recognition and enforcement of foreign states' civil and commercial judgements;
- A parallel association agreement to the Prüm Decision on criminal DNA and fingerprint data sharing;
- The European Union Satellite Centre;
- Crisis management operations;
- EU battle groups;
- The European Defence Agency;
- Additional research and education cooperation (beyond EEA requirements);
- Additional fisheries and agriculture agreements (beyond EEA requirements);
- Additional financial mechanisms (beyond EEA requirements);
- The 'Open Skies' air transport agreement between EU and US;
- The EU Health Security Committee;

78 See for instance its annual reports. Its 54th can be accessed at <www.efta.int/sites/default/files/publications/annual-report/annual-report-2014.pdf>.

“Rejoining the EEA would also keep the UK within the Single Market, rendering exit economically neutral across all areas.”

- The European Centre for Disease Prevention and Control;
- The European Food Safety Authority;
- European Agency for Safety and Health at Work;
- European Aviation Safety Agency;
- European Centre for the Development of Vocational Training;
- European Chemicals Agency;
- European Environment Agency;
- European Foundation for the Improvement of Living and Working Conditions;
- European Maritime Safety Agency;
- European Medicines Agency;
- European Network and Information Security Agency;
- European Railway Agency.

This is because EEA countries have signed up to participate in a range of programmes that stretch beyond trade access. For 2014–2020, these include:

- Horizon 2020 (EU framework programme for research and innovation);
- Erasmus+ (EU programme for education, training, youth and sport);
- Galileo (European satellite navigation programme);
- Creative Europe (EU framework programme for culture and media);
- Connecting Europe Facility (Information and Communication Technologies (ICT) part);
- European Statistical Programme 2013–2017 (EU programme to further the development of the European Statistical System (ESS));
- Health for Growth (EU programme to implement the EU health strategy);
- Union Civil Protection Mechanism (EU programme to prevent and prepare for disasters);
- Interoperability Solutions for Public Administrations (ISA) Programme;
- Employment and Social Innovation (EU programme to support employment, social policy and labour mobility);
- Consumer Programme (EU programme to implement EU consumer policy);
- Copernicus (European Earth observation programme);
- Programme for the Competitiveness of Enterprises and Small and Medium-sized Enterprises (COSME);
- Rights, Equality and Citizenship Programme (EU programme to promote gender equality and children’s rights, and to combat all forms of discrimination).

This approach has been suggested by a number of groups and individuals, notably Civitas.⁷⁹ While membership of the EEA would require the UK to incorporate many EU laws and, at first sight, appears to deny the UK a formal say in the drafting of those laws (an interpretation that is a serious misconception), in many ways the EEA option constitutes an effective ‘bridge option’ between full EU membership and full independence.

Rejoining the EEA would also keep the UK within the Single Market, rendering exit economically neutral across all areas. This is the central appeal of its use as a transitional arrangement, generating additional time for negotiations to continue towards the optimal end treaty if the two-year time limit looks set to be passed. It would also allow phased work to begin on the mammoth task of analysing which EU laws need to be repealed.

79 Another advocate of this view is the “Flexcit” document by Dr Richard North.

“It is inaccurate to claim that Norway has no role in crafting EU rules.”

6.6.2 Criticisms of the EEA have involved deliberate inaccuracies

The ‘EEA option’ can be characterised as a ‘half in, half out’ approach which, in effect, gives Norway the right to free trade with the EU but keeps the country out of political institutions.

Norway’s EEA membership is often written off by its critics rather simplistically as ‘fax democracy’ (or ‘fax diplomacy’ as it has been described by former Norwegian Prime Minister Jens Stoltenberg). This is because of the impression that all Single Market-relevant legislation passed by the EU must be applied by the EEA states, and that they have no say in such legislation’s drafting, amending or enacting.

This is a woefully reductive analysis. It is untrue to suggest that Norwegians have no input.

First, the EEA Agreement includes a veto (a ‘right of reservation’) for unreasonable EU rules. The veto works by suspending free trade (and thus Single Market rules) in the product or service area being regulated for. In 2012, the Oslo Government, usually very pro-European and compliant, used this veto for the first time on the Third Postal Directive. The EU had no real response and the directive, an obscure set of postal services rules, simply went unimplemented. Norway suffered no repercussions, until the 2013 election brought in a more EU-friendly administration which chose to implement the law. If the Norwegians used their veto more actively, this alone would constitute a tool for changing EU law, as drafters would be minded to better factor in its application across the EEA.

It is also inaccurate to claim that Norway has no role in crafting EU rules. It arguably has more influence than similar-sized EU countries like Finland or Croatia. First, Norway represents its own interests and contributes expert advice in important global bodies like the WTO and International Labour Organization (ILO). As we find repeatedly in Part Three, the European Commission or European External Action Service (EEAS) usually represents all its members in one aggregated joint position. Yet it is precisely in such global bodies that the international regulatory agenda is set.

This is noted by international companies that are based in Norway, which have argued: *“We experience that Norway may have a stronger voice in different international bodies as a country outside the EU.”*⁸⁰ An example of how much influence Norway has can be seen in the way Oslo’s representatives were actively involved in preparing the Special Report on Carbon Dioxide Capture and Storage for the Intergovernmental Panel on Climate Change (IPCC) – which provided the basis for the EU’s 2009 directives (Norway also participated in the EU negotiations). The OECD has described Norway as a ‘spearhead’ and ‘leader’ in climate and maritime discussions, backing up US politician Al Gore, who said that *“other countries look at Norway as a moral leader in climate policy”*, and Greenpeace’s chief negotiator: *“It is better having a clear voice... than being drowned in the EU’s internal disputes.”*⁸¹

The ‘Alternativrapporter’ report claims that *“Norway can as a member of the EEA still speak with an independent voice in international forums, where the EU increasingly speaks with one voice”*⁸² Large businesses in Norway have

80 Interview in Civitas *“The Norwegian Way: A case study for Britain’s future relationship with the EU”*, J. Lindsell (2014), page 21.

81 Civitas *“The Norwegian Way: A case study for Britain’s future relationship with the EU”*, J. Lindsell (2014), page 33.

82 Civitas *“The Norwegian Way: A case study for Britain’s future relationship with the EU”*, J. Lindsell (2014), page 34.

“Norway has significant influence over laws before they arrive at EU bodies.”

confirmed that Norway has a larger voice in bodies like the WTO than it would as an EU member. There are even anecdotal cases of representatives of individual EU member states begging the Norwegians to take a certain stand in the WTO because the EU had chosen a position that was not in that member state's interests.⁸³

When the EU starts drafting the laws themselves later, Norwegian experts attend the relevant committees and consultations in the same way as full EU members. At this point, Norway simply evades any proposed EU rules if they do not apply to the Single Market – if they are irrelevant to the Norwegians' economic agreement then they are simply ignored.⁸⁴

There is an oft-cited claim that Norway does not feed into the rules that it is expected to live by, that it is trapped in a situation where new laws are literally faxed through to Oslo by the EU. Comments in support of this interpretation by Norwegian politicians have nearly always come from people who have an ideological stake in getting Norway to join the EU.⁸⁵ These claims are simply inaccurate. According to a study by Civitas, “Norway actually has a greater say over what goes on in Norway as an EFTA-EEA state than it would [as a full EU member]”.⁸⁶ Figure 6.xi illustrates how EEA laws are actually made, and where non-EU states such as Norway feed into the system.

As Figure 6.xi shows, this ‘two pillar system’ offers numerous opportunities for Norway to have a say over EU laws. In many ways, and as we repeatedly see across this volume, Norway does not need a vote at the Council of Ministers or the European Parliament as it has already had significant influence over the laws before they arrived at these EU bodies for approval. In addition, any one EEA country can veto the introduction of a regulation applying to them all. Because the EEA countries are small, their governments and parliaments until recently tended not to use them, but this trend is now being overturned (especially as Iceland has stepped back from EU membership and has a reduced appetite for legislative approximation). Thus, by possessing a universal veto right, when they choose to use it, the EFTA/EEA countries already have greater power than the UK, which can no longer veto the application of EU laws and lacks the significant number of votes needed to block them from being approved in the EU institutions.

If Norway's veto has seldom been tested, this is a matter of choice by political parties keen to integrate to the maximum prior to full accession; it is not because of faults in the system. The end result is that Norwegian products are made to continental specifications and can be sold across the EU/EEA without tariff barriers or quotas. The only exceptions are seafood and agricultural products, because the CFP and CAP are exempted. Oslo can set its own farm subsidies and agricultural rules, and can fish by its own quotas and rules. Nevertheless, flagship produce such as salmon enjoys preferential access in the EU thanks to biannual tariff discussions.

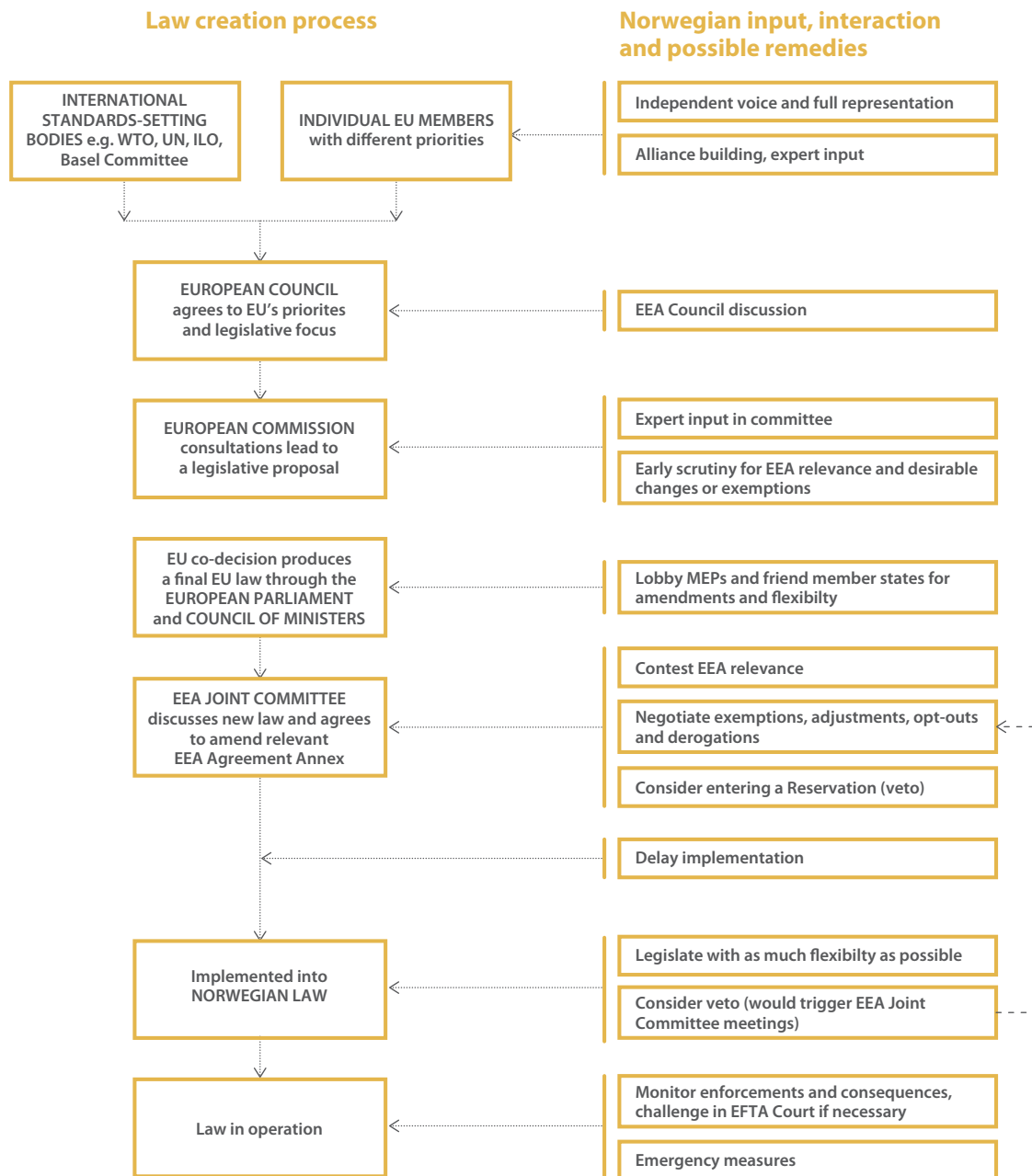
83 Civitas “The Norwegian Way: A case study for Britain's future relationship with the EU”, J. Lindsell (2014), page 31.

84 See the penultimate chapter of “Controversies”, L. Rotherham EU Referendum Campaign (2011).

85 It is telling that, when Norwegian politicians from parties that aren't committed to taking Norway into the EU speak on this issue, they are usually far more positive about the UK's prospects.

86 Civitas “The Norwegian Way: A case study for Britain's future relationship with the EU”, J. Lindsell (2014), page 28.

Figure 6.xi: Norwegian influence over EEA law creation



Source: see Annex A.

The Norwegian/EEA approach can be criticised for preserving too much of the acquis. Precisely how much is an open question. Arguments can be made that Norway implements anywhere between 9 per cent and 75 per cent of EU laws. It is certainly true that most environmental, social and employment regulations are implemented in Norway – including the Working Time Directive. But this also needs to be put into a domestic context. The WTD was not seen as a great change for Norway since legislation had already existed since 1919 limiting weekly working time to 48 hours.

“Norway remains firmly outside the EU’s political institutions, remaining a sovereign, independent country with the right to self-representation.”

6.6.3 Single Market access without ‘political union’ is secured under the EEA option

EEA membership entitles countries to trade with the EU but does not affiliate them to the cause of ‘ever closer union’. There is no commitment to political integration, but rather to:

- (a) The free movement of goods;
- (b) The free movement of persons;
- (c) The free movement of services;
- (d) The free movement of capital;
- (e) The setting up of a system ensuring that competition is not distorted and that the rules thereon are equally respected;
- (f) Closer cooperation in other fields, such as research and development, the environment, education and social policy.⁸⁷

The requirement for free movement will be a concern to those seeking to address imbalances under the UK’s current EU relationship. EEA states do have an emergency opt-out from these provisions, but this element of the EEA agreement has yet to be applied and has limited application.

But thanks to these freedoms, Norway’s trade with the EU is secure. It is the EU’s fifth largest import partner for goods, and its seventh largest export market. Norway enjoys a surplus, and three quarters (74.3 per cent) of all Norwegian exports go to the EU.⁸⁸ However, it remains firmly outside the political institutions, remaining a sovereign, independent country with the right to self-representation. Reports for the Norwegian Parliament have concluded that *“the agreements with the EU have on the whole safeguarded Norwegian interests and values”* and that the EEA agreement has *“provided a stable and relatively predictable framework for almost all aspects of Norway’s economic relations with the EU”*.⁸⁹

Significantly from a UK perspective, Norwegian Eurosceptics in the Neitil EU movement do not campaign for the maintenance of the status quo, but assess that an even better scenario would arise if Norway were to leave the EEA and strike out on the global stage. Claims that this sort of deal would require a complicated ‘Rules of Origin’ agreement are also overstated.⁹⁰

6.6.4 The Norway Option does contain some genuine flaws and it cannot represent a long-term solution for Britain

Some of the criticisms of the EEA model’s are legitimate. To begin with, EEA states have to pay contributions to the EU. In the case of Norway this comes in the form of ‘Norway grants’. These funds also still end up subsidising poorer European member states generating a net contributory loss.

There is a caveat. The actual sum in question appears to be falling. The Norwegian Government’s political critics also suggest that its contributions

87 Agreement on the European Economic Area, accessed 03/05/2015 at: <www.efta.int/sites/default/files/documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf>.

88 European Commission. Accessed 03/05/2015 at: <<http://ec.europa.eu/trade/policy/countries-and-regions/countries/norway/>>.

89 Quoted in Civitas *“The Norwegian Way: A case study for Britain’s future relationship with the EU”*, J. Lindsell (2014), page 10.

90 See Section 2. The review of this issue in Civitas *“The Norwegian Way: A case study for Britain’s future relationship with the EU”*, J. Lindsell (2014) was unable to find any local business source that cited Rules of Origin as a major problem.

“The UK’s own contributions to the EEA budget would represent a significant reduction compared to current EU rates.”

were unnecessarily high in the first place, as it was keen to underline its EU-friendly credentials. Even so, the UK’s own contributions to the EEA budget would represent a significant reduction compared to current EU rates, and therefore would mean taxpayers saving billions.⁹¹

The principal potential problem, however, is that accession to the EEA relies on consent. In 2006, then Icelandic Prime Minister Davíð Oddsson warned that “[The EU] would try their best to make sure it would not work, because if a country left and it did work it would be a humiliating experience for them.” This was seemingly borne out in the Open Europe ‘War Games’ as well, which concluded that “a Norway-style deal – Single Market membership but no formal political influence – was rejected by EU partners who saw it was a potentially dangerous precedent”.⁹² This may have been because the UK representatives did not particularly push for this option.

As Martin Howe QC has demonstrated, the UK is a party to the EEA agreement through the EU signature rather than as a signatory.⁹³ It would need the assent of all the other parties to accede in its own right, transferring its membership across as an external EU partner state.⁹⁴ Just as winning wide-ranging EU reform and the restoration of major competences cannot be guaranteed by renegotiating the EU Treaties from within, nor can it be guaranteed that all EEA states would consent to this transition rather than see it as a bartering chip.

It does remain likely, indeed extremely probable, that other countries would agree to this process. But it would be imprudent to see this as a guaranteed route, and it must in turn be treated as just one route for exploration. This need for the assent of all other parties if the UK is to join the EEA becomes particularly important if Britain intends to subsequently pursue another option – the “Reformed EEA” route. However, seeking to ambitiously change the entire EEA is even less of a guaranteed option. Given the time frame that this would demand, fundamental British concerns over red tape and migration would have to be parked indefinitely. Furthermore, if member states have already shown themselves to be disinclined to reform the EU, adding extra negotiators to the tally will only exacerbate the problem.

If the UK has failed to persuade EU governments to drop the principle of ever closer union, it is not likely to persuade those same governments to drop the EEA as a parking point for countries seeking to transfer into the EU. Integrationist EU states in this scenario would see UK accession to the EEA in the same way de Gaulle saw UK accession in the 1960s, as a spoiler. Indeed, knowing that the UK seeks to join the EEA specifically in order to change it would increase the likelihood of any one state declaring in advance that it is unhappy with UK accession and seek to block it. Correspondingly, while it would be a happy potential

91 Given trade variables and differences between the Norwegian and UK economies, we simply here note that proportionately the Norway model would scale up into a significant gain for the UK economy based on GDP and associated factors.

92 Open Europe “Gaming Europe’s Future: Simulating the negotiations that could determine Britain’s place in Europe” (2014), *The Brexit Scenario*, page 5.

93 Politeia “Zero Plus: The Principles of EU Renegotiation”, M Howe (2014).

94 Croatian accession was markedly signed off by just its ambassador, the three EEA-EFTA member state ambassadors, plus Greece acting as the Council Presidency on behalf of everyone else. The UK did not sign, as the issue had been settled ‘upstream’ within the Council largely via the Working Party on European Free Trade Association (incidentally, a group largely producing ‘A items’ that don’t get EU ministerial debate: another reason why EEA-EFTA members have greater influence). But in any event, the ECJ itself could be invited to review any attempt at shanghaiing the Council into approving a shift, and this would add time – precisely the variable this option is intended to avoid. The critical point therefore is that EEA transition is neither guaranteed nor automatic, but depends on the willingness of EU and EEA partners to consent.

“Switzerland is outside the EU’s customs union, meaning that it can secure free trade deals with other countries.”

solution to join the EEA and transform it into a ‘Son of EFTA’, putting every egg into this one basket is not a practical or realistic solution to the problems of EU membership.

Rather than attempt to gain the consent of every member state to change the EEA agreement, it makes more sense (if this organisation is to be pursued as a route) to simply win their support for the UK to gain transitional EEA membership; and then to sort out a bilateral deal that leaves existing structures for remaining members unaffected.

Consequently, it seems more likely that an ‘EEA Lite’ agreement could be reached. An EEA Lite model, based on the EEA terms, would reduce the number of areas applied to the UK.⁹⁵ EEA Lite has the advantage of allowing national opt-outs rather than changing the terms as they apply to everyone. Once again, the full attractiveness or feasibility of this model cannot be gauged in advance.

6.6.5 The UK could aim for bilateral deals (the ‘Swiss Option’)

Another form of ‘special deal’ is the type of relationship that Switzerland has secured with the EU by being part of the European Free Trade Association (EFTA) but outside the EEA. This approach means Switzerland retains access to the EU Single Market via a range of bilaterals, while simultaneously being a member of an outside trade bloc.

After rejecting EEA membership in 1992, Switzerland secured a number of comprehensive bilateral deals with the EU, covering the four freedoms and various side issues. These were in response to evolving circumstances, and do not constitute a specifically-designed product so much as an evolving ‘living agreement’ between Switzerland and the EU. Today there are some 120 bilateral agreements between Switzerland and the EU.⁹⁶

EFTA was founded following the Stockholm Convention of 1960 and was driven mainly by the UK, which saw it as an alternative to the emerging EEC. The UK quit the organisation to join the EEC, a route followed by a number of other states.⁹⁷ It should be noted that it was largely because the UK market was leaving EFTA that EFTA became less viable, or at least attractive, for the others.

Switzerland is outside the EU’s customs union, meaning that it can secure free trade deals with other countries. Significantly, despite its geography as the EU’s ‘inner sea’, it has historically been much more successful than the EU in securing comprehensive FTAs, as set out in Table 6.xii.

95 This model has been explored in work by David Campbell Bannerman, MEP et al: see in particular “Time To Jump: A Positive Vision of an Independent Britain Outside the EU in an EEA Lite Agreement” (Bretwalda Books, 2013) and the accompanying website <www.timetojump.org>.

96 These came in the form of ‘Bilaterals I’ (agreed in 2002) and ‘Bilaterals II’ (agreed in 2004).

97 Denmark: 1973; Portugal: 1986; Austria, Finland, Sweden: 1995.

Table 6.xii: Free Trade Agreements in force with the EU but not with Switzerland, and vice versa, by market size, 2012

EU only	GDP (PPP), \$billion	Switzerland only	GDP (PPP) \$billion
Algeria	327.7	China*	12,471.0
Syria	122.0	Japan	4,487.0
Guatemala	77.0	Canada*	1,484.0
Panama	63.0	Hong Kong*	372.0
Costa Rica	62.0	Ukraine*	338.0
El Salvador	45.0	Singapore*	328.3
Honduras	33.0	Botswana*	34.0
Nicaragua	24.4	Namibia*	16.9
Andorra	3.2	Swaziland*	6.5
San Marino	1.4	Lesotho*	4.0
TOTAL	758.7	TOTAL	19,541.7

* Agreement also included services. Since the end of 2012, the EU has reached agreements with Canada and Singapore (not yet in force or ratified) and with Ukraine (suspended due to the deteriorating international situation and to keep the Russian bilateral preferential regime in place). Source: see Annex A.

Reaching a Swiss-style deal would require the UK to sign either one or several bilateral agreements with the EU to ensure that the UK could access the Single Market.

6.6.6 Many of the criticisms of the Swiss Option deal don't stand up to scrutiny, but some deserve consideration

It is true that the Swiss have (so far) been outside the Single Market in services, but the Single Market in services, even for EU member states, is significantly underdeveloped.

It should also be noted that there are also 'guillotine' clauses in the way Swiss arrangements are aggregated. These state that, if one part is voided, then that whole package falls; there are considerable concerns that, following Switzerland's 2014 referendum result to suspend free movement of people, the whole of Bilaterals I may be in danger, raising uncertainty about future relations between Switzerland and the EU. These would have to be addressed in any UK-EU deal based on this model – the UK would have to seek to ensure that no such 'guillotine clauses' existed within its agreement.

Then there is the mechanism by which Switzerland's federal parliament is involved. Swiss law does have to be updated in order to ensure equivalence with European capital market law. However, there is no provision or device in the EU-Swiss relationship that forces Switzerland to adopt new EU laws, so it indirectly relies on the continuing consent of parliamentarians to the evolving package – a democratic gain.

Were the UK to leave the EU, apply for and then gain EFTA membership, it would also have to negotiate into its existing trade deals. It could not simply inherit previously agreed EFTA deals, though in many cases the signatories would very likely be prepared to expand membership. In some instances, particular areas may require additional negotiation, as the addition of a UK industry to the balance might generate new complications.

“The UK could alternatively opt into the Customs Union.”

In turn, these might be settled by the expediency of an opt-out excluding one sector. But as and when these deals do get passed on, this would mean speedy preferential access to markets outside of the EU presently of around 440m consumers. As EFTA states can operate both bilateral FTAs as well as EFTA FTAs, the UK could gain a second fast track to improved trade access. (It is worth noting that the highly influential Heritage Foundation in the USA is already calling for the US to reach a free trade deal with an independent UK).

Swiss terms would take time to fully secure, however. As David Cameron correctly noted, *“The Swiss have to negotiate access to the Single Market sector by sector.”*⁹⁸

Unsurprisingly the EU does not like this diplomatically untidy system, which also belies the ideal of there being only one EU model. The House of Commons Foreign Affairs Committee went to Berne in 2013 and confirmed that the Commission found the current system not to its tastes.⁹⁹

6.6.7 The UK would be able to apply for membership of the EU customs union (the ‘Turkey Option’)

The UK could alternatively opt into the Customs Union. This would allow for continued access to the Single Market from within. It avoids some of the disadvantages of the EEA model (such as the free movement of people issue) but at the cost of generating new ones.

Under the Customs Union, Turkey aligns its commercial policy with the EU’s Common Commercial Policy. This means it is excluded from EU trade deals and has to negotiate its own. So far, Turkey has concluded FTAs with 32 countries, 11 of which were repealed due to the accession of these countries to the EU. Currently, Turkey has 17 FTAs in force, including with the EFTA. Meanwhile, there are 13 countries or blocs that Turkey has started FTA negotiations with; namely Peru, Ukraine, Colombia, Ecuador, Mexico, Japan, Singapore, The Democratic Republic of Congo, Cameroon, Seychelles, the Gulf Cooperation Council, Libya, and MERCOSUR. Turkey has also launched precursors to negotiations with the USA, Canada, Thailand, India, Indonesia, Vietnam, Central American Countries, other ACP Countries, Algeria, and South Africa.¹⁰⁰

The key issue is over the burden of EU red tape, which the country has to accept with considerably less input than EEA countries enjoy. Turkey’s costs are, however, offset by massive subsidy, which the UK would not get. Consequently, this option constitutes a weaker arrangement than the EEA option, and thus at best forms a secondary transitory route covering a very limited period. Nevertheless, it still has its advocates.

6.7 The optimal route is a ‘British Option’

Given Britain’s position within the EU-28, withdrawal would have an unprecedented impact on the other member states. It will therefore require a tailored solution: a unique, bespoke treaty tailored to the precise details of Britain’s situation and the circumstances of our departure.

98 “Prime Minister David Cameron discussed the future of the European Union at Bloomberg” (Speech, 23 January 2013), accessed 03/02/2015 at: <www.gov.uk/government/speeches/eu-speech-at-bloomberg>.

99 House of Commons Foreign Affairs Committee “The future of the European Union: UK Government policy”. First Report of Session 2013–14. Volume I, p. 76 et seq., accessed 03/05/2015 at <www.publications.parliament.uk/pa/cm201314/cmselect/cmfa/87/87.pdf>.

100 Republic of Turkey, Ministry of Economy, accessed 03/05/2015 at: <<http://economy.gov.tr/index.cfm?sayfa=tradeagreements&bolum=fta®ion=>β>>.

“A change in the UK’s association with the EU could both provide the same access and increase its ‘influence’ where it actually matters: in Britain, and across the wider world.”

A wide-ranging and comprehensive agreement of this nature could include far more than the terms necessary to govern subsequent UK/EU trade. Geography generates areas of common concern and obvious cooperation. In short, a British exit would require a ‘British Option’.

The EU-28 clearly believe that Canada, the world’s number 16 economy, is a partner worth having, because they have just concluded the CETA deal with it. What is the rest of the EU likely to think about Britain, the world’s number 9, an economy twice the size of Canada?

It follows that the prospects for reaching a new arrangement are far better than is often believed, as even fair-minded supporters of the European Union are prepared to concede:

Given the importance of the UK market to the Eurozone, the UK would probably have little difficulty in negotiating [a Free Trade Agreement]. There is a good chance that the tariffs levied by the EU on British manufactured goods would be zero.¹⁰¹

The authors of the above quotation would prefer Britain to remain within the EU because they believe that no possible free trade agreement would provide better access to EU markets than we currently enjoy, but would entail a ‘loss of influence’.

That is far from certain. In fact, a change in the UK’s association with the EU could both provide the same access and increase its ‘influence’ where it actually matters: in Britain, and across the wider world. Until the question is tested by renegotiation, we will never know. And unless that renegotiation is conducted using the full range of options open to Britain, we will have no chance of obtaining what we want.

The UK’s route to a new deal with the EU runs through a complex backwoods path of possibilities. As the Open Europe War Game observed:

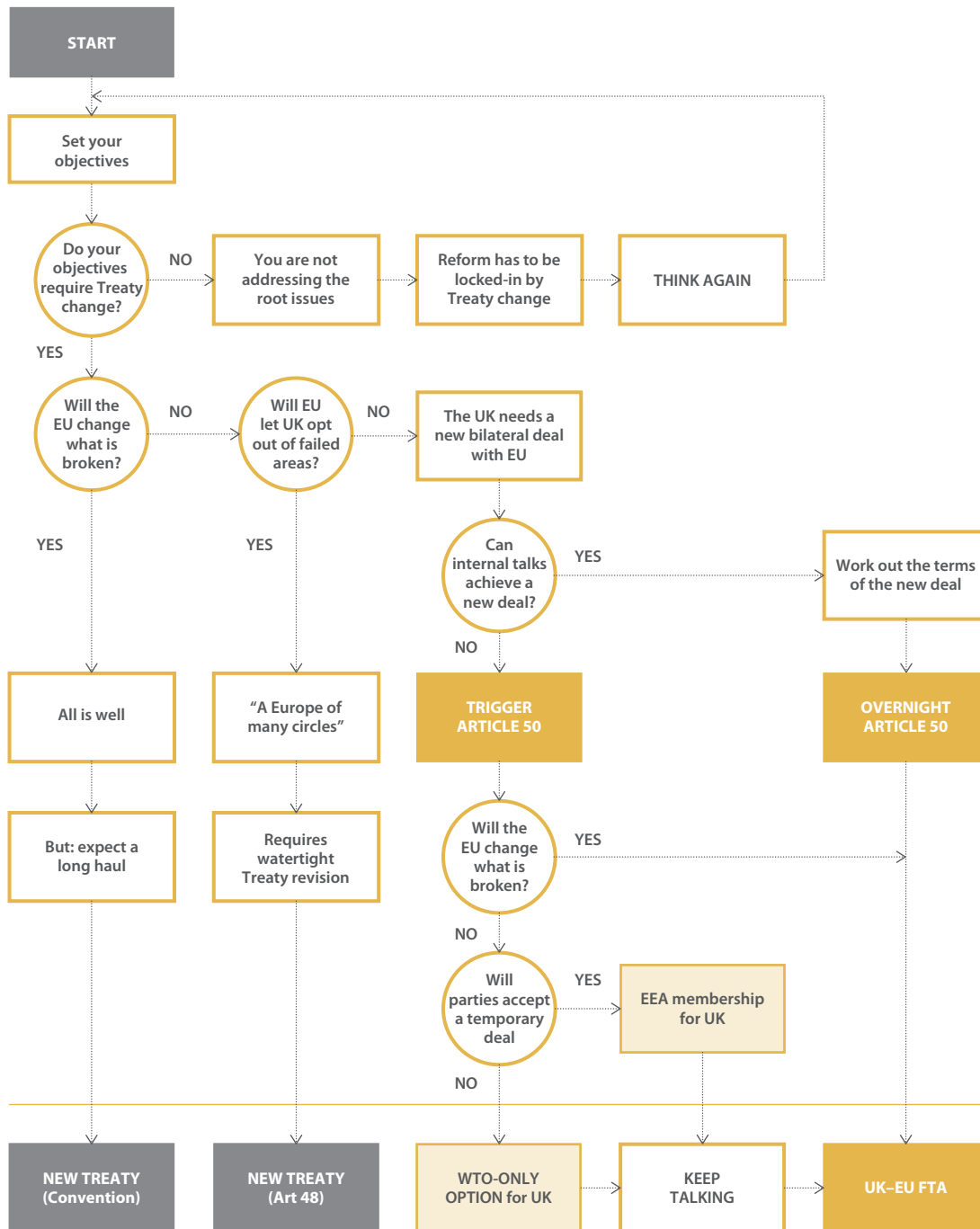
It is likely that a UK exit from the EU would produce an emotional response from other EU countries, but this would clearly depend on the exact circumstances. It is clear that it is in the UK’s and the other member states’ interest to conclude a free trade agreement, at least on goods. However, whether a preferential deal could be completed within the two-year timeframe stipulated in the EU Treaties is unclear and depends on the goodwill of the other EU member states, European Commission negotiators and the European Parliament. The EU institutions, particularly the Parliament, could somewhat ironically, have stronger negotiating hands following a Brexit than they would under a ‘renegotiation from within’ scenario. After this two-year period, the UK could be left to rely on World Trade Organisation (WTO) rules if no deal can be reached.¹⁰²

The key variable will be goodwill. The second will be an appetite among other EU members for change. Notwithstanding the reasonableness of the cause, neither can be guaranteed to be in bountiful supply. British negotiators will have to be flexible and ministers (and Parliament) will have to be far-sighted in setting their eyes on an ambitious end state that resolves all (or at least, a clear majority) of the underlying issues, costs, and seeds of future crises.

101 Centre for European Reform “The Great British Trade-off: The impact of leaving the EU on the UK’s trade and investment”, (2014), Springford and Tilford, page 9.

102 Open Europe “Gaming Europe’s Future: Simulating the negotiations that could determine Britain’s place in Europe” (2014), The Brexit Scenario, page 16.

Figure 6.xiii: Negotiating the British Option



Source: see Annex A.

There is nothing intrinsically impossible about the renegotiation process. Figure 6.xiii provides a flowchart. Whereas Figure 6.ii illustrated the outcomes which are technically possible, this diagram clarifies what a British negotiator’s priorities should be at any stage.

It will swiftly become evident which routes remain possible and which are closed off. Determining the options, however, requires first asking the question.

Renegotiation begins with Whitehall and Westminster comprehensively identifying where the problems lie. It then challenges the EU to reform.

If it will not, renegotiation challenges the EU to let the UK opt out of EU failure.

If it will not, renegotiation challenges the EU to allow the UK into a new treaty.

If it will not, renegotiation challenges the EU to let the UK transition to a new deal.

If it will not, then the relationship truly is broken, and a new deal will have to be reached via departure first.

But at least, via this route, the end-result will have been arrived at in good faith; and that increases the likelihood of friendly neighbourhood relations that will endure in the decades to come.

Amid all the rhetoric, Figure 6.xiii makes plain that there are three realistic end-results for the renegotiation process (the others are temporary transitional positions). Two of these involve Britain remaining inside some form of re-scripted EU. We do not, however, make any assessment on the relative likelihood of any individual outcome.

Conclusion

When the evidence is examined, there are excellent prospects for negotiating an improved relationship between Britain and the EU – principally, but not exclusively, based on trade arrangements.

It is not inevitable that the process will end in a British exit from the European Union. The priority, for the EU as much as for Britain, is to decide what the new relationship needs to contain, and then to negotiate for it in good faith. Whether that relationship is ‘inside’ a form of European Union (perhaps one in which the Eurozone members have integrated further) or ‘outside’ and effected through a free trade agreement, is in a sense a secondary issue. The key concern is for Government and Parliament to identify the root problems, and generate a treaty deal that then addresses them.

ANNEX A: Data sources for Section 6

Figure 6.ii: Routes to Article 50 and beyond – the three scenarios

Authors’ own research.

Figure 6.iv: Average UK trade balance with EU-28 for 1994–2003

Data for the years 1994–1998 inclusive drawn from Table 9.3 (trade in goods and services) in ONS “United Kingdom Balance of Payments 2001” (“Pink Book 2001”). Data for the years 1999–2003 inclusive drawn from the ONS website. The data for each country is the balance of trade in goods and services for each year downloaded from the ONS website. The data includes the revisions to previously published figures released by ONS on 20 January 2015. Prior to 1999 there are no figures available for the standalone trade between Britain and either Cyprus or Malta. The average quoted in the chart is therefore the five-year figure for 1999–2003.

Prior to 1999 trade figures for Belgium and Luxembourg are aggregated. Since the trade profile of Britain with each is somewhat different, it would be unreliable to apportion the earlier aggregates between the two countries. The average quoted in the chart is therefore the five-year figure for 1999–2003.

Figure 6.v: Average UK trade balances in goods and services with EU-28 for 1994–2003

Data for the years 1994–1998 inclusive drawn from Table 9.4 (trade in goods) and Table 9.5 (trade in services) in Pink Book 2001. Data for the years 1999–2003 inclusive drawn from the ONS website. The data for each country is the separate balances of trade in goods and of trade in services for each year downloaded from the ONS website. The data includes the revisions to previously published figures released by ONS on 20 January 2015.

Results for Belgium, Cyprus, Malta and Luxembourg are the five-year figures for 1999–2003 as discussed under Figure 6.iv.

Figure 6.vi: Average UK trade balance with EU-28 for 2004–2013

The data for each country is the balance of trade in goods and services for each year downloaded from the ONS website. The data downloaded included the revisions to previously published figures released by ONS on 20 January 2015.

Figure 6.vii: Average UK trade balances in goods and services with EU-28 for 2004–2013

The data for each country is the separate balances of trade in goods and of trade in services for each year downloaded from the ONS website. The data downloaded included the revisions to previously published figures released by ONS on 20 January 2015.

Table 6.viii: Britain as a buyer of EU member exports, 2012

Export data is derived from the EUROSTAT website. Figures for exports of goods taken from the database “EU Trade Since 1988 by Broad Economic Categories” [DS-032655], supplemented for omissions with data from “International trade of EU, the euro area and the Member States by SITC product group [ext_lt_intertrd]. Figures for exports of services taken from the database “Total services, detailed geographical breakdown by EU Member States (since 2002)” [bop_its_tot], supplemented for omissions with data from “International trade in services (since 2010)” (BPM6) [bop_its6_det].

Gross Value Added data for each country taken from the EUROSTAT Table “Gross Value Added and Income by A*10 industry breakdowns”, with the exceptions of the GVA values of the Manufacturing sectors for Bulgaria, Romania and Spain because in that Table the manufacturing values for those countries are amalgamated in the values reported for the combined Industry (except Construction) sector. GVA values for Romania and Spain taken from the EUROSTAT Table “National Accounts aggregates by industry (up to NACE A*64)”. The GVA value for Bulgaria is derived as the balancing figure to reach the reported EU-28 total after including the alternative values for Romania and Spain.

Table 6.ix: World's largest economies, 2013, 'Dollar math' version

Data downloaded from the World Bank website, GDP at PPP (current international dollar) code: NY.GDP.MKTP.PP.CD. "Notional NAFTA" result derived as the sum of the individual values for Canada, Mexico and the USA. "Notional EU" results derived as the sum of the values of the constituent member countries.

Table 6.x: Fantasy football – Balancing the loss of the UK to the EU Budget

Data downloaded from the World Bank website, GDP at PPP (current international dollar) code: NY.GDP.MKTP.PP.CD.

Figure 6.xi: Norwegian influence over EEA law creation

Diagram taken from Civitas "The Norwegian Way: A case study for Britain's future relationship with the EU" (2015), J. Lindsell, Figure 4, page 29.

Figure 6.xiii: Negotiating the British Option

Authors' own research.

Table 6.xii: Free Trade Agreements in force with the EU but not with Switzerland, and vice versa, by market size, 2012

Based on Civitas "Where's the Insider Advantage? A review of the evidence that withdrawal from the EU would not harm the UK's exports or foreign investment in the UK" (2014), Burrage, Table 10, page 54.

7 Conclusion

Britain's planned EU referendum will not happen in a vacuum. Before it takes place, the Prime Minister will first set out to secure a fundamental renegotiation of Britain's EU membership. His mission is to reform the EU, or at least the parts of it that most damage UK interests. This will be a real challenge, but a challenge that can be, and must be, met if the UK is going to remain a member.

Different lists have been drawn up as to what the current key failings of the EU are. Both the Labour and the Conservative parties have identified a number of structural and competency flaws that need to be addressed; the Fresh Start Group of MPs, many of whom are now ministers, has analysed the inherent 'metal fatigue' in the Treaties and has produced a series of suggested reforms. There is no absence of carefully-studied ideas.

While no complete consensus on the 'shopping list' exists, there are key areas where people agree that serious change is needed. Indeed, the Prime Minister himself has identified a number of significant reforms that must happen within the EU. His promises over the last 10 years constitute a good starting point for the coming renegotiation.

The one absolute requirement is Treaty change. This has been recognised by the Prime Minister, who stated that his proposals do involve "*proper, full on, Treaty change.*"¹⁰³ A piece of paper that simply included a generic promise would not be sufficient, as such a pledge could not be guaranteed to deliver results and would be subject to the whims of the European Courts in its interpretation. Any other promissory note would only be as credible as the extent to which it identifies powers to return to parliamentary and devolved control.

To address fundamental problems, fundamental change is required. If other EU leaders refuse to alter their own rules, the UK could legitimately pursue a new bilateral status that fixed matters by changing just the UK's own relationship with the rest of the EU. It would be acceptable and achievable for Britain to obtain this better deal as a state cooperating with, rather than as a member of, the EU.

Attitudes across Europe's capitals will soon become clear. If other EU states prove unwilling to pursue a reform agenda and instead place a premium on rolling European integration, the UK will have to consider life outside the Union. As Part 3 shows, this has many attractions and would be preferable to the status quo.

The UK has reasonable concerns that need to be addressed, and renegotiation offers a real chance to address them. Both ambition and vision will be needed; any diffidence that emerges within the Foreign Office needs to be swiftly quashed. But the promises made by the Prime Minister are achievable and, if met, would constitute a sea change in Britain's relationship with the EU. There is a real prospect of change, though if it fails to materialise we should not be afraid to go. If all else fails, the UK would default to the WTO option which, as we show in Part 3 and Part 4, is far better than the status quo.

103 David Cameron, Andrew Marr Show, BBC, 4 January 2015.



United Kingdom

Part 3:

How Britain would gain influence outside an unreformed EU

Chapter

8 Foreign Affairs	254	18 Transport	537
9 Defence	287	19 Education	564
10 Financial services	313	20 Technology and Research	581
11 EU Budget	350	21 Justice and home affairs	604
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In Part 1 and Part 2 we established that the UK's relationship with the EU is in need of fundamental reform, and that such reform would require either an overhaul of the EU's Treaties or the introduction of a special deal which would give the UK a looser, bilateral relationship with the Union. As we have also established, such changes must be seen as an absolute prerequisite for the UK remaining a member of the EU and that, were such reforms to be blocked, we would have no option but to leave. But what does 'leaving' look like? This section seeks to answer that question by assuming that Britain has left the EU without any 'special deal' and that its trading relationship with the Union has defaulted to World Trade Organization (WTO) terms.

In Part 3 we analyse 18 different policy areas and establish what it means for the EU not to have a role. These are:

- Section 8: Foreign affairs
- Section 9: Defence
- Section 10: Financial affairs
- Section 11: EU Budget
- Section 12: Migration
- Section 13: Agriculture and rural communities
- Section 14: Fisheries
- Section 15: Human rights
- Section 16: Energy
- Section 17: Environment
- Section 18: Transport
- Section 19: Education
- Section 20: Technology and research
- Section 21: Justice and home affairs
- Section 22: International Development
- Section 23: Health
- Section 24: Taxation
- Section 25: Culture

A Prime Minister facing an 'Out' vote in a future referendum might assume that the UK would be cut off from the world, unable to engage in international opportunities. This analysis shows that, far from diminishing Britain's influence, leaving the EU would enhance Britain's role on the world stage. It would entitle it to once again be an active member of the key international bodies where it is currently represented by the EU, and would give the UK Parliament the right to legislate in areas which have, hitherto, been denied to policy-makers.

In short, in recent years a new global regulatory reality has been emerging. International bodies, either associated with the UN or established as separate stand-alone institutions, have been setting the ground rules for agreements at a global level which regional trade blocs such as the EU are obliged to model their own rules on.

Meanwhile, WTO rules now actively encourage global sectoral associations (Transnational Private Regulators, or TPRs) to determine their own common rules, in order for these in turn to be adopted as the world's standards. These now include, for example, work done by international trade associations on accounting standards, payment systems, food safety, civil aviation, advertising codes, and even corporate responsibilities for human rights.

Consequently, not only is the EU no longer top of the food chain in determining Europe's trade rules, but it is distracting British businesses and Whitehall

from lobbying the right people to get the best rules for them, and is failing to provide proper oversight.¹

The UK has been swapping a vote at the global source of new regulations for a tenth of the vote on deciding whether to gold-plate them at EU level.

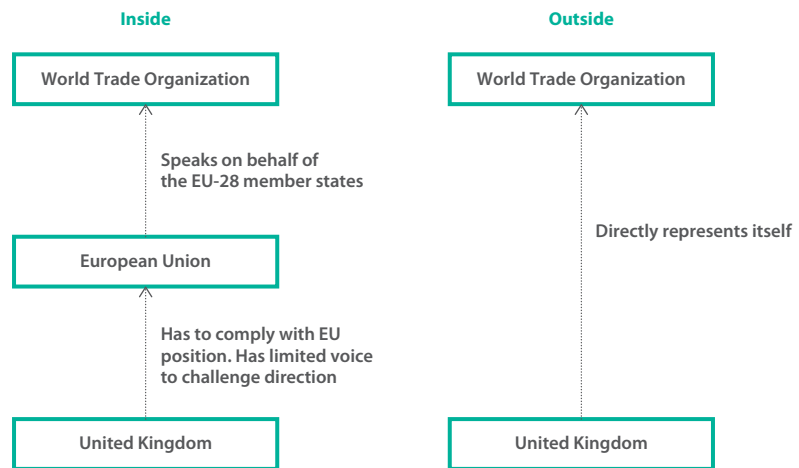
For each policy area we find that:

- **The UK would remain a member of key international bodies.** Leaving the EU either maintains the UK's standing in key international organisations, or it provides the UK with the opportunity to have a larger say. The UK would be able to regain its seat in key bodies like the WTO. It would, once again, be able to contribute to the debate setting the terms for international rules and vote in its own interests, rather than being represented in these bodies by the EU.
- **The UK could continue to cooperate with the EU.** It would still be possible for the UK to work with the EU and participate in European programmes of common interest. Because the EU has committed itself to developing a 'special relationship' with neighbouring countries (as set out in Article 8 TEU), leaving the Union would not compromise the ability of the UK to work with the EU's institutions or EU member states. There are numerous, alternative forms of cooperation that exist between the EU and third countries. Many of the key European programmes that the UK is involved with are either managed by non-EU organisations (and are thus open to countries outside the EU), or are EU programmes which already admit non-EU states.
- **New policy opportunities would become available.** A range of policy opportunities would become available to the UK by opting out of the EU. The chance to free itself from the confines of EU regulation would give UK policy-makers the opportunity to take the country in a different direction and to use tools which are currently denied to them under EU law. This substantial increase in the influence of the British Parliament would result in new opportunities to introduce both left-leaning and right-leaning policies, from state aid to VAT reductions. While any new legislation would be limited by other factors (including international law), there is no doubt that UK politicians would be able to devise new manifestos and offer the public solutions that have been denied to them for many years.

We use this as a broad structure for all of the sections in Part 3. Our basic argument is illustrated in Figure i.

1 An important and holistic overview is provided at <www.eesc.europa.eu/resources/docs/a-comparative-analysis-of-transnational-private-regulation-fcafaggi_12062014.pdf>.

Figure i: Simplified diagram of UK influence inside the EU and outside



Regulations are often made at source, globally. Removing the UK from a particular EU competence does not mean the end of international cooperation, but rather its start. It means the regaining of direct UK influence at the regulatory source of many of the agreements (later re-engineered at EU level), since UK diplomats would take back power from the EU delegates currently sent to these committees and conferences in their stead. The size of even the UK’s current influence in these bodies is explained by the Foreign & Commonwealth Office (FCO) itself in its 2014 Scotland Analysis.² It underlines the UK’s significant role within UN structures as a permanent member of the Security Council (P5), a key funder, a highly active committee member, and a leading peace-keeping contributor. The key UN agencies are briefly set out in Table ii below:³

Table ii: FCO view on UK influence at the key UN agencies

Organisation	Role	UK context
Food and Agriculture Organization (FAO)	The FAO’s primary aim is to achieve food security for all and to make sure that people have regular access to enough high quality food to lead a healthy life, as well as raising levels of nutrition, improving agricultural productivity and contributing to the growth of the world economy.	UK membership of the FAO affords influence on priority policy areas, such as regulations and guidelines for international fisheries. Owing to the size of its contribution, the UK has significant influence at the FAO, with a quasi-permanent seat on the FAO’s Council, which makes decisions on policy priorities and its budget.
International Labour Organization (ILO)	The ILO is the international organisation responsible for drawing up and overseeing international labour standards. The UK is one of 10 permanent members of the Governing Body.	The UK, as one of the leading ILO member states and a permanent member of the Governing Body, has greater influence than many smaller countries.
United Nations Educational, Scientific and Cultural Organization (UNESCO)	UNESCO’s mission is to contribute to the building of peace, the eradication of poverty, sustainable development and inter-cultural dialogue through science, culture, communication and information. It particularly focuses on two areas: Africa and gender equality. The UK has Permanent Representation in UNESCO, including an Ambassador and a Board Member, as well as representatives from the National Commission. The UK participates in negotiations that impact on UK interests in various specialist policy groups on culture, science and communications.	As a member of the Executive Board, the UK maintains strong influence on the planning and management of UNESCO’s programmes and budget.

2 HM Government, “Scotland analysis: EU and international issues” (2014), pages 50–52.

3 HM Government, “Scotland analysis: EU and international issues” (2014), pages 50–52.

Organisation	Role	UK context
International Civil Aviation Organization (ICAO)	The ICAO is the agency responsible for air safety, promoting the safe and orderly development of international aviation, and setting standards and regulations for aviation safety, security, efficiency and regularity.	The UK has a Permanent Representative as well as an Air Navigation Commissioner. The UK participates in various specialist policy groups on safety, environment and security.
International Maritime Organization (IMO)	The IMO is responsible for the safety and security of shipping and the prevention of pollution.	As a founder member, host and leading state in the IMO, with a strong maritime sector, the UK is highly influential.
International Fund for Agricultural Development (IFAD)	The IFAD is an international financial institution dedicated to eradicating rural poverty in developing countries.	Owing to the size of the UK's accumulated contributions to the IFAD since it was established in 1977, the UK has a quasi-permanent seat on the Executive Board and access to its sub-committees on evaluation and audit. This allows opportunities for influencing the policy direction and reform priorities of the organisation.
World Health Organization (WHO)	The WHO is the coordinating body for health within the UN. It is responsible for providing leadership on global health matters, shaping the health research agenda, and monitoring and assessing health trends.	The UK prepares and fields delegations for the large set-piece meetings of the WHO's governing bodies – principally the World Health Assembly, its Executive Board and regional meetings. The UK works with other member states and the Secretariat to tackle global health problems.
International Telecommunication Union (ITU)	The ITU is the UN forum through which information and communication technology (ICT) standards and issues are agreed.	The UK has secured adequate spectrum allocation for mobile telecommunication, radio and broadcasting frequencies, defence, scientific and commercial use. Through the UK's membership of the ITU, telecommunications standardisation meets the requirements for industry and users, and infrastructure is maintained so that the UK can operate and trade (including in financial services) with any country around the world.
Universal Postal Union (UPU)	The UPU is the primary forum for cooperation between governments and postal administrations relating to the international exchange of post. It also provides technical assistance where needed, as well as mediating and liaising internationally. It sets the rules for international mail exchange and makes recommendations to stimulate growth in mail, parcels and financial services.	The UK is represented by Royal Mail, which delivers the UK's objectives in international postal standards. Royal Mail has a dedicated team which liaises with the UPU. The UK is one of the biggest member states in the UPU.
World Meteorological Organization (WMO)	The WMO promotes cooperation in the establishment of networks for making meteorological, climatological, hydrological and geophysical observations, as well as the exchange, processing and standardisation of related data, and assists in technology transfer, training and research.	The UK is an active part of the WMO, leading on meteorological issues, setting best practice and developing the brief on climate change. Within the WMO, the UK has a high level of influence, primarily through the Met Office being recognised as one of the leading weather and climate services in the world, and is effectively a permanent member of the WMO Executive Council (which has nine European seats). This means that the UK can exert a lot of influence in WMO policy developments, including standards and policy for exchange of meteorological data, which can be a major cost driver for a national meteorological service.
World Intellectual Property Organization (WIPO)	The WIPO is the UN agency dedicated to the use of intellectual property (patents, copyright, trademarks, designs, etc.) as a means of stimulating innovation and creativity.	Owing to its size, the UK has major influence at the WIPO – a seat on every committee, including those that set the budget, set the agenda and affect the business-facing operations at the WIPO.

Source: Foreign and Commonwealth Office

Leaving the EU offers the prospect of new powers for not just the UK Parliament and UK Government, but also for the devolved assemblies as some returned powers would be immediately devolved. This means the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly would all gain significant new influence over a range of policy areas.

Taken together, the strategic overview suggests that a shift away from EU membership offers numerous opportunities for policy-makers, and provides a rare chance to make the UK a much more influential and democratic country. Its ability to work with the EU would not be significantly hindered and it would gain new opportunities to feed into policy-making in international bodies. More importantly, UK politicians would be able to offer policies to the public that the EU currently forbids.

8 Foreign Affairs

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“The UK is peculiarly reticent about its prospects on the world stage.”

Certainly it is above all your profound national qualities which have enabled you to play this outstanding role at the height of the storm. But, in this achievement of yours, for how much also has counted the value of your institutions! At the worst moments, who ever contested the legitimacy or the authority of the state? Today, at Westminster, allow me to testify to what is due to Britain in this respect as in others.

Sure of yourselves, almost without seeming so, you put into practice in freedom a well-founded and stable political system. With you, in the political field, tradition, loyalty, and the rules of the game are so strong that your Government is quite naturally endowed with cohesion and endurance; that your Government has, for the duration of each legislature, an assured majority; that the Government and this majority are always in tune; in brief, it is in a sense in the nature of things that your executive and legislative powers are balanced and co-operative. [...] Thus, without closely correlated constitutional texts but by virtue of undeniable general consent, you find the means of assuring always the best results from democracy without ever incurring excessive criticism from the ambitious nor supercilious censure from the lawyer.

Speech of President de Gaulle to Parliament, Westminster Hall, 7 April 1960

Since its inception, the EU has seen a steady increase in its international role and influence, having now gained legal personality, a large diplomatic staff, and numerous national offices throughout the world. The ambition of the European External Action Service (EEAS) is likely to continue to grow, and in doing so may stifle or contradict British interests. UK diplomats need to consider whether the country's influence could be best exerted individually, aligning it with that of Europe only when it is in Britain's own interests, and whether this could be done without compromising the UK's international standing or energy security. Propitiously, by leaving the EU, Britain would see more freedom of action for the Foreign & Commonwealth Office, retain its seat on the United Nations Security Council, retain membership of key international bodies, and be able to work with the EU as it sees fit.

The EU has developed a Common Foreign and Security Policy (CFSP). It began as cooperative, became formally inter-governmental as an attached 'second pillar', and is now collapsed into the Treaty structure itself. Change has been rapid, and the ambition for further EU action is deep.

For a country that is still a permanent member of the UN's Security Council, at the head of the Commonwealth of Nations, and with a respected and extensive diplomatic corps, the UK is peculiarly reticent about its prospects on the world stage. The reasons behind Whitehall's drive towards joining the European Economic Community (EEC) to some extent mirrored Paris's concerns about its relative decline in a world of rising superpowers. But in London this decline was all the more bitterly felt, given the central role Britain had played in the dark days of the Second World War as the capital of the free world (literally so, given the presence of governments-in-exile).

Time, however, has passed. Psychologically and generationally, Britain is now more attuned to its reduced status as an influencer and contributing force for good. With the arrest of economic decline, the shakeup of the Foreign & Commonwealth Office (FCO) attitudes in the Thatcher-Reagan years, and the psychological stimulus of the Falklands War checking post-Suez and wider post-Vietnam defeatism, its decline is no longer absolute but relative. The diplomatic objective covertly attached to joining the EEC in the 1970s, that of creating a counterweight to the Soviet Union, the USA and China by forming a federated European power in direct competition, is less pressing in today's multipolar world.

“There are a host of international groupings to which the UK sends delegates without having to be an EU member.”

However, in continuing to establish its own identity, the EU now constitutes a direct and growing threat to British influence. This is particularly felt in international institutions, where increasingly the EU corporately occupies the place and function once filled by British diplomats or delegated civil servants.

The irony is particularly striking when compared against the case of Norway. Oslo has a direct input at the true coal face of many EU laws. EU/European Economic Area (EEA) regulations are frequently just implementing decisions reached at world bodies. This means that EEA membership is a diplomatic trade off. Oslo certainly has a less direct input into how the EU makes its rules than an EU member state; but a member state increasingly has to submit to the wishes of others via Qualified Majority Voting (QMV), whereas the EEA associate can choose not to implement a bad trade law.⁴ Oslo also sends its own delegate to the World Trade Organization (WTO), UN and other organisations that set the global standards that define the parameters of the EU rules, while national governments depend on someone from the Commission. This leads to the absurdity of EU governments approaching non-EU EEA capitals to lobby on their behalf; and foreign capitals such as Canberra no longer bothering to talk to EU capitals like London over trade deals, since the key decision-makers are all based in Brussels.

8.1 The UK would remain a member of all key international bodies that deal with foreign affairs

Key international bodies

- Commonwealth of Nations
- International Criminal Court
- G7
- G20
- Organisation for Economic Co-operation and Development (OECD)
- Organization for Security and Co-operation in Europe
- United Nations

Notwithstanding the European Commission’s growing assumption of powers in world bodies, the UK does still cling on to a presence in many, even if its powers are more and more circumscribed.

The framework for regaining direct influence over the regulations that end up at the EU is therefore already in place, allowing Whitehall to cut out the middleman. It may also serve as an opportunity to reassert good government over subsequent gold-plating of these rules, since the regulators would be involved in the process from the outset, and would be more aware of both the opportunities and costs arising from the set global standards.

8.1.1 The UK would continue to operate in the same range of world and regional committees

There are a host of international groupings to which the UK sends delegates without having to be an EU member. These include inter-governmental bodies, as well as an array of global professional and trade associations that are increasingly now also being relied on to draft world standards. The UK would remain a member of these if it left the EU. These include:

⁴ This suspends the EEA Single Market for that product area between the EFTA states and EU states, since there are then two rules in play across the EEA; but it is also correspondingly an incentive for the EU to take EEA interests and concerns into account when drafting, especially as the relevant national parliament for once has a direct stake.

“Removing the UK from a particular EU competence does not mean the end of international cooperation.”

- The United Nations and its associated entities, such as the Food and Agriculture Organization, the International Civil Aviation Organization, the International Labour Organization, the International Seabed Authority, and the World Health Organization;
- United Nations programmes, such as International Criminal Tribunals, the United Nations Office on Drugs and Crime, the United Nations Office for the Coordination of Humanitarian Affairs, the United Nations Children’s Fund, and the World Food Programme;
- The World Bank and related bodies such as the International Monetary Fund, the International Finance Corporation, and the International Centre for the Settlement of Investment Disputes;
- Other international organisations including, for instance, Interpol, the International Customs Tariffs Bureau, the World Customs Organisation, and the Permanent Court of Arbitration;
- Selective global institutions, such as the Commonwealth, and the Organisation for Economic Co-operation and Development;
- Regional bodies in which the UK has a strategic interest as a result of its dependent territories (for instance in Antarctic preservation), or in which it has an historic or outreach interest (such as its Observer status at the Arctic Council);
- European regional entities arising from the Council of Europe;
- Other regional entities, such as the Organization for Security and Co-operation in Europe (OSCE, as one of the five leading contributors), the European Bank for Reconstruction and Development (based in London) and the North Atlantic Salmon Conservation Organisation (based in Edinburgh);
- A range of other organisations taking non-governmental organisation (NGO) or professional affiliation, such as the International Astronomical Union, the International Committee of the Red Cross, the International Electrotechnical Commission, the International Parliamentarians Union, the World Energy Council (in London), the Missile Technology Control Regime, and the International Standards Organisation.

Tellingly, many of these entities are not based in Brussels, or even in an EU member state, but in Switzerland.

As we will explore further, regulations are often made at source globally. Removing the UK from a particular EU competence does not mean the end of international cooperation, but rather its start; it means regaining direct UK influence at the regulatory source of many of the agreements later re-engineered at EU level, since UK diplomats would take back power from the EU delegates currently sent to these committees and conferences in their stead.

The significance of the UK’s current influence in these bodies even today has been highlighted by the FCO.⁵ It underlined the UK’s significant role within UN structures as a permanent member of the Security Council (P5), a key funder,

⁵ HM Government “Scotland analysis: EU and international issues” (2014), pages 50–52.

“The UK’s size and the range of its expertise mean that its voice is heard right across the range of international cooperation.”

a highly active committee member, and a leading peace-keeping contributor.⁶ The EU is not the single go-to point for reaching international agreement, and indeed in practice is lower down the food chain.

The FCO also underlined the wider reach of the British Government beyond the UN:

The UK’s size and the range of its expertise mean that its voice is heard right across the range of international cooperation, from scientific endeavours such as CERN and the European Space Agency, to the bodies that keep the world communicating such as the Universal Postal Union and the International Telecommunication Union. Other examples include supporting the work of the World Health Organization on the International Health Regulations which help prevent and respond to acute public health risks that have the potential to cross borders and threaten people worldwide and which have helped prevent pandemics, such as severe acute respiratory syndrome (SARS) and avian influenza, from taking hold in any part of the UK; and ensuring that the international intellectual property system is balanced and effective, and best able to protect the UK’s intellectual property rights through the World Intellectual Property Organization.

The world today is comprised of a “complex network of alliances and groupings”, in which the UK already acts in isolation, in partnership, or through the agency of an international body.⁷

As the FCO put it, “As a relatively large, wealthy and militarily powerful country, with a global foreign policy and a long history of influence in world affairs, we have a complex network of alliances and partnerships through which we can work, to an extent matched in the EU perhaps only by France”. This is demonstrated by Chart 8.i below:

The EU consequently forms just one framework for organised cooperation, which will continue through other fora if the UK decides to step away from it. The Libya campaign demonstrates this; it became a NATO-flagged operation, working under a UN mandate, with the US providing support but a volunteer group of European states taking the lead, involving contributions by non-EU states, non-NATO states, and Arab ally input. As the Foreign & Commonwealth Office has observed:

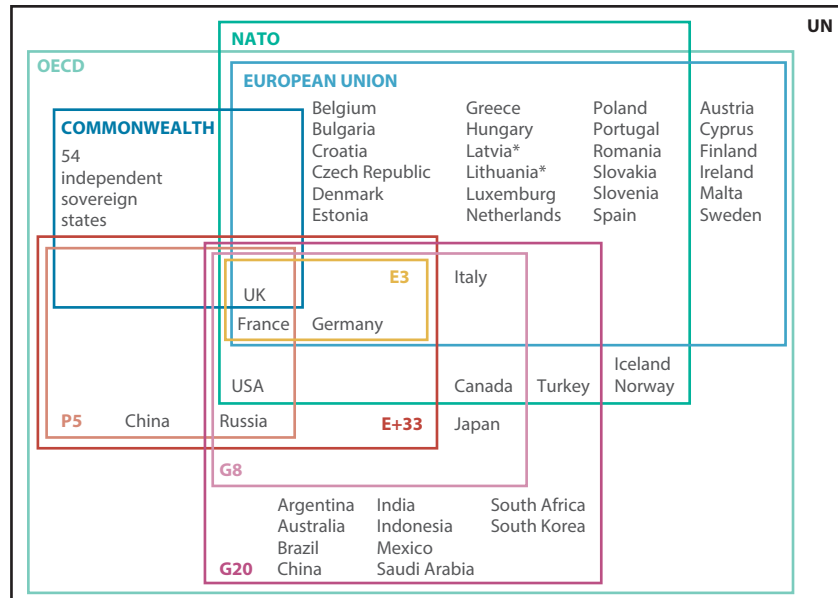
This fits the nature of British choices over Libya. We used our close bilateral relationship with France, including as the two permanent European members of the UN Security Council, to deliver a UN mandate for action, and, together with the US, developed the air operation in an ad hoc coalition. We used NATO as the best military command option and to gather further contributions from partners. We did not look for an EU military role, but were content for the EU to prepare for the less challenging task of assistance to humanitarian activity.⁸

6 HM Government “Scotland analysis: EU and international issues” (2014), pages 97–103.

7 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy” (July 2013), page 34.

8 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy” (July 2013), page 35.

Chart 8.i: The UK's greater overall diplomatic reach and options⁹



* Latvia and Lithuania are not currently in the OECD

Source: Review of the Balance of Competences¹⁰

Indeed, it may on occasion prove that the EU is not the preferred partner, even when it does decide to engage. Police training in Afghanistan was divided between rank and file training, undertaken by NATO (NTMA), and the training of more senior personnel, undertaken by an EU mission (EUPOL). But the two proved dangerously incompatible:

The Turkey-Cyprus dispute made it difficult for EU and NATO member states and planning staffs to discuss cooperation between ISAF and NTMA on the one hand, and EUPOL on the other. This meant that the EU personnel, many of whom were from countries with troops in ISAF or at least paying NATO costs for it, could not be properly supported by ISAF infrastructure. Most seriously, EU personnel's movements around the country were not reflected in the 'blue force tracker', a system for avoiding accidental ISAF strikes on friendly forces. It also meant that NTMA and EU training activities were poorly coordinated, even though, with NTMA focusing primarily on basic training and the EU on more advanced topics such as community and intelligence-led policing, they could have partnered each other well. Cooperation only improved slowly, through the efforts of leaders on the ground using informal arrangements. This was more easily achievable in provinces such as Helmand, where the UK ran the NATO team and most EU personnel were UK secondees. In 2011, EUPOL, NTMA and a German police mission signed agreements on standardised police training.¹¹

- 9 HM Government "Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy" (July 2013), page 14.
- 10 HM Government "Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy" (July 2013), page 14.
- 11 HM Government "Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy" (July 2013), page 75. ISAF was the International Security Assistance Force (ISAF), a NATO-led security mission in Afghanistan established by the United Nations Security Council in December 2001.

“Exit would afford Foreign & Commonwealth Office representatives more flexibility to explicitly promote British interests.”

8.2 The UK could continue to cooperate with the EU on foreign affairs

Key issues

- Collaboration on conflict prevention and emergencies
- Preserving energy security

Currently, the UK works with the EU on foreign affairs through the European External Action Service (EEAS), the High Representative and through more ad hoc arrangements. International relations by their very definition involve inter-governmental activity. But the Commission’s growing coordination ambitions for the CFSP, and the expanding number of EEAS staff and delegations, could limit the UK’s ability to operate on its own terms. Diplomats must consider how appropriate coordination with the EU could continue after leaving. Exit would afford Foreign & Commonwealth Office representatives more flexibility to explicitly promote British interests, and those representatives could become more important than delegates from EU national capitals, themselves constrained by Brussels and seeking an unburdened proxy to represent their interests – in return for a favour spent elsewhere.

8.2.1 Cooperation on vital issues like conflict prevention could continue

Logically, countries that border the EU – areas covered by the EU’s Neighbourhood Policy – are the states over which the UK and the EU have the greatest general interest in continuing to cooperate closely, though for their separate reasons. The core EU countries are most likely to agree to act in areas where they have a pressing interest with direct impact, for example Ukraine. A more geographically distant UK, meanwhile, would see engagement with the EU as a useful way to mitigate transitory effects that ripple through Europe, including combating illegal immigration and trafficking, but also conflict resolution.

The UK will therefore likely derive most benefit from liaising with the EU over Middle East and North Africa (MENA), the Caucasus, and Ukraine, with particular emphasis on the former. Arguably, the UK’s national interest is lower than the EU’s collective interest in the East rather than the South, excepting countries with strategic energy reserves and large UK investments. We might exclude defence aspects from this equation, which would, as we explore elsewhere, be a better fit for action via NATO.

The UK supported the development of a common EU foreign role essentially because of a lack of self-confidence and an unhealthy obsession with relative decline. Those in 1970s Whitehall with a fixation on managing British decline forgot that policy-makers have been aware of imperial decline since Curzon became Viceroy of India (1920), relative continental decline since Albert and Victoria married off their daughter to a future Kaiser (1858), and relative global decline since de Tocqueville penned his observations on the inevitable super-power status of the USA and Russia (1835). The Foreign Office has been managing decline for nearly two centuries; it was an aberration that Britain sought territorial union with the EEC to attempt to offset it.

Those who see the EU as a surrogate for British foreign strength underline EU ‘soft power’, namely its combined economic power and the common external budget.¹² Coupled with military capacity, this results in what the EU styles

12 International Institute for Strategic Studies “Europe and Global Security” (2010), accessed 28/04/2015 at: <www.iiss.org/en/publications/adelphi/by%20year/2010-3b16/europe-and-global-security-4518>.

“Institutionally and collectively, the EU has repeatedly shown that it aspires to a greater role.”

‘smart power’. The EU’s credibility as a foreign policy actor is further strengthened, supporters say, by the fact that it does not aspire to become a military hegemon, opposes Weapons of Mass Destruction, has no territorial claims, rejects unilateralism, and prefers to operate via international organisations.

This, however, is making a virtue out of a necessity while masking the weakness of the EU’s position. Institutionally and collectively, the EU has repeatedly shown that it aspires to a greater role, while leaving capability gaps in its activities. The fact that the EU is unable to engage in large-scale collective joint-flagged activities, beyond comparatively low-demand peace-keeping and small-scale insertions requiring limited complex support, does force EU strategists to limit their engagement. It has been estimated that, despite potentially having 1.86m men in uniform in 2010 (the sum of EU member state armed forces), only about a third could actually be deployed outside Europe simply owing to lack of training or constitutional limitations. Once other considerations are applied, the total shrinks further – one NATO assessment from 2010 estimated that only three to five per cent of the total could in fact deploy.¹³

Some critics, such as the historian Robert Kagan, have suggested that this has led to European policy-makers ducking crisis situations that require decisive engagement.¹⁴ That weakness now also threatens to imprint itself psychologically on British leaders. Outside of the CFSP, the UK could settle for the role of a benign middle power, but it is almost unique in this group of states in being able to back up its diplomacy by projecting itself globally. It could intervene to tip the balance in small to middle range crises, acting speedily while an alliance of other states coalesces.

This depends, of course, on the UK not only remaining outside CFSP collectivism and retaining a sense of globalism but more critically maintaining defence expenditure at a rate sufficient to allow force projection on a meaningful scale and without risking a tainting failure.

8.2.2 Constructive collaboration could continue on a selective basis

Collective action by the EU is supposed to be a power multiplier and the logical defence against new emerging superpowers. The reality is more complex.

One of the specific reasons cited in support of UK entry into the EEC was the rise of China. Prime Minister Edward Heath, for example, said in his 1972 Guildhall speech that *“we must be in a position to put forward European policies for some of the outstanding problems of the day, notably for relations with the Soviet bloc, with China, and for coping with the continuing changes in the Middle East.”*¹⁵

Collective action does not seem to have proven quite so effective. While tiny Iceland has been able to negotiate a free trade agreement with China, South Korea has now agreed one too, and an Australian deal is on the cards, the EU has failed to do similarly. Divergent national interests within the EU may help explain this. As of 2011, the EU was running a €156bn trade deficit with Beijing.

13 Journal of Common Market Studies “European Union as a Small Power” (2010), page 50, accessed 28/04/2015 at: <<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-5965.2010.02128.x/pdf>>. Centre for European Reform “Britain and France should not give up on EU defence cooperation”, C. M. O’Donnell, accessed 28/04/2015 at: <www.cer.org.uk/sites/default/files/publications/attachments/pdf/2011/pb_csdp_24oct11-3907.pdf>.

14 Policy Review “Power and weakness” R. Kagan, (2002), accessed 28/04/2015 at: <<http://users.clas.ufl.edu/zselden/course%20readings/rkagan.pdf>>.

15 Edward Heath’s Guildhall Speech, 7 February 1972.

“EU attitudes towards Russia have proven to be woefully counter-productive.”

Trade in services – a special UK interest – was lingering at only €43bn.¹⁶ Copyright is regularly breached by fake Chinese products and dumping is a significant issue, though Germany, as the dominant EU exporter in goods, has been reticent to upset too many apple carts. Meanwhile, China’s hand is strengthened by it holding a critical proportion of Eurozone national credit and Eurobonds.

Common action is predicated upon the EU states having a particular common interest, or being prepared to go to the wall to defend individual interests. Beijing, however, is large enough to target weak links and play member states off against each other. As a House of Lords report has explored, the very nature of the EU lends itself to being exploited by a China willing to force its commercial weight.¹⁷ This undermines arguments that the EU provides quite such a collective bargaining boon. Particularly telling are the comments relating to human rights lobbying:

It is clear that disunity and lack of mutual support over issues such as the Dalai Lama weaken the position of both the EU and the member states involved. The Lisbon Treaty will not be sufficient to enhance EU solidarity. While respecting the division of competences, the EU and its member states need to decide the key issues on which, in practice, the EU should stand firm on a united approach and then fully implement this approach. The Chinese will trade where they need to trade. Evidence given to us showed that good political relations have not necessarily led to commercial success with the Chinese. Conversely, difficult political relations have not necessarily entailed commercial damage.¹⁸

This observation was separately confirmed by submissions to the Balance of Competences Review that covered Foreign Policy, which claimed that a number of member states ‘offloaded’ human rights issues onto the Commission in order not to lobby for them themselves and thereby risk trade fall out.¹⁹ Far from being a force multiplier, there is evidence to suggest that the global human rights agenda gains rather than loses by having greater numbers of distinct sovereign voices speaking up for it globally.

Russia was another of the competing nations cited as a motive for the UK joining the EEC. With the collapse of the Soviet Union, the incentive is clearly much smaller today. The current threat to Ukrainian integrity, however real, comes from a reduced Russian army operating in provinces 1,200 miles further east of the German border than during the Cold War. While it has inherited its predecessor’s nuclear stockpile, Putin’s Russia does not represent an existential threat to Western society in the way Brezhnev’s Soviet Union did on UK accession to the EEC.

EU attitudes towards Russia have proven to be woefully counter-productive. The development of the Deep and Comprehensive Free Trade Agreement (DCFTA) with Kiev was pushed by the Commission/EEAS, notwithstanding known rifts within Ukraine’s politics, and an awareness of the fundamental importance Moscow attached to, if not drawing Ukraine fully into a

16 Centre for European Reform “How can the EU influence China?”, C. Grant (2013), accessed 28/04/2015 at: <www.cer.org.uk/insights/how-can-eu-influence-china>.

17 House of Lords European Union Committee “Stars and Dragons: The EU and China” (2010).

18 House of Lords European Union Committee “Stars and Dragons: The EU and China” (2010), pages 44–45.

19 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy” (July 2013).

“Examples of failure within the expenditure system include €200,000 granted to a Belgian travel company.”

new economic union, at least Finlandising it.²⁰ While emphasising, of course, that Russia’s annexation of Crimea and the proxy warfare that followed in east Ukraine are the fault of Moscow, it was gross EU strategic mismanagement that escalated the crisis to the key trigger point. Subsequently, attempts to make a common EU response have been hampered by conflicting national interests.

It is difficult to see how a UK operating outside the EU would have had any negative impact on this, particularly given the wider engagement with other non-EU Western nations to attempt to achieve a common Western stance.

We might similarly look at the EU approach to the Arab Spring. Some critics have suggested that the EU’s trade policies were too one-sided and, rather than stimulating local economies, actually increased unemployment while limiting credit, thus fostering discontent due to the contrasting economic gains accruing to favoured elites. If so, the Common Agricultural Policy and its associated tariffs on imports will be largely to blame, given the comparatively high proportion of the populations of some North African states employed in agriculture. Meanwhile, funds designated to help reformers are small and their criteria for being awarded are unclear.

Examples of failure within the expenditure system picked up by Open Europe have included €200,000 granted to a Belgian travel company for the organisation of the Tenth European Cultural Festival in Algeria, €80,000 spent on the ‘European Movie Week’ in Morocco, and €3,600 to a Tunisian company for the purchase of ties with the EU logo.²¹ Even if these are exceptions, funding strategy and transparency have come under severe challenge.

Attempts by Scandinavian countries and the UK to harden EU policy on Egypt, meanwhile, were blocked by Italy and Greece. Furthermore, there were sharp divisions between the UK and France and other member states over whether there should be an arms embargo over Syria. We might put this another way: the EU *“came late and off-balance to the protests, and worse, came to the revolutions without a shred of unity.”*²² It is difficult to reach agreement on moves to withhold aid packages from countries that backslide, while the funding programmes themselves are opaque as far as the House of Commons Scrutiny Committee is concerned.²³

But where there are systems that do work, and where there is a commonality of interest, the UK could choose to cooperate after leaving the EU. The UK could transition to a neighbourhood deal of its own, and continue to reach agreements with remaining EU countries on areas of common concern. Indeed, the UK could continue to willingly participate in existing third party deals, such as measures to assist in controlling migration and combating terrorism. A change in its EU status need not end UK participation in those areas in which

20 Generating a neighbouring state whose independence was compromised. The current preferred tactic is to create a ‘frozen conflict’ within the state’s territorial borders, which also precludes NATO accession. One might compare recent developments with the lack of reaction by Russia in response to Ukraine signing an FTA with EFTA in 2010. The differences between the two types of agreement lie in the wider associated terms, the political context, and particularly in the non-exclusivity that comes with the FTA option (the DCFTA broke Russia’s preferential terms agreement).

21 Open Europe “The EU and the Mediterranean: Good neighbours?”, V. Scarpetta & P. Swidlicki (2011).

22 EuroPress “Saving Private Ashton”, I. Torreblanca (1 April 2011), accessed 30/04/2015 at: <www.presseurop.eu/en/content/article/580901-saving-private-ashton>, cited in Journal of Contemporary European Research “Pressing the Reset Button in Euro-Mediterranean Security Relations?” (2013), accessed 30/04/2015 at: <www.jcer.net/index.php/jcer/article/view/508/395>.

23 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy” (July 2013), page 46.

“The EU has entered big power politics but remains a small power.”

it sees value – indeed, an internationalist government could increase participation from the outside. Leaving allows for a more comprehensive review of what these deals bring, and that in turn might encourage remaining EU partners to up their game.

EU effectiveness is further inhibited by a range of other dynamics:

- EU policy is divided by interest groups and sub-regional alliances, including Benelux, Visegrád, Nordic Triangle, and the Weimar Triangle;²⁴
- National opinions towards outside parties are divided by culture, language, history and religion;
- Some states have an enduring tradition of neutrality;
- Former colonial powers often have enduring interests in a given state;
- Some countries host particular diasporas;
- Certain countries are constitutionally bound or less likely to support overseas interventions, or are inclined to limit them to ‘safer’ airpower;
- Some countries are too small to deploy forces of any size.

Combined, these suggest that fluid coalitions of the willing would be more effective than an apparently unachievable single EU diplomatic-political mind-set. As an author from the Nobel Institute has pointed out, the EU has entered big power politics but remains a small power.²⁵ Indeed, academics often prefer to use the ambiguous term ‘actor’.

Where agreement is reached, however, it may not suit British interests. Former Labour Foreign Secretary Lord Owen has summarised the problem in the following terms:

EU experience shows that what is more likely to develop is a soft CFSP designed to keep policy within the middle of the euro pack. Something which we have seen all too recently over Kosovo. One does not need to invoke British foreign policy over the last one thousand years. One only has to recall, with the exception of France, the continental European equivocation over nuclear weapons while we were still confronting the Soviet Union in the 1970s and 1980s to know why we should refuse to lose our independence in foreign and defence policy. While [the] French also know this to be true and are sympathetic to British fears, in the last analysis they believe that Germany will always support France out of solidarity if French vital interests are at stake. Britain has no such bilateral buttress.²⁶

British soft power’s strength contrasts starkly with that of the EEAS that is increasingly supplanting it. A 2012 study, looking at one area where EU states were supportive of an EU policy position (albeit with differences over opt-outs), namely over the International Criminal Court, shows that even a fully coherent EU cannot magic up changes in a multipolar world.²⁷ The EU’s position was even rejected by four putative EU applicant states. The author’s conclusion is that:

24 ‘Benelux’ is the grouping of Belgium, Luxembourg and the Netherlands. ‘Visegrád’ or V4 is an alliance of four Central European states – Czech Republic, Hungary, Poland and Slovakia. The ‘Weimar Triangle’ refers to a grouping of Poland, Germany, and France.

25 Journal of Common Market Studies “European Union as a Small Power”, A. Toje (2010), accessed 28/04/2015 at: <<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-5965.2010.02128.x/pdf>>.

26 Speech by Lord Owen, December 1998, accessed at: <www.europeanfoundation.org/publications-2011>.

27 Journal of Common Market Studies “Still punching below its weight? Coherence and effectiveness in European Union foreign policy” (2012), accessed 28/04/2015 at: <<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-5965.2011.02244.x/abstract>>.

“Critics have described the EEAS as a ‘Mexican army’, with too many generals and not enough soldiers.”

[...] coherence may be necessary for the EU to exert its influence abroad, but it clearly is not sufficient in a multi-centric world order where many others do not share the EU’s collective policy preferences and are ready to deploy vast resources in pursuit of their goals. The tendency of EU leaders to link the Union’s frequent lack of coherence to its frequent lack of effectiveness on foreign and security policy is thus either misinformed or misleading, or perhaps both.²⁸

This suggests that the idea that post-imperial European states need to pool power in order to compete in a quadripolar world (USA, China, USSR and EEC) is outdated.

To be fair, the dispute over the International Criminal Court pitted EU power against the USA over an issue that the latter had identified as a vital strategic interest. But even so their disagreement was over a matter in which the EU was operating in a comparatively united manner.

The situation is exemplified by the current condition of the EEAS. Critics have accused it of having an uncertain role, being short of strategic focus, being less dynamic than national counterparts, being reactive rather than proactive, lacking experienced staff (including key linguists), lacking key subject matter experts, being institutionally isolated, and of employing staff with (not surprisingly) low morale.²⁹ It has been weakened by the lack of an esprit de corps, resulting in a “sense of abandonment felt by those officials coming from the Commission, and in the lower levels of mutual trust among EEAS officials”.³⁰ Other critics have described it organisationally as a ‘Mexican army’, with too many generals and not enough soldiers. This explains its intention to establish a diplomatic training college, and to increasingly co-opt national diplomats into joint activities overseas.

The problem is circular from a UK perspective for as long as it remains joined to the CFSP. The European diplomatic cadre is a hindrance if it remains ineffective, and dangerous if it becomes competent. Withdrawal from the CFSP removes both threats.

8.2.3 The UK could engage in joint action and trade embargoes outside the CFSP

EU funds are partly targeted at reducing threats to internal stability.³¹ An example of this is the attempt to stabilise the Caucasus through the Eastern Partnership (EaP), a sub-branch of the European Neighbourhood Policy (ENP). As one academic study has demonstrated, however, its effectiveness is limited by a reticence to cancel funding when ethical targets are breached, with grants shifted from public sector distribution to NGOs. However, civil society remains weak in many EaP states – a fact recognised by Commission officials on the ground – so such an approach is less of a disincentive or even a threat. ENP cooperation has its limits:

- 28 Journal of Common Market Studies “Still punching below its weight? Coherence and effectiveness in European Union foreign policy” (2012), page 472, accessed 28/04/2015 at: <<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-5965.2011.02244.x/abstract>>.
- 29 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy” (July 2013), page 37.
- 30 Journal of Common Market Studies “Manufacturing Esprit de Corps: The Case of the European External Action Service” (2013), accessed 28/04/2015 at: <<http://onlinelibrary.wiley.com/doi/10.1111/jcms.12107/abstract>>.
- 31 An irony is the manner in which the Eurozone’s economic instability is driving the Greek and Cypriot Governments into the arms of Moscow.

“Developments in Kosovo undermine the credibility of the EU as a united force.”

The potential ineffectiveness of the ENP promotion of regional cooperation in military-security issues can be explained not only by the divergent interests of the regional actors but also by the reluctance of the EU to take specific actions, instead opting for vague propositions and inconsistent policies.³²

This means that, in such programmes, once again the FCO is caught between either being associated with a weak player, or forced to cede control to a new and stronger competitor:

Increased involvement may also garner more EU-enthusiasts and result in increased EU-isation of the regional policies. However, the current approach of the EU, besides having marginal, if any effect on conflict resolution in the South Caucasus, risks decreasing the leverage of the EU in the region, inducing the local actors to turn for more concrete action to Russia or the USA. Reiterated commitment to ‘enhance EU involvement in solving protracted conflicts’ (European Union 2011) is yet to demonstrate positive results.

More recent developments in Kosovo also undermine the credibility of the EU as a united force.³³ Pristina’s unilateral declaration of independence was a defeat for EU diplomacy. In fact, the Union’s common line was opposed by France and the UK, who both shared the US view that, if unaddressed, this frozen conflict would swiftly reheat.

The same kinds of questions arise when considering coordination of embargoes. The EU can only organise a set of sanctions if all member states are unanimous. Counterintuitively, the removal of the UK or any other member state would strengthen the EU hand by making the ability to reach agreement on sanctions more likely, while continuing to allow the receding state to unilaterally impose its own.

As of late 2014, the EU had 18 sets of sanctions in operation. One is related to individual terror groups. The remainder fall into four main categories: arms embargoes such as that against China; embargoes of materiel that might be used by an oppressive state against its citizens; wide trade embargoes against, for example, North Korea or Iran; and targeted economic and travel sanctions against individuals.³⁴ Since these are in place and are subject to media scrutiny, it is difficult to envisage any weakening in policy in any of these instances if the UK were to leave the CFSP.

Significantly, the UK would continue to operate in non-EU fora to combat nuclear proliferation. The EU is not the only game in town. For context, Croatia prior to joining the EU already participated in the International Atomic Energy Agency, the Organisation for the Prohibition of Chemical Weapons, the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, the Nuclear Suppliers Group, the Zangger Committee, the Proliferation Security Initiative, the Australia Group, the Wassenaar Arrangement on small

32 Journal of Contemporary European Research “‘Fear or Love Thy Neighbour’? The EU Framework for Promoting Regional Cooperation in the South Caucasus”, N. Babayan (2012), accessed 30/04/2015 at: <www.jcer.net/index.php/jcer/article/view/325/320>.

33 Journal of Contemporary European Research “Between ‘Pragmatism’ and ‘Constitutionalism’: EU-Russian Dynamics and Differences during the Kosovo Status Process”, J Ker-Lindsay (2011), accessed 21/05/2015 at: <www.jcer.net/index.php/jcer/article/view/336/273>.

34 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy” (July 2013), pages 29–30.

“The EU’s track record on sanctions is not exemplary.”

arms and dual use, and had applied to join the Missile Technology Control Regime.³⁵

There are faults with the EU sanctions system. In the case of Russia/Crimea, these were highlighted by differing national interests, since Germany bears the brunt of embargoes on trade in goods, Eastern Europe on trade in food-stuffs, France in military exports, and the UK on financial holdings.³⁶ Effective embargoes need to either be enacted through smart sanctions, which are best determined through G7 planning, or wide-ranging sanctions, which are best deployed with a large number of western states all accepting a common burden. Such cooperation runs bigger than just the EU.

It has to; the EU’s track record on sanctions is not always exemplary. Within six months of pushing for sanctions on China after the Tiananmen Square massacre, France breached them and most of the sanctions were ended shortly thereafter.³⁷ The remaining sanctions on arms remained voluntary, and were consistently breached by France and, post-1997, the UK, albeit both on a small scale. This suggests simplistic claims that the UK alone can put the moral backbone into EU sanctions policy are wrong. Third party support by other countries and, in particular, a sympathetic US Congress is also key.

One academic study from Ghent, looking at EU sanctions on transgressing African, Caribbean and Pacific (ACP) countries, has noted serious discrepancies in how the EU applies sanctions. In clear-cut cases involving a major human rights violation or coup d’état, EU members can reach agreement. However, without an obvious trigger incident, the policy has proven more ambiguous:

The EU might close an eye towards certain countries that tend to make progress in eradicating poverty while stagnating or worsening politically. In other words, the EU’s proclaimed overarching goal in the developing world, namely poverty reduction, might conflict with its desire to promote democratisation.³⁸

Studies cited by the report have further suggested that:

- Sanctions are only imposed on weaker countries in which the EU has no important security or economic interests, and which have limited capacity to reciprocate, such as Sub-Saharan Africa;
- The EU has shown itself more interested in stabilising than in democratising the Mediterranean region;
- Energy interests and the fight against terrorism impede the EU in fulfilling its democracy promotion agenda in central Asia;
- There is conflict between security interests and democracy promotion in Africa;
- The state which historically has gained the most influence from EU engagement in this field generally is France;
- Historical (in the sense of ex-colonial) interests have prevented the EU from using negative instruments towards certain countries.

35 European Commission “Screening Report: Croatia” (2007), page 4, accessed 30/04/2015 at: <http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_31_hr_internet_en.pdf>.

36 House of Commons Library “Sanctions over the Ukraine conflict”, B. Smith (2015).

37 Journal of Contemporary European Research “Anything But Arms? Perceptions, the European Union and the Arms Embargo on China”, S. A. W. Brown (2011), page 27, accessed 30/04/2015 at: <www.jcer.net/index.php/jcer/article/view/306/260>.

38 Journal of Contemporary European Research “EU Aid Conditionality in ACP Countries: Explaining Inconsistency in EU Sanctions Practice”, K. Del Biondo (2011), page 381, accessed 30/04/2015 at: <www.jcer.net/index.php/jcer/article/view/294/290>.

“EU foreign policy coordination now poses more of a threat to UK interests than a boon.”

Burma/Myanmar provides another example of the limits of collective EU action. Some commentators have observed that UK action, run unilaterally in parallel to EU activity, increased sanction effectiveness. Meanwhile, the EU sanctions contained significant loopholes, particularly in the key state revenue area of energy production.³⁹ French company Total’s investment in the country caused particular outrage in Westminster at the time.⁴⁰

The gains made from working through the EU on Iran are also mixed. It is correct that the UK has an image problem in Iran owing to postcolonial reticence in Tehran. It is also true, however, that Iran has generated its own problems with a number of EU states since 1980. Winning support for EU sanctions on Iran can absorb considerable FCO focus and negotiating capital.⁴¹ Furthermore, the usual problems involved with the UK acting directly can sometimes simply be exacerbated by acting through the EU. At the UN, an EU proposal can trigger the same response from some third world countries as a British one. One academic recalls that:

One diplomat said the problem is that some member states have only the goal of EU unity in mind and not the EU’s effectiveness within the UN. EU co-ordination produces EU output, a success on one measure of effectiveness, but it cannot then ensure its values and interests are promoted within the UN.⁴²

Operating outside of the CFSP, the UK could still agitate for joint sanctions with international partners. The UN establishes sanctions committees in response to individual resolutions. There would be instances where a Permanent Member of the Security Council has an interest in vetoing this approach. In such instances, the UK could discuss joint sanctions with CFSP members in the same way the United States does – bilaterally and then enforcing them individually (in the case of Russia in 2014, for example, through President Obama signing the Ukraine Freedom Support Act). Canada has the Special Economic Measures Act (1992), authorising its Government to impose sanctions through orders and regulations. Australia has two governing laws, one covering UN sanctions, and the other non-UN ones via the Autonomous Sanctions Act 2011. All manage to coordinate sanctions against international transgressors without signing up to CFSP membership.

8.3 New foreign policy opportunities would become available

Many of the motives behind the UK seeking to join the EEC have either changed or disappeared. EU foreign policy coordination now poses more of a threat to UK interests than a boon. International relations experts must consider what new freedoms the UK might explore to flourish outside the EU. By evading the EU’s ‘mission creep’, there would be new opportunities to galvanise the special relationship with Washington, to act decisively rather than deliberate, and to exercise distinctly British soft power.

39 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy” (July 2013), pages 43–44.

40 Total S.A. operates a pipeline from Burma to Thailand, and is subject to legal action for breaching the EU sanctions and for facilitating modern slavery.

41 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy” (July 2013), pages 48–49.

42 Journal of Common Market Studies “Speaking with One Voice? European Union Co-ordination on Human Rights Issues at the United Nations”, K. E. Smith (2006), accessed 30/04/2015 at: <<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-5965.2006.00616.x/abstract>>.

“Unlike other EU countries, the UK has a large diplomatic corps and a global footprint.”

8.3.1 The UK could assert its soft power more effectively

Unlike other EU countries, the UK has a large diplomatic corps and a global footprint. Other EU countries might gain from receiving direct EU representation in a capital where they are otherwise served by a diplomat covering a large geographical area. This does not apply in the case of the FCO, for which the addition of an EU presence provides limited additional coverage. The Republic of Ireland, for example has 73 missions scattered around the world, with large gaps across most of Africa that an EU legation might fill. By contrast, the UK FCO operates from around 270 posts.⁴³

Although the Treaties provide for an EU mechanism to supply consular protection, the UK does not need this either – either because of this extensive coverage, or because it has long-standing systems for *chargés d’affaires* already in place. This was noted, for instance, during the debate over Scottish independence, with the official UK Government review of the diplomatic impact highlighting this very point.⁴⁴ However, even third state assistance comes at a price, since the supplying state can recoup costs, while the quality of the service provided by the covering country varies massively. This provides a strong argument against remaining in any system intending further consular harmonisation.

The Scotland audit also had this to say about the UK diplomatic service:

*The UK’s Ambassadors and High Commissioners in the emerging powers and traditional markets alike lead campaigns to win new business, attract inward investment and champion the reputation of the UK economy, and work to build an environment in which UK business can thrive. The UK’s diplomatic network is working to help UK companies overseas to win contracts, secure investment to the UK and break down barriers to trade; promote the UK’s economic and sectoral strengths; build coherent collective international responses to shared challenges; and understand, explain and influence to our advantage economic, financial and political conditions in other countries. UK Ministers have led a number of successful trade missions overseas highlighting investment opportunities and contracts worth hundreds of millions of pounds and safeguarding thousands of jobs in the UK.*⁴⁵

The establishment of an EU diplomatic corps, the EEAS, in parallel to British diplomats, can only harm the UK’s lead over its competitors as the central importance of EU delegations grows while the FCO faces inevitable calls for cut backs.

The Scottish study goes on to highlight further key influencers based in UK embassies, which are also under threat from the EEAS’s growing role. These include:

- 70 missions with defence attachés working on such issues as intelligence sharing, access to training sites for UK forces to prepare for overseas deployments, and promoting the defence industry. For all the mockery of old school ties, ‘Defence Diplomacy’ (which is often dependent on individual contacts and personal trust) can be extremely important in opening back doors during diplomatic blockages or in crises;

43 The Journal “Irish embassies cost €43 million to run last year”, accessed 30/04/2015 at: <www.thejournal.ie/irish-embassy-cost-1600664-Aug2014/>; and HM Government “The Foreign and Commonwealth Office” (January 2012), accessed 30/04/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/32884/about-fco.pdf>.

44 HM Government “Scotland analysis: EU and international issues” (2014), pages 32–33.

45 HM Government “Scotland analysis: EU and international issues” (2014), page 41.

“The UK’s soft power makes a vital contribution to its influence and reputation around the world.”

- 40 countries where National Crime Agency employees are located for liaison with 120 countries;
- 1,200 staff from UK Trade and Investment in 169 offices in over 100 countries, selling such marketing concepts as the ‘GREAT’ campaign;
- 1,445 Department for International Development staff in post working on programmes;
- 29 countries and territories where the Science and Innovation Network is supported, with potential business and investment gains;
- 110 countries where the British Council is present, ‘selling’ British culture and by extension values and interests;
- Facilitating the Chevening, Marshall and Commonwealth scholarships. There are now some 42,000 US Chevening alumni.⁴⁶

The British Council, notwithstanding its £162m in government funding, does not emphasise its value to the UK in such terms. Yet it is important to underline what such overseas representations do mean, again from the Scotland report:

By sharing the UK’s culture and values, and by making the most of the assets which attract others, the UK builds trust and credibility in the international community, and attracts the brightest and best to choose the UK over its competitors. The UK’s soft power – the ability to influence others through the power of attraction – makes a vital contribution to its influence and reputation around the world.

This leads on to a significant statement:

The UK’s soft power arises from a wide range of assets including, among others, the UK’s heritage, culture and language, the strength of its education and cultural sectors, the promotion of free speech and parliamentary democracy, thriving civil society and cultural diversity. While the UK Government cannot, and does not, seek to control all of these directly, it can support them and harness their strengths, for instance through the UK’s international scholarships, aid programmes or collaboration with public diplomacy partners including the British Council, which provide an unrivalled platform for the sharing of UK culture and values with people from other countries. The UK is regularly recognised in international comparisons for its outstanding tradition of nurturing these activities and networks, and YouGov research has described the UK as a ‘soft power superpower’. The UK brand is also considered to be strong in comparison with other nations around the world.⁴⁷

46 HM Government “Scotland analysis: EU and international issues” (2014), pages 41–49.

47 HM Government “Scotland analysis: EU and international issues” (2014), page 43.

“Outside the EU the UK will not be obliged to follow what it disagrees with.”

8.3.2 Less lobbying would be required, generating more deliberate action

Would leaving the EU mean a drop in global influence for Britain? In some narrow instances we have to accept that it does. There will be occasions where the EU is collectively represented at the top table as a communal bloc. An example of this is in the Middle East, where the EU is represented on the Quartet alongside the United States, Russia, and the UN. It might be argued by insiders that a particular policy on a given day was much closer to British thinking than that of other EU states, meaning that the FCO opinion gained extra clout. This process, of course, works both ways, since the EU is an engine of compromise. It also ignores the influence the UK might wield either at the UN, or in conjunction with the Americans. It supposes that a country like Egypt is irrelevant in the equation since it is not at the meetings, or Norway, which has played such a key role as a trusted mediator. It assumes that Tony Blair got the job as a Middle East envoy purely on the basis of nationality-based job rotation at EU level.

There would be occasions where the EU position without the UK would be divergent from the Whitehall position, just as it is now. There would also be times when it coincides. Outside the CFSP, however, the UK is not obliged to follow what it disagrees with. If we are content with not ruling the world but being viewed as the trusted and consistent voice of reason, we still have a great role play.

8.3.3 The FCO could focus on pushing for free trade agreement (FTA) deals that opportunity now provides

A confident and independently-run British foreign policy can redirect its focus globally. Emphasis could include:

- The ‘Anglo-Saxon states’. Multiculturalism and immigration have changed the shape of the societies of the Old Commonwealth and the US, but culturally and psychologically in many respects they remain closer to each other than to many EU states;
- An extended emphasis on the Anglosphere, and in particular those countries that are open for trade and share common and solid legal systems that safeguard trade and investment;
- Renewed support for the Commonwealth as a framework for extending British cultural influence (and thus soft power), with go-ahead groups that cut trade barriers;
- Reinforced political and social ties with those countries that share a common Head of State, the Queen.

Britain’s relationship with the Commonwealth requires a major rethink. The days of empire are long gone and there is no scope for that institution to act as a subservient player in British diplomatic interests, even if London were interested in that route. But the UK could use it as a power multiplier, like the EU but without the assimilation costs. Professor Stephen Bush, for example, has suggested that the UK could shift its focus on the African member states from aid to aspects of development that are currently not being targeted. This international networking approach could support SMEs with the help of skilled civil, mechanical and electrical engineers, agronomists, marketing personnel, and

“Taking powers back from the EU would enable the UK to negotiate directly at the global top level.”

medical and finance professionals. Commonwealth Scholarships could also be set up in parallel.⁴⁸

Tim Hewish suggests that leaving the EU is an opportunity to divide up the FCO into what used to be its component parts.⁴⁹ He recognises that much of the work of the European wing of the FCO will initially be taken up in disentangling the UK from various systems and working out what replaces current committees and working groups.

So a greater focus on Commonwealth free trade would be achieved by boosting its current FCO Unit size (presently two staff plus four part timers) and putting a Minister of State in to run it. Its primary objective would be to get those trade deals agreed, along with bilateral investment agreements, initially focusing on countries that have larger markets and are most likely to sign one quickly. Given an anticipated lack of skills within the FCO to achieve this – trade is currently negotiated by the Commission – staff would have to be recruited internationally. The appointment of Mark Carney (a Canadian) as Governor of the Bank of England, and the drive to appoint Bill Bratton (an American) as Metropolitan Police Commissioner, show that top people from outside the UK are available to fill top jobs in Government.

Professor Bush also suggests a fascinating prospect, with the UK able to secure its long-term presence as a P5 UN state not merely through its Intercontinental Ballistic Missile (ICBM) capability, but also by acting as a patron of Commonwealth members who are not represented at the high table. France would take that role for the EU countries.

Happily, the UK is already a full and engaged member of all the key international institutions. Some, such as the OECD, would merit closer engagement in the future. Clearly, the WTO would be vital as an arbiter when transitioning from aspects of the old EU deal.

As we have seen, taking powers back from the EU would enable the UK to negotiate directly at the global top level, allowing those behind the UK negotiating position to be directly accountable to Parliament and at the ballot box. An independent Britain could put into UK law the agreements that have been made at institutions such as the International Organisation for Migration in a format that is best suited for the UK, rather than for an EU norm.

8.3.4 UK overseas territories would see their rights preserved

The threat of the EU falls not only on Whitehall, but covers the UK's dependent territories. With the exception of Gibraltar, none of the UK's Overseas Territories are part of the EU. The Isle of Man and Channel Islands decided to remain outside on UK accession, demonstrating that British islands could remain outside of the EU if they so chose. The Sovereign Base Areas of Cyprus were excluded on Cypriot accession. However, with the UK remaining a full member of the EU, pressures remain on all dependent territories through the secondary impact of legislation. This is particularly the case with human rights and social legislation, but also increasingly with banking regulations. Since 2001, the UK has been obliged to pursue Directive 2001/400, sharing information on bank savings, and the broader process has long-term consequences for 'harmful tax competition'. Offshore banking systems in Crown territories would be less likely to be subjected to such pressure if the UK were not itself under pressure. That is not to say that, outside the EU, no action could be taken against Overseas

48 IEA "A Brexit Blueprint: Britain revalued and independence regained", S. Bush (2014), pages 76–78, accessed 30/04/2015 at: <www.iea.org.uk/sites/default/files/publications/files/Stephen%20Bush_Web_1.pdf>.

49 IEA "Brexit Prize: Final shortlisted entries", pages 23–25, accessed 30/04/2015 at: <www.iea.org.uk/publications/research/brexit-prize-final-shortlisted-entries>.

“Energy security is one of the weakest links in EU joint action.”

Territories’ taxation arrangements. Certainly, Ed Miliband’s plan to crack down on avoidance would have been able to go ahead unimpeded, and indeed more pressure could be brought to bear on Luxembourg than is currently possible.

There is a legitimate question over whether Gibraltar would be more susceptible to border closures by a hostile Spanish government if Britain left the EU. The Commission does now intervene in matters of free movement. Its track record, however, has proved less than outstanding, with a review in November 2013 ruling that delays that were clearly deliberate and politically-motivated had not been unlawful. Even this engagement comes at a price, with the Commission, for example, challenging the Gibraltar Income Tax Act (ITA 2010) and questioning the validity of 165 tax rulings. If Gibraltar remained with the UK as part of the EEA or in a similar arrangement, its border access rights would be identical to those held now. With an entirely different arrangement, it would need the Foreign & Commonwealth Office to bring its influence to bear. However, residual human rights could be tested through the ECJ.

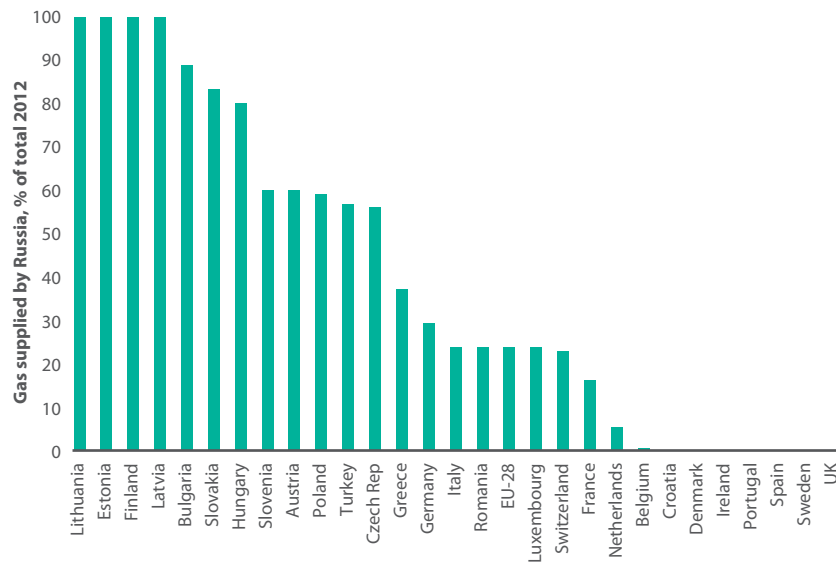
8.3.5 British foreign policy could avoid becoming captive to EU energy demands

Energy security is one of the weakest links in EU joint action. The foreign policy of a number of European states has been affected by their dependence on foreign suppliers of oil and gas in particular, though other sparse commodities such as rare earths and radioactive materials may also, in time, play their part. ‘Pipeline Politics’ has particularly affected relationships with North African states, especially Libya; Middle Eastern states; and Russia. Member states reliant on these countries for imports have been shown to be susceptible to lobbying and threats. Indeed, paradoxically one key reason for the Baltic States’ accession to the EU was a recognition of their energy dependence on Russia, and their hope that they could subsume that problem into the negotiating hand of the larger bloc. However, in the process that impacts upon states that are less dependent.

Growing interdependence between Russian suppliers and European consumers in the 1980s was forecast to increasingly remove energy as a pawn in international relations. The theory was that Europe needed the energy, and Moscow the money, too badly to inhibit the flow. Two variables now provide a new element of risk. The first is the extent to which the Kremlin has used natural resources as a partisan political prop, meaning that targeted Western sanctions have to hit natural resource companies to be effective. The second is a willingness by Moscow to use energy as a Damoclean and deployable threat, notwithstanding contractual obligations, and to view actual and serious revenue damage as an acceptable geopolitical cost that long-suffering Russian citizens could and would endure.

It would be wrong to see the UK as completely unreliant on Russian energy imports. It purchases a considerable amount indirectly via countries further up the pipeline, and has been dependent upon imported Russian coal for around a fifth of its supply. Even so, while UK dependence on Russian energy is significant and growing, it falls short of the direct dependence evident in many other member states, and there are greater prospects of alternative sourcing.

Figure 8.ii: Direct Russian gas supplies as of 2012



Source: The Economist⁵⁰

Even if the extent to which it is in the national interest to support international conglomerates with highly globalised shareholders might be questioned, UK interests diverge further from other EU members states when recalling the important role played by British or part-British energy giants.

Though the issue is covered elsewhere,⁵¹ EU energy policy does and will play a central role in CFSP thinking. Energy security has been a serious issue at the Council of Ministers since 2006, with the emergence of an outline Common Energy Security Policy. This has a deeper history, with repeated attempts first by the Commission and then by the drafters of the EU Constitution to treat North Sea reserves as a matter of common interest.

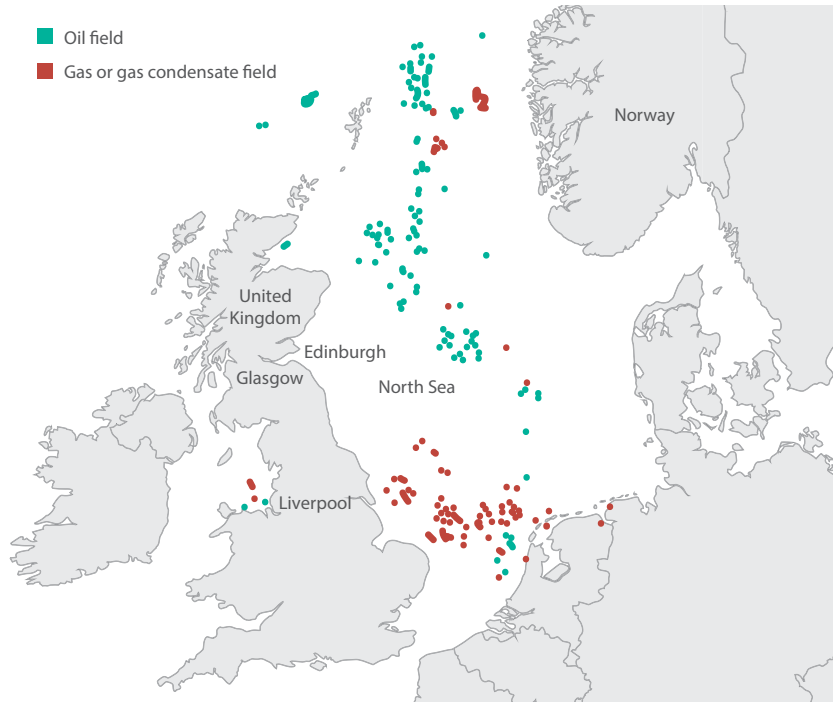
In the long term, as long as the UK remains signed up to either the CFSP or EU energy policies, the ability of the UK to draw upon North Sea stocks as a strategic reserve to suit national, rather than continental, needs will be under threat. That includes both rates of depletion as well as pricing in a crisis.

Geostrategic energy realities also underpin the issue of fracking. EU policies hindering development of this resource may play to French and Germany audiences, which have already spent massively on other forms of energy supply, and have no bearing in countries such as Italy with no key reserves. They do, however, have a massive impact on the strategic independence of states that might be inclined to take this route towards energy self-reliance.

50 The Economist “Conscious uncoupling”, accessed 17/05/2015 at: <www.economist.com/news/briefing/21600111-reducing-europes-dependence-russian-gas-possible-but-it-will-take-time-money-and-sustained>.

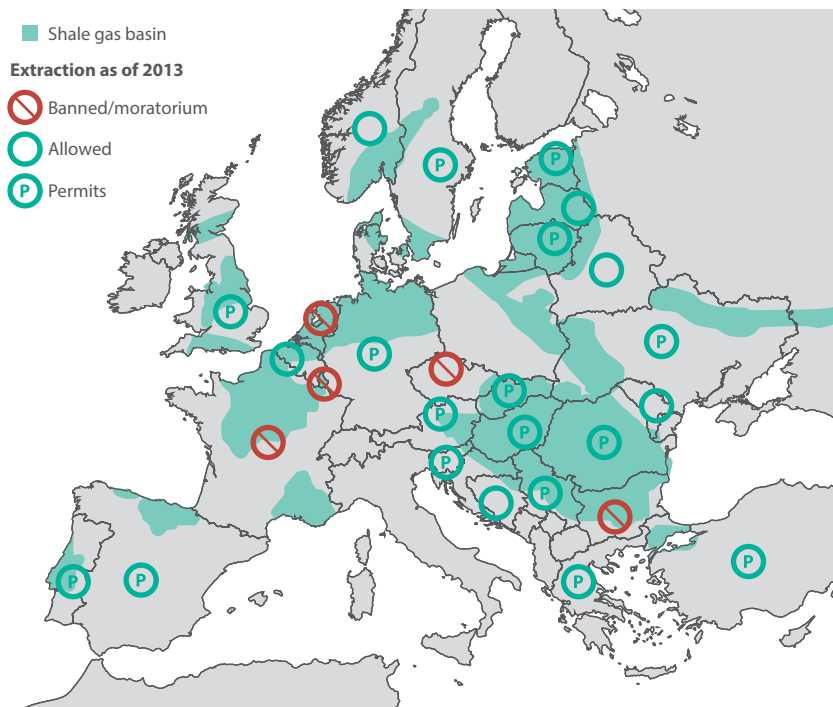
51 See Section 16.

Figure 8.iii: Locations of key North Sea energy reserves – sites of British, Norwegian and Dutch national assets



Source: Bluebird electric⁵²

Figure 8.iv: Shale reserves and states with an interest in their development



Source: compilation⁵³

52 Accessed 17/05/2015 at: <www.bluebird-electric.net/oceanography/North_Sea.htm>.

53 International Energy Agency; KPMG; press reports.

“French and British diplomatic interests, as opposed to military interests, are often divergent.”

8.3.6 Outside the EU Britain can work more productively with the USA

Increased bilateral defence cooperation with the French has been explored since 1998, and it is seen in some quarters as a precursor for wider EU work. This makes perfect sense where interests coincide. But it would be a mistake to extrapolate from this that greater diplomatic cooperation is a given. French and British diplomatic interests, as opposed to military interests, are often divergent. While both countries may see common cause in intervention in Libya or against ISIL, politically the consequences of Suez are still being felt. Following that crisis, the UK diplomatically tied itself to the USA, while France bound itself to Germany, and the underlying motives remain driving forces even today.

The diplomatic interests of Paris can be at variance with London's. French ministers sent agents to blow up a Greenpeace ship in a New Zealand port in 1985, but refused to allow US planes flying from British bases passage to bomb Tripoli in 1986. Differences in priorities remain. EU Mediterranean Policy has largely been driven by the French. Former French President Nicolas Sarkozy's Union for the Mediterranean (UfM) concept, which has led to trade deals that conserve French farmers' interests, only received grudging backing from Germany while triggering Turkish protests when it was suggested that it could replace that country's EU accession (a UK objective). French diplomats, meanwhile, remain highly focused on French interests in Francophone Africa, and have long considered the EU as a mechanism for supporting its position there. Examples have included French emphasis on EU-flagging intervention in Mali, and more controversially its attitude towards (Anglophone) Rwandan rebels during that country's genocide.⁵⁴ France and the UK also have a broader history of rivalry across the Middle East and Indian Ocean area, which has continued even with the absence of direct territorial disputes.

Where the French and the UK have a common interest, diplomatic cooperation makes perfect sense. However, it makes no sense to imagine a political union, as proposed during the crises of 1940 or 1956, would be any more practical today than a wider EU-based one.

National priorities inevitably change over time. UK relations with the USA are a case in point. Over two centuries they have transitioned from colonial master to continental competitor, financial investor and sponsor of Manifest Destiny (below the 49th parallel) back to imperial and economic rival, then with greater mutual third party threats into partner and subsequently junior partner.⁵⁵ It would hardly be surprising if the relationship did not adapt again in the future, and this is precisely what is happening with Washington's present increased focus on the Pacific rather than on continental Europe.

It would be a mistake, however, to neglect three enduring features. The first is a commonality of interests. While the 'Special Relationship' has occasionally been over-egged, both the USA and the UK continue to share highly privileged defence and intelligence interests, and a degree of trust and interoperability

54 France supported the government of Juvénal Habyarimana, which was mainly Hutu, against the Tutsi tribe's Rwandan Patriotic Front, which since 1990 had been attempting to restore the rights of Rwandan Tutsis both within Rwanda and in exile. France allegedly supplied weapons later used in the genocide of the Tutsis, and allowed Hutu militias to escape through a French military 'safe zone' on the Zaire border.

55 'Manifest Destiny' was the prevalent foreign policy doctrine of the young USA after independence, which justified expansion west and south to the Pacific in conflict with indigenous peoples, Spanish, Mexican and British interests. The 49th parallel was the agreed border with British Canada during the negotiation splitting Oregon County in the 1840s.

“The EU machinery is undercutting the Atlantic Alliance.”

endures that other European states have not and cannot match (and which only the other Old Dominions exceed).

Second, there are strong Anglo-Saxon cultural legacies within the USA's body politic. If the reality falls short of a Churchill-FDR Relationship, there still is something unusual at work. For every Suez there is a Falklands, and conversely for every Mosaddeq or Buraimi there is a Basra.⁵⁶ National policies occasionally diverge, whether over favoured national suppliers of bananas or whether to bomb government targets in Syria. But an enduring commonality of interests persists, alongside a rejection of isolationist or minimalist tendencies held by other fair-weather allies of Washington. Though the measure of it will vary considerably in intensity depending on who occupies the White House or Downing Street, the US-UK diplomatic and military alliance remains a key element in international relations.

Third, for all that the rise of Asia entails, Washington is increasingly realising that Europe's neighbours east and south still provide the locus for many of the problems confronting the West globally. Disengaging from Europe is not an option even if, for reasons of financial necessity, draw down is.

Consequently, even if the United States is putting less priority on the European theatre and the UK alliance than in the past, a future President might yet go some way to reverse this. Senator McCain's proposal when running for the Oval Office of an 'alliance of democracies', prioritising friendships over geography, provides just one example of fresh thinking.

It is precisely this form of multilateralism that is being undermined by a continentalisation of European thought which is both bunkered and anti-American. This has a more dangerous wider knock-on effect. As a former US Ambassador to the UN has observed, "A cursory review of current policy concerns shows just how extensively the EU machinery is undercutting the Atlantic Alliance, not just its NATO component."

But even more significantly:

With the EU's passage to the stage of a 'common foreign and security policy', the split between 'Europe' and America became harder for Europeans to deny, and harder for Americans to ignore. Americans in particular wonder what makes a policy 'European,' as opposed to 'Western,' or 'Atlanticist'? Do 'European' interests from Greece to Ireland, and from Portugal to Finland, have more in common than interests stretching across the Atlantic? And what is to happen to Canada, Australia, New Zealand, Japan and other industrial democracies whose geography makes them forever outsiders to the European Club?⁵⁷

The security consequences of this will become more apparent in Section 9. For as former US Defense Secretary Caspar Weinberger (1980–1987) has also observed:

It is quite apparent that, while many countries have some anti-American feelings, these countries are extremely unlikely to support the fiscal and other efforts needed to acquire a defence capability that would enable them to defend themselves without the support of NATO and the US's support of NATO.⁵⁸

56 Meaning that the US-UK relationship will ebb and flow as some interests diverge. But the key is to compare this range with that of other states. The US and UK acted largely in concert to depose Mohammad Mossadeq in Iran in 1953, yet clashed over Saudi claims on the Al Buraimi Governorate of Oman in 1952.

57 Journal of the European Foundation "American attitudes towards "Europe: What next for the atlantic alliance?", J. R Bolton (1998), page 10, accessed 01/05/2015 at: <www.europeanfoundation.org/publications-2011>.

58 Journal of the European Foundation, "How Europe Undermines NATO", C. Weinberger (2000), page 7, accessed 01/05/2015 at <www.europeanfoundation.org/publications-2011>.

“The EU has been supplanting national diplomats.”

8.3.7 EU ‘mission creep’ on foreign policy could be stopped at a stroke

While its new diplomatic service is the flag bearer for the EU internationally, it is not just in CFSP activity that the EU has been supplanting national diplomats. In every area where the Commission has a competence, and particularly where it has sole competence, Commission officials have been replacing national representatives in international conferences and negotiations. The Treaty on the Functioning of the European Union (TFEU) gives the Commission the power to enter into, though not yet always to sign off, agreements in a range of international areas, as set out in Table 8.v below.

Table 8.v: EU areas of engagement in international institutions

Policy Area	TFEU Article(s)
International monetary system	138
Education and sport	165(3)
Vocational training	166(3)
Culture	167(3)
Health	168(3)
Trans-European Networks	171(3)
Environment	191(4)
Common Commercial Policy	207
Development cooperation	209
Economic, technical, and financial cooperation	213–14
Humanitarian aid	214
Association Agreements	217

EU authority is being further expanded by ECJ case law and by loose Treaty wording. As the Government’s Balance of Competences Review noted:

The second part of Article 216(1) describes when the EU has the implied power to enter into international agreements even when the Treaties do not expressly say so. As noted above, the AETR judgement established that the EU had implied power to enter into agreements with third countries in order to achieve its internal objectives. Article 216(1) TFEU confirms this by providing that the EU may enter into an international agreement ‘where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union’s policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding act of the Union or is likely to affect common rules or alter their scope’. This means in particular that when EU law gives the institutions power to act internally in order to attain EU objectives, the EU implicitly also has the power to enter into international obligations ‘necessary’ for the attainment of that objective, even when there is no express provision allowing it to do so. In construing ‘necessary’ in the case law, the ECJ only asks whether the external action in question pursues an objective of the Treaties, rather than whether external action is indispensable to the attainment of that objective.⁵⁹

59 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy” (July 2013), page 21.

“The EU has over many years sought, in one way or another, to increase its role and present itself as a ‘single voice’ in international organisations such as the UN.”

This creates practical problems – as the FCO laconically expressed during its Review: *“Difficulties may arise where the EU or member states wish to speak or present statements in meetings of international bodies or organisations outside formal negotiations, in circumstances where both the EU and member states are able to participate and a range of competences may be engaged.”* This opportunity for divergence of interests, in which the Commission’s position is legally supreme, will only get worse with time.

An example of how this is already happening is over the Arms Trade Treaty (ATT). The Commission identified it as an area that fell under its external trade competence, and therefore sought to constrain negotiators by requiring them to agree a common position first, which they would then have to defend. The UK and other states, however, considered this a breach of Article 346 TFEU, which covers arms trading as a national competence. In the event, as negotiations fell within a UN framework to which the EU corporately at this stage still had only limited direct access, the Commission power grab was partial. Significantly, the FCO audit revealed that:

The EU has over many years sought, in one way or another, to increase its role and present itself as a ‘single voice’ in international organisations such as the UN. The practice has become widespread as the extent of the EU’s competence has evolved, and there are now few international organisations where there is not at least some effort to forge a common EU position, and have that position, even if it only amounts to a lowest common denominator, expressed by one participant on behalf of all the member states... There are, however, tensions within this dynamic, stemming from a complex set of questions over who should represent such common EU positions, on behalf of whom, and how.⁶⁰

Attempts to change this have been, the FCO says, a “fraught process”, and that *“in the absence of clarity over EU representation in international organisations, there is a risk that the Commission (or the EEAS) assumes that, having represented the member states on an issue, it has gained unfettered competence to act. Put simply, the UK sees a risk that representation comes to equate to competence.”* This ‘representation creep’ is supported or at least not objected to *“by many member states, particularly the smaller ones”*. Notwithstanding attempts to check this trend, observers have noted that the Commission still sees its use of Article 17 TFEU as a justification for unilateral diplomacy and that it remains a cause of genuine concern.⁶¹

The impact of this reaches across this publication. Some important work has been done in this area.⁶² The ‘Flexcit’ research programme conclusively demonstrates not only that the EU is taking over the negotiating role of national diplomats, but that it is negotiating the very deals that the EU then subsequently takes back to the Council of Ministers and Commission in order to turn into law. The author Dr Richard North even found Norwegian politicians who have been informally asked by Scandinavian EU member diplomats to speak on their

60 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy” (July 2013), page 39.

61 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy” (July 2013), page 41.

62 “Flexcit, The definitive EU exit plan for Britain”, R. North et al. (10 October 2014-work in progress), accessed 01/05/2015 at: <www.eureferendum.com/flexcit.aspx>.

“Across every EU Treaty competence, the UK is losing its voice and veto at the top table.”

behalf, because they are constrained by the EU joint position.⁶³ Another review in 2014 gave, among other examples, one EU regulation banning the export of metallic mercury: this was in fact driven by work done at the United Nations Environment Programme.⁶⁴

In other words, across every EU Treaty competence, the UK is losing its voice and veto at the top table – and at bodies such as the UN agencies that compile international trading standards. In exchange for this, the Permanent Representative to the EU (UKREP) and the British Minister attending the Council get to argue and vote (often by QMV) on the small print about how this gets implemented and gold-plated at EU level. In these terms, the EU is not a force multiplier for British diplomacy but an inhibitor. By contrast, a country such as Norway, which has retained its right to represent itself at these meetings, is able to directly influence and even block harmful rules well before they get to the drafting stage to enter into Single Market rules.

As far as EU diplomacy goes, it is not just the EEAS which is a threat, but the EU structure as a whole. Regaining competences increases UK influence higher up the food chain well before any new rules get to Brussels. Stepping away from integration into the Single Market not only reduces the cost of EU red tape on British businesses by allowing the UK market to cut unnecessary burdens, but also ironically allows British negotiators to limit the damage EU regulators can do to British exports by allowing for a greater UK input into how international trade is run.

Fundamental to sovereign self-determination is the right of a state to defend itself and, more peacefully, to diplomatically represent its interests to outside parties. States which have surrendered such powers, such as the individual states of America did in the 1780s and 1790s, are said today to have ‘pooled their sovereignty’ and have ceased to exist as fully-independent political entities.

One of the absolutely central justifications for the UK’s entry into the EEC was over foreign affairs and Britain’s post-war relative decline. Supporters of membership underlined that joint action by EU states made it collectively able to stand up to bullying by the superpowers.

Europe’s practical weakness in being able to present such a united front, however, has long been recognised. This realisation formed the basis of the 1981 London Conference that reviewed European failures in reactions to the invasion of Afghanistan by the USSR. However, measures originally set into motion to deter Soviet aggression and engage neutral European states are now a threat to Britain’s sovereign interests. The world has changed track while the EU has merely accelerated.

Table 8.vi shows that the EU is speeding up its development of a common foreign representation, while pushing for an increasingly integrated military capability (the Common Security and Defence Policy, or CSDP).⁶⁵

63 “Flexcit, The definitive EU exit plan for Britain”, R. North et al. (10 October 2014-work in progress), pages 88–89, accessed 01/05/2015 at: <www.eureferendum.com/flexcit.aspx>. The whole interview can be found on the EU Referendum blog, accessed 11/02/2015 at: <<http://eureferendum.com/blogview.aspx?blogno=84212>>. Local Government Minister Anna Tvinnerieim sets out her position and concludes it would be “fantastic” for Britain to join EFTA, for both Britain and Norway.

64 Civitas “Hard Bargains or Weak Compromises? Reforming Britain’s relationship with the EU”, L. Rotherham, B. Binley (2015), pages 29–31.

65 See Section 9.

Table 8.vi: EU diplomatic integration showing clear direction and intent⁶⁶

- 1954 European Coal and Steel Community (ECSC) information office opens in Washington. It is manned entirely by US nationals until 1958.
- 1956 ECSC opens a liaison office for Latin America, in Santiago de Chile. First full diplomatic mission in London also opens (the UK at this stage not being a member).
- 1964 New semiautonomous non-profit agency established. The European Agency for Cooperation (EAC) is funded under a Commission grant, to recruit and manage, under renewable contracts, the heads of mission and staff to man the Commission offices in the associated countries. In this era of De Gaulle, these personnel are thus engaged as contract staff, and generally do not enjoy diplomatic status. Many of these staff are in fact former colonial administrators from member states, or development professionals from the private sector. 21 offices are run, essentially as offshoots of the Directorate General for External Relations rather than the whole Commission.
- 1971 European Court of Justice (AETR Judgement) rules that external activity by member states is limited by internal competences, and cannot outside of the EEC run counter to directives already made for within the EEC. The Commission's international role will thus automatically expand with legislation and harmonisation.
- 1972 Washington legation becomes full embassy as legislation recognising full diplomatic status passes Congress.
- 1973 By this year, some 320 people are serving in these offices; 120 Europeans (mainly civil engineers and agronomists) and 200 local staff.
- 1975 Lomé Convention. Development aid spurs representation. The number of missions in these countries (now upgraded to full delegations of the Commission) doubles to 41 in three years; diplomatic immunity for lead staff first given.
- 1977 European Commission sits in on G7 meetings.
- 1980 By this year, there are 50 delegations around the world, with over 1,000 personnel working in them. This is around the same figure as the Belgian Foreign Office.
- 1981 Commission opens a delegation in Australia, principally to deal with nuclear fuel and in order to defend the Common Agricultural Policy.
- 1982 Report to the Council on the external competences of the Community. This contains the acknowledgement that: "The Commission has a nucleus of a foreign service. Its external delegations are doing work directly comparable to Member State embassies."
- 1988 Reform: absorption of staff into the Commission mainstream. Number of officials serving in delegations rises overnight from 165 to 440. The local staff number 1,440. There are 89 missions, on all continents except Antarctica.
- 1990 By this year, the majority of posts are considered full diplomatic missions by their host countries, and many heads of delegation (as the former 'delegates' were now referred to) are being accredited at Head of State level, with credentials signed by the President of the Commission, carrying the rank and courtesy title of ambassador.
- 1991 The European Communities becomes the 161st Member of the Food and Agriculture Organisation (FAO), the oldest of the UN's specialised agencies. This is the first time that the future EU will enjoy a status comparable to a member nation in a UN body. EC Membership also crucially introduces the concept of the "alternative exercise of membership rights" between the EC and the member states, which applies not only to voting rights but also to speaking rights. This means that the Commission speaks, negotiates and votes on issues of Communities competence, while the presidency speaks, negotiates and votes on issues of member state competence.

66 TaxPayers' Alliance "EU Diplomats", L. Rotherham, pages 6–9, accessed 01/05/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/224449/evidence-taxpayers-alliance-eu-diplomats.pdf>, plus insert from Labour's Federal Agenda for Europe, CPS/ERG, 1996.

- 1993 The Treaty of Maastricht specifically refers to the External Service for the first time (raising the question of its earlier legal basis). Under the new Common Foreign and Security Policy, delegations now have a more proactive political role. Recruitment remains haphazard. Anecdotally, one senior figure recalls basing selection on performance in a staff football match.
- 1994 Labour's MEP manifesto supports the ambitions of the Party of European Socialists: "Once a Common Foreign and Security Policy is in place, the question of a seat for the EU on the Security Council can be addressed."
- 1998 Amsterdam Treaty creates the new post of High Representative. This effectively generates a second parallel EU foreign service, representing Council and Commission combined, as opposed to just working for the Commissioner for External Relations.
- 1999 Javier Solana appointed High Representative. The position quickly accrues extra responsibilities, as existing posts are combined with his (for instance key roles at the WEU, the Western European Union, and European Defence Agency). Appointment of Special Envoys begins apace. There is a small but growing number of officials detached from member states' foreign services being placed in delegations, with obvious risks of these 'going native'. Meanwhile, under the policy of 'deconcentration', responsibility for implementation of assistance programmes is devolved to local offices. €6.5bn from the EU Budget is administered in this way by the European Commission.
- 2002 The High Representative becomes one of the partners in the Quadripartite Commission for the Middle East ('the Quartet').
- 2003 Delegation network is by now accredited to over 150 countries. Manned by more than 5,000 staff, it is one of the largest European diplomatic services in its own right. Embassies are often housed in more than one building, with 50-100 staff working within them. Within Europe, Commission embassies are openly involved in supporting Yes campaigns for accession countries, intervening on the pro-integration side in internal democratic debates.
- 2005 "It is plain from the DG External Relations website that the outcome of the referendums in 2005 in the Netherlands and France does not seem to have given the Commission pause for thought" (retrospective from House of Commons EU Select Committee, 27th Report). EU staff serving abroad has gone up by a third since 2000.
- 2006 Full accreditation to the Vatican (and in the following year full accreditation to the Order of the Knights of Malta) demonstrates the extent of diplomatic representation. Delegation in Iraq.
- 2007 Delegations in Switzerland, East Timor, Azerbaijan, Montenegro and the African Union. Upgrading of offices in Armenia and Cape Verde. There are 118 delegations in third countries and 5 delegations at centres of international organisations.
- 2008 Measures for a delegation in Uzbekistan and permanent representation at the Council of Europe, as well as the upgrading of offices in Kyrgyzstan, Tajikistan, Yemen, Nepal, Togo, Djibouti and Liberia.
- 2009 European External Action Service comes into being.
- 2010 Agreement reached over DG assets transferred to EEAS. Senior staff appointed. Commission delegations become EU missions with increased diplomatic status as direct intermediaries of the broader EU.
- 2011 EEAS becomes operational. It takes over SITCEN to form the Intelligence Analysis Centre (EU INTCEN) and direct liaison with military and secret intelligence agencies. EEAS sets up two offices in Libya.
- 2013 Commission proposes the EEAS takes over managing the EDF. The EEAS and delegated Commission staff now number 7,000, with an admin budget of €509m.

The CFSP has increasingly become of interest as a motor of wider European integration as others have stalled. As academics have observed:

Foreign and security policy appears as the last great hope for those anxious to foster progress towards 'ever closer Union'. While enlargement was once seen as crucial to the onward march of integration, 'enlargement fatigue' has undermined such aspirations. Simultaneously, the erosion of the 'permissive

“The CFSP is still presently a ‘paper tiger’ and, as such, a danger to those who rely heavily on it.”

consensus’ has effectively ended hopes for real progress towards some kind of federal Europe. Finally, economic unification is inadequate as a source of inspiration for European citizens. Thus in a context where the EU is seeking a new legitimizing discourse, its international role has come to be seen as the most appropriate vehicle for galvanising popular support for the EU in the 21st century and driving integration forward.⁶⁷

If the UK removes itself from this aspect of EU integration, it would remove a long-term threat to its interests, by an organisation which is set over time to supplant its representatives in global fora. The UK would also regain its former strategic clarity, while taking national credit for activities that are increasingly EU-flagged.

The UK is no longer a superpower, nor does it need to be one. But it does have a role to play as a leading global ally with some measure of limited but useful power projection, tipping the scale at focused points and places. It can be an independent moral voice and example, operating in association with other world powers, especially the USA but also – where they agree and are prepared to act – with other European powers.

The CFSP is still presently a ‘paper tiger’ and, as such, a danger to those who rely heavily on it. When it becomes otherwise, by contrast it will become a threat to the independence of its contributors.

As two senior British military commanders and two former UK ambassadors to Washington have jointly written:

Recent events in the Middle East and in the mountains of Central Asia merely confirm the inescapable fact of Europe’s diversity: that the governments and peoples of Europe think differently, and that any attempt to create a common foreign policy – let alone a common defence – is unlikely to succeed. To go further and give it legal force would be more likely to result in no action rather than commonly-agreed action, and deny legality to actions by member states.

There is no common demos; there is (as Eurostat polls prove) no single European public opinion. Yet it is now proposed that important decisions about Foreign Policy and Defence shall be decided by Majority Voting, so countries could be forced to support decisions that are domestically controversial and unpopular. Nor is there any commonly-identified threat to all European nations which could justify any such alliance. And if there were, that threat would easily be presented in a manner more likely to divide the European Alliance (as it could be called) than unite it...

This new Foreign Affairs and Defence mechanism comes at a heavy cost: nation states will increasingly lose their ability for independent action, on any area where a joint policy has been established by qualified majority. The proposals will also give to the new Union the exclusive right to negotiate internationally on areas where domestic policies (such as health, transport, and aspects of trade) overlap into the international arena. This removes from domestic control issues of vital importance to the electorate. Ordinary citizens, on the other hand, will be utterly incapable of doing anything about it – other than registering ineffectual demonstrations outside the shell of a national parliament.⁶⁸

67 Journal of Common Market Studies “Security Co-operation beyond the Nation-State: The EU’s Common Security and Defence Policy”, C. Bickertonm, B. Irondelle, A. Menon (2010), accessed 01/05/2015 at: <<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-5965.2010.02126.x/abstract>>.

68 Bruges Group “Plan B for Europe: Lost opportunities in the EU Constitution debate”, pages 23–27, accessed 21/05/2015 at: <www.brugesgroup.com/Plan-B-For-Europe.pdf>.

“Further integration is inevitable.”

The area of external action primarily consists of the Common Foreign and Security Policy and the Common Security and Defence Policy. Integration in both of these spheres has accelerated since the 1990s, as France and Germany have sought to reorientate their relationship with the removal of the Soviet threat and the increase in relative power gained by a reunified Germany. The UK, which has historically felt less intimidated by a strong democratic Germany given the lack of common borders, does not share Paris’s geopolitical motivation in the same manner, but will continue to pay the same strategic price if it remains in political union.

The extent of this EU-level integration may be judged from the audit of Croatian readiness for accession in 2006.⁶⁹ This revealed that, over a two year period, Zagreb had aligned its policies with 390 declarations, demarches, and common positions. This included specific policy areas covering European Neighbourhood Policy (ENP), Russia, the Middle East Peace Process, the Gulf Cooperation Council, the Euro-Mediterranean Partnership, the Transatlantic Dialogue, the Africa, Caribbean and Pacific (ACP) countries as well as Latin America and Asia; then there are regional initiatives including the South East European Cooperation Process (SEECP), the Stability Pact, the Central European Initiative (CEI), the Adriatic-Ionian Initiative, the Quadrilateral, and the Alps-Adriatic Working community; and further activities undertaken at interagency level within the EU institutions. Common EU activity is consequently far more wide-ranging than is commonly perceived.

It is also useful to put the EU’s diplomatic corps in its historical context so that the long-term trend becomes clearer. It was originally formed as a trade support staff in important foreign delegations, especially London and Washington DC. With the development of aid and trade agreements, it morphed into what some academics have described as “a kind of ‘illegal EU diplomatic corps’ squeezing out national embassies and “expected to be models of discretion and self-effacement”.⁷⁰ The corps has incrementally become diplomatic representatives, and the process looks set to continue. In the 1970s, Commission representatives started to successfully argue, without Council involvement, for diplomatic status on the grounds that the Community was a ‘partial state’. The issue over pennants for official vehicles and the access rights this can provide in international law took until the mid-1980s to resolve. Then the Maastricht Treaty allowed for EU diplomatic activity but only inter-governmentally – the Second Pillar approach. The Treaty of Amsterdam subsequently gave impetus to a desire for the EU to engage in peace-keeping, adding force to its diplomacy. The Lisbon Treaty collapsed the pillar and gave the EU a collective institutional diplomatic face.⁷¹

Further integration is inevitable. This can only come over the long term at the expense of national delegations.

Meanwhile, the development of a distinct EU diplomatic power, in such scale and with superior powers to those of national delegations, is a long-term threat to the UK’s ability to represent its own interests abroad. This has long been recognised by those who support these developments, and admitted by diplomats who do not.

69 European Commission “Screening Report: Croatia” (2007), page 2, accessed 30/04/2015 at: <http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_31_hr_internet_en.pdf>.

70 Journal of Common Market Studies “Diplomats Without a Flag: The Institutionalization of the Delegations of the Commission in African, Caribbean and Pacific Countries” V. Dimier, M. McGeever (August 2006), accessed 01/05/2015 at: <<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-5965.2006.00632.x/abstract>>.

71 TaxPayers’ Alliance “EU Diplomats”, L. Rotherham, accessed 01/05/2015 at: <<https://d3n8a8pro7vhm.cloudfront.net/taxpayersalliance/pages/325/attachments/original/1422267950/evidence-taxpayers-alliance-eu-diplomats.pdf?1422267950>>.

Sheer numbers provide a ready indicator. Table 8.vii sets out some comparative figures. The EU is developing a capability already approaching par with all but its largest member states and dwarfing that of smaller members. Yet as the table also demonstrates, non-EU European states such as Norway are still able to independently operate in the international arena with fewer resources.

Table 8.vii: Comparative scale of international representation

Country	Diplomatic network	Overseas trade and investment	Official Development Assistance (ODA)	International organisations
United Kingdom (UK)	270 offices in 170 countries and over 14,000 staff, and an annual budget of £1.6bn.	162 offices in 96 countries.	In 2012 the UK provided £8.6bn of ODA – ranking third in the world (behind the US and Germany) for volume of ODA provided. 28 focus countries.	Extensive and includes: EU, UN, NATO, G7, G8, G20, Commonwealth, UNSC, OSCE, CoE, FATF, IMF, EIB, EBRD, UN Specialised Agencies.
Denmark	78 Embassies worldwide, seven missions at international organisations, employing 2,700 people.	The Trade Council employs approx. 300 staff, in about 90 sites around the world. 'Invest in Denmark' is represented in 14 locations outside Denmark.	0.85 per cent of GNI. Denmark coordinates with other donors, for example with the UK in East Africa on Somalia and in regional capacity-building work.	NATO, CoE, UN, WTO and OSCE, as well as the Nordic Council and Arctic Council.
Norway	Embassies in 86 countries, more than 100 missions in total. Annual budget of NOK 35bn (£3.8bn) of which NOK 30bn earmarked for development assistance.	Norway's UKTI equivalent is Innovation Norway with offices in 30 countries with over 700 employees.	0.93 per cent of its GNI (£30bn). Close to half of Norway's international development budget is channelled through multilateral organisations, and Norway works actively with other donors, e.g. through its Climate and Forest Initiative.	European Economic Area, Schengen Convention, NATO, UN, WTO, IMF, EBRD, CoE, Arctic Council, OSCE.
EEAS	140 delegations covering 163 countries. There are 3,474 staff plus around 3,500 delegated Commission staff. Administrative budget of €509m (out of around €9.3bn in total for the EU's international programmes).	Operating from these locations.	Around €2.6bn is spent on development cooperation and €800m on less contingent aid.	Rapidly expanding presence in international fora. These now include the GCC, AU, OSCE, OECD, UNESCO, WTO, G7/G8, G20, and many UN bodies. In many instances represents EU states.

Source: HM Government⁷²

The central problem is the EU's increasing capability to occupy the chair in the growing number of areas where the Commission represents a common position, thus replacing the diplomats of individual member states. The consequences are:

- The EU is running a £3.4bn international programme for which the institutions of the EU gain the credit and receive the lobbying, rather than the member states who pay;
- These funds support local NGOs, academics and opinion formers who act as cheerleaders for the processes of ever closer union, and the EU acts as the go-to point for foreign leaders;
- EEAS delegates support EU policies rather than specific UK interests;
- They have gained and continue to gain direct representation in international bodies, taking over the role of the British representative in the large numbers of areas where there is a common policy;

72 National data from: HM Government "Scotland analysis:EU and international issues" (2014), accessed 01/05/2015 at: <www.gov.uk/government/publications/scotland-analysis-eu-and-international-issues>; EEAS data from European External Action Service "2013 Annual Activity Report" (2014), accessed 01/05/2015 at: <http://eeas.europa.eu/background/docs/annual_activity_report_2013_en.pdf>.

“The democratic deficit will only be exacerbated over time.”

- Where double representation exists, this would be an incentive for future surrenders, as FCO ministers cut back on staffing;
- Joint action in areas of common concern provides a mechanism for further delegation of authority under QMV;
- This all undermines the UK’s permanent seat on the UN Security Council.⁷³
- The original assumption that pooling power adds value to compensate for this is also open to question. As one academic assesses:

The assumption that the EU has influence when it speaks with one voice [at the UN] must be questioned, for it is heavily dependent on who is speaking – that is the presidency. A strong (committed, efficient, effective) presidency can project a strong position; a weak one can be ignored. But regardless of the presidency’s strength, some outsiders note that reducing 15 – now 25 – states to one voice diminishes the EU’s influence: in a room full of delegates hostile to human rights, more voices might be better, and certainly better than a weak presidency’s voice.⁷⁴

Even if these weaknesses are addressed with a more centralised role for the EEAS, it comes at a cost to the UK as the world’s fourth military power and sixth largest economy (give or take).

There is a hidden further risk, and that comes from secondments. In 2013, the EEAS had 25 UK diplomats seconded to it.⁷⁵ It is increasingly being viewed as a recognised career stream for Whitehall. It risks, alongside the UK Representation at Brussels, becoming a schooling ground for British civil service staff who are more in favour of European integration – in other words for personnel to both ‘go native’ and get a CV boost in the process.

Conclusion

If it is the UK’s ambition to merge into a bigger body politic and become a component of a larger state – as Virginia is to the USA – then it makes perfect sense to create a new diplomatic entity to represent the collective, to accompany a new common defence structure to fight on its behalf. If that is not Britain’s ambition, however, then the increased shift of diplomatic power away from Whitehall and from the oversight of Parliament will only weaken the UK.

That is as true in terms of Britain’s ability to sell itself globally as it is for the country’s ability to control the inflow of international treaty obligations towards EU institutions that the Commission then turns into regulations and laws.

MPs happy with a European federal system and the role of a Virginian State Delegate may have no qualms. Those seeking to explain to a puzzled constituent why they have had no input at any stage in correcting a bad EU law might instead reflect on how the current system operates, and how with a growing EEAS and set of EU competences, the democratic deficit will only be exacerbated over time.

73 TaxPayers’ Alliance “EU Diplomats”, L. Rotherham, accessed 01/05/2015 at: <<https://d3n8a8pro7vhmx.cloudfront.net/taxpayersalliance/pages/325/attachments/original/1422267950/evidence-taxpayers-alliance-eu-diplomats.pdf?1422267950>>.

74 Journal of Common Market Studies “Speaking with One Voice? European Union Co-ordination on Human Rights Issues at the United Nations”, K. E. Smith (2006), pages 132–133.

75 HM Government “Government Response to the House of Commons Foreign Affairs Committee Report HC 219 of Session 2013–14: The UK staff presence in the EU institutions” (September 2013), pages 7–9, accessed 01/05/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/236742/32688_Cm_8698_v0.3.pdf>.

9 Defence

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Nuland: I can't remember if I told you this, or if I only told Washington this, that when I talked to Jeff Feltman [United Nations Under-Secretary-General for Political Affairs] this morning, he had a new name for the UN guy Robert Serry, did I write you that this morning?

Pyatt: Yeah I saw that.

*Nuland: OK. He's now gotten both Serry and [UN Secretary General] Ban Ki-moon to agree that Serry could come in Monday or Tuesday. So that would be great, I think, to help glue this thing and to have the UN help glue it and, you know, f**k the EU.*

[BBC analysis by] Jonathan Marcus: Not for the first time in an international crisis, the US expresses frustration at the EU's efforts. Washington and Brussels have not been completely in step during the Ukraine crisis. The EU is divided and to some extent hesitant about picking a fight with Moscow. It certainly cannot win a short-term battle for Ukraine's affections with Moscow – it just does not have the cash inducements available. The EU has sought to play a longer game; banking on its attraction over time. But the US clearly is determined to take a much more activist role.

BBC transcript of leaked conversation between US Assistant Secretary of State Victoria Nuland and the US Ambassador to Ukraine, Geoffrey Pyatt

The EU is involved in defence policy in numerous ways, such as organising battlegroups through the Common Security and Defence Policy (CSDP), but most meaningful military action by member states remains bilateral or international.⁷⁶ The EU's ambitions in this area are worrying. They include the merging of Britain's significant arms industry, which would compromise our NATO membership, raise questions about Britain's independent nuclear capability, and imply future costs for the UK if EU ambitions outreach capabilities.

Could the EU continue to work with France in mutually-agreed interventions, and with other European states on peace-keeping missions, from outside the Union? Thankfully, the defence outlook outside the EU is secure, since Britain would remain part of key groupings like NATO, the 'Five Eyes' intelligence community, the UN (running Blue Beret peace-keepers) and the Organization for Security and Co-operation in Europe, while it would also be able to join EU battlegroups or the Galileo satellite project if it wishes, as do other non-EU states.

The ability and readiness of a state to defend itself lies at the heart of sovereignty. The idea of countries forming strategic alliances does not invalidate this. It was an alliance between the Greek city states in the fifth century BC that led to the defeat of the Persian Empire and the preservation of their independence. But such alliances can themselves generate the risk of a loss of independence; in the Greek example, it directly led to one participating democracy (Athens) forcing its will on other weaker members of the Delian League by imposing taxes on them. In turn, this led to the Peloponnesian War and thus ultimately to the decline and extinction of classical democratic government for a time.

The EU, in its first incarnation as the Coal and Steel Community, was founded as an economic union because the French Parliament vetoed an initial attempt to rearm the West Germans and establish a European military formation. This was quite openly declared to be the starting point for developing a federal political entity. With the passage of time and the reunification of its neighbour, France has looked to revisit the issue of a common defence policy as a priority. François Mitterrand sought, with the Franco-German centred Eurocorps, to

76 The quote above accessed 17/05/2015 at: <www.bbc.co.uk/news/world-europe-26079957>.

“The UK is already a valued member of international bodies such as the United Nations and NATO.”

develop a formal military aspect to the Union. This aspiration has strengthened thanks to anti-Americanism, a belligerent Russia, and Islamist terror.

From a UK perspective, however, Britain stands to lose a great deal from any shift away from the American alliance and NATO towards this emerging alternative power structure. NATO is comparatively robust, whereas the CSDP is the agent of an EU obsessed with soft power and conscious of its own limitations. Those limits include a psychological aversion to tough, complicated, costly, enduring and casualty-associated deployments. NATO is also technically capable, overwhelmingly thanks to the assets provided by, and only through, the Americans. European-sourced alternatives are often mere stop-gaps, if they are available at all.

Then there is what the UK gains from its unique association with the US – the very privileged status that prompted Charles de Gaulle to veto UK accession 50 years ago. This includes technical and intelligence cooperation, which becomes increasingly more critical as the technology gap between the US and Europe widens.

9.1 The UK would remain a member of all key international defence bodies

Key international bodies

- ‘Five Eyes’
- NATO
- Organization for Security and Co-operation in Europe
- United Nations

The UK is already a valued member of international bodies such as the United Nations and NATO. There is no real chance that membership would be threatened by leaving, so defence experts should instead consider how the UK’s relationships within these bodies might change if Britain left an unreformed EU.

Realistically, after leaving, Britain would remain a dynamic player in all the important international bodies that organise or coordinate states’ militaries and security forces. In many respects, exit from the EU could augment rather than undermine the role Britain plays in these bodies.

NATO is not an either-or organisation. For 20 years, for example, three member states (the US, UK and France) were also members of a South East Asian counterpart, SEATO.⁷⁷ The Middle East variant, CENTO, included Turkey with the UK and US as associated powers.⁷⁸ SEATO and CENTO are no more, but a range of bilateral and multilateral treaties exist that tie the UK and France, in particular, to states outside of the EU in military cooperation deals, particularly in Africa and the Middle East, but also within Europe itself.

9.1.1 Leaving the CSDP means securing the UK’s membership of NATO

The need to secure Europe in the context of two world wars and external threats has not been lost on the world community. A crucial mechanism already exists to do the job, one that does not need duplicating. A European precursor to NATO has been taken over by the EU to do precisely this, however.

The Western European Defence Organization (WUDO) was founded in 1948. It was launched before North America recognised it needed to recommit

⁷⁷ SEATO was disbanded in 1977 in the aftermath of the Vietnam War, which was its primary post-colonial *raison d’être*.

⁷⁸ It was the ‘Baghdad Pact’ until the Iraq revolution, and ended in 1979.

forces along the Iron Curtain that it had largely withdrawn after the Second World War ended.

WUDO subsequently re-emerged as the Western European Union (WEU) with West Germany's entry into Western defence planning. It was largely dormant, however, until the 1990s, when it was turned to as a useful mechanism to allow European states to cooperate with limited US engagement over Bosnia, and for Russian cooperation during the Kosovo crisis. With the development of the Common Foreign and Security Policy (CFSP), it was then swiftly identified as a ready entity to provide the structure for more integrated EU defence cooperation, first as a separate inter-governmental agreement (Pillar Two of Maastricht) and then collapsed into the main Treaty itself. This has given the EU a corporate interest, though not a voice, in NATO itself.

The EU sees the development of CSDP and the broader CFSP as mechanisms to steer a political course separate from the United States and to generate a distinct European voice in the world. The Treaties are now clear about this:

- The Treaty of Lisbon included for the first time a mutual defence clause;
- Lisbon allows for the delegation of responsibility to willing states through enhanced cooperation;
- It extends roles from peace-keeping to peace-making;
- It encourages greater cooperation in training and procurement between member state forces.

This represents a long-term threat to UK interests. The problem with participating in and endorsing this approach is that, by attempting to define a collective alternate pole to Washington, it encourages further and permanent decoupling of the NATO alliance.

Chart 9.i: Share of defence expenditure by NATO member states 2012



Source: NATO⁷⁹

The basis of UK defence interests lies in maintaining strong defence links with the only current superpower, and the only Western nation that will still be a military superpower in 50 years. Quite aside from having the budget, materiel and manpower, the USA is often (but not always) one of the states

79 NATO "Financial and Economic Data Relating to NATO Defence" (24 February 2014), page 4.

“The EU mission has been beset with problems.”

more inclined to intervention, and intervention in areas where the UK itself is inclined to intervene. It is also the absolute must-have participant for any NATO operation involving any measure of complex adversary, owing to US technical capabilities in a number of niche fields. This ranges from logistics through to intelligence, from psychological operations to air defence suppression and airborne close fire support. An EU audit in 2001 by the Capabilities Improvement Conference (CIC) identified 42 shortfalls: the situation has not been resolved since.

That relationship can only be maintained by the UK retaining NATO as its partner of choice rather than buying into the expansion of the interests of the corporate EU.

But that, in turn, can only happen if a sovereign UK outside of the EU security sphere maintains defence, diplomatic and intelligence spending at a level or in specialisms that provide added value to the USA, and thus itself remains a partner of choice. Examples of these specialisms include minesweeping, intelligence analysis, and capable escort vessels.

The balancing act is to determine strategically what spectrum of assets is required for the nation to both add value to its key ally but also allow it to act unilaterally in defence of its interests where other countries do not share Britain's views. That is what strategic defence reviews are for. Leaving the EU would not negatively affect Britain's NATO membership, and may well enhance it.

9.1.2 The UK would continue to cooperate in joint anti-piracy action across the world

Supporters of the CSDP point to cooperation off the coast of Somalia as an example of a successful EU defence policy. What tends to get overlooked is that anti-piracy operations by EU NAVFOR in OP ATALANTE are largely operating in support of a UN mission, and in parallel to work undertaken by NATO. Indeed, the HQ is just outside London, in a structure that allows command to alternate just by switching offices.

The multinational angle is reinforced when one considers that this anti-piracy action takes place in conjunction with separate activity by the navies of China, India, Japan, Russia, Taiwan and other states. Even within the EU element, Norway, pre-accession Croatia, and Montenegro have participated.

The EU mission has, however, been beset with problems. Different Rules of Engagement are observed from navy to navy, dependent on whether diplomats see pirates as victims of economic circumstance or as international criminals; questions over which jurisdiction arrested pirates fall under have created immense legal problems; human rights law has complicated prisoner processing; the EUCAP Nestor training programme, very limited in scope, has struggled to fill even its tiny designated manpower.

With the development of a Maritime Security Strategy in 2014 and an Action Plan, the EU's interest in protecting trade routes is already apparent.⁸⁰ The EU underlines that 90 per cent of its international trade (and a surprising 40 per cent of its 'internal trade') is transported by sea. It highlights the volume of passenger carriage of EU nationals; the relevance of conflict prevention; and the vulnerability of ports, cables and rigs. It cites shipping as a means to transport weapons of mass destruction (WMD), and a way for terrorists to interrupt trade routes. It is consistent with Commission precedent that anti-piracy work is coupled with terrorism risks to provide future medium-term entrées for the

80 European Commission “For an open and secure global maritime domain: elements for a European Union maritime security strategy”, accessed 23/05/2015 at: <<http://europeanmemoranda.cabinetoffice.gov.uk/files/2014/04/7537-14.pdf>>.

“The UK outside of the CSDP could continue to cooperate in multi-state Special Forces work, with a reduced risk of being expected to provide support to EU deployments when things go wrong.”

Commission and European External Action Service staff to expand their CDSP role, and develop into the premier actor in shipping issues.

Over time, within the CSDP, this means that the Royal Navy will increasingly become enmeshed with other naval forces rather than remain an independent national asset. Outside, this threat would be removed, but like Norway or Taiwan the UK could still cooperate in combatting piracy, through better-led UN and NATO strategies.

9.1.3 Counter-terrorism cooperation could continue as an associated party, while UK Special Forces capability would be protected

With rolling cuts over the past four decades affecting the main elements of the UK’s conventional forces, certain strategic forces have gained in relative importance. This includes Special Forces, which provide the UK with specialist and highly-focused capabilities that most other nations lack.

These face a threat from the EU due to the collective impact of changes. To date, these have included the establishment of a military resource list that the EU could draw on for collective operations; and the development of a policy towards protection of ‘EU assets’ that are vulnerable to attack (and which also need protecting).

The UK outside of the CSDP could continue to cooperate in multi-state Special Forces work, with a reduced risk of being expected to provide support to EU deployments when things go wrong. Working with preferred partners rather than a pool of 28, this will likely have a positive impact on maintaining levels of security and discretion in an area obviously requiring complete secrecy to remain effective.

At the same time, counter-terrorism work more broadly would also continue on the basis of high level cooperation and multilateralism involving the relevant partners, whether inside the EU or outside.

9.2 The UK could continue to cooperate with the EU on defence issues

Key issues

- Ad hoc cooperation on individual peace-keeping or observer missions
- Collaboration tackling piracy
- Continued equipment standardisation (via NATO)
- Limited coordination of procurement policies

The UK cooperates with the EU in defence policy in several ways, such as battlegroups through the CSDP, but most meaningful military action by member states remains bilateral or international. The EU’s ambitions in this area are worrying, including meddling in Britain’s lucrative arms industry, and implying future high costs for the UK if EU ambitions outreach other members’ capabilities. Could Britain continue to work with France in mutually-agreed interventions, and with other European states on peace-keeping missions, from outside the Union? Thankfully, the defence outlook outside an unreformed EU is secured by UK membership of the aforementioned international bodies, while Britain would also be able to join EU battlegroups by invitation or the Galileo satellite project if it wishes, as do other non-EU states.

“Simple bilateral cooperation with EU countries could still happen for a UK outside of the CDSP.”

9.2.1 Cooperation with other EU member states could continue

The UK has long had an interest in cooperating with other European states. It signed a bilateral with France as early as 1947, at Dunkirk: given the choice of venue and the implications, the perceived long-term threat to both parties at the time is self-evident. Defence capabilities were again cited in the 1960s as a reason why European Economic Community states considered UK membership to be a particular gain.⁸¹

Notwithstanding decreased military spending since then, other capitals still recognise that UK association with the CSDP adds value, capability and credibility to what is being undertaken, and there is no reason to anticipate that cooperation could not continue where it was felt to be mutually useful. Equally, the UK could stay out of the CSDP entirely and use other mechanisms.

Denmark proves the point. It is a small country. It is a NATO member. It formed a joint corps with the German army, with English as the working language, to defend Jutland. This corps was later expanded to add Poland and move its area of focus further east. It has been disproportionately involved in joint operations in former Yugoslavia, Iraq and Afghanistan. Its interests include continuing defence commitments in the Arctic, in Greenland. Its outlook is clearly internationalist. However, Copenhagen insisted on opting out of the development of the CSDP. Denmark, despite its opt-out, remains a strategic player in the field, however. Alongside EU flagged vessels, it has deployed warships on counter-piracy work off Somalia.

As of 2008, it had 145 personnel deployed on UN peace-keeping operations, 1,072 deployed in multiple locations under a NATO flag, and 40 deployed as coalition forces. It pulled the plug as the lead nation for the UN spearhead peace-keeping brigade SHIRBRIG, largely because it was doing most of the work.⁸²

EU CSDP structures themselves do not prevent cooperation with third parties, even if a country like Denmark has gone beyond a simple opt-in approach. Switzerland, by noted contrast given its own constitution, has deployed a token presence in EU operations in Kosovo, while its police officers participated in EU work in Macedonia and Bosnia. Norway contributed troops to the 2,500-strong EU Nordic battlegroups that were at readiness in 2009 and 2011. Turkey also contributed troops to an Italian-led EU battlegroup. Both countries contributed voluntarily – they were not required to do so through their EU arrangements.

With greater deployable manpower, the UK would have the advantage of being able to offer formed units already trained together and interoperable, and thus be in a better position to fit into an inevitably cobbled-together crisis force structure with the EU.

Simple bilateral cooperation with EU countries could still happen for a UK outside of the CDSP. The main driving force behind increased cooperation with France in recent years has been money. Both the UK and France have had to cut back on defence budgets owing to severe financial pressures, albeit holding out for longer than most of their European NATO counterparts. The aspiration from the UK ministerial side within the Ministry of Defence, and probably mirrored in Paris, has been to see increased cooperation with France as a stop-gap measure while public finances are put back in order. Both governments realised,

81 Journal of Common Market Studies “Is defence the entry ticket”, N. Salter (1965), accessed 23/05/2015 at: <<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-5965.1965.tb01111.x/abstract>>.

82 The ‘Standby High-Readiness Brigade’ was formed as a response to the Rwandan genocide, headquartered just outside Copenhagen. It ceased operations in summer 2009. See: <www.centerforunreform.org/?q=node/359>.

“The UK must not forget its long-standing strategic interests in Norway and the ‘Northern Flank’.”

however, that either could still need to deploy in an area of interest during this period where capability gaps would emerge. Some planners might also have contingency plans in case something more long term is required, if treasuries prove unwilling to return to previous levels of defence spending.

The Scandinavians have reached a similar conclusion, with greater cooperation over Nordic forces. Other countries, by contrast, have proved more reluctant. Given these contrasting attitudes, it is possible to come up with a list of the EU states most amenable to medium-term partnership. Or to quote former Defence Secretary Liam Fox, reviewing how to decide where to build enhanced bilateral relations:

For this there are two tests, do they invest in defence? And do they fight? Too few European allies pass both these tests.⁸³

Much has emerged from the Cameron-Sarkozy deal of 2010, including planning for a joint expeditionary element, common ventures in aircraft carrier production – and even their possible ‘sharing’ while the Royal Navy lacks its planes – increased cooperation on nuclear deterrent research, and certain other joint technical developments. This follows on from measures addressing other capability gaps, like coordinating rosters for Caribbean guard duty frigates, or deconflicting risks such as over submarine collisions. So cooperation with Paris would not be totally new, and could continue.

This collaboration was strengthened by the Libya crisis, in which only three other EU countries supplied strike missions. The lack of significant input from certain states during the crisis suggested that the EU can provide political cover to French ambitions, but may provide little of the necessary technical assistance. If the UK rejects the CSDP, the reduced appeal to France of further CSDP integration over the medium term suggests that the London-Paris military axis would be maintained, perhaps actually strengthened temporarily, seeing the Ministry of Defence through until the capabilities lost under spending cuts start to be restored. Planners would have to recognise from the outset, though, that the NATO framework for working with the French will have its limits.

The UK must not forget its longstanding strategic interests in Norway and the ‘Northern Flank’. That non-EU state has been a historic defence partner of the UK; and more generally the Scandinavians are most likely to be seen deploying alongside UK forces in international missions. Cooperation with these countries, as well as other internationalists such as the Netherlands, Poland and the Czech Republic, would suggest itself as a natural priority. It is hard to imagine current commitments to the equally outward-looking Baltic States disappearing either.

Overall, we might expect that UK attention will be drawn towards the five ‘N’s: NATO collectively; and then bilaterally – the North Atlantic states, its near neighbour France, Northern Europe, and ‘New Europe’.

Of course, this sets to one side those countries beyond Europe with which the UK enjoys particularly strong relations, such as Australia, Oman, or Jordan. These bilaterals would not be affected by CSDP departure and may benefit from greater clarity in UK long-term intent.

83 Politeia “The Armed Forces, NATO and the EU: What should the UK’s role be?”, L. Fox (2010), page 5, accessed 23/05/2015 at: <<http://politeia.co.uk/sites/default/files/files/P115.pdf>>.

“France’s interests in integration are different from our own.”

9.2.2 Joint engagement with the EU’s defence institutions could continue

Over the last few years, a number of factors have increasingly come into play that encourage European states to accept a strategy of action through alliances. These have largely been due to:

- Capability escalation, as new and expensive generations of equipment come online or need development;
- Asset escalation, as first world materiel is sold on the black market or stolen from failing state stocks;
- Decline in budgets accompanying drawdown in overseas territorial commitments;
- Overall cuts in defence expenditure as a result of addressing budget deficits;
- Ring-fencing or prioritising of social and health expenditure exacerbating defence cuts;
- Increasing welfare and employment costs of the Western military compared with other states;⁸⁴
- Long-term mismanagement of large-scale military procurement further straining finite resources.

The result is that the leading Western military states need to spend significant amounts of money if they are to maintain parity with emerging regional powers, logistically and psychologically capable of deploying mass units and low tech equipment asymmetrically or in bulk. Only the United States is prepared to spend these sums of money, and is more readily capable of doing so on the basis of its considerably larger GDP and population. For their part, collectively European defence budgets have fallen from €200bn to €170bn since 2008. Where does this leave the UK?

Some argue that this shows more EU defence integration is needed. They point to duplication, a Cold War orientation in procurement, multiplicity of command structures, and a limited number of individual states large enough to singly develop the scale of forces capable of expeditions. The first objection to this argument is that it is self-fulfilling, since NATO is already used as an excuse by many states to cut military expenditure below the two per cent of GDP recommended minimum threshold on the grounds that someone else can shoulder the burden: this phenomenon will only get worse with increased EU integration. But in any event, while these critiques may hold true of smaller EU states and for current pooled CSDP capability taken collectively, they are less of a concern to the two states that do currently enjoy expeditionary capability and options.

Crucially, as the other nation with significant deployment capability and intent, France’s interests in integration are different from our own. In the immediate aftermath of the collapse of the Soviet bloc and the re-emergence of a united and less constrained Germany, the priority for Paris was to anchor the German military into a joint structure, which developed into the Eurocorps. This was a logical approach given the basic Franco-German political motivation underpinning the EEC from its onset: constraining German militarism while reinforcing French capability. The ambition in the 1990s was already that this would form the basis of the EU’s joint military capability over time, by adding other parallel agreements with other willing states.

In tandem and separately, a number of European nations were also developing their own bilateral and multilateral agreements. Many, in fact, were based

84 Exemplified in the UK ironically by the debate over the Gurkhas, with increased financial provision undermining the cost-efficiency rationale for brigade retention.

less on long-term ambitions for European integration and more on the narrow logic of national interests, organising around micro-alliances where there was a commonality of economic or geographic interests and, significantly, a shared sense of military identity and compatibility.

As Tables 9.ii and 9.iii demonstrate, the result has been a kaleidoscope of military deals.

Table 9.ii: Some recent examples of development of bilateral and multilateral units

Country	Involved in	Main motivation
The sharers		
The Netherlands	Amphibious force with the UK; rapid deployable land headquarters with Germany; integrated naval command with Belgium; shared naval training and logistics with Belgium; member of European air transport command; non-permanent F-16 expeditionary wing with Denmark, Norway and Belgium	Reduce costs, encourage European integration
Belgium	Shared naval training and maintenance with the Netherlands; pooled naval command with the Netherlands; member of the Eurocorps land army corps headquarters; contributes battalion to Franco-German brigade; pooled fighter, transport, helicopter pilot education with France; member of European air transport command; non-permanent F-16 expeditionary wing with Denmark, Norway and the Netherlands	Encourage European integration, reduce costs
Sweden	Nordic defence cooperation (with Denmark, Finland, and Iceland) which includes joint centre on exchange of data on air traffic and specialisation in military education and more than 40 common procurement programs	Reduce costs, build common Nordic identity
Lithuania	Joint defence college with Latvia and Estonia; naval co-operation with the same countries, as well as a joint radar surveillance centre and specialised naval education	Reduce costs, integration in the EU and NATO
Germany	Land rapid deployable corps headquarters with the Netherlands; member of the Eurocorps land army corps headquarters, which also serves as command of the non-permanent brigade with France; member of the European air transport command	European integration
Newcomers and potentials		
UK	Amphibious force with the Netherlands; recently agreed wide-ranging co-operation with France including shared use of aircraft carriers and a jointly deployable force	Reduce costs
Czech Republic	Talks with Slovakia on sharing air force training and maintenance, logistics and education	Reduce costs
Slovenia	Talks with Croatia on building integrated air force	Reduce costs
The loners		
Romania	Non-permanent brigade with Albania, Bulgaria, Italy, Greece, Macedonia and Turkey	Reduce regional tensions
Spain	Non-permanent amphibious force with Italy (with integrated command); land component command headquarters with France, Italy and Portugal	European integration

Source: Centre for European Reform⁸⁵

Table 9.iii: Sub-EU military cooperation

Entity	Forces	Countries
Eurofor	Land	Spain, France, Italy and Portugal
Eurocorps	Land	Germany, Belgium, Spain, France and Luxembourg
Euromarfor	Maritime	Spain, France, Italy and Portugal
European Air Group	Air	Germany, Belgium, Spain, France, Italy, the Netherlands and the United Kingdom; plus Sweden, Hungary and Poland with lesser status

85 Original table located at: <www.cer.org.uk/sites/default/files/publications/attachments/pdf/2011/rp_981-141.pdf>. Note the presence of non-EU states in several of these operationally practical units – Norway, Iceland, Albania and Turkey.

“EU defence integration remains firmly on the table, and locked into the Treaties as an enduring ambition.”

So cooperation with other European states would continue one way or another outside of the CSDP.

EU defence integration remains firmly on the table, and locked into the Treaties as an enduring ambition. Withdrawal from this element of the Treaties would end the threat of the UK losing its defence identity, but crucially without impacting on its ability to develop multilateral and variable working arrangements that do potentially plug gaps.

In the UK’s case, these are likely to involve battalion-level interoperability with the Baltic and Nordic states; Dutch littoral expeditionary activity; and tri-service interventions with the French in Africa. Further cooperation might take place with Italian brigades, and Czech and Polish forces. None of this requires EU membership, and all run the risk of being undermined by it over the long term. UK bilateral engagement, in particular with Australian and Canadian forces, is also a product of factors beyond EU interests and history.

9.3 New defence policy opportunities would become available

The UK remains an important military power, regardless of European association. Limited budgets and an uncertain geopolitical future do, however, pose challenges. Tacticians should consider what benefits might be reaped from the expanded policy options of leaving an unreformed EU. These include the avoidance of EU ‘mission creep’, freeing British arms firms and defence contractors from EU rules, and closer association with the USA.

The UK is a strategically significant defence partner, with wide-ranging global interests, unique historical ties, unusual connections arising from its status as a monarchy, and a willingness to act as a Community Support Officer, even if no longer as a world policeman. Locking itself into a common European defence structure risks jeopardising this. But remaining outside the CSDP allows the UK considerable flexibility in how it arranges itself internationally.

9.3.1 EU ‘mission creep’ in defence could be stopped at a stroke

In Section 8, we reviewed the development of the EU’s diplomatic capabilities, and demonstrated that the FCO was quite capable of doing its job in international circuits. Much the same applies to the strong arm of diplomacy, the military.

The long-term threat posed by EU ‘mission creep’ in defence becomes clear when reviewing the historical context, as seen in this CSDP timeline:⁸⁶

86 See: TaxPayers’ Alliance “Engaging with the Enemy?”, L. Rotherham, pages 8–12, accessed 23/05/2015 at: <<https://d3n8a8pro7vhmx.cloudfront.net/taxpayersalliance/pages/3646/attachments/original/1422261075/eudefence.pdf?1422261075>>; augmented by The European Journal (October 2006), accessed 23/05/2015 at: <www.europeanfoundation.org/wp-content/uploads/2014/05/The-European-Journal-October-2006.pdf>; The European Journal (March 2009), accessed 23/05/2015 at: <www.europeanfoundation.org/wp-content/uploads/2014/05/The-European-Journal-March-2009.pdf>; “Time to Jump”, D. Campbell-Bannerman (Bretwalda, 2013).

Timeline of EU military integration to 2013

- **1945** De Gaulle nurses an enduring grudge over UK support for Syrian independence, though Britain does facilitate the French return to Indo-China.
- **1947** Anglo-French Treaty signed at Dunkirk, targeted at future German aggression.
- **1948** Treaty of Brussels expands membership of the Anglo-French Treaty, leading to the Western Union Defence Organisation (WEDO).
- **1949** NATO formed.
- **1950** Pleven Plan mooted for a supranational European defence system (common forces, defence budget and armaments industry) incorporating West Germany.
- **1954** Proposal for a European Defence Community rejected by French National Assembly. Germany allowed to enter the WEDO (becoming the WEU), and focus in European integration shifts to economic issues.
- **1956** Suez Crisis. Anglo-French military cooperation ends in fiasco, different strategic appreciations of the American military alliance, and divergence.
- **1960-1** Fouchet Plan proposes wider cooperation on issues including defence and foreign policy, a more intergovernmental approach and outside of the EEC. Rejected. Major pause in European defence integration, to last three decades.
- **1966** France withdraws from NATO's integrated command.
- **1967** Following a British proposal, NATO forms the Eurogroup committee to improve coordination of the continent's members.
- **1984** WEU relaunched in order to improve NATO cooperation with neutral states.
- **1985-6** Westland Affair, essentially over forming a European trade barrier for military helicopters.
- **1988** Kohl and Mitterrand agree in principle to closer defence structural cooperation.
- **1990** Reunification of Germany as Soviet threat recedes. European defence budgets cut in the context of a world recession.
- **1991** Franco-German Security and Defence Council becomes operational.
- **1992** La Rochelle summit. French and Germans set up Eurocorps. Maastricht Treaty clauses on Common Foreign and Security Policy: a common defence policy which might in time lead to a common defence. Includes provisions for enhanced cooperation in the field of armaments, with a European armaments agency as a proposal to be examined further. EMU criteria place further demands on defence budgets. War in Bosnia. Alternating WEU/NATO-flagged Adriatic blockade begins. Council of the WEU sets out Petersburg tasks, effectively putting the WEU at the service of EC policy decisions.
- **1993** British and French airborne and marine elements 'twinned'. WEU sets up Western European Armaments Group.
- **1994** Franco-British Air Group formed. Eurocorps parades in Paris.
- **1996** The Organisation for Joint Armament Cooperation (French: Organisation conjointe de coopération en matière d'armement, OCCAR) formed. Achieved legal status 2001. Franco-German summit at Nuremberg declares, "In the European Union our two countries will work together with a view to giving concrete form to a common European defence policy and to WEU's eventual integration into the EU." It also pledges that Germany would be consulted before French nuclear weapons were used. Very badly received by the President of the Assemblée Nationale.
- **1997** France's Europe Minister calls for the extension of the Franco-German "common concept" on security and defence to the whole of the EU. Amsterdam Treaty formalises the role of the WEU previously agreed, and adds "peace-making" to the treaties. Principle of QMV attached. Royal Ordnance closure at Bridgwater after a takeover by a French company removes the last British manufacturer of high explosives. An attempt by GEC to take over Thomson-CSF on the other hand is blocked. European Commission highlights aerospace industry (including electronics and missiles) as a target for consolidation and restructuring in the face of US competition.
- **1998** First common Code of Conduct on Arms Exports. Poertschach meeting: UK drops veto over separate European defence activity,

but British policy is uncertain and ambiguous: “Cela reste à décoder.”
St Mâlo summit. Anglo-French bilateralism advanced, but at the cost of lifting the UK veto on EU defence integration. Contemporary reports explain the decision as a deliberate British concession in the context of the retreat from a commitment on joining the euro.

- **1999** Cologne Council reflects on limited capabilities available during Kosovo Crisis: “We [...] are resolved that the European Union shall play its full role on the international stage. To that end, we intend to give the European Union the necessary means and capabilities to assume its responsibilities regarding a common European policy on security and defence.” As part of the “maintenance of a sustained defence effort” forces will adapt – particularly intelligence, strategic transport, and command and control – with more harmonisation of defence planning and procurement as states declare “*We are now determined to launch a new step in the construction of the European Union.*” Standing EU bodies authorised. Countries asked to ‘pre-identify’ deployable assets.
Michael Colvin MP presents his paper to the EDG/CDU backbench working group on WEU options. It identifies six possible ways forward. The least-favoured one is ultimately chosen.
Helsinki Council establishes the target of a combined ‘hatted’ (but not standing) resource of 60,000 men to achieve EU military policy. A Political and Security Committee, Military Committee, and Military Staff are also formed.
- **2000** WEU formally incorporated into EU structures, including its satellite centre.
Military Committee established, along with the Military Staff.
Feira Council: 5,000 deployable Gendarmes added to the asset list.
MEPs call for (Airborne Warning and Control Systems) AWACS and carrier groups to be added, and a European Security College to be founded to “foster a common culture”, coupled with a specific information policy to sell this to the public in the EU and neighbouring states.
Prodi gaffe: “If you don’t want to call it a European Army, don’t call it a European Army. You can call it ‘Margaret’, you can call it ‘Mary-Anne’, you can find any name, but it is a joint effort for peace-keeping missions”.
- **2002** EU Institute for Security Studies established
European Convention first inserts space into draft Community competences.
Berlin Plus agreement creates mechanisms for EU to access some NATO assets.
- **2004** European Defence Agency founded.
A European Union Force (EUFOR Althea) takes over from NATO in Bosnia.
Anglo-French agreement on sharing Caribbean naval patrolling duties.
- **2006** Javier Solana claims the EU is at the ‘threshold of irreversibility’ for a European defence policy.
French and Italian dispute over command of peacekeepers in Lebanon.
- **2007** Treaty of Velsen sets up a European Gendarmerie.
- **2009** Wogau Report (despite lack of legal competence) calls for more defence integration, the establishment of a European Civil Peace Corps, and the development of shared capabilities: “A common defence policy in Europe requires an integrated European Armed Force which consequently needs to be equipped with common weapon systems so as to guarantee commonality and interoperability.” SAFE programme proposed to “synchronise” militaries through opt-ins and nationally-focused specialisation under common command, and a European Statute for Soldiers. Council of Defence Ministers also proposed, along with development of the EU Defence College.
Lisbon Treaty expands on EU defence institutions, especially in procurement, introduces what amounts to a mutual defence clause, and greatly boosts the post and profile of the CFSP. UK veto lifted on developing a military crisis cell.
- **2010** UK-French military agreement, including sharing of in-flight refuelling capabilities.
- **2011** Libya Crisis.
- **2013** Mali: discordant EU to provide second order support.
EEAS announces intent to post defence attachés in EU embassies.
Gahler Report calls for defence industry integration on ECSC model.
Koppa Report calls for permanent structured cooperation (PESCO).
Defence now an agenda item at EU Council.
- **2014** Ukraine crisis.

The long-term consequences of this are:

- A number of UK military capabilities risk being pooled at EU level. This means a reduction in the ability of the UK to operate independently in military defence of its national interests, let alone effectively;
- UK forces could end up deployed on EU operations despite participation enjoying limited domestic support;
- The UK military is increasingly subject to human rights simplifications and limitations, reducing effectiveness for the sake of legal precision;
- The UK defence industry is under threat from rationalisation, both costing jobs and increasing national dependence on foreign suppliers;
- Increased willingness to cooperate with EU counterparts has generated cost overruns which exacerbate defence budget gaps;
- The UK has become party to the Galileo satellite project – seen as a white elephant (below);
- The EU has generated its own mutual defence clause, Article 42(7), which remains ambiguous;
- The EU risks overestimating its capability and engaging in a PR-driven intervention without the practical US support essential for speedy deployment and success;
- EU states risk decoupling from, and therefore undermining, NATO;
- The UK risks individually losing the advantages it gains from bilateral arrangements with the United States, in a swap for less effective EU programmes;
- EU engagement within a member state is constitutionally ambiguous owing to the possible exploitation of the Treaty’s disaster clause to intervene with force;
- Cypriot accession has added an additional complicating political dynamic when NATO cooperation is needed.

Operationally, EU aspirations are beginning to outmatch EU capabilities and the bigger states will have to pick up the pieces. The EU is currently engaged in a number of small scale operations. UK support is limited and often token.

Table 9.iii: CSDP military and civilian missions, 2012–2013 figures

Operation	Common costs (€m)	UK share (€m)	Total personnel	UK personnel contribution
Althea (Bosnia and Herzegovina Peace-keeping)	15.3	2.3	1,081	Four military personnel in theatre. Until December 2013, an 'over the horizon' reserve force of up to 120 troops.
Atalanta (counter-piracy off the coast of Somalia)	7.5	1.2	1,424	The operation commander and some 60 HQ staff. The UK has also contributed one frigate for three months every two years.
EU Training Mission Somalia	7.8	1.2	91	Three military and two civilians.
EU Training Mission Mali	21.6	3.3	524	37 military.
EUBAM Libya (border management assistance)	30.3	4.6	Up to 165: deployment underway.	Four civilians, including Deputy Head of Mission.
EUCAP Sahel (capacity building for security forces)	8.7	1.3	32	One civilian.
EUAVSEC South Sudan (capacity building for aviation security)	12.5	1.9	8	One civilian.
EUCAP Nestor (capacity building for maritime security forces in the Horn of Africa)	22.9	3.5	29	Four civilians.
EUJUST LEX (capacity building for Iraqi judicial sector)	27.2	4.2	26	Five civilians.
EUSEC Democratic Republic of Congo (security sector reform)	11	1.7	46	None.
EUBAM Rafah (border management assistance in the occupied Palestinian territories)	1	0.2	3	None.
EUPOL COPPS (police capacity building in the occupied Palestinian territories)	9.3	1.4	49	Four civilians.
EUPOL Afghanistan (police capacity building)	57	8.7	258	18 civilians.
EUPOL Democratic Republic of Congo (police capacity building)	6.8	1	28	None.
EULEX Kosovo (executive and capacity building mission in rule of law)	111	17	819	37 civilians.
EUMM Georgia (ceasefire monitoring)	20.9	3.2	238	12 civilians.
Total	318.4	48.8	4,821	193

Source: HM Government⁸⁷

What is remarkable about this list is not the commitment to a particular theatre, which could be matched by any individual EU member state, but rather the sum range of deployments (and thus the level of engagement undertaken by flagged EU personnel), and the collective number of personnel. At nearly 5,000 soldiers deployed under an EU banner, this is approaching the size of a British brigade. This figure further ignores staff committed to the Crisis Management and Planning Directorate (60), Civilian Planning and Conduct Capability (75),

87 HM Government "Review of the Balance of Competences: Foreign Policy" (2013), pages 59–61.

“EU defence decision-making has the added danger of capability issues.”

plus two battlegroups on standby to deploy as required (around 3,000 in total). The size of the HQ unit known as the EU Military Staff – 260 personnel – demonstrates the potential for military deployments. As a comparison, the HQ of the Allied Rapid Reaction Corps (ARRC) which is a NATO operational headquarters, operates with around 440 personnel and is designed to step up to manage five divisions and six brigades, working out in practice at around 35,000 troops. This suggests that the EU sees defence deployment as a growth area. As one of only two large-scale deploying member states, significant commitments will see the UK take the strain.

Even if the UK is no longer a part of the CFSP, however, this does not preclude the UK choosing to continue to cooperate on such operations.

The EU format generates its own inherent dangers and weaknesses. A study of deployments undertaken by 2013, and indeed those discussed and dropped, points to decisions being subject to risk-aversion, election cycles, recognition of local bias risk against certain deploying countries, and national interests.⁸⁸ Many of these problems exist in reaching NATO political agreements. However, if this is an argument against NATO, then the countervailing one is that the UK should operate on an ad hoc basis with allies that do want to deploy, as occurred over Libya; and NATO provides a more credible framework to accommodate that.

EU defence decision-making has the added danger of capability issues. This applies as much to limited European assets in a US void, as it does to restrictions on European troops when they do arrive. Restrictions on EU trainers have limited their practical assistance to Afghan police students, while finite airlift capacity simply delayed the Chad deployment by six months.⁸⁹ Assets that are held tend to be duplicated, delayed by EU bureaucracy, and hindered by the need for formal consensus (NATO's is slightly more elastic).⁹⁰

Pledged troops are only available at the EU level when made so by individual member states, and once deployed may have extremely limited mandates that leave considerable security vacuums. Then there is the issue of the quality of the personnel employed. Examples on EU deployments include cases in Macedonia where:

A senior diplomat based in Skopje at the time confirmed that some EU officers engaged in criminal activity in Macedonia. On at least one occasion, EU officers deliberately misinformed the EUFOR command. This caused COMEUFOR to make an unsubstantiated public accusation of excessive use of government force in confrontation with a criminal group.⁹¹

Despite claims of torture by EU-flagged soldiers in the Congo (which triggered an official investigation by another participating state), we can take these as rare exceptions and certainly not unique in very testing peace-keeping environments. But it is fair to observe that the military capability on offer varies from nation to nation, including the quality of trained personnel; in NATO – given expectations, increased interoperability and recognised standards – it is perhaps marginally easier to bypass such staff, at least in an HQ environment.

The greatest risk, however, comes with the mandated mission. Operation Artemis in the Democratic Republic of the Congo managed to suppress a crisis

88 “The EU and Military Operations: A comparative analysis”, K. Engberg (Ghent University, 2013).

89 HM Government “Review of the Balance of Competences, Foreign Policy” (2013), page 64.

90 HM Government “Review of the Balance of Competences, Foreign Policy” (2013), pages 67–68.

91 Journal of Contemporary European Research “Taking stock of EU Military Conflict Management”, A. Peen Rodt (2011).

“The UK has the fourth largest military budget in the world. It is a key NATO member. Its military reputation augments its diplomatic influence.”

for as long as the forces remained deployed. Other African operations only succeeded because of the resolve of the French in taking them on and wrapping an EU flag around their own interests. At some point, though, a humanitarian crisis will hit European television screens and politicians will be urged to intervene, in larger numbers, with greater haste and into a less benign environment than most of them are used to. It is on such a deployment that the risks will become evident, and the EU disconnect with US power painfully felt.

Therefore, leaving the EU allows Britain’s armed forces the flexibility to escape the stultifying impact of EU military consolidation.

9.3.2 The UK would gain more flexibility in defensive spending, planning and capability

The Ministry of Defence conducted an audit during the Scottish independence debate of what added benefit it brought as a corporate player. Its review reminds us of what the UK, even in the twenty-first century, can bring to the world as a distinct but engaged force.⁹² It has the fourth largest military budget in the world. It is a key NATO member. Its military reputation augments its diplomatic influence. It protects 300 offshore energy platforms. It has a significant number of rapidly-deployable units and assets. In summary, *“the UK has defence capabilities of a scale and sophistication enjoyed by few other countries.”*⁹³

This comes with a significant caveat:

*The UK’s presence at the top table of international affairs can be attributed to a number of factors: its permanent membership of the UN Security Council; its position as one of the largest global economies; its leading membership of NATO and the EU; the scale of its investment in defence and security; and its political willingness to engage internationally. The outstanding, world-wide reputation of the UK Armed Forces is also an important factor underpinning relationships with a wide range of allies and partners who are keen to be associated with them. This reputation has been forged over centuries, but in today’s fast-moving and competitive world, its maintenance requires constant attention and investment.*⁹⁴

Ultimately, achieving this would boil down to whether the UK Government has an interest over the long term in financing the UK armed forces. It already faces a choice. It might cut spending and cut commitments, perhaps even masking a drop below the two per cent of GDP defence spending pledge by starting to include other expenditure in that bracket. It could accept a reduced role in the world, acknowledging it is incapable of protecting its interests, dampening public and media expectations in the future, and accepting a downward spiral in influence that could weaken its attractiveness as a trade partner.

Or it could choose an alternative route. It might accept that there is a financial price to pay, but interpret it as an investment, and as a means of saving much more money if deterrence in a vital area like the Persian Gulf fails and fuller rearmament is needed in the future. It could identify what capabilities its armed forces require to do the tasks expected of them, target those capability gaps, and find the money to do so. This would necessarily be accompanied by a far more stringent approach to procurement planning, and an even greater injection of professionalism, competition, and coherence would be needed than has commendably been added over the last few years.

92 HM Government “Scotland analysis: Defence” (2013).

93 HM Government “Scotland analysis: Defence” (2013).

94 HM Government “Scotland analysis: Defence” (2013), page 54.

“Over 200 military students are enrolled in British military colleges each year, from most countries around the world.”

Defence must also feature as an arm of the diplomatic rebooting that Britain would need after leaving an unreformed EU. There are clear instances where defence can indeed act as a welcome spur. As the Scotland analysis also noted:

The UK’s longstanding relationships with many nations and the reputation of the UK Armed Forces are areas of comparative national advantage in a competitive modern world. The UK’s mutually beneficial relationships with countries with common security concerns and strategic interests are often facilitated by shared history, language, and culture. Defence ties are an important component of more broadly-based international relationships which offer advantages to the UK’s security and prosperity. This includes, for example, well established relationships with the other countries in the Five Eyes intelligence sharing community (US, Canada, Australia and New Zealand) as well as the contributions of Commonwealth personnel who continue to serve in and enhance the UK Armed Forces. These links continue to provide real benefits, such as access to overseas training sites to prepare UK troops for overseas operational deployments. The UK’s relationships with countries around the globe also have great significance in today’s world and are often underpinned by the historic ties of their armed forces.

The historical development of the UK Armed Forces alongside those of the Commonwealth means that many countries have modelled their armies and navies on the UK’s, and look to replicate its standards, doctrine and training methods. This shared history, and the common understanding and culture that derive from it, underpin strong and enduring defence ties in peacetime, while also providing a sound basis for working together effectively in times of crisis.

While historical ties can facilitate access and underpin relationships, this is not sufficient in today’s world. The success of the UK Armed Forces in widespread defence engagement rests upon their reputation as experienced, professional and sophisticated fighting forces. This credibility cannot be taken for granted, and requires continual investment.⁹⁵

Defence diplomacy here plays a part. Over 200 military students are enrolled in British military colleges each year, from most countries around the world. In 2014, 13 serving Chiefs of Defence around the world had done so. As the report observes, “*these activities are not merely altruistic.*” They provide a crucial entrée for defence diplomacy.

9.3.3 UK participation in procurement integration would end, safeguarding UK businesses and jobs plus defence capability

Cutting edge defence technology requires bigger and wealthier companies to develop it. This encourages either mergers or joint ventures. The key problem with both is the strategic consequences of such partnerships, and the Westland crisis was in 1986 a key indicator of the choices this involves.

The EU is engaged in a process of rationalising defence industries. The Commission recognises that this is likely to lead to specialisation, extending further the type of niche supply cooperations that Airbus provides, where one country might supply the engines and wings and another the main fuselage.

The problem with this approach is that a country that supplies a vital item may decide to withhold it, as Belgium did over 155mm ammunition during the Falklands War. By that stage, the alternative of producing domestically had gone. Such concerns were raised with the closure of the Royal Ordnance Factory in Bridgwater in 2006, which removed the ability of the UK to manu-

95 HM Government “Scotland analysis: Defence” (2013), page 54.

“Increased cooperation with EU competitors has already significantly reduced the chance of US-UK cooperation through fear of technology loss.”

facture military explosives. The last time this had happened, in 1938, it took two years to fully reverse.

Bridgwater was unfortunately not operating on a level playing field. As the union submission to the Parliamentary review noted:

BAE Systems operates in an unfair arena for weapons production in that European arms manufacturers are subsidised. US explosive production is run on a Government Owned Contractor Operated systems. UK production operates at a high level of safety and environmental issues.⁹⁶

Applying the strict logic of competitiveness to an industry whose competitors were subsidised has, in this instance, damaged the national interest. This model is set to continue, given trends in European defence aggregation.

The Quadrilateral Defence Agency (OCCAR) was set up in 1996 to coordinate procurement planning surrounding the defence industries of the four largest European economies. Its growth led to the creation of a European Defence Agency (EDA) within the EU Treaties, and headed by the CFSP representative. The EDA has been slowly edging out OCCAR as the central player in European defence coordination. A key difference is that the EDA operates as a facilitator of broader EU defence policy focused on formal integration rather than cooperation.

It makes eminent sense for the UK Government to cooperate with others in planning for bulk orders in procurement. This is, however, dependent on all sides honouring their contracts, otherwise the unit price is driven up (as happened over Eurofighter). It is also dependent upon contractors being able to deliver goods at the promised price. European procurement cooperation has been hugely hampered by repeated failures of the cooperating parties to deliver, forcing duplication of effort as parallel research is commissioned, or major cost expansion as participants drop out.⁹⁷ Cooperation through the EDA is therefore not a panacea, and relying on it after merging UK defence industries with their EU competitors will remove the alternative option. But the UK could, outside of the CFSP, still work on multilateral projects which it deems would represent value for money, on a project by project arrangement and via an OCCAR that remains outside of the EU. It could also work with the EDA on a purely case-by-case basis, as Norway chooses to.

Relying on EU cooperation also overlooks that the UK has privileged technological access to US exports. In other words, when a US exporter sends over a plane, it still has ‘most of its best microchips in it’. While this can never be guaranteed with an individual product, and negotiations in Washington to achieve this can take time, the result is a generational gain in capability and the potential for significantly reduced end costs. Increased cooperation with EU competitors has already significantly reduced the chance of US consent through fear of technology loss, particularly to their French competitors but also due to re-export.⁹⁸ UK and US defence companies, by contrast, are much more commercially intertwined, with greater confidence and business trust in each other as well as a stronger financial interrelationship.

96 Defence Select Committee “Memorandum from Prospect”, accessed 23/05/2015 at: <www.publications.parliament.uk/pa/cm200506/cmselect/cmdfence/824/824we17.htm>.

97 The problems associated by picking the European route have sadly become normative – see in particular multiple postings on EUreferendum.com, and associated publications commencing with Centre for Policy Studies “The Wrong Side of the Hill”, R. North (2005).

98 Understandably so: US-UK fighter cooperation for example is based on fifth generation technology.

“The UK has a thriving security contractor industry.”

EU defence integration will have serious repercussions for jobs in Britain’s defence industry if it is forced along the merger route. This is a sector worth £35bn a year to the UK economy, comprising 10 per cent of national manufacturing, and employing 300,000 people – the UK has more jobs in defence manufacturing SMEs than France, Germany, Italy and Spain combined.⁹⁹ Leaving the EU, if it stays unreformed, could safeguard this element of the UK economy and, in doing so, bolster Britain’s future military capacity.

9.3.4 The UK’s successful security industry would be protected from harmful overregulation outside the CSDP

The UK has a thriving security contractor industry. It is regulated by the Private Security Industry Act 2001, and monitored by the Security Industry Authority which maintains a register.

On top of this, there are Private Military Security Contractors. These are companies that supply training, risk analysis, close protection and extraction, often in situations where national governments have neither the resources nor the inclination to become involved – such as supplying bodyguards for contractors or even Whitehall staff in warzones.

Noting the success of US counterparts, as well as the scale of the industry across Europe (100,000 jobs in 2011, and a market value between €26bn and €36.5bn), the Commission is intent on legislating in this field. Ostensibly, this is to increase competitive access but this is mitigated by an increased attempt to apply the Charter of Fundamental Rights. Therefore, any market access gains to be made by the UK’s highly-skilled security sector are extremely likely to be counterbalanced by increased ‘red tape’.

The British Government assesses the global value of this market to be £384bn, a figure that is of value both as an indication of the risks associated with red tape and (since it is four times higher than the Commission’s own estimate) a warning sign of Commission lack of expertise in this field.¹⁰⁰

UK security businesses would be protected if they were removed from the reach of the Commission. Equipment interoperability does not need regulation to be encouraged, but professional management when making the purchase. Good business practice itself should commend it, given lives may be at stake.

9.3.5 The UK would be better able to respond to future challenges

When giving his annual lecture, the last Chief of the Defence Staff General David Richards remarked on the shifting sands of crises, and the increasingly complicated range of partnerships and alliances that were becoming available to cope with them. When reviewing them, however, he said it was central to get a greater understanding of where British interests lay and where the UK could make a major upstream difference:

The UK will require other carefully chosen alliances over the coming decade through which to influence the strategic landscape and help determine the outcome of fast moving crises. Already our collaboration with countries in the Gulf and Africa has delivered results in the region, for surprisingly little cost. Perhaps we should be focusing our defence relationships on these regions

99 CBI website “Defence”, accessed at: <www.cbi.org.uk/business-issues/public-services/in-focus/defence/>.

100 European Scrutiny Committee “EU Action Plan for the Security Industry, accessed 23/05/2015, at: <www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86-xiii/8631.htm>.

“The Ministry of Defence needs to act in tandem with a self-confident Foreign Office.”

rather than competing for influence, with many others, in for example, China or India? The Foreign Office and MOD are working on a new Defence Engagement methodology to help us answer some of these questions.

This strategic evaluation of our alliances will have to include a proper review of not just the Arab world and Africa but also of Russia and other countries. Where do they sit among our interests? Indeed are we really certain what those interests are? To help us I have argued that we need a strategic handrail to guide our interactions and focus our efforts.

Without such a handrail we risk spreading the jam too thinly, annoying our natural allies for failing to support them properly while wasting our efforts investing in others when they are already well supported by others, often our close partners.¹⁰¹

A well-designed “handrail” will prove essential to securing the UK’s place in the world. It also requires domestic policies to be considered in partnership, whether the ‘PREVENT’ strategy and stopping home-grown extremism, combatting the demand side aspects of narcotics, or undermining insurgents by interrupting their financial support. To achieve this, the Ministry of Defence needs to act in tandem with a self-confident Foreign Office. As a Centre for Policy Studies pamphlet warned back in 1998:

Lord Curzon was being overly pessimistic when he said 90 years ago without the Empire, ‘England from having been the arbiter will sink at best into the inglorious playground of the world. Our antiquities, our natural beauties, our relics of once-mighty sovereignty, our castles and cathedrals, our mansion houses and parks will attract a crowd of wandering pilgrims. People will come to see us just as they climbed the Acropolis at Athens or ascend the waters of the Nile. England will become a sort of glorified Belgium.’

It need not, but it could.¹⁰²

Even if the UK militarily and economically slips down the ranks of the top ten powers, “in a world of 180 countries, this is not an unenviable status and it is certainly an adequate platform from which to consider more than one alternative course for Britain’s future.”¹⁰³ The author was from Canada, a nation that has persistently rejected union with the superpower neighbour upon which it is so economically dependent and culturally linked.

9.3.6 The UK could maintain its strategic nuclear deterrent outside of the CSDP, if it wanted to

The UK is a nuclear power. There is an understandable national debate over the morality of this, its cost, and its practicality. The political conclusion may well be, however, that nuclear deterrence is a strategic imperative given the development of long range capability by Iran and North Korea, plus an increasingly belligerent Russia that has asserted the validity of first strike nuclear use. This then becomes an issue in the context of deepened CSDP cooperation.

101 Twelfth Annual Chief of Defence Staff Lecture (14 December 2011), accessed 23/05/2015 at: <www.gov.uk/government/publications/12th-annual-chief-of-defence-staff-lecture/12th-annual-chief-of-defence-staff-lecture>.

102 Centre for Policy Studies “Britain’s Final Choice: Europe or America” C. Black (1988), page 10, accessed 23/05/2015 at: <www.cps.org.uk/files/reports/original/111027150000-BritainsFinalChoice1998.pdf>.

103 Centre for Policy Studies “Britain’s Final Choice: Europe or America” C. Black (1988), page 10, accessed 23/05/2015 at: <www.cps.org.uk/files/reports/original/111027150000-BritainsFinalChoice1998.pdf>.

“The British public can decide to keep on electing politicians who endorse a British deterrent or not.”

Missiles have already been identified as an EU asset when Greece listed its Patriot systems as on offer to any EU Peacekeeping Corps. Understandably, the two European nuclear powers have been far more reticent in offering their strategic systems, which remain firmly under national command.¹⁰⁴ Even so, France has been politically exploring joint German and Italian cooperation in developing its nuclear strike capability since 1956. Though blocked by de Gaulle on his return to power, even he considered the prospect of a nuclear Germany as inevitable over the long term, and believed that some mechanism could be useful to bind Germany here too.¹⁰⁵ The idea re-emerged in the 1990s in the wake of deeper Rhenish military union, as the response to Germany growing by a third after reunification. The 1997 Franco-German Joint Security Concept included a clause setting up a “*dialogue on the role of nuclear deterrence in the context of a European defence policy.*” In 2007, during the Meseberg summit, the French made a formal offer of increased joint control. Merkel’s Government declined.

This means the UK is facing two long-term threats simultaneously, which happen to be entirely contradictory and depend upon whether the French or German approach ultimately wins. The first prospect is that, with increased integration, France’s Force de Frappe ultimately becomes the Force der Atomstreit. Bilateral nuclear engagement then grows and Paris and Berlin offer to supply their joint nuclear umbrella to the EU, raising new questions about the UK’s independent nuclear deterrent. The second risk is that the Germans, pushed on by the Greens and the Left, not only continue to reject such a step, but use their influence in trade terms to hinder the Atlantic cooperation the UK needs to maintain its own systems.

Both are long-term threats, both are plausible, and both can be avoided by maintaining a distinction between the UK’s military and the growing EU one. The British public can then decide to keep on electing politicians who endorse a British deterrent or not. British pacifists or proponents of nuclear disarmament should still appreciate the matter being an important sovereign choice.

9.3.7 The UK could stop subsidising inferior EU military satellites and partner with the United States’ superior capabilities

Despite cutbacks, the USA’s space budget for 2014 ran at \$8bn. Obviously, the nature and capabilities of US spy satellites are highly classified. What is generally understood, however, is that the United Kingdom does have preferential access to whatever intelligence emerges from the wider intelligence gathering system. It also appears that EU space systems add little that is new, and at a cost.

The EU has considerable ambition to develop its own satellite systems, however. Space was specifically added as a new EU competence in the Treaty of Lisbon. This merely regularised what was already happening without any legal base. The EU created its own SatCen, or satellite centre, in 1992, and it became an EU agency in 2002. For the removal of doubt on its intent, it is currently headed by a French air force one star general who is an intelligence specialist in imagery analysis, and this is its declared role. However, it is largely limited to exploiting commercially-available assets, which are themselves limited as intelligence tools. Developing new ones that are better costs money, and means more integration of the technology leaders, which again risks harming any privileged US cooperation without generating anything on a par. Absurdly, any

104 This is setting to one side tactical US stocks additionally reportedly held in four other EU states (and one applicant), since technically these are under joint control and are in any event undergoing a period of withdrawal.

105 “A Constructed Peace: The Making of the European Settlement 1945–1963”, M. Trachtenberg (Princeton, 1999).

“The UK currently risks wider damage to its intelligence relationship with the United States.”

opportunity to spend such sums to actually try to achieve this has so far been wasted due to the EU’s Galileo programme.

The EU has spent billions on Galileo, a GPS programme largely replicating existing US capabilities, justified by entirely spurious cost-benefit analysis and part-funded by a foreign power (China) with an interest in maintaining strike targeting if the Americans switch their programme off. The geodesic politics behind these satellites became evident in 2014 with disputes over the Russian Glonass counterpart, with the US and Russia vetoing ground station placements because of possible military applications. The only gain from developing this system appears to be to allow the French to participate in any nuclear strike to which the United States might object.¹⁰⁶

With 30 satellites in orbit (including spares), the cost to the EU has quintupled and may now end up at £16bn – suggesting an end cost to the UK taxpayer of around £1.5bn. Actual revenue in return is difficult to quantify. Attempts by the UK Government to copyright some of the technology allowing the systems to interlink are already facing legal difficulties. It is also hard to judge to what extent British companies that have gained by winning Galileo contracts are in fact losing out by failing to innovate in areas of genuine long-term private sector value. There is a major risk of opportunity cost from what may turn out to be simply a massive state subsidy of an industry that what would otherwise be a globally competitive technology leader.

Stepping outside the space element of the Lisbon Treaty allows for the UK Government to cooperate in projects that have a quantifiable benefit to the taxpayer and to the national space industry, permits the latter to continue to maintain and develop its global competitiveness, and would end Britain’s subsidy of inferior EU intelligence capabilities where access to superior US ones continues to be available.

If the UK Government, after leaving the EU competence, decided that it did in fact want to be involved in the Galileo project, it could do so. In 2009, Norway’s Economy and Business Minister Sylvia Brustad announced her country would commit to Galileo’s development, with an initial funding commitment of €68.9m. Norway had already been a member of the European Space Agency (ESA) since 1986, as has Switzerland since 1976 – indeed, other non-EU states including Canada are associate members. The ESA is not an EU agency, but works very closely with the EU programme and they share a liaison office in Brussels.

9.3.8 The UK could better secure its privileged intelligence cooperation with the United States by stepping away from EU intelligence cooperation

The UK currently risks wider damage to its intelligence relationship with the United States. Clearly, the value of this is highly classified. An open pointer emerged with the investigation by MEPs into the Echelon system in 2000–2001, which concluded a powerful system was indeed in play involving the Five Eyes Community. Whatever the precise details, the partnership clearly has benefits for the UK denied to other EU states, and these would be at risk from an Atlantic intelligence decoupling.

The EU is already engaged in closer intelligence cooperation through such systems as Schengen II, Europol databases, the development of an Intelligence Division of the EU Military Staff, the Joint Situation Centre (SitCen), the

¹⁰⁶ The justification by HM Government in 2004 was that of marginally increasing post-GPS accuracy to within 1m (still not enough to keep automated lorries from driving into pedestrians or automated tractors from destroying olive trees) and, unconvincingly, to assist unspecified future technology which no one has yet thought of. See European Standing Committee A, (7 June 2004).

“There are better ways of preserving future peace than generating new economic tensions between states under the Eurozone experiment.”

Terrorism Working Group (TWG), and MONEYVAL on money laundering. The range covers the fight against organised crime, terror, and intelligence support for military commanders across the spectrum of intelligence agencies. It covers the supply of raw information, its processing into assessment, and intelligence.

The danger arises because of both the increased threat of leaks and important decisions being based on more limited intelligence while the key material will no longer be shared. Notwithstanding new EU security classifications, some member states are ‘leakier’ than others, and security may further vary depending on the issue – even within the NATO framework, the Yugoslav crisis saw reported leaks to the Serbs and Russians by an anti-American French officer and again by the Greek secret service.¹⁰⁷ In other circuits, the Serious Organised Crime Agency (the UK predecessor to the National Crime Agency) decided not to fully share intelligence on serious crime with Europol as it feared leaks too.

By maintaining separate intelligence systems and refraining from opting into common analytical centres, the UK could preserve not only its own relationship with Five Eyes partners but also the personal data of its citizens. Outside of an integrated system, the UK can still cooperate and share information, bilaterally linking in where needed to whatever IT system is set up to monitor travel bans on suspected terrorists or pass on specific intelligence.

Conclusion

The EU was originally founded as a mechanism for pooling the war resources of France and Germany, coal and steel, in order to make conflict between the two traditional belligerents unthinkable. In reality, the neighbouring presence of the Soviet 3rd Shock Army kept the peace, offset by the very large contingent of American and other armies keeping the USSR at bay. It was very much a case of ‘peace through NATO’.¹⁰⁸

That basic premise remains today. The EU can and does have a potential role as a stabilising force, particularly for those countries with historic border tensions or gaps in their democratic history. But ultimately the three safeguards for European stability have been NATO, the spread of democracy across the continent, and the lack of gain compared with the cost of a country engaging in border recidivism. In a sense, if ‘building Europe’ was always fundamentally about generating peace, the basic motive of its existence is gone. As there are better ways of preserving future peace than generating new economic tensions between states under the Eurozone experiment, ironically the significance of NATO as Europe’s cardinal stabiliser may increase over time – providing it has not been wrecked and abandoned in the interim. The UK, as the alliance’s traditional Atlantic bridge, is strategically and uniquely placed to save it.

Comment, by the late Admiral Sir Sandy Woodward, Commander of the Falklands Task Force¹⁰⁹

It does seem to me that in the welter of argument and counter-argument, there is a danger that we lose sight of what ‘Alliances’ are intended to do for the signatories, together with what those signatories should have in common. It may seem so obvious as not to require re-statement, yet to many laymen, the question of Euro Defence can appear more a matter of politics than plain kindergarten commonsense.

107 Guardian “Nato spy leaked bombing raid plans to the Serbs”, A. Little and R. Norton-Taylor (9 March 2000), accessed 23/05/2015 at: <www.theguardian.com/world/2000/mar/09/balkans2>.

108 Soviet primacy itself also suppressed frictions between its member states over ethnic minorities in Eastern Europe.

109 Bruges Group “Plan B for Europe”, L. Rotherham, pages 24–25.

Somewhere in our statement, I would have thought we ought to have started with a short piece on why a nation embarks on an alliance in the first case.

Some while ago, I wrote myself an essay on the subject. It ran [with a few recent amendments] as follows...

Bearing in mind that '[military] alliance' equates to '[commercial/political] partnership' at the same time, the basic motive for any voluntary alliance must be mutual advantage across the board. They are formed to conduct wars, defensive or offensive, military or economic. Historically, alliances are made by nations of like interests and maintained only as long as those mutual interests continue. Perception of advantage will vary over time and in nature for each member. It follows that no alliance is likely to be for ever, or even necessarily for long. Alliances should be frequently examined to see if they remain relevant and changed or left if they are not. You should not volunteer to enter another unless you perceive clear advantage from doing so. Even more important, you must preserve your right to end it, when inevitably, it no longer remains to your advantage. This last point is fundamental and directly contrary to the present proposals which appear to deny members the right to leave.

Use the rules of the school playground to help you in your first steps to choice, they will not be a bad guide. As you go up the scale towards international relations, the playground rules get a bit less relevant but remain fundamental. With minor modification, let's try them:

- 1 Choose the ally whose broad culture and general behaviour is most nearly in line with your own – you will be more comfortable in the long run: this obviously implies considerable knowledge of his previous behaviour.*
- 2 Choose an ally who is both sufficiently distant to allow you a fair degree of freedom to do as you please internally, but is sufficiently close to help you when you need him.*
- 3 Choose as an ally one that can demonstrably contribute positively and safely to the health, wealth and strength of your particular interest.*
- 4 If the options for choice in your alliance include some who are markedly larger, stronger and all round more powerful than you, choose the one most likely to listen to you when you disagree – the one with whom you have the most political, economic and military attitudes in common.*
- 5 Choose an ally that likes and respects you.*

It will not always be an easy choice. Nor can we necessarily hope to meet all the requirements in making our choice. Sometimes there will be no choice at all. There probably isn't now. Europe presently only partially satisfies the third rule confined to our economy and even that is arguable. By stark contrast, the United States of

America satisfies them all and builds on a long term relationship which remains healthy. So that is probably too long and perhaps too naively simplistic for higher management, yet it is no more and no less than the essential motivations for the likes of any large organisation from the Mafia, via clubs and affiliations, to NATO and the UN.

NATO was clearly enough originally formed to match/meet a perceived threat from the USSR. There is little need for it on that basis today and except as a large international military organisation capable of acting on behalf of the United Nations, I have to doubt the need for its continued existence as a military alliance though economic and political factors may seem sufficient reason to keep it going, for lack of anything better.

We are probably therefore witnessing the first moves towards the dissolution of NATO - unsurprisingly led by France, backed by a united-Germany and Russia. This move is likely to produce a fair degree of chaos in its early days, as we are already seeing over Iraq. From my personal kindergarten, I see my interests lying more with the USA than with some loose alliance of central European nations formed for little other reason than to mount some long term challenge to the USA. But maybe I am being short-sighted.

10 Financial Services

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EU regulation has had a substantial impact on the UK financial sector, dictating the way that financial firms conduct themselves, the products they can sell, and the standards they are expected to meet. The EU's role in setting such rules has grown exponentially over the last few years and is set to increase even further. While the EU has provided some benefits for some UK firms, a number of problems have begun to arise. These include the growing burden of EU regulation, the restrictions imposed on an increasingly outward-facing City of London, and the threat of the UK being constantly out-voted on key issues.

Were Britain to leave the EU, European companies and organisations would still come to the City of London to get the best financing options and terms. Centres such as Frankfurt, Paris and Amsterdam have attempted to build markets that compete with the City in the past and have failed; Britain departing the EU would not make those less-competitive centres any more effective. Threats to the effect that the UK would lose access to EU customers fail to recognise the global reality of how both EU and non-EU companies (and other organisations) finance themselves.

Claims that Britain would lose its ability to set up local branch offices for sale of financial products (such as insurance) within individual EU countries fail to recognise that in key respects, the Single Market in financial services is not yet started and may never be completed – and in any event UK companies are nonetheless finding way to set up local EU subsidiaries without financial passporting – again, this will not necessarily change if Britain were to leave the EU – we would be just like US or other companies that are outside the EU now, but which are managing to find ways to have local subsidiaries.

Leaving the EU offers the chance not only to leave behind constricting employment law, taxation and EU-wide governmental interference with the proper workings of financial markets, but also to leave a regulatory framework that has consistently under-performed and instead regain a voice in the global regulatory bodies that are playing a much more significant role in setting international standards. Outside the EU, the UK could well become one of the leading voices in the global harmonisation of financial regulation.

10.1 The UK would remain a member of all key international financial standards bodies

Key international bodies

- Basel Committee on Banking Supervision
- Committee on the Global Financial System
- Committee on Payment and Settlement Systems
- Financial Action Task Force
- Financial Stability Board
- G7
- G20
- International Monetary Fund
- Organisation for Economic Co-operation and Development
- United Nations
- United Nations Conference on Trade and Development

There is no doubt that, upon leaving the EU, the UK would continue to have a large voice in the global bodies that deal with financial affairs. These global bodies are fast becoming the most important institutions in deciding financial regulation. There has been a strong international element to financial and banking regulation for many years, stretching back to the Bretton Woods system of

“Today, many EU laws affecting the financial services sector come from international bodies but are then ‘gold-plated’ by the EU.”

the mid-20th Century. There are global Standard Setting Bodies (SSBs) which cover the banking, securities and insurance markets, as well as international organisations which develop accounting standards and standards for financial institutions. This role was noted in the Balance of Competences Review:

The increasingly global nature of financial services has resulted in an international framework of regulatory standards. These standards have been significantly rewritten in the years since the crisis, providing the context for the EU’s recent approach to regulation. Evidence emphasised that the UK needs to ensure it has adequate influence in financial services at both the global and EU level. There were also strong calls for the EU to ensure it facilitates access for financial services firms between EU and non-EU markets and does not adopt a protectionist approach.¹¹⁰

Many of these SSBs report to the G20 heads of government, finance ministers and central bank governors. It is accepted that financial regulation is becoming more global, as argued by the Centre for European Reform: *“International regulation is being more closely co-ordinated to reflect the globalised nature of the financial system”*.¹¹¹ Leading figures within the EU have also made it clear that they expect there to be more international cooperation on financial matters in the coming years. The European People’s Party (EPP) argued in its 2014 manifesto: *“EPP will reform financial markets so that all banks in the EU follow the same rules, and, globally, will seek a better regulatory framework for financial markets.”*¹¹²

Today, many EU laws affecting the financial services sector come from international bodies but are then ‘gold-plated’. The CRD IV Package, for example, is based on the Basel III agreement. The importance of international bodies was also highlighted in the Balance of Competences Review, during which stakeholders told the Government *“that a large proportion of EU-level legislation has been the necessary implementation of rules that originated at the international level.”* Interestingly, the Review also found that stakeholders regarded the G20 and SSBs as the appropriate fora for resolving financial issues such as fragmentation and extraterritoriality (see Figure 10.i for an illustration of the relationship between international, EU and domestic financial laws).

In the Balance of Competences Review, stakeholders highlighted the UK’s strong influence and representation at the global-level bodies. For instance, the British Bankers Association (BBA) commented that *“the UK [...] maintains a leading voice in [international forum] discussions and it can therefore be argued that the UK has materially shaped the parameters of debate before the EU implementation process begins and remains well placed to continue to shape EU policy-making”*.¹¹³ Leaving the EU would not compromise the UK’s membership of many of these key international organisations, and would also allow the UK to implement international laws more effectively.

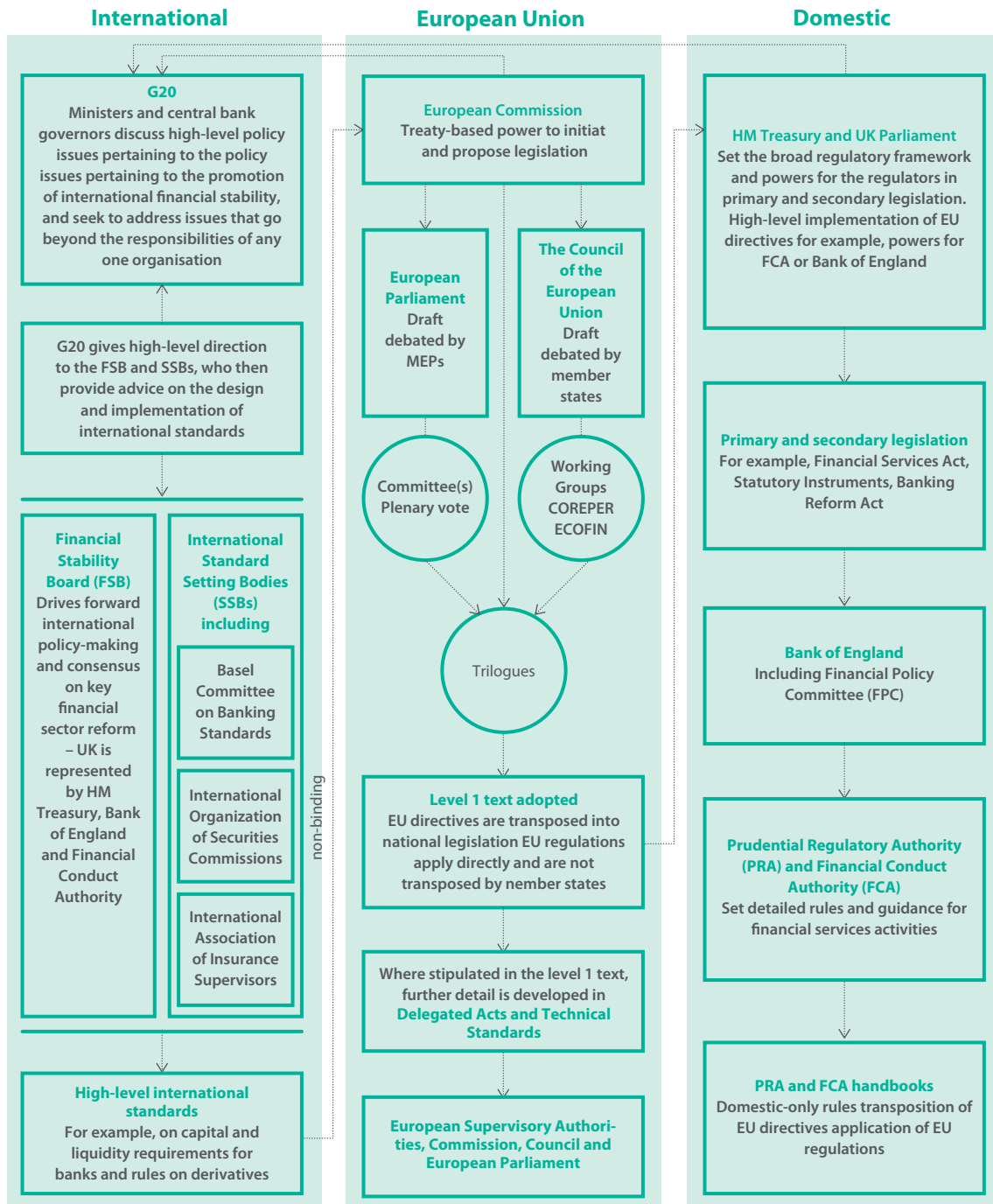
110 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union, The Single Market: Financial Services and the Free Movement of Capital” (2014), page 6.

111 Centre for European Reform “The consequences of Brexit for the City of London”, J. Springford and P. White (2014), page 1.

112 EPP “Why vote for the European People’s Party?” (2014), page 2.

113 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 54.

Figure 10.i: Simplified and stylised diagram of international, EU and domestic financial services policy-making process



Source: HM Government¹¹⁴

10.1.1 The UK would retain the same relationship with many key international financial agencies

Upon leaving the EU, the UK would retain its membership of the United Nations and its agencies and programmes that deal with financial affairs, including

114 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 51.

“There have been two people claiming to represent Britain’s interests: the European Commission President and the British Prime Minister.”

the United Nations Conference on Trade and Development. The UK would continue to be a member of the Organisation for Economic Co-operation and Development (OECD) and would remain subject to non-legislative agreements that the OECD comes to. The OECD Code of Liberalisation of Capital Movements, which requires the progressive, non-discriminatory liberalisation of capital movements among member countries, is one example of an international policy the UK would continue to benefit from outside the EU. Following the financial crisis, the OECD has played a major role in providing cross-country analyses of market reforms and programmes to stimulate growth. The OECD has also led various international fora as part of G7/G8 and G20 efforts to address tax havens and other issues.

Further, the UK would remain a member of the Financial Action Task Force (FATF). In 2012, this body gained a new mandate through to December 31 2020 to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering and other related threats to the integrity of the international financial system.

10.1.2 The UK would secure a stronger relationship with the other key international financial agencies

After leaving the EU, the UK would remain a member of the G7 and G20.¹¹⁵ However, at both of these meetings, the European Commission representative would no longer be competing with the UK representative as to who speaks for Britain. Since the 1980s, the EU has been able to send representatives to the G7 and G20, and their role has grown over time. There have, therefore, been two people claiming to represent Britain’s interests: the European Commission President and the British Prime Minister. Outside the EU, the British Prime Minister would be the only person in the meeting who could speak for the UK.

An example of why this may be significant is the fact that the G20 is considering whether the EU’s Financial Transaction Tax (FTT) is acceptable under international law. Having a strong, independent British voice at the table, who can speak without fear of contradiction, would be of benefit.¹¹⁶ The importance of these international bodies in financial services rule-making is further demonstrated by the G20’s push to change ‘over-the-counter’ derivative trading regulation. This stems from a commitment made in April 2009 by the G20 nations to *“promote the standardisation and resilience of credit derivatives markets, in particular through the establishment of central clearing counterparties subject to effective regulation and supervision”*.¹¹⁷

The growing role of these groups in financial regulation was also shown during the financial crisis. At a G20 summit held in London in 2009, member states agreed to introduce new rules on hedge funds, bank traders’ pay, rating agencies, and bank capital requirements, a blacklist of tax havens and a review of accounting rules. Currently, individual member states still have a strong voice over the international agenda at G20 summits (for example, during the London 2009 meeting, French President Sarkozy was able to secure policy commitments that other members had not wanted).¹¹⁸ But it is not an unchallenged voice.

115 The G8 is now referred to as the G7 after Russia was suspended in March 2014.

116 Daily Telegraph “Financial transactions tax contravenes G20 agreements warn global market bodies”, L. Armitstead (18 April 2013).

117 US Department of State “Declaration on Strengthening the Financial System” (2 April 2009), accessed 07/04/2015 at <www.state.gov/e/eb/ecosum/pittsburgh2009/resources/165078.htm>.

118 Financial Times “Sarkozy claims credit on tighter regulation”, B. Hall (2 April 2009).

“The UK would remain a member of the International Monetary Fund.”

What is ‘equivalence’?

In 2012 the European Commission mandated ESMA to provide it with technical advice on the equivalence between some third countries regulatory regime and different aspects of the EU regulatory regime under EMIR. These specific areas concern: the recognition of third country CCPs; the recognition of third country TRs; the identification of potentially duplicative or conflicting requirements regarding the clearing obligation, reporting obligation, non-financial counterparties and risk-mitigation techniques for OTC derivative contracts not cleared by a CCP.

Were the UK to choose to adopt an equivalent system, the scope for it to distance itself from laws such as AIFMD would be limited.

Source: ESMA

On financial matters, the G20 works through the Financial Stability Board (FSB), founded in April 2009 in London with a mandate “to coordinate at the international level the work of national financial authorities and international standard setting bodies and to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies”.¹¹⁹ The UK already has a strong voice on the FSB, as it is currently chaired by the Governor of the Bank of England. There is no reason why Britain would not continue to have a significant voice if it left the EU. The FSB is headquartered in Basel, Switzerland and was described by former Secretary of the US Treasury Timothy Geithner as “in effect, a fourth pillar” of the architecture of global economic governance along with the World Trade Organization, World Bank and International Monetary Fund (IMF).¹²⁰ Remaining a key player in the FSB is central to Britain’s continued influence over financial governance.

The UK would also remain a member of the International Monetary Fund (IMF). In fact, it would be able to avoid moves to have its position merged into a single EU seat (the issue of EU representation in the Fund was already being examined by Ecofin, the EU Council of Finance Ministers, on two occasions in 2001–02).¹²¹ Likewise, the UK would remain a member of the Financial Action Task Force on Money Laundering and would continue to be a committee member on the Basel Committee on Banking Supervision (BCBS), the Committee on the Global Financial System (CGFS) and the Committee on Payment and Settlement Systems (CPSS).¹²² Like the G7 and G20, the European Commission is also represented at these meetings. Again, outside the EU, there would be no risk of the UK having two potentially contradicting voices purporting to represent it at the same event. The BCBS is particularly important, given the role it played upstream in creating CRD IV, following the Third Basel Accord (Basel III) on capital adequacy, stress testing and market liquidity risk. Basel IV is currently under discussion, and will probably require higher leverage ratios for banks, more detailed reserves disclosures, and more transparent risk rating systems that rely less heavily on Moody’s and S&P.

Outside the EU, the UK could also seek to strengthen its voice on other important boards, such as the International Association of Insurance Supervisors (IAIS), the International Accounting Standards Board (IASB) and the International Organization of Securities Commissions (IOSCO).

10.2 The UK could continue to cooperate with the EU on financial issues

Key issues

- Attract talented people
- Maintain high regulatory standards
- Promote transparency and consumer protection
- Retain the head offices of multinationals
- Secure access to the EU’s capital markets

119 Financial Stability Board, accessed 07/04/2015 at: <www.financialstabilityboard.org/what-we-do/about-the-compendium-of-standards/wssb>.

120 White House “Press Briefing by Treasury Secretary Tim Geithner on the G20 Meetings” (24 September 2009), accessed 07/04/2015 at: <www.whitehouse.gov/the_press_office/Press-Briefing-by-Treasury-Secretary-Geithner-on-the-G20-Meetings>.

121 Journal of Common Market Studies “A Single EU Seat in the IMF?”, L. B. Smaghi (2004), pages 229–248.

122 The Basel Committee was established in 1974 and is tasked with setting the capital adequacy policy applicable to equity and capital assets for the global banking system.

“The Financial Services Action Plan introduced 42 measures.”

The UK financial sector is deeply interconnected with the EU’s financial and capital markets, currently enjoying – as one of the four fundamental freedoms of the EU – complete free movement of capital. There is little doubt that Britain’s financial services sector would continue to enjoy comprehensive access to the EU’s capital markets regardless of whether we are members of the EU or not. EU companies, bodies and Governments will still require access to UK financial institutions.

10.2.1 The UK would continue to access the EU’s capital markets and could remain an entry point to the EU Single Market

One of the four freedoms of the EU is ‘free movement of capital’ and this allows the UK full access to the EU’s capital market.¹²³ This has proven to be very useful for the UK’s financial sector, as capital controls have been removed since 1988 as part of the Single Market programme. For many years, the focus of EU policy-makers was on developing and implementing rules that would eliminate obstacles to the free movement of financial services. These rules were based on a number of key policy propositions:

- Harmonised EU-wide minimum standards covering prudential and consumer protection requirements;
- Mutual recognition of those requirements by member states in line with the judgment of the European Court of Justice (ECJ) in the case of *Cassis de Dijon*;
- The transfer of supervisory competences from one member state to another, according to how the firm chose to structure itself in that market;
- An assumption that all supervisors supervise thoroughly and competently and had an adequate set of powers and tools to do so¹²⁴.

In 1999, the EU introduced the Financial Services Action Plan which, via 42 measures, sought to develop a single wholesale market, open and secure retail markets, and state-of-the-art prudential supervision (further liberalising reforms were proposed by the ‘Committee of Wise Men’ in 2000). Various EU initiatives, such as the single banking licence, have allowed banks based in one member state to set up a branch in another, yet still be regulated by authorities in their home state, thereby cutting compliance costs. The major step came in the 1990s when the EU developed a branching regime, which allowed financial firms to either set up a branch or to provide services on a remote basis without fear that the local supervisor could impose its own authorisation requirements. Today, this right to open subsidiaries in other EU member states without having to worry about complying with different regulatory bodies is known as having ‘passporting’ rights.

123 The ‘capital market’ is the market for buying and selling equity (stocks) and debt (bonds), used by governments and businesses to raise capital. Instruments traded on capital markets are typically medium- or long-term as maturities usually exceed one year, whereas instruments sold in the money markets have shorter maturities. The UK abolished capital controls under the Thatcher Government.

124 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), pages 14–15.

Other initiatives include the Undertakings for Collective Investment in Transferable Securities Directive (Directive 2009/65/EC), which allows funds complying with the Directive's requirements to market their units freely across the European Economic Area (EEA) on the basis of a single authorisation in their home member state, and the Directive on Payment Services (Directive 2007/64/EC) which provides the legal foundation for the creation of an EU-wide single market for payments.

The proposed EU Capital Markets Union being introduced by Commissioner Jonathan Hill may be positive. There is no doubt that the proposals are potentially (the Daily Telegraph dubbed it "*the most significant EU proposal of the last 10 years*").¹²⁵ Were the Capital Markets Union to achieve what it sets out to, it could lead to the freer flow of investment capital, unlocking the funds businesses need to grow. It will take time, however, to properly understand the costs associated with it and to discover whether the proposals will be effective in practice.¹²⁶ Also, experience teaches us to be extremely cautious before celebrating mooted reforms.

The Capital Markets Union may also address one serious flaw with existing EU measures to boost access to capital: to date, the benefits of EU measures in this area have been, for the most part, confined to the wholesale market. As the Centre for European Reform has noted, "*the Single Market programme has not transformed Britain's retail banking market, which has become more concentrated in recent years, not less.*"¹²⁷ During the Government's Review into the Balance of Competences, evidence was collected that suggested that the benefits of the Single Market were not enjoyed equally across the whole of the financial services sector, especially by businesses that were domestic in nature:

*The Association of Professional Financial Advisers (APFA) noted that, 'The financial advice sector, being made up primarily of wholly UK based businesses with predominantly UK customers, does not use the benefit of a single market, yet suffers the costs of having to comply with EU directives'. The Building Societies Association (BSA) also noted that the lack of cross-border activity meant that access to the Single Market had not benefited their members.*¹²⁸

Some pro-EU groups, such as the Centre for European Reform, have argued that, if Britain left the EU, some banks would leave Britain and the UK would end up with "*more limited access to European markets than it currently enjoys*".¹²⁹ However, it is very unlikely that the EU would try to deny the City access to European capital markets: the EU itself would be harmed if it cut ties with the City of London, as it would be likely to reduce its access to loans, professional services and investment opportunities. Further, the appeal to large multinational financial institutions of settling in the City is not simply Britain's membership of the EU. The UK has a range of attractions to these firms.

125 Daily Telegraph "Lord Hill's capital market plans are the most significant EU proposal of the last 10 years" (18 February 2015).

126 European Commission press release, accessed 07/04/2015 at: <http://europa.eu/rapid/press-release_IP-15-4433_en.htm>.

127 Centre for European Reform "The consequences of Brexit for the City of London", J. Springford and P. White (2014), page 3.

128 HM Government "Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital" (2014), page 6.

129 Centre for European Reform "The consequences of Brexit for the City of London", J. Springford and P. White (2014), page 1.

“The CBI has acknowledged that, on World Trade Organization terms, ‘the UK could still seek access as a third country provider of financial services.’”

However, even if the EU decided that it would refuse to engage with the UK in this area (a very unlikely stance), the UK could still continue to have access to EU capital markets anyway. The CBI has acknowledged that, on World Trade Organization terms, *“The UK could still seek access as a third country provider of financial services”*.¹³⁰ This is because the last 30 years have seen the progressive relaxation of capital controls around the world, and the OECD’s legally-binding Code of Liberalisation of Capital Movements requires the progressive, non-discriminatory liberalisation of capital movements among member countries.¹³¹ The Government’s Balance of Competences Review argued that, because of these international developments, *“the domestic impact on the UK of this treaty freedom has, therefore, been limited.”*¹³² Access to EU capital markets is not dependent on EU membership or even on a ‘special relationship’; a commitment to allowing firms access to capital markets is enshrined in the General Agreement on Trade and Services (GATS).

Further, there is very little risk that the EU would compromise its international obligations and deny British financial bodies the right to set up subsidiaries or branches in EU member states.¹³³ In fact, the EU has an impressive record in meeting this obligation to third countries.

But while the EU does permit access to its capital markets from third parties, there is sometimes a cost that has to be paid: for certain transactions the European Securities and Markets Authority (ESMA) must deem the third country’s financial system as ‘equivalent’. Further, the terms of the Markets in Financial Instruments Directive (MIFID II) mean that third country firms could sell services to ordinary customers within the EU by setting up a branch within EU borders, would be supervised by the third country along with the authorities of the EU host country.

‘Equivalence’ could be retained by the UK deciding to replicate EU financial laws as they are produced. Considering the sheer lack of UK influence over EU laws (see Section 3), this would not be materially different to the situation in which we find ourselves today. In fact, by reclaiming a seat at key international institutions, the UK may gain a more significant role in drafting the international rules that the EU then transcribes into its own laws.

Financial firms have also made it clear that they value the retention of ‘passporting’ rights. These allow firms to either:

- 1 Establish a presence in another European Economic Area (EEA) member state (the ‘host’ state). This is known as an ‘establishment’ passport;
- 2 Carry out its permitted activities cross-border, without establishing a presence in the host member state, referred to as a ‘services’ passport.

One important observation is that passporting rights apply to the EEA, not the EU. Were the UK to leave the EU and gain membership of the EEA, passporting

Are the EU’s capital markets open to third countries?

The EU’s own Treaty states that: *“all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.”*

TFEU, Article 63

130 CBI “Our Global Future” (2013), page 137.

131 The OECD member countries are Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.

132 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 19.

133 Considering the willingness of the European Commission to introduce capital controls in Cyprus in 2013, there is a strong argument that remaining in the Union poses as great, or perhaps greater, threat of loss of access for British financial firms.

“Swiss banks have been able to keep their head offices in Switzerland. Outside the EU, the UK could negotiate a similar agreement.”

would continue.¹³⁴ Switzerland has also negotiated effective limited passporting rights, giving its firms the ability to set up an establishment in the EEA under the provisions of special bilateral treaties between the European Union and Switzerland.¹³⁵ This arrangement has not hindered Switzerland’s financial services sector. According to the House of Commons Library, to date, the Swiss have largely circumvented any disadvantages caused by non-membership by establishing subsidiaries within the EU.¹³⁶ The City of London Corporation has noted:

Although Swiss firms have sometimes found that freedom of movement for capital is narrowly interpreted in the Union where third countries are concerned, large Swiss firms have come to terms with this, operating through subsidiaries in London and elsewhere. Though extremely cumbersome this does give them full access to the EU market. But unlike for EU-based financial industry, cross-border service delivery is merely tolerated where it is observed, not established by right, and room for interpretation remains.¹³⁷

Swiss banks have been able to keep their head offices in Switzerland. Outside the EU, the UK could negotiate a similar agreement.

There are other reasons to be optimistic about the likelihood of the UK retaining access to European capital markets if it leaves the EU. Given London’s enormous financial market, Britain would have a great deal of clout in any negotiations.¹³⁸ In addition, given that it has been a member of the EU for so long, it is extremely likely that ESMA would, initially at least, determine that the UK complies with the *acquis* and thus deem its financial regulatory system to be ‘equivalent’.

10.2.2 The UK could continue to attract talented people from Europe

Outside the EU, the UK would be keen to ensure the continuation of mutual recognition of professional qualifications and to ensure that talented people from the EU could continue to come and work in its financial sector. Thankfully, it would have several options available to it.

In the highly unlikely event that the EU refused to agree to a mutual recognition of standards and qualifications, the UK could simply take a unilateral decision to recognise European qualifications without a reciprocal agreement with the EU.

Outside the EU, the UK could ensure that mutual recognition continues by joining the EEA, as the directives establishing the mutual recognition of qualifications (notably Directives 89/48/EEC and 92/51/EEC) apply to EEA members as well as EU members. This would mean no disruption to the current system. Were the UK to decide that it did not want to be part of the EEA, there are other alternatives. The Swiss and EU have secured bilateral agreements which permit the free movement of workers and mutual recognition of professional qualifications; a similar bilateral deal could be negotiated between the UK and the EU in

134 FCA “Passporting FAQs”, accessed 07/04/2015 at: <www.fca.org.uk/firms/being-regulated/passporting/passporting-faqs>.

135 FCA “Passporting FAQs”, accessed 07/04/2015 at: <www.fca.org.uk/firms/being-regulated/passporting/passporting-faqs>.

136 House of Commons Library “Leaving the EU – Commons Library Research Paper” (2013), page 49.

137 City of London “Switzerland’s Approach to EU Engagement: A Financial Services Perspective” (2013), page 4.

138 House of Commons Library “Leaving the EU – Commons Library Research Paper” (2013), page 50.

“The EU is legally encouraged under Article 8 TEU to ‘develop a special relationship with neighbouring countries’.”

the two year separation period.¹³⁹ As the UK and EU already share many standards (see Section 19), it is very likely that such a deal could be secured.

10.2.3 European minimum regulatory standards could still be agreed between the EU and the UK

Leaving the EU need not compromise regulatory standards or lead to a ‘race to the bottom’. The UK could – if it wished – mimic EU standards, retaining much the same position it has now. It could also continue to engage with the EU to discuss how to share and develop best practice. UK-based financial firms would certainly continue to lobby in Brussels and Strasbourg in any case.

The EU works with third countries in order to cooperate on financial rules: *“The Commission is in contact with authorities responsible for accounting from countries all around the world in order to cooperate in the creation of a single reporting framework for companies listed on international markets.”*¹⁴⁰ In pursuit of that programme it works with the likes of Japan, China, Canada, South Korea and India to ensure the convergence of International Financial Reporting Standards. In addition, via the Financial Market Regulatory Dialogue, both EU and US regulators have cooperated on financial regulation since 2002. It is very likely that the EU would want to cooperate with the UK on international financial rules, even if it was outside the EU, as the EU is legally encouraged under Article 8 TEU to *“develop a special relationship with neighbouring countries”*.¹⁴¹

As noted previously, if the UK wanted to retain full access to EU capital markets, it would have to emulate several of the EU’s financial policies to ensure its regulatory system is considered ‘equivalent’. Absolute equity will not necessarily be required, however. It is not even a condition for EU membership; divergence is already taking place. In March 2014, the EU reached an agreement on Banking Union – however, the UK chose to remain outside of it, with no question about this compromising its terms of membership (though some in the financial sector have expressed concerns that there may be unforeseen consequences for non-members in the future).¹⁴²

In any case, international rules mean that there is little prospect of a grand divergence. In the Balance of Competences Review, Lloyd’s of London noted that *“UK prudential insurance regulation would not be very different if the UK was solely responsible for the rules”*. In the banking sector, the BBA and RBS similarly considered that *“UK regulation would not necessarily be particularly different, given the UK’s commitment to global standards.”*¹⁴³ In addition, UK negotiators could still work with EU negotiators in international forums to push for standards they both agree on. This could be achieved with or without a formal deal between the UK and the EU.

139 Swiss Government information accessed 07/04/2015 at: <www.sbf.admin.ch/diploma/01793/01794/index.html?lang=en>. Following a referendum that narrowly found in favour of imposing migration controls on EU migration, Switzerland is exploring ways it can comply with its bilaterals but also curtail EU migration.

140 European Commission “Third Countries equivalence/convergence”, accessed 07/04/2015 at: <http://ec.europa.eu/finance/accounting/third_countries/index_en.htm>.

141 TEU Article 8.

142 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 6.

143 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital”, (2014), page 54.

“Leaving the EU would offer the UK a chance to develop new rules to cater for its financial industry.”

Alternatively, were Britain to leave the EU and apply and gain entry to the EEA, it would continue to be able to influence EU financial regulation at committee and drafting stages, and by traditional lobbying. It could also avoid having to implement rules and laws with which it disagreed, either by deciding to delay implementation or by challenging rules that seem to contravene Single Market logic (like the FTT) through the EFTA Court. There may also be scope for threatening to use the EEA veto (the ‘right of reservation’) with damaging legislation.

10.2.4 The UK could retain EU laws that have increased transparency and benefited some consumers

Some EU financial sector rules have been positive, by making the financial system more transparent and by seeking to ensure that consumers can place more faith in it.¹⁴⁴ As Section 29 demonstrates, certain aspects of these rules could be retained after Britain leaves the EU.

A selection of the more notable directives and regulations which the UK may wish to keep is listed below. Certain provisions of these regulations and directives have been criticised, however, so even were the UK to decide to retain these rules, it may wish to consider revising aspects of them.

- The Prospectus Directive (Directive 2003/71/EC). This requires companies seeking to raise money to provide information to potential investors (certain elements of this may wish to be reviewed).
- The Transparency Directive (Directive 2004/109/EC). This sets out detailed rules as to how companies that have issued securities must report to the markets about their performance.
- The European Market Infrastructure Regulation (Regulation (EU) 648/2012). This introduces new rules for the clearing and risk management of over-the-counter (OTC) derivative trades, new oversight of clearing houses and trade repositories, and reporting requirements for derivative trades.
- The Market Abuse Regulation (Regulation (EU) No 596/2014). This updates existing rules covering the punishment of market abuse and other crimes such as insider dealing and market manipulation.
- The Credit Rating Agencies Regulation (Regulation (EC) No 1060/2009). This covers the authorisation and conduct of Credit Rating Agencies (within the EU these agencies are authorised and supervised at the EU level by the European Securities and Markets Authority).
- The Mortgage Credit Directive (Directive 2014/17/EU). This aims to create an EU-wide mortgage credit market with a high level of consumer protection.
- The Consumer Credit Directive (Directive 2008/48/EC). This aims to ensure a high level of consumer protection and improve clarity by recasting existing Directives.

¹⁴⁴ There are costs attached, however. See Section 10.3.2.

“Outside the EU, the UK would not only be able to retain these positive features but would also be able to build upon them.”

- The Investor Compensation Schemes Directive (Directive 97/9/EC). This aims to ensure compensation for clients receiving investment services from investment firms (including credit institutions) in specific circumstances where the firm is unable to return money or financial instruments that it holds on the client’s behalf because it is in default.

10.3 New financial policy opportunities would become available

Leaving the EU would offer the UK a chance to develop new rules to cater for its financial industry. While there is some debate over which direction the UK will want to go if it leaves the EU, Parliament would have the power to make the UK even more welcoming to foreign firms and a far better place to do business.

10.3.1 London’s natural appeal could be retained and built on

Leaving the EU would not see a substantial reduction in the number of financial services companies based in the UK. Inertia would prove very strong, keeping many firms within Britain (and especially in the City of London).

Several factors would help retain business in the UK, regardless of whether Britain is in or out of the EU:

- The sheer depth and breadth of London’s financial markets, covering every internationally provided product of every size;
- The predictability of the legal system;
- The international status of the English language;
- A generally accommodating tax and regulatory environment;
- A large amount of expertise;
- A tradition of openness;
- Perceived integrity;
- Infrastructure able to support high levels of activity;
- The UK’s time zone;
- Proximity of related professional services;
- A highly developed education system;
- A red tape averse culture;
- A large number of financial institutions.

Outside the EU, the UK would not only be able to retain these positive features but would also be able to build upon them.

10.3.2 EU ‘mission creep’ over financial laws could be stopped at a stroke

Today, the EU has a substantial remit over financial firms and the wider financial markets. Most of its power stems from Articles 63 to 66 of the Treaty on the Functioning of the European Union (TFEU), which permit the EU to legislate on the area of free movement of capital and payments. Many of the powers the EU has used to manage the financial sector after the economic crisis stemmed from the Lisbon Treaty.¹⁴⁵ For many years, there was an accepted view that EU financial rules benefited the UK and helped to ensure that British standards of

¹⁴⁵ This also reflects the Lamfalussy process which creates a four level structure for EU regulation. Level 1 is a principles based framework legislation decided by co-decision, Level 2 is a detailed implementing decision decided under comitology, Level 3 is advice to the Commission by national regulators in the ESAs which also promote supervisory convergence, and Level 4 is enhanced focus by the Commission on enforcement.

“The general consensus is that the UK’s influence over financial laws has declined dramatically since the 2008 financial crisis.”

openness and ‘light touch regulation’ were exported across the EU. Prior to the Eurozone crisis, the general thrust of EU financial services measures reflected the UK’s traditions of liberalisation, competition and the encouragement of trade.¹⁴⁶ Some EU laws were even praised by the British Government (the Treasury described the Settlement Finality Directive as a “key underpinning for the systemic robustness of the financial markets”).¹⁴⁷ Independent studies have concluded that the UK would have introduced several pre-crisis EU financial regulations even if it had not been a member of the Union (see Figure 10.ii for a list of some of these regulations).

Figure 10.ii: EU policies that the UK benefited from before the financial crisis

Measure	Year	In force
Takeover Directive	2004	2004
Settlement Finality Directive	1998	1999
Accounting Rules e.g. Fair Value Directive	2001	2004
Money Laundering Directive	2001	2003
Market Abuse Directive	2003	2004
Transparency Directive	2004	2005

Compiled by Europe Economics¹⁴⁸

The general consensus today, however, is that the UK’s influence over financial laws has declined dramatically since the 2008 financial crisis. The European Commission has made it clear that it is moving away from traditional UK views on financial regulation. This is one of the more startling revelations of the Government’s Balance of Competences Review:

The shift in focus from market-opening to financial stability in the last five years has raised questions regarding the quality of the policy-making process and the resulting rules. Although there is broad consensus about the need for EU-level regulation to underpin the Single Market in financial services, evidence from stakeholders raised significant concerns regarding the recent pace, volume and focus of EU legislation, the failure to differentiate between financial services sub-sectors, the lack of proportionality, and insufficient recognition of the subsidiarity principle, especially in the retail sector.¹⁴⁹

The Single Market in Financial Services

Like many EU policies, the Single Market in Financial Services remains a work-in-progress. Many would claim that there still isn’t a Single Market in Financial Services. However, the European Commission claims that one has emerged since 1999. BIS, for its part, considers it an enduring lost opportunity of EU membership.

Unfortunately, the UK lacks the constitutional power to block harmful rules because the vast majority of EU financial law is based on the Treaties’ Single Market articles, which means that the laws are decided via Qualified Majority

146 Examples of such studies include Open Europe “Continental Shift” (2011), and Europe Economics “How EU Wholesale Financial Regulation Differs from what the EU would Choose for Itself” (2014).

147 HM Treasury, cited in Europe Economics “How EU Wholesale Financial Regulation Differs from what the EU would Choose for Itself” (2014), page 14.

148 Europe Economics “How EU Wholesale Financial Regulation Differs from what the EU would Choose for Itself” (2014), pages 14–19. The report argues that the UK would have introduced several more EU laws than the ones listed in Figure 10.ii, but in a significantly reduced form. The laws listed in Figure 10.ii are laws that Europe Economics argues the UK would have introduced in their entirety.

149 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 7.

“By 2010, a state of crisis had emerged as it became clear that the balance sheets of a significant proportion of banks in the Eurozone were impaired.”

Voting (QMV) in the Council of Ministers. So the UK lacks a veto over financial laws (by contrast, France has a veto over any changes to the Common Agricultural Policy, allowing it to protect its premier industry: agriculture). The Financial Times commentator, Janan Ganesh, has argued that there should be a veto for the UK for financial services.¹⁵⁰

Even commentators who are sympathetic to the EU acknowledge that there is a risk that new EU reforms will result in *“reducing British influence in shaping financial regulatory policy.”*¹⁵¹ The report also acknowledges that *“the days when the UK set the agenda on EU financial regulation are over.”*¹⁵² As Roger Bootle has written, *“there is a clear desire on the part of some European officials to see the City cut down to size.”*¹⁵³

In the months that followed the crash, the Commission put forward a number of new proposals for regulating the financial sector, arguing that *“the October 2008 financial crisis brought to light the need to completely revise the financial supervisory framework... the European Commission proposes a more harmonised and better coordinated system which aims at anticipating any financial turbulence effectively.”*¹⁵⁴ A whole new infrastructure was needed to equip the EU with the tools it required to manage Europe’s many financial industries.¹⁵⁵ Initially, the Commission proposed introducing two new pillars: first a ‘European Systemic Risk Council’ which would be responsible for *“safeguarding financial stability in the area of macro-prudential supervision at European level”*; second, a ‘European System of Financial Supervisors’ which would be *“responsible for linking national supervisors into a strong Community network.”*¹⁵⁶

By 2010, a state of crisis had emerged as it became clear that the balance sheets of a significant proportion of banks in the Eurozone were impaired. Funding both for sovereigns and banks in peripheral Eurozone states evaporated. The need for recapitalisation led to the Commission proposing the establishment of a Banking Union for the euro area, which would improve the quality of supervision across the EU by giving its institutions powers over national supervisors. This Union would have three key elements: a single banking supervisor; a single resolution authority and resolution fund and a common system for deposit protection.¹⁵⁷ Over the next few years, the EU set about introducing bodies that would realise these aims. Three new institutions have been introduced, all with full ‘legal personality’. These institutions are:

- 150 Open Europe “From a Reluctant European: a memo to the Prime Minister”, J. Ganesh (2015), page 16.
- 151 Centre for European Reform “The consequences of Brexit for the City of London”, J. Springford and P. White (2014), page 2.
- 152 Centre for European Reform “The consequences of Brexit for the City of London”, J. Springford and P. White (2014), page 7.
- 153 “The Trouble with Europe”, R. Bootle (London 2014), page 169.
- 154 European Commission “European financial supervision”(COM(2009) 252 final), accessed 07/04/2015 at: <http://europa.eu/legislation_summaries/internal_market/single_market_services/financial_services_general_framework/mi0017_en.htm>.
- 155 In 2008, the Commission mandated a high-level group chaired by Jacques de Larosière to make recommendations on how to strengthen supervisory arrangements across the EU. The main recommendation was to establish a European System of Financial Supervision comprising EU supervisory bodies for the banking sector, markets and securities, insurance and occupational pensions, and macro-prudential oversight.
- 156 European Commission “European financial supervision”(COM(2009) 252 final), accessed 07/04/2015 at: <http://europa.eu/legislation_summaries/internal_market/single_market_services/financial_services_general_framework/mi0017_en.htm>.
- 157 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 17.

“Many of the new rules don’t appear to respect the ideas of subsidiarity.”

- 1 the European Banking Authority;
- 2 the European Insurance and Occupational Pensions Authority;
- 3 the European Securities and Markets Authority.

While the financial sector in the UK has been broadly supportive of these new institutions and sees the potential for EU-wide sharing of information, many also note that it is far too early to determine if these three bodies will be successful.¹⁵⁸

The last few years have also seen the introduction of a Single Supervisory Mechanism, which has given the European Central Bank (ECB) direct supervision powers over the largest 128 banks in the Eurozone and “powers of direction” over the others. A Single Resolution Mechanism has also been agreed so that failing banks can be either i) restructured, ii) sold off or iii) wound down with minimal cost to taxpayers. During this process *“The UK Government has been clear that it will not participate in the banking union, and non-participating member states, including the UK, have secured clear provisions that, taken together, help protect the Single Market by ensuring non-discrimination and providing equal treatment between participating and non-participating member states.”*¹⁵⁹

There are worries that the substantial increase in EU rules risks limiting the UK’s decision-making powers, especially as many of the new rules don’t appear to respect the ideas of subsidiarity. The General Council of the Bar of England and Wales warned in 2014 that *“EU legislation since the 2008 crisis has tended increasingly to encroach on member states’ competences, and towards prescriptive, centralised decision-making. This gives rise to cause for significant concerns about subsidiarity and the balance of competences, as well as legal basis and institutional balance.”*¹⁶⁰

This institutional reorganisation has been accompanied by a substantial increase in the amount of EU regulation. Over the last 10 years, there has been a roughly ten-fold increase in the volume of EU law on financial services, driven in part by international laws but also by a new political attitude to finance.¹⁶¹ According to the House of Lords European Union Committee: *“41 [European] legislative proposals have brought about a radical transformation in the EU financial sector regulatory framework”*.¹⁶² Of these 41 proposals, the Committee identifies 13 that it classes as ‘major reforms’ (these 13 proposals are presented in Figure 10.iii).¹⁶³

Figure 10.iii: ‘Major reforms’ to the EU’s financial policy

Measure	Year	In force
Bank Recovery and Resolution Directive	2014	2015 and 2016
Single Resolution Mechanism Regulation (affects Eurozone only)	2014	2016

158 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 70.

159 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 18.

160 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 79.

161 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 74.

162 House of Lords European Union Committee “The post-crisis EU financial regulatory framework: do the pieces fit?”, (2015), page 95.

163 House of Lords European Union Committee “The post-crisis EU financial regulatory framework: do the pieces fit?”, (2015), pages 108–110.

“The Solvency II framework could increase the insurance system’s probability to be involved in a global crisis, thus contributing to the crisis itself.”

Measure	Year	In force
Markets in Financial Instruments Directive II (MiFID II)/Markets in Financial Instruments Regulation (MiFIR)	2014	2017
Packaged Retail and Insurance-Based Investment Products Regulation (PRIIPs)	2014	Likely 2016
Single Supervisory Mechanism (SSM)/ECB Regulation	2013	2013 and 2014
Capital Requirements Directive (CRD IV)/Capital Requirements Regulation (CRR)	2013	2013
Credit Rating Agency (CRA) Regulations I, II, and III	2009 (I), 2011 (II) and 2013 (III)	2013, 2011, and 2009, respectively
Market Abuse Regulation (MAR) and Market Abuse (Criminal Sanctions) Directive (CSMAD)	2014	2016
European Market Infrastructure Regulation (EMIR)	2012	2012
Short Selling Regulation (SSR)	2012	2012
Alternative Investment Fund Managers Directive (AIFMD)	2011	2013
European Supervisory Authorities (ESAs) (EBA, ESMA, and EIOPA) Regulations	2010	2011
European Systemic Risk Board (ESRB) Regulation	2010	2011

Source: Compiled by the House of Lords European Union Committee¹⁶⁴

One of the most notable new regulatory requirements for the insurance sector is Solvency II (Directive 2009/138/EC), which is set to come into force on 1 January 2016.¹⁶⁵ It is set to codify and harmonise EU insurance regulation, setting out broader risk management requirements.

Solvency II effectively amounts to the introduction of a whole new prudential regime for insurance businesses and is incredibly broad in scope.¹⁶⁶ It was designed to create a level playing field in the insurance industry, with a transparent method for calculating capital weightings that could be applied across all institutions. The Directive also makes extensive changes to the Solvency Capital Requirement, which sets out the amount of funds that insurance and reinsurance undertakings are required to hold.

It has been very seriously criticised for being over-complicated, however, and has led to commentators warning that it might make the insurance industry more susceptible to crisis. As put in a recent academic study:

The Solvency II framework could increase the insurance system’s probability to be involved in a global crisis, thus contributing to the crisis itself. Even if the

164 House of Lords European Union Committee “The post-crisis EU financial regulatory framework: do the pieces fit?” (2015), pages 108–110.

165 This Directive is, in part, based on international agreements.

166 According to the British Government: “The Directive introduces a modern prudential regime based around the three pillar approach of banking regulation. The first pillar provides a standard for valuing the liabilities an insurer has to policy-holders, and the capital insurers must hold to meet the insurance, investment and other risks to which they are exposed. The second pillar is the supervisory review, which focuses on whether the capital buffer is appropriate for the risks of the insurer and its control environment. The firm may be required to hold additional capital as a result. The third pillar is greater market discipline through disclosure by insurers of key data on capital, risks and their control.” HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 29.

“‘Mission creep’ has been opposed by British officials.”

principles and the overall Solvency II structure are economically viable, they fail when a wrong risk measure – the Value-at-Risk – is applied to the correct principle of more risk/more capital.¹⁶⁷

UK insurers have spent extremely large sums so that their businesses can meet the Solvency II standards. Lloyd’s of London has claimed that it has cost it £300m.¹⁶⁸ It is unsurprising that leading figures have been critical of EU insurance regulations. Nigel Wilson, chief executive of Legal & General, said at a conference in 2013 organised by the Association of British Insurers that *“the European [regulatory] system is one of the worst. Pretty much everyone in this room is not investing in Europe for that reason”*.¹⁶⁹ In September 2013, Deloitte recorded that new regulations had cost the European insurance industry as much as €9bn since 2010, with each of the top 40 insurers having spent more than €200m on compliance. Of regulation deemed to have a major impact, 36 per cent was of national origin. The rest came from the EU or international sources.¹⁷⁰ When one factors in other expensive legislation in this area, including the Directive on Insurance Mediation (Directive 2002/92/EC), which imposes common standards and a new authorisation regime for the sale of insurance and reinsurance, the introduction of IMD II, which extends EU regulation to include the direct salesforces of insurers, one gets an idea of the problems that the EU has generated in this area.

The EU’s wider new rules, dubbed by academic commentators as a ‘macro-micro’ financial supervision architecture, have led to a number of dramatic changes in the financial industry.¹⁷¹ Some of the key changes include:

- A requirement to adapt to new arrangements for cross-border supervision and crisis management;
- Changes to capital and liquidity requirements;
- The introduction of new structures and new measures, including changes to trading book capital requirements;
- The introduction of new special administration regimes along with other resolution mechanisms;
- New requirements for the treatment of bondholders in the event of a firm falling into administration and the restriction/separation of activities;
- Restrictions on remuneration or dividend policy;
- Caps on size, connectedness, concentration or complexity;
- Accounting changes;
- New taxes and stability fees.

This ‘mission creep’ has been opposed by British officials, as revealed in a Financial Times article on 8 November 2011:

Sir Mervyn King [now Lord King] is not known as a man given to shouting. But during a meeting this summer in the genteel surroundings of London’s

167 International Association for the Study of Insurance Economics “Risk Measures and Capital Requirements: A Critique of the Solvency II Approach” A. Floreani (2013).

168 Trade Policy Research Centre, “The City and the UK’s membership”, R. Stewart-Brown (2015), page 8.

169 Financial Times “L&G chief brands EU regulatory framework ‘worst in world’”, A. Gray (2013).

170 Deloitte “Rethinking the response”, accessed 08/06/2014 at: <www2.deloitte.com/uk/en/pages/financial-services/articles/rethinking-the-response.html>.

171 Journal of Contemporary European Research “Beyond growth & jobs? Perspectives for the EU Single Market Policy Framework”, C. Schweiger (2009), page 533.

“The Eurozone – which has its own financial interests in opposition to the UK – now has an inbuilt permanent majority.”

Threadneedle Street, the Bank of England governor let fly. The visitor sitting across from him – a silver-haired Frenchman whose meticulous dress and proud demeanour appeared straight out of Gaullist central casting – was threatening to rein in the governor’s new powers to set capital rules for Britain’s banks. Sir Mervyn was having none of it. As his voice rose, his interpreter grew increasingly startled – particularly as the Frenchman refused to back down... The object of the governor’s ire was Michel Barnier, the 60-year-old former French foreign minister named two years ago as European internal market commissioner – a perch giving him oversight of the continent’s financial industry.¹⁷²

Yet despite this opposition, there is nothing that the UK can currently do to prevent the introduction of these rules. Britain’s influence within the EU’s institutions has declined dramatically. In the first European Elections in 1979, the UK had 20 per cent of the seats in the European Parliament. By 2015, that had declined to 9.5 per cent. Likewise, while the UK had 17 per cent of the votes in the Council of Ministers in 1973, that has declined to at least 8 per cent.¹⁷³ Within the Commission itself, there has been a surprising decline in the number of UK officials, with British nationals in the Commission falling from 9.6 per cent of the total in 2004 to 4.5 per cent in 2014 (by contrast the UK share of EU population is 12 per cent).¹⁷⁴ This has led to considerable problems (every time that it has voted against a measure that has made it through to the Council, the measure has still passed). The former Chancellor Norman Lamont noted in a Daily Telegraph article in 2013:

Bankers are unpopular, and bankers’ bonuses are an unpopular cause on which to fight an issue of principle. That is why the European Parliament is pressing the point as part of its struggle to win more powers from member states and national governments. And of all member states, Britain has most to lose. We are isolated in the Council of Ministers, where George Osborne has been fighting alone. One can’t help being suspicious that the French and Germans, who have changed their position, see some advantage to themselves in Britain being disadvantaged.¹⁷⁵

More worryingly, under the new voting rules, the Eurozone – which has its own financial interests in opposition to the UK – now has an inbuilt permanent majority thanks to changes introduced by the Lisbon Treaty (see Figure 10.iv, which shows the former voting weights, when over 250 was needed to pass a vote, to the current arrangement, which gives the Eurozone a permanent majority). This is worrying because, as put by Wolfgang Münchau in the Financial Times, *“if the Eurozone has a collective interest in anything, it is to stop the City acting as its main financial centre.”¹⁷⁶*

172 Financial Times “Barnier vs the Brits”, A. Barker (8 November 2011).

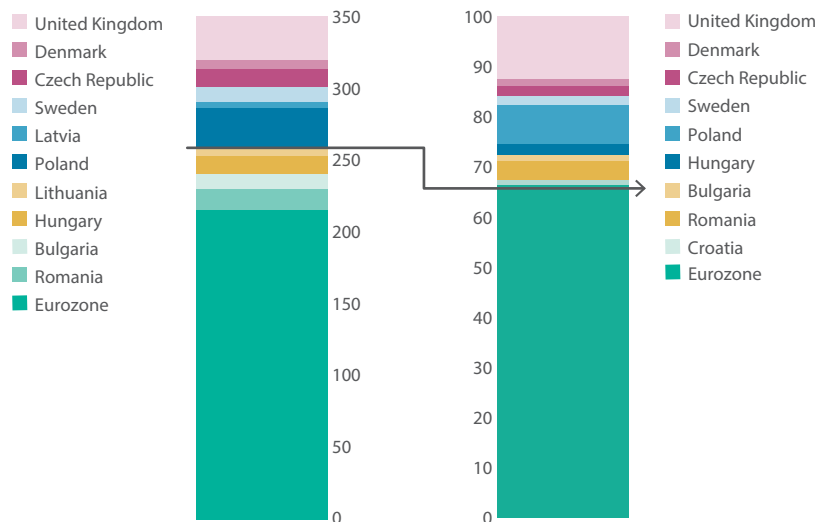
173 Under the Lisbon Treaty, new voting weights which came into force in 2014 give the UK 12.5 per cent of the votes. However, until 2017, member states can request that votes are taken under the old weightings, reducing the UK’s voting weight to 8 per cent. Figures can be found in Business for Britain “Measuring Britain’s influence in the Council of Ministers” (2014).

174 BBA “British Influence in the EU” (2014).

175 Daily Telegraph “A cap on bankers’ bonuses would be lunacy”, N. Lamont (25 February 2013).

176 Financial Times “Bonus issue marks start of a long battle”, W. Münchau (3 March 2013).

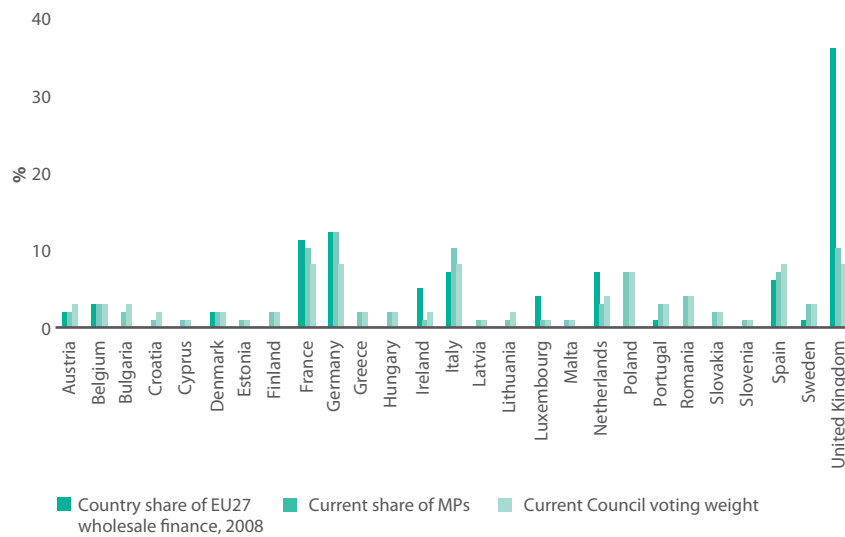
Figure 10.iv: EU voting weights



Source: Adapted from Open Europe¹⁷⁷

The problem the UK faces can be seen even more clearly when one compares its share of EU wholesale finance to its Council voting weight (see Figure 10.v).

Figure 10.v: Member state share of EU wholesale finance in the EU to Council voting weight and the number of MEPs



Source: HM Government¹⁷⁸

There is already evidence that the Eurozone has begun caucusing, undermining the UK’s influence. An example is the creation of the European Financial Stabilisation Mechanism in May 2010 (which was controversial because it used Article 122 of the TFEU, effectively ignoring the Treaties’ ‘no bailout clause’). This was forced through by Eurozone states voting together. Although the decision was nominally approved under QMV at a meeting of the Council of

177 Open Europe “Continental shift” (2011), page 22.

178 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 59.

“Considering the likelihood of the number of non-Eurozone states falling to four or fewer in the coming few years, the life expectancy of the double majority lock seems short at best.”

Ministers on 9 May 2010, Eurozone leaders had already outlined the creation of the EFSM at their own meeting on 7 May.¹⁷⁹

In 2012, George Osborne was able to secure a ‘double majority lock’ in the European Banking Authority, which forced laws passing through that institution to go through two rounds of voting: Eurozone states and non-Eurozone states. This system allows a majority of non-Eurozone countries to effectively vote down laws that would harm their interests. While the non-Eurozone states are a heterogeneous group, this initially appears to be a satisfactory solution. But it has subsequently emerged that – were the number of non-Eurozone states to fall to four or lower – the ‘double majority lock’ would expire. In a report for Business for Britain, Europe Economics noted that:

Although such measures may offer some protection in the very short term (up to around 2018) they are unlikely to be sustainable over the longer term because almost all current non-Eurozone members of the EU intend to join the euro by 2020, meaning ‘double majority voting’ would become very close to a UK veto on any new financial regulation – and thus unacceptable to Eurozone members.¹⁸⁰

There is clear evidence that the number of non-Eurozone states is set to drop in the coming years. In 2012, the former EU Trade Commissioner and British Government Minister Lord Mandelson claimed in a public lecture that:

I believe there will be an inevitable gravitational pull of decision-making towards the inner Eurozone core. Britain will be invited to support this evolution but if we refuse we will be ignored... It is certainly not inconceivable – indeed I think it is likely – that Britain will find itself a decade from now the only state in the EU, certainly the only large state, outside the Eurozone. Effectively the EU will have been rebooted, with the UK on the outside.¹⁸¹

History suggests that Lord Mandelson is right. Since its inception, the Eurozone has continuously expanded. It started with 11 members in 1999. Greece joined in 2001, Slovenia in 2007, Cyprus and Malta in 2008, Slovakia in 2009, Estonia in 2011, Latvia in 2014 and Lithuania in 2015. Croatia is set to join in 2019 and Hungary in 2020. The Czech Republic aims to join in 2017 and Romania in 2020.¹⁸² Bulgaria has also stated it has plans to join the single currency.¹⁸³

Considering the likelihood of the number of non-Eurozone states falling to four or fewer in the coming few years, the life expectancy of the double majority lock seems short at best.¹⁸⁴ The European Commissioner responsible for financial affairs, Lord Hill, has ruled out an expansion of this approach. This puts the UK in a difficult situation, as George Osborne noted in 2014:

179 The European Parliament would later note “the statement of 7 May 2010 of the Heads of State and Government of the euro area when coming to their decision on the EFSM”, accessed 07/04/2015 at: <www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0277+0+DOC+XML+V0//EN>.

180 Europe Economics “EU Financial Regulation” (2014), page 1.

181 Mansfield College, Oxford “The Hands Lecture by the Rt. Hon. Lord Mandelson” (May 4 2012).

182 Europe Economics “EU Financial Regulation” (2014), page 34.

183 EurActiv, “Bulgaria says it will start talks to join the Euro”, accessed 07/04/2015 at <www.euractiv.com/sections/euro-finance/bulgaria-says-it-will-start-talks-join-euro-311331>.

184 The others would be Poland, Denmark and Sweden. Of course, were member states to leave the euro or were other non-euro states to join the Union this could stop this trend, but this is extremely unlikely.

“The UK cannot rely on the European Court of Justice (ECJ) to rule in its favour.”

If we cannot protect the collective interests of non-Eurozone member states then they will have to choose between joining the euro, which the UK will not do, or leaving the EU.¹⁸⁵

The UK cannot rely on the European Court of Justice (ECJ) to rule in its favour either. The ECJ has a longstanding track record of using its judicial discretion to further EU integration.

The cost and burden of some of the most notable laws has even resulted in the UK taking EU institutions to court. It lost three of the four cases, as detailed below:

(i) Regulation No 236/2012 (the ‘short selling ban’) – UK lost the case

In 2012, the EU passed Regulation No 236/2012 which introduced new restrictions on the short selling of bank equities or on sovereign credit default swaps.

Short selling is the sale of a security that is not owned by the seller, but borrowed. The seller usually expects the value of the security to go down, so it can be bought back and returned to the lender at a profit. The risks involved in short selling are theoretically unlimited, since the value of the security could go up ad infinitum after the seller has sold, and the seller would still be obliged to return the security to the lender, plus any dividends paid on the ‘shorted’ stock. On a large scale, the agglomeration of such risks may contribute to financial sector instability. Short sales are not always for speculative profit, however. They can often be used to hedge risk on a positive position on the same security. The new regulation introduced several key changes to the legal framework:

- Net short positions in shares equal to 0.2 per cent of the issued share capital of the company or more must be reported to authorities;
- Net short positions in shares equal to 0.5 per cent of the issued share capital of the company or more must be publicly disclosed;
- Uncovered short sales are banned (except for stocks that are primarily traded outside the EU).

As a result of this regulation, restrictions were placed on short selling. While damaging to the financial industry in its own right, this law was seen as a dangerous precedent as it was transferring too much power from national regulators to the ESMA. The regulation has already had a substantial impact: between 1 November 2012 and 28 February 2013, there were 12,603 notifications reported to competent authorities on 970 different shares in 18 member states.¹⁸⁶ It is also clear that the requirements of the regulation have had a disproportionate impact on the UK:

ESMA reports that 224 holders publicly disclosed 1,090 short positions on 427 shares, with the bulk of disclosures from the UK, followed by France and Sweden. Among the 3,508 notifications made public by these 224 holders, 90 per cent were from holders domiciled in the UK or the US, and the 10 biggest holders accounted for 37.5 per cent of those published notifications.¹⁸⁷

185 Open Europe “Chancellor’s speech to the Open Europe Conference” (15 January 2014).

186 European Commission “Evaluation of the Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps” (COM(2013) 885 final), (2013).

187 European Commission “Evaluation of the Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps” (COM(2013) 885 final), (2013).

“It is possible that, in the future, we would see a similar case arise and that a future ruling could go against the UK.”

The Chancellor made clear that he saw the ban as unreasonable, lodging a complaint against Article 28 of the regulation.¹⁸⁸ While the Court’s Advocate General initially issued an opinion supporting the UK, the Court rejected all of the UK’s claims in the case in January 2014.¹⁸⁹

(ii) The ECB’s new ‘location policy’ (forcing clearing houses to relocate to the Eurozone) – UK won the case

This case saw the European Central Bank (ECB) argue in 2011 that clearing houses that dealt with large numbers of euro-denominated trades should be based in the Eurozone, a claim that would have harmed a significant number of firms within the City of London (not least LCH.Clearnet). While the ECJ ruled that the ECB did not have the competence to introduce such a policy, it is important to note that this case was not dismissed on the grounds of it contravening the Single Market. It is thus possible that, in the future, were the ECB to gain new powers, or were another EU institution to introduce a similar proposal, that we would see a similar case arise and that a future ruling could go against the UK.

(iii) CRD IV (which includes the ‘bonus cap’) – UK lost the case

In April 2013, the European Parliament approved the text of Capital Requirements IV (Directive 2013/36/EU or CRD IV) which, among many other provisions, imposed a cap on bankers’ bonuses, setting a basic ratio of fixed pay to variable pay of 1:1, with some flexibility for that ratio to increase to 1:2 if there is strong shareholder approval.

This rule requires EU-based banks to apply the cap, so UK banks have to apply the bonus cap to all their operations around the world, incentivising them to relocate their headquarters out of the EU. As the former Chancellor Norman Lamont warned in The Daily Telegraph in 2013:

Statutory controls on pay will remind anyone of a certain age of the Seventies, and Ted Heath’s disastrous wage and price policies. They didn’t work then, and they won’t work now. Instead, they create distortions, as companies find ways of circumventing them. If implemented, the new pay restrictions would lead to an exodus of bankers and traders to Switzerland and the Far East.¹⁹⁰

188 Open Europe “Chancellor’s speech to the Open Europe Conference” (15 January 2014). Article 28 “vests the European Securities and Markets Authority (‘ESMA’) with certain powers to intervene, and by way of legally binding acts, in Member State financial markets in the event of a ‘threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union’. These circumstances are, in turn, further defined in Article 24(3) of Commission Delegated Regulation (EU) No 918/2012. The action which ESMA is empowered to take under Article 28(1) of Regulation No 236/2012 includes the imposition on natural and legal persons of notification and disclosure requirements, and a prohibition on the entry into certain transactions or subjecting such transactions to conditions.” OPINION OF ADVOCATE GENERAL JÄÄSKINEN, 12/09/2013, Case C-270/12 United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union, accessed 07/04/2015 at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62012CC0270>>.

189 ECJ “The power of the European Securities and Markets Authority to adopt emergency measures on the financial markets of the member states in order to regulate or prohibit short selling is compatible with EU law” (2014), accessed 07/04/2015 at: <<http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-01/cp140007en.pdf>>; and ECJ “Opinion of Advocate General Jääskinen, Case C-270/12” (2013), accessed 07/04/2015 at: <<http://curia.europa.eu/juris/celex.jsf?celex=62012CC0270&lang1=en&type=NOT&ancre=>>>.

190 Daily Telegraph “A cap on bankers’ bonuses would be lunacy”, N. Lamont (25 February 2013).

“The EU has been proposing to introduce a Financial Transaction Tax since 2010.”

Unsurprisingly, banks including Lloyds, Barclays and HSBC have attempted to evade this cap by the use of more generous allowances or larger basic salaries to reward staff. The argument on the City side was that bonuses are a more effective tool for keeping bankers prudent, since they are subject to deferral and clawback – shareholders or the government can take back large chunks of a bonus if wrongdoing is proven. Clawback is very difficult with fixed salaries.¹⁹¹ The City also feared that stringent bonus rules would make recruitment more difficult, and that, since banks would have to increase fixed remuneration to avoid slashing overall pay, this would remove their room for manoeuvre if they needed to cut costs rapidly.

The British Government lodged a case against the cap, though it later withdrew its challenge when the ECJ looked set to reject it. The European Banking Authority (EBA) also released a report that was very critical of the use of allowances to circumvent the bonus cap:

The EBA found that in most cases institutions had topped up the fixed remuneration of their staff and had introduced discretionary ‘role based’ allowances which have an impact on the limit of the ratio between variable and fixed remuneration required by the EU Capital Requirements Directive (CRD IV).

The report showed that most of the allowances, which were the subject of the EBA investigation, did not fulfil the conditions for being classified as fixed remuneration, namely with respect to their discretionary nature, which allows institutions to adjust or withdraw them unilaterally, without any justification.¹⁹²

Statements like this suggest that allowances are at risk too. The EU also tried to introduce caps on fund manager payments. After a long set of negotiations, the “Undertakings for the Collective Investment in Transferable Securities (UCITS V)” directive (Directive 2014/91/EU) was passed instead. UCITS will mean that fund managers will be paid half their bonuses in units of the actual funds they manage, so their interests are aligned with those of investors. This 2014 law brings fund manager remuneration closer to that of hedge and private equity fund managers.¹⁹³ The UCITS Directive has been praised by many in the financial sector.¹⁹⁴ While this compromise can be counted as a temporary City victory in seeing off actual bonus caps in fund management, the direction of travel and ambitions of EU legislators do not bode well.

(iv) (COM(2012) 631 FINAL) the ‘financial transactions tax’ – UK lost the case

The EU has been proposing to introduce a Financial Transaction Tax (FTT) since 2010, and its moves to realise this ambition have raised serious questions about the impact it would have on both Britain’s financial sector and the amount of control the UK has over its taxation policy.¹⁹⁵ After the decision of 11 Eurozone countries, led by Germany and Austria, to progress with the FTT under the terms

191 Civitas “EU cap makes bank bonuses worse than ever”, J. Lindsell (25 February 2014), accessed 07/04/2015 at: <<http://civitas.org.uk/newblog/2014/02/eu-cap-makes-bank-bonuses-worse-than-ever/>>.

192 EBA “EBA discloses probe into EU bankers allowances” (2014) accessed 07/04/2015 at: <www.eba.europa.eu/-/eba-discloses-probe-into-eu-bankers-allowances>.

193 Financial Times “Europe reaches deal on fund manager pay”, M. Marriage (25 February 2014).

194 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital”, (2014) page 78.

195 Questions about the impact that the FTT has had on taxation more generally are considered in Section 24.

“It has been estimated that the FTT could cost the UK up to £3.6bn.”

of ‘enhanced cooperation’, the tax looks set to be introduced.¹⁹⁶ The Commission presented a proposal on 23 October 2012.¹⁹⁷ George Osborne made clear the UK’s opposition to the FTT in dramatic terms: *“Proposals for a Europe-only Financial Transaction Tax are a bullet aimed at the heart of London... the idea of a tax on mobile financial transactions that did not include America or China would be economic suicide for Britain and for Europe”*.¹⁹⁸

It has been estimated that the FTT could cost the UK up to £3.6bn. The proposals have been roundly condemned, even by traditionally pro-EU groups such as TheCityUK: *“TheCityUK believes a FTT will hinder UK and European competitiveness at a time when we need to do all we can to stimulate economic growth”*¹⁹⁹ The House of Lords European Committee has also warned about the consequences of introducing an FTT:

*We concluded that there was a significant risk that financial institutions would relocate outside the EU if an FTT was introduced, with serious consequences not only for the City of London, but the for the EU financial services industry as a whole.*²⁰⁰

The UK lodged a case against the motion, but this was rejected in April 2014 on the grounds that it was reasonable for the ECB to want direct regulatory oversight over trades and risks taken with euro-denominated instruments, since ultimately it was the ECB (and not the Bank of England) that was responsible for the currency’s stability.²⁰¹

While several commentators have expressed doubt about whether the EU would be able or willing to actually introduce the tax, there is strong evidence that the organisation is serious: the former European Commissioner for Taxation Algirdas Šemeta argued that the *“FTT is legally sound and fully complies with EU Treaties and international law”*.²⁰² The current President of the European Commission Jean-Claude Juncker has also made it clear that he sees the introduction of an FTT as a priority and President Hollande of France reiterated his support for the tax in January 2015.²⁰³ The House of Lords European Union Committee has strongly criticised those who *“seriously underestimated*

196 The eleven states are: Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain.

197 European Commission “Proposal for a Council Decision authorising enhanced cooperation in the area of financial transactions tax” (COM (2012) 631 FINAL/2), accessed 07/04/2015 at <http://ec.europa.eu/taxation_customs/resources/documents/taxation/com_2012_631_en.pdf>.

198 Open Europe “Chancellor’s speech to the Open Europe Conference” (15 January 2014).

199 TheCityUK website, accessed 07/04/2015 at: <www.thecityuk.com/research/our-work/infographics/>.

200 House of Lords European Union Committee “Financial Transaction Tax: Alive and deadly”, (2013), page 7. It should be noted that in Sweden a similar attempt to introduce an FTT led to an exodus of financial businesses.

201 The UK can lodge another case at a later date – the initial UK challenges were to the mechanism used to initiate the enhanced cooperation for the FTT. Because the details of the tax (what percentages of what products will be taxed) are yet to be finally agreed, the Court suggested it would not be able to judge the potential Single Market implications, but that a challenge would be possible when France and Germany had agreed on these specifics.

202 European Voice “Financial Transaction Tax breaks EU law”, T. Vogel (2013).

203 Financial Times “France seeks to revive European financial transactions tax”, A. Baker & P. Stafford (22 January 2015).

“If the UK leaves the EU, the most important change that would take place is that the British Government would once again be put in charge of financial regulation.”

*the political will among the FTT’s advocates to see this proposal succeed”.*²⁰⁴ It would seem – as the Committee puts it – that the FTT is *“alive and deadly”*.²⁰⁵

Taken together, these four cases illustrate a critical lack of UK influence.

If the UK leaves the EU, the most important change that would take place is that the British Government would once again be put in charge of financial regulation. The scope for action might be limited if the UK decides that its priority is to maintain an ‘equivalent’ regulatory regime. However, this is just one of two options that become available to the UK once it leaves. Outside the EU, the UK would be able to make a choice when it comes to financial regulation:

- 1 Continue to ‘import’ many EU standards, helping to ensure that it retains regulatory equivalence;
- 2 Diverge from EU standards, which would give the UK much greater control of its financial policy but may risk compromising UK access.

It would be for Parliament to decide between these two options, but the UK would be free to either deregulate (see Section 10.3.5) or impose even more controls on the financial sector (see Section 10.3.6).

There is also the prospect of the UK finding a ‘third way’, able to vary standards to a certain extent (either increasing or decreasing the degree of regulation) but still able to maintain full access to the EU’s capital markets. This can be seen in Switzerland’s unique banking rules, for example on secrecy and client transparency (although the Swiss are coming under increasing pressure to conform to European and international norms).

Furthermore, given its continued role in the key international institutions governing financial regulation, if it were outside the EU, Britain might be able to group together with countries like Switzerland, South Korea, the USA, Japan, Canada, Australia, Singapore and Hong Kong to try to get its own model banking regulations through the various global bodies. This could have an impact on future EU legislation.

It is clear, however, that by leaving the Union, the UK would be able to opt out of the EU’s ‘mission creep’ in financial services – a power it doesn’t have today. There would be costs, but it would be a decision that the UK would be able to make by itself (and considering the decreasing importance of the EU to the UK’s financial sector, see Section 10.3.4, the balance between deregulation and ensuring ‘equivalence’ is likely to shift in the future). Were it to decide to leave the EU and differentiate itself by embarking on a policy of deregulation, the UK would have to consider which regulations and directives it could remove without compromising other non-EU international agreements. Laws that the UK could repeal are considered in Section 10.3.5.

10.3.3 Outside the EU, the UK could introduce a more sensible means of devising new financial rules

Numerous commentators have articulated their dissatisfaction with the way many EU rules have been introduced: without due process, without proper consultation, and without real consideration of the impact that these rules may have. The CBI, in its submission to the Balance of Competences, noted that *“too*

204 House of Lords European Union Committee “Financial Transaction Tax: Alive and deadly” (2013), page 10.

205 House of Lords European Union Committee “Financial Transaction Tax: Alive and deadly” (2013).

Figure 10.vi: Key consultations undertaken by European Commission on EU financial services legislation 2009–13



Source: HM Government²⁰⁶

206 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 90.

“Even if the UK were to decide to incorporate EU laws, it would still have the power to make changes to them.”

*many rules are being put forward with unconvincing evidence of the overall benefits or with weak assumptions and a weak evidence base”.*²⁰⁷ There are also concerns about a lack of clarity over the intended outcomes of Commission policies. Statistics from the European Commission itself suggest that insufficient time has been given to consultation (see Figure 10.vi).

A lack of proper consultation has resulted in badly thought-out rules being introduced. Regulations and directives that are regularly criticised for this include the Capital Requirements Directive IV (CRD IV), the Capital Requirements Regulation (CRR) and the Bank Recovery and Resolution Directive which, taken together, constitute the bulk of the new EU regime designed to stop a financial institution failing.

The British Private Equity & Venture Capital Association (BVCA) has pointed out that the CRD IV reporting requirements were wholly inappropriate for its industry, arguing that *“the failure of much EU level financial services legislation to differentiate appropriately between different sectors means that firms are often significantly affected for no discernible reason.”*²⁰⁸ The House of Lords European Union Committee has also argued that:

*Smaller firms, some financial services providers (including certain asset managers) and non-financial firms have been disproportionately affected by... CRD IV/CRR. Inappropriate definitions and requirements have been put in place which have significantly increased the operational costs for Real Estate Funds, Private Equity Funds and Venture Capital Funds in particular. This demonstrates the dangers of a lack of proportionality in financial regulation, and the need to keep in mind the specific features of the financial sectors in question.*²⁰⁹

Were it to leave the EU, the UK would immediately gain the power to re-evaluate existing laws and to determine how to incorporate future EU financial laws (if it decides to do so). This offers the attractive prospect of the UK being able to introduce its own consultation mechanisms, able to better mitigate the harmful impact of future EU rules. ESMA does not demand complete uniformity of financial laws for a third country to be determined ‘equivalent’. So even if the UK were to decide to incorporate EU laws, it would still have the power to make changes to them.

10.3.4 Outside the EU, the UK would be able to expand its trade

There is clear evidence that the EU is no longer a growing market for many UK financial firms. The export of financial services and products is now overwhelmingly focusing on rising powers. Various trends demonstrate this shift (see Figure 10.vii for an example). The insurance sector’s export trade is dominated by non-EU markets of which the US is by far the largest.²¹⁰ Trade with the EU in financial services is proportionately more significant but, taking exports of insurance and financial services together, the EU’s share was only about a

207 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 87.

208 House of Lords European Union Committee “The post-crisis EU financial regulatory framework: do the pieces fit?” (2015), page 59.

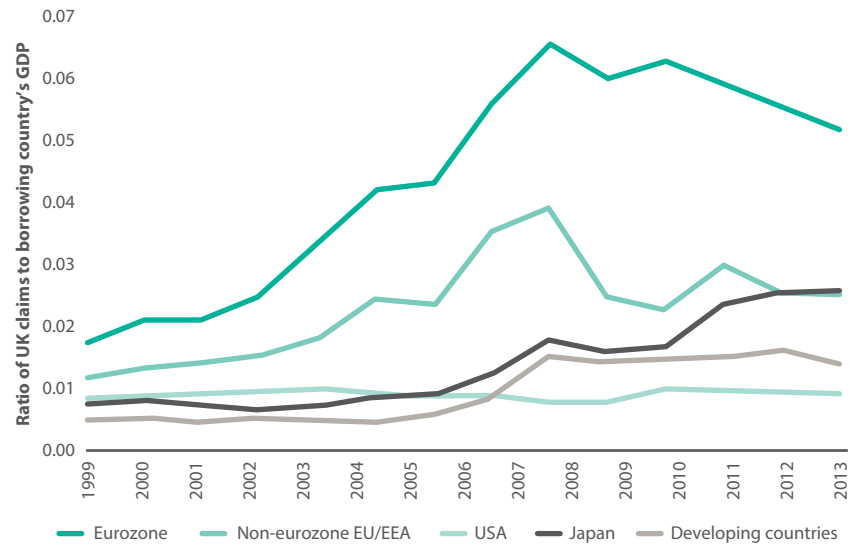
209 House of Lords European Union Committee “The post-crisis EU financial regulatory framework: do the pieces fit?” (2015), page 11.

210 Lloyd’s of London’s four largest national markets (by premium written) are the USA, the UK, Canada and Australia.

third in 2013 in terms of both gross and net earnings, and the figure has been falling in recent years. It ran at 38 per cent in 2010 but was down to 34 per cent in 2013. The EU share of financial services exports alone has been static over the past decade.²¹¹

The EU may be an important trading partner at the moment, but it is doubtful whether this will be the case in another 10 to 20 years.

Figure 10.vii: UK banks' international assets as a proportion of GDP



Source: Centre for European Reform²¹²

Europe Economics has argued that the financial sector needs to consider whether it is worth doing business in the EU, considering the growth in the rest of the world:

*[For] some time Europe could be seen as a good business opportunity for global firms, and in many cases London was used as the entry point for these firms... These advantages, of course, had to be offset against any losses there might be either in terms of reduced access for British financial sector firms to markets outside the EU (e.g. because of tariffs, or implicit trade barriers) or of UK firms' activity being diverted into the EU, when it might better have gone elsewhere in the world.*²¹³

The problem is that the EU has started to embrace protectionist measures. Since the financial crisis, there has been a shift in the European Commission's policy – away from allowing each member state to determine for itself the level of access for third country firms and towards enforcing a common approach based on the principles of equivalence and reciprocity. Respondents to the Balance of Competences Review warned that this could “create tensions with Third Countries, including key emerging markets, increase uncertainty and inhibit competitiveness for firms, and be damaging to the interests of end-users

211 Economists for Britain “UK exports of insurance and financial services are crucially important, but EU share is falling as growth disappoints”, R. Lea (2015).

212 Centre for European Reform “The consequences of Brexit for the City of London” (2014), page 4.

213 Open Europe “Continental Shift” (2011), page 13.

“Scrapping EU rules could give the UK a competitive edge – especially given that world growth will increasingly come from outside Europe in the future.”

*and consumers in all member states given that this approach does not take account of sectorial nuances”.*²¹⁴

A notable example of an EU protectionist measure is the Alternative Investment Fund Managers Directive (AIFMD), which took effect in July 2013. It has targeted the hedge fund industry and made it harder for non-European funds to provide services in the EU. It introduced restrictions on the degree of leverage, as well as imposing an assortment of rules about business conduct, reporting arrangements, provisions for collateral, asset registration and so on. Unlike many other EU financial directives which have their roots in international agreements, this directive largely originates in Europe.²¹⁵

Industry respondents to a Deloitte survey characterised the AIFMD as “protectionist”, in that it could be interpreted as “a building block of ‘Fortress Europe’”. A full 68 per cent of respondents believed that the directive would lead to fewer non-EU managers operating in the EU, due to the new burdensome business conduct rules.²¹⁶

Inside the EU, the direction is clear. Outside, scrapping such rules could give the UK a competitive edge – especially given that world growth will increasingly come from outside Europe in the future. Open Europe highlighted this issue in 2011 via analysis undertaken with Europe Economics:

*Over the next decade, growth opportunities for financial services within the EU are likely to be more limited than elsewhere in the world. Many European countries are likely to undergo economic stagnation and deleveraging. In 2005, the five largest EU economies accounted for 27 per cent of global banking assets. In 2050 that would have decreased to 12.5 per cent. Meanwhile the BRIC countries’ share of these assets will have increased from 7.9 per cent in 2005 to 32.9 per cent in 2050.*²¹⁷

Outside the EU, there would be new opportunities for building new relationships between the UK financial sector and financial sectors in non-EU countries by scrapping protectionist clauses in EU directives. For example, AIFMD has been identified by Europe Economics as a law that the UK, outside the Single Market, would not have introduced.²¹⁸

Outside the EU’s institutions, the UK would be able to diversify. At the moment a high percentage of City trading deals is in EU financial products. While this percentage is declining, the UK financial sector is currently very exposed to future crises in Europe.

10.3.5 Outside the EU, the UK could, if it chooses, deregulate the financial sector

While EU laws that were introduced before the financial crisis have been seen as positive by a number of commentators, they were still seen as expensive. As Europe Economics warned: “*In the 1990s and 2000s... EU-wide financial rules...*

214 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: The Single Market: Financial Services and the Free Movement of Capital” (2014), page 62.

215 “Flexit”, R. North (2015), page 172.

216 Deloitte “Responding to the new reality” (2012), accessed 07/04/2015 at: <www.deloitte.com/assets/Dcom-BruneiDarussalam/Local%20Assets/Documents/Financial%20Services/Alternative%20Investment%20Fund%20Managers%20Directive%20Responding%20to%20the%20new%20reality.pdf>.

217 Open Europe “Continental Shift” (2011), page 4.

218 “Flexit”, R. North (2015), page 172.

“Future UK policy-makers may decide, considering the declining importance of EU markets to the City, that the financial gains of deregulation outweigh the costs of potentially no longer being deemed equivalent.”

*often increased compliance costs for firms in the UK”.*²¹⁹ Various studies have also shown that these financial rules feature prominently in lists of the most expensive EU regulations.²²⁰

It has been estimated that the EU financial services industry will spend €33.3bn on EU compliance costs between 2012 and 2015, with a large proportion of this impacting the City of London.²²¹ In addition, these rules have created considerable confusion. For example the EU’s plans for new rules that would require the standard reporting of all foreign exchange derivative trades were postponed in October 2014 after national regulators found themselves unable to agree on what deals counted.²²² There is also uncertainty about EU proposals to clamp down on inter-bank lending rate benchmarks.²²³ Proposals to recast the IORP Directive (Directive 2003/41/EC) – which sets out a minimum harmonisation framework for occupational pension schemes and their supervision – were contested by both the British Government and the European Scrutiny Committee, due to the European Commission’s *“lack of justification for the proposal, subsidiarity issues and the practical consequences of the measure”*, raising concerns about the 125,000 schemes operating within the EU (managing assets of around £1.96tn for around 75m beneficiaries).²²⁴

In addition, academic studies have suggested that EU financial regulations have failed to create harmonised systems across the EU. For example, in one study it was concluded that transposition of the EU Takeover Directive into French law was a failure, as French outcomes diverged from European Commission aspirations for greater clarity and uniformity.²²⁵

Policy-makers would face a choice after leaving the EU. Too much deregulation may risk ESMA deeming the UK’s rule book to no longer be ‘equivalent’ to the EU’s own rules. If the UK were to decide that deregulation was a better course, however, there would be opportunities for substantial gains. The ability to deregulate outside the EU has been acknowledged across the board, including by the Centre for European Reform: *“upon exit, there might be some competitiveness gains for the City if the UK rescinded some rules that it considers damaging. The recent rule limiting banker’s bonuses to double their annual salary might be one. Britain might choose lower capital requirements for insurers that the EU has imposed under the Solvency II directive”*.²²⁶

Future UK policy-makers may decide, considering the declining importance of EU markets to the City, that the financial gains of deregulation outweigh the costs of potentially no longer being deemed equivalent. It would be a bold move, but it would only be open to a UK Government if Britain were outside the EU.

219 Open Europe “Continental Shift” (2011), page 3.

220 Open Europe “Continental Shift” (2011), page 3; British Chambers of Commerce “Worlds apart: The EU and British regulatory systems”, accessed 07/04/2015 at: <www.escholar.manchester.ac.uk/uk-ac-man-scw:113812>.

221 JWG “Analysis Report, Dirty windows: Regulating a Clearer View” (2012).

222 Financial Times “Europe delays full foreign exchange derivatives reporting”, P. Stafford (10 October 2014).

223 EuroFinUse “FAST TRACK FOR RULES ON FOREX”, accessed 02/04/15 at: <www.betterfinance.eu/fileadmin/user_upload/documents/Press_Releases/en/EuroFinUse_Press_Release_-_FOREX_Regulation.pdf>.

224 House of Commons European Scrutiny Committee, accessed 07/04/2015 at <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-xxiv/21910.htm>.

225 JCMS “The second time as farce: The EU Takeover Directive, the clash of Capitalisms and Hamstrung Harmonization of European (and French) Corporate Governance”, B. Clift (2009), pages 55–79.

226 Centre for European Reform “The consequences of Brexit for the City of London”, J. Springford and P. White (2014), page 8.

“Despite claims from the European Commission that its new rules have made the financial system more secure, there is little evidence that its reforms have reduced systemic risk.”

If it did decide to introduce a policy of deregulation, however, the UK would have to ensure it did not compromise other international agreements to which Britain has signed up. Europe Economics has identified a number of rules that the UK – if it were willing to be outside the Single Market – could repeal without compromising international rules:

- Creation of the Committee of European Securities Regulators;
- Financial Collateral Directive;
- Prospectus Directive;
- 10th Company Law Directive;
- Payment Services Directive;
- Alternative Investment Fund Managers Directive;
- ESMA Short Sale Restrictions;
- Financial Transaction Tax under Enhanced Cooperation;
- CRD IV;
- ECB ‘location’ policy.

10.3.6 Outside the EU, the UK could, if it chooses, impose greater controls over financial firms

One underappreciated facet of Britain’s EU membership is that it is actually harder for the British Government to impose greater controls over the financial sector. Many political parties, especially on the Left, have made it clear that they want to introduce new systems for regulating finance.

Despite claims from the European Commission that its new rules have made the financial system more secure, there is little evidence that its reforms have reduced systemic risk.²²⁷ The British Government has also warned that the UK’s interconnectedness with EU markets is a source of concern:

The UK financial sector’s interconnectedness with EU and global financial institutions does present some risks, particularly when exposure is heavily skewed towards certain regions. It is well-documented that, in the run-up to the financial crisis, European banks were heavily exposed to mispriced securitised debt based upon loans to households and companies in the US. So while open capital markets bring clear benefits to the UK’s financial sector, an interconnected system also poses risks. Since the financial crisis, rule-making at both an EU and international level has focussed [sic] on addressing these risks.²²⁸

EU laws passed before the 2008 financial crisis failed to ensure that there was satisfactory protection against systemic risk within the system, with EU regulation adding little in terms of market stability. The Government’s official investigation into the causes of the financial crisis, the Turner Review, was critical of EU policies (emphasis added):

The predominant assumption was that increased complexity had been matched by the evolution of mathematically sophisticated and effective techniques for measuring and managing the resulting risks. Central to many of the techniques was the concept of Value-at-Risk (VAR), enabling inferences about forward-looking risk to be drawn from the observation of past patterns of price

227 Systematic risk is defined as “the propensity of a financial institution to be undercapitalised when the financial system as a whole is undercapitalised”.

228 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 41.

“There is little evidence that the EU’s reforms have managed to tackle the problems facing the EU’s financial sector.”

*movement. This technique, developed in the early 1990s, was not only accepted as standard across the industry, but adopted by regulators as the basis for calculating trading risk and required capital, (being incorporated for instance within the European Capital Adequacy Directive). There are, however, fundamental questions about the validity of VAR as a measure of risk... the use of VAR measures based on relatively short periods of historical observation (e.g. 12 months) introduced dangerous procyclicality into the assessment of trading book risk.*²²⁹

In short, previous EU regulators failed to properly regulate risk.²³⁰ Left-leaning critics could make a strong argument that insufficient measures like the European Capital Adequacy Directive actually contributed to this false sense of security. As the Turner Review points out: *“Mathematical sophistication ended up not containing risk, but providing false assurance that other prima facie indicators of increasing risk (e.g. rapid credit extension and balance sheet growth) could be safely ignored.”*²³¹

Several years on from the financial crisis, there is little evidence that the EU’s reforms have managed to tackle the problems facing the EU’s financial sector. In late 2014, the EBA undertook a major ‘stress test’ of 123 EU and EEA banks (including Norwegian institutions), covering more than 70 per cent of total EU banking assets. It found that 25 of these banks had capital shortfalls.²³² This complements earlier (though less rigorous) academic research of the 196 largest EU banks, which concluded that, for certain EU countries, the cost to the taxpayer of rescuing the riskiest domestic banks is so high that they *“might be considered too big to be saved”*. The banks cited includes ING Group in the Netherlands, Danske Bank in Denmark and Nordea Bank in Sweden.²³³

The failure of post-crisis EU reforms to improve the stability of the banking sector has been noted by commentators and politicians. The House of Lords European Union Committee noted that *“several witnesses commented that such stability measures did not adequately address problems relating to the resilience of financial markets, particularly with respect to the resolution of large and complex financial institutions.”*²³⁴

In addition, senior financial figures have pointed out that EU rules may have inadvertently exposed the financial sector to new risks. Garry Jones, the Chief Executive of the London Metal Exchange, has complained that *“some regulations, such as the European Markets and Infrastructure Regulation which were intended to make markets safer, have actually created the environment for greater*

229 FSA “Turner Review” (2009), page 22.

230 David Heathcoat-Amory argues that *“As the 2007/08 banking collapse showed, financial services need better regulation. But this is unlikely to be achieved by the EU, whose own accounts have been persistently rejected by the auditors, and whose expert opinions about the euro have been so spectacularly wrong.”* Centre for Policy Studies “The UK and the EU: Cutting the knot” (2012), page 28.

231 FSA “Turner Review” (2009), page 22.

232 It should be noted that stress tests in the EU after the crisis were also ‘watered down’ according to the Centre for European Reform: *“Germany played an active part in watering down stress tests for EU banks in 2010, and why it fought a rear-guard action to try and dilute the new Basel accords on capital adequacy. Seen from outside, Germany has appeared strangely reluctant to accept one of the central lessons of the financial crisis: that banks should hold more and better quality capital.”* CER “Financial regulation: Britain the perennial outlier?” (2011).

233 “Systemic Risk in Europe”, R. Engle, E. Jondeau, M. Rockinger (2014). Swiss banks did not have to take part in the stress testing, but doubtless followed it with great interest.

234 European Union Committee “The EU financial regulatory framework in detail”.

“EU membership is not necessary to retain these rules.”

risks in certain areas”.²³⁵ Likewise, passporting has itself been criticised, with some highlighting the problems caused by Iceland’s Landsbanki during the crisis. As the Turner Review pointed out:

*Landsbanki’s UK branch was not subject to full prudential supervision by the FSA. This is because European Union single market rules – which cover Iceland as a member of the European Economic Area (EEA) – allow banks in one country to operate as branches in another, with the supervision of solvency and of whole bank liquidity resting with the home country supervisor (this right is known as ‘pass-porting’). The FSA, as host country supervisor, had only limited powers relating to the supervision of local liquidity. The insolvency of Landsbanki therefore illustrates a weakness in the current European approach to a single market in retail banking. Depositors in one country (or their government) are vulnerable to the failure of banks in another country if the home country concerned lacks the supervisory resources to ensure bank solvency, or the fiscal resources or willingness to fund bank rescue, and if the deposit insurance cover is low and unfunded. The approach to bank branch passporting rights, at least as they apply to branches conducting retail business, therefore requires review.*²³⁶

It should be acknowledged that recent EU reforms should make it easier for a bank to be wound down without causing problems for the taxpayer. The EU’s Bank Recovery and Resolution Directive (Directive 2014/59/EU) sets out a range of measures which should help to facilitate the recovery of banks in difficulties via recovery planning and early intervention powers, along with a common set of resolution tools which may be applied in the event of failure as an alternative to insolvency. According to the British Government: *“Overall, these measures will help ensure that the authorities can restructure failing institutions to restore viability at little or no direct cost to the tax-payer”*.²³⁷ But EU membership is not necessary to retain these rules.

In 2013, the responsibility for prudential supervision in the UK moved from the Financial Services Authority to the Bank of England, which has made it clear that it would like to pursue a relationship-based model of regulation rather than a purely rules-based one.²³⁸ This was illustrated by the former Governor of the Bank, Mervyn King:

I give two examples of where we think it will be important for regulators to exercise judgment and why we need to make a break from the style of regulation we have seen in the past. One is that I would like Andrew and his colleagues to be able to say to a bank – this is a hypothetical example but is clearly relevant to what happened before the crisis – “Your leverage has gone up from 20 to one to 40 to one in the past four or five years. You have not broken any rules. Nevertheless, this is a highly risky set of activities to undertake, and we want you to reduce your leverage.” The only way that regulation can have an effect is if the regulators have the freedom to impose their judgment and not

235 The Telegraph “LME chief says European rules are hitting growth”, A. Critchlow (14 December 2014), accessed 18/05/2015 at: <www.telegraph.co.uk/finance/commodities/11293437/LME-chief-says-European-rules-are-hitting-growth.html>.

236 FSA “Turner Review”, page 38.

237 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 26.

238 The FSA’s responsibilities have been devolved to the Bank and two new bodies, the Prudential Regulation Authority and the Financial Conduct Authority.

“Even when the UK wants to go further in its regulatory approach than the norm, it could potentially clash with EU rules.”

*base it purely on a myriad of detailed rules. Another example would be to say to a bank, “The structure of your bank is so complex and opaque, with so many offshore and onshore legal entities, that we don’t understand the risks you are taking. We are not entirely confident that you do either, but certainly outside investments cannot assess it. We think that degree of opacity is inconsistent with a sensible and stable contribution to financial stability.” These institutions are operating not only for themselves; they are big enough to affect the economy of the whole country. Therefore, the regulator has to be free to make a judgment about that degree of opacity, even though nothing is done that could be said to violate a specific detailed rule. That degree of judgment is vital. The choice is yours. If you want to stay with a highly legalistic and bureaucratic regime for regulation, which many of the institutions would prefer, please do not give it to us. We would not want to take on that responsibility. If you want judgment to be exercised, we are prepared to take it on.”*²³⁹

As Europe Economics has put it: *“even when the UK wants to go further in its regulatory approach than the norm, it could potentially clash with EU rules.”*²⁴⁰ The Fresh Start Group of MPs expressed similar concerns over the potential restriction on the ability of the UK *“to introduce more stringent regulation than the EU currently proposes, for example regarding capital requirements for banks”*²⁴¹ Likewise, the International Regulatory Strategy Group has suggested that, *“undoubtedly, there are some areas of EU rules where the UK would have taken a different approach. However, there are many examples where the UK would have taken a tougher stance”* noting as an example the structural banking reforms in the Financial Services (Banking Reform) Act 2013 compared to current EU proposals.²⁴²

Conclusion

As this chapter has shown, there are many opportunities for the UK outside the EU. Outside the EU, European companies and organisations would still come to the City of London to get the best financing options and terms, while the UK would gain a new, stronger voice on key international bodies. Britain would well lead the world in the development of global financial standards.

While the Centre for European Reform argues that the UK should remain within the EU, even this most pro-EU of organisations acknowledges that leaving would not be a disaster for the financial sector:

*Britain’s eurosceptics are right that the City would not collapse in the event of an EU exit. Its central role in foreign exchange and securities trading, in insurance and asset management, and in financial law and accountancy services would continue, as would its position as the location of choice for many leading private equity and hedge funds.*²⁴³

239 House of Lords House of Commons “Oral evidence taken before the joint committee on the draft financial services bill” (3 November 2011), accessed 02/04/15 at: <www.parliament.uk/documents/joint-committees/Draft-Financial-Services-Bill/Ucjcdfs031111ev11.pdf>.

240 Open Europe “Continental Shift”(2011), page 15.

241 Fresh Start, cited in HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 44.

242 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union The Single Market: Financial Services and the Free Movement of Capital” (2014), page 55.

243 Centre for European Reform “The consequences of Brexit for the City of London”, J. Springford and P. White (2014), page 10.

“In the late 1990s, pro-EU organisations claimed that the UK’s financial sector would decline if Britain failed to join the euro.”

Often the consequences of leaving the EU are presented with unjustified hyperbole. The UK would retain many of its pull factors and remain a “location of choice” for many important organisations. In its comprehensive assessment of the UK financial sector after the 2008 crisis, the Turner Review pointed out that Britain faced a choice:

Current arrangements, combining branch passporting rights, home country supervision, and purely national deposit insurance, are not a sound basis for the future regulation and supervision of European cross-border retail banks. Sounder arrangements require either increased national powers, implying a less open single market, or a greater degree of European integration.²⁴⁴

Five years on, Britain still faces the same choice.

Exiting the EU does not mean losing access to the EU’s capital markets, or sacrificing the principle of free movement of capital. Immediately after leaving the EU, the UK would retain all of the EU directives and regulations that it has already signed up to – by definition, the UK’s regulatory system would then be considered equivalent to the EU’s.

UK policy-makers should have little to no difficulty in engaging with EU counterparts about how to ensure that our two financial systems are ‘equivalent’ as time goes on and new policies are introduced. However, the UK would then have much greater say over the detail of its ‘equivalent’ legislation.

There are also huge opportunities for UK financial services globally. According to HSBC’s research paper, “The World in 2050”, 17 of the top 30 economies in the world in 2050 could be emerging countries. Among Brazil, Russia, India, China and South Africa – the ‘BRICS’ countries – securities markets already provide 60 per cent of total financing, and their equity markets are around six times larger than they were in 2002.²⁴⁵

It should be noted that, in the late 1990s, pro-EU organisations claimed that the UK’s financial sector would decline if Britain failed to join the euro: “if the UK decides not to join a monetary union, the financial services industry will gradually ebb away to the continent”.²⁴⁶ However, there has been no evidence that Britain’s decision to remain outside the single currency has harmed the City. In fact, as the Centre for European Reform grudgingly admits, “fears that the City of London’s position as a financial centre would be gradually eroded if Britain did not join the Eurozone have not materialised: to date, the City has thrived outside the currency union.”²⁴⁷ It should also be noted that, despite not joining the euro, the UK was still able to win access to the Eurozone’s payment system: TARGET. This has allowed the City of London to become the largest centre for euro-denominated trading.²⁴⁸ It should also be noted that EU membership is no guarantee of retention of the four freedoms – as was shown in the Cyprus crisis in 2013, when capital controls were introduced. The UK lacks influence within the EU already, and has nothing to fear from separating itself from the EU’s institutions. Having a seat has not allowed the UK to successively challenge any of the EU’s new financial rules.

244 FSA “Turner Review” (2009), page 101.

245 HSBC “The World in 2050”, accessed 07/04/2015 at: <www.hsbc.com/~media/HSBC-com/about-hsbc/advertising/pdfs/the-world-in-2050.pdf>.

246 BBC News “Euro to ‘benefit’ UK economy” (2000), accessed 07/04/2015 at <<http://news.bbc.co.uk/1/hi/business/855310.stm>>.

247 Centre for European Reform “The consequences of Brexit for the City of London”, J. Springford and P. White (2014), page 1.

248 Centre for European Reform “The consequences of Brexit for the City of London”, J. Springford and P. White (2014), page 3.

Those who claimed that Britain would not cope outside the euro were wrong then, and they are wrong now to suggest that the UK financial sector would not cope outside the EU. With the right policies there is no reason the UK cannot still trade with the EU while better developing links with countries globally. There would not be any reason for financial firms to move their headquarters. As Gao Jian, Vice-Governor of the China Development Bank, put it in April 2013 when considering the impact of Britain leaving the EU on the City of London:

*It may make a little difference but not much. The City's position as a global financial centre with close connections with Hong Kong would not change. Because of its infrastructure, because of its legal environment, because of its participation in the world, China will definitely use London as a financial hub for many international transactions.*²⁴⁹

249 G. Jian cited in R. Bootle "The Trouble with Europe", page 170.

11 EU Budget

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“The UK, as one of the largest contributors to the EU Budget, has over the last three years paid in twice as much as it has received back from the EU.”

EU policy and spending priorities are determined by the EU Budget process, a complex and evolving system which pays both for EU policies and for the administration of the Union.²⁵⁰

While some funding is certainly directed to admirable causes, including research and economic development, it is also the case that certain member states benefit far more than others. The UK, as one of the largest contributors to the EU Budget, has over the last three years paid in twice as much as it has received back from the EU. This raises two important questions: how much would the UK save from leaving the EU and would an independent UK be able to fund the various organisations which currently benefit from EU funding? In fact, leaving the EU would allow the UK to make substantial savings. Britain would not just be able to continue funding its domestic agencies and organisations that benefit from EU monies but also make a substantial investment in the country.

11.1 The UK would remain a member of all key international bodies

The UK's contributions to the EU Budget do not have a direct impact on Britain's membership of any other key international organisations.

11.2 The UK could continue to cooperate with the EU on budgetary matters

Key issues

- Retaining the right to cooperate with EU on budgetary issues
- Maintaining the right to receive some funding from the EU programmes that the UK contributes to

The EU Budget is, in part, funded by countries which are outside of the EU and also diverts some of its funding to non-EU countries. This itself is determined by the Multiannual Financial Framework (MFF), which currently commits the EU to a total of €960bn of spending between 2014 and 2020 (in 2011 prices – the size of the Budget is uprated by two per cent each year).²⁵¹ The aim of the MFF is, in the words of the President of the European Commission Jean-Claude Juncker, “to orient the EU Budget further towards jobs, growth and competitiveness.”²⁵² EU politicians like to stress that the EU Budget represents ‘European added value’ for the member states, and that money spent at the EU level goes further than it would if spent at the member state level. There are considerable doubts about whether this is an accurate description.

Outside the EU, the UK would still be able to cooperate with the EU in this area. This is thanks to both the EU's willingness to open its budgetary process to third countries and its dependency on the UK's funding revenue, both of which would offer the UK not just opportunities but a strong hand in any future negotiations.

250 Some EU programmes are paid for outside the EU Budget, such as Flexibility Instruments, the Emergency Aid Reserve, the European Solidarity Fund, the European Global Adjustment Fund and the European Development Fund. The MFF Inter-Institutional Agreement provides details on how ‘off-budget’ mechanisms will work.

251 European Commission, accessed 24/05/2015 at: <http://ec.europa.eu/budget/mff/index_en.cfm>. The MFF sets a maximum amount of €960bn for commitment appropriations and €908bn for payment appropriations. This generates a €52bn gap. Commitments are funds for specific initiatives, payments are forecast for the period covered by the Budget. This, in part, explains why there are different figures for the EU budget.

252 European Parliament “My new start for Europe”, J-C Juncker (2014), page 4.

“The EU’s funding programmes extend far beyond the geographic confines of the EU itself.”

11.2.1 Some European funding programmes could continue to flow to the UK

The EU’s funding programmes extend far beyond the geographic confines of the EU itself. Outside the EU, the UK could seek to participate in the programmes it wants to be involved in. Council Decision 94/179/Euratom of 21 March 1994 allows for loans to be granted to certain non-EU countries for specific projects.²⁵³ The EU also grants or has granted financial assistance in the form of medium-term loans to a number of non-EU countries experiencing serious, but generally short-term, balance of payments or budgetary difficulties. Countries that have benefited from this sort of aid include Hungary, the former Czechoslovakia, the Baltic States, Bulgaria, Romania, Israel, Algeria, Ukraine, Moldova, Belarus, Georgia, Armenia, and Tajikistan.²⁵⁴

Today, cooperation between the EU and third countries is integral to various EU programmes, and funding is allocated for non-EU states in the Budget itself. The 2013 Budget headings, which allocated funding to non-EU states were:

- Competitiveness for growth and employment;
- Seventh Research framework programme;
- Trans-European Networks (TEN);
- Galileo;
- Lifelong Learning;
- Competitiveness and innovation framework programme (CIP);
- CIP Entrepreneurship and innovation;
- CIP ICT policy support;
- CIP Intelligent energy social policy agenda;
- Customs 2013 and Fiscalis 2013;
- Cohesion for growth and employment;
- Structural funds;
- Technical assistance;
- Cohesion Fund Market related expenditure and direct aids;
- Agriculture markets;
- Animal and plant health;
- Fisheries governance and international agreements;
- Life+;
- Freedom, security and justice;
- Solidarity and management of migration flows;
- Public health and consumer protection programme;
- Culture 2007–2013 Youth in action;
- Media 2007;
- Europe for Citizens;
- Civil protection Financial instrument.

Taking research funding as an example, cooperation is conducted under the Strategic Forum of International Science and Technology Cooperation. European Research Framework Programmes are also open to non-EU countries – for example there were 13 associated countries in FP7: the EU candidate and potential candidate countries, members of the European Economic Area (EEA), Switzerland, Israel, Moldova and the Faroe Islands. Likewise, the Science and Technology for Development Programme is open to non-EU countries. The EU has also signed international Science and Technology Agreements

253 European Commission “European Union Public Finance: 4th Edition”.

254 European Commission “European Union Public Finance: 4th Edition”.

“Were the UK to decide that it wanted to continue contributing to EU funds, it could still do so.”

with many countries including Algeria, Argentina, Australia, Brazil, Canada, Chile, Egypt, India, Japan, Korea, Mexico, Morocco, New Zealand, Russia, South Africa, Ukraine and the United States.²⁵⁵ These agreements can be legally binding.

11.2.2 UK contributions to the EU Budget could continue

Some commentators have suggested that, were the UK to leave the EU, it would compromise the UK’s ability to contribute to EU programmes such as structural funds. The key question, however, is actually the amount of control the UK has over the funds it gives to the EU. Were the UK to decide that it wanted to continue contributing to these funds (a key proviso), it could still do so – Norway, Iceland and Liechtenstein make annual contributions to the EU Budget, in return for them being able to participate in the EU’s regional policy. In 2012, these states paid €312m to the EU Budget and contribute to the EU’s less affluent areas via the EEA Grants and Norway Grants.

Over recent years, Hungary’s governing party Fidesz has arguably threatened the principles of accountable government and the rule of law. The Government of Viktor Orbán has been criticised by liberal Hungarians, and he in turn has challenged the EEA and Norwegian Grants, a small proportion of which were paying for non-governmental organisations (NGOs) critical of his government. The Hungarian Government attempted to move the administration of the grants to a quango but, in response, Norway announced the suspension of its grants worth over €110m in March 2014.²⁵⁶ The UK currently has nothing like this control over its contributions to structural and cohesion funding, but would gain this control were it to leave the EU.

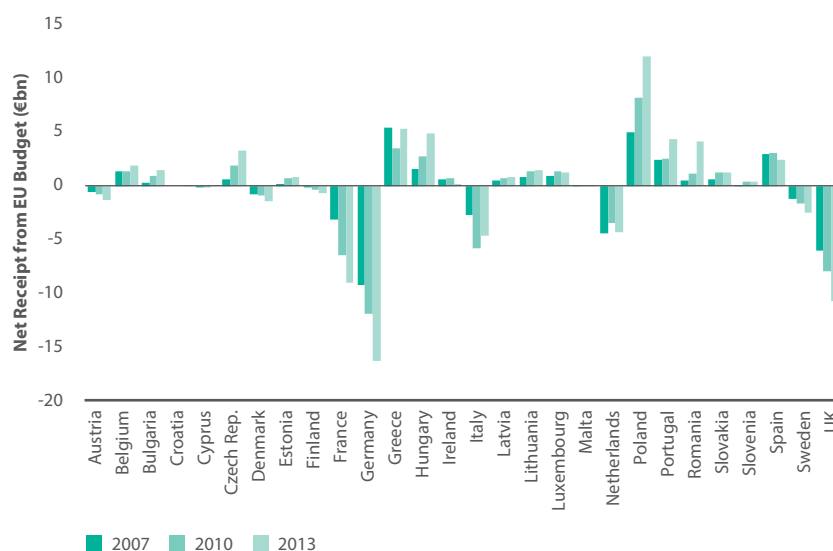
Switzerland, by contrast, does not contribute directly to the EU Budget and its contributions to social and economic cohesion projects are relatively small. However, since 1991, Switzerland has contributed €2.7bn to develop and stabilise Eastern Europe and the Balkans. This contribution was made binding by the 2006 Eastern Europe Cooperation Act, and further approved by Swiss voters in a national referendum. However, via this scheme, the funds are paid to Eastern European countries directly, allowing Switzerland to maintain some control over how its money is spent.

255 European Commission “International RTD cooperation”, accessed 24/05/2015 at: <http://ec.europa.eu/research/iscp/pdf/policy/st_agreement_ec_euratom_october_2014.pdf>.

256 EEA Grants website “Suspension of EEA and Norway Grants to Hungary” (2014), accessed 24/05/2015 at: <<http://eeagrants.org/News/2014/Suspension-of-EEA-and-Norway-Grants-to-Hungary>>.

“The EU Budget is dependent upon a few very big ‘losers’: Germany, France and the UK.”

Figure 11.i: ‘Winners’ and ‘Losers’ from the EU Budget in 2007, 2010 and 2013



Source: European Commission Financial Programming and Budget webpage²⁵⁷

Figure 11.i illustrates the ‘winners’ (those who receive more than they pay in) and ‘losers’ (those who pay in more than they receive back) among the current EU-28 from the EU budgetary process.²⁵⁸ Clearly, there are more ‘winners’ (19 in 2013) than ‘losers’, even if in some instances (Croatia, Cyprus, Estonia, Ireland, Malta, Slovenia) the net gain is comparatively small. ‘Winners’ also tend to keep winning. Across the period 2007–2013, only one country, Cyprus, switched from being a (very slight) ‘loser’ to being a (very slight) ‘winner’.

The most obvious observation from Figure 11.i, however, is that the EU Budget is dependent upon a few very big ‘losers’: Germany, France and the UK. Although the contributions of member states will have been affected by the Eurozone crisis, Figure 11.i also indicates what happens when a small-sized, less prosperous country such as Croatia accedes to the EU. The ‘winners’ keep winning and the ‘losers’ lose even more. That has been the pattern after previous enlargements. But what would happen if the EU were instead to shrink?

The UK’s net contribution of around €11bn represents 8 per cent of the EU-28 total expenditure for 2013. This is not a trivial amount. Without the British contribution, the EU would either have to curtail its expenditure significantly (hurting the ‘winners’) or require an even greater contribution from the remaining members (further penalising the ‘losers’). Either route could even lead to some ‘winners’ becoming ‘losers’. Most likely, the Commission would divide the burden between both responses, ensuring that every member state incurred some of the pain. This adjustment would have to take place at a time when the Eurozone crisis had weakened member states’ national finances. The result is very unlikely to be politically palatable for those governments.

257 European Commission “EU expenditure and revenue”, accessed 24/05/2015 at <http://ec.europa.eu/budget/figures/interactive/index_en.cfm>.

258 Figures obtained by taking the official figures for ‘Total Expenditure’ for each country and subtracting the ‘Total Own Resources’ (i.e. ‘Total National Contribution’ of VAT-linked and GNI-linked contributions, after adjusting for national rebates, plus ‘Traditional Own Resources’ of sugar levies and customs duties) attributed to each country to arrive at the net gain or loss. Croatia is not represented in the 2007 and 2010 results, as it did not join the EU until July 2013.

“The state of the EU Budget provides Britain with considerable strength for renegotiating the terms of its membership.”

In other words, the state of the EU Budget provides Britain with considerable strength for renegotiating the terms of its membership. Even if the UK were to leave, there would be very strong demand from the EU for the UK to continue to pay into the Budget, perhaps in the form of either an ‘exit charge’ or most likely a ‘user fee’ for continuing access to the Single Market under a post-membership free trade agreement. This is because the UK’s contribution allows the EU to maintain its current level of spending and not fall into a deficit, which is in theory not possible under the Treaties, and the EU will wish to maintain this position while it adapts to the new situation.

The UK would, therefore, not only be able to still contribute to EU programmes (if it wanted to), but would also have a powerful hand in any post-referendum negotiations, as its contributions would be vital for the EU to retain or transition from its previous levels of expenditure.

11.3 New Budget policy opportunities would be available

The EU’s Budget has increased dramatically since it was first introduced as a single budget in 1965, imposing significant costs on the UK. The UK’s contributions to the EU Budget are, today, twice what the UK receives back. Leaving the EU therefore offers the enticing prospect of substantial savings, while continuing to pay the recipients of existing funds and maintaining existing policy direction in areas where Parliament decides it is appropriate. Either way, the taxpayer benefits.

11.3.1 EU ‘mission creep’ in budgetary policy could be stopped at a stroke

The EU Budget has changed dramatically since it was first introduced, as the nature, size and powers of the EU itself have grown and evolved. EU Budget contributions are one of the best examples of EU ‘mission creep’, with the UK’s contributions gradually increasing over time.

In the early years of the European Economic Community (EEC), a number of different budgets funded the EEC’s separate policies. These were unified in 1965 with the creation of the ‘General Budget of the European Communities’. From 1970, this Budget was funded by the system of ‘Own Resources’ following the passage of the Own Resources Decision (ORD).

In 1988, there was a move away from annual standalone budgets and the first Financial Perspective was introduced, which set spending limits over a number of years. This system proved effective and gradually evolved into the EU’s present system: the Multiannual Financial Framework (MFF), which sets the maximum spend (‘ceilings’) for the EU over at least five years. The MFF itself is agreed by the Council unanimously along with the Commission and the Parliament, while the annual budgets that constitute the MFF are agreed via Qualified Majority Voting (QMV) in the Council of Ministers and a majority of the European Parliament.²⁵⁹ While annual budgets are scrutinised by the UK Parliament, they do not need to be approved via an Act of Parliament.

Today, the EU derives its legal competence with regard to the Budget from Articles 310 to 325 of the Treaty on the Functioning of the European Union (TFEU). Via this legal base, the EU Budget has grown into a complex system, underpinned by additional legislation that is deemed to impact the UK national

²⁵⁹ In the 2014–2020 MFF there are six budget headings: 1) Smart and Inclusive Growth 2) Sustainable Growth: Natural Resources 3) Security and citizenship 4) Global Europe 5) Administration 6) Compensations.

“This increasing remit has, unsurprisingly, been mirrored by an increasing size of the Budget itself.”

interest.²⁶⁰ Payments to the EU are determined via the ORD. Own resources are decided by the Council acting unanimously and then approved by the individual parliaments. ORD Decisions set out how the EU can collect revenue:

- Traditional own resources (TOR): These are mainly import duties on goods that are brought into the member states. Member states currently have to contribute 80 per cent of the revenue collected to the European Commission;²⁶¹
- Value Added Tax (VAT): This is calculated by applying a uniform rate (currently 0.3 per cent) on the harmonised VAT base rate of each member state;
- Gross National Income (GNI): This is based on the member states transferring a standard percentage of their GNI to the EU. While this is intended to cover the balance of total expenditure it has become the largest source of revenue for EU Budgets;²⁶²
- Other income: This includes income from EU staff, unspent money from previous years and any other income (e.g. fines levied by the European Commission).

This increasing remit has, unsurprisingly, been mirrored by an increasing size of the Budget itself.²⁶³ This has raised concerns in some member states, not least the UK, which has made it clear that it objects to this trend: *“The UK Government has taken a clear view on the need for restraint and reform in the EU Budget, through recent negotiations on the MFF, annual budgets and the Own Resources Decision”* and that *“restraining the size of the EU budget is seen as being firmly in the UK national interest”*.²⁶⁴ The British Government assesses EU spending proposals via three considerations: whether the funding is on the right level, whether funding is the right action, and whether it is the right value. Despite this attempt at scrutiny, the EU’s Budget has become significantly larger over the last four decades (see Figure 11.ii).

260 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: EU Budget” (2014), page 10.

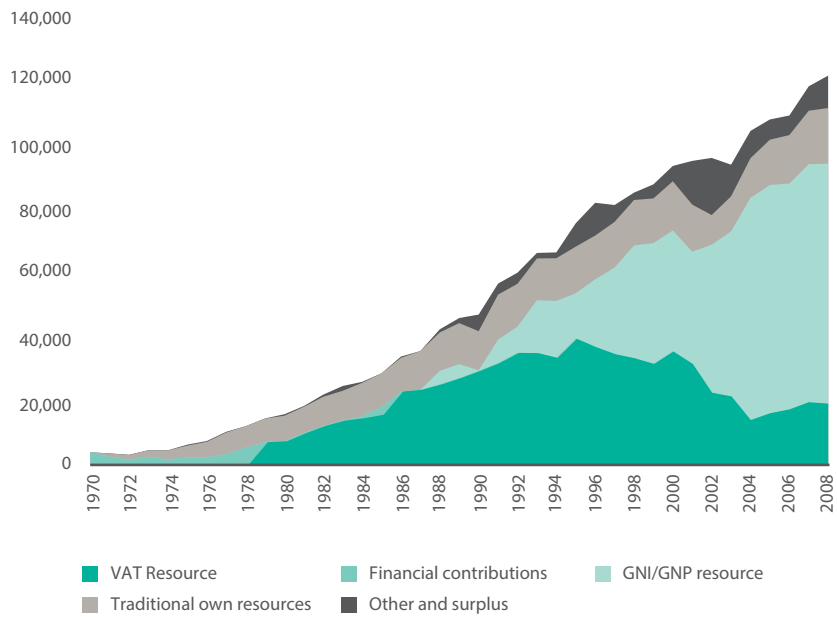
261 Under the terms of the 2007 Own Resources Decision, member states retained 25 per cent of the import duties to cover collection costs and passed 75 per cent to the European Commission. However, under the new terms agreed for the 2014–2020 MFF deal it was agreed to lower the amount the member states keep to 20 per cent. In 26 May 2014, the Council adopted a legislative package, including a new own resources decision, introducing some changes to the own resources system for the period 2014–20. While the system has to be approved by each member state (usually via Parliamentary ratification) the new own resources rules will apply retroactively from 1 January 2014. The 20 per cent retained do not constitute a fiscal gain for the retaining state, but might be argued to be a further hidden cost to the economy of EU membership.

262 Sometimes referred to as the ‘EU surcharge’. GNI differs from Gross Domestic Product (GDP) which accounts for the goods and services produced within a country. GNI is GDP plus net contribution of employees abroad plus net property income from overseas, minus net taxes and subsidies on products and imports.

263 The EU also uses Innovative Financial Instruments (IFIs) to leverage the EU Budget. See: <www.publications.parliament.uk/pa/ld201012/ldselect/ldecom/297/29711.htm>.

264 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: EU Budget” (2014), page 34.

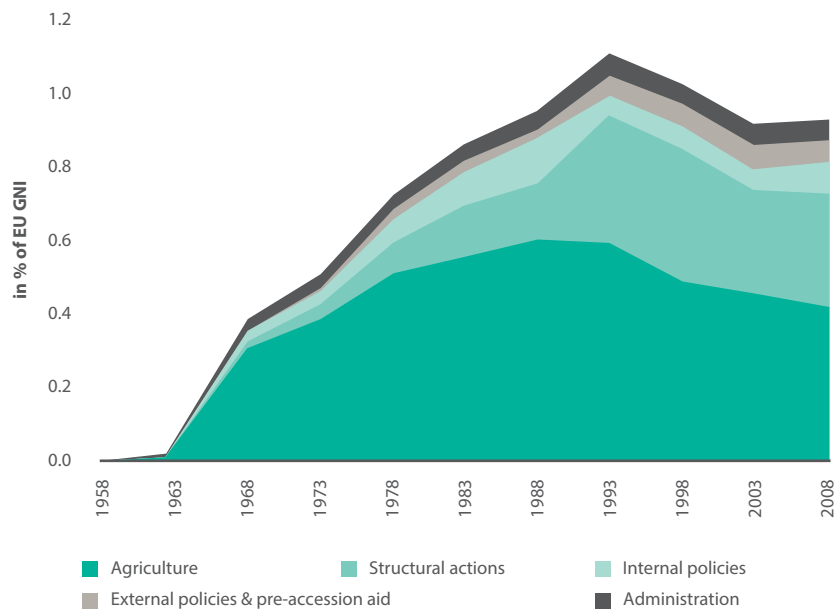
Figure 11.ii: Development of EU Budget revenue, 1958–2008



Source: HM Government

While the EU Budget has increased in absolute terms, its expenditure shrunk as a percentage of EU Gross National Income (GNI) in the lead up to 2008, though still remains very high (see Figure 11.iii).

Figure 11.iii: Development of EU Budget expenditure, 1958–2008



Source: HM Government

What is more concerning is that, despite the increasing size of the Budget, the UK has failed to benefit and, in recent years, has been one of the main 'losers' from the Budget process (see Figure 11.iv).

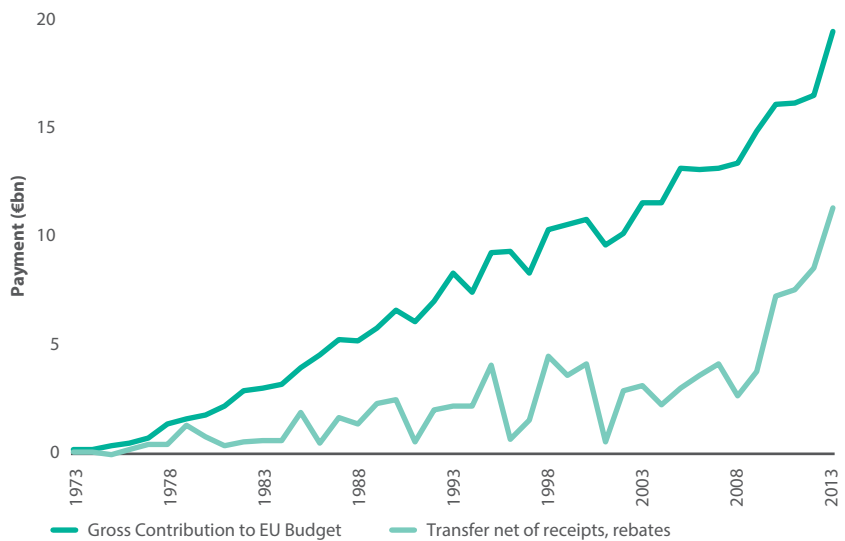
Figure 11.iv: EU receipts, 2012, euros per capita



Source: European Commission

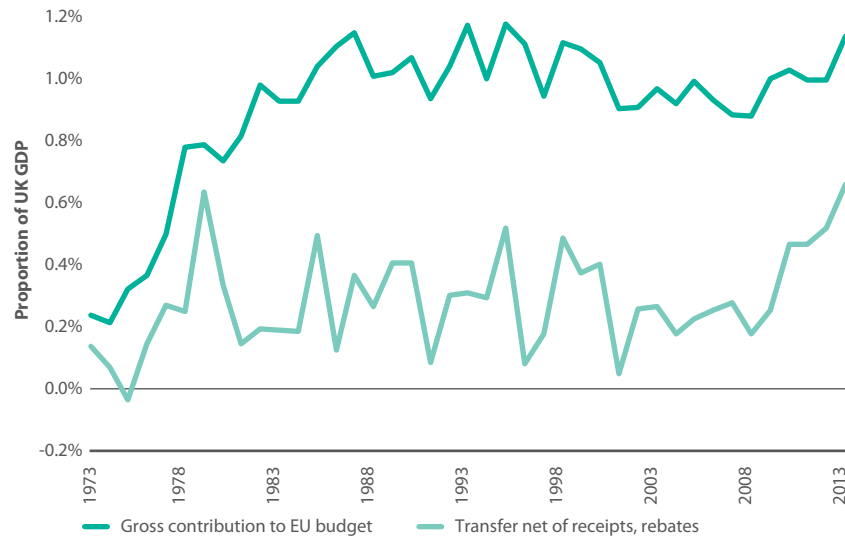
As can be seen in Figure 11.v, Figure 11.vi and Figure 11.vii, UK net transfers to the EU have been steadily increasing. Only once in the last 40 years has the UK received back more than it has paid in (ironically in 1975, the year of the first membership referendum).

Figure 11.v: UK transfers to the EU, 1973–2013



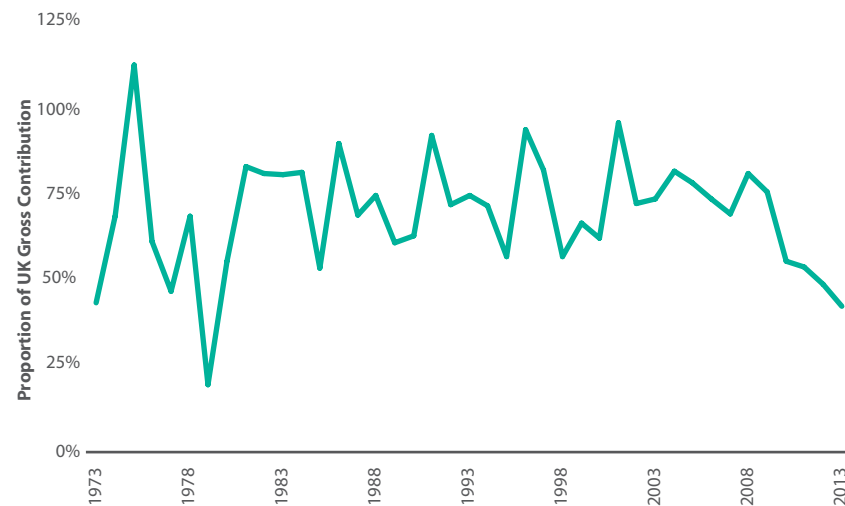
Source: ONS “United Kingdom Balance of Payments”, editions 1984–2014

Figure 11.vi: UK transfers to the EU as a proportion of GDP, 1973–2013



Source: ONS “United Kingdom Balance of Payments”, editions 1984–2014

Figure 11.vii: Proportion of UK gross contribution returned by the EU in other transfers, 1973–2013



Source: Internal research based on ONS figures

The extent to which Britain has lost out through the EU budgetary process can be followed in the charts. Figure 11.v sets out the amounts which the UK Government has transferred to the EU during our membership.²⁶⁵ As can be seen, the headline amount which Britain pays into the EU has risen inexorably over the years, with the increases becoming steeper as time has gone on. This gross figure ignores transfers which come back to the UK in the form of grants or rebates and the like, so Figure 11.v also presents the corresponding net contribution for each year. Naturally, this net payment is a smaller amount than the headline liability. But it is worth noting that, since around 2000, it too has begun to rise rapidly. The line for the net contribution is creeping ever closer to that of the gross contribution, meaning that Britain is progressively receiving back less and less of the amount it pays in.

265 The ONS data used presents the transfers on a Balance of Payments basis.

“The burden of the net contribution has nearly quadrupled.”

Of course, one reason why the nominal British contribution has increased has been the effect of inflation eroding the value of sterling. Figure 11.vi therefore presents the same money transfers as proportions of the British Gross Domestic Product (GDP) for each year.²⁶⁶ This gives an indication of how affordable the transfers are compared to the size of the British economy. It can be seen that the burden of the gross contribution jumps during the first decade of membership²⁶⁷ but, after the early 1980s, it appears to oscillate around the level of one per cent of GDP. As the British economy has grown in size, the UK Government has been obliged to pay more money into the EU Budget, but this liability remained just as affordable.

Supporters of the EU might regard that as a fair and reasonable outcome, and it is arguably why a significant share of a member state's EU contributions are linked to GNI. However, the net contribution is more important than the gross headline liability. Figure 11.vi indicates that this has fluctuated far more, meaning that the amount of economic value surrendered to and recovered from the EU has been rather erratic. Again, it can be seen that the burden of the net contribution in economic terms has leapt upwards since 2000, while the headline contribution has remained comparatively flat. A good deal of this lost value can be attributed to the surrender of part of the British Rebate. More significantly, since the financial crisis in 2008, although the headline liability has barely changed (from 0.9 per cent of GDP in 2008 to 1.1 per cent of GDP), the burden of the net contribution has nearly quadrupled (from 0.2 per cent of GDP to 0.7 per cent).

Another way of looking at these figures is to examine them in terms of the proportion of the gross contribution which Britain receives back in terms of grants and rebates. Figure 11.vii indicates that this has oscillated wildly during the period of British membership. (The oscillation becomes less extreme once the 'Fontainebleau Rebate' negotiated by the Thatcher Government came into effect.) The 'average return' across the period 1973–2013 has been 68 per cent. In simple terms, during its membership, the UK has received back roughly 68p in grants and rebates for every £1 it has paid into the EU.

This long-term average obscures the significance of more recent history. Britain's return on its EU contributions has been falling since the start of the 21st Century. In particular, since the Eurozone crisis began in 2009, the return has been only 49 per cent, i.e. Britain has been getting back only 49p for every £1 it has paid in. A second factor has come into play alongside the short-sighted surrender of part of Britain's Rebate by the Blair Government.

Contributions to the EU Budget are not directly linked to a member state's ability to pay. In simple terms, they reflect its relative performance compared to the rest of the EU-28. That is why the UK's return from its EU contributions has deteriorated so rapidly after 2008, and its net contribution has leapt up. The UK has begun to recover from the global financial crisis. That process is far from complete, but it is further developed than in most other EU countries. Through the EU Budget, British recovery is subsidising Eurozone failure.

Recent statistics released by Eurostat projected that the UK economy would grow by 3.1 per cent in 2014, compared to 1.3 per cent in the EU as a whole and just 0.8 per cent in the Eurozone.²⁶⁸ Given the significant impact which a country's Gross National Income (GNI) plays in determining its annual contribu-

266 The data used is GDP at market prices on the current price basis (ONS data set YBHA) as this is most compatible with Balance of Payments figures.

267 As a new member, from 1973 Britain enjoyed a transitional period of five years during which its full liability to contribute to the EU was phased in.

268 European Commission "Autumn forecast 2014", accessed 24/05/2015 at: <http://ec.europa.eu/economy_finance/eu/forecasts/2014_autumn_forecast_en.htm>.

“There are clear limits to the ability of the UK to ‘rein in’ EU spending.”

tions to the EU, the success of the UK economy exerts a further upward pressure on British Budget payments (though this will be partially offset by the ongoing weakness in the euro).

It should be recognised that, because the MFF is decided through unanimity, the UK has been able to block harmful expansion of the EU Budget (though it has also meant that France can block reforms to the Common Agricultural Policy). In the words of the Balance of Competences Review, *“this ability to veto a long-term budget which conflicted with UK priorities has enabled the UK to achieve significant successes in recent years, including in the most recent MFF negotiations”*.²⁶⁹ However, use of such a veto would come with serious political risks and should not be confused with control.²⁷⁰ As the Government has argued: *“the budget today is a product of compromise and cannot always reflect the UK’s preferences or those of any other member state, in every policy area”*.²⁷¹ This can be seen in the way that the UK has not voted in favour of the discharge (which is, in part, based on the European Court of Auditors report) of the EU Budget for the last three years.²⁷² According to Open Europe:

*The Lisbon Treaty enhanced the rule of the European Parliament in negotiations over the EU long-term budget, giving MEPs an effective veto... therefore, through the Commission’s agenda-setting powers and the Parliament’s veto powers, the EU institutions are also an obstacle to reforming the budget.*²⁷³

There are clear limits to the ability of the UK to ‘rein in’ EU spending because it also lacks protection from the various tools that the EU has used to extract additional funds from the UK. These tools include increasing the amount of spending that is permitted in an approved EU Budget via Draft Amending Budgets (DABs), which can be – and are – amended throughout the year.²⁷⁴ For example, the Council of Ministers agreed on 8 December 2014 to a €4.8bn increase in the 2014 Budget to deal with a portion of the EU’s unpaid bills, leading to the UK having to pay up to an extra £420m. (This also meant that the 2014 Budget increased to €140.3bn, considerably higher than the Budget that the member states originally agreed to in February, which was just €135.5bn). The European Court of Auditors has also stated that *“for too long the emphasis has largely been on spending the EU budget according to the rules established for its use, without paying sufficient attention to whether it provides value for money and results in EU added value...”*²⁷⁵

DABs are often used to increase the size of the annual Budget, as pointed out by the UK Government: *“Many of these DABs... include a request for (sometimes substantial) additional budget expenditure within the MFF ceilings”*. In light of this, it is unsurprising that the British Government has been *“heavily critical of*

269 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: EU Budget” (2014), page 38.

270 According to the Treaties, if no agreement on an MFF has been reached by the end of the current long-term budgetary period then the ceilings and other provisions corresponding to the last year of the old framework are extended until the next framework is adopted. This amounts to a fixed two per cent increase every year.

271 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: EU Budget” (2014) page 21.

272 Discharge is the final approval of the EU Budget for a given year. HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: EU Budget” (2014), page 30.

273 Open Europe “Seizing the moment” (2012), page 9.

274 DABs are based on economic forecasts adopted at a meeting of the Advisory Committee on Own Resources (ACOR) where all member states are represented.

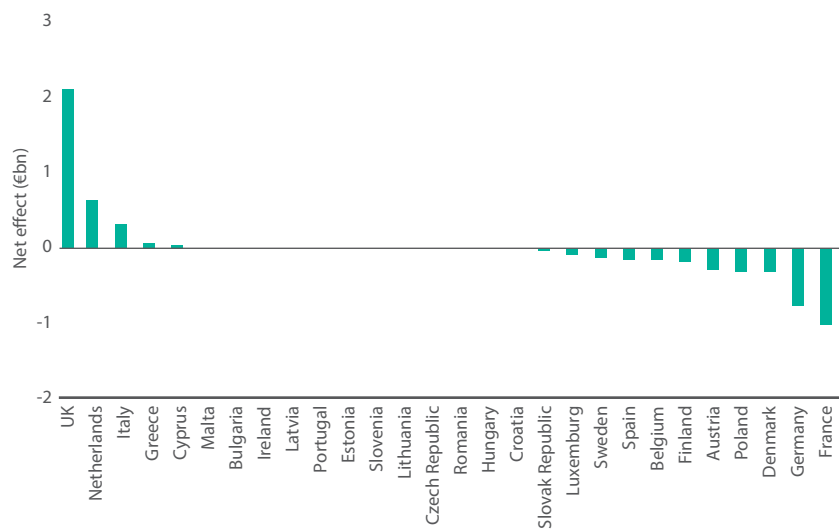
275 European Court of Auditors “Landscape Review” (2014), page 5.

the number and scale of DABs proposed by the European Commission in recent years.²⁷⁶ Via these mechanisms, the annual Budgets that the UK agrees to often end up being far more expensive than initially expected.

In addition, there are also ‘off budget’ items which are outside the MFF, including flexibility instruments, emergency aid reserves, the European Solidarity Fund, European Globalisation Adjustment Fund and the European Development Fund. These are meant to react in response to unexpected circumstances that cannot be pre-empted. Off budget items are managed via the MMF Inter-Institutional Agreement.

A separate device that the Commission can use to claim money from the members is the ‘surcharge’. On 17 October 2014, the European Commission informed HM Treasury that the UK would have to make an additional contribution to the EU Budget of approximately €2.1bn (£1.7bn) but £850m after the UK Rebate was applied.²⁷⁷ This surcharge was introduced because Eurostat (which carries out regular audits of the methods and data used to estimate GNI) recalculated the GNI-based contributions of each member state dating back to 1995 (the UK went back to 2002). This study found that certain member states had a GNI which made up a larger proportion of total EU GNI than initially thought. As a result, the Commission demanded that the additional amount was paid to cover the difference (member states whose GNI made up a lower proportion received a credit.) The consequences of this revaluation for each member state are presented in Figure 11.viii.

Figure 11.viii: Surcharges imposed on member states in October 2014



Source: European Commission

This surcharge aroused considerable anger within the UK. Prime Minister David Cameron described his “downright anger about... the completely unjustified and sudden production of the bill”, and told a press conference: “I’m not paying that bill on 1 December, if people think I’m going to they’ve got another thing coming.”²⁷⁸ The Government was able to gain some concessions, including the introduction of a new proposal for a regulation that provided for payments of an exceptional size to be delayed interest-free until 1 September in the year following the calcu-

276 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: EU Budget” (2014), page 26.

277 European Commission “Information note for Member States” (17 October 2014), page 3.

278 David Cameron, press conference at the European Council, October 2014.

“Funds the UK receives from the EU Budget are little more than a return of funds that the UK has contributed to the EU in the first place.”

lation of adjustments.²⁷⁹ Chancellor George Osborne claimed to have halved the surcharge by negotiating for the Rebate to be applied to it, but this is open to dispute, with the House of Commons Treasury Committee stating that *“it should have been unambiguously clear to the Treasury, well in advance of ECOFIN on 7 November 2014 that the UK was entitled to a rebate on any additional budget contributions that could arise from the GNI revisions.”*²⁸⁰ The Government’s apparent surprise at the advent of the surcharge has also been criticised, since it had voted in favour of the adjustment to the method of GNI calculations earlier in the year and had other opportunities through 2014 to voice objection. Indeed, the methodological adjustment resulted from a 2008 EU decision which, again, the Government could have protested.²⁸¹

However, one area of concern is that the EU legislation that was used to justify this surcharge still makes clear that member states’ GNI-based contributions from previous years can be changed retrospectively. This means that, unless this mechanism is amended or changed substantially, there is a risk of another surcharge were Eurostat to reassess future contributions.

Outside the EU, the Commission would no longer have such extensive control over the UK’s contributions. The UK would not only be able to have much greater control over its contributions to the EU Budget but would also be protected from the various devices the EU currently uses to extract additional funding from Britain.

11.3.2 The UK would save twice as much as it gets back from EU funding

While the EU Budget has provided funding for the UK in many different areas, the fact remains that the UK is – and has been for many years – a net contributor, today putting in more than twice what it gets back.²⁸² The UK’s payments are likely to remain very high and could even increase over the coming years (see Figure 11.ix). Devices that seek to rectify the manifest unfairness of this situation, including the UK’s Rebate, have declined in impact over the last few years. UK contributions go towards funding programmes that other member states benefit from more than the UK, such as the Common Agricultural Policy (CAP). By contrast, countries outside the EU, which do partake in some European programmes, are able to fund only specific areas, making contributions directly to the programmes that they benefit from and not to the general Budget.

It should be stressed that the funds the UK receives from the EU Budget are little more than a return of funds that the UK has contributed to the EU in the first place. As other Sections suggest, these are not even spent effectively when they do find their way back to Britain.²⁸³

This means that, were Britain to leave the EU and decide to withhold its whole contribution, it would not only be able to continue to pay for all the pro-

279 Proposal for a Council Regulation amending Regulation (EC, Euratom) No 1150/2000 implementing Decision 2007/436/EC, Euratom on the system of the European Communities’ own resources, COM (2014) 704.

280 House of Commons Treasury Committee *“The UK’s EU Budget Contributions”* page 10.

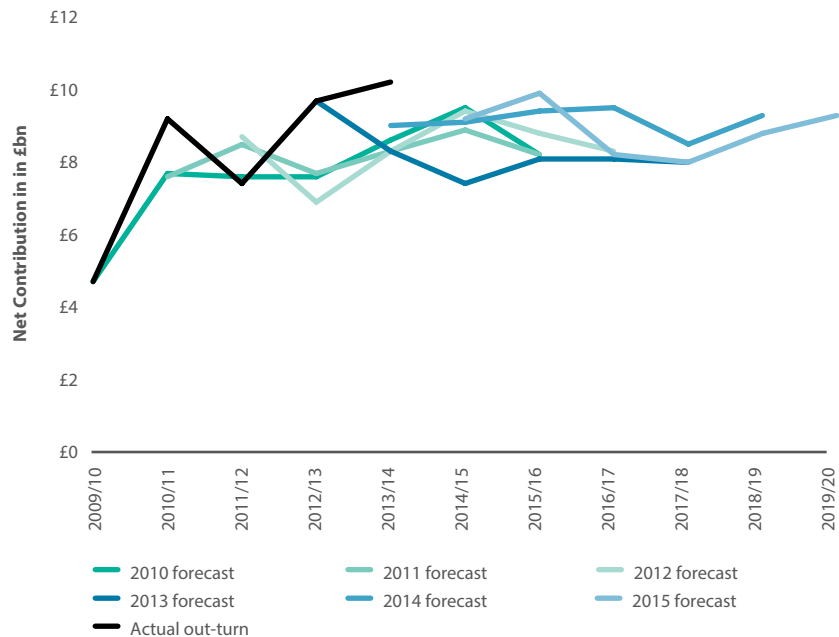
281 Civitas *“Downing Street could have stopped the £1.7bn EU surcharge”*, J. Lindsell, (2014), accessed 24/05/2015 at: <<http://civitas.org.uk/newblog/2014/10/downing-street-could-have-stopped-the-1-7bn-eu-surcharge>>.

282 See Figure 11.v: Some have attempted to claim that the UK is a net beneficiary from the EU, as in return for being a net contributor to the EU Budget we gain full access to the Single Market. In fact, as Section 30 shows, this claim is not substantiated by the evidence (it also ignores that, outside the EU, the UK could retain access to the EU market via other initiatives).

283 See Sections 13 and 20.

grammes that it helps to fund through the EU, but would retain a surplus which could be spent on other areas.

Figure 11.ix: Official forecasts of the UK net contribution to the EU Budget, 2010–2015



Source: OBR Supplementary Fiscal Tables to the Budgets for June 2010, March 2011, March 2012, March 2013, March 2014 and March 2015

There is little evidence that this is going to change over the coming years. Since 2008, there has been a dramatic increase in the UK’s net contribution to the EU Budget. The UK’s contributions in 2013 were at an all-time high, though the Office for Budget Responsibility (OBR) forecast that the UK’s payments would decline as the Government would be able to prevent another increase in the EU’s Budget ceiling through a tougher MFF.²⁸⁴ In 2014, Chancellor George Osborne claimed:

*Some people claimed that our payments to the European Union would go up this year. Instead I can confirm that the OBR’s forecast today shows Britain’s net payments to the EU falling by around £1bn for this year and next year – and falling in real terms over the next 5 years. That is the dividend we receive thanks to a Prime Minister who fights hard for our national financial interest in Brussels.*²⁸⁵

However, this claim was based on figures that need to be put into context. As the OBR numbers in Figure 11.ix show, the UK’s net Budget contribution had risen from £4.7bn in 2009–10 to £10.2bn in 2013–14. As such, any reduction would have taken place from a very high point and have been modest at best.

OBR figures also need to be treated with caution: its forecasts of Britain’s contributions to the EU have been consistently revised upwards, as Figure 11.ix

284 The MFF signed in 2014–2020 was the first time that the European Council agreed to a real term reduction.

285 George Osborne’s 2014 Autumn Statement Speech, accessed 24/05/2015 at: <www.gov.uk/government/speeches/chancellor-george-osbornes-autumn-statement-2014-speech>.

“The longer that the Eurozone crisis continues, the more Britain will have to pay into the EU.”

also illustrates. There has been a tendency for the OBR to forecast a slight rise in the amount of British contribution in the very near term, usually an upward-adjustment to their previous prediction, followed by a slightly corrective decline in years furthest away in the forecast period. Notwithstanding the imprecision of particular estimates, Figure 11.ix makes clear that the forecasters believe the trend pattern for British contributions to the EU is an upward one.

The problem which the OBR faces in making its forecasts is that the level of British contributions and receipts is dependent on the trajectory of the overall EU economy. That, in turn, makes it dependent upon data and forecasts from other bodies, such as the EU’s Advisory Committee on Own Resources (ACOR). Figure 11.x indicates that this has resulted in the OBR relying upon consistently over-optimistic estimates of the likely recovery of the Eurozone.

Figure 11.x: OBR forecasts of Eurozone economic growth, 2010–2015

	2009	2010	2011	2012	2013	2014	2015
June 2010 Budget	-4.0%	0.7%	1.4%	1.7%	1.9%	2.3%	2.4%
March 2011 Budget		1.7%	1.4%	1.8%	1.8%	1.9%	1.9%
March 2012 Budget			1.5%	-0.3%	1.1%	1.6%	1.7%
March 2013 Budget				-0.5%	-0.5%	1.0%	1.3%
March 2014 Budget					-0.4%	1.0%	1.4%
March 2015 Budget						0.9%	1.2%
Actual out-turn	-4.0%	1.8%	1.5%	-0.7%	-0.4%		

Source: OBR

The longer that the Eurozone crisis continues, the more Britain will have to pay into the EU.

The OBR explained its difficulties in forecasting the British contribution to the EU Budget in its “Economic and Fiscal Outlook”, published alongside the 2014 Autumn Statement, in the aftermath of the controversy over the adjustment of the UK liability:²⁸⁶

We aim to produce a central forecast that anticipates future adjustments and negotiations as best we can, but there are a number of important uncertainties to bear in mind when considering this forecast. For example:

- *Ongoing and future EU Budget negotiations;*
- *The extent to which budgeted expenditure might not be fully spent and the use of flexibilities to carry spending between years;*
- *Future changes in the relative performance of the UK and other member states;*
- *Scheduled adjustments to update previous interim contributions in return for actual outcomes of GNI, VAT and TOR bases, across all member states;*
- *Resolution of remaining or future Eurostat reservations on GNI estimates, which could lead to further adjustments to past contributions; and*
- *Forecast movements in the exchange rate, since EU finances are denominated in euros.*

286 OBR “Economic and fiscal outlook” (December 2014), para 4.141, pages 162–163.

“Political dynamics also look set to keep Britain’s contributions to the EU at a high level.”

In its “Economic and Fiscal Outlook” published to accompany the March 2015 Budget, the OBR again flagged the uncertainty created by disagreements between the ONS and Eurostat over the implementation of new EU accounting standards for public statistics (and which have forced a delay in the publication of the 2015 edition of the UK Economic Accounts). It was not possible to assess whether this would lead to either upward or downward revisions of the estimated UK contribution, because of changes to the way in which the various tax bases were calculated, *“but it is clear that the possibility of such adjustments poses risks to our forecast.”*²⁸⁷

One of the main problems which the EU budgetary process creates, then, is the uncertainties it imposes on HM Treasury in attempting to set the UK Government’s own Budget. This is particularly unfortunate at a time of deficit reduction and public spending restraint.

If the EU spends up to the limits of the MFF, as seems increasingly likely, then Britain’s contributions would be even higher than the OBR currently forecasts.²⁸⁸ A Commission official warned in November 2014 that *“if the EU spends right up to the payment ceiling, as now seems to be likely, that means that national contributions will go up.”*²⁸⁹ These factors mean that the OBR’s assumption that spending would remain under the MFF payment ceiling may prove to be incorrect.

It should be noted that the MFF does not necessarily ‘lock-in’ lower real terms spending levels to 2020. The European Commission is allowed to enter into spending commitments which go over and above the monies the EU receives, creating looming ‘unpaid bills’ and Budget ‘black holes’ which then have to be addressed through annual Budget negotiations. A recent European Court of Auditors report revealed that a shortfall of €326bn (£259bn) in unmet liabilities could accrue by 2020, the UK’s share of which would be approximately £34bn (based on the level of UK contributions).²⁹⁰

In short, while David Cameron secured a limited victory in 2013 by being able to negotiate a real terms cut in the MFF period, this does not guarantee lower levels of EU spending year-on-year to 2020 – at the very least, the Budget would continue to grow at two per cent per year. The Commission’s ability to make spending commitments over and above the agreed levels of member states’ contributions may well result in significant pressure being exerted on member states to agree to significant increases in the EU’s annual Budgets for at least 2014 and 2015.²⁹¹

Beyond the economic fundamentals, the political dynamics also look set to keep Britain’s contributions to the EU at a high level. Economic commentators are in broad agreement that there is a possibility that the Eurozone crisis could return in the near future. Political developments in Greece and Spain, continued economic problems in Italy and France, as well as global concerns surrounding the oil price, may affect the ability of key member states to contribute to the Budget, passing additional burdens onto the UK.²⁹²

287 OBR “Economic and fiscal outlook” (March 2015), para 4.136, page 149.

288 OBR “Economic and fiscal outlook” (March 2013), para 4.110, page 122.

289 Daily Telegraph “UK faces £34bn bill for black hole in EU Budget”, Waterfield (2014).

290 European Court of Auditors, information found at <www.eca.europa.eu/en/Pages/DocItem.aspx?did=30031>.

291 Were there to be a rise in the 2014 Budget above the MFF’s ceiling, this would result in the EU having to use a €2.4bn contingency fund to meet its commitment. This could cost the UK an extra £400m in payments. More information can be found at <www.eca.europa.eu/Lists/ECADocuments/LR14_02/QJ0614039ENN.pdf>.

292 It should be noted that even a recovering euro would not likely be enough to protect the UK.

“Leaving the EU offers the prospect of escaping this unsatisfactory situation.”

In addition, the EU has shown a great unwillingness to make any serious reductions in its spending. In recent years, there have been a number of concerning projects that do not appear to have benefited the public in any significant way, such as the 2012 decision by the European Commission to spend €169m on ‘European Schools’, a network of 14 institutions teaching around 22,500 children (mostly of EU employees). In the Fresh Start Group’s “Options for Change” green paper, the authors found that a large number of groups are funded by the EU Budget and described this as “essentially taxpayer-funded political lobbying”:

Among the beneficiaries are: Avalon, which co-ordinates activities and lobbies on behalf of sustainable rural development in the Central and Eastern European regions; Birdlife Europe; CEE Bankwatch; Climate Action Network Europe; Coalition Clean Baltic; Danube Environmental Forum, EUCC – The Coastal and Marine Union; Eurogroup for Wildlife and Laboratory Animals; EUROPARC; European Environmental Bureau; European Environmental Citizens Organisation for Standardisation; European Federation for Transport and Environment; European Landowners Association; European Water Association; Federation of Associations for Hunting and Conservation of the EU; FERN; Friends of the Earth Europe; Health & Environment Alliance; International Federation of Organic Agriculture Movements EU Group; International Friends of Nature; International Network for Sustainable Energy; Justice & Environment; Mediterranean Information Office for Environment, Culture and Sustainable Development; NGO Platform on Shipbreaking; PAN Parks; Pesticides Action Network Europe; reuse and Recycling European Union Social Enterprises Network; Sea Alarm Foundation; Seas At Risk; Women in Europe for a Common Future; World Development Movement and World Wildlife Fund (European Policy Office). There are dozens of different budget lines that fund other NGOs and groups. A number of these organisations spend part of this money lobbying for more EU money in the future.²⁹³

Funding has been directed to organisations that subsequently promote the EU.²⁹⁴ This rise in quangos has been highlighted by Open Europe, which has shown that the number of EU quangos has increased dramatically over the last few years.²⁹⁵ The Balance of Competences Review warned:

“The increased level of complexity that a greater number of member states will bring to the existing juste retour approach will be a challenge for agreeing future budgets, internal versus external expenditure, and public goods.”²⁹⁶

In short, the EU Budget looks set to continue to rise, and the UK, which today pays in twice as much as what it gets back, looks set to remain a net loser. Leaving the EU offers the prospect of escaping this unsatisfactory situation.

11.3.3 Significant funds would become available to the Government

Between the first and twentieth working day of every month a large amount (in 2012, the average amount was £1,251,750,000) is deducted from HM Treasury’s

293 Fresh Start “Options for Change” (2012), page 116.

294 Institute of Economic Affairs “Euro Puppets”, C. Snowden (2013).

295 Open Europe “The Rise of the EU Quangos (Updated)” (2012).

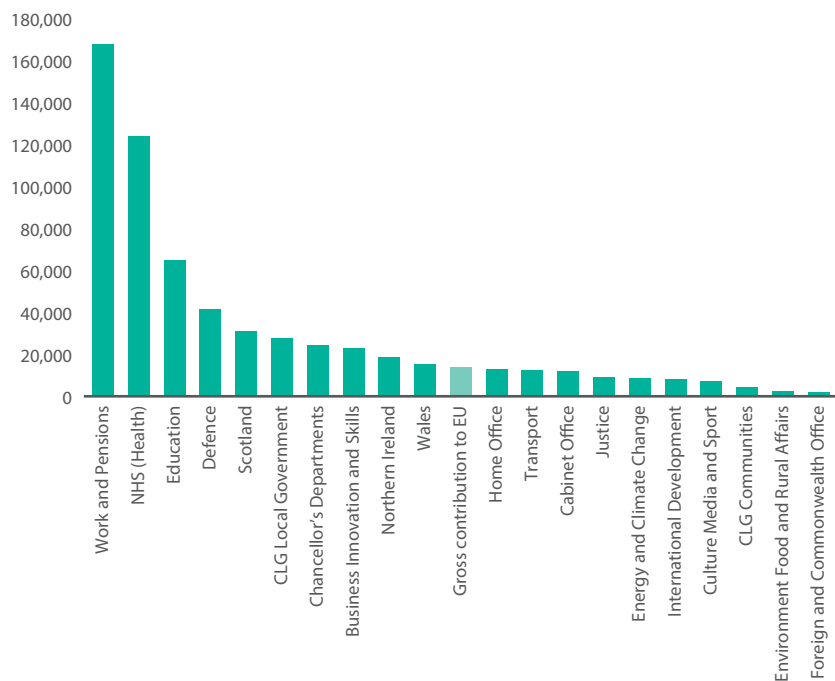
296 HM Government “Review of the Balance of Competences: EU Budget” (2014), page 69.

account in the Bank of England and paid into a new account. This is the monthly transfer of payments to the EU and, in the words of one commentator, is “the biggest regular transfer of national funds ever committed in the history of the United Kingdom.”²⁹⁷ This unsurprisingly has a direct impact on the British Government’s spending decisions. As the Balance of Competences Review made clear:

*The relationship of the EU budget to deficit reduction plans is clear and direct – the UK’s contribution to the EU is made through the UK national budget. Most changes to the overall size of the EU Budget, to the revenue system or even to the distribution of EU expenditure between headings of the Budget or member states, will have an impact on the UK’s contribution.*²⁹⁸

The UK’s current contributions to the EU are considerable.²⁹⁹ According to the Government, gross contributions to the EU Budget are higher than expenditure on the Home Office, Department of Transport, Cabinet Office, Department of Justice, Department of Energy and Climate Change, among many others (see Figure 11.xi).

Figure 11.xi: Total managed expenditure by Department Group and gross contribution to the EU Budget 2012–13



Source: HM Government

This contribution has become even steeper with the recent reduction of the ‘British Rebate’ (also known as the ‘UK Rebate’, the ‘Fontainebleau Rebate’, the ‘UK correction’ or the ‘UK abatement’).

The Rebate has been contentious among many EU member states (who have to finance it) and even among pro-European British politicians who have seen

297 “Au Revoir Europe”, D. Charter (Biteback, 2012) page 81.

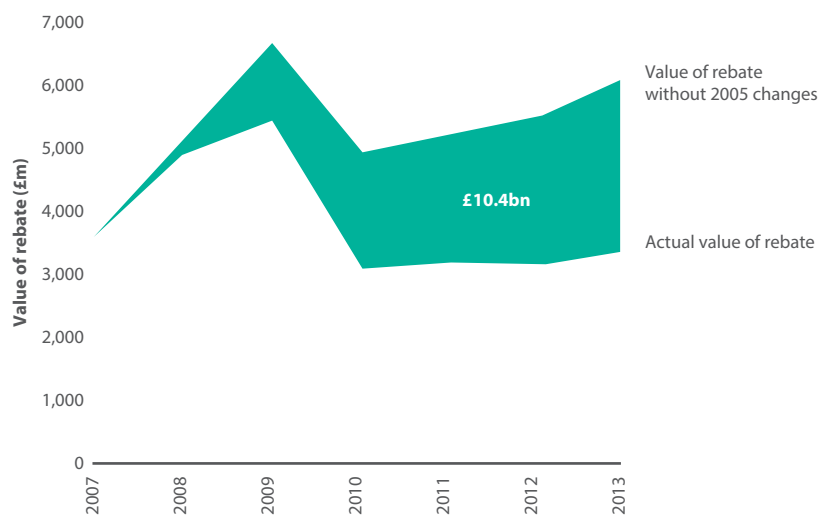
298 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: EU Budget” (2014), page 34.

299 And could be made even more considerable by the additional costs that come to the UK in converting its contributions from sterling to euro and then back to sterling. Exchange rate fluctuations could work for or against the UK. See Fresh Start “Options for Change” (2012), page 105.

the Rebate as an embarrassment. In 2005, the then Prime Minister, Tony Blair, stated that the Rebate was an “*anomaly that has to go.*”³⁰⁰ In December 2005, the British Government agreed to the ‘abatement disapplication’, a mechanism which reduced the UK’s Rebate by stating that the UK would no longer receive a Rebate on non-agricultural spending in member states that joined the EU after 2004. Tony Blair defended this decision as being a bartering tactic in exchange for a substantial reform and reduction of the Common Agricultural Policy, which did not come to pass. According to the UK Government, “*it resulted in a substantial decrease in the size of the abatement...*”³⁰¹

By comparing the final value of the UK Rebate in each year from 2007 (when the disapplication first came into force) and the value of the Rebate without the disapplication, we can see that, between 2007 and 2013, the total loss incurred by switching between the Thatcher and Blair Rebates was £10.4bn (see Figure 11.xii).

Figure 11.xii: Value of the lost UK Rebate



Source: Business for Britain³⁰²

Both at the time and afterwards, this was heavily criticised. As David Cameron said:

*On the UK’s contribution... remember how the last government gave away almost half of our rebate. This has had a long-term and continuing effect on the UK’s net contributions. And it’s worth remembering why. Because when the European Union spends money on, for example, structural funds and cohesion payments in Eastern European countries, the UK no longer gets a Rebate on this money.*³⁰³

Britain is not the only country with a special status: the call rate for the VAT-based own resource for Germany, the Netherlands and Sweden is set at 0.15 per cent for 2014–2020 (for other member states the rate is 0.3 per cent) and, for 2014–

300 BBC News “Blair says EU rebate ‘has to go’” (2005).

301 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: EU Budget” (2014), page 19.

302 Business for Britain “The UK’s EU rebate: How much did Tony Blair give away?” (2014).

303 David Cameron, Statement on the EU budget (11 February 2013).

2020, Denmark, the Netherlands and Sweden benefit from gross reductions in their GNI contributions. Germany was able to also secure a 33 per cent reduction on its share of financing the UK's Rebate at the Fontainebleau Council.

Were Britain to leave the EU, it would no longer be expected to make such large regular transfers to the EU's institutions, though it would be free to opt into funding areas if it wished.

11.3.4 The UK would be able to continue supporting organisations that benefit from EU funding

There are certainly a large number of UK programmes that are paid for by the EU Budget, with some sectors benefiting far more than others. This makes it hard to determine whether the EU Budget represents a net gain or loss; academics have pointed out that, at a fundamental level, it is very hard to find a clear, single definition of 'value added'.³⁰⁴ One factor that makes it difficult to gauge the relative effectiveness and impact of the EU Budget is its difference compared with national budgets. It is important to be wary of the prevalent claim that the EU Budget represents good value for money because of how small it is compared to national budgets. This claim ignores the fact that the EU Budget does not have to pay for health services, pensions, welfare, defence and educational services, which other budgets do.³⁰⁵

This notwithstanding, the EU has provided funding for the UK in a range of different sectors. One of the most notable early examples is the European Regional Development Fund (ERDF), which was set up in 1975 following heavy pressure from the UK. According to the Balance of Competences Review, Britain wanted to "ensure that EU membership could show tangible economic benefits at home".³⁰⁶ In 2013, the EU redistributed €6.3bn of UK's contributions back to the country via a range of programmes. However, it should also be noted that funding from the EU Budget does not only flow to EU members and that, in 2013, €6.3bn was earmarked for non-EU states (mostly under the 'other' heading as can be seen in Figure 11.xiii).

Figure 11.xiii: EU Budget expenditure in the UK and non-EU states 2013

Programme	Amount (€m)	
	non-EU	UK
Competitiveness for growth and employment	958.2	1,441.6
Seventh Research framework programme (incl.compl.of sixth Research FP)	660.3	1,114.0
Decommissioning (Direct research)	0.0	1.1
Ten	209.8	32.5
Galileo	1.1	38.9
Lifelong Learning	47.7	120.6
Competitiveness and innovation framework programme (CIP)	14.2	36.8
CIP Entrepreneurship and innovation	8.2	17.9

304 Note of academics' EU Budget seminar, London 10 January 2014.

305 This was pointed out by the Liberal Democrats in their submission to the Balance of Competences, see HM Government "Review of the Balance of Competences between the United Kingdom and the European Union: EU Budget" (2014), page 37.

306 HM Government "Review of the Balance of Competences: EU Budget" (2014), page 14.

Programme	Amount (€m)	
	non-EU	UK
CIP ICT policy support	4.8	11.4
CIP Intelligent energy	1.2	7.6
Social policy agenda	3.5	8.2
Customs 2013 and Fiscalis 2013	8.8	0.2
Nuclear decommissioning	0.0	0.1
European Global Adjustment Funds	0.0	0.0
Energy projects to aid economic recovery	0.0	27.2
Decentralised agencies	0.0	49.2
Cohesion for growth and employment	4.1	665.3
Structural funds	3.7	664.5
Convergence objective	0.0	353.7
Regional competitiveness and employment objective	0.0	239.0
European territorial cooperation objective	0.0	70.0
Technical assistance	3.7	1.9
Cohesion Fund	0.3	0.4
Market related expenditure and direct aids	1.2	3,168.9
Agriculture markets	0.2	3,123.9
Direct Aid	0.0	3,084.2
Export refunds	0.0	0.2
Storage	0.0	0.3
Fisheries market	0.0	0.2
Animal and plant health	0.9	44.9
Rural development	0.0	751.9
European fisheries fund	0.0	13.4
Fisheries governance and international agreements	99.7	8.2
Life+	4.1	14.4
Freedom, security and justice	8.4	82.0
Solidarity and management of migration flows	8.0	49.9
Fundamental rights and justice	0.0	13.1
Decentralised agencies	0.0	8.5
Citizenship	35.8	33.1
Public health and consumer protection programme	3.6	6.2
Culture 2007-2013	1.5	4.4
Youth in action	5.7	11.7
Media 2007	5.3	7.1
Europe for Citizens	0.5	0.7
Civil protection Financial instrument	0.5	0.1
Communication actions	2.0	2.3
Instrument for Pre-accession (IPA)	772.4	0.0
Other actions and programmes	4,335.0	55.3

Programme	Amount (€m)	
	non-EU	UK
ADMINISTRATION	169.1	128.1
COMPENSATIONS	0.0	0.0
TOTAL EXPENDITURE	6,357.9	6,308.3

Source: European Commission

It is hard to gauge whether this funding, when it is given, is being usefully spent: this problem has led the House of Lords European Committee to argue that we should distinguish between ‘value added’ and ‘juste retour’ (‘fair return’), with the latter focusing on the level of funding flowing to the UK, even if the funding fails to offer demonstrable value.

Horizon 2020 provides an example. A number of UK organisations stress that they benefit from EU funding, not least research institutions. Horizon 2020, which provides funding for both EU and non-EU institutions, is focused on three main pillars:

- **Excellent Science:** This will “support the EU’s position as a world leader in science with a dedicated budget of €24.4bn, including an increase in funding of 77 per cent for the ERC”;
- **Industrial Leadership:** This will “help secure industrial leadership in innovation with a budget of €17.01bn. This includes an investment of €13.5bn in key technologies, as well as greater access to capital and support for SMEs”;
- **Societal Challenges:** The challenges that this funding is aimed to address include: health; demographic change and wellbeing; food security; sustainable agriculture; marine and maritime research and the bio-economy; clean and efficient energy; smart, green and integrated transport; climate action; resource efficiency and raw materials and “inclusive, innovative and secure societies”.³⁰⁷

A significant proportion of the UK’s contribution returns via research funding – especially for inter-institutional projects. The UK also does very well out of the EU’s research budget (it receives €6.1bn as part of the FP7 funding, second only to Germany).³⁰⁸ Despite itself providing limited funding for research in comparison to other countries, the UK remains one of the leading nations in science and research (it has been ranked by the World Economic Forum as one of the top ten countries in the world for innovation capacity).³⁰⁹ As the CBI has noted: “Programmes like Horizon 2020 and FP7 have harnessed the EU’s ability to facilitate cross-border collaboration, reducing cost and risk in technology development and driving critical mass, as well as integrating private-sector and university innovation funding in the aerospace sector.”³¹⁰ A large amount of research has been conducted under the EU Research Programmes into health, food, agriculture and fisheries, biotechnology, information and communication technologies, nanosciences,

307 European Parliament, information found at <www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_5.9.6.html>.

308 HM Government “Review of the Balance of Competences: EU Budget” (2014).

309 World Economic Forum “The Global Competitiveness Report (2013–2014)”. UK success in this field has been attributed to a range of factors including the large number of outstanding UK firms and its supply of high-level skills.

310 CBI “Our Global Future” (2013), page 83.

“The EU’s spending decisions are highly opaque.”

nanotechnologies, energy, environment, transport, socio-economic sciences, space and security. Non-EU countries benefit from these programmes too.³¹¹

Yet it should be noted that these funds are, in effect, merely being returned to their source; and every pound could be replicated without despatching money via the EU, with the additional administration that this entails. Because the EU is - and has for many years - been a net contributor to the EU Budget, it can afford to continue paying for all the bodies that receive EU funding. Given the prominent role of its research institutions, the UK will remain a partner of choice, and receive EU funding, regardless of its EU status.³¹²

11.3.5 A more transparent Budget system could be introduced

The EU’s spending decisions are highly opaque. It is very hard to understand why the EU chooses to fund certain programmes and not others. ‘European Added Value’ (EAV) has been described as being “*difficult to define*” and having a clear arbitrary component.³¹³ The House of Lords European Union Select Committee has stated that the EAV is “*a subjective and in the end political quantity*”.³¹⁴

When it comes to spending, the EU Budget operates on a system of commitments and payments.³¹⁵ This system sees a mismatch between the Budget promised and the actual Budget available to spend. In the words of the Balance of Competences, this system “*raised questions around transparency and planning in several submissions of evidence...*”³¹⁶

The European Court of Auditors (ECA) was established in 1977 and, today, is tasked with publishing an annual report on the implementation of the EU Budget. This report includes the Statement of Assurance (DAS), an opinion on whether EU transactions have been made within the rules and whether the Commission’s accounts are in order. In its latest report concerning the 2012 accounts, the ECA concluded that some payments were affected by “*material error*” with an estimated error rate of 4.8 per cent as a whole (the ECA considers two per cent as an acceptable level of error). The ECA has been unable to give an unqualified DAS for 19 consecutive years, demonstrating weaknesses which, in the words of the British Government, “*undermine the credibility of the EU Budget and clearly show that the UK’s strong stance on financial management is justified.*”³¹⁷ For several years there has been unacceptably high error rate in the EU’s Budget sign off process (as can be seen in Figure 11.xiv).

311 See Section 20.

312 See Section 18.

313 The Commission’s Staff Working Paper on EAV cites three criteria used to evaluate the MFF proposals: effectiveness, efficiency, and synergy.

314 House of Lords European Union Committee “The Multiannual Financial Framework”, page 18.

315 The distinction between commitments and payments is important because multiannual programmes and projects are usually committed in the year they are decided, but paid over multiple years as implementation progresses. ‘Commitments’ represent planned or budgeted spend and ‘payments’ represent actual realised spend. The difference between the two depends on the time gap. For example, direct CAP payments take place in the same year, but with structural funds, there is gap between commitments being turned into payments and other commitments are not used. This creates unspent commitments or RAL (“*reste à liquider*”).

316 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: EU Budget” (2014), page 58.

317 The British Government has also expressed “*extreme disappointment*” in the ongoing failure of the EU. See HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: EU Budget” (2014), page 31.

“One of the most concerning developments of recent years has been the refusal of EU political leaders to see the Eurozone crisis as a need to get excessive spending under control.”

Figure 11.xiv: Error rates in the EU Budget (2010–12)

Overall error rate			Agriculture: market and direct support			Regional Policy: energy and transport		
Year of report	Budget year	Error rate	Year of report	Budget year	Error rate	Year of report	Budget year	Error rate
2011	2010	3.7%	2011	2010	2.3%	2011	2010	7.7%
2012	2011	6.0%	2012	2011	2.9%	2012	2011	6.0%
2013	2012	4.8%	2013	2012	3.8%	2013	2012	6.8%

Source: ECA

This is a large amount of unaccounted revenue. In its “Fight against Fraud” report for 2012, the European Commission estimated that the financial impact of irregularities reported as fraudulent for 2012 was €339m.³¹⁸

Member states are required by Article 325 TFEU to counter illegal activities at the expense of the EU and are obliged to make fraud against the EU Budget a criminal offense. The European Anti-Fraud Office (‘OLAF’, from the French ‘Office européen de lutte antifraude’) is also empowered to carry out investigations.

One of the most concerning developments of recent years has been the refusal of EU political leaders to see the Eurozone crisis as a need to get excessive spending under control. As the House of Lords European Union Select Committee has stated:

*We are disappointed that the euro area crisis has not stimulated more radical thinking about what policies, supported by what budgets, the EU needs to meet the immense challenges it now faces, particularly in achieving the very difficult task of stimulating sustainable economic growth while progressively reducing excessive budget deficits.*³¹⁹

In the Balance of Competences Review, it was noted that “some submissions critiqued the overall design of the EU Budget at a high level, describing its overall priorities as misaligned with modern day needs”. It is hard to disagree with this assessment; the EU has been very bad at making savings and at diverting its funds to effective causes. In 2012, Open Europe highlighted the absurd situation that had arisen of the EU proposing to cut only six out of almost 41,000 EU jobs.³²⁰ The 2014–2020 MFF did introduce some relief, but did not go far enough for the Prime Minister: “There are areas where we could and should go further, not least on reforming the Common Agricultural Policy and reducing the bureaucratic costs of the European Commission...”³²¹

There is a clear political component to the EU’s spending priorities. While some of these political priorities are easy to praise and agree with (such as the goals of Europe 2020, which aim to raise the employment rate for 20–64 year olds to 75 per cent, improve the conditions for research and development and boost education level), others are less defensible.

318 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: EU Budget” (2014) page 31.

319 House of Lords European Union Committee “The Multiannual Financial Framework 2014–2020” (2012), page 22.

320 Open Europe “Seizing the moment” (2012), page 3.

321 David Cameron, Statement on the EU Budget (11 February 2013).

“the UK, as a long term net contributor to the EU, would lose little from leaving the EU and would have much to gain.”

In 2014, for example, the EU committed up to €3.9bn of its Budget to 90 initiatives that promoted both itself and its political priorities. This funding was for campaigns that often went far beyond ‘public information’ and instead bordered on ‘propaganda’, championing the ideas of European integration and seeking to “*improve public perceptions of the Union*”.³²² Even the structural funds have been criticised: the Balance of Competences Review raised concerns, stating that “*the UK has argued that Structural and Cohesion Funds should be directed primarily towards poorer regions in poorer member states, rather than being redistributed around rich member states*.”³²³

This assessment of the EU’s political spending is widely shared. Open Europe has argued that it would be very hard to reform the European Union because “*it is not primarily designed to maximise economic returns across Europe, but rather to balance a range of political interests*.”³²⁴ The think tank also argues that “*funding tends not to be directed towards areas where it can add the most value, but is used to defend entrenched interests and reward special pleading, including from the EU institutions themselves*.”³²⁵ Others have agreed that the EU should direct additional funding to more worthy causes. The House of Lords European Union Select Committee, for example, stressed that the Europe 2020 budget did not focus on key objectives such as protecting biodiversity, and the area of freedom, security and justice.³²⁶

Leaving the EU offers the enticing prospect of leaving a self-evidently broken system, which has consistently failed to fix itself, and taking more decisions at home, in a fairer, more transparent manner. The UK has been constantly at the forefront of calls to make the EU’s funding system more transparent. If it were put in charge of its own finances, it could finally put its words into action.

Conclusion

Leaving the EU would give the UK a major opportunity to make substantial savings. The UK’s contributions to the EU Budget have been, for many years, on an upward trajectory, punctuated by incidents like demands for surcharges. There are many options available for the UK outside the EU to continue to fund those EU programmes it benefits from (gaining more control in the process over where its contributions flow to), and leaving offers a chance to replace opaque and unsatisfactory EU funding schemes with a more transparent and accountable system. From a financial perspective, the UK, as a long-term net contributor to the Union, would lose little from leaving the EU and would have much to gain. Staying, by contrast, holds serious risks. Were the Eurozone to encounter further financial difficulties it, via budgetary exposure, raises the real and dire prospect of UK contributions increasing even more.

322 Business for Britain “How much does the EU spend on promoting itself?” (2015), page 1.

323 HM Government “Review of the Balance of Competences: EU Budget” (2014), page 34 Cohesion funds are used by the EU to address economic and social imbalances and target funding through to member states with a GNI of less than 90 per cent of the EU average. Cohesion policy is supported via five structural and investment funds: the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime & Fisheries Fund (EMFF).

324 Open Europe “Seizing the moment” (2012), page 6.

325 Open Europe “Seizing the moment” (2012), page 6.

326 House of Lords European Union Committee “The Multiannual Financial Framework”, page 20.

ANNEX A: The formula for calculating the UK rebate

The UK correction of a year t (to be budgeted for the first time in year $t+1$) is equal to:

$$UK\ correction_t = Original\ amount_t - UK\ advantage_t - TOR\ windfall\ gains_t$$

The precise determination of each element is as follows

Original Amount

Original amount $_t$ =

$$0.66^* \left[\frac{ncVAT_t^{UK}}{ncVAT_t^{EU}} - \frac{AE_t^{UK}}{AE_t^{EU} - NAgE_t^{NewMS} - PAE_{INFL,t-1}^{AC}} \right] * (AE_t^{EU} - NAgE_t^{NewMS} - PAE_{INFL,t-1}^{AC})$$

where

$ncVAT_t^{XX}$ = non-capped VAT base of member state/group of member states XX (where XX = UK or EU) in year t

AE_t^{XX} = EU expenditure allocated to XX (where XX = UK or EU) in year t

$NAgE_t^{NewMS}$ = non-agricultural expenditure (i.e. expenditure excluding agricultural direct payments, market-related expenditure and rural development expenditure originating from the EAGGF section) allocated in year t to member states which have acceded to the EU after 30 April 2004, subject to phasing-in over the period 2007–2011

$PAE_{INFL,t-1}^{AC}$ = pre-accession expenditure allocated to Acceding Countries in the year before accession (i.e. 2003), adjusted for inflation to year $t-1$

It can be further expressed as:

$$PAE_{INFL,t-1}^{AC} = \text{Until}_{2012} * \Sigma (PAE_{INFL,t-1}^{AC} * \text{Deflator}_{i-1/t-1}^{GDP})$$

where

Until_{2012} = 1 until year t equals 2012 and 0 as from 2013 onwards

i = the year(s) between 2004 and year t when an enlargement occurs

$\text{Deflator}_{i-1/t-1}^{GDP}$ = the latest available GDP deflator for the EU expressed in euro, as provided by the Commission, for the period $i-1$ to $t-1$

Ceiling on the total 2007–2013 UK Correction Adjustment

During the period 2007–2013, the UK correction adjustment related to the exclusion from the UK correction of “non-agricultural EU expenditure” allocated to member states which have acceded to the EU after 30 April 2004 shall not exceed, in 2004 prices, a ceiling of €10.5bn (this ceiling being adjusted for any enlargement which may occur between the years 2006 and 2012, except for the enlargement to Bulgaria and Romania).

This means that the following total 2008–2012 reduction of the UK correction (the reduction is phased in as from the 2008 correction, to be first budgeted in 2009, and the ceiling applies to the 2012 correction, to be first budgeted in 2013), which is equal to

$$0.66 * \sum_{t=2008}^{2012} \left[\frac{\text{ncVAT}_t^{\text{UK}}}{\text{ncVAT}_t^{\text{EU}}} * \frac{\% \text{reduc}_t * \text{NagE}_t^{\text{All NewMS}}}{\text{Deflator}_{2004-t}^{\text{GDP}}} \right]$$

shall not exceed the ceiling of €10.5bn, increased, if applicable, by the following amount (in euros):

$$0.66 * \sum_{t=2008}^{2012} \left[\% \text{reduc}_t * \left[\frac{\text{ncVAT}_t^{\text{UK}}}{\text{ncVAT}_t^{\text{EU}}} * \text{NagE}_t^{\text{All NewMS}} - \frac{\text{ncVAT}_t^{\text{UK}}}{\text{ncVAT}_t^{\text{EU-27}}} * \text{NagE}_t^{\text{12 NewMS}} \right] \text{Deflator}_{2004-t}^{\text{GDP}} \right]$$

where

$\text{ncVAT}_t^{\text{UK}} =$	non-capped VAT base of member state/group of member states XX (where XX = UK, EU or EU-27) in year t
$\text{NagE}_t^{\text{All NewMS}} =$	non-agricultural EU expenditure (as defined previously) allocated in year t to all member states which have acceded to the EU after 30 April 2004
$\text{NagE}_t^{\text{12 NewMS}} =$	non-agricultural expenditure (as defined) allocated in year t to the 10 member states which have acceded to the EU on 1 May 2004 as well as Bulgaria and Romania
$\% \text{reduc}_t =$	percentage reduction of NAge corresponding to year t (i.e. 0 per cent before 2008; 20 per cent for 2008; 70 per cent for 2009 and 100 per cent from 2010 onwards)
$\text{Deflator}_{2004-t}^{\text{GDP}} =$	the latest available GDP deflator for the EU expressed in euro, as provided by the Commission, for the period 2004 to year t

If the adjusted ceiling is exceeded (in any year until 2013), the UK correction shall be increased by the excess amount. The UK corrections of subsequent years shall also be adjusted to ensure that the ceiling is not exceeded, up until and including the UK correction originating in the year 2012, to be first budgeted in 2013.

UK Advantage

$$\text{UK advantage}_t = \frac{\text{ncVAT}_t^{\text{UK}}}{\text{ncVAT}_t^{\text{EU}}} * (\text{GNIP}_t^{\text{EU}} + \text{cVATP}_t^{\text{EU}}) - (\text{GNIP}_t^{\text{UK}} + \text{cVATP}_t^{\text{UK}})$$

where

$\text{ncVAT}_t^{\text{UK}} =$	non-capped VAT base of Member State/group of member states XX (where XX = UK or EU) in year t
$\text{GNIP}_t^{\text{XX}} =$	Total GNI payments made by XX (where XX = UK or EU) in year t
$\text{cVATP}_t^{\text{XX}} =$	Total capped VAT payments made by XX (where XX = UK or EU) in year t

TOR Windfall Gains

$$\text{TOR windfall gains}_t = 0.20 * \text{TOR}_t^{\text{UK}} * \left[\frac{\text{TOR}_t^{\text{UK}}}{\text{TOR}_t^{\text{EU}}} - \frac{\text{ncVAT}_t^{\text{UK}}}{\text{ncVAT}_t^{\text{EU}}} \right]$$

where

TOR_t^{XX} = net traditional own resources of member state/group of member states XX (where XX = UK or EU) in year t

$\text{ncVAT}_t^{\text{XX}}$ = non-capped VAT base of XX (where XX = UK or EU) in year t

Source: “Commission Working Document on the on calculation, financing, payment and entry in the budget of the correction of budgetary imbalances in favour of the United Kingdom (‘the UK correction’) in accordance with Articles 4 and 5 of Council Decision 2006/xxx/EC, Euratom on the system of the European Communities’ own resources”

Interinstitutional file 2006/0039 (CNS), accessed 21/05/2015 at: <http://ec.europa.eu/budget/library/biblio/documents/financing/calc_own_res_2007_en.pdf>.

12 Migration

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“Currently, the UK does not have full control over its migration policy due to the EU’s free movement rights.”

Currently, the UK does not have full control over its migration policy due to the EU’s free movement rights. These have steadily grown in scope over the last 60 years, from a ‘workers’ right’ to include those ‘seeking work’, students, retirees, and now all EU ‘citizens’.

As new nations have joined the EU, the level of European immigration has increased, causing political difficulties. Inside the EU, the UK could only hope to reduce immigration by the hundreds. The current arrangements have led to the deeply unsatisfactory situation wherein non-EU migrants face significant difficulties entering the UK, but EU (or to be precise European Economic Area (EEA)) migrants face no hurdles at all.³²⁷ For education, for example, which depends on large numbers of foreign students coming to the UK, this has potentially caused serious economic damage. Government efforts to tackle net migration have focused entirely on restricting non-EEA immigrants, and have consequently put downward pressure on the number of student visas issued to these nationals each year (EU rules also have implications for the fees that universities can charge EU students). The confluence of unrestricted European immigration and tight controls on non-EEA migration may have caused skills problems for other industries too.

If Britain decided to leave the EU, policy-makers would face crucial questions about which direction they would like to take Britain’s migration system: leaving would give the UK complete control, allowing it to either retain an ‘open border’ scheme or reduce inward immigration by, potentially, the tens of thousands. The UK would gain significant new freedoms which would allow policy-makers to, if desired by the British people, reform its migration system to select only highly skilled workers from across the world. It would also, crucially, have the power to remove the discriminatory element in our current migration system and apply the same criteria to both EU migrants and non-EU migrants, making it easier for the UK to fill the gaps in its economy by finding the best candidates globally.

However, meaningful reform could only come as part of a wide-ranging change in how the UK manages migration policy across a range of government departments. Leaving the EU is an enabler, not a solution in itself.

12.1 The UK would remain a member of all key international migration bodies

Key international bodies

- The Commonwealth
- United Nations High Commissioner for Refugees (UNHCR)

The UK, as a founder of the United Nations, is bound by the majority of international human rights law that covers migration. However, Britain’s ability to engage properly with a number of international organisations in this area, notably the Commonwealth, has been limited due to the migration rules that have been introduced as a result of EU membership.

Policy-makers need to ask themselves how the UK’s relationship with these bodies would change after the UK leaves the EU. In fact, leaving the EU would be a chance to improve the UK’s relationship with countries around the world and address the discriminatory aspects of its current migration policy.

³²⁷ As we explore elsewhere, EEA nationals enjoy broadly similar free movement rights, though with certain important caveats, in particular focusing on workers and not families, and with safeguards for exceptional flows. Leaving the EU to join the EEA would correspondingly only partially address concerns in this area. The Swiss have a separate arrangement.

“Outside the EU, access to the UK labour market could be linked to any free trade agreements Britain may wish to pursue.”

12.1.1 The UK would retain the same relationship with key international agencies

The United Nations governs migration rights internationally – with the United Nations High Commissioner for Refugees one of the most noticeable agencies. These rights are laid out in numerous conventions that are not specifically related to migration but whose scope protects migrants. The UK is a signatory to the majority of these conventions, which are known as the Core International Human Rights Instruments.³²⁸ When it comes to asylum and refugees, the UK is a signatory of the UN 1951 Refugee Convention and the 1967 Protocol. Leaving the EU would have no effect on the UK’s status in this regard.

12.1.2 The UK would gain a better relationship with other international bodies

If the UK were to leave the EU and the EEA, it would gain the chance to build its relations with other international organisations, including the Commonwealth. The latter’s 53 nations and 2.3bn people could provide the UK with a wider pool of labour, which it could look to more favourably. This does not have to mean free movement for non-EU countries, but rather closer engagement would be a means of selecting from the best talent in the world without having to impose restrictions on non-EU migration, which is required when EU levels spike under the Government’s existing immigration policy (notably the net migration cap).

The same could be said for other regional groups such as ASEAN, whose members include strategically important growing economies in Asia.³²⁹ Outside the EU, access to the UK labour market could be linked to any free trade agreements Britain may wish to pursue (although this might be better conducted bilaterally than through regional organisations).

12.2 The UK could continue to cooperate with the EU on migration issues

Key issues

- Allowing people to live and work in EU countries
- Continuing asylum and refugee cooperation
- Continuing criminal and justice cooperation

While the EU has extensive non-EEA migration policies, the majority of migration law is not an EU competence and remains with member states. As the UK already has many opt-outs from EU migration directives, leaving the EU would bring about only a limited legal change aside from any changes to the free movement rules. This raises questions over whether, if the UK were to opt out of this limited shared competence, it would compromise Britain’s ability to work with the EU on migration issues.

328 United Nations “The Core International Human Rights Instruments and their monitoring bodies”, accessed 20/03/2015 at: <www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>. It should be noted that UK and all European nations are not part of the UN Convention on the Protection of Migrant Workers that explicitly concerns migrants. This is despite the European Parliament and the European Economic and Social Committee (EESC) encouraging EU member states to sign.

329 The Association of Southeast Asian Nations is a political and economic organisation of Southeast Asian states. It was formed on 8 August 1967 by Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Membership has since expanded to include Brunei, Cambodia, Laos, Myanmar-Burma and Vietnam.

“The EU’s freedom of movement rights would be honoured for all those citizens who reside in other EEA nations prior to any Treaty changes.”

Upon leaving the EU, the UK and the EU would still be bound by the 1969 Vienna Convention to honour the existing free movement agreements as already made use of. This means that no member state citizens already in the UK or UK citizens abroad would be forced to leave. There would also be no obstacles preventing the UK from continuing to take part in criminal and judicial cooperation for overarching security purposes.

12.2.1 People could continue to live and work in EU countries

A significant fear for those concerned about Britain leaving the EU is the potential mass exodus of both Europeans and Britons from each other’s respective nations. Former Attorney General Dominic Grieve has claimed that: *“EU exit would make 2m Britons abroad illegal immigrants overnight.”*³³⁰ However, this claim is not grounded in legal fact, as the Vienna Convention on the Law of Treaties 1969 would come into play. It contains articles that are based on ‘acquired rights’, which individuals build up over time and hold despite any changes in future treaties enacted by their nation. Article 70 states that the termination of a treaty *“does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.”*³³¹ This is qualified further by previous legal pronouncements, as the International Law Commission told the UN in 1959: *“Private rights acquired under existing law do not cease on a change of sovereignty.”*³³² Moreover, *“acquired rights”* were acknowledged in Greenland’s withdrawal from the European Economic Community (EEC). Under the term *“vested rights”*, the European Commission said that Greenland should retain the *“substance”* of free movement rights for workers from the EEC at the time of withdrawal.³³³

As a House of Commons Library note clarified:

*Generally speaking, withdrawing from a treaty releases the parties from any future obligations to each other, but does not affect any rights or obligations acquired under it before withdrawal.*³³⁴

Therefore, the EU’s freedom of movement rights would be honoured for all those citizens who reside in other EEA nations prior to any Treaty changes. Furthermore, the Greenland example also included a transitional period. This works both ways, and the UK’s Vienna Convention obligations would prevent any government from deporting migrants who came to the UK under the old system. The UK’s large expatriate retiree community in Spain, France and Italy would also not have to worry. While the Centre for European Reform has claimed that, were Britain to leave, *“Spain might demand that British retirees on the costas pay for their own healthcare or it may try to limit migrants’ access to healthcare...Their healthcare is costly to the Spanish treasury, which is struggling to balance its books”* this is inaccurate, as the NHS would be responsible

330 Guardian “EU exit would make 2m Britons abroad illegal immigrants overnight”, O. Bowcott (19 March 2015), accessed 20/03/2015 at: <www.theguardian.com/politics/2015/mar/18/dominic-grieve-brexit-2m-britons-abroad-illegal-immigrants-eu-echr>.

331 Vienna Convention on the Law of Treaties, 23 May 1969, accessed 20/03/2015 at: <<https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>>.

332 International Law Commission, Documents of the 11th Session, including the Report of the Commission to the General Assembly, accessed 20/03/2015 at: <http://legal.un.org/ilc/documentation/english/a_cn4_119.pdf>.

333 House of Commons Library “Leaving the EU” (July 2013), page 13.

334 House of Commons Library “Leaving the EU” (July 2013), pages 14–15.

“The UK could address the ‘pull’ factors that influence immigration.”

for paying the cost of healthcare of pensioners abroad in any case.³³⁵ In 2013–14, the UK paid £580m to other EEA countries for the treatment of British pensioners resident in the EEA, while it received just £12m from other EEA countries in the same year for the treatment of EEA pensioners in the UK. Further, as previously noted, the Vienna Convention would guarantee the right to remain for Britons already in European nations through acquired rights.

Moreover, if the UK remains in the EEA after leaving the EU, the free movement of people would be part of this package. As TheCityUK makes clear, this choice is stark:

*If the policy framework chosen includes membership of the Single Market, then the UK will not be able to alter its immigration policy for EEA and EU nationals.*³³⁶

This is echoed by MigrationWatch, which states that the UK could not opt out of free movement while trying to remain subject to free movement of goods, services, and capital in the Single Market. It would not be negotiable, in its view. This provides an incentive to use the EEA only as a ‘stepping stone’ to a better deal where ‘free movement’ isn’t required.³³⁷

A UK in the EEA would have to keep free movement, but it could take steps to address the ‘pull’ factors that influence immigration. Cracking down on employers who pay below the minimum wage and tackling the willingness of some landlords to provide cheap but squalid accommodation are two examples of what could be done. Further potential reforms include David Cameron’s welfare proposals, or the ideas put forward by Open Europe, which entail limiting new EU migrants’ access to non-contributory out-of-work and in-work benefits for a certain period. The rationale would be to “substantially decrease” the incentive to come to the UK for low-skilled jobs.³³⁸ Open Europe’s calculations estimate that:

*For a single worker earning the minimum wage in Poland coming to work on the UK minimum wage, removing immediate access to in-work benefits would halve the financial incentive to migrate to the UK once the cost of living is factored in [on a Purchasing Power Parity basis], with the potential income boost falling from 155 per cent of Polish weekly take-home pay to 72 per cent.*³³⁹

The numbers can be seen in more detail in Figure 12.i.

335 Centre for European Reform “Is immigration a reason for Britain to leave the EU?”, J. Springford (2013), page 8.

336 TheCityUK “Analysing the case for EU membership”, accessed 01/03/2015 at: <www.thecityuk.com/research/our-work/reports-list/analysing-the-case-for-eu-membership-how-does-the-economic-evidence-stack-up/>.

337 It should be noted that free movement isn’t a prerequisite in all the EU’s trade deals (e.g. see the trade deal with South Korea and Canada).

338 Open Europe “How to Save the EU Free movement: Make it fair to keep it free”, page 3, accessed 01/03/2015 at: <<http://openeurope.org.uk/intelligence/immigration-and-justice/save-free-movement/>>.

339 Open Europe “How to Save the EU Free movement: Make it fair to keep it free”, page 4, accessed 01/03/2015 at: <<http://openeurope.org.uk/intelligence/immigration-and-justice/save-free-movement/>>.

“In the EEA Britain may be able to secure a similar exemption from free movement rules, although this would require agreement from the other states.”

Figure 12.i: Weekly take-home pay: single earner, minimum wage, no dependent children (UK GBP in PPP)

	UK nationals and EU migrants under current rules	EU migrants in UK under OE rules	Spanish minimum wage	Polish minimum wage	Bulgarian minimum wage
Salary	£227.50	£227.50	£178.07	£174.06	£79.48
Total deductions	-£30.99	-£30.99	-£11.31	-£60.05	-£18.20
Income post deductions	£196.51	£196.51	£166.77	£114.01	£61.28
Benefits/tax credits	£93.77	£0.00	£47.30	£0.00	£0.00
Total	£290.28	£196.51	£214.07	£114.01	£61.28
Effect on income of moving to UK under current rules			35.60%	154.60%	373.70%
Effect on income of moving to UK under OE rules			-8.20%	72.40%	220.70%

Source: Open Europe³⁴⁰

Securing such reforms would be politically challenging, but they mean that, even under EEA membership, Britain could still look to reduce the amount of immigration. Furthermore, it is worth considering the case of Liechtenstein, an EEA-EFTA state, which has negotiated an exemption from free movement rules allowing it to limit migration and settling. This was granted due to Liechtenstein’s small size and the possibility of overcrowding.³⁴¹ Within EFTA-EEA, Britain may be able to secure a similar exemption, although this would require agreement from the other states.

12.2.2 Criminal and judicial cooperation would continue

Opting out of the Schengen Area has given the UK added security by allowing it to retain checks on people entering and leaving the UK.³⁴² However, it has also meant that Britain has been unable to opt in or out of a number of crime and justice measures. Leaving the EU would give the UK the power to adhere to (or mirror) such EU measures. For instance, it is in the UK’s security interest to remain involved with the Advance Passenger Information Directive (Directive 2004/82/EC). The sharing of data with the UK’s European neighbours is crucial in the fight against criminal activity and terrorist threats.

The UK also currently has limited participation in Frontex and Eurosur, which provide a common policy on surveillance of the EU’s external borders and cross-border crime. This could remain in some form, as it would still be in both parties’ mutual interests to cooperate. However, it would not require Britain to remain in the EU: a new bilateral agreement could suffice. Britain also pays into and receives money from SOLID funds. These refer to refugees, a

340 Open Europe “How to Save the EU Free movement: Make it fair to keep it free”, page 4, accessed 01/03/2015 at: <<http://openeurope.org.uk/intelligence/immigration-and-justice/save-free-movement/>>.

341 EU law website “Agreement on the European Economic Area – Protocol 15 on transitional periods on the free movement of persons (Switzerland and Liechtenstein)”, accessed 08/04/2015 at: <[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:21994A0103\(16\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:21994A0103(16))>.

342 This removed all passport and immigration controls on internal EU borders to allow people (and goods) to move across the landlocked borders on continental Europe free from hindrance.

“The UK has a selective approach towards EU asylum policy.”

return fund, and the integration of non-EEA nationals. Were it to leave the EU, the UK would not receive the funds, but may opt to play a role in helping the EU in these areas.

A considerable amount of future cooperation after exit could be conducted bilaterally with specific nations such as France, or with the EU as a whole. Regular contact and information exchanges between police, border control, and security services should be a priority in continued UK-EU cooperation in the area of migration.

12.2.3 Asylum and refugee cooperation would continue

Much like the immigration directives, the UK has a selective approach towards EU asylum policy. The UK signed up to the first phase of asylum measures, introduced with the Treaty of Amsterdam (1999), which gave the EU greater competency in this area. However, the UK opted out of the second phase, stating that: *“We do not judge that adopting a common EU asylum policy is right for Britain”*.³⁴³ The UK did sign up to the third iteration of the Dublin Regulations, a mechanism that identifies which EU member state is responsible for dealing with an asylum claim. The UK also adopted the latest EURODAC Regulation, which supports the Dublin system via the collection and storing of fingerprints. In terms of everyday assistance for asylum seekers and refugees, the UK is a recipient from a number of EU funds. These are the European Integration Fund, the European Refugee Fund, and the European Return Fund (the UK is excluded from the External Borders Fund as it is not part of the Schengen Area).

As the UK is not a frontline destination for asylum seekers or refugees, and because of its independent border checks outside of Schengen, the impact of this type of migration is not as immediately acute as it is for the ‘frontline’ Mediterranean nations such as Spain, Italy, Greece and Malta. However, asylum seekers coming from Calais to Dover do affect the UK, and the issue is exacerbated by the existence of Schengen (a large area of the EU that is devoid of passport checks). Additionally, the UK has to rely on the cooperation of France to allow UK officials to work in Paris and Calais to check documentation of individuals highlighted as risks. This makes working with the Schengen Area and EU border programmes just as important if Britain leaves the EU.

There are several mechanisms for this: the UK’s contribution to the UN’s refugee settlement scheme, called the Gateway Protection Programme, has been acknowledged as a success and would continue.³⁴⁴ For ease, the UK could incorporate this existing programme when dealing with genuine asylum seekers coming from EU nations such as France. The UK could continue to work with the EU to help address ‘push factors’ that drive people to leave their home countries in North Africa and the Middle East. Taking this approach means that leaving the EU would mean no major changes in UK-EU relations in this policy area.

The UK would lose the EU funding outlined above to deal with asylum seekers if it left. This would require allocation of UK taxpayer funds; however, Britain would regain billions of pounds once its EU membership fee expired which could pay for any shortfall.³⁴⁵

343 The Migration Observatory, University of Oxford “The UK, the Common European Asylum System and EU Immigration Law”, page 4.

344 Guardian “Refugees hail UNHCR Gateway programme as a British success story” (19 March 2014), accessed 21/03/2015 at: <www.theguardian.com/world/2014/mar/19/unhcr-refugee-programme-british-success>.

345 See Section 30.

“There is no doubt that, over the years, the EU has exerted an ever-increasing amount of influence over the UK’s migration policy.”

12.3 New migration policy opportunities would become available

Leaving the EU would give the UK the chance to make some significant changes to its immigration policy, which is currently so heavily bound by EU free movement rights. Alterations to free movement could be minor (retaining the status quo) or could work to lower the annual inflow, thereby allowing the Government to meet a specified net migration target. The UK could also have access to a wider global talent pool without the uncontrolled pressures of free movement, and its immigration policy could be fairer by providing enhanced opportunities for highly skilled workers from the rest of the world to work in the UK. After it left, the UK would have to decide which route it wished to take, though any decision would also have to be informed by recent research studies, including those which show a net economic benefit from EEA migration.³⁴⁶

12.3.1 EU ‘mission creep’ over migration policy could be stopped at a stroke

Despite the fact that the UK currently opts out of a considerable amount of EU legislation and directives in this area, there is no doubt that, over the years, the EU has exerted an ever-increasing amount of influence over the UK’s migration policy, accumulating more powers for itself and revising the terms of free movement over the decades.

The original Treaty of Rome (1957) made clear that the Common Market of the six founding members would include the free movement of workers i.e. those who were currently economically active, not those seeking a job: *“Freedom of movement for workers shall be secured within the Community.”*³⁴⁷ Two points are critical: first, the UK was not subject to the 1957 Treaty as it was not a member of the original EEC; and second, free movement was originally intended to apply only for current workers, not all people. As the UK Government’s Balance of Competences Review makes clear:

*The idea was that workers would move across the Union to fill skills and employment gaps and improve their own economic opportunities. In line with this purpose, the expectation was that the numbers who actually moved would be fairly small.*³⁴⁸

At the same time, Britain’s overseas colonies were becoming independent. Before subsequent independence movements, every Commonwealth citizen was a British subject, which allowed for free entry into the UK. In short, individuals from the wider Commonwealth were not seen as foreign nationals from a legal perspective. This changed after the influx of migrants from the Caribbean. The Commonwealth Immigration Act 1962 marked the first attempt in legislation to restrict Commonwealth migration. This broke the ruling concept that the Commonwealth constituted a single territory in which British subjects could move freely.³⁴⁹ This was to be restricted again under the Commonwealth Immigration Act 1968, which meant that those wishing to enter the UK freely

346 For example, see Nomura Economics Insights “UK Policy Options if it leaves the EU” (May 2014), page 12, accessed 26/02/2015 at: <www.eureferendum.com/documents/nomuraeu.pdf>.

347 Treaty of Rome, Title III, Chapter 1.

348 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Free Movement of Persons” (2013), page 25.

349 Commonwealth Exchange “How to Solve a Problem like a Visa – the unhappy state of Commonwealth immigration into the UK”, T. Hewish (2014), pages 12–14.

“The UK signed up to the premise of free movement and its widening definition because the effects of EU migration between 1970 and 2000 were not particularly acute.”

had to demonstrate provable British ancestry from British-born parents or grandparents.

As for the EEC, in the 1960s two key measures were introduced in the form of Directive 68/360 and Regulation 1612/68.³⁵⁰ The former did away with any outstanding restrictions on workers and made it clear that:

*Article 2: Member States shall grant the nationals referred to in Article 1 the right to leave their territory in order to take up activities as employed persons and to pursue such activities in the territory of another Member State... Members of the family shall enjoy the same right as the national on whom they are dependent.*³⁵¹

Back in the UK, the Immigration Act 1971 made provision to control immigration into the UK from peoples of all nationalities, not just Commonwealth citizens. The UK was also completing its application to join the EEC in the early 1970s, so while Commonwealth nationals were being put on the same footing as any other foreign national, increased access for EEC workers was being contemplated.³⁵²

In the subsequent two decades (1970–1990), the EEC expanded to include a number of new members from Western Europe. However, the Berlin Wall and the Iron Curtain remained, providing a clear limit to the EU’s expansion. Regardless, in 1990 further immigration changes took place in the EU: three new directives came into force which shifted the original premise of free movement away from active workers towards a general right to movement for those who were retired (Directive 90/365/EEC), for students (Directive 90/336/EEC), and for those of independent means (Directive 90/364/EEC).³⁵³ This was a fundamental break from the past and meant that movement was no longer tied to traditional economic activity. This was reinforced in the 1992 Maastricht Treaty, agreed by the Major Government, which created the notion of EU citizenship which spread across national European borders. As is made clear in the Treaty: *“Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States.”*³⁵⁴ This saw what the Balance of Competences called: *“The severance of the absolute link between migration and the need to be economically active.”*³⁵⁵

Despite these changes, the UK signed up to the premise of free movement and its widening definition because the effects of EU migration between 1970 and 2000 were not particularly acute. It provided UK nationals with opportunities to work in EU nations without restriction, helped students study at EU universities, and gave UK pensioners the chance to retire in sunnier climes. The overall net migration numbers remained low and near neutral. The underlining assumption was that EU members had a similar standard of living and that migration flows were complementary. However, this all changed in 2004 with the expansion of the EU to include former Eastern bloc nations, the Accession Eight countries (A8), as can be seen in Figure 12.ii.

350 EC Regulation 1612/68 (1968), accessed 23/02/2015 at: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31968R1612:en:HTML>>.

351 EC Council Directive 68/360 (1968), accessed 23/02/2015 at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31968L0360&from=EN>>.

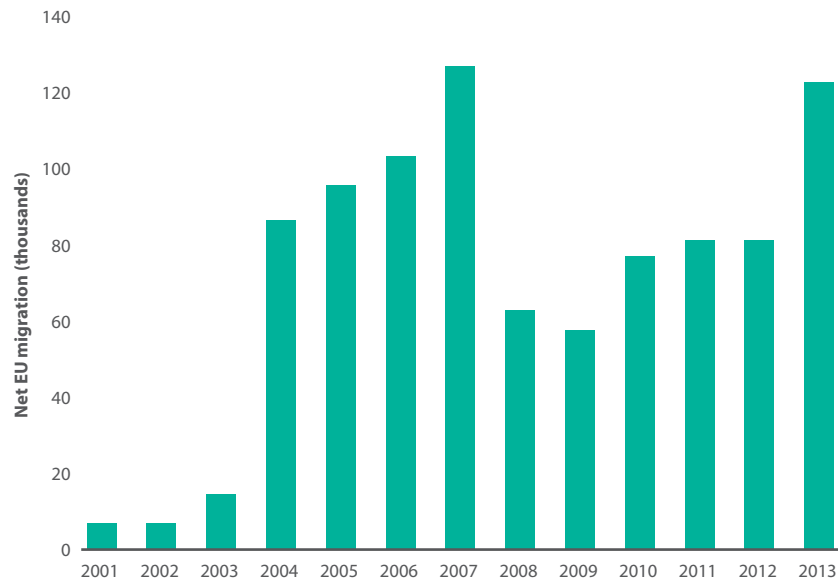
352 Commonwealth Exchange “How to Solve a Problem like a Visa – the unhappy state of Commonwealth immigration into the UK”, T. Hewish (2014), page 14.

353 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Free Movement of Persons” (2014), page 14.

354 European Union, Maastricht Treaty, 1992, accessed 23/02/2015 at: <www.eurotreaties.com/maastrichtec.pdf>.

355 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Free Movement of Persons” (2014), page 14.

Figure 12.ii: Net EU migration into the UK by EU citizens



Source: HM Government³⁵⁶

The near-majority of these A8 nations had an average per capita income of around a quarter of Western European nations. As Figure 12.ii demonstrates, these poorer EU citizens used their new rights to look for work in the UK – initially mostly in low skilled employment. The Directive that made this possible, Directive 2004/38/EC (‘Free Movement Directive’), made clear that: “*The new measures are designed, among other things, to encourage Union citizens to exercise their right to move and reside freely within Member States.*”³⁵⁷

Strategically, the UK increased the impact of the extension of free movement with its decision not to enact seven-year transitional controls on A8 migration. Only two other EU members, Ireland and Sweden, made the same choice. Other economically-advanced Western European nations, such as France, Germany, Spain and Italy, imposed transitional controls to limit the levels of Eastern-bloc immigration.

In 2013, former Home Secretary Jack Straw admitted that having no restriction on Eastern European migration was a “spectacular mistake”. He went on to say:

*Thorough research by the Home Office suggested that the impact of this benevolence would in any event be relatively small, at between 5,000 and 13,000 immigrants per year up to 2010... Events proved these forecasts worthless. Net migration reached close to a quarter of a million at its peak in 2010. Lots of red faces, mine included.*³⁵⁸

356 Compiled by the House of Commons Library, accessed 20/05/2015 at: <www.parliament.uk/briefing-papers/SN06077.pdf>.

357 European Commission “Right of Union citizens and their family members to move and reside freely within the territory of the Member States”, accessed 23/02/2015 at: <http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/l33152_en.htm>.

358 BBC News “Jack Straw regrets opening door to Eastern Europe migrants” (13 Nov 2013), accessed 23/02/2015 at: <www.bbc.co.uk/news/uk-politics-24924219>. The Home Office’s basic premise that Straw acted on was openly disputed by Eurosceptic commentators at the time.

“The collective impact of these policy decisions has been a rapid increase in the UK’s population over the last 10 years.”

The UK was more attractive to A8 nationals because of its generous in-work benefits. Most other Western European nations base benefits on contribution records rather than residence.

The collective impact of these policy decisions has been a rapid increase in the UK’s population over the last 10 years. As the Balance of Competences Review highlighted, EU nationals accounted for 10 per cent of UK immigration between 1975 and 1990. This increased sharply post-2004, with the proportion standing at 27 per cent in 2005 and 38 per cent in 2013, and is still rising.³⁵⁹ In addition, the number of immigrants from the original EU-14 Western European nations has remained stable over the last decade, with 951,000 resident in the UK in 2004 and just under 1.1m in 2012.³⁶⁰ Meanwhile, the number of A8 nationals has jumped from just 125,000 in 2004 to over 1m in 2012.³⁶¹ This situation has been compounded by the accession of Romania and Bulgaria (the A2) to the EU, with the number of A2 residents rising from 20,000 to 155,000.³⁶² These increased numbers exercising their EU freedoms to live in the UK has led to some public disquiet.

As the Balance of Competences Review into Asylum and Immigration detailed, the EU’s power has increased over the last 15 years in this policy area. However, the UK has been able to secure a number of opt-outs. The most significant relates to the Schengen Agreement. This removed all passport and immigration controls on internal EU borders to allow people (and goods) to move across the landlocked borders of continental Europe free from hindrance. As an island nation, the UK took the view that entry would be restricted to sea and air ports as well as the Eurostar, thus the protocol need not apply. This means that the UK maintains an independent border and visa system outside the EU’s free movement zone.³⁶³

However, the UK does opt in to limited aspects of the Schengen Protocol. These are concerned with police and judicial cooperation. Others include more practical measures such as the Passenger Information Directive (Directive 2004/82/EC), which requires the transmission of passenger data by carriers on flights into the EU from third countries. Moreover, the UK has opted into the rules on ‘Carrier’s Liability’, which requires carriers to assume responsibility and return third country nationals home if they are refused entry into the Schengen Area. This responsibility includes ensuring that a third country national has the required documents to enter the Schengen Area.³⁶⁴ Furthermore, the UK participates (although not fully) in Frontex, an EU agency which provides surveillance on persons and the external borders of EU member states. It also has a limited interaction with Eurosur, which counters cross-border crime and unauthorised border crossings.

There are antagonisms at play between businesses, the UK Government, and the public over the current policy on Schengen. Some businesses argue that not being in Schengen damages the UK’s ability to attract non-EEA tourists visiting Europe. This is particularly noticeable when looking at Chinese tourists

359 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Free Movement of Persons” (2014), page 29.

360 These figures have since increased.

361 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Free Movement of Persons” (2014), page 27.

362 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Free Movement of Persons” (2014), page 27.

363 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Asylum and Immigration” (2014), page 17.

364 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Asylum and Immigration” (2014), page 19.

“The UK could choose its own immigration policy, one that is better able to adapt to social pressures and economic demand.”

figures. Evidence in 2010 found that just three per cent of Chinese visitors to the EU obtained a UK visa, while only two per cent obtained both UK and Schengen visas, leaving 95 per cent obtaining a Schengen visa alone.³⁶⁵ Shipping representatives are supportive of the Schengen Area too, claiming that, by removing UK border checkpoints, the UK could save approximately £550m per year in direct costs.³⁶⁶

However, MigrationWatch has argued that its research shows there is no public appetite for joining the Schengen Area: *“There is no public support for, or even discussion of, the UK joining the Schengen area. The effect of that would almost certainly be a substantial flow of illegal migrants.”*³⁶⁷

Public disquiet about EU free movement is not limited to opposition to joining the Schengen Area. Significant concerns have been raised about the impact of immigration: for example, in a poll included in the UK Government’s Balances of Competences Review, 32 per cent of UK citizens cited immigration as one of the two most important issues facing the UK, second only to unemployment (cited by 36 per cent). In 2005, ‘the right of people in EU countries to live and work wherever they want’ was supported by a margin of two to one. In 2013, however, free movement was opposed by 49 per cent (38 per cent supported it). As for A8 nations, in particular, net support for skilled workers coming to the UK to either fill existing jobs or look for work in the UK stands at 39 per cent and 33 per cent respectively. However, this falls to minus 27 per cent for unskilled workers filling job vacancies and minus 51 per cent for unskilled workers searching for work.³⁶⁸ The majority of businesses are in favour of the Single Market in labour, however, as it allows them to have easy access to a wider talent pool without restriction and red tape.

Leaving would, at a stroke, put an end to this ‘mission creep’. The UK would no longer be bound by the EU’s shifting definition of free movement. Today, the UK is trapped in a system where even the Prime Minister’s small but significant policy proposals to clamp down on benefits to EU nationals in the UK are unlikely to be allowed. The Polish Government threatened to veto it:

*There is a red line we cannot allow ourselves to cross and that is discrimination against EU citizens.*³⁶⁹

Even mild reforms for revising free movement are met with rejection by EU nations, making any substantial changes a non-starter if the UK exits the EU but remains in the EEA. However, if the UK were willing to leave both the Treaty provisions in the TEU, TFEU and EEA agreement, it could choose its own immigration policy, one that is better able to adapt to social pressures and economic demand.

365 UK-China Visa Alliance “Promoting Growth in Britain’s Economy: Proposals for innovation in the visa system to encourage more visitors from China while keeping the UK’s borders secure” (2011), page 3, accessed 23/02/2015 at: <<http://ukcva.com/wp-content/uploads/2013/05/VISA-Report-2012.pdf>>.

366 This issue is separate from the trafficking of illegal immigrants and their respective nationalities (as tragically demonstrated with the Morecombe Bay deaths)

367 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Asylum and Immigration” (2014), page 29.

368 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Free Movement of Persons” (2014), pages 36 and 38.

369 The Independent “Poland threatens to veto David Cameron’s EU migrants benefits cuts plan” (18 December 2014), accessed 01/03/2015 at: <www.independent.co.uk/news/world/europe/poland-threatens-to-veto-david-camerons-eu-migrants-benefits-cuts-plan-9934481.html>.

Table 12.iii: EEA and Swiss residents in the UK, and British born residents in the EEA and Switzerland

Bulgaria	58,366	Bulgaria	3,206
Czech Republic	40,959	Czech Republic	4,456
Denmark	21,933	Denmark	18,047
Germany	311,286	Germany	96,938
Estonia	9,354	Estonia	54
Ireland	412,658	Ireland	253,605
Greece	38,911	Greece	8,445
Spain	84,989	Spain	281,025
France	139,259	France	172,806
Croatia	9,078	Croatia	290
Italy	136,187	Italy	72,234
Cyprus	66,845	Cyprus	42,854
Latvia	70,654	Latvia	1,423
Lithuania	133,116	Lithuania	2,187
Luxembourg	-	Luxembourg	5,927
Hungary	51,198	Hungary	5,829
Malta	29,101	Malta	11,429
Netherlands	60,414	Netherlands	48,977
Austria	15,666	Austria	9,843
Poland	661,482	Poland	37,020
Portugal	90,314	Portugal	18,989
Romania	103,421	Romania	3,846
Slovenia	-	Slovenia	577
Slovakia	62,464	Slovakia	4,276
Finland	14,623	Finland	5,570
Sweden	32,378	Sweden	23,129
UK	-	UK	-
Iceland	-	Iceland	1,184
Liechtenstein	-	Liechtenstein	48
Norway	17,059	Norway	20,322
Switzerland	17,146	Switzerland	47,327
TOTAL	2,721,626	TOTAL	1,329,698

Source: MigrationWatch from UN data³⁷⁰

12.3.2 Discrimination against non-EU nationals could end

While the UK could, if it so wished, opt for a more liberal immigration system today, Britain is, however, bound by EU Treaty obligations to honour the free movement of people from the EU. Within an unreformed EU, there is no over-

370 Migration Watch UK “The British in Europe – and Vice Versa”, accessed 24/04/2015 at: <www.migrationwatchuk.org/briefing-paper/4.30>.

“It is damaging that the UK denies access to highly skilled and low skilled workers from countries whose economies, culture, legal system, and politics are very similar to our own.”

arching policy mechanism the UK Government can enact to restrict the entry of EU nationals – such as national quotas or targeting certain jobs. This means that, if the UK wants to lower net migration, it has no choice but to target non-EEA migrants.

Prime Minister David Cameron pledged in 2010 to cut net immigration from the hundreds of thousands to the tens of thousands. When the pledge was formulated in early 2010, EU net migration had been consistently offset by net British emigration over the previous decade. However, EU net migration has more than doubled during the 2010–2015 Parliament.³⁷¹ In the 2015 election campaign, the Labour Party also committed to cutting immigration.³⁷²

This has led to some potentially disturbing policy developments. For example, the Coalition Government, in an attempt to reduce the amount of non-EEA migration into the UK, made a number of alterations to Tier 1, Tier 2 and Tier 3 visas. It abolished the Tier 1 General Visa, which gave ‘highly skilled migrants’ access to the UK labour market. Around 10,000 people annually entered the UK with Tier 1 visas.³⁷³ The Tier 1 Post-study work visa, which previously gave students the right to remain in the UK for two years after their academic studies had finished, was also abolished. A cap of 20,700 was introduced on Tier 2 visas for ‘skilled migrants’ (however, there was no limit for those paid above £153,500 per year and the Intra Company Transfer version of this Tier has no cap). Tier 3 visas for ‘low skilled’ migrants never came into circulation in 2008, because the Government decided that the evidence showed that there was no economic need for any unskilled immigration from outside the EU. In 2013, David Cameron shut this tier down completely.³⁷⁴ This led Immigration Minister James Brokenshire to state in 2014 that:

*What I think [the net migration figures] show is that where we have the controls, we have seen an impact on non-EU migration – down by around 50,000 under this government to levels that we haven’t seen since the late 1990s... But where the pressure is being brought to bear is on EU migration where we don’t have those same controls.*³⁷⁵

In a global economy, it is damaging that the UK denies access to highly skilled and low skilled workers from countries whose economies, culture, legal system, and politics are very similar to our own.

Leaving the EU would permit the UK to develop a fairer immigration system, allowing it to treat EEA migrants and non-EEA migrants the same (so long as the UK does not sign up to EEA membership). New deals could be struck with a number of nations: Commonwealth nations like Canada, Australia, and New Zealand; or the United States, which is the UK’s largest trade and investment partner. When he visited Australia in late 2013, London Mayor Boris Johnson

371 BBC News “Net migration to UK rises to 260,000 in year to June” (27 Nov 2014), accessed 24/04/2015 at <www.bbc.co.uk/news/uk-30224637>.

372 Daily Telegraph “Ed Miliband: Labour will cut immigration if we win next election” (22 September 2013), accessed 24/04/2015 at: <www.telegraph.co.uk/news/politics/10326285/Ed-Miliband-Labour-will-cut-immigration-if-we-win-next-election.html>.

373 Work Permit.com “UK immigration announces end to Tier 1 General visa extensions” (1 May 2014), accessed 23/02/2015 at: <www.workpermit.com/news/2014-05-01/uk-immigration-announces-end-to-tier-1-general-visa-extensions>.

374 Work Permit.com, “Tier 3 Visa for Unskilled Migration”, accessed 24/04/2015 at: <www.workpermit.com/uk/uk-immigration-tier-system/tier-3-unskilled-migration.htm>.

375 BBC News “Net migration to UK rises to 260,000 in year to June” (27 Nov 2014), accessed 24/04/2015 at: <www.bbc.co.uk/news/uk-30224637>.

“Free movement as a concept was not disputed with much vigor prior to 2004 due to the relatively low numbers of people who were entering the UK.”

called for a “bilateral labour mobility zone” between the UK and Australia which could also include New Zealand.³⁷⁶ The premise was to give Australians the same rights as EU citizens to live and work in the UK. Recently, the UK think tank Commonwealth Exchange advanced Boris Johnson’s thinking and found an existing policy mechanism to deliver what it dubbed ‘Boris’ Bilaterals’.³⁷⁷ It referred to an agreement between Australia and New Zealand called the Trans-Tasman Travel Agreement (TTTA), which allows for free movement between the two nations. Importantly, the visa would be free and flexible by not being based on any treaty obligations, while also providing for restrictions on access to welfare benefits which can be altered as the parties see fit. New Zealand offers access to welfare after two years of residence, while Australia is much stricter.

Commonwealth Exchange argues that the TTTA should be seen as a starting point for future expansion of free movement across matching developed Western economies. The UK, New Zealand, Australia and Canada all share a common language, a Common Law legal system, and a Westminster model parliamentary system. They are also highly compatible economically. A similar case could be made for the United States, and any free trade agreement between the US and the UK could include some element of free movement policy. Commonwealth Exchange’s work also highlighted the popular public appeal of this policy. This is in stark contrast to the growing public unease at free movement policies in the EU. Leaving the EU would give the UK an opportunity to reconsider its options based on economic compatibility not geographical proximity.

Free movement as a concept was not disputed with much vigor prior to 2004 due to the relatively low numbers of people who were entering the UK. The benefits appeared to outweigh the negatives for both sides. However, the term has become politically charged and at times toxic in the public discourse. Therefore, extending free movement rights to other nations might be hard to sell to the electorate, no matter how economically advanced the relevant nations are. That said, Australia, Canada, New Zealand and the US are already frequented by many Britons. Of the 5m UK nationals who live abroad, UN figures show the highest proportion reside in Australia (1.3m), the USA comes second (750,000), Canada is third with 670,000, while New Zealand is the fifth most popular destination, with over 300,000 British residents living there.³⁷⁸

Pursuing such a policy would be delicate, however: if the UK were withdrawing free movement rights from the EU at the same time as extending them to Commonwealth nations or the US, the inconsistency might undermine the UK’s position with European states. This is a challenge that must be considered, although it is certainly surmountable.

Visas could also be reformed to make life easier for non-EEA nationals. In 2011, the UK abolished its Tier 1 General visa which allowed highly skilled workers the chance to work in the UK for three years without being tied to a specific employer.³⁷⁹ The only option for skilled migrants now is to access a Tier 2 visa in various guises, but the important criteria is that you need sponsorship from a business. A business has to acquire a sponsorship license to do this, and the

376 Daily Telegraph “The Aussies are just like us, so let’s stop kicking them out”, B. Johnson (25 Aug 2013), accessed 26/02/2015 at: <www.telegraph.co.uk/news/politics/10265619/The-Aussies-are-just-like-us-so-lets-stop-kicking-them-out.html>.

377 Commonwealth Exchange “How to Solve a Problem like a Visa – the unhappy state of Commonwealth immigration into the UK”, T. Hewish (2014), page 29.

378 Accessed 09/06/2015 at <www.un.org/en/development/desa/population/migration/data>.

379 HM Government “Tier 1 (General Visa)”, accessed 26/02/2015 at: <www.gov.uk/tier-1-general/overview>.

“After an exit from the EU, the UK would need to change how it welcomes both Britons and overseas visitors on entry to the UK.”

cost ranges between £500 and £1,500. Plentiful anecdotal qualitative evidence from non-EEA workers has suggested that sponsored visas artificially restrict them to their specific company job. Commonwealth Exchange highlighted the case of an Australian TV reporter. He planned to move jobs within the UK, but in order to do so he first had to leave the UK, return to Australia, and apply for a new visa to work for the new company. The cost and time alone is a deterrent.

An easier and more workable solution would be to create high skilled visas for a specific sector, therefore placing the onus on the worker to be marketable to UK businesses. In the case of the Australian TV reporter, his visa would have allowed him to transfer to a new role in a new company within the same field. (It is likely that, if introduced, such a policy would include a cap on numbers and require that the applicant is initially sponsored by an employer). This approach is already in effect in Canada as *“its system prioritises broadly desirable human capital, rather than a specific job offer.”*³⁸⁰

In addition, the CBI has reported the heavy burden for businesses of securing sponsorship accreditation. It estimates that it costs £500,000 for companies to meet such rules, and states that this is beyond the reach of most SMEs. This was verified by a Commons Select Committee, which argued that only large companies with a dedicated human resources department could afford a Tier 2 accreditation.³⁸¹

The former Tier 1 General (highly skilled) visa had a quota of 10,000, and it could easily be rejuvenated after an exit from the EU and replicated for skilled workers on Tier 2. It may also be extended to include EU workers, depending on whether free movement policies continue. This would give the UK greater flexibility to attract the best and highest skilled workers globally.

If a more international policy were put in place and the UK sought to encourage more low skilled migration, there would be a strong case for reviving the Tier 3 visa but to apply it to the whole world (including EU member state citizens). That way, the UK could choose the best low skilled workers without providing unrestricted access to low skilled Europeans. It would certainly give the UK more choice and more control over numbers. Quotas could be put in place, which could be increased or decreased based on economic demand. Further, the duration of Tier 3 visas could be limited to one year’s stay, as envisioned by the Labour Government’s cornerstone report “A Points Based System” in 2008.³⁸² The visa would not give the migrant access to benefits and would not give dependents the right to reside in the UK.

After an exit from the EU, the UK would also need to change how it welcomes both Britons and overseas visitors on entry to the UK. It would be expected that Britain would regain its own lane for UK passport holders at the border, while the majority of EEA lines would be refashioned.

The difficulty of creating new queues relates to security, as a recent Parliamentary Commonwealth immigration and visa debate found, when the Minister replying for the Government commented on the proposal for a Commonwealth queue:

380 Centre Forum “Britain’s points based migration system”, A. Murray (2011), page 20, accessed 26/02/2015 at: <www.centreforum.org/assets/pubs/points-based-system.pdf>.

381 Centre Forum “Britain’s points based migration system”, A. Murray (2011), page 36 accessed 26/02/2015 at: <www.centreforum.org/assets/pubs/points-based-system.pdf>. These figures have been disputed by other organisations like MigrationWatch.

382 HM Government “A Points-Based System: Making Migration Work for Britain” (2008), page 30.

“Having the correct and appropriate security information for any individual entering the UK is paramount.”

Having a separate route for those travellers from Commonwealth countries who do not have registered traveller status would, in many cases, hamper UK Border Force’s ability to deal with fluctuations in arrival flows... This is about having information and knowledge about people who come into the UK to ensure that they will not hurt our citizens. Within the EU, there are information exchanges for criminal records, such as the European criminal records information system, and data are available about criminals’ past activities.³⁸³

Although not the most convincing response, having the correct and appropriate security information for any individual entering the UK is paramount. One potential solution would be to move to a fully integrated e-gate system, which would have all security data available instantly (although this would take time for a number of developing nations).

Another Commonwealth option is to introduce a fast track business lane and travel card scheme similar to that operated by Asia-Pacific Economic Cooperation (APEC) nations. Its rationale is clear:

APEC’s approach has been to create a visa, which allows business travellers a pre-cleared, short-term entry system for participating countries. It removes the need to individually apply for visas, which saves valuable time and also allows multiple entries for three years before it must be renewed. There are also special lanes at major airports for APEC cardholders... The typical cost for the three-year visa is Aus\$200.³⁸⁴

Six Commonwealth nations are part of this scheme, with Australia having the largest number of card holders. With the right detailed pilot study and assistance from other Commonwealth nations, the UK could trial such a scheme.

The UK could also learn from the Australia and New Zealand smart gates travel scheme, whose electronic system allows for swift and easy access upon entry for UK, US, and Singapore travellers, while also ensuring the highest standards of border control.³⁸⁵ It is now being piloted to include Switzerland, Ireland and Canada. Adopting smart gates would be a sensible policy for the UK.

Attracting foreign workers with a strong command of the English language may also be a priority. Good language skills are of particular importance in sectors like healthcare, and other countries (including Canada and Australia) run points-based systems which reward those who speak their languages. Canada has decided to provide extra points to English or French speakers to ensure that immigrants can quickly enter the job market and assimilate. Australia has also adjusted its points system to favour immigrants who have an English speaking background. This has resulted in the proportion of English speaking migrant workers rising from 20 per cent of the degree level intake to 28 per cent over a five year period.³⁸⁶

A Commons Select Committee has critiqued the UK’s current points-based system for non-EEA immigrants, and found that Britain focuses too much on what it defined as hard measures, such as age, previous salary, and education,

383 Hansard (27 Jan 2015), accessed 01/03/2015 at: <www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150127/halltext/150127h0002.htm>.

384 Commonwealth Exchange “How to Solve a Problem like a Visa – the unhappy state of Commonwealth immigration into the UK”, T. Hewish (2014), page 34.

385 Australia Customs “Smart Gates Scheme”, accessed 26/02/2015 at <www.customs.gov.au/smartgate/default.asp#whoSmartGate>.

386 Centre Forum “Britain’s points based migration system”, A. Murray (2011), pages 20 and 25, accessed 26/02/2015 at: <www.centreforum.org/assets/pubs/points-based-system.pdf>.

“Both universities and businesses have argued that recent changes have made the UK less attractive to foreign students.”

while employers were more concerned with skills, particularly soft skills and a strong comprehension of the English language.³⁸⁷ Of course, by leaving the EU, the UK would be able to apply such criteria to all immigrants.

Another contentious issue that could be resolved by leaving the EU is the decision by the Home Office to remove the Tier 1 Post-study work visa. The first justification was that, by offering a two-year extension of recent graduates' right stay in the UK, it was undermining the concept of student visas as being transitory. Second, it was argued that too few skilled graduates were going into skilled work, with only half of non-EU graduates securing the requisite level of employment. A further domestic consideration was the stubbornly high number of UK graduates who were either unemployed or in low skilled jobs.

However, both universities and businesses have argued that the change has made the UK less attractive to foreign students (although overseas university applications have increased since 2010). The Director General of the Institute of Directors Simon Walker stated:

*Eighty percent of IoD members say that educating foreign students in British universities is good for the country – yet the system is described by Sir James Dyson as being one where ‘we take their money, we give them our knowledge, and then we kick them out’. This is madness. I agree with Sir James that we ought to be handing out visas to the brightest students at their graduation ceremony... The economy of the future will be powered by a young, mobile workforce... we must do all we can to attract them from around the world.*³⁸⁸

Australia, meanwhile, has a policy to introduce new post-study visas, by allowing graduates to remain for two, three and four years after bachelor, masters, and PhD degrees respectively.³⁸⁹ The UK could find a compromise arrangement, wherein students have six months or a year to find a job in the right skill set and then move to the correct tier visa.

What complicates matters is the fact that EU students pay lower student tuition fees than non-EU students and, of course, have free movement rights. Under the terms of an exit from the EU, this may change. It is not in the scope of this Section to set out education policy other than to state that EU students may need visas like the rest of the world.

12.3.3 Free movement for the EU or Western Europe could continue

Were the UK to leave the EU, it could push for a continuation of free movement with the EEA or, potentially, with only a few EEA countries. This would require a 'special deal' between the UK and the other EU nations, either via a bilateral arrangement or via EEA membership. If it decided to pursue a relationship based on bilateral agreements, it would allow the UK to return to a system of free movement of workers, not peoples.

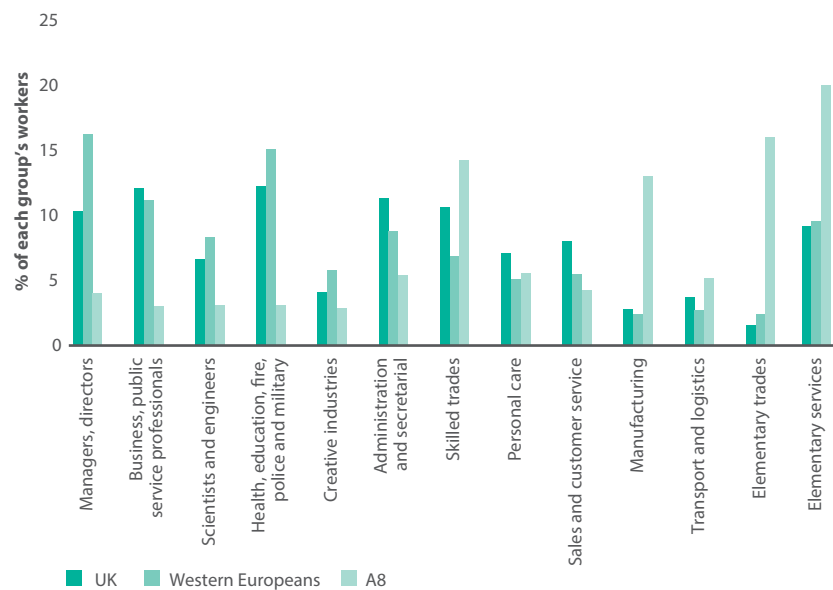
387 Centre Forum “Britain’s points based migration system”, A. Murray (2011), page 35, accessed 26/02/2015 at: <www.centreforum.org/assets/pubs/points-based-system.pdf>.

388 Evening Standard “Simon Walker: London Must Attract the World’s Best Workforce” (4 February 2014), accessed 01/03/2015 at: <www.standard.co.uk/comment/simon-walker-london-must-attract-the-worlds-best-workforce-9106242.html>.

389 Commonwealth Exchange “How to Solve a Problem like a Visa – the unhappy state of Commonwealth immigration into the UK”, T. Hewish (2014), page 37.

Were it to pursue a relationship based on bilateral arrangements, the UK may wish to strike a deal with just certain EU countries – in all likelihood the EU-15 – which overwhelmingly provide high skilled labour. The spike in numbers from the A8 nations in 2004 took policy-makers by surprise. A8 nationals accounted for an inflow 713,000 between 2004 and 2012 period, making the then Labour Government’s original projection of 13,000 a year wildly inaccurate.³⁹⁰ At present, 2.7m UK residents were born in other EU countries. Of those, 41.7 per cent (1.1m) were born in the A8 and A2 accession countries.³⁹¹ The EU-15 levels have remained steady, with annual net migration figures of around 20,000 until 2012.³⁹² (This jumped quite rapidly in 2013 to 40,000 net, however, and then to 71,000 net in 2014.). Statistically, the majority of the EU-15 appear to have a better command of English prior to arrival in the UK, appear to be better educated than A8 migrants, and importantly are highly skilled workers. Figure 12.iv provides evidence of this skills divide.

Figure 12.iv: Occupation of EU immigrants



Source: Labour Force Survey 2004–2012³⁹³

390 The then Labour Government assumed the other major EU economies would allow free A8 movement at the same time.

391 Migration Observatory “Migration flows of A8 and other EU migrants to and from the UK” (10 April 2014), accessed 26/02/2015 at: <www.migrationobservatory.ox.ac.uk/briefings/migration-flows-a8-and-other-eu-migrants-and-uk>.

392 Centre for European Reform “Is immigration a reason for Britain to leave the EU?” (Oct 2013), page 4, accessed 26/02/2015 at: <www.cer.org.uk/publications/archive/policy-brief/2013/immigration-reason-britain-leave-eu>.

393 Centre for European Reform “Is immigration a reason for Britain to leave the EU?” (Oct 2013), page 3, accessed 26/02/2015 at <www.cer.org.uk/publications/archive/policy-brief/2013/immigration-reason-britain-leave-eu>.

“There was a time when freedom of movement meant member states could expect workers to have a job offer before they arrived.”

The Tier system

- Tier 1 (Entrepreneur): for those wishing to set up or take over a business (or businesses) in the UK that they will be actively involved in running.
- Tier 1 (Investor): for those who wish to invest capital in the United Kingdom.
- Tier 1 (Exceptional Talent): for those who are recognised or have potential to be recognised as exceptionally talented leaders in the fields of science, humanities, engineering or the arts.
- Tier 2 skilled workers with a job offer from a UK-based employer.
- Tier 4: for students.
- Tier 5: for temporary workers.

Tiers not in use

- Tier 1 (General): for highly skilled potential migrants looking for a job or wishing to become self-employed in the UK.
- Tier 1 (Post Study Work): students who have successfully completed a degree at a UK institution could apply for permission to work in the UK for two years without needing a work permit.
- Tier 3: for low-skilled workers filling specific temporary labour shortages.

If Britain retains free movement with EU-15 member states and agrees a reciprocal arrangement for UK nationals, Britons who wish to retire to France, Spain or Italy in the future would have no reason to worry. For the A8 and A2 nations, meanwhile, a quota system would either have to be introduced specifically for their nationals (which could prove politically hazardous) or those nationals would be subject to the annual ‘rest of the world’ quotas for Tier 2 and Tier 4 visas, or for any new Tier 3 (low skilled) visa. If the UK remains in the EEA, however, it is unlikely that the EU would make such a fundamental concession as it, in effect, undermines the principles laid down and agreed at Maastricht.

Currently, travel between the Republic of Ireland, the United Kingdom, the Isle of Man, Jersey and Guernsey is governed by the Common Travel Area (CTA) agreement, founded in 1953 and updated in 2011. The 2011 agreement is a Memorandum of Understanding, not a legally binding treaty. It allows for easy travel between Ireland and Northern Ireland. The agreement also aligns British and Irish visa stances vis-à-vis third countries – notably Ireland updated its border policy to mimic Britain’s after the 1962 Commonwealth Immigrants Act. Since both states joined the EEC at the same time, revision was not needed with a view to the free movement of people.

However, if Britain wishes to substantially withdraw from EEA free movement, British and Irish policy-makers would need to update this agreement. This may require more extensive border checks on the Republic/Northern Ireland land border and/or ports both sides of the Irish Sea. The introduction of border controls in Ireland or at mainland British ports may seriously affect Anglo-Irish relations and travel within the United Kingdom itself, but are issues that will have to be addressed.

Alternatively the UK could, if it chooses, seek to return to free movement of workers not people. David Cameron hinted at this in his November 2014 EU reform speech:

There was a time when freedom of movement meant member states could expect workers to have a job offer before they arrived and this [his policy aims] will return us closer to that position.

This would be a return to what the EEC originally conceived of when it introduced free movement. It would be significant for two reasons: first, in 2013, of

“The effects of immigration are not purely economic.”

the 67 per cent of EU nationals that came to the UK for work, 40 per cent were classed as ‘looking for work’.³⁹⁴ Thus, if the UK were to return to the original principles of EEA worker movement, it is likely to see a significant reduction in numbers at the same time as ensuring that the UK continues to be perceived as open for legitimate European workers. Taken together such a policy could reduce EU migration into the UK by around 80,000 a year from the current totals, and has been echoed by David Goodhart, Chair of the Advisory Group of the highly regarded think tank Demos.³⁹⁵

12.3.4 Free movement for the EEA could be restricted

Policy-makers would do well to consider data demonstrating the economic benefits of EU migration. The Centre for European Reform has highlighted numerous studies which have found very little evidence to show that the large increase in A8 workers in recent years has impacted negatively on native Britons’ average wages or their job prospects.³⁹⁶

However, the effects of immigration are not purely economic. One argument is that the sheer scale of recent immigration has placed a high burden on the country’s services, whether provided by the state (like hospitals and schools) or private sector. This problem is exacerbated by governments, before and after 2004, failing to give extra resources to areas with increasing populations due to migration. Open Europe acknowledges that healthcare represents a challenge, and more needs to be done to reclaim the costs of medical treatment carried out by the NHS on EEA nationals.

In addition, new social housing lettings to EU nationals have been rising over time from three per cent of the total in 2007 to five per cent in 2013. In numerical terms, for A8 and A2 nationals, this stands at 6,164 in the latter year.³⁹⁷ The fact that the majority of A8 migrants stay in private rented accommodation raises further questions about pressures on housing. The Centre for European Reform has calculated that, if net EU migration continues at the average rate of 87,000 a year seen between 2004 and 2012, there will be 46,000 new EU immigrant households formed a year (20 per cent of all new household formations in England).³⁹⁸

These are the sorts of wider issues UK policy-makers have to grapple with in the context of immigration. As noted previously, it would be possible to restrict free movement to just EU-15 nationals if Britain signed a series of bilateral deals outside the EEA. If it remained inside the EEA, however, it would not be possible to pick and choose which EU nations free movement applied to, as it would go against the non-discriminatory articles written into EU Treaties.

If the UK left the EU, did not remain inside the EEA, and signed bilateral arrangements with EU-15 countries to allow free movement to continue, it would have to deal with the implications this would have for A8 and A2 nationals. A large number of A8 nationals have made their home in the UK – the larg-

394 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Free Movement of Persons” (2014), page 33.

395 Demos “National Citizen Preference in an era of EU free movement”, Goodhart (2013), accessed 26/02/2015 at: <www.demos.co.uk/files/DavidGoodhartSubmissionJuly2013.pdf>.

396 Centre for European Reform “Is immigration a reason for Britain to leave the EU?” (Oct 2013), page 4, accessed 26/02/2015 at: <www.cer.org.uk/publications/archive/policy-brief/2013/immigration-reason-britain-leave-eu>.

397 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Free Movement of Persons” (2014), page 44.

398 Centre for European Reform “Is immigration a reason for Britain to leave the EU?” (Oct 2013), page 7, accessed 26/02/2015 at: <www.cer.org.uk/publications/archive/policy-brief/2013/immigration-reason-britain-leave-eu>.

“Unemployment figures remain stubbornly high in the EU, particularly in Spain and Greece.”

est of which is the Polish community with 643,000 nationals in the 2011 Census. And given the (albeit disputed) evidence that A8 immigration has been economically beneficial to the UK, any reduction in future numbers could impact UK growth. Without a properly-managed solution, such as increasing the Tier 2 skilled visa quota, and applying it to A8 nations, as well as reopening up the Tier 3 low skilled visa, this is a risk.

Alternatively, a quota system could be introduced for all EEA nationals, or these nationals could simply be subject to the annual ‘rest of the world’ quotas on Tier 2 and Tier 4 visas, and any new Tier 3 visas as well. However, it is worth noting that the introduction of a tiered system for EEA migrants, and the reactivation of another Tier, could put strain on the UK Border Authority (UKBA). These proposals would therefore require increased resources to be diverted to additional border staffing and computer systems compared to the current EEA free movement rules.

Once again, it should be stressed that, if the UK remains in the EEA after leaving the EU, it is unlikely that the EU would make fundamental concessions that undermine the principles laid down and agreed at Maastricht.

12.3.5 Benefit entitlements could be reformed

In 2014, David Cameron pledged to cut welfare benefits to EU migrants who are looking for work and, more radically, to cut them for all EU migrants:

*Once they are in work, they won't get benefits or social housing from Britain unless they have been here for at least four years.*³⁹⁹

A number of countries outside the EU conduct a similar policy, with new migrants not entitled to welfare benefits until they have worked and paid taxes for a number of years. These timeframes typically range from two to five years. Consider, for example, the terms of the deal between Australia and New Zealand – the Trans-Tasman Travel Arrangement (TTTA).⁴⁰⁰

It is outside the scope of this Section to advocate an overhaul of the UK benefits system, but as has been noted previously, many EU nations have a contributory system, which can reduce the incentive for migrants to come to the country in question.

Unemployment figures remain stubbornly high in the EU, particularly in Spain and Greece. However, each nation has a responsibility for its own citizens out of work. Those EU migrants who are unemployed in the UK should not remain a British concern after exit from the EU beyond current treaty obligations. A similar policy has, in fact, been floated by the German Government:

*[The report] recommends the introduction of a time limitation on the right of residence for EU citizens seeking employment. EU citizens must provide evidence that their ongoing attempts to find a job have a prospect of success.*⁴⁰¹

399 BBC News “David Cameron's EU speech: full text” (28 November 2014), accessed 24/04/2015 at: <www.bbc.co.uk/news/uk-politics-30250299>.

400 Asian Development Bank Institute “The Trans-Tasman Travel Agreement and skills mobility” (2013), accessed 26/02/2015 at: <www.adbi.org/files/2013.01.23.cppsess2.2.ramasamy.skills.mobility.pdf>.

401 Daily Mail “Jobless European migrants could be deported from Britain after Germany backs tougher stance on migration” (28 March 2014), accessed 26/02/2015 at: <www.dailymail.co.uk/news/article-2591416/Jobless-migrants-deported-three-months-Germany-says-Britain-not-squeezed-eurozone.html>.

“Because the Government is unable to reduce the overall number of EU nationals coming to the UK due to free movement rules, there are only a few tangible policy options open to Britain, such as benefit caps.”

This is already the case for claiming unemployment benefits.⁴⁰² A number of German politicians have signaled that they want a three-month time limit to find work or face deportation. Therefore, whatever form of free movement rights the UK decides to adopt after leaving the EU, a three month window to find a job if EU workers become unemployed would appear acceptable in principle to Germany. This could also be twinned with a stricter welfare benefit policy.

While a reduction in benefits available to EU migrants may disincentivise them from coming to the UK, and while it may be politically desirable, reciprocity may rear its head. Any reduction in benefits by the UK could be met with retaliatory measures by other EU countries, such as France or Spain. As the Centre for European Reform highlights:

The British position has long been that government expenditure must be reserved for immigrants who are in work, or have long-established ties to the member state in which they live. Many British emigrants to Spain fail that test.⁴⁰³

This, however, ignores the proportion of UK expats in Spain running businesses in support of the Spanish tourist trade and who are paying local taxes and, in particular, forgets that health support for UK expats in Spain of retirement age is largely funded by a combination of NHS contributions (via EHIC), local tax payments, and private health insurance.

As for current policy, because the Government is unable to reduce the overall number of EU nationals coming to the UK due to free movement rules, there are only a few tangible policy options open to Britain, such as benefit caps. As the Prime Minister made clear in his latest EU reform speech:

We have limited benefits claims to three months for those EU migrants who have no prospect of a job... We are overhauling our welfare system with a new benefit called Universal Credit. And its legal status means we can regain control over who we pay it to. So as Universal Credit is introduced we will pass a new law that means EU jobseekers will not be able to claim it. And we will do this within existing EU law. So instead of £600, they will get nothing. We also want to restrict the time that jobseekers can legally stay in this country. So if an EU jobseeker has not found work within six months, they will be required to leave.

At the moment 40 per cent of those coming to work in the UK do not have a job offer when they arrive – the highest proportion in the EU... Many of these will no longer come... EU jobseekers who don't pay in will no longer get anything out... And those who do come will no longer be able to stay if they can't find work... There was a time when freedom of movement meant member states could expect workers to have a job offer before they arrived and this will return us closer to that position.⁴⁰⁴

The Prime Minister also said at the time that EU nationals claiming tax credits and child benefit must live and contribute to the UK for four years, while if the child is living abroad, no child benefit will be given no matter how long the parents have worked in Britain or how much tax they have paid.

402 Civitas “Nasty Country: immigrant restraints are old, wrong or useless”, J. Lindsell, (2013), accessed 24/05/2015 at: <<http://civitas.org.uk/newblog/2013/11/nasty-country-immigrant-restraints-are-old-wrong-or-useless/>>.

403 Centre for European Reform “Is immigration a reason for Britain to leave the EU?” (Oct 2013), page 9, accessed 26/02/2015 at: <www.cer.org.uk/publications/archive/policy-brief/2013/immigration-reason-britain-leave-eu>.

404 BBC News “David Cameron’s EU speech: full text” (28 November 2014), accessed 24/04/2015 at: <www.bbc.co.uk/news/uk-politics-30250299>.

“If the UK remains in an unreformed EU, it will struggle to find policies that will reduce EU migration numbers.”

But David Cameron’s speech was given the cold shoulder by a number of EU countries.⁴⁰⁵ This suggests that, if the UK remains in an unreformed EU, it will struggle to find policies that will reduce EU migration numbers which are also acceptable to other member states. However, outside the EU, the UK would have a much greater say over the benefits system that is introduced for future migrants, and would no longer be restricted in the way it currently is.

12.3.6 Reforms would fit into a cross-departmental package of policies to comprehensively address ‘push’ and ‘pull’ factors and consequential effects

Immigration is a clear example of why simply restoring national control over a policy area is not of itself a solution. It is, however, the essential precursor to one. Moreover, it also demonstrates how policy change then has to be managed across government in a coherent manner.

Politicians have started to recognise that public concern exists about immigration. But that is not enough. Nor is it enough to seek to amend elements of our EU membership within the current Treaty structures, since these limit considerably what reforms are permitted. Nor again is it enough to either hope to ‘ride out’ the issue (as the economic drivers of immigration into the EU are getting stronger) or expect other EU states to develop their own interests in the issue (since the UK, as a greater magnet, offsets their problems at home).

The following tables, taken from a Civitas report, provide a number of options that would become available to the UK outside the EU.⁴⁰⁶ The first looks at some of the initial changes that might be implemented and who would be responsible for doing so.

Table 12.vii: EU/EEA-related precursors to gaining control of the UK’s borders

Issue	Consequence	Response	Dept. Lead
Control over entrance	Actual right to control entry at borders	Remove UK from EEA (i.e. not just EU, owing to four freedoms). Renegotiate EU trade terms in tandem.	Home
Control over deportation	Reduced ability to permanently deport undesirables. Social disorder. Rough sleeper encampments. Untaxed and uninsured drivers.	Suspend application of ECHR (esp. Article 8). Enforce policing.	Home, PCCs
Zero tolerance of criminal activity	EEA nationals enjoy a greater threshold of prison time before deportation than other foreign nationals.	Over 2011 there were 49,233 Daily Activity File (DAF) updates over an EU national within the England and Wales legal system: notification of a conviction or breach should be a sufficient trigger to allow deportation and barring from re-entry. Requires a database to match. Also needs reduction of legal threshold of deportation trigger to match non-EEA nationals, which should also in turn be dropped to absolute zero-tolerance. You break the law, you get deported.	MoJ
Foreign nationals in UK prisons	Reduced options to deport convicts to home jails in order to free up space. As at 30 June 2014, 10,834 out of 85,509 inmates were foreign nationals.	Start to draft bilaterals with countries of origin: first officially identify what those countries are.	MoJ

405 A review of these comments can be found on Open Europe’s website. Open Europe, “Cameron’s speech: The response (so far) from around Europe” (28 Nov 2014), accessed 23/02/2015 at: <<http://openeuropeblog.blogspot.co.uk/2014/11/camerons-speech-response-from-europe.html>>.

406 Civitas “Hard Bargains or Weak Compromises”, B. Binley and L. Rotherham (2015), pages 36–40, accessed 24/05/2015 at: <www.civitas.org.uk/pdf/HardBargains.pdf>.

Management of borders	Planning to continue to allow workers in where the economy needs them.	Canadian etc. points system, with points-per-job revisited every year. Lower numbers actually awarded with greater emphasis on short-term stay. Actually assess what skill sets are needed but based on industry input not Whitehall central planning.	Employment
Illegal entry	Stowaways and Sangatte.	Further develop the 'forward frontier' principle. Do not encourage additional illegal migration by spending more on search and rescue in the Mediterranean but run PR campaigns in home countries to deter based on risks, and a proven policy of deportation without financial gain. Liaison with local law enforcement to help them catch human traffickers and sequester proceeds of crime locally.	Home, FCO
Early access to welfare	Safety net for economic migrants to 'chance it' without prior work arrangements; some celebrated cases of social security abuse.	Welfare access by foreign nationals entirely dependent on bilaterals and what access and rates are available to UK nationals in their country of origin. Minimum pay in lead time by foreign nationals. Availability only to those arriving with contract containing notification period. Remove access to skills training by migrant workers.	Social Security
Grandfather rights	Existing EEA residency rights would be legally deemed to carry across.	Legal clarification that any changes in the law do not mean current foreign workers retain blanket right to stay under old provisions.	Home

This can be contrasted with the following table, which explores some actions that, outside the EU, would need to be taken to fully manage immigration controls.

Table 12.viii: Further reforms that would then follow

Issue	Consequence	Response	Dept. Lead
Weakly enforced overstay	Encourages breaking rules.	More enforcement staff; greater fines for breaches; breaches generate stiff no-re-admittance black marks; review of IT cross-compliance by departments.	Home
Nine million National Insurance (NI) numbers estimated issued to foreign nationals	Uncertainty over fraud.	Publish NI details in these cases online (not UK nationals as home NI can be used as an identity check). Stronger system allows for use of NI as part of any migration management scheme. Tighten up resultant rights from trivial NI pay-in e.g. by selling Big Issue (as per the Firu a Vasile Housing Benefit eligibility case).	DWP
Backlog	The default setting will be to allow residency applicants to stay owing to delays in processing their claims (regardless of actual merits).	The default setting should be the burden of proof is on the claimant. Ban claims from (regularly reviewed) White List of countries. Limit appeals options and to be held within 7 days of first hearing.	Home
Passport rights	Inability to deport joint passport holders with family ties, or first generation UK nationals.	Revisit legal obligations of UK to passport holders and those who have destroyed papers (statelessness issues). Explore development of a Manus Island/Lampedusa facility to dissuade illegal economic migrants pretending to be asylum seekers.	Home
Bogus marriages	Back door right to stay.	Greater priority in prosecuting. Seize assets. Encourage churches to defrock those found guilty (placing at risk their charitable tax status).	MoJ
Excessive language rights	Additional costs to Police Forces and legal service obliged to provide support in foreign languages. Discourages integration	Increased use of remote services (phone interpreters and static provision legally sufficient to caution by handing a prepared translated card) for routine aspects of cases. Possible pooling of PCC language provision.	Home, MoJ, PCC
Health tourism	Financial loss to Treasury.	NHS to enforce reclaims from home country, revisit bilaterals, requirement of visitor health insurance, no subsidised medication at point of distribution without state reciprocity. Similar principles for dental care. However, adapt new policies to minimise risks of transmittable diseases e.g. TB.	Health

Lack of UK nationals in workforce to replace foreign workers	Job gaps on introduction of border changes; wage inflation; loss of UK competitiveness.	Encourage UK workers to take up these jobs by cutting welfare if refused.	Social Security
Untrained UK nationals to replace foreign workers	Unmotivated and ill-equipped workforce to take the place of migrant workers.	A central issue without which immigration changes would leave a policy chasm. Greater emphasis from job advisors at schools on low paid stepping stone work; massive improvements in schooling system and delivery of 'Three Rs'; deflation in school grading; continued expansion of vocational training.	Education
Wage abuse by gangmasters	Foreign workers paid less than minimum wage; undercuts employment of UK nationals.	Prioritised enforcement of existing laws on minimum wages, and criminal prosecution. Also: helpline/ support for abused foreign workers to assist in return home, to break power of end-point abuse.	Treasury (wages transparency)
Housing abuse by gangmasters	Multiple residency in excess of maximum occupancy in rented accommodation, as part of undercutting wages paid to UK nationals.	Enforcement of occupancy laws. Possible change of law to permit sequestration of assets so used.	Local councils
Danger of overregulation under existing system	Gangmasters Licensing Authority (GLA) risks adding red tape costs to agricultural producers (farms and forestry).	Abolish GLA/licensing to reduce red tape costs to agriculture and replace with direct law enforcement and reliance on an expanded helpline system.	Home
Family rights	Residency rights extended to large families not just to one individual. Reduction of ethnic diversity among immigrant trade opportunities by these groups acting as an economic bridge to their country of origin. Employers bring in family rather than employ existing UK nationals.	Individuals to apply separately and solely on their own merits (also ECHR relevant).	Home
Language use	Failure of immigrant to integrate on arrival. Additional costs for the delivery of services.	Increased emphasis as part of points system; increased requirement for immigrants to be conversant in English in order to be better aware of the broader community and environment. DCLG to dissuade multilingual (exc. Welsh, Gaelic) literature by councils. Councils to focus on English language courses for existing first generation immigrants with poor English.	FCO consulates, DCLG
Increased house prices	Increased population increases strain on housing stock, therefore on house prices; yet also demands higher social or subsidised housing owing to native unemployed and immigrants on low pay.	Reduction of dependence on foreign workforce will reduce house prices; government will need to reappraise its attitudes and perceptions (media messaging) towards a fall in house prices, along with the associated potential for negative equity. This is not, however, justification for further state intervention on top of existing ill-considered schemes. Long term a reduction in such prices is a national gain but Whitehall is endorsing a massive bubble.	Treasury
Ambulance-chasing lawyers	Imbeds delay into the system, adds cost, discourages deportations, and rewards bad lawyers when many others actually get a bad deal.	Legal clarity on limits to appeals for deportation. Finite pay outs per legal firm and a disincentive nominal baseline payment to be paid on any appeal that legal aid does not cover. Australian system of media advertising legal firms (dispassionate and basic contact details).	Justice
Mismanaged asylum policy in tandem	Asylum seekers go off radar, or remain an underused asset in certain cases.	Better management of asylum seekers cases: legal requirement for them to keep location notified or else case defaults. Asylum seekers with specific skill sets (e.g. a surgeon, linguist) may be authorised to undertake community work where skills are of value, in order to reduce state subsidy required. Utterly dismiss any prospect of amnesty for illegal asylum seekers, which encourages the practice.	Home
Prioritising the integrators	A more integrated society with a reduction in extremism.	Increased focus on this aspect (e.g. passports for Gurkhas, greater emphasis on access by nationals who have the Queen as head of state) or come from an environment with established 'British' principles (whose definition might be debated) and are therefore capable of ready social integration. Be prepared to argue that an interest in getting a UK passport is not the same as being in the national interest to giving them one.	Home

“Exit from the EU and regaining complete policy freedom provides the widest possible choice. Taking a more global view is paramount.”

Similar reforms will be needed in a number of other areas to make the most of the options that suddenly become available on EU exit. Repatriating a power from the EU will often prove to be the start of reform, enabling activity across ministries, and will not be an end in itself.

Conclusion

Migration is one of the major centrepieces of the EU debate. This will not change during the coming UK referendum. What started as free movement for Western Europeans who were ‘economically active’ morphed into the inclusion of students and retirees in the early 1990s. The Maastricht Treaty in 1992 conferred free movement rights on all EU citizens, which finally broke those rights’ attachment to work.

Despite this change, EU immigration did not become a political or social issue until 2004, with the A8 Eastern European nations joining. The spike in numbers from less economically-developed A8 countries into the UK has been the catalyst for significant public dissatisfaction. This has been further exacerbated by the accession of the A2 nations.

Thus free movement in its current form has not always been around – it arose from the EU’s expansion into Eastern Europe.

Migration policy, following a UK exit from the EU, rests on the decision whether to remain in the EEA and its free movement rules. Should the UK seek to retain the EEA’s Single Market access, in all likelihood this means little substantial reform of the EU’s free movement rights for the UK. Establishing a new relationship with the EU that excludes or qualifies free movement of people will be politically tricky, but not impossible. However, one only has to consider the recent Swiss referendum to place quotas on EU citizens, and the subsequent veiled threats Switzerland received from the Commission, to understand how challenging reform will be in the EEA – or even outside the EEA, as the Swiss are. The EU is set on a process of ever closer union, and there is little scope for turning back to pre-Maastricht ideas on immigration.

Exit from the EU and regaining complete policy freedom provides the widest possible choice. Taking a more global view is paramount. Leaving offers new policy opportunities to build bridges with other countries, such as developing visas for professions as opposed to those just linked to employers. This would be, in effect, a return to high skilled Tier 1 General visas and could be adapted to skilled Tier 2 General visas too. Such an approach would reduce the cost of businesses applying for licenses as well as giving employees more freedom. Depending on how exit takes place, the UK could also reactivate low skilled Tier 3 visas, with a flexible cap to fill gaps in the labour market.

The UK could also extend a version of free movement rights to economically advanced nations outside Europe with which it shares many similar characteristics. These nations would be Australia, Canada, New Zealand (and other countries that share our Head of State) plus the USA. This would provide businesses with a new talent pool of highly skilled workers, as well as providing UK citizens the chance to work, study, and retire in other developed nations. Reform of UK airport queues is also important during exit. Policies such as a Commonwealth business visa or passport lane similar to those adopted by APEC could also be explored, as could new lanes.

Another possible solution is a return to free movement for economically-developed Western European states (the EU-15). This is the pre-Maastricht position, which business, politicians, and the public did not challenge in any meaningful way. It would require bilateral agreements, and would allow UK students and retirees the option of freely studying and living in Western Europe. The concern is the fallout from A8 nations, who would have their free movement

rights curtailed by Britain and their citizens placed on Tier 1, 2, or 3 visas like the rest of world. Furthermore, Britain could also restrict access to welfare benefits for EU citizens to act as an economic disincentive for coming to the UK. David Cameron set out plans in 2014, but whether they get past other EU nations remains to be seen. Exit provides the UK the freedom to act unilaterally.

To avoid uncertainty for current EU workers in the UK and those Britons working or retired in EU nations, more should be made publicly of “*acquired rights*” based on the Vienna Convention, where individual rights gained under existing law do not end upon treaty change or withdrawal.⁴⁰⁷

Taken together, the UK must tread carefully when exercising its policy options and balance EU concerns against opportunities from the rest of the world. The Government must work with business to secure the right skills and people the UK requires.

The majority of academic studies have shown the potential benefits that prudent migration policies can bring. The chance to reform migration policy, to remove the manifest unfairness of the current system, to rearrange our priorities so that the UK is more open to the rest of the world and better placed to source talented people that our economy needs globally, is an opportunity that needs to be fully seized.

407 As a default, current residents (both within the UK, and expats) retain grandfather rights, certainly for any transitional period. We might also anticipate some debate in advance generating a suitable cut-off date for new people gaining these rights, for instance the date of legislative change or of Treaty alteration. The key point is that large scale deportations would not occur.

13 Agriculture and rural communities

13.1 The UK would remain a member of all key international agricultural bodies	410	13.2.4 EU pet passports and similar mechanisms could remain	422
13.1.1 The UK would retain the same relationship with many key international agriculture agencies	411	13.2.5 An appropriate agreement could be reached to cover the migrant agricultural workforce	423
13.1.2 The UK would secure a stronger relationship with the other key international agriculture agencies	414	13.3 New agriculture policy opportunities would become available	423
13.1.3 Changes to the UK's tariffs could have positive moral and international consequences	416	13.3.1 The CAP is a longstanding problem that is inherently flawed, from which Britain could free itself	425
13.2 The UK could continue to cooperate with the EU on agriculture	417	13.3.2 Leaving the CAP offers flexibility and creates opportunities	429
13.2.1 Key agricultural sectors would already be legally compliant for EU export, easing transition	418	13.3.3 The UK could better respond to future challenges outside the EU	432
13.2.2 EFTA countries are able to manage even their borderline agriculture without the CAP	419	13.3.4 Livestock and animals could be better managed by the UK and its devolved governments	435
13.2.3 Food safety with the EU would be maintained bilaterally	420	Conclusion	438

England in effect is insular, she is maritime, she is linked through her exchanges, her markets, her supply lines to the most diverse and often the most distant countries; she pursues essentially industrial and commercial activities, and only slight agricultural ones. She has in all her doings very marked and very original habits and traditions.

In short, the nature, the structure, the very situation that are England's differ profoundly from those of the continentals. What is to be done in order that England, as she lives, produces and trades, can be incorporated into the Common Market, as it has been conceived and as it functions? For example, the means by which the people of Great Britain are fed and which are in fact the importation of foodstuffs bought cheaply in the two Americas and in the former dominions, at the same time giving, granting considerable subsidies to English farmers? These means are obviously incompatible with the system which the Six have established quite naturally for themselves.

The system of the Six – this constitutes making a whole of the agricultural produce of the whole Community, in strictly fixing their prices, in prohibiting subsidies, in organising their consumption between all the participants, and in imposing on each of its participants payment to the Community of any saving they would achieve in fetching their food from outside instead of eating what the Common Market has to offer. Once again, what is to be done to bring England, as she is, into this system?

One might sometimes have believed that our English friends, in posing their candidature to the Common Market, were agreeing to transform themselves to the point of applying all the conditions which are accepted and practised by the Six. But the question, to know whether Great Britain can now place herself like the Continent and with it inside a tariff which is genuinely common, to renounce all Commonwealth preferences, to cease any pretence that her agriculture be privileged, and, more than that, to treat her engagements with other countries of the free trade area as null and void – that question is the whole question.

It cannot be said that it is yet resolved. Will it be so one day? Obviously only England can answer. The question is even further posed since after England other States which are, I repeat, linked to her through the free trade area, for the same reasons as Britain, would like or wish to enter the Common Market.

Press conference of President de Gaulle announcing the French veto on UK accession, 14 January 1963⁴⁰⁸

The European Union is currently extensively involved in Britain's agricultural and rural life, primarily through the Common Agricultural Policy (CAP) and the levels of external tariffs on food and drink. Despite the Rebate, the CAP comes under heavy criticism for distorting the market, failing to work well for British farmers, excluding developing world agriculture, endangering the British countryside, and enriching the wrong people. Reformers must ask whether it is possible to leave the EU and escape these problems, but retain preferential access to the EU market for British agricultural goods. Fortunately, most regulations concerning crops and animal foods are decided at an international level and

408 Western European Union Assembly "Political Union of Europe" (June 1964), accessed 13/04/2015 at: <<http://aei.pitt.edu/5777/1/5777.pdf>>. On the issue of de Gaulle's motivation, one might also note, as R.G. Hansen, does, that the total imports from its Overseas Countries and Territories (OCTs) may have been running at a third of the UK total figure, but France's on accession had been running at a quarter. Moreover, in January, the UK already had under half the number of outstanding OCT negotiating issues that France had on Treaty formation. De Gaulle's objections, from the language, seem more about fundamental attitudinal and directional differences.

only codified by the EU. The UK could therefore remain compliant and influential, while the EU would be likely to agree trade access for goods since Britain is a net food importer.

This is a matter for Parliament, but there is no reason why agriculture could not continue to be subsidised in the UK after a vote to leave the EU. Because the UK is a net contributor to the EU Budget, a vote to leave the Union means that Britain would have sufficient funds to continue subsidising farmers⁴⁰⁹. Compared to their continental counterparts, UK farmers are also much more efficient. This means that UK taxpayers are currently subsidising EU competitors. By cutting out foreign sponsorship, UK farmers could continue to receive their current level of subsidy while saving UK taxpayers money.

Table 13.i: Increase in everyday food prices under the CAP⁴¹⁰

Item	1970	1980	1990	2000	2004 ⁴¹¹	2015	Proportionate change 1970 - 2015
Cheese (cheddar)	40.8	209	330	505	567	768	1,882%
Lamb loin, imported	57	238	414	537	731	1382	2,425%
Back bacon	72	262	462	603	711	873	1,213%
Imported butter, 250g	10.1	44	65	88	92	161	1,594%
Granulated sugar	8.3	36	62	55	74	80	964%
Carrots	7.3	29	59	45	57	77	1,055%
Pork sausages	41	134	225	307	316	496	1,210%
Instant coffee, 100g	22.7	101	131	188	175	273	1,203%
Pasteurised milk, pint	4.7	17	31	34	35	39	830%
Rump steak, British	125	507	813	866	897	1626	1,301%
Flour, per 1.5kg	10.8	39	55	60	68	96	889%
Bananas	16.8	59	114	99	86	86	512%
Onions	12.6	33	63	56	62	79	627%
Tomatoes	30.9	99	143	150	129	207	670%

Source: Office for National Statistics⁴¹²

There are two main problems with the CAP from a UK perspective. First, it provides an exceptionally poor and poorly-targeted rate of return for the farming sector. Second, it drives up the cost of living significantly. In effect, it means that Britons are subsidising foreign farmers to push up their food prices.

409 See Section 30.

410 Inflation between 1970 and 1980, i.e. before and after the introduction of the CAP to the UK, was 330 per cent.

411 The elevated recent figures compared with the statistics from the time of the report indicate that current savings would be significantly in excess of £400 per family, and underline the upwards trend of costs in time notwithstanding world food prices fluctuating.

412 ONS "Consumer Price Inflation Reference Tables, February 2015", accessed 13/04/2015 at: <www.ons.gov.uk/ons/datasets-and-tables/index.html?newquery=Consumer+Price+Inflation+Reference+Tables+2010&newoffset=0&pageSize=50&content-type=Reference+table&content-type=Dataset&content-type-orig=%22Dataset%22+OR+content-type-original%3A%22Reference+table%22&sortBy=none&sortDirection=none&applyFilters=true>.

“If Britain left the EU, it would have a distinct voice at the top table, on issues as diverse as forestry and bee populations.”

Food could be significantly cheaper. Outside the agricultural Single Market, the UK could opt to allow greater access for third world farmers, thereby cutting food prices in the shops, and stimulating those economies through ‘trade not aid’.⁴¹³ As we shall see later, the CAP burden on the consumer from higher food prices works out at around £400 per family per year. Food imported into the EU from cheaper third country producers becomes more expensive due to tariffs and quotas, meaning that only more expensive food is available on the super-market shelves. Table 13.i explores how standard food prices have increased since UK accession to the European Economic Community (EEC) thanks to the protective nature of the market.

13.1 The UK would remain a member of all key international agricultural bodies

Key international bodies

- Codex Alimentarius Commission
- European and Mediterranean Plant Protection Organization (EPPO)
- International Organisation for Biological Control (IOBC)
- International Seed Testing Association (ISTA)
- International Plant Protection Convention (IPPC)
- International Seed Federation (ISF)
- International Union for Protection of New Varieties of Plant (UPOV)
- OECD
- United Nations (Food and Agriculture Organization)
- World Organisation for Animal Health (OIE)
- World Trade Organization (Sanitary and Phytosanitary Agreement)

The majority of the agricultural rules the EU creates are legislated versions of agreements made at global bodies such as the Codex Alimentarius Commission, UN agencies or the WTO. Currently, the UK does not fully exercise its voice in these bodies since it is often represented by the Commission or Council Presidency along with the other EU member states. One might ask whether Britain could remain part of these key bodies without Europe’s collective clout and trading importance. In fact, if Britain left the EU, it would have a distinct voice at the top table, on issues as diverse as forestry and bee populations.

EU law-making cannot be looked at in isolation. EU rules fit into an interlocking jigsaw of global and continental European agreements reaching out beyond the Union itself.⁴¹⁴

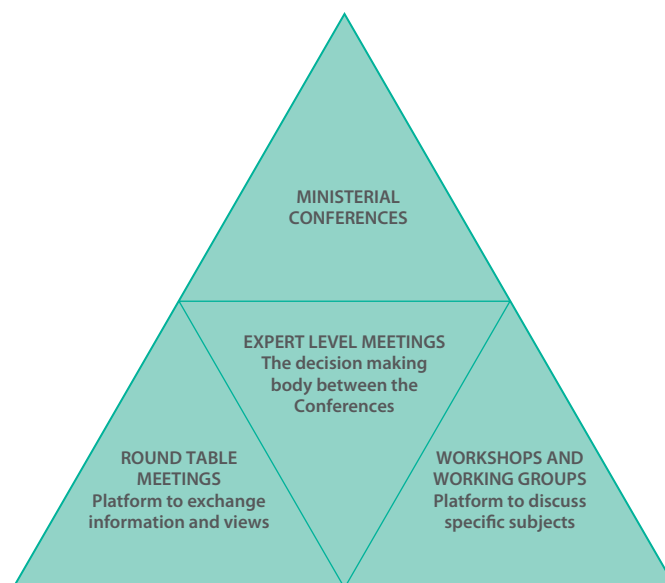
413 A measure of the wide variety of second order tariff impacts (other than cushioning the subsidised sector) comes from the ongoing changes to the EU sugar sector, which is opening up the sugar beet element while very high tariffs on imports of sugar cane remain. The consequence one producer fears is a contraction in the UK refining sector leading to a loss of high quality jobs; reduced competition on the EU sugar market, thereby reinforcing existing high prices for consumers and industrial sugar users; and developing countries losing a major market for their sugar cane exports. See HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Agriculture”. The Institute of Economic Affairs estimated that, without the CAP, food prices in particular could drop by around 17 per cent, see Institute of Economic Affairs “Abolish the CAP, let food prices tumble”, K. Niemietz (2013), accessed 13/04/2015 at: <www.iea.org.uk/blog/abolish-the-cap-let-food-prices-tumble>.

414 See “Flexcit”, R. North (2015).

13.1.1 The UK would retain the same relationship with many key international agriculture agencies

Forestry issues are largely excluded from EU control, though this is subject to areas of overlap. However, it does provide an example of where the UK is able to satisfactorily run its domestic affairs, set in a context of cross-border cooperation through, for example, the European Forest Institute (EFI), which is not an EU institution. The UK is a member, as are non-EU states Norway, Switzerland and Turkey. Affiliated organisations, of which there are 130, come from North America, the Balkans, Ukraine and Russia. The EFI forms an institutional centre for the Ministerial Conference on the Protection of Forests in Europe (also known as the Forest Europe Process). Its system is somewhat less hierarchical than the EU's, see Figure 13.ii.

Figure 13.ii: Forest Europe: an inter-governmental model for rural cooperation



Source: Forest Europe⁴¹⁵

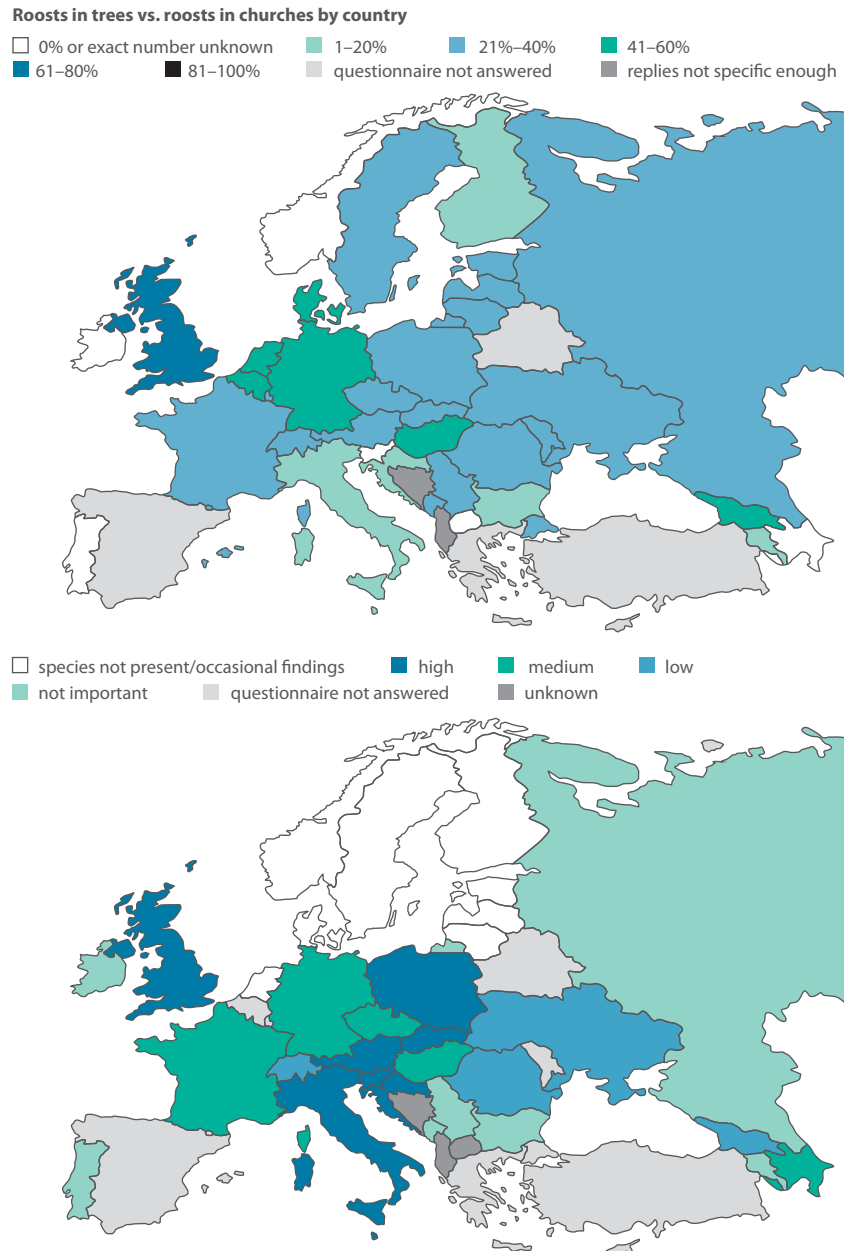
This example demonstrates both the opportunities for Britain outside CAP and EU rural policies and the risks of staying within them. Inside the EU, the Commission and Council are already assuming joint responsibility for negotiating on behalf of national capitals on forestry, leaving it to the latter merely to implement the decisions reached. We might tentatively style this the new 'Informal Directive approach' to extending the EU's reach. Considering it has no legal basis for acting, the Commission's development of a formal EU Forest Strategy demonstrates an obvious case study of competence creep, and the risks of not making a clean and clear Treaty break.

A hierarchy of non-EU agreements could also operate in tandem with those from the Union. Landscape provides another example of the wider nature of ultra-EU cooperation. The European Landscape Convention (Florence, 2000), for instance, was a Council of Europe agreement. But it cites as its inspirational and guiding sources the Convention on the Conservation of European Wildlife and Natural Habitats (Bern, 1979); the Convention for the Protection of the Architectural Heritage of Europe (Granada, 1985); the revised European

415 Forest Europe, accessed 13/04/2015 at: <www.foresteurope.org/about_us/structure>.

Convention on the Protection of the Archaeological Heritage (Valletta, 1992); the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (Madrid, 1980) along with its additional protocols; the European Charter of Local Self-government (Strasbourg, 1985); the Convention on Biological Diversity (Rio, 1992); the Convention concerning the Protection of the World Cultural and Natural Heritage (Paris, 1972); and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice on Environmental Matters (Aarhus, 1998).⁴¹⁶

Figure 13.iii: One size does not fit all: how bats show flexible inter-governmentalism works best



Source: Eurobats⁴¹⁷

416 European Landscape Convention (Florence, 20 October 2000), accessed 15/04/2015 at: <www.gov.uk/government/publications/european-landscape-convention-florence-20-october-2000>.

417 Eurobats “Publication Series No. 4” (2010), accessed 28/04/2015 at: <www.eurobats.org/sites/default/files/documents/publications/publication_series/pubseries_no4_english_2nd_edition.pdf>.

“Common rules cannot be designed for a common environment if such an environment does not exist.”

As another example, the Agreement on the Conservation of Populations of European Bats was driven by the Bonn Convention on Migratory Animals, and the Bern Convention which was agreed at Council of Europe level.⁴¹⁸ Those who complain about excessive regulatory protection given by UK laws to bats should reflect on how the original international agreement, as agreed at the Council of Europe, was interpreted and bureaucratised through EU law (specifically the Habitats Directive (Council Directive 92/43/EEC) and its successor regulations), and how it was finally transposed by Whitehall into gold-plated domestic law.⁴¹⁹

Even allowing for the choice of a directive (as opposed to an automatically-applying regulation) to introduce a measure of flexibility for EU member states when translating the legislation into domestic law, the national government remains constrained by both international and EU texts, whereas non-EU states could refer to just the original. This is particularly important where national circumstances differ, as the maps below demonstrate. Common rules cannot be designed for a common environment if such an environment does not exist.

Animal habits, in this case the way bats roost, differ just as their environments differ. Attempting to legislate otherwise for a non-existent norm (i.e. ignoring whether bats prefer to roost in trees, church rafters or in residential flats) is a costly, ineffective and counter-productive way of making laws and then running programmes from them. But this is precisely what the EU does as standard practice.

Or to put this into a different context, consider the case of the regulations governing seeds in Turkey, which are managed on OECD and ISTA (International Seed Testing Association) principles. These in turn are themselves subject to the WTO's Sanitary and Phytosanitary Agreement.

This example might seem somewhat esoteric. However, the UK has preferred to maintain a high level of standards in this field, and there have been instances where EU harmonisation has run lower than these standards. A consequence has been that, after harmonisation, UK exporters consequently have found it more difficult to export seed potatoes to Egypt, which itself had higher standards more closely aligned with the UK's previous rules.⁴²⁰

We therefore see the same principles in play as govern the UK's broader EU trade relationships. There is a hierarchy of Treaties in operation. EU regulations prove to be only one layer of these, and they typically only implement international decisions where member states had delegated to the Commission their direct negotiating responsibility. Where the issue is an EU one, the Commission coordinates a common response, member states follow the voting line, and a national representative – if the Commission delegate is not allowed to address the meeting – does so on his or her behalf.

Unnecessary costs could, as a result, emerge. Food standards are set out internationally through the Codex Alimentarius. This in itself carries no direct legal force, but is a set of guiding elements agreed at UN level against which national legislation is orientated and tested. Codex food safety standards are applied through the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). This text is considered superior to EU law. The World Organisation for Animal Health (OIE) is another body that sets the framework for farming rules in this context.

418 HM Government “Agreement on the Conservation of Bats in Europe” (4 December 1991), accessed 15/04/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/267839/Bats_1991.pdf>.

419 For instance, with the high category fines and jail terms.

420 HM Government “Review of the Balance of Competences between United Kingdom and the European Union: Agriculture” (2014), page 34.

“The Commission is expected in regulatory terms to match what is agreed at the multinational level, or use these texts as minimum threshold principles.”

Codex is responsible for top-level agreements through general subject committees (such as Methods of Analysis and Sampling, Food Hygiene, and Food Sampling), ad hoc task forces (such as on quick frozen foods), and Commodity Committees (such as Milk and Milk Products, Fish and Fish Products, and Fats and Oils – the latter is of particular interest as it used to be chaired by the UK).⁴²¹ But this is not the complete story, as the regional committees which develop Codex’s work continentally do not see Europe represented by the EU. European-level standardisation instead takes place in a body we will see in other Sections: UNECE. For instance, the European standard for avocados is set out by Standard FFV-42. Paradoxically, as any participating member of the UN can engage on an equal footing, while EU members are bound by common positions and by Commission primacy, in many areas and meetings the representative from the United States or Kazakhstan has more of an input on European standards than any EU member state delegate.

The Commission is subsequently expected in regulatory terms to match what is agreed at the multinational level, or use these texts as minimum threshold principles. Where the Commission then exceeds its obligations in drafting its own regulations, it thus generates additional costs for member states that would be avoided outside the EU competence.⁴²²

13.1.2 The UK would secure a stronger relationship with the other key international agriculture agencies

The FAO, or Food and Agriculture Organization, is the oldest specialised agency of the UN. It coordinates the efforts of governments and technical agencies in the development of agriculture, forestry, fisheries, and land and water resources. Since 1991, when the European Community became a corporate member, responsibilities have been parcelled out between what the EU is responsible for and what national governments could independently do.

Latterly, the Commission has helpfully proposed a formal list seeking to clarify in law who was responsible for what (abridged as Box 13.iv below).⁴²³ It incidentally generates a list of what competences could potentially be restored to national control in this one body alone.

Box 13.iv: Division of competences at the FAO (abridged Commission submission)

These new arrangements are intended by the Commission to enable the EU and its member states to achieve coherent, comprehensive and unified external representation; all EU positions should be expressed from behind the EU nameplate. Therefore, EU actors and the Member State holding the Presidency of the Council should collaborate closely, in particular for the presentation of common positions. As the FAO deals only with non CFSP issues, the relevant EU actors are the Commission and the EU Delegation accredited to the FAO (not the EEAS).
Only the EU has the competence to act in the customs union, the establishing of the competition rules necessary for the functioning of the internal market,

421 The EU is now obliged to publish an agenda before working group meetings indicating for each item on the agenda where the competence sits in the EU treaties and thus who gets to vote.

422 Where its rules are more restrictive and hinder imports, they can be challenged as a protectionist measure at the WTO.

423 Data accessed 28/04/2015 at: <www.euo.dk/upload/application/pdf/ee2d1aba/2013033pdf>. This appears to have been necessitated by “lots of difficulties and lengthy discussions” in the Council over whether the EU should actually be taking the lead on an issue. The role of the European Court of Justice as a motor has been key, through its interpretation of the “implied external competence”: if the EU does it internally, it should be responsible for it externally.

“Areas such as environmental protection would continue to be agreed globally and food quality would still be controlled.”

the monetary policy for the EU Members States whose currency is the euro, the conservation of marine biological resources under the common fisheries policy and the common commercial policy.

In addition, in certain policy areas, only the EU may act in the FAO insofar as the EU has adopted common rules which may be affected by actions taken by the FAO or where external action of the EU is necessary to enable the EU to exercise its internal competences.

These policy areas are, in particular:

- The internal market, the approximation of laws and the free movement of goods, persons, services and capital;
- Agriculture and rural development;
- Fisheries other than the conservation of marine biological resources, as well as aquaculture;
- Environment;
- Energy;
- Common safety concerns in public health.
- In certain policy areas, both the EU and its member states have competences to act in the FAO, including, in particular:
- Research and development and space;
- Development cooperation;
- Humanitarian aid;
- Protection and improvement of human health;
- Industry;
- Tourism.

As members of the FAO, both the EU and its member states have competences to act in the FAO with regard to organisational and procedural matters, including legal and budgetary issues, election of chairpersons, adoption of agendas and reports.

The distribution of competences between the EU and its member states, as set out is, by its nature, subject to change. Whenever changes arise which affect the list, the EU reserves the right to amend this declaration accordingly, without this constituting a prerequisite for the exercise of its competences in matters covered by the FAO.

The UK Government is opposed to more formalisation of the current, fluid arrangements such as the Commission has been seeking:

It opposes the general nature of the Declaration of Competences, the discontinuation of specific declarations of Competences for the agenda items for each meeting, the preference for ‘lines to take’ rather than fully agreed statements, enhancement of the co-ordinator and ‘spokesperson’ role of EU delegation and/or Commission at the expense of the Presidency and member states – with national ‘voices’ supporting EU positions no longer being delivered from behind the ‘national nameplates’. It also strongly opposes the suggestion that for agenda items not covered by EU or common positions, member states inform each other as well as the EU Delegation and the Commission about their draft positions and voting intentions.⁴²⁴

This does not mean to say, however, that the Commission’s formalisation drive, which has received backing from the European Court of Justice (ECJ), will not happen. In any event, the dispute is over form and processes rather than competences. These are securely locked in the current Treaties, giving the EU exactly the hidden role that Whitehall is seeking to deny as a formality. The argument over who does what at the FAO thus provides a significant example of the power play currently ongoing.

Areas such as environmental protection would continue to be agreed globally, and food quality would still be controlled. Plant variety does not need the

⁴²⁴ European Scrutiny Committee, accessed 15/04/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-xxiii/21908.htm>.

“If it were to step outside the EU’s tariff wall, the UK could have a positive impact on third world trade.”

EU to keep it fully regulated, to provide just one example. Even setting grandfathered agreements to one side, Turkey manages in this area by running its own office surveying plant variety and registering rights. Turkey is a member of the FAO, the European and Mediterranean Plant Protection Organization (EPPO), the International Organisation for Biological Control (IOBC), the International Seed Testing Association (ISTA), applies the OECD Certification system, and is part of the International Plant Protection Convention (IPPC). Turkey has also applied for membership of the Near East Plant Protection Organisation (NEPPO).

The Turkish seed industry is also a member of the International Seed Federation (ISF). Turkey is member of the International Union for Protection of New Plant Varieties, with the UPOV Convention awaiting ratification. It has signed bilateral plant health agreements with 17 countries, a plant research agreement with Cuba, a Material Transfer Agreement with Bulgaria over the exchange of plant genetic material, and Technical, Scientific and Economic Cooperation Agreements with 46 countries facilitating the exchange of information and genetic or biological material from plants.

13.1.3 Changes to the UK’s tariffs could have positive moral and international consequences

If it were to step outside the EU’s tariff wall, the UK could have a positive impact on third world trade. The CAP disrupts world markets. It displaces traditionally successful exports to the EU, and subsidises the competitors of UK farmers. In pushing individual prices higher, it can force spill-over competition: the subsidising of cereals for animal feed, for example, encouraged US soybean meal production, and increasing soybean oil exports then competed with tropical oil seeds.⁴²⁵ EU tariffs discourage processing by producer countries. Insulated European production means third world supply and thus price have become more unstable. Poor years encourage the development of, and dependency on, cash crop exports by third world economies. European farmers meanwhile find research and development investment diverted into non-agricultural areas instead.

Particularly objectionable have been the cases where subsidised European foodstuffs have been dumped on third world markets. Britain, after leaving the EU, could adopt a more moral and competitive trade and tariff policy if the electorate so chose. In a stroke, the UK’s food prices could be fairer to its own citizens and developing world exporters. Since 1987, the EU has run an EU Food Distribution system to disburse part of its intervention stocks as European social aid. As these ‘wine lakes’ and ‘grain mountains’ were phased out, this has today become a fund, running at €8bn over 2014–2020. It has been extended to cover payment for other items such as shoes, soap and shampoo.

Recipient states have to supply 15 per cent co-financing; in the case of the UK, the Fontainebleau Rebate terms mean that funds from this distribution are deducted from grant totals otherwise received under the European Social Fund and European Regional Development Fund, which the UK assesses as being more useful. In short, the UK Treasury is discouraged from applying for EU grants that other member states apply for. Consequently, the UK Government is not applying for funds above those automatically granted under the basic terms of the system. These latter grants amount to £1m, or just one per cent of the total grant.

425 Overseas Development Institute “The CAP and its impact on the third world” (1986), page 2, accessed 27/05/2015 at: <www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/6708.pdf>.

“The UK would gain the option of offsetting losses to farmers by means of new direct income support.”

The result is that the UK is supplying financial support to a major budgetary programme without gaining any benefit back; such benefits as are generated are also economically questionable, and best provided by national or regional governments. If the UK were no longer associated with this CAP legacy policy, it would save taxpayers £40m a year which could be spent supporting food banks, according to the original intent of the programme, if that is what the Government wanted.

Another key variable is the EU’s tariff rates. Agriculture is one of the areas where, under WTO rules, some of the higher levels of tariff and other barriers are permitted. This suits protectionist European countries which are less competitive on the world market and which are agriculturally more self-sufficient (like France), but not those which have rather different circumstances (like the UK).

Outside of the CAP and faced with the EU tariff wall, UK policy-makers would face the question of how much global trading freedom they wish to cede on farm produce. The balance lies in the trade-off between cutting costs to the consumer (by leaving the CAP ‘structure’ and cutting external tariffs on agricultural imports) – and food prices as a share of weekly income are particularly noticeable to less well-off families – against remaining compliant with the CAP system and maintaining increased access to the European market for UK farmers selling their goods.

The mathematics underpinning this is complex and varies from sector to sector. This country is, for example, one of the EU’s three largest markets for fruit exports, particularly dried fruit. Two-thirds of this comes from outside the EU, one third from Turkey alone.⁴²⁶ By contrast, preferential access to West Indies bananas, which require some measure of subsidy to support these island economies, has been a hot issue in the EU that the UK has expended diplomatic effort in seeking to support, as it involves its former colonies and remaining territories in the Caribbean.⁴²⁷

However, if high tariffs are imposed on UK exports by the EU, the UK would gain the option of offsetting losses to farmers by means of new direct income support. The Turkish model is hectare based, but grants vary depending on use of soil analysis, organic farming, or certified seeds, and it does not depend on actual land tenure so tenant farmers could directly benefit rather than the landlord. Turkey has also opted to provide support for diesel, fertilisers, and various measures of livestock and crop improvement.

13.2 The UK could continue to cooperate with the EU on agriculture

Key issues

- Database on Commission-approved livestock drugs and medicines
- Early warning systems
- Livestock movement and disease control
- Pet movement
- Product standards

426 CBI “The EU market for dried fruit” (December 2008), accessed 15/04/2015 at: <www.icci.com.pk/data/downloads/1/131919889_1.pdf>.

427 As this has become a formal WTO dispute, long-term subsidies for these economies is not a realistic option and the relevance of these grants to the UK’s EU debate is somewhat receding (reducing the moral case for the UK staying in the EU in order to argue their case). By contrast, a CAP-free UK could more easily opt to enter into ‘banana treaties’, allowing them preferential access to its own significant consumer market.

“Prices and production are distorted by subsidies, numberless rules, and the inflexibility of ‘one size fits all’ policies across a continent.”

The EU and UK currently trade a large volume of agricultural products, but prices and production are distorted by subsidies, numberless rules, and the inflexibility of ‘one size fits all’ policies across a continent. British farmers would be concerned that they can still sell to the EU in the event of Britain leaving the Union. Fortunately, there is every indication that, if Britain left the EU, either through the European Economic Area (EEA) or a trade deal, preferential market access could continue while the worst elements of the CAP are avoided.

The extent to which the UK sought to be integrated into the EU’s marketplace would determine how far it would need to be compliant with the Commission’s regulations. The same principles apply to lamb exports as to washing machine exports, since it will be a trade-off between cutting back on regulatory burdens in return for more straightforward trade access and direct political impact on regulations.

UK food and non-alcoholic drink exports to the EU in 2014 amounted to £12.8bn, with salmon (£626m) heading the list. Second is chocolate (£590m). Both products exemplify these costs and benefits, as the former is negatively affected by regulations and tight subsidy controls and the latter is the subject of political debate over attempts to rename cocoa butter as chocolate.

The EU market takes three quarters of total exports, and so is important.⁴²⁸ However, the overall turnover of the industry (i.e. including non-exporting businesses) is valued at £81.8bn, meaning that non-EU trade accounts for approaching five sixths by value.⁴²⁹ While lower than most other trade sectors, this still leaves the whole industry affected by regulations and decisions affecting a minority of trade. Moreover, as a major food importer and therefore consumer, the UK’s negotiating position across much of this area is high.⁴³⁰ Total UK food imports amount to around £38bn annually. Any EU tariff war, however unwelcome, would correspondingly generate its own alternative market.

Therefore, UK-EU trade is likely to continue, though the nature and extent of the transition becomes a matter of political choice.

13.2.1 Key agricultural sectors would already be legally compliant for EU export, easing transition

Confirming compliance with the large corpus of rules is a major hurdle for countries seeking to join the EU. Countries leaving the EU, however, begin from a starting point of complete conformity with the *acquis*. This means that their exports are already fully in accord with customs demands on point of entry. Correspondingly, the threat of Non-tariff Barriers (NTBs) emerging is significantly reduced.

One renegotiation option is to pursue the EEA route. In this agreement, agriculture largely lies beyond the bounds of the Treaty. Article 19 of the agreement simply states that *“the Contracting Parties shall examine any difficulties that might arise in their trade in agricultural products and shall endeavour to seek appropriate solutions.”* Areas of trade dispute are sent for bilateral review, and both parties pledge to use the WTO as their guidelines and attempt to move

428 This is even more so when one adds the broader export leader, Scotch.

429 Food and Drink Federation “UK Food and Drink Export Performance”, accessed 22/05/2015 at: <www.fdf.org.uk/exports/ukexports.aspx>.

430 81 per cent of tomatoes, 59 per cent of mushrooms, 50 per cent of green beans, 30 per cent of cucumbers, and 22 per cent of spring onions are foreign grown, with some showing a collapse in home production over a decade. CAP impact may also be increasingly felt in a secondary nature owing to livestock dependency on soya, which could benefit from a loosening of EU genetically-modified organism strictures. See Oxford Farming Conference “The Rt Hon Owen Paterson MP speech on Opportunity Agriculture”, (07 January 2014).

“EFTA states have allied with Japan, South Korea and others to form the ‘Group of 10’ at the WTO.”

beyond them.⁴³¹ As we explore in Section 25, geographically-designated produce like Cashmere or ‘Scottish-farmed salmon’ do not have to come from an EU state or even Europe, so trade mark agreements along those lines could continue outside the EU.

13.2.2 EFTA countries are able to manage even their borderline agriculture without the CAP

As significant net food importers and inevitable CAP donor states (were they to join the EU), Switzerland and Norway have much to gain financially from choosing to remain outside of the CAP. They can still opt to subsidise their own uncompetitive farmers while remaining within WTO rules, however. Given that UK farmers are more competitive than their European Free Trade Association (EFTA) counterparts, while the country is also a major food importer, British prospects of gains from taking a similar route are greater.

The WTO has described Swiss agriculture economically as its *“Achilles’ heel”*.⁴³² As an OECD study observes, it is dominated by small family farms that are not globally competitive; the country per capita is the largest OECD net importer; producer support is high even by European standards; agri-tariffs are double international standards as well as extremely complex (the explanatory notes run to 300 pages); consumers pay premium world prices for food; and even so the country declined to sign up to be part of the protectionist CAP system.⁴³³

A difference that would emerge between the UK and EFTA states is that the latter have allied with Japan, South Korea and others to form the ‘Group of 10’ at the WTO.⁴³⁴ This lobby group argues that agricultural support should be exempt from tariff reductions where social considerations might apply, which basically means seeking to prevent rural depopulation by providing subsidies to an otherwise marginal or loss-making industry.

The UK has less of a recent history in supporting regional subsidy in this way. Areas such as the Highlands and Pennines might appreciate such an approach, supporting more isolated and economically-challenged communities at risk of depopulation. So it seems plausible that some accommodation might be reached that led to a common line on strategic support to Arctic and Alpine producers that did not, by its scale and condition, generate any imbalances, obligations or hindrances for UK markets.

In other words, the UK would not hinder its EFTA partners’ objectives if it left the EU and joined the EFTA. In return they would recognise that their own geographic conditions which trigger social aid do not apply to the UK, given our more benign latitude and elevation. With that caveat in mind, the WTO does

431 Available on the EFTA website, accessed 28/04/2015 at <www.efta.int>.

432 WTO “Switzerland and Liechtenstein”, accessed 15/04/2015 at: <www.wto.org/english/tratop_e/tpr_e/s280_sum_e.pdf>.

433 OECD “The Agri-food Situation and Policies in Switzerland”, accessed 15/04/2015 at: <www.oecd-ilibrary.org/docserver/download/5k40d6ccd1jg.pdf?expires=1424268487&id=id&accname=guest&checksum=B04DEB967120B393DD7A86F3348CB904>.

434 WTO “Country groupings”, accessed 28/04/2015 at: <www.wto.org/English/Thewto_E/Minist_E/min05_e/brief_e/brief25_e.htm>. N.B. “G-10 Coalition of countries lobbying for agriculture to be treated as diverse and special because of non-trade concerns (currently nine members): Chinese Taipei, Rep of Korea, Iceland, Israel, Japan, Liechtenstein, Mauritius, Norway and Switzerland.”

“The UK runs a national system of food safety, and this would continue if Britain left the EU.”

provide a mechanism to secure long-term tariff improvements, and particularly to trim subsidy – and Britain would remain a key WTO player.⁴³⁵

13.2.3 Food safety with the EU would be maintained bilaterally

The UK runs a national system of food safety, and this would continue if Britain left the EU. Rules would cover such areas as feed inspectors, medications allowed in feed (especially relevant for partially infected herds), marketing authorisation for veterinary medicines, rules over the sale of raw milk, hygiene regulations, definitions of unfit meat, checks at slaughterhouses, microbiology testing, rules on by-products, additives and flavourings, and quick frozen produce.

There is evidently scope for added value in cooperating in research areas, rather than duplicating potentially costly medicinal testing for example. The EU’s Rapid Alert System for Food and Feed (RASFF) and its counterpart covering animal diseases might see the UK opting in as an associate, taking the opportunity to ensure that alerts are in future circulated more widely across the public health professionals who need more timely warnings. Cooperative work might continue in joint funding of projects at EU-reference laboratories.

There are two main routes to achieving this. The UK could apply the EEA route of common standards on food content, and increasing homogeneity in standards under European Food Agency oversight.⁴³⁶ Or it could take the WTO route, which is centred on sharing information and following the Sanitary and Phytosanitary Measures (SPS) Agreement of 1995. This latter approach allows governments to set their own standards, which have to be science-based and follow internationally-agreed standards agreed at various working committees in international bodies. A country could decide not to implement them, though it would then be challenged to justify its actions; another state may opt to consider them invalid and ban imports, but the ban would then be open to review by a WTO tribunal.

Western countries share similar approaches towards developing bioethical standards. This means that UK exports would be challenged infrequently. The EU may develop new individual standards in relation to new technology, or over some pharmaceuticals. But even if the UK develops its own standards in these areas, and the EU held that they diverged sufficiently to warrant suspension of ready access, the Commission would still have to justify any ban at the WTO.

There is some measure of risk associated with this, though perhaps little more than currently exists, since EU and EEA countries have individually demonstrated a readiness to impose unilateral import bans when food chain scares occur (as happened with BSE). More likely would be certification issues over whether a specific hormone was acceptable in the Single Market; here, farmers seeking to export to the EU might be best served by being provided with ready access to a database of drugs that the Commission has approved, an approach which is little different from the material currently supplied by the Department for Environment, Food & Rural Affairs (DEFRA).

435 WTO standards govern animal, plant and consumer health agreements globally. Key organisations such as the OIE (founded 1924) safeguard standards, for example applying the International Animal Health Code (for mammals, birds and bees), the International Aquatic Animal Health Code (for fish, molluscs and crustaceans), the Manual for Aquatic Animal Diseases, and the Manual of Standards for Diagnostic Tests and Vaccines.

436 Norway’s Government in 1999 successfully pushed for dropping veterinary controls at borders in return for accepting the veterinary acquis. This was highly controversial domestically.

“The EU system is based on compliance testing at source by the national government, and removal of checks elsewhere to facilitate trade... the possibilities became darkly clear with the horsemeat scandal.”

The key gain of taking the WTO route would be over quality testing. The EU system is based on compliance testing at source by the national government, and removal of checks elsewhere to facilitate trade. The problem comes when criminality or incompetence means a lowering of standards and the removal of checks, whether due to organised crime or policing failures. The possibilities became darkly clear with the horsemeat scandal, when several supermarkets were revealed to be selling produce made from something rather different from the beef consumers were expecting. Increased national checks become permitted outside the Single Market.

In addition, EU and international cooperation would still occur over outbreaks of disease. Geographically, the UK is part of continental Europe. It makes sense to work with the EU if it is developing a widespread public health policy, even if we lie outside of it. This would be most critical in relation to disease control. If anything, countries outside the EU could implement tougher quarantine rules: it is more a matter of whether they are necessary. They become less so if trading states have confidence that they would be notified of all outbreaks and that appropriate control measures would be swiftly implemented. In areas where some UK concerns have been raised – for instance, over the spread of equine infectious anaemia, West Nile virus, and even minimum thresholds over timings for the pet passport – it would be possible for new border controls to be introduced for entry into the UK.

The current EU system has its flaws. National systems are reportedly quicker at spotting diseases and susceptible species.⁴³⁷ A case in point is the *Schmallenberg* virus, now widespread across much of the EU. It was not made a notifiable disease despite governments seeking to limit its spread. The result was a US trade ban of bovine semen exports from the EU – including the significant UK export market, despite its stocks being less badly hit.

Other examples of familiar EU issues in this area include bovine spongiform encephalopathy (BSE, ‘mad cow disease’), and Foot and Mouth (FMD) in 2001. In the former case, critics accused member states of using the Precautionary Principle card against the UK beef market for selfish commercial gain, playing the system to hobble their competitor.⁴³⁸ In the latter, preventative vaccination needed to be authorised by the EU in order to avoid culling, and as this impacted upon wider pan-EU FMD-free status, it meant that taking this option under EU rules would trigger slaughter anyway.⁴³⁹ Moreover, the necessary speed for culling to work was lost by having to operate through a bureaucracy, the EU Standing Veterinary Committee, whose rules (for instance on the dis-

437 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Animal Health and Welfare and Food Safety Report” (2013), page 33.

438 The precautionary principle is a system of risk management that is used to address matters with suspected risk of causing harm to the public (or whatever environment is in question). If there is no clear scientific consensus that the proposed policy is safe, then the principle puts the burden of proof on the supporters of taking the action. It might be best summed up, in analogy to British law, as ‘dangerous until proven harmless’. The Commission has supported the precautionary principle since 2000, and it is included in the Lisbon Treaty. It states (in this form): “*Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.*” Article 191[2], TFEU.

439 The EU’s own subsidy system itself may have contributed, since it encouraged ‘black sheep’: moving animals around to claim extra grants (a process which has also been referred to as ‘bed and breakfasting’). See Private Eye “Not the Foot and Mouth report”, accessed 15/04/2015 at: <www.warmwell.com/footmoutheye.html>. This demonstrated that the EU was a major contributory element, but far from solely culpable>.

“Animal passports are more of a global programme than an EU one.”

posal of stock) delayed response times and exacerbated the risk of spread.⁴⁴⁰ The result was the often inhumane destruction of millions of animals, and an end economic cost to the UK estimated upwards of £8bn.

A system that allows a swift national response is clearly key. If that is best achieved by letting vets act on sight of an outbreak, then one route for continuing EU cooperation is via liaison with the European Food Safety Authority (EFSA). This would allow participation in a framework that monitors evolving outbreaks and the risk of wider transmission. The cases of Bluetongue, Bird Flu and Ash Dieback remind us, meanwhile, that agricultural epidemics reach beyond the EU. EFSA runs a neighbourhood programme cooperating with eastern and southern flank neighbour states. Formal engagement may not even be needed, since EEA countries are not part of the EFSA system. That has not stopped Norway from inviting the organisation to audit its anti-BSE controls, for example, and work is currently underway to expand joint EU-EEA working groups of scientists. It may have a useful and enduring purpose if politics is kept out of its work.

13.2.4 EU pet passports and similar mechanisms could remain

Animal passports allow people to take their pets with them on holiday, providing a mechanism to avoid quarantine while ensuring that communicable diseases (largely rabies, continental tapeworms and tick borne diseases) are kept out of circulation.⁴⁴¹

In fact, this is more of a global programme than an EU one. Correspondingly, it seems likely that this scheme, including approved lists of carriers, would be continued and carry across without objection by participants. These include, for example, Bosnia, Taiwan, the USA, the UAE, and Mexico. Variant arrangements could also exist, for instance with Malaysia, which requires that the pet has not been near a pig for the previous two months. If, by contrast, the nature of the UK's participation is reviewed, this would also provide an opportunity to remove some of the bureaucracy, such as the 10-year minimum for vets keeping paperwork, use of Latin names complicating travel by hybrids, and the narrow definition of 'non-commercial events' impacting upon pets being taken to minor cash show events.

By contrast, the extent to which the UK would remain covered by EU regulations covering livestock identification and tracing would become a matter for reconsideration. Some of the current processes are costly and bureaucratic, though the existence of a tagging system does function as a means of monitoring and control. The UK is particularly disadvantaged in sheep farming. This is more mobile in the UK, and the 100 per cent accuracy required may not be matched by the electronic (EID) technology monitoring it. This is in addition to farmers in non-EU countries such as New Zealand competitively gaining by not being burdened by running such a system themselves.

These costs are likely to continue if the UK maintains a high level of EU market access, but could at least be partially mitigated if trading in from outside. Uruguay and Australia both run a traceability system just covering exports

440 A measure of the inconsistencies arising from conflicting EU regulations can be viewed by contrasting the unwillingness of officials to break EU laws on groundwater pollution by swiftly burying killed animals, against their readiness to breach environmental rules with mass pyres, and the gross abuse of animal welfare laws (and even traditional common law principles, as well as common decency, in practices used when requisitioning animals). FMD offers the grimmest case study of how EU member states' intertwined systems and structures can catastrophically fail.

441 The tapeworm aspects are UK specific. Successful application of the pet passport depends on such variables as the handwriting and administrative competence of the issuing vet, which might differ dramatically.

“It is not possible to run a permit system within the EEA, but it would be outside.”

to the EU; Japan opts to trace through the whole food chain; while the US has been working on a general 48 hour track back system.

13.2.5 An appropriate agreement could be reached to cover the migrant agricultural workforce

A mobile labour force is a key element of how farming functions. Agriculture acts as a major draw for unskilled workers to the UK, and as a stepping stone for more skilled individuals seeking to move on to other jobs.

It is not possible to run a permit system within the EEA, but it would be outside. This could perhaps copy the Seasonal Agricultural Workers Scheme (SAWS), which covered seasonal workers from Romania and Bulgaria fruit-picking in the UK before those workers gained full free movement rights in 2014.

Were one to be introduced, applicable to EU states as well as to the wider world, it would need to be run in conjunction with systems intended to incentivise a return to former levels of UK farm employment and be designed to fill any skills gaps. As such, a transitional agreement covering EU access might be preferred to guarantee that a continuing (if diminishing) foreign workforce is available in the fields. It need not disappear completely and may remain quite significant.

13.3 New agriculture policy opportunities would become available

The UK farming industry and related markets are currently constrained by EU rules, gold-plating, and the high common external tariff.⁴⁴² Outside the EU’s agricultural policies, a range of policy options would be open to debate, and the public must decide what mix of trade access, regulation and competition they are comfortable with. As this is a devolved matter, the Scottish Parliament, Welsh Assembly and Northern Irish Assembly would all see considerable new powers devolved to them. There are a number of successful options and models that Britain could adopt after leaving the EU, such as the market orientation of New Zealand, or the EU-linked Norway.

How would farmers actually fare outside the EU? What is the likelihood of winning a good deal over British exports to the EU and keeping the tariffs low? Table 13.v shows the key countries the UK exports to compared to import figures. Figures 13.vi and 13.vii contrast the produce in question.

Table 13.v: Top ten UK-EU exports vs imports in FFD⁴⁴³

	Exports	Imports	Trade deficit
	Value in £000s	Value in £000s	Value in £000s
Irish Republic	3,353,167	3,823,384	-470,217
France	2,083,914	4,190,057	-2,106,143
Netherlands	1,343,202	4,859,033	-3,515,832
Germany	1,221,420	3,721,000	-2,499,580
Spain	800,073	2,480,285	-1,680,213
Belgium	488,401	2,209,344	-1,720,944
Italy	444,847	2,366,419	-1,921,572

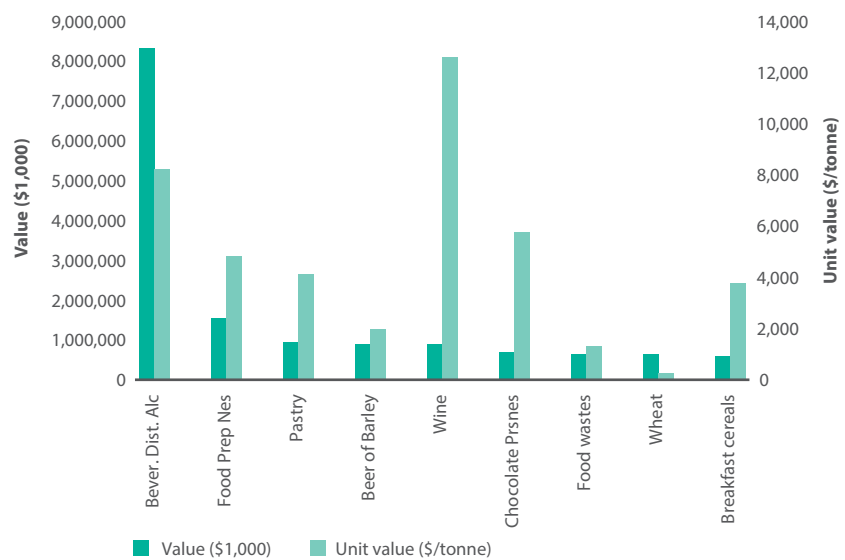
442 An example has been the Commission’s interest in overturning the 1976 UK exemption from duty for cider and perry makers who produce under 70 hectolitres. This would affect 80 per cent of these farmers who tend to be ‘microbrewers’, rendering traditional methods uneconomic, discouraging experimentation, standardising orchard variety, and putting small producers out of business.

443 Food, feed and drink.

	Exports	Imports	Trade deficit
	Value in £000s	Value in £000s	Value in £000s
Denmark	266,711	1,314,208	-1,047,497
Poland	253,613	238,525	15,088
Sweden	252,288	324,280	-71,993

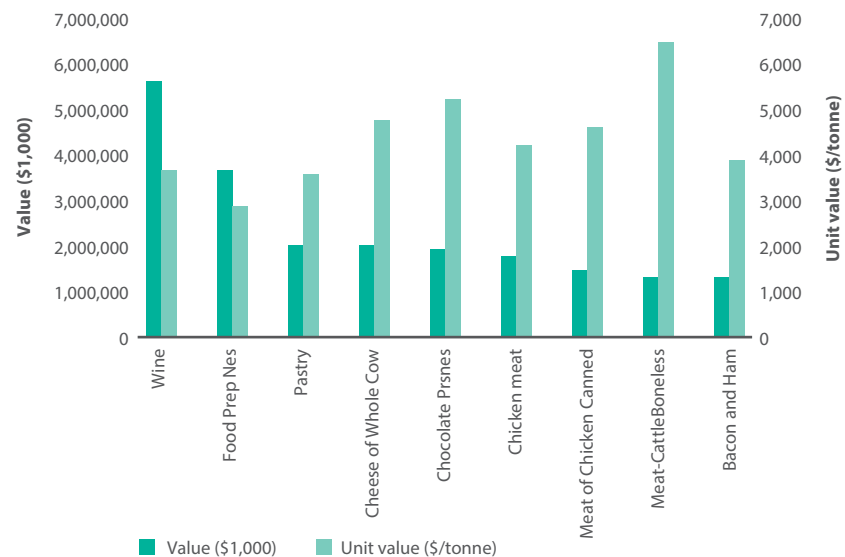
Source: DEFRA

Figure 13.vi: Balance of trade in key commodities (top exports)



Source: FAOSTAT⁴⁴⁴

Figure 13.vii: Balance of trade in key commodities (top imports)



Source: FAOSTAT⁴⁴⁵

444 FAOSTAT "Top Imports", accessed 16/04/2015 at: <<http://faostat.fao.org/desktopdefault.aspx?pageid=342&lang=en&country=229>>.

445 FAOSTAT "Top Imports" accessed 16/04/2015 at: <<http://faostat.fao.org/desktopdefault.aspx?pageid=342&lang=en&country=229>>.

“The UK has a very strong negotiating hand in readdressing its agricultural terms.”

Two features stand out. First, the UK is a great consumer of European foodstuffs, which it could otherwise often buy more cheaply on the world market (i.e. if global producers were not blocked by the Common External Tariff). Second, the key European producers and countries that stand to lose most include those most likely to otherwise want to obstruct UK access to the market.

It would not only seem that the UK has a very strong negotiating hand in readdressing its agricultural terms, but that given the domestic lobbies that would be most affected in these countries, it also provides British negotiators with a strong card to play elsewhere across the negotiations.

Given the flaws within the CAP, it is hardly surprising that leaving the policy allows a significant opportunity to reflect on how best to support agriculture. Indeed, the level of choice is likely to generate intense political debate – which it should.

13.3.1 The CAP is a longstanding problem that is inherently flawed, from which Britain could free itself

The CAP is a central and defining feature of the EU, and has been since its foundation. Its inclusion was part of the original trade-off between the founding states, and a precondition of French support.

In the early 1960s, agriculture employed 30 per cent of the Italian workforce and made up about a seventh of its EEC exports. Having an expensive policy backing it perhaps made sense in that era, still mindful of serious wartime deprivations. But it makes less sense now.

The system has been self-perpetuating even with a recalcitrant Britain involved. There was a window of opportunity for more significant reform in the 1980s than in fact occurred. However, the UK yielded its support for reform in return for political backing by Paris for the Fontainebleau Rebate. The UK then came to oppose the reduction in CAP expenditure owing to twists in the system itself; the Commission’s proposed grant caps, for example, would have disadvantaged the larger and more efficient British farms.

The accession of several Eastern European states has subsequently boosted the numerical vested interests against major reform. The Blair surrender of the UK Rebate covering Eastern accession funding in turn elicited a vague promise of a future CAP review, but with a staggering lack of any binding commitment by Paris to deliver.

The CAP’s longevity is no justification for its retention. As some commentators have argued, the UK’s strategic interests today lie outside this policy:

It is difficult to find a more wasteful, expensive, immoral, bureaucratic, corrupting system of farm subsidy in the world – although within the EU there is plenty of competition. As a net food importer with a relatively efficient farming sector, Britain is penalised both positively and negatively by the CAP, paying more into it and getting less out. If Britain wants to recognise the contribution that its farmers make to maintaining the environment, it should pay a direct grant, based on acreage and land quality. It makes no sense to subsidise rivals.⁴⁴⁶

The current objectives of the CAP, as set out by the Commission are as follows:

- 1 Maintaining a reliable food supply;
- 2 Providing financial support for farmers;
- 3 Improving food quality;

446 Centre for Policy Studies “Britain and the EU: A Solution”, D. Hannan, page 7.

“As long as the UK is in the CAP, it will face a range of major problems.”

- 4 Guaranteeing food safety;
- 5 Supporting rural society;
- 6 Protecting the environment;
- 7 Providing better animal health and welfare conditions;
- 8 Cost-efficiency in fulfilling these aims.⁴⁴⁷

If the policy is not achieving these aims, or its effects could be replicated by other models, then the UK does not need to belong to it. On most of these counts, it is difficult to argue that the policy has not generated at least as many costs as it has allayed.

As long as the UK is in the CAP, it will face a range of major problems. The CAP is an expensive policy mistake for the UK. The impact is felt in many ways. In terms of costs, a 2009 study calculated that it increased food prices for UK consumers by £5.3bn; increased social welfare costs added £317m (since they are based on a basket of goods including CAP-affected ones); regulatory burdens were estimated at £264m; duplicated administration cost £5m; and the CAP tax burden added another £4.7bn.⁴⁴⁸ Excluding some aspects that lead to double counting, that meant a total burden of £10.3bn, or £398 per household per year.⁴⁴⁹

The recipients of the subsidies also come under question. In the first instance, the UK makes a net annual donation to the CAP of £1bn, so could run an identical CAP for just the current UK recipients and still save money. Whether it would seek to do so is questionable, however, given the range of recent recipients which include golf clubs, gliding clubs, cathedrals, boxing clubs, motor clubs, housing associations, and a company that allows you to drive tanks.⁴⁵⁰ That is just what is known to happen in the relatively transparent UK.

A further problem relates to the nature of support farmers get. The lack of any link to productivity means there is no incentive for recipients to strive towards becoming more competitive, a particular issue for continental counterparts. Businesses in a number of agricultural industries are now dependent on CAP grants to survive. The result is that EU policy has failed to stimulate the reform needed to compete on the global market, encouraging the retention of its tariff walls. The biofuels policy has been a particular disaster, raising wheat prices by five per cent and oilseed by 17 per cent for the benefit of an energy market whose economic logic has also been challenged.⁴⁵¹

447 The actual Treaty obligations are: (a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour; (b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture; (c) to stabilise markets; (d) to assure the availability of supplies; (e) to ensure that supplies reach consumers at reasonable prices' (Article 39[1] TFEU). The legal mandate is inherently interventionist.

448 A marked example is the impact of joining the EU on Baltic sugar prices in stores. Literally overnight, Estonian prices leaped by 84 per cent (106 per cent in the capital) with end increases of 300–400 per cent already anticipated. See “These Tides” (2004), page 14. Overproduction within the expanded EU was not generating market competitiveness, but merely quotas for maintained levels of subsidies and sustained overproduction for the home market (requiring export subsidies to dump).

449 TaxPayers' Alliance “Food for Thought”, L. Rotherham (2009). Putting a figure to CAP impact is difficult as actual costs would vary year on year depending on gate prices. Some comparable costings undertaken by the OECD and the University of Dublin focus on narrow trade aspects rather than indirect support. See HM Government “Review of the Balance of Competences between the United Kingdom and the European Union Agriculture”, pages 35–36.

450 Listed recipients can be found at <www.cap-payments.defra.gov.uk/Search.aspx>.

451 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Agriculture” (2014), pages 45–46.

“The EU law-making systems can only make CAP worse, but by leaving the EU Britain could escape this fate.”

The central problem with the policy is that it is an impossible compromise. It is designed to provide revenue to the French, keep Laplanders on their lonely frozen farms, justify Italians in tobacco fields, and prop up Greek olive groves (real or fictitious). Europe’s food interests are fundamentally divergent. So are attitudes to policing fraud, particularly among net recipients. The system is, by contrast, highly centralised in design, since the delinkage of subsidy from supply means the funding is actually a communalised social security system. Encouraging greater policing of it then fostered red tape, on top of what was already built into the system: an example cited during the Competences Review related to a red tape simplifier that was now a burden:

The Scottish Government identified the EU regulatory regime for plant reproductive material as an area where the balance between the benefits and drawbacks of EU action had been lost over time. It said the benefit for farmers and growers of having confidence in the seeds they purchase had become outweighed by the burdens created by an over-complex EU system that had failed to modernise. The Welsh Government concurred that improvement was needed in the simplicity and streamlining of EU requirements. This would ensure the regulatory requirements were appropriate and affordable to the different kinds of material and the different parts of the industry, for example the same rules governing the commercial trade were not necessary for the amateur gardener.⁴⁵²

The EU law-making systems can only make CAP worse, but by leaving the EU Britain could escape this fate. The Commission has a strong appetite for more regulation of food controls and involvement in rural issues, particularly those with an environmental aspect. This is often driven by EU-funded lobbyists, supported financially by the Commission, who back further legislation in a circle of questionable propriety.

Whatever the merits of their particular campaigns and causes, the receipt of millions of euros by NGO pressure groups calls into question the neutrality of their engagement. Under the LIFE+ funding programme alone, 32 groups received €9m in 2013 as operational grants.⁴⁵³ These include funds for groups to raise their own profile, push for “comprehensive and ambitious” policy targets, “advocate policy change”, run street actions, put out press releases, run campaigns (including in schools), organise petitions, and meet EU officials.⁴⁵⁴

There is therefore a red tape generator attached to the system, funded by the taxpayer. An academic study in 1999 – and correspondingly now very dated – contrasted the 17,000 staff of the European Commission with the 10,000 lobbyists thought to be based in Brussels (a figure today estimated at 15,000). One in five lobbyists were agriculture or food related. The author suggested that the total of the salaries of NGO lobbyists was running at £100m per year.

452 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union Agriculture”, page 67. The example was also cited of national ministries receiving minimal legal advice from a disinterested Commission on grant technicalities, and striving to ensure that no breaches might be questioned by auditors. The result was further gold-plating.

453 European Commission “European environmental NGOs: LIFE operating grants 2014”, accessed 28/04/2015 at <<http://ec.europa.eu/environment/life/publications/lifepublications/ngos/documents/ngos2014.pdf>>.

454 The lack of logic in this funding is exacerbated when one considers one recipient, Stichting FERN, is paid €115,000 to lobby the Commission that its policy on Carbon trading is “not fit for purpose”.

“Agricultural protectionism has hindered negotiations by European delegates at WTO rounds, because protectionism encourages retaliation.”

We might also observe that they thus already outnumbered the staff they were lobbying.⁴⁵⁵

The EU system can only be fixed by a fundamental overhaul that is impossible from within. The CAP has created so many vested interests that reform is unachievable, even with the system of Qualified Majority Voting (QMV).⁴⁵⁶ A country that seeks to reform the system while also paying for it is extremely likely to be disappointed. Only if the model is repatriated to member states, and for national taxpayers to subsidise, is reform achievable. But that is impossible, as it would require the beneficiaries to accept the costs as well as the gains.

Compounding this is the broader cost that the CAP places on UK business. Agricultural protectionism has hindered negotiations by European delegates at WTO rounds, because protectionism encourages retaliation. Removing the UK from the CAP increases the prospect of the country getting free trade agreements agreed, as it would exchange the weight of the collective EU bargaining hand with the gain of a new degree of versatility with tariffs, quotas and mutual recognition of procedure.

The UK clearly gets a bad deal from the CAP. It is not that subsidies are unknown to British farming: the UK passed an Agriculture Act in 1947 to provide sectoral support in the form of a top-up subsidy for home producers, covering the gap between the world price and the farm gate price (this practice is now partially constrained by WTO agreements). However, the difference between it and the CAP model is that the subsidy was allowed to track the world price rather than be maintained at a permanently high level.

Under the EEA system, the CAP is excluded from the agreement. Agricultural produce is covered as a commodity, hence Protocol 3 allows for the development of reduced tariffs on processed goods. The main area of activity covered is that of food safety, and in fact this aspect generates the largest body of legislation created by the EEA agreement.⁴⁵⁷ However, implementation of food safety standards varies considerably between EEA states, and some measure of increased flexibility exists that is less evident among EU member states. In practice, this appears to mean that EEA members adopt the less contentious aspects, including rules over labelling, presentation and advertising of food-stuffs, additives and contaminants, food for particular nutritional uses, food contact materials, quick frozen foods, and mineral waters; but are able to be more circumspect with interpreting the Precautionary Principle which is where the key costs lie.

The Commission's 'rural policy', for its part, tends to be geographical or incidental rather than conceptual. Much of it is subsumed either in farming support issues, or tied in with regional aid. The policy emerges by default via general rural payments, and there are occasional hat tips when legislation is drafted intending to facilitate access and rights to 'deprived' isolated and outlying communities.

A notable example is when EEA states sign up to participate in INTERREG programmes, designed to bolster bilateral cooperation between regions across national borders (which may or may not be geographically rural). The approach is basically budgetary, and the strategic and practical value of its programmes

455 Journal of Common Market Studies "The Influence of UK NGOs on the Common Agricultural Policy", page 122, accessed 16/04/2015 at: <<http://onlinelibrary.wiley.com/doi/10.1111/1468-5965.00153/abstract>>.

456 Which applies to policy management but not to CAP itself, which is written into the Treaty.

457 Norwegian Ministry of Foreign Affairs "The EEA Agreement and Norway's other agreements with the EU", page 43, accessed 16/04/2015 at <www.eu-norway.org/Global/SiteFolders/webeu/MeldSt5_UD_ENG.PDF>.

“Rather than terminate funds distributed from the Single Payments Scheme via the Rural Payments Agency (RPA), an identical amount of money could still be distributed for a transitional period.”

has been called into question. Financially, it is least beneficial to peripheral as opposed to frontier nations. The UK (like the EEA-EFTA countries) falls into the former camp and thus gets a bad deal from it.⁴⁵⁸

The EEA model therefore means avoiding a number, but not all, of the rural burdens associated with the CAP and its bodyguard policies. Avenues do exist within its framework for cooperation when an EEA government is particularly keen to mirror or sign up to EU-level deals.⁴⁵⁹

This might be compared with the other treaty models available. Agreements such as the DCFTA with Ukraine, or the Morocco Treaty covering agricultural and fisheries products, cut WTO-maximum permitted limits on tariffs and quotas. These offer flexibility by allowing some measure of preferential access to each other's markets, not necessarily even in a mirrored way, without signing up to participating in the policies themselves. Standards do have to be met but, as we have seen, WTO rules could suffice.

13.3.2 Leaving the CAP offers flexibility and creates opportunities

There are three main options that would follow the end of the UK's participation in the CAP:

- The UK could seek to negotiate highly-preferential access to the EU market, conceding in return a high level of subsidy, regulation, and high food prices;
- The UK could seek a bilateral arrangement with significant access to the EU market, using the lever of higher tariffs on EU food imports to gain preferential access for its own key exports. Top of this list by far is whisky, by a factor of five in value over prepared foods;
- The UK could instead step away from protectionism and gradually adopt a less subsidised model, or a more focused and targeted form of subsidy dependent on rural and farming needs, with the objective of making food much more affordable to families and UK farming globally competitive.

There are therefore a number of options the UK might elect to implement. It could, for instance, recognise that the country imports 62 per cent of the food it consumes, setting it apart from CAP-hungry EU countries. Subsidy currently goes excessively to the most successful grain producing land, which is already relatively commercially successful. Horticulture remains underexploited.⁴⁶⁰ Other sectors will need transitional support shifting towards long-term global needs.

The implications are that, if subsidies are to change or be reduced, the removal of funding should be managed to allow farmers time to adapt. Rather than terminate funds distributed from the Single Payments Scheme via the Rural Payments Agency (RPA), an identical amount of money could still be

458 Cohesion Fund and Social Fund spending are essentially cross-subsidies from wealthier EU states to poorer ones, a pre-requisite of a successful economic and currency union, from which the UK in any event seeks to exempt itself.

459 Norway provides an example, since the two main parties (though not the electorate, evidently) are keen on joining and align themselves to as much of the *acquis* as they can.

460 Noted in Institute of Economic Affairs “A Brexit Blueprint”, S. Bush (2014), page 6. South Lincolnshire incidentally provides a study in old markets and recent shifts in demand.

“£1bn of UK money would no longer be sent annually to subsidise foreign RPA equivalents.”

distributed for a transitional period.⁴⁶¹ The differences would be that this new policy would be following clear and unambiguous UK political direction; and that £1bn of UK money would no longer be sent annually to subsidise foreign RPA equivalents.

If, in the interim, the EU resolved to introduce tariffs on UK agricultural exports, Britain would be entitled to levy the same on the larger amount of EU imports. Revenue raised from this could be used to create a targeted subsidy for the UK food sector if that was considered the political priority. This might be achieved either by direct support, subject to WTO provisions; indirect support, for instance by cutting fuel rates on red diesel or tax on the sale of farm machinery, or modifying income support for the workforce; or supply produce support by linking financing to gate prices compared with world prices (as allowed under an old 1947 Act, though again subject to WTO limits).

The central point is that the market could remain heavily regulated and significantly subsidised or not. It could be run to the absolute benefit of farmers or of consumers, or somewhere in between. Box 13.viii shows how support to agricultural producers has changed since the 1980s in a selection of non-EU countries, in comparison to the EU. Most have seen producer support fall due to policy reform and price increases on world markets, although there is still a large variation in both the level and composition of support provided around the world.

Box 13.viii: Agriculture Support in Selected non-EU Countries, as set out in the UK’s Balance of Competences Review⁴⁶²

- **Norway** – set out its objectives for agriculture in a White Paper of 2012 as: food security, agriculture throughout Norway, creating added-value, and sustainability. Efforts to maintain domestic production mean that Norwegian policy is characterised by large direct payments for income support (differentiated by region and farm size) and tariffs at the border designed to support prices.
- **The United States** – reformed its agricultural policies with the Farm Act 2014. This represented a move away from direct payments and towards insurance-based support. Up to now, agricultural support has been based on direct payments, counter-cyclical payments and insurance. Environmental programmes are also important, although they are typically payments to take land out of production.
- **Canada** – reformed agricultural policy in 2012 and aimed to shift from reactive income support to protecting producers from market and natural disasters. Canadian agricultural support has long consisted of layers of subsidised risk management tools for farmers such as income insurance, subsidised savings, insurance against natural perils and ad-hoc disaster assistance.
- **Brazil** – has two agricultural ministries: one covering the commercial sector, and another dealing with small-scale family farming. Domestic prices were previously below world prices, meaning that market price support was negative. Support has grown since the 1990s, in common with many developing and emerging economies, and now consists of price support, rural credit and agricultural insurance.

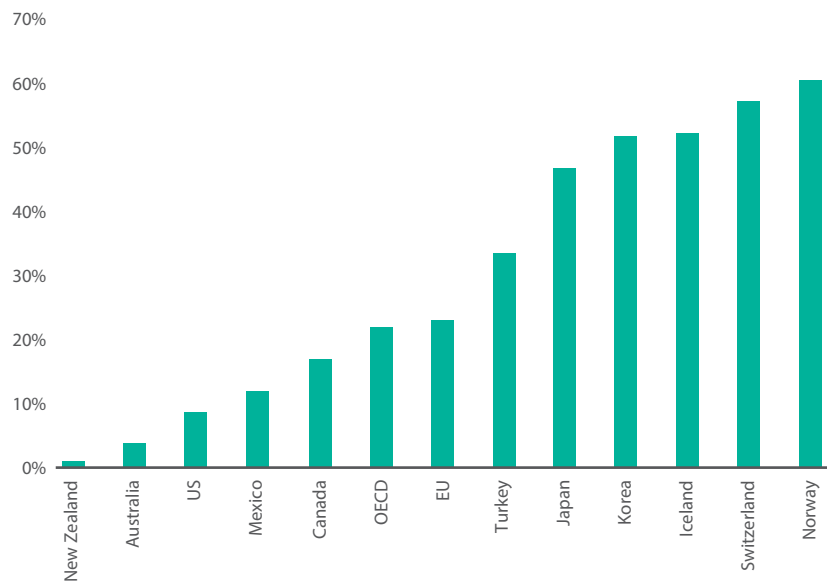
461 Institute of Economic Affairs “Old Friends, New Deals”, T. Hewish (2014), pages 18–19.

462 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union Agriculture” (2013), page 23.

- **New Zealand** – production and trade distorting policies, largely payments requiring production or based on input use, essentially disappeared with reforms in the mid-1980s. Its low levels of support for agriculture reflect its position as a competitive exporter (New Zealand is the world’s largest dairy and sheep meat exporter) with an open trade policy. Support is limited to general services such as agricultural research and biosecurity. This was combined with successful market access gains for New Zealand agricultural produce through heavy focus during free trade agreement negotiations.

The really radical option would be to follow the lessons of New Zealand, cut support and protection radically, and let farms float and compete. The subsidy maths are simply demonstrated in the following table.

Figure 13.ix: Comparative levels of public support for agriculture



Source: Institute of Economic Affairs⁴⁶³

New Zealand clearly had to make massive cuts to its agricultural subsidy system. It did so on the recommendation of many of its farmers, who placed a premium on ending budget deficits (aggravated by farm subsidies) in order that the country might get inflation under control, which was destroying the value of the subsidies being given. They picked short-term difficulties to secure long-term gains.

The impact was variable, with the most heavily-subsidised sector (sheep farming) most affected. But overall, the farming sector has massively benefited and with far less pain than was expected. Business failures ran at one per cent rather than the 10 per cent feared under the worst case scenario. Today, a tenth of the country’s top 100 companies are agricultural firms. The number of farm holdings and people employed has held steady, the rural population has grown, while the sectoral share of GDP has risen too.⁴⁶⁴

This may not be the whole story. Agricultural exports have always been of major importance to the New Zealand economy, so they receive a great deal of

⁴⁶³ Institute of Economic Affairs “Cutting the Gordian Knot”, Murray/Broomfield (2014), page 41.

⁴⁶⁴ Institute of Economic Affairs “Cutting the Gordian Knot”, Murray/Broomfield (2014), pages 41–44.

“The New Zealand example is just one option.”

support from negotiators during free trade agreement negotiations and multi-lateral talks. UK farmers may fear they would not fare so well, given UK agriculture’s relatively small share of GDP compared to financial services, legal services, chemicals processing etc.⁴⁶⁵ The New Zealand scenario also ignores the differing contexts – New Zealand removed subsidies in a different economic situation to that in which Britain currently finds itself, and with very different nearby competition. But if Auckland is not the model we are looking for, other countries have followed their own reforming paths as well.

The likely political route is not entirely clear given the future competitors. Outside the CAP, Britain would be surrounded by agricultural nations whose ministers would continue to heavily subsidise their farmers even if DEFRA refrained – even if EU tariffs remained absent, British farmers would be competing with Irish beef, Danish pork and Greek cheesemakers, all on an unbalanced field.⁴⁶⁶ By comparison, New Zealand was geographically close only to Australia, which also has comparatively low subsidies.⁴⁶⁷ The National Farmers Union itself has agreed in principle that subsidies are unhelpful and should be wound down, but only if this is carried out in concord with the UK’s nearest competitors.⁴⁶⁸

From a UK perspective, any reduction in subsidies or shift away from direct payments systems could also have an impact on land prices, reducing rents and prices, and removing an obstacle to the entry of new farmers or the consolidation of larger farms.⁴⁶⁹ Clearly, if the New Zealand approach were followed, such changes would not come without negatives and there would be losers as well as winners.

But the New Zealand example is just one option. It lies at one end of the sliding scale of the economic options that would be on the table if farmers resolved to wean themselves off subsidy and expand into the global market, and if the public placed a premium on slashing the cost of living. It might be an alarming model, and might be felt to be too unpopular for the UK to adopt, but it has been a successful one.

13.3.3 The UK could better respond to future challenges outside the EU

In practical terms, a country opting to move outside the CAP would have a number of fresh choices. These include, for example:

- The UK Parliament (and devolved assemblies) could choose, as Turkey does, to run its own Grain Board or intervention agency for arable crops, setting its own minimum quality standards, and targeting its interventions;⁴⁷⁰

465 Civitas “Softening the Blow”, J. Lindsell, (2014), pages 15–17.

466 Competition would not always be for like with like (the success of Feta would depend on consumers in Britain not shifting from Cheddar, for example). It would also involve UK producers ‘competing’ with olive growers, citrus farmers and other suppliers where there was little or no domestic competition. More important is that these would supply a tariff target if UK exports were themselves tariffed. Continental farmers tend to be the most vociferous and disruptive lobbyists within the EU system. This in turn implies Commission negotiators can/will be incentivised towards seeking broader trade continuity.

467 Institute of Economic Affairs “Abolish the CAP, let food prices tumble”, K. Niemietz (18 January 2013), accessed 28/04/2015 at: <www.iea.org/blog/abolish-the-cap-let-food-prices-tumble>.

468 Civitas “Softening the Blow”, J. Lindsell (2014), pages 18–19.

469 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Agriculture” (2014), page 40.

470 Turkey, for instance, does not intervene for oilseeds, protein crops, potato starch or dried fodder, but places a strategic premium on high intervention rates for its sugar market.

“Food supplements could become a matter of personal choice.”

- Similar choices would emerge on the regulation of, for instance, fruit, vegetables, hops, and flowers;
- Tobacco regulation could potentially be more or less strict as the national debate decided, but without any massive UK taxpayer sponsorship of inferior foreign growers;
- The UK Parliament and the devolved assemblies could have a proper debate about bioethanol. Ministers would no longer be subject to the Renewable Energy Directive (Directive 2009/28/EC) setting targets for renewables by 2020, which have impacted farmers’ own planting choices and therefore the gate prices of other crops;
- The UK Parliament and the devolved assemblies could escape the stultifying forces of EU in areas it may wish to explore, such as innovative whisky aging using virgin staves or barrel butts, where previously the traditional distilleries could muscle out innovation with threats to appeal to the ECJ;⁴⁷¹
- The UK Parliament and the devolved assemblies could remove subsidy requirements and other incentives that may encourage farmers to manage land in a manner that contributes to the severity and occurrence of flooding.

There are, of course, trade-offs for each of these in terms of making negotiation of full mutual access to EU agricultural markets more difficult.

Other options would also open up. In pursuing flexibility outside the EU, the Precautionary Principle could be ended. The Precautionary Principle is a style of governance that places the requirement of the balance of evidence onto the affirmative. In other words, it has to be shown that something definitely does no harm, rather than for evidence to emerge that something does do harm.

This approach suits the legal and governance systems of the continent, but is not part of Common Law and Anglo-Saxon traditions, which require something to be banned on practical and definitive grounds rather than speculative ones.

Where evidence is limited or contradictory, the application of the Precautionary Principle means that innovations are vetoed. The problem with the European approach is that it hampers choice and restricts opportunity.

Outside this system, food supplements could become a matter of personal choice. The evidence that they add value is limited; but as comestibles, they are now subject to EU testing regulations and as such it currently needs to be demonstrated evidentially that they cause no additional harm. As this process has been estimated to cost in the vicinity of £100,000 per submission (‘dossier’), the cost is largely prohibitive.

The same principle is also largely behind obstacles to European farmers planting GM crops and, more importantly, British researchers developing new crops that they can copyright and sell. The EU’s GM policy is incoherent. For a decade, only one GM crop (MON 810, an insect-resistant maize grown predominantly in Spain) was authorised for growing in Europe. Seven more were finally being authorised in early 2015, but only by re-delegating to individual member states a proscriptive right to block national use even where the Commission had green-lighted it. By restoring the national block, any value from having a common system of recognition was also removed.

471 See more about this at: Compass Box Whisky Company, accessed 16/04/2015 at: <www.compassboxwhisky.com/html/spicetree_readmore.htm>.

“The result is both a dynamic loss to UK farmers as well as opportunity loss from UK science, which has been losing its lead in GM technology.”

The EU definition of ‘Novel Food’⁴⁷² (a term that mimics the legal principle of “*since time immemorial*” in English law) is fixed to a very specific date, since their ‘novelty’ means they must not have been significantly consumed before 15 May 1997.⁴⁷³ Processes covered in this category include cloning, which is being separated out to be governed under its own laws. EU rules permit its use for livestock breeding, but cloning of farmed animals and the marketing of cloned animals, including imports, are being made subject to legislation.⁴⁷⁴ Where that would leave these animals’ edible produce, such as milk and cheese, is subject to fierce EU debate. Areas such as nanotechnology, meanwhile, have barely registered.

Investment approvals are being appealed against by some member states; EFSA-approved programmes are still blocked in Council; a backlog is deterring investors even more. The result is both a dynamic loss to UK farmers as well as opportunity loss from UK science, which has been losing its lead in GM technology. Estimates vary but the economic impact runs into the hundreds of millions of pounds.⁴⁷⁵ Other instances of the Precautionary Principle at work include cases set out in Box 13.x below.

Box 13.x: Division of Competences “evidence snap shot” of excessive precautionary burdens⁴⁷⁶

EU requirements variously described by respondents in the report as onerous or insufficiently risk-based include:

- Surveillance for veterinary medicine residues as it poses a low risk to public health;
- Decisions on genetically modified organisms (food and feed) where scientific evidence supports approval, but decisions by some member states are based on other factors;
- Proposals on cloning do not take into account significant evidence of the benefits to production, and minimised disease spread;
- Spinal cord removal in sheep is costly to industry and there is little evidence that sheep scrapie can be transmitted through spinal column material;
- Control levels set by the EU for food imported from Japan following the Fukushima nuclear disaster were lower than those required to protect EU consumers;
- Some argued that official meat controls are not risk-based;
- Evidence has been produced to show that skin on sheep meat (smokies) can be safely produced, but progress in gaining approval at EU level is precautionary and slow;
- Some pet organisations argued the EU’s standards on rabies are not high enough and do not take sufficient account of the risk of rabies being reintroduced to the UK.

Other examples cited by respondents of misuse of the Precautionary Principle related to: trade agreements on lactic acid; debates about products from cloned animals; genetically modified food and feed, nanotechnology and neonicotinoids.⁷⁰

472 Including the likes of GM food and cloned food.

473 15 May 1997 was the date Regulation 258/97, the relevant law, was adopted. As a peculiar historic contrast, ‘time immemorial’ refers to a date no one still alive at the time of first reference, seven centuries ago, could possibly remember: they picked the coronation day of Richard I – 3 September 1189.

474 Though the legal basis has been disputed. See European Scrutiny Committee, accessed 16/04/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-i/21904.htm#a5>.

475 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Agriculture” (2014), page 61.

476 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union Animal Health and Welfare and Food Safety”, page 36.

477 While sometimes seen as a health issue, the brief attempt to ban olive oil being served in bowls in restaurants appears to have been more of a market issue relating to possible repackaging by the restaurateur of an opened bottle.

“Leaving the EU would allow other opportunities to review problematic parts of the system.”

It may prove that the British public is sensitive about some of these areas and prefers to err on the side of caution. Outside the EU’s competence, there would be more choice and certainly more opportunity for informed public debate.

But in the coming decades the world population will continue to expand, and while growth rates have slowed as many countries emerge from poverty, the demand on food suppliers will still greatly increase. Increasingly, wealthy larger countries will be able to bid more for these relatively rarer resources, pushing world prices higher. To avoid Malthusian crises, improvements in food technologies have to be developed, especially GM. Strategically, outside the CAP, the UK would be better placed to make that judgement call.

Leaving the EU would allow other opportunities to review problematic parts of the system. Whatever replaces the CAP could do with being streamlined, owing to the complexity and bureaucracy associated with it at many levels. Single Payment Scheme running costs may amount to a tenth of the value of the pay outs, and bear no account of paperwork requirements even for the tiniest of micropayments.⁴⁷⁸

The High Level Group on Administrative Burdens, an EU initiative to cut red tape, noted that the runner up in a Commission-run competition to find the worst examples was an entry suggesting that small scale producers should be excused the paperwork when delivering to wholesalers or packing firms, thus acknowledging red tape was a significant problem to food producing SMEs.⁴⁷⁹ Gardener organisations complain that new proposals for all plant varieties to have an officially-recognised description or distinctness, uniformity and stability test would result in unsustainable costs for gardeners and specialist companies of £500 to £3,000 per seed variety, in the process threatening variation.⁴⁸⁰

13.3.4 Livestock and animals could be better managed by the UK and its devolved governments

Since launching the Agricultural Revolution, Britain has enjoyed a strong reputation as a major source of the best livestock. Its reputation for its quality flocks is so ancient that there has been a woolsack in the House of Lords since the time of Edward III.⁴⁸¹ Any doubt over the UK being legally capable of managing animal regulation is nonsensical. There is a key caveat, however, in that this depends on DEFRA abandoning its current regulatory zeal.

With the restoration of national control, an industry that could face a brighter future is the national dairy herd. Inside the EU, the UK and its devolved governments have been constrained by dairy quotas that require Britain to import from continental herds. Contrary to UK and Danish opposition, as these quotas are being phased out, the Commission has been subsidising the industry and buying up intervention stocks instead. Less competitive farmers have thus been excessively cushioned while being moved from their protected status within the UK market.⁴⁸² Today, the regulated milk market leaves farmers with weak

478 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Agriculture” (2013), page 134.

479 High Level Group on Administrative Burdens “Cutting Red Tape in Europe” (2014), page 23, accessed 28/04/2015 at <http://ec.europa.eu/smart-regulation/refit/admin_burden/docs/08-10web_ce-brocuttingredtape_en.pdf>.

480 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Agriculture” (2014), page 68.

481 During work on it in 1938, the woolsack was filled with wool from across the Commonwealth: perhaps a relevant modern metaphor on future policy repair work that is needed.

482 The European Journal (June 2009), pages 25–27, accessed 16/04/2015 at: <www.europeanfoundation.org/publications-2011/>.

“New livestock management systems could remove burdens on UK farmers after leaving the EU.”

bargaining power over gate prices, since EU law prevents producers collaborating as a coherent lobby, and prices and demand do not track one another.

Poultry might also be managed with a lighter regulatory touch. Turkey, which has 60m laying hens, has been able to regulate itself and avoid state intervention and producer subsidy. It has followed the route of offsetting tariffs with export refunds.⁴⁸³ Its bees did not need the EU either: the country is one of the world's leading producers of honey. Tariffs here were offset by marketing support to beekeepers, premiums for queen bees and bumblebees (the latter to encourage pollination), and partial export support. By contrast, Turkey's EU counterparts have been tasked by the ECJ to demonstrate that no GM pollen is in jars of honey; EU grants are restricted to certain countries; and the main UK beekeeper lobbying group has joined with farmers in rejecting the neonicotinoid ban on pesticides on the basis of a lack of evidence.⁴⁸⁴ European cooperation in the industry would not end – work on combatting the *Varroa* parasite could continue through scientists sharing their findings.

Moreover, new livestock management systems could remove burdens on UK farmers after leaving the EU. Outside the CAP, there would be opportunities to remove red tape on livestock controls. Animal health would continue to be protected, and with improvements. The key areas any new arrangement would need to cover would be: notification, surveillance, eradication and disease freedom; disease preparedness, awareness and control; registration, approval traceability and movements; entry into the EU and export; and emergency measures. As the UK has a highly experienced Government department managing agriculture, even if it is at times overly bureaucratic, the problem is less one of getting the EU to trust DEFRA than of DEFRA being able to confirm that EU member states are themselves following or enforcing the rules.⁴⁸⁵ In this respect, the option of being able to insist on national checks at any stage in the UK food chain, rather than having to take official foreign stamps at face value, would be a considerable gain.

Currently, the Commission is engaged in a massive consolidation of all the legislation that covers animal health law. Using its system in the future should become easier and, even if Britain is outside the EU, would be mutually desirable. Foot and mouth disease, classical swine fever, African swine fever, high-path avian influenza, and African horse sickness are such cross-border concerns that cooperation would be inevitable. If Turkey is able to monitor livestock exports to the requirements of the EU, then UK authorities can.⁴⁸⁶

Areas where the UK and its devolved governments might seek to cut back on the regulatory burden might include animal tagging, on practicality, cost and welfare grounds; simplifying record keeping for cattle; fallen livestock dis-

483 European Commission “Screening report: Turkey” (September 2006), pages 8–9, accessed 28/05/2015 at: <http://ec.europa.eu/enlargement/pdf/turkey/screening_reports/screening_report_11_tr_internet_en.pdf>.

484 Accessed 28/04/2015 at: <www.honeybeehive.co.uk/2013/04/uk-gvernment-fail-support-neonicotiniod-ban>.

485 Where confidence has broken down, as per BSE, it has done so in spite of EU membership.

486 Turkey provides a number of examples of extra-EU cooperation, for instance covering prohibited substances, import requirements, and participation in international veterinary agreements. A review of its horse racing industry for example reveals participation in the World Arabian Horse Organization (WAHO), the International Federation of Arabian Horse Races (IFAHR), the International Federation of Horseracing Authorities (IFHA), the International Stud-Book Committee (ISBC), and the International Federation for Equestrian Sports (FEI). It matches these with compliance with EU norms generated by its unusual Customs Union status, for example by setting up its own national bovine database (which appears indeed to exceed its actual obligations).

“UK legislators would likely seek to maintain standards of animal care, in accordance with the country’s reputation as a leader in this field.”

positional rules; and animal transport qualifications. The extent to which it chooses to do so would depend on the nature of the relationship it sought with the Single Market. Ultimately, it might also depend on the farmer’s relationship with the consumer. It is possible to envisage some UK farmers concentrating on the EU market, and accepting the red tape just as a US exporter to it has to, and others pursuing slightly less regulated and thus more profitable non-EU and home market trade, with perhaps the smaller farmers opting for the latter.⁴⁸⁷

Of course, the UK could continue to prioritise animal welfare. The removal of EU legislation would not generate a shift to battlefield levels of animal cruelty. UK legislators would likely seek to maintain standards of animal care, in accordance with the country’s reputation as a leader in this field. Slaughterhouse regulations demonstrate how advanced the UK is in relation to numerous other EU member states, for instance with poultry stunning and ongoing debates about the relative ethics of water bath versus controlled atmosphere stunning (CAS), with UK having a larger share of sites using the more humane latter.

Animal transport within the UK would be regulated by UK laws that are appropriate to its national climate and transport network. Only hauliers engaged in exporting to the continent would be required to comply with costly additional rules intended to improve standards in non-compliant states and cover long distance routes. Animal testing remains an issue of some debate following an EU ban, and the increasing number of technical and safety gaps this is generating; in any event, work on safe alternatives is taking place both bilaterally and through the OECD.

Given the UK’s national psyche and the presence of a vociferous and respectable animal rights third sector, aside from correcting red tape imbalances, it is unlikely that existing rights would be rescinded. Indeed, the danger is that the UK would continue to considerably exceed standards in other EU countries and make British farming less competitive. Examples of where the UK has applied EU legislation considerably in advance of its competitors (who have, in some cases, not applied them at all) include directives covering pigs (Directive 2008/120/EC, *inter alia*) and laying hens (Directive 1999/74/EC). An opportunity might correspondingly exist, however, to market British farming globally as ethically compliant.

UK departure from the EU may, arguably, reduce the pressure for animal rights to be taken into consideration in the Union itself. This overlooks, however, the inclusion of the issue into the Treaties, the presence in Brussels of a vociferous green lobby, and the limits to actual UK influence.⁴⁸⁸ While CAP funds get spent in Spain providing financial support to the bullfighting sector, since these are distributed via Spanish national intermediaries and are targeted at farmers undertaking legal activity rather than the sport itself, neither the Commission nor the UK can intervene.⁴⁸⁹ The cost to the latter has been

487 It is also possible to suggest this might lead to a second NFU forming, as industry needs would differ and lobbying interests would thus vary.

488 The UK could opt to make animal rights more of an issue in its negotiations within the CAP. Given the limits to what a country can prioritise among the vital national interests that need defending, cynically this would probably be best deployed as a bartering chip, threatening to hamper the economies of more laissez-faire/disinterested governments – i.e. UK business competitors. This is unlikely to be adopted as an approach however.

489 The Hedley Lomas Case is another striking example. The UK tried to ban live sheep exports to Spain as it judged its abattoirs to be cruel and thus contrary to EU animal rights law. Notwithstanding a fairly explicit legal base, the ECJ saw this as a unilateral infringement of the Single Market and overturned it. Outside the Single Market, such a ban could be enforced (subject to WTO rules).

“The UK can do far better than the CAP.”

estimated at £15m in subsidy a year.⁴⁹⁰ But the legacy of UK lobbying is Article 13 TFEU, and this means that MEPs and Ministers in future spending rounds could justifiably choose to lobby to exclude such funds. The Commission has latterly begun to develop an Animal Welfare Strategy and has been working on an Animal Welfare Framework Law.

Even after Britain leaves the EU, Britain’s past activity means that the EU will retain high animal welfare standards.

Conclusion

Without being constrained by the CAP, several routes would open up for the UK. It could strive to keep EU border tariffs down in both directions to encourage trade, but at the price of accepting some higher levels of red tape. It could opt for a competitive farming market like New Zealand, or keep paying the subsidies presently being distributed (less the £1bn in foreign subsidies), or reform the CAP into something more logical. It could focus on just the health and standards issue, ensuring that UK exports are managed in a way that is compliant with WTO obligations, and run in a way that the Commission understands is competent and free from harm to the consumer. It could target money at rural economies and farming communities, or allow changes that would benefit every consumer.

A key caveat is that, while the UK could continue existing or parallel EU subsidies and quotas, under WTO rules taken as a whole it could not significantly add to the lump sum of these.⁴⁹¹ But new schemes that might be considered include running an extended agri-environmental points system, or encouraging grouping of schemes for greater contiguous effect.⁴⁹²

The route the UK chooses would have an impact upon the Crown Dependencies, giving them more latitude the more the UK itself assumes. Presently, the Isle of Man and the Channel Islands are outside of the CAP, but within the customs union as far as produce is concerned. Under Protocol 3 of the UK’s Accession Treaty, they effectively follow EEA health and trading standards to facilitate exports. They neither pay in to nor receive CAP funds, while state aid for their exports is limited by EU rules. In a sense they provide an example of how a minimalist withdrawal from the CAP might work.⁴⁹³

But essentially, the UK can do far better than the CAP. As a major net food importer from the EU, subsidising its continental competitors in the process, and with its counterparts (especially France) placing a premium on the economic well-being of their farming communities, the UK has a strong negotiating hand.

490 European Parliamentary Questions, accessed 16/04/2015 at: <www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-000994&language=EN>.

491 See “Flexcit”, R. North, pages 235–237, accessed 16/04/2015 at <www.eureferendum.com/documents/BrexitPamphlet001.pdf>.

492 Explored for instance in Open Europe “More for Less: Making the EU’s farm policy work for growth and the environment”, accessed 16/04/2015 at: <<http://openeurope.org.uk/intelligence/energy-and-environment/cap/>>.

493 The Channel Islands are “within” the EU for most of the purposes of the free movement of goods but outside the EU for other purposes, in particular non-customs related fiscal matters and the free movement of persons and services. The Islands are not eligible for structural funds grants or the support measures for agricultural markets. Their status belies both the sacrosanctity of the Four Freedoms and the necessity of uniformity across EU association treaties.

14 Fisheries

14.1 The UK would remain a member of all key international fishing bodies	441	14.3 New fishing policy opportunities would become available	453
14.1.1 Non-EU systems operate in the Atlantic already	442	14.3.1 The CFP has suffered from longstanding problems and enduring failure to reform	454
14.1.2 The UK would cooperate better to help manage Third Party waters	446	14.3.2 As long as we remain in the CFP, there will be a significant impact on the UK	456
14.2 The UK could continue to cooperate with the EU on fishing	448	14.3.3 The CFP has always been disastrous to stocks	459
14.2.1 Preferential market access to the EU could continue	448	14.3.4 Regulations could be set appropriate to needs	461
14.2.2 Current UK approaches differ hugely from countries that have looked after their fisheries and stayed out	449	14.3.5 The UK has a number of possible alternatives to participating in the CFP	461
14.2.3 Management cooperation would continue	450	14.3.6 Withdrawing from the CFP enables, if needed, more radical action to be taken more responsively down the line	463
14.2.4 EU ambitions for a Common Maritime Policy are even greater still, and will not go away	451	14.3.7 Policy opportunities generate significant net gains for the UK	463
		Conclusion	464

“The key issue is that British Governments have not prioritised protecting the fishing industry or national waters.”

*The ‘pragmatic’ approach to European fisheries can be found in the Commission’s own booklet, *How does the European Union manage Agriculture and Fisheries?* The first paragraph states, ‘The Common Fisheries Policy responds to a host of legal, political, economic, social and environmental factors affecting both the fishing industry and the process of European integration. [...]’*

[The Common Fisheries Policy] can’t be ‘environmental’ – because these items are increasing the destruction of the marine resource. It can’t be ‘social’ – because people, especially in remote areas, are being thrown into turmoil. It can’t be ‘economic’ – because the fishermen are not allowed to sell the best and freshest fish from the quota share-out. So it leaves legal and political; for the process of European integration.

John Ashworth, Environmental Spokesman of Save Britain’s Fish, June 1998⁴⁹⁴

The Common Fisheries Policy (CFP) was skewed from its very inception. It was introduced into the *acquis* at the last minute, to the particular diplomatic embarrassment of the Dutch and to the benefit, in particular, of the French, to generate increased access for the fishermen of the Six to the home waters of the applicant states. This latter group consisted of four countries with particularly rich North Atlantic fishing grounds: the UK, Ireland, Norway, and Denmark (along with the latter’s fish-rich dependencies).

In the event, the fix so angered the Norwegians that its Fisheries Minister resigned in protest, generating a political crisis that helped deliver a No vote in their accession referendum; the Faroes resolved to stay out of the EU; Greenland subsequently voted to leave; and Iceland has been motivated to stay out as well. As diplomacy goes, the policy has proven as counterproductive as it has been bluntly self-serving.

The CFP has, however, operated in the interests of those member states that are prepared to place a premium on their fishing industry in negotiations (such as Spain, and unlike the UK), and for those prepared to use the policy as a lever elsewhere (such as Spain and France, particularly during accession talks⁴⁹⁵). The key issue is that British Governments have not prioritised protecting the fishing industry or national waters, preferring to put their limited chips into bartering in other areas.⁴⁹⁶

Some reforms have since been agreed to remove some of the CFP’s worst excesses. This has only happened after three decades of lobbying, they are partial reforms, and they are being phased in. Today the competence remains firmly within the EU Treaties and not where it can be best managed – by those with a direct stake in the commodity and who face the direct impact on their livelihoods.

494 The European Journal “The Fault of the Fishermen?” (1998), Volume 5 Number 8, page 8, accessed 30/04/2015 at: <www.europeanfoundation.org/wp-content/uploads/2014/05/The-European-Journal-June-1998.pdf>.

495 As displayed by Madrid and Paris’s attempts to lever preferential access for their fleets during 1994 negotiation talks. Norway’s accession consequently again hit the buffers in a referendum and for exactly the same reasons.

496 Or even just maintaining the status quo. The difficulty with defending the status quo against further integration is that effort is expended without gain merely in order to prevent further loss; countries that accept the principles of ever-closer union merely judge which gains outweigh which benefits, and trade the one off against the other. In this regard, Heath’s accession negotiators proved unusually integrationist from a UK perspective. But once accepted as *acquis*, the CFP was irreversible to any more robust successors.

“The CFP only applies within the 200 nautical mile limit of an EU member state, and is overwhelmingly focused on the rich Atlantic grounds.”

Removing the management of fisheries from the hands of the EU would enable the UK to regain control of a valuable commodity; allow for more environmentally-prudent management systems; increase national access to a resource that, under international law, is its right; and gain a major bartering chip over transitional fishing rights for states presently fishing within restorable UK territorial waters, and which may be obstructively protectionist towards other UK exports. But ultimately, if Norway can successfully manage its fisheries, then the UK and its devolved assemblies can do so too.

14.1 The UK would remain a member of all key international fishing bodies

Key international bodies

- Food and Agriculture Organization of the UN
- International Council for the Exploration of the Sea
- Northwest Atlantic Fisheries Organization

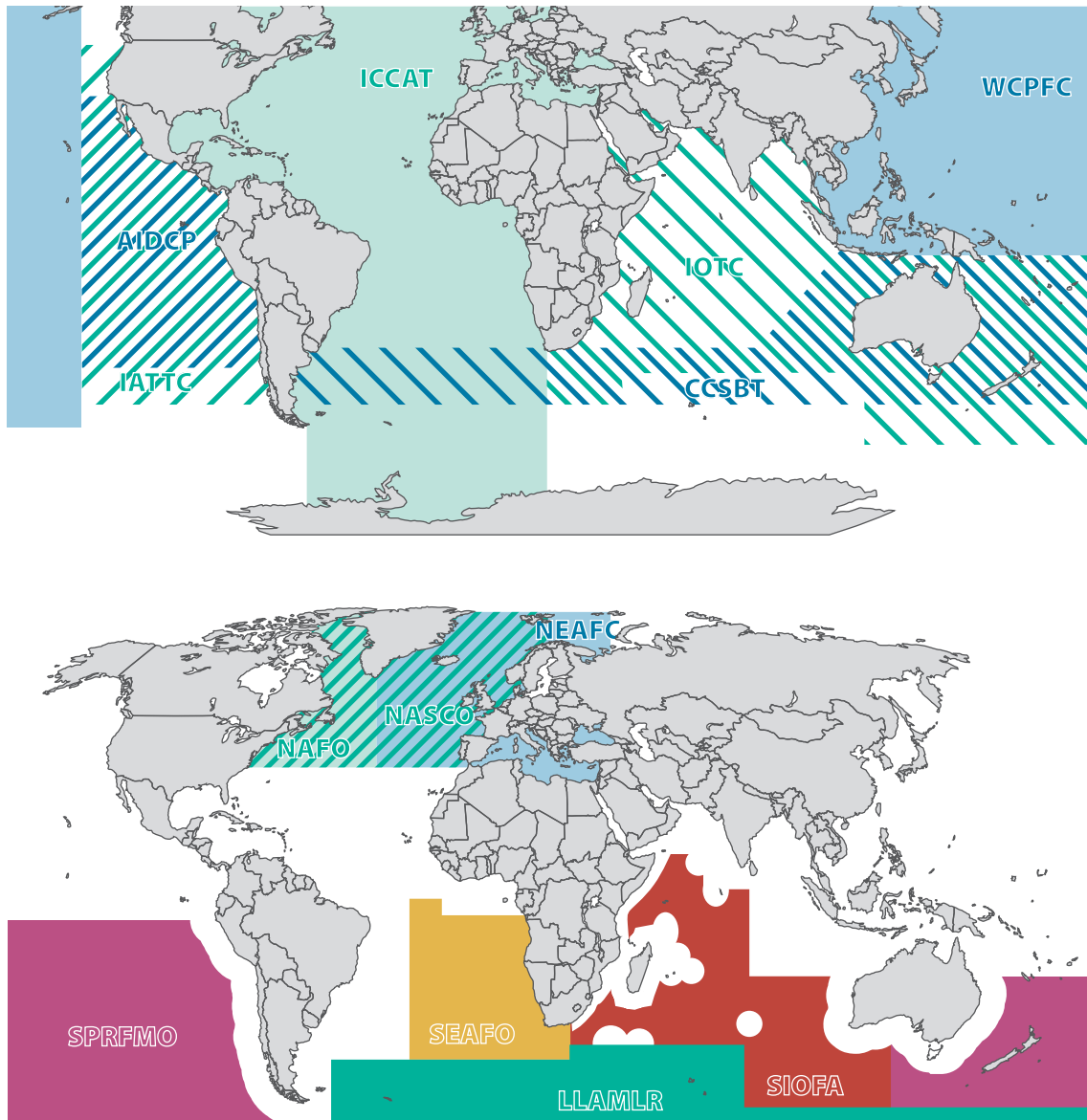
The CFP only applies within the 200 nautical mile limit of an EU member state, and is overwhelmingly focused on the rich Atlantic grounds.

The Mediterranean is still a multi-governmental arena through the General Fisheries Commission for the Mediterranean (GFCM), which includes the Black Sea. The GFCM came into being in 1952 and consists of 23 member countries plus the EU corporately, with the authority to set “*binding recommendations*”. It has sub-committees: the Scientific Advisory Committee (SAC), the Committee on Aquaculture (CAQ), the Compliance Committee (CoC), the Committee of Administration and Finance (CAF), along with their respective subsidiaries. It is headquartered in a palace in Rome that is in the process of being part-shared with the Lithuanians as their embassy.

Until recently, Baltic waters were largely run by an inter-governmental system under the Gdansk Convention. This ended only because EU territorial expansion made it redundant (Russia’s Baltic ports mean the process is now bilateral).

The lesson here is that the EU is used to cooperating in an international environment to manage stocks where it does not have direct control. It does so with the non-EU Nordic Atlantic states. It could do so with the UK if it left the CFP. As Figure 14.i shows, aside from bilateral arrangements, there are already a number of multilaterals that govern how migratory and at-risk stocks are managed. The idea that there needs to be a CFP because fish cross borders ignores existing international management practices.

Figure 14.i: Territorial scope of leading international fisheries organisations



Source: Various

14.1.1 Non-EU systems operate in the Atlantic already

With no CFP, the UK's international agreements would largely be made bilaterally (or with as many partners as had a direct fishing interest). This would prune the number of diplomatic and administrative hangers-on and simplify decision-making. With limited participation, no Qualified Majority Voting (QMV), legal clarity over jurisdictions, and direct shareholding of the stocks, there would be a greater incentive to reach realistic quotas based on scientific advice and genuine community assessments of where stocks currently lie (geographically and numerically).

A key part of the international framework is the UN. UNCLOS, the Convention on the Law of the Sea, defines basic rights and territorial limits. The Food and Agriculture Organization (FAO) is the UN's relevant body, including a Fisheries and Aquaculture Department. As its duties:

“Appeals to the WTO are not permitted by EU member states, since that is a corporate EU responsibility.”

- It collects, analyses and disseminates information on the sector’s operations (catch, production, value, prices, fleets, farming systems, employment);
- It develops methodology, assesses and monitors the state of wild resources and elaborates resources management advice;
- It monitors and advises on the development and management of aquaculture;
- It provides socio-economic analysis of fisheries and aquaculture, and assists in the elaboration of development and management policies and strategies and institutions;
- It supports and assists a network of regional fishery commissions and promotes aquaculture networks;
- It monitors and advises on technology development, fish processing, food safety and trade.⁴⁹⁷

In practical terms, these duties include providing technical support to conservation authorities, supporting the UN Code of Conduct for Responsible Fisheries, and advising on policy development. This is not a notional one desk operation. Component elements include the Programme and Coordination Unit (FIDP), FishCode Programme (FIDF), Fisheries and Aquaculture Policy and Economics Division (FIP), Policy, Economics and Institutions Branch (FIPI), Statistics and Information Branch (FIPS), Products, Trade and Marketing Branch (FIPM), Resources Use and Conservation Division (FIR), Aquaculture Branch (FIRA), Fishing Operations and Technology Branch (FIRO), and the Marine and Inland Fisheries Branch (FIRF). Its regional office covering Europe and Central Asia is, improbably from a maritime perspective, located in Budapest (since, as an FAO body, it covers agriculture as well).

The UN agreements the FAO oversees include the UN Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. This 1982 agreement is fundamental in that it established that states should cooperate to ensure conservation and promote the objective of the optimum utilisation of fisheries resources both within and beyond their Exclusive Economic Zones. In essence, this sets the template for managing stocks that straddle borders. It includes tools for monitoring, compliance, and for enforcement.

Disputes over caught fish are over a product, and are therefore subject to World Trade Organization (WTO) rules and resolution. Note, however, that appeals to the WTO are not permitted by EU member states, since that is a corporate EU responsibility.

In 2004, Scottish and Irish salmon farmers complained to the European Commission that Norway was engaging in dumping, selling salmon in the Single Market below market value on account of subsidy or state aid. The Commission imposed anti-dumping measures on Norwegian salmon, originally intended to last for five years, and it specified *“a minimum import price of EUR2.80 per kilogram for whole fish and other minimum import prices for salmon fillets, etc.”*⁴⁹⁸ Norway challenged the Commission at the WTO, which found in November

497 FAO “Fisheries and Aquaculture Department”, accessed 17/04/2015 at: <www.fao.org/fishery/organization/24544/en>.

498 Norwegian mission to the EU “EU repeals anti-dumping measures against Norwegian salmon” (2009), accessed 17/04/2015 at: <www.eu-norway.org/news/repeals_anti_dumping/#.VEkVUfk7tcZ>. Additional detail on the WTO website “DISPUTE DS337 WTO “European Communities - Anti-Dumping Measure on Farmed Salmon from Norway”, accessed 17/04/2015 at: <www.wto.org/english/tratop_e/dispu_e/cases_e/ds337_e.htm> and the EU trade website “WT/DS 337 – Anti-Dumping Measure on Farmed Salmon from Norway”, accessed 17/04/2015 at: <<http://trade.ec.europa.eu/wtodispute/show.cfm?id=350&code=2>>.

“Britain too would be able to defend its market access through the international bodies the Commission quietly obeys.”

2006 that the EU’s retaliation lacked evidence and was excessive, causing its measures to cease. The Norwegian Government summarised the triumph:

Norway brought the matter before the WTO with two objectives in mind: to have the existing anti-dumping measure withdrawn, and to obtain clarification of various points that would make it more difficult for the EU to impose such measures against Norwegian salmon in the future. The Panel’s report provides a sound basis for achieving both of these objectives.⁴⁹⁹

This indicates that Britain too would be able to defend its market access through international bodies the Commission quietly obeys. This should quell fears that, if Britain leaves the Union, the EU would arbitrarily take every opportunity to block British exports out of spite – it simply cannot.

Figure 14.ii: ICES advice progress



Source: ICES⁵⁰⁰

The ability of the UK to run its own fisheries policy is again demonstrated by the existence of another international body covering the area, one that predates the UN. The International Council for the Exploration of the Sea (ICES; CIEM in French) was founded by the UK and seven other states in 1902, following conferences held in Stockholm in 1899. It works to “promote and encourage research and investigations for the study of the sea particularly those related to the living

499 Norwegian Ministry of Foreign Affairs “WTO Panel rules in favour of Norway in salmon case” (2007), accessed 01/05/2015 at: <www.regjeringen.no/en/dep/ud/selected-topics/trade-policy/wto/wto_salmon/salmonreport.html?id=490213>.

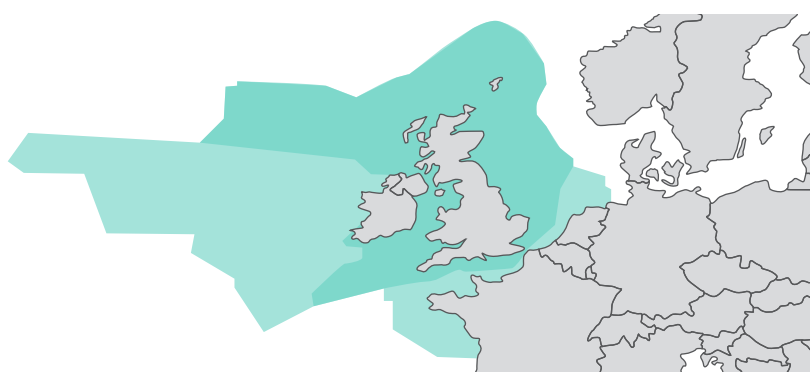
500 ICES “Follow our advisory process”, accessed 01/05/2015 at: <www.ices.dk/community/advisory-process/Pages/default.aspx>.

resources thereof" (Art. 1) and its research work is focused on the North Atlantic. In 2002, its role was reaffirmed as being to act "*as a strong and independent scientific organisation in order to improve its capacity to give unbiased, sound, reliable, and credible scientific advice on human activities affecting, and affected by, marine ecosystems.*"⁵⁰¹

ICES is headquartered in Copenhagen, meets annually or as required, and works largely by simple majority voting. It has a staff of around 56, operating on a budget of about £4.5m.⁵⁰²

Its personnel coordinate around 150 pan-national working groups such as the Working Group on Commercial Catches; the Workshop on Age Reading of Horse Mackerel, Mediterranean Horse Mackerel and Blue Jack Mackerel; the Working Group on Biological Effects of Contaminants; and the Working Group on the History of Fish and Fisheries (covering reviews of historical data).

Figure 14.iii: UK and neighbouring EU waters in the context of ICES ecoregions



Source: ICES⁵⁰³

From the viewpoint of providing vital statistics, therefore, the European Commission is not an irreplaceable asset either, dealing as it does with the data provided by national counterparts.

Then there is NAFO, the Northwest Atlantic Fisheries Organization.⁵⁰⁴ Its Fisheries Commission is responsible for the management and conservation of the fishery resources of the Regulatory Area (waters outside the Exclusive Economic Zones) and annually decides on the NAFO fisheries regulations, Total Allowable Catches (TACs) and quotas.⁵⁰⁵ These are based on advice from the Scientific Council, while internal and external relations are run through a General Council. It is managed from Nova Scotia, Canada.

NAFO has 12 full members. Ukraine has a seat. Japan and South Korea both have seats. France has a seat, representing St Pierre et Miquelon. Denmark is present representing Greenland and the Faroes. The UK does not have a seat, as EU members are otherwise represented by the European Commission. Outside

501 The Copenhagen Declaration on Future ICES Strategy (2002).

502 Compare with the Commission's DG Maritime Affairs and Fisheries, with a staff of 400 (as one of the smaller DGs), and which hands out that amount in subsidies on average every three days.

503 ICES Maps and spatial information, accessed 17/04/2015 at: <www.ices.dk/marine-data/maps/Pages/default.aspx>.

504 This is the successor to ICNAF, founded in 1949, itself an offshoot of what was in its first incarnation in 1921 the NACFI. Fisheries management is again shown to predate the EU. NAFO's geographical focus is further to the west.

505 Northwest Atlantic Fisheries Organization, accessed 17/04/2015 at: <www.nafo.int/about/frames/about.html>.

“The EU is instructing member states to comply with international law in order to comply with legally inferior EU law.”

the CFP, the UK would gain representation of its blue water fishing interests alongside Norway. Absurdly, as voting in NAFO is by membership, and typically through majority voting, the EU collectively has one vote whereas it previously had several through its member states.⁵⁰⁶

Other relevant international bodies include the International Commission for the Conservation of Atlantic Tunas (ICCAT). This was set up after a conference in Rio in 1966 and actually covers around 30 species. It is credited by members as being the only authority capable of managing these stocks. The UK (as well as France) is a contracting party, but only on behalf of its Overseas Colonies and Territories (OCTs). The European Commission acts on behalf of EU member states themselves.

Meanwhile, member states are still engaged at the International Maritime Organization (IMO) whose responsibilities include aspects of fisheries. The European Commission has encouraged member states to sign up to the IMO’s 1995 International Convention on Standards of Training, Certification and Watch-keeping for Fishing Vessel Personnel (the STCW (F) Convention). The Convention introduces, for the first time, an international standard for the training and qualifications of fishermen, and the UK had not ratified it previously. The reason it is seeking to do so now is somewhat telling: *“similar decisions arising in the context of the International Labour Organization impose, in practice, an obligation upon member states as failure to comply would be regarded by the Commission as a breach of EU law.”*⁵⁰⁷ In other words, the EU is instructing member states to comply with international law in order to comply with legally inferior EU law. In any event, it provides another example of how the EU is not operating in a vacuum.

14.1.2 The UK would cooperate better to help manage Third Party waters

One of the enduring scandals surrounding the CFP has involved Third Party Agreements (TPAs). These deals, largely covering Spanish vessels, allow continued or extended access to developing countries’ waters. The impact on desperate small scale fishing communities in these countries is such that it has been identified as one factor behind the rise of Somali piracy.

Chart 14.iv: List of EU fisheries TPAs as at late 2014

Country	Expiry	Type	EU annual contribution (€)
Cape Verde	<i>No protocol in force since 2014. New protocol initialled.</i>		
Comoros	2016	Tuna	600,000
Côte d’Ivoire	2018	Tuna	680,000
Gabon	2016	Tuna	1,350,000
Gambia	<i>No protocol in force</i>		
Greenland	2015	Mixed	17,847,244

506 We are not aware of any audit of how frequent this diplomatic loss is across international organisations, but it would increase as Commission competences become total. Croatia, for instance, had to withdraw from ICCAT on accession.

507 European Scrutiny Committee “Safety standards for fishermen”, accessed 17/04/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-xxi/21916.htm>. The situation is complicated by governments now recognising a conflict with EU employment law, and a challenge to the legal base at the ECJ.

Country	Expiry	Type	EU annual contribution (€)
Guinea	<i>Agreement and Protocol provisionally applied during 2009 but subsequently withdrawn.</i>		
Guinea- Bissau	2017	Mixed	9,200,000
Equatorial Guinea	<i>No protocol in force</i>		
Kiribati	2015	Tuna	1,325,000
Madagascar	2014	Tuna	1,525,000
Mauritania	<i>Protocol expired on 2014</i>		
Mauritius	2017	Tuna	660 000
Micronesia	<i>No protocol in force since 2010</i>		
Morocco	2015	Mixed	30,000,000
Mozambique	2015	Tuna	980 000
São Tomé and Príncipe	2018	Tuna	710,000 / 675,000
Senegal	2019	Tuna (+ hake component)	1,808,000 / 1,668,000
Seychelles	2020	Tuna	5 000 000
Solomon Islands	<i>No protocol in force since 2012</i>		

NGOs have repeatedly raised concerns about not only the economic impact of highly competitive western vessels on subsistence fishing, but also about ecological damage, illegal and illicit overfishing, and in particular unlawful and dangerous practices undertaken to facilitate the latter without detection. Greenpeace, for instance, has highlighted the impact of TPA bulk catch on Mauritanian and Senegalese communities. The UN further assesses that Guinea alone loses €105m of stocks to illegal fishing.⁵⁰⁸ With one in five Senegalese employed in the fishing industry, the risk to its economy has obvious knock-on effects: increasing attempts to migrate to Europe for alternative livelihoods. The CFP is correspondingly a key element in the disjointed system generating the EU's own migration crisis – its policies effectively export maritime unemployment, then the EU reaps what it sows in consequent legal and illegal immigration.

The example of Bluefin tuna serves as a broader management warning. ICCAT fisheries experts in 2007 recommended setting a quota of 15,000 tonnes on that fish. Horse-trading at the Council of Ministers led to an EU quota bid set at 29,000 tonnes. There have been similar increases in the quota for North Sea cod, despite 93 per cent of its 2008 catch being immature. The Commission identifies 88 per cent of EU stocks as overfished, compared with 25 per cent of world stocks.⁵⁰⁹ EU management systems are simply not fit for purpose.

508 See Guardian “Is the EU taking its over-fishing habits to west African waters?”, J. Vidal (2012), accessed 17/04/2015 at: <www.theguardian.com/environment/2012/apr/02/eu-fishing-west-africa-mauritania>.

509 The European Journal, (2009), page 5, accessed 17/04/2015 at: <www.europeanfoundation.org/publications-2011>.

“Through bilateral cooperation, Norway has remarkably good access.”

14.2 The UK could continue to cooperate with the EU on fishing

Key issues

- Management cooperation
- Preferential market access

Of course, Britain would cooperate with interested parties in managing both migratory fish stocks and the transition of foreign fleets operating within UK waters to a new system if it left the EU. UK delegates would, however, have their negotiating strength restored, since they would be managing a national resource to which they had full legal title.

14.2.1 Preferential market access to the EU could continue

The CFP is specifically not part of the European Economic Area (EEA) Agreement, so states like Norway do not benefit from automatic tariff- and quota- free access to the Single Market for their major seafood exports. Nevertheless, through bilateral cooperation, Norway has remarkably good access.

Over 60 per cent of Norway’s seafood exports were sold to the EU in 1999.⁵¹⁰ Sales to Eastern European states may even have expanded recently due to the EU’s standoff with Russia over Ukraine. Protocol Nine of the EEA agreement exempts some white fish from tariffs and reduces tariffs on others, but “[i]mportant Norwegian export products such as herring, mackerel, salmon, prawns, scallops and Norway lobster are not covered by the tariff reductions in the agreement, and are thus subject to high tariff rates when exported to the EU.” This isn’t the whole story – on some products, tariffs are designed only to discourage Norway exporting processed products. So instead, unprocessed fish are sold to Denmark (at a lower tariff) and Denmark benefits from the value added of bringing the goods to final market.⁵¹¹

In recent years, the EU and Norway have agreed to drop many fish and agricultural tariffs, as foreseen in the EEA Agreement’s Article 19 biennial review clause. Previously, it had often been Norway that “resisted EU efforts for ambitious liberalisation”.⁵¹² Here, however, we see Norway successfully protecting its interests. The EU exempted Norway’s cod, saithe (pollock), haddock and halibut from duty altogether.⁵¹³ Other tariff lines are extremely detailed so it is difficult to claim that ‘the tax on fish is X per cent’ or even ‘the tax on salmon is Y per cent’. Certainly, tariffs on Norwegian exports are extremely low. For example, while the EU’s general tariff on an average country’s sales of Atlantic Salmon, that is ‘whole or in pieces but not minced’, is 5.5 per cent, yet Norway enjoys a preferential rate of zero per cent.⁵¹⁴ On a type of raw frozen herring fillets, Norway’s tariff from the EU is three per cent as compared to the world’s 15 per

510 Norwegian Ministry of Foreign Affairs “Part 6 – The EEA and Norway’s room for manoeuvre”, Report No.12 to the Storting (2000–2001).

511 Norwegian Ministry of Foreign Affairs “Part 6 – The EEA and Norway’s room for manoeuvre”, Report No.12 to the Storting (2000–2001).

512 European Commission “A review of the functioning of the European Economic Area” SWD (2012) 425, (2012), pages 11–12.

513 European External Action Service website “EU and Norway Trade Relations”, accessed 17/04/2015 at: <http://eeas.europa.eu/delegations/norway/eu_norway/trade_relation/index_en.htm>.

514 European Commission “Taxation and Customs, TARIC database”, accessed 17/04/2015 at: <http://ec.europa.eu/taxation_customs/dds2/taric/measures.jsp?Lang=en&SimDate=20140620&Area=NO&Taric=1604110030&LangDescr=en>.

“Several countries demonstrate how North Atlantic fisheries management can successfully operate outside the CFP.”

cent.⁵¹⁵ Herring in airtight containers faces no tariff if exported from Norway, but 20 per cent if sold to the EU from a third country.⁵¹⁶

There are numerous examples of these preferential tariff lines: herring, mackerel, caviar and caviar substitutes, frozen or cooked lobster, and smoked salmon. This shows that Norway is far from locked out of the EU market for its principal goods. In any case, many Norwegians who are critical of the current EFTA-EEA situation argue that tariffs are an unimportant consideration in fish sales, because factors like “*purchasing power, consumer preferences, pricing policies at the wholesale and retail*” all outweigh them. The removal of all EU tariffs on Norwegian exports would save 1.5bn Norwegian kroner (or about £144m at the time of writing).⁵¹⁷

14.2.2 Current UK approaches differ hugely from countries that have looked after their fisheries and stayed out

Several countries demonstrate how North Atlantic fisheries management can successfully operate outside the CFP, placing a higher premium on scientific evidence and banning discards. We will review some of the principles later, but how do these countries cooperate technically with the EU?

Norway has three fisheries agreements with the EU. The Bilateral Arrangement covers the North Sea and the Atlantic, the Trilateral Agreement covers Skagerrak and Kattegat (Denmark, Sweden and Norway), and the Neighbourhood Arrangement covers the Swedish fishery in Norwegian waters of the North Sea. Notably, Sweden was first involved as an independent partner when it was outside the EU. The legal framework is renewed every six years and can be denounced with nine months notification. Fishing for mackerel, herring, cod, haddock and plaice are thus jointly managed and quotas are set by agreement, guided by the realities of what share of the waters fall within whose national Exclusive Economic Zone fisheries limits.

Iceland's arrangements with the EU are governed by the Northern Agreement, working along a similar renewable timeframe to Norway's. Iceland is an iconic case study given its part in the three Cod Wars, revealing the significant national interests at stake in control of these fishing grounds.⁵¹⁸

The Faroes is also a revealing example because of a recent dispute with the EU over mackerel, which led to restrictions being placed on EU (as it happens, Scottish) access. That was resolved, to Faroese advantage, with new mutual quota arrangements in late 2014.

515 “*Fillets, raw, merely coated with batter or breadcrumbs, whether or not pre-fried in oil, frozen; Of the species *Clupea harengus**”, European Commission “Taxation and Customs, TARIC database”, accessed 22/05/2015 at: <http://ec.europa.eu/taxation_customs/dds2/taric/measures.jsp?Lang=en&SimDate=20140620&Area=NO&Taric=1604121010&LangDescr=en#CD590>.

516 European Commission “Taxation and Customs, TARIC database”, accessed at: <http://ec.europa.eu/taxation_customs/dds2/taric/measures.jsp?Lang=en&SimDate=20140620&Area=NO&Taric=1604129920&LangDescr=en#CD590>.

517 Nei til EU “*Alternativrapporten: The Alternative EEA Report*”, S. Gjelsvik *et al* (2012), pages 99–100. The Alternative Report argues that Russia, India and China have all increased their fish imports despite 15–30 per cent tariffs, yet Swiss imports declined despite no tariff existing. They argue there's ‘no correlation’ between customs and fish exports, partially since it's usually the customers who pay the difference, not the exporter (who gets the same profit regardless of destination).

518 The three clashes took place in 1958, over Iceland's extension of the EEZ to 12 n.m.; 1972–3 over its extension to 50 n.m. (did this influence Heath's negotiators?); and 1975 over the speed of the introduction of the new 200 n.m. limit. Iceland achieved its objectives and extended its sovereign waters. The UK, having ceded its EEZ fishing rights to the then-EEC, was unable to do likewise.

“Even without there being an EU bilateral agreement in place, structures exist through which obligations, limits and rules are still managed.”

Greenland withdrew from the EEC after gaining devolution from Denmark and with the victory of a withdrawalist party in its 1979 elections.⁵¹⁹ Its intent was confirmed in a referendum in 1982. The Danish Government had previously pledged to honour the results of the vote, and negotiated on its behalf. The result was a deal that allowed for continued access to Community fisheries markets, in exchange for a ten-year transitional fishing agreement. The current bilateral had a new protocol negotiated in 2012, setting out a slightly reduced EU quota.

The basic principle here involves both parties agreeing a quota for each species, in exchange for which the host country receives a payment. Additional funds may be provided for scientific research, allowing for the biomass to be better monitored so that future quotas can be more responsibly allocated. EU fishing vessels also pay the country a licence fee to be registered. A new development has been the inclusion within the text of a reference to suspending the deal if either side breaches “*essential and fundamental elements of human rights*”, though this appears to be largely included to mirror the text in other third party agreements where allegations have been made of major transgressions involving Spanish trawlers.⁵²⁰

Canada provides a further useful comparison, given the fisheries clash between its maritime authorities and Spanish trawlers in the 1995 Turbot War.⁵²¹ The Grand Banks fisheries had collapsed due to over-exploitation, and in response the Canadians enforced strict control measures within their waters. However, responsibility for the stocks in international waters was less clear-cut. A Spanish trawler was seized outside the Canadian Exclusive Economic Zone, having dumped nets illegal to Canadian waters. The boat turned out to be full of undersized fish, and (more seriously) was running double book-keeping and had a concealed hold containing moratorium stock.

The breach in this case was not over a bilateral arrangement between the EU and Canada, but involving a higher treaty and an international organisation, the Northwest Atlantic Fisheries Organization (NAFO), that covered the High Seas. The key point is that, even without there being an EU bilateral agreement in place, structures exist through which obligations, limits and rules are still managed.

14.2.3 Management cooperation would continue

Management of restored UK waters would naturally fall to the national authorities. In practice, it would be down to Britain to make decisions on issues such as fleet management, inspection, modernisation aid, and community grants onshore. Such market intervention may be restricted by any new agreement with the EU. Yet this could be offset by other aspects of the terms; in particular, they could address the minimum share of landings required at UK ports by vessels fishing in UK waters, generating increased economic activity in UK harbours.

Certain other areas would also result in likely bilateral agreements. This is particularly true of food safety. With sea fishing, this would likely be limited to issues surrounding mutually-agreed authorised preservatives entering the food chain. In aquaculture, the same principles would apply as to food safety monitoring after the CAP.⁵²² In essence it is about agreeing a commonly-applied

519 Aside from issues surrounding fisheries, which constituted half of the national income, Greenlanders were also dissatisfied as a massive food importer over high food prices resulting from the CAP.

520 Safety violations particularly from ‘darked out’ illegal fishing at night, resulting in collisions.

521 Known as the Halibut War in the UK: the particular sub-species have different names.

522 See Section 13.

“The EU is seeking wider control of its surrounding seas.”

list of chemicals that scientists determine are safe to use. In this, as with agriculture, international systems already apply.

14.2.4 EU ambitions for a Common Maritime Policy are even greater still, and will not go away

A central concern over the policy underpinning common fisheries management is that it is merely one part of a move towards a much wider Common Maritime Policy. As long as the UK subscribes to the CFP, it is associated with a large number of flanking programmes and ambitions reaching beyond inter-governmental assistance.

The EU is seeking wider control of its surrounding seas.⁵²³ Its ambition includes setting policies for renewable energy, shipyards and other infrastructure, cyclones, immigration, fisheries management (long seen as best achieved through a common European fleet), nutrition in seafood, environmental disasters such as those generated by oil slicks, port management, sea lanes (and therefore Dover Control), flag registers, maritime accident investigations, maritime research, dredging, climate change, coastal defences, terrorist threats, tourism, maritime surveillance, angling, smuggling, trafficking, piracy, naval defence, the coastguard, search and rescue, heritage (including museums and underwater archaeology), yachting, and so forth.

The Commission is clear as to what is meant to emerge from this process: “A sense of common identity may well be one important side effect of bringing stakeholders together to participate in maritime planning processes.”⁵²⁴ As one study has observed, noting the above list of EU ambitions:

For as long as the UK is a part of the Common Fisheries Policy, all of these are at risk from being run by Brussels. The UK would be by default accepting the premise that there should be a Common Maritime Policy, constituting the above. Lift any item from that list, and the Commission is already planning a common policy around it. If it floats, swims, scuttles or rusts, it will increasingly be managed elsewhere – unless we extricate ourselves from the CFP, and even then that is no watertight guarantee⁵²⁵

An example of this in action is the development of an Action Plan for a Maritime Strategy in the Atlantic Area. This in turn is happening in the context of the Commission’s drive for “Blue Growth”, i.e. issues connected with the maritime economy. The implication is that the Commission has a responsibility to legislate since it identifies a sector with 5.4m EU jobs and €500bn GVA associated with it. When it does legislate, however, it will do so for the entire EU, and not for the specific benefit of the neighbouring ports whose resource under international law it otherwise would be.

This is not to say that wider maritime policy is beyond the scope of bilateral cooperation. The UK has a vested interest in Mediterranean states policing their waters to interdict human traffickers and the flow of illegal migrants. Once in

523 The concept is for instance set out in European Commission “Towards a Future Maritime Policy for the Union” (COM (2006) 275 final), (2006), accessed 17/04/2015 at <http://eur-lex.europa.eu/resource.html?uri=cellar:b2e1b06a-6ca9-4e24-ac15-60e1307f32e2.0003.03/DOC_1&format=PDF>.

524 European Commission “Towards a Future Maritime Policy for the Union” (COM (2006) 275 final), (2006), accessed 17/04/2015 at <http://eur-lex.europa.eu/resource.html?uri=cellar:b2e1b06a-6ca9-4e24-ac15-60e1307f32e2.0003.03/DOC_1&format=PDF>.

525 See Civitas “Hard Bargains or Weak Compromises”, B. Binley & L. Rotherham (2015), page 71.

Andalucia or Calabria, migrants who arrive within Schengen potentially have free run across a borderless EU as far as Sangatte. Assisting with the patrolling of these waters is ultimately a matter of common interest, even if the nature of the assistance (financial or, for instance, aviation from Gibraltar) is open to debate.⁵²⁶

A view from abroad – and 10 years of possibilities since wasted

“The Common Fisheries Policy is a joke – a cruel joke. That was what Struan Stevenson MEP and I were told by the fishermen of Iceland when we visited their country recently. They had nothing but contempt for a system that had driven British industry into penury and caused a widespread collapse of stocks.

“This opinion was shared by officials who manage the Icelandic fisheries and even leading bankers on the island. One, who invests worldwide in successful fishing industries, has made it company policy not to invest in any fishing business in Russia or the EU because of arbitrary political decisions.

“The Icelandic Fisheries Ministry explained that its core objective is to ensure that fishing is not a burden on the economy, but must contribute to it. They have certainly succeeded in doing that. Fisheries now accounts for 10 per cent of Iceland’s GDP. It employs 5,000 marine fishermen and another 5,000 ancillary workers and processors onshore.

“As to the industry itself, its prosperity is obvious. There were modern, well-equipped trawlers tied up in the fish docks in Reykjavik, and modern fish processing plants. Prosperity was something the industry shared with the Faroes, which I visited earlier this year. Yet, in a country of 293,000 people that claims ownership of 260,000 mobile phones, the fisheries system could not be more different.

“While the Faroes rely on effort control – with days at sea – the Icelanders dismiss this idea. They rely on an annual TAC and Individual Transferable Quotas (ITQs). Quotas can be bought and sold between fishing companies, none of whom are allowed to own more than 12 per cent of the total quota.

“This has seen the consolidation of the industry, which is now owned by around a dozen major companies. However, because the fishermen themselves own the resource – the fish stocks – there is no landing of [illicit surplus to quota] ‘black fish’, very little discarding and a general drive towards a fully sustainable fishery, where no more than a quarter of any stock can be fished in a single year.

“Although different in that respect from the Faroes, it is also successful. Cod stocks have fluctuated between 1.5 and 2.5m tons over the last decades and catches are lower than in the heady days of the 1980s when stocks of 1.2m tons were recorded. But they have clawed back from the disastrous ‘90s, when they dropped to 600,000 tons, currently restored to a healthy 8-900,000 tons, allowing landings of over 200,000 tons. Total catches of all species amount to some 2m tons. Skippers and senior crew bringing home earnings of €100,000 a year are not abnormal. To achieve this, their system has commonalities with the Faroes – not least national control. Not only are discards banned, there is a premium on getting rapid, accurate information from the fishery, fast decision making and very rapid implementation.

“With TACs calculated annually, allowing vessel quotas to be allocated (with specific quotas reserved for small vessels), the significant difference between the Icelandic system and the EU is the information flow. While the

526 Though such cooperation would obviously not be taken in isolation, but in conjunction with a reformed series of UK policies covering both push and pull factors. See Section 12.

CFP is based on old and unreliable data, Icelandic TACs are determined with the most up-to-date information from landings, which is generally reckoned to be accurate, augmented by extensive data from government survey vessels.

“Also, the fishing effort is constantly being fine-tuned. Reports of excessive juveniles being caught are radioed in to the Fisheries Directorate, which employs 95 staff, and the area affected is immediately closed. Public radio broadcasts are made to warn fishermen to steer clear of the designated area. Additionally, there are huge conservation areas, off-limits to fishing, to preserve spawning and juvenile stocks.

“The Government sets the rules, and the fishermen are left to get on with it. There are no subsidies and no state aid. Those who break the rules are ‘named and shamed’ on the Fisheries Directorate internet site. Serious or serial offenders lose their licences. This light touch has seen the fleet contract from 2,500 registered vessels in 1992, to less than 1,700 in 2002, with fewer people employed. But capacity has not reduced significantly. The fleet has become more modern, and more efficient, as the stability afforded by the management system has encouraged vessel owners to invest. This is not just confined to the large vessels. Skippers of boats under ten metres are prospering as well. They have one of the most modern and efficient fleets in the world.

“What gives the system some of its advantages is its flexibility. Skippers who land over quota are allowed to buy more quota to cover the excess, although they are only given 48 hours to do so, once the fish are landed. On the other hand, skippers who do not meet their quotas are not allowed to keep them – to prevent people making a living out of trading quotas.

“Yet, despite their successes, they admit that they still do not fully understand the ecosystem on which they depend. They have thus invested in a world-class marine research centre, which employs 180 people, paid from a levy on fish auction prices. It is this that helps to keep Iceland in front, in a rapidly changing market, where quality and availability of stocks are at a premium.

“Generally, the Icelanders are happy with their system. Certainly, the fact that they can make fishing pay made a refreshing change from the doom and despondency of Britain, where the British Government is pouring money into scrapping our best and most modern vessels and where crew members and skippers are thrown on the dole in large numbers. Their flexibility and imagination was in total contrast to the leaden bureaucracy of the CFP.

“We were deeply impressed by a system that has been so successful that the Government is about to implement a special resource tax of 9.5 per cent on ‘excessive profits’ from the industry.

“We left determined that, at the first available opportunity, we will restore national and local control to the British fishery. We will use the Iceland experience, and the experience from the other fisheries we have visited, to help us shape a successful UK policy [outside the CFP].”

Rt. Hon. Owen Paterson MP⁵²⁷

14.3 New fishing policy opportunities would become available

Currently, the CFP is run by the European Commission. Restoring it to national control allows for the Government to completely rethink how it manages British waters, starting with the principle of handing powers down to local community

527 The European Journal Volume 11 Number 7, (2004), page 7.

“Stocks collapse if no government can unilaterally protect them from foreign predator fleets.”

control. The UK and its devolved assemblies could be as radical as they wanted, and as restrictive with licensing as they considered appropriate, in rationally interpreting the scientific evidence on what actions safeguarding stock replenishment over the long term are needed.

Presumably, the UK would draw upon the lessons learned by the Canadians from their attempts to undo the damage done to the cod industry in the Grand Banks. Unfortunately, there are many other collapsed industries that provide similar case studies. The primary lesson appears to be that stocks collapse if no government can unilaterally protect them from foreign predator fleets. The second is that stocks will take a long time to recover, and there is no magic wand to undo the damage already done.

14.3.1 The CFP has suffered from longstanding problems and enduring failure to reform

The EU's management system has always been flawed; the UK, in whose waters much of the resources would otherwise have fallen, is in a sense merely the worst loser – but by far. Recent reforms have started to acknowledge the inherent flaws in the system, but are doomed to only ever supply a partial relief. This is because any solution has to begin with the competence being removed from EU control and fully run by those with a vested interest in the resource.

The problems with the system fall into 10 principal categories;

- **Financial:** the UK has been contributing tax money to other countries, which have received hundreds of millions to support their fleets, without getting anywhere near a like amount back;
- **Competitive:** these funds have been used to upgrade competitors – vessels, harbours, factories and infrastructure – rendering the UK fleet less able to compete on an equal footing;
- **Infractional:** rules have been bent if not broken by the system of quota hopping, meaning that foreign owners have bought up larger UK permits and vessels from British owners who have been unable to compete at sea. Attempts to remedy this in law have been obstructed at the EU;⁵²⁸
- **Territorial:** the UK outside the CFP would be regulated under the UNCLOS (the UN Convention on the Law of the Sea), giving it increased control rights. But while enjoying perhaps 80 per cent of the resource (seafood), the CFP allocated the UK 37 per cent by volume and perhaps 12 per cent by value;⁵²⁹
- **Ethical:** the UK has contributed to the funding of third party waters access, supporting similar undermining of third world fishing communities;
- **Equity:** as a common policy, countries with no interests and even with no coast get to vote on traditional UK waters. This gives them a free bartering chip to claim against the UK elsewhere;

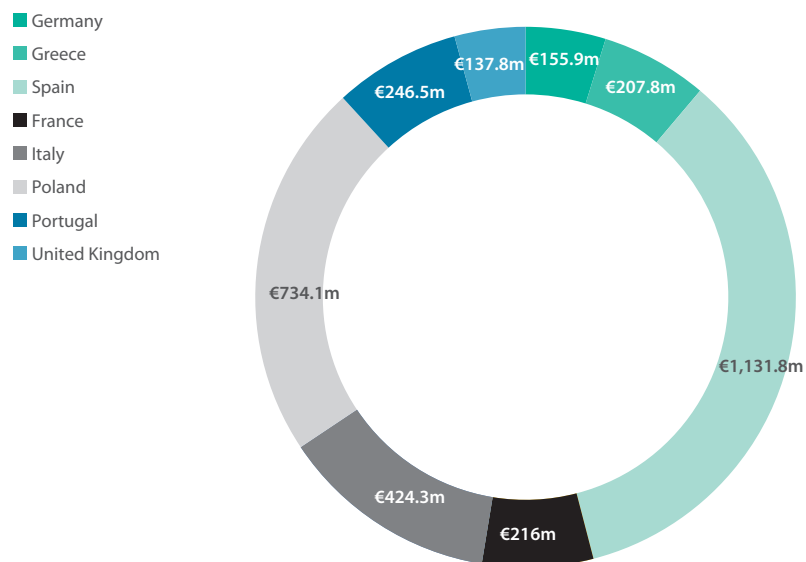
528 Particularly in the Factortame Case and its slow-burning aftermath. The background to this was an attempt by the UK Government to legislate to prevent quota hopping, by foreign owners buying UK vessels and their associated catch quota. This was eventually overturned as discriminatory.

529 Source: Save Britain's Fish (SBF). Cited for example in Centre for Policy Studies "The Essential Guide to the European Union", R. Lea, 2004, accessed 17/04/2015 at <[www.cps.org.uk/files/reports/original/111028111302-TheEssentialGuidetotheEU](http://www.cps.org.uk/files/reports/original/111028111302-TheEssentialGuidetotheEU.pdf)>. pdf page 95. SBF notably accurately predicted the long term direction of EU travel.

- **Parity:** there is no parallel system for the Mediterranean, Black Sea or Baltic. Baltic EU accession countries were not supposed to gain improved access for their fleets on joining. Instead, increased access has been permitted with just a potential option to restrict access to pre-accession boats within a 100nm limit, and only in extreme circumstances. Given that Polish vessels fished in the North Sea and Norwegian Sea prior to the collapse of herring and mackerel stocks there, even that caveat is open to challenge;
- **Continuity:** the UK retains its six and 12 miles limits only at the cost of renewing a derogation every ten years.⁵³⁰ This comes at a potential negotiating price elsewhere;
- **Ecological:** the CFP has been disastrously mismanaged and has wrecked the resource, which will take a very long time to recover. The EU has been dumping millions of tonnes of dead fish into the sea since first introducing a quota system in 1983 – the Total Allowable Catch;
- **Contextual:** there is a broader integrationist maritime policy which threatens wider UK interests, including North Sea energy and maritime security.

Despite the key location of the resource, the grants given to support the extracting fleets have not been favourable to the 1973 accession states. It is not even as if the communities doomed to decline have been cushioned, but rather those that are doing the most damage have seen their horsepower boosted, their vessel size increase, their catch capability grow, and their distribution network facilitated. Figure 14.v demonstrates the disparities.

Figure 14.v: Total European Fisheries Funds (€) received by a number of member states (2007–13)



Source: HM Government⁵³¹

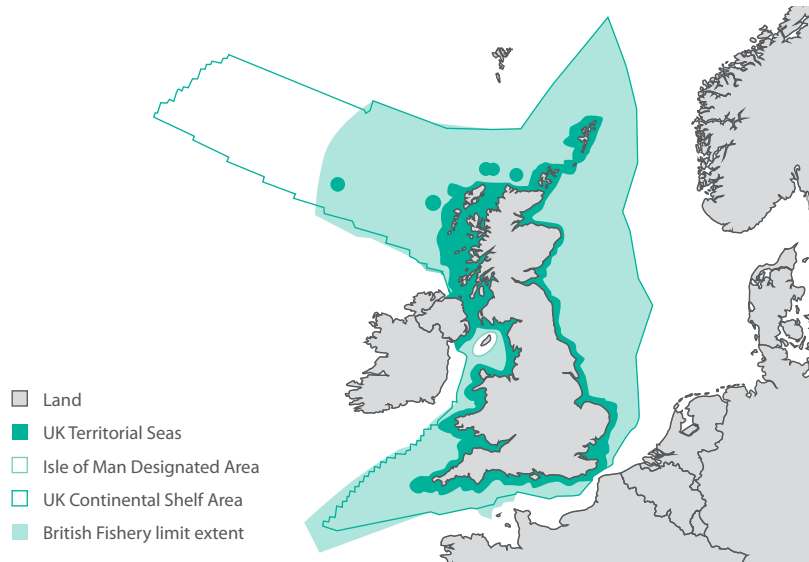
530 Failure to achieve this on the first deadline led to the 1983–4 Kent Kirk Case, where a Danish skipper won a court case proving the default – i.e. that the absence of a continued derogation meant the loss of the waters.

531 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Fisheries Report” (2014), page 42

The CFP in its modern form has been around since the early 1980s and these problems have only increased.

The following map shows the UK's actual and surrendered territorial rights. The UK retains its inner waters (six and 12 mile limits) but only under a rolling derogation; in this area only UK vessels (0–12 miles) along with non-UK vessels with traditional access (6–12 miles) can fish. Beyond that out to 200 nautical miles, or the median line with another state, is the UK economic zone in which fishing rights are pooled between EU nationals.⁵³²

Figure 14.vi: Surrendered UK fishing waters (light green)⁵³³



Source: JNCC⁵³⁴

14.3.2 As long as we remain in the CFP, there will be a significant impact on the UK

It is difficult to quantify the damage caused to the UK from this policy failure, but an attempt has been made. An audit in 2009 came to the conclusion that unemployment in the fishing fleet and in support industries cost £138m in that year; economic decline in coastal communities had a direct impact bill of £27m; the risk of pending damage to the recreational fishing industry (at the low estimate) ran at £11m; the UK share of support to foreign fishing fleets under EU grants was £64m; the UK share of support to foreign fisheries industries under EU grants was £1m; the redeemable UK share of EU third water fishing permits (allowing for half to be reinvested in development aid) was £12m; the loss of comparative competitiveness was calculated at £10m; the cost of decommissioning schemes added £4m; foreign flagging of UK vessels meant an economic loss of £15m; and the administrative burden cost £22m.

By far the greatest impact was the opportunity cost due to loss of access to home waters under the 200 nautical mile principle – a surrender estimated

532 Since 1976, 200nm has been the new maximum limit for the exercise of UK sovereign rights in fisheries and renewable energy powers. Marine planning and nature conservation powers could extend further.

533 Boxed but unshaded waters around Rockall (amounting to 60,000 sq. miles) were unilaterally ceded by the incoming UK Government in 1997, though continental shelf claims remained applied. The motive appears to have been a trade-off, as legal rights to the latter under international law were strengthened at the cost of the former. Note also incidentally the exclusion of Channel Islands and Isle of Man waters.

534 Joint Nature Conservation Committee, accessed 17/04/2015 at <<http://jncc.defra.gov.uk/page-1478>>.

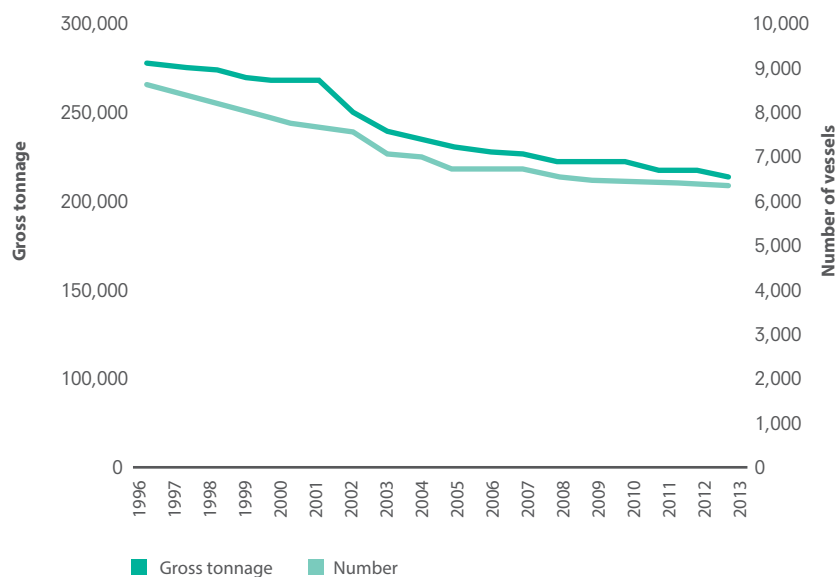
to run annually at £2.11bn. Higher food prices also needed to be factored into social security payments, calculated at £269m; while the loss of the economic value of dumped fish meant the physical destruction of £130m. That meant a total annual end cost estimated for the UK of the CFP running at £2.81bn.⁵³⁵

In practical terms, this is best seen by comparing the number of fishermen in the industry before the CFP was introduced and now. In 1970, employment ran at 21,443 full and part-time. Over the 1970s up to the mid-1980s, there was a small reduction in full-time work and a slightly larger increase in part-time work. UK vessels continued to land at more or less the same rate in UK ports.

Accession of the huge Iberian fleets to UK waters changed matters: 20,703 British fishermen in 1994 became 12,152 in 2013. Gross vessel tonnage dropped from 274,532 in 1996 to 197,283 in 2013, as a quarter of the vessels went.⁵³⁶

Central to the damage has been the system of the Total Allowable Catch. The management system involves a political agreement being reached over the total tonnage of fish allowed to be caught in an area in a given timeframe. This is parcelled out among fishing nations, and it is in turn shared out among a nation's fishermen. Once a Total Allowable Catch limit is reached by a boat or by a country, it has to stop fishing for that species. Where species live alongside one another, this obviously creates particular difficulties and the standard obligation has been for them to be dumped back overboard, regardless of their chances of surviving. As quotas vary from country to country and species to species, the other discordant result is often that trawlers in British ports a few miles from the shoals cannot go out to sea, while boats from further afield continue to go about their business. The accession of the large Iberian fleets, and their accelerated access to traditional British and Irish fishing grounds (in return for not vetoing accession applicants), made a difficult system of managing a finite resource impossible.

Figure 14.vii: Continuing decline of the UK fleet in recent years



Source: UK Parliament⁵³⁷

535 TaxPayers' Alliance "The Price of Fish: Costing the Common Fisheries Policy", L. Rotherham (2009).

536 Marine Management Organisation "UK Sea Fisheries Statistics" (2013).

537 House of Commons "Sea Fisheries Statistics" (2015), page 9, accessed 17/04/2015 at: <www.parliament.uk/briefing-papers/SN02788/sea-fisheries-statistics>.

“The UK outside the CFP would regain control of its extensive fisheries.”

The one item of the 10 on the above CFP failings list in which progress has been made is over dumping. But even that reform is being phased in, and has taken 30 years to negotiate. It remains a clear demonstration of the inflexibility of a system based on national self-interest, bartering, and a weak UK hand in meetings run by QMV. Unless the UK leaves the EU, the problems inherent in the system will be increasingly felt in particular by Scotland, which hosts an increasingly disproportionate rump of the surviving British interests and fleet.⁵³⁸

Moves to devolve power downwards have merely masked the ‘quangocraciation’ of the system rather than develop better management principles. The new EU attempt at localised fisheries management is a system of Regional Advisory Councils, which have representatives from the relevant fisheries industries as well as scientific experts. The North Sea Regional Advisory Council, for instance, has an Executive made up of 23 members. Its work covers waters IVc (properly the territorial interests of the Netherlands, Belgium, Picardy and England); IVb (the wider UK, Germany, Denmark and the Netherlands); and IVa (Scotland, Norway, and the Faroes).

Its promise is marred in practice. Several of the Executive’s members are not fishing groups but environmental campaigners. Of the fishing representatives, two represent Baltic Sea states. Only three come from the UK. There are more Brussels-based lobby members than English and Scottish representatives combined. It has little real power anyway – it can only make recommendations to the Commission, so the CFP remains extremely centralised. There are no Norwegian representatives, because this council advises the Commission, which is the actual intermediary with Oslo.⁵³⁹

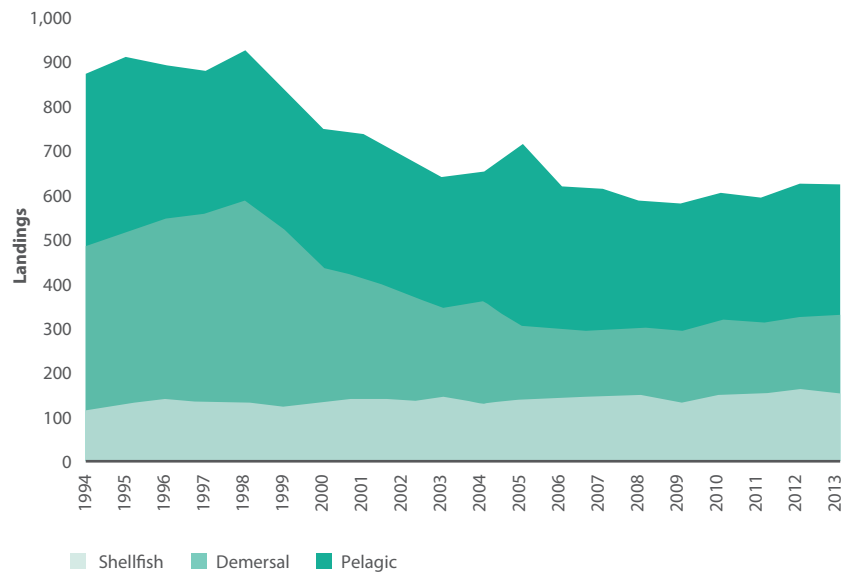
The UK outside the CFP would regain control of its extensive fisheries, and end the decline in landings (see Figure 14.viii). How it chose to manage stocks would be a matter of national debate, along with the duration of the transitional period to be allowed for foreign vessels currently in national waters. This variable, along with the quota-equivalent to be assigned, provides the UK with a strong lever in renegotiating other aspects of the Treaties – providing fisheries patrol vessels are prepared to enforce it, and the Department for Environment, Food & Rural Affairs (DEFRA) is prepared to fine and completely ban those caught transgressing.⁵⁴⁰

538 60 per cent of the resource by tonnage and value, 40 per cent of the fishermen. HM Government “Scotland analysis: EU and international issues” (2014), page 59, accessed 01/05/2015 at: <www.gov.uk/government/publications/scotland-analysis-eu-and-international-issues>, though this figure excludes some English waters ‘boundaried’ to be run by Edinburgh. The Scottish minister participates in quota talks with UK delegates and could take the lead. The CFP has been a notable area of discordance within the largely pro-EU SNP.

539 North Sea Advisory Council, accessed 17/04/2015 at <www.nsrac.org>. Thus in IVa, and indeed to the North West of Britain, true devolution should properly be to representatives of Scotland alone. That, however, would undermine there being a ‘common’ policy.

540 Policing could be made easier by requiring catches in UK waters to be landed in UK ports, other than for trusted boats. This would also have a knock-on effect for secondary economy links. ‘Klondiking’, or at-sea transferral to other vessels, would also need to be monitored. Given EU vessels would still need to be ‘tagged’ to comply with the EU’s own rules, this should be possible.

Figure 14.viii: Decline of UK landings



Source: UK Parliament⁵⁴¹

14.3.3 The CFP has always been disastrous to stocks

The extent of the opportunities available for sensible stock management outside the CFP becomes apparent when the scale of the mismanagement to date is considered dispassionately. Contrary to the global drive for vessels of under 30 feet, which fosters conservation and community links, the EU system supports what Greenpeace styles “monster boats”.⁵⁴² As a result, 15 per cent of the Danish fleet by number catch 90 per cent of the national Total Allowable Catch, while one Dutch owned UK-flagged vessel has 23 per cent of the English quota. The system’s further complexities are shown by the example of the owners of one vessel selling landings in Africa in order not to comply with EU food safety law.

By contrast, pre-accession Croatia was able to ban fishing by companies founded by foreign nationals. Foreign vessels and even fishermen were only allowed in if covered by a bilateral.⁵⁴³ Outside the CFP, working with other North Sea littoral states and Ireland, the UK could set stricter management terms over vessel tonnage, just as it could over mesh size, closed waters, gear types, damage to the marine food chain, and methods – including those that increase the risk of cetacean bycatch (accidentally catching dolphins, whales and porpoises). Boat size is not the only problem that has persistently damaged stocks. It has led to peculiar arrangements such as arose in 2004, where the Fisheries Council (by QMV) banned just the local Scottish vessels from the North Sea because their haddock included a five per cent rate of cod bycatch, leaving Danish, German and French vessels in the same grounds. In the meantime, no

541 House of Commons “Sea Fisheries Statistics” January 2015, accessed 17/04/2015 at: <www.parliament.uk/briefing-papers/SN02788/sea-fisheries-statistics>.

542 Of that organisation’s top 20 worst offenders, only two are British flagged, and both are foreign owned. Indeed, one is Icelandic, which makes a particular mockery of the EU bilaterals system. Greenpeace has its own name for quota-hopping: ‘flag milking’. Greenpeace “Monster Boats: Scourge of the Oceans”, page 8, accessed 22/05/2015 at: <www.greenpeace.org/eu-unit/Global/eu-unit/reports-briefings/2014/GP_monsterboats_report.pdf>.

543 European Commission “Screening report: Croatia”, (2006), page 4, accessed 17/04/2015 at: <http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_13_hr_internet_en.pdf>.

“The most obvious failings in the CFP have come through discards.”

account was taken of the industrial-scale dredging of hundreds of thousands of tonnes of sand eels, the bottom of the marine food chain, to turn into pig feed.⁵⁴⁴ Nor was any attempt made to allow for a reduction in cod catch by modifying the nets and trawl process.

The most obvious failings in the CFP have come through discards – the policy of fish surplus to quota having to be dumped back into the sea, rather than landed and counted against future quotas, regardless of their survival rate.

The extent of discards varies massively from year to year, particularly as individual fisheries are closed and quotas change. However, a Commission staff working paper from 2011 made the following remarks on discards:

Most of the so discarded species die, but as TACs are based on landings, discarded fish are not taken into account. This unaccounted mortality reduces the effectiveness of the TAC system as a conservation tool and undermines scientific advice, which requires reliable data. Based on EUROSTAT data it can be estimated that in European fisheries 1.7m tonnes of (all species) are discarded annually, corresponding to 23 per cent of total catches.⁵⁴⁵

For context, 1.7m tonnes would keep Billingsgate fish market fully occupied for the next 68 years.⁵⁴⁶ In the same report, the Commission actively repudiates the CFP:

Has the CFP performed as expected? The conclusions of the Green Paper are that the CFP has failed to achieve its key objectives: to ensure sustainable exploitation of living aquatic resources in all three dimensions – environmental, economic and social. The stocks are overfished, the economic situation of most of the fleets is poor despite high levels of subsidies, jobs are mostly of low quality, while the situation of many coastal communities depending on fishing is precarious.⁵⁴⁷

Economically, environmentally and socially, the Commission admits that the CFP is unsustainable. It was set up to run individual species that turned out to intermingle. Levels were set by political barter. Discarded fish fall off the statistics. Interventions have been run in an ad hoc and occasionally contradictory manner. Of total stocks (and only then for those for which sufficient scientific evidence existed), in 2009, 21.5 per cent were being run to match potential yield, 35 per cent were over-exploited and 43 per cent were beyond safe biological limits.⁵⁴⁸

So it is hardly surprising that the Commission’s objectives, along with those of the Fisheries Council, have long been interpreted by UK fishermen as polit-

544 The brutal, blundering, unimaginative inflexibility of the Commission’s proposals is shown up elsewhere in British fisheries. A long-line vessel in Grimsby, which catches only dogfish and skate and never catches cod, would still be bound to 15 days at sea, making it unviable. Jim Portus, Chief Executive of the South Western Fish Producer Organisation Ltd, said to me that he was bitterly critical of the Commission’s refusal to take account of technical changes, diversification and restructuring. He said: *“The Commission only gives credit when a fleet is destroyed by a taxpayer funded decommissioning scheme.”*. European Journal “To Fish or Not to Fish – that is the question”, O. Paterson (2004), accessed 30/04/2015 at: <www.europeanfoundation.org/wp-content/uploads/2014/05/The-European-Journal-January-2004.pdf>.

545 European Commission “Commission proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy” (2011).

546 Billingsgate Market, accessed 20/04/2015 at: <www.billingsgatefishmarket.org/>.

547 European Commission “SEC(2011) 891”, (2011), accessed 30/04/2015 at: <http://ec.europa.eu/fisheries/reform/sec_2011_891_en.pdf>.

548 European Commission “SEC(2011) 891”, (2011), accessed 30/04/2015 at: <http://ec.europa.eu/fisheries/reform/sec_2011_891_en.pdf>.

“It is estimated that 400 pieces of EU legislation constrain the industry’s activities.”

ically motivated, cynically weakening the home fleets in order to better facilitate the establishment of a commonly-managed European one, operating in common waters.

In January 2015, the Commission set out new rules to phase out discards, among other reforms designed to shift focus to regional consultation and scientific study. The fact that it has waited 30 years to act and still has not banned discards demonstrates the cost and risks of persisting with this dystopian experiment.⁵⁴⁹

Some species are particularly prone to migrate, such as salmon, sea trout, and eels. Leaving the CFP would not prevent the UK from signing up to common agreements, such as setting limits to fishing for such catch outside of coastal waters. The UK could opt into equivalent future versions of the EU Eel Regulations (Council Regulation (EC) 1100/2007) by passing domestic laws: after all, it was ICES (see above) and not the EU whose work was largely responsible for identifying the decline in Glass Eels, while the European Eel is listed as under threat in Annex II of the CITES agreement (the Washington Convention on International Trade in Endangered Species, of which the UK is one of 180 parties). The North Atlantic Salmon Conservation Organization (NASCO), meanwhile, includes a North Eastern Commission at which EU member states have ceded their seat to the Commission.⁵⁵⁰ Claims that the CFP is needed as ‘fish cross borders’ forget that fish cross the CFP’s outer maritime boundaries too. That Iceland, Norway and the Faroes can and do thrive proves that other joint management systems are viable.

14.3.4 Regulations could be set appropriate to needs

As we have seen in regard to the CAP, regulations would still be required to ensure food safety is maintained.⁵⁵¹ The remainder could be revisited, pruned, or repealed. Aquaculture (fish farming) supplies around one fifth of the EU’s fish, and with an annual turnover of £450m the UK after France has been its biggest producer. However, it is estimated that 400 pieces of EU legislation constrain the industry’s activities, encouraging competition from Chile and the Far East which does not have to comply with the same standards.⁵⁵²

14.3.5 The UK has a number of possible alternatives to participating in the CFP

A comprehensive audit on possible post-CFP management structures already exists. Whether the policies appeal or not, the audit undertaken by Owen Paterson MP (before he became DEFRA’s Secretary of State) reveals that a radical reform package could be enacted.⁵⁵³

The Fishing Green Paper he proposed in 2005, after reviewing non-CFP systems, consisted of a number of proposals, some of which have been in part or in

549 There might be a case for re-examining the ban on a species basis: some reports suggest plaice may have a 60 per cent survival rating. This does not appear to be a significant consideration though.

550 Denmark participates, but only in respect of the Faroes and Greenland.

551 See Section 13.

552 European Foundation “The European Journal” (May 2009), page 14, accessed 20/04/2015 at: <www.europeanfoundation.org/wp-content/uploads/2014/05/The-European-Journal-May-2009.pdf>; and more recently FISHupdate “Scots MEP warns of dangers to fish farming from EU red tape” (2014), accessed 20/04/2015 at: <www.fishupdate.com/scots-mep-warns-of-dangers-to-fish-farming-from-eu-red-tape-fishupdate-com/>.

553 Conservative Party “Consultation on a National Policy of Fisheries Management in UK Waters” (2005).

“The UK would cooperate with other states to manage littoral fisheries, especially Norway, the North Sea states, and Ireland, in a spirit of genuine cooperation.”

whole adapted as fundamental CFP reforms. Others might yet be implemented. The basic list includes effort control, based on ‘days at sea’ instead of fixed quotas; a ban on discarding commercial species; permanent closed areas for conservation; provision for temporary closures of fisheries; promotion of selective gear and technical controls; rigorous definition of minimum commercial sizes; a ban on industrial fishing; prohibition of production subsidies; zoning of fisheries; registration of fishing vessels, skippers and senior crew members; measures to promote profitability rather than volume; and effective and fair enforcement.

However, what is completely incompatible with the current system is the proposal that power be shifted away from the EU and, in terms of day-to-day management, down from national capitals to local control. As part of this, the UK would assert full control of its own Exclusive Economic Zone, including full sovereignty of what lies within the 12 mile limit, and jurisdiction over its own vessels on the High Seas (subject to international law). One distinction to be made would be between inherited rights and acquired rights, allowing for foreign fishermen with genuine traditional access to these waters to remain, but allowing for the Government to be more constraining with more recent arrivals. Foreign fishermen would have access under permission or licence, not as an automatic gift. The UK would cooperate with other states to manage littoral fisheries, especially Norway, the North Sea states, and Ireland, in a spirit of genuine cooperation. That would include joint activity and even shared funding of research and stock monitoring.

The survival of the stocks would take priority. This would require agreement on the extent of culling of predators such as seals, if this is the recommendation of the scientific community. Local management would be through Fisheries Management Authorities (FMAs), divided into two categories: inshore to 12 miles, and offshore to 200. Each would have a small executive board, responsible for policy-making, a consultative council, and an executive arm responsible for the public administration of the fishery. There would also be an enforcement agency. Most functions carried out at present by DEFRA staff would be devolved to the local level, with DEFRA maintaining only strategic and oversight functions. There would be an appeals tribunal, which might also function as a judicial body on enforcement matters, to deal with disputes and possibly infringements. Inshore boards would be appointed by councils; offshore ones as per other non-governmental bodies. They would be appointed on the basis of competence and independence. Their work would be informed by input from advisory councils.

The central benefit would be the UK regaining control of its own waters, and deciding who could fish there and how. It might be managed via a New Zealand-style transferrable quota system.⁵⁵⁴ Or it could develop into a fisheries system based on property rights.⁵⁵⁵ Or the effort might simply be put into restoring past community strengths and traditional fleets.⁵⁵⁶ In any event, it is important to recognise that these sovereign waters, even if jointly-managed through inter

554 IEA “A road map for British exit from the European Union”, I. Murray & R. Broomfield (2014), pages 20–23, accessed <www.iea.org.uk/publications/research/brexit-prize-final-shortlisted-entries>.

555 IEA “A road map for British exit from the European Union”, I. Murray & R. Broomfield (2014), pages 18–20, accessed <www.iea.org.uk/publications/research/brexit-prize-final-shortlisted-entries>.

556 IEA “Britain revitalised and independence regained”, S. Bush (2014), pages 64–65, accessed 30/04/2015 at: <www.iea.org.uk/publications/research/brexit-prize-final-shortlisted-entries>.

“Independence from the EU would allow the UK to explore more radical solutions than are currently feasible.”

national committees, would need to be policed, and there is always the possibility of confrontation.⁵⁵⁷

Other approaches also become possible. Prior to accession, Croatia elected to engage in state aid for its fishing industry. These grants included a blue-diesel scheme for commercial fishing vessels; a programme for the modernisation of the fishing fleet; a capital investment scheme; a programme for buying off trawler licenses; and an income support scheme.⁵⁵⁸ This might be compared with the example of salmon farms in the UK. Outside the EU competence, the UK could provide support to the industry if salmon exports were to face significant EU tariffs, although this could prompt anti-dumping measures. By contrast, its interests within the current system have been less than satisfactorily met. The Commission failed to support UK salmon interests when London and Dublin opposed the lifting of surveillance measures on Norwegian salmon during EU expansion in 2005 (after dumping had been claimed), and it has on multiple occasions overruled individual grants to particularly isolated Scottish fish farms intended to make them more competitive.

14.3.6 Withdrawing from the CFP enables, if needed, more radical action to be taken more responsively down the line

If UK and global stocks continue to deteriorate, independence from the EU would allow the UK to explore more radical solutions than are currently feasible. For example, the New Economics Foundation think tank recommended in 2012 that the best way to address the problem of depleted fish stocks was to completely suspend fishing for many species and in many areas for four to nine years, and to compensate (current) fishermen for not fishing during that time. The New Economics Foundation calculated that there would be long-term returns of 148 per cent on every pound invested by 2052, due to the safe recovery of stocks and subsequent prudent reform to stop future overfishing.⁵⁵⁹

Under current EU rules, such action is simply unimaginable – it would need the agreement of 28 fisheries ministers, may well fall foul of state aid rules, and would require tortuous wrangling over the design of the compensation budget. Outside the EU, however, if the electorate so chose, Britain could pilot the ‘no fish’ policy in specific areas, or indeed lead the way in alliance with other non-EU states and show the potential benefits of the scheme (the viability of which has partially been demonstrated by Canada and Iceland).

Less radically, the UK would be able to channel more funds directly into the technological improvement of the British fleet without falling foul of EU competition law. Incentives could be designed for fishermen to invest in cutting edge ‘smart nets’ which minimise by-catch and allow juvenile fish to escape; better equipment for monitoring stocks and relaying information to scientific advisers; satellite monitoring; e-logbooks; and wheelhouse CCTV.

14.3.7 Policy opportunities generate significant net gains for the UK

It will not be possible to rescue Britain’s stocks or fleet overnight. It would likely take a generation. This is an improvement on the current state of affairs, how-

557 As there is now. Clashes between trawler men of differing nationalities, sometimes fatal, have occurred in several CFP-run locations.

558 European Commission “Screening report Croatia: Chapter 13” (2006), page 6, accessed 30/04/2015 at: <http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_13_hr_internet_en.pdf>.

559 NEF “No Catch Investment”, A. Esteban (2012), accessed 30/04/2015 at: <www.neweconomics.org/publications/entry/no-catch-investment>.

“Leaving the CFP allows for the fleet and coastal communities to regenerate.”

ever, which is looking like a permanent national loss. As we saw earlier, this cost is ecological, societal, physical, and (at £2.81bn per annum) calculable.

It is not just the fleet that would gain over the coming decades, but the UK’s significant fish processing industry (especially in Humberside and Grampian). Between 2010 and 2012, the number of units involved in this trade fell by 15 per cent.⁵⁶⁰ Worst hit have been the smaller businesses, which have shrunk in number by half since 2004. The statistics suggest that the number of start-ups in the industry has dropped markedly and new companies have higher failure rates.

Table 14.ix: UK sea fish processing industry population – FTEs and processing units

Sea fish processors	2000	2004	2008	2010	2012
No. of UK full time (FTE) jobs	22,256	18,180	14,660	14,331	11,864
No. of processing units	541	573	479	384	325

Source: Seafish⁵⁶¹

Seafood processing and packing shows how the CFP has had a wider negative impact. Indeed it is typically accepted by Government that the ratio of livelihoods affected runs at around nine jobs on land for every one at sea. Despite this, the UK fleet has for too long been treated as a peripheral interest by British diplomats and negotiators. The fishing industry’s economic significance is more important than has too often been given credit.

Conclusion

Taking both the disastrous common food management systems together, the UK could successfully abandon both the CFP and its misaligned cousin the Common Agricultural Policy (CAP).

Leaving the CAP allows for deregulation, cheaper food, targeted aid for needy farmers, a bigger dairy market, and a reduced state subsidy if such an approach is so desired. The scope to reduce subsidies may be limited by the nature of the new form of access to the European market, in which products would be competing against subsidised continental counterparts. The extent to which this skewed competition will be happening would be limited, however, given that the key exports will be whisky, fish and processed food.

Leaving the CFP allows for the fleet and coastal communities to regenerate, but only if stocks are sensibly managed, foreign access is reduced (probably gradually), and the true benefits will even then only be felt over a generation.

In both instances, the UK has a strong negotiating hand as a net loser under the current system. A robust negotiating position over transitional terms would generate advantages to be traded off elsewhere. Given that, under international law, the UK owns these waters, its hand is strong. An opportunity now emerges. While the CFP and CAP have squeezed British fishing and farming for four decades, the release of the clamps will lead to recovery over time.

560 Seafish “2012 Survey of the UK Seafood Processing Industry”, accessed 30/04/2015 at: <www.seafish.org/media/Publications/2012_Survey_of_the_UK_Seafood_Processing_Industry.pdf>.

561 Seafish “2012 Survey of the UK Seafood Processing Industry”, accessed 30/04/2015 at: <www.seafish.org/media/Publications/2012_Survey_of_the_UK_Seafood_Processing_Industry.pdf>.

15 Human Rights

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“Principles intended to prevent dictatorships from incarcerating and murdering citizens have been redirected to change society.”

The Charter is the world’s most modern and comprehensive, legally binding document on the protection of human rights, reaching beyond the ECHR in many ways as it contains more rights and principles. For example, the articles in the Charter titles Equality and Solidarity contain new and far-reaching provisions (although in many instances their scope and exact meaning is in need of further clarification).”

In conclusion, national judges are increasingly called on to adjudicate upon matters which have a European dimension, and they are coming into more frequent contact with the Charter. References to the Court of Justice are now occurring more routinely in respect of the provisions of the Charter, and hence there is a further need for this important gathering and the necessity for judges as key actors and the other relevant players involved in this fundamental are of EU law to gain an expertise in the workings of the Charter.

Contributions noted in the minutes of a Brussels conference on the EU Charter of Fundamental Rights, 2014⁵⁶²

Over the past 30 years, the interpretation of human rights legalisation has become an increasingly controversial topic. Principles intended to prevent dictatorships from incarcerating and murdering citizens have been redirected to change society in place of legislators. This has been attributed, in part, to a generational shift among judges and, in particular, to campaigners (including some lawyers).

The cases in question comprise two key elements. First, they lead to a legal decision in which European-level case law overturns existing case law and legal principles in Britain. In other words, the fault in the system does not lie in the UK legal system, and instead sits beyond the reach of reformers in an international no-man’s land, with no one accountable or challengeable. Second, there is a sense of public injustice or a perception of irregularity about the given decision. Examples include prisoners getting the vote, criminals receiving compensation for hurt feelings, drug dealers not seeing their insurance voided under ‘crime exemption’ clauses, and illegal asylum seekers failing to get deported. In many cases, it may appear that society is no longer able to discriminate against the wilfully anti-social so that they have to fully bear the consequences of their actions.

Human rights may appear to be a problem sourced at Strasbourg (home of the European Court of Human Rights) and the machinery of the Council of Europe (which enforces the European Convention on Human Rights), both of which are distinct from the EU, but the European Union has increasingly adopted the agenda as its own with, for example, its own Charter of Fundamental Rights. With the Government now looking to both renegotiate the terms of Britain’s EU membership and considering opting out of the European Convention on Human Rights, it is important to investigate these issues together. For example, measures a government may take in relation to securing opt-outs, guarantees and firewalls in the context of the European Convention on Human Rights threaten to be circumvented by actions taken in parallel within the EU. Both of these questions should be resolved in tandem.

The process was perhaps inevitable. The original 1950 European Coal and Steel Community Agreement included free movement provisions, in part an Italian negotiating objective in order to export its unemployed. While this was restricted by caveats over health and public policy, it created a proto-right in law

562 European Commission “The Charter of Fundamental Rights of the European Union: assessing and responding to training needs of legal practitioners and public officials” (2014), accessed 18/05/2015 at: <http://ec.europa.eu/justice/fundamental-rights/files/report_conference_17_18_12_2014.pdf>.

“Common Law has been a central influence in determining how human rights globally have developed.”

to individuals.⁵⁶³ Its expansion over the following 65 years, as EU competences have grown, might also be seen as predictable. Observers would have tracked the development of a concept of European citizenship, its association with a set of personal rights, and their protection under law by a high court (the Court of Justice of the EU, or CJEU, and in particular its higher court – the European Court of Justice or ECJ).

15.1 The UK would remain a member of all key international human rights bodies

Key international bodies

- Council of Europe
- International Labor Organization
- UNICEF
- United Nations Human Rights Committee
- United Nations Committee on Economic, Social and Cultural Rights
- United Nations Committee on the Elimination of Racial Discrimination

The outrages of the Second World War resulted in the creation of an international framework to pursue those who commit breaches of human rights. However, defining what is right and wrong in a state’s dealings with others is far from a modern development.

The ‘Geneva Conventions’ that people tend to think of when they hear the term were agreed in 1949 and come with a number of additional protocols. But in fact the Conventions were based on three earlier treaties, from 1929, 1906 and 1864, which were in turn rooted in the carnage of the Battle of Solferino. Even so, international codes of behaviour date back much further, exemplified by the gentlemanly principles adhered to in the eighteenth and seventeenth centuries (such as not deliberately targeting officers, accepting surrender, fighting in uniform, avoiding wanton destruction, and the concept of parole).⁵⁶⁴ These codes themselves date back even further to philosophical principles expressed a century or two earlier, particularly in the wake of the atrocities of the Thirty Years War; and these in turn were predated by chivalric codes of conduct that, in theory, applied to the socially superior classes (the knights), such as ransom.⁵⁶⁵ So regulating warfare, and then wider rights, has a considerable historical pedigree in international law.

Its application in English Law has long been seen as an exemplar, to the extent that Common Law has been a central influence in determining how human rights globally have developed. The antecedence is just as ancient – Magna Carta (1215 for its first issuance), the Habeas Corpus Act (1679, though a principle first referenced in 1305), and the Bill of Rights (1689). It is no coincidence that the unravelling of the institution of slavery on English soil was facilitated by Common Law principles. Human rights legislation has been one of the nation’s greatest exports, even if the term itself has recently adopted narrow political associations.

563 Journal of Common Market Studies “The Genesis of European Rights”, W. Maas (November 2005), accessed 22/05/2015 at: <<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-5965.2005.00606.x/abstract;jsessionid=77A42865B041878926DC85D89EBF51C2.f03t03>>.

564 More appreciated when it was breached, such as during the Spanish insurgency against Napoleon.

565 Again, more appreciated when it was breached, for instance through the social levelling that literally occurred in the execution of highborn prisoners during the Battle of Agincourt, and as exemplified by the failed Papal Bull restricting use of crossbows.

“Either solution to the European Convention on Human Rights problem is impossible given the UK’s EU membership terms as they stand.”

15.1.1 The UK could amend its status with the Council of Europe’s Human Rights Court

On a European level, the key institutional framework is the European Convention on Human Rights. The UK has sought to adjust how national courts and the Strasbourg Courts interlock, allowing tighter interpretation of what constitutes a human right. The long-term outcome remains to be seen. However, the two anticipated routes will involve either the UK:

- 1 Leaving and then re-joining the Convention with specific protocols establishing opt outs;
- 2 Leaving but with a redefined national human rights system (setting personal rights alongside personal obligations) governed purely by UK courts.

The former approach would be undermined by the EU itself applying principles emerging from rulings by the Strasbourg Courts to EU law and practice, regardless of any UK opt-outs. The latter model would be incompatible with the current terms of our EU membership, since that carries a precondition of being a signed-up member of the Convention.

The problem is further exacerbated by the legal obligation of member states to comply with Fundamental Rights obligations under the Treaty of Nice. A “*serious and persistent breach*” of such obligations can lead to sanctions, resulting in the removal of a member state’s voting rights.

So either solution to the European Convention on Human Rights problem is impossible given the UK’s EU membership terms as they stand. Remove those EU blocks, however, and the human rights ambiguities faced by UK courts can be addressed.

By making this legal transition, the UK would not turn into a discriminatory, racist and xenophobic society: precedent has already been set, case law would need to be reconsidered and overturned, and actual anti-discriminatory laws would remain in place. Additionally, British society and attitudes have changed considerably over the last 50 years – there is a greater public sensitivity to genuine offense, and people are more culturally and religiously aware.

There are European Conventions that would still apply even during any transition in the management of human rights law, alongside a change in the terms of the UK’s EU membership.⁵⁶⁶ These include both the provision and definition of human rights, and international standards in the policing of them, as well as the obligations states are expected to maintain in order to facilitate judicial cooperation.

⁵⁶⁶ If a replacement UK system was passed by Parliament in advance of the Convention termination date, transition would be instant. If agreed through re-accession, work on a protocol sufficient to allow re-application could begin in advance of denunciation. This assumes in any case that a decision was not simply reached within Parliament to unilaterally suspend automatic application of European Court of Human Rights judgments deemed incompatible, meaning a partial technical breach in just one aspect of the Treaties until resolved. This seems the most likely route. The European Court of Human Rights’ verdicts have often and indeed routinely been ignored by some states without sanction, so one might assume that wider Council of Europe membership would be maintained by the UK, such as sending delegates to the Parliamentary Assembly (PACE), along with the other protocols and Conventions listed. But the issue of the best route for fixing the problems with the European Convention on Human Rights itself (along with the diplomatic complexities raised) must fall to another study.

“Excluding the treaties setting up the Council of Europe itself, there are around 210 conventions and treaties agreed through that institution.”

These would include:

- The European Convention on the Suppression of Terrorism;
- The European Agreement on the Transmission of Applications for Legal Aid;
- The European Convention on Information on Foreign Law;
- The European Convention on Extradition;
- The European Convention on Mutual Assistance in Criminal Matters;
- The European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children;
- The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data;
- The Convention on the Transfer of Sentenced Persons;
- The European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches;
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime;
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;
- The Convention on preventing and combating violence against women and domestic violence.

For context, excluding the treaties setting up the Council of Europe itself, there are around 210 conventions and treaties agreed through that institution, of which a number have rights implications that are largely self-regulated nationally.⁵⁶⁷ In each instance, the UK can opt to sign, sign with caveats (unless the treaty text expressly states otherwise), or not sign. It can also denounce a given agreement if a flaw is discovered. This system correspondingly allows for greater flexibility than Fundamental Rights managed via the EU.

The Council of Europe system also carries with it further distinct monitoring systems. In addition to the work undertaken by Parliamentary Assembly delegates who write reports on how well the agreements are operating, some directly establish working groups. One example is the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). This is, in effect, an inspection group, made up of “*independent and impartial*” nationals from each of the signatory states, and “*chosen from among persons of high moral character, known for their competence in the field of human rights or having professional experience in the areas covered by this Convention.*”⁵⁶⁸

Even after all these enduring safeguards, the Home Secretary will, as the responsible minister, be directly accountable before Parliament and the public for all decisions made. So even without EU Fundamental Rights and the European Court of Human Rights, the UK will still be governed not only by Common Law human rights traditions but also a parallel set of European agreements reached at Strasbourg that UK courts would finally be allowed to interpret themselves.

⁵⁶⁷ Accessible via <<http://conventions.coe.int/>>. Some have not received UK ratification, indicative of political difficulties>.

⁵⁶⁸ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1967, Article 4, accessed 22/05/2015 at: <<http://conventions.coe.int/Treaty/en/Treaties/Html/126.htm>>.

“Much of international human rights law is based on UN norms.”

15.1.2 The UK could continue to operate through the pre-eminent human rights arena, the United Nations

Even this is far from the full story, since much of international human rights law is based on UN norms. The central corpus is what is collectively styled the International Bill of Human Rights. This is made up of the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966). There are nine core human rights treaties today. None of these would be affected by the UK leaving the EU.

Nor would the UK's obligations arising from the broader range of other agreements based on the International Bill of Human Rights. These include:

- The International Convention for the Suppression of the Traffic in Women and Children;
- The International Agreement for the Suppression of the White Slave Traffic;
- The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;
- The Convention on the Rights of the Child;
- The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- The International Covenant on Civil and Political Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention on the Rights of Persons with Disabilities;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Convention on the Elimination of All Forms of Discrimination against Women.

As a demonstration of the additional leeway provided by the UN route, the UK has not opted into the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Nor has any EU state. Turkey has, with five caveats preserving national laws.

Also important are the UN bodies associated with these agreements, which would continue to operate if Britain were outside the EU. Four bodies operate in relation to the UN Charter. The Human Rights Council is made up of a rolling membership of 47 delegates, of whom 13 are from Europe. The Universal Periodic Review (UPR) conducts a report of human rights processes in all UN member states. The Special Procedures of the Human Rights Council are a group of independent human rights experts, looking at 14 countries and 39 themes. The Human Rights Council Complaint Procedure provides a mechanism for gross and reliably-attested violations to be communicated.

There are also 10 treaty bodies that monitor the application of obligations. These are:

- The Human Rights Committee (CCPR);
- The Committee on Economic, Social and Cultural Rights (CESCR);
- The Committee on the Elimination of Racial Discrimination (CERD);
- The Committee on the Elimination of Discrimination against Women (CEDAW);

“Unlike the EU/European Convention on Human Rights systems, they do not seek to judicially overturn or erode a policy or stance.”

- The Committee against Torture (CAT);
- The Subcommittee on Prevention of Torture (SPT);
- The Committee on the Rights of the Child (CRC);
- The Committee on Migrant Workers (CMW);
- The Committee on the Rights of Persons with Disabilities (CRPD);
- The Committee on Enforced Disappearances (CED).

However, the impact of human rights work is more widely felt still. The International Labour Organization (ILO) is responsible for preventing breaches in the human rights of the workforce, including such issues as trade union rights, equal remuneration, discrimination, and minimum working ages.

There is also human rights activity in:

- The World Health Organization;
- The Inter-Agency Standing Committee (IASC);
- The Department of Economic and Social Affairs (DESA);
- The Commission on the Status of Women (CSW);
- The Office of the Special Adviser on Gender Issues and the Advancement of Women (OSAGI);
- The Division for the Advancement of Women (DAW);
- The United Nations Children’s Fund (UNICEF);
- The United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women).

These, in turn, operate committees and working groups, for instance the UN Committee on the Elimination of all Forms of Racial Discrimination (CERD).

Perhaps the most pertinent international body, however, is the Office of the Human Rights High Commissioner (OHRC), based in Geneva. The Commissioner functions as the principle human rights official of the UN. His Research and Right to Development Division (RRDD) is responsible for thematic research and policy development. The Human Rights Treaties Division (HRTD) supports the 10 human rights treaty bodies listed above. The Field Operations and Technical Cooperation Division (FOTCD) supports the work of human rights in the field. The Human Rights Council and Special Procedures Division (HRCSPD) supports the Human Rights Council and review processes.⁵⁶⁹

These committees are not above politics in conducting their national reviews. But unlike the EU/European Convention on Human Rights systems, they do not seek to judicially overturn or erode a policy or stance.

15.1.3 The examples of other free Common Law jurisdictions demonstrate that domestic courts provide sufficient safeguards

Four other countries provide clear parallels with the UK’s human rights structures: the United States, Canada, Australia, and New Zealand.

None has signed up to the European Convention on Human Rights. It is also worth noting that, while both North American countries hold observer status at the European Convention on Human Rights, all four have opted not to sign up to regional alternatives.

New Zealand has a human rights commission, set up in the context of UN rights. This has been subsequently regulated by its domestic human rights act. Australia has expanded upon domestic human rights legislation to incor-

⁵⁶⁹ The OHRC has a staff of 1,085 (as of late 2013), with a further 689 deployed in the field.

“These examples show that it is possible for a Common Law country with a strong democratic tradition to run its human rights affairs without any external court of appeal acting as a safety check.”

porate a specific provision to appeal to the UN. It has commissioners covering Aboriginals, age and disability discrimination, children, human rights, race discrimination, and sex discrimination. It has not seen the need to align with other regional Commonwealth countries to create an alternative to the Strasbourg Court.

The USA's constitutional safeguards are widely-known. In Canada, a Charter of Rights and Freedoms was established at the same time as its constitution was being repatriated from the UK in 1982, though a human rights act had already been on the statute books from 1977. Both countries are participating members of the Organization of American States (OAS). Tellingly, both have opted out of the key judicial aspect of the OAS human rights system – the Inter-American Court of Human Rights. Other Caribbean countries with Common Law systems have similarly remained out of a structure engineered to cater for Roman Law and states with execrable human rights traditions.⁵⁷⁰

Essentially, these examples show that it is possible for a Common Law country with a strong democratic tradition to run its human rights affairs without any external court of appeal acting as a safety check.

When the United Nations drafted the Universal Declaration of Human Rights in 1947–1948, setting the framework for all its human rights material since, the drafting committee was composed of nine members. One was British, one was American, one was Canadian, and one was Australian.⁵⁷¹ Given that these countries still have among the strongest democratic traditions and enduringly balanced legal systems in the world today, the selection and proportion remain telling.

15.2 The UK could continue to cooperate with the EU on human rights

Key issues

- Supporting human rights internationally

The UK could elect to cooperate with other EU states on human rights issues. Globally, the UK would obviously be in a position to maintain its stance as a supporter of human rights under oppressive regimes. Cooperation in international development and in world fora advocating reform would continue where it would add practical value.

15.2.1 Outside the EU, a major loophole over human rights excesses can be closed

The current threat to the United Kingdom via the EU comes in seven forms.

- 1 **The Charter of Fundamental Rights.** The EU established this Charter in 2000. The Lisbon Treaty made it binding in 2009. It entrenches European Convention on Human Rights rights within EU law, and applies both to EU bodies but also to national governments when applying EU law – an expanding activity given the direction of the *acquis*. Both the UK and Poland enjoy some protection under a Protocol stating that the Charter does not create any new rights. However, one problem that arises is that there cannot be

570 A key contention is over the death penalty (which for instance caused Trinidad and Tobago to withdraw participation). But it is only one contention among many: Canada for instance does not apply capital punishment.

571 Charles Dukes, Eleanor Roosevelt, John Humphrey and William Hodgson.

“EU rights rather than Common Law traditions will inevitably be inculcated.”

second-class EU citizens, so rights that are created for other EU citizens by definition must carry across when challenged.

- 2 **The Fundamental Rights Agency (FRA).** This EU quango pursues a human rights agenda, with an annual operating budget of €21m. It provides outreach across EU institutions, national governments, and non-EU international bodies, and into NGOs and lobby groups. It therefore acts as a motor for ultra-liberal judicial reinterpretation of the law, and through it, society. This is an issue for countries such as the UK which already have a liberal society, which are already democratic, and where public debate over changes in societal norms is expected to avoid a backlash against enforced ‘political correctness’.
- 3 **The Commission.** The body responsible for instigating law acknowledges that it is and should be inspired by Fundamental Rights principles, and that it should take note of human rights cases. This will accelerate with the move to get the EU to sign up corporately to the European Convention on Human Rights. Although, as of late 2014, even the ECJ was flagging up difficulties with the contradictory jurisdictions that will emerge, the political reality is that it will happen anyway as it is provided for in the Lisbon Treaty.⁵⁷² A confirmation of the political centrality of Fundamental Rights lies in how Commissioners since 2010 are now obliged to swear an oath to uphold them.
- 4 **The European Parliament.** Fundamental rights cases are also cited as an inspiration by MEPs when offering opinions, and drafting and voting on laws and amendments.
- 5 **The Court of Justice.** The CJEU treats the EU Charter of Fundamental Rights as a primary document. Fundamental Rights case law is growing. There has been what practitioners describe as an ‘exponential growth’ at the Court of Justice in referrals to the Charter since the Lisbon Treaty entered into force. In 2010, a reference was made to the Charter in 27 cases, followed by 43 in 2011, 87 in 2012 and 113 in 2013.⁵⁷³
- 6 **EU-funded human rights lobbyists.** As in many other areas, the EU funds campaigners to push a human rights agenda, including groups that test the law in court as well as lobby legislators and attend conferences alongside the legal practitioners. The Rights, Equality and Citizenship 2014–2020 programme has a total available budget of €439m, funding such groups and also much of the training referenced below.
- 7 **EU-trained legal professionals** working in human rights law. By training judges, lawyers, border guards, police officers and other similar professionals, EU rights rather than Common Law traditions will inevitably be inculcated. This might have a particular advantage in a new EU member state with enduring issues, but the advantage is less apparent for an advanced and established country. One example of a body used as a host for such training

572 The Treaty says “*the Union shall accede*”, not “*may*”. Accessed 22/05/2015 at: <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=160882&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=73798>>.

573 European Commission “The Charter of Fundamental Rights of the European Union: assessing and responding to training needs of legal practitioners and public officials” (2014), accessed 22/05/2015 at: <http://ec.europa.eu/justice/fundamental-rights/files/report_conference_17_18_12_2014.pdf>.

“With no set constitution, the UK falls under far greater threat.”

is ERA, the Academy of European Law, set up specifically to keep professionals up-to-date as EU law developed. Given that the Human Rights Act 1998 incorporates human rights law directly into the UK legal system, EU training of practitioners will increasingly have a direct bearing on how principles are interpreted in the courtroom and the field. Jean Monnet funding (see Section 19) includes significant finance for EU law academics.

These influences are particularly problematic for the UK, as it does not have a written constitution. Most other countries set out rights and freedoms in a guardian constitutional text. The UK system is more fluid, allowing rights to be more responsive as the opinion of what is considered ‘reasonable’ by the average individual shifts over time. However, with the introduction of additional foreign courts, fault lines have appeared in the system. A model that includes the European Convention on Human Rights and the EU creates a court-driven system for change, and yet which contains extremely limited mechanisms for democratically reviewing the impact of the legal interpretations made. With no set constitution, the UK falls under far greater threat because there is not textual bedrock limiting judicial reinterpretation.⁵⁷⁴

As evidence for the complexities this entails, in the wake of the case of *R (on the application of AB) v Secretary of State for the Home Department*, a High Court judge stated that the Charter of Fundamental Rights now extends the impact of human rights beyond that provided for through the European Convention on Human Rights and the Human Rights Act 1998:

*The constitutional significance of this decision can hardly be overstated. The Human Rights Act 1998 incorporated into our domestic law large parts, but by no means all, of the European Convention on Human Rights. Some parts were deliberately missed out by Parliament. The Charter of Fundamental Rights of the European Union contains, I believe, all of those missing parts and a great deal more. Notwithstanding the endeavours of our political representatives at Lisbon it would seem that the much wider Charter of Rights is now part of our domestic law. Moreover, that much wider Charter of Rights would remain part of our domestic law even if the Human Rights Act were repealed.*⁵⁷⁵

That view was denied by the Government, but the fact that it was made reveals the current level of uncertainty in human rights law and its jurisdiction. As a Parliamentary Committee has noted:

*To have such uncertainty about the status of the Charter is concerning. Its entry into force in December 2009 as a set of rights with the legal status of an EU Treaty marked, from any perspective, a significant development in EU policy-making and in EU law. Yet in the UK its domestic effect is surrounded by disagreement and misunderstanding.*⁵⁷⁶

574 The dynamics can best be considered in reviewing the conflict between the US Supreme Court and the US Constitution, especially in their early years.

575 European Scrutiny Committee “The application of the Charter in the UK – a state of confusion”, accessed 22/05/2015 at: <www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/979/97904.htm>.

576 European Scrutiny Committee “The application of the Charter in the UK – a state of confusion”, accessed 22/05/2015 at: <www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/979/97904.htm>. Whether the Charter was truly constrained, and what its referencing in the EU Constitution would permit, was an issue of totally mirrored and absolute legal interpretations. The UK Government stance 2000–2005 placed complete (yet unquantified) confidence in the limiting effect of the “horizontal clauses” that supposedly constrained the text; but their effectiveness was already subject to entirely contradictory legal interpretation.

“Both the EU courts and the European Court of Human Rights overlook these nuances by dealing with rights as absolutes, neglecting the implications.”

The Charter itself was supposed to have been a declaratory statement of existing rights but, under the principles of ever closer union, it has come to be interpreted as providing a framework for expanding and creating rights. It also serves to invalidate national rules and laws that are in conflict with its provisions. This has included any distinction over the provision of services based on gender – an example being insurance, where young women might get better rates as statistically less risky drivers.

Regardless of the extent to which the Commission may temporarily hold back from testing the limits of the UK’s protocol, this discrepancy will remain highly controversial and always subject to being fought over at the CJEU with no guarantee of success for the British Government. It remains therefore an enduring risk accompanying EU membership.

15.3 New human rights policy opportunities would become available

The problem with EU and European Court of Human Rights supervised rights is not the right itself, but in the resolution of ambiguities. All the principles underlined by the list of Strasbourg and Charter rights are already set out in Common Law case history, and all are further safeguarded by UN agreements to which the UK is a party. The difficulties arise in the interpretation of nuances over quality of life and lifestyle – rather than life or death – issues.

Here national courts might have a different view when it comes to setting one person’s rights against those of another, when accommodating one party brings to the other physical costs, administrative burdens, or social demands. Both the EU courts and the European Court of Human Rights overlook these nuances by dealing with rights as absolutes, neglecting the implications of what happens to those other than the plaintiff.

15.3.1 The UK could halt the system generating new rights

The system’s failure becomes clearer if one looks at specific rights. Some of the particularly problematic ambiguities are included in Table 15.i below.

Table 15.i: Chartered Rights and known areas of ambiguity arising

Article	Right	Ambiguity
1	Inviolability of human dignity	Definition of dignity; cost application of maintaining it; actions intended to deter malfeasance/bad practice which may be seen as singling out
2	Life	Health provision; Irish and Polish abortion debates
3	Integrity of the person	Emerging science such as cloning
4	Prohibition of inhuman or degrading treatment	General application to provision of local services; prison welfare
6	Liberty and security	Delays in legal/administrative review; deportation systems; safety obligations
7	Respect for private and family life	Deportation of undesirables with local connections; privacy laws; internet
8	Protection of private data	Archive management and access
14	Education	Tuition fees
18	Asylum	Process and rules
20	Equality before the law	Undermining protocols/opt-outs generating different classes of EU citizens

“Dissatisfaction will endure if human rights management remains in an EU setting.”

Article	Right	Ambiguity
21	Non-discrimination	Any distinction through whatever cause over gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation
23	Equality between men and women	Equal pay for work considered similar
25	Elderly	Potential implementation costs for SMEs
31	Fair and just working conditions	Social Chapter issues
33	Family and professional life	Maternity/paternity rights
37	Environmental Protection	Cost-effectiveness in policies
45	Movement and residence	Migration levels; associated social security rights

This is not to pass judgement on the merits of any of the related cases, the background of the plaintiffs, or whether the law needed to be changed. But fundamental rights cases fill newspaper headlines because they are considered to be controversial, even potentially unjust, and because there is no obvious remedy in the human rights legal system, since its supreme court is not merely the ultimate arbiter but its word cannot be revisited by the member state affected.

Dissatisfaction will endure if human rights management remains in an EU setting. If left to national courts, however, it appears more likely that domestic judges will take into consideration what is ‘reasonable’ in the application of the law.

The cost of this legal interference is huge, but unfortunately difficult to quantify. The only apparent attempt to date was in 2009.⁵⁷⁷

The research estimated that the cost of complying with judgments under the European Convention on Human Rights is £2.1bn a year, with an additional £1.8bn in one-off costs. That figure notably excludes the impact of the corresponding growth of a ‘compensation culture’ also fostered by the Court’s costs.⁵⁷⁸

The study was a massive research undertaking that cross-indexed cases lost by the UK at the European Court of Human Rights with the laws passed by the UK Government in order to be compliant. The impact assessments relating to the latter group were used to assess the inherent costs.

There remain several difficulties with the figure. On the one hand, there is the risk of a government department gold-plating the change in the law or aggregating multiply-motivated ones. While the study attempted to include this, some remaining distortion probably remains in the figures.

In the other, the analysis only covered cases involving the UK. It did not include cases where precedent had been set by a Strasbourg court without the UK being present, even as a judge. Thus the precedential impact on UK case law might happen imperceptibly, and changes to UK law be obliged without due acknowledgement of the source.

Given the volume of court cases, the costs from the latter probably exceed the hidden impact of the former, and the former may perhaps never have entered into UK law in the first place if the red tape had nothing to be applied to.

Since the audit was completed, the UK has lost a number of further cases.

577 TaxPayers’ Alliance “Britain and the ECHR”, L Rotherham (2009), accessed 22/05/2015 at: <<http://old.taxpayersalliance.com/echr.pdf>>.

578 Estimated by the industry at £7.1bn annually, though a contentious figure.

“This added to ongoing concerns about taxpayers being tapped for compensation fees by ‘ambulance-chasing human rights lawyers’.”

- The case of *Vinter and Others vs the United Kingdom* revisited the persistent and vexed issue of the Home Secretary’s prerogative and whole life tariffs.⁵⁷⁹
- *Animal Defenders International v. the United Kingdom* confirmed that the UK could legitimately still ban political TV advertising during the election – the Government won the case, but only by a judicial margin of one vote out of 17 and with some precedent already set elsewhere so this principle is not necessarily secure and remains a future threat.⁵⁸⁰ That would have Berlusconi/Murdoch-level consequences for big money financing of electoral campaigns.
- *Al-Skeini and Others v. the United Kingdom* determined that an official military investigation into five Iraq deaths had not been “effective” enough.⁵⁸¹ This added to ongoing concerns about taxpayers being tapped for compensation fees by “ambulance-chasing human rights lawyers” exacerbated by the expenses claim put in over *Al-Jedda v. the United Kingdom*. This in turn related to UK policy in Iraq on interning those believed to be insurgents, who could neither be let out onto the streets nor realistically prosecuted by the state.⁵⁸² Notably, the defence (HM Government) successfully pointed out the level of fees, time claims, and deployment of staff submitted by the plaintiff’s lawyers was disproportionate to the case. The *Al-Jedda* ruling proved particularly contradictory, as in *Al-Saadoon and Mufdhi v. the United Kingdom* – supported as it happens by the same legal firm – the charge was that the UK had handed over detainees too quickly and with no prospect of a fair trial.⁵⁸³
- *Tahery v. the United Kingdom* awarded damages to a convicted individual after a stabbing witness declined to give evidence in court, though the judge had himself warned the jury when considering it that the witness statement had not been subject to cross-examination.⁵⁸⁴
- *McDonald v the United Kingdom* ruled that failure to provide toilet assistance at night (or at least pay due consideration to an individual’s dignity when planning care) could constitute a breach of human dignity provisions. This has broader potential implications on statutory obligations for health care provisions by the state, especially during a period of cuts.⁵⁸⁵
- *M.M. v the United Kingdom* has implications for the retention of criminal records, their disclosure, and their counting as spent. The issue is part of a wider series of cases brought before the UK Supreme Court, which have been opposed by chief constables seeking to retain on file all criminal records including those spent.⁵⁸⁶

579 3896/10.

580 48876/08.

581 55721/07: notwithstanding that in four cases the deaths had been as a result of a gun battle, and in the fifth there had not been a positive witness identification of the suspects.

582 27021/08.

583 61498/08.

584 22228/06.

585 4241/12.

586 24029/07.

- *Buckland v the United Kingdom* set the principle of the right to a family life against the ability of a Gypsy Council to manage a site, as the latter sought to expel a resident whose caravan was occasionally occupied by a disruptive individual.⁵⁸⁷
- *A.A. v the United Kingdom* overturned an attempt to deport someone who, as a juvenile, had committed a rape.⁵⁸⁸
- *Hode and Abdi v. the United Kingdom* extended the principle of pre-flight spouses to refugees, as a parallel to changes that had occurred to foreign students and workers.⁵⁸⁹
- *Mackay and BBC Scotland v the United Kingdom* related to the informal ad hoc process by which, under Scottish law, a court order blocking the reporting of a trial was made. By the time it had reached Strasbourg, the law had already been changed through adding Chapter 102 of the Rules of The Court of Session.⁵⁹⁰
- *Kay and Others v the United Kingdom* undermined the ability of a council to combat homelessness by issuing short-term leases on houses that were unoccupied but on the list for demolition.⁵⁹¹
- *A.W. Khan v. the United Kingdom* judged that deporting a heroin importer to his country of origin was not acceptable.⁵⁹²
- *Gillan and Quinton v. the United Kingdom* has limited the ability of police chiefs to order geographically-based stop-and-search orders (e.g. near a known protest target).⁵⁹³
- *Beggs v. the United Kingdom* awarded £16,400 damages for delays in appeals lodged by a prisoner put in jail over a dismembered corpse, and where the court itself recognised many of the delays were down to the prisoner.⁵⁹⁴
- *Othman v. the United Kingdom* halted extradition of Abu Qatada to Jordan on the grounds of a supposed lack of a fair trial.⁵⁹⁵ When he was finally despatched, he was acquitted.
- *Minshall v. the United Kingdom* compensated a guilty-pleading alcohol excise evader on the basis of a delay – unchallenged at the time of issuing – applied to a financial order over the duty owed.
- *Hanif v. the United Kingdom* overturned a case in which a juror had informed the judge that he happened to have previously worked with a police officer involved in the case.⁵⁹⁶

587 40060/08.

588 8000/08.

589 22341/09.

590 10734/05.

591 37341/06.

592 47486/06.

593 4158/05.

594 25133/06.

595 8139/09.

596 52999/08.

“What the Human Rights Act has done, however, is mask the impact of human rights decisions.”

In some cases, the rulings are less controversial. *M.A.K. and R.K. v. the United Kingdom* quite legitimately confirmed that national law had been broken by medical practitioners acting without parental consent.⁵⁹⁷ *A.D. and O.D. v. the United Kingdom* explored excessive delays in childcare provision.⁵⁹⁸ *Richard Anderson v. the United Kingdom* ruled that legal delays were too long, in a case largely covering other issues.⁵⁹⁹ *Reynolds v. the United Kingdom* is part of a broader extension of liability and duty of care to voluntary NHS psychological case admissions.⁶⁰⁰ Even in such cases, however, domestic remedies for settling damages and disputes exist as an alternative to a European court.

There are four lessons to be learned from this list of judgments since the original research. First, the form of impact that human rights cases have is more than just financial: it means laws being changed, societal practices being amended, and government altered – including how democratic accountability itself functions.

Then there is the matter of the Human Rights Act 1998 that was introduced to make appeals to Strasbourg a thing of the past. Notwithstanding its introduction, the UK is still being taken to court there.

Thirdly, what the Human Rights Act has done is mask the impact of human rights decisions. The most contentious used to be in public view since they would be sent to Strasbourg, lost, and then require changes in the law to fix. Now, the courts are carrying out this self-correction within the UK’s legal system, but far less visibly, without the public debate, and without any mitigation. The Strasbourg decisions are merely being anticipated upstream and the transformation is being masked. The problems arise when they do become public, because of wider consequential applications that then back-reference the original judgment. This tends to happen much later and leads to extra public frustration (“why is this happening?”) and additional cost due to risk managers seeking to avoid uncertainty and potentially vexatious claims.

In some cases, acclimatising Common and Scots Law to developing European human rights law adds further costs. A ballpark figure sets out possible extra costs in Table 15.ii, below. It is, however, impossible to estimate the hidden costs arising through the direct application of European human rights principles within UK courts, so any actual cost will be higher.

Table 15.ii: Supplemental Human Rights costs since the 2009 ECHR research

Case	Issue	Impact
<i>Al-Skeini and Others v. the United Kingdom</i>	Iraq cases	Legal costs were generically included in previous estimates, but the al-Sweady investigation, that cleared UK soldiers after years of leaving them in limbo, has alone cost over £24m.
<i>McDonald v the United Kingdom</i>	Additional health care obligations	The local authority submitted that the provision of a night-time carer would cost £22,270 per year. For each case affected in the future, pro rata applied across every council, it would carry a total £7m bill nationally.

597 45901/05 and 40146/06.

598 28680/06.

599 19859/04.

600 2694/08.

“This means that the annual cost from European Court of Human Rights cases is still running at around £2.1bn a year.”

Case	Issue	Impact
<i>M.M. v the United Kingdom</i>	Changes to criminal archive practice	Costs would ultimately include criminal damage arising from increased difficulty in identifying repeat offenders, and administrative costs in sweeping archives of spent cases on the Police National Computer and Police National Database. Weeding/ culling of several million files if ultimately required will likely be billed on the basis of the current ACPO Criminal Records Office (ACRO) £70 individual check rate but any end figure is highly speculative.
<i>Kay and Others v the United Kingdom</i>	Councils less likely to rent out unused derelict homes	The context is complex, and the figures vary regionally. ⁶⁰¹ Lambeth Council (the one in the case) has a short-term housing trust portfolio intended to raise £40m from the sales. ⁶⁰² Short-life cooperatives more widely affected are mostly (but not exclusively) in London and the South. Total cooperative-managed stock of all types nationally is in the order of only 25,000 units, but the issue will affect some councils disproportionately and particularly those already facing long waiting lists and seeking to release capital for builds.

Source: Internal research

Fourthly, there are also separate costs that arise from risk aversion and the safety/statutory compliance factor.⁶⁰³ That segment of the compliance industry that covers workforce, consumer and public rights has been bolstered by the growth in human rights, as firms and civil servants seek to obtain training for role certification and as a qualification that provides legal cover if their organisation is sued.

What these cases show is that liabilities arising from human rights cases to the UK economy have continued to rise by some millions (a precise figure would be speculative). What is also clear is that no action has been taken that remedies known costs already extant. The European Court of Human Rights research referenced earlier calculated that bills starting accruing from a case judged in 1981, and that total costs have accelerated in the intervening years.⁶⁰⁴ The cases listed above show the process has continued. If the annual cost since that report was written is now added to the bill, as estimated in 2009, it shows that the current annual cost from European Court of Human Rights cases is still running at around £2.1bn a year, and the cost to date of compliance as of late 2014 will have amounted to £27.8bn.

These cases further confirm that it is not only the courts in England and Wales that are affected by human rights activity. In fact, two of the first three courts in the British Isles to be affected in the 1970s (by the Strasbourg Court) were those in Northern Ireland and the Isle of Man. But Scots Law is no more immune than Common Law to being overruled under human rights review. Indeed, Human Rights Act application to Scotland is included in the remit of

601 It is usefully set out at Nearly Legal “Kay v Uk – A royale quarterpounder”, accessed 22/05/2015 at: <<http://nearlylegal.co.uk/blog/2010/09/kay-v-uk-a-royale-quarterpounder/>>.

602 The motives are raised and discussed at: <www.brixtonblog.com/housing-lambeth-councils-100m-property-sell-includes-short-life-council-homes/20726> – presumably less administrative costs, and the figure of £32m is elsewhere cited as housing market rates have fluctuated. Short-life housing does not necessarily apply to complete derelicts but can refer to the Council’s plans for a building, which have a time gap where it may continue to serve as housing and would otherwise be vacant.

603 An example of policy impact from risk aversion lies in how the German military (amongst others) limits exposure by service personnel to dangerous environments, in part because of commander liability if there are casualties. This is significantly politically-driven but there is a litigation factor involved.

604 TaxPayers’ Alliance “Britain and the ECHR”, L Rotherham (2009), accessed 22/05/2015 at: <<http://old.taxpayersalliance.com/echr.pdf>>.

“Justice can be served by any free court applying the law of the land”

the Scotland Act. This also means that fixing the problems will be particularly difficult in Scotland without revisiting the devolution terms themselves. This may be on the political agenda but it creates potential difficulties that ministers in Westminster may be prepared to leave Scottish counterparts to have to confront themselves.

It is true that, in many cases, an observer may believe justice has been served in a particular ruling. That does not obviate the principle that justice can be served by any free court applying the law of the land, as passed by a government enjoying a democratic mandate, and tested against Common Law precedent.

It is also important that not all the costs would be removed if the system was reset. Since the cases have already triggered changes in the law, the one-off costs have already been paid. In some cases, the public might quite like a particular change and consider any associated cost worth paying. But the best way of retaining an accountable system is to ensure that these issues are debated in Parliament. This is also the surest way of determining that businesses and government do not find themselves confronted with excessive compliance costs, an area in which human rights lawyers and judges are technically and professionally inexpert.

The research cited above applies to cases arising from the European Court of Human Rights and judgments by the Strasbourg Court. However, they also have a direct bearing on how EU rules and regulations are formed. Measures that may, in future, be introduced to limit costs arising from the interaction of the UK legal system with European Court of Human Rights mechanisms could initially be fixed by a change in how UK courts interact at that level; but even then, any successful reforms would then be undermined because of the growing and serious role of the EU.

15.3.2 Legal decisions would be more attuned to British law

The EU operates through two principal legal courts. Together they form the Court of Justice of the EU (CJEU).

The European Court of Justice (ECJ) is made up of 28 judges and nine advocates general. Currently, five come from Common Law jurisdictions. A further three judges have studied and/or taught in the United States, giving them at least some exposure to the differences between Anglo-Saxon and continental Roman Law.

The General Court consists of one judge per member state. As of mid-2015, only 4 of the 28 members have come from Common Law countries. Considering the biographies of each judge, it appears that none of the remainder have either studied or practised in the UK.⁶⁰⁵

Common Law interpretations over what constitute fundamental rights will invariably be affected over time by this. It has already happened in Strasbourg, where Common Law judges have been outvoted and new case law set by foreign judges overturning UK precedent.

By returning decision-making to the UK, involving British lawyers arguing British law reviewed by British judges and perhaps a British jury, all those concerned will be operating inside familiar British legal systems. This avoids the risk of case decisions breaking with Common Law or Scots Law logic and introducing contradictory rulings.

⁶⁰⁵ In Strasbourg it is common to find at least a couple of judges who had spent some time in London chambers or at a British university. Increasing case work and academic emphasis in the UK on human rights in recent years might help explain this.

“Bad decisions, controversial rulings or impractical judgments cannot subsequently be revisited by Parliament, publicly debated, or overturned.”

Conclusion

Any ambitions to reform human rights law by repatriating its management from Strasbourg to UK courts will fail unless the increasing role of the ECJ and the Commission is tackled at the same time.

Regardless of the merits of an individual case, the concept of a foreign court setting precedent in UK courts – without even a British-trained lawyer or judge being present – must be a cause for concern. Unlike with the domestic courts, bad decisions, controversial rulings or impractical judgments cannot subsequently be revisited by Parliament, publicly debated, or overturned.

Human rights law is developing an *acquis* of its own. An eighteenth-century American would have described it as a judicial tyranny; in modern democratic and economic terms, it certainly leaves a lot to be desired.

16 Energy

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“The EU’s aim to create a single European energy policy has generated substantial problems.”

EU energy policy has had a dramatic impact on the UK, affecting nearly everyone who lives on these islands. While most of the energy issues the UK faces are a result of British Government policies, there is no doubt that EU rules regulating the production of energy and the standards that energy firms are expected to conform to have, either directly or indirectly, impacted businesses and consumers.

The EU’s aim to create a single European energy policy has generated substantial problems, both via an increased regulatory burden and, up until recently, by driving up the cost of energy for consumers. However, despite these problems, there are fears that leaving the EU could compromise the UK’s access to EU energy markets. In fact, international energy connections already bind the EU to many non-EU states, including Norway. In addition, international bodies have a growing role in setting energy standards.

Taken together, this means that, if the UK left the EU, it could retain access to the EU’s energy market, it would not have to dismantle any infrastructure, and would not have to worry about being isolated, as it could represent itself in international bodies rather than merely be one voice in a crowd.

16.1 The UK would remain a member of all the key international energy bodies

Key international energy bodies

- International Atomic Energy Agency
- International Energy Agency
- International Energy Forum
- International Partnership for Energy Efficiency Cooperation
- World Energy Council
- United Nations Framework Convention on Climate Change

Today, international bodies play a significant role in governing energy-related issues, helping to coordinate international action on everything from energy regulation to pricing. Some fear that, were the UK to leave the EU, it would compromise Britain’s ability to participate in these increasingly important institutions. However, an investigation of their membership requirements shows that these organisations would not only allow the UK to retain its membership but, in certain cases, Britain would have a stronger say over their proceedings, as the country would no longer be forced to comply with a standard EU position that may not reflect the views of UK policy-makers.

16.1.1 The UK would retain the same relationship with many of the key international energy agencies

After leaving the EU, the UK would remain a member of the most important international energy organisations, including the International Energy Agency (IEA) which helps to coordinate energy policy among OECD members. The IEA was founded in response to the 1973–4 oil crisis to help countries come up with collective responses to major disruptions in oil supply. Today its remit also includes energy security, economic development, environmental awareness and ‘engagement worldwide’. The IEA is made up of 29 member countries and, to join, each member has to meet a number of requirements – none of which include being a member of the EU. As EU member states tend to agree to a common line before IEA meetings, the UK may be able to take a more independent position in this institution were it to leave the EU. It would also not need to worry about EU representatives speaking on its behalf.

“Were it to leave the EU, the UK would remain a participating member of the climate change negotiations.”

Likewise, the UK would remain a signatory to the International Atomic Energy Agency (which serves as the “*world centre for cooperation in the nuclear field*”) as membership is not dependent on the UK being a member of the EU; the World Energy Council (a UN-accredited body, headquartered in London, which promotes an “*affordable, stable and environmentally sensitive energy system*”) which operates on the basis of ‘membership committees’; and the International Energy Forum, which allows energy ministers from across the world to meet and discuss energy issues.⁶⁰⁶

16.1.2 The UK would secure a stronger relationship with the other key international energy agencies

Were it to leave the EU, the UK would remain a participating member of the climate change negotiations that take place under the United Nations Framework Convention on Climate Change (UNFCCC), but would no longer be required to be part of a ‘Team EU’ arrangement where all member states agree on a common position. Likewise, the UK would remain a member of the International Partnership for Energy Efficiency Cooperation – which coordinates global cooperation in energy efficiency. The EU is a member of this body in its own right, raising concerns that its representative could speak on behalf of the UK in the future. Leaving the EU would end this threat and ensure that Britain had no need to adjust its position to accommodate EU views.

Finally, the Energy Community is open to third countries, and the UK would be able to become a ‘party’ not a mere ‘participant’ after leaving the EU. It would also not be required to agree its position with the European Commission before any Energy Community meeting.

16.2 The UK would be able to cooperate with the EU on key energy issues

Key energy issues

- Maintaining the UK’s connection with European energy networks
- Promoting cooperation on energy issues
- Maintaining high standards

The EU currently works with a large number of third countries on a whole range of energy-related matters, including energy connectivity and renewable energy. While some of these policies are open to non-EU member states, there are questions about how easily the UK would be able to access EU programmes were it to leave the Union. The EU has made it clear that it is happy for non-EU states to be connected to its energy networks and to cooperate with other countries on energy related issues. The UK could also continue to introduce and even build on the EU’s existing standards.

16.2.1 The UK would continue to be connected to other European energy networks

Were the UK to leave the EU, it would want to stay connected to EU energy networks. The British Government has taken the lead in promoting more cross-border trade between the EU member states. In 2012, David Cameron wrote a letter to the then President of the European Council, Herman Van Rompuy, stating that the EU needed “*to establish a genuine, efficient and effective internal market*

606 International Atomic Energy Agency website, accessed 18/05/2015 at: <www.iaea.org/about/policy/process-becoming-member-state-iaea>.

*in energy... Energy interconnection should be enhanced to help underpin security of supply.*⁶⁰⁷

Fortunately, connection to EU energy markets does not depend on EU membership. Norway is very well connected to the European energy market and, in February 2015, established a new system linking Norwegian hydropower to German wind energy.⁶⁰⁸ The proposed NORD.LINK subsea high voltage direct current (HVDC) power cable between Germany and Norway would connect the two states and permit electricity flows between the EU and a non-EU state. There are many interconnectors like this linking the EU to states in the European Economic Area (EEA) and beyond, including countries in the Middle East, Israel and Serbia.⁶⁰⁹ The EU's 'projects of common interest' include numerous initiatives that link EU member states and non-EU/non-EEA states (see Figures 16.i, 16.ii and 16.iii).

Figure 16.i: Electricity Projects of Common Interest



Source: European Commission⁶¹⁰

607 Joint letter to President Van Rompuy and President Barroso, 20 February 2012, accessed 18/05/2015 at: <www.gov.uk/government/news/joint-letter-to-president-van-rompuy-and-president-barroso>.

608 Tennet "Green light for important electricity connection between Norway and Germany" (10 February 2015), accessed 22/05/2015 at: <www.tennet.eu/nl/news/article/green-light-for-important-electricity-connection-between-norway-and-germany.html>.

609 Information provided by the European Commission. Accessed 18/05/2015 at: <https://ec.europa.eu/energy/sites/ener/files/documents/pci_annex_7_2_en.pdf>, <https://ec.europa.eu/energy/sites/ener/files/documents/pci_annex_3_10_2_en.pdf> and <https://ec.europa.eu/energy/sites/ener/files/documents/pci_annex_6_10_en.pdf>.

610 Information provided by the European Commission. Accessed 18/05/2015 at: <http://ec.europa.eu/energy/infrastructure/transparency_platform/map-viewer/>.

Figure 16.ii: Gas Projects of Common Interest



Source: European Commission

Figure 16.iii: Oil Projects of Common Interest



Source: European Commission⁶¹¹

Whether it is electricity, gas or oil, the EU is connected to countries beyond its borders. This includes nations that are not even in the EEA; as the Centre for European Reform has pointed out, “Switzerland is already well connected to the European electricity grid.”⁶¹² The EU has stated that it wishes to conclude negotiations with Switzerland aimed at full integration of electricity markets.⁶¹³ The UK should have no difficulty in gaining access to French nuclear-generated

611 Information provided by the European Commission. Accessed 18/05/2015 at: <http://ec.europa.eu/energy/infrastructure/transparency_platform/map-viewer/>.

612 Centre for European Reform “Connecting Europe’s energy systems”, S. Tindale (2012), accessed 18/05/2015 at <www.cer.org.uk/sites/default/files/publications/attachments/pdf/2012/sct_energy_28sept12-6202.pdf>.

613 European Commission “The EU Energy policy: Engaging with Partners beyond Our Borders” (COM(2011) 539 final), accessed 18/05/2015 at: <http://europa.eu/legislation_summaries/energy/external_dimension_enlargement/en0032_en.htm>.

“The European Commission has made it clear that it wants to continue to engage with its neighbours.”

electricity exports or in ensuring that gas from Siberia can continue to flow through the EU to domestic markets.⁶¹⁴

These interconnectors would not be removed were Britain to leave the EU. There is also no reason why the UK cannot continue to work with the EU to ensure that its facilities are able to connect with EU grids. Indeed, key players in the UK’s current energy mix are large, state-owned European companies such as EdF (Électricité de France) – it is hardly likely they would risk their own considerable profits by escalating protectionism in the energy sphere. Of the other ‘Big Six’ energy firms, two are German-owned (E.ON and nPower) and Scottish Power is owned by a Spanish corporation, Iberdrola.

It is important to note that the Republic of Ireland accesses many energy sources purely through the UK (below). Given that it would be prohibitively expensive to build new pipelines to bypass Britain, and that these pipelines would have to be constructed with inordinate speed, it is highly unlikely that the EU would choose to suspend energy trade with the UK.

It is also worth noting that the European Commission has made it clear that it wants to continue to engage with its neighbours. As Commission President Jean-Claude Juncker has stated: *“I want to keep our European energy market open to our neighbours... if the price for energy from the East becomes too expensive, either in commercial or in political terms, Europe should be able to switch very swiftly to other supply channels. We need to be able to reverse energy flows when necessary.”*⁶¹⁵ Further, with the continuing threat that energy supplies from Russia could be cut off, there is a clear political necessity for the EU to keep access to UK energy reserves, not least North Sea oil and gas.

While there are clear benefits to this ongoing access to the EU’s energy markets, despite repeated efforts to build a Single Market in energy, the EU has failed to realise this vision. Despite the fact that the European Council set a clear deadline of 2014 for the completion of the internal energy market, the Commission has acknowledged that it has not been completed.⁶¹⁶ EU rules remain fragmented, varying from member state to member state. There are numerous reasons for this failure. While the UK had unbundled its electricity and gas markets in the 1980s, many European countries remained vertically integrated. While the EU’s attempts to unbundle European energy systems could have benefits (its second energy liberalisation package was clearly based on the UK’s own model) there are evident limits to the EU’s success in this area.

This failure to build a genuine Single Market is, in part, down to the inevitable variations in how different member states implement EU directives. Respondents to the Balance of Competences Review warned that *“flexibility in implementation was leading to differing interpretation of legislation across the EU which in some cases was putting the UK at a competitive disadvantage”*.⁶¹⁷ There has also been a huge amount of variation in the time taken to implement EU laws; for example, the UK was one of the first states to fully implement the Third Energy Package, but other member states have had a patchy record in implementing it, putting the UK at a competitive disadvantage (this has led the

614 North Sea gas will help ensure the UK remains connected to the network: the UK is also less dependent than other countries on an EU grid owing to Norway’s exports and solid fuel imports from around the world.

615 “A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change”, J-C. Juncker (2014), accessed 23/052015 at: <http://ec.europa.eu/priorities/docs/pg_en.pdf#page=6>.

616 Council of the European Union “Note 16037/14”.

617 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report” (2014) page 7.

“Leaving the EU need not even mean a decline in UK influence over EU legislation.”

Trade Policy Research Centre to warn that *“energy is yet another area where the UK’s efforts to achieve EU reform have been less than successful”*.⁶¹⁸

16.2.2 The UK would continue to be able to cooperate with the EU on energy matters

President Juncker has made it clear that he believes the EU should engage and work with third countries on energy issues, stating that *“we need to pool our resources, combine our infrastructures and unite our negotiating power vis-à-vis third countries.”*⁶¹⁹ There is no reason why the UK, after it leaves the EU, cannot continue to work with the EU to ensure that its facilities are able to connect with EU grids and to share health and safety practices. Switzerland, for example, has been negotiating a bilateral agreement with the EU in the electricity sector since 2007 and, in autumn 2010, the Swiss Government expanded the negotiation mandate, allowing it to encompass the third internal energy market package.⁶²⁰

Likewise, it would be possible for the UK to continue to cooperate with the EU on renewable energy related matters. The EU is committed to working with third countries via the ‘Bringing Europe and Third countries closer together through renewable Energies’ (BETTER) programme, which allows member states to cooperate with third countries to meet their renewable energy targets.⁶²¹ In addition, the expanded mandate between the EU and Switzerland also facilitates the incorporation of the EU directive on the promotion of the use of energy from renewable sources.

Leaving the EU need not even mean a decline in UK influence over EU legislation – especially if it secures membership of the EEA. Norway’s involvement in a 2009 EU directive on the geological storage of carbon dioxide (CO₂), known as the Carbon Capture and Storage (CCS) Directive 2009/31/EC, shows how states could still interact and influence EU/EEA law from the EEA position. The CCS Directive was *“largely based on rules that had been established in 2007 under multilateral agreements on the marine environment”* in which Norway *“played a leading role in discussions”*, as it had experience in carbon storage from the North Sea’s Sleipner natural gas field. The field is run by Statoil (the Norwegian state-owned oil firm) and, since 1996, has operated as the world’s first offshore CCS plant. Norwegian authorities such as the Climate and Pollution Agency also contributed expert input to the 2007 Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR convention), led working groups, and put forward proposals. Norwegian representatives were *“actively involved”* in preparing the Special Report on Carbon Dioxide Capture and Storage for the Intergovernmental Panel on Climate Change (IPCC), published in 2005. Together, the OSPAR convention and IPCC paper set the agenda for the EU’s 2009 Directive, which includes several of the same principles. In addition, Norway participated in the EU negotiations themselves, and was *“at an early stage invited to take part in the working group... to draw up the legislation”*. Norway’s agenda succeeded. The OECD described Norway as a *“spearhead”* and *“leader”* in climate and maritime discussions, backing up former US presidential candidate Al Gore, who said *“other countries look at Norway as a*

618 Trade Policy Research Centre *“The EU, Energy and Climate Change”* (2012) page 11.

619 *“A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change”*, J-C. Juncker (2014), accessed 23/05/2015 at: <http://ec.europa.eu/priorities/docs/pg_en.pdf#page=6>.

620 Swiss Federal Office of Energy *“Energy negotiations between Switzerland and the EU”*, accessed 28/05/2015 at: <www.bfe.admin.ch/themen/00612/00618/?lang=en>.

621 European Commission *“Bringing Europe and Third countries closer together through renewable Energies (BETTER)”*, accessed 23/05/2015 at: <<http://ec.europa.eu/energy/intelligent/projects/en/projects/better>>.

“By working both upstream and throughout the process, Norway clearly had a good deal of influence.”

*moral leader in climate policy”, and Greenpeace’s chief negotiator: “It is better having a clear voice... than being drowned in the EU’s internal disputes”.*⁶²²

Of course, it is not necessary to support the specific green agenda or to agree with Norway’s specific contributions to see the importance of this episode. The lesson is that, by working both upstream and throughout the process, Norway clearly had a good deal of influence.⁶²³

There are other examples of the strength of the Norwegian position. In 2009, the EU published proposals for oil exploration regulation. The EEA Joint Parliamentary Committee argued these EU rules were ‘not EEA relevant’, putting Norway in a better position than Britain. But the EU then asserted that the rules, the ‘Proposal on safety of offshore oil and gas prospection, exploration and production activities’, would apply to Norway.

Together with the UK, the Netherlands and Denmark, Norway lobbied hard and what eventually passed as Directive 2013/30/EU was amended strongly such that those North Sea states (which are responsible for up to 90 per cent of the EEA’s oil extraction) would be less impacted. In the words of a legal commentator, rather than letting the EU invent a whole new punishing regime for safety on offshore sites, the final law “allows (a state) to enhance its existing regime rather than reinvent the wheel”, a situation more to the satisfaction of the four European oil states.⁶²⁴

The UK could also reapply to become a member of the Council of European Energy Regulators (if it gains membership of the EEA). This would further bolster its influence over EU regulatory policy.

16.2.3 The UK could continue to incorporate EU standards

In addition to trying to regulate the production and supply of energy, the EU has a prominent role in attempting to ensure that energy production meets a wide range of standards. Perhaps the most notable example has been in the area of safety. The EU has introduced numerous policies that have aimed to make both the workplace and the average citizen safer, ranging from the Directive on Minimum Standards for the Protection of Workers from Explosive Atmospheres (Directive 99/92/EC) to the Offshore Safety Directive (Directive 2013/30/EU). The EU has also shown a willingness to act in response to circumstances as well: following the explosion on the Deepwater Horizon drilling rig in 2010, the Commission launched an urgent assessment of the safety of offshore activities in European waters, together with a review of the applicable legislation.

The EU has also introduced a robust framework for ensuring high safety standards in civil nuclear plants.⁶²⁵ EURATOM was praised in the Balance of Competences Review for its “high safety standards”.⁶²⁶ But there was concern that, when it came to EURATOM, the EU focuses far more on safety and security than

622 Nei til EU “Alternativrapporten: The Alternative EEA Report”, S. Gjelsvik et al. (Oslo, 2012), page 21.

623 Civitas “The Norwegian Way”, J. Lindsell (London, 2015), pages 32–33,

624 “Offshore oil and gas safety directive now in force”, R. McFarlane (2 October 2013), accessed 23/05/2015 at: <www.inhouselawyer.co.uk/index.php/scotland-home/10323-offshore-oil-and-gas-safety-directive-now-in-force>. Final directive available on the EU Law website at: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:178:0066:0106:EN:PDF>>. From Civitas “The Norwegian Way”, J. Lindsell (London, 2015), pages 49–50.

625 Arguably excessively so, given the requirement of A10/A2 states to shut down uncertain reactors (with EU grants). This was notwithstanding actual electricity shortfalls that might be generated. A notable example on both counts was the reactor at Kozloduy.

626 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report” (2014) page 9.

“Stakeholders complained that the EU was trying to increase its remit via extensive health and safety regulation.”

it does on the role of nuclear energy in a future energy mix. After the Fukushima incident in Japan, the EU started to undertake stress tests at nuclear plants across the EU. The Commission has now proposed a Nuclear Safety Directive.

Were it to leave the EU, the UK would retain all EU directives that it has introduced onto the statute books (it would need to make sure that regulations are kept via a separate process). However, it should be noted that the UK already had high standards before the EU introduced its own policies. In the Balance of Competences Review, stakeholders argued that *“world class systems were already in place for oil and gas reserves and they were already subject to a raft of safety legislation”*.⁶²⁷ In the same review, stakeholders complained that the EU was trying to increase its remit via extensive health and safety regulation and again noted that there were already sufficient rules in this area.⁶²⁸

16.3 New energy policy opportunities would become available

Were Britain to leave the EU, it would suddenly have a large number of policy options available to it. It would not just be able to escape from the EU’s ‘mission creep’ in energy, but would also have the chance to reverse some of the damage that EU policy has done over the last few years. UK policy makers would have to be sure that any reforms introduced met Britain’s international obligations, and would have to ask themselves whether any attempts to repeal EU energy law might compromise the UK’s commitment to green policies. However, because of the array of options available to the UK after leaving the EU, it could help to reduce ‘carbon leakage’ (see later) and cut the cost of energy via a range of policies, leaving it the freedom to retain – or amend – EU laws which it considered beneficial.

16.3.1 EU ‘mission creep’ could be stopped at a stroke

The importance of having a sensible energy policy is hard to overstate. Energy security must be near the top of any national list of priorities. By leaving the EU, the UK would be able to protect itself from an ever-increasing number of policies driving up the cost of energy and placing burdensome restrictions on what resources can be used for its production. Leaving the EU would, as far as energy is concerned, give the UK the chance to opt out of a relationship where the disadvantages overwhelmingly outweigh the advantages.

While the EU has a long history of involvement in energy issues (the two groups that eventually evolved into the European Economic Community (EEC), the European Coal and Steel Community and the European Atomic Energy Community, were both concerned with energy issues), there was, for many years, no explicit legal base for European energy measures in the Treaties. This meant, among other things, that member states were able to develop their energy mixes independent of one another, responding to national circumstances.

Despite the fact it was only given the formal power to legislate on energy in 2009, the EU has been involved in decisions in the area for many years, developing a de facto energy policy over several decades. This arguably started when the then EEC sought to come to a common position against the Organization of

627 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report” (2014) page 53.

628 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report” (2014) page 70.

“Despite this lack of a legal basis, directives were still passed that affected energy markets.”

Petroleum Exporting Countries (OPEC) during the 1973 energy crisis.⁶²⁹ During the Maastricht Treaty discussions in the early 1990s, proposals for an energy chapter were vetoed and the final wording of the Treaty meant that the EU lacked the legal foundations for energy laws for several years.

However, despite this lack of a legal basis, directives were still passed that affected energy markets, notably initiatives that sought to create an internal market in electricity (Directive 96/92/EC) and gas (Directive 98/30/EC), which were based on internal market or environmental clauses in the Treaties. Other policies, like the Renewables Energy Directive (Directive 2009/28/EC) and the introduction of the EU’s Emissions Trading Scheme (ETS) were based on environmental clauses in the Treaty. It was noted by the House of Lords Committee that, before 2009, certain European energy laws lacked a convincing legal basis.⁶³⁰

The introduction of the Lisbon Treaty in 2009 finally gave the EU the right to legislate in the area of energy. Today, the EU derives its legal basis for energy policy primarily from Article 194 of the Treaty on the Functioning of the European Union (TFEU), though it also derives its right to legislate on security of supply via Article 122 TFEU and on energy networks via Articles 170–172 TFEU.⁶³¹ The Lisbon Treaty made it clear that energy policy was now a shared competence between the EU and the member states, stating in Article 194 TFEU that the EU’s strategic objectives in the field of energy policies are to:

- Ensure the functioning of the energy market;
- Ensure security of energy supply in the Union;
- Promote energy efficiency and energy saving and the development of new and renewable forms of energy;
- Promote the interconnection of energy networks.

While the Treaty prohibits the EU from passing measures which *“affect a member state’s rights to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply”*, this has not prevented the EU from introducing a host of laws in the area of energy, including policies regulating member states’ energy mixes.⁶³² EU programmes that aim to reform and increase the transparency of the energy markets, create a level playing field for competition, promote market liberalisation and cross-border market access (along with promoting renewables) have led to a substantial increase in the number of EU laws. While some of these changes are seen as positive – and have been promoted by the UK – it has also been noted that *“the UK has often needed to change its existing legislation when harmonising rules and regulations have been subsequently agreed at the EU-level”*.⁶³³ Increasing EU competence invariably means changes to UK domestic laws to accommodate harmonising measures.

629 The countries of the Organization of the Petroleum Exporting Countries (OPEC) – Algeria, Angola, Ecuador, Iran, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, the United Arab Emirates and Venezuela – together with Syria, Egypt and Tunisia – imposed a global oil embargo in protest over the United States position over the Yom Kippur war. Within a year, the price of a barrel had increased from \$3 to \$12. This sparked a worldwide slump.

630 House of Lords European Union Committee *“The Treaty of Lisbon: an impact assessment: Volume I”* (2008), page 221.

631 The Foreign and Commonwealth Office (FCO) determined that the powers were new in its own assessment of the Lisbon Treaty, found in FCO *“A comparative table of the current EC and EU Treaties as amended by the Treaty of Lisbon”* (2008).

632 *“EU law after Lisbon”*, A. Biondi, P. Eeckhout & S. Ripley (Oxford, 2012), page 372.

633 HM Government *“Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report”* (2014), page 7.

“‘Completing the Single Market’ has become a catch-all term justifying unnecessary harmonisation and further over-prescriptive regulation.”

In addition to this increase in constitutional powers, the EU has introduced a number of policies and programmes in its attempt to manage Europe’s energy markets. Recent initiatives include the European Commission’s “Energy Policy for Europe” (published in 2007, this committed the EU to “a low consumption economy based on more secure, more competitive and more sustainable energy”)⁶³⁴ and the Renewable Energy Directive or 20–20–20 package, which seeks:

- A 20 per cent reduction in EU greenhouse gas emissions in each member state by 2020 compared to 1990 levels;
- 20 per cent of all energy consumed in the EU to be generated from renewable sources by 2020 (separate targets were produced for all member states);
- A 20 per cent reduction in primary energy consumption (non-binding) in each member state by 2020.

The EU responded to the financial crisis by adopting a “European Energy Programme for Recovery” (Regulation (EC) No 663.2009), which provided funding to energy-related products. In 2009, the Third Package of internal electricity and gas market reform legislation was also adopted, which sought to further improve the functioning of the market through a range of measures, aiming to achieve a fully functioning market by 2014 and, by 2015, to end the energy island status of the last few isolated member states. This was followed up, in 2010, with the adoption of a new strategy. “Energy 2020: A strategy for competitive, sustainable and secure energy” aims, among other things, to limit energy use in Europe, build a pan-European integrated energy market, empower consumers, further develop energy technology and innovation, and strengthen the external dimension of the EU energy market.⁶³⁵ The recent 2030 framework introduced a new renewables target of 27 per cent (though as of yet there has not been new binding targets on member states) and only offered a review of the energy efficiency directive, looking at “policy measures at the EU and national levels”.⁶³⁶

It is clear that the Commission means business in developing this policy area.

As discussed earlier, ‘completing the Single Market’ has become a catch-all term justifying unnecessary harmonisation and further over-prescriptive regulation. Far from the dream of liberalising trade, the creation of a Single Market has been characterised by the proliferation of regulation and an extension of EU powers and oversight. The assumption that harmonisation and more regulations would complete the Single Market and bolster competitiveness can also only be taken so far. Energy UK has noted that, in certain areas, in particular interconnection, “a one-size-fits-all EU approach is not appropriate” and has highlighted examples of laws which don’t appear to improve cross border trade.⁶³⁷ It has stated:

It is important in our view that the Network Codes focus particularly on overcoming barriers to trade and do not impose unnecessary costs. This is particularly important for a mature competitive market such as the UK, where costly

634 European Commission, accessed at: <http://europa.eu/legislation_summaries/energy/european_energy_policy/127067_en.htm>.

635 European Commission “A strategy for competitive, sustainable and secure energy”, accessed 23/05/2015 at: <http://europa.eu/legislation_summaries/energy/european_energy_policy/en0024_en.htm>.

636 European Commission Climate Action, information at: <http://ec.europa.eu/clima/policies/2030/index_en.htm>.

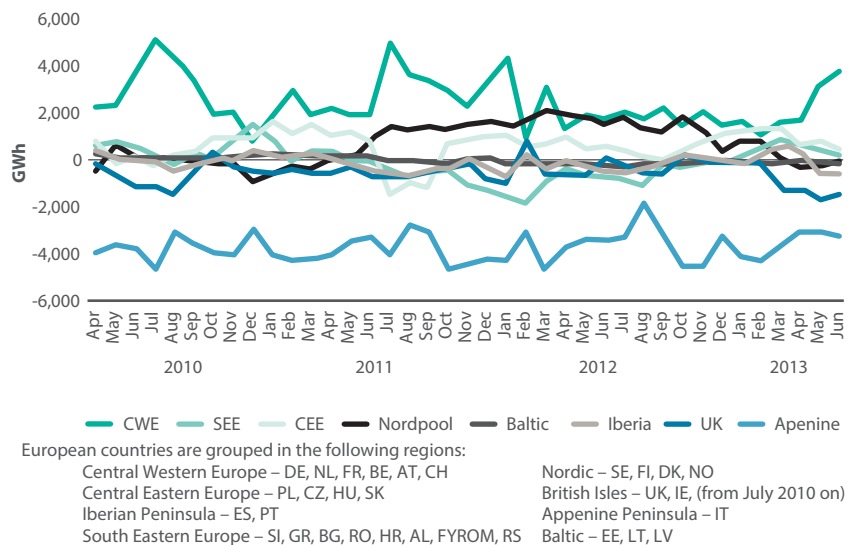
637 Energy UK “Balance of Competences Review” (2014).

system changes could be required without major benefit in terms of promoting cross border competition.⁶³⁸

The UK Government has noted the “missing links in the EU’s energy infrastructure”, while reports for the European Commission have stated that, while the EU has managed to secure some market coupling over the last 10 years, “market coupling is delivering only the benefits of short term arbitrage in energy trading.”⁶³⁹

Other reports have pointed out that price convergence between markets has not materialised. In the Central West Europe region, market coupling initially resulted in price convergence of 66 per cent in the first year (2011) but, by 2012, this figure had fallen to 46 per cent and, in 2013, to just 15 per cent. According to the study “market coupling has failed to overcome national supply/demand factors.”⁶⁴⁰ The lack of growth in cross-border energy trade can also be seen in figure 16.iv which, while showing significant variation over several months, also shows a concerning lack of growth over time. Significant barriers also exist in efforts to interconnect member states, especially in regard to cross-border interconnection projects, where member states’ consenting regimes can differ radically (it is hoped that the Trans-European Energy Infrastructure Regulation – adopted in 2013 – will address these barriers). Differences in attitudes to issues such as fracking and nuclear energy have also caused problems (the decision by Germany to phase out nuclear energy, in particular, has created uncertainty).

Figure 16.iv: EU cross-border monthly physical flows by region



Source: European Commission⁶⁴¹

It is hard to disagree with The Economist that the EU suffers from “balkanised energy markets”.⁶⁴²

Leaving the EU would allow Britain to, once again, be certain of its energy security. The ability to discard damaging laws that hold back energy produc-

638 Energy UK “Balance of Competences Review” (2014).

639 Department for Business, Innovation & Skills “European Commission Consultation on the Single Market Act” (2011), page 23.

640 Energy Economist “Trying to get a single European electricity market” (2014).

641 European Commission “Quarterly Report on European Electricity Markets, Vol.6 Issue 2” page 22.

642 The Economist “Europe’s energy woes” (2014), page 32.

“Interconnectivity need not be harmed by Britain leaving the EU: the UK would remain connected to European energy and electricity grids.”

tion and to dramatically decrease the price of energy (lowering VAT on energy bills is an option that would become immediately available) offers real and tantalising opportunities for the UK energy sector. Interconnectivity need not be harmed by Britain leaving the EU: the UK would remain connected to European energy and electricity grids, and work could be done to ensure that energy firms could continue to compete in a Europe-wide market. Foreign firms would certainly wish to maintain their current access to UK consumers, and presently the UK market is more open than some EU counterparts. So the UK has plenty of options to ensure that it could still cooperate with the EU after leaving and, even in the highly unlikely scenario that it was unable to do a deal, the benefits of being able to manage its own energy mix and avoid the consequences of EU energy policies make leaving the EU a more attractive scenario than retaining the status quo.

One very positive development in the last few years has been the decision of EU leaders to not introduce burdensome laws in certain areas. For some time, there was a fear within the British Government that the EU was going to restrict fracking. While this could be seen as a negative development (see Section 17 for an environmental criticism of this decision), there is little doubt that, from an energy-generating perspective, it was positive. Instead of introducing a regulation or directive on shale gas, the Commission instead agreed a non-binding recommendation. According to the British Government, *“this has given energy firms the ability to plan their business with confidence, encouraging investors without undermining important environmental protections. Shale Gas extraction could attract a peak annual investment of up to £3.3bn, and support over 64,000 jobs in the UK alone.”*⁶⁴³

There are certainly exciting opportunities that become available for the UK, with the British Geographical Survey suggesting that there is 1,300 TCF of shale gas in the north of England alone. However there are concerns that the EU may seek to regulate shale gas in the future. As the Balance of Competences Review noted: *“It is possible that, in the future, when there is heightened activity on shale in the EU, the Commission may consider proposing more prescriptive legislation to ensure that all participants adhere to the same rules.”*⁶⁴⁴

In addition, the EU has also abandoned (for now at least) the idea of national renewable targets after 2020. This offers much greater flexibility for member states and meets one of the key demands of the British Government. In October 2014, EU leaders committed by 2030 to reduce greenhouse gas emissions by at least 40 per cent, and increase energy efficiency and renewables by at least 27 per cent.⁶⁴⁵ A special ‘flexibility clause’ was added to the final text, making it possible for the European Council to revise the targets after the UN summit in December 2015.

16.3.2 UK would be able, if it wishes, to alter its current energy policies

Leaving the EU would offer Britain the chance to reconsider some of the more burdensome laws that have been introduced. The UK may choose to retain most EU laws relating to energy, either as part of a deliberate Government policy of incorporating standards or as part of applying for EEA membership, which would require the incorporation of the vast bulk of these laws; such an approach

643 HM Government “Cut EU red tape: one year on” (2014).

644 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report” (2014) page 76.

645 European Commission “2030 framework for climate and energy policies”, accessed 23/05/201 at: <http://ec.europa.eu/clima/policies/2030/index_en.htm>.

“The EU has taken to using prescriptive regulations rather than the more flexible directives.”

would be cost neutral in regulation terms. But it would also be possible for the Government to repeal, or at least reconsider, many of the energy laws currently on the statute books (though it would have to remember its international obligations).

As of 19 December 2014, there were 230 legislative instruments falling under the remit of Directorate General for Energy.⁶⁴⁶ These are the inevitable product of decades of both legislative creep and the EU’s ambition of integrating Europe’s energy markets. While regulatory harmonisation both allows energy firms to access larger markets and provides stability for investors, there appears to have been a disconcerting failure to rein in the amount of regulation that is being produced. It is also worrying that the EU has taken to using prescriptive regulations rather than the more flexible directives.⁶⁴⁷ Under EU rules and targets, the UK has committed itself to the largest increase in renewable energy consumption of any EU member. Under the rules that it has agreed to, the UK must quadruple the amount of energy consumption that comes from renewables. In terms of electricity generation this means increasing the share of renewables from 11.3 per cent in 2012 to over 30 per cent in 2020.⁶⁴⁸ The Renewables Directive (Directive 2009/28/EC) introduced a target for the share of energy from renewable sources in the transport sector to amount to at least 10 per cent of its final energy consumption by 2020. The Fuel Quality Directive (Directive 2009/30/EC) has also obliged the UK to reduce the greenhouse gas intensity of fuels by six per cent by 2020.

The Energy Efficiency Directive (Directive 2012/27/EU) was adopted in 2012 and sets a common framework for the promotion of energy efficiency, including requiring member states to set indicative energy efficiency targets and achieve certain energy savings, and a requirement for large businesses to carry out an energy audit every four years. In addition, the Energy Performance of Buildings Directive (Directive 2002/91/EC) requires energy performance certificates to be included in all advertisements for the sale or rental of buildings.

These measures – especially the 20–20–20 targets – have raised considerable concern, not least in the UK. The UK’s former Chief Scientific Adviser Sir David King has even suggested that former Prime Minister Tony Blair did not realise what he was signing up to:

I think there was some degree of confusion at the heads of states meeting dealing with this. If they had said 20 per cent renewables on the electricity grids across the European Union by 2020, we would have had a realistic target but by saying 20 per cent of all energy, I actually wonder whether that wasn’t a mistake.⁶⁴⁹

The EU often takes a very long time to design and implement legislation, and individual acts often lack coherence across energy, climate and environmental policy. The problems caused by such cumbersomeness can be seen in the responses to the Balance of Competences Review, which criticised *“the inflexibility of EU processes to adapt to changing circumstances and the tendency for the Commission to pursue new legislation rather than focusing on monitor-*

646 DG ENER “Overview of the secondary EU legislation (directives and regulations) that falls under the legislative competence of DG ENER and that is currently in force”, accessed 23/05/2015 at: <<https://ec.europa.eu/energy/sites/ener/files/documents/2014-12-19-ener-legislation.pdf>>.

647 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report” (2014), page 40.

648 Open Europe “Rotten foundations: Time to reassess the EU’s Environmental and Climate Change policies”.

649 BBC News “Poverty fears over wind power” (2008).

ing, enforcement and revision of existing legislation” and also pointed out that respondents disliked the “incoherence of elements of [EU] energy policy with the interaction between individual pieces of legislation sometimes leading to unintended consequences”.⁶⁵⁰

It is possible to calculate the cost of EU energy laws by looking at detailed HM Government Impact Assessments (IAs). These are official documents produced by departments to accompany new regulations, stating how far the specific recommended policy meets the Government’s objectives and calculating the potential costs. While there has been a noted failure by the Government to place all the IAs in one repository (previous attempts to compile such a collection have had notable omissions) it is possible to select a large sample.

The EU and British Government both claim that these directives bring benefits which often outweigh the costs, but this claim has been widely disputed.⁶⁵¹ There is a lot of evidence to suggest that the benefits have been exaggerated: for example, the ETS Impact Assessment said the benefits were dependent on a scenario “where EU action is pivotal in achieving a global deal”.⁶⁵² This proved a flawed assumption. In other IAs, the projected benefits are based on an attempt to quantify predicted improvements in the environment.

By looking at the total cost to British business, we can start to get an idea of the total cost of the regulatory impact, with a detailed breakdown of the costs and benefits provided below.

Table 16.v: Net costs of EU energy directives⁶⁵³

IA Title	Total Cost (Lower)	Total Cost (Upper)	Total Benefits (Lower)	Total Benefits (Upper)	Net Costs (Lower)	Net Costs (Higher)
EU Renewable Energy Directive	£98.9bn	£119.1bn	£6.2bn	£12.4bn	£92.7bn	£106.6bn
EU Climate and Energy package, the revised EU Emissions Trading System Directive and meeting the UK non-traded target through UK carbon budgets	£20.6bn	£20.6bn	£9.2bn	£9.2bn ⁶⁵⁴	£20.6bn	£20.6bn

650 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report” (2014), page 7.

651 Open Europe “Top 100 EU regulations cost the UK economy £27.4bn a year – and costs outweigh benefits in a quarter of cases” (2013).

652 Government Impact Assessment of the EU Climate and Energy package, found at <https://ukccsrc.ac.uk/system/files/publications/ccs-reports/DECC_CB_90.pdf>.

653 The following values were determined by adding the relevant IAs. It is important to note that the UK can go ‘beyond’ minimum EU standards and that the costs and benefits stem not just from the EU but from the decision of UK policy-makers as well. However, it is equally important to remember that the origin of many of these rules and directives stemmed originally from the EU and that the measures cited above were primary introduced to meet EU requirements. IAs also provide a ‘lower’ and ‘upper’ estimate of the costs. Both are provided in Table 16.v.

654 Benefits in this IA were based on the assumption that the 2009 Copenhagen Agreement would result in a global climate change deal. As the IA points out: “Benefits depend on other’s actions and the emissions concentration trajectory the world is on. High end of range reflects world where EU action is pivotal in achieving a global deal.” Considering the failure of the Copenhagen Summit only lower benefit estimates were counted, not the £242.1bn higher estimate.

IA Title	Total Cost (Lower)	Total Cost (Upper)	Total Benefits (Lower)	Total Benefits (Upper)	Net Costs (Lower)	Net Costs (Higher)
Directives concerning the Internal Market in Gas & Electricity	£23.6m	£217.7m	£13.6m	£27.2m	£10.1m	£190.5m
Proposal to recast the Basic Safety Standards (96/29)(and other Euratom) Directives	£76.5m	£84.9m	£0	£0	£76.5m	£84.9m
Industrial Emissions Directive (IED)	£3.4m	£20.6m	£0	£0	£3.4m	£20.6m
Regulations on the supervision and control of shipments of radioactive waste and spent fuel	£690,000	£690,000	£0	£0	£690,000	£690,000
EU requirements for heating, cooling, and hot water networks	£0	£0	£0	£0	£0	£0
Oil Stocking Order	£126m	£126m	£554m	£554m	-£428m	-£428m
Energy Products Directive	£1.4bn	£2.1bn	£5.3bn	£6.8bn	-£3.9bn	-£4.6bn
Planning for nationally significant infrastructure	£200m	£200m	£4bn	£5bn	-£3.8bn	-£4.8bn
Energy Performance of Buildings Directive	£7.1bn	£8.6bn	£9.9bn	£30.3bn	-£2.8bn	-£21.7bn
TOTAL	£128.8bn	£151.4bn	£35.5bn	£64.8bn	£93.2bn	£86.5bn

Source: Business for Britain

Significantly, there are benefits that stem from these laws, not least the potential to make the air cleaner, and it is worth emphasising that the above analysis suggests that some EU directives actually have a net benefit for the UK. Britain would certainly retain rules for the safe transportation of radioactive waste, for example. Table 16.v simply shows the net costs that stem from these rules, and these can be considerable.

It has been suggested that, even if it were outside the EU, the UK Government would go beyond minimum EU requirements in implementing EU regulations. However, this claim does not tell the whole story: studies have shown that British regulation is more effective at delivering benefits than European regulation, so were the UK to replicate the spirit and intentions of EU laws as British rules, these rules would likely be much less onerous and, crucially, more easily altered in response to changing circumstances.⁶⁵⁵

In addition to applying upward pressure on energy prices, EU energy laws also place a significant regulatory burden on British firms. There is mounting evidence that the UK has been particularly badly hit by the compliance costs that have stemmed from EU energy laws, in part down to the UK's failure to secure exemptions.

655 Open Europe "Still out of control? Measuring eleven years of EU regulation" (2010).

“The increasingly complex regulatory burden has been noted by firms with high energy demands.”

The increasingly complex regulatory burden has been noted by firms with high energy demands. The British Ceramic Confederation has warned that “the EU’s stringent hazard based / precautionary approach to regulation can cause serious implementation problems for companies.”⁶⁵⁶

In addition, the UK’s ability to assist struggling firms is severely undermined by EU rules on state aid, which set strict requirements for any sort of assistance. These are, at least, being reconsidered and the EU has introduced new “Environmental and Energy State Aid Guidelines” that would look at state aid in the energy sector.

The problem with EU regulation in recent years is that it has been based on a number of assumptions which, in the words of the House of Lords, “have been proven inaccurate”.⁶⁵⁷ In particular, the EU’s belief in the mid-2000s that there would be a global deal agreed at Copenhagen (in which the EU would play a major role) to tackle climate change was proven wrong. At the same time, the period 2005–14 has seen major changes in global markets: economic recession brought the price of carbon down, while the shift to shale gas in the US has, at least in the short to medium term, revitalised fossil fuel industries that had previously been seen as endangered. EU policy decided in the mid-2000s is already well out-of-date, and yet it is very hard for the UK to opt out of or modify these laws. Despite these problems, the EU’s current policy agenda seems to be ‘more of the same’. Current proposals from the European Commission focus on completing the Single Market, with specific plans for more regulation and harmonisation with a view to improving interconnectivity. It should also be remembered that, while important, interconnection on its own does not guarantee that prices would fall: as President Barroso admitted in a presentation when looking at the impact of EU proposals, “energy costs [are] to rise in all scenarios”.⁶⁵⁸

Perhaps the most dramatic impact that the EU has had on energy policy is the way its measures have forced the closure of UK power plants. In particular, two directives have caused significant damage to the UK’s energy sector, the Large Combustion Plant Directive (Directive 2001/80/EC) and the Industrial Emissions Directive (Directive 2010/75/EU), which have both forced many old power plants to close.

A quarter of the UK’s current power plants are due to close by 2020. Of these, half (including all of the coal and oil stations scheduled for closure) are shutting down to comply with the Large Combustion Plant Directive, which limits emissions from combustion plants with a thermal capacity of 50 MW or more. Under the terms of the Directive, combustion plants built earlier than 1987 are forced to comply. This Directive has had a particularly damaging impact on the UK compared to other EU member states.⁶⁵⁹ The stations that have closed, or are scheduled to close are presented in Table 16.vi:

656 British Ceramic Confederation “Response to the call for evidence on the Government’s review of the balance of competences” (2014) page 1.

657 Lords European Union Sub Committee “No country is an energy island” (May 2013), page 9, accessed 23/05/2015 at: <www.parliament.uk/documents/lords-committees/eu-sub-com-d/energy/euenergypolicyfinalreport.pdf>.

658 European Commission “Energy Priorities for Europe: Presentation of J.M. Barroso to the European Council” (22 May 2013), accessed 23/05/2015 at: <http://ec.europa.eu/europe2020/pdf/energy3_en.pdf>.

659 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report” (2014), page 20.

Table 16.vi: Power plants that have closed or are due to close to comply with Directive 2001/80/EC

Station	Capacity (MW)	Closure Date
Grain A	1,300	Dec-12
Kingsnorth	1,940	Dec-12
Cockenzie	1,152	Mar-13
Didcot A	1,940	Mar-13
Fawley	990	Mar-13
Tilbury	750	Aug-13
Ferrybridge C units 1 & 2	980	To close by end of 2015
Ironbridge	970	To close by end of 2015
Littlebrook	1,370	To close by end of 2015

Source: Department of Energy and Climate Change⁶⁶⁰

It has been estimated that over 1,000 jobs will be lost as a direct result of these closures. It is also worrying in the context of the UK's energy security. A House of Lords Committee recently warned that it was concerned about *"the imminent closure of large numbers of coal plants across the EU due to environmental rules."*⁶⁶¹ It is understandable why: the UK's margin of excess electricity generating capacity looks set to decline in the next few years, to potentially below 10 per cent in 2022 (Ofgem has warned that the de-rated capacity margin may be four per cent by winter 2015),⁶⁶² and there is a distinct danger of widespread blackouts and of vulnerable individuals being put at risk from extreme temperatures.⁶⁶³

The EU looks set to go even further and close down more plants. The Industrial Emissions Directive would place additional restrictions on the operation of some existing coal and older CCGT stations after 2016.⁶⁶⁴ Commentators have warned that these current power stations are at risk from the new directive:

- Rugeley;
- Cottam;
- Eggborough;
- West Burton;
- Ferrybridge;
- Fiddlers Ferry;
- Aberthaw;
- Longannet;
- The Drax plant;
- Kilroot.

660 Freedom of Information request from Business for Britain to the Department of Energy and Climate Change.

661 House of Lords European Union Sub Committee "No country is an energy island: securing investment for the EU's future" (2013) page 5.

662 HM Government "Balance of Competences between the United Kingdom and the European Union: Energy Report" (2014), page 68.

663 HM Government "Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report" (2014), page 68.

664 The Industrial Emissions Directive coalesced seven existing directives into one, including the Large Combustion Plant Directive, the Integrated Pollution Prevention and Control Directive, the Waste Incineration Directive, the Solvent Emissions Directive and the three existing directives on Titanium dioxide.

“Many EU rules surrounding energy are fair in intent but are either written too bluntly to be effective or ignore specific UK circumstances.”

The EU has also created problems when it comes to opening new nuclear power plants – in 2013, the European Commission launched an in-depth investigation to examine whether UK plans to subsidise the construction and operation of a new nuclear power plant at Hinkley Point in Somerset are in line with EU state aid rules, adding months of delay to the introduction of new energy generating capacity.⁶⁶⁵

These policies have been criticised by many different groups. In a recent report, Ofgem warned that the *“risks to electricity security of supply over the next six winters have increased”*, putting the reduction of capacity down to plants having to close to comply with the term of the Large Combustion Plant Directive (the same report noted that LCP Directive opted-out oil plants were also closing faster than expected).⁶⁶⁶ Ofgem further warned that Large Combustion Plant Directive opted-in plants which were converting to biomass had reduced capacity.⁶⁶⁷ Meanwhile, in the Balance of Competences Review, commentators noted that the EU has restricted the use of first generation biofuels via its proposals to address indirect land use.⁶⁶⁸

Many EU rules surrounding energy are fair in intent but are either written too bluntly to be effective or ignore specific UK circumstances. Smarter regulation that takes into account the UK’s specific energy mix (lots of coal powered stations, slowly building more nuclear stations) could still promote carbon reduction but at a pace less damaging to Britain’s economy and energy security.

Were it to leave the EU, the UK would have much greater control over which laws are implemented and could reverse a large amount of the damage that has been done by the EU in this area. Britain could also introduce special allowances for energy intensive industries that demonstrate best practice. For example, David Merlin-Jones has noted that the UK chemicals sector, which is heavily penalised by various rules, actually prevents the emission of two tonnes of carbon for every one tonne it emits. This is because, although energy-intensive itself, it produces the materials required for technologies such as catalytic converters and insulation.⁶⁶⁹ Taking a holistic view of environmental protection, industries such as these should not be punished but promoted, especially those at the forefront of global science. This would fit into the general strategy of converting Britain to an ‘ideas economy’ and reviving manufacturing, while genuinely contributing to the global response to climate change.

Outside the EU, ministers could also choose to take a more flexible approach to certain targets to which the country is currently signed up, such as the 20:20:20 mix (see above).

16.3.3 ‘Carbon leakage’ could be stopped as the UK would gain more power to better regulate the energy market

A range of policy options would become available to the UK, were it to leave the EU, that would help it to see off the threat of ‘carbon leakage’, when burdensome energy laws cause companies to leave for less energy-expensive countries. There is no doubt that European gas and electricity prices, including in the UK, have gone up over the last few years. Today, they are among the highest in

665 European Commission “State aid: Commission opens in-depth investigation into UK measures supporting nuclear energy” (2013).

666 Ofgem “Electricity Capacity Assessment Report” (2013) pages 9–12.

667 Ofgem “Electricity Capacity Assessment Report” (2013) pages 9–12.

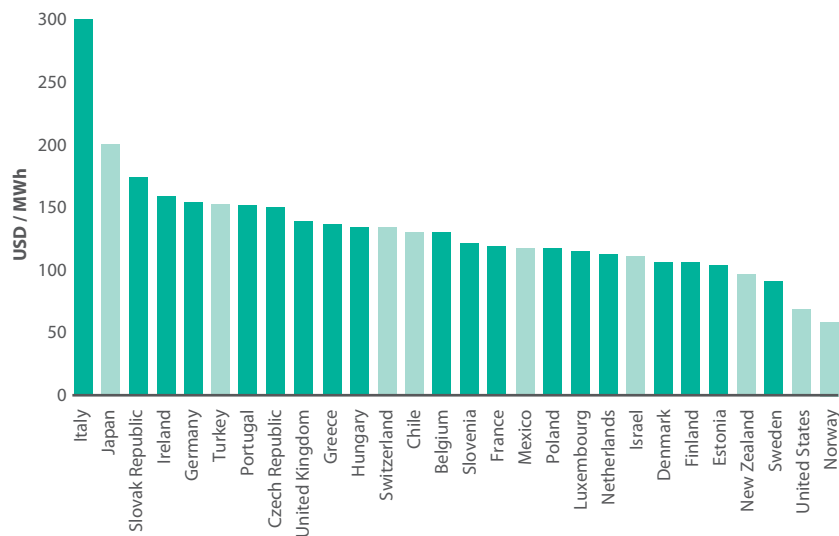
668 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report” (2014), page 60.

669 Civitas “Chain Reactions: How the chemical industry can shrink our carbon footprint”, D. Merlin-Jones (London, 2011).

the developed world.⁶⁷⁰ Thanks to global oil price dynamics, these prices may fall in the coming years, but there is no definitive evidence that the disparity in prices between the EU and other countries will disappear.

It is a mistake to talk about an average ‘EU price’ or ‘EU cost’ of energy, as there has always been a great deal of variation in energy prices between EU member states. But when one compares the prices of all available European states to countries from outside the EU, it becomes clear very quickly that, despite this variation, EU countries are among the most expensive in the developed world for energy. While most European states have lower costs than Japan, very few have energy prices comparable to those found in the United States.⁶⁷¹ As Figure 16.vii makes clear, industries in EU countries (dark green) have to face high electricity prices, especially when compared to other countries such as the United States (non-EU states coloured in light green).

Figure 16.vii: Retail price of electricity for industry in OECD countries (2012)



Source: International Energy Association⁶⁷²

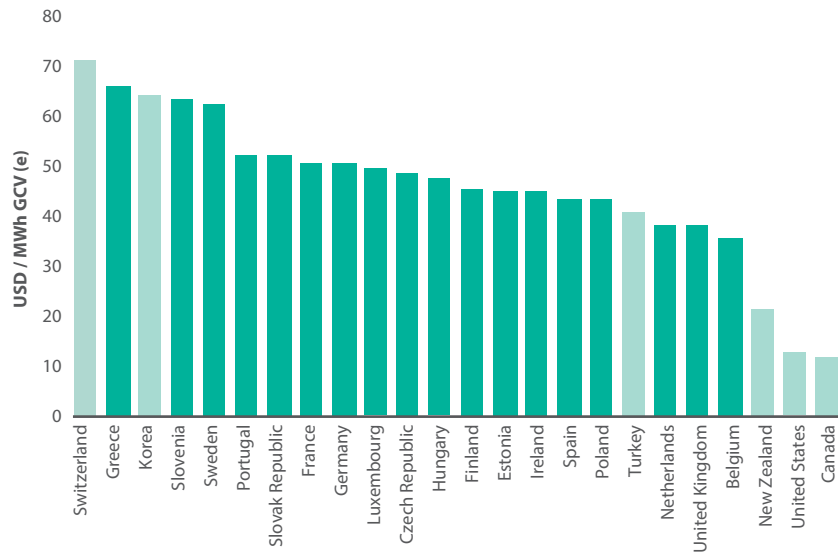
The same is also true of natural gas prices for industry, with European countries facing much higher prices than the United States (see Figure 16.viii). While the UK has one of the lowest gas prices in Europe, it is still nearly double the price found in the US. Comparing Europe’s high natural gas prices with those of the United States gives some idea of the problems facing Europe’s industries.

670 It is important to note the difference between price and cost. Energy prices refer to the price energy consumers actually pay for a given unit of energy. Energy costs/bills refer to the amount of money consumers have to pay for their energy consumption. Electricity prices and costs have risen for industry across Europe since 2008. More information on prices and costs can be found at the European Commission, found at <http://ec.europa.eu/news/energy/140129_en.htm>.

671 It is tempting to attribute US success solely to its large shale gas reserves and nothing to do with policy, however this ignores the fact that the EU enjoys very large shale gas reserves as well, reserves which have been under-utilised, not least because, up until recently, there has been a threat of over-regulation. While it cannot be assumed that UK shale gas will, initially at least, be as cheap as US gas as pointed out by the House of Lords, it is still very important to compare EU prices to the US as investors and manufacturers have already started to move resources and facilities to the US. However shale gas has to be seen as a short-medium term answer rather than a long term one.

672 International Energy Association “2013 Key World Energy Statistics” pages 42–43 (Omissions are a result of lack of information),

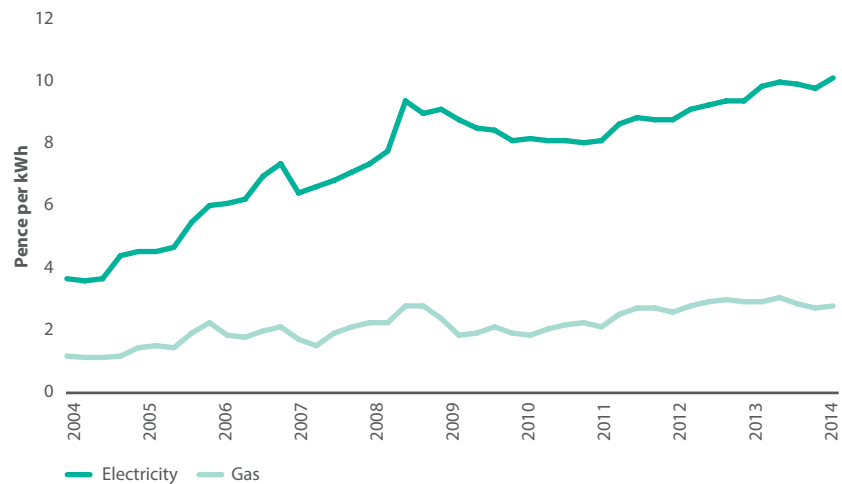
Figure 16.viii: Retail price of natural gas for industry in OECD countries (2012)



Source: International Energy Association⁶⁷³

While it is clear that the UK enjoys relatively low energy prices compared to many other EU countries (a product, in part, of its more liberalised energy markets), Britain’s gas and electricity prices are still much higher than those found in the US. They have also risen rapidly over the past decade. Figure 16.ix shows how electricity prices have more than doubled for non-domestic consumers in the last 10 years, and the price of gas has nearly doubled as well.

Figure 16.ix: Evolution of average electricity and gas prices for non-domestic consumers in the UK in nominal terms (excluding climate change levy)



Source: HM Government⁶⁷⁴

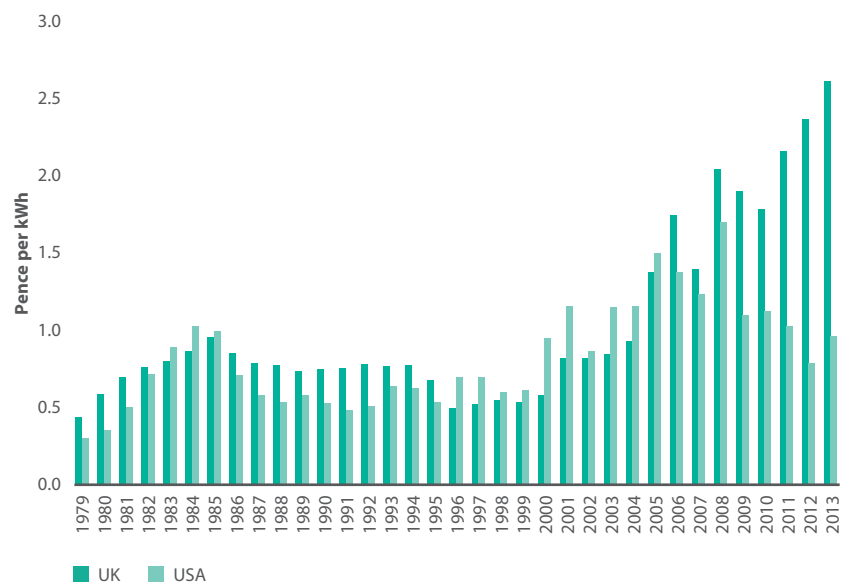
673 International Energy Association “2013 Key World Energy Statistics” pages 42–43 (Omissions are a result of lack of information).

674 HM Government “Price of fuels purchased by non-domestic customers in the United Kingdom – excluding climate change levy”, accessed at: <www.gov.uk/Government/statistical-data-sets/gas-and-electricity-prices-in-the-non-domestic-sector>; The Climate Change levy is a tax imposed on certain energy generating products, including coal.

The UK's struggles are mirrored across the whole of the EU: according to the Commission between, 2005 and 2011, EU manufacturing saw the highest increase in energy costs relative to the US, China and Japan.⁶⁷⁵ According to former Commission President Barroso, between 2005 and 2012, the gas price for European industry increased by 35 per cent and the electricity price increased by 38 per cent. In the US, by contrast, gas prices fell by 66 per cent and electricity prices fell by four per cent.⁶⁷⁶

The divergence between prices has put EU member states at a competitive disadvantage compared to less energy-expensive countries. The International Energy Agency has said that the price gap between Europe and the US is here to stay, warning that *“lower energy prices in the United States mean that it is well-placed to reap an economic advantage, while higher costs for energy intensive industries in Europe and Japan are set to be a heavy burden.”*⁶⁷⁷ The European Commission itself has said that, due to the high price of energy, *“European Energy Intensive Industries... must decide whether to invest in Europe or abroad, in countries with much more promising market dynamics.”*⁶⁷⁸ The marked difference can be seen in Figure 16.x, which shows annual industrial gas prices for the UK and US between 1979 and 2011 and the widening gap that has emerged as US prices have fallen while UK prices have continued to rise.

Figure 16.x: End user gas prices for industry



HM Government⁶⁷⁹

And the same trend can be seen in electricity prices (Figure 16.xi), where the UK's prices have increased significantly while US prices have remained static.

675 European Commission Staff Working Document “Energy Prices and costs report” (2014), page 197.

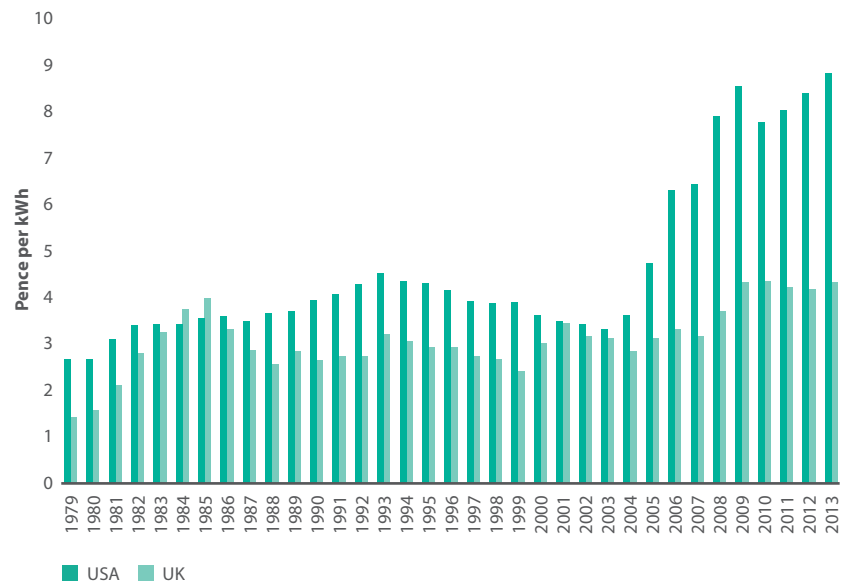
676 European Commission “Energy Priorities for Europe: Presentation of J.M. Barroso to the European Council” (2013).

677 International Energy Agency “World Energy Outlook” (2013).

678 European Commission Communication “Energy Prices and costs in Europe” (2014), page 12.

679 HM Government data found at <www.gov.uk/government/statistical-data-sets/gas-and-electricity-prices-in-the-non-domestic-sector>.

Figure 16.xi: End-user electricity prices for industry



Source: HM Government⁶⁸⁰

Last year the European Commission came to the disturbing conclusion that “almost all member states have seen a consistent rise in consumer prices of electricity and gas” and found that certain Energy Intensive Industries had reported gas price rises of between 27 per cent and 40 per cent in the period 2010–12.⁶⁸¹ The same study also concluded that, since 2008, electricity network costs have increased by 30 per cent for industrial consumers and that taxes and levies rose by 127 per cent for industry, before exemptions.⁶⁸²

This was not an isolated study; other reports by the EU have found that between, 2008 and 2012, industrial electricity prices (excluding VAT and recoverable taxes) have risen by about 3.5 per cent per year, although in some countries retail industrial prices have actually increased more dramatically than this; Estonia, Lithuania and Latvia have all experienced an annual increase in prices of more than eight per cent.⁶⁸³ Other econometric surveys have come to similar conclusions. A recent study of the Real Unit of Energy Costs for EU member states concluded that these costs had increased by 47 per cent between 2000 and 2009. Between 2000 and 2009, the UK had an average annual Real Unit of Energy Costs increase of 4.6 per cent while the EU as a whole saw an average increase of 4.2 per cent (an increase in Real Unit Energy Costs means that the amount of money spent on energy sources to obtain one unit of value has increased).⁶⁸⁴

There are numerous factors which drive up the price of energy and drive up the costs for Energy Intensive Industries: wholesale fossil fuel prices and the market structure are just two of the many factors that intertwine and shift the

680 HM Government data found at <www.gov.uk/government/statistical-data-sets/gas-and-electricity-prices-in-the-non-domestic-sector>.

681 European Commission “COM(2014) 21/2” (2014), page 6.

682 European Commission “COM(2014) 21/2” (2014), page 6.

683 European Commission Staff Working Document “Energy Prices and costs report” (2014), page 9.

684 European Commission “Energy Economic Developments in Europe” (2014), pages 11–25.

“The British Government has already recognised the role of the EU in driving up energy costs and adding administrative burdens.”

price of energy to varying degrees on a day-to-day basis.⁶⁸⁵ While working out the exact effect of each of these drivers is not within the remit of this paper, it is worth noting that there is a growing consensus that EU policy has played a small but significant role in driving up Energy Intensive Industries’ energy bills, a role which is growing.

Despite the EU’s claims that the increase in costs is mostly driven by external factors, including rising fossil fuel prices, and the taxes and levies set in the member states, the European Commission has itself acknowledged that it has had an impact on energy costs, stating that its policies would “ensure a sustainable energy sector in the long run, with acknowledged higher costs in the short term.”⁶⁸⁶ Various studies by the European Union, British Government and think tanks have also begun to highlight specific EU laws that are causing problems, either by increasing the regulatory burden or by driving up costs. In a recent report, an analyst at Oxford University’s Institute for Energy Studies warned that “the cost of Europe’s clean energy policies has also risen, and will rise further, as a result of the Commission’s proposals, made in January 2014, for EU energy and climate change targets.”⁶⁸⁷

The British Government has already recognised the role of the EU in driving up energy costs and adding administrative burdens to British businesses, with the Prime Minister’s Red Tape Taskforce cautioning in October 2013 that:

*High energy prices, additional charges on business, onerous record keeping, and unnecessary bureaucracy all make it harder for our companies to compete in global markets. EU rules cannot be allowed to undermine the competitiveness of European business. Where EU rules place EU firms at a competitive disadvantage, they must be tackled rigorously and speedily in order to free up our businesses to help create growth and jobs.*⁶⁸⁸

In a letter to the then President of the European Commission José Manuel Barroso, Prime Minister David Cameron also made it clear that the EU needed to avoid placing a energy-related regulatory burden on British businesses: “It is essential that we avoid regulations or targets that will force member states away from their least cost decarbonisation pathway, or undermines a level technology playing field.”⁶⁸⁹ The British Government has begun to warn UK businesses to expect an increase in their energy costs and has told medium-sized users of energy to expect cost increases of 15–21 per cent as a result of both EU and UK policies. The Department of Energy and Climate Change (DECC) has provided a breakdown of how bills are going to increase over the coming few years, summarised in Table 16.xii.⁶⁹⁰

685 Factors that have been highlighted by other studies range from the economic climate to the accessibility of fuels to the impact of legislation (both European and British). In the gas market, for example, there is a concerning lack of suppliers and gas prices are still often indexed to oil prices. The sheer number of factors that can influence energy prices and the complex way these factors interact means there remains a serious lack of credible and comparable information on what actually finally determines prices and costs of energy for different consumers. There are also factors which influence the global energy markets, such as the impact of subsidised coal in China.

686 European Commission “Energy Prices and costs in Europe” (2014), page 2.

687 “Costs, competitiveness and climate policy: distortions across Europe”, D. Buchan (2014), page 5.

688 HM Government “Cut EU red tape: Report from the Business Taskforce” (2013).

689 Letter from D. Cameron to J.M. Barroso (4 December 2013), accessed 18/05/2015 at: <<https://p3-admin.greenpeace.org/eu-unit/Global/eu-unit/reports-briefings/2013/Letter%20Cameron%20to%20Barroso%2004122013.pdf>>.

690 HM Government data, non-CRC participant, counting impact of climate change policies.

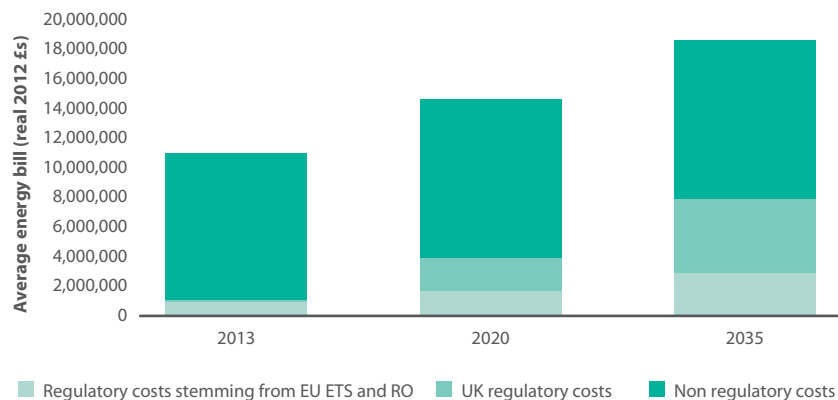
Table 16.xii: Estimated gas and electricity costs for medium-sized business users (real 2012 £/MWh)

	2013	2020	2030
Average gas bill	£520,000	£540,000	£560,000
Average electricity bill	£1,070,000	£1,360,000	£1,570,000
Average energy bill	£1,590,000	£1,900,000	£2,130,000

Source: DECC

DECC identified two EU policies that are having a particularly harmful effect: the EU Emissions Trading System (EU ETS) (combined with the UK Government’s Carbon Price Floor) and the Renewables Obligation (RO).⁶⁹¹ The RO (which is due to be replaced) was created independently by the British Government but has since been adopted to comply with the EU’s renewable target, despite the UK’s developing hostility to the idea of a renewables target.⁶⁹² In addition, the Government’s Red Tape Task Force was told by several companies that there were significant problems with the Emissions Trading Scheme Directive (Directive 2003/87/EC), Energy Efficiency Directive (Directive 2012/27/EU) and Energy Performance of Buildings Directive (Directive 2002/91/EC).⁶⁹³

Figure 16.xiii: Estimated average energy bills paid by an energy intensive user consuming 100,000MWh each of gas and electricity (2012 prices)



Source: DECC⁶⁹⁴

691 Department of Energy & Climate Change “Estimated impacts of energy and climate change policies on energy prices and bills”, page 13.

692 For more information please see House of Commons Library “The Renewables Obligation”, found at <www.parliament.uk/briefing-papers/SN05870.pdf>.

693 HM Government “Cut EU red tape: Report from the Business Taskforce” (2013).

694 Note that the CPF is counted as a non EU-ETS/RO cost. For consistency, highest cost estimates were used for all policies in 2020 and 2030. Estimated impact of regulations on wholesale prices are counted as non-regulatory cost. It is important to note that, while this information provides a good quantification of the costs of the two main planks of EU energy legislation, it should not be seen as a definitive figure for the additional burden placed on Energy Intensive Industries by the EU ETS and RO. The Figure does not include other, less significant, EU policies and in addition there is a good chance that the UK would have introduced similar policies had it been outside of the EU, although the costs would likely have been much smaller. What the above graph does show however is that the two main planks of EU energy policy are exerting an increasing burden on EIIs, though it would be wrong to claim that they are the sole problem. For more information, see DECC “Estimated impacts of energy and climate change policies” (2013), page 86.

“More concerning is that it seems these high costs are only going to increase over the coming years.”

While it is impossible to calculate the impact of EU energy and climate change policies on energy policy, it is possible to determine the cost of the two most expensive EU energy policies: the EU ETS and RO.⁶⁹⁵ DECC has provided detailed breakdowns of the impact (and predicted future impact) on energy bills, and this allows us to, at least for these two policies, calculate the impact on UK Energy Intensive Industries. While DECC figures show that the costs stem from the UK (or at least for the moment), it is also clear that the cost of the EU ETS and RO is increasing with time. For Energy Intensive Industries, these two policies account for 9.1 per cent of the cost of energy today and will account for 15.8 per cent of energy bills by 2030.

The EU has acknowledged that its policies have increased the cost of fuel bills, with the 2014 Communication “Energy Prices and Costs in Europe” concluding that EU renewable energy levies constitute six per cent of the average EU household electricity price.⁶⁹⁶ Yanis Varoufakis, Finance Minister of Greece, has criticised the ETS from a neo-Marxist perspective:

The best example of this form of neoliberal crassness is, of course, the debate on how to deal with climate change. Neoliberals have rushed in to argue that, if anything is to be done, it must take the form of creating a quasi-market for ‘bads’ (eg an emissions trading scheme), since only markets ‘know’ how to price goods and bads appropriately. To understand why such a quasi-market solution is bound to fail and, more importantly, where the motivation comes from for such ‘solutions’, one can do much worse than to become acquainted with the logic of capital accumulation that Marx outlined and the Polish economist Michal Kalecki adapted to a world ruled by networked oligopolies.

The upward pressure the EU is exerting on energy costs is now acknowledged by most commentators. As recently noted by The Economist: “European industries pay three to four times more for gas and over twice as much for electricity as American ones (who benefit from cheap shale gas)”.⁶⁹⁷ American newspapers have also warned that US policy-makers should aim to avoid copying the EU; in a recent editorial the Washington Post argued that “we ought to take note of what’s happening on the other side of the Atlantic... across Europe, the price of retail electricity has soared by 20 per cent over four years, thanks to the European Union.”⁶⁹⁸

More concerning is that it seems these high costs are only going to increase over the coming years. The European Commission recently warned that “European industry’s efforts to compensate for higher energy costs [...] may need to go even further.”⁶⁹⁹ In a recent report, the International Energy Agency said that electricity and gas costs would remain high for another 20 years and that the EU is likely to lose up to a third of its global market share of energy intensive exports. It has stressed that the gap between the US and the EU is “structural. It’s not a one-off”.⁷⁰⁰

These high costs have directly contributed to ‘carbon leakage’. Energy costs often amount to 30–35 per cent of production costs for energy intensive indus-

695 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report” (2014), page 46.

696 European Commission “Energy Prices and costs in Europe” (2014),

697 The Economist “Europe’s energy woes” (2014,) page 32.

698 Washington Times “Editorial: European Union cooling to global-warming costs” (2014).

699 European Commission “Energy Prices and costs in Europe” (2014), page 13.

700 International Energy Agency “World Energy Outlook”, data found at <www.worldenergyoutlook.org/pressmedia/quotes/2/>.

tries.⁷⁰¹ In some industries energy costs can be up to 60 per cent of total production costs.⁷⁰² As a result, it is unsurprising industries say that the UK economy is becoming less competitive, with the British Ceramic Confederation warning that “the range and interaction of energy issues in the UK now are making industry less competitive than in other countries in and outside the European Union.”⁷⁰³ The Ceramic Confederation has gone on to stress the need for secure energy prices; natural gas represents approximately 85 per cent of all energy consumed in the ceramics sector. Similar concerns are found in the cement industry. The British Cement Association has warned that “energy represents an increasing proportion of the variable costs of cement manufacture”.⁷⁰⁴

By taking the employee numbers in each industry and by highlighting those who are in direct employment, we can calculate the number of people whose jobs are likely to be directly affected by rising energy:

Table 16.xiv: Energy Intensive Industries employee numbers

Industry	Total employee numbers	Total number of people in direct employment (High risk)
Metal	471,000	62,000
Chemicals and chemical products	600,000	214,000
Paper and paper products	100,000	25,000
Non-metallic mineral extraction and Petroleum industry	125,000	7,000
Glass	157,000	7,000
Ceramics and cement	40,000	20,000
Total	1,526,000	363,000

Source: Business for Britain⁷⁰⁵

It is important to stress that EU policy is not the sole factor behind rising energy costs and that it is far from clear what the final impact of high energy costs will be on employment in Energy Intensive Industries. It is clear, however, that significant numbers of jobs are now at risk and the EU is playing a growing role in driving up the energy costs these firms face.

Leaving the EU would give the UK the power to address these issues. While it may wish to retain some legislation (as discussed above), the ability to repeal certain laws like the Renewables Obligation and the EU ETS would offer the prospect of dramatically lower energy costs over time (any such repeal would take several years, due to the long-term obligations of the RO, for example, and the need to ensure that the UK meets international obligations).

701 Ctechinnovation “The cost of Heat in the Ceramic Industry”, accessed 18/05/2015 at: <www.ctechinnovation.com/latest-articles/The-Cost-of-Heat-in-the-Ceramic-Industry.pdf>; also Ceramfed “Key priorities for new Government” (2010), accessed 18/05/2015 at: <www.ceramfed.co.uk/img/content/key_priorities_for_new_Government_bcc_april_2010.pdf>.

702 CBI “Our Global Future”.

703 British Ceramic Confederation “Key Priorities for the New Government” (2010), accessed 18/05/2015 at: <www.ceramfed.co.uk/img/content/key_priorities_for_new_Government_bcc_april_2010.pdf>.

704 British Cement Association “Submission to the European Commission”, accessed 18/05/2015 at: <http://ec.europa.eu/clima/events/0065/bca070630fin_en.pdf>.

705 Business for Britain “Energy Policy and the EU” (2014), page 38.

“EU policies have generated genuine concerns about energy security.”

Alternatively, by escaping EU competition law, Britain would have greater ability to step in and save otherwise healthy companies that may struggle due to a spike in energy prices or the prices of a specific energy-related service. Currently, such state aid would be very difficult to enact with Commission approval, prompting a fine. The UK would also have the power to remove some of the legally-binding targets that currently restrict it. Removing the renewables target could result in costs for manufacturers falling by up to seven per cent, saving the UK between £15.8bn and £21bn, according to Open Europe. However, because many RO costs on bills now are for projects that have already been promised, it is likely that savings would be more limited.⁷⁰⁶

16.3.4 The UK would be able to retain its energy security

EU policies have generated genuine concerns about energy security. In addition to the problems related to the closure of power generators and the limitations of renewable investments, fears about Europe’s energy security also stem from the EU’s dependence on unreliable third country suppliers. This has been a key concern for several years, especially since the decision by Russia in 2006 to restrict flow of energy products in Eastern Europe, as put in one academic analysis:

The EU, however, excessively depends on Russian natural gas to satisfy its internal energy needs. While this certainly makes the EU vulnerable, Russia’s perceived reliability as a supplier has been severely undermined by its apparently political use of gas exports during the 2006 gas dispute with Ukraine, which left European customers cold in the middle of winter. The gas crisis not only alarmed Europeans about their vulnerability to supply disruptions and Russian ‘energy blackmailing’, but also sparked the question whether a normative Europe can sufficiently assert itself against aggressive Russian geopolitics.⁷⁰⁷

Ongoing disputes between the European Commission and the Putin Government in Moscow have led to further clashes. In 2009, a similar stand-off in Ukraine resulted in 30 per cent of the EU’s gas imports being cut off for two weeks.⁷⁰⁸

While the EU’s efforts to diversify Europe’s energy supply – either via its own policies or via programmes such as the Connecting Europe Facility – are laudable, its success is debatable. In the Balance of Competences Review, some stakeholders warned that “*security of supply issues had been given insufficient weight within EU energy policy...*”⁷⁰⁹ and Europe’s continued dependence on third countries suggests that these efforts have not been particularly effective. Across the EU as a whole, energy dependence has almost invariably increased between 2001 and 2008 (dependence started to slowly decline after 2008, but this appears to be due in part to the drop in energy consumption at the beginning of the economic crisis rather than success in weaning the EU off third country suppliers, see Figure 16.xv).

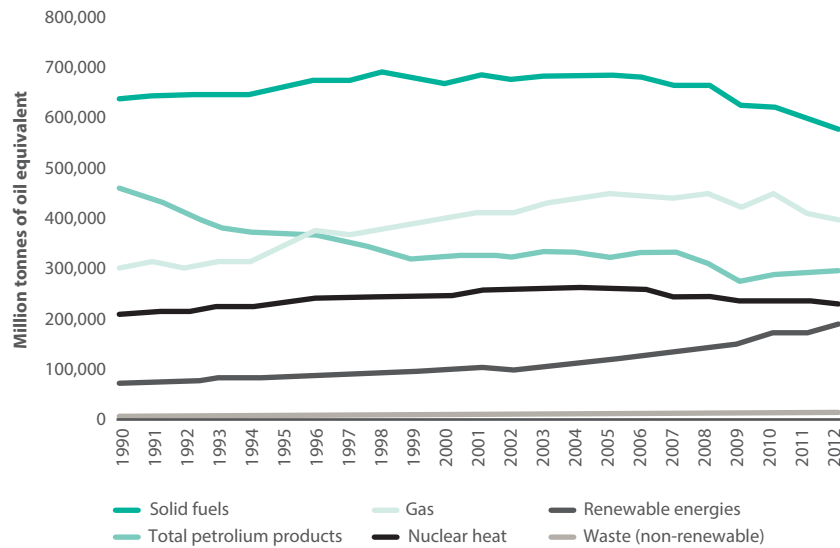
706 Open Europe “Rotten foundations: Time to reassess the EU’s Environmental and Climate Change policies” (2014), page 22.

707 POLIS Journal Vol. 7 “EU-Russia energy relations: a critical analysis”, L. Pick (2012), page 323.

708 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report” (2014), page 8.

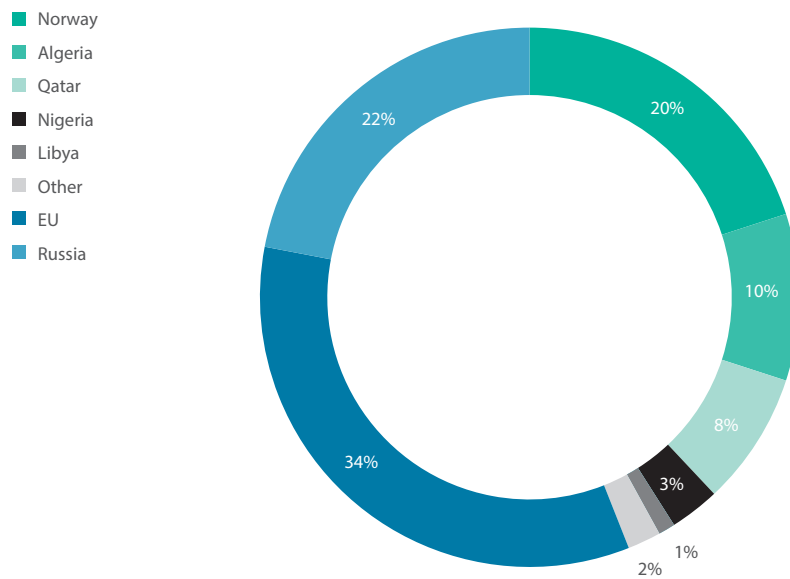
709 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report” (2014), page 8.

Figure 16.xv: EU-28 gross fuel consumption since 1990



In 2012, total primary energy dependence for the EU was at half of the EU's total energy needs. Petroleum products import dependence was also very high, equalling 86 per cent in 2012. Likewise, gas import dependence in the EU has been on an almost constant rising trend since the beginning of the century, increasing from less than 50 per cent in 2000 to 66 per cent in 2012. The EU's dependence on third countries is shown in Figure 16.xvi.

Figure 16.xvi: Where does the EU get its gas from?

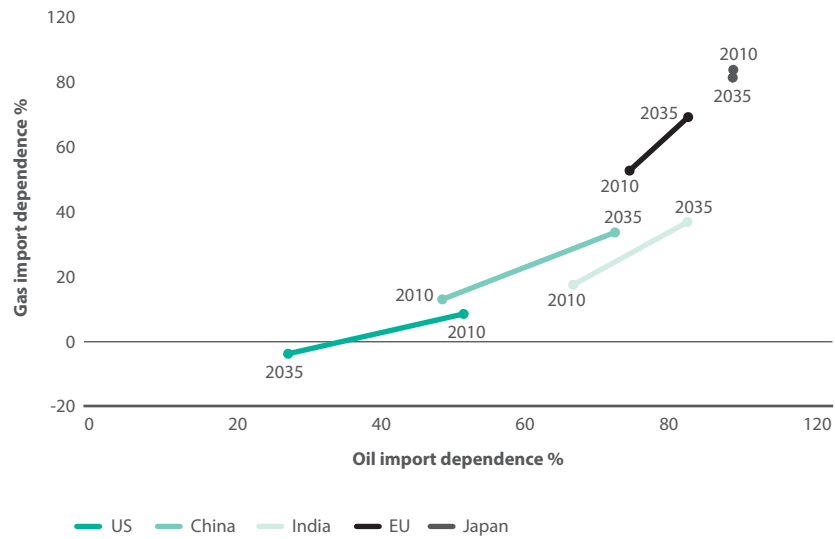


Source: Eurostat

While the last decade has seen the EU increase its import dependency, the same period has also seen the US increase domestic supply and significantly decrease its energy imports (gas imports in monetary terms have fallen by 56 per cent compared to their peak in 2005). This is thanks, in part, to American willingness to utilise shale gas reserves. The United States is set to become a net gas exporter by 2035 and is making strides towards ending its dependency on imported oil. The EU, by contrast, will become far more dependent on energy imports, and

as Figure 16.xvii shows, will be one of the most dependent blocs in the world by 2035.

Figure 16.xvii: Net oil and gas import dependence by region (2010–35)



Source: European Commission⁷¹⁰

There are security implications: Europe’s dependency on foreign suppliers of energy reduces its diplomatic clout (highlighted in the recent Ukraine crisis). Certain EU states have become increasingly dependent on potentially hostile states. Between 2006 and 2012, the Czech Republic and Hungary became reliant exclusively on Russia’s imports. The same is true of Slovakia, Poland, Lithuania and Bulgaria, which all depend largely on just Russia for petroleum products.⁷¹¹ This has raised concerns in the House of Lords: “the UK is not directly dependent on Russian supplies but in an integrated market we would not be immune from shortages or price increases across the European Union”.⁷¹²

Following the recent uprising in Kiev and subsequent regional turmoil, British trade bodies warned that the supply of gas could be compromised, with the British Ceramic Confederation arguing that:

*The problems in Ukraine reinforce the need for the Government to ensure the UK has extra gas storage capacity and a requirement to hold adequate safety stocks. Uncertainty over supply has led to terrible price volatility in the past and will do so in future, leading to harmful effects on manufacturing and investment and a possible loss of jobs.*⁷¹³

Dependency on other countries also means that the EU’s commitment to combating climate change is thrown into question, as many states do not comply

710 Replication of original graph found in European Commission “Energy Priorities for Europe: Presentation of J.M. Barroso to the European Council” (2013).

711 European Commission “European Economy: Occasional Papers 196” (2014), pages 19–30.

712 House of Lords Economic Affairs Committee “The Economic Impact on UK Energy Policy of Shale Gas and Oil” (2014), page 17.

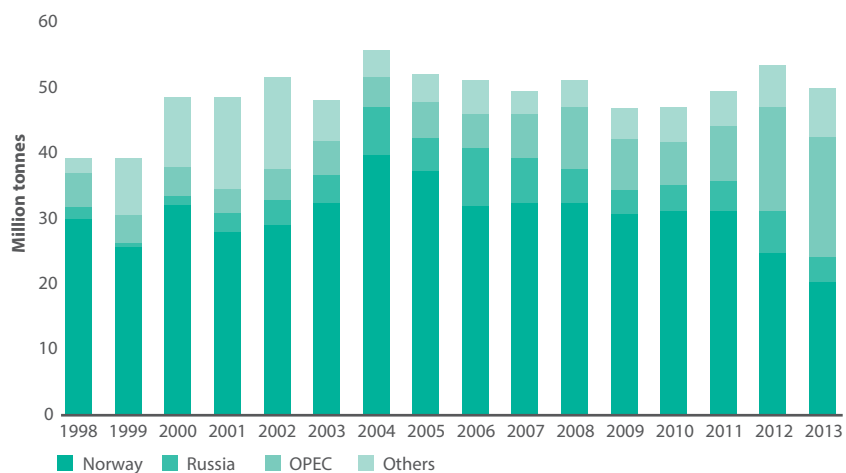
713 British Ceramic Confederation “Press Release on turmoil in Ukraine could spark energy crisis for UK Industry (2014), accessed 18/05/2015 at: <www.ceramfed.co.uk/news/press-release-turmoil-in-ukraine-could-spark-energy-crisis-for-uk-industry>.

with the same high green standards as those found in Europe.⁷¹⁴ The EU has sought to address these problems: following a demand from the European Council in March 2009 for urgent EU action to improve the security of energy supplies, the Commission introduced the Gas Security of Supply Regulation (Regulation (EU) No 994/2010), though its impact is still to be determined.

The UK is becoming increasingly dependent on energy imports: imports in 2013 were at a record high level, exports were their lowest level since 1980, with net imports accounting for 47 per cent of energy used in the UK.⁷¹⁵ In 2013, the UK became a net importer of petroleum products for the first time since 1973, largely due to the closure of the Coryton refinery in July 2012.

As the former Energy Secretary Ed Davey told the BBC in February 2015: *“By having our own oil and gas supplies in the North Sea, it makes us more independent and more secure.”*⁷¹⁶ According to Government estimates, UK oil and gas reserves and resources are in the range of 11.1 to 21.0bn barrels of oil equivalent.⁷¹⁷ While the UK is a net importer of crude oils, North Sea production remains significant. Figures for 2013 are not fully available but, in 2012, the UK produced more crude oil than any other country in the European Union, and the second most in the European Economic Area after Norway.⁷¹⁸ It should also be noted that the UK’s production of crude oil and NGLs would be sufficient to meet nearly two thirds of refinery demand. Further, the overwhelming amount of UK’s oil imports come from non-EU states (see Figure 16.xviii).

Figure 16.xviii: Source of UK oil imports 1998–2013



Source: Department of Energy and Climate Change⁷¹⁹

714 It is easy to exaggerate the difference between EU and other countries’ green credentials. Certain reports have stressed that in many ways the EU and the US have very similar systems and that industries transferring between the two may be carbon neutral. However, it is clear that some member states are much more lax when it comes to EU law. See D. Buchan “Costs, competitiveness and climate policy: distortions across Europe”, page 5, accessed at: <www.oxfordenergy.org/wp-content/uploads/2014/04/Costs-Competitiveness-and-Climate-Policy.pdf>.

715 DECC “Digest of United Kingdom Energy Statistics 2014”.

716 BBC News “North Sea ‘must be competitive’ – Energy Secretary” (24 February 2015), accessed 24/05/2015 at: <<http://m.bbc.co.uk/news/business-31599147>>.

717 DECC “UK oil and gas reserves and resources”, accessed 24/05/2015 at: <www.gov.uk/oil-and-gas-uk-field-data#uk-oil-and-gas-reserves-and-resources>.

718 DECC “Digest of United Kingdom Energy Statistics 2014”, accessed 28/05/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/338750/DUKES_2014_printed.pdf>.

719 DECC “Digest of United Kingdom Energy Statistics 2014”, accessed 18/05/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/338750/DUKES_2014_printed.pdf>.

“The UK could also look at alternative ways of generating energy.”

Likewise, extremely large physical gas flows come into the UK from outside the EU. A willingness to maintain a diverse energy portfolio that does not rely too much on either a single supplier or a single fuel would help to ensure that the UK could withstand any energy shocks. “Energy security” and “energy independence” are not – or at least need not be – interchangeable terms.⁷²⁰

The UK could also look at alternative ways of generating energy, including smaller modular nuclear reactors (without having to worry about breaking EU state aid rules).

16.3.5 The UK could alter tariff and VAT policy to boost the energy industry

UK energy bills for domestic and residential properties are currently covered by the reduced rate of VAT (five per cent).⁷²¹ Outside the EU, governments could explore means testing to remove this tax for the most vulnerable, or indeed remove it for all. Presently, even green consumables such as family-sized solar panels and wind turbines are taxed at five per cent, so the Government could do more to incentivise people to reduce their own domiciles’ carbon footprints. There is currently a 20 per cent tax on North Sea Oil – there is much debate over whether this is too high and whether it discourages firms from exploring the UK’s North Sea waters to their fullest.

Conclusion

The EU’s current energy policy is incredibly expensive and is holding the UK and other member states back. The ‘carbon leakage’ phenomenon that has developed as a result of the EU’s policies is putting the whole of Europe at an economic disadvantage, while other EU policies risk power cuts. Leaving the EU would allow the UK to, once again, reclaim control over its energy policies and would not compromise the UK’s ability to connect with energy grids.

Leaving the EU does not mean that the UK’s energy mix would become more geared towards fossil fuels (see Section 17) but it does mean that the UK Government would be in charge of determining Britain’s future energy policy.

720 House of Commons Energy and Climate Change Committee “UK Energy Supply: Security or Independence?” (2011), accessed 18/05/2015 at: <www.publications.parliament.uk/pa/cm201012/cmselect/cmenergy/1065/1065.pdf>.

721 HMRC “VAT rates on different goods and services”, accessed 18/05/2015 at: <www.gov.uk/rates-of-vat-on-different-goods-and-services>.

17 Environment

17.1 The UK would remain a member of all key international environment bodies	516	17.2.4 The UK could continue to offer and be supported by EU disaster provisions	527
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17.2.2 The UK could, if it wishes, continue to introduce EU environmental policies	524	17.3.4 EU environmental policies that placed burdens on businesses could be repealed	533
17.2.3 The UK could continue to work with EU countries to push for lower global emissions	526	Conclusion	536

“Were the UK to leave the EU, it would not compromise its ability to cooperate with partner nations in Europe and beyond.”

Today, environmental policies are often determined by international agreements, both at a European and at an international level. International cooperation is chosen as the best way to resolve common problems, such as pollution, which do not respect national boundaries. Many of the environmental policies the UK has embraced are often characterised by a high degree of inter-state cooperation and concern for global developments.

Leaving the EU would raise a number of questions about whether these policies would continue. These questions include whether leaving the EU would compromise the UK’s ability to work with other countries to tackle climate change, and whether leaving would represent a step backwards for green policies in general.

Because the EU and international organisations are committed to working with other countries, were the UK to leave the EU, it would not compromise its ability to cooperate with partner nations in Europe and beyond. In addition, the UK often takes the lead in environmental matters, going further than the EU in introducing policies that seek to tackle climate change. Outside the EU, the UK would still have this power and could decide to keep leading Europe in this area. Alternatively, it could decide to go in a different direction, and embrace more business-friendly and consumer-orientated policies that are currently denied to it.

17.1 The UK would remain a member of all key international environment bodies

Key bodies

- Council of Europe
- International Maritime Organization
- United Nations
- United Nations Framework Convention on Climate Change (UNFCCC) meetings
- World Trade Organization (WTO)

The UK is a member of many international bodies that play an important part in determining global environmental laws and which coordinate international efforts to tackle climate change. The EU has played a considerable role in these institutions for several years and, in many cases, that role is growing, raising concerns not just about the consequences for the UK’s representation in these bodies (as the EU gradually supplants it) but also about the implications of Britain leaving the EU and whether it would compromise the UK’s standing in these organisations. Because many of the key international environmental bodies operate at either the UN level or are determined by separate treaties, the UK would not ‘fall out’ of any of them after it left the EU. In fact, the UK would likely gain a more significant role in these bodies as it secures the power to speak on its own behalf.

17.1.1 The UK would retain the same relationship with many key environmental bodies

After leaving the EU, the UK would remain a member of the United Nations, which has played a major role in the development of international laws and standards regarding the environment for many years (arguably since the Stockholm Conference in 1972). The UN has been a leading advocate for changes in environmental policy, encouraging its member states to make the environment a priority. For example, in 1982, the UN General Assembly adopted the “World Charter for Nature”, which promoted the conservation of species. In 1987, the UN adopted the Montreal Protocol, which aimed to reduce the production and consumption of ozone depleting substances.

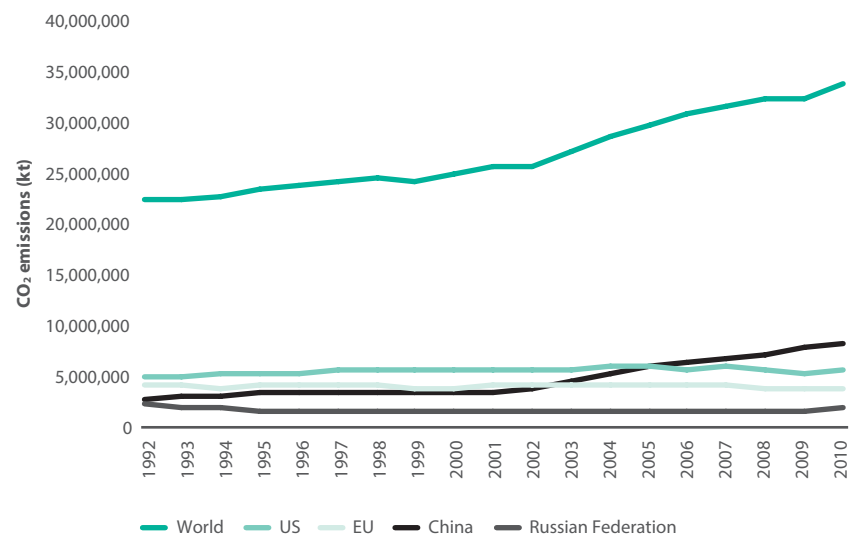
The UN has also been promoting substantial changes in attitudes to the environment. For example, the UN World Commission on Environment and Development released “Our Common Future” in 1992, which set out a “*global agenda for change*” in environmental matters. Perhaps the most notable role the UN plays with regard to the environment today comes in the form of the United Nations Framework Convention on Climate Change (UNFCCC), which sets strategies for reducing emissions in each member state. Outside the EU, the UK would be able to have more flexibility in how it adopts UNFCCC requirements.

As a member of the UN, the UK is also a member of the United Nations Environment Programme, the United Nations Convention to Combat Desertification Secretariat, and the United Nations Convention on the Law of the Sea. It would remain a member of the International Maritime Organization, a UN specialised agency that has a role in combatting maritime pollution.

Beyond the UN, the UK would continue to be a member of the Intergovernmental Panel on Climate Change (IPPC), since membership is open to all members of the World Meteorological Organization (which the UK joined in 1948). The UK would also remain a member of other international environmental organisations that it has joined in its own right, including (but not limited to) the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, the International Carbon Action Partnership, and the International Tropical Timber Organization. It would remain party to the various treaties that it has signed, such as the Ramsar Convention on Wetlands of International Importance and the Bern Convention on Trade in Endangered Species of Wild Fauna and Flora.

It is likely that, outside the EU, the UK would not see its influence fade in climate change matters. While the EU likes to claim that it is “*a world leader in the fight against climate change*”, there is very little evidence that it has managed to influence global attitudes to emissions – despite its impressive work in trying to reduce its own. This can be seen in Figure 17.i, which shows that, since 1992, while the EU has seen a relative decline in total CO₂ production, this has not been mirrored in other countries, including the EU’s main trading partners (China, in particular, has seen its emissions increase dramatically).

Figure 17.i: CO₂ emissions (kt) of EU, main EU import partners and world (1992–2010)

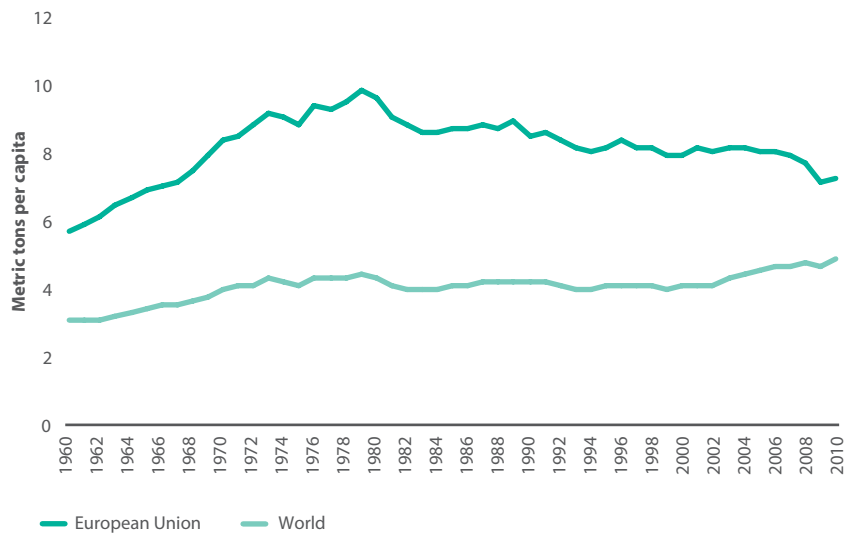


Source: World Bank⁷²²

722 World Bank “CO₂ emissions (kt)”, accessed 11/06/2015 at: <<http://data.worldbank.org/indicator/EN.ATM.CO2E.KT/countries>>.

This failure is also reflected in Figure 17.ii, which shows that, while CO₂ emissions per capita have fallen in the EU, for the world as a whole they have increased.

Figure 17.ii: CO₂ emissions (metric tons per capita) EU vs world



Source: World Bank⁷²³

This is unsurprising when one considers that most commentators agree that the EU has performed extremely badly in international fora that discuss climate change. For example, at the 2009 Copenhagen Summit, there was a startling failure by the EU to agree to a common line that satisfied all member states, and the EU as a whole ended up being side-lined during the discussions. The BBC highlighted the EU's failure to be a 'world leader' and its acceptance of standards that fell far below what it wanted:

For about two hours on Friday night, the EU held the fate of the Obama-BASIC 'accord' in its hands, as leaders who had been sideswiped by the afternoon's diplomatic coup d'etat struggled to make sense of what had happened and decide the appropriate response.

If the EU had declined to endorse the deal at that point, a substantial number of developing countries would have followed suit, and the accord would now be simply an informal agreement between a handful of countries – symbolising the failure of the summit to agree anything close to the EU's minimum requirements, and putting some beef behind Europe's insistence that something significant must be achieved next time around.

So why did the EU endorse such an emasculated document, given that several leaders beforehand had declared that no deal would be better than a weak deal? The answer probably lies in a mixture – in proportions that can only be guessed at – of three factors:

- *Politics as usual – ie never go against the US, particularly the Obama US, and always emerge with something to claim as a success.*
- *EU expansion, which has increased the proportion of governments in the bloc that are unconvinced of the arguments for constraining emissions.*
- *The fact that important EU nations, in particular France and the UK, had invested significant political capital in preparing the ground for a deal –*

723 World Bank "CO₂ emissions (metric tons per capita)", accessed 11/06/2015 at: <<http://data.worldbank.org/indicator/EN.ATM.CO2E.PC/countries>>.

“EU environmental policies have failed to reduce global emissions.”

tying up a pact on finance with Ethiopia’s President Meles Zenawi, and mounting a major diplomatic push on Thursday when it appeared things might unravel.

Having prepared the bed for US and Chinese leaders and having hoped to share it with them as equal partners, acquiescing to an outcome that it did not want announced in a manner that gave it no respect arguably leaves the EU cast in a role rather less dignified than it might have imagined.⁷²⁴

This has significant ramifications for both the EU and the wider world. Notably, it undermines efforts to combat climate change, as the EU effectively exports its carbon emissions to countries which do not comply with the same high standards. As noted in a recent report:

It is likely that these refineries outside of the region would be emitting similar levels of CO₂ and other industrial emissions [compared to] if the refining capacity had remained within the UK and EU and potentially significantly higher levels of emissions depending on how stringent local regulations would be and how well operated the refineries were. Europe would simply have ‘exported’ the environmental and climate change issues associated with supplying Europe’s refined product demand to other countries.⁷²⁵

The EU has also found itself isolated when it comes to other environmental concerns. For example, in 2013, Canada blocked the EU’s entry as an observer on the Arctic Council following the latter’s campaign against the seal trade.⁷²⁶ By contrast, the UK is active in discussions over the Arctic, signing a Memorandum of Understanding with Canada to conduct cooperation in polar research.⁷²⁷

It is easy to see why the EU lacks clout: EU environmental policies have failed to reduce global emissions, local successes have simply resulted in the export of emissions to third countries that the EU has become increasingly dependent on, and in the process it has alienated other countries. While EU action has helped to reduce emissions within Europe, and it has a notable record in encouraging investment in renewables, there are clear limits to its successes. While the need to protect the environment and tackle climate change was enshrined internationally at the Rio Summit in 1992 and with the adoption of the Kyoto Protocol in 1997, the EU has conspicuously failed to encourage other countries to follow its lead. The EU’s policy of being *“a world leader in the fight against climate change”* has simply left the bloc isolated, assuming without fully sharing the costs, and has done very little to reduce emissions on a global level. *Leaving an EU that has failed to make an impact would not reduce the UK’s clout in any way.*

724 BBC News, “Why did Copenhagen fail to deliver a climate deal?” (22 December 2009), accessed 24/05/2015 at: <<http://news.bbc.co.uk/1/hi/8426835.stm>>.

725 “The role and future of the UK refining sector”, IHS and Purvin & Gertz (10 May 2013), page 19, accessed 24/05/2015 at: <www.ukpia.com/files/pdf/therolefutureoftheukrefiningsector.pdf>.

726 The Globe and Mail “Canada signals new era for Arctic Council” (15 May 2013), accessed 24/05/2015 at: <www.theglobeandmail.com/news/politics/canada-signals-new-era-for-arctic-council/article11951388/>.

727 Indeed, several. The 2009 memorandum is online here: <www.aadnc-aandc.gc.ca/eng/1100100037418/1100100037419>.

“Upon leaving, the UK would get the chance to represent itself, gaining a new right to participate actively in international discussions in a far more constructive way.”

17.1.2 The UK would secure a stronger relationship with the other key international environment agencies

According to the British Government *“the EU now plays an active role in the negotiation and implementation of international agreements relating to the environment and in the main represents the UK and the other member states on matters of EU competence within the UN.”*⁷²⁸ This means that, upon leaving, the UK would get the chance to represent itself, gaining a new right to participate actively in international discussions in a far more constructive way. For example, the UK would remain a member of the Council of Europe (which, in 1973, introduced the European Network of Biogenetic Reserves to conserve natural or near-natural habitats and also hosted the Bern Convention on the Conservation of European Wildlife and Natural Habitats). While the Council is completely separate to the EU, it nonetheless has a very close relationship with the institutions of the EU, as the Council itself acknowledges:

*The European Union is the Council of Europe’s most important institutional partner at both political and technical levels. Cooperation embraces all sectors of the Council of Europe and a wide spectrum of activities, making the European Union an ‘across the board’ partner.*⁷²⁹

This engagement involves permanent high-level dialogue between the two organisations along with joint activities. The 2007 Memorandum of Understanding between the EU and the Council further bound the two together. The fact that the Council of Europe shares the same buildings as the EU’s institutions embodies this synergy. Again, outside the EU, the UK would not have to worry about the EU speaking on its behalf to the Council and would be able to have a larger voice in its deliberations.

The EU member states are members of the International Whaling Commission, but the EU has observer status. Outside the EU only the UK representative would be able to speak on behalf of Britain, with no pressure to follow a common line.

Even in the few instances where the EU is the party to international agreements, there is no reason why the UK could not reapply and gain membership for itself. For example, while the EU is party to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters on the UK’s behalf, Britain would be able to be a member in its own right.

Outside the EU, the UK could be a full participant in the World Trade Organization (WTO) which, among other things, is committed to sustainable development and the preservation of the environment (as enshrined in the Marrakesh Agreement). WTO rules also permit members to adopt trade-related measures aimed at protecting the environment.⁷³⁰

728 HM Government *“Review of the Balance of Competences between the United Kingdom and the European Union: Environment and climate change”* (2014), page 5.

729 Council of Europe *“The Council of Europe’s Relations with the European Union”*, accessed 24/05/2015 at: <www.coe.int/t/der/EU_en.asp>.

730 WTO *“Trade and Investment”*, accessed 24/05/2015 at: <www.wto.org/english/tratop_e/envir_e/envir_e.htm>.

“There would be considerable scope for the UK to continue cooperating with its geographical neighbours even if it left the Union.”

17.2 The UK could continue to cooperate with the EU on environmental issues

Key issues

- Cooperation on environmental programmes
- Pushing for a global emissions deal

The EU has introduced a number of policies that aim to reduce emissions and preserve the natural environment. Leaving would, at face value, appear to undermine the UK’s ability to work with the EU on such matters. In fact, due to the EU’s commitment to working with third countries on this issue (as pollution does not respect national boundaries), there would be considerable scope for the UK to continue cooperating with its geographical neighbours even if it left the Union. It would also still be able to introduce EU-style environmental laws, meaning that there need not be a drop in environmental standards.

17.2.1 The UK could, if it wishes, continue to take part in EU environmental programmes

Leaving the EU would not limit the UK’s ability to work with EU neighbours and take part in its environmental programmes. The EU is fully committed to engaging with third countries on environmental issues and does not demand a ‘special deal’:

Our land, seas, rivers and air are under attack from factors which do not recognise international borders; when it comes to protecting the environment, the issues go well beyond the scope of national or regional considerations. The European Union and its individual member states actively pursue a pro-environment policy in the context of successive EU enlargements, in bilateral relations with non-EU countries or regional groupings, and when negotiating and signing up to international agreements.⁷³¹

Under an EU strategy devised by the Council in 2002, the European Union is required to ensure that environmental questions are taken into account when EU external policies are drawn up and implemented. The EU has stated that its priorities when engaging with third countries are:

- Working to achieve Millennium Development Goal 7, principally by building capacity to integrate the environment in developing countries, support civil society actors and the preparation of innovative solutions;⁷³²
- Promoting implementation of EU initiatives and commitments at international level, including in the areas of sustainable development, climate change, biodiversity, desertification, forests and their governance, marine resources, waste and chemical products, etc.;
- Improving the integration by the EU of environmental questions, particularly as regards combating poverty, by expanding the EU’s responsibilities and through cooperation and specialist aid;

731 European Commission “Environment: cooperation with third countries”, accessed 24/05/2015 at: <http://europa.eu/legislation_summaries/environment/cooperation_with_third_countries/>.

732 This provides yet another example of regulation in the UK actually coming from global systems handing down initiatives to the EU to legislate on.

“There have been concerns that the scheme has failed to go far enough, with a glut of permits allowing carbon prices to fall.”

- Improving international governance as regards the environment and the EU’s driving role, particularly by assisting regional and international environmental monitoring and assessment, aid for implementing multilateral agreements on the environment, and support for international organisations and processes concerned with the environment and energy;
- Promoting options for renewable energy, particularly through institutional support and technical assistance, the creation of a legislative and administrative framework propitious for investment and business, and encouragement for regional cooperation.⁷³³

An example of how these principles translate into policy can be seen in the fact that the EU has had detailed environmental cooperation agreements with several countries, including Russia.⁷³⁴

One area where continued UK-EU cooperation would be very likely is the EU Emissions Trading System (EU ETS). This was launched in 2005 and is now considered one of the cornerstones of EU (and European Economic Area (EEA)) climate change policy. It covers more than 11,000 power stations and industrial plants in 31 countries, as well as airlines. It creates a market for carbon footprint allowances:

The EU ETS works on the ‘cap and trade’ principle. A ‘cap’, or limit, is set on the total amount of certain greenhouse gases that can be emitted by the factories, power plants and other installations in the system. The cap is reduced over time so that total emissions fall. In 2020, emissions from sectors covered by the EU ETS will be 21 per cent lower than in 2005. By 2030, the Commission proposes, they would be 43 per cent lower. Within the cap, companies receive or buy emission allowances which they can trade with one another as needed. They can also buy limited amounts of international credits from emission-saving projects around the world.⁷³⁵

This system obliges industries to surrender one allowance for every tonne of CO₂ that they emit. By limiting the number of allowances and reducing that number gradually, it should – in theory – help to reduce emissions. However, there have been concerns that the scheme has failed to go far enough, with a glut of permits allowing carbon prices to fall (see Figure 17.iii). Some commentators have claimed that *“the EU ETS is not delivering the CO₂ cuts required by science, historical responsibility and sound financial practices.”*⁷³⁶ One set of criticisms has come from Friends of the Earth, which has complained that *“the most dangerous loopholes in the EU ETS must be removed by ending overseas offsets, stopping free permits to polluters, introducing a much tighter cap, and preventing*

733 European Commission “Environment and sustainable management of natural resources, including energy”, accessed 24/05/2015 at: <http://europa.eu/legislation_summaries/environment/cooperation_with_third_countries/128173_en.htm>.

734 European Commission “EU-Russia environmental cooperation”, accessed 24/05/2015 at: <http://europa.eu/legislation_summaries/environment/cooperation_with_third_countries/128004_en.htm>.

735 European Commission “The EU Emissions Trading System (EU ETS)”, accessed 24/05/2015 at: <http://ec.europa.eu/clima/policies/ets/index_en.htm>.

736 Friends of the Earth “The EU Emissions Trading System: failing to deliver” (2010), accessed 24/05/2015 at: <http://ec.europa.eu/clima/consultations/docs/0005/registered/9825553393-31_friends_of_the_earth_europe_en.pdf>.

*the use of banked permits from earlier phases of the EU ETS scheme.*⁷³⁷ Another environmental group, Sandbag, has noted that “after running for five years, the EU Emissions Trading Scheme (ETS) has failed to constrain the annual supply of carbon across capped sectors for any year except 2008”⁷³⁸

Figure 17.iii: EU ETS carbon price, EUR per tonne



Source: European Energy Exchange⁷³⁹

The failure of the carbon trading scheme comes down to the over-issue of permits, driving the price down. This mis-issuing of permits has done a great deal of damage to the environmental cause.

Regardless of the failures of the EU ETS, the system provides an example of where EU states would actively seek to maintain UK participation on leaving. Although non-EEA states currently do not participate, the entire logic of the ETS requires as many advanced economies as possible to join – both to reduce the continent’s overall carbon emissions and to ensure no one country can gain competitive advantage by dropping onerous rules.

Any EU interactions with an independent Britain, with or without a ‘special deal’, are therefore likely to have an environmental component to them. Even if the EU were to refuse to cooperate with the UK, EU member states have the power to enter into agreements with third countries to establish higher environmental standards (so long as such deals are not incompatible with EU laws). The UK would thus be able to establish bilateral deals with other EU states. The British Government itself has acknowledged that “it is possible that environmental issues affecting more than one European state could be addressed by bilateral or multilateral agreements between individual states rather than by action by the EU itself.”⁷⁴⁰

737 Friends of the Earth “The EU Emissions Trading System: failing to deliver” (2010), accessed 24/05/2015 at: <http://ec.europa.eu/clima/consultations/docs/0005/registered/9825553393-31_friends_of_the_earth_europe_en.pdf>.

738 Sandbag “Rescuing the EU ETS from redundancy”, accessed 25/05/2015 at: <www.sandbag.org.uk/site_media/pdfs/reports/Rescuing_EU_ETS.pdf>.

739 It should be noted that the UK has introduced a carbon price floor that prevents the cost of carbon falling below £16 per tonne.

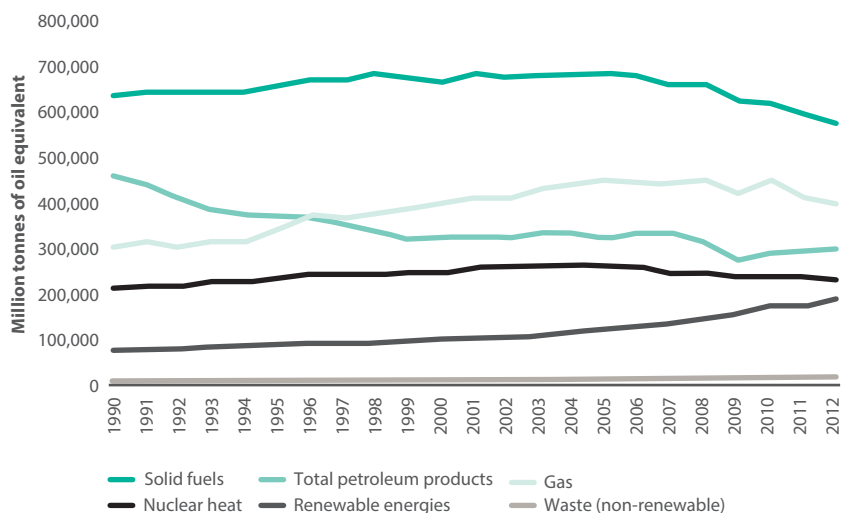
740 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Environment and climate change” (2014), page 25.

17.2.2 The UK could, if it wishes, continue to introduce EU environmental policies

When it comes to energy use legislation, the Commission undoubtedly has achievements to its credit: especially its encouragement of renewable energy. EU schemes like the Directive on Energy Production from Renewable Energy Sources (Directive 2001/77/EC – now repealed) which set national indicative targets for renewables, the SAVE Directive (Directive 93/76/EEC) which required member states to promote energy efficiency to help limit CO₂ emissions, the Renewables Directive (Directive 2009/28/EC) which provided for binding national renewable energy targets, and the Energy Efficiency Directive in 2012 (Directive 2012/27/EU) have all, to varying extents, helped to ensure that member states invest in renewable sources of energy. Today, the EU has a 20-20-20 target, with a key target of an 80 per cent reduction in emissions by 2050, which is currently planned to be achieved via the ‘high RES’ plan.⁷⁴¹

When it comes to reducing emissions, these policies have been successful within the EU – though as we will see, not without significant costs. Across Europe, renewable use has increased dramatically over the last few years (see Figure 17.iv). There is no doubt that EU policies have played a role in this change. One could even argue that the fact that these targets have been decided at an EU level, and are thus less easy to change, has given investors confidence and made them more willing to put money in renewable technology. In the Balance of Competences Review, it was suggested that stakeholders felt that “*having a specific and binding target for renewables had been fundamental in shaping UK renewables policy and providing investor certainty*”. It should be noted, however, that renewables still only provide a minimal amount to the UK energy mix.

Figure 17.iv: EU Gross inland consumption by fuel



Were Britain to leave the EU (and the EEA), the UK Parliament would be free to reconsider all EU environmental rules. This means that the UK could, if it wished, retain the various laws that have been introduced. There is, for example, no reason why the EU Directive on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) cannot be continued, with the UK simply mirroring the EU’s developments via a ‘living instrument’. This would

741 There are significant concerns about whether these plans are viable – especially considering the lack of wind power and the need for nuclear power as a backup. The EU is also committed to using Carbon Capture and Storage as part of its 2030 plans.

“The issue becomes one of the freedom to make informed decisions, on the balance of evidence and the costs and concerns involved.”

have the added benefit of making it easier for the UK to secure a free trade deal with the EU by having an identical regulatory system – which Britain has at the moment in any case.

Likewise, the neonicotinoid pesticide ban could continue, or be enforced more strongly, if the UK Government is convinced that bees are genuinely affected and that protecting bee populations is more important (i.e. for pollination as well as biodiversity) than the protection offered by that specific pesticide family. Alternatively, it could, after reviewing the hard evidence, follow scientific advice that is more open minded about the causes.

In addition to encouraging investments in renewables and protecting the environment, the EU has also undertaken impressive work to encourage investment in energy efficiency. The Energy Efficiency Action Plan was adopted in 2002 and aimed to deliver a one per cent improvement in energy intensity per year to 2010. Other directives, including the Energy Performance of Buildings Directive (Directive 2002/91/EC), The Co-generation Directive (Directive 2004/8/EC), the Eco-design of Energy Using Products Directive (Directive 2005/32/EC), the Energy End Use Efficiency Directive (Directive 2006/32/EC) and Energy Services Directive (Directive 2012/27/EU) have all helped to make products and services somewhat more energy efficient. However, the EU has acknowledged that, while it is committed to saving 20 per cent of its energy consumption by 2020, it is currently on track to make a saving of only nine per cent.⁷⁴²

Leaving the EU would allow the UK to continue introducing measures that promote energy efficiency. Indeed, the UK could even decide to go further. While there would be costs for businesses, this is a choice that the British Parliament would have full power to make. The issue becomes one of the freedom to make informed decisions, on the balance of evidence and the costs and concerns involved.

In addition to trying to reduce emissions and energy usage, the EU has also introduced a number of policies to try and protect the natural environment. These policies range from the large scale (such as the Air Quality Directive (Directive 2008/50/EC), which aims to help tackle cross border pollution) to far more localised rules. Examples of EU policies that seek to protect the natural environment include the Water Framework Directive (Directive 2000/60/EC), the 2012 blueprint for safeguarding European waters, and the Landfill Directive (Directive 1999/31/EC), which has been praised for helping to increase the amount of recycling.⁷⁴³ EU environmental law surrounding coastal conservation, protection and management has also been commended by various commentators.⁷⁴⁴

Of course, there is no reason why extant EU directives concerning the environment, already transposed into UK law, could not be maintained or enhanced by the UK outside the Union. After leaving the EU, a legal mechanism would be needed to empower former EU rules (across the legal spectrum, not only in environment policy). It would then be up to the UK Parliament to decide which environmental rules to keep, modify or enhance.

742 European Commission “The Commission’s new Energy Efficiency Plan”, accessed 24/05/2015 at: <http://europa.eu/rapid/press-release_MEMO-11-149_en.htm?locale=en>.

743 European Scrutiny Committee “Water scarcity and droughts”, accessed 24/05/2015 at: <www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-xxiv/42812.htm>.

744 Integrated coastal zone management (ICZM) is not without its limitations. It is still a recommendation, yet the legal framework was strengthened in 2010 for the Mediterranean when the European Council adopted the decision to ratify ICZM to the Barcelona Convention.

“Leaving the EU need not mean the sudden repeal of great swathes of environmental policy.”

Indeed, a number of criticisms could be levied against the EU from a pro-environmental perspective for not going as far as it might. For example, the EU’s 2008 Climate and Energy Package does not extend to international maritime transport, even though shipping accounts for four per cent of greenhouse gas emissions.⁷⁴⁵ Likewise, while emissions from small and large combustion plants are covered by separate EU directives, there are no corresponding provisions applying to medium installations (defined as having a thermal capacity between one and 50 MW).⁷⁴⁶ The EU has also backed away from its opposition to fracking, has not introduced national emissions targets post 2030, and has also made it clear that member states could adopt their own approach to genetically modified foods (something that the European Scrutiny Committee welcomed).⁷⁴⁷

In part, this failure to be as bold as some would like is down to the EU’s own internal politics. In 2011, Poland was able to block plans for the Commission to look at cutting EU carbon emissions by more than the previously agreed target of 20 per cent by 2020 compared to national levels. The then Polish Environment Minister Andrzej Kraszewski stated that *“we expect greater solidarity within Europe and an understanding of the situation of specific member states”*.⁷⁴⁸ (This is perhaps unsurprising when 90 per cent of Poland’s electricity comes from coal).

Leaving the EU need not mean the sudden repeal of great swathes of environmental policy, or even the UK’s disengagement from many EU environmental policies which are explicitly open to non-EU states. Quite simply, the political forces do not exist in the UK at the moment to make such a repeal likely. The UK has had a commitment to protecting the environment going back to the Alkali Acts in the 19th Century.⁷⁴⁹ A belief in protecting the environment is today found in both the major UK political parties. There is also a very strong NGO movement, ranging from the Royal Society for the Protection of Birds (RSPB) to Friends of the Earth, which would continue to exert a large amount of influence if Britain left the EU.

Today, UK law goes far further than the EU in many ways. The Climate Change Act 2008 would remain on the statute books were Britain to leave the EU. In addition, were the UK to decide to apply for EEA membership, it would find that most of the EU’s environmental policies would be required as a condition of membership (though there would be the opportunity for dramatic simplification).

17.2.3 The UK could continue to work with EU countries to push for lower global emissions

There is no reason why, in international fora, the UK could not cooperate with the EU on environmental policies. There are some limitations to taking action at the international level – including the lack of a court. However, action at a global level is best achieved through global fora. There is no reason why, in these meetings, the UK could not cooperate with the EU and work to make sure that the

745 European Scrutiny Committee “Carbon dioxide emissions from maritime transport”, accessed 24/05/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-xxiv/21906.htm>.

746 European Scrutiny Committee “Atmospheric emissions from medium combustion plants”, accessed 24/05/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-xxi/21915.htm>.

747 European Scrutiny Committee “Cultivation of genetically modified crops”, accessed 24/05/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-v/21915.htm>.

748 Financial Times “Poland blocks efforts on emission targets” (2011).

749 The Alkali Act 1863 was intended to curb discharge into the air of muriatic acid gas.

“This provides all the more reason for the devolved administrations to step up and make the most of what would, in many instances, prove to be a devolved responsibility.”

environment is protected, uniting with European states over important issues over which they genuinely agree.

17.2.4 The UK could continue to offer and be supported by EU disaster provisions

In 2014, severe weather caused extensive flooding across Serbia and Bosnia and Herzegovina, the worst those countries had experienced for a century. Although they are not EU members, the Commission responded swiftly, not only by providing funding but also by using the EU’s Civil Protection Mechanism for coordination:

*The European Commission, France and Slovenia place high priority on the economic recovery of both countries and are committed to providing a substantial financial contribution. In addition to mobilising international financial support, the Donors’ Conference will also contribute to stepping up cooperation over floods and natural disasters in the region.*⁷⁵⁰

EU funds go to countries all over the world, including the USA (following Hurricane Katrina), Haiti (following the 2010 earthquake), and Japan (following the tsunami in 2011). An independent UK could therefore expect to benefit from the EU’s support in this area, even without a ‘special deal’.

17.3 New environmental policy opportunities would become available

Were Britain to leave the EU, it would gain considerable powers over environmental policies and would face a choice over the direction it should go. On the one hand, the UK would retain the power to carry on going further than the EU in combatting climate change and reducing emissions. On the other, it would also have the ability to introduce some deregulation and repeal environmental laws that it disagreed with. Whichever route it chose, it would be a choice for the British Parliament – a choice that is simply not available to the UK today. In many respects, the UK does not share the same environmental problems as the rest of the EU, given that it is a separate landmass. Indeed, the terrestrial ecoregions of continental Europe, when mapped out, resemble a colourful patchwork quilt. This provides all the more reason for the devolved administrations to step up and make the most of what would, in many instances, prove to be a devolved responsibility.

17.3.1 EU ‘mission creep’ on environmental matters could be stopped at a stroke

The EU’s power over environmental policy has increased dramatically in the last few years, to the extent that – today – there is almost no aspect of environmental policy that the EU does not have a large remit over. As put by the British Government: *“There are now few aspects of the environment within the member states which are not the subject of EU controls.”*⁷⁵¹

The EU’s powers to legislate in relation to the environment are derived from Articles 191 to 193 of the Treaty on the Functioning of the European Union (TFEU), which give the EU remit over a range of environmental concerns. Under the original Treaty of Rome, the then EEC’s powers over the environment were

750 European Commission “EU solidarity with Bosnia and Herzegovina and Serbia”, accessed 24/05/2015 at: <http://ec.europa.eu/enlargement/news_corner/floods/index_en.htm>.

751 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Environment and climate change” (2014), page 22.

“Were the UK to leave the EU, it would no longer need to worry about this ‘mission creep.’”

limited – mostly due to a lack of awareness of the importance of environmental and climate change issues in 1958. This has, however, changed over the decades, as awareness grew and as the EU, in parallel, accumulated more powers over this field. Despite its initial lack of a clear legislative base, the EEC was introducing environmental policies as early as the 1970s, most notably the Sound Levels of Exhaust Systems Directive (Directive 70/157/EEC). The Paris Summit meeting of heads of state and government of the EEC, in October 1972, marked the beginning of its environmental policy, with the adoption of a declaration on environmental and consumer policy. Another large step came with the introduction of the Birds Directive (Directive 79/409/EEC), which aimed to protect wild birds. The 1987 Single European Act gave the EU new powers over the environment, including specific Treaty powers over environmental action. The 1999 Treaty of Amsterdam enshrined the principle that environmental protection was a key part of the EU’s policy, while the Lisbon Treaty gave the EU explicit permission to legislate over the matter of climate change. According to the British Government, today “EU law now covers the majority of areas of environment and climate change policy.”⁷⁵²

One of the most concerning consequences of this ever-increasing EU power is that it has diminished the role of the member states – and not just in the field of environmental policy.⁷⁵³ One example is land use, which is an area that the EU nominally has no power over, but which falls into its remit if it is in the context of the environment. Another example is the willingness within the EU to make certain activities illegal. There is a constitutional objection to this, as evidenced by a dispute in 2001 between Commission and Council, the latter taking the view that this went beyond the Community’s power. However, the European Court of Justice (ECJ) later ruled that it would permit criminal penalties – seen at the time as a dramatic increase in the EU’s power.⁷⁵⁴ Concerns have been raised about the EU’s Environmental Crime Directive (Directive 2009/99/EC), which may cause serious problems when one considers the different legal systems of the member states.

It is also concerning that the UK’s influence over EU environmental legislation has steadily declined over the last few years. While several EU policies have been inspired by UK policy, it has also ignored UK objections in many key areas. For example, it ignored the UK’s concerns (on the grounds of subsidiarity and proportionality) about the expansion of the EU’s Floods Directive (Directive 2007/60/EC). It is a worrying indicator for the UK, considering the harm this Directive has caused. By virtue of its EU membership, Britain has been required to move from its old ‘reactive’ response to environmental policy (requiring proof of harm before action) to the far more proactive approach demanded by EU law.

Were the UK to leave the EU, it would no longer need to worry about this ‘mission creep’ as it would be able to introduce environmental laws on its own terms, accepting or rejecting laws according to the discretion of its own Parliament. This is particularly attractive when it comes to maritime issues, as the UK is responsible for large sections of oceans (one of Britain’s greatest sources of biodiversity).

752 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Environment and climate change” (2014), page 5.

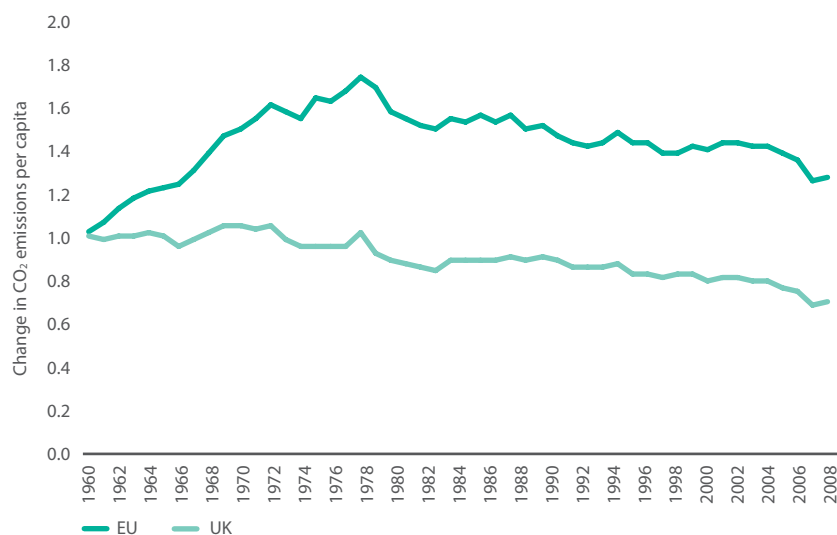
753 This has been noted by the academic Jonathan Story, who has argued that “it is not just that the EU’s powers hollow out the representative function of its member states; the EU was a house built by politicians to take opposition out of politics”. Accessed 12/05/2015 at <<https://storybookreview.wordpress.com/2014/02/15/european-social-democracy-facing-the-void-in-an-age-of-austerity-book-review/>>.

754 Case C-176/03.

17.3.2 The UK could continue to be bolder than the EU on emissions

While there is a common refrain that the EU goes further than the UK in introducing climate change policies, this is not borne out by the evidence. The UK has taken dramatic steps to reduce its emissions, and Figure 17.v. shows that it is the continental leader in this field.

Figure 17.v: Relative increase/decrease CO₂ emissions (1960=1)



Source: Adapted from World Bank figures⁷⁵⁵

Many organisations have argued, convincingly, that the UK has gone much further than the EU in the pursuit of climate change legislation. The British Ceramic Confederation, United Kingdom Environmental Law Association (UKELA), and Northern Ireland Local Government Association have all said that the UK's 2008 Climate Change Act shows that Britain has more ambitious targets than the rest of the EU. Indeed, this is how EU environmental policy is meant to work: on the basis of minimum standards. The EU has made it clear that member states can, if they wish, go further in introducing more stringent measures.⁷⁵⁶

It is also worth noting that many EU measures were influenced by British rules. For example, the EU's Industrial Emissions Directive (Directive 2010/75/EU) was heavily inspired by the UK's Environmental Protection Act 1990. Likewise, many of the EU's exposure reduction commitments first found their life in the UK Air Quality Strategy and many of the EU's waste rules can be found in UK laws such as the Mines and Quarries (Tips) Act 1969. Even the EU's Emissions Trading System had been trailed by a UK trading emission scheme, and directives that aimed to combat emissions from industrial plants were often inspired by the UK's own Integrated Pollution Control regime.⁷⁵⁷

755 World Bank "CO₂ emissions (metric tons per capita", accessed 24/05/2015 at: <<http://data.worldbank.org/indicator/EN.ATM.CO2E.PC>>.

756 This is one of the three main principles one finds at the heart of most EU environmental policies. Other principles include the 'precautionary principle' (which allows risk management to take place even where risk assessment is inconclusive), and the emphasis that environmental damage is dealt with at the source and that the polluter pays. The introduction of the precautionary principle in 1999 represented a significant break from the UK's traditional approach to environmental law.

757 HM Government "Review of the Balance of Competences between the United Kingdom and the European Union: Energy Report" (2014), page 20.

“There is no reason why green policies could not be pursued outside the EU.”

The EU has introduced rules to try and tackle waste, for example the Waste Batteries Directive (Directive 2006/66/EC) and the Waste Oil Directive (Directive 75/439/EEC). However, often EU rules fail to be as broadly considered as the UK; for example directives that aim to deal with waste, such as the Waste Electrical and Electronic Equipment Directive (Directive 2002/96/EC), have been criticised by UK Coal, which pointed out that the administration costs created by these laws are substantial even though they have failed to significantly improve the pre-existing UK regime.

There is no reason why green policies could not be pursued outside the EU. Britain already leads by example in a number of ways, and could build on this: the Carbon Price Floor and Feed-In Tariffs could be further amended to encourage British energy to decarbonise, for example. Depending on how trade negotiations for market access progress, there would also be scope for ensuring products in the UK were greener.

It is worth noting that many of the UK Green Party's policies directly clash with EU law or EU priorities. The only way for many of its goals to be met is to pursue national environmental, trade and foreign policies outside the EU's control. This is because the Greens are strong opponents of (or at least elements of) globalisation and aggressive capitalism. They support, for example, removing international property rights from the control of the WTO (presumably so agri-giants cannot patent genes and seeds). They also oppose the existence of the World Bank and IMF as currently formulated, and would resist further exploration or exploitation of Arctic and Antarctic energy and mineral resources.⁷⁵⁸ Green free trade agreements would also favour stability and local trading over general market access increases.

Likewise, EU rules also prevent other environmental groups from realising their policies. For example, the New Economics Foundation think tank has argued that the best way to restore 49 overfished stocks in European waters would be to completely stop fishing them for four years (and nine years in some cases).⁷⁵⁹ Such a policy would currently be impossible given the EU's Common Fisheries Policy.

Britain could also, if the electorate so chose, be more interventionist in supporting green industries. Outside the EU's rules on competition, it would be easier for the Government to funnel state aid towards heavy industries that demonstrate best practice, or to green technology start-ups, or both. Likewise, the Government could use targeted procurement to support the UK renewables industry, for example by buying UK-built photovoltaic panels for state-owned buildings. At present, such contracts would have to be put out to EU-wide tender, and would normally be won by European firms that already had established technology, meaning that the UK Government would be further supporting competition to British start-ups. Alternatively, the UK could seek to cut emissions via means other than renewables (which the Government has made clear that it does not want to continue) by encouraging firms to invest in cleaner technologies.

758 Green Party “International Policy”, accessed 26/02/2015 at: <<http://policy.greenparty.org.uk/ip.html>>.

759 New Economics Foundation “£14 net profit for every £1 invested in fisheries” (14 September 2012), accessed 24/05/2015 at: <www.neweconomics.org/press/entry/14-net-profit-for-every-1-invested-in-fisheries>.

“Leaving the European Union would allow the reversal of EU policies that have had a damaging impact on the environment.”

17.3.3 The UK could introduce new policies that allow for the local environment to be better protected

Leaving the European Union would allow the reversal of EU policies that have had a damaging impact on the environment. An example is the EU's decision to ban the use of some pesticides, as noted by the scientific commentator Matt Ridley. In a short article worth citing in full, he looked at this issue in detail:

The European Union's addiction to the precautionary principle – which says in effect that the risks of new technologies must be measured against perfection, not against the risks of existing technologies – has caused many perverse policy decisions. It may now have produced a result that has proved so utterly foot-shooting, so swiftly, that even Eurocrats might notice the environmental disaster they have created.

All across southeast Britain this autumn, crops of oilseed rape are dying because of infestation by flea beetles. The direct cause of the problem is the two-year ban on pesticides called neonicotinoids brought in by the EU over British objections at the tail end of last year. The ban was justified on the precautionary ground that neonics might be causing the mass decline of bees. There is, by the way, no mass decline of bees, as I shall explain.

Neonics are primarily used as a seed dressing: seeds are soaked in the chemical so that the plant grows up protected from pests and – crucially – often does not need to be sprayed. The beauty of this is that it targets pests, such as flea beetles, that eat the plant, but not the bystanders such as other insects. In the laboratory, bees exposed to high doses of neonics do indeed die or become confused. So they should – that's what the word “insecticide means.

Yet large-scale field studies and real world evidence consistently demonstrate that rape pollen does not contain a high enough dose to have an impact on bee colonies. The Department for Environment, Food and Rural Affairs report on the subject concluded that lab studies used to justify the EU ban severely overdosed their bees and that bees are not affected by neonics under normal conditions. Australian regulators claim that neonics have actually improved the environment for bees by replacing older pesticides. And in the US, the Department of Agriculture and the Environmental Protection Agency have so far resisted calls to ban neonics for much the same reason.

*Even though there was literally no good science linking neonics to bee deaths in fields, they were banned anyway for use on flowering crops in Europe. Friends of the Earth, which lobbied for the ban, opined that this would make no difference to farmers. Dave Goulson, a bee activist and author of a fine book on bumblebees called *A Sting in the Tale*, was widely quoted as saying that farmers were wasting their money on neonics anyway; though how he knew this was not clear. Presumably he thinks farmers are stupid.*

Well, the environmentalists were wrong. Approaching 50 per cent of crops in Hampshire have been affected this autumn by losses and not much less in other parts of the country. Farmers in Germany, the EU's largest producer of rape, are also reporting widespread damage. Since rape is one of the main flower crops, providing huge amounts of pollen and nectar for bees, this will hurt wild bee numbers as well as farmers' livelihoods.

Farmers are instead reluctantly using pyrethroids. These older insecticides are less effective against pests (flea beetles are becoming resistant to them), more dangerous to other insects, especially threatening to aquatic invertebrates when they seep into streams and less safe to handle. So the result will be more insect deaths. In a panic, Defra has just announced that it will allow the use of two neonics, but – and here you have to laugh or you would cry – both

“The ban was brought in entirely to placate green lobby groups, which have privileged and direct access to unelected European officials.”

are sprayed on the flowering crop, rather than used to dress seed! So they definitely can harm bees.

The ban was brought in entirely to placate green lobby groups, which have privileged and direct access to unelected European officials in policy-making. They hotted up their followers, using the misleading lab studies, to bombard politicians on the topic. The former health commissioner, Tonio Borg, felt so inundated by emails that he had to do something. Owen Paterson, as environment secretary, received 85,000 emails to his parliamentary address alone. Yet he warned colleagues that a ban was unjustified and would be counterproductive. He was right.

Back to bees. What decline? The number of honeybee hives in the world is at a record high. The number in Europe is higher than it was in the early 1990s when neonics were introduced. Hive mortality in Britain was unusually low in the year before the neonic ban. It’s a myth that honeybees are in dire straits.

That’s not to say beekeepers don’t have problems. There was a severe problem eight years ago caused by the mysterious colony collapse disorder – a phenomenon that has happened throughout history and seems once again to have disappeared. Greens tried to blame it on genetically modified crops, but it happened in countries with no GM crops. The battle against the varroa mite continues to be hard. A newly virulent strain of tobacco ringspot virus has made the rare leap from infecting plants to infecting bees.

What about wild bees, and bumblebees in particular? Having read again and again of the terrible decline of bumblebees, I set out to find some graphs or tables. I came away empty-handed. In Britain some species contracted their ranges and some expanded during the 20th century. The specialist species seem to have suffered while the generalists have thrived. But claims of a continuing fall in the abundance of bumblebees over the past 20 years seem to be entirely anecdotal.

As Dr Goulson recounts in his book, it’s hard to study bumblebee nests because so many get destroyed by badgers. The huge expansion of the badger population in recent years cannot have helped the populations of their favourite prey.

Full disclosure: I have a farm. My oilseed rape is looking all right this year, but the farmer is not happy at having to use pyrethroids and nor am I. The local beekeeper is hopping mad about the neonic ban, which he thinks has done more harm than good. And he’s genuinely worried about a new threat to honeybees from the small hive beetle, which is spreading in Italy, a major source of honeybees and queens for Britain. Currently there is free movement of potentially contaminated bees from Italy into the UK. In short, nobody’s taking any precautions about the real threats.⁷⁶⁰

Another example of where the EU’s laws have caused difficulties is in the area of GM crops. While there have been some recent moves to transfer these powers to the member states, another example of a law causing harm is the EU’s Waste Water Treatment Directive (Directive 91/271/EEC), which not only generated additional burdens to the whisky industry in regard to the discharge of waters used in the distilling process, but also deprived the environment of nutrients and heat which had benefited local wildlife. Likewise, the EU’s banning of emtryl created problems for estate managers, owing to the lack of substitute medicines for pheasants.

760 The Times “Brussels and its busy bees are a perfect pest”, M. Ridley (6 October 2014).

“The Dutch Government argued that these laws were more focused on ends rather than means.”

Were Britain outside the EU, it would no longer have to comply with such damaging laws and could seek to introduce new tools for promoting the local environment.

17.3.4 EU environmental policies that placed burdens on businesses could be repealed

A number of EU environmental policies (such as the EU ETS) – quite deliberately – place burdens on certain industries, while other EU laws that are meant to protect the environment have also caused unforeseen problems for businesses. For example, the Waste Incineration Directive (Directive 2000/76/EC) has added to bureaucracy by requiring new permits to be obtained for incineration plants, while the Environmental Impact Assessment Directive (Directive 2011/92/EU) and the Strategic Environmental Assessment Directive (Directive 2001/42/EC) have both been criticised for being over burdensome. Indeed, the Dutch Government argued that these laws were more focused on ends rather than means.⁷⁶¹ The EU Directive on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) is often cited by businesses as particularly onerous. It was introduced on environmental grounds but has imposed many costs on smaller companies.⁷⁶² It has also been criticised for being far too dependent on assessments of hazards rather than risk – putting certain substances at risk of being banned for being hazardous even though, if used correctly, they are safe. REACH was condemned in 2007 by Julian Morris, the founder of the International Policy Network:

The idea is that there are lots of chemicals being used in industrial processes which have never been tested. This is true. What the European Commission wants us to believe is that as a result of that we are all at risk and therefore we need to evaluate all of those chemicals that haven't been tested, just to see if they might cause a problem, both individually and in combination. Given the fairly large number of chemicals for which this applies (in the realm of 30,000), there were, as you might expect, some objections from the chemical industry: observations that this would take 1,000 years, it would cost hundreds of billions of euros, etc., etc., were taken somewhat seriously – so seriously that they did actually scale back the legislation very, very slightly. Now it only applies to about 10,000 chemicals and will only take then, I suppose, on that measure, 333 years, and cost a mere tens of billions of pounds to implement – quite mad and without real justification. Among other things, one can observe that it doesn't apply to petrochemicals – they managed to get a complete exemption – nor does it apply to natural compounds, and yet scientists in the US have shown that when you study the carcinogenicity of natural and synthetic compounds, on average there's no difference: they are just as carcinogenic as one another. So surely, if you were to do this you would apply it to everything, not merely to the 10,000 remaining chemicals. But the point is that it is just not feasible, and probably not desirable. It wouldn't pass a cost benefit test. It is not clear that REACH action is going to save any lives whatsoever, whether human or animal.⁷⁶³

761 Government of the Netherlands “Testing European Legislation for Subsidiarity and Proportionality” (2013).

762 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Environment and climate change” (2014), page 7.

763 Julian Morris speech to The Bruges Group, accessed 22/04/2015 at: <www.brugesgroup.com/eu/eu-corruption-and-eu-environmental-policy.html?keyword=19>.

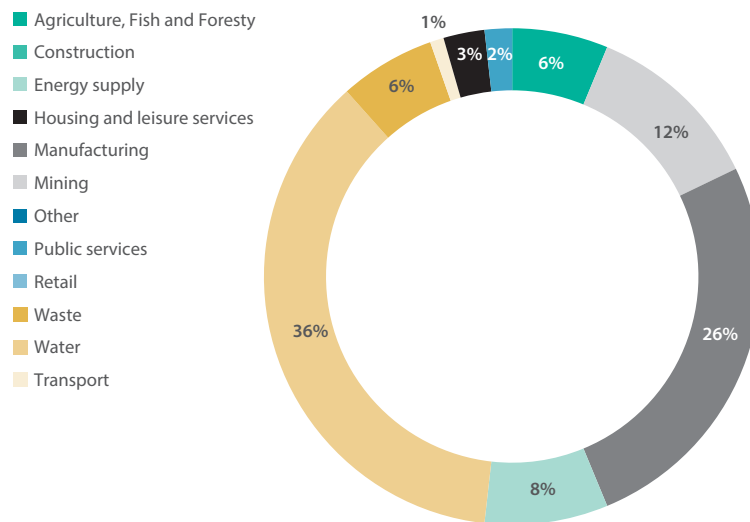
The British Government has also been critical of certain EU environmental policies for imposing significant costs on the UK. For example, the Government has argued:

*The European Commission’s proposal on soil protection would impose unnecessary regulatory burdens on farmers and other land managers. The proposal takes a prescriptive approach to land management and tackling soil degradation. Many of its provisions duplicate requirements under the Common Agricultural Policy. Farmers would therefore be faced with additional administrative burden without any additional benefits for the protection of soil.*⁷⁶⁴

The European Commission has acknowledged that its environmental policies have put a cost on businesses, proposing to review the Habitats and Wild Birds Directive to “better identify regulatory burden relief so as to meet EU policy goals at least cost and best achieve the benefits of EU regulation.”⁷⁶⁵

Another example is the Integrated Pollution Prevention and Control (IPPC) Directive, which applies an integrated environmental approach to the regulation of certain industrial activities. IPPC applies to about 4,000 industrial installations in the UK (about 45,000 across the EU), from refineries to breweries, and from intensive pig farms to cement works. It requires each installation to have a permit containing emission limit values and other conditions, based on the application of Best Available Techniques (BAT) and set to minimise emissions of pollutants likely to be emitted in significant quantities to air, water or land. Permit conditions also have to address energy efficiency, waste minimisation, prevention of accidental emissions and site restoration.

Figure 17.vi: The equivalent annual direct costs to business of EU environmental legislation (excluding climate change) by industry sector (2011 prices)



Source: Department for Environment, Food & Rural Affairs

764 HM Government “Cut EU red tape” (October 2013), accessed 24/05/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/249969/TaskForce-report-15-October.pdf>.

765 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Environment and climate change” (2014), page 22.

“The sheer quantity and interaction of these laws also creates a burden for many companies.”

Outside the EU, the UK could choose not to mimic EU environmental directives and instead cut the bureaucracy of some EU rules. For example, the Waste Framework Directive (Directive 2008/98/EC), which obliges member states to develop national waste management plans, and the Landfill Directive (Directive 1999/31/EC), which requires the level of biodegradable bio-waste from municipal landfills to be progressively reduced, have created considerable problems for companies and could be reconsidered. Likewise, according to some commentators, the Wild Birds and Habitats Directive (Council Directive 92/43/EEC), which introduced the ‘Natura 2000 network’ and a new system of species protection, has required households to go through the same procedures as major developers.⁷⁶⁶ The Royal Yachting Association has also warned that this directive gives little consideration for the socio-economic impact of site-designation. Separately, rules banning halogen bulbs could be reconsidered.

After leaving the EU, the UK could also look to introduce laws more effectively. The Water Framework Directive (Directive 2000/60/EC), and associated legal provisos, took over 10 years to be integrated into UK law and were described as *“remarkable in their technical and ecological complexity”* in academic studies.⁷⁶⁷ And while the policies themselves have been identified by commentators as very successful in transforming UK rivers, they have also been criticised by Thames Water Utilities for providing too little environmental benefit for the substantial associated costs.⁷⁶⁸ In addition, it has been suggested that the Floods Directive (Directive 2007/60/EC) played a major role in causing the Somerset floods.⁷⁶⁹ EU legislation can also conflict with itself. For example under the UK interoperation of EU law, there is a difference between the Water Framework Directive and EU waste legislation over how to deal with dredged material from rivers.

It is not merely the burden of individual laws, but the EU’s willingness to introduce these laws that has proven an issue. Uncertainty over the pace of change has led to problems for many businesses. The sheer quantity and interaction of these laws also creates a burden for many companies, with Environmental Assessments, Impact Assessments and other such requirements imposing, when taken together, substantial administrative costs on many businesses. Bureaucratic inflexibility over laws such as the Habitats Directive also leads to absurd situations emerging – such as one instance when a housing business had to incur costs of £300,000 to protect 23 newts.⁷⁷⁰ Indeed, EU rules have been blamed for preventing planning permission from being granted for the construction of new homes for many years. According to the Home Builders Federation, EU rules add an extra 18 months to the normal cycle of a

766 According to the European Commission this Directive has protected over 1,000 animals and 200 habitat types – see European Commission, Environment.

767 The Student Journal of Law “An assessment of the extent to which EU Environmental Law aids coastal conservation, protection, and management in the United Kingdom”, G. Davies, accessed 24/05/2015 at: <www.sjol.co.uk/issue-4/an-assessment-of-the-extent-to-which-eu-environmental-law-aids-coastal-conservation-protection-and-management-in-the-united-kingdom>.

768 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Environment and climate change” (2014) page 31.

769 EU Referendum Blog “EU policy: deliberately flooding the Somerset Levels”, R. North (3 February 2014), accessed 24/05/2015 at: <www.eureferendum.com/blogview.aspx?blogno=84683>.

770 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Environment and climate change” (2014), page 35.

“It would, in short, give the UK new opportunities to make environmental policy work effectively.”

house-building application.⁷⁷¹ The European Commission has acknowledged that its assessments usually take 6–12 months to complete.⁷⁷²

In addition, some policies have proven simply ineffective. The Nitrates Directive (Directive 91/676/EEC) aimed to protect water quality across the EU by preventing nitrates from agricultural sources polluting ground and surface waters. However, France has been indicted by the European Court of Justice (ECJ) twice for its failure to properly transpose the directive.⁷⁷³ There have also been concerns raised about its impact on flooding risk.⁷⁷⁴ Outside the EU, these laws could be amended or repealed so that they reflect international obligations but in a way that is appropriate for the UK.

Finally, leaving the EU offers the chance to reduce the influence of large organisations that have successfully lobbied the Commission to introduce damaging laws, despite lacking convincing scientific evidence. Just as Greens criticise the undue influence of certain parts of big business in the Commission, the chance to reduce the power of the so-called ‘green lobby’ is an attractive prospect from the vantage point of a democracy.⁷⁷⁵

Conclusion

The EU has a large role across environmental policy, ranging from efforts to reduce emissions to measures to preserve the local environment. Leaving the EU would offer a great number of opportunities for the UK to both develop its own environmental laws and revisit EU policies that do not work or do not go far enough. Equally, reducing or at least amending the EU’s environmental laws holds the prospect of substantial savings, while also allowing the UK to better protect its environment.

Crucially, leaving the EU need not represent a step backwards in environmental protection. Leaving would simply give the UK greater freedom of action. It would, in short, give the UK new opportunities to make environmental policy work effectively.

771 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Environment and climate change” (2014), page 35.

772 European Commission, Commission Staff Working Paper, Impact Assessment Accompanying the document, Proposal for A Directive of the European Parliament and Council Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on The Environment (2011).

773 EurActiv “Manuel Valls wants EU nitrates directive to ‘evolve’” (10 September 2014), accessed 24/05/2015 at: <www.euractiv.com/sections/sustainable-dev/manuel-valls-wants-eu-nitrates-directive-evolve-308329>.

774 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Environment and climate change” (2014) page 31.

775 Institute of Economic Affairs “Euro puppets”, C. Snowden (2013), page 20.

18 Transport

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“Transport policies are agreed at many different organisations.”

The EU has extensive powers over the transport policies of its member states. While there is a general consensus that the EU’s efforts to liberalise transport markets have had some beneficial effects, there are also serious concerns about both the burden of EU regulations and the apparent inability of the EU to effectively represent its member states on the international stage.

Despite these problems, some worry that leaving the EU would compromise the UK’s ability to cooperate with the EU on transport-related issues. Yet since many of the EU’s transport policies and programmes are open to third countries, it would still be possible for the UK to continue to cooperate with EU partners on key cross-border transport issues. Meanwhile, Britain would also gain the ability to repeal or modify some of the more burdensome laws that the EU has introduced over the last few years. Finally, the UK would regain a direct voice in the international bodies that are playing a growing role in setting worldwide standards, rather than be represented in them by the EU.

Crucially, as co-operation would continue, the transport industry should have confidence that, if the UK leaves the EU, British coaches, trucks, lorries, ships and planes would still be able to access Europe.

18.1 The UK would remain a member of all key international transport bodies

Key international bodies

- Convention Concerning International Carriage by Rail
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
- International Civil Aviation Organization
- International Labour Organization
- International Maritime Organization
- International Rail Transport Committee
- World Forum for Harmonization of Vehicle Regulations
- United Nations Economic Commission for Europe

Many transport policies are, unsurprisingly, set at an international level. Centuries of human interaction across borders have left a long legacy of international cooperation on this issue. Today, transport policies are agreed at many different organisations, ranging from the World Forum for Harmonization of Vehicle Regulations to the International Maritime Organization. However, while the UK has traditionally been a member of these organisations, the EU has taken a growing role in many of them and there are fears that, were the UK to leave, it would see its influence decline. This proves on review to be unfounded.

18.1.1 The UK would retain the same relationship with many key international transport bodies

Upon leaving the EU, the UK would continue to be a member of the UN and the United Nations Economic Commission for Europe (UNECE). UNECE is now responsible for many transport standards, providing secretariat services to the World Forum for Harmonization of Vehicle Regulations.⁷⁷⁶ The British Government’s Balance of Competences Review noted that:

In many instances, EU action needs to be seen in the context of international arrangements at the UN Economic Commission for Europe (UNECE). For example, a 1958 UNECE agreement has been effective as the main inter-

⁷⁷⁶ United Nations Economic Commission for Europe, “Vehicle Regulations”, accessed 05/04/2015 at: <www.unece.org/ro/trans/main/welcwp29.html>.

“This could give the UK a much stronger voice in a vital forum.”

national framework for the harmonisation of vehicle technical standards at the international level and recent regulatory developments at the EU level have seen Directives replaced with a number of UNECE Regulations.⁷⁷⁷

Given that it would continue to be a member of this important forum, after leaving the EU, it is highly unlikely that there would be a drop in UK standards for transport. Likewise, Britain would remain a member of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, which it joined in 1949. This sets basic requirements for seafarers on an international level. In addition, UK organisations would not have to leave the International Rail Transport Committee.

18.1.2 The UK would secure a stronger relationship with other international transport bodies

The European Commission currently coordinates the actions of member states in bodies like the International Civil Aviation Organization (ICAO). Were the UK to leave the EU, it would remain a member of the ICAO (in which the European Commission currently has no representation, save by indirect means) but would no longer have to coordinate with other EU states. This could give the UK a much stronger voice in a vital forum: the ICAO administers the international framework for aviation, which was established by the Chicago Convention of 1944 and which sets non-binding minimum aviation safety standards. Outside the EU, the UK would also gain the power to adopt much more flexible regulation, while still meeting ICAO requirements, than is currently permitted under EU rules.

The European Commission has observer status in the International Maritime Organization (IMO), which is based in London, and in the International Labour Organization (ILO). These, respectively, develop and maintain a global regulatory framework for shipping and set international labour standards. They are dynamic and increasingly important organisations (the ILO adopted the Maritime Labour Convention (MLC) in 2006, creating a single, self-contained instrument comprising all the current standards relating to maritime labour, and setting out rules for employment and living conditions, health protection, medical care, and social protection). Again, leaving the EU would allow the UK to have a much larger say in these organisations, as the UK need no longer worry about the European Commission speaking on its behalf.

Furthermore, in 2011, the EU acceded to the Convention Concerning International Carriage by Rail, which aims to create a uniform legal system applicable to the international carriage of passengers and freight. Once again, leaving the EU would strengthen the UK’s voice in this forum by virtue of the fact that the UK will no longer have to compete with the EU in voicing its interests.

It is also likely that the UK’s reputation would benefit from being separated from the EU, as the latter has conspicuously underperformed in these key international fora. The maritime industry, for example, has been very critical of the EU’s actions in the IMO, stating in the Balance of Competences Review that *“it can potentially detract from the UK’s own scope to act effectively.”* This critical view is repeated several times in the Review:

Maritime industry stakeholders were not supportive of European Commission ambitions to represent all EU member states in the IMO or ILO and considered that member states were more effective in the IMO when acting as individual entities. The Commission’s attempts to forge common positions in IMO nego-

777 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 21.

“The US and EU would have a vested interest in striking a deal as UK airspace would fall between the two land masses.”

tations were seen by many as counterproductive, making it harder to achieve desirable outcomes. It was felt by the industry that Commission efforts should not run counter to those of individual member states who were seeking to work with a broader range of IMO member nations towards agreed and workable international rules. Moreover, EU officials were not felt to have sufficient expertise in the areas under discussion and should therefore be prepared to be guided by member states and industry stakeholders.⁷⁷⁸

The EU also negotiates comprehensive service agreements with third countries, meaning that the UK would have to negotiate new deals outside the EU. Were Britain to leave, it would mark a temporary end to its participation in the EU-US Open Skies Agreement, for example. However, because the UK formerly had an ‘open skies’ arrangement with the US anyway, and considering the importance of major hubs like London Heathrow and Gatwick, it would be very likely that a new deal could be reached.⁷⁷⁹ In addition, the US and EU would have a vested interest in striking a deal as UK airspace would fall between the two land masses.

18.2 The UK could continue to cooperate with the EU on transport issues

Key issues

- Common Maritime Transport Policy
- Single European Sky
- Transport emissions
- Worker and passenger rights

There is little doubt that a number of EU policies have benefited firms by opening up transport markets and safeguarding passengers. These range from permission for any EU transport company to operate passenger services for more than nine people, to the liberalisation of international road haulage within the EU. There are some who claim that, were Britain to leave the EU, opportunities for continued cooperation would be limited. However, because the EU is legally encouraged to cooperate with neighbouring third countries (Article 171 TFEU allows the EU to cooperate with third countries and Article 8 TEU commits the EU to forming a “special relationship” with neighbouring countries), it would have both legal and practical reasons to carry on working with the UK. The EU already works with its neighbours on issues of transport, as the House of Commons European Scrutiny Committee has noted:

The Commission’s aim is to reinforce transport connections and market integration with third countries on the EU’s eastern and southern borders... the Commission acknowledges the important role strengthened cooperation in the transport sector can play in helping EU neighbours become economically and politically stable.⁷⁸⁰

778 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 34.

779 Before 2008, there was a complex bilateral agreement between Britain and the United States which defined the rules under which airlines could fly over the Atlantic. The first agreement, signed in Bermuda on 11 February 1946, became known as Bermuda 1. On 22 June 1977 a second agreement, Bermuda 2, was reached (and was subsequently amended in September 1988, June 1990 and March 1991). More details can be found in House of Commons Library “Aviation: Open Skies, Standard Note SN/BT/455”, L. Butcher (2010), page 2.

780 House of Commons European Scrutiny Committee “The EU and its neighbouring regions: transport”, accessed 05/04/2015 at: <www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-xlii/42827.htm>.

“The UK could also retain EU transport law that it deemed to be beneficial to workers and passengers.”

While, historically, the UK has received relatively little transport funding from the EU, there is no reason why the connections between the two would end. The EU has made it clear that it wants to develop regional networks with third countries and to cooperate on transport infrastructure with neighbouring countries – and that it is willing to provide financing for “mature priority projects”.⁷⁸¹ This means that, were the UK to leave, the EU would be required to work with Britain on key aviation, maritime and rail issues. The UK could also retain EU transport law that it deemed to be beneficial to workers and passengers.

18.2.1 Cooperation on EU aviation policies could continue

There is little doubt that, before the EU took action in the mid-1980s, Europe’s transport systems were fragmented. In the words of one academic analysis of the European airline industry:

*In 1978, the European scheduled airline market remained fragmented by the assertion of sovereignty over national airspace and there was little competition evident in its modus operandi. Overseas routes were largely limited to capital cities. Passenger capacity was controlled and divided between subsidised and state-owned national carriers operating in dominant positions and under a near universal single-designation regime in which only one airline from each country was allowed to operate a route.*⁷⁸²

Since 1985, the EU has introduced a number of policies to create a Single Market in the various transport sectors, both opening up national markets and introducing harmonising measures that have benefited some companies. The EU’s efforts in this area have, for the most part, been well received by the British Government, which has traditionally been the leading advocate for the development of a Single Market in transport services (it was the British and Dutch Governments that originally pushed for market liberalisation). UK policies have often been seen as a model for the rest of the EU, such as the British rail liberalising reforms in the early 1990s.⁷⁸³ Efforts to open up European aviation markets include the introduction of a number of regulations and directives, and the creation of the Single European Sky (SES).⁷⁸⁴ Notable regulations include Regulation 1008/2008, which brought together EU rules for the harmonisation of the granting of operating licenses, and Regulation 2009/12/EC, which lays down common rules for the levying of airport charges.

Were Britain to leave the EU, it need not worry about losing access to such EU aviation programmes. The EU has made it clear that it wants to develop

781 European Commission “The EU and its neighbouring regions: A renewed approach to transport cooperation” (COM(2011) 415 final), page 14.

782 Journal of Common Market Studies “Civil Aviation and European Integration”, Dobson (2010), pages 1127–1147.

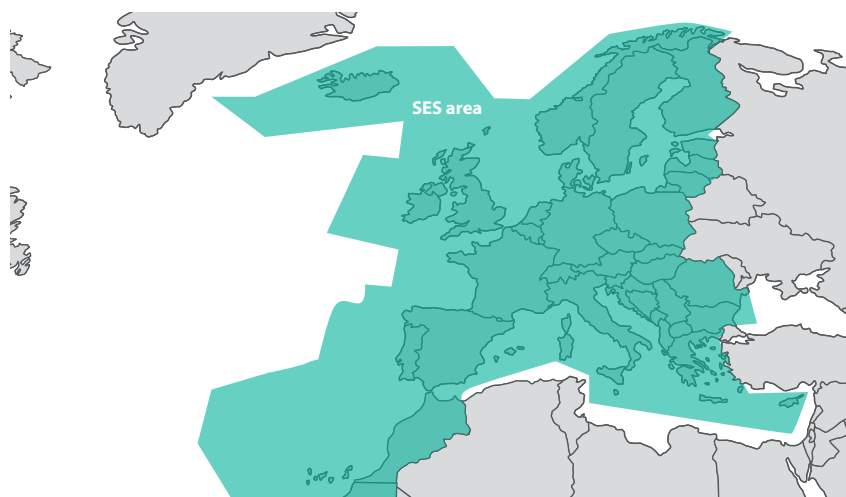
783 The Office for Rail Regulation has stated that “UK domestic regulatory policy has often served as the starting point for EU proposals” see HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 14.

784 These laws include the introduction of harmonised requirements for an operating licence for EU airlines (Council Regulation (EEC) No 2407/92), on access for Community air carriers to intra-Community air routes (Regulation (EEC) No 2408/92) and full freedom with regard to fares and rates (Regulation (EEC) No 2409/92). The Single European Sky (SES) initiative was launched in 1999 to improve the performance of air traffic management. The first four high level regulations were SES I. In 2009 SES II was introduced and in January 2013 SES II+ was introduced. An academic account of French attempts to prevent the liberalisation of the airlines can be found in Journal of Common Market Studies “Civil Aviation and European Integration”, Dobson (2010), pages 1127–1147.

links with third countries, and has said that “closer integration between the transport markets of the EU and those of the enlargement and ENP countries can make transport connections faster, cheaper and more efficient, to the advantage of citizens and businesses”.⁷⁸⁵ The EU has also stated that “ECAA policy has been designed to allow gradual market opening between the EU and its neighbours linked to regulatory convergence through gradual implementation of EU rules to offer new opportunities for operators and wider choice for consumers.”⁷⁸⁶

The SES system is an example of a key aviation programme that the UK could continue to take part in were it outside the EU. The SES has given the EU authority to manage its member states’ airspace and the air traffic management of commercial planes.⁷⁸⁷ Were the UK to leave the EU, it would not fall out of this programme as SES already encompasses third countries. Today, the SES has numerous member states, including the EU-28, the European Common Aviation Area countries, Switzerland and Morocco (see Figure 18.i). Non-EU states even have non-voting representation in the Single Sky Committee, the group that manages the SES.⁷⁸⁸ The EU has said that it is happy for non-EU states to be part of the SES, but with conditions: “The Single European Sky... will also be extended to include the EU’s neighbours. The recognition of EU law and the principle of EU designation is a minimum precondition for this.”⁷⁸⁹ Cooperation on this area seems certain if Britain is outside the EU.⁷⁹⁰

Figure 18.i: Single European Sky member states



Source: Eurocontrol⁷⁹¹

785 European Commission “The EU and its neighbouring regions: A renewed approach to transport cooperation” (COM(2011) 415 final).

786 European Commission “The EU and its neighbouring regions: A renewed approach to transport cooperation” (COM(2011) 415 final), page 4.

787 In the ECJ’s ‘open skies’ judgments of 5 November 2002, it made it clear that member states could no longer act in isolation when negotiating international air services agreements.

788 Directorate-General for Energy and Transport “Single European Sky and Functional Airspace Blocks”, accessed 24/05/2015 at: <www.icao.int/safety/information-management/Transition%20Library%20for%20AIM/Documentation/Single%20European%20Sky%20and%20Functional%20Airspace%20Blocks.pdf>.

789 European Commission “The EU and its neighbouring regions: A renewed approach to transport cooperation” (COM(2011) 415 final).

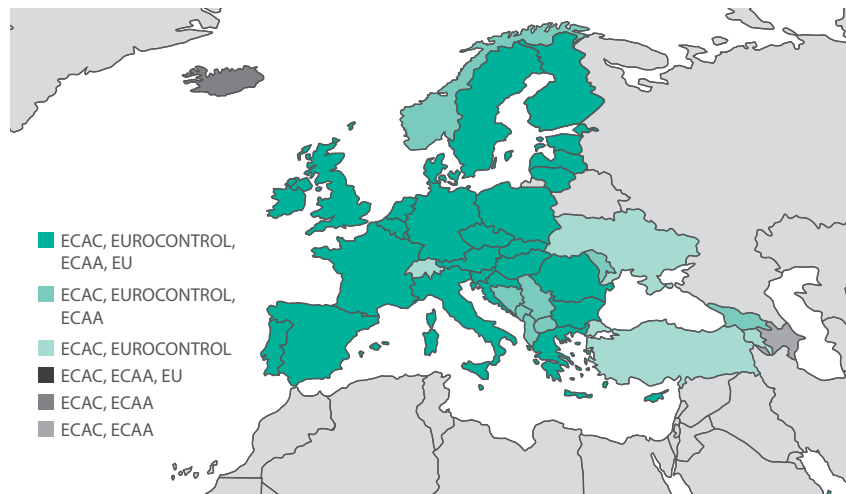
790 Negotiating access to the SES may also give UK policy-makers a chance to negotiate concerns with regard to Gibraltar.

791 Eurocontrol “What is the SES area?”, accessed 18/05/2015 at: <www.eurocontrol.int/faq/what-ses-area-single-european-sky-area>.

Were it to leave, the UK could also choose to remain part of the European Common Aviation Area (ECAA), a series of bilateral agreements between European countries which, together, create a Single Market in aviation services extending far beyond the EU's borders. The ECAA includes many non-EU members, like Norway, Iceland, Macedonia, Albania, Bosnia and Herzegovina, Serbia and Kosovo (see Figure 18.ii). No technical or regulatory obstacles would prevent such cooperation from continuing if Britain left the EU. The EU has even made it clear that it would like to see the ECAA expand: *"In the aviation sector, closer integration with the EU's neighbours is driven by the objective of creating a wider European Common Aviation Area (ECAA) covering 1 billion people in the EU and all neighbouring countries on its southern and eastern borders."*⁷⁹²

The ECAA is implemented through comprehensive air services agreements, and the EU has concluded such agreements with the Western Balkans, Georgia, Jordan and Morocco. Similar agreements are being negotiated with Israel, Lebanon and Ukraine. Negotiations are expected with Tunisia in the near future and, possibly, Azerbaijan. There is no reason why the UK could not benefit from a similar agreement, as British regulations and standards already, of course, comply with EU norms.

Figure 18.ii: Membership of European Common Aviation Area

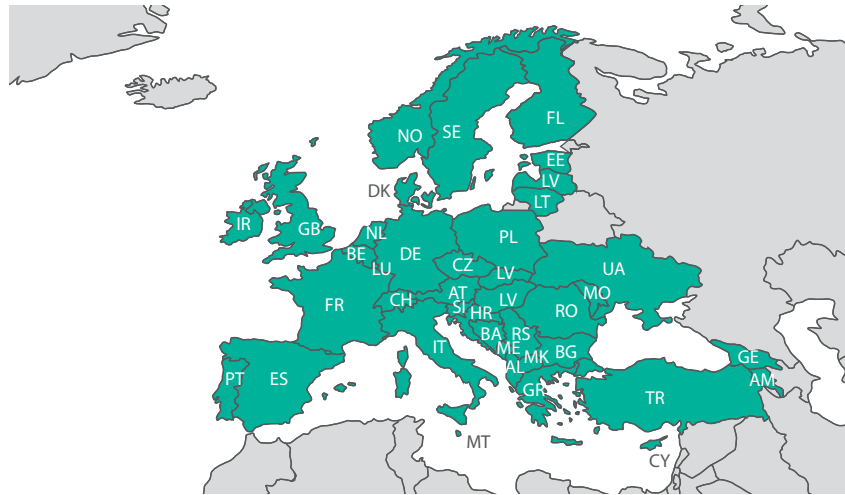


Source: Various

Likewise, the UK could remain a member of Eurocontrol, a pan-European air traffic management organisation with a 41-strong membership that extends far beyond the EU's borders (see Figure 18.iii). Founded in 1960, it is an international organisation that is separate from the EU, and provides for seamless pan-European air traffic management.

792 European Commission "The EU and its neighbouring regions: A renewed approach to transport cooperation" (COM(2011) 415 final).

Figure 18.iii: Membership of Eurocontrol



Source: Eurocontrol

There is no reason why the Europe-wide liberalisation of the aviation market would suddenly end following the UK's departure from the EU. It has benefited continent-wide companies like EastJet, which have made it clear that these policies are crucial to their success.⁷⁹³ Passengers have also gained. In the years immediately following the changes, the number of routes increased from 490 in 1993 to 520 in 1996. The number of people using promotional fares rose from 60.5 per cent in 1985 to 70.9 per cent in 1995.⁷⁹⁴ These benefits would continue.

In addition, the UK could continue to work with the EU on the allocation of landing slots. These have been regulated at an EU level since 1993, when Council Regulation (EC) 95/93 laid down common rules for the allocation of slots. There is no reason why the UK could not retain the appropriate regulations and directives after leaving the EU (it should be noted that the Slots Regulation applies to European Economic Area member states as well).

Given the success of liberalisation, and the importance of UK airports like Heathrow, all parties would have an interest in cooperation on these issues continuing.

18.2.2 Cooperation on EU maritime policies could continue just as before

As with aviation, when it comes to maritime policy the EU is committed to deepening its ties with non-EU states, meaning that there would not be significant disruption if the UK left. This is fortunate, as it is likely that the UK would wish to continue to participate in a number of programmes, including the Common Maritime Transport Policy. Established in 1986, this created a Single Market for shipping services and the freedom to provide maritime cabotage services in the EU.⁷⁹⁵

In 2011, the EU stated that it wanted to work with third countries on maritime issues:

793 HM Government "Review of the Balance of Competences between the United Kingdom and the European Union: Transport" (2014), page 24.

794 Journal of Common Market Studies "Civil Aviation and European Integration", Dobson (2010), pages 1127-1147.

795 The principle of freedom to provide maritime transport between member states was established in Regulation 3577/92. Cabotage refers to the haulage of goods between two points in the same country by a vehicle registered in another country.

“Outside the EU, the UK could certainly still partake in EU programmes and cooperate on maritime issues.”

The European Maritime Transport Space without barriers will, in the longer term, be developed into a ‘Blue Belt’ of free maritime movement in and around Europe. The aim is to simplify formalities for ships travelling between EU ports. That includes putting in place electronic systems for data exchanges between ship and shore. In line with the ‘Blue Belt’ concept, cooperation with the neighbouring countries aims to simplify administrative procedures for short sea shipping, establish an administrative single window for port formalities and ensure inter-operability of information systems.⁷⁹⁶

In addition, to enhance maritime safety and security, as well as protection of the environment, the EU offers technical assistance to its neighbours under regional projects SAFEMED in the South and SASEPOL in the East. It is likely that a similar scheme could be developed for the UK in the event of it leaving the EU.

The EU has to cooperate with third countries on maritime issues under the terms of the International Maritime Organization (IMO). The EU also cooperates with third countries that are in the European Maritime Safety Agency-operated vessel traffic monitoring system. In addition, it works with third countries on programmes like SafeSeaNet and CleanSeaNet.

Outside the EU, the UK could certainly still partake in EU programmes and cooperate on maritime issues. It could therefore continue to engage with the EU as it develops its ‘integrated maritime policy’.⁷⁹⁷

18.2.3 Cooperation on EU rail policies could continue

In railways, the EU has embarked on a campaign of harmonisation over the last 10 years which the UK could, if it so wished, continue to cooperate with after leaving. However, given the lack of significant rail connections beyond Eurostar, it is doubtful whether this would be the case. The main feature of European railway policy is the European Rail Traffic Management System, prompted by several EU railway packages which have, among other things:

- Established a general framework for the development of EU railways;
- Clarified the formal relationship between the state and infrastructure managers;
- Set out the conditions that freight operators must meet in order to be granted a licence to operate services on the EU rail network;
- Introduced a defined policy for capacity allocation and infrastructure charging;
- Established a European Railway Agency (set up in 2004).⁷⁹⁸

Directive 96/48/EC and Directive 2001/16/EC also introduced a new process designed to ensure that trains can transit effectively between different member

⁷⁹⁶ European Commission “The EU and its neighbouring regions: a renewed approach to transport cooperation” (2011).

⁷⁹⁷ The European Commission presented the Green Paper “Towards a future Maritime Policy for the Union: a European vision for the oceans and seas”. In 2014, the European Parliament and Council adopted legislation that introduced a common framework for maritime spatial planning. As part of the EU’s Integrated Maritime Policy the Commission is developing a “Common Information Sharing Environment” (CISE) to facilitate integrated maritime surveillance activity in the EU.

⁷⁹⁸ The European Railways Agency was established by means of Regulation (EC) No 881/2004. In 2005, 2008 and 2012, representatives of the rail industry and the Commission signed memorandums of understanding on the deployment and development of the European Rail Traffic Management System. Information provided by European Scrutiny Committee at <www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-xxix/42807.htm>.

“The UK would likely be able to continue to cooperate with the EU on rail policies.”

states’ rail networks. Directive 2007/59/EC of 23 October 2007 aims to harmonise the minimum qualification requirements and the certification of locomotive and train drivers in the EU. It states that all train drivers must hold a licence (declaring that they have met the minimum health, basic training and general professional knowledge requirements) and introduced a harmonised further training certificate. More recently, Directive 2012/34/EU established a single European railway area, bringing together the main principles governing rail development.

Were it to choose to do so, the UK would likely be able to continue to cooperate with the EU on rail policies. The EU has already introduced a number of policies to liberalise railways, including the passage of three railway ‘packages’ in 1991, 2004 and 2007, which progressively opened up the rail freight market.⁷⁹⁹ The EU is also working with third countries to address interoperability issues, and promoting the deployment of the European Rail Traffic Management System in its neighbourhood, which will replace traditional railway signals with computer displays.⁸⁰⁰

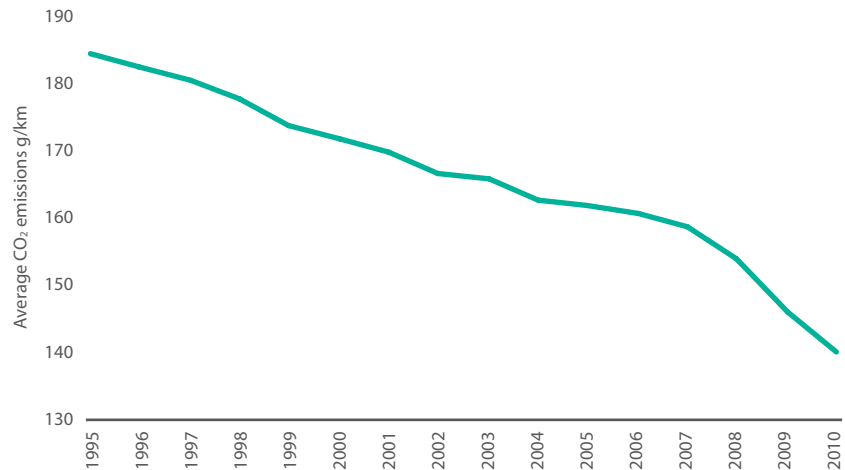
18.2.4 The UK could retain EU rules reducing transport emissions

EU rules have aimed to reduce the amount of emissions and other types of transport pollutants. Several of these reflect international obligations. For example, the International Convention for the Prevention of Pollution from Ships (MARPOL) seeks to limit emissions of nitrogen oxides (NOx). Civilians have benefited from some of the EU’s laws. For example, Directive 2002/49/EC banned the noisiest aircraft from operating in the EU, and Directive 2002/49/EC of 25 June 2002 relating to the assessment and management of environmental noise (the Noise Directive) provides a basis for the adoption of EU measures designed to reduce noise emissions from rail vehicles and infrastructure. Further, the introduction of emission standards in vehicles (the Euro 5 and Euro 6 standards) has reduced emissions from European vehicles and with some success (see Figure 18.iv).

799 The first package was the Railway Directive (Directive 91/440/EC) which was later amended. The second package included the Railway Safety Directive (Directive 2004/49/EC), Directive 2004/50/EC, Directive 2004/51/EC and the European Railway Regulation (Regulation (EC) 881/2004). The third railway package included Directive 2007/58/EC, Directive 2007/59/EC, Regulation (EC) No 1370/2007, Regulation (EC) No 1371/2007 and Regulation (EC) No 1372/2007. It should be noted that Directive 2007/58/EC opened up passenger services to competition from 1 January 2010.

800 European Commission “The EU and its neighbouring regions: a renewed approach to transport cooperation” (2011).

Figure 18.iv: CO₂ performance standards in the EU in new passenger cars 1995–2010



Source: European Commission⁸⁰¹

In spite of this seemingly impressive achievement, the European Parliament has noted that the EU's attempts to create an environmentally-friendly transport policy have fallen short: *"Despite a variety of efforts, European transport policy still faces many challenges in terms of sustainability, particularly in combating climate change."*⁸⁰² From 1990 to 2007, greenhouse gas emissions from transport rose by 26 per cent.⁸⁰³ In addition, EU targets have been hard to meet, with London notably failing to reach EU standards.⁸⁰⁴ It now risks triggering major EU fines.

However, while the UK may wish to keep some of these policies, there are others it may wish to distance itself from. For example, as part of its mission to reduce emissions, the EU adopted Directive 2008/101/EC, which obliged all aircraft operators who fly into or out of aerodromes in the European Economic Area to monitor their carbon emissions from 1 January 2010, and then to submit an independently-verified report to their respective regulator by 31 March of the following year. Aircraft operators then had to surrender the corresponding number of carbon allowances and project credits to their regulators. While the desire to reduce emissions is clearly admirable, the application of the EU Emissions Trading System (EU ETS) to foreign aircraft caused significant anger in other countries, not least compromising relations with China, which temporarily froze a large order of Airbus aircraft in response (the European Parliament has refused to agree to new proposals to exempt third country aircraft from the EU ETS, making the prospect of future battles likely). This Directive has also brought about a small increase in air fares for ordinary passengers.

801 Cited for example in "European Commission consultation on Reducing CO₂ emissions from road vehicles", page 2, accessed 21/05/2015 at: <http://ec.europa.eu/clima/consultations/docs/0012/registered/icct_additional_comments_en.pdf>.

802 European Parliament "Transport policy: General", accessed 05/04/2015 at: <www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_5.6.1.html>.

803 European Parliament "Transport policy: General", accessed 05/04/2015 at: <www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_5.6.1.html>.

804 Guardian "Boris Johnson advised his London air pollution plans are too little, too late", J. Vidal (11 February 2015).

“Withdrawing from this EU competence or the EU completely does not necessarily spell the end of this legislation.”

18.2.5 The UK could retain all EU rules promoting passenger and worker rights

The EU has introduced a number of rules that seek to make sure that passengers receive a minimum level of assistance in the event of serious delays to or cancellation of their journey. The rules lay down a set of basic rights common to all modes of transport, such as non-discrimination, protection for disabled passengers, traveller information, and arrangements for handling complaints.

The EU has set out detailed rules for people who are denied access to transport. For example, Regulation 295/91 and Regulation No 261/2004 established a system of compensation for passengers denied boarding on overbooked flights. Similar rules can also be found in the maritime industry, where Regulation 117/2010 gives people the right to assistance in the case of delayed or cancelled departures on ferries – and lays down some rights for compensation. In the event of cancellation or significant delay, EU rules demand mandatory compensation and assistance schemes specific to each mode of transport. For example, in aviation, EU rules help to ensure that passengers who cannot board their flight are offered:

- 1 Assistance (meal, telephone calls and accommodation if necessary);
- 2 The choice between either being reimbursed within seven days, being rerouted, or continuing their journey as soon as possible or at a mutually agreed later date;
- 3 A predetermined sum in compensation.

Similar rules can be found in the railway and the maritime and inland waterway sectors where, if a journey is delayed for over 90 minutes, passengers must be offered a choice between (i) being rerouted as soon as possible, or (ii) being reimbursed within seven days. Comparable laws were introduced for coach transport under the terms of Regulation (EU) No 181/2011.⁸⁰⁵

In addition, EU rules have sought to protect workers’ rights. Directive 2002/15/EC, on the organisation of the working time of persons performing mobile road transport activities, lays down minimum requirements in relation to working time in order to improve health and safety for drivers (the EU Drivers Hours Regulation, Regulation EC 561/2006, subsequently added to this).⁸⁰⁶ The Working Time Directive sets out common minimum standards and allows for more specific rules to be made for particular sectors. The Commission has also proposed a draft directive to implement a European Social Partners’ Agreement between the European Barge Union, the European Skippers Organisation and the European Transport Workers’ Federation on specific working time rules for mobile workers in inland waterway transport.

But withdrawing from this EU competence or the EU completely does not necessarily spell the end of this legislation. It transfers the decision to the UK Parliament, and takes the EU lobbying networks out of the equation.

⁸⁰⁵ Consumer groups have observed that claims are rarely made and may face obstructionism by companies as exceptional circumstances (loosely defined) do not oblige payment. However, numerous claims will for their part then generate higher ticket prices as companies offset compensation costs.

⁸⁰⁶ When considering hours regulation, EU law also requires the introduction of tachographs (a driver and vehicle activity recording device) to monitor compliance with EU drivers’ hours legislation. The use of tachographs is regulated by Council Regulation (EEC) No 3821/85.

“If Britain left the EU, UK bodies would take responsibility for implementing health and safety measures instead.”

18.2.6 The UK could retain all EU rules promoting safety in transport

The EU has introduced a number of policies that aim to make sure that transport in Europe is safe, but with variable results. Today, EU agencies such as the European Aviation Safety Agency and the European Railway Agency are tasked with implementing safety rules. If Britain left the EU, UK bodies would take responsibility for implementing health and safety measures instead, but the UK could still retain all the relevant EU law if it so wished.

EU health and safety law ranges across the different transport sectors. Following the 9/11 terrorist attacks, Regulation (EC) No 2320/2002 was adopted to safeguard civil aviation.⁸⁰⁷ When it comes to road vehicles, EU rules have also attempted to make personal vehicles safer, mandating the introduction of certain safety systems: Directive 2003/97/EC, for example, stipulated that new heavy goods vehicles being driven in the EU should have additional ‘blind spot’ rear-view mirrors.⁸⁰⁸ Regulation (EC) No 78/2009 laid down certain requirements for the construction and functioning of frontal protection schemes and brake assist systems. EU Directive 2010/40/EU established a framework to accelerate the coordinated and interoperable deployment and use of intelligent transport systems (ITS) across Europe (the proposed introduction of the eCall system will further expand it).⁸⁰⁹ There are laws for other passenger vehicles: Directive 2004/49/EC promoted safety and passenger rights, which were extended to bus and coach transport via Regulation 181/2011, while Council Directive 94/25/EC lays down design and construction standards to enhance the safety and handling characteristics of certain categories of recreational craft.

Beyond setting vehicle requirements, the EU also requires periodic road-worthiness tests for motor vehicles and their trailers. These rules were set out in Directive 2000/30/EC of 6 June 2000 on the roadside inspection of commercial vehicles, and Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles. In addition, the EU sets requirements for roads, such as Directive 2004/54/EC of 29 April 2004, which set minimum safety requirements for tunnels in the trans-European road network.

Were the UK to leave the EU, it would be able to retain all the directives that are currently on the statute books (a parliamentary mechanism would be needed to keep EU regulations in force). The UK would be perfectly within its rights to keep these laws and even expand on them – though such a decision would be down to a future British Parliament.

More to the point, however, the UK would then be able to distinguish between legislation that was necessary to remain compliant with international agreements, those that are gold-plated at EU level for member states, and those that are gold-plated at UK level (either as the UK civil service sought to add material on for itself, or to remove any uncertainty if a case were referred to the European Court of Justice (ECJ)).

For example, the recreational craft legislation referred to above (Directive 94/25/EC), as amended today, takes into account 49 extant agreements reached at European Standardization Organization (ESO) level. The ESO comprises the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC) and, less relevant here, the European Telecommunications Standards Institute (ETSI). These names reappear throughout these sections, and are national standards organisations

807 This was replaced in March 2008 by Regulation (EC) No 300/2008.

808 Directive 2007/38/EC of 11 July 2007 laid down that existing lorry fleets were also to be fitted with these devices.

809 Directive 92/6/EEC.

“Problems have also emerged as a result of safety directives going too far.”

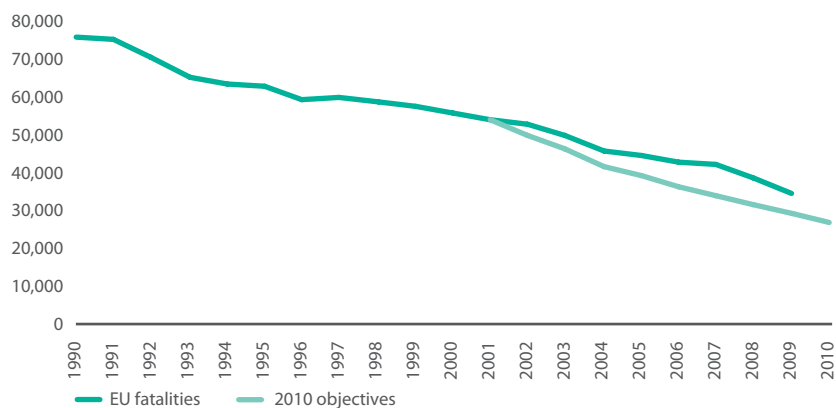
brought together outside the EU in a continental framework to generate advisory – voluntary – common standards. With recreational craft, those 49 agreements included standards for the boat’s remote steering system, electrical installations, petrol engine components, bilge pumps, mooring points, noise limits, galley stoves, buoyancy levels, scantlings (dimensions and strength), and so on. The EU legislation emerges very late in the drafting for common standards, and the UK version almost as an annex.

Moreover, it should be noted that problems have also emerged as a result of safety directives going too far. The Thomas Cook Group noted in its submission to the Balance of Competences Review that the ECJ had interpreted passenger rights in such a way that it *“resulted in a significant increase in costs for the aviation sector which were not subject to any form of Impact Assessment, nor any other consideration as to the impacts of the decision”*.⁸¹⁰ Later in the Balance of Competences Review, it was made clear that, among stakeholders, there is *“concern at the perceived use of common standards in other fields, such as safety or social policy.”*⁸¹¹

EU rules on drivers’ hours, for example, have created significant problems, with firms having to ensure that there is a second member of staff for certain trips, increasing costs.⁸¹² A similar problem has emerged in the rail industry, where Directive 2005/47/EC has restricted the number of nights that a rail driver is permitted to stay away from home.

EU rules have also failed to ensure that an adequate number of people are safe. In June 2003, the Commission published the “European Road Safety Action Programme 2003–2010”. The aim of this programme was to halve the number of road deaths in the EU by the end of 2010. As can be seen in Figure 18.v, while there has been a significant reduction in road fatalities, the EU has failed to meet this target. In 2009 alone, there were 1.15m serious traffic accidents on EU roads, which caused around 34,500 deaths and over 1.5m injuries, with a cost for society of about €160bn (£142bn).⁸¹³

Figure 18.v: EU road fatalities 1990–2010



Source: European Commission⁸¹⁴

810 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 43.

811 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 6.

812 It also generates additional paperwork for state employers, for instance the armed forces who have to maintain a log for each driver.

813 European Scrutiny Committee “Road Safety”, accessed 05/04/2015 at: <www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-xxxvii/42818.htm>.

814 Referenced for example in “Towards a European road safety area: policy orientations on road safety 2011–2020” (COM(2010) 389), accessed 21/05/2015 at: <http://ec.europa.eu/transport/road_safety/pdf/com_20072010_en.pdf>.

“Leaving the EU would give Britain the power to choose whether to deregulate or even nationalise transport sectors.”

Finally, the expansion of safety measures has generated concerns in the British Government, as it *“does not see a need for common standards of security in relation to land transport, nor for legislative proposals in this area.”*⁸¹⁵ While the UK would have the power to retain all EU health and safety laws, this may be an area where the UK chooses to pursue some form of deregulation (see Section 29).

18.3 New transport policy opportunities would become available

The EU has introduced a number of regulations and directives over the last 40 years that currently restrict the policy options available to UK Governments. Leaving the EU would give Britain the power to choose whether to deregulate or even nationalise transport sectors. It would also remove the threat of EU transport policy ‘mission creep’ at a stroke.

18.3.1 EU ‘mission creep’ on environmental matters could be stopped at a stroke

Transport is one of the few areas where the EU (and the former European Economic Community (EEC)) have historically had a large amount of power and influence. Evidence of the range of EU laws in this area can be seen in the Annex. As early as 1957, the Treaty of Rome granted the infant EEC institutions a large degree of authority as part of its aim to see *“the adoption of a common policy in the sphere of transport”*.⁸¹⁶ This was a key objective for the Treaty’s authors, as the creation of a Single Market in transport was seen as an essential prerequisite for making all the EEC’s other freedoms viable. The Treaty aimed to produce a competitive market, with competition rules prohibiting both cartels and market abuse by dominant actors.⁸¹⁷

Despite having this legal power (and despite the Commission’s efforts), the Common Transport Policy made little progress until the second half of the 1980s, with the EEC passing only a handful of measures, such as the Type-approval of Motor Vehicles and their Trailers Directive (Directive 70/156/EEC). The Council was reluctant to introduce new policies and, as a result, very little happened for many years.

A step change came when the European Parliament lodged a case against the Council because of its failure to implement the Common Transport Policy. In its judgment of 22 May 1985, the ECJ rejected the Council’s arguments for inertia, forcing it to proceed with the introduction of a Common Transport Policy.⁸¹⁸ Following this case, there was a change in the attitudes of the member states. In the words of one academic analysis:

*Some states recognised specific benefits for their own airlines... Others felt coerced by legal realities. And finally there developed a sense of the inevitability of it all, something which eventually even infected the French, the staunchest of the regulatory conservative states.*⁸¹⁹

815 HM Government, cited in the European Scrutiny Committee “Transport security”, accessed 05/04/2015 at: <www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86-viii/8608.htm>.

816 Article 3(e) Treaty of Rome.

817 Article 61 & Article 79 Treaty of Rome.

818 Judgment of the European Court of Justice 22 May 1985 In case 13/83.

819 Journal of Common Market Studies “Civil Aviation and European Integration”, Dobson (2010), pages 1127–1147.

“There are times when the Single Market justification simply fails to convince.”

Emboldened by this development, in 1985, the European Commission introduced the “White Paper on the completion of the internal market”, which made a series of recommendations for ensuring the freedom to provide services and set out the guidelines for the Common Transport Policy. This was followed up in 1992, 1995, 1998, 2001 and 2006 with other white papers, which saw the introduction of more plans. This reflected a growing legal competence as well: in 1992, the Maastricht Treaty committed the EU to connect the whole EU via ‘Trans-European networks’, with transport being one of three principal networks that the EU was to legislate on.

In 2009, the EU introduced a new communication: “A sustainable future for transport: Towards an integrated, technology-led and user friendly system” (COM(2009) 279), and followed this up with a second communication in 2011: “Roadmap to a Single European Transport Area: Towards a competitive and resource efficient transport system” (COM(2011) 144). This second communication set out plans for the reduction of greenhouse gases by at least 60 per cent by 2050. It also proposed the creation of a Single European Transport Area, based on the Single European Sky, a Single European Railway Area and the EU ‘Blue Belt’, as well as greater guarantees of passenger rights.

Today, while transport is a competence shared between the EU and member states, in the words of the British Government, “the EU has wide competence in matters relating to transport and normally tends to act when there is a trans-national element involved”.⁸²⁰ The EU’s legal base for aviation and maritime policies usually stems from Article 100(2) Treaty on the Functioning of the European Union (TFEU). Rail and road policies, by contrast, are usually justified under Article 91 TFEU. Over 100 transport laws and regulations have been introduced in recent years as the EU has taken a more active role in the sector. This increase in EU rules can be seen in the Annex.

In the Balance of Competences Review, it was noted that “problems were often seen to have been less with the underlying objectives than with the method of pursuing these objectives, the rate of progress, or poorly planned and overly detailed legislation.”⁸²¹

There are times when the Single Market justification simply fails to convince. For example, when it comes to international trains, there is a persuasive Eurosceptic argument that “Britain’s geographical location will ensure that these trains will always be a smaller part of the picture here than elsewhere. Our history has left us with a railway network including vast numbers of bridges and tunnels too restricted in dimension for most rolling stock in use on the Continent ever to run on.”⁸²² European transport policy often fails to recognise the fundamental differences between Britain and the rest of the EU (to say nothing of differences within Britain itself). For example, in railways alone, the UK has different gauges, different electrification systems and different coupling systems. Likewise, the Cableways Directive (Directive 2000/9/EC) lacks a credible Single Market justification – as cableways have not historically been used as a means of moving between member states.

EU transport policies often have an ideological rather than practical agenda. The UK Chamber of Shipping has noted that the EU has “adopted requirements and standards which are not suited to the particular circumstances of the shipping

820 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 13.

821 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 23.

822 Bruges Group “On the Wrong Track: The impact of European Union legislation on Britain’s railways”, Petley (2009) page 5.

“EU proposals for new laws have been criticised by the British Government, but this has not stopped these laws from being introduced.”

*sector, but which are proposed because of a desire for uniformity of treatment with other sectors or transport modes”.*⁸²³

This is seen in the way in which the EU has shown a desire to legislate in areas where international action would be far more useful. The Balance of Competences Review made it clear that there are significant worries about the EU’s willingness to break with international norms: *“There was also frustration, particularly in maritime administration, over EU initiatives to legislate in areas where, in their view, regulation at United Nations agency level would be preferable because of the need for global standards to ensure a level playing field across the world.”*⁸²⁴ It should be noted that the EU’s increasing influence in international bodies has also generated concerns within the British Government. The Balance of Competences Review pointed out that *“the UK sees a risk that representation comes to equate competence”*.⁸²⁵

EU proposals for new laws have been criticised by the British Government, but this has not stopped these laws from being introduced. When the EU put forward proposals for harmonisation in respect of rules of establishment and cabotage, the UK Government highlighted that *“in many areas of the Report the Commission only provides partial information rather than a complete picture... a number of statements are made that do not appear to be supported by evidence”*.⁸²⁶ Stakeholders in the Balance of Competences Review were also very critical of certain laws, such as the Driver Training Directive (Directive 2003/59/EC), which was condemned as *“poorly drafted EU legislation”*.⁸²⁷

EU regulations and directives tend to be very broad and impact a large number of areas, creating inadvertent issues. Take, for example, the House of Commons European Scrutiny Committee’s concerns about the EU’s draft directive establishing a single European railway area:

- Possible infringement of rights of operators of service facilities under the European Convention on Human Rights;
- The scope and effect of proposals about conditions of access to services;
- Introduction of ‘use-it-or-lose-it’ provisions;
- A Commission checking role for cross-border agreements and any implication for the Channel Tunnel Rail Usage Contract;
- The effect of licensing requirements on the ownership of some existing UK train and freight operating companies and on current proposals for new operators;
- Charging for noise-related track access;
- Rigid and simplistic rules for exceptions to charging principles;
- Reservation charges and the effect on rail freight services;
- Effect of provisions on regulatory bodies in respect of the scope of powers of the Office of Rail Regulation and the economic regulatory role of the Inter-Governmental Commission for the Channel Tunnel;

823 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 43.

824 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 6.

825 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 37.

826 European Scrutiny Committee, accessed 10/04/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-i/21904.htm#a24>. Cabotage refers to the haulage of goods between two points in the same country by a vehicle registered in another country.

827 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 45.

“The UK would only have to introduce new EU laws which it agrees with or which are a requirement for access to EU programmes.”

- The effect of Annex III, on services to be supplied, for current UK practices covering a number of services including ticketing and information systems, port facilities and relief/towing facilities;
- The detail and inflexibility of Annex VIII, on requirements for costs and charges relating to railway infrastructure.⁸²⁸

Evidence of the impact of ‘mission creep’ can also be found in the Government’s analysis of other transport laws. For example, on the subject of new EU proposals for vehicle registration documents, the Government stated that the potential consequences could include a requirement that a vehicle registration be withdrawn if a vehicle is prohibited from use.⁸²⁹ While any attempt to deregulate needs to take into consideration international obligations, there is no doubt that Britain could adopt a better regulatory model outside the EU. In such circumstances, the UK would only have to introduce new EU laws which it agrees with or which are a requirement for access to EU programmes.

18.3.2 The UK would be able to reintroduce national licences

EU rules governing national licences have been around for many years. In 1991, the EU introduced the Driving Licence Directive (Directive 91/439/EEC), which harmonised the format of licences and categories of vehicles, and introduced the principle of mutual recognition. This was later amended five years later by Directive 96/47/EC, which provided for an alternative credit-card format for driving licences. In addition, Council Directive 99/37/EC (amended by Directive 2003/127/EC) harmonises vehicle registration documents, and the Road Package of 21 October 2009 introduced a standardised layout for the Community Licence.⁸³⁰

Commentators have pointed out that national licences are part of the trappings of statehood that could be reclaimed outside the EU.⁸³¹ If the UK were to apply for a bilateral deal, it may be able to either repeal or substantially alter EU rules on driving licences. A future British Government may wish to look at amending Regulations No 1071/2009, No 1072/2009, No 1073/2009 and, potentially, No 1008/2008 (though it would need to keep airline licences to be part of EU-wide airline programmes).

The UK would have to ensure that other EU member states continued to recognise its driving licences after leaving. Because mutual recognition of driving licences only applies to EU driving licences, the UK could face the scenario of its driving licences being unrecognised. However, individual member states can choose to recognise third country driving licences (e.g. Portugal recognises Brazil’s). Continuing mutual recognition via bilateral deals would not prove difficult. In addition, UK could use international driving permits, which are recognised internationally and allow the holder to drive a private motor vehicle when accompanied by a valid UK driving licence.⁸³²

828 European Scrutiny Committee, accessed 10/04/2015 at: <www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-xxix/42807.htm>.

829 European Scrutiny Committee, accessed 10/04/2015 at: <www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/83-viii/8317.htm>.

830 This package is made up of three EU regulations: No 1071/2009, No 1072/2009 and No 1073/2009.

831 Centre for Policy Studies “Britain and the EU: A solution”, D. Hannan, (2014), page 7.

832 Reviewing the implementation of the international agreement in UK law also allows an opportunity to reassess another problem for the armed forces over grandfather rights for drivers. Those holding older licences retained previous rights to drive more categories of vehicles. Government legal opinion is split over how much training is needed for soldiers to be able to drive a minibus or a trailored vehicle. Taking the cautious legal interpretation has meant an extended two week conversion course, limited places, and a paucity of sanctioned drivers.

“The EU’s moves to harmonise transport infrastructure have also led it to introduce burdensome laws that do not promote interconnectivity.”

The UK would also regain the freedom to introduce a new type of passport cover, as it would no longer be bound by EU resolutions to use a common format. It would be possible to return to the old dark blue covers that used to be used.

18.3.3 The UK could introduce some deregulation

European politicians soon realised that, under the terms of the Treaty of Rome, creating a Common Transport Policy would involve not just the opening of national markets but also the harmonisation of transport regulations and the introduction of common transport programmes. This has proven costly. For example, Marco Polo, a programme that supports actions aimed at shifting freight from roads to other types of transport, was very expensive: Marco Polo I (which ran from 2003 to 2006) had a budget of €102m, and Marco Polo II (which ran from 2007 to 2013) had a budget of €450m.⁸³³ In addition, the trial implementation of the European Rail Traffic Management System on a single route in Wales reportedly cost over £59m.⁸³⁴ There have also been concerns that the introduction of eCall may be costly, and the Government has had to *“work... with other member states to minimise the potential burdens on manufacturers and the potential cost to consumers”*.⁸³⁵

While some businesses state that they benefit from this harmonisation, others have complained about it. For example, the Freight Transport Association has criticised EU rules for driver licences that it regards as being over-prescriptive.⁸³⁶ EU regulations, in general, have created problems for businesses, with the Balance of Competences Review noting that stakeholders felt that *“mechanisms used to implement change... often created additional costs and regulatory burdens.”*⁸³⁷

The EU’s moves to harmonise transport infrastructure have also led it to introduce burdensome laws that do not promote interconnectivity and appear to go against the spirit (if not the word) of the Treaties. For example, there is not a Single Market justification for EU measures which impose cross-border rules on transport that operates solely within the United Kingdom. Requiring firms to comply with EU standards has led to problems for domestic industries: the Private Wagon Federation has stated that such regulations have *“led to a significant increase in costs and difficulty without apparent benefit arising”*.⁸³⁸

Similar complaints have been made about the regulation of agricultural vehicles and trailers, which also do not usually move across national boundaries. Concerns have been raised by the recreational aviation industry, which has claimed that the EU’s rules on balloons and gliding (again, not cross-border activities) are overly-prescriptive. The Motorcycle Industry Association has stated that *“there appears to be little motorcycle specific expertise at Commission level and an unwillingness to appreciate or understand motorcycling”*.

One notable example of a burdensome harmonisation law is the EU’s new Ports Regulation, which will *“introduce common rules on the transparency of*

833 European Scrutiny Committee, accessed 10/04/2015 at: <www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/83-vii/8316.htm>.

834 Bruges Group “On the Wrong Track: The impact of European Union legislation on Britain’s railways” Petley (2009), pages 22–25.

835 European Scrutiny Committee, accessed 10/04/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-i/21904.htm#a24>.

836 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 52.

837 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 29.

838 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 28.

“The UK remains trapped in a Union in which most other member states are unable, or unwilling, to liberalise at the same pace, putting Britain at a disadvantage.”

*public funding and the market access of port services.*⁸³⁹ The creation of a common regulatory framework would involve the appointment of a ports regulator to intervene in setting the prices for cargo handling and the use of infrastructure. Some 47 UK ports would fall within the scope of the Commission's proposal. Unsurprisingly, this has attracted the opposition of all 47 Port Authorities in the UK, as well as MPs from port constituencies around the country. The House of Commons European Scrutiny Committee has *“noted [the] significant concern of the UK ports industry”*.⁸⁴⁰ This is not surprising because the measure is predicted to be hugely damaging to the UK industry, which is more market-driven and competitive than those of other European countries.⁸⁴¹ What makes it even more concerning is that, according to the Government in late 2014, there has been no prospect of a sustainable block in the Council that might ensure that this proposal does not proceed any further.⁸⁴²

There is a common consensus that, while some of the EU's policies may be appealing, they take a very long time to materialise and even then the EU often fails to get other member states to open up their national monopolies. In 2014 the Balance of Competences Review noted that *“the EU was considered to have a variable record of enforcing legislation in member states which had not complied sufficiently rigorously.”*⁸⁴³ While there have been some successes – such as National Express's ability to win contracts in Germany – the UK remains trapped in a Union in which most other member states are unable, or unwilling, to liberalise at the same pace, putting Britain at a disadvantage.

Unfortunately, there is little sign that this will change. The House of Commons European Scrutiny Committee noted that, in 2011, *“member states had continued to raise numerous technical concerns with little effort made by the Presidency to work systematically through them, only minor changes to the text had been put forward by the Presidency, there had been wide variations in member states' positions and the Presidency had given no indication of expecting to resolve them by June 2011.”*⁸⁴⁴

Leaving the EU would give the UK the option to pursue deregulation of the transport sector. This could range from a repeal of a few unwanted laws, such as a revision of the ports regulation, to a comprehensive re-evaluation and rejection of EU harmonised rules, such as the three railway packages and the various EU rules governing road vehicles. Likewise, laws like the Cableways Directive (Directive 2000/9/EC), which lack a credible Single Market justification, may be removed. The UK could also reconsider certain EU proposals that it opposed, such as the proposal for working time rules in regard to inland waterway transport.

839 European Commission, accessed 10/04/2015 at: <http://ec.europa.eu/transport/modes/maritime/ports/ports_en.htm>.

840 European Scrutiny Committee, accessed 10/04/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-xiv/21903.htm>.

841 Grimsby Telegraph “Proposed EU rules will damage our local ports, say MPs” (27 February 2014), accessed 24/09/2014 at: <www.grimsbytelegraph.co.uk/Proposed-EU-rules-damage-local-ports-say-MPs/story-20715077-detail/story.html>.

842 European Scrutiny Committee, accessed 10/04/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-xiv/21903.htm>.

843 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 31.

844 European Scrutiny Committee, accessed 10/04/2015 at: <www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-xxix/42807.htm>.

“EU policies and requirements can become very complicated for transport users and manufacturers.”

It is unlikely that the UK would always be able to differ from the EU too much in substance, as many standards are set at international bodies such as the ICAO for aviation matters. However, there would still be opportunities for change.⁸⁴⁵

Unless laws are brought in simplifying the process, EU policies and requirements can become very complicated for transport users and manufacturers. For example, in 2011, the House of Commons European Scrutiny Committee noted that the EU regulatory structure for type approval for agricultural and forestry vehicles at that time consisted of 23 separate directives, and required the industry and regulators to be aware of around 60 directives. The Committee stated that *“this is considered to be a costly, burdensome process.”*⁸⁴⁶ It is hard to disagree with the Balance of Competences Review when it said that *“EU harmonising action was sometimes disproportionately burdensome, with a fear expressed that an overly-prescriptive approach could lead to suppressing innovation”*.⁸⁴⁷

18.3.4 The UK would be able to reintroduce nationalisation

A different criticism of the EU’s effectiveness in transport policy is made from the Left. The Trades Union Congress has complained that *“the Commission has focused too much on creating markets and strengthening competition without doing enough to ensure that the countervailing social, environmental equalities and work rights are strong enough to make EU citizens feel confident about our place in Europe.”*⁸⁴⁸

Organised labour has been particularly critical of Directive 91/440/EC, which the late RMT leader Bob Crow condemned as causing *“the privatisation of our railway network”*.⁸⁴⁹ While this seems to be an exaggeration (Germany maintains a large public stake in its railway industry), this Directive does make restructuring of the railways difficult and limits UK policy options in this area. Outside the EU, this Directive could be reconsidered. While it is possible that Britain may wish to retain this law, it is also possible that it would choose to repeal it. If it does so, it offers a chance to remove laws that enshrine rail privatisation and end EU restrictions on how a future nationalised railway might operate.

Conclusion

Leaving the EU would give the UK the ability to substantially revise its transport policies. From making it easier to nationalise the railways to allowing Britain to pursue deregulation, a number of new policies would become possible. Most importantly, Britain would gain the power to avoid EU ‘mission creep’, which

845 It should also be noted that harmonisation of infrastructure has tended to go hand in hand with funding. The Trans-European Transport Network (TEN-T) programme, for example, finances infrastructure projects and studies for roads, railways, inland waterways, airports, ports, satellite navigation and traffic management systems that lie on a designated TEN-T network. Regulation (EU) No. 1315/2013 brought together the three Trans-European Networks funding programmes into one package, for the period 2014–20. In addition the EU has promoted research into railways and innovation. More detail provided by the House of Commons European Scrutiny Committee, information found at: <www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/83-xxxi/8315.htm>; and at: <www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/83-xxxiv/8322.htm>.

846 European Scrutiny Committee, accessed 10/04/2015, at: <www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-xxxiii/42805.htm>.

847 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 39.

848 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Transport” (2014), page 29.

849 Campaign Against Euro-federalism “Say ‘no! to EU rail privatisation”, B. Crow (2008), accessed 10/04/2015 at: <www.caef.org.uk/d111crow.html>.

threatens to impose common standards on the UK with potentially considerable costs, despite the lack of a Single Market justification.

However, the UK is likely to want to continue to cooperate with the EU in many transport areas in the event of withdrawal. Fortunately, the EU is very open to cooperation with third countries in aviation, maritime and railway issues. In addition, leaving the EU need not result in any reduction in passenger safety or rights. Where it makes sense to cooperate, engagement would continue as before. Departure offers a number of advantages and few disadvantages when it comes to transport.

ANNEX A: Notable EU transport directives and regulations introduced since 1999

Date	Directives/ Regulation	Description
1999	Directive 1999/62/EC	On charging infrastructure costs to transport undertakings
1999	Council Directive 99/37/EC	Harmonises vehicle registration documents and simplifies checks on ownership and transfers between residents of two different member states
1999	1999 Eurovignette Directive	Introduced 'polluter pays' principle for infrastructure charging
1999	Directive 1999/37/EC	On the registration documents for vehicles
1999	Directive 1999/63/EC	Organisation of the working time of seafarers on board EU member state-flagged ships
1999	Directive 1999/95/EC	Applied Directive 1999/63/EC to third country ships calling at Community ports
2000	Directive 2000/30/EC	On roadside inspection of commercial vehicles
2000	Directive 2000/59/EC	On port reception facilities for ship-generated waste and cargo residues, which made it compulsory to dispose of oil, oily mixtures, ships' waste and cargo residues at EU ports, and provided for monitoring to enforce this
2001	Directive 2001/16/EC	On the interoperability of the trans-European conventional rail system
2001	Directive 2001/13/EC	Laid down rail sector operating conditions (safety, technical, economic and financial) applicable throughout the EU, and established a freight service authorisation procedure for the European cross-border network
2001	Directive 2001/105/EC	Strengthened and standardised the legal provisions laid down in the previous directive on ship inspection and survey organisations
2001	Directive 2001/106/EC	Makes port state control by member states mandatory for certain potentially hazardous vessels
2002	Regulation (EC) No 484/2002	'Driver attestation' for all nationals of non-EU countries hired by a carrier to be in possession of a Community Licence
2002	Directive 2002/7/EC	Amplified and amended Directive on weights and dimensions of vehicles, especially heavy goods vehicles
2002	Regulation (EC) No 484/2002	Certificate of professional aptitude
2002	Directive 2002/15/EC	Lays down minimum requirements in relation to working time in order to improve the health and safety of drivers

Date	Directives/ Regulation	Description
2002	Directive 2002/85/EC	Compulsory installation of speed limitation devices in passenger vehicles with more than 8 seats
2002	Directive 2002/49/EC	Assessment and management of environmental noise (the Noise Directive) provides a basis for the adoption of EU measures designed to reduce noise emissions from rail vehicles and infrastructure
2002	Regulation (EC) No 2320/2002	Adopted to safeguard civil aviation and provide the basis for a common interpretation by the member states of Annex 17 to the Chicago Convention
2002	Regulation (EC) No 417/2002	Set a fixed timetable for the withdrawal from service of single-hull oil tankers, to be replaced by safer double-hull vessels
2002	Directive 2002/59/EC	Established a Community vessel traffic monitoring and information system (SafeSeaNet)
2002	Regulation (EC) No 1406/2002	Established a European Maritime Safety Agency (EMSA)
2003	Council Directive 2003/96/EC	Community framework for the taxation of energy products (especially excise duties on mineral oils)
2003	Directive 2003/59/EC	Lorry-driver attestation
2003	Directive 2003/20/EC	Compulsory use of seat belts in vehicles under 3.5 tonnes in weight
2003	Directive 2003/97/EC	Stipulated that new heavy goods vehicles being driven in the EU should have additional 'blind spot' rear-view mirrors
2003	Directive 2003/42/EC	On rules governing occurrence reporting in civil aviation accidents
2003	Regulation (EC) No 782/2003	On the prohibition of organotin compounds on ships; such compounds were used primarily as anti-fouling agents, to prevent the growth of organisms on ships' hulls, but cause serious environmental damage
2003	Regulation (EC) No 1726/2003	On the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers, repealed Regulation (EC) No 417/2002
2004	Directive 2004/54/EC	Minimum safety requirements for tunnels in EU road network
2004	Directive 2004/50/EC	Extended to cover the whole of the European rail network, in order to meet the demands created by the full opening-up of the rail network to national and international freight transport services (in January 2007) and international passenger transport services (in January 2010)
2004	Regulation (EC) No 881/2004	Set up European Railway Agency
2004	Directive (2004/49/EC)	Rail Safety Directive - establishes a common regulatory framework for railway safety
2004	Directive 2004/49/EC	Requires all railway undertakings to obtain a safety certificate in order to gain access to infrastructure
2004	Regulation (EC) No 549/2004	Laying down the framework for the creation of the Single European Sky
2004	Regulation (EC) No 550/2004	Provision of air navigation services

Date	Directives/ Regulation	Description
2004	Regulation (EC) No 551/2004	On the organisation and use of the airspace in the Single European Sky
2004	Regulation (EC) No 552/2004	On the interoperability of the European Air Traffic Management network
2004	Directive 2004/36/EC	SAFA (safety assessment of foreign aircraft) programme made mandatory
2004	Regulation (EC) No 725/2004	Designed to ensure that decisions adopted by the IMO are interpreted and implemented uniformly
2005	Directive 2005/47/EC	Lays down working conditions for mobile workers engaged in interoperable cross-border services in the railway sector
2005	Regulation (EC) No 2111/2005	Blacklist introduced
2005	Directive 2005/35/EC	On ship-source pollution and on the introduction of penalties for infringements; this contains precise definitions of offences and also provides for effective, dissuasive and proportionate penalties – criminal or administrative – for violation of the rules
2006	Regulations (EC) No 261/2004 and (EC) No 1107/2006	Enforces rights in all modes of transport; non-discrimination, special protection disabled passengers, complaint handling, compensation, etc.
2006	Directive 2006/1/EC	Governs the cross-border leasing of vehicles without drivers for the carriage of goods by road
2006	Directive 2006/38/EC	Amended infrastructure charging Directive
2006	Regulation (EC) No 561/2006	Rules on maximum driving time per day and per week, breaks and minimum daily rest periods
2006	Directive 2006/22/EC	Lays down minimum requirements for the implementation regulations and stipulates the minimum checks in order to monitor compliance. Vehicles must be equipped with a digital tachograph
2006	Regulation (EC) No 474/2006	Adjustments to blacklist
2007	Regulation (EC) No 1371/2007	Enhancement of the 2006 Regulation on passenger rights, now applying to rail networks
2007	Directive 2007/38/EC	Existing lorry fleets to be fitted with 'blind spot' rear-view mirrors
2007	Directive 2007/59/EC	Aims to harmonise the minimum qualification requirements and the certification of locomotive and train drivers in the EU
2007	Regulation (EC) No 1370/2007	Public service obligations for passenger rail transport
2007	Regulations (EC) No 1321/2007	On rules governing occurrence reporting in civil aviation accidents
2007	Regulations (EC) No 1330/2007	On rules governing occurrence reporting in civil aviation accidents

Date	Directives/ Regulation	Description
2008	Directive 2008/68/EC	Set up a common regime covering all aspects of the inland transport of dangerous goods in the EU (by rail and inland waterway as well as by road). Also repealed Directives 94/55/EC and 96/35/EC
2008	Directive 2008/96/EC	Aims to ensure that road safety is taken into account, through impact assessments, at all stages of the construction, operation or substantial alteration of roads; established systematic safety audits for road infrastructure projects
2008	Directive 2008/57/EC	Recast the earlier directives into a single text
2008	Regulation (EC) No 1335/2008	Assigned new tasks to the agency in response to the changes made to the Railway Safety Directive
2008	Directive (2008/57/EC)	On the interoperability of the rail system
2008	Regulation (EC) No 1008/2008	Removed all remaining commercial restrictions for European airlines operating within the EU, thus setting up the European Single Aviation Market. This was subsequently extended to Norway, Iceland and Switzerland. It could and should be further extended to seven Balkan states through the European Common Aviation Area Agreement of 2006, provided those countries progressively implement all relevant EU rules
2008	Regulation (EC) No 300/2008	Replaced Regulation (EC) No 2320/2002, set the common rules and basic standards on aviation security, as well as mechanisms for monitoring compliance
2008	Regulation (EC) No 216/2008	SAFA (safety assessment of foreign aircraft) programme made mandatory (inspections, etc.)
2008	Directive 2008/106/EC	Revised Directive 94/58/EC, outlined the rules on training and competency standards for seafarer certification, and regulated specialist training, member states' requirements on seafarer training, communication between crew members and the verification of crew members' certificates (port State control)
2008	Directive 2008/106/EC	On the minimum level of training of seafarers
2009	Regulation (EC) No 1071/2009	Repealed the above, adding a fourth requirement: effective and stable establishment in a member state
2009	Regulation (EC) No 1071/2009	Stricter rules on entry to the road haulage business and sought to modernise the road transport industry's image
2009	Regulation (EC) No 1072/2009	Consolidated and harmonised rules on cabotage (merged Regulations (EEC) No 881/92 and No 3118/93 and repealed Directive 2006/94/EC (on certain types of carriage of goods by road) – essentially adopted more restrictive formula of 'consecutive cabotage' (allowing up to three cabotage operations within the seven days following an international journey to the cabotage host country)
2009	Regulation (EC) No 1073/2009	(The Road Package of 21 October 2009) Lays down common rules for access to international market for bus services. It clarifies the scope and simplifies the procedures, by revising and consolidating the previous legislative framework (Regulation (EEC) No 684/92 on international carriage of passengers and Regulation (EC) No 12/98 on passenger cabotage services) which it also replaces. It confirms the principle of the free provision of services, under the same conditions as those laid down in Regulation (EEC) No 684/92, and then goes on to set out the conditions for issuing and withdrawing Community Licences, their periods of validity, the detailed rules for their use and the layout of both the licence and certified copies thereof
2009	Regulation (EC) No 1073/2009	Amended Regulation (EC) No 561/2006 for occasional international journeys
2009	Directive 2009/40/EC	On extending roadworthiness tests to motorcycles – eventually excluded by EP

Date	Directives/ Regulation	Description
2009	Regulation (EC) No 78/2009	Various type-approved of motor vehicles with regard to the protection of pedestrians and other vulnerable road users
2009	Regulation (EC) No 661/2009	Repealed Directive 2003/97/EC, made the same types of rear-view mirrors obligatory for vehicles registered outside the EU
2009	Directives 2009/131/EC	Recast the earlier directives into a single text
2009	Directive 2009/12/EC	Lays down the basic principles for the levying of airport charges paid by air carriers for the use of airport facilities and services
2009	Regulation (EC) No 80/2009	Computerised Reservation Systems (the CRSs are the 'technical intermediaries' between the airlines and the travel agents) shall display air services of all airlines in a non-discriminatory way on the travel agencies' computer screens
2009	Regulation (EC) No 1070/2009	Regulation (EC) No 552/2004 amended in 2009 (SES 2) in order to include performance-based mechanisms
2009	Directive 2009/13/EC	Implemented an agreement by ECSA and ETF on Maritime Labour Convention, creating a single, self-contained instrument comprising all the current standards relating to maritime labour
2009	Directive 2009/45/EC	Consolidated and recast the safety rules and standards for passenger ships from Directive 98/18/EC
2009	Directive 2009/16/EC	To ensure more frequent and more effective inspections under new monitoring mechanisms linked to potential risk
2009	Directive 2009/21/EC	On flag State requirements, which enables compliance on the part of ships flying a member state flag to be monitored more effectively
2009	Directive 2009/17/EC	Amending the Directive establishing a Community vessel traffic monitoring and information system (SafeSeaNet)
2009	Regulation (EC) No 391/2009	Establishing common rules and standards for ship inspection and survey organisations, aiming at an independent quality monitoring system to eliminate the outstanding flaws in inspection and certification procedures for the world fleet
2009	Directive 2009/15/EC	Establishing common rules and standards for ship inspection and survey organisations, aiming at an independent quality monitoring system to eliminate the outstanding flaws in inspection and certification procedures for the world fleet
2009	Directive 2009/18/EC	Establishing fundamental principles governing the investigation of accidents, with standard principles for investigations at sea and a system for pooling findings
2009	Regulation (EC) No 392/2009	On the liability of carriers of passengers by sea in the event of accidents
2009	Directive 2009/20/EC	On the insurance of ship owners for maritime claims
2010	Regulation (EU) No 1177/2010	Enhancement of the 2007 Regulation on passenger rights, now applying to waterway networks
2010	Directive 2010/40/EU	Deployment of intelligent transport systems (ITS) in road transport, aims to ensure coordinated and consistent
2010	Regulation (EU) No 913/2010	Maps out nine competitive European freight corridors for goods that have to cross several member states
2010	Regulation (EU) No 996/2010	Superseded Directive 94/56/EEC, relating to the investigation of civil aviation accidents

Date	Directives/ Regulation	Description
2011	Regulation (EU) No 181/2011	Enhancement of the 2010 Regulation on passenger rights, now applying to buses and coaches
2011	Directive 2011/76/EU	Amended infrastructure charging Directive
2011	Directive 2011/82/EU	On the cross-border exchange of information on road safety related traffic offences. Established a procedure for information to be exchanged between 'national contact points', using an electronic data exchange network
2011	Directives 2011/18/EU	Recast the earlier directives into a single text
2012	Directive 2012/45/EU	Governs uniform procedures for checks in the EU on the transport of dangerous goods by road
2012	Directive 2012/34/EU	Established a single European railway area, recast the first railway package, replaced and repealed Directives 2001/12/CE, 2001/13/CE and 2001/14/CE
2012	Directive 2012/35/EU	Amending Directive 2008/106/EC, on the minimum level of training of seafarers
2012	Directive 2012/33/EU	On reducing the sulphur content of marine fuels
2012	Directive 2012/35/EU	On the minimum level of training of seafarers
2012	Regulation (EU) No 530/2012	On the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers, repealed Regulation (EC) No 417/2002
2013	Directive 2013/38/EU	Amending Directive 2009/16/EC on port State control
2013	Directive 2013/54/EU	Concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention. Translated the agreement reached between ECSA and ETF on that convention of 2006
2013	Regulation (EU) No 100/2013	Amended the EMSA regulation, clarifying its core and ancillary tasks

19 Education

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“After leaving the EU, students would still be able to study overseas and UK universities would be able to keep working with key international education organisations.”

The European Union’s involvement in education is currently largely limited to facilitating the mutual recognition of qualifications and training certification, while most state-to-state cooperation in this sphere is conducted inter-governmentally. However, the European Commission has recently been attempting to expand its remit on the basis of weakly-related law, at the same time as influencing curricula with pro-EU material. British teachers and policy-makers must consider whether the positive elements of European cooperation, such as the Erasmus+ programme, can be maintained while the country escapes the Commission’s creeping ambition. Luckily, after leaving the EU, students would still be able to study overseas, UK universities would be able to keep working with key international education organisations, and Britain could address harmful EU policies like the Jean Monnet programme.

Education is an area that is still largely treated as the preserve of member states. Some reference has long been made in the Treaties to mutually recognising qualifications and training, and what has developed since has overwhelmingly been through voluntary inter-governmental cooperation via EU-hosted programmes.

Latterly, however, the Commission has been testing the boundaries in eight areas, including whether it has what amounts to a statutory obligation to intervene in early school leaving (as this may affect the marketplace) and the nebulous definitions of human rights (starting with schooling access for Roma children).

But the EU’s limited involvement so far means that cooperation in areas where the Commission has been providing value might continue by voluntary association if Britain left the EU. This is demonstrated by the fact that these schemes already allow access to countries that are not EU member states. The most important aspects of this cooperation involve facilitating student study overseas and inter-institutional link-ups in research programmes.

Stepping outside the EU would come with an additional gain: the UK would avoid the pitfalls associated with increased European integration and the politicisation of education. The Lisbon Strategy risks putting an excessive EU, rather than inter-governmental and global, focus on both education and research. It has also been prioritising the accident of geography over excellence.

Education is a critical long-term component of a successful and dynamic economy. If it is to make the most of its ability to export globally, the UK needs to develop a more responsive and technologically-innovative industrial base. While there are many factors that influence this, key is having a capable, adaptive and well-educated workforce. Moreover, it should be motivated to work, and as capable as any migrant workforce against which it is competing in the home market.

19.1 The UK would remain a member of all key international education bodies

Key international bodies

- Council of Europe
- European Credit System for Vocational Education and Training
- European Qualifications Framework
- European Quality Assurance in Vocational Education and Training
- International Association for the Evaluation of Educational Achievement

Given current limited EU involvement, transition to an EU-free educational system would be far from problematic. That prospect, however, is likely to be eroded over time.

“Closer cooperation makes more sense for countries with relatively poor standards and with smaller teaching communities.”

19.1.1 Administratively, the UK needs to break free

As education currently remains largely an inter-governmental issue, being outside the EU need hardly be a hindrance. It may even be a boon if funding systems are repatriated along with key budgets, since the administrative burdens and costs of applying for a grant can be disproportionate to the impact and chances of getting one. Closer cooperation makes more sense for countries with relatively poor standards and with smaller teaching communities. As the Department for Education (DfE) has cautiously noted:

The UK arguably has mature education systems with the analytical and policy-making capacity to identify what and how it needs to improve, as well as the structural frameworks required to implement reforms. Given the reform content set out by McKinsey and Pearson, the UK Government does not believe that the EU approach to education policy coordination sufficiently recognises the variety and variation of experience and expertise in member states. This view is supported in some evidence: ‘Texts of this kind are too general and too heavily caveated to be of use, or not specific enough to take account of individual national circumstances’ [citing a former senior civil servant]. Thus, EU level policy outputs are often seen as too ‘normative’, taking insufficient account of the fact that policies and systems have different effects in different countries at different times for different reasons.⁸⁵⁰

It continued:

Even among what might be considered its natural audience, the inconsistent Ministerial attendance from all member states at meetings of the Education Council or the Youth Council, as well as the level of attendance at Director General meetings, High Level Group meetings and meetings of thematic groups, suggest – anecdotally, at least – a bureaucracy and a system with little traction.

Ironically, in areas where lessons could be learned by the UK over, for example, early school leaving, the limited activity that has taken place has followed English practice.⁸⁵¹

If ‘coordination’ as an EU ambition is irrelevant, ‘benchmarking’ and the sharing of best practices have more purpose. This need not, however, be done at the EU level and the teaching establishments from which the UK has most to learn lie beyond the European Union. An EU focus risks acting as a distraction.

19.1.2 A range of non-EU organisations provide more valuable reference points

Without the EU, the UK would still be capable of cooperating in the continental and global arenas.⁸⁵² The Organisation for Economic Co-operation and Development (OECD) is the leading organisation for comparative education indicators, analysis and trends, notably through its PISA and Education at a Glance (EAG) programmes. The International Association for the Evaluation of Educational Achievement (IEA) provides large-scale international compar-

850 HM Government “Review of the Balance of Competences, Education, Vocational Training and Youth” (December 2014), page 31.

851 HM Government “Review of the Balance of Competences, Education, Vocational Training and Youth” (December 2014), pages 29 and 31.

852 HM Government “Review of the Balance of Competences, Education, Vocational Training and Youth” (December 2014), page 14.

“The OECD is by far the most useful and promising means of developing comparative assessments of UK weaknesses and learning from counterpart systems.”

isons of educational achievement, policies and practices through studies such as the Progress in International Reading Literacy Study and the International Civic and Citizenship Study.

United Nations agencies, including UNESCO, the UNESCO Institute for Statistics (UIS) and UNICEF, also release global education statistics, even if they focus largely on the extremes (illiteracy). The Commonwealth similarly facilitates cooperation with a focus on baseline and fundamental capacity building, such as improving the quality of teachers.

The Council of Europe has a role in educational access, particularly for minorities. Its education programme hosts the Higher Education Series, acting as a forum for sharing best practice through a number of targeted publications. This has previously focused on issues of community relations and citizenship, but has now branched out into mutual recognition of qualifications. The Council of Europe is cooperating with both the European Commission and the UN across 55 countries to ensure greater transparency in this field.

Of these, the OECD is by far the most useful and promising means of developing comparative assessments of UK weaknesses and learning from counterpart systems. OECD membership is not dependent on EU membership. Korea, Australia, Chile and Israel, for example, are in it. Over a third of its members (13 out of 34) are not EU states.

Table 19.i: How Turkey cooperates with the EU on education⁸⁵³

- Was able to participate in the EU's Education and Training 2010 Process.
- Joined the Bologna Process in 2001 (see below).
- Introduced obligatory European Credit Transfer System and Diploma Supplement mechanisms.
- Invited to consultations on EU policy on youth, particularly over coordinating comparative statistics.
- Allows equal educational access to children of migrant workers and helps integrate them.
- Foreign students take an entrance exam in English or are selected in their home country by a joint interview panel. Scholarships are available for third country nationals. The guiding principle is bilateral reciprocity.
- Participates in the Socrates programme and is looking at possibly moving further into the Erasmus+ programme.

19.1.3 Cooperation through the Bologna Process would continue

The Bologna Process is a loosely designed programme set up to create a European Higher Education Area by 2010. However, it is inter-governmental and covers 46 countries. It operates in association with the EU only as much as it does with the Council of Europe and the UN.

The objective, which remains ongoing, is to facilitate transfers across 'academic jurisdictions', make study in Europe more appealing for outsiders, maintain standards, and maintain tolerance. It is not a rigid structure. Its agenda has partially been driven by consultation with key bodies including the European University Association, European Students Union, the European Association of Institutions in Higher Education, the European Association for Quality

⁸⁵³ European Commission "Turkey: Screening Report, Chapter 26 - Education and Culture" (February 2006). As a general observation, reviewing the 35 titles audited by the Commission during accession negotiations provides a helpful guide to what issues and opportunities arise for countries moving in the opposite direction. In most cases, including education, few problems actually emerge - particularly as the country in question is already compliant with the traditional key stumbling points.

“The UK genuinely gains from European cooperation, but not by dint of meetings between ministers at an EU level.”

Assurance in Higher Education, and Educational International. These are not EU bodies.

What this has meant is that university education is now widely credit-graded along the North American model, allowing for courses to potentially be transferred and for work undertaken during a spell abroad to be recognised as of a sufficient standard to contribute to the end qualification at home.

19.2 The UK could continue to cooperate with the EU on education

Key issues

- Cross border university cooperation
- Erasmus+ and related programmes
- Horizon 2020 funding
- Mutual recognition of qualifications and training

The UK genuinely gains from European cooperation, but not by dint of meetings between ministers at an EU level. The real benefits arise from institutions being able to cooperate on research projects, students being able to pursue a year abroad or even deeper academic immersion, and teachers and lecturers themselves gaining the opportunity to work in a completely different environment. This latter benefit would be especially useful where the subject matter experts or the field of study are based abroad (be it theoretical physics at Cambridge, or researching Dante at Florence).

However, these can continue outside the EU frameworks as they are overwhelmingly not dependent on them.

19.2.1 Schooling would continue as before

Neither primary nor secondary schools would notice any difference if the UK withdrew from this EU competence. They would, however, remove themselves from the increasing threat of Commission involvement in setting parts of their curriculum.

The UK has protected schools from this so far by Sections 406 and 407 of the Education Act 1996, which requires political balance in the classroom. The result has been that coverage of the EU issue has become a focus for debate between two conflicting sides, rather than an opportunity (as in most other EU countries) to hand out explanatory material supplied by the European Commission and the press offices of other EU institutions.

Compare the British approach with that of its EU counterparts, as emerged from the notes of a working party on “Communicating Europe and school information” in 2011, uncovered by a Freedom of Information request.⁸⁵⁴ This showed, for instance, how “*Polish efforts at EU communication have been concentrated on promoting active citizenship, and communicating the benefits of EU integration.*” The level of genuine balance might be challenged by the focus of the discussion, as evidenced by the admission that “[t]he ideas of integration and solidarity are also important topics, which see prejudices examined and critiqued.” The working party “closed noting that the educating in schools on the EU is a task of the utmost importance for the success of the EU project, and invited upcoming Presidencies to continue looking at education as a priority matter.”

Significantly, EU failures – whether the growth of xenophobia, low turnout in MEP elections, or EU referendums that lead to No votes – are repeatedly identified as being down to failures to educate and communicate a standardised

854 HM Government, Freedom of Information Case Reference: 0321-12, page 6.

pro-EU message. We can confidently predict growing strains and tensions in this competence in the future, as certain capitals join with the Commission in seeking to expand the presence of the EU earlier in the lives of future voters, when they are at their most formative. There is already, for example, a European Policy Network on School Leadership, a teacher training curriculum, and a handbook for policy-makers on new teachers.⁸⁵⁵

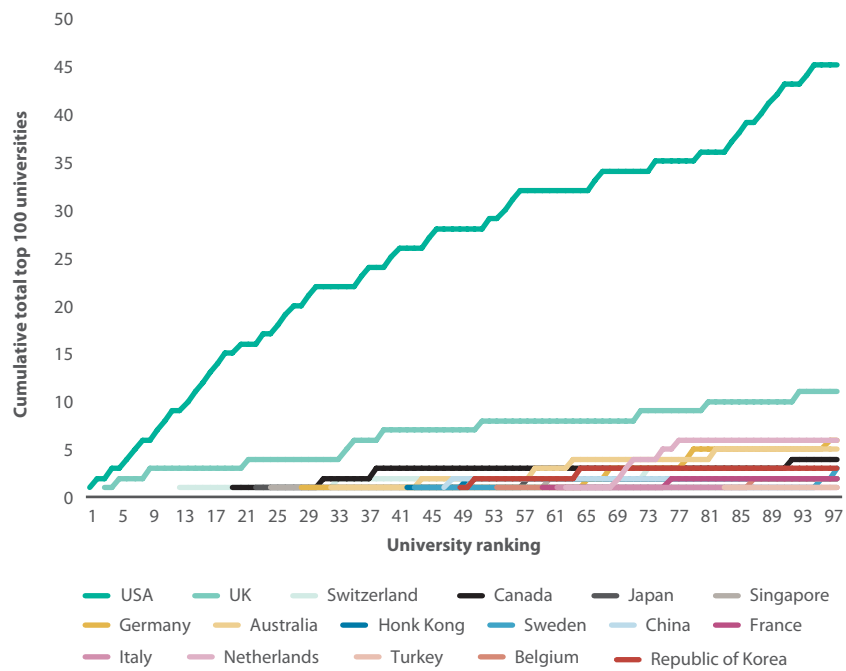
19.2.2 Universities could continue to cooperate with their EU counterparts, while standards would be maintained

The UK enjoys the highest university standards in Europe, and is outmatched globally only by the United States. Quality obviously varies across UK institutions, but the best are on a par with the best in the world.

A look at the status of UK institutions in the global league table demonstrates what the UK has to gain and lose. One of the most widely-followed is the Times Higher Education World University Rankings. While these include teaching capability, and a marginal part of the grading is by volume of the research grants received (which can make judging research capability circular), it is a good starting point.

The graph below shows the top 100 establishments globally, and how countries compare to one another within the top 100.

Figure 19.ii: Relative national excellence in university rankings 2014–15



Source: Times Higher Education Supplement⁸⁵⁶

As shown by the above graph, the UK is, after the US, a world leader. The USA would correspondingly be the obvious partner of choice in many instances. It is perhaps dangerously significant that the Commission has been working on its

855 “Time to Jump : A Positive Vision of an Independent Britain Outside the EU in an EEA Lite Agreement”, D. Campbell-Bannerman (2013), pages 210–211.

856 The Times “Times Higher Education World University Rankings 2014–15”, accessed 27/04/2015 at: <www.timeshighereducation.co.uk/world-university-rankings/2014-15/world-ranking>.

“It would be possible to continue university grants at their current level by repatriating all these funds and still make a saving.”

own ranking system, U-Multirank, to rebut such rankings – and at some considerable cost. The EU methodology, bureaucracy and accuracy have all been challenged, and British universities have already expressed fears that this would mean cuts in grants to them.⁸⁵⁷

For now, however, the global appreciation of the quality of its higher education institutions is an income generator for the UK, since universities accept foreign students who bring with them fees. This quality also goes some way to compensate for failures within the British schooling system, since graduates at the best institutions leave on a par in terms of education and qualifications with counterparts anywhere. Finally, it supports British soft power, since it gives future business and political leaders a taste of British culture and society. The purpose after all of the Rhodes Scholarship, of which a young Bill Clinton was a beneficiary, was to promote international understanding across the English-speaking world.⁸⁵⁸

The amount of funding available for research programmes from the central EU Budget is considerable. Analysis by the Department for Business, Innovation and Skills (BIS) suggests that around one sixth of UK university funding grants now come via EU coffers.⁸⁵⁹ This amounts to around £700m annually.⁸⁶⁰

As this equates to about one quarter of the EU funds available in this area, UK institutions clearly do comparatively very well out of the arrangement and this is a rare area where the UK does draw back some of its contributions to the central Budget.

But it is important to compare EU grants to universities with the broader grants package. The universities’ sectoral grants are a narrow tranche of a far bigger budget. The full Horizon 2020 (H2020) programme runs at €80bn over seven years to 2020. It is a blanket fund covering a very wide range of cross-border activity, with one fifth, for example, reserved for small and medium sized enterprises (SMEs). The programme is also intertwined with the European Investment Fund and thus the European Investment Bank – an institution for which UK contributions exceed receipts by a factor of two to one. While there are no figures yet available showing national shares across Horizon 2020, the varied predecessor grants have certainly not seen the UK gain a fair proportion of the receipts. Given this, it would be possible to continue university grants at their current level by repatriating all these funds and still make a saving.

Further, what the universities get from the EU Budget is not charity but due to the leading role British university researchers play; the EU grants are funding the best, and for once the grant system means competition, rather than a simple redistribution of wealth, plays a central role. Unless the UK loses its competitiveness in this field, so long as it continues to participate in a budgetary pool with other states (and the European Economic Area (EEA), for example, has such a pool), UK top-graded research establishments would still make the best partners for EU researchers to team up with. From a UK perspective, this makes logical sense too. There would be areas where teams can cooperate and complement each other. As the Government’s Balance of Competences Review observed:

857 HM Government “Review of the Balance of Competences, Education, Vocational Training and Youth” (December 2014), page 45.

858 Or at least this is the toned-down modern reinterpretation of the aspirations of the founder, who was acutely aware of the soft power PR value from the programme and saw it as an express means to win over friends to Britain by introducing them to its culture (and generosity) first hand.

859 HM Government “Review of the Balance of Competences, Education, Vocational Training and Youth” (December 2014), page 47.

860 The UK’s universities budget overall is worth around £4.5bn a year, of which around £1.6bn goes on research. EU grants thus provide a major component of research funding, but research expenditure would be impossible without the departmental budget for the universities in the first place.

“Erasmus+ itself is not limited to just EU states, or even just to EEA countries.”

Research and innovation is sometimes cited as one of the most growth enhancing areas of EU spending on the basis that programmes contribute to increased industrial competitiveness, generate extended networks and strengthen the knowledge infrastructure in Europe.⁸⁶¹

This is not an automatic given; throwing money at a group of researchers does not guarantee technological gain. Nor should it divert the UK from partnerships where the advantages may be greater. This is why a looser arrangement would be more beneficial, since it would allow the UK to have strong, direct oversight over research priorities. At present, such oversight appears to be surprisingly weak.

19.2.3 Student overseas programmes could continue

Erasmus stands for the European Community Action Scheme for the Mobility of University Students. Properly speaking, we are now on Erasmus+, which incorporates the successors of formerly separate schemes such as Comenius, covering third party engagement with schools, Grundtvig, covering adult education, Socrates, covering language skills, and programmes involving broader youth links.⁸⁶²

Erasmus has given British students the opportunity to study abroad. It does not, however, cover the placement of language students from UK universities in relevant schools. This is managed by the British Council in conjunction with the relevant government departments of the 14 host countries globally. Six are in the EU. Five are in Latin America.

Crucially, Erasmus+ itself is not limited to just EU states, or even just to EEA countries. The programme covers 32 primary countries – the EU, the EEA, Turkey, and even Macedonia. With the exception of pariah states, every other country in the world, from Mongolia to the Marshall Islands, has opted in to some elements of the Erasmus+ package.

UK’s possession of high quality higher education establishments mean that it is a major net recipient of both foreign students and their tuition fees. Britain accepts around 25,000 EU students a year, compared with around 14,000 British students who use Erasmus+ to study abroad. The UK is the number one choice for EU placement. From the grant system that operates it, British institutions do well, although the UK taxpayer funding the central EU Budget does less well. Since the money follows the student, moving from an EU system to a more decentralised system would likely have minimal impact on the receipt of foreign students’ fees while ending the UK’s contribution to subsidising them. The key variable in this is less likely to be the grant system than maintaining the availability of student visas, which in any event will depend on future immigration policy – and university access is one of the less controversial areas.⁸⁶³

All told, there is no reason why Erasmus+ could not continue indefinitely, or over a transitory period while a new and fairer funding mechanism was arranged. A new UK system could also expand the area of engagement to encourage increased participation by other countries. The University of Birmingham, for its American and Canadian Studies degree, for instance, has

861 HM Government “Review of the Balance of Competences, Education, Vocational Training and Youth” (December 2014), page 48.

862 The European Parliament’s preferred name was ‘Yes Europe’, underlining the PR aspect also underpinning this policy.

863 However, thanks to the Gravier and Blaizot cases (C-293/83, and C-24/86), the precedent has been long set that EU nationals have a right of equal access to educational and vocational training within member states. Further test cases risk obliging the UK to give fuller right of equal access to non-UK nationals at potential cost to access by home students and workers. The EU *status quo* thus carries a risk largely avoided by being an external partner.

“Neither the EU’s hand nor even the Government’s need be involved for valuable exchanges to happen.”

already negotiated bilateral exchange arrangements with 22 US universities and 13 Canadian ones alongside business internship opportunities. No tuition fees are paid and UK grants are maintained. Manchester University has arrangements for its students with 12 Chinese universities, 24 Japanese, six Latin American, seven Russian, and six Middle Eastern institutions. Neither the EU’s hand nor even the Government’s need be involved for valuable exchanges to happen.

19.2.4 Qualifications would still be recognised

Another of the EU’s cited benefits has been mutual recognition of academic and vocational qualifications. This has indeed been positive, but there is no reason why it should be under threat under any new arrangement. If issuing authorities are credible, the training level will be trusted. The issue is really one of protectionism. EU rulings are meant to have allowed British ski instructors to teach on French slopes; yet seven British instructors were arrested for doing so in 2014. British lecturers are supposed to be allowed to teach at Italian universities; yet in 2013, three universities turned to the 2011 Gelmini Law to target around 100 foreign lecturers (but not their Italian counterparts) in a round of major wage cuts. Even in the most high profile ‘success cases’, the principle of mutual recognition does not appear to be working within the EU framework. Outside, with the prospect of reciprocal and equal sanctions, it might.

A World Trade Organization (WTO) tool for extreme cases of qualification non-recognition would be to challenge the qualifications of those working in Britain. The key guiding rules are the European Qualifications Framework (EQF), the European Credit System for Vocational Education and Training (ECVET) and the European Quality Assurance in Vocational Education and Training (EQAVET). Associated is the Europass, a common format document which makes qualifications more easily understood internationally.

As it happens, though, the EQF and the Europass provide models that could be matched by any third party; ECVET is a voluntary agreement that respects national variants and just needs a Memorandum of Understanding to recognise; EQAVET includes EEA countries and Turkey; and Europass is an online formatting system.

In short, mutual recognition requires an agreement on standards (which already exists) and the attitude to enforce them (which mostly exists, and where it does not the problems are not going away).

19.2.5 Vocational training cooperation would still continue

Vocational training in the EU is limited to the sharing of best practice, notwithstanding Commission ambitions here as elsewhere.

If Whitehall considered it useful, it could continue to contribute to the work of The European Centre for the Development of Vocational Training (CEDEFOP), whose budget runs at €18m. This is probably the only tangible aspect worth assessing.

If it did not, it could just read CEDEFOP’s published research online.

19.2.6 Migrant education could still be catered for

The children of migrant workers are currently covered by the *acquis* arising from case law. Since the question of schooling is dependent on migrant workers having the right to bring in their extended family in the first place, this issue would be dependent on future migration policy and residency rights, particularly if EEA status were the preferred route. Reform of this area might end the legal peculiarity whereby a worker with residency rights can bring in a child,

“Running education policy outside EU interference would allow Britain to avoid significant long-term threats.”

and who then requires a carer to be brought in until the child has completed his or her education.

On a broader point, under EEA law, children of EEA nationals resident in the UK are entitled to state education on the same basis as UK nationals. Currently, there are space pressures within a number of Local Education Authorities (LEAs), and there is significant crossover between these areas and areas of concentrated immigrant (not just EU) settlement. Satisfactorily addressing the management of immigration levels – or increasing school funding – would have a direct impact on managing school places over the immediate and longer term, since one quarter of births in 2010 were to mothers born outside the UK.⁸⁶⁴

A radical change in the UK's EU status would impact on the status of UK staff working within EU teaching institutions, as well as those employees currently enjoying privileged access to them. This is a minor matter in the scheme of things. Continuing access to or funding of the European Schools, one of which is sited in Culham, would be discussed as a normal diplomatic adjustment covering civil servants posted there who are parents.⁸⁶⁵ UK funding for the European University Institute and similar proto-federal academic bodies would become superfluous, though funding for research grants could be applied for through normal channels on their merits. One might expect transitional arrangements to apply.

19.3 New education policy opportunities would become available

Running education policy outside EU interference would allow Britain to avoid significant long-term threats. These are largely centred on the Commission and its backers using education as a PR mechanism, supporting EU integration across a number of other fields, and selling a political ideal to a future generation that it seeks to convince is the main beneficiary of the programme. That they are also the most vulnerable to such messaging has not gone unnoticed by the messengers, as Section 25 shows.

19.3.1 The UK could stop EU PR targeting the young

The European Commission runs a highly-organised PR service, extolling the merits of European integration to those it identifies as particularly susceptible, and who can act as “*opinion multipliers*”.

The lead entity is the Commission's press directorate general DG COMM. For 2014, its key performance indicators were: increasing the number of EU citizens feeling European; successfully increasing participation in its ‘Fostering European Citizenship’ activity; increased readership of its website; and its ability to spend the allocated budget.⁸⁶⁶ The objective, simply put, is to undermine opposition to the EU project. This manner of state-funded political PR, if this is what it is, of course has implications for a free society.

864 HM Government “Review of the Balance of Competences, Education, Vocational Training and Youth” (December 2014), page 48. The mobility associated with the migrant workforce might help explain why UN stats looking at gross national enrolment (which includes late entry) in UK primary schools passed 100 per cent in 2003 and rose to 108.5 per cent in 2012. See the UNESCO Institute for Statistics Country Profile for Britain.

865 The system is in any case on a par with boarding schools available to children of Defence and Foreign Office staff on arduous postings.

866 European Commission “Management Plan 2014”, accessed 27/04/2015 at: <http://ec.europa.eu/dgs/communication/pdf/comm-initiatives/management-plan2014_en.pdf>.

“Young people are targeted, especially via the school system.”

Considerable work has been done exploring the mechanics of this, which need not be repeated here.⁸⁶⁷ In essence, the EU can be said to run three main types of PR system:

- Direct PR – press office work (DG COMM has 625 staff);⁸⁶⁸
- Proxy PR – budgets supporting programmes, lobbies and campaigns endorsing the EU as the medium of choice;
- Inferred marketing – making the EU look good by planting the EU flag and logo prominently on projects and building works funded by its Budget (rather than the flags of the national gross budgetary contributors).

Within the education sector, the EU’s activities are at their most questionable. The greatest concern lies in the way that young people are targeted, especially via the school system. The UK has been protected by domestic law, resulting in the pulping of a large number of English language documents in the past, but the threat remains. As the Commission said of one review in 2007, *“it will examine how schools could best provide students with the key competences, and how school communities can help prepare young people to be responsible citizens, in line with fundamental European values.”*⁸⁶⁹

This approach dates as far back as the still-valid 2002 overarching Communications Strategy, which states:

Information must therefore be provided at two distinct levels, using different messages and appropriate tools. Certain information must be addressed to those who are interested and already reasonably well-informed whereas other information must be aimed at those who are apathetic and unfamiliar with the European Union. The need to resist the temptation to be satisfied with maintaining dialogue with the natural circle of those ‘in the know’ is a real challenge, which the new strategy must help us to take up.

In addition, information and messages must be geared to local realities, languages and perceptions and to the specific interests and concerns of the various target groups. These groups should be selected in accordance with the communication plans negotiated with the member states on each of the priority topics agreed on.

The target groups should include not only opinion makers such as political representatives, leading personalities in civil society, the media, the business world and so on, but also specific categories of the general public such as young people, women, families, working people, etc.

*Particular attention should be given to young people and the education sector as a channel for helping people to learn about the European Union.*⁸⁷⁰

867 See Open Europe “The Hard Sell: EU Communication Policy and the Campaign for Hearts and Minds”, L. Rotherham (2008), amounting to 150 pages of specific case detail.

868 European Commission “Statistical Bulletin – Off & TA”, accessed 27/04/2015 at: <http://ec.europa.eu/civil_service/docs/europa_sp2_bs_nat_x_dg_en.pdf>. For context, the EU Media Operations staff is bigger than Luxembourg’s army.

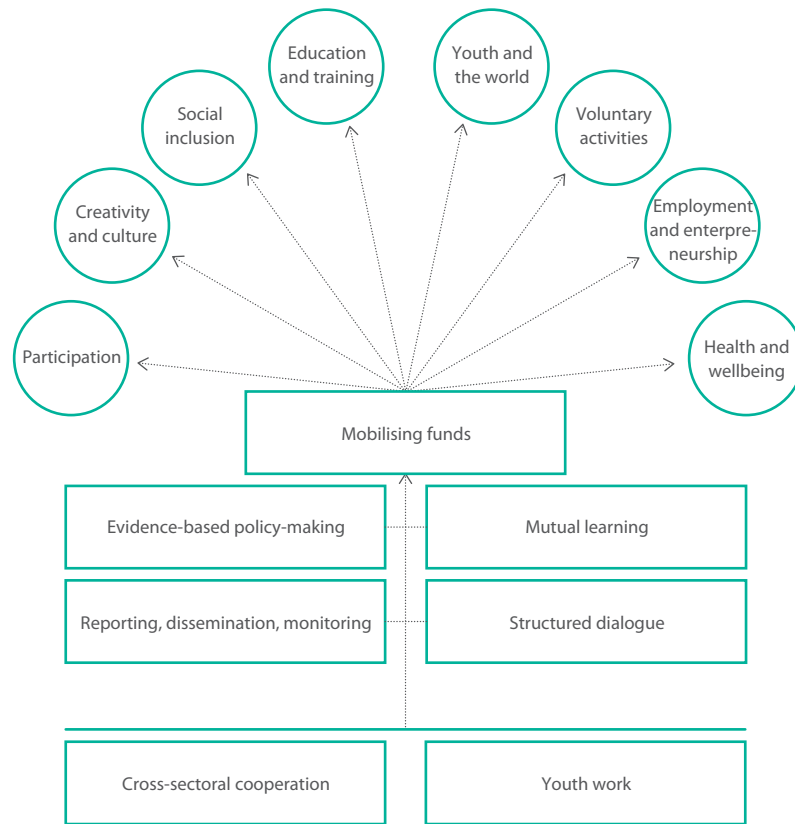
869 European Commission “Communicating Europe in Partnership” (COM(2007) 568 final), accessed 27/04/2015 at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0568&qid=1396451856339&from=EN>>.

870 European Commission “Commission on an information and communication strategy for the European Union” (COM(2002) 350 final/2), page 16. This document does not appear to have been superseded (at least, publicly) and certainly has not been repudiated. Indeed, it was separately reinforced with the mission of the Education competence in part being *“to explore the richness of European diversity and to develop a sense of belonging to Europe as a vital part of the individual’s sense of identity.”* (European Commission “The History of European Cooperation in Education and Training” (2006), page 39).

“A particular area of concern is the Jean Monnet programme.”

This is not an isolated ambition but forms part of a wider package looking at how best to both engage and recruit Europe’s youth. Figure 19.iii shows the extent of current EU ambitions over youth policies.⁸⁷¹

Figure 19.iii: EU direction in expanding a policy for youth



Source: European Commission

Removing the UK institutionally from the educational reach of the Commission would address these risks. This particularly applies to the Youth in Action programme, EU funding of student union activism, and youth organisations that act as policy lobbyists.⁸⁷² Cooperation could still occur, but without everything being tempered by the political PR of the EU.

19.3.2 The UK could step away from the Jean Monnet programme

A particular area of concern is the Jean Monnet programme. It funds chairs, centres and research activities in the field of EU Studies in (at the last count) 72 countries. Its programmes involve 1,500 professors, and reach about half a million students a year. The problem is similar to Riyadh funding Islamic Studies programmes abroad, or Moscow funding Russian Studies in British universities: the threat of inherent bias. To some extent, this is unavoidable, since an interest in studying Peace Studies or Gender Studies by its very nature implies a certain philosophical starting point.

871 European Commission “Draft 2012 Joint Report of the Council and the Commission on the implementation of the renewed framework for European cooperation in the youth field (EU Youth Strategy 2010–2018)” (COM(2012) 495 final), page 4.

872 A Bruges Group study identified 12 pages of such payments for 2000, ranging from the Union des Fédéralistes Européens to the youth wing of the European People’s Party. See “The EU Propaganda Machine”, Oulds/Ball/Rotherham.

“Academics, including those from Britain, have been co-opted into the process of ‘Brussels talking to Brussels’.”

The problem with funding EU Studies goes beyond this, however, judging by the statements of the academics cited in support of the programme in its annual report, and by its openly-declared integrationist objectives (see Table 19.iv).⁸⁷³

Table 19.iv: The big picture missions for the various streams that receive Jean Monnet funding

Jean Monnet Chairs are required to disseminate and exploit the results of the organised teaching and research activities beyond the stakeholders directly involved. This will considerably increase the impact and contribute to a systemic change.

Jean Monnet Centres of Excellence have a major role in reaching out to students from faculties not normally dealing with European Union issues as well as to policy-makers, civil servants, organised civil society and the general public at large.

Jean Monnet Associations should become reference points in the European Union subject areas they cover. They will assume the role of multipliers and they will disseminate knowledge; they will also contribute to collecting and capitalizing information as well as providing analysis and visions on specific subjects.

Jean Monnet Networks foster the creation and development of consortia of international players (HEIs, Centres of Excellence, departments, teams, individual experts, etc.) in the area of European Union studies. They contribute to gathering information, exchanging practices, building knowledge and promoting the European integration process across the world.

Source: European Commission⁸⁷⁴

The Commission is fostering an academic cadre to explore the progress of European integration rather than to question it.

It would appear from anecdotal evidence that the UK has been less affected in the lecture theatre, with British recipients of these grants largely maintaining a measure of teaching balance.⁸⁷⁵ The consequences, however, are less neutral in the research material that emerges, particularly that submitted to the Commission as analysis of its mandate. Academics, including those from Britain, have been co-opted into the process of ‘Brussels talking to Brussels’, even if a significant measure of professional integrity remains in the UK. In any event, the advantages gained for contributing UK taxpayers is not evident.⁸⁷⁶

19.3.3 The UK will need to undertake major educational reform to compete globally over coming generations

While university standards are excellent at the top end of the scale, questions remain over other institutions and courses. More seriously, the relative quality of UK schools has become a matter of serious concern.

The last OECD triannual Programme for International Student Assessment (PISA) survey dates from 2012. It reviews competence in reading, mathematics and science in a survey of 15 year-olds across 65 countries. As the survey

873 “Time to Jump: A Positive Vision of an Independent Britain Outside the EU in an EEA Lite Agreement” (2013), D. Campbell-Bannerman, pages 209–214.

874 European Commission “Erasmus Plus Programme Guide” (2015), accessed 27/04/2015 at: <http://ec.europa.eu/programmes/erasmus-plus/documents/erasmus-plus-programme-guide_en.pdf>.

875 Examples of bias are set out in the Open Europe publication “The Hard Sell”, Rotherham & Mullally.

876 That includes third party courses, since there are EU-sponsored university programmes across the world. Courses teaching EU studies in say Australia or the US are not subject to the Education Act, providing greater value to the Commission in generating sympathetic intermediaries, courses for students, spokesmen for interviews, and English language material friendly to the EU’s direction.

“Most member state students do not study abroad.”

involves around half a million students, it is statistically significant.⁸⁷⁷ It found, however, that the UK was not getting the results it should be given the high level of education spending even by OECD standards. Of the OECD countries, Britain ranked 26th in maths, 23rd in reading, and equal 20th in science. This left it out-paced by ASEAN countries also in the study.

Different political parties will have different solutions to address this, and some will be more radical than others. But the objective will need to be the creation of a workforce capable of competing with the world’s best, improving the enduringly poor competitiveness of British businesses, and motivating workers to achieve their life goals by toil and increments.⁸⁷⁸

19.3.4 The ‘education economy’ can be geared to serve and expand, and the UK benefit more from overseas pupils

The European Commission recognises that most member state students do not study abroad, but go to a university in their home country. Increased institutional engagement by the EU over time risks generating burdens for vice chancellors for the benefit of what amounts to a student minority.⁸⁷⁹

Financially, the UK does well from hosting foreign students. An issue of central importance is, therefore, where foreign students come from. As Table 19.v shows, they are global rather than European in origin.

Table 19.v: Full-time and part-time students at UK Higher Education institutions, 2008–09

	Origin of undergraduate students			Origin of postgraduate students		
	UK excl. Scotland	Non-UK EU excl. Scotland	Non-EU	UK excl. Scotland	Non-UK EU excl. Scotland	Non-EU
Full time	1,004,535	51,715	95,995	119,285	30,795	117,920
Part time	524,020	12,200	16,215	234,145	13,490	21,180
Total	1,528,555	63,915	112,210	353,430	44,285	139,100

Source: BIS⁸⁸⁰

From a UK perspective, particularly important is ensuring that non-EU students continue to come to the UK and subsidise its universities through their fees and grants. Tuition fees from EU domiciled students, for example, contributed £293m across the UK in the year examined; from non-EU domiciled students it was £2.2bn.

877 OECD “2012 PISA results: UK Key Findings”, accessed 27/04/2015 at: <www.oecd.org/pisa/keyfindings/PISA-2012-results-UK.pdf>.

878 This also has an impact on the viability of the UK workforce as an alternative to large numbers of imported labour, and is a key prerequisite of generating a healthy long-term immigration policy.

879 In this, the business aspect underpinning educational establishments mirrors the difficulties faced by British businesses generally: over-engagement by the Commission and excessive costs for disproportionately small gains.

880 Department for Business, Innovation and Skills “Estimating the Value to the UK of Education Exports”, Research Paper 46 (June 2011), page 23, accessed 27/04/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/32395/11-980-estimating-value-of-education-exports.pdf>.

“In a global marketplace, the best UK universities need to maintain their competitiveness.”

The end figure is much larger. A BIS survey estimated that education exports recently ran at £14bn in a single year and this is set to rise to £25bn by 2025.⁸⁸¹ It is possible to gain some measure of the direction this is taking by looking at the official estimate of £210m or so earned from transnational education: 83 per cent (as at 2008–9) of the students involved were located outside of the EU.⁸⁸²

A number of Asian universities are, however, on the rise and are gaining in prestige and recognised quality. The Russell Group universities will have to adapt to maintain their reputations for excellence and market share. Non-global leading universities will, meanwhile, need to continue to learn to play to their strengths.

There are, furthermore, a wide variety of policies a government could choose, amend or reject to support higher education: the key principle is simply that, in a global marketplace, the best UK universities need to maintain their competitiveness, and all universities need to add value either to society or to the economy.

A future government might see scope for further competition across the educational system. If this became the aim, outside of EU competence, any profit-associated elements would be freed of the risk of EU-related business burdens. Currently, the Acquired Rights Directive has an impact when schools merge or are taken over. Equality legislation hampers faith establishments from prioritising recruitment of teachers who share their beliefs. EU rules on public procurement constrain LEAs' procurement systems for school building programmes, and may even affect the provision of information to groups seeking to set up a free school.⁸⁸³ An EU Agenda for the Rights of the Child has even been developed, increasing the likelihood of social legislation in the future with uncertain cost-benefit pre-evaluation. Alternative rules and procedures could be devised better suited to the UK's current needs.

19.3.5 The UK will still need to train a competitive workforce

Significant reforms and expansion have, meanwhile, taken place within the vocational training system. More work still needs to be done to ensure that apprenticeships add value, are enrolled into in high rates, and have higher completion rates. Employers need to be the driving force behind reaching and maintaining standards.

Training must also develop those skills business recognises will add value, especially in science and engineering. STEM (science, technology, engineering and mathematics) departments in universities can better dovetail into this. However, most important is turning greater numbers of employers into trainers, since they have the greatest appreciation of the skillsets their industry in practice needs.

The better-trained workforces of German competitors will not simply go away, even if the EU does.

19.3.6 The Scottish student fees anomaly could be ended

A shift in treaty status would be an opportunity to fix anomalies associated with Scottish tuition fees. Currently, Scottish residents are exempt, and EU law

881 Department for Business, Innovation and Skills “Estimating the Value to the UK of Education Exports”, Research Paper 46 (June 2011), page 10.

882 Department for Business, Innovation and Skills “Estimating the Value to the UK of Education Exports”, Research Paper 46 (June 2011), page 36. Around half of this was through partnered structures, and three tenths through various systems involving remote learning.

883 HM Government “Review of the Balance of Competences, Education, Vocational Training and Youth” (December 2014), pages 50–51.

means non-UK nationals of an EU state can be no worse off and so are exempt too. But non-Scottish UK nationals are required to pay.⁸⁸⁴

Removing the legal parity of Scottish residents with EU – rather than wider UK – residents would allow Scotland’s universities to charge EU nationals, non-Scottish students, and non-EU nationals the same rates and leave the Scottish Government just subsidising Scottish students, if that is what it wants to do. That would be fairer, remove an area of grudge, and generate some extra revenue for Scottish university managers. Or they could use it as a way to adjust their rates to gain competitive advantage, as application levels require.

More importantly, a wider failing in the current system might be corrected. Around one in eight student loans go to EU nationals, who are eligible by dint of EU law. Some recent figures, as set out in Table 19.vi, suggest that, while the majority of repayment arrears are down to UK nationals, the UK taxpayer is also subsidising loans to a not insignificant number of non-UK students too.

Table 19.vi: EU and UK student loan status as of 2014

Status	EU students	UK students
Repaid in full	4,800	145,800
Loan cancelled	100	4,600
Repaying loan	6,000	824,100
Earning below repayment threshold	11,800	295,800
Not traced by HMRC	800	50,300
Going through trace process	2,400	150,400
Awaiting first P14 to determine if above threshold	7,000	424,700
Status does not presently require repayment	900	122,500
In arrears	6,300	14,000
Further information being sought	9,200	22,500

Source: Students Loans Company⁸⁸⁵

The scale of current non-payment is a major concern, and helps explain why the projected write-off rate keeps creeping up – and with it the costs, and the interest rates required of future students to plug the gap. Equal treatment obligations towards non-UK students also seem to be deepening the hole by adding another group of students who are proving even harder to track down.

In a number of cases, reciprocal national arrangements facilitating the chasing up of these loans do not even exist. It makes far more sense to cut the ties which oblige the UK taxpayer to offer such loans, so that the education system of the country of origin provides the support instead. By comparison, in countries like Australia and the United States, fees can be higher for non-nationals and there is no access to a state loans system. This is no different to how UK universities treat non-EU foreign nationals who qualify for the Overseas Rate, which is set higher as the university receives no government subsidy for them.

With a more focused policy emerging from the end of EU obligations, the UK could choose to maintain current mutual access rights but correct the imbal-

884 Article 18 of TFEU prevents discrimination on nationality grounds against nationals from other EU member states, but has been interpreted not to cover differences within a member state. Anecdotal evidence is pointing to a further discrepancy as Northern Irish students make use of Republic of Ireland passports.

885 Student Loans Company “Statistical First Release” (June 2014).

“Another layer of rules and directions from the EU will not rescue matters.”

ances around tuition fees. Or it could reduce the subsidy and make the UK higher education system more self-supporting, cut what amounts to an EU student subsidy, make all non-UK nationals pay full rates, and allow universities to negotiate bilateral arrangements for year abroad free tuition around the world. Or it could meet somewhere in the middle and make a deal focused on reciprocity based on the actual number of UK students who study abroad. But it could, at any rate, reach a new settlement based on what universities wanted and British students needed.

A critical point remains with respect to this tuition fees anomaly, however. Education will remain a devolved issue, with decision-making handled by the appointed authorities. With education removed fully from the hands of the Commission, the devolved assemblies will be key beneficiaries too.

Conclusion

The UK's educational system has, for some decades, helped mitigate the decline in UK relative competitiveness. It has generated revenue for the Exchequer, while at its best it has trained graduates to a level on a par with any international competitor, and provided the workshop for a disproportionate number of Nobel Prize winners.

However, that advantage is under long-term threat as the Commission now reflects on how to generate a common educational system, and accelerate the building of a common European identity by making study abroad normative. UK institutions, popular given their quality and the English language, would prove the biggest draw, but their managers would lose out from increasingly limited access to foreign tuition fees.

Much remains to be improved about the UK's education system. Statistically, it is self-evident that schools and grades lag behind our leading and future competitors. Of the universities themselves, while some are world standard, many are not. It is clear, however, that another layer of rules and directions from the EU will not rescue matters.

20 Technology and Research

20.1 The United Kingdom would remain a member of all key international technological and research bodies	582	20.2.4 The UK could keep EU consumer protections if it wished	590
20.1.1 The UK would retain the same relationship with many key international technology and research agencies	583	20.2.5 Cooperation on technology issues could continue and EU standards could be retained	591
20.1.2 The UK would secure a stronger relationship with the other key international technology and research agencies	583	20.3 New technology and research opportunities would become available	592
20.2 The UK could continue to cooperate with the EU on technology issues	584	20.3.1 EU ‘mission creep’ on technology and research issues could be stopped at a stroke	592
20.2.1 European research programmes and technology initiatives would still include the UK	584	20.3.2 Bureaucracy that holds back innovation could be reduced	598
20.2.2 EU funding would continue to flow to the UK so long as Britain kept contributing	587	20.3.3 Consultations for technology firms could be improved	600
20.2.3 European patents would continue to protect British technology	588	20.3.4 International cooperation and trade could be improved	601
		Conclusion	603

“There is no reason why the UK could not still be able to access EU funding if it left the European Union.”

The EU has extensive powers over issues relating to technology, ranging from policies that govern the use of new hardware, to rules that guide the research and development of new equipment. The EU’s technology-based regulations have had a substantial impact on innovation and economic growth. This has raised questions about the consequences of leaving the EU for technological innovation, and whether it would compromise UK access to EU funding.

The importance of having a developed technological sector cannot be overstated. Many politicians throughout the 20th Century emphasised the need to harness the ‘white heat’ of technological advancement. The UK is considered today to be the second most innovative nation on earth.⁸⁸⁶ Commentators increasingly view technology as the key determiner of trade.⁸⁸⁷ Successfully encouraging technological development is seen by the UK and the wider EU as a crucial component in winning the ‘global race’.⁸⁸⁸

EU membership has offered the UK some advantages when it comes to the development and use of new technology, mainly due to the EU’s willingness and ability to provide funding for new research.⁸⁸⁹ However, because the EU’s technology and research programmes are – for the most part – international in scope, and designed to work with third countries, there is no reason why the UK could not still be able to access EU funding if it left the European Union. The UK would also retain membership of the many global and non-EU bodies and agencies that coordinate international technology and research cooperation. In short, leaving the EU would not reduce the UK’s standing in this field, nor would it undermine its ability to access funding or work with other countries in developing innovative new technology.

20.1 The United Kingdom would remain a member of all key international technological and research bodies

Key international bodies

- International Telecommunication Union
- United Nations
- United Nations Educational, Scientific and Cultural Organization (UNESCO)
- World Intellectual Property Organization
- World Meteorological Organization
- World Trade Organization

Today, numerous international bodies help to regulate technology and the development of research across the world. These bodies have many important roles, ranging from the management of international patents to the promotion of inter-state cooperation on technological issues. While the UK has a powerful voice in many of these bodies, the EU’s role has been steadily growing and there is a risk that it could replace the UK’s own representatives. However, as the EU has not yet fully supplanted the UK, leaving the EU would not mean Britain

886 The Global Innovation Index 2014, accessed 20/04/2015 at: <www.globalinnovationindex.org/content.aspx?page=gii-full-report-2014>.

887 “Old Links New Ties”, D. Howell (2013), page 27; and Journal of Common Market Studies “A comparison of Private and Subsidised R&D Partnerships in the European Information Technology Industry”, J. Hagedoorn & J. Schakenraad (1993), pages 373–390.

888 European Parliament “Fact sheets on the European Union”, accessed 20/04/2015 at: <www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_5.9.4.html>.

889 Research in the EU, like the UK, is managed by the Haldane principle, which means that research proposal decisions are taken by researchers themselves via peer review.

“WTO rules now govern 97 per cent of world trade in information technology products.”

losing any representation in those organisations that matter most in international technological issues.

20.1.1 The UK would retain the same relationship with many key international technology and research agencies

By virtue of the fact that it would remain a member of the United Nations after leaving the EU, the UK would also remain a member of the International Telecommunication Union. As well as coordinating the shared global use of the radio spectrum and satellite orbits, it also promotes international cooperation in telecommunications, including worldwide technical standards.⁸⁹⁰ Its remit includes broadband internet, wireless technologies, aeronautical and maritime navigation, and space-based communication technology.⁸⁹¹

The UK would also remain a member of: the World Intellectual Property Organization (which, in addition to administering the International Patent System, “offers a range of global services for protecting intellectual property (IP) across borders, and for resolving IP disputes outside the courts”); the United Nations Educational, Scientific and Cultural Organization (UNESCO), which promotes scientific cooperation across the globe; and the World Meteorological Organization, the UN body that analyses the state and behaviour of the Earth’s atmosphere.⁸⁹²

In addition to UN work, joint initiatives to tackle global concerns are led by the G8 Heads of Research Councils, which the UK is and would remain a member of outside the EU. The G8 Research Councils Initiative on Multilateral Research Funding is described as “a coordinated effort to support multilateral research partnerships... aim[ing] to support excellent research on topics of global relevance which can best be tackled by a multinational approach.”⁸⁹³

20.1.2 The UK would secure a stronger relationship with the other key international technology and research agencies

The UK would remain a member of the Internet Corporation for Assigned Names and Numbers, an organisation that operates the internet’s Domain Name System, coordinates allocation and assignment of the internet’s unique identifiers, such as Internet Protocol addresses, and accredits generic top-level domain (gTLD) name registrars. The European Commission is also a member of this body, meaning that, were the UK to leave the EU, it could be confident that its representative would be the only one who could speak on behalf of the British Government.

As has been detailed in earlier sections, the UK would continue to be a member of the World Trade Organization, which plays a significant role in promoting the use of Information and Communications Technology (ICT). The Ministerial Declaration on Trade in Information Technology Products was agreed at the Singapore Ministerial Conference in December 1996, and aimed to lower all taxes and tariffs on ICT products by signatories to zero. These rules now govern 97 per cent of world trade in information technology products.⁸⁹⁴

890 International Telecommunication Union, accessed 20/04/2015 at: <www.itu.int/en/about/Pages/default.aspx>.

891 International Telecommunication Union, accessed 20/04/2015 at: <www.itu.int/en/about/Pages/default.aspx>.

892 World Intellectual Property Organization, accessed 20/04/2015 at: <www.wipo.int/services/en>.

893 Research Councils UK, accessed 20/04/2015 at: <www.rcuk.ac.uk/international/funding/collaboration/g8initiative>.

894 World Trade Organization, accessed 20/04/2015 at: <www.wto.org/english/tratop_E/inftec_e/itaintro_e.htm>.

“The EU has signed international Science and Technology Agreements with many countries.”

In addition, the WTO manages the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which sets down minimum standards for many forms of intellectual property (IP) regulation, and it is also looking at improving e-commerce across borders.⁸⁹⁵ Having a strong voice in this body is likely to become increasingly important over the next few years. Once again, leaving the EU would free the UK representative from having to toe a common EU line which the British Government may disagree with.

20.2 The UK could continue to cooperate with the EU on technology issues

Key issues

- Continued participation in EU research programmes
- Continued funding from the EU
- Securing European patents
- Continuing cooperation on technological issues
- Retaining standards

Historically, the EU’s role has primarily been to establish joint research programmes and to provide funding to worthy projects. Some may fear that leaving the EU could jeopardise the funding received by UK bodies. However, because the EU is committed to developing its research ties with non-EU countries, an independent UK would not see any drop in its access to EU funding or programmes. Were an independent UK to decide it wanted to continue cooperating with the EU or European institutions, it would be possible without any need for a ‘special deal’.

20.2.1 European research programmes and technology initiatives would still include the UK

The EU’s research programmes extend far beyond the confines of the EU. Cooperation between the EU and third countries is integral, and this is conducted under the Strategic Forum for International Science and Technology Cooperation. The European Research Framework Programmes have also been open to non-EU countries for many years. In addition to the EU member states, there were 13 associated countries in the last of these programmes, FP7: the EU candidate and potential candidate countries, members of the European Economic Area, Switzerland, Israel, Moldova and the Faroe Islands.

Perhaps the most notable current EU research program is ‘Europe 2020’, which aims, among other things, to invest in education, research and innovation. Norway contributes to the implementation of this program.⁸⁹⁶ The Science and Technology for Development Programme is also open to non-EU countries. The EU has signed international Science and Technology Agreements with many countries, including Algeria, Argentina, Australia, Brazil, Canada, Chile, Egypt, India, Japan, Korea, Mexico, Morocco, New Zealand, Russia, South Africa, Ukraine and the United States.⁸⁹⁷ These agreements are legally binding.

895 World Trade Organization, accessed 20/04/2015 at: <www.wto.org/english/tratop_e/ecom_e/ecom_e.htm>.

896 Letter from the Prime Minister of Norway to the President of the European Council, 19 March 2010, accessed 20/04/2015 at: <www.eu-norway.org/PageFiles/398304/Herman%20Van%20Rompuy.pdf>.

897 European Commission “International RTD Cooperation”, accessed 20/04/2015 at: <http://ec.europa.eu/research/iscp/pdf/policy/st_agreement_ec_euratom_october_2014.pdf>.

“The EU’s willingness to work with third countries is a simple matter of necessity: technology is global and interconnectivity is essential.”

This willingness to work with third countries is a simple matter of necessity: technology is global and interconnectivity is essential. The US, China and Russia have all developed separate satellite systems, so the EU needs to ensure its hardware and software can cooperate with these.

In addition, the UK could negotiate to benefit from EU-wide technological initiatives. For example, Norway is part of the EU’s drive to lower roaming charges across Europe. Were it willing to consider applying for a Norway-style relationship after leaving the EU, the UK could continue to benefit from such initiatives. Alternatively, it could aim to secure access to them via a bilateral deal with the EU.

Britain remains one of the leading nations in science and research (UK success in this field has been attributed to a range of factors, including the large number of outstanding UK firms and its supply of high level skills).⁸⁹⁸ The UK has acknowledged the contribution of the EU, though it would like some changes, stating that *“future funding should be focused on funding actual research and innovation programmes of various scales which demonstrate excellence and EU added value – with an increased focus on impact, evaluation, dissemination and knowledge transfer”*.⁸⁹⁹ Other reports have acknowledged that FP7 meant *“UK business participants... gained access to new or significantly improved tools or methodologies and other forms of intellectual property. Participation had contributed to the development of new products and processes and increased income and market share.”*⁹⁰⁰

Nuclear research, by contrast, is conducted under the terms of the Euratom Treaty – formerly a separate body that was brought under full European Economic Community (EEC) control in 1967. Under FP7, there were three specific programmes: fusion nuclear research, fission nuclear research and radiation protection. Again, non-EU states have secured access to Euratom programmes, such as Switzerland. The UK may wish to look into securing a ‘special deal’ that would allow continued cooperation in this area.⁹⁰¹

However, even without a ‘special deal’, Britain could still participate in Horizon 2020 outside the EU. According to the European Commission, 124 non-EU countries are eligible for Horizon 2020 funding. These include: Afghanistan, Bangladesh, Cambodia, Fiji, Iran, Iraq, Uganda, Ukraine, Uzbekistan, and Zimbabwe.⁹⁰² Likewise, the EU works with third countries on audiovisual matters: Decision No 1041/2009/EC of the European Parliament and of the Council of 21 October 2009 established an audiovisual cooperation programme with professionals from third countries, establishing the programme MEDIA Mundus for the funding of projects in the audiovisual sector between 2011 and 2013. The UK would also remain a member of the European Cooperation in Science and Technology, which is designed to help coordinate nationally-funded research at European level and is committed to helping build

898 World Economic Forum “The Global Competitiveness Report (2013–2014)”.

899 Department for Business, Innovation and Skills “Funding for EU research and innovation from 2014: A UK perspective” (May 2011), accessed 20/04/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/32484/11-901-funding-eu-research-innovation-from-2014.pdf>.

900 Technopolis “The impact of the EU RTD Framework Programme on the UK” (May 2010), accessed 20/04/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/32488/10-1158-impact-eu-rtd-framework.pdf>.

901 European Commission “EU and Middle-East Building Bridges through Science Diplomacy” (April 2015), accessed 20/04/2015 at: <<http://ec.europa.eu/research/iscp/index.cfm?pg=events>>.

902 European Commission “Horizon 2020 – Work Programme 2014–15”, accessed 20/04/2015 at: <http://ec.europa.eu/research/participants/data/ref/h2020/wp/2014_2015/annexes/h2020-wp1415-annex-a-countries-rules_en.pdf>.

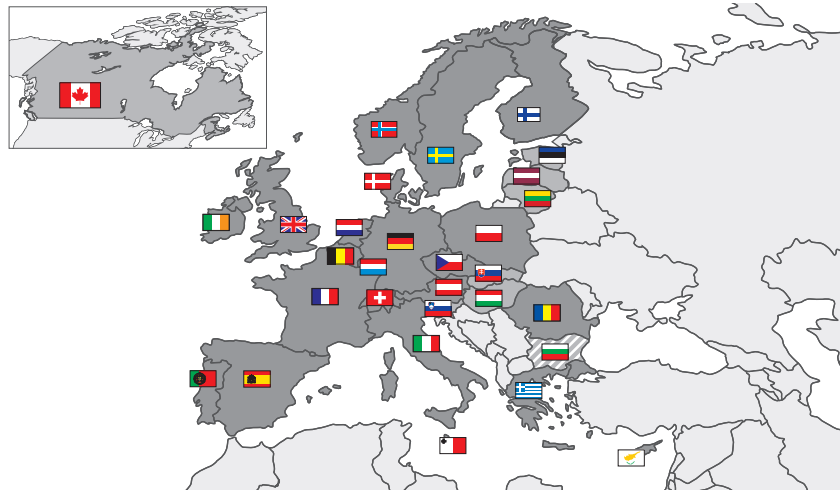
the European Research Area. While it is heavily linked to the EU, its member states include Bosnia and Herzegovina, the Republic of Macedonia, Iceland, Norway, Serbia, Switzerland, Turkey and Israel.⁹⁰³

The UK would continue to be a member of EUREKA, which has a focus on “facilitating the coordination of national funding on innovation aiming to boost the productivity & competitiveness of European industries. The network integrates over 40 pan-European economies, but also includes Israel, South Korea, and Canada.”⁹⁰⁴ Other members include Russia and Turkey. Likewise, the UK would be able to remain part of groups such as the European Organization for Nuclear Research (CERN).

The UK would continue to be a member of the European Space Agency (ESA).⁹⁰⁵ While there is cooperation between the EU and the ESA (including a joint ESA/European Commission Secretariat and meeting of ministers), they remain separate organisations, and leaving the EU would not affect the UK’s membership of the ESA.

The ESA has many members outside the EU, including Canada (as a cooperating state). It also receives a significant amount of its funding directly from the UK (current members can be seen in Figure 20.i).

Figure 20.i: ESA member states and cooperating states



Source: European Space Agency⁹⁰⁶

There are many notable EU space programmes, including the Galileo global navigation satellite system (which is similar to the US Global Positioning System programme) and the European Geostationary Navigation Overlay

903 Israel is classed as a ‘cooperating state’.

904 Eureka “About Eureka”, accessed 20/04/2015 at: <www.eurekanetwork.org/about>.

905 The EU has promoted space research since the 1970s. Successive Research Framework Programmes have allocated significant money to space research. In 2007, the Commission issued the communication “European Space Policy”. Under terms of Article 189 TFEU, the EU has an explicit competence to support member states in space research (the Treaty makes clear that it is not allowed to harmonise national laws in this area). It does this in conjunction with the European Space Agency (ESA).

906 ESA “Space in images” (February 2013), accessed 20/04/2015 at: <www.esa.int/spaceinimages/Images/2013/02/ESA_Member_States_and_Cooperating_States>.

“EU funds are, in effect, a recycling of British contributions.”

Service (EGNOS). Both programmes have around €6.3bn in funding.⁹⁰⁷ The Copernicus system began in 1998 and uses space remote sensing information to provide reliable data on environmental developments. In addition, the EU has championed astronomical research, including in the southern hemisphere (which remains much less developed than the northern hemisphere).⁹⁰⁸ It should be noted that the EU has been willing to cooperate with non-EU countries on its space-related programmes, signing a deal with Norway in 2010 on Satellite Navigation.⁹⁰⁹

Were the UK willing and able to secure European Economic Area (EEA) membership, it would ensure access to even more funding opportunities. Norway continues to participate in EU scientific committees, and both Norway and Iceland are observer members of European research programmes, including the European Health Technology Assessment.⁹¹⁰ However, even without a special deal, the UK would still be able to cooperate with the key agencies, retain access to EU funding or could simply pay for the research itself – as the amount that the UK would save from not contributing to the EU Budget would be enough for the British Government to continue to pay for all programmes in full (see Section 30). The UK Government has a policy of ring-fencing its £4.6bn science budget, so this would be in keeping with current practice.

20.2.2 EU funding would continue to flow to the UK so long as Britain kept contributing

Under EU rules, any legal entity established in a member state – or an associated country – may respond to calls for proposals and, if a proposal is accepted, receive EU support. This allows universities, research centres, businesses (including SMEs) and even international organisations to make bids for EU research funds. Via the contributions of its member states, the EU provides a large amount of funding for research, especially for cross-border projects. While at first glance it appears that the UK also does very well out of the EU’s research budget (it has received €6.1bn as part of the FP7 funding, second only to Germany), it should be remembered that the UK remains a net contributor to the EU Budget and that these funds are, in effect, a recycling of British contributions (see Section 11).⁹¹¹

There is no doubt that the UK benefits from this funding. As the CBI has noted: *“Programmes like Horizon 2020 and FP7 have harnessed the EU’s ability to facilitate cross-border collaboration, reducing cost and risk in technol-*

907 HM Government “Review of the Balance of Competences: Research and Development” (2014), page 18. It should be noted that serious concerns have been raised about the possibility of ‘mission creep’ with Galileo. See: The Bruges Group “Black is White: Government deception and the Galileo Project”, G. Towler, accessed 20/04/2015 at: <www.brugesgroup.com/GalilioUpdateAnalysis.pdf>.

908 HM Government “Convention establishing a European Organisation for Astronomical Research in the Southern Hemisphere with Financial Protocol” (June 2002), accessed 20/04/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/273185/5767.pdf>.

909 HM Government “Cooperation Agreement on Satellite Navigation between the European Union and its Member States and the Kingdom of Norway” (September 2010), accessed 20/04/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/236011/8449.pdf>.

910 Norwegian Medicines Agency, accessed 20/04/2015 at: <www.legemiddelverket.no/English/about-norwegian-medicines-agency/Sider/default.aspx> and European Commission “Health Technology Assessment Network”, accessed 20/04/2015 at: <http://ec.europa.eu/health/technology_assessment/policy/network/index_en.htm>.

911 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Research and Development” (2014), page 10.

“So long as the UK continues to produce world-class researchers, it could expect to still participate in EU programmes.”

*ogy development and driving critical mass, as well as integrating private-sector and university innovation funding in the aerospace sector.”*⁹¹² A large amount of research has been conducted under the EU research programmes, including work on health, food, agriculture and fisheries, biotechnology, information and communication technologies, nanoscience, nanotechnologies, energy, environment, transport, socio-economic sciences, space and security. There have also been Joint Technology Initiatives (JTIs), which fund R&D into industry-ordinated topics.

EU funding for research is allocated on the principle of excellence. So long as the UK continues to produce world-class researchers, it could expect to still participate in EU programmes and receive funding, although it would probably be expected to continue to contribute to the budgets of such programmes too. The UK boasts some of world’s leading research facilities – a fact that would not change were Britain to leave the EU.

Switzerland, for example, cooperates with the EU on research programmes thanks to a bilateral deal. It also receives a large amount of EU funding for its research and contributes to the EU’s programmes (between 2007 and mid-2012, around CHF1.56bn in grant funding flowed into Switzerland).⁹¹³ Switzerland’s cooperation with the EU is managed via the EURESEARCH programme, which was founded in March 2004 and allows for Swiss research institutions to engage with EU programmes, including Horizon.⁹¹⁴ The UK could seek to cooperate with EU research programmes via a similar bilateral agreement.

20.2.3 European patents would continue to protect British technology

While there is a UK patent office (which would remain regardless of Britain’s relationship with the EU), European products are regulated by the European Patent Office, which is not an EU institution and whose membership is not limited to members of the EU (see Figure 20.ii). The UK’s membership of the European Patent Office stems from it being a signatory to the European Patent Convention, a fact that would not change were Britain to leave the EU.⁹¹⁵

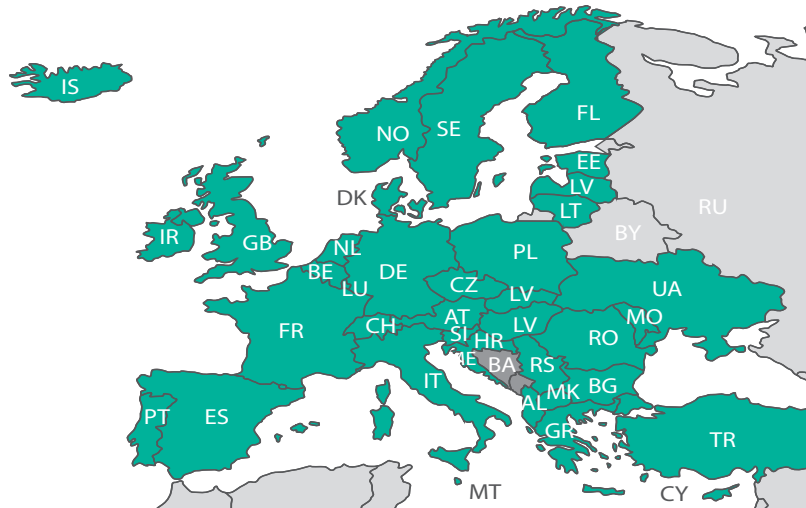
912 CBI “Our Global Future: The business vision for a reformed EU” (November 2013), accessed 20/04/2015 at: <www.cbi.org.uk/media/2451423/our_global_future.pdf>.

913 Swiss Government “EU research framework programmes”, accessed 20/04/2015 at: <www.news.admin.ch/NSBSubscriber/message/attachments/33444.pdf>. Funding in this and other areas has been suspended over the current dispute surrounding free movement of peoples.

914 Euresearch Association, accessed 20/04/2015 at: <www.euresearch.ch/en/about-euresearch/euresearch-association>.

915 Proposals for a unified patent court still need to be developed and enshrined in a Treaty.

Figure 20.ii: Member states of the European Patent Office



Source: European Patent Office⁹¹⁶

Within its Administrative Council, EEA member states and Switzerland have representatives representing their countries and their interests.⁹¹⁷ The UK could, if it wishes, remain a member of the European Patent Office outside the EU – this would ensure that, when a UK company produces a product with a single application, it could guarantee that its patent is respected across the whole of Europe even though Britain would be outside the EU.

In addition, the UK would remain a member of the World Intellectual Property Organization (WIPO) and a signatory to the Patent Cooperation Treaty (PCT). This would continue to allow Britain to seek protection for an invention in 148 countries across the world.

Figure 20.iii: Member states of the PCT



Source: World Intellectual Property Organization⁹¹⁸

916 European Patent Office “Member states of the European Patent Organisation”, accessed 20/04/2015 at: <www.epo.org/about-us/organisation/member-states.html>.

917 European Patent Office “Representatives”, accessed 20/04/2015 at: <www.epo.org/about-us/organisation/member-states.html>; and <www.epo.org/about-us/organisation/administrative-council/representatives.html>.

918 World Intellectual Property Organization “The PCT now has 148 contracting states”, accessed 21/04/2015 at: <www.wipo.int/pct/en/pct_contracting_states.html>.

“CE marking has generated concern, due to the lack of ability of home regulators to investigate possible issues.”

UK companies could also still apply for ‘CE’ marking (this is open to countries from outside the EU),⁹¹⁹ which would mean that products were deemed safe for use across the whole EU.⁹²⁰

20.2.4 The UK could keep EU consumer protections if it wished

While EU regulations have caused problems for many businesses (see Section 29), there is a strong argument that EU rules have also created benefits for consumers, protecting their privacy and raising awareness of the risks of new technology. The EU has also helped to ensure that services and technology can spread across Europe, promoting improved communications via a range of initiatives such as the multiannual radio spectrum policy programme, which sets out policy direction and objectives for the strategic planning and harmonisation of the radio spectrum. It is currently looking into achieving high speed broadband via satellite.

The TV Without Frontiers Directive (Directive 89/552/EEC), meanwhile, has given EU consumers a relatively comprehensive system of users’ rights and protections, while ensuring the free movement of broadcasting services within the internal market. With regard to telecommunications, the EU has offered a number of benefits (though similar services were often offered by the UK beforehand), such as the 112 single European emergency number and the missing children helpline (both of which were introduced by Directive 2009/136/EC). Likewise, the right to change fixed-line or mobile operator within one working day while still retaining the original phone number was introduced by the EU.

Perhaps the most notable advantage that the EU has offered people has come in the form of its roaming regulations, which have cut roaming charges across the EU and the EEA. Since 2007, these regulations have steadily lowered the maximum roaming charges allowed. While a proposed regulation aims to abolish end-user roaming charges completely, this has not been approved yet. (However, since calls are much cheaper in some parts of the EU compared to others, any harmonisation would make calls cheaper for some at the expense of others, and this may be particularly felt in poorer member states.)

Future proposals could also benefit consumers. This includes plans to complete the Digital Single Market which, if accomplished, could create potential efficiency gains of €50bn per year across the EU (the EU considers its ‘Digital Agenda’ to be a key part of its Europe 2020 strategy, and seeks to “exploit the potential of Information and Communication Technologies (ICTs) in order to foster innovation, economic growth and progress”.⁹²¹) Current proposals include making payment services easier to use and more trustworthy, and making electronic invoicing standard in public procurement procedures – though the EU has been very slow in introducing these reforms.

The EU has also introduced a number of policies and directives to protect citizens’ privacy, including the Directive on Privacy and Electronic Communications (Directive 2009/136/EC) and the Data Protection Directive (Directive 95/46/EC). The first law, known as the ‘cookies directive’, means that website operators must obtain the permission of each individual user before

919 US Government “CE Marking”, accessed 21/04/2015 at: <www.export.gov/cemark/eg_main_017267.asp>.

920 It should be noted that CE marking has generated concern, due to the lack of ability of home regulators to investigate possible issues. This has led to unfortunate incidents such as the PIP breast implant scandal, in which the UK regulators lacked the power to investigate possible issues before the failure had been reported.

921 “Why the EU needs a Digital Single Market”, speech by Vice-President Ansip in the European Parliament plenary session (26 November 2014).

“Serious public interest stories have been ‘Googlewiped’.”

harvesting their data, known as ‘keeping cookies’ (this is why most websites now have a banner or pop-up on their landing pages informing users that their data may be collected and requiring them to agree in order to keep using the website). While the original deadline for implementing this law was 2011 (by which time only Denmark and Estonia had implemented it to the Commission’s satisfaction), the UK implemented it in May 2012. It mainly affects web-based businesses such as analytics, advertising and recommendations sites, and required many websites to be modified or rewritten at considerable cost.

Furthermore, a European Court of Justice (ECJ) ruling in 2014 directed search engines to respect a person’s ‘right to be forgotten’ if links they request to be removed are not in the public interest. Google is by far Europe’s most-used search engine, but its reaction to the ECJ ruling provoked widespread concern. The ECJ ruling did not give clear guidelines on how Google was supposed to process link takedown requests (the web-pages themselves stay up, only the search results are removed.) Just weeks after the ruling, serious public interest stories were ‘Googlewiped’, including an article on the BBC News website by Robert Peston on alleged wrongdoing by a past chief executive of Merrill Lynch.⁹²²

It is difficult to criticise Google itself for its reaction to the ruling, since “Google [did] not previously have a continental system for collective amnesia”, and suddenly had to process 70,000 takedown requests. It is also extremely worrying to technology and rights groups such as Think Privacy, Big Brother Watch, and the Open Rights Group that such an important ruling on the continent’s internet norms can be made by the ECJ, and with such a lack of precision.⁹²³

The EU has also promoted awareness of the risks of technology, such as via the ‘Safer Internet Day’ and the ‘Safer Internet Forum’. The main objectives of the programmes are to promote the safer use of the internet and other communication technologies (particularly by children and young people), to educate users (in particular children, parents, carers, teachers and educators), and to fight against illegal content and harmful conduct online.

The UK could look at a wide-scale repeal, or at least a reconsideration, of all these laws were it to leave the EU. However, any sort of repeal would have to consider international rules that the EU may have been addressing when it introduced the offending policy (for example, the cookie directive can be traced to a 1980 list of personal data recommendations from the OECD).

But a central feature of all this legislation is that it is currently on the statute books in the UK, and consumer protection gains can be kept after Britain leaves the EU.

20.2.5 Cooperation on technology issues could continue and EU standards could be retained

The EU has made it clear that it is willing to work with third countries on technology issues. For example, after leaving the EU, the UK could continue to work with the EU on dealing with cyber security: the European Commission has said that, as part of its internet strategy, it would be “*engaging the global community to develop a set of principles, reflecting European core values, for internet resilience and stability, in the framework of our strategic dialogue and cooperation with third countries and international organisations.*”⁹²⁴

922 BBC News “Why has Google cast me into oblivion?”, R. Peston (July 2014), accessed 21/04/2015 at: <<http://m.bbc.co.uk/news/business-28130581>>.

923 In addition, the EU has recently taken action against Google for alleged anti-competitive behavior. Civitas “Utterly forgettable – the ECJ’s Google ruling”, J. Lindsell (July 2014), accessed at: <<http://civitas.org.uk/newblog/2014/07/utterly-forgettable-the-ecjs-google-ruling/>>.

924 European Commission (COM(2009) 149 final), (2009).

“Upon leaving the EU, the UK would be better-placed to make its research and technology sectors much more dynamic and innovative.”

The UK could also retain EU laws that it sees as beneficial after leaving the Union (directives would remain on the statute books, regulations would have to be retained via another parliamentary device). The EU has set a number of rules and regulations that govern how people use various forms of technology. These range from EU standards in relation to internet governance (which argue that governments have a role to play and that “*the core architecture should be respected*”, through to EU rules that protect minors online and classify videogames via the ‘PEGI’ rating system. There is no reason why the UK could not, unilaterally, retain these standards after it left the EU: PEGI is the legal system for video game classification in Israel and Iceland, for example. Likewise, the UK could continue to aim to introduce very fast broadband by 2020 outside the EU (the UK is already on course to do this: between 2012 and 2014, the number of UK connections that were superfast rose from six per cent to 26 per cent).⁹²⁵ The UK could also retain EU measures that seek to address spam, spyware and malicious software, and EU initiatives for protecting computer security.

The EU deserves credit for promoting a high level of ethical awareness in its research. All research activities supported by FP7 were required to respect fundamental ethical principles.⁹²⁶ The Directive on the Protection of Animals used for Scientific Purposes (Directive 2010/63/EU) has helped to promote high standards across the Europe. Both the Association of Medical Research Charities (AMRC) and the Royal Society for the Prevention of Cruelty to Animals (RSPCA) have praised this Directive. The UK could easily retain these policies. However, it is important not to exaggerate the EU’s role: these bodies have also pointed out that the UK is widely recognised as a world leader in animal protection. In fact, many of the ethical practices are ‘exported’ from the UK to the rest of the EU (see Section 13).

20.3 New technology and research opportunities would become available

Leaving the EU would result in a substantial transfer of powers to the UK, offering a plethora of new policy opportunities. The EU’s control over technology and research has increased over the years, as EU ‘mission creep’ has given the Commission ever more authority. This makes leaving the EU a very attractive prospect, as it would not only return key powers but would also give the UK the security of knowing that further powers would not be lost. The chance to reduce the bureaucracy inherent to the EU’s technological programmes, and the chance to introduce better consultations and improve links with non-EU countries, suggest that, upon leaving the EU, the UK would be better-placed to make its research and technology sectors much more dynamic and innovative.

20.3.1 EU ‘mission creep’ on technology and research issues could be stopped at a stroke

The EU has had powers over research and the development of new technologies since the European Coal and Steel Community was established. Today, the

925 This is an EU aim that was set out in Commission Recommendation 2010/572/EU of 20 September 2010. See also “Communication from the Commission of 20 March 2006: Bridging the Broadband Gap” (COM(2006) 129 final). UK figures taken from HM Government “Superfast broadband rollout now one of the fastest in the world” (November 2014), accessed 21/04/2014 at: <www.gov.uk/government/news/superfast-broadband-rollout-now-one-of-the-fastest-in-the-world>.

926 These principles were set out in the Charter of Fundamental Rights of the European Union.

“EU proposals to create a Digital Single Market have drawn scorn from British creative industries.”

EU is considering a vast regulatory expansion that could affect everything from sales taxes and e-privacy to internet searches and big data.⁹²⁷

The founding Treaty of that original community in 1951 stated that the Community was tasked to “*encourage technical and economic research*”,⁹²⁸ The Treaty of Rome expanded this competence, while the Treaty establishing the Euratom Community set the basis for joint research on nuclear issues.

The 1987 Single European Act gave the EU significant new powers over research and development, with the remit “*to strengthen the scientific and technological basis of European industry to encourage it to become more competitive at international level.*”⁹²⁹ This was further developed as a result of the Maastricht Treaty and once again by the Lisbon Treaty in 2009, which, among other things, gave the EU specific competence over space research. Today, the EU derives its powers to legislate on research and technological development from Articles 179 to 189 of the Treaty on the Functioning of the European Union (TFEU). There is, however, some confusion about exactly where the EU’s remit begins and ends, with the British Government pointing out that “*in the area of research, technological development and space, the transition from TEU to TFEU [has] added, rather than removed, confusion around competence*”.⁹³⁰ While the EU has stated that it wants to see the “*completion*” of the European Research Area, it is far from clear what “*completion*” actually looks like.

The EU has wielded its increasing power over research through a number of programmes. In the 1970s, it introduced multi-annual research programmes which later evolved into the ‘Framework Programmes’. The last programme (FP7) was conducted between 2007 and 2013 (though some FP7 projects remain ongoing as of May 2015). In 2000, the EU introduced the Communication “Towards a European Research Area”. In 2009, the EU institutions, the governments of EU member states and stakeholders signed the Lund Declaration to “*focus on the grand challenges of our time, moving beyond current rigid thematic approaches*”.⁹³¹ The EU is now looking at fresh ways of expanding its competence, including establishing a Single Market for online services like Netflix and enacting new laws on data tracking. EU proposals to create a Digital Single Market have drawn scorn from British creative industries, which claim that it would put an end to the way they sell films, television and music.⁹³²

‘Innovation funding’ is one of the more recent EU endeavours: in February 2011, the European Commission introduced a Green Paper entitled “From Challenges to Opportunities: Towards a Common Strategic Framework for EU Research and Innovation Funding”, which proposed that all EU instruments for research and innovation should work together to improve efficiency of funding at national and EU levels. In November 2011, the Commission proposed ‘Horizon 2020’ as the next financial instrument to “*implement the Innovation Union*” and

927 Politico “Leaked digital single market’s ‘evidence file’ reveals Commission’s ambitions”, Z. Sheftalovich (20 April 2015).

928 Treaty establishing the European Coal and Steel Community, Article 50.

929 Single European Act.

930 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Research and Development” (February 2014), pages 21–22.

931 Lords European Union Committee, accessed 15/04/21 at: <www.publications.parliament.uk/pa/ld201213/ldselect/ldcom/162/16204.htm>.

932 Daily Telegraph “TV and music firms rage at EU digital plan”, C. Williams (28 March 2015).

“Others have criticised EU ‘raids’ on research budgets.”

to secure “Europe’s global competitiveness”.⁹³³ Horizon 2020 is focused on three main pillars:

- **Excellent Science:** This will “support the EU’s position as a world leader in science with a dedicated budget of €24.4bn, including an increase in funding of 77 per cent for the ERC”;
- **Industrial Leadership:** This will “help secure industrial leadership in innovation with a budget of €17.01bn. This includes an investment of €13.5bn in key technologies, as well as greater access to capital and support for SMEs”;
- **Societal Challenges:** The challenges that this funding is aimed to address include: health; demographic change and wellbeing; food security; sustainable agriculture; marine and maritime research and the bioeconomy; clean and efficient energy; smart, green and integrated transport; climate action; resource efficiency and raw materials and “inclusive, innovative and secure societies”.⁹³⁴

These programmes were praised by some contributors to the Balance of Competences Review as being fairly successful, both helping to develop new technologies and creating employment.⁹³⁵ However, others have criticised EU ‘raids’ on research budgets.⁹³⁶ On 7–8 February 2013, the European Council agreed an overall budget of €908.4bn for the MFF (reducing the Commission’s suggested budget for Horizon 2020 by 12 per cent, from €80bn to €70.96bn). More details on how Horizon 2020 operates are provided in Figure 20.iv.

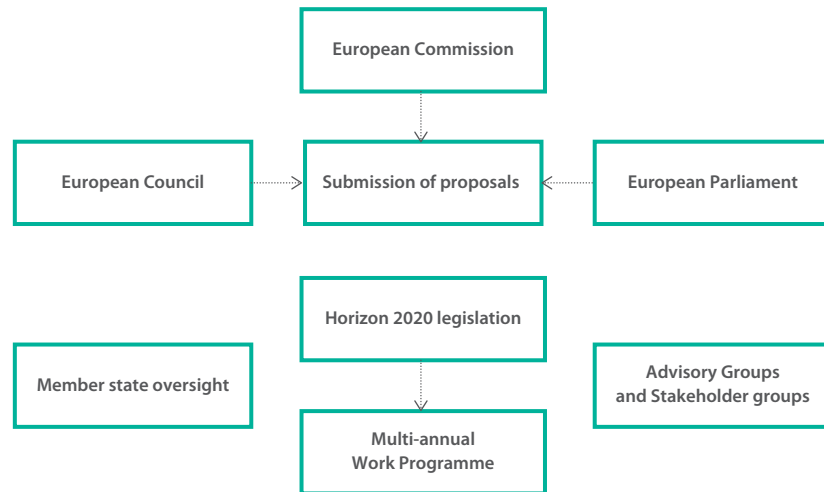
933 European Parliament “Fact sheets on the European Union”, accessed 21/04/2015 at: <www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_5.9.6.html>.

934 European Parliament “Fact sheets on the European Union”, accessed 21/04/2015 at: <www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_5.9.6.html>.

935 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Research and Development” (May 2014), page 35.

936 BIJ “Juncker’s €315bn investment plan for EU in trouble as Nobel scientists criticise raid on space and research budget”, N. Mathiason (16 February 2015).

Figure 20.iv: Development of Horizon 2020



Source: House of Lords European Union Committee

The EU has also introduced an increasing number of policies that seek to regulate the use of technology. Today, extensive EU legislation exists that governs how technology may be used in a number of areas. An idea of the EU's growing competence can be gained by highlighting the different technological areas that the EU currently legislates on. These include (but are not limited to):

- Audiovisual and electronic communications;⁹³⁷
- Biotechnology;⁹³⁸
- Bioenergy;⁹³⁹
- Biofuels;⁹⁴⁰
- Cleaner coal;⁹⁴¹
- Geothermal;⁹⁴²
- Grid;⁹⁴³
- Hydrogen;⁹⁴⁴
- Internet;⁹⁴⁵

937 European Commission "Audiovisual and Media Policies", accessed 21/04/2015 at: <http://ec.europa.eu/archives/information_society/avpolicy/index_en.htm>; European Commission "Telecoms rules", accessed 21/04/2015 at <<http://ec.europa.eu/digital-agenda/en/telecoms-rules>>.

938 European Commission "Users guide to European Regulation in Biotechnology", accessed 21/04/2015 at: <http://ec.europa.eu/enterprise/sectors/biotechnology/files/docs/user_guide_biotech_en.pdf>.

939 European Commission "Renewable energy", accessed 21/04/2015 at: <http://europa.eu/legislation_summaries/energy/renewable_energy/index_en.htm>.

940 European Commission "Renewable energy", accessed 21/04/2015 at: <http://europa.eu/legislation_summaries/energy/renewable_energy/index_en.htm>.

941 European Commission "Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry", accessed 21/04/2015 at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32002R1407>>.

942 European Commission "Renewable energy", accessed 21/04/2015 at: <http://europa.eu/legislation_summaries/energy/renewable_energy/index_en.htm>.

943 European Commission "Smart grids and meters", accessed 21/04/2015 at: <<http://ec.europa.eu/energy/en/topics/markets-and-consumers/smart-grids-and-meters>>.

944 European Commission "Hydrogen", accessed 21/04/2015 at: <http://ec.europa.eu/enterprise/sectors/automotive/safety/hydrogen/index_en.htm>.

945 European Commission "Telecoms rules", accessed 21/04/2015 at: <<http://ec.europa.eu/digital-agenda/en/telecoms-rules>>.

“Critics have said that EU action would limit competition and create a fragmented market for internet services across Europe.”

- Nanotechnology;⁹⁴⁶
- Photovoltaics⁹⁴⁷
- Solar;⁹⁴⁸
- Wind;⁹⁴⁹
- Human embryos and cloning.⁹⁵⁰

This list reveals a set of political priorities within the Commission.

One of the more obvious areas where the EU's remit has increased and looks set to increase further is in telecommunications. Today, the EU has such a significant role that Ofcom (the UK regulator) has a direct relationship with EU bodies. The EU has attempted to regulate telecoms for a number of years, with the Terminal Equipment Directive (Directive 88/301/EEC) enforcing the liberalisation of telecoms, including the satellite and mobile markets. The ECJ upheld the Directive in the face of opposition, and the Maastricht Treaty in 1992 enshrined the right of the EU to legislate in this area. Fifteen years later, the controversial European Commissioner Viviane Reding proposed introducing the idea of a single EU-wide telecoms regulator.

The 'Telecoms Package' introduced a number of changes to the technology sector, including the 'Framework Directive' (Directive 2002/21/EC), which established an EU harmonised framework for the regulation of electronic communications networks and services. In practical terms, this has resulted in the creation of a Body of European Regulators of Electronic Communications (BEREC) and the introduction of proposals that could allow network operators to restrict access to certain internet services and applications. Critics have said that this would limit competition and create a fragmented market for internet services across Europe, and threaten the principle of 'net neutrality'.⁹⁵¹ One of the most notable changes has been the introduction of the '.eu' top-level internet domain (though it's hard to see what practical benefit this brings to European citizens).⁹⁵²

946 European Commission "Current legislative framework for nanomaterials & introduction to the impact assessment on transparency measures", accessed 21/04/2015 at: <<http://ec.europa.eu/DocsRoom/documents/5716/attachments/1/translations/en/renditions/native>>.

947 European Commission "Council implementing Regulation (EU) No 1238/2013 of 2 December 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China", accessed 21/04/2015 at: <http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_151944.def.en.L325-2013.pdf>.

948 European Commission "Renewable energy", accessed 21/04/2015 at: <http://europa.eu/legislation_summaries/energy/renewable_energy/index_en.htm>.

949 European Commission "Renewable energy", accessed 21/04/2015 at: <http://europa.eu/legislation_summaries/energy/renewable_energy/index_en.htm>.

950 BBC News "Europe rejects human cloning ban" (29 November 2001), accessed 21/04/2015 at: <<http://news.bbc.co.uk/1/hi/sci/tech/1682591.stm>>.

951 European Commission "Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office", accessed 21/04/2015 at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R1211&from=EN>>. In 2014, the European Parliament voted in favour of a package of reforms that had been put together by former Digital Agenda Commissioner Neelie Kroes which enshrined net neutrality in law, but this has since been contested by the European Commission.

952 European Commission "Regulation (EC) no 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain", accessed 21/04/2015 at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002R0733&from=EN>>.

“There is some ambiguity about what exactly the Commission would like to do in the future.”

In addition, the EU has also made it clear that it would like to see additional changes made to the audio-visual industry. While the EU enshrined the free movement of European television programmes within the internal market with the Television Without Frontiers Directive (Directive 89/552/EC), it has built on this with subsequent directives (notably Directive 2007/65/EC, which updated the original directive to accommodate technological developments). Directive 2010/13/EU has also built on the EU's remit, setting down rules of 'fair competition' regarding audio-visual media services. In 2012, the European Union established a Radio Spectrum Policy Programme (RSPP) to define key policy objectives and set up general principles for managing radio spectrum in the internal market.

The Commission has been clear that it would like to promote innovation as part of its '2020 strategy', and the EU's proposed 'Innovation Union' seeks to turn the EU into a leading scientific performer. As the Centre for European Reform has pointed out, however, it is often far from clear what 'innovation' actually means in terms of policy.⁹⁵³ Foreshadowing the 'Internet of Things' (IoT), the European Commission issued a Communication on 18 June 2009 which called for "an action plan for Europe" arguing that "standardisation will play an important role in the uptake of IoT".⁹⁵⁴ It has also expressed an interest in legislating on online gambling.⁹⁵⁵

Perhaps the most obvious example of EU ambition today is in regard to developing the Digital Single Market. This can be seen in a letter sent from the President of the European Commission Jean-Claude Juncker to Commission Vice-President Andrus Ansip:

During our mandate, I would like you to focus on the following, in your role as Vice-President... Steering and coordinating, within the first six months of the mandate, ambitious legislative steps towards a connected Digital Single Market, notably by adding more ambition to the ongoing reform of our telecoms rules, modernising copyright rules in the light of the ongoing digital revolution – taking full account of Europe's rich cultural diversity – and modernising and simplifying consumer rules for online and digital purchases. This should be based on a clear assessment of the main obstacles still to be removed and the formulation of a clear long-term strategy for the Digital Single Market.⁹⁵⁶

This has already resulted in damaging proposals being put forward, such as a suggestion that independent films and music producers must apply for a pan-European licence for their material even if they are only selling domestically.

While there is some ambiguity about what exactly the Commission would like to do in the future, two things are clear: first, the EU's remit over research and technology has increased; and second, this has been matched in the last few years by a greater willingness by the European Commission to use its powers. Were the UK to leave the EU, it could protect itself from this 'mission creep'. While the UK may still choose to introduce new EU directives or regulations after leaving, this would be a decision for the UK Parliament. It would also have the power to repeal or amend existing laws (while taking into consideration international obligations).

953 Centre for European Reform "Innovation: How Europe can take off", S. Tilford and P. Whyte, accessed 21/04/2015 at: <www.cer.org.uk/sites/default/files/publications/attachments/pdf/2011/rp_998-139.pdf>.

954 European Commission COM(2009) 0278 final (2009).

955 European Commission COM(2011) 128 (2011).

956 European Commission "Vice President for the Single Market", 1 November 2014, accessed 21/04/2015 at: <http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/ansip_en.pdf>.

“One could argue that the very idea of taxpayer-funded bodies ‘picking winners’ is ineffective.”

20.3.2 Bureaucracy that holds back innovation could be reduced

Despite noble intentions, many EU laws have inadvertently created innovation-hindering problems for businesses and consumers. While one could argue that the very idea of taxpayer-funded bodies ‘picking winners’ is ineffective compared to market dynamics, even if the EU’s rationale for intervening in the market is accepted, there is little doubt that the means by which it does so lack coherence and effectiveness, often adding to administrative burdens.

There are several reasons EU laws can create problems, ranging from a failure by the Commission to properly engage with the science, through to a comprehensive failure by policy-makers to fully think through the consequences of EU action. Complaints about EU bureaucracy on research matters are some of the main grievances that businesses have with the EU and, unsurprisingly, this concern was expressed repeatedly in the Government’s Balance of Competences Review. Even large businesses have made it clear that they are also concerned about the complexity involved in engaging with the EU.

There has been no detailed research (that the British Government can find) on whether EU funds allocated to research could get a better return if invested in different ways, though academic commentators, including the Vice Chancellor of Buckingham University, have criticised the way the EU funds research. While some have said that EU membership makes applications easier, others have complained about the level of bureaucracy and the slowness of the EU processes involved.⁹⁵⁷ It is telling that the British Government has said that *“the UK considers that the time has come to revisit the role and shape of future EU research and innovation instruments within a streamlined portfolio of instruments.”*⁹⁵⁸

Another related concern for business is the willingness of the EU to operate before a clear scientific consensus has emerged, legislating in technological areas where there has been little understanding. One example is the EU’s campaign against neonicotinoid pesticides, despite the National Farmers Union pointing out that the scientific research does not back the EU’s claims.⁹⁵⁹ A similar concern is the EU’s determination to invest in particular types of technology (notably fibre optics) rather than being outcome-focused and willing to consider alternatives. The decision in November 2014 to sack the European Commission’s Chief Scientific Adviser also raised concerns that the EU was moving away from evidence-based policy.⁹⁶⁰

Beyond an unwillingness to always engage with the science, the EU can also be accused of introducing ill thought out laws that have significant unintended consequences. There are, for example, concerns about EU policies on data protection and the limits that the EU places on data sharing. In the Balance of Competences Review, stakeholders warned that amendments on data sharing proposed by the European Parliament could potentially have serious implica-

957 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Research and Development” (2014), pages 28 and 40.

958 Department for Business, Innovation and Skills “Funding for EU research and innovation from 2014: A UK perspective”, (2011), accessed 20/04/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/32484/11-901-funding-eu-research-innovation-from-2014.pdf>.

959 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Research and Development” (2014), page 42.

960 Guardian “Juncker axes Europe’s chief scientific adviser”, J. Wilsdon (13 November 2014).

“EU rules for vacuum cleaners are another good example of how EU rules are placing a burden on technology firms.”

tions for the use of patient data for health research purposes.⁹⁶¹ The University of Surrey agreed, saying that the current system could require medical practitioners and researchers to obtain patient consent even for anonymous data. Concerns have also been raised that, following the European Court decision on *Brüstle v Greenpeace* (2012), the future of UK stem cell research may be compromised because of the potential loss of private sector investment. The ECJ gave an opinion, not binding on the European Patent Office but likely to be influential, which said that a process which included the removal of a stem cell from an embryo, even at the very early blastocyst stage, constituted interference with a ‘human embryo’ and therefore could not be patented.⁹⁶² State aid rules have also been highlighted as being a deterrent to innovation.

In 2014, the EU passed laws limiting the kinds of ‘e-cigarette’ that could be sold. Some doctors are concerned that e-cigarettes, which give the user a ‘nicotine hit’ but do not contain the numerous other toxins found in traditional tobacco products (carbon monoxide, tar, lead, arsenic, formaldehyde), may themselves pose health risks for users. There is also an argument that e-cigarettes glamorise or normalise smoking behaviour and may counteract anti-smoking public policy. There is not, however, strong evidence for either of these phenomena yet, whereas evidence that the products are an effective nicotine replacement therapy is established. The EU was dissuaded from the strongest prohibitions on e-cigarettes, classifying them as a medical product, but has passed a ban on some refillable products and devices that deliver large nicotine hits, as well as proscribing all advertising. There is concern that this is legislating to control a technology without adequate scientific evidence, and that it might dissuade heavy smokers from quitting or force current ‘vapers’ back to real tobacco.⁹⁶³ This suggests a lack of mature policy-making rigour.

EU rules for vacuum cleaners are another good example of how EU rules are placing a burden on technology firms. One of Britain’s most celebrated entrepreneurs, Sir James Dyson, went so far as to recommend leaving the European Union in 2014 after a new EU law banned vacuum cleaners rated over 1,600 watts. His criticism was not that this ruling would rule out his own Dyson products – all of which are under 1,400 watts – but that the EU was legislating in the interests of German manufacturers and ignoring sound scientific advice. He said that he wanted much more stringent wattage testing to include the loss of suction some machines experience with full dust bags, and a lower cap – to encourage energy efficiency, as the EU package was nominally designed to do.⁹⁶⁴

Outside the EU, the UK would be free to introduce its own funding measures and reconsider such harmful rules. This would put it in a stronger position to support technology firms and principles such as ‘net neutrality’. There would be a valuable opportunity to look at existing laws, and to either seek to remove ‘gold-plating’ or even remove harmful EU rules from the statute books entirely,

961 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Health”, (2013) page 58.

962 Oxbridge Biotech Roundtable “*Brüstle v Greenpeace* – The patentability of stem cells in Europe”, accessed 21/04/2015 at: <www.oxbridgebiotech.com/review/business-development/ip-blog-brustle-v-greenpeace-the-patentability-of-stem-cells-in-europe/>.

963 BBC News “Users warn EU e-cigarette controls could cost lives”, R. Moss (February 2014), accessed 21/04/2015 at <www.bbc.co.uk/news/uk-england-26370871>; and New Scientist “Europe’s law on e-cigarettes sets global benchmark”, A. Coghlan (27 February 2014).

964 The Independent “James Dyson calls vacuum cleaner regulation ‘A good reason to quit Europe’”, L. Eletheriou-Smith (September 2014), accessed 21/04/2015 at: <www.independent.co.uk/news/world/europe/james-dyson-calls-vacuum-cleaner-regulation-a-good-reason-to-quit-europe-9715064.html>.

although any such process would have to consider the UK's international obligations. There would also be opportunities for reducing overspend (the EU has failed to rein it in, especially in regard to nuclear programmes).⁹⁶⁵

The UK is very fortunate in that it is already a very innovative nation. This can be seen in Table 20.v, which shows that the UK came second in the 2014 Global Innovation Index, the best measure of how innovative nations across the world are.

Table 20.v: 2014 Global Innovation Index Rankings

Country	Rank	Score
Switzerland	1	64.78
United Kingdom	2	62.37
Sweden	3	62.29
Finland	4	60.67
Netherlands	5	60.59
United States of America	6	60.09
Singapore	7	59.24
Denmark	8	57.52
Luxembourg	9	56.86
Hong Kong (China)	10	56.82

Source: Global Innovation Index⁹⁶⁶

A notable example of Britain's innovative culture is the fact that it recently became the first country in the world to legalise three parent babies.

20.3.3 Consultations for technology firms could be improved

Industry stakeholders told the Balance of Competences Review that the EU's consultation processes were not effective enough. These witnesses said that the language used in consultation documents was chosen to achieve certain responses, and that the Commission's websites did not contain sufficient information about programmes and projects. Leaving the EU would allow the UK to introduce a far better method for consulting on new technologies, and gauging how and when new products should be allowed to market. A better criteria for funding was spelled out by the Department for Business, Innovation and Skills in 2011:

The UK would like to see future funding concentrated on funding actual research programmes of varying scales. These should support evidence-based policy and demonstrate: an increased emphasis on dissemination and knowledge transfer (including across projects); a move towards open information and access to results as appropriate; a greater focus on innovation and the application of research outcomes; and links with business, education and wider society considered from the outset. Where appropriate, funded projects

965 An example of a European Commission analysis of overspend can be found in European Commission (COM(2011) 0432 final).

966 Global Innovation Index, accessed 21/04/2015 at: <www.globalinnovationindex.org/content.aspx?page=gii-full-report-2014>.

“The UK also has bilateral deals with other countries to promote research.”

should have to indicate from the outset how they could deliver... added-value and this could be factored into the assessment process.⁹⁶⁷

Outside the EU, the UK would also have a much larger say over the ethical considerations raised by research and technological developments. Today, the European Group on Ethics in Science and New Technologies (EGE) provides ethical advice to the European Commission, but it is opaque and unscrutinised. By contrast, the UK already has a high profile position in the form of the Government Chief Scientific Adviser.

20.3.4 International cooperation and trade could be improved

Leaving the EU would not bring about a decline in the UK's ability to strike agreements with foreign governments. The UK already works with many other countries via a variety of different mechanisms aside from the EU. These include bilateral deals signed by the Government, and individual researchers or businesses making their own connections with international counterparts.

The UK has a significant infrastructure for promoting technology and cooperation across borders. As noted by the British Government:

International collaboration in science and innovation is vital for meeting policy challenges on a global scale. Challenges such as pandemic disease, climate change and food security require the ability to engage other governments with, and through, science. The UK Science and Innovation Network (SIN) is made up of more than 90 staff, in 46 different locations in 29 countries and territories. SIN officers engage with the local science and innovation community in support of UK policy overseas.⁹⁶⁸

An example of the UK's success can be seen in the way the China SIN team brokered a relationship between the University of Edinburgh and Peking University, enabling them to establish a laboratory for collaboration on stem cell research. Outside the SIN, the UK also has bilateral deals with other countries to promote research – for example, in 2008 the UK signed a Memorandum of Understanding with Canada to conduct cooperation in polar research.⁹⁶⁹

The importance of strengthening links to non-European economies is hard to exaggerate. According to the British Government's report “Innovation and Research Strategy for Growth”, China is set to become the second largest recipient of foreign direct investment in the world, and is already the second largest investor in research and development after the US. Today, the EU faces countries that are outcompeting it in research and technological terms, causing the

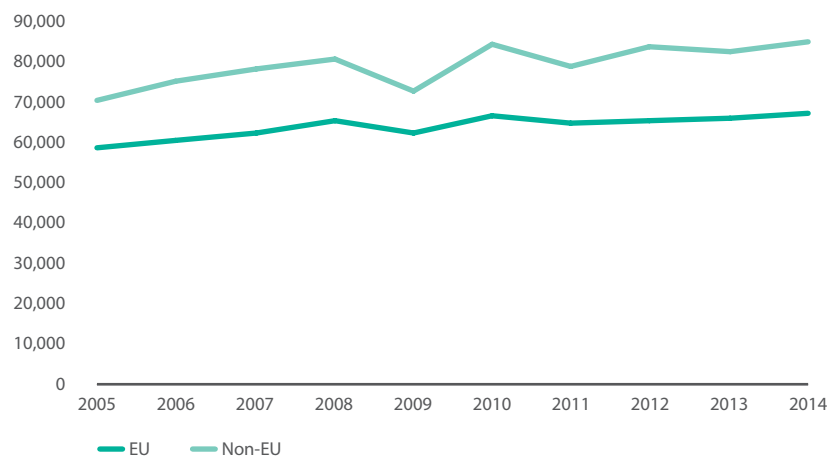
967 Department for Business, Innovation and Skills “Funding for EU research and innovation from 2014: A UK perspective” (May 2011), accessed 21/04/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/32484/11-901-funding-eu-research-innovation-from-2014.pdf>.

968 HM Government “Scotland Analysis: EU and international issues” (2014), page 48, accessed 21/04/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/271794/2901475_HMG_Scotland_EUandInternational_acc2.pdf>.

969 HM Government “Memorandum of understanding between the Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland concerning cooperation in polar research”, accessed 21/04/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/224827/Polar_research_MoU_with_Canada__signed__17_December_2008.pdf>.

Commission to admit that it faces an “*innovation emergency*”.⁹⁷⁰ The EU has been aware of this gap for many years, warning in the 1980s that “*for the first time since the 18th century, the major formative initiatives of an industrial revolution are not originating in Europe. Europe is ‘missing out’ on the third Industrial Revolution*”. A Centre for Policy Studies study in 1984 found that eight out of ten personal computers sold in Europe were imported from the USA, and nine out of ten video recorders were from Japan.⁹⁷¹ Today, the Commission remains concerned that the EU is at risk of losing its position – in particular with the rise of Asian countries, including China and South Korea. It is right to be concerned: more than half the patent applications in Europe in 2014 came from outside the EU (see Figure 20.vi).

Figure 20.vi: European patent applications 2005–2014 per country of residence



Source: European Patent Office⁹⁷²

In addition, the EU has been suffering from brain drain as researchers and innovators move to countries where conditions are more favourable. The European Parliament has admitted that “*although the EU market is the largest in the world, it remains fragmented and is not sufficiently innovation-friendly*.”⁹⁷³ It remains to be seen whether the ‘Innovation Union’ or ‘Programme for the Competitiveness of Enterprises and SMEs’ will improve matters.

Outside EU and EEA competition rules, the UK would be able to favour promising British technology firms more strongly. Civitas research suggests that, in highly complex sectors such as aerospace, new firms need early protection from global market forces or they are taken over or run into the ground

970 European Commission “From Innovation Emergency to Economic Growth” (March 2012), accessed 21/04/2015 at: <http://europa.eu/rapid/press-release_SPEECH-12-226_en.htm?locale=en>.

971 Centre for Policy Studies “Making it work: The future of the European Community” (1984), accessed 21/04/2015 at: <www.cps.org.uk/files/reports/original/111028095621-MakingitWork1984.pdf>.

972 Quartz “More than half the patent applications in Europe last year came from the US, China, and Japan”, M. Murphy (February 2015), accessed 21/04/2015 at: <<http://qz.com/350794/more-than-half-of-european-patent-applications-were-filed-by-countries-outside-europe-in-2014/>>.

973 European Parliament “Fact sheets on the European Union”, accessed 21/04/2015 at: <www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_5.9.7.html>.

before they fulfil their promise.⁹⁷⁴ Having left the EU, Britain might expect to support such young companies in a variety of ways – through more state aid, targeted procurement, VAT or corporation tax variation, integrated technology clusters, and favourable business zones.⁹⁷⁵ This holds the prospect of giving the British Government wider options in developing initiatives such as Tech City in East London.

The UK would have many exciting opportunities outside the EU. The internet has already proven to be a massive driver of trade and prosperity, and its continuing development could benefit the UK far more than others.⁹⁷⁶ English-speaking countries are uniquely likely to gain: almost 85 per cent of home pages and an estimated 55 per cent of all internet content is in English, meaning it has never been easier for British SMEs to reach the world.⁹⁷⁷ Some commentators have even argued that, if the UK leaves the EU, internet connectivity could allow a rapid increase in exports to those Commonwealth countries which are well-connected to the internet.⁹⁷⁸

Conclusion

The EU has an extensive and growing role in technology matters, introducing regulation that is holding back firms and causing research institutions frustration. Leaving the EU would not represent a step back in terms of cooperation: there are many avenues available for continuing funding programmes and collaboration with the EU outside formal membership. Leaving also offers the prospect of substantially reducing the amount of bureaucracy and red tape, which is holding many firms back and preventing the development of new technology. Outside the EU, the UK could be more engaged with research facilities globally and develop more efficient tools for promoting technological development.

In short, the UK would be better-placed to develop its position as a world leader in research and innovation, still well-connected with European facilities and capital, and fully capable of adapting to changing circumstances in the world today.

974 Civitas “Picking Winners”, K. Pourvand (October 2013), accessed 21/04/2014 at: <www.civitas.org.uk/PDF/PickingWinners.pdf>.

975 Civitas “EU State Aid and Procurement”, G. Gaskarth (March 2014), accessed 21/04/2015 at: <www.civitas.org.uk/economy/index.php>.

976 The Economist “Digital Shopkeepers of the World”, accessed 21/04/2015 at: <www.economist.com/blogs/graphicdetail/2012/04/daily-chart-2>.

977 W3techs “Usage of content languages for websites”, accessed 21/04/2015 at: <http://w3techs.com/technologies/overview/content_language/all>.

978 In his work, Tim Hewish has argued that, in South-East Asia, despite the Commonwealth population only making up 5.6 per cent of the region’s total, they are 13.5 per cent of its internet users see: Institute of Economic Affairs “Old Friends, New Deals: The route to the UK’s global prosperity through International Networks”, T.Hewish, 2014, pages 45–49.

21 Justice and home affairs

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“England enjoys a different legal system to the continent, based on Common Law rather than Roman Law.”

It is further agreed that His Majesty and the United States on mutual Requisitions by them respectively or by their respective Ministers or Officers authorised to make the same will deliver up to Justice, all Persons who being charged with Murder or Forgery committed within the Jurisdiction of either, shall seek an Asylum within any of the Countries of the other, Provided that this shall only be done on such Evidence of Criminality as according to the Laws of the Place, where the Fugitive or Person so charged shall be found, would justify his apprehension and commitment for Tryal, if the offence had there been committed. The Expence of such apprehension and Delivery shall be borne and defrayed by those who make the Requisition and receive the Fugitive.”

Article 27 of the Jay Treaty between the United Kingdom and United States of America, 1794

The UK's participation in an EU justice system is problematic for two central reasons. The first is one of direction, since harmonisation is inherent within a system that has a supreme court (the European Court of Justice (ECJ)) governing case law. The collapse of the inter-governmental Justice and Home Affairs (JHA) structure (the old “Pillar 3”) has brought the area directly within the EU remit and largely eroded the protective national veto.

The second issue is that England enjoys a different legal system to the continent, based on Common Law rather than Roman Law (also known as the Napoleonic Code, after its major reformer). Common Law emphasises precedent set by previous legal cases; the word of the law over the interpreted intent of the legislators; a distinction between prosecutor, judge/umpire, and investigating power; wider use of the jury; an adversarial court room between equal parties; witnesses called by the parties; habeas corpus and limited detention rights; reasonable doubt; the right to silence; the right to be present in court, rather than tried in absentia; a rejection of extraterritoriality; the principle of inherent freedom to act unless specifically banned; and the presumption of innocence.

Scots Law is somewhat more aligned to the continental system, and as a result is only partially under threat. But countries which do employ the Common Law structure, including the Republic of Ireland, non-Scots UK, Cyprus and Malta, are now running two increasingly competing and contradictory systems in tandem.⁹⁷⁹ Much of this is down to the contradiction between having the inherent right to do something unless forbidden (Common Law) against only possessing a given right if it is granted to the individual in law (Napoleonic). The latter is, clearly, inherently more prescriptive. It also explains why the UK used to be less drawn to signing up to charters setting out rights, since by default these latter already exist in nature, but when they are vaguely expressed and added to the law books, such charters then allow activism by lawyers pursuing a political agenda. This leads to a de-democratised legal system as laws are made in the court room.

English history has seen this happen twice before, and the precedents should cause concern. The attempt by the Avignon Papacy to set up its own court, the Rota, as the Supreme Court in Christendom obliged Richard II and Edward III

⁹⁷⁹ A structural example can be found in the existence of an Advocate General post at the ECJ, based on the French administrative model, whose role is to run an audit of a case and summarise it with recommendations to his fellow judges. His findings cannot be appealed against as they go straight to his fellow judges. It has no parallel in Common Law systems. See The European Journal “Friend or Foe? The Role of the Advocate General in the European Court of Justice”, J. Massey (2005), page 8 accessed 22/05/2015 at <www.europeanfoundation.org/wp-content/uploads/2014/05/The-European-Journal-May-2005.pdf> . Again, confusion has arisen with Scandinavian police counterparts who are treated administratively as judicial authorities in terms of cooperation. See HM Government “Review of the Balance of Competences, Police and Criminal Justice” (2014), page 39.

“The UN remains the most important international organisation for the Union.”

to develop Statutes of Praemunire, limiting the legal authority of the Popes and defining it as treasonable. That laid the groundwork for the great break that happened in Henry VIII’s time. The other controversy involved the Gascon Court of the English monarchs and whether the Paris Court of the King of France had supreme jurisdiction. That conflict fanned the whole Hundred Years War. Both were only settled by the collapse of one of the two competing jurisdictions. The increasing parallels today are consequently alarming.⁹⁸⁰

21.1 The UK would remain a member of all key international justice bodies

Key International Bodies

- Interpol
- Council of Europe
- UN Office on Drugs and Crime
- Central Bank Counterfeit Deterrence Group
- G7
- World Customs Organization
- UNESCO

The essential principles behind how JHA operates fit within a broader international system that is already in existence.

21.1.1 The UK would retain the same relationship with many international bodies

Significantly, the European Council in Brussels itself recognises this. Authorising the Stockholm Programme in 2010, it emphasised the wider international order as fundamental to how the EU itself operated, stating:

- *The European Council reiterates its commitment to effective multilateralism that supplements the bilateral and regional partnership with third countries and regions.*
- *The UN remains the most important international organisation for the Union. The Lisbon Treaty creates the basis for more coherent and efficient Union participation in the work of the UN and other international organisations.*
- *The Union should continue to promote European and international standards and the ratification of international conventions, in particular those developed under the auspices of the UN and the Council of Europe.*
- *The work of the Council of Europe is of particular importance. It is the hub of the European values of democracy, human rights and the rule of law.*
- *For law enforcement cooperation, Interpol is an important partner for the Union. Civil law cooperation is in particular made in the framework of the Hague Conference on Private International Law.*⁹⁸¹

980 Writs of Assistance and legal novelties in the pursuit of customs fraud also incidentally laid the groundwork for the American Revolution.

981 “The Stockholm Programme – an open and secure Europe serving and protecting citizens” (2010), accessed 22/05/2015 at: <[http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52010XG0504\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52010XG0504(01)&from=EN)>.

A desire for cross-border cooperation in policing led to Interpol being floated at the First International Criminal Police Congress in Monaco in 1914. Although conflict intervened, an International Criminal Police Commission was founded in 1923. National Central Bureaux then emerged for liaison purposes in the 1920s. In 1930, specialist departments were instituted to deal with currency counterfeiting, criminal records, and passport forgery. In 1935, it set up its own telecoms system, allowing for speedy private transmission of information. The Anschluss in 1938 meant the organisation's Vienna headquarters were taken over by the Nazis and cooperation was suspended. It was re-launched in 1946 as Interpol, and Red Notices, or people alerts, were instituted. In 1949, it began to be associated with UN activity as an NGO.

Today, Interpol acts as a clearing house to notify other agencies of international alerts for a person wanted by national authorities. It is headquartered at Lyon, and comprises seconded national staff. Significantly, it also analyses data, provides training, and supports the development of partnerships covering crimes in emerging technologies. Examples of its activity are set out in Table 21.i, along with some examples of international bodies with which it works.

Table 21.i: Interpol activities

Activity	Examples of activity	Examples of third party engagement
Corruption	Liaison in asset recovery; runs training.	World Bank, UN Office on Drugs and Crime, UN Development Programme, Basel Institute on Governance.
Crimes against children	Runs a project in conjunction with Internet Access Service Providers to block access to child abuse material online; identify the victims of child sexual abuse depicted in photographs and films (maintains International Child Sexual Exploitation image database); issues yellow notices to help locate missing persons, especially minors.	Virtual Global Taskforce.
Cybercrime	Global coordination on the detection and prevention of digital crimes.	INTERPOL Global Complex for Innovation (IGCI) currently being constructed in Singapore.
Drugs	Identify new drug trafficking trends and criminal organisations operating at the international level; to assist all national and international law enforcement bodies.	National law enforcement agencies and NGOs that have a counter-drug mandate.
Environmental crime	Leads global and regional operations to dismantle the criminal networks behind environmental crime using intelligence-driven policing; coordinates and develops international law enforcement best practice manuals, guides and other resources.	Wildlife, pollution and fisheries agencies.
Financial crime	Identify best practice; and facilitate information exchange.	American Express, MasterCard, Visa, ATM Industry Association, International Association of Financial Crimes Investigators, Central Bank Counterfeit Deterrence Group (CBCDG), World Customs Organization (WCO).
Firearms	Analysis of crime data; training; information exchange. Tools include the INTERPOL Firearms Reference Table (IFRT), INTERPOL Ballistic Information Network (IBIN), INTERPOL Illicit Arms Records and Tracing Management System (iARMS).	UN Office for Disarmament Affairs (UNODA), United Nations Office on Drugs and Crime (UNODC).
Fugitive Investigations	Operation Infra-Red, to locate and arrest serious long-term international fugitives - these criminals have committed crimes such as murder, child sexual abuse, drug trafficking and money laundering. Operational support and assistance to the searches for individuals wanted for genocide, crimes against humanity and war crimes by INTERPOL member countries, UN tribunals and the International Criminal Court.	United Nations Mechanism for International Criminal Tribunals (UN-MICT).
Integrity in Sport	INTERPOL Major Event Support Teams (IMESTs) to assist in security arrangements; Match-Fixing Task Force.	FIFA, and other sporting organisations.

Maritime piracy	Improving evidence collection; facilitating data exchange; building regional capabilities.	UN, IMO, Baltic and International Maritime Council, African Union, military organisations, and companies in the private sector.
Organised crime	Focused projects.	Variable.
Pharmaceutical crime	Coordination; training; partnerships.	Pharmaceutical companies.
Terrorism	Orange notices (CT alerts); liaison facilitating UN Notices (AQ embargoes and travel bans); INTERPOL Incident Response Teams (ICTs).	G8, United Nations Security Council Resolution (UNSCR) 1540 Committee, UN Office for Disarmament Affairs (UNODA), International Atomic Energy Agency (IAEA), Global Initiative to Combat Nuclear Terrorism (GICNT), Meeting of States Parties of Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction (BTWC), WHO, International Federation of Biosafety Associations, the Coordinating Organisations for Regional Disease Surveillance, the International Organisation for Animal Health, World Customs Organization (WCO) Organization for the Prohibition of Chemical Weapons (OPCW), Organisation for Security and Cooperation in Europe (OSCE), UNICRI, International Centre for Chemical Safety and Security (ICCSS), United Nations Office on Drugs and Crime (UNODC).
Trafficking in human beings	Coordination; training; analysis; partnerships.	Economic Community of West African States, International Centre for Migration Policy Development, International Labour Organization, International Organization for Migration, Organization of American States, OSCE, Southeast European Cooperative Initiative, UK Missing Persons Bureau, United Nations Office on Drugs and Crime.
Trafficking in illicit goods and counterfeiting	Operational support, capacity building, raising awareness, I-Checkit: the INTERPOL-Checkit programme combines key information from private industry and law enforcement to allow targeted users to verify whether a product has been traded illicitly. Online International IP Crime Investigators College (IIPCIC).	World Customs Organization, World Intellectual Property Organization, Underwriters Laboratories, International Chamber of Commerce, Business Action To Stop Counterfeiting and Piracy, International Trademark Association, Business Software Alliance, Entertainment Software Association, International Federation of the Phonographic Industries, Motion Picture Association.
Vehicle crime	INTERPOL Stolen Motor Vehicle (SMV) database; analysis.	Car manufacturers.
War crimes	Investigative support; assist attempts to locate.	United Nations Mechanism for International Criminal Tribunals (UN-MICT).
Works of art	Publicity; database.	United Nations Educational, Scientific and Cultural Organization (UNESCO); International Council of Museums (ICOM); United Nations Organization for Drugs and Crime (UNODC); World Customs Organization (WCO); members of the public accorded special access rights (which may include dealers and auctioneers).

Source: Interpol⁹⁸²

As shown in the third column, EU institutions form only one component of the extremely large and varied international community in this area. Other organisations include a number of UN bodies operating under a range of international legal agreements facilitating legal coordination, of which the most notable is the International Criminal Court at The Hague. Another important example is the World Customs Organization's SAFE framework of Standards.⁹⁸³ This is a mechanism for simplifying customs systems while facilitating counter-terrorism work, since it is impractical to search every container repeatedly during

982 Accessed 22/05/2015 at: <www.interpol.int/>. EU bodies also feature in column three.

983 World Customs Organization "SAFE Framework of Standards", accessed 22/05/2015 at: <http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_security/normes_WCO_en.pdf>.

“Corpus Juris provides an example of how a common European legal system is gradually being developed by the Commission.”

its transit from source to destination. Additionally, there are authority-led programmes. The US Customs-Trade Partnership Against Terrorism (C-TPAT) system takes SAFE a step further by extending bilateral arrangements between US Customs and trusted partners with which a mutual recognition agreement has been signed – this includes the EU, but also New Zealand, Canada, South Korea, Taiwan, and Jordan among others. Participation is voluntary and down to the company seeking to export. The examples of third party engagement demonstrate the extensive range of JHA institutions operating at a global level, and the extent to which, outside the EU, the UK would secure its voice in these fora.

21.2 The UK could continue to cooperate with the EU on justice matters

Key issues

- Civil judicial cooperation
- Preservation of Common Law and Civil Law
- Police cooperation

Internationally, most legal systems now interact with each other. Their activities, marginally or significantly, can imprint upon how each other operates. This is particularly the case given the Strasbourg Conventions that set standards for the European legal systems. However, this is very different to the nature of the threat now posed by the interrelationship with a hierarchical EU.

21.2.1 Corpus Juris demonstrates how EU legal integration constitutes a long-term threat to Common Law

Corpus Juris has become an icon among Eurosceptics, as it provides an example of how a common European legal system is gradually being developed by the Commission. It emerged from a European Commission focus group, and the programme’s name pointedly references the codification of Roman law under Justinian I in the sixth century.

This prototype criminal code covering EU fraud was first worked up over 1995–1996. It emerged as a first draft in 1997, was followed by studies by MEPs and OLAF (the EU’s anti-fraud office), and led to the equivalent of a Green Paper in 1999.⁹⁸⁴ By then, the proposals included the creation of the principle of ‘European territoriality’, a judicial area in which EU legal activity could operate in parallel to national activity. It also set the groundwork for the concept of a European crime, defined at EU level, and for an action which domestic law itself may not interpret as being illegal. National courts would be expected to implement the legal decisions both of their counterparts and of a new set of EU judges, even if the suspect had broken no law in their home country. It also risked overturning the ancient Common Law principle of double jeopardy (*autrefois acquit* – not being prosecuted twice for the same action – and the civil law equivalent of *ne bis in idem*) since it began to establish overlapping judicial authorities, with one able to overrule the other. The key player would be a new European Public Prosecutor (EPP), “*responsible for investigation, prosecution, committal to trial, presenting the prosecution case at trial and the execution of sentences.*” That necessitated, in turn, the introduction of a new concept: a European Arrest Warrant.

984 The history is set out in The European Journal “The Rise of Corpus Juris”, A. Heath (2001) pages 10–11, accessed 22/05/2015 at: <www.europeanfoundation.org/wp-content/uploads/2014/05/The-European-Journal-May-2001.pdf>.

“The Commission has lost little time in proposing the introduction of an EPP Office.”

The project wasn't incorporated into the Nice Treaty. Instead, a compromise system called Eurojust was. Set up as an information sharing centre, supporters of integration subsequently viewed it as the kernel for a future EPP office. Building on the Commission's 2001 Green Paper on Criminal Law Protection of the Financial Interests of the Community, it finally saw permissive legal reference in the Lisbon Treaty.⁹⁸⁵ Article 86 TFEU states:

In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament.

More significantly, the Article set out procedures allowing for it to be launched through 'enhanced cooperation' by a minority of member states: in other words, the national veto to its introduction was removed. The Commission lost little time in proposing the introduction of an EPP Office (EPPO).⁹⁸⁶ It reasoned:

The aforementioned challenges reveal shortcomings in the national legal frameworks for the protection of public money. EU rules, hampered as they are by the incomplete and inadequate transposition of the Convention on the protection of the financial interests, have had little impact. Consequently, member states' judicial authorities use their traditional national criminal law tools to fight crime against the EU Budget: there are different ways and means to tackle a single reality. This is hardly appropriate for the complex cases which by their nature go beyond the national context and require more than a national response.⁹⁸⁷

In theory, initiatives advanced by the enhanced cooperation procedure should not affect the UK if it declines to take part. But in reality there are likely to be serious implications for non-participant member states.

The EPPO was firmly put on the agenda. What will follow is also clear, as the Commission also identified in the same document:

- *Wide variation across the Union in definitions of relevant criminal offences, such as embezzlement or abuse of power, in the sanctions which those offences attract, and in time limitations for criminal offences.*
- *The concept of public official in relation to anti-corruption rules varies.*
- *In some member states the heads of businesses and legal persons can be*

985 European Commission “Green paper on criminal-law protection of the financial interests of the Community and the establishment of a European prosecutor (COM(2011) 0715 final), accessed 22/05/2015 at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52001DC0715&from=EN>>.

986 European Commission “On the protection of the financial interests of the European Union by criminal law and by administrative investigations” (COM(2011) 293 final), accessed 22/05/2015 at: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0293:FIN:EN:PDF>>; European Commission “Proposal for a Council Regulation on the establishment of the European Prosecutor's Office” (COM(2013) 0534 final), accessed 22/05/2015 at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52013PC0534&from=en>>.

987 European Commission “On the protection of the financial interests of the European Union by criminal law and by administrative investigations” (COM(2011) 293 final), accessed 22/05/2015 at: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0293:FIN:EN:PDF>>. The Commission observed that as one member state failed to pursue criminal charges in 62 per cent of cases highlighted to it by OLAF, the Commission itself should have the power to pursue them. It did not notably suggest that money should instead be withheld from the country in question in due proportion.

“The introduction of the EPPO does not signal the end of the Commission’s direct engagement in national criminal law, but its beginning.”

held criminally liable for criminal conduct on behalf of the company, in others they cannot.

- *Restrictive procedural rules which include limits on the use of evidence collected in a foreign jurisdiction. At times the use of such evidence is not considered sufficient to open criminal investigations.*
- *Further building upon existing instruments, such as the European Judicial Network in Criminal Matters and the European Judicial Training Network.*
- *Future Commission proposals will be subject to an in-depth assessment of their impact on fundamental rights.*

This means that the introduction of the EPPO will not signal the end of the Commission’s direct engagement in national criminal law, but its beginning. Just as the Commission has justified its engagement in other competences on the basis of its duties overseeing the Single Market, protecting consumer interests and monitoring fundamental rights, the same legal obligations will be applied to both the policing of the criminal justice system and to recourse to the courts. Indeed, in the launch conference, its proponents declared that it was much more broadly acting as *“the embryo of a future European Criminal Code.”* In the process, it seeks to apply pre-trial detention (suspects may be locked up for up to nine months, and potentially longer) and it would remove traditional legal safeguards such as trial by jury.

21.2.2 EU membership means harmonisation of the criminal justice system

If the EPPO was the limit to harmonisation, it might be argued that it was a price worth paying to police the corruption that can accompany EU grants. But it is not. The extension of the competences assigned to Europol, the pan-EU police agency, provides a proven example of mission creep as Table 21.ii shows.

Table 21.ii: Competences assigned to Europol

1993	Europol Drugs Unit (EDU) agreed.
1998	Mandate expanded to preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime (to be determined), with a particular emphasis on the criminal organisations involved.
1999	Mandate includes child abuse and forgery of money, along with the authority to enter into cooperation agreements with third states and international organisations.
2000	Assets recovery activity begins.
2002	Covers child abuse on the internet.
2005	Central authority for euro counterfeiting.
2006	Addresses emerging threats.
2007	Money laundering added.
2009	New legal basis allows for accelerated branching out.
2010	Europol becomes an EU Agency.
2015	The full list now covers: unlawful drug trafficking, illegal money-laundering activities, crime connected with nuclear and radioactive substances, illegal immigrant smuggling, trafficking in human beings, motor vehicle crime, murder, grievous bodily injury, illicit trade in human organs and tissue, kidnapping, illegal restraint and hostage taking, racism and xenophobia, robbery, illicit trafficking in cultural goods including antiquities and works of art, swindling and fraud, racketeering and extortion, counterfeiting and product piracy, forgery of administrative documents and trafficking therein, forgery of money and means of payment, computer crime, corruption, illicit trafficking in arms, ammunition and explosives, illicit trafficking in endangered animal species, illicit trafficking in endangered plant species and varieties, environmental crime, and illicit trafficking in hormonal substances and other growth promoters.

“Were all crimes identical across the EU this might make sense, but some crimes are not universally recognised by all member states.”

Alongside this timeframe, one might recall how the original Maastricht Treaty JHA clauses merely involved agencies of states sharing information between themselves; the Amsterdam Treaty pledged guarantees for EU citizens, with the EU acting as the intermediary between member states; the Nice Treaty introduced an ECJ interest as the EU now formed framework mechanisms; and the Lisbon Treaty allowed for parallel living structures to form.

This incremental harmonisation can be seen in how environment law has become criminalised.⁹⁸⁸ An ECJ ruling in 2005 determined that the EU could itself impose penalties for breaches. Case C-0176/03 resolved that the law applied not through the inter-governmental Pillar Three (still at that time in existence) but through Article 175 within the main body of the Treaties. More widely, this meant that criminal sanctions could in future be applied to any competence the Commission ran.

Harmonisation through homogenisation can have unwelcome side effects. The European Arrest Warrant (EAW) was originally intended to facilitate the apprehension of a suspect or convicted criminal by triggering the automatic carry-across of a warrant by another EU state.

Were all crimes identical across the EU this might make sense, but some crimes are not universally recognised by all member states. One individual was charged with Holocaust denial and briefly arrested in the UK while in transit from the USA to Dubai. Although morally questionable, in none of those three countries was his activity illegal. In another example, Belgian authorities stated they would not honour any Polish EAW based on abortion. Then there was the (later rescinded) Greek EAW for a cartoonist charged with blasphemy.⁹⁸⁹ Added to this are the widespread differences in how member states investigate crimes. These can include differing protocols for incarcerating suspects prior to them being formally charged.

It is significant that it was not until several years after the EAW was introduced that a requirement was added for an issuing authority to indicate whether the recipient had been notified if they had been tried in absentia.

But the key concern remains the EAW's near-automatic admissibility. A future warrant may be issued abroad where the interpretation of a specific human right does not mirror case law in the UK. The EAW is not unique in this regard, since the same dangers apply to the application of a European Investigation Order (EIO), and the European Evidence Warrant (EEW) issued in the pursuit of an investigation as well.⁹⁹⁰

988 The European Journal “Popping their Heads Over the Parapet”, G. Towler (2006), pages 7–8, accessed 22/05/2015 at: <www.europeanfoundation.org/wp-content/uploads/2014/05/The-European-Journal-January-2006.pdf>.

989 The European Journal “The strange case of Dr Toben”, M Wright (2009), pages 10–11 accessed 22/05/2015 at: <www.europeanfoundation.org/wp-content/uploads/2014/05/The-European-Journal-January-2009.pdf>.

990 European Scrutiny Committee “European Investigation Order”, accessed 22/05/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-vi/21918.htm>; European Scrutiny Committee “European Investigation Order”, accessed 22/05/2015 at: <www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-xliii/42811.htm>.

Box 21.iii: Examples of differing legal systems in operation⁹⁹¹

England and Wales:

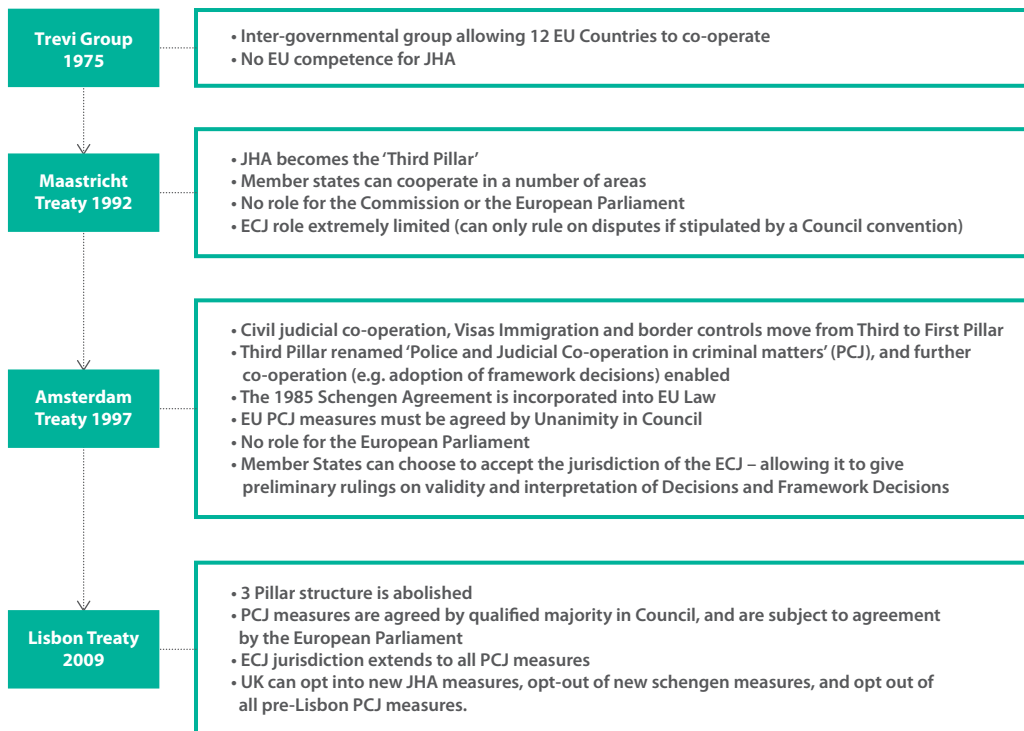
A prosecutor will consider the evidence provided by the police and decide whether there is sufficient evidence to charge an individual and then to prosecute. If the defendant pleads not guilty then a prosecution and defence case will be presented before a court, and either one or more magistrates, a judge, or a jury (depending on the seriousness of the case) will determine whether the defendant is guilty beyond reasonable doubt based on the evidence presented.

Spain:

An investigative judge carries out an investigation with a prosecutor. In the case of crimes with penalties of less than nine years, the decision to try the defendant is taken by the investigative judge. In other cases, the decision to try the defendant is taken by the trial court. The evidence is tested in the trial court.

The UK has long recognised both the advantages and the difficulties associated with EU extradition agreements. The considerable political debate in Britain over the future of the EAW highlights the balance between the increased ease of extraditing from other EU states and the increased risks of allowing extradition to them. In reality, extradition fits into an international system of bilateral agreements between the UK and third parties, and the end of UK participation in EAW would not signal a return to the days of the ‘Costa Del Crime’. On the contrary, it would provide a necessary spur to correct a current and serious judicial failing. As Figure 21.iv demonstrates, however, failure to achieve this will have long-term consequences for future EU extradition processes given the current direction of travel.

Figure 21.iv: Long-term trends in legal harmonisation



Source: HM Government⁹⁹²

991 HM Government “Review of the Balance of Competences, Police and Criminal Justice” (2014), page 27.

992 HM Government “Review of the Balance of Competences, Police and Criminal Justice” (2014), page 29.

“There is also the threat of integration impacting on civil law.”

21.2.3 EU legal integration also constitutes a threat to UK civil law

There is also the threat of integration impacting on civil law. The ECJ has generated a principle of equivalence, establishing that the EU law here must not be applied less favourably than national law (an example being the *Factortame* case – a UK case granting foreign vessel owners, buying up British fishing quotas, protection from attempts by ministers to legislate against their activities). The Amsterdam Treaty introduced a Community competence in civil judicial cooperation, encouraging the harmonisation of practices and approaches.

In 2005 a European Enforcement Order (EEO) was developed, followed by an European Payment Order for payments procedure. These uncontested areas were then followed by measures covering small claims (Denmark opted out). Harmonisation has been taking place in legal aid in cross-border cases, mediation, and a large number of laws covering consumer rights (since they have an obvious bearing on Single Market issues). On occasion, these have been pushed by the Commission without actual Treaty authority, by turning to the generic ‘rubber articles’.⁹⁹³ Tort laws and civil procedures have for some time been identified as areas for further work by the Commission, in order to harmonise civil litigation. So too has automatic mutual recognition of competition rulings across member states, in addition to the downwards implementation of rulings from the Commission. Several aspects of how damages operate have also been challenged, affecting antitrust cases, calculations, limitation periods, and the ‘loser pays’ principle.⁹⁹⁴

Consumer protection has extended from unfair contract terms, sales and guarantees, distance selling, and doorstep selling, to areas such as product information rights, late delivery or non-delivery, cooling-off periods, returns, refunds, repair terms and guarantees.

Commission engagement in family law has followed, with a regulation covering successions. This is based on habitual domicile (left undefined), contrary to the previous UK practice of domicile at the time of death. Rather than immovable property falling under the law governed by physical location, the Commission seeks to limit this principle by allowing an expat to choose which jurisdiction should apply. Again, differences between Common Law and Civil Law jurisdictions emerge since the former do not apply any principles of ‘reserved heirship’ but allow the testator much greater choice over how he or she divides up any inheritance. Civil law also limits the ability of a testator to alienate property permanently during his lifetime. Furthermore, the systems are different with respect to the functions and powers of an administrator, and with it the mechanisms for inheritance taxes. Although the UK has employed its opt-out, this remains an example of the Commission’s direction.

Another example is the Brussels IIa Regulation, covering aspects of divorces. Professionals have objected to this on the basis that it encourages parties to rush to courts to secure the most favourable jurisdiction for themselves rather than undergoing mediation.⁹⁹⁵ This is further complicated by the Maintenance

993 Old denominations of 94, 95 and 308 – ie catch-all Articles intended for the completion of the Single Market in areas the Council and Commission had not thought of listing.

994 The European Journal “Is British civil justice to be swallowed up by EU civil procedure code?”, M. Vasconcelos (2008), pages 22–24, accessed 22/05/2015 at: <www.europeanfoundation.org/wp-content/uploads/2014/05/The-European-Journal-October-2008.pdf>.

995 European Scrutiny Committee “Report on the application of the Brussels IIa Regulation”, accessed 22/05/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-i/21904.htm#a34>.

“The Commission has now determined that the European Convention on Human Rights is not a sufficient guarantor of this principle, and has decided to regulate.”

Regulation, which can mean that divorce and financial provision are reviewed in one jurisdiction while maintenance is settled in another.⁹⁹⁶ Judges also now face being blocked from needs-based orders on sole domicile jurisdiction, even where the second country is not an EU member. Significantly, the UK has also opted out of the follow-on Rome III proposals that are instead just applied to a group of enhanced cooperation states.

Perhaps the most serious impact is felt in damages, particularly as UK courts have developed a global reputation for clarity, transparency and impartiality. As a valued arbiter of choice, this has had a positive impact for legal practitioners – perhaps also for the wider UK economy if it is seen as a result as a favoured place to do business. This is now at risk due to direct engagement by the Commission, which is seeking to regulate damages arising from competition law.⁹⁹⁷ Its intent is to remove aspects which may make one jurisdiction more favourable than another: in the UK’s case, this means levelling down. The long-term impact of this and similar changes on the appeal of the London courts, for example requiring the publication of leniency documents submitted, and the presumption that any cartel infringement caused harm, remain very much to be seen.

21.2.4 The UK’s JHA linkage sits badly within the EU

The difficulties arising from trying to bolt together such differing systems are wide ranging. One example has been the introduction of the Directive on Interpretation and Translation, for persons being investigated for a criminal offence. The Directive makes no specific reference to telephone interpreting, which is UK standard practice when booking someone into custody. As a result, several statements relating to detention needed to be translated by the UK police into over 50 languages, to be made available for detainees in written form.⁹⁹⁸

A greater concern lies over the burden of proof. This is increasingly affected both by the precautionary principle (see Section 13 for a detailed explanation) and by human rights law valuing the victim of a crime over the principle of the presumption of innocence.⁹⁹⁹ The Commission has now determined that the European Convention on Human Rights is not a sufficient guarantor of this principle, and has decided to regulate. Its own impact assessment, however, admits that there is no body of data to base this assessment on, and relies instead on anecdotal evidence from a limited number of countries. Paradoxically, the Commission’s attempt to quantify the burden of proof, fundamental to Common Law workings, now risks generating confusion in UK law as it becomes subject to re-interpretation.¹⁰⁰⁰

The immediate impact is that the extent to which inference of guilt may be drawn from an accused’s failure to cooperate in certain instances – such as refusing to cooperate in a narcotics search without good cause – comes under ques-

996 HM Government “Review of the Balance of Competences, Civil Judicial Cooperation” (2014), page 43.

997 European Scrutiny Committee “Damages in competition law” (2013), accessed 22/05/2015 at: <www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/83-xxii/8310.htm>.

998 HM Government “Review of the Balance of Competences, Police and Criminal Justice” (2014), page 58.

999 An example is the European Protection Order (EPO). These are essentially restraining orders and laudable in principle, but where the burden of proof triggering them could vary from state to state and which thus risk injustices.

1000 European Commission “On the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings” (COM(2013) 821 final).

“Political ambition is inherent within the system, and occasionally supersedes principles of good management.”

tion.¹⁰⁰¹ This is not an isolated threat, since there is also another proposed directive relating to the right of access to a lawyer and right to communication on arrest.¹⁰⁰² This too has generated difficulties with the draft: for instance, under Scots Law it means getting a lawyer present during an initial search, and more widely in Common Law jurisdictions adds obligations that are unrealistic or unviable.¹⁰⁰³ It could mean a lawyer has to be present even outside of a formal police interview, adding to Legal Aid costs. The Commons Select Committee tasked with scrutinising the draft identified a number of other conflicts: over confidentiality, waiving rights to legal representation, and the absolute form of legal remedy.

The mandate for Commission legislation arises from the Stockholm Programme (covering the EU’s priorities over 2010–2014). While significant parts of this remain focused on governmental cooperation and mutual recognition, central is the push for a “Europe of Rights”: *“European citizenship must be transformed from an abstract idea into a concrete reality. It must confer on EU nationals the fundamental rights and freedoms set out in the EU Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.”*¹⁰⁰⁴

This political ambition is inherent within the system, and occasionally supersedes principles of good management. The Scottish Government has observed, for instance, that the preference for building up the Eurojust system rather than maintaining multilateral cooperation means *“no effort had been made to establish whether the objectives could be better achieved by continuing with the existing arrangements, which respect national and local jurisdictions more.”*¹⁰⁰⁵

These underlining factors are central to determining whether it is in the UK’s interest to be a fundamental partner to these programmes or instead be an external associate. Two further examples help provide context. Member states could be training their officials to understand how foreign jurisdictions and systems work to better cooperate with them. Instead, the emphasis was first on generating a new elite operating as part of a common legal culture, and now on expanding beyond this cadre. As Stockholm mandated the Commission: *“In order to foster a genuine European judicial and law enforcement culture, it is essential to step up training on Union-related issues and make it systemati-*

1001 *“It is difficult to overstate the significance of the Commission’s proposal. It brings the law of the presumption of innocence, as laid down by the European Convention of Human Rights (ECHR) and in the constitutional or national laws of member states, into the realm of EU law, which has supremacy over national law, for all criminal offences. In so doing it sets out certain rights which go further than the interpretation of similar rights in the ECHR by the European Court of Human Rights, and so creates separate standards of procedural safeguard under EU and ECHR law. A domestic consequence of this is that UK laws on drawing adverse inferences from a failure to cooperate or from maintaining the right to silence, which are compliant with the ECHR, would be in conflict with EU law, and so subject to Commission infringement proceedings and severe financial penalty if not amended.”* European Scrutiny Committee “The presumption of innocence and EU law” (2013).

1002 European Commission “On the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest” (COM(2011) 326/3), accessed 22/05/2015 at: <http://ec.europa.eu/justice/policies/criminal/procedural/docs/com_2011_326_en.pdf>.

1003 Interference with or harm to evidence connected to an indictable offence, harm to other people, other people being tipped off, the recovery of property being hindered or where awaiting the arrival of a solicitor would cause unreasonable delay to the process of investigation. European Scrutiny Committee “Rights of access to a lawyer and right to communicate on arrest” (2011).

1004 “The Stockholm Programme – an open and secure Europe serving and protecting citizens” (2010), accessed 22/05/2015 at: <[http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52010XG0504\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52010XG0504(01)&from=EN)>.

1005 HM Government “Review of the Balance of Competences, Police and Criminal Justice” (2014), page 44.

“To sell the value of this legal cooperation, a PR programme is required.”

cally accessible for all professions involved in the implementation of the area of freedom, security and justice. This will include judges, prosecutors, judicial staff, police and customs officers and border guards.”¹⁰⁰⁶

To sell the value of this legal cooperation, a PR programme is required. Stockholm authorises this too: *“The European Council therefore calls on all Union institutions, in particular the Commission as well as on the member states, to consider ways to better communicate to citizens and practitioners the concrete results of the policy in the area of freedom, security and justice.”*

Again, the establishment of an increasingly integrated set of legal, law enforcement and customs practitioners may be seen by some as an acceptable compromise. However, that rather depends on how strong the weakest link in the chain turns out to be. Even for a country like Italy, one of the European Economic Community’s Founding Six, the current Foreign Office business guidance is that *“as far as Italy is concerned, bribery and corruption represent major problems that cost the country around €60bn a year. Public tenders are generally regarded as the most at risk from corruption, particularly those associated with procurement, waste management, construction, health and defence.”¹⁰⁰⁷*

In such circumstances, setting frameworks to combat fraud, corruption, and organised crime may make sense in order to protect UK business interests and the EU Budget. They make less sense, however, if doing so comes at a risk of breaking the Common Law system and unsettling best practices that have largely preserved this country from the same.

21.2.5 Cooperation between jurisdictions is standard practice

UK cooperation with its EU counterparts has only recently moved from the Third Pillar, and thus from an inter-governmental approach, into the main Treaties. There is no reason why it cannot move back again. That is particularly evident given the extent to which the UK has already deployed its opt-out to date, leaving UK authorities to operate through bilateral and multilateral exchanges. After leaving the EU, it would make sense to build on this approach, depending on how compatible EU states are with Common Law processes (and vice versa). A central proposition to this is the concept of mutual recognition, identifying the working of one jurisdiction as being validly applicable by a partner state.

It is worth recalling that the United States sees 50 state judiciaries simultaneously operate separate state laws.¹⁰⁰⁸ Indeed, Louisiana is able (along with Puerto Rico) to run a Roman Code system. Even within a single country, clearly-defined cross-jurisdictional cooperation can occur without leading to administrative breakdown. Divorce laws for example are set by individual US states, and vary over issues like no-fault statutes. Yet the systems all recognise a number of principles: for example, that marriages conducted in a foreign country have to be annulled before remarriages are possible. The recognition of the legal acts of other US states is governed by the ‘Full Faith and Credit Clause’ of the US Constitution. Where conflicts between jurisdictions do emerge, the selected court itself follows a set process to determine whether it is properly the one to hear the case, a procedure designed to restrict ‘court shopping’.

1006 “The Stockholm Programme – an open and secure Europe serving and protecting citizens” (2010), accessed 22/05/2015 at: <[http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52010XG0504\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52010XG0504(01)&from=EN)>.

1007 Foreign and Commonwealth Office “Overseas Business Risk – Italy”, accessed 22/05/2015 at: <www.gov.uk/government/publications/overseas-business-risk-italy/overseas-business-risk-italy>.

1008 This is even without exploring such issues as the 150 tribal courts of Reservations, 20 CFR federal-tribal courts, Courts Martial, etc.

“The existence of a separate, and in some cases vastly different, Scottish legal system shows that, across the UK, its systems are capable of close cooperation with alternative practices.”

The existence of a separate, and in some cases vastly different, Scottish legal system shows that, across the UK, its systems are capable of close cooperation with alternative practices. Under Scots Law, for instance, the crime of manslaughter does not exist. Juries can deliver a verdict of Not Proven, a qualified acquittal. Regulators do not themselves prosecute, but pass on cases to the Crown Office and Procurator Fiscal’s Office to decide. PACE, the Police and Criminal Evidence Act, does not apply to Scotland, but cautions are more widely issued as a default. Adverse inference from witness silence cannot be drawn, and witnesses can be summoned to provide a Precognition or scoping interview without a lawyer present that cannot be quoted in court. Witness statements have limited evidential value. Access rights are more restricted, but majority thresholds are more easily reached. Charges are more fully set out and liable to subsequent challenge. Again, evidence has to come from multiple sources; the principle of corroboration.

Consequently, cooperation between different legal jurisdictions is far from a novelty for British courts. An EU framework is not required, but the danger is that it is being developed, like EU trade policy, for the benefit of a minority of cases at a cost impacting on all.

21.2.6 The UK can still cooperate with the EU in criminal cases

The Danish example demonstrates the limits of the appeal of the current system. Denmark negotiated an opt-out from the Lisbon Treaty on JHA matters that is far more robust than those of the UK and Ireland, since it is automatically triggered and the state has to subsequently decide to opt in to new JHA rules.

As at the start of 2010, Copenhagen had decided to opt in to four areas covered by the JHA opt-out process. By contrast, the UK had opted in to 68.¹⁰⁰⁹ The difference is largely down to the Danish Government being required to politically justify each action individually. As the UK parliamentary debate on the 35 JHA opt-ins in November 2014 demonstrated, many can be extremely politically sensitive, especially when they involve an extension of the remit of the ECJ.

This difference in approach between Copenhagen and London comes down to a matter of choice and priorities. As Dominic Raab MP has written:

The real area of contention relates, after exercising the block opt-out, to the extent to which the UK should exercise its right to apply to opt back in to certain EU crime and policing laws, on a selective basis. Those choices are contingent on a cost-benefit analysis in each case. What emerges from the wider analysis in this report is that, while some of the EU crime and policing measures have proved valuable, many instruments are flawed or of minimal operational relevance to the UK. In a number of cases, supranational legislation masquerades as a substitute for practical cooperation.¹⁰¹⁰

1009 TaxPayers’Alliance “Britain’s Justice and Home Affairs Opt Ins”. The amount of scrutiny and debate associated with this process can best be described as nugatory.

1010 Open Europe “Cooperation Not Control: The Case for Britain Retaining Democratic Control over EU Crime and Policing Policy”, D. Raab, page 4. This review thoroughly explores the background to all the opt-outs in question, and challenges in detail the value of the opt-in system as opposed to an inter-governmental approach. This includes cost-value analysis of key institutions, comparative reviews of the UK as the more frequent recipient rather than instigator of an action (which has implications for the willingness of other countries to find a successor arrangement), duplication, DNA privacy concerns, technical redundancy and so on. “Most notably, there is not a single measure covered by the opt-out where the evidence suggests that the law enforcement cooperation aims desired necessitate ceding democratic control to supranational EU bodies such as the Commission or ECJ.”

“There is an alternative, and that is operating through structures that are external to the EU.”

The mistake of seeing action at the EU level as a natural default has now been exacerbated. Since December 2014, the ECJ has gained full jurisdiction over the interpretation and application of JHA legislation, and the Commission can bring forward infraction proceedings against any member state which does not fully or (in its view) correctly implement pre-Lisbon JHA measures in which it participates.¹⁰¹¹ The legal boundaries remain very unclear and risk a new dynamic encouraging integration of criminal law.¹⁰¹²

There is an alternative, and that is operating through structures that are external to the EU. Examples identified during the Balance of Competences Review specifically included:

- The Crown Prosecution Service (CPS) ‘liaison magistrates’ assigned to France, Italy, Spain, Pakistan, the United Arab Emirates and the USA, whose function is to facilitate extradition and mutual legal assistance between the host country and the UK, with reciprocal secondments to the UK;
- Council of Europe Conventions, of which some examples are the Convention on
- Mutual Assistance in Criminal Matters (CETS 030 and 099); on the Compensation
- of Victims of Violent Crimes (CETS 116); on Extradition (CETS 024 and 098); and in particular on Cybercrime (the ‘Budapest Convention’) which shows the increasing focus on cyber threats from other organisations as well as the EU;
- The United Nations Convention against Transnational Organised Crime, adopted in 2000. This is the main international instrument in the fight against transnational organised crime, and is supplemented by three Protocols which target trafficking in persons, the smuggling of migrants, and illicit manufacturing of and trafficking in firearms;
- Beyond Europe, the UK also has bilateral and multilateral agreements for matters such as judicial cooperation and extradition. For example the UK has bilateral agreements on ‘Mutual Assistance in Relation to Criminal matters’ with countries including Canada (1988), Columbia (1997), and Thailand (1994).¹⁰¹³

21.2.7 Civil judicial cooperation can continue

In fact, the range of international agreements that would govern a deal with EU partners after UK exit is particularly broad, and they are not recent innovations. The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters dates from 1965, and is itself a suc-

1011 Excluding proportionality in operational policing, and the exercise of national internal security.

1012 This is addition to the phenomenon encountered elsewhere of increasing budgets for coordinating information sharing generating their own momentum. The EUCPN (Crime Prevention Network) is currently a mechanism for arranging meetings and publishing work, but it is already generating recommended guidelines which the Commission on past form will interpret as an invitation to set out legislative proposals to protect personal rights and traded property.

1013 HM Government “Review of the Balance of Competences, Police and Criminal Justice” (2014), page 66.

“The range of international agreements that would govern a deal with EU partners after UK exit is particularly broad.”

cessor treaty to an original Civil Procedure signed in 1905.¹⁰¹⁴ This was itself a development of a treaty signed in 1896.¹⁰¹⁵ Both were European in their context, and agreed so long ago that the text was only written in French.

Alternatively, one can consider the examples of:

- The 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters;
- The 1980 Hague Convention on the Civil Aspects of International Child Abduction (covering in particular breach of custody);
- The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children;
- The 1963 Vienna Convention on Consular Relations (article 36 provides for certain obligations in the case of an arrest or detention of a foreign national).

In a number of such cases, participation in what were originally European-level but pre-EU agreements has expanded to include a number of non-EU members.

Again, there is the model of the 2007 Lugano Convention, covering the EU and European Free Trade Association (EFTA) countries less Liechtenstein. It represents a partly asymmetric system with various countries making marginal exceptions (in the UK’s case, including over property rights). Broadly speaking, however, it sets out where jurisdiction sits in civil and commercial cases, in particular where someone is sued.

Some EU programmes facilitating mutual legal understanding will not be controversial. Large parts of the work undertaken under the rubric of the European Judicial Network are about increasing legal awareness of how systems operate in other countries. If the political bias towards harmonisation can be stripped away, all this entails is putting information on a website and running conferences involving national practitioners.

But other areas will require considerable thought. The development of a mechanism for businesses to reclaim money owed through small claims processes might be pursued. Presently, the European Payment Order allows for a uniform format to be used to help process uncontested claims. However, enforcement falls under the national law of the receiving jurisdiction, and the process is more of an administrative standardisation. For contested sums up to €2,000, there is the option of the new European Small Claims Procedure.¹⁰¹⁶ This allows for the judgment in the plaintiff’s jurisdiction to then be enforced in the country of the other party, although enforcement occurs under the rules of the second country.¹⁰¹⁷ Ending this might be a loss to the consumer in a small number of cases. This could be mitigated by including in any contract a standard clause referencing that arbitration is ‘subject to English law’.¹⁰¹⁸

1014 Hague Conference on Private International Law, accessed 22/05/2015 at: <www.hcch.net/index_en.php?act=text.display&tid=16>.

1015 See: <www.hcch.net/upload/conv1896.pdf>.

1016 European Scrutiny Committee “European Small Claims Procedure”, accessed 22/05/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-xix/21910.htm>.

1017 Within 14 days of receiving the application form, the court should serve a copy of it, along with the Answer Form, on the defendant. The defendant has 30 days to reply, by filling in his or her part of the Answer Form. The court must send a copy of any reply to the plaintiff within 14 days. Within 30 days of receiving the defendant’s answer (if any) the court must either give a judgment on the small claim, or request further details in writing from either party, or summon the parties to an oral hearing. If there is an oral hearing, it is not necessary to be represented by a lawyer.

1018 If the consumer was based in England, of course.

“Serious crime is frequently international.”

In any event, changes to the Treaty text governing the nature of UK-EU trade structures, discussed in other Sections, would themselves dictate the jurisdictional nature of the regulatory system that would be taking over. This would set the regulatory context for the successor to such laws as the Distance Selling Directive, and therefore the format for how disputes will be resolved. The same would apply to areas such as mediation, account preservation, contract law, legal resolution, or land ownership abroad. A problem with jurisdictional authority under the current emerging system is that a European court could interpret English law differently from an English court, with all that follows from the development of case law.¹⁰¹⁹ This threat would be removed if jurisdictions are kept clearly distinct but defined.

21.2.8 Cooperation on criminal matters can continue

It is, of course, critically important that the UK’s law enforcement agencies are, and remain capable of, cooperating with both their EU and non-EU counterparts. This is particularly vital given the increase in the number of foreign nationals in the UK¹⁰²⁰. Additionally, there are over 12,000 foreign nationals in jails across England and Wales, around one prisoner in seven.¹⁰²¹ Serious crime is frequently international; often developing through network structures and multinational membership. While cybercrime also has the ability to leap jurisdictions, the cases themselves tend to fall into one jurisdiction. Even when crimes cross borders, there is typically a natural lead national element to the resulting criminal investigation.

Judicial cooperation is centred on the facilitation of extradition, mutual legal assistance (MLA) in criminal matters, the exchange of criminal records, the freezing and confiscation of assets, prisoner transfer, the supervision of alleged and convicted offenders, and the enforcement of fines.

The Serbian example shows how bilateral agreements covering the key issues can be arranged from outside the JHA system.

Belgrade reached an operational agreement with Europol in 2014; is seeking a bilateral agreement between its training college and the EU counterpart, CEPOL; is legislating with compliance with the Prüm Decision in mind; is a member of the global EGMONT Group of Financial Intelligence Units (FIUs), and of the Council of Europe’s Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

It is a signatory to 42 memoranda of understanding relating to the exchange of financial intelligence data with third countries, 17 of which are with EU member states; has ratified the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse; and has ratified the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse.

Its drugs laws are governed by four UN Conventions and a Council of Europe counterpart. Counterfeiting activity should, but does not yet, follow the principles set out in the 1929 Geneva Convention for the suppression of counterfeiting currency.

Visa formats are regulated according to the standards of the International Civilian Aviation Organisation; and it is a party to the Police Cooperation Convention for South East Europe.

1019 HM Government “Review of the Balance of Competences, Civil Judicial Cooperation” (2014), page 43.

1020 The number of EU nationals rose from 1.1m to 2.3m between 2004 and 2012, while the number of non-EU nations rose from 1.9m to 2.5m over the same period.

1021 HM Government “Review of the Balance of Competences, Police and Criminal Justice” (2014), page 31.

“The EU is seeking to harmonise policing. For the UK, this creates difficulties.”

This is a significant list that is not dependent on EU membership (although, of course, Serbia has accession aspirations). But it does not take into account non-governmental financial services institutions with which criminal investigators have to work, in particular the Society for Worldwide Interbank Financial Telecommunication (SWIFT). This is a tri-region mechanism for facilitating financial telecommunications between institutions, averaging around 5.6bn messages a year (and growing), and mostly dealing with payments and securities. It was established in 1973, is headquartered in Brussels with a server in Switzerland, and is incorporated under Belgian law but in effect subject to multiple legal jurisdictions. Outside the EU’s competence, any compliance requirements covering transactions involving the City of London, especially over data sharing and privacy issues in combatting organised crime, would transfer to UK jurisdiction. As the system is overseen by the Oversight Forum of the G10 Central Banks, of which the Governor of the Bank of England is already a member, the UK’s status would be unaffected.

21.2.9 Policing cooperation would be more secure

The EU is seeking to harmonise policing. For the UK, this creates difficulties. The UK tradition is for the police to be citizens in uniform, largely unarmed, and historically discreet (notwithstanding the recent popularity of fluorescent jackets). Continental counterparts have emerged from military gendarmeries whose initial role involved catching Napoleonic deserters and whose founding tradition was putting down insurrections. This is why UK police forces, except the Royal Ulster Constabulary/Police Service of Northern Ireland, have tended not to deploy in formed EU bodies alongside other armed police agencies in support of civil authorities in a peace-keeping role. The European Gendarmerie Force, EGF, is made up of elements from those EU member states “*possessing a police force with military status*” (currently only seven participate, alongside Turkey as an observer).¹⁰²² The UK does not participate. One reason is Britain’s unusually fragmented county-based force makeup.

The threat to policing within EU structures becomes evident when looking at what the Commission is trying to introduce to the EU police training college, CEPOL. This is a comprehensive European Law Enforcement Training Scheme (“LETS”). It is intended to extend CEPOL training beyond the current senior ranks. It aims to do this through the development of ‘common curricula’ on cross-border criminal phenomena, the assessment of the impact of EU-related law enforcement training policies and initiatives, the management of EU funding to support capacity-building in third countries, and the promotion of the mutual recognition of law enforcement training and European quality standards. It is also intended that CEPOL will, for example, be able to devise common curricula for officers to train them for participation in Union missions. The direction of intent is clear.¹⁰²³

Liaison work and information exchanges do not require full structural membership. This is evidently the case in cooperating with Europol, the entity touted by integrationists as ‘Europe’s FBI’. As it happens, Europol and the FBI are capable of cooperating by means of working agreements and the posting of liaison officers. In 2014, the US posted a cybercrime officer to liaise with Europol’s EC3 section. Norway was able to post one officer covering the entire Europol remit as long ago as 2002.

¹⁰²² European Gendarmerie Force, accessed 22/05/2015 at: <www.eurogendfor.org/>.

¹⁰²³ European Scrutiny Committee “The European Police College”, accessed 22/05/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-xx/21903.htm>.

“The central element of police cooperation is not dependent on Europol membership, but can be regulated by a separate agreement.”

Europol has operational agreements with 12 non-EU states, including Switzerland, Norway, Australia and Canada, plus strategic agreements with six others, including Turkey, Ukraine and Russia. It has an operational agreement with Interpol, and strategic agreements with the World Customs Organization and the UN Office on Drugs and Crime.

The Canadian agreement, for instance, authorises the parties to exchange personal data, specialist knowledge, strategic intelligence, general situation reports, information on investigative procedures, information on crime prevention methods, and participation in training activities, as well as support and advice for law enforcement activities. The agreement sets out practices for requesting and supplying information and the obligation of protecting it on receipt. Any dispute does not escalate up to the ECJ, but is sorted out by the designated points of contact, and the arrangement can be ended with three months' notice.

The central element of police cooperation is, therefore, not dependent on Europol membership, but can be regulated by a separate agreement. This will be particularly relevant in the fight against narcotics. With the exception of synthetic drugs, this trade tends to originate well beyond Europe's borders both in terms of countries of origin (opiates in the Far East, cocaine in Latin America) and transit routes (Turkey, the Balkans, or African transshipment). As such, intelligence cooperation is a global requirement. This explains why the EU has identified its own structures as being weak beyond its own borders, and why it has been seeking improved bilateral agreements.¹⁰²⁴ Ultimately, though, the Commission has deviated from the area in which it could best add value, focusing on inter-EU transit, to expand increasingly into sub-national issues such as dependency, associated crime, and local distribution. An arrangement that encouraged a proper division of labour is not likely, however, without a firmer separation of competences.¹⁰²⁵

21.3 New justice and home affairs policy opportunities would become available

After leaving the EU, future cooperation on JHA issues becomes a matter of choice, and with more freedom to correct previous errors. That applies both to Common Law and to the distinct Scottish legal system.

21.3.1 The history of UK partial participation demonstrates the current risks and the advantages of measured cooperation

The UK's JHA opt-outs are precarious. In 2014, an increased role for the ECJ triggered an automatic review. Ministers have enjoyed a second chance to consider what should remain opted out of, what needs to now be opted out of, and what can be opted fully into. However, any further moves to sign up to an arrangement will be permanent. That carries the double risk of Whitehall being unable to leave any failing arrangement in the future, as well as making ministers doubly cautious since they cannot test the water for a trial period first.

It is not our intent to audit every possible JHA opt-in option here. The explanatory memorandum produced by the Government that gave a brief overview

1024 European Scrutiny Committee “EU drugs policy”, accessed 22/05/2015 at: <www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-xliii/42828.htm>.

1025 The existence of an EU narcotics monitoring agency, EMCDDA, covering all aspects of drugs generates Commission interest the whole length of the chain and into social consequences as well, even if it is not best placed to act.

“History demonstrates that extradition has an extensive back history long pre-dating the EU.”

of the measures ran to 155 pages.¹⁰²⁶ An adequate summary of those that were opted back into can also be found elsewhere.¹⁰²⁷ What is now certain, however, is that UK policy is locked into EU policy in each of 35 JHA measures reapplied for out of a possible 130.

After leaving the EU, however, the UK could essentially elect to go down two routes. It could seek to participate as fully as possible in the principles of data sharing and administrative cooperation, seeking to develop a more integrated policing and customs intelligence capability. Under the current EU model, this is very likely to operate as a quasi-federal agency on top of national policing entities, with a long-term accrual of responsibilities and powers. Intergovernmentally, Europol and its counterparts would adopt more of the role of a regional Interpol. Alternatively, it is possible to take the civil liberties approach and challenge the need for such institutionalised sharing of data, particularly given the ill-defined end view of what data needs to be recorded. Additionally, there would be questions over the security of such a system, as well as the number of agencies that could potentially access it.

A salient question is the extent to which, without EU structures in play, extradition may become more difficult. This is perhaps partially likely. In some instances, for example with the Republic of Ireland, extradition has occasionally faced politically-generated difficulties. Or there is the past example of the ‘Costa del Crime’. Spain’s appeal as the retirement location of British criminals, by contrast, diminished following a bilateral extradition arrangement in 2001; this tightened up an earlier deal, itself designed to plug a loophole. That loophole, as it turns out, arose from Madrid rescinding but not replacing an extradition treaty with Britain dating from 1878; that decade was the golden age of British extradition, as the Government sought to put on a regular footing its status as an international haven for political refugees.¹⁰²⁸ History demonstrates that extradition has an extensive back history long predating the EU.

Today, there are two lists of countries to which extradition processes apply. Category 1 covers EAW states. Category 2 states are those states covered by other extradition treaties, and where extradition is permitted on human rights grounds. The key governing legislation is the Extradition Act 2003. Ninety-one states are on this latter list, including Australia, Canada, Iceland, India, Norway, Switzerland, Turkey, and the United States of America. The Croatian example, which was until recently a Category 2 state until moving into Category 1, demonstrates that some administrative restructuring will be required to

1026 HM Government “Decision pursuant to article 10 of protocol 36 to the Treaty on the Functioning of the European Union” (2013), accessed 22/05/2015 at: <www.gov.uk/government/publications/decision-pursuant-to-article-10-of-protocol-36-to-the-treaty-on-the-functioning-of-the-european-union>.

1027 European Scrutiny Committee “Overview of the 35 measures”, accessed 22/05/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/762/76205.htm>.

1028 The UK has a long history of reaching extradition treaties, though they were long very limited in number and intent. The Jay Treaty (see start of this Section) required the production of sufficient evidence to convict in the country of receipt, and in any case lapsed in 1807. The 1802 Treaty of Amiens allowed for extradition between France, Spain, Holland and the United Kingdom, but lapsed due to the renewed war and any impetus was then lost. However, in the mid-nineteenth century and with the advent of new technologies (such as would capture Dr Crippen), anonymity and information vacuums became less permissive to fugitives from the law, and interest was renewed. Clauses within the treaties listed which crimes were covered, and a domestic judge would ensure there was a *prima facie* case to answer. The potential absence of this latter aspect in particular, since the more widespread French model cared less, long limited the number of agreements reached by the UK, and it is a gap in approach increasingly being felt again today. <www.gov.uk/government/uploads/system/uploads/attachment_data/file/117673/extradition-review.pdf> provides a comprehensive overview in the context of the EAW.

“Switzerland, another major banking nation, reached a cooperation agreement with the EU on the sensitive area of combatting fraud in 2004.”

accompany any change in the UK’s EU relationship as old extradition agreements are dusted off.¹⁰²⁹ But there is not a complete vacuum.¹⁰³⁰

In sum, the key gain for the UK in turning to an arm’s length relationship with JHA management is one of securing safeguards. There may be some initial efficiency costs, but these arise within systems in which efficiency gains are already limited.

As to whether a future Julian Assange would be automatically extradited to Sweden, such a decision would be for a future UK court to assess as part of any *prima facie* review, and for a Home Secretary to assess the broader political picture and explain a decision to intervene or not before Parliament.

21.3.2 Agreements can be reached that are responsive to UK needs, but reforms are essential internally

Models exist that demonstrate cooperation agreements can be designed to be responsive to future UK needs. Switzerland, another major banking nation, reached a cooperation agreement with the EU on the sensitive area of combatting fraud in 2004.¹⁰³¹ This significantly includes a safeguard ‘*ordre public*’ clause, Article 4, allowing the exercise of an opt-out in an individual case:

Cooperation may be refused if the requested Contracting Party considers that execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of the requested Contracting Party.

It could also be declined on the grounds of disproportionality, or where the information is otherwise already available. Yet the arrangement still sets up the sorts of Joint Investigation Teams, liaison work, claims recovery, mutual legal assistance and similar actions that Europol participants otherwise engage in. In this instance, operatives are not governed by ECJ interpretation, but by the 1959 European Convention on Mutual Assistance in Criminal Matters, and the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. Both are Council of Europe products.

There will be cases where the UK Government will see advantages to drawing from EU databases, such as SIS II, VIS (for visas) or EURODAC (for fingerprints). In fact, the EU’s direction of travel is to ensure that the increasing quantity of restricted but non-secret data being collected is more broadly obtainable through the sTESTA system – a €53m secure common clearing house accessible across EU jurisdictions and states.

The loss of participation in the emerging ECRIS database, which shares information on criminal convictions, might be seen as a loss; however, measures are already underway to extend this to plug a major gap by including data on convicted third country nationals, so the UK could be included in data sharing at this stage.

1029 Croatia’s initial experience in issuing its first EAW to the UK, involving quite literally an evil twin, has administratively not been a happy experience and demonstrates the flaws in the system and the wisdom in applying *prima facie* checks. See: <www.5sah.co.uk/croatian-eaw-discharged-abuse-process/>.

1030 European extradition is today underpinned by the Council of Europe’s 1957 Convention on Extraditions: <<http://conventions.coe.int/Treaty/en/Treaties/Html/024.htm>>.

1031 Cooperation Agreement to Combat Fraud and any other Illegal Activity to the Detriment of their Financial Interests (2005).

“The actual end value of signing up to such programmes is open to question.”

In addition to the database networks cited above, sTESTA infrastructure is used for several non-EU projects, such as SCEPYLT (Explosives Control and Protection System to Prevent and Fight against Terrorism) involving six EU states including the UK.¹⁰³²

sTESTA is one component of the (now completed) IDABC programme, or Interchange of Data between Administrations.¹⁰³³ Access to the IDABC system is regulated by Memoranda of Understanding (MoUs) with the third party. Thus candidate countries have been allowed in prior to being EU members. Turkey similarly has an Memorandum of Understanding. This means that the technical infrastructure exists for the UK to participate in areas of future interest, since the mechanisms are designed to be flexible in terms of admitting third parties.

The actual end value of signing up to such programmes is open to question. In 2015, the House of Commons Public Accounts Committee found that the Home Office was simply not up to speed over deporting foreign criminals held within the justice system, even with the tools currently at its disposal.¹⁰³⁴ Systemic failure in deporting such individuals, identified in 2006, had still not been corrected despite nine times as many staff being assigned to tackle the faults – up to 900 in 2014, or one for every 12 people in prison. The Home Office lacked essential data; was uncertain over how many were failing to be deported on release; and had no insight into the relative cost-effectiveness of methods available. Only three in ten foreign nationals were checked against a key database on arrest in 2013–14, with many forces lacking data links between their fingerprint systems and the Home Office immigration database. A key questionnaire takes an average 32 days to send out, and in half of the cases the material (which the offender has to fill out) is simply ignored. The approach is described as “*grossly ineffective*”, badly coordinated, and as using failed schemes.

Correspondingly, participating in international IT systems may well prove in many cases not to be as important as plugging IT gaps within the Home Office itself.

Conclusion

It is fundamental that the the judicial, policing and security services are able to operate within a clear legal framework, efficiently, with the support of the public, and without placing at risk traditional British freedoms. Operationally, some administrative difficulties may arise over the short term during any transition out of the EU. These need not be enduring. Any decisions reached under the current framework, by contrast, are.

Whatever future Parliaments decide over protecting the traditions forged in Magna Carta and the Bill of Rights, it is a balancing act best left outside of the ECJ’s hands, managed far away from the Qualified Majority Voting that, after Lisbon and Stockholm, is now in play at the Home Affairs Council. In other words, the evidence so far from Justice and Home Affairs is that the public has the greatest confidence when justice is administered from home.

1032 European Commission “Business Models for Sharing and Re-Use” (2014).

1033 Other examples of the material shared include the PLOTEUS Portal (generating a single hub for links relating to learning abroad). The system is firewalled between public and restricted official access depending on the intended function and domain. Secure elements are protected by encryption and vetting.

1034 Public Accounts Committee “Managing and removing foreign national offenders” (2015).

22 International Development

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“Around £1.2bn of UK aid is channelled through and managed by the EU.”

The EU and UK principally interact over aid via various EU development spending programmes, to which the UK contributes through the general EU Budget. But there have been longstanding problems with EU aid, including fraud, inefficient spending, and expenditure on projects that may not be British priorities. EU trade, customs, fisheries and agriculture policies also have a substantial impact on development. If Britain were to leave an unreformed EU, philanthropists must consider whether the UK could continue to participate in those EU aid projects which are judged positively. Since most aid is actually coordinated at the global level by key institutions such as the UN, however, Britain could indeed remain involved in international development projects, while benefiting from the public relations opportunities and greater accountability that individual participation brings.

Around £1.2bn of UK aid is channelled through and managed by the EU. This is about three times what Britain channels through the UN. Two-thirds is taken directly from UK payments into the EU Budget.

Britain's contribution means that the European Commission's own aggregated aid budget is, after that of the United States, the second biggest in the world. This sum provides the Commission with a notable and recognised instrument of soft power.

Yet the UK is a major global donor in its own right, and its status and the effectiveness of its own programmes and priorities would be increased by regaining direct control over its share of these surrendered funds. It would also, incidentally, turn the UK into the second biggest global aid donor, which is what, thanks to the British taxpayer, it already is – in fact if not in management practice.

22.1 The UK would remain a member of all key international development bodies

Key international bodies

- International Committee of the Red Cross
- New Pacific humanitarian peace-keeping and crisis support body
- United Nations
- World Trade Organization (WTO)

Aid is overwhelmingly a globally-coordinated effort, since massive disasters can transcend the ability of single states or even regional bodies to prepare or cope.

The central forum for aid spending, dealing with the world's crises as they emerge and develop, is inevitably the United Nations. The EU coordinates its own activity through the UN. For example, in 2010, the EU announced a 12-point action plan to better target aid.¹⁰³⁵ This was a welcome development. More significantly, however, the measures were actually prepared in the context of the EU's commitment to the Millennium Goals, discussed at a High Level Plenary Meeting at the UN. The UK currently coordinates its distinct aid budget through such fora, and consequently the key change emerging from taking full control of its development budget would be in the volume of aid the UK is responsible for in these talks.

The WTO is another key forum where UK engagement would be augmented rather than reduced by leaving the EU. 'Aid for Trade' is WTO-led, but UK par-

¹⁰³⁵ European Scrutiny Committee "A twelve-point EU action plan in support of the MDGs", accessed 07/05/2015 at: <www.publications.parliament.uk/pa/cm201011/cmselect/cmeuleg/428/428i04.htm>.

“Regaining UK control in this area would not mean that Britain stops helping people in crises.”

ticipation is EU-driven. The Bali package emerged from the 2013 conference in which British Minister Lord Green was a vice-chair. However, the parts of the package that related to agriculture, customs and trade were negotiated via the three European Commissioners in attendance. UK participation in development advances can be hindered by EU trade policy.

22.1.1 Cooperation in disaster relief would not be affected

Regaining UK control in this area would not mean that Britain stops helping people in crises. In some cases, such as several of those listed in Table 22.i, UK armed forces will be in the vicinity in any event and among the first on the scene. Typically, aid is coordinated not at EU level but at the UN, and the EU fits into the broader response alongside state contributors such as the USA, Canada and Japan. Just as important is the coordination that takes place across the globe with NGOs and non-state actors, including the Red Cross.

Table 22.i: Some examples of UK Armed Forces support to humanitarian operations

<p>Indonesia /Sri Lanka post-tsunami relief operations 2004 Navy: HMS Chatham; Royal Fleet Auxiliary Diligence; Royal Marines Boat Squadron (six rigid raiders and personnel); HMS Scott. Army: five four-man military operations teams; two logistics officers. RAF: C-17; Tristar; five C-130s; mobile air movement squadron team. Joint: two operations liaison and reconnaissance teams; joint forces headquarters liaison party.</p>
<p>Pakistan earthquake 2005 Helicopters (3 Chinook); 86 engineers; and airlift capability (C-130 & C-17).</p>
<p>Lebanon 2006 Airlift capability: C-17 relief sortie from RAF Akrotiri carrying freight.</p>
<p>Bangladesh cyclone 2007 Supply of light boats.</p>
<p>Cyclone Nargis 2008 HMS Manchester support to Burma.</p>
<p>Padang earthquake 2009 Airlift capability: C-17 sortie of civilian rescue equipment and personnel.</p>
<p>Haiti earthquake 2010 Royal Fleet Auxiliary (RFA) Largs Bay and Operational Liaison and Reconnaissance Team (deployed by C-130).</p>
<p>Chile earthquake 2010 Airlift capability: C-17 sortie to supply tents and other supplies.</p>
<p>Pakistan floods 2010 Temporary bridging and airlift capability: C17 sorties of freight and passengers.</p>
<p>St. Lucia hurricane 2010 Support from HMS Manchester deployed in the region for the Atlantic Patrol Task (North) task, with a party of 35 deployed by helicopter to support operations.</p>

“The UN is the core coordinating body strategically and thematically.”

Jamaica hurricane 2012

Delivery of DfID shelter kits to repair 70 schools by RFA Argus, deployed in the region as part of the Atlantic Patrol Tasking (North).

Caribbean (ongoing)

Storage of relief goods on APT(N) ships.

Source: HM Government¹⁰³⁶

The UN is the core coordinating body strategically and thematically. The UN office covering the key aspects of forward planning, the UN Office for Disaster Risk Reduction (UNISDR), is engaged in early warning and disaster risk reduction (DRR). It was set up in 1999 and is central in ensuring that national approaches coalesce. It is headed by a Special Representative and has regional offices, including one for Europe. A small office is sited in Bonn on the UN campus, liaising with the score of other UN development offices based there.

There are also wings of the UN which cover displacement, the protection of unarmed civilians, human security, and other humanitarian elements. But in terms of emergency support, the central entity is another UN body, the Inter-Agency Standing Committee (IASC). This was set up in 1992 to further strengthen UN response times and capability. The IASC agrees international policy, works out divisions of responsibility, identifies gaps, and lobbies for humanitarian principles to be applied.

Its six principles are:

- Respect for Mandates: that decisions of the IASC will not compromise organisations with respect to their own mandates;
- Ownership: that all organisations have an equal ownership of the Committee and its subsidiary bodies;
- Overall Objective: that the ultimate objective is to support effective humanitarian action;
- Relevance to field operations: that members recognise the criticality of ensuring relevance to field operations and of input by field operations;
- Subsidiarity: that decisions will be taken at the most appropriate level as agreed by IASC Principals;
- Impartiality of the Secretariat: that the IASC will be serviced by a Secretariat that does not represent the interests of any one organisation.

Membership is made up of representatives from across the UN institutions, which are in turn subject to national scrutiny, along with invited attendees from the main global aid NGOs. It is headed by the Emergency Relief Coordinator, as of 2015 Stephen O’Brien, a former UK Government Minister: the post is traditionally occupied by a British national (O’Brien himself replaced Baroness Amos). In a given crisis, a local Office for the Coordination of Humanitarian Affairs (OCHA) is set up to support a designated UN Humanitarian Coordinator.

1036 HM Government “Scotland analysis: EU and international issues” (January 2014), page 30.

“Given the track record of the EU in misusing the solidarity clause, being associated with it in the context of Qualified Majority Voting (QMV) brings far more risks than real value.”

22.2 The UK could continue to cooperate with the EU on development issues

Key issues

- Collaboration in humanitarian emergencies
- Contribution to worthwhile projects
- EEA Grants
- NGO cooperation
- Targeted cooperation with European Investment Bank

The same principles would apply if there were a crisis in Europe itself. The Treaties do provide in the solidarity clause a mechanism for cooperating in the event of a catastrophe.¹⁰³⁷ Recent history certainly provides us with examples of why complacency would be a mistake, whether we recall the mass displacements that followed the Second World War, the 1918 Spanish Flu epidemic, or the largely-forgotten Messina earthquake of 1908 that killed 100,000.

If Britain were outside the EU, it would be nonsense to pretend that there would be no cooperation if such a tragedy were to happen again. Indeed, Declaration 37 of the Treaties states that the governing Article 222 does not restrict even participating members from choosing a more appropriate route for their action.

Given the track record of the EU in misusing the solidarity clause, being associated with it in the context of Qualified Majority Voting (QMV) brings far more risks than real value.¹⁰³⁸ The rest of the EU’s role through Article 196, meanwhile, is stated as being to support, coordinate and supplement member state activity. None of this is precluded by being outside the system.

In the event that a member state needs assistance, the mechanism used in the EU is to lodge an appeal at the Monitoring and Information Centre (MIC), which has been in place since 2001.¹⁰³⁹ By late 2014, it had been activated over 150 times. Latterly, the UK has provided support on average two to three times a year. The UK itself has only requested assistance once, during a cold snap in 2010, when it needed more road salt.

There are potential advantages in having an office which is a single go-to point for requests, and which can then coordinate a pooled response depending on what states have in stock. One risk, however, is that some member states become reliant on it, rather than securing national reserves and, in turn, ultimately reducing pooled capability.

The UK is one of the main donors to this MIC office, contributing around a ninth of its €190m budget while claiming little back. It is, therefore, in a strong position to negotiate continuing support if, on analysis, it proves to be in the Department for International Development’s (DFID) financial and practical interest.

22.2.1 European Investment Bank funding could continue or be ended

The European Investment Bank (EIB) is one of the main agents backing international public finance. It supports EU policies by providing long-term finance to investment projects. Most of its lending is within the EU, but 10 per cent (approximately €7bn) is lent more widely.

1037 Measures were also passed in 2007, though lacking a secure legal basis.

1038 It was used to force non-Eurozone members to contribute to the first euro bail out fund, a clear breach of both wording and intent.

1039 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy” (July 2013), pages 79–80.

“There is a good case for reviewing UK participation in the EIB.”

Since the EIB has the same credit rating as the UK, but risks this being reduced, borrowing directly against the UK’s rating rather than through a rating-pooled intermediary is a safer long-term hedge. However, since the UK shareholding (as of 2013 figures) is about 16 per cent and UK receipts from EIB loans run at around eight per cent, the value for Britain of this state financing is not evident. In other words, the UK is using its own credit rating to lend to competitor businesses.

If British interests and businesses are less likely to receive grants, there is a good case for reviewing UK participation in the EIB. The UK could continue to be involved and see the assets as a national investment; it might seek to secure some mechanism to partially withdraw, which may be complicated; or it might fully withdraw. The EIB cooperates with European Free Trade Association (EFTA) states via the EFTA Loan Facility, which focuses on energy and transport. These are obvious candidates for investment, so EU membership is not a prerequisite for UK access.

From a purely development perspective, a UK-own system could elect to match, reduce or increase the proportion and nature of its funding targeting third world (as opposed to EU) investment. It might, for instance, focus on growth sector SMEs, start-ups, and especially cooperative programmes involving UK partners that might lead to further exports.

22.3 New development policy opportunities would become available

If the target of the UK spending 0.7 per cent of its national income on development aid is both a political priority and an issue of sensitive national debate in an age of austerity, then wise use of all of Britain’s development funds should be an obvious spending concern.

Much of the UK’s current aid is already channelled through non-EU bodies like the UN, and the funds that go through the EU are also influenced by international priorities. However, EU policies that seem detached from development, such as agriculture, blunt the aid’s efficiency. Outside the EU, Britain could remain involved in international development projects, while benefiting from the soft power opportunities and greater transparency that individual participation brings.

22.3.1 International development could be better focused

There are a number of flaws associated with the EU’s handling of international aid that would be mitigated if brought back under national control and parliamentary scrutiny. Broadly speaking, £1.2bn of UK aid is distributed through the EU, via the Commission for International Cooperation and Development (DEVCO), the Commission for Humanitarian Aid and Civil Protection (ECHO), and the European External Action Service (EEAS). Two thirds of this is not voluntary as it is drawn from the EU’s own aid Budget, financed by levies on member states.

This works well when both Whitehall and Brussels interests coincide. The problems arise when they do not. The official UK audit of EU development policy warned that:

- Policy-making can sometimes result in compromise positions that do not give full effect to UK priorities or that lack impact;
- Parallel policy-making at the EU and national level has the potential to result in conflicting policies;
- EU development programme management and delivery are overly complex

“Emphasis is now on regionalisation, which fits better with the EU’s agenda than the UK’s.”

and inefficient, and the EU does not systematically measure results;

- The division of roles between the Commission Directorates-General and the EEAS is unclear and there can be a lack of coordination between Brussels and EU Delegations;
- The EU institutions’ capacity and development expertise is limited in relation to their scope and scale, although ECHO’s humanitarian expertise is widely recognised.¹⁰⁴⁰

Money spent via the EU counts towards the UK’s target of 0.7 per cent of national income put into international aid. If these funds were not spent through the EU, the UK could choose whether to retain them – a £1.2bn Treasury gain – or redirect them into other aid projects.

There are several types of programme:

- European Development Fund (EDF) grants for overseas countries and territories;
- Development Cooperation Instruments (DCIs) for Latin America, South Africa, Asia and the Gulf;
- Instrument for Stability (IfS) – crisis response;
- Humanitarian Aid Instruments (HAIs) – emergency relief.

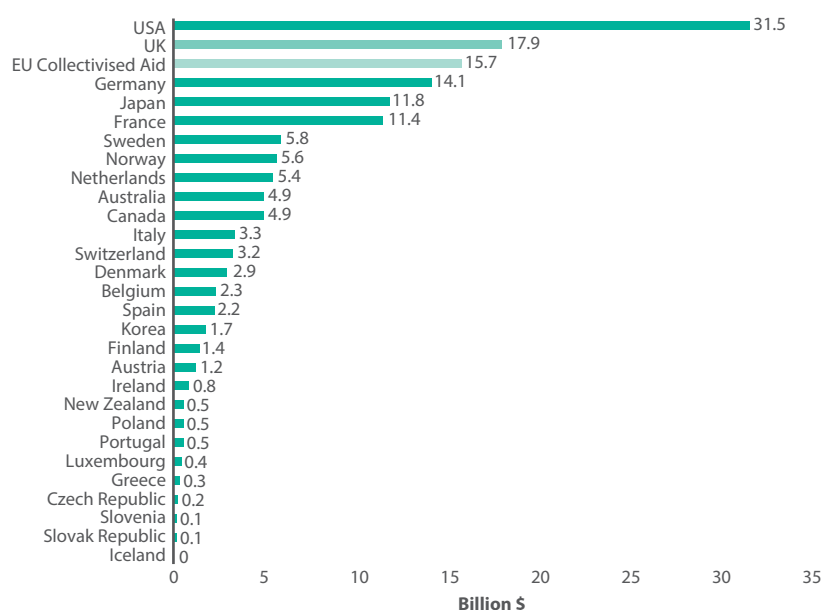
A coherent UK policy upon withdrawal from the EU Development Aid programme would need to review all EDF and DCI grants, which at times have been associated with geopolitical bribery. European Economic Community (EEC) development aid to the emerging African, Caribbean and Pacific states (ACP) was, after all, born of a political deal over privileged French access to emerging nations’ markets. Attempts by the fourth Lomé Convention to use the deal to bolster civil society met with what may best be described as mixed results, and have been overtaken by trade liberalisation. After the 2000 Cotonou Agreement, the emphasis is now on regionalisation, which fits better with the EU’s agenda than the UK’s.

On taking back direct control of its funds, the UK could choose to retain direct links with the aid that matters most – humanitarian crises. International frameworks already exist to deal with such crises so it is more a question of deconflicting resources, which can be achieved by telephoning EU crisis managers to discover whether there is a shortage of water purifiers or blankets currently being loaded onto palettes.

1040 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Development”, (February 2014) pages 6–7.

“Newspapers have revealed so many examples of mismanagement of the EU aid budget over the years that they hardly need repeating in depth.”

Table 22.ii: Total UK level of development aid (including EU-managed elements) vs the OECD norms and the total collectivised EU Budget, 2013



Source: UK Parliament¹⁰⁴¹

22.3.2 National-run systems could provide greater accountability and reduce the risk of fraud and mismanagement

Newspapers have revealed so many examples of mismanagement of the EU aid budget over the years that they hardly need repeating in depth. As a reminder, a handful of the more notorious examples include:

- Delays of over four years in spending any of the €500m EU Water Initiative funds;¹⁰⁴²
- Subsidised powdered milk exports undercutting the Bangladeshi dairy market;¹⁰⁴³
- The Commission accepting official Zimbabwean exchange rates resulting in the loss of nine tenths of the aid’s value, boosting the Mugabe regime;¹⁰⁴⁴
- Siphoning off of hundreds of millions in aid to the Palestinian Authority over several years;¹⁰⁴⁵
- A beehive collective with insufficient transport to move the honey to market.¹⁰⁴⁶

1041 Sources: House of Commons “The 0.7% aid target”, July 2014, page 10, accessed 07/05/2015 at: <www.parliament.uk/briefing-papers/SN03714.pdf>; European Commission “2014 Annual Report”, accessed 07/05/2015 at: <https://ec.europa.eu/europeaid/sites/devco/files/annual-report-2014-eu-development-external-assistance-policies-implementation-in-2013_en.pdf>.

1042 Journal of the European Foundation (October 2006), page 23.

1043 ActionAid “Milking the poor” (September 2011), accessed 07/05/2015 at: <www.ms.dk/sites/default/files/sites/default/files/filarkiv/udgivelseser/milking-the-poor.pdf>.

1044 The Sprout (February 2004), page 5.

1045 The Sprout (May 2005), pages 12–13.

1046 Journal of the European Foundation (April 2001), page 5.

“There is a greater demand for transparency and accountability with UK-managed expenditure.”

Things may well have improved since the time Chris Patten, as a newly-appointed Commissioner, recalled: “*Every time they open a cupboard, a skeleton falls out.*”¹⁰⁴⁷ However, as recently as November 2014, MPs wrote to the Europe Minister for more information regarding claims of corruption made by a whistleblowing British secondee to the EULEX Rule of Law Mission to Kosovo, who was also concerned about his subsequent treatment by the Commission.¹⁰⁴⁸ The issue has not disappeared.

Fraud spotters complain that the Commission’s financial management systems remain overly bureaucratic.¹⁰⁴⁹ In its last review, the European Court of Auditors declared its supervisory and control systems were only “*partially effective*”. This was particularly an issue with European Development Fund finances, with error rates for the budget estimated to run at 5.1 per cent.¹⁰⁵⁰

UK aid projects are not immune to problems like fraud or waste. However, as we explore separately across a number of competences, there is a greater demand for transparency and accountability with UK-managed expenditure. This is thanks to the direct role played by parliamentary committees; a higher degree of professionalism or training in some quarters; a stringent department; an alert press; a reliable and funded internal audit office; and, in particular, a general interest in exposing waste and fraud within the system, since there is no impetus to conceal it (and thus weaken the political cause of European integration).

The UK, in 2013, had an aid budget of \$17.9bn, the second largest in the world behind the US (at \$31.5bn).¹⁰⁵¹ A significant proportion of this has the potential to be better-targeted and managed by removing it from the EU’s grasp, without necessarily affecting how much is handed out.

22.3.3 The UK could regain funds, or redirect aid, spent on cohesion development in applicant states

Significantly, the £1.2bn of aid the UK channels through the EU excludes pre-accession aid – grants directed at potential future member states, intended to bring them up to an economic level compatible with being an EU member. These cohesion funds are, in reality, first world aid bribes, sweeteners for countries to undertake market reforms.

By removing itself from the regional aspects of the EU Budget, the UK could save considerable amounts of money. Countries trading with the EU via a free trade deal do not need to make any such contributions. Alternatively, the Swiss and Norwegian models require much reduced contributions, saving hundreds of millions. The Swiss calculated that their model saved them nine times gross and six times net overall, though their main contributory losses were from precisely these grants.¹⁰⁵² Even so, since 2008, their subsidies to Eastern Europe appear to have run at £158m per annum.¹⁰⁵³

1047 Journal of the European Foundation (April 2001), page 5.

1048 European Scrutiny Committee, accessed 07/05/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-xxiv/21917.htm>.

1049 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Development” (February 2014), page 30.

1050 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Development” (February 2014), page 30.

1051 Guardian “Foreign aid reaches record high” (April 2014), accessed 07/05/2015 at <www.theguardian.com/global-development/2014/apr/08/foreign-aid-spending-developing-countries>.

1052 Swiss Confederation, Integration Office FDFA/FDEA, Europe Report 2006.

1053 Swiss Confederation, accessed 07/05/2015 at: <www.erweiterungsbeitrag.admin.ch/erweiterungsbeitrag/en/home/the-swiss-contribution/kurzportraet-erweiterungsbeitrag.html>.

“The EU openly acknowledges the propaganda value that aid carries.”

This assessment allows us to estimate a rough comparison of potential UK savings under a different funding system. Based on comparative GDP per capita and population, if Switzerland were the UK's size it would have been paying around £630m per year. By contrast, as a full member, the UK's own share is currently set to run at an average of €3.45bn (£2.6bn) annually to 2020.¹⁰⁵⁴ That suggests a shift to Swiss rates could save £2bn in regional aid to Eastern Europe alone, and more if no budgetary contribution was required as part of any trade treaty. The money saved could either be spent as Parliament decided, or directed as actual aid to benefit developing countries.

22.3.4 A UK-flagged development budget would be good for British soft power

DFID has been astonishingly reticent to use aid for basic PR purposes. By contrast, recruitment adverts for the armed forces make surprisingly prominent use of humanitarian intervention as a motive for joining. Other countries' programmes, particularly USAid, proudly display the donor flag, knowing that this carries major PR impact and can be a real boost to hearts and minds campaigns in places such as Afghanistan. DFID has peculiarly seen such an obvious approach as distasteful, and it has required ministerial prompting to change this.

The EU is certainly not so reticent and openly acknowledges the propaganda value that aid carries. Examples range from its projects part-funding infrastructure work in EU states (where the EU flag and name drop is obligatory) to EU-administered programmes in developing countries. There is even a specific Communication and Visibility Manual for External Action, setting out contractual obligations for grant recipients.¹⁰⁵⁵ This encourages:

A communication and visibility plan that will highlight in a dynamic way the impact of the EU support. [...] All communication and visibility activities should be carried out in close cooperation with the appropriate Delegation of the European Union or the relevant department of the European Commission.

The 44 page document puts the EU's PR image at the centre of any aid programme:

- It targets key opinion formers and influential figures in the government, media and beyond;
- It requires even international organisations working alongside the national government to flag up the EU prominently;
- It makes the EU PR gain a key part of the aid planning effort by putting press opportunities central;
- The PR plan has to be signed off by the Commission's own delegation;
- A template is provided (see Box 22.iii);
- The communication budget has to be “sufficient to have a real impact, and reflect the size, and, consequently, the likely impact of the action”;
- If aid is being sent speedily in response to a crisis, no plan is needed but the fact of the EU's support does still need to be suitably displayed.

1054 European Commission “Total EU allocations of Cohesion Policy, 2014–2020”, accessed 07/05/2015 at: <http://ec.europa.eu/regional_policy/index.cfm/en/funding/available-budget/>.

1055 European Commission “Communication and Visibility Manual for EU External Actions”, accessed 07/05/2015 at: <<https://ec.europa.eu/europeaid/node/17974>>.

Box 22.iii: The European Commission's Communication and Visibility Plan Template

GENERAL COMMUNICATION STRATEGY

Objectives

- 1 Overall communication objectives
- 2 Target groups
 - Within the country(ies) where the action is implemented
 - Within the EU (as applicable)
- 3 Specific objectives for each target group, related to the action's objectives and the phases of the project cycle

Examples of communication objectives:

- ensure that the beneficiary population is aware of the roles of the partner and of the EU in the activity
- raise awareness among the host country population or in Europe of the roles of the partner and of the EU in delivering aid in a particular context
- raise awareness of how the EU and the partner work together to support education, health, environment, etc

COMMUNICATION ACTIVITIES

- 4 Main activities that will take place during the period covered by the communication and visibility plan Include details of:
 - the nature of the activities
 - the responsibilities for delivering the activities
- 5 Communication tools chosen. Include details of advantages of particular tools (media, advertising, events, etc.) in the local context

INDICATORS OF ACHIEVEMENT

- 6 Completion of the communication objectives include indicators of achievement for the different tools proposed
- 7 Provisions for feedback (when applicable). Give details of assessment forms or other means used to get feedback on the activity from participants

RESOURCES

- 8 Human Resources
 - Person/days required to implement the communication activities
 - Members of the management team responsible for communication activities
- 9 Financial resources
 - Budget required to implement the communication activities (in absolute figures and as a percentage of the overall budget for the action)

The effect of this has been to weaken the UK brand and strengthen the EU one, so the former gains less recognition for the generosity of its taxpayers. This is a strategic loss of influence.

It is also in stark contrast to Norway, which contributes the 'Norway Grants' as part of its EEA membership fee.¹⁰⁵⁶ Norway has planned to spend €804m in grants, controlled directly by the Norwegian Ministry of Foreign Affairs. Most projects and building works in Central and Eastern Europe that receive Norwegian funding are clearly marked as such, increasing goodwill towards the country. The grants can prioritise matters in which Norway is a world-leader, so effort goes into environmental protection, renewable energy, education, civil society institutions and academia. Norway's grants further elevate its expertise in specialist areas such as carbon capture and storage, and human and social

¹⁰⁵⁶ Technically the grants are not a formal obligation of the EEA Agreement but have become a de facto expectation, rising roughly in line with the main EU Budget.

“EU policy can actually lead to increased costs rather than efficiency savings.”

development, with an explicit aim to bolster ties with EU members. In terms of diplomatic impact, this may be more effective at demonstrating Norway’s commitment to solidarity and fellowship than Britain’s much larger contribution through structural funds, which is swallowed into the general EU pot.

The politics behind how the grants work can prove quite revealing. When moves by Hungary’s Fidesz Government raised concern over accountable democracy and the rule of law, the Commission criticised Prime Minister Viktor Orbán’s constitutional changes. Orbán attempted to scapegoat the EEA and Norway Grants in response, claiming the NGOs they funded were a democratic affront as they undermined his Government. The Fidesz Government tried to move administration of the grants to an unaccountable quango: Norway simply announced the suspension of grants worth over €110m.¹⁰⁵⁷ The example demonstrates both the politics associated with the funds, and the flexibility of those contributing outside the EU format.

Withdrawing from the EU would allow the UK to gain the full credit for its development aid, impacting positively on its reputation. This is critical if UK forces are deployed in a region where aid money is spent.

22.3.5 The UK could restructure aid currently spent via the EU to remove identified flaws

The EU has committed itself to developing a more coherent strategy towards development support. However, certain EU policies are inherently damaging. As former Greenpeace Executive Director Stephen Tindale has observed:

“The main fault with EU development policy is not the quality of spending, or even the insufficient quantity, but the fact that other EU policies damage poor countries. Since 2005, the EU has aimed to make all its policies coherent with its strategy for development. However, some EU policies, particularly those on trade, agriculture and fisheries, continue to harm poor countries.”¹⁰⁵⁸

Another problem, identified during the Balance of Competences Review, was that of the strategic direction of the policies themselves.¹⁰⁵⁹ There is a trade-off between potential benefits in economy, efficiency and effectiveness, and how close the end result is to UK targets (which may be more accurately determined, given wider UK diplomatic presence on the ground). That means some aid will be spent on priorities and in areas away from the desired focus.

The Overseas Development Institute, in particular, has observed that EU policy can end up as a composite of all the member states’ policies without the necessary prioritisation and targeting, which can actually lead to increased costs rather than efficiency savings. This is on top of criticisms of complexity, inefficiency, insufficient focus on value for money, bureaucracy, increased administrative costs, and inflexibility after commitment. Duplication has also been criticised, with the EU passing money on to other international organisations that member states could have sent directly themselves.

1057 EEA Grants website “Suspension of EEA and Norway Grants to Hungary” (May 2014), accessed 11/02/2015 at: <<http://eeagrants.org/News/2014/Suspension-of-EEA-and-Norway-Grants-to-Hungary>>.

1058 Centre for European Reform “Priorities for EU development aid”, accessed 07/05/2015 at: <www.cer.org.uk/sites/default/files/publications/attachments/pdf/2013/pbrief_sct_development_14june13-7556.pdf>. For instance, setting rates on processed chocolate at thirty times the rate of raw cocoa.

1059 HM Government, “Review of the Balance of Competences between the United Kingdom and the European Union: Development” (February 2014), page 51.

“There is a lack of coherent EU policy.”

If particular competences that do prove damaging to developing countries, by restricting trade access to third world farmers or hindering local livelihoods, are restored to national control, it could lead to changes in UK policy at least. Other policies that do not enjoy full public confidence could be opened up to scrutiny. These might include:

- Reviewing tariff levels in the Generalised Scheme of Preferences (GSP) that were changed in 2012, allowing greater access to UK markets by non-EU farmers;
- Reducing the amount of dumping that takes place on developing country home markets (especially in agriculture and foodstuffs);
- UK funds no longer contributing to third party fishing access by EU super-trawlers, which result in overfishing and subsidised competition;
- Possible reduction of subsidy to UK farmers so there is fair competition, or better targeting of what is provided, depending on an informed public debate;
- A policy, driven by open and informed national debate, on climate aid;
- Biofuel policies, that presently can encourage land grabs as well as deforestation;¹⁰⁶⁰
- Tourist development that has a negative impact on the environment;
- Decoupling emergency aid funds from grants spent in conjunction with peace-keeping strategies – occasionally of uncertain EU legality;
- Better managed end delivery of aid: in 2006 only 70 per cent of appropriations ended up actually spent; the risk is increasingly now of overcompensating and overcommitting;
- Less focus on debt cancellation, largely covering state credits;
- Minimalisation of direct budget support mechanisms so less aid goes through national governments, as it is more susceptible to waste, divergence and fraud.

There is a lack of coherent EU policy on whether funding should continue to go to poor people in emerging middle income countries (like India and Brazil), or focus on states with extreme poverty and lack of sanitation. The former types of country, which can afford aircraft carriers, nuclear weapons and space programmes, do not qualify for DFID aid but do for EU aid. This is a major discrepancy in EU funding that DFID has sought to change.

Conclusion

Aid is not a subject to be treated in isolation – as it now has to be by British Government ministers, thanks to important negotiating roles being held instead by several EU Commissioners. ‘Trade for aid’, development targeting, environmental funding, tariff barriers, and quotas all deserve coherent management. Aid, for example, can be a tool in deterring mass migration and undermining radicalism.

If EU aid were indeed a force multiplier for Britain, one might expect DFID and its DEVCO counterpart to be complementary. Yet independent audits of UK oversight of EU-run aid can be highly critical, seeing DFID as having ceded the upper hand in its dealings with EU counterparts, viewing value for money as an outsider concept to EU planners, and considering EU objectives to be divergent

1060 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Development” (February 2014) page 61.

from DFID's own.¹⁰⁶¹ UK money currently spent through EU aid is best placed in more accountable hands.

However, restoring these grants to national control is not an end in itself, but instead an opportunity to correct current failings and to get the most from money which, wisely spent, makes real life-or-death differences. Restoring EU aid funds to British control requires Whitehall to ensure it has joined-up policy targets in place so it can contribute towards the cohesive strategic results the Cabinet Office seeks. Or it could just concentrate on the needy on the brink. Either way, failure would be held to account by the UK Parliament and public.

1061 Independent Commission for Aid Impact "DFID's oversight of the EU's aid to low-income countries" (December 2012), accessed 07/05/2015 at: <http://icai.independent.gov.uk/wp-content/uploads/2012/12/ICAI-EU-report-061212-FINAL.pdf>.

23 Health

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“Membership of the WHO would ensure that Britain would still benefit from cross-border cooperation on medical issues.”

The EU’s involvement in health matters is, at present, minimal. However, thanks to both ‘mission creep’ and a generous reading of the Treaties by the European Commission, this role is expanding at a concerning rate, with the last few years seeing the introduction of several damaging EU laws and policies that have undermined the NHS and Britain’s wider health sector.

Policy-makers need to ask themselves this: can they preserve the limited benefits that EU cooperation has brought to the health sector but also reverse the recent introduction of damaging laws? Fortunately, by leaving the EU, the UK would be able to maintain close links with key international health organisations and European bodies, and would also be able to repeal burdensome EU regulations.

23.1 The UK would remain a member of all key international health bodies

Key international bodies

- Commonwealth Medical Association
- Commonwealth Medical Trust
- Commonwealth Nurses Federation
- Commonwealth Association for Mental Handicap and Development Disabilities
- Commonwealth Pharmacists Association
- Commonwealth Association of Paediatric Gastroenterology and Nutrition
- Commonwealth Dental Association
- Council of Europe
- International Labour Organization
- International Commission on Occupational Health
- United Nations
- World Health Organization

The UK is, in its own right, a member of numerous key international health-care bodies which are responsible for managing cooperation between different countries and promoting product standardisation worldwide. It is also a member of many other health bodies which play an important role in health related issues. Some of these organisations currently engage with the EU rather than the UK. Fortunately, the UK would continue to remain a member of all of these key organisations, and may actually gain a stronger voice in setting international medical standards.

23.1.1 The UK would retain the same relationship with many key international health agencies

The UK is a member of the World Health Organization (WHO), by virtue of the fact that it is a member of the United Nations and has recognised the WHO’s constitution. The European Union is not a member of the WHO, yet a lot of the EU’s work is organised jointly with it and the Council of Europe (among others). An example is the Early Warning System, which works with the WHO’s International Health Regulations events systems (both of which were used during the recent swine flu epidemic). Even in the extremely unlikely situation that the UK was not permitted to take part in EU health coordination, membership of the WHO would ensure that Britain would still benefit from cross-border cooperation on medical issues. WHO Europe is also taking a leading role in developing the new European Mental Health Strategy with the European Commission.¹⁰⁶²

1062 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Health” (2013), page 47.

“Many of the principles that govern national and EU healthcare policies are set at a higher international level.”

In addition to its role in coordinating healthcare policies, the WHO helps to produce health-related legislation. For example, the UK is a signatory to the WHO Framework Convention on Tobacco Control (FCTC), which played a major role in convincing the EU to ban menthol cigarettes (FCTC guidelines informed member states that “*there is no justification for permitting the use of ingredients, such as flavouring agents, which help make tobacco products more attractive*”).¹⁰⁶³

Various UN bodies have a major role in setting international health policies, and these often directly inform the EU’s own policy. EU agencies also work with the Joint UN Programme on HIV/AIDS alongside the WHO. Its membership of these bodies, and others like it, mean that the UK would continue to have significant influence over international health standards were it to leave the EU.

Outside the EU, Britain would remain a member of the International Labour Organization (ILO) which, via fundamental conventions and recommendations, sets down international labour standards that the EU later incorporates into law, including those relating to health and safety and occupational diseases. The UK could also still work with NGOs like the International Commission on Occupational Health (ICO).

Britain would continue to have membership of key Commonwealth organisations, such as the Commonwealth Medical Association, the Commonwealth Medical Trust, the Commonwealth Nurses Federation, the Commonwealth Association for Mental Handicap and Development Disabilities, the Commonwealth Pharmacists Association, the Commonwealth Association of Paediatric Gastroenterology and Nutrition, and the Commonwealth Dental Association.

This should address many people’s concerns about leaving the EU, as many of the principles that govern national and EU healthcare policies are set at a higher international level, and the UK would therefore still have influence over them via its membership of the key international bodies. The Declaration of Helsinki, for example, is a non-legally binding instrument, agreed in 1964, which sets out the ethical principles on human experimentation. EU legislation, such as directives on health and safety, workers’ rights, gender equality, trafficking and asylum, usually introduces principles that have been agreed elsewhere.

23.1.2 The UK would secure a stronger relationship with the other key international health agencies

Were Britain to leave the EU, it would also remain a member of the Council of Europe, which conducts health programmes, including spreading best practice, training programmes and producing models for member states.¹⁰⁶⁴ Despite its independence, the Council has a very close relationship with the institutions of the EU, as the Council has itself acknowledged:

“The European Union is the Council of Europe’s most important institutional partner at both political and technical levels. Co-operation embraces all sectors of the Council of Europe and a wide spectrum of activities, making the European Union an ‘across the board’ partner.”¹⁰⁶⁵

1063 FCTC, cited by the House of Commons European Scrutiny Committee, accessed 25/05/2015 at: <www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/83-xx/8304.htm>.

1064 Council of Europe “Health policy”, accessed 25/05/2015 at: <www.coe.int/t/dg3/health>.

1065 Council of Europe “The Council of Europe’s Relations with the European Union”, accessed 25/05/2015 at: <www.coe.int/t/der/EU_en.asp>.

“Leaving the EU need not compromise the UK’s membership of key European health institutions.”

This engagement involves permanent high-level dialogue between the two organisations along with joint activities. The 2007 Memorandum of Understanding between the EU and the Council bound the two together further. Outside the EU, Britain would not have to worry about the EU speaking on its behalf to Council bodies and would be able to have greater influence over its deliberations. Further, the UK would continue to benefit from Council of Europe programmes such as the European Directorate for the Quality of Medicines (which promotes and monitors the application of health standards), and the European Pharmacopoeia (which is a single reference work for the quality control of medicines in the signatory states, providing a “*legal and scientific basis for quality control during the development, production and marketing processes.*”)¹⁰⁶⁶ as it has signed the Convention on the Pharmacopoeia.¹⁰⁶⁷

23.2 The UK could continue to cooperate with the EU on key health issues

Key issues

- Collaboration on medical emergencies
- Collaboration on health standards
- Enforcement of the European health insurance card
- Enforcement of medical patents

Numerous institutions, both EU and non-EU based, aim to improve cooperation between European countries on health related issues. The UK may wish to continue to be involved in some or all of them if it left the EU.

Policy-makers would have to consider how Britain could still collaborate with European organisations on issues such as medical emergencies and health standards, alongside determining how to continue to enforce Europe-wide systems that work well, such as health insurance and medical patents. Fortunately, leaving the EU need not compromise the UK’s membership of key European health institutions, given that several are open to non-EU members, and others are open to members of the European Economic Area (EEA) or to countries that secure a special deal with the EU, like Switzerland.

23.2.1 Collaboration on medical issues would continue

Under Article 168(3) of the Treaty on the Functioning of the European Union (TFEU), the EU is committed to fostering cooperation with third countries and international organisations that deal with public health – it would have a legal obligation to continue to cooperate with the UK on health-related issues. The EU has also shown a willingness to work with third countries, and Canada has expressed an interest in the new European framework on the prevention of drug related health damage.¹⁰⁶⁸

Furthermore, there is no evidence that leaving the EU would lead to a drop in the quality of UK health and safety standards. All EU directives that have introduced health provisions would remain in force. As a member of the EU, Britain has often exported best practice. And while a review of many of these laws would be likely, such a review would be unlikely to result in the UK reduc-

1066 Council of Europe “Background & Mission of the European Pharmacopoeia”, accessed 25/05/2015 at: <www.edqm.eu/en/european-pharmacopoeia-background-50.html>.

1067 Convention on the Elaboration of a European Pharmacopoeia, European Treaty Series (ETS), No. 50, 1964.

1068 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Health” (2013), page 44.

“The European Health Insurance Card, or EHIC, is available to countries in the EEA and to Switzerland.”

ing its standards. For example, the National Grid has argued that the UK would “almost certainly have adopted similar guidelines” to the EU on non-ionising radiation.¹⁰⁶⁹

Were it willing to apply for a more intimate relationship than ‘WTO status’, such as joining the EEA, the UK could also remain a member of the European Medicines Agency (EMA). A form of membership of the EMA is open to all EEA members: Norway, Liechtenstein and Iceland all have observer status. This means that companies based in non-EU, EEA countries can, like their counterparts in EU member states, submit a single application to the EMA to obtain a Community marketing authorisation which would be valid in all EU and EEA states. It should also be noted that the EMA is already working with regulators outside the EU in fields such as generic medicines. So even if the UK didn’t join the EEA, it is very likely that it would be able to cooperate with the EMA outside the EU.¹⁰⁷⁰ Given that the EMA is physically sited in London, its status will inevitably feature as part of the post-exit negotiations.

The European Health Insurance Card, or EHIC, is available to countries in the EEA and to Switzerland.¹⁰⁷¹ It has helped to ensure that British nationals who travel to other EEA countries can access state-provided healthcare. It also covers treatment of pre-existing medical conditions and routine maternity care (provided the reason for a person’s visit is not specifically to give birth). There are limits to how effective it is: it is no alternative to travel insurance and would not cover any private medical healthcare or costs such as mountain rescue in ski resorts, being flown back to the UK, or lost property. Greater use of the card could, however, make it easier for NHS authorities to assess whether someone has come from another EU country and whether the NHS needs to claim reimbursement from the relevant member state. The failure to do this currently represents a major economic loss for the NHS, since other states claim for health services rendered to UK citizens while the NHS tends to treat foreign nationals for free. There are now plans for patients registering with a new doctor to show a European Health Insurance Card to help the Government recover costs from other EU countries.

Regardless of its flaws, leaving the EU need not mean losing this useful device if Britain either joins the EEA or negotiates a similar deal to the one between Switzerland and the EU. Were Britain to leave the EU and remain within the EEA or secure a bilateral deal, UK citizens would be able to continue to receive medical treatment in other countries, so long as the UK were willing to offer the same treatment to EEA citizens who fall ill while visiting Britain.

The European Food Safety Agency is open to countries that are part of the EU’s neighbourhood policy, so the UK could, if it wished, continue to cooperate with this organisation without any form of special deal.¹⁰⁷² Norway has also opted into EU health bodies such as the European Centre for Disease Prevention and Control and the EU Health Security Committee, despite these being non-EEA bodies.¹⁰⁷³ The Early Warning Response Systems (EWRS) are also open to

1069 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Health” (2013), page 44.

1070 European Medicines Agency “Europe to boost international cooperation on generics” (2015), accessed 25/05/2015 at: <www.ema.europa.eu/ema/index.jsp?curl=pages/news_and_events/news/2015/01/news_detail_002251.jsp&mid=WC0b01ac058004d5c1>.

1071 European Commission “European Health Insurance Card”, accessed 25/05/2015 at: <<http://ec.europa.eu/social/main.jsp?catId=509&langId=en>>.

1072 European Food Safety Authority “About us”, accessed 25/05/2015 at: <www.efsa.europa.eu/en/sco/aboutsco.htm>.

1073 Civitas “The Norwegian Way: A case study for Britain’s future relationship with the EU”, J. Lindsell (2015), page 23.

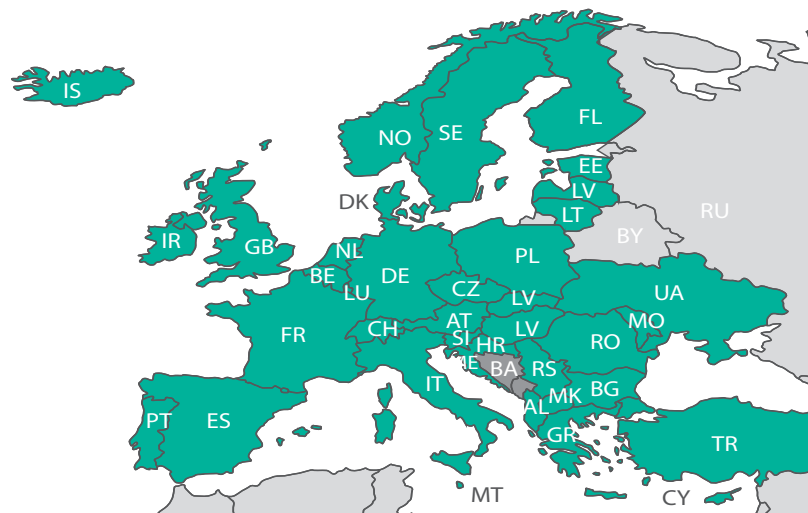
EEA member states. Furthermore, UK suppliers of medical devices would still be able to submit their products for 'CE' marking, which would recognise that they are fit for use across the EU.

The EU's role in setting standards should not be exaggerated. National authorities are responsible for the authorisation of many of the medicines available in Europe that are not authorised by the European Commission on the recommendation of the European Medicines Agency.¹⁰⁷⁴

23.2.2 The European pharmaceutical patent system is open to non-EU members

The intellectual property rights of European medical products are regulated by the European Patent Office, which is not an EU institution and whose membership is not limited to EU member states (see Figure 20). The UK is a member of the European Patent Office because it signed the European Patent Convention, a fact that would not change were Britain to leave the EU.

Figure 23.i: Member states of the European Patent Office



Source: European Patent Office¹⁰⁷⁵

Within the Administrative Council, EEA member states and Switzerland have representatives to represent their countries and their interests.¹⁰⁷⁶ Were Britain to leave the EU, therefore, it would be able to ensure that, when a UK company produces a medical product or a new type of medicine, that firm can, with a single application, see its patent respected across the whole of Europe. Even micro-states like Monaco and San Marino have membership, as well as candidate countries Albania and Serbia.

23.2.3 Medical research with EU partners would continue

EU medical research programmes are not confined to EU member states. Norway continues to participate in EU scientific committees, and both Norway

1074 European Medicines Agency "National competent authorities (human)" (2015), accessed 25/05/2015 at: <www.ema.europa.eu/ema/index.jsp?curl=pages/medicines/general/general_content_000155.jsp>.

1075 European Patent Office "Member states of the European Patent Organisation" (2015), accessed at: <www.epo.org/about-us/organisation/member-states.html>.

1076 European Patent Office "Representatives" (2015), accessed at: <www.epo.org/about-us/organisation/member-states.html>.

“Because health is a devolved matter, leaving the EU would also see new powers for the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.”

and Iceland are observer members of the European Health Technology Assessment Network.¹⁰⁷⁷ Leaving the EU would not disrupt the UK’s membership of key European research bodies if it decided to join the EEA.

Alternatively, the UK could seek to engage with the EU via a bilateral agreement. Switzerland cooperates with the EU on medical research programmes, as it is allowed to participate in the EU’s Framework Programmes thanks to a bilateral deal. Switzerland receives a large amount of EU funding for its research (between 2007 and mid-2012, around CHF1.56bn in grant funding flowed into Switzerland).

23.2.4 Medical professionals from the EU could continue to work within the NHS

According to the UK Government, 10 per cent of NHS staff are from EEA countries.¹⁰⁷⁸ This is enabled by the mutual recognition of qualifications, which helps to ensure that gaps within the NHS are quickly filled. Some fear that there would be a sudden drop in NHS staff if Britain left the EU. However, this is very unlikely to happen.

Outside the EU, the UK could ensure that mutual recognition of medical qualifications continued by joining the EEA. This arrangement includes the freedom of movement of workers, and the Directives establishing the mutual recognition of qualifications (notably Directives 89/48/EEC and 92/51/EEC) apply to EEA members as well as EU members. There would be no disruption to the current system.

Were the UK to decide that it did not want to be part of the EEA, there are other alternatives. Switzerland and the EU have secured bilateral agreements that permit the free movement of workers and mutual recognition of professional qualifications.¹⁰⁷⁹ A similar bilateral deal could be negotiated between the UK and the EU in the two year separation period. As the UK and EU already share many standards, it is likely that such a deal could be secured.

23.3 New health policy opportunities would become available

Despite the EU’s relatively small influence over healthcare, the terms of its membership still restrict the UK’s ability to make significant alterations to current medical policies. Thanks to EU ‘mission creep’, there are likely to be even fewer opportunities for a British Government to significantly change health-care policy in the future.

By leaving the EU, a future UK Government would not only be able to avoid further EU ‘mission creep’, it could also address problems that are currently ‘off limits’, such as tackling the issues caused by the Working Time Directive and health tourism. Because health is a devolved matter, leaving the EU would also see new powers for the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

1077 Norwegian Medicines Agency information accessed at: <www.legemiddelverket.no/English/about-norwegian-medicines-agency/Sider/default.aspx>; European Health Technology Assessment Network information accessed at: <http://ec.europa.eu/health/technology_assessment/policy/network/index_en.htm>.

1078 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Health” (2013), page 9.

1079 Swiss Government, information accessed at: <www.sbf.admin.ch/diploma/01793/01794/index.html?lang=en>. (Following a referendum that found narrowly in favour of imposing controls on EU migration, Switzerland is exploring ways of complying with its bilaterals while also curtailing EU migration).

“The EU’s influence over health-care policy has increased over the last few years.”

23.3.1 EU ‘mission creep’ in healthcare could be stopped

The European Union currently has limited control over healthcare policy, most of which it secured in the Maastricht Treaty in 1992. That Treaty saw the EU gain new powers over “public health”, including a budgetary interest and a right of policy initiative (under Qualified Majority Voting or QMV). Yet the Treaty still limited the EU’s power on health-related issues, making it clear that the management of healthcare was a member state issue. These limits on the EU’s remit have been relaxed somewhat in recent years: the Treaty of Amsterdam (1999) and Treaty of Lisbon (2009) gave the EU new powers. Securing these powers was something of a victory for the EU, as it has attempted on several occasions to widen its remit – most notably during discussions over the European Constitution in 2004.¹⁰⁸⁰

Today, the current limits on the EU’s healthcare powers are enshrined in the Treaty itself. Under the terms of Article 168 of the Treaty on the Functioning of the European Union (TFEU), member states are responsible for:

*The definition of their health policy and for the organisation and delivery of health services and medical care. The responsibilities of the member states shall include the management of health services and medical care and the allocation of the resources assigned to them.*¹⁰⁸¹

Formally, the EU is restricted to “complement[ing] national policies” as well as taking action in the Single Market regarding health products.¹⁰⁸² In some areas, such as social care, the EU has nearly no remit.¹⁰⁸³

Despite the legal limits, this has not prevented the EU from attempting to introduce comprehensive rules in this area, proposing a new ‘Healthcare Directive’ in 2007 and a substantial increase in powers. This was seen as “controversial” by the BBC, with Labour MPs warning that it could “lead to an internal market for health and ultimately to the demise of the publicly-funded National Health Service (NHS).”¹⁰⁸⁴ The European Commission ultimately had to withdraw the Directive, but it highlights the desire of some in the Commission to extend EU competence in this area.

Despite this setback, the EU’s influence over healthcare policy has increased over the last few years, threatening the UK Government’s monopoly of authority over the NHS. One particularly sinister development came in 2006, when a Communication from the Commission announced that, following ECJ judgments, it had become “clear that when health services are provided for remuneration, they must be regarded as services within the meaning of Treaty and thus relevant provisions on free movement of services apply”.¹⁰⁸⁵ This approach has allowed for the gradual accumulation of EU powers: in 2008, the EU introduced an Executive Agency for Health and Consumers and, in 2014, introduced an agreement on the framework for EU action in healthcare between 2014 and 2020, making improving healthcare one of the goals of the ‘Europe 2020’ pro-

1080 Bruges Group “Health and the Nation”, L. Rotherham (2004), accessed 25/05/2015 at: <www.brugesgroup.com/eu/health-and-the-nation.htm?xp=paper>.

1081 Article 168(7) TFEU.

1082 Articles 114 and 168 TFEU.

1083 However, EU fundamental rights cases are now testing obligations by care providers.

1084 BBC News “Key EU health care report delayed” (2007), accessed 12/04/2015 at: <<http://news.bbc.co.uk/1/hi/world/europe/7150879.stm>>.

1085 European Commission “Communication from the Commission: Consultation regarding Community action on health services (SEC (2006) 1195/4)” (2006) page 3.

“The UK’s influence over health-related legislation has declined over the last year.”

gramme.¹⁰⁸⁶ In addition, the EU has also managed to accumulate significant health-related powers thanks to successive Treaty changes. Under Article 168(4) TFEU, for example, the EU is tasked with “*setting high standards of quality and safety for medicinal products and devices for medical use*” in addition to setting quality and safety standards for organs and substances of human origin.¹⁰⁸⁷ Under Article 168, it has a role over medical devices.

At the same time as this growing Treaty competence, both policies designed to promote the Single Market and improve workers’ rights and judgments from the ECJ have forced damaging changes on the NHS, as pointed out by the Welsh Government:

*Decisions of the European Court of Justice leading to the development of the directive allowing patients to receive health care elsewhere in Europe at the cost of their home country, have gone against the understanding that management of health services is the prerogative of the member states.*¹⁰⁸⁸

Tellingly, the European Parliament has itself acknowledged this gradual expansion of competences: “*Despite the absence of a clear legal basis, public health policy had developed in several areas prior to the current Treaty.*”¹⁰⁸⁹ Judging by the recent action of the European Courts and the steady increase in EU health-related laws, there is a risk that this ‘mission creep’ will continue over the next few years – the Commission has already made it clear that it would like to legislate on telemedicine systems.¹⁰⁹⁰ While the EU may – on paper – have limited power over health policy, via ‘mission creep’, the unintended consequences of other policies, and ECJ judgments, the EU’s remit over health has gradually increased and the trend looks set to continue.¹⁰⁹¹

More concerning is the fact that, according to British Influence, the UK’s influence over health-related legislation has declined over the last year. As the group’s ‘scorecard’ points out: “*The major development in 2014 was the adoption of the EU’s public health plan but the UK failed to achieve a reduction in the budget so our rating goes from green to amber.*”¹⁰⁹² There is little doubt that the EU is pushing to have even more powers over healthcare. The Government’s Balance of Competences review noted:

Stakeholders also flagged the European Semester process and the involvement of the Troika in discussing national reforms in member states. Their involvement in health is increasing, particularly in member states requiring bailouts in recent years. There were questions on whether there are competence impli-

1086 There had been two previous programmes of Community Action in the field of health between 2003–2008 and 2003–2013.

1087 Article 168(4)(c) TFEU.

1088 The Welsh Government, cited in HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Health” (2013), page 69.

1089 European Parliament “Factsheets on the European Union: Public Health”.

1090 European Commission “Telemedicine systems and services”, accessed 25/05/2015 at: <http://europa.eu/legislation_summaries/public_health/european_health_strategy/sp0003_en.htm>.

1091 An additional way the EU has accumulated power is via delegated powers under Article 290 TFEU. This article enables the Commission to adopt further legislation to supplement or amend “non-essential elements” of the parent law. The EU has attempted to use this power to ensure that checks are carried out by medicines regulators in customs areas – something the British Government has contested. See European Scrutiny Committee “Preventing the counterfeiting of medicinal products” (2008).

1092 British Influence “The British Influence Scorecard 2015” (2015), page 80.

“The President of the European Commission Jean-Claude Juncker made it clear that he wanted to see an increase in EU power.”

*cations in health from this work. This is an important point to keep under review.*¹⁰⁹³

When he entered office in 2014, President of the European Commission Jean-Claude Juncker made it clear that he wanted to see an increase in power. In a recent letter, he acknowledged that, when it came to food safety, “*the Commission already exercises substantial responsibilities in these areas*”, but went on to argue for more action in human health, despite recognising the legal limits on the EU’s powers:

In the area of human health, the tasks given to the Commission under the Treaty are more limited. The specific exclusion of national health policy and of the management of health services illustrate the importance of respecting the rules on subsidiarity and proportionality. At the same time, the EU can clearly help member states address the challenge of increased calls on health services and more complex technological choices at a time of intense pressure on public finances. During our mandate, I would like you to focus on the following:

- *Ensuring that the Commission is always ready to play its part in supporting the EU’s capacity to deal with crisis situations in food safety or pandemics.*
- *Working together with the Commissioner for Internal Market, Industry, Entrepreneurship and SMEs to jointly develop EU policies as regards medicines and pharmaceutical products while taking fully into account that medicines are not goods like any other.*
- *Within the first six months of the mandate, reviewing the existing decision-making process applied to genetically modified organisms (GMOs), in line with the Political Guidelines.*
- *Developing expertise on performance assessments of health systems, drawing lessons from recent experience, and from EU-funded research projects to build up country-specific and cross-country knowledge which can inform policies at national and European level. To the extent that it relates to the quality and productivity of the EU workforce, to the modernisation of social protection systems and to the quality and effectiveness of public expenditure, this expertise can also usefully inform the work of the European semester of economic policy coordination.*
- *Supporting the Commissioner for Humanitarian Aid and Crisis Management in his capacity*”.¹⁰⁹⁴

Outside the EU, the UK would no longer have to worry about the EU attempting to introduce new health laws that could cause problems for the NHS or the wider healthcare sector. Depending on the sort of relationship that Britain secures, there would be limits to how far it is able to have an independent policy for medical products. For example, if the UK applies to join the EEA, it would be expected to comply with Single Market regulations. Alternatively, if the UK signed a bilateral deal with the EU to secure access to the Single Market in medical products, it may well be obliged to incorporate EU health standards,

1093 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Health” (2013), page 69.

1094 European Commission “Mission letter to Vytenis P. Andriukaitis” (2014), J-C. Juncker, page 4.

“The health provisions in TTIP have generated significant opposition, not least within the Labour Party.”

as Switzerland is currently required to do.¹⁰⁹⁵ Any attempt to reduce or amend EU directives would have to consider international obligations, but there would still remain substantial leeway to reduce the burden of EU ‘gold-plating’ (see Section 29).

23.3.2 The proposed TTIP could be replaced and amended to better protect the NHS

The proposed Transatlantic Trade and Investment Partnership (TTIP) free trade agreement between the EU and the USA has been criticised by some as a risk to the NHS, especially the introduction of the Investor-State Dispute Settlement (ISDS) instrument. According to the NHS Confederation: *“Concern... remains about potential ‘policy freeze’: might governments think twice about introducing certain kinds of legislation if they fear potential challenges under ISDS?”*¹⁰⁹⁶

The health provisions in TTIP have generated significant opposition, not least within the Labour Party. There is, potentially, a situation where future governments would not be able to end private sector involvement in the NHS. This has raised fears that it could permanently compromise one of the key principles of the NHS – that it is *“accountable to the public, communities and patients that it serves.”*¹⁰⁹⁷

This problem does not apply solely to direct NHS provision either, but to wider public health initiatives such as those designed to dissuade people from taking up smoking. One of the ‘Big Four’ tobacco giants, Philip Morris International (PMI), attempted to use an ISDS mechanism between Australia and Hong Kong to sue Australia for introducing plain packaging legislation. There is a fear that similar initiatives would be extremely difficult to justify in the UK after TTIP was passed, since they would alter the terms of the market for a tobacco company.¹⁰⁹⁸ Indeed, PMI has made multi-billion pound threats against the UK even before TTIP has been enacted.¹⁰⁹⁹

Were the UK to leave the EU, it would no longer be party to the current terms of the proposed TTIP. Opposition to ISDS is sometimes written off as an anti-business stance or a simple misunderstanding – but the Governments of Norway and South Africa have stated that they would not commit to such mechanisms, following the recent use of ISDS on matters of public policy.

23.3.3 EU health regulations could be repealed

In recent years, the EU has taken a more active role in the healthcare sector, using its new Treaty powers to regulate the market and to try and improve stand-

1095 European Commission “Explanatory Notes to Chapter 15 (Medicinal Products GMP inspection and batch certification) of Annex 1 of the EU-Swiss MRA”.

1096 NHS European Office “The Transatlantic Trade and Investment Partnership and the NHS” (2014).

1097 NHS “About the NHS”, accessed 25/05/2015 at: <www.nhs.uk/NHSEngland/thenhs/about/Pages/nhscoreprinciples.aspx>. It should be remembered that there is some debate about the actual impact TTIP will have in this area.

1098 Tobacco is only the most salient example of this ISDS threat. It is possible that, for example, if car engines are found in future to be emitting a previously unknown chemical, or a chemical only just discovered to be dangerous, then ISDS could be used to dissuade governments from regulating engine production to avoid that chemical’s emission.

1099 Civitas “Big Tobacco’s £11bn UK attack could send EU-US trade deal up in flames”, J. Lindsell (12 August 2014), accessed 25/05/2015 at: <<http://civitas.org.uk/newblog/2014/08/big-tobaccos-11bn-uk-attack-could-send-eu-us-deal-up-in-flames/>>; Civitas “How does TTIP affect your health? A public warning”, E. Stubbs (20 November 2014), accessed 25/05/2015 at: <<http://civitas.org.uk/newblog/2014/11/how-does-ttip-affect-your-health-a-public-warning/>>.

ards. The legislative trend would suggest that the EU is moving away from its former approach of respecting health as a member state area and is now seeking to adopt a far more micro-managerial approach. The increase in EU regulation can be seen in Table 23.ii, which lists a number of EU health rules that have been introduced in the last 15 years.

Table 23.ii: Notable EU healthcare directives and regulations introduced since 2000

Directive/Regulation	Date	Description
Regulation (EC) No 141/2000	2000	Lays down the centralised procedure for the designation of orphan drugs.
Directive 2001/20/EC (the Clinical Trials Directive)	2001	Deals with the implementation of good clinical practice.
Directive 2001/83/EC	2001	Requirements that medical devices must fulfil in order to be placed on the market, and the procedure for assessment of conformity, as well as conditions for clinical investigation and for packaging and labelling.
Regulation (EC) No 178/2002	2002	Requirements that medical devices must fulfil in order to be placed on the market, and the procedure for assessment of conformity, as well as conditions for clinical investigation and for packaging and labelling.
Directive 2004/23/EC	2004	Setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells.
Directive 2005/28/EC	2005	Reinforces the implementation of good clinical practice.
Regulation (EC) No 1901/2006	2006	Ensuring that medicinal products meet the needs of children.
Regulation (EC) No 1902/2006	2006	Ensuring that medicinal products meet the needs of children.
Regulation (EC) 1394/2007	2007	Regulating advanced-therapy medicinal products, based on advances in cellular and molecular biotechnology and novel treatments, including gene therapy, cell therapy and tissue engineering.
Directive 2007/47/EC	2007	Requirements that medical devices must fulfil in order to be placed on the market, and the procedure for assessment of conformity, as well as conditions for clinical investigation and for packaging and labelling.
Directive 2009/120/EC	2009	Regulating advanced-therapy medicinal products, based on advances in cellular and molecular biotechnology and novel treatments, including gene therapy, cell therapy and tissue engineering.
Regulation (EC) No 1223/2009	2009	Requirements that medical devices must fulfil in order to be placed on the market, and the procedure for assessment of conformity, as well as conditions for clinical investigation and for packaging and labelling.
Pharmaceutical Package	2011	Harmonisation of national drug licensing procedures, and to introduce rules on advertising, labelling and distribution.
Directive 2011/62/EU	2011	Regulation against presence of sub-standard, falsified or non-relevant ingredients, or wrong dosage, etc.
Regulation 1027/2012	2012	New requirements and procedures for monitoring of medicines etc.
Directive (2012/26/EU)	2012	New requirements and procedures for monitoring of medicines etc.

“The UK had excellent practices in place before the Directives.”

Directive/Regulation	Date	Description
Regulation (EU) No 282/2014	2014	Establishment of a third Programme for the Union’s action in the field of health 2014–2020, support actions in the fields of communicable diseases and other health threats, human tissues and cells, blood, human organs, medical devices and medicinal products.

Source: Compiled by the European Parliament

It is important to note that not all EU medical laws have been harmful: on occasion, the EU has been successful in spreading best practice.¹¹⁰⁰ An example is the way it has attempted to reduce European citizens’ intake of tobacco and over-consumption of alcohol.¹¹⁰¹ Recent regulations have called for warnings to take up 75 per cent of the front and back of cigarette packets (the compromise is set to be 65 per cent). The UK often benefits from this, in so far as the spread of good practice often entails the spread of British standards. As the Balance of Competences Review acknowledged in the case of tobacco: “[T]he EU has spread good practice... building on work already undertaken here and in other member states”. In the same document, respondents noted that the spread of good practices had not resulted in big changes in Britain, because “the UK had excellent practices in place before the Directives.”¹¹⁰²

Often the EU’s laws are supported by the British Government. The EU’s recent ban on menthol cigarettes and the ban on small packets of ten cigarettes, for example, were both supported by the UK Government.¹¹⁰³ This ability to cooperate with other EU countries may develop further, thanks to the proposed Health Technology Network, a voluntary network which would allow contributing members to compare the effectiveness of different healthcare treatments. Norway and Iceland participate as observers. The EU’s efforts to develop e-health may also prove to be beneficial. While EU policies have created costs for businesses, the harmonisation of medicines and medical devices, along with a common regulatory framework, has helped to make it easier for those who export these items to the EU.

There are some advantages to developing common systems. The regulation establishing the European Medicines Agency (EMA) (created in 1993 to “guarantee the highest level of public health and to secure the availability of medicinal products”) has provided the producers of medicines with a single agency for evaluation.¹¹⁰⁴ In the Balance of Competences Review, it was found that exporters appreciated only having to secure one licence: “a system where life science companies seek 28 different licenses across member states would clearly be detrimental for patients and industry”.¹¹⁰⁵ Notably, the Health Products and Food Branch of Health Canada does cooperate with the EMA, including a mutual recognition agreement, so EU membership is not a prerequisite for cooperation.

1100 Though this should be set in the context of the EU also subsidising the production of poor grade tobacco, and by contradictory policies on e-cigarettes.

1101 The Commission has introduced green papers and a strategy to reduce citizen’s intake of tobacco and alcohol. It should be noted that some of these rules may have been informed by international organisations (see Section 29 for more details).

1102 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Health” (2013), page 33.

1103 BBC News “Tough EU smoking rules approved” (2014).

1104 Once medicines are placed in the market, they are monitored throughout their entire lifespan by the EMA which records any adverse drug effects in daily clinical practice (the ‘Pharmacovigilance System’).

1105 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Health” (2013), page 7.

“Commonality of supply over time risks an obligation to provide healthcare to EU nationals regardless of nationality and domicile.”

Certain EU regulations have also improved market dynamics within the health sector, though at some risk. For example, Directive 2011/24/EU allows patients to purchase healthcare in another member state and claim reimbursement from their home country (subject to certain conditions). This helps to create a market in healthcare, potentially widening sources of income for the NHS. But this direction also risks undermining the NHS since it admits to the prospect of the Europeanisation of healthcare, with several potential consequences. If patients have the right to be treated and a national service cannot provide the treatment, then patients can go abroad. Legal challenges to test the liability of national health providers for patients who do this and then claim costs back afterwards have so far largely failed, but this cannot be guaranteed to remain the case. Similarly, commonality of supply over time risks an obligation to provide healthcare to EU nationals regardless of nationality and domicile.

It is therefore clear that there are limits to the benefits of EU health regulations – mostly due to inconsistencies in the way different member states implement directives. In particular, recent scandals involving fraudulent breast implants and certain metal-on-metal hip replacements suggest that some member states have less stringent quality checks than others, raising questions about the effectiveness of the EU’s regulatory framework for medical devices.¹¹⁰⁶ As pointed out by the Royal College of Surgeons:

*[W]e have concerns that a device failing to meet the approval criteria of one notified body may gain approval from another, less stringent, notified body elsewhere. We see this as a public protection risk, and one which is a barrier to increasing public confidence in the system.*¹¹⁰⁷

In short, there is a risk that low-quality medical products could be approved by a sub-par authority and then marketed on the EU market. In addition, irregularities in the way member states implement EU directives mean that there are still hurdles facing the free movement of items, including tissues and cells.

Several EU health laws stand out as having caused particular problems for UK healthcare, most notably the Clinical Trials Directive (2001/20/EC). This law, first introduced in 2001, has been identified as increasing bureaucracy, creating new burdens for business, and as allowing European states to introduce contradictory domestic rules. This makes the EU a less attractive location for clinical trials and getting licensed products to market becomes a slower process:

*The implementation of the EU Clinical Trials Directive in 2004 was intended to harmonise the standard of clinical research performed in the EU. Unfortunately, different interpretations of the legislation across the member states, different national laws and a general increase in the number of requirements greatly increased the administrative burden associated with performing clinical research. This increased the time taken to obtain key documents such as Clinical Trial Approvals (CTAs). This steep increase in complexity is considered to have contributed, along with other factors, to the steady decline in the number of clinical trials performed in the EU since 2004.*¹¹⁰⁸

1106 The House of Commons European Scrutiny Committee noted in November 2014 that the EU is planning to introduce new regulation to try and amend the medical devices rules. See also The Independent “Implant danger extends to all medical devices”, J. Lawrence (18 January 2012).

1107 Royal College of Surgeons, cited in HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Health” (2013), page 31.

1108 Association of the British Pharmaceutical Industry, cited in HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Health” (2013), page 31.

“Beyond the NHS, EU health policies have also introduced legislative burdens in other areas of public life.”

The consequences of this law can be seen in the fact that, between 2007 and 2011, applications for clinical trials in the EU fell by 25 per cent, and by 22 per cent in the UK.¹¹⁰⁹ It remains to be seen whether the reforms to this Directive via the new Clinical Trials Regulation will improve the situation.¹¹¹⁰

Other EU health-related proposals have been criticised for being overly detailed. The British Government said in 2014 that it *“considers that the Commission’s proposals to introduce additional pre-market scrutiny of higher risk devices by a central Committee of Member State experts would be ineffective, overly bureaucratic and delay patient access to life-changing medical technologies”* (the Government has stated that it would seek to ensure that any additional pre-market scrutiny was *“clinically focused and applicable to a narrowly defined range of products”*).¹¹¹¹

Beyond the NHS, EU health policies have also introduced legislative burdens in other areas of public life. The EU’s summary page of consumer safety legislation lists five general provisions and 22 specific provisions on product safety, with laws ranging from the Machinery Directive (Directive 2006/42/EC) to the Dangerous Products Resembling Foodstuffs Directive (Directive 87/357/EEC).¹¹¹² This has led to the creation of organisations like the European Food Safety Authority and Scientific Committees for consumer safety and public health.¹¹¹³

For instance, EU laws – introduced to protect workers from dangerous vibrations – forced many organisations to reorganise their practices. REACH is another example of a highly prescriptive EU law that was intended to *“improve the protection of human health”* and yet has caused real problems in the chemical industry, both adding complexity to the sector and – according to green campaigners – not going far enough to protect human health.¹¹¹⁴ Rules requiring additional medical information to be placed on food labelling (the label must list all allergens in a product) have also been criticised as going too far. According to the British Hospitality Association, these changes have created a £200m annual bill for the UK catering sector.¹¹¹⁵

1109 HM Government “Cut EU red tape” (2013), page 50.

1110 The EU has introduced a Clinical Trial Regulation (Regulation No. 536/2014) which, according to the Government’s Red Tape taskforce, would make it *“easier and quicker for businesses to apply and seek approval to undertake clinical trials”*. See HM Government “Cut EU red tape: One Year on” (2014), page 6.

1111 European Scrutiny Committee “Regulation of medical devices”, accessed 25/05/2015 at: <www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-xxi/21907.htm>.

1112 European Commission, accessed 25/05/2015 at: <http://europa.eu/legislation_summaries/consumers/consumer_safety/index_en.htm>. For a detailed critique, see IEA “A blueprint for Britain: Openness not Isolation”, I. Mansfield (2014), page 37.

1113 Established by Regulation (EC) No 178/2002 and Commission Decision 2008/721/EC.

1114 Greenpeace “New EU chemical law alive, but not kicking” (2006).

1115 British Hospitality Association “Food allergen regulations will cost business £200 million per year” (2014).

“Healthcare professionals have found that the EU is very slow to amend its practices or existing regulations/directives.”

Case Study of the problems stemming from EU health rules:

A dozen tons of sun-dried Indian bummalo fish were exported annually to the UK. This was subject to a number of EU import requirements, including health certification and fumigation certification. In 1995, the Commission decided that locally-supplied health certification was insufficient and would need to be replaced by a Communities variant. This caused friction as it added extra costs to a very localised and small scale industry. In 1997, a ban on shrimp and squid following a genuine health issue in the fisheries was extended to the Bombay Duck fishermen, though they were from different fishing communities and the Commission had received no data on any health issues with this foodstuff. When the subject was reviewed by the Commission, it decided that exemptions would be permitted to certified establishments signed off by health inspectors, which was both costly and impractical for more distant villages. The small scale of the exports meant that the fishery, and therefore the product, was now unviable even with subsequent Commission concessions. The issue was only resolved because one company was finally found to take on the costs of being a certified packer.¹¹¹⁶

Perhaps the most notable example of this over-zealous application of health and safety rules is the Health and Safety at Work Framework Directive (Directive 89/391/EEC) which, among other things, requires all businesses to keep written records of risk assessments carried out in their workplace. It has been estimated by the Government that repealing or modifying this single directive so as to exempt small businesses in low-risk sectors would benefit at least 220,000 UK small companies.¹¹¹⁷

In addition to the cost of its rules, healthcare professionals have found that the EU is very slow to amend its practices or existing regulations/directives. While this raises questions about the EU’s remit, more concerning is the fact that those who engage with the European Commission on medical issues have reported that it *“did not always look enough at the costs and benefits of a specific policy”*.¹¹¹⁸

Were Britain to leave the EU (and the EEA), the UK Parliament would be free to reconsider all EU laws and rules. Of course, in any negotiations with the EU after leaving, the UK would have to consider whether its new relationship permits significant regulatory divergence and whether it is willing to compromise. It would also have to consider international obligations, such as UN regulations, which sometimes inform EU directives. However, Britain would certainly be able to introduce some degree of deregulation and could adjust the way international obligations are transposed.

Beyond a greater freedom to consider ethical questions, the main areas where the UK would gain new powers to legislate include:

- Medical devices;
- Organ and human tissue;
- Medical labelling;
- Genetic testing;
- Stem cell experimentation.

Were the UK to apply for membership of the EEA, it would retain full access to the Single Market in medical products and medicine, but would be expected to comply with many EU directives and regulations. However, there would be much greater scope for variation on health issues (products and services) unre-

1116 Taken from Civitas *“Hard bargains or weak compromises? Reforming Britain’s relationship with the EU”*, B. Binley and L. Rotherham (2015), page 15.

1117 HM Government *“Cut EU Red Tape”* (2013), page 22.

1118 HM Government *“Review of the Balance of Competences between the United Kingdom and the European Union: Health”* (2013), page 10.

“Many of the health-related issues that have been caused by the EU often do not stem from health-based measures.”

lated to the Single Market. Further, if a truly damaging directive or regulation was being forced through the EU while Britain was in the EEA, the UK could veto it (along with the other EEA states), suspending free trade in that specific product or service area.¹¹¹⁹

However, were the UK to decide that it valued the ability to vary its regulation more than access to the Single Market and not join the EEA, it would be possible for the UK to enact stricter laws. At the moment, there are constraints – for example, Directive 2002/98/EC puts limits on how restrictive member states can be when it comes to protective measures for human blood, stating that any standards must comply with EU competition law.¹¹²⁰ The UK could – if it wished – build further on its already high standards and demand that medical products that enter from the EU comply with its own requirements. Alternatively, the UK may choose to deregulate – for example, regaining control over food labelling requirements could mean that UK catering firms would no longer be required to publish all allergen information, reducing costs. But the choice would be for the British and Scottish Parliaments, as well as the Welsh and Northern Irish Assemblies.

23.3.4 Other non-healthcare related EU policies that have adversely impacted the NHS and UK medical sector could be amended

Many EU programmes and laws cross several policy areas, and health is not immune. This means that many of the health-related issues that have been caused by the EU often do not stem from health-based measures, but from other policies which have, inadvertently, demanded changes within the NHS and wider UK health sector.

Perhaps the best example of this is the Working Time Directive or WTD (Directive 2003/88/EC). This policy, introduced in 2003, has led to dramatic changes within the NHS. These changes have not been well-received. John Black, then President of the Royal College of Surgeons, said in 2010:

To say the European Working Time Regulations has failed spectacularly would be a massive understatement. Despite previous denial by the Department of Health that there was a problem, surgeons at all levels are telling us that not only is patient safety worse than it was before the directive, but their work and home lives are poorer for it... there is not a moment to lose in implementing a better system which would enable surgeons to work in teams, with fewer hand-overs and with the backup of senior colleagues.¹¹²¹

He was not alone in having this view. In 2010, a survey of 980 surgeons and surgical trainees, which covered all nine surgical specialties and all Strategic Health Authorities in England as well as surgeons based in Scotland, Northern Ireland and Wales, found that 80 per cent of consultant surgeons and two thirds of surgical trainees (66 per cent) thought patient care had deteriorated under the directive, and an additional 65 per cent said their training time had

1119 Civitas “The Norwegian Way: A case study for Britain’s future relationship with the EU”, J. Lindsell.

1120 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Health” (2013), page 22.

1121 Royal College of Surgeons “Impact of doctor working time cap on patient safety and training getting worse, says new survey”, accessed 12/03/2015 at: <www.rcseng.ac.uk/news/impact-of-doctor-working-time-cap-on-patient-safety-and-training-getting-worse-says-new-survey#VQBelfmsX94>.

“Two judgments have created serious problems for the NHS’ rota systems.”

decreased.¹¹²² According to the Royal College of Surgeons, *“the survey paints a picture of an NHS that... is still is totally overstretched due [to] an arbitrary hours regulation.”*¹¹²³

The problems that the WTD has caused the NHS primarily come from two key rulings by the ECJ:

- The ‘SiMAP’ ruling in October 2000, which saw the ECJ decide that time spent on call in a hospital counted as working time. This resulted in resident on-call doctors’ hours being slashed;
- The ‘Jaeger’ ruling in April 2003, which saw the ECJ decide that ‘rest periods’ had to be taken immediately if a minimum rest period had been interrupted (e.g. because of an emergency).

Taken together, these two judgments have created serious problems for the NHS’ rota systems. The British Medical Association estimates that the effect of this judgment is tantamount to losing between 4,300 and 9,900 junior doctors, who now have the legal right to reduce their on-call time in given periods.¹¹²⁴ This has created an obvious shortage in the number of available doctors, which has in turn imposed extra costs on the NHS since it relies heavily on junior doctors.¹¹²⁵ According to the Daily Telegraph, since 2010 the NHS has had to spend £2bn on temporary doctors to fill gaps in rotas.¹¹²⁶

The problems with the WTD were identified by the British Government in the Balance of Competences Review:

*Seven of our stakeholders, including the Royal College of Physicians (RCP), HEE and the GMC, felt that there is a lack of operational flexibility, particularly around the on-call time and compensatory rest requirements caused by the CJEU judgements SiMap (which stated that all time when a worker was required to be present on site whilst on call counted as actual working hours) and Jaeger (which confirmed that time on call at a place of work counted as working hours even if workers could sleep and that compensatory rest must be taken immediately after the end of the working period). Some stakeholders believed more needs to be done to ensure rules governing working time allow suitable training opportunities for doctors to deliver a health service that operates on a 24-hour basis.*¹¹²⁷

1122 Royal College of Surgeons “Impact of doctor working time cap on patient safety and training getting worse, says new survey”, accessed 12/03/2015 at: <www.rcseng.ac.uk/news/impact-of-doctor-working-time-cap-on-patient-safety-and-training-getting-worse-says-new-survey#.VQBelfmsX94>.

1123 Royal College of Surgeons “Impact of doctor working time cap on patient safety and training getting worse, says new survey”, accessed 12/03/2015 at: <www.rcseng.ac.uk/news/impact-of-doctor-working-time-cap-on-patient-safety-and-training-getting-worse-says-new-survey#.VQBelfmsX94>.

1124 House of Commons, “Select Committee on European Union Ninth Report” (2004).

1125 The WTD applies only to doctors employed in hospitals. It does not apply to GPs who are considered ‘autonomous workers’ for the purpose of the directive. While staff have the right to opt out of the 48 hour week, the British Medical Association advises staff not to do so.

1126 Daily Telegraph “NHS pays £20,000 a week for a doctor”, L. Donnelly & M. Mulhern (2012).

1127 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Health” (2013), page 49.

“In 2013–14 the UK handed £749.8m to EU governments for the care of British citizens, but the NHS only managed to collect £50.3m from EU countries.”

These issues have been acknowledged across the board, even by pro-EU organisations like the Centre for European Reform. It recognised in a recent report that *“the WTD still encounters... much hostility from British doctors.”*¹¹²⁸

In addition, proposed new EU data protection laws have been highlighted as an area of concern. The European Commission’s proposals for new requirements on the consent and use of sensitive data would – according to medical officials – create new burdens for the medical research sector: *“There are concerns about current moves in Europe around data protection and it will be important to ensure that the use of anonymised patient data for health research continues to be permissible.”*¹¹²⁹

Outside the EU, the UK would be able to look at repealing provisions of the Working Time Directive (Directive 2003/88/EC) or amending it so that it does not apply within medical centres. This would be the realisation of a long-held goal: the Coalition Government committed to addressing the problems that the WTD created in the NHS.¹¹³⁰ However, Britain would only have the direct power to change the policy if it was outside the EU.

By the same logic, if it chooses to, a future government could certainly retain the WTD or could even decide to enhance health workers’ rights further – leaving the EU would not automatically precipitate a retreat from employment protection. Were the UK to join the EEA, it would have to retain the WTD. For Norway, this proved to be of limited impact since the Norwegians have had a 48-hour limit on the working week for nearly a century, so saw no reason to particularly resist the WTD. However, if the EU ever tried to increase the demands of the WTD, Norway would be well-placed to deploy a veto.

23.3.5 ‘Health tourism’ could be brought under control

The rise of ‘health tourism’, people coming from the other EU states to use the NHS, is a problem that could be solved by leaving the EU, although there would be a trade-off. ‘Health tourism’ has been a permissible practice in the EU ever since an ECJ judgment in 2005 determined that the obligation to reimburse the cost of hospital treatment provided in another member state also applies to the NHS. This means that the UK has to pay for services that UK nationals receive in other member states under certain circumstances.¹¹³¹ Today, the EU states that EU member state citizens have the freedom to receive health services throughout the Union. The EU has also required the NHS to make changes to cope with free movement of people.¹¹³² This has proven very expensive for the NHS.

According to the Department of Health, in 2013–14 the UK handed £749.8m to EU governments for the care of British citizens (an increase of £100m in one year), but the NHS only managed to collect £50.3m from EU countries to pay for the care of European citizens in the UK.¹¹³³

1128 Centre for European Reform “The Working Time Directive: what’s the fuss about?”, K. Barysch, page 9.

1129 Medical Schools Council, cited in HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Health” (2013), page 58.

1130 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Health” (2013), page 10.

1131 Case C-372/04. The case involved a lady, Yvonne Watts, who went to another EU member state for treatment and demanded reimbursement. The ECJ ruled that patients have a right to paid treatment elsewhere in the EU, without prior approval, so long as they were suffering from “undue delay”.

1132 This right is enshrined in the Cross Border Healthcare Directive (Directive 2011/24/EU) and Article 48 TFEU which permits the adoption of measures in the area of social security to enable free movement of people.

1133 FOI request from the Department of Health, sent by the Daily Mail.

“Leaving the EU would not mark an end to UK cooperation with the EU on medical and health-related issues.”

Outside the EU, the UK would have a much stronger say over the current framework and could reconsider how current laws work. For example, it could reconsider Regulation 883/2004, which interacts with UK domestic provisions about entitlement to NHS care. It may also be easier to identify EU nationals who are accessing UK health facilities. The current level of confusion over whether an EU national is ‘permanently resident’ within the UK would be much reduced after Britain formally leaves the EU and EU nationals are given the same status as other third country nationals. It could therefore be easier to address concerns that the UK is not receiving full reimbursement from EU/EEA migrants who use the NHS.

Outside the EU, the UK could also seek to revise the Cross Border Healthcare Directive (Directive 2011/24/EU) and the European Health Insurance Card. It could look at new possibilities such as an ‘NHS passport’. Of course, in doing so, it has to consider whether any changes would compromise the ability of UK nationals to receive healthcare in other European countries. However, it would be a decision that Parliament would be allowed to make.

Conclusion

When the European Economic Community was created in 1957, its founding document – the Treaty of Rome – made it clear that the management of health care was the sole remit of member states. Ever since then, however, the EU has gradually accumulated more power over public health via successive Treaty changes.

The EU has introduced a number of healthcare policies, some of which have been, on the whole, beneficial to the UK. This is because EU policies have largely focused on opening new markets and spreading best practice, rather than attempting to micromanage the NHS (it is telling that the instances of ‘bad’ EU healthcare law identified in this Section are those which do micromanage healthcare systems). While the EU does intervene in areas of ‘product safety’, this was focused until recently on spreading standards that often originated in the UK.

However, this positive analysis of the EU’s role changes when one factors in other EU policies which have inadvertently had a negative impact on the NHS and wider UK medical sector. It is an issue, for example, that the new Comprehensive Economic and Trade Agreement (CETA) with Canada and the proposed Transatlantic Trade and Investment Partnership (TTIP) with the United States could potentially limit the power of future UK Governments over the NHS. Difficulties also emerge from operating a residency-based healthcare system when most other member states have direct contribution or insurance-based models. When these factors are taken into consideration, it is much harder to claim that EU membership is a net gain for public health policy in the UK. EU membership also suppresses powers to manage issues ranging from medical research to stem cell policy. The head of the Commission is guided by his own personal ethics committee, whose decisions are ultimately tested or guaranteed by European judges.

Leaving the EU would not mark an end to UK cooperation with the EU on medical and health-related issues. Cooperation on research would continue, as would cross-European initiatives like the European Health Insurance Card. UK membership of non-EU bodies and international organisations ensures that, whether it is a member of the EU or not, it would be able to carry on working with its neighbours on all health issues.

The most significant change that would come from leaving would be a sense of security: there would be no risk of new EU laws being imposed on the NHS or of EU trade deals like TTIP imposing unwanted and undemocratic restraints on

the UK healthcare sector. There would be no more risk of the EU or the Courts using a very generous reading of the Treaties to justify unwanted and burdensome laws. Despite the legal safeguards that are meant to protect the UK from 'mission creep', the EU has shown an unrelenting willingness in the last few years to introduce an ever-increasing number of laws in this area – and the UK has been powerless to stop it. In that respect, leaving the EU would not mark a decrease in British 'influence' – on the contrary, it would give Britain the safeguards that it currently lacks and self-evidently needs.

24 Taxation

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“The UK would gain significant new powers when it comes to implementing OECD decisions.”

While the EU has, on paper, only limited powers over the taxation policies of its member states, there is little doubt that these powers have increased over the last few years, both as a result of ‘mission creep’ and an over-generous reading of the Treaties by the EU’s courts. The growth of the EU’s competence – and its circumvention of the UK’s safeguards – raise important questions about whether leaving the EU would protect Britain’s interests.

An analysis of the situation shows that leaving would not only offer Britain the chance to avoid EU ‘mission creep’, but it would also give it a louder voice in the setting of global taxation norms by bolstering its position in key international bodies. Furthermore, leaving the EU need not reduce the UK’s influence over taxation policy at a European level, as it would still be able to work with its EU counterparts to deal with issues such as double taxation and tax evasion.

24.1 The UK would remain a member of all key international taxation bodies

Key international bodies

- Commonwealth Association of Tax Administrators
- G7
- G20
- Organisation for Economic Co-operation and Development (OECD)
- United Nations Conference on Trade and Development
- World Trade Organization

Over the last few years, several international organisations, including the OECD, G7, G20 and World Trade Organization (WTO), have become increasingly important in setting international tax standards and policies. The EU has a growing role in a number of these bodies. By leaving the European Union, the UK would see its voice strengthened in many of these fora by virtue of the fact that it would be able to speak for itself. It would consequently have a much greater say over the international standards that are being adopted across the world.

24.1.1 The UK would retain the same relationship with many key international taxation agencies

Were it to leave the EU, the UK would still be a member of the OECD and would remain subject to non-legislative agreements and minimum international standards on taxation. This includes the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, the Model Agreement on Exchange of Information on Tax Matters, and the OECD Model Tax Convention, among other agreements.

This is good news, as the OECD is one of the most important international organisations in setting international taxation standards, and many of its non-legislative proposals find their way into European (and British) law. The OECD Model Tax Convention, for example, helps to both clarify and standardise tax liability for taxpayers who operate across borders and address double taxation by offering a baseline for bilateral agreements. As a member of the OECD, the UK would continue to have a good deal of influence in this body, even if it was outside the EU. The UK would also gain significant new powers when it comes to implementing OECD decisions: for example, under current rules, the UK must be a signatory to the 1961 Code of Liberalisation of Capital Movements and only the EU can give binding force to the code. However, were Britain to leave the EU, it would have the power to implement the code in different ways (it could even leave the two OECD Codes of Liberalisation entirely).

“Outside the EU, the Prime Minister would be the only person in the meeting who could speak for the United Kingdom.”

The importance of the OECD is only likely to increase – it is currently undertaking work into base erosion and profit shifting, looking at how international rules need to be updated. Having a strong voice and, crucially, flexibility in implementing its decisions will become increasingly important in the coming months and years.

Likewise, outside the EU, the UK would remain a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes, which is where compliance with OECD standards of transparency and exchange of information for tax purposes is discussed and agreed. The UK would also continue to be a member of other international taxation bodies such as the Commonwealth Association of Tax Administrators.

24.1.2 The UK would secure a stronger relationship with the other key international taxation agencies

The UK would remain a member of the G8 and G20 outside the EU. However, at both of these meetings, the European Commission would no longer be able to claim to speak on the UK’s behalf. Since the 1980s, the EU has been able to send representatives to these meetings and its role is growing (best reflected in the fact that, in 2014, the EU actually hosted the G8 in Brussels for the first time). At the meetings, there have consequently been two people professing to represent Britain’s interests: the European Commission President and the British Prime Minister. Outside the EU, the Prime Minister would be the only person in the meeting who could speak for the United Kingdom.

Such clarity is likely to become more useful in the coming years. The G8 has become an important forum for international cooperation in efforts to tackle tax evasion, a place where new international taxation measures are debated and agreed. In 2013, the G8 nations agreed to new measures that would permit other members to have automatic access to information on their residents’ tax affairs and would require the owners of shell companies to identify their effective owners.¹¹³⁴ The G20 has also recently started to work with the United Nations Conference on Trade and Development (UNCTAD) on a number of matters, including the possibility of capital controls.

While the World Trade Organization (WTO) does not have comprehensive tax rules or guidance, academic studies have shown that its multilateral rules impact member states’ direct and indirect taxation policies.¹¹³⁵ According to one commentator, the WTO is the *“only international rule-based system that deals with tax matters.”*¹¹³⁶ The power of the WTO is reflected in the way both it, and its predecessor GATT, forced the USA to change its tax policies on four separate occasions:

- 1976 Domestic International Sales Corporations (DISC);
- 1984 Foreign Sales Corporations (FSC);
- 2000 Extraterritorial Income Exclusion Act (ETI);
- 2004 American Jobs Creation Act (AJCA).

As a member of the EU, the UK has almost no independent power in the WTO. According to the WTO, the European Commission *“alone speaks for the EU*

1134 G8 “Lough Erne Declaration”, accessed 31/3/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/207543/180613_LOUGH_ERNE_DECLARATION.pdf>.

1135 WTO “The WTO and Direct Taxation”, M. Daly (2005).

1136 IFA “The World Trade Organisation and Taxation”, J. Farrell (2011).

“EU institutions are committed to working with third countries to address taxation issues.”

*and its members at almost all WTO meetings and in almost all WTO affairs”.*¹¹³⁷ Outside the EU, the UK would be able to represent itself.

24.2 The UK could continue to cooperate with the EU on taxation issues

Key issues

- Dealing with double taxation
- Dealing with tax evasion

There are two major tax policy areas where coordinated EU action can be of particular benefit: reducing double taxation and tax evasion. However, because EU action is coordinated between member states, some question whether the UK would still be able to work with the EU on these matters if it left the Union.

Fortunately, EU institutions are committed to working with third countries to address these issues. Even if the EU refused to engage with the UK, cooperation could be secured via bilateral agreements with the EU’s member states. This means that cooperation on taxation matters where it most makes sense – in relation to cross-border issues – would not ultimately be upset by Britain’s departure.

24.2.1 Measures to stop double taxation across borders could still be introduced, either via EU institutions or EU member states

Abolishing double taxation is one of the historic aims of the EU. Article 220 of the former EC Treaty was very explicit about its desire to deal with this issue:

*“Member states shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals... the abolition of double taxation within the Community.”*¹¹³⁸

Today, Articles 110–113 of the Treaty on the Functioning of the European Union (TFEU) require member states to “enter into negotiations” on the abolition of double taxation. To achieve this aim, the Commission has introduced a number of directives, including:

- The Merger Taxation Directive (Council Directive 90/434/EEC). This provides a common system of taxation that is applicable in the cross-border reorganisation of companies situated in two or more member states;
- The Parent-Subsidiary Directive (Directive 90/435/EEC). This abolished withholding taxes on divided payments between group companies residing in different member states (though bilateral treaties could have dealt with this – such deals exist between the UK and the US, for example);
- The Interest and Royalties Directive (Directive 2003/49/EC). This put in place a common system of taxation on interest and royalty payments between associated companies of different member states, meaning that interest and royalty payments that were made by a subsidiary were exempt from

¹¹³⁷ WTO “European Union or Communities?”, accessed 31/3/2015 at: <www.wto.org/english/thewto_e/countries_e/european_union_or_communities_popup.htm>.

¹¹³⁸ Treaty Establishing the European Community, Article 220.

“The UK does not need the European Commission’s approval to cooperate with the EU member states to reduce double taxation.”

any taxes in that state provided that the beneficial owner of the payment is a company or permanent establishment in another member state.¹¹³⁹

The Commission has also made it clear that it would like to end ‘exit taxes’¹¹⁴⁰ and eliminate tax obstacles to the cross-border provision of occupational pensions.¹¹⁴¹

There is no reason why the UK, outside the EU, could not continue to work with the EU on tax if it so chose. The relevant directives could be retained following the UK’s departure, allowing cooperation to continue, and Britain could still work with the EU on an ongoing basis on these programmes. The EU has made dealing with third countries a priority, either bilaterally or via the WTO.¹¹⁴² This philosophy has been clearly articulated by the European Commission, which has argued: *“Rejecting globalisation and closing up markets because of these negative effects would be counterproductive. From the EU perspective, a viable option, therefore, is to manage the effects better by means of agreements with third countries on as broad a geographical basis as possible covering common standards and cooperation, including in tax matters.”*¹¹⁴³ Thus, there is no reason why cooperation could not continue as before – the UK would be able to work with the Commission to discuss possible common standards and cooperation on double taxation matters.

However, even if the Commission were unwilling to engage with an independent Britain, the UK could still work with other EU member states. Because tax is a reserved matter, the UK does not need the European Commission’s approval to cooperate with the EU member states to reduce double taxation. Collaboration with member states would be just as effective as EU-level action, and even the European Parliament has acknowledged that *“with bilateral agreements double taxation can generally be avoided”*.¹¹⁴⁴ Member states of the EU are currently permitted to establish tax treaties with non-EU countries.

The UK has a double taxation treaty with all other 27 members of the EU.¹¹⁴⁵ Norway and Switzerland also cooperate with the EU (and many other countries) on double taxation, but in general evade EU laws. A Directorate-General Internal Policies briefing note explained how:

EU financial markets legislation is not applicable to Switzerland as it is not part of the EEA. There is one small bilateral agreement with Switzerland in financial services, namely on non-life insurance (regarding the setting up of

1139 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Taxation” (2013), page 30.

1140 European Commission “Exit taxation and the need for co-ordination of Member States’ tax policies” (COM(2006) 825 final), accessed 31/03/2015 at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006DC0825&from=EN>>; and European Commission “Common system of taxation: interest and royalty payments made between associated companies”, accessed 31/03/2015 at: <http://europa.eu/legislation_summaries/taxation/l31039_en.htm>.

1141 European Commission “Tackling tax obstacles to the cross-border provision of occupational pensions”, accessed 31/03/2015 at: <http://europa.eu/legislation_summaries/taxation/l31056_en.htm>.

1142 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Taxation” (2013), page 6.

1143 European Commission “Promoting Good Governance in Tax Matters” (COM(2009) 201 final), accessed 31/03/2015 at: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0201:FIN:EN:PDF>>.

1144 European Parliament “Fact Sheet, Direct Taxation: Personal and company taxation”, accessed 31/03/2015 at: <www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_5.11.2.html>.

1145 A full list of UK tax agreements provided by HMRC, accessed 31/03/2015 at: <www.hmrc.gov.uk/taxtreaties/in-force/b.htm>.

“The UN has campaigned to bring countries together to close double taxation.”

branches, but this is hardly used as most Swiss insurance companies have subsidiaries in the EU).

The same document also noted:

EC rules on harmonisation of taxes are outside the scope of the EEA Agreement. The VAT Directive and other acts on taxation have therefore not been incorporated into the EEA Agreement. Articles 14 and 15 EEA agreement refer to non-discrimination based on nationality. By way of example, there is a court case from the EFTA Court in which Iceland had put higher VAT on foreign books than on domestic books. Iceland lost the case as it was a discriminatory tax system. As Switzerland is not part of the EEA agreement, these Articles do not apply to Switzerland. However, Switzerland largely follows the rules of the 6th VAT Directive with the EU and their cooperation in the field of VAT fraud is governed by bilateral agreements with the EU.¹¹⁴⁶

It is not surprising that the EU is willing to cooperate with other countries on this issue; nation states often work together in order to avoid tax loopholes. Furthermore, the UN has campaigned to bring countries together to close double taxation via the Committee of Experts on International Cooperation in Tax Matters.

24.2.2 Tax evasion could still be reduced via cooperation between Britain and the EU

The EU has also embraced a programme of engaging with countries outside the EU to tackle tax evasion and avoidance:

On average, information on 20 billion euros of taxable income is exchanged between member states each year and five non-EU countries (including Switzerland and Liechtenstein) as well as ten dependent or associated territories of [member states] outside the EU (including Jersey, Guernsey, the Isle of Man, the Cayman Islands and Aruba) participate in the EU network of cooperation in this field through agreements providing for equivalent or the same measures as those of the EU Savings Directive. To promote fair tax competition, the EU has the Code of Conduct on Business Taxation. The Commission is currently in discussions with Switzerland and Liechtenstein to promote the principles of the Code beyond EU borders.¹¹⁴⁷

The EU has signed agreements with five non-EU countries and 10 dependent and associated territories to deal with tax evasion. When making these agreements, the EU demands that the third country has good governance on taxation policies.¹¹⁴⁸ Because, upon leaving the EU, Britain would retain all directives on tax evasion and avoidance that the EU introduced while the UK was a member, it would meet these criteria and – should it wish – would be able to request a similar agreement as part of the two year leaving process.

1146 European Parliament “Overview of EU rules applicable to EEA/EFTA countries in financial services, competition and taxation Briefing Note”, accessed 31/03/2015 at: <www.europarl.europa.eu/document/activities/cont/201108/20110818ATT25100/20110818ATT25100EN.pdf>.

1147 European Commission “Tax evasion and avoidance: questions and answers” (2012).

1148 The EU’s standards are set out on the European Commission’s website, accessed 31/03/2015 at: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0201:FIN:EN:PDF>>.

“Exiting the EU would give Britain the chance to make some significant alterations to its current tax policies, most notably VAT.”

24.3 New taxation policy opportunities would become available

Although it only has limited powers over taxation today, EU ‘mission creep’ is progressively reducing the UK’s ability to set its own policies. But given that the EU’s role in taxation is currently relatively small, some question whether the UK leaving would have much of an impact at all. In fact, exiting the EU would give Britain the chance to make some significant alterations to its current tax policies, most notably VAT. Leaving would also allow the UK to introduce fairer taxation, reducing taxes on the poorest in society and addressing the issue of tax avoidance.¹¹⁴⁹

24.3.1 EU ‘mission creep’ over taxation could be stopped at a stroke

Taxation is normally cited by supporters of the EU as an example of an area in which the UK has been able to see off damaging EU proposals. This is because taxation policies are decided via unanimity in the Council of Ministers, giving the UK an effective veto. The UK Government has highlighted this as a good thing, and it has made clear that, in its view, unanimity needs to be retained. An historic example of the requirement for unanimity working well is the downfall of the Commission’s proposal to harmonise corporation tax, which was first proposed in 1962. Following consistent defeats, in 1980, the Commission conceded that this attempt at harmonisation was probably doomed to failure.¹¹⁵⁰

Leading officials in the EU, however, have said that they find the need for unanimity intolerable. Former President of the European Commission Romano Prodi famously said that *“it is like a soldier trying to march with a ball and chain around one leg.”*¹¹⁵¹

In any case, the EU has sought to circumvent the legal restrictions on its taxation powers via *“the inclusion of tax or fiscal measures in non-tax proposals.”*¹¹⁵² Despite the fact that tax policy, either via Article 113 or Article 115, should only be agreed via unanimity, the EU has found ways of introducing direct taxation proposals under Qualified Majority Voting (QMV). This is done by classing tax policies as a secondary objective of any proposal, rather than the main objective. The European Court of Justice (ECJ) has made it clear that it would allow such proposals to then be passed under QMV:

*If examination of a Community measure reveals that it pursues a twofold purpose or that it has a twofold component and if one of these is identifiable as the main or predominant purpose or component whereas the other is merely incidental, the act must be based on a single legal basis, namely that required by the main or predominant purpose or component.*¹¹⁵³

An example of this is the directive introducing charges for use of infrastructure (Directive 1999/62/EC) by heavy goods vehicles, which set a minimum rate of

1149 Changes over tax avoidance would obviously only affect UK taxpayers. As it is a global issue, however, the wider problem could only be addressed beyond the EU.

1150 European Commission, “Report from the Commission to the Council on the scope for convergence of tax systems in the Community” (COM(80) 139) (1980).

1151 Centre for Policy Studies “European Tax Harmonisation: The impending threat”, T. Villiers (2001), page 12.

1152 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Taxation” (2013) page 7.

1153 Law Society “European brief: Financial Transaction Tax” (2013); ECJ, “Judgement of the Court in Case C-211/01” (2003).

“The European Commission has also made it clear that it wants to expand existing laws and introduce new EU wide taxes.”

VAT on vehicles. This law was introduced as a transport policy and hence under QMV. By including taxation measures in a directive as a ‘secondary’ objective, and then giving the directive a legal basis on an Article that is decided via QMV, the EU has been able to circumvent unanimity voting.

This raises very serious questions about British influence as well as the legality of some of the EU’s recent tax policies. It is hard to disagree with a 2001 report for the Centre for Policy Studies by Theresa Villiers, who was even then warning that *“the EU is pressing forward with plans to harmonise taxes in a wide range of areas but the process is seldom an open one. Tax harmonisation is being pursued by stealth. The tactic is to move towards full scale tax harmonisation in a series of small steps, each steadily enlarging the involvement of the EU in tax matters and each leading on to the next harmonisation initiative.”*¹¹⁵⁴

In addition, the European Commission has sought to provide new guidance to member states on taxation matters, recently stating: *“In the light of the case law of the European Court of Justice, the Commission has concluded that higher taxes cannot be levied on inbound dividends than on domestic dividends or on dividends paid to non-residents than on those paid to residents. Consequently, it provides the member states and accession countries with guidance on how to ensure their systems of dividend taxation of individuals are compatible with the EC Treaty.”*¹¹⁵⁵ This is another, concerning, example of the EU moving into areas which are supposed to be ‘off limits’.

Worryingly, the European Commission has also made it clear that it wants to expand existing laws and introduce new EU wide taxes. In 2006, the European Commission put forward a proposal for coordinating member states’ direct tax systems in the Internal Market via a Common Consolidated Corporate Tax Base (CCCTB).¹¹⁵⁶ In 2011, a CCCTB was proposed under Article 115 TFEU, with the proposal establishing a single set of rules that companies operating within the EU would use to calculate their taxable profits. The UK has said that it will not agree to this.¹¹⁵⁷ In addition, the EU has introduced a number of proposals for future indirect tax measures, including:

- A Green Paper on the future of VAT (COM(2010) 0695);
- A communication on reform of the VAT system (COM(2011) 0851);
- A proposal for a Directive (COM(2011) 0169), accompanied by a communication (COM(2011) 0168) amending the Energy Taxation Directive (Directive 2003/96/EC);
- A proposal for a Financial Transaction Tax (COM(2011) 0594);
- A Commission proposal for a Directive on passenger car-related taxes (COM(2005) 0261).¹¹⁵⁸

Alongside trying to introduce measures via legislation, in 2014, the European Commission announced that it would investigate whether the tailoring of tax laws by national governments to make their countries more attractive to international companies could be considered anti-competitive under EU law. The EU

1154 Centre for Policy Studies “European Tax Harmonisation: The impending threat”, T. Villiers (2001), page 5.

1155 European Commission “Dividend taxation of individuals”, accessed 31/03/2015 at: <http://europa.eu/legislation_summaries/taxation/131052_en.htm>.

1156 European Commission “Communication from the Commission to the Council, the European Parliament and the European Economic and social committee” (2006), page 3.

1157 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Taxation” (2013), page 19.

1158 European Commission “Passenger car related taxes”, accessed 31/03/2015 at: <http://europa.eu/legislation_summaries/taxation/131004_en.htm>.

“Even the EU’s own Council Legal Service has acknowledged that the proposals do not comply with EU law.”

also tries to influence member states’ taxation policies via ‘Tax Co-ordination’, non-legislative action that includes conventions, recommendations, and guidelines such as the Code of Conduct group.

The EU has said that it wants to extend the remit of VAT and has put forward new VAT rules for vouchers. Algirdas Šemeta, the former Commissioner for Taxation, Customs, Anti-fraud and Audit made it clear that the Commission wanted to extend its remit in this area:

*Vouchers are a booming business in Europe, with millions bought and sold every week. There is no justification for this ever-expanding market to be held back because of uncertainty and complications in the tax rules. With the new VAT rules proposed today, we can move to a genuine single market for vouchers, to the benefit of businesses, citizens and tax administrations.*¹¹⁵⁹

Such initiatives have been supported by MEPs in the European Parliament.¹¹⁶⁰

Perhaps the most notable example of EU efforts to expand its remit in the field of taxation is the proposed Financial Transactions Tax (FTT) (which, first introduced under Article 113 TFEU, is being taken forward by 11 member states under the terms of enhanced cooperation). The FTT is set to be particularly burdensome to the UK (see Section 10).

The FTT could be levied on a wide range of financial transactions, including instruments negotiable on the capital markets, money market instruments (other than instruments of payment), units or shares in collective investment undertakings, and derivatives contracts.¹¹⁶¹ The main concern is that, even though the FTT will be introduced by 11 member states, there may be requirements for non-participating states to help collect revenues raised by the tax.¹¹⁶²

The Law Society of England and Wales has warned that *“the Society is concerned that the proposal as presented would not be compatible with the Treaties due to the considerable extraterritorial effects of the tax.”*¹¹⁶³ Even the EU’s own Council Legal Service has acknowledged that the proposals do not comply with EU law.¹¹⁶⁴ According to the ‘residence principle’ at the heart of the proposal, the FTT would be imposed by the member state of establishment/authorisation of the financial institution, with no consideration for where the transaction may take place. This leads to the incredible outcome of the FTT being imposed on non-participating states or even non-EU states. Put another way, it means that, despite opting out, the FTT would be levied in the UK on behalf of the 11 participating states, *“with potential damage to our market, but no benefit to the Exchequer”*.¹¹⁶⁵ Quite simply, it imposes a tax on institutions in

1159 European Commission “Commission proposes new VAT rules for vouchers”, accessed 31/03/2015 at: <http://ec.europa.eu/commission_2010-2014/semeta/headlines/news/2012/05/20120510_en.htm>.

1160 Centre for Policy Studies “European Tax Harmonisation: The impending threat”, T. Villiers (2001), page 6.

1161 Bruges Group “The City of London in retreat”, T. Congdon (2014), page 30.

1162 The FTT would be charged at the rate fixed by the member states – but no less than 0.1 per cent of the consideration paid by the financial institution concerned or the market price of the transaction if that is higher. The minimum rate of tax for derivatives contracts would be 0.01 per cent.

1163 The Law Society “Financial Transaction Tax” (2013), accessed 31/03/2015 at: <http://international.lawsociety.org.uk/files/European_Brief_Financial_Transaction_Tax_May2013.pdf>.

1164 House of Lords European Union Committee “Financial Transaction Tax: Alive and deadly”, (2013), page 3.

1165 House of Lords European Union Committee “Financial Transaction Tax: Alive and deadly”, (2013), page 3.

“The UK has made it clear that it opposes any extension of EU competence in the area of taxation.”

member states that have made it clear that they do not agree with or consent to that tax.

The UK’s case against the FTT was rejected by the ECJ in April 2014, on the grounds that the case was premature and that the legislation had not been finalised. Even pro-EU groups like British Influence acknowledge that, while the *“danger of a financial transaction tax being agreed by the EU has receded in the last year... some risk remains.”*¹¹⁶⁶

These developments are troubling for Britain, and the UK has made it clear that it *“opposes any extension of EU competence in the area of taxation.”*¹¹⁶⁷ This isn’t just a question of sovereignty: in their submission to the Balance of Competences Review, the Charity Finance Group (CFG) and National Council for Voluntary Organisations (NCVO) argued that attempts to create harmonisation *“in some cases proved detrimental to the UK charity sector”* and that it was *“essential that member states are able to respond to national needs and circumstances.”*¹¹⁶⁸

Outside the EU, there would be no risk of the UK having to implement taxation policies it did not want. The British Parliament could, however, replicate EU tax measures if it felt they were good policies.

24.3.2 The UK would be able to repeal and amend taxation laws, including VAT

While there are limits to the EU’s powers over taxation policy, it still has a right to pass laws under unanimity, and has made use of this power since the 1950s. This means that there are a significant number of EU laws that impact the UK’s taxation policy which Britain would only gain the power to reconsider if it decided to leave.

Under the changes introduced by the Lisbon Treaty, the EU uses two legal bases for tax policies: Article 113 TFEU and Article 115 TFEU.¹¹⁶⁹ Direct taxation measures are brought in under Article 115. This is, in itself, controversial, as Article 115 does not explicitly permit direct taxation, as the European Parliament has itself acknowledged:

*The field of direct taxation is not specifically regulated by European law. Nevertheless, a number of Directives and the case-law of the Court of Justice of the European Union (CJEU) are helping to establish harmonised standards for company taxation and the taxation of private individuals.*¹¹⁷⁰

Perhaps as a result of this rather flimsy legal base, only a few directives have been introduced on direct taxation to date, with the focus being on removing tax obstacles for businesses. Examples include the Administrative Assistance Directive (Directive 77/799/EEC), the Recovery of Claims Directive (Directive 76/308/EEC), the Mergers Directive (Directive 90/434/EEC), the Parents-Subsidiary Directive (Directive 90/435/EEC), the Arbitration Convention on

1166 British Influence “The British Influence Scorecard 2015” (2015), page 36.

1167 It is worth noting that, even if the British Government changed its view, any extension of the EU’s power over taxation would trigger a referendum under the terms of the European Union Act 2011.

1168 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Taxation” (2013), page 36.

1169 It is important to note that tax action via either article needs an internal market justification.

1170 European Parliament “Direct taxation: Personal and Company Taxation”, accessed 31/03/2015 at: <www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_5.11.2.html>.

“The EU’s remit over excise duties has steadily increased.”

the Elimination of Double Taxation (Convention 90/436/EEC) and the Interest-Royalty Directive (Directive 2003/49/EC).

The EU can also introduce indirect taxation proposals via Article 113. This legal base is much clearer and there are far more laws in this area, including over excise duties, which the EU first exercised competence over in 1993 when it passed Council Directive 92/12/EEC. This set down basic principles for the holding, movement and monitoring of products subject to excise duties – primarily tobacco, alcohol and energy products. The directive forced member states to remove their own domestic fiscal controls, introduced a series of minimum rates, and made levying duties on products from other member states at higher rates than on those produced domestically illegal.

The EU’s remit over excise duties has steadily increased: in 2008, Directive 2008/118/EC was passed, introducing general arrangements for excise duty and laying down general arrangements for products subject to excise duty. This reflects a long-standing aim of the EU: since the early 1970s, the Commission has attempted to harmonise both structures and rates, but progress has been limited. Other notable directives on indirect taxation include:

- Directive 2008/7/EC on the raising of capital;
- Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures;
- Directive 2006/112/EC on the common system of VAT.

Perhaps the most obvious way that EU indirect taxation policy affects the member states is the VAT Directive. This directive has gone through several iterations (it is currently on its sixth version) and codifies the provisions governing the introduction of the common system of VAT in the EU. It sets out how the tax is calculated on the basis of the value added to goods/services at each stage of production and the distribution chain, and allows for the tax to be collected through a system of partial payments. This enables taxable persons to deduct from their VAT accounts the amount of tax which they have paid to other taxable persons on purchases for commercial purposes during the preceding stage.

Outside the EU, the UK could reconsider VAT policy and would gain new powers to vary the rate. While the VAT Council Directive would, initially, remain on the British statute books, Parliament would be able to reconsider the legislation and make changes to it, should it deem this appropriate. Even if the UK joined the EEA it would be outside the EU’s VAT system.¹¹⁷¹

The UK would have a greater say over VAT policy than it has had since it joined the then European Economic Community in 1973. The UK secured some notable derogations when it joined, including zero rates (where VAT charged is 0 per cent on most types of food and drink). The UK has 11 significant categories of items that are sold at the zero-rated VAT charge.¹¹⁷² It also has two significant categories of items sold at the reduced rate of VAT (charged at 5 per cent).¹¹⁷³ The rationale has traditionally been to keep the costs of basic essentials low to help society’s poorest.

1171 The Government may choose to keep a similar VAT programme in place, for the simple reason of assisting exporters. Alternatively, it may choose to lower/raise VAT in different areas, no longer bound by EU requirements. The choice, however, would be the British Parliament’s.

1172 For the full list, see HM Government “VAT rates on different goods and services”, accessed 31/03/2015 at: <www.hmrc.gov.uk/vat/forms-rates/rates/goods-services.htm>.

1173 HM Government “VAT rates on different goods and services”, accessed 31/03/2015 at: <www.hmrc.gov.uk/vat/forms-rates/rates/goods-services.htm>.

“The British Government is nominally obliged to send a percentage of all VAT collected each year directly to the EU Budget.”

Options that would become available to the UK outside the EU include the power to consider expanding the number of items that are sold at either zero or reduced rates of VAT.¹¹⁷⁴ Alternatively, the UK could seek to harmonise its VAT rates and lower the basic rate below the EU’s minimum rate.

Despite public pressure on the UK Government to reduce VAT and exempt specific items, it is the European Commission that has to approve changes in overall VAT policy. Petitions requesting that the Government eliminate VAT on various items are therefore unlikely to ever have any direct effect.¹¹⁷⁵ Even a request by an MP for a VAT reduction on expensive energy bills was turned down, with ministers insisting that “VAT is at the legal minimum rate it can possibly be.”¹¹⁷⁶ Another area where VAT is deeply unpopular is on repair to church buildings, but again it has been impossible to reform this.¹¹⁷⁷

The consequences of breaking the law can be costly. In a recent case, the European Commission referred the Dutch Government to the ECJ for allowing exemptions on boat moorings not used for water sports that had not been approved at EU level.¹¹⁷⁸

Leaving the EU would end this unsatisfactory situation. There would no longer be any legal restraint on removing VAT, allowing for a reduction in the price of many items. The UK would also not be dragged into further VAT measures introduced via underhand means. The EU already sets minimum levels of VAT – currently 15 per cent – and there is considerable pressure to raise this threshold, up to the European average of 19.4 per cent or higher. This threat would end by leaving the EU.

While a (broadly) harmonised VAT system has brought benefits for some exporters and multinational firms, VAT policy creates problems for Britain. The British Government is nominally obliged to send a percentage of all VAT collected each year directly to the EU Budget (the precise percentage depends on Commission calculations).¹¹⁷⁹ Between 2007 and 2013, this resulted in a UK contribution of £15.4bn in VAT payments, an average of £2.2bn each year (see Table 24.i). This can be broken down into a total contribution of £246 for each British citizen over the same period.

1174 For the full list, see HM Government “VAT rates on different goods and services”, accessed 31/03/2015 at: <www.hmrc.gov.uk/vat/forms-rates/rates/goods-services.htm>.

1175 HM Government e-petition, “VAT Exempt Health & Fitness”, accessed 31/03/2015 at: <<http://epetitions.direct.gov.uk/petitions/65980>>.

1176 BBC News “Treasury dismisses idea of VAT cut on energy bills”, accessed 31/03/2015 at: <www.bbc.co.uk/news/uk-24580089>.

1177 House of Commons Library “VAT & Churches” (SN1051), accessed 31/03/2015 at: <www.parliament.uk/briefing-papers/sn01051.pdf>.

1178 European Commission “Taxation: Commission refers The Netherlands to the Court over VAT exemption for water sport activities” (2014).

1179 All figures in Table 24.i are exact contributions for the years in question. The calculation that the Commission performs in order to come up with these amounts takes 0.3 per cent of the base rate of 15 per cent from the UK contributions, rather than 0.3 per cent of the full 20 per cent.

“The UK’s contribution per head is significantly higher than most other member states, including the EU’s largest economy Germany.”

Table 24.i: VAT contributions to the EU from the UK, 2007–13

Year	UK VAT contribution ¹¹⁸⁰ (€)	UK VAT contribution (£) ¹¹⁸¹	Contribution per head of population (€) ¹¹⁸²	Contribution per head of population (£)
2007	3,409,000,000	2,334,329,795	55.82	38.22
2008	2,940,000,000	2,335,918,200	47.75	37.94
2009	2,124,000,000	1,890,529,920	34.23	30.47
2010	2,629,000,000	2,253,841,700	42.06	36.06
2011	2,513,000,000	2,182,037,900	39.58	34.37
2012	2,794,000,000	2,265,095,800	43.72	35.44
2013	2,527,000,000	2,144,412,200	39.54	33.56
Totals	18,936,000,000	15,406,165,515	302.70	246.05

Source: Business for Britain¹¹⁸⁰

According to the European Commission, the EU total contributions over the 2007–13 period amount to €86.1bn, of which 18 per cent came from Britain. This is down, in part, to the fact that the UK has a much larger population than the EU average but it is not the sole reason (the UK only makes up 12.6 per cent of the total EU population). The UK’s contribution per head is significantly higher than most other member states, including the EU’s largest economy Germany. At €246 per head, the UK’s contribution is €78 more than the average paid across the EU (£168). Leaving the EU would allow the UK to retain this revenue and end a manifestly unfair funding system.

The EU continues to legislate extensively in the area of VAT. In 2010, the Commission published its Green Paper on the future of VAT (COM(2010) 695), which proposed possible measures to make VAT *“more consistent with the single market and its capacity as a revenue raiser”*.¹¹⁸¹ There is another more unsettling trend: the ECJ has been known to unilaterally legislate on VAT matters to fill ambiguities in the rules, generally ruling in favour of the European Commission. In 2005, the Court of Justice assessed the case of Arthur Andersen and ruled that certain services did not qualify for VAT exemption. Since then, despite there being no official update to EU legislation, HMRC has had to modify VAT arrangements in the UK to take this ruling into account.¹¹⁸²

24.3.3 The UK would have more power over setting its own taxation policy and could make the tax system simpler

While the EU says that the member states do have power to choose their own taxation policies, it also points out that the options available to them are limited: *“Provided that the member states comply with EU rules, each is free to choose*

1180 Business for Britain *“How much VAT do British taxpayers pay into the UK?”*, T. Philpott (2015).

1181 European Parliament *“Indirect taxation: Value added Tax (VAT)”*, accessed 31/03/2015 at: <www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_5.11.4.html>.

1182 HMRC *“VATINS5210 – Services of an insurance intermediary: insurance brokers and insurance agents: decision of the ECJ in Arthur Andersen & Co Accountants C472/03 (Andersen)”*, accessed 31/03/2015 at: <www.hmrc.gov.uk/manuals/vatinsmanual/vatins5210.htm>.

“There are clear trends suggesting that taxation laws are going to become increasingly global in the coming years.”

the tax system it considers most appropriate”.¹¹⁸³ The EU does permit member states to introduce their own taxation policies in a number of areas, including:

- Taxes on insurance contracts;
- Tax on betting and gambling;
- Excise duties;
- Stamp duties.

However, any taxation introduced in these areas has to comply with EU standards. The Balance of Competences Review noted that *“while direct taxation remains primarily a member state competence, member states must exercise its competence consistently with EU law, meaning that when the UK makes changes to its system of taxation, it must not implement anything which is contrary to the Treaties.”*¹¹⁸⁴ For example, the UK would not be able to introduce taxes on goods from another member state which exceed the taxes that are imposed on similar domestic products (this means that the UK cannot introduce favourable tax treatment for its domestic industries). The EU also has a voluntary Code of Conduct Group for business taxation.

In addition, the Law Society has noted that, because domestic tax measures have to comply with EU rules, complexity is creeping into the tax system:

*Significant complexity in certain areas in the UK [is increasing] such as: the introduction of domestic transfer pricing; thin capitalisation rules; and expansion of dividend exemptions to non-UK dividends but with a series of complex exclusions to the exemptions that apply to both UK and non-UK dividends.*¹¹⁸⁵

Leaving the EU would change this situation, and allow the UK to have much greater power over setting taxation laws, including simplifying matters. Further, because there are clear trends suggesting that taxation laws are going to become increasingly global in the coming years (the financial crisis prompted fora like the G8 to take action on international tax havens and to increase cooperation on tax policies), outside the EU the UK would be better placed to have a stronger voice over these laws without its views being contradicted by the Commission. It would also be likely to have much greater flexibility in implementing international agreements on taxation matters.

‘Winning the global race’ depends, among other factors, on having a competitive tax system. Membership of the EU compromises the UK’s ability to offer both simple and low taxes – it demands minimum rates of excise duty and minimum VAT rates for most goods. Being able to discard EU Treaty requirements and other laws would allow the UK to go much further in making Britain an attractive country for investors.

Another problem is that the EU takes a comparatively long time to change its tax policies, meaning that it is not always up-to-date with modern practice. One example is the VAT treatment of financial services, which was first proposed in 2007 (COM/2007/747) and, at present, is still not in force.

1183 European Parliament “General tax policy”, accessed 31/03/2015 at: <www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_5.11.1.html>.

1184 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Taxation” (2013), page 19.

1185 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Taxation” (2013), page 34.

“EU legislation has, in some instances, been found to have helped multinationals avoid taxation altogether.”

24.3.4 Tax avoidance could be easier to deal with

In the EU, it is suggested that, around one trillion euros in tax revenue is not collected each year due to tax evasion and avoidance.¹¹⁸⁶ In an attempt to counter this, the EU allows for cooperation and exchanges of information among its member states, and has introduced policies that seek to stamp out tax evasion, such as the Savings Taxation Directive (Directive 2003/48/EC). In addition, the EU has also established a number of expert groups, including the Code of Conduct on Business Taxation group and the Tax Policy Group. In 2012, the Commission launched an action plan on tax fraud and evasion. The British Government has also made it clear that it considers reducing tax evasion and avoidance to be an extremely high priority. In a speech in October 2013, Prime Minister David Cameron announced that *“for too long, a small minority have hidden their business dealings behind a complicated web of shell companies, and this cloak of secrecy has fuelled all manners of questionable practice and down-right illegality.”*¹¹⁸⁷

It is debatable how successful the EU has been in managing to reduce tax avoidance. EU legislation has, in some instances, been found to have helped multinationals avoid taxation altogether.¹¹⁸⁸ The recent ‘LuxLeaks’ scandal is one well-known example of the problems that have stemmed from attempts to harmonise EU policies: according to reports – backed up by 28,000 pages of leaked tax documents – the Government of Luxembourg helped multinational corporations by arranging favourable tax deals, making use of EU directives that prevent double taxation to ensure that firms based in Luxembourg had to pay very little tax. This has raised awkward questions for the current President of the European Commission Jean-Claude Juncker.

Most of the problems with tax avoidance come from multinational companies adopting strategies that are legal under the EU’s Treaties, in particular the free movement of capital, which allows the offshoring of funds to other EU member states to avoid tax liabilities. Article 63 TFEU states that *“all restrictions on the movement of capital between member states and between member states and third countries shall be prohibited.”*¹¹⁸⁹

Outside the EU, the UK would initially have to apply the OECD’s 1961 Code of Liberalisation of Capital Movements, but a radical change could be to consider leaving the code and introducing new capital controls to prevent the flow of taxable earnings out of the country. (However, were Britain to join the EEA, it would not have the power to deviate from the OECD code). Any decision that the UK makes on capital movements would also have to consider the impact that this would have on financial firms’ access to European markets.

1186 This claim was made by Former President of the European Commission Herman Van Rompuy in March 2013, see <<http://uk.reuters.com/article/2013/04/12/us-eu-tax-vanrompuy-idUSBRE93B0KC20130412>>.

1187 HM Government “PM speech at Open Government Partnership 2013”, accessed 31/03/2015 at: <www.gov.uk/government/speeches/pm-speech-at-open-government-partnership-2013>.

1188 European Commission “Tackling tax avoidance: Commission tightens key EU corporate tax rules” (2013).

1189 TFEU, Article 63.

“It is important that nation states control their own fiscal destiny.”

Conclusion

Leaving the EU would give the UK many new choices over its tax policies. The opportunity to vary policy, in particular VAT, could make life easier for many people. While at present the EU has relatively limited direct powers over setting taxes, the clear evidence of ‘mission creep’ and the EU’s willingness to circumvent the legal restrictions on its powers are both issues of particular concern and would be addressed by leaving. The UK Government alone would then determine tax policy.

It is important that nation states control their own fiscal destiny, as they are best placed to respond to specific and changing national circumstances. As their starting point, EU tax measures have been designed to address the obstacles that hinder cross-border business or administrative cooperation, mainly by aiming to prevent double taxation. These have, on the whole, been beneficial and would continue after Britain left. However, EU attempts to increase its remit in recent years have resulted in the European Commission seeking to introduce damaging EU-wide tax laws to fund an emerging central European government and to support the single currency. The greatest advantage of leaving would perhaps be the security of knowing that the EU would not be able to take control of Britain’s tax system.

25 Culture

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“British culture is part of the nation’s diplomatic and industrial appeal.”

How important is culture? The UK Government certainly rates it, assessing its worth in the following terms:

It is a core part of our national identity and underpins how we see ourselves. It also defines how the world sees the UK. UK culture is our hallmark, and makes the UK distinctive in a globalised world. The world was watching the UK during our Olympic year and British confidence, creativity and flair is more in demand than ever. Our culture, tourism, and sport help define both national and regional identities, and are a vital component of the UK’s capacity to promote itself abroad and our use of ‘soft power’.¹¹⁹⁰

British culture is part of the nation’s diplomatic and industrial appeal, crafting the UK’s Unique Selling Point. But arts and culture are not simply important in terms of national prestige; they are also income generators. In 2011, they had a Gross Value Added of £5.9bn and a turnover of £12.4bn. If money generated by tourism is taken into account, the figure rises above £50bn, with one in 11 jobs in the economy depending on it.¹¹⁹¹ There are three main risks associated with EU engagement: direct and inferred constraints, bureaucratic costs arising from increased involvement, and branding contamination.

Financially, culture, tourism and sport are as vulnerable as any other UK industry to EU regulation. The Union of European Football Associations (UEFA) was viewed by the Commission as falling into its remit as soon as clubs started to generate significant revenue, once the game became a major international going concern; and shareholders and stakeholders were seen as needing protective rights. This accelerated with increased EU engagement in media and as sponsorship opportunities expanded vastly. The first real display of this came in the 1990s with a challenge over club and player rights over international signings, and the introduction of rules limiting the number of foreign players a given club could field.

To date, the UK has been able to defend tax relief on financial support to culture, including the film industry. But as the Commission is the arbiter, the continuation of such policies cannot be guaranteed. Despite its limited direct authority, Commission engagement is expected to expand. This is anticipated particularly in the areas of state aid, immigration, the Single Market, and structural funds. The issue of branding contamination takes us to the question of soft power, which we address in Section 8. ‘Britishness’ is a successful global brand and, certainly compared with some other countries, still a benchmark of quality today. The slow drive towards a common ‘EU culture’, necessary for political union, would have as much of an impact on the UK as the banning of ‘Made in Britain’ on its products.

1190 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Culture, Tourism and Sport” (2014), page 25.

1191 The end figure is open to challenge when one audits health benefits and state subsidy. The economics of the Olympics were overstated from the outset. However, private sector engagement is indeed significant and therefore directly as well as indirectly open to policy impact.

“The EU is not the central forum for international agreements on culture.”

25.1 The UK would remain a member of all key international cultural bodies

Key international cultural bodies

- Council of Europe
- Sporting bodies (FIFA, IOC)
- UNESCO
- World Anti-Doping Agency
- World Trade Organization
- World Travel and Tourism Council

The EU is not the central forum for international agreements on culture. Even at the European level, much of the work is done at the Council of Europe, which is psychologically focused on bringing together minds rather than administrators. Globally, agreements are facilitated at the UN. The question is whether such collective cultural work can continue if Britain left the EU. Since all meaningful bodies governing tourism, sport and the arts are actually run at an international level, their operation in Britain would not be threatened.

Sports are generally governed by non-state institutions. They still tend to be regulated by the descendants of the amateur bodies that first codified their rules: even Korfball, the supposedly futuristic sport endorsed by the Millennium Dome, was not created by Peter Mandelson’s department, but is instead run from a Federation (the IKF) established in Antwerp in 1933. Sport does receive attention from government in areas such as cartels, performance-enhancing drug use, and the state sponsorship of athletes. But the role of the EU in each of these fields would not be missed.

25.1.1 The UK would remain a member of key international bodies covering cultural cooperation

Outside the EU, the UK would still be involved in all the key international cultural organisations. These are either run at the global level or are associations of third parties. Indeed, the UK managed for many years to operate even without participating in UNESCO, the UN office, since Britain boycotted it during the Cold War as the Soviet Bloc was using culture as a propaganda vehicle. Times have changed and UNESCO provides a mechanism for events that act as global twinning mechanisms. Tourism is covered by another UN agency, the UNWTO. The World Travel and Tourism Council is the corporate lobby and forum for the world’s largest businesses in the sector.

The Council of Europe is significantly engaged in promoting cultural and heritage cooperation too. It first agreed a Convention on Culture in 1954. Its work has included providing Conventions on Spectator Violence and on Anti-Doping. This latter issue is also addressed by the World Anti-Doping Agency, in which UK sectors cooperate bilaterally. The Olympic Movement (International and National Olympic Committees) is considerably involved in such matters. The IOC is also a central player in the fight against match-fixing, increasingly being undertaken in conjunction with Interpol. UNOSDP, meanwhile, is the UN office that uses sport as a building block for peace.¹¹⁹² UK participation in these bodies would not be affected if it left the EU.

¹¹⁹² UNESCO: United Nations Educational, Scientific and Cultural Organization, founded in 1945. UNWTO: the United Nations World Tourism Organization, 156 nation state participants whose work includes 400 affiliates from the trade. UNOSDP: United Nations Office on Sport for Development and Peace, based in Geneva and a link point between sport and aspects of politics.

“Increasing the EU brand also weakens the distinct UK brand.”

25.1.2 Britain would remain part of key international bodies governing Intellectual Property Rights

Cultural Intellectual Property Rights (IPRs) would likely be negotiated as part of the new trade arrangements between the EU and the UK, and would be as integrated into Single Market procedures as the rest of trade. The EEA, for example, has harmonised agreements on IPR, but manages to exclude aspects of the EU system that clash with free trade agreements or which are not EEA-relevant competences.

Meanwhile, for the music industry, given the nature of the internet and its central role in revenue loss for the industry, attempts to define (let alone combat) illegal downstreaming could be valuable across the EU but really need wider international action.

Global property rights are by default covered by the WTO’s TRIPS system, though a free trade agreement could set up a deeper joint system.¹¹⁹³ The rules are fairly well-developed, and differences relate largely to whether countries increase the default period of coverage (50 years for the music industry) and the extent to which they actually police their domestic laws.

25.1.3 Leaving the EU need not impede the global bodies associated with the UK’s tourism industry

The EU has marginal involvement in tourism, except for the impact its regulations have on businesses generally.

The Commission is currently pushing for a ‘European Tourism Quality’ brand/mark. This would be voluntary. As the EEA includes tourism as one of its ‘flanking’ competences, mechanisms already exist for non-EU states to adhere to such voluntary quality controls. UK versions already exist, of course, though trading standards in parts of the sector could still do with improvement. Other non-EU actors could play just as valuable a role, however, such as the European Travel Commission (independent, founded in 1948, includes non-EU states), the OECD, or the United Nations World Tourism Organization.

Increasing the EU brand also weakens the distinct UK brand. This is a particular concern within the EU system when coupled with the UK’s island and non-Schengen status. In other words, heritage, history and Heathrow are among the pulls to the UK, but Britain risks becoming just one peripheral stop on a pooled EU tourist itinerary unless it leaves the Union.

25.2 The UK could continue to cooperate with the EU on cultural matters

Key issues

- Cultural exchanges such as town twinning
- Minority language collaboration
- Mutual recognition of property rights and symbols
- Unbiased educational programmes

As explained above, the EU does not have an extensive role in British culture, but is involved in some arts funding, heritage cooperation, and product certification. Were the UK to leave, the Government could consider which areas it

¹¹⁹³ TRIPS stands for ‘trade-related aspects of intellectual property rights’. The TRIPS agreement was signed as part of the Uruguay round in 1994 and became effective in 1996, guaranteeing that WTO members agreed to minimum intellectual property standards.

“To generate a demos, you need a common context.”

wanted to continue working on with the Commission, and whether to enter into a ‘special deal’ to achieve this. The nature of the EU programmes being funded makes this rather unlikely. Almost total cultural cooperation could be achieved through EEA membership, but a more flexible approach may also be pursued since so many areas of European cultural cooperation are not directly controlled by the EU.

25.2.1 Cultural bilateralism can continue but European cultural homogenisation would be avoided

To generate a demos, you need a common context. In the absence of a common language (which Latin can no longer supply, if ever it could), it needs to be achieved through crafting a common heritage.¹¹⁹⁴ Some attempts have been made to co-opt the extremist history of the twentieth century and set the EU up as the unifying counter element. The success of this has been limited: first, by charges of poor taste, especially over the co-opting of the Holocaust to the cause of European integration and associating Euroscepticism with the side of the perpetrators; and second, by the simple detail that member states were arraigned on opposing sides during the Nazi and Cold War eras.¹¹⁹⁵

Heritage provides a less charged mechanism for demonstrating a common European identity, equating Shakespeare with Cervantes, and Durer with Michelangelo. Thus, the motive behind nominating sites for the EU’s European Heritage Label is to:

*celebrate and symbolise European integration, ideals, values and history. They are carefully selected for their symbolic value, the role they have played in the European history and the activities they offer in order to bring the European Union and its citizens closer together.*¹¹⁹⁶

The cultural gains could, however, be just as easily achieved with a UK-only system of heritage labelling, without the EU PR element, and by simply submitting a UK generated list and web links for any common tourist publicity. As UNESCO World Heritage Lists and the Council of Europe’s European Cultural Routes already separately exist, and the budget is in any case tiny, if the Commission disapproves of the loss of its propaganda on the ideals of integration, British tourism would not be missing out.

By contrast, more useful would be to continue work done on physical cultural protection, particularly with respect to combating the illegal trade in plundered artefacts. Given the extent to which this criminal activity is funding terror groups like ISIL, inter-agency cooperation is likely to continue.

One of the success stories associated with the EU involves the preservation of cultural identity in foodstuffs and produce. Protected Designation of Origin (PDO), Protected Geographical Indication (PGI) and Traditional Speciality Guaranteed (TSG) associate a particular brand of food with an area of historic production. This is not always without controversy, as the Feta Cheese case

1194 The idea of there being a ‘European demos’ has been comprehensively discredited by leading historians, including the pre-eminent Professor of Mediterranean History, David Abulafia, who has pointed out that “‘Europeanness’ cannot be traced far back in time.” See *Historians for Britain* “‘European Demos’: a historical myth?” (2015).

1195 The Poles have also proved particularly sensitive about attempts by the Commission to co-opt Soviet oppression into the EU’s PR package, seeing Polish national identity rather than the EU as their redemption.

1196 European Commission “European heritage label – Europe starts here!”, accessed 29/04/2014 at: <http://ec.europa.eu/programmes/creative-europe/actions/heritage-label/index_en.htm>.

“Supporters of European integration back cultural cooperation in order to build a new European culture.”

demonstrates,¹¹⁹⁷ but it has been applied for, for instance, by the producers of Orkney Cheddar and Anglesey Sea Salt.

The resulting Database of Origin and Registration (DOOR) of registered products runs to around 1,500 products, 72 of which are from the UK.¹¹⁹⁸ However, products do not have to be made within the EU in order to be registered. China has ten so lodged, such as *Pinggu Da Tao* peaches and *Longjing Cha* tea. Distinctive British products could certainly still benefit from protected origin definitions so long as the UK continues to respect the EU's own identification marks.

Supporters of European integration within the institutions back cultural cooperation in order to build a new European culture, constructing a demos justified by a *common* European identity. This contrasts with the approach made through the Council of Europe, which is about swapping national cultures in order to create a *shared* European identity. The difference lies in the application of what is devised, and by the political loyalties and obligations intended to be associated with it.¹¹⁹⁹

In practical terms, if it withdrew from this policy area, the UK would be prevented from contributing to and receiving funds from the EU cultural budget, except from programmes joint-funded (and signed off) by the Department for Culture, Media and Sport (DCMS) or the 43 designated agencies and public bodies which it is responsible for. That list includes the great national museums, English Heritage, the state broadcasters, and Arts Council England.

A bilateral approach also allows greater direct appreciation of the value of programmes currently being funded under the culture and MEDIA programmes, running at €1.8bn over 2014–20. Depending on what the Government wishes, funding for culture SMEs, since it is presently permitted by the Single Market, could continue as now on a national basis, or it could be turned over to the market. In other words, subsidies and support could continue, or cuts could be more widely debated and targeted support under current EU grants reconsidered.

This means that current funding levels could be maintained if the political will supported that.

Some perspective on what the removal of EU funding would mean is needed. In the case of the film industry, in 2011–12, in terms of state support, 58 per cent came from UK tax relief structures, 14 per cent came from the National Lottery, 11 per cent was from DCMS-sourced grants, and seven per cent was from state broadcasters. Only two per cent, £6.6m, came from the EU Budget.¹²⁰⁰

Meanwhile, the UK could opt to continue participating in programmes which are objectively more successful. These might include opting into the EU's 'European Capitals of Culture' programme, minority language cooperation, and museum exchanges. Of these examples, the first results in a coun-

1197 Feta generated an intra-EU trade dispute over whether Feta-style cheese made in Denmark should be allowed to keep its name, on the grounds that, like Cheddar, the produce had become generic.

1198 European Commission "DOOR", accessed 29/04/2014 at: <<http://ec.europa.eu/agriculture/quality/door/list.html>>.

1199 The British Council, which is well suited to judge these matters, believes the EU is not best placed to support culture internationally: "*national and devolved governments and national cultural institutions remain the best placed level of government to support and champion the internationalisation of their national arts and cultural sectors*". HM Government "Review of the Balance of Competences between the United Kingdom and the European Union: Culture, Tourism and Sport" (2014), page 28.

1200 HM Government "Review of the Balance of Competences between the United Kingdom and the European Union: Culture, Tourism and Sport" (2014), page 27.

“Churches and religious groups are perfectly capable of institutionally cooperating without the EU acting as an intermediary.”

try gaining a slot on average only once every eight years (along with an obligation to highlight the common aspects of European integration and the work of the Commission). The UK is next down for a slot in 2023, but also now runs its own parallel UK ‘Cities of Culture’ programme every four years with much the same impact. Minority language cooperation can be and is done bilaterally, or through organisations and lobby groups – an example is the Federal Union of European Nationalities, FUEN, which was founded in 1949 and is outside the EU. On museums, the UK has had an association bringing them together since 1889, which is itself a member of a European Network – NEMO. Correspondingly, the UK would certainly be able to make do without any formal EU involvement.

25.2.2 Religious association across Europe would not be affected

Churches and religious groups are perfectly capable of institutionally cooperating without the EU acting as an intermediary.¹²⁰¹ The EU’s engagement with them has not always been with the best of intentions.¹²⁰² Instead, the Union has seen them as opinion multipliers who might endorse the programme of integration.¹²⁰³

The philosophical value that faith groups bring to society would not be lessened by decreasing the EU’s role. Indeed, with every marginal increase in the role of Parliament, the significance of contributions by religious leaders in the Lords (especially the 26 Anglican bishops) also rises slightly.

Churches themselves stand to gain more widely from less EU. One example is the impact from changing the rate of VAT on church repairs (the Treasury historically takes more in VAT than it grants via English Heritage). Others lie in adjusting the Habitats Directive (Council Directive 92/43/EEC) so bat conservation takes account of church user needs; from clarity on the limits of what human rights arise from same sex marriage laws; and in removing ambiguity that drives overcautious authorities and chief executives from allowing Christian symbols on human rights risk aversion grounds (i.e. offending someone by putting up a Christmas tree in a charity shop window).¹²⁰⁴

1201 The Catholic Church’s historical role on the continent in the establishment of Christian Democrat parties (by the hierarchy) and Christian Socialists (by the ranks) is both a case in point, and a further reminder of the distinct traditions and founding motivations that separate them from their political counterparts in the UK and Scandinavia.

1202 Rather than tap into religious leaders as moral philosophers, church thinkers have been largely frozen out in particular of the ethics debate, as personified by the advisory council to the Commission President on the morality of emerging technologies. That is largely down to the secular nature of the Commission as an institution. MEPs have been more receptive, and indeed COMECE (the Catholic bishops’ lobby group) has been largely orientated to influence their work.

1203 Hence EU funding under the former A-3 budget lines for entities variously listed as Church law groups, Evangelical associations, Lutheran bodies, Jewish women’s groups, youth bodies of Church-associated political parties, Christian debating groups, Catholic youth groups, Orthodox youth groups and Christian peace groups.

1204 Such instances, exemplified by the media favourite of banning hot cross buns ‘to be safe’, are a secondary order impact. They are often not a fault of the EU, but of uninformed domestic overreaction to human rights obligations fostered by the uncertainties of vexatious legal challenge. However, structural changes to how human rights are managed in law could remove the fear of litigation that partially drives this. With increased confidence, personal choice is restored, fewer media stories occur, and the process is cyclical.

“EU involvement in film is largely driven by French protectionism over its cinema.”

25.2.3 TV and film cooperation could still continue outside the EU

EU involvement in these media is largely driven by French protectionism over its cinema, which itself is part of the strategic goal of sustaining the French language against English globally. UK interests do not coincide with this objective. Indeed, it has hampered the push for comprehensive free trade deals, including the Transatlantic Trade and Investment Partnership.¹²⁰⁵ There is more of an argument to be made in favour of supporting joint production ventures, though this comes at the risk of providing subsidy for programmes that lose money because they are not commercially popular. TV channels already commission material from other countries, their ‘talent scouts’ can spot a winner like *Borgen*, and they are quite capable of identifying which ones need adapting to their home market to work – this even includes re-filming English language work if, for example, an American context alienates.

The extent to which EU engagement adds value here is questionable. From a UK perspective, the industry is already a successful exporter. International revenue runs at around £1.3bn annually; the US remains by far the largest market (£523m in 2013 and growing at 10 per cent), and Australasia the second biggest (£95m).¹²⁰⁶

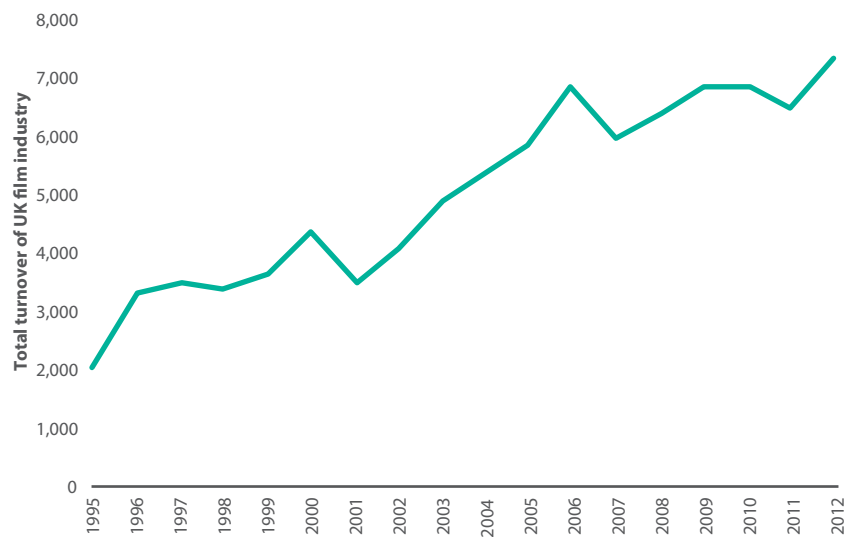
Formalised cooperation in supporting the film industry is another alternative. However, the UK is already one of Europe’s more competitive, both as a recognised production site and with a series of iconic productions maintaining brand recognition (examples in both film and TV terms include the Bond franchise, *Downton Abbey*, *Top Gear*, *Doctor Who*, and the licensing of the *Great British Bake Off*). UK film exports won 15 per cent of the international box office in 2012, valued at €5.3bn.¹²⁰⁷ Increased attention is being drawn to China, which is now the world’s second most important export market (at €3.5bn). The industry exported £1.5bn in services in 2012. While admittedly it is not on the scale of Hollywood, it is a global competitor (especially the larger companies) whose work commands a market.

1205 In 2013 President Hollande’s Government demanded that the audiovisual sector be kept out of TTIP negotiations with America lest the power of Hollywood undermine French cultural coherence.

1206 TRP Research “UK Television Exports Survey FY 2013/2014”. Collectively, the EU value is about three fifths of the US one, but it is tellingly not considered a single market by the profession.

1207 BFI “Statistical Yearbook”, accessed 29/04/2015 at <www.bfi.org.uk/education-research/film-industry-statistics-research/statistical-yearbook>.

Figure 25.i: Total turnover of UK film industry 1995–2012 (consolidated) (£ millions)



Source: BFI Statistical Yearbook 2014¹²⁰⁸

Film and video games subsidies (in the UK, typically in the form of tax incentives) would continue to be allowed within the EEA system just as they are currently within the EU – until the Commission decides to change the rules, at least. Globally, however, the issue remains unsettled. New Zealand, for example, subsidised the trilogy of *The Hobbit* films, seeing value added to its tourist industry. Under WTO rules, a country may yet challenge film support as favouring its export market. Were that to successfully happen, then EU, EEA and global practices would all be affected – but the UK would be better placed to defend its own corner within the WTO if it can speak up for itself.

Equally unlikely to be affected by changes in the UK's EU status is continued cooperation in supporting cinemas. The Commission subsidises them to show small budget foreign films whose commercial value is limited, and part of the MEDIA programme supports the networking of cinemas to facilitate this. It entails €35m of grants subsidising the (French) Europa Cinemas group. As viewers who have seen its in-house advertising would already know, its activity is not limited to EU cities but covers 69 countries.

The single greatest shift may prove to be over the regulation of programming. The Television Without Frontiers Directive (Council Directive 89/552/EEC), followed by the Audiovisual Media Services (AVMS) Directive (Directive 2010/13/EU), sets common broadcasting standards, and there has been controversy over the extent to which this should be extended into digital and online providers. Within the EEA, common standards such as over watersheds would still likely apply; outside it, the online market could be allowed to develop in a more deregulated manner if lawmakers so chose. The AVMS Directive since 2012 does specifically form part of the EEA acquis, and this has the effect of enabling member states to specify that certain sporting events are of national significance and should therefore be free to view. This practice, covering for example the Grand National or Six Nations matches, could therefore continue if the UK so chose.

The Eurovision Song Contest, incidentally, would be unaffected. The competition is run through national television agencies. Its remit runs so far beyond

¹²⁰⁸ BFI "Statistical Yearbook 2014" (2015), page 221, accessed 29/04/2015 at <www.bfi.org.uk/education-research/film-industry-statistics-research/statistical-yearbook>.

“The twinning process is also now associated with the EU’s PR programme.”

EU boundaries that it extends to the likes of Armenia, Israel, and (as a one-off) Australia.

25.2.4 Town twinning could continue outside the EU

Town twinning is seen in some circles as a council junket. Its original intent was to increase mutual understanding in the aftermath of the Second World War, though this has somewhat been overtaken by the fall of the Iron Curtain and the widespread possession of televisions (coupled with a largely free press informing the public on the true character of their continental neighbours).

Unfortunately, the twinning process is also now associated with the EU’s PR programme, *“fostering a sense of ownership of the European Union and finally developing a sense of European identity”*.¹²⁰⁹ However, since non-EU states such as Ukraine are involved in the programme, if town councils felt strongly about expanding their participation, arrangements could still likely be made. Although it receives EU backing, the programme is in fact run through the Council of European Municipalities and Regions (CEMR), a local government membership body set up in 1951 and which is now a regional branch of a global entity, United Cities and Local Governments.

25.2.5 Sporting contests across Europe would continue

European sport is not dependent upon the EU to operate, but on a variety of international organisations. Examples include UEFA (54 members, founded 1954), the European Athletics Association (50 members, founded 1934), or the FEI (*Fédération Equestre Internationale*), which covers horse events – a branch of the International Olympics Committee, founded in 1921 and based in Lausanne. Cooperation with these would continue under any circumstance.

EU engagement is aimed at *“developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.”*¹²¹⁰ There is nothing to stop such cooperation continuing outside the EU.

Within the EEA structure, the Commission is interested in sport as an industry, and involvement (and interference) can be expected in competition issues and over limits on the numbers of nationals fielded. There is also a risk that attempts to encourage home-grown talent might be challenged as contrary to equal treatment rules.¹²¹¹

It would be a simplification, however, to ascribe the lack of success in the Football World Cup by the four British home teams to EU rules enabling clubs to field multiple foreign players. Other countries, such as Germany, Italy and Spain, have greater proportionate success. The difference lies in teams abroad seemingly being better at identifying and encouraging home talent and being less dependent on posting spotters abroad with a chequebook.

1209 European Commission website “‘Europe for Citizens Programme’, Education, Audiovisual and Culture Executive Agency section”, accessed 29/04/2015 at: <http://eacea.ec.europa.eu/citizenship/programme/action1_measure1_en.php>.

1210 Article 165(2), TFEU.

1211 The interests of the Single Market have been developed over time through the Walrave Judgment (1974), Bosman (1995), Balog (1998), Piau (2006), Meca-Medina (2004 and 2006) et al. Logically, these would continue to be developed if the UK is part of the EEA, with international sports bodies operating in EEA countries increasingly falling under EU company law and regulations. It will yet take several test cases to determine the limits and implications of Commission intervention in international bodies, and future absurdities would probably only be settled by open conflict between regulatory jurisdictions.

“Leaving the EU presents an opportunity for Britons to look at themselves and ask what the British identity really means.”

25.3 New cultural policy opportunities would become available

Having removed the EU’s cultural politics, one option would be to place greater emphasis on defining the nation’s own. To begin with, this could include a debate about national identity (including British, Scottish, English, Welsh and Northern Irish identities). The failure to forge a cohesive narrative about what constitutes the nation in a postmodern, multicultural, multi-ethnic society has been identified as an underlying factor facilitating community breakdown. It also helps explain concerns about mass immigration, if newcomers cannot coherently be assimilated into the national whole. Leaving the EU presents an opportunity for Britons to look at themselves and ask what the British identity really means and how it can be fostered. With powers over culture in the hands of the devolved assemblies, it would also be an opportunity to strengthen the identities of Scotland, Wales and Northern Ireland.

National control of these competences could also allow Britain to manage its culture, media and sport industries in ways that are better suited to national priorities, emphasising PR value for Britain, Scotland, Wales and Northern Ireland, freeing businesses, introducing greater flexibility, and indirectly addressing domestic extremism.

25.3.1 Some business sectors would be secured from EU threats

Certain sectors have been damaged by EU decisions and processes. The most infamous instance has probably been the art market, and the introduction of *Droit de suite*: artist resale rights (ARR). This is a surcharge levied on art sales that is intended to benefit the original craftsman or painter. In practice, it has predominantly benefited the estates of a very limited number of world famous artists, with 90 per cent of the actual creators being dead.¹²¹² Its introduction across the EU was largely driven by the French, who had run such a system since 1920 and were thus operating at a competitive disadvantage that they sought to export.

The impact of the change has yet to be fully assessed. Despite Britain enjoying an initial derogation, the UK’s market share of global sales has dropped as forewarned, from 27 per cent to 20 per cent. Particularly problematic has been the administrative burden for small sales by smaller companies. This is worsened by ARR being compounded by being applied to sales between traders, which does not by contrast apply to VAT.

Horseracing provides an example of second order risk. First, the use of Bute (phenylbutazone) as a painkiller for racehorses has led to the introduction of obligatory microchipping, to ensure that animals that have been given it do not end up in the food chain. Second, European Court of Justice activity has encouraged the offshore basing of betting firms, with a risk of reduced turnover going back into the racing industry itself. Third, horse transportation is becoming increasingly difficult and expensive due to the need to fulfil standards set to ease livestock movement. These include competency certificates for drivers and escorts (however experienced), travel times limits, tachographs, engine emissions limits (costing £3,000 to amend), and limitations that ignore the design of a horse box (for instance over temperature, or the standard slope of the ramp). A UK-led legal framework would stop laws being made on the hoof which are actually intended to regulate eastern European horsemeat trade.

1212 The European Journal, Volume 8 Number 7 (2001), page 22.

“Good projects could still be funded from UK sources.”

25.3.2 PR messaging could be engaged in developing Britishness, rather than pushing a weak European identity

Ending the EU funding of UK cultural and educational programmes removes the obligation of the recipient to fulfil the PR aspects of the award criteria. Good projects could still be funded from UK sources. That would exclude, for example, research grants to find a common European identity in folk tales; public subsidy for museums purely on the basis of an association with the ‘Founding Fathers of Europe’; or funding for schoolbooks that rewrite the First World War as a European civil war.

With no push for a common European identity, there is the option of concentrating on securing a British one. Policy-makers could elect to do what the EU is doing but with a different aim. They could spend more effort educating school-children about a civic British national identity and culture, which would help engage second generation immigrants with the mainstream culture. Likewise, in the devolved nations, greater emphasis could be placed on promoting civic notions of Scottish, Welsh or Northern Irish identity – and finding common aspects of a civic British identity.

Opinions will vary on the extent to which the state should be doing this in schools, but a consensus appears to have been reached that the absence of a coherent narrative on what ‘Britishness’ is has allowed extremism to appropriate identity for its own ends.

25.3.3 Grants could still be made to support the Arts

Some suggest that culture should be more market-orientated and less reliant on state grants. Others suggest that the system encourages wider tourism and the income that accompanies it, and supports a wide variety of emerging bands and artists. Whatever premium is placed on subsidies by future UK Governments, EU association is not necessary for them to be offered.

Conclusion

The UK is a cultural Great Power, and would remain so outside the EU competences. British theatre, music, film, television, landscape, sportsmen, museums and even cuisine are world leaders. Across these fields, and across other aspects of the UK’s national life and identity, the country has world icons ranging from David Beckham to Kate Bush, Prince Harry to Mr Bean. These are hugely important assets, as ambassadors, role models, salesmen, and symbols. British football club shirts can be found on every continent. Stereotypes of cricket and fair play are intermixed with the modern British reputation for neo-Cool Britannia. Such things are important when picking a trusted partner to do business with.¹²¹³

There is, moreover, another asset that would endure even without full participation in the EU’s cultural machinery. The English language is itself a crucial tool and a key product. It can be marketed and sold, and its mastery is a skill that adds value. It is the key medium of global business, transport, diplomacy, and technology. Culturally, it is the medium of the two most globally successful music industries, the dominant western cinema producer, and the two leading Western stage communities.

¹²¹³ Readers may be familiar with the ‘GREAT’ range of poster adverts run by BIS/British Council, which provide a number of examples of cultural images and icons seen as UK strengths.

The English language would remain as an enduring asset for the UK operating beyond the EU's inner sanctum. The key would be exploiting it globally. A measure of its power can be seen in a single irony. Given its status as Europe's second language of choice, its continued use within the corridors of Brussels itself would likely survive full British exit from the EU.

26 Conclusion

Part 3 has shown that, across a wide range of policy areas, there would be substantial benefits if the UK left the EU. In each area that has been investigated, from agriculture to financial services, the advantages of leaving overwhelmingly outweigh the disadvantages.

Britain would have greater influence over international affairs and regulations. The UK would regain its right to speak on its own behalf in the international bodies that are increasingly the source of the rules that the EU then imposes on Britain. Rather than having a tenth of a say over the EU's final implementation of these regulations, the UK would have the ability to directly influence them from the very start. International cooperation would continue across a huge range of crucial policy areas, and the UK would remain a member of numerous non-EU European agencies, even without a 'special deal'.

Nor would leaving compromise the UK's ability to work with the EU's member states or institutions. As Part 3 has shown, since the EU has committed itself to developing a 'special relationship' with neighbouring countries (as set out in Article 8 TEU), there would be nothing stopping Britain from working with the EU on areas of mutual interest.

In fact, the UK and its devolved governments would enjoy a wide range of new policy opportunities. Britain would have the power to create jobs, improve its welfare system, address immigration, protect its financial sector, tackle the causes of poverty, and create a fairer and more democratic society. Leaving the EU would enable the UK to build a society that reflects the British people's hopes and ambitions. Put simply, it would put Britain's future back into Britain's hands.

Crucially, Part 3 has also shown that, even without a 'special deal', due to the end of its obligation to fund the EU Budget, the savings Britain would make would be more than enough to continue funding all the programmes and organisations that currently receive EU grants and subsidies - including in the important area of research and development. As Part 4 goes on to detail, the remaining surplus could be reinvested into the UK economy, compensating the five per cent of British firms who directly export to the EU for the (low) levels of tariffs they may face under a 'WTO terms' relationship.

This is a crucial point and, as Part 4 will now go on to argue, leaving the EU would not only be a chance for Britain to bolster its international influence. It would also increase the nation's prosperity.



Part 4:

How Britain would prosper outside an unreformed EU

Chapter

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“It would therefore suit entire industries if the EU no longer governed their fields.”

In Part 3 we reviewed how, across the range of EU competences, alternative forms of international cooperation already exist that provide a superior legal framework in international treaty law to EU membership. Often, but not always, there would be considerable advantages if we used these frameworks as the basis for European cooperation in the future, rather than relying on how the Commission interprets them.

It would therefore suit entire industries if the EU no longer governed their fields. But what if the issue is examined at a macro level? Would there be a strategic gain from stepping away from the EU’s current structures into a new form of association with Brussels, or is it simply a question of identifying the ‘broken competences’ that need to be – and can be – fixed?

In Part 4, we review four key overarching themes and demonstrate how Britain would prosper outside an unreformed EU. We begin, in Section 27, with an assessment of the basic policy choice facing the UK. Britain has more to gain from participating in ‘globalisation’ than from a ‘regionalisation’ concept like that which underpins the EU. Unlike most EU members, held back by uncompetitive social costs, short-termism and ‘Eurosclerosis’, the UK has the scalable industries able to compete on the global stage and has already begun to re-orientate towards the growth markets of the future. The fears of any shocks to foreign direct investment and financial services that might occur were the UK to be outside the EU have been exaggerated.

Above all, a looser relationship with the EU would provide Britain with the ‘least worst’ outcome in the event of the Eurozone either integrating or disintegrating. Conventional analyses of the costs and benefits of the alternative trading options open to the UK are based on an assumption of ‘Business as Usual’ inside the EU, and fail to appreciate how unrealistic that standpoint has now become.

Section 28 concentrates upon the possible impact on foreign direct investment (FDI) if Britain were to leave. It provides both an assessment of the drivers of FDI and an explanation of how these would change. The conclusion reached is that membership of the EU is not essential for making the UK a worthwhile place in which to invest, and a looser relationship might well make it more attractive. Historically, Britain has been a net investor abroad, placing more capital overseas than it has received, and EU countries have not been the most significant investors in the UK.

Section 29 considers the regulatory burdens attached to EU membership. The EU is based on a regulatory regime – and, more significantly, one in which the removal of regulations is deemed to be strategically counterproductive, since it implies withdrawal by the EU from involvement in a particular field. Brussels demolishes trade obstacles by creating common European ones; this is a particular problem when it involves ‘levelling up’ to the highest level of regulation across the EU, thus adding extra red tape costs to economies with low regulatory burdens. As the UK falls into this latter category, this regulation represents a strategic cost rather than a benefit for the British economy. Leaving an unreformed EU could see the cost of regulation cut.

Section 30 is an extensive new tariff study. This fresh audit compares what the UK gains in tariff terms from being part of the EU with baseline gains and costs from trading into the EU but without the basic membership fees, applying standard World Trade Organization rates. Even without agreeing a new deal through a free trade agreement, it becomes clear that the ‘club fees’ significantly exceed the net tariff gains in the specific case of the UK.

Finally, Section 31 shows why people would be financially better off outside the EU, explaining how changes in domestic law that would only become possible after Britain leaves would make each UK household at least £933 per year better off through lower prices.

Taken together, this strategic overview suggests that a shift away from EU membership is not without its technical problems, but that it would generate significant net gains across the UK economy.

27 The source of the UK's future growth lies outside the EU

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“The EU is a ‘regionalisation’ project.”

There is no point in refighting the battles of the 1970s. Whether the UK was right to enter the EU, and whether and by how much it has benefited from its membership, these are irrelevant to the debate that must be conducted today. Those matters relate to the past. What has to be decided is what Britain should do now and in the future.

Two points are central to that debate. First, whatever the position was in 1973, the UK of 2015 is clearly in far less need of the EU as a prop and protection against the outside world. Second, in discussing ‘the EU’, it has to be recognised that this is now an institution devoted to ensuring the survival of the Eurozone, at whatever cost. That frames the debate as not ‘what should Britain’s stance be towards the EU as it is today?’ but ‘what should Britain’s stance be towards an EU which has evolved in response to the defects of the Eurozone?’ Most of the analysis of the costs and benefits of British membership of the EU has therefore missed the point.

In discussing the question of British membership, the UK media has focused on issues such as immigration, sovereignty, and the general disenchantment with the EU. However, on a more fundamental level, important economic cross-currents could have been driving the UK away from the EU in any event. Those same cross-currents could lead to additional pressures that will test the structural integrity of the EU, if it fails to reform itself.

The central issue is ‘regionalisation’ versus ‘globalisation.’ The EU is a ‘regionalisation’ project, because it involves countries combining to form an exclusive club so as to enhance their bargaining power vis-à-vis the rest of the world, as well as to shield its members from external shocks. The benefits from better regionalisation and European integration should in theory be significant and should rise over time.

Equally, however, there should be benefits from globalisation, i.e. interacting with countries that are far away. While the immediate benefits of globalisation for European countries may not be as large as those of having closer trading relationships with their immediate neighbours, the economic benefits from globalisation ought to rise faster over time.

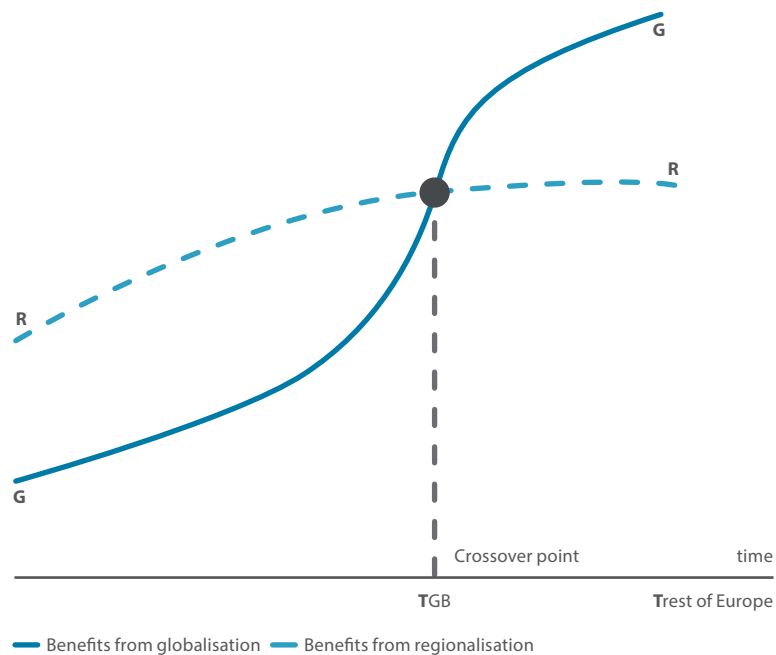
Most modern economies will have a ‘crossover point’, at which they gain more from globalisation than from regionalisation. The UK has an earlier crossover point than the other European countries, and so less to gain from persisting with a ‘Fortress EU’ approach. The evidence may even suggest that British exporters have already begun to cross over naturally, before any reassessment of their country’s membership status has even taken place. Britain therefore faces a choice. An unreformed EU will always under-perform in the new global economic conditions – even if it manages to avoid a meltdown event in the Eurozone. On the other hand, the UK is well-placed to thrive outside the EU in most exit scenarios – especially if the Eurozone undergoes a meltdown event.

The centre of gravity of the world economy is moving away from Western Europe. There is no justification for Britain to strengthen its ties to that region, or to an economic model that remains trapped in the past. A complete crash of the euro system would deliver a profound shock to the world economy, and that would have negative consequences for Britain whether it was a member of the EU or not. But the UK would experience a ‘least worst’ outcome if it had a looser relationship with the EU. Britain should be taking steps now to secure revision of the EU Treaties to insulate itself from the fallout.

27.1 Britain faces a choice between 'globalisation' and 'regionalisation'

The EU is a regionalisation project, i.e. it erects a barrier around its members, allowing them to trade freely among themselves while non-members are kept outside through either tariffs or non-tariff barriers.

Figure 27.i: Comparison between globalisation and regionalisation strategies



Source: SLJ Macro Partners

Figure 27.i depicts a simple stylised chart of the comparative economic benefits of regionalisation and globalisation over time. Regionalisation is represented by the RR schedule in light blue. Globalisation is represented by the GG schedule in dark blue.

An EU accession country should reap some positive immediate benefits. Thereafter, the benefits should in theory rise over time. However, this curve should be concave, because members should experience diminishing returns to scale as the 'low hanging' fruits are harvested. In the specific case of the EU, the relatively low potential growth rate would start to cap the benefits any member country could enjoy - but, in principle, diminishing returns should be expected from membership of any regional trading bloc eventually, irrespective of its particular internal policy stances.

'Regionalisation' is different to 'globalisation.' A country like the UK could, for example, also benefit from signing a bilateral free trade agreement with, say, South Korea. While the immediate benefits might not be as large as those arising from trading freely with, say, France inside the EU, the UK could enjoy economic benefits that rise faster over time, from a lower starting point. Again, this is not a specific remark about the EU today. In principle, given a sufficiently long-run view, and all other things remaining equal, mathematically there must arise a point at which the gains from trading with the world outside exceed the gains from membership of a regional bloc.

“The returns from trade with the world outside the EU will be more attractive.”

The global economy outside the EU is presently worth around \$58 trillion, compared to \$18 trillion for the collective EU-28 economies. Also, the world outside the EU has a higher potential growth rate. According to the IMF, the long-term growth rate of the world outside the EU is above four per cent, meaningfully higher than the two per cent potential growth rate for the EU.

The shape of the GG curve reflects this. Beyond a certain point, the returns from trade with the world outside the EU will be more attractive, making the GG curve much steeper than the RR curve. The precise path of the RR and GG schedules for any individual country will depend upon the competitiveness of its industries, the sectors of its specialisations, the structure of its economy, the policies of its government and other cultural and institutional traits. Nevertheless, the general point holds that each country in the EU has a ‘crossover’ point, whereby the economic benefits of globalisation exceed those from regionalisation. At that point, the value of membership of a regional trading bloc declines relative to alternative arrangements. Accordingly, the member states closest to their ‘crossover point’ may become more interested in nurturing their trading relationships with countries outside the EU than with those inside the EU.

There are reasons to suspect that the crossover point for the UK may occur earlier than anyone else. Three aspects of the British economy particularly suit it for globalisation:

- First, the UK has a considerable financial sector. Financial services are already global and scalable in operation. The offshore RMB currency market, for example, is a new line of business that London is better positioned to capitalise on than any other city in Europe and perhaps the world.
- Second, the UK speaks English, the global language of business. This eases the path towards globalising and dealing with countries and companies from far away.
- Third, English Law, and the concepts it employs, is familiar to other parts of the world and should further help the UK integrate globally.

Section 2 presented evidence of the UK’s recent export patterns, especially the declining shares going to EU members, and the higher growth of goods exports to countries with which Britain does not enjoy a trade treaty compared to those with which it does.¹ Taken together these data could indicate that British exporters have already begun the cross-over process of their own accord, without waiting for the political establishment to address the issues surrounding EU membership.

Every country has a ‘crossover point,’ whereby the benefits from globalisation exceed the benefits from regionalisation. Thus, every EU country will sooner or later come to the same crossroads. However, the UK may very well have the earliest crossover point of the EU-28, which means that Britain will have to face and resolve its choice earlier than any of its European partners. This means that Britain’s unhappiness with the terms of its membership probably constitute a more significant systemic issue for the EU as it is currently constituted than the noises around Greece and its Eurozone difficulties.

1 See Section 2

“In the EU, politics has always been allowed to take priority over economics.”

27.2 An unreformed EU will be unable to exploit the new world economic conditions

For the EU to remain relevant, it will need to transform itself into a more dynamic construct that enhances the competitiveness of its (corporate and economic) members.

QE and fiscal stimulus may provide some short-term demand support, but a wholesale re-writing of the ‘software’ that governs how the EU functions is necessary. The challenge is, through structural reforms, to make ‘regionalisation’ and ‘globalisation’ complementary effects which multiply the rewards available for countries, rather than frustrating them.

The problems with the EU model are discussed more fully in Appendix B. The major defects, which present obstacles for the EU in fully exploiting the new opportunities, are the associated costs and a general sense of ‘Eurosclerosis’. But there are also more obviously political defects. The leadership of the EU, especially in Germany, is far more inward-looking and gripped by a short-termist approach. Above all, there remains institutional ambivalence about globalisation itself.

27.2.1 The social and other non-economic costs of the EU will hold it back

In terms of economic size, the EU is broadly comparable to the North American Free Trade Area (NAFTA). However, they have been constructed very differently. NAFTA is a basic free trade area without any elements of political union. Employment, immigration, and other laws in Mexico, the US, and Canada are still determined nationally. There is virtually free capital mobility within NAFTA, but there is low labour mobility between Mexico and the other members.

Within the EU, there is a general expectation of ever-closer integration between the EU members. However, frictions over non-economic issues could influence some member countries’ perceptions about the benefits of being a member state. For example, in terms of Figure 27.i, to some British people, the overall benefits (economic and non-economic) of being a member of the EU may have even passed their peak and have begun to decline.

In the EU, politics has always been allowed to take priority over economics.² The differences between the EU and NAFTA essentially reflect different political views about the purpose of creating a trading bloc. ‘European’ leaders regard their ultimate objective as being ‘ever closer union’ as an end in itself, rather than giving greater importance to maximising the economic opportunities of their citizens. The structural problems of the EU are considered in Appendix B, while the specific question of regulation is discussed in Section 29.

27.2.2 ‘Eurosclerosis’ restricts the capacity of EU members to perform

A slowing potential growth rate and hostile demographics will come to be an ever-increasing factor in EU affairs, even more so than either the one-off or recurring costs of social legislation.

The EU ‘Investment Plan for Europe’ is not in itself a bad idea, as it would at a minimum impart a modest fiscal stimulus in times of need.³ However, it will not address Europe’s principal problem.

² See the discussion in Section 1.1.

³ See the discussion in Section 28.

“Globalisation has exposed these structural weaknesses.”

Unlike India, the EU does not need more motorways. It needs a wholesale restructuring of its social contracts and market deregulation. European multinational corporations with global footprints are dynamic, but its smaller, medium-sized and services-based enterprises have been restrained by excessive regulations, not just in the labour markets but also in the product markets.

Globalisation has exposed these structural weaknesses. A wholesale rethink of how countries and the EU work is urgently needed. These difficulties confronting the EU also distort member countries' views when they contemplate how best to capitalise on globalisation.

'Eurosclerosis' was a term coined in the 1970s, apparently in Germany, to describe the then perceived problem of the EU in generating economic growth while still carrying what were thought of as high levels of unemployment. (It can be seen as the counterpart to British anxiety at the time about 'stagflation', or high inflation without growth, and what was then considered high unemployment.) Ironically, the Delors Report, which led to the Single European Act and the launch of the Single Market, was inspired by a belief that moving to the next stage of EMU would unlock the potential within the EU economy.

Facetiously, a critic might say that the EU has indeed solved its problem of 'high growth without jobs', by creating an environment of low or zero growth and even higher unemployment. Clearly, the Single Market has not lived up to its expectations. Part of the explanation must lie in the defects within the Eurozone, discussed in Section 1. It is very revealing, however, that the primary approach of the EU towards a structural economic problem was to change its political constitution.

27.2.3 At present, the German leadership has a less outward-looking perspective

Due to Germany's competitiveness and the scalability of its exports, Germany's RR curve may be much steeper than that of the UK, i.e. it still has much to gain from a regional trade bloc, as opposed to globalisation, and is further away from the point at which the returns from regionalisation begin to diminish. Germany runs a trade surplus of \$285bn against the rest of the EU. In headline terms, 42 per cent of Germany's exports stay in the EU, which is slightly lower than the equivalent figure for the UK (approximately 44 per cent). These trends continue to extend.

In contrast, the UK runs a large trade surplus vis-à-vis the world outside the EU and a large trade deficit against Europe. If Germany's RR curve is very steep, it would be difficult for its GG curve to rise fast enough to yield an early 'crossover point.' This is one reason why Germany will remain supportive of the EU, unless the non-economic aspects of being an EU member (e.g., implicit liabilities that some countries might impose in the future) become a worry for the country.

This inward-looking perspective among the German political class is in marked contrast to the attitude of its business leaders, who are extremely globally-minded – see Appendix A.

27.2.4 Short-termism acts an impediment to reform

EU members are currently sheltered from some of the pressures arising from globalisation. For instance, Poland might not be able to compete against South Korea head-to-head, but by being a member of the EU, it can do so indirectly, in cooperation with German companies. But such a shelter also has negative side effects. This is the classic moral hazard problem: what is good may actually be bad, and what is bad could actually be beneficial – in the long run.

“In marked contrast to the EU as an institution, Britain is far better placed to exploit the opportunities of globalisation.”

Excessively low interest rates and ample financing led to the credit and housing bubbles in Spain and Ireland. The surprisingly low interest rates caused by the announcement (and non-implementation) of the Outright Monetary Transaction (OMT) programme have permitted Eurozone countries to postpone reforms.⁴ In other words, being a member of the EU may be ‘too comfortable’ and therefore counter-productive in the long run, as countries become ‘soft’ and uncompetitive, oblivious to the fact that the world outside the EU has become hyper competitive.

27.2.5 The tension between regionalisation and globalisation can lead to paralysis

From a ‘static’ perspective, regionalisation and globalisation are always conflicting concepts. Regionalisation is about creating barriers to divide (and protect) ‘insiders’ from ‘outsiders.’ In contrast, globalisation is about a ‘level playing field’ between the signatories of free trade agreements. Seen in these terms, more globalisation always means less regionalisation, and more regionalisation always means less globalisation.

But regionalisation, properly managed, could foster positive dynamism within a trading bloc that better prepares countries and companies to take on global competition. When both concepts are seen from a ‘dynamic’ perspective, they cease to be substitutes with ‘additive’ benefits but become complements with ‘multiplicative’ effects.

To make this leap from a static union to a dynamic union, the EU will need to reform to permit increasing returns to scope and scale. At present, it is simply not orientated to be an organisation which assists member states to make the transition to full global competition.

27.3 Britain is already well placed to exploit opportunities in the rest of the world, whether inside the EU or not

In marked contrast to the EU as an institution, Britain is far better placed to exploit the opportunities of globalisation, inside the EU or not. Whether the UK made the correct decision in the 1970s, and how much the country has benefited from joining the EU, are not terribly relevant. Those issues have passed. The question is what Britain should do now and in the future.

Fears about a life outside the EU, which concentrate on threats to inward investment from abroad, and the position of the City of London and the financial services sector, have been exaggerated. Britain already has the businesses and the approach which suit it for competing in a global economy. Whatever the position may have been in the 1970s, in the 2010s the UK does not need the EU as a prop or protection. It certainly does not need ‘ever closer union’.

27.3.1 Fears of a shock to foreign direct investment have been exaggerated

Foreign direct investment (FDI) is regularly identified as vulnerable during any potential change in the UK’s relationship with the EU. A UK Country Attractiveness survey by EY identified two main reasons:

- First, Britain’s reputation for political stability and predictability consistently tops the list of reasons why foreign investors find the UK attractive –

⁴ See the discussion in Section 1.2.

“Unsurprisingly, not all foreign investors are convinced of the benefits of Britain’s EU membership.”

and hence a radical change in its relationship with the EU would be contrary to their expectations.

- Second, foreign investors say that access to the EU market is very important when deciding whether to invest in the UK (72 per cent of respondents polled by EY held this view).⁵

Evidence of this nature is a key part of the ‘case against reform’ presented by supporters of the EU. However, the findings quoted above represent only half of the story. When the same EY survey asked the same respondents if the possibility of the UK leaving the EU after 2017 would affect their investment before 2017, only 31 per cent of foreign investors surveyed said that it would. This divides into 12 per cent who would reduce investment and 19 per cent who would put current plans on hold. More investors are prepared to ‘wait and see’ than regard EU membership in its current form as essential to any commitment they make to the UK.

Furthermore, the results also suggest that there is some positive sentiment for the UK considering changes to its relationship with the EU. In the United States, for example, which was the source of more than a third of all UK bound investment projects in 2013, 15 per cent of respondents said the possibility of a referendum would cause them to increase investment compared to the 10 per cent who would reduce investment.

The overall results suggest that, while the uncertainty created by a referendum could have a short-term impact on foreign inward investment in the UK up to 2017, this impact would not be uniformly negative. Unsurprisingly, not all foreign investors are convinced of the benefits of Britain’s EU membership. When asked how the UK’s attractiveness as an investment destination would be affected if Britain’s political relationship with Europe were reformed, but access to the Single Market was retained, the results were reasonably balanced: 22 per cent of respondents said this new model would make the UK more attractive, while 31 per cent said it would make the UK less attractive. There is not a decisive sentiment either for or against the EU as it stands. It may not be a critical factor, after all.

The geographic differences in the answers to this question are interesting, and they do suggest that certain groups of investors can see benefits from a reshaping of the UK’s relationship with Europe. Market access is clearly important but the political arrangements less so.

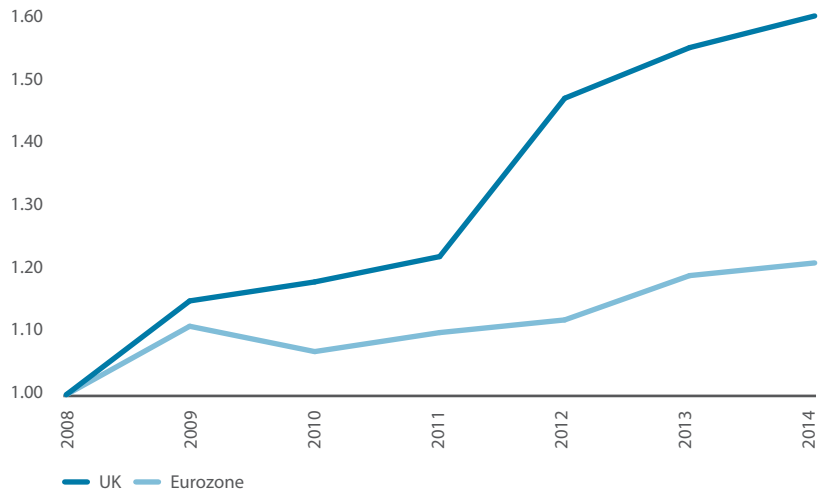
- Investors from the US were evenly split, with 23 per cent viewing a new regime as potentially making the UK more attractive and 23 per cent seeing it as less attractive.
- Asian investors were positive overall, with 35 per cent seeing the changes as making the UK more attractive compared to 23 per cent who had the opposite view.
- Unsurprisingly, Western European investors were overwhelmingly negative, with 43 per cent seeing change as making the UK less attractive compared to the 15 per cent who saw the move as positive.

⁵ See the advance media article by EY’s chief economist in City A.M. “Why some foreign investors think an EU referendum would be worth the pain”, M. Gregory (6 May 2015), accessed 31/05/2015 at: <www.cityam.com/215142/why-some-foreign-investors-think-eu-referendum-would-be-worth-pain>.

To place these responses in context: Western Europe is not where global growth or investment will come from over the coming generations. It is, however, where much of the UK's trade deficit comes from.

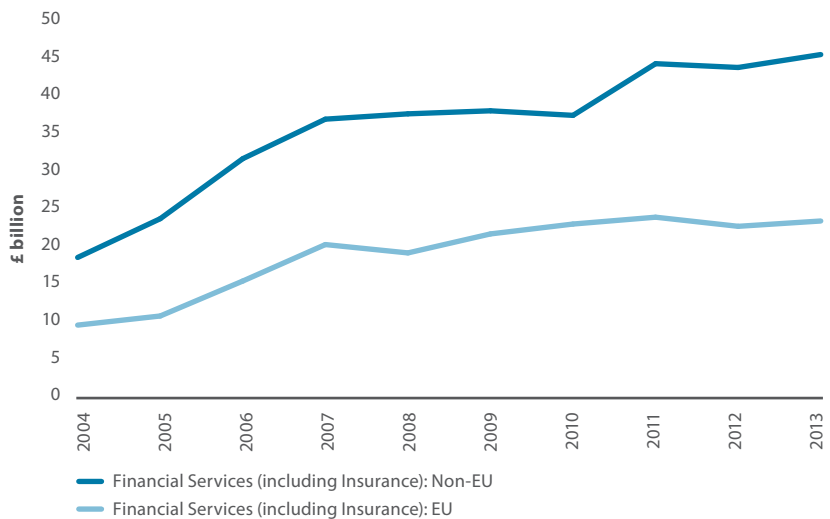
Figure 27.ii compares FDI trends into the UK and the Eurozone since the onset of the global financial crisis. Notwithstanding the possibility of a UK referendum on the EU being known for some time, it is clear that the UK remains a distinctly preferred destination for FDI inflows compared to the Eurozone. This implies that global investors are, rightly, cautious over the Eurozone and they remain uncertain about the sustainability of monetary union in Europe.

Figure 27.ii: Relative inward FDI into the UK and the Eurozone, 2008–2014



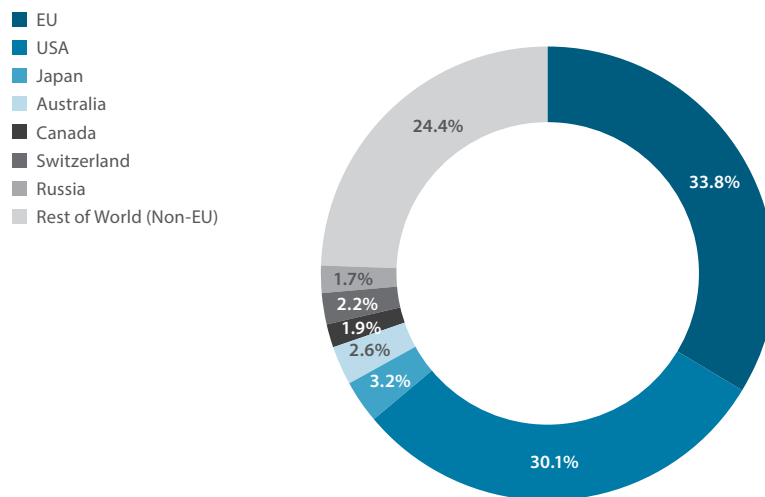
Source: The ECU Group plc, UNCTAD

Figure 27.iii: UK Financial Services Exports (including insurance), 2004–2013



Source: ECU Group plc

Figure 27.iv: UK net export earnings for Financial Services (including Insurance) by country, 2013



Source: ECU Group plc

The issues surrounding foreign direct investment are considered in more detail in Section 28. Suffice it to say that supporters of the EU are apt to confuse the annual in-flow of investment and the (far larger) total stock of investment made in the UK by overseas investors. This can create the misleading impression that the entire stock would be withdrawn overnight if Britain ceased to be inside the EU. Since existing investments in plant, machinery and the like constitute ‘sunk costs’, there would be little to gain from liquidating them before the long-run prospects for the British economy had become apparent.

27.3.2 Fears of a shock to financial services have been exaggerated

It is often claimed that the City of London would suffer were Britain to withdraw from the EU. The UK is the leading exporter of financial services across the world, contributing a trade surplus of £59bn in 2013. This was more than three times that of the next largest trade surpluses, recorded by Luxembourg and the US. In fact, this was a record surplus for the UK, suggesting the realisation of export-led growth in the industry.

However, Figure 27.iii provides the trend growth for the UK’s exports in insurance and financial services over recent years. Figure 27.iv analyses the 2013 net export earnings by country. Together these show that the UK’s alleged dependence on the EU continues to diminish markedly in favour of the rest of the world. The EU now only represents 33.8 per cent of the UK’s Insurance and Financial Services exports as of 2013, a proportion that is likely to continue to decline as sales to the EU remain flat while those to the rest of the world continue to expand.

It is often suggested that the EU would relocate much of its banking and financial services business away from London, and block it from clearing European financial transactions. The reality is that this is both unlikely and would be especially difficult for European countries to engineer in any coherent, safe, practical or timely manner.

“The rise of the City of London to its position as the pre-eminent financial centre for the EU had little to do with Britain joining in 1973.”

As a major financial centre, London’s attractions are far broader than simply the UK’s membership of the EU.⁶ No other city, or group of cities, is realistically capable of replicating its current position. Furthermore, financial services personnel may not want to live in Frankfurt, even if it could accommodate them. London not only has critical mass, but it lies in an advantageous time zone and English is the indisputable first language of banking, finance and insurance.

Many commentators claimed that the City of London would lose its pre-eminence, first, when the UK bowed out of the ERM and then later opted out of the euro. Even though a few banks did indeed relocate on each occasion, they soon returned. While it is essential to guard against complacency, with careful management, the City of London is capable of maximising the opportunities from emerging and developing countries (which account for most of the world’s population and are the primary sources of economic growth for the future).

It is worth pointing out that the rise of the City of London to its position as the pre-eminent financial centre for the EU had little to do with Britain joining in 1973. London had, of course, been the financial hub for the British Empire and it continued a specialisation in dealing with currency matters as the centre for the Sterling Area. This made it a natural location for the surplus overseas dollar balances which began to accumulate in the 1960s as the Kennedy and Johnson Administrations implemented tax and regulatory measures to control the US balance of payments by discouraging domestic banks from financing overseas operations.⁷ There was also an opportunity for regulatory arbitrage: the Roosevelt era limit on the interest charge that US banks could charge (‘Regulation Q’) only applied to loans made within the US, whereas UK banking regulation on reserve levels applied only to sterling transactions, not those conducted in foreign currencies. Financial houses in London therefore developed first the ‘Eurodollar’ and then the ‘Eurobond’ markets as mechanisms for exploiting this under-utilised resource. This led to a considerable expansion of activity, and consequently earnings.

The decision to deregulate the financial sector (‘Big Bang’), taken in 1984 and brought into effect on 27 October 1986, was explicitly made in order to protect the competitive position of London against overseas rivals. It predated the EU’s equivalent attempt at liberalisation, the Single Market (which notoriously, in services, has never been completed). Considered in terms of its impact on earnings and growth, the Big Bang policy has to be scored as a significant success. Institutional flexibility and responsiveness of this order is a source of optimism for the future, and a marked contrast to the EU approach.

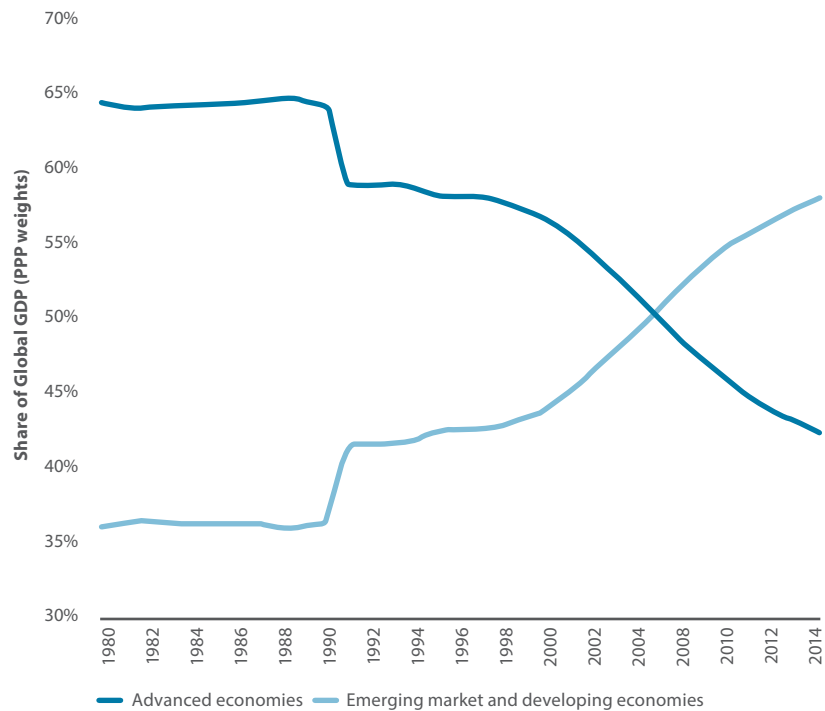
27.3.3 Britain is already shifting towards the markets of the future

As an economy driven by the services sector, which accounts for some 80 per cent of UK GDP, the growth potential for the UK over the coming decades in following the ‘globalisation’ path towards developing and emerging markets is clearly significant. As Figure 27.v indicates, these markets have increased in global importance since the 2008 financial crisis.

6 See Section 10.

7 Reputedly also the Soviet bloc preferring not to take the risk of a political confiscation of any overseas funds held in New York banks.

Figure 27.v: Share of global GDP between advanced and emerging market/developing economies



Source: ECU Group plc

The UK’s major trading partners include the US, the EU-28 and other advanced economies, such as Switzerland, Japan, Australia and Canada.⁸ These relationships are supplemented by emerging market economies such as Russia, Taiwan and Saudi Arabia, as well as trade with other international financial centres such as Hong Kong and Singapore. The volume of trade with emerging economies has great potential for growth, especially in financial services where the UK is the global leader.

The UK has a strong record in managing financial and professional business from developed economies. But developing economies also require financial services to achieve further progress in building their industries, providing infrastructure and supporting their citizens. The UK has been able to support them through its leading role in international financial markets.

The number of financial centres seeking international business is growing. While London and New York are long established international financial centres, new Asian centres such as Singapore and Hong Kong have evolved into well-developed regional hubs.

Working with other financial centres has helped develop the international networks of UK-based firms, allowing them to expand their international business. In return, the UK has provided access to its markets and expertise for overseas companies and has acted as a template for many developing centres. Hong Kong and Singapore are examples of financial centres that have based themselves on UK practices and models.

The significant benefits of the UK as a leading global centre for financial services are supplemented by the UK’s traditional sources of competitive advantage such as language, time zone and rule of law. The UK also has one of the largest frameworks of international tax treaties. Britain remains one of the lead-

⁸ Strictly, only certain EU member states, not all of them – see Section 2.

“Discussion of Britain’s relationship with ‘the EU’ has to recognise that this is now an institution devoted to ensuring the survival of the Eurozone, at whatever cost.”

ing locations for asset management and is the leading jurisdiction in Europe for funds under management. The UK has one of the biggest, longest established and most respected insurance markets in the world, employing over 300,000 people.

London is the global centre of foreign exchange and a major hub for Islamic finance. It is also the western hub for renminbi (RMB) currency trading. Spot trading volumes doubled from 2012 to reach an average daily volume of \$5bn in the first half of 2013. At the end of 2013, 62 per cent of all the renminbi trading conducted outside China and Hong Kong took place in London, up from 54 per cent at the beginning of that year. London handles nearly 30 per cent of all RMB FX trading, compared to just 7.4 per cent in France, 5.4 per cent in Luxembourg and 3.9 per cent in Germany.⁹

Emerging economies’ financial markets tend to be both shallow and fairly closed. Emerging markets account for almost half of global GDP, but just 19 per cent of financial assets. If emerging markets can become more open, as a leading financial services provider, the UK stands to benefit. New flows of capital, foreign exchange (FX) and inward investment could bring new opportunities for the UK. London has a 40 per cent share of global FX trading, but only 20 per cent of trade in emerging market currencies – a share which could rise with greater openness to foreign capital flows.

The UK needs to concentrate on opening up new markets, on increasing investment opportunities and on lowering the policy and regulatory barriers that currently exist as a member of the EU. Given that financial services (including insurance) contribute around half of the UK’s total trade surplus in services, this would be a key priority for the UK Government whether the country remained inside the EU or not.

27.4 Consideration of the UK’s options towards the EU has to take into account the potential for a Eurozone meltdown and the integration the EU might adopt to avoid it

Discussion of Britain’s relationship with ‘the EU’ has to recognise that this is now an institution devoted to ensuring the survival of the Eurozone, at whatever cost. The significant risks for the future of the Eurozone are discussed at length in Section 1 and the structural failings of the EU in Appendices A and B. The conclusion reached is that either the Eurozone would disintegrate, or further political integration would be attempted in order to preserve the euro.

That means the debate should not be framed as ‘what should Britain’s stance be towards the EU as it is today?’ but as ‘what should Britain’s stance be towards an EU which has evolved in response to the defects of the Eurozone?’ Most of the cost/benefit analysis of this topic has, therefore, missed the point. Seen in the correct context, the arguments point towards a looser relationship with a dysfunctional EU as the better foundation for future British prosperity.

27.4.1 Assessment of the options open to Britain have been marred by short-sightedness and wishful thinking

The debate over the potential risks versus the longer-term benefits of leaving the EU (or not) has involved many myths and misconceptions. The key points to be borne in mind are:

⁹ Financial Services Trade & Investment Board “RMB Trading”, accessed 06/06/2015 at: <www.fstib.com/campaigns/rmb-trading/>.

“The debate over the potential risks versus the longer-term benefits of leaving the EU (or not) has involved many myths and misconceptions.”

- On both sides, emotive exaggeration and misinformation has missed the key issue. The simple reality is that, without widespread reform and change within the EU, and a viable solution to the Eurozone’s deficient arrangements within EMU, the longer-term economic interests and the social well-being of many countries within the EU would be best served outside the current EU model, not within it.
- The fact that EU is not functioning well for its citizens does not seem to be in doubt by anyone in this debate. The UK should thus not feel apologetic about bringing this much needed ‘real’ debate into the heart of Europe.
- Any short-term ‘pain’ associated with the UK leaving the EU in its current form, particularly if it were unable to negotiate broadly similar arrangements on trade with its EU partners, would pale into significance when compared to the eventual pain inflicted on a significant proportion of the EU’s citizens by not enacting much-needed EU reform and providing a sustainable remedy to the EMU structural deficiencies.
- There would be a transitional cost for the UK whatever the outcome of any referendum. For example, there would be costs to adapting to the next set of EU directives. These costs are never factored into any In/Out modelling, which is forced to assume that all other things (e.g. the state of EU regulation or governance) remains equal.
- Ironically, there is an argument that it would be in the long-term interests of the remaining EU member states to be free of a persistent ‘trouble-maker’ such as the UK. If this provided the scope for further integration of the Eurozone, and this achieved its stabilisation as a genuinely ‘optimal currency area’, the outcome might even make the remaining EU a more effective trading partner for the UK. But this is a highly speculative issue.
- No assessment carries much merit which does not recognise the long-term unsustainable nature of the current EU model. At some point, there will be significant change. One form that change could take is a Eurozone meltdown. Another form is further political and economic integration. The Eurozone is either going to integrate or disintegrate.

27.4.2 Estimates of the costs and benefits of British withdrawal from the EU are frequently compiled on an inappropriate basis

Most commentary on British withdrawal from the EU consists of drawing up lists of the pros and cons of each alternative (e.g. ‘WTO Option’, ‘Norway Option’ etc.) compared to the current arrangements, and then judging which points have greatest importance. This involves priorities such as Single Market access, influence over rule-setting and the like. That only informs the reader as to the prejudices of the commentator. Occasionally, there will be an attempt to place economic values on each factor, but that often relies upon simplification and exaggeration. For example, there have been suggestions that, outside the EU, red tape compliance costs will suddenly vanish, or that there will be a collapse in the well-being of British citizens,¹⁰ or a loss of 4m jobs.¹¹

10 See TheCityUK “Analysing the Case for EU Membership: How Does the Economic Evidence Stack Up?” (April 2014), page 18.

11 The lobbying group British Influence, misquoting research they had commissioned themselves. See Section 2.

“No model can ever predict an unpredictable ‘Black Swan event’.”

More sophisticated analysis involves a forecast of the medium-term outlook for Britain under alternatives to EU membership. These involve comparison against a baseline case projection of ‘Business As Usual’ derived from a computable general equilibrium (CGE) model of the UK economy and its relations with the rest of the world. A CGE model divides an economy into a number of sectors, each of which is assigned its own ‘production function’ (i.e. a mathematical formula for its output from any given input of labour, capital, intermediate inputs from other sectors etc.) and import/export account (i.e. its linkage to international trade). These relationships are usually deduced from surveys of how that economy has performed over time. Each forecast is based on an adjustment to the baseline case to reflect the assumed consequences of each alternative trading status for the UK. Two examples of such work have been contained in “The Europe Report: A Win-Win Situation” (August 2014), edited by Gerard Lyons for the Mayor of London, and usually known as ‘the Lyons Report’; and “What If...? The Consequences, challenges & opportunities facing Britain outside EU” (April 2015), published by the think tank Open Europe.

An objection to such models is that, because the underlying formulae are drawn from historical data, they can only ever predict how an economy has behaved in the past. This is a potential flaw inherent in the exercise. No model can ever predict an unpredictable ‘Black Swan event’.¹²

Another intrinsic problem with a CGE model follows from its construction. A modern multi-sector economy is, quite obviously, a complex series of inter-dependent and mutually-adjusting relationships. Any mathematical description will have the same character. In order to avoid circular arithmetic, a forecast of some key economic variables can only be made if the architect of the model determines in advance what the future value of other key economic variables will be.¹³ A good example involves investment: does the amount of capital stock invested determine the rate of return, or does the rate of return determine the value of the capital stock? Design choices by the architect inevitably shape and channel the range of possible outputs from the model.

The consequence is that any model exhibits highly sensitive dependence upon its initial assumptions. This is best illustrated by Table 27.vi, which compares the output of the two models already mentioned.

12 The term gained popularity from its use in “The Black Swan: The Impact of the Highly Improbable” (Random House, 2007) by Nassim Taleb, which acquired prominence during the 2008 financial crisis.

13 In technical terms: the architect pre-sets some variables ‘exogenously’ in order to enable the model to generate others ‘endogenously’.

Table 27.vi: Comparison of the findings of the Lyons Report and Open Europe

Impact on UK GDP Growth compared to Base line EU membership		
	Lyons Report (2014)	Open Europe (2015)
Forecast Period	To 2035	To 2030
Scenario for the UK:		
Out: 'WTO Option'	— 0.5% p.a.	— 2.2% p.a.
Out: 'FTA Option (a)'	+ 0.6% p.a.	— 0.8% p.a.
Out: 'FTA Option (b)'	n/a	+ 0.6% p.a.
Out: 'FTA Option (c)'	n/a	+ 1.55% p.a.
In: 'Reformed EU'	+ 0.85% p.a.	n/a

Source: “Lyons Report”: “The Europe Report: A Win-Win Situation” (2014), Section 6; “Open Europe”: “What If...? The Consequences, challenges & opportunities facing Britain outside EU” (2015), Section 6.

Both models are attempting to forecast the same economy, presumably on the basis of broadly similar starting data. Although there are some differences in detail, they investigate broadly the same scenarios for Britain outside the UK: the ‘WTO Option’, where Britain does not negotiate free trade access to the Single Market, and an ‘FTA Option’, where it does.¹⁴ The somewhat significant differences in their findings could be explained by differences in their estimates of the various costs and benefits of each aspect of each scenario – over time, a small discrepancy would compound to a large end-variation. Perhaps more significant, however, will be different modelling assumptions taken about how the UK economy would react.

For example, the Open Europe report takes the intriguing view that “*implicitly Brexit* [i.e. British withdrawal from the EU] *reduces the UK’s effective labour supply elasticity, which results in changes in growth opportunities*”.¹⁵ No hard reason is given for this stance. The implications for forecast wage rates, and hence productivity and competitiveness, is obvious and will clearly lead to a downgrading of any ‘Out’ scenario, particularly the WTO Option.

Or again, the Open Europe model baseline case assumes that the British contribution to the EU Budget would stay at a “*roughly constant*” proportion of GDP.¹⁶ In fact, the UK net contribution is determined ‘roughly’ by the difference between (a) a gross contribution driven by the relative Gross National Incomes and VAT bases of each of the EU-28; and (b) grants and rebates received, mainly driven by relative regional deprivation.¹⁷ Unless the Eurozone crisis disappears overnight, or the size of the UK economy remains forever fixed relative to the rest of the EU (neither of which the Open Europe report seems to imply), this model-

- 14 The Open Europe report models three versions of a Free Trade Agreement between the UK and the EU: (a) unaccompanied by any domestic policy changes; (b) accompanied by the adoption of unilateral free trade by the UK; and (c) accompanied by both unilateral free trade and “ambitious deregulation”. It is difficult to be certain, but the version modelled in the Lyons Report appears closest to version (a) in the Open Europe report.
- 15 Open Europe “What If...? The Consequences, challenges & opportunities facing Britain outside EU” (2015), Annex I, page 95.
- 16 Open Europe “What If...? The Consequences, challenges & opportunities facing Britain outside EU” (2015), footnote 156 on page 78.
- 17 See the discussion of the EU Budget in Section 11.

“The EU does not represent the future of the world economy.”

ling assumption will be a poor reflection of reality.¹⁸ By apparently under-counting the future size of the UK net contribution, the model will implicitly overscore the performance of Britain inside the EU – and so, quite inadvertently, devalue the merits of all the rival ‘Out’ cases.

All economic models can be criticised in this way because their construction forces imperfect choices upon their architects. This does not invalidate their use. It means that they cannot be regarded as producing precise predictions of inevitable outcomes, e.g. that Option X can only affect UK GDP by +x per cent or – y per cent. Provided the architects act with professional integrity and consistency, economic models are an acceptable method for assessing the relative merits of alternative policies. Indeed, for all their disagreements, the Lyons Report and Open Europe nevertheless rank their alternatives to EU membership in the same order.

Yet in the context of this discussion, such forecasts have an especial weakness in their operating assumption of ‘Business As Usual’. As Open Europe says: *“Under this baseline, against which the other scenarios are compared, the UK stays in the EU and there are no major shocks...”*¹⁹ Models cannot predict unpredictable ‘Black Swan events’. Unfortunately, in this one instance, the ‘Black Swan event’ is not unpredictable. The Black Swan is paddling in the water in front of our eyes. It is the risk of a Eurozone meltdown, or of further EU integration to avoid such an outcome or in response to its occurrence.

A model constructed from the outset on the basis that no significant change will occur in the Eurozone prejudices any assessment of Britain’s membership of the EU. One might as well produce a weather forecast for Manchester on the assumption that it is never going to rain.

27.4.3 Britain’s future growth requires a looser relationship with the EU

From the perspective of 2015, the EU does not represent the future of the world economy. It is a low-growth region, run according to an out-dated model. Britain would do better to position itself to trade with the newer, faster-growing regions of the world. The traditional arguments for Britain being inside the EU have less traction in this environment. Whatever implications this has for the continuation of that membership, there is certainly no justification for any strengthening of the economic and institutional ties between the EU and the UK.

What the EU does represent in 2015 is the threat of a Eurozone meltdown, or of further political integration. That completely transforms the basis of assessment of the costs and benefits. A complete crash of the euro system would deliver a profound shock to the world economy, and that would have negative consequences for Britain whether it was a member of the EU or not. But the UK would experience a ‘least worst’ outcome if it had a looser relationship with the EU when either of those events occurs. Britain should be taking steps now to secure revision of the EU Treaties to insulate itself from the fallout.

27.4.3.1 The EU is an out-of-date model in the modern economy

The arguments against reform of Britain’s relationship with the EU centre on the allegedly critical importance of that market as a buyer of exports. That argument was considered in Section 2. Whatever may have been the case in the past, in the future the emphasis for British exporters will lie outside the EU, if the

18 See the discussion of the upward trajectory of the UK net contribution to the EU Budget in Section 11.

19 Open Europe “What If...? The Consequences, challenges & opportunities facing Britain outside EU” (2015), page 78.

country is to avoid becoming trapped by the consequences of ‘Eurosclerosis’. Table 27.vii summarises the immediate prospects for the different regions of the world economy.

Table 27.vii: Anticipated sources of world GDP growth, 2015

Region	Forecast GDP growth, 2015
Asia	6.0%
Sub-Saharan Africa	4.5%
Middle East/North Africa	4.1%
North America	3.2%
Latin America	2.8%
Australasia	2.7%
Eastern Europe	2.1%
Japan	1.6%
Western Europe	1.4%

Source: Economist “The World in 2015”

This is a world in which there will be more mobile telephones than people on the planet,²⁰ more users of Facebook than inhabitants of China,²¹ and in which US advertisers (who can probably recognise long-term trends) expect to spend more on the internet than on newspapers, magazines and all outdoor sites.²² It is also a world in which the EU Commission is only just beginning to consider whether it needs to do something about a Digital Single Market.²³

Why, in these circumstances, would an economy want to tie itself to the slowest moving part of the world? The EU seems to be an idea that is so brilliant that nobody else wants to copy it. When everyone else has an iPhone and plays games on their tablet, why stick with skiffle and the hula hoop?

27.4.3.2 Traditional arguments for EU membership are out-of-date

There are three traditional arguments for having close economic links with Continental Europe:

- Dependence: Britain has to be in the club with which it trades the most;
- Proximity: Britain will always trade most with those countries closest to it;
- Influence: Britain needs to be in the club which draws up the rules governing its largest market.

These arguments are somewhat circular. ‘Influence’ is only important so long as Britain does not develop more significant export markets elsewhere, and ‘Dependence’ is actually an argument against trying to do so. ‘Proximity’ is wrong in fact, because prior to joining the EU, Britain did not undertake most of its trade with its closest neighbours.²⁴

20 Source: The Economist “The World In 2015”, citing data from Ericsson and the UN.

21 Source: The Economist “The World In 2015”, citing data from Facebook and the UN.

22 Source: The Economist “The World In 2015”, citing data from Zenith/Optimedia.

23 See the discussion in the context of the EU Investment Plan, in Section 28.

24 See the discussion in Section 2.

“In a digitally-connected world, buyer and seller are brought together irrespective of the distance between them.”

The Dependence argument has been considered at length in Section 2, where evidence is presented for a long-term secular decline in the importance of ‘the EU’ as a buyer of British goods and services. The other two factors are, however, worth consideration.

There is a superficial obviousness about the ‘Proximity’ argument, taken with the claim that ‘about 50 per cent of UK exports go to the EU’ (even though that second claim is based upon aggregating 27 separate buying nations into one). TheCityUK has put it in the following terms:

As well as the difficulties associated with securing deals with the same degree of market coverage, the other problem that the UK will face is that if EU countries are not included, the markets involved will also be geographically further away. This, in itself, is likely to lead to a reduction in trade as, empirically, distance matters.²⁵

The argument can be put to a very simple test. British trade with a country on the other side of the Atlantic Ocean could be compared against that with two EU members on the UK’s immediate doorstep, one of which uses the same language.

Table 27.viii: Simple assessment of the Proximity Argument for trade with the EU

Country	Minimum Distance from UK	Share of 2013 British exports	
		Goods	Services
Ireland	Zero	6.2%	3.8%
France	22 miles	6.9%	5.3%
USA	2,900 miles	13.2%	24.2%

Source: ONS “United Kingdom Balance of Payments: The Pink Book 2014”, Table 9.4 and Table 9.5.

The issues may be more complicated than the Proximity argument suggests. Clearly, it will be easier for a country to trade with its closest neighbours, and thus enjoy a marginal cost advantage. But this has not been sufficient by itself to prevent Britain’s largest single trading partner from being a nation on the other side of an ocean.

More to the point, however, is that in a digitally-connected world, buyer and seller are brought together irrespective of the distance between them. The Proximity argument, like the EU itself, is trapped in an era when trade was chiefly concerned with smokestack industries. Besides, it is reasonable to assume that Germany, say, is not going to drift off to a different part of the globe if Britain ceases to be an EU member.

The Influence argument also has superficial plausibility, and it plays upon the fear of being ‘left out’ of something important or valuable. It seems obvious that a country needs ‘our people’ in the room when the rules affecting ‘our boys’ are decided. This assumes, of course, that regulations are things that damage businesses and bureaucrats are people who have to be lobbied in order to stop them doing something stupid:

25 The CityUK “Analysing the Case for EU Membership: How Does The Economic Evidence Stack Up?” (2014), Section 5.5, pages 62–63.

“The Influence argument against reform is a throwback to an old-fashioned age when trade was heavily controlled.”

“Norway and Switzerland are bound by the rules of the Single Market yet have a very limited role in forming those rules – they are not in the room when the rules are made, they are only consulted...”

Dr. Johanna Jonsdottir, Senior Officer of the Services, Capital, Persons & Programmes Division of the EFTA: ‘For a noisy nation [United Kingdom] accustomed to a place at the table and having a voice heard, that could feel like a very un-splendid isolation.’

Nikolai Astrup, spokesperson on European Affairs for the Norwegian Conservative Party: ‘If you want to run the EU, stay in the EU. If you want to be run by the EU, feel free to join us in the EEA.’”²⁶

But consider: the single country to which Britain actually sells the most exports is the USA. The UK sells 33 per cent more goods to the US than to Germany and 300 per cent more in the value of services.²⁷ Businesses exporting to the US have to abide by the US regulations applying to their sector. How many senators does Britain have in the US Congress?

Once again, the Influence argument against reform is a throwback to an old-fashioned age when trade was heavily controlled. It has less relevance in an era where businesses go out into the world without waiting for clearance from their political masters. It also ignores the vital role that international bodies play in setting the rules the EU then turns into regulations. Leaving the EU would give Britain stronger influence at the source of global rule-making.²⁸

27.4.3.3 The threat of Eurozone meltdown transforms the arguments about British membership of the EU

The conventional ‘priority list’ approach to assessments of EU membership mentioned in Section 27.4.2 is completely transformed when the threat of a Eurozone meltdown is taken into account. The Eurozone will either integrate or disintegrate. That profoundly affects the cost/benefit analysis for Britain.

Suppose the Eurozone does undergo a meltdown event.

- ‘Dependence’: How much the Eurozone members purchased from Britain due to its access to the Single Market before any crash would have little effect if a crash event rendered them unable to afford imports in the same quantities, and they were perhaps forced into a ‘siege economy’. In fact, British dependence on the EU as a buyer of exports would be close to a systemic weakness.
- ‘Proximity’: Again, it is of little relevance how close to the UK Eurozone members are if they are unable to afford to trade. Indeed, their nearness would facilitate even larger numbers of their citizens to exercise their freedom of movement under the EU Treaties to travel to Britain in search of work. The arguments surrounding immigration are complex,²⁹ but clearly the potential scale transforms the debate. At the very least, the British people might expect to be consulted on the matter.

26 British Influence Press Release “Norway? No way. Influence, power and status would be damaged by Brexit, experts’ briefing shows” (12 February 2015), accessed 05/06/2015 at: <www.britishinfluence.org/press_release_norway_no_way>.

27 HM Government “United Kingdom Balance of Payments: The Pink Book 2014”, Table 9.4 and Table 9.5.

28 See Part 3.

29 See Section 12.

“Once the threat of Eurozone meltdown, or further defensive integration, is taken into consideration, almost any scenario outside the EU becomes preferable.”

- ‘Influence’: Quite what value could be attributed to British influence over a collection of near-bankrupt countries is unclear, but it would probably be outweighed by the corresponding obligations which Britain would bear towards them under the EU Treaties.
- One point which does not receive attention: ‘EU Budget’. The UK is already a more-or-less permanent net contributor to the EU Budget under the rules as they stand.³⁰ A Eurozone crash would transform the arithmetic on which national liabilities are set, and would almost certainly result in an even higher net transfer moving from Britain, especially if the EU Commission decided (as it almost certainly would) to institute some form of rescue package for distressed regions and nations. Without this point being addressed in advance, the UK could find itself being one of the main financiers of a new ‘Marshall Plan’ for the Eurozone. In the circumstances, it might well be in Britain’s interests to contribute to such a programme (to say nothing of humanitarian or development aid motives) – but that is something which ought to be a matter for a British Parliament to decide on its own merits.

On the other hand, suppose that in the course of a developing crisis, the Eurozone members decide to integrate further in search of mutual support. The result would be something close to a ‘New EU-4’, where one of those four was in effect an amalgamation of all countries using the euro. That outcome would upset the conventional calculations of costs and benefits just as much, if not more.

- The ‘Dependence’ and ‘Distance’ factors would be just as much structural weaknesses for Britain even if a full meltdown were avoided – unless the UK had managed to insulate itself beforehand by expanding its economic ties with markets outside the EU. An inward-looking, more integrated Eurozone would expect Britain to follow it in withdrawing from the forces of globalisation. There is no reason to suppose that the New EU-4 would find a cure for ‘Eurosclerosis’, and the condition might spread to the UK too.
- The ‘Influence’ factor is radically worsened. If the EU Treaties have not been revised, the current flimsy protections for non-euro member states would expire and Britain would face a future of being in a permanently out-voted minority. At some point, the question of Britain’s opt-out from the euro is bound to come into question.
- Britain’s position under the ‘EU Budget’ factor would also worsen. An integrated Eurozone would be operating some form of trans-regional redistribution from wealthy to impoverished areas. Even if this was not conducted formally through the central EU Budget, there would inevitably be a de facto British engagement in this. It could also be expected that calls for ‘European solidarity’ would lead to a concerted attack on the Fontainebleau Rebate, and as a permanent minority, the UK would be in a weak position to resist.

Once the threat of Eurozone meltdown, or further defensive integration, is taken into consideration, almost any scenario outside the EU becomes preferable. The ‘WTO Option’ could, arguably, be less attractive than what the UK has now – but that is not the basis on which a comparison should be made. A Eurozone meltdown would deliver a profound shock to the world econ-

30 See Section 11.

“The risks attributed to a potential UK exit from the EU have been exaggerated.”

omy, and no developed nation would escape the consequences whether it was inside the EU or not. (These issues are considered further in Appendix B.) But at least in the WTO Option, the UK would be insulated from the automatic budgetary and immigration impact that would follow from being a full member of the EU on the current terms.

On a ‘least worst’ assessment basis, the consequences for Britain of a Eurozone meltdown are more acceptable if it is outside the EU on almost any terms. The only open question concerns tariff-free access to third country markets that the UK currently enjoys through trade treaties negotiated by the EU. That question is considered in Section 30. Since that issue only arises in the event of a formal British departure, a more relaxed membership of a ‘second tier EU’ – but only one that satisfied as a minimum the criteria discussed in Section 5.4 – would represent an objective for renegotiation.

What Britain should be doing now is negotiating for a looser relationship with the EU that insulates the country from these negative consequences.

Conclusion

The EU is a ‘regionalisation’ project based on creating a cocoon that protects those inside the bloc from those outside. Member states receive concessional trading and other preferential terms (e.g. cross-border transfers and subsidies). These protective elements of the EU have undoubtedly led to a false sense of security, that membership of the EU would shelter them from the competitive pressures of globalisation.

The reality is that some of the EU member countries simply cannot compete anymore with much of the rest of the world. The ‘software’ advances in the US and the ‘hardware’ advances in China are such powerful forces that serving each other coffee and cutting each other’s hair can no longer be growth models that would suffice in preserving the standard of living.

Germany, the Netherlands, and Switzerland, on the other hand, have continued to innovate and find ways to compete effectively in the world. The collective decisions made by the peoples of these countries have allowed their national industries and businesses to evolve.

Brussels and Frankfurt continue to see Greece (and the other under-performing ‘sub-prime’ EU members standing next in line behind it) as a ‘domestic’ issue or a ‘family’ matter. But the reality is that, while EMU might have worked extremely well in the 1990s, its constitution is not designed to perform in the new world. The problems within the EU reflect more a changing world than the philosophical differences between the member countries. Even if there were to be a sudden and miraculous cure for the specific problems which Greece faces, and which that country causes for the rest of the EU, without structural reform all that would happen is a temporary reprieve until problems developed for the next domino in the line.

The risks attributed to a potential UK exit from the EU have been exaggerated in terms of any negative impact on jobs, growth and trade. In reality, there cannot be a shut down and switch over in the way some supporters of the EU imply. There are far too many practical impediments.

Given its history and culture, it is highly likely that Britain could continue to succeed globally outside the EU. As it has done before, the UK would be able to successfully recalibrate and refocus its economy onto a different path, one which is better aligned to the future than the past. It is for the EU to convince the UK that its future is best served by staying in the relationship as it currently stands.

28 Investment opportunities will be stronger

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“Leaving the EU could have a positive impact on the attractiveness of the UK economy to foreign investors if the right policy decisions are made.”

‘Investment’ is often held up as a major advantage of EU membership. It is claimed that access to the Single Market makes Britain a magnet for foreign multinational companies, from which the economy gains through increased employment, productivity and the like. Even to discuss membership is said to create ‘damaging uncertainty’, putting this valuable flow of money at risk.

The emphasis of this argument has shifted over time. Originally British businesses were going to enjoy these benefits, in the sense that their investment rate would increase. Now, greater stress is placed on foreign direct investment (FDI). This covers investment by non-UK businesses in UK companies through:

- Acquisition of share capital with a lasting management involvement (generally taken as a stake of at least 10 per cent, and would include either increasing an investment in an existing subsidiary or making a successful take-over);
- Acquisition of loan capital, i.e. bonds, on the same basis;
- Lending to an existing subsidiary or branch;
- Unremitted profits (earnings in the UK being left here and reinvested in the business, rather than paid out to the overseas parent).

Claims about the effect of EU membership on investment levels have to be seen in the context of how investment flows both into and out of the UK have changed over time. Here a practical problem arises. The obvious source of information, the ONS website, only holds data from the late 1990s onwards. A complete assessment requires the consultation of official statistics from the original hard copy publications, which can now be difficult to locate.

But when the whole evidence is examined, it is clear that membership of the EU does not represent a decisive factor for investment flows involving the UK. To date, the EU itself has had limited impact in the field of investment, and so has done little to facilitate such direct investment as has taken place. There are strong commercial grounds for having some form of investment treaty with the EU. But any closer integration between Britain and the EU is unnecessary. Although a deal governing FDI would be mutually beneficial, it would not be essential for either side.

Britain is a net investor, not a net recipient of FDI, and historically EU countries have not been major investors. Indeed, in recent years, the greatest ‘dis-investors’ from Britain have been our European partners, and in return Britain has dis-invested most from EU countries. Membership by itself is not a strong enough factor to persuade member states to leave their money in each other’s economies. Given the troubles of the Eurozone, it is likely that for the foreseeable future EU countries will be less able to sustain their levels of investment in Britain, and that Britain will be less willing to continue investing in them.³¹ Moreover, provided acceptable terms of access to the Single Market can be preserved, a looser relationship with the EU would lead to stronger opportunities for inward investment in Britain, and British businesses would be better able to undertake outward investment abroad.³²

The critical factor is having an economy in which it is worth investing. That is more likely to come about by negotiating a more rewarding trade relationship with the EU than through further integration, or even by persisting with a status quo which is no longer fit for purpose. Indeed, leaving the EU could have a positive impact on the attractiveness of the UK economy to foreign investors if the right policy decisions are made.

31 See Section 1.

32 See Section 6.

“Given that FDI is often held up as a major virtue of British membership of the EU, it is unfortunate that nobody is certain what rules now govern it.”

28.1 Mission creep without a mission: the EU’s uncertain remit over investment

Investment was not originally within the scope of EU competence under the Treaty of Rome, except indirectly as part of a half-hearted attempt to liberalise the movement of capital (and leave room for possible EU capital controls).³³

The EU first acquired explicit competence for investment under the Lisbon Treaty, as an extension of its common commercial policy. However, the Lisbon Treaty failed to bring clarity. It did not define the items covered by the extension of the common commercial policy. As a result, the Government’s Balance of Competences Review concedes that, in investment, *“the dispute over competence in this area is complex.”*³⁴

There are now two fundamental sources of disagreement:

- Whether the EU’s power to regulate internal capital flows³⁵ means that it has exclusive competence over all forms of investment, not just FDI;³⁶
- Whether the EU’s new power to liberalise barriers to FDI extends to a competence to regulate the treatment of investments after they have been made.³⁷

Given that FDI is often held up as a major virtue of British membership of the EU, it is unfortunate that nobody is certain what rules now govern it.

More significantly, the EU has not exercised its powers in a constructive manner. Since the Lisbon Treaty came into force in 2009, the EU has not negotiated any investment treaties with other countries, although the Comprehensive Economic and Trade Agreement (CETA) deal with Canada does contain investment provisions.³⁸ By way of contrast, over the same period, Canada has reached investment agreements with 16 other countries, excluding the CETA deal but including a treaty with China (with which the EU has been in talks since 2013).³⁹ The 1,200 existing bilateral investment treaties between EU member states and third countries will remain in force until such a time as the EU concludes new agreements which replace them (a member government may undertake negotiations on its own behalf in the meantime, but only if it has prior permission from the Commission).⁴⁰ The Balance of Competences Review concedes that the EU has no experience in negotiating investment treaties.⁴¹

Nevertheless, since November 2014, the EU Commission has had an “Investment Plan for Europe”.⁴² This has three strands:

33 See Section 2.

34 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Trade and Investment” (2014), page 38.

35 The Treaty on the European Union (The Lisbon Treaty), Article 207.4.

36 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Trade and Investment” (2014), page 38.

37 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Trade and Investment” (2014), page 38.

38 See Section 2.

39 See Appendix C.

40 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Trade and Investment” (2014), page 34.

41 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Trade and Investment” (2014), page 34.

42 Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank (COM(2014) 903), accessed 23/04/2015 at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0903&from=EN>>.

“Since the inception of the European Economic Community (EEC) in 1958, action at the EU level has done little or nothing to facilitate such investment as has taken place.”

- “Mobilising at least €315bn additional investments at EU level”: this is a new fund to “support strategic investments of European significance in infrastructure, notably broadband and energy networks”, so the Commission can be expected to extend its reach by ploughing money from member states into the internet and the energy supply, and taking stakes in start-up businesses;⁴³
- “Making investment finance reach the real economy”: because private investors are not able to judge the viability of long-term projects “given their intrinsically complex nature and lack of information to properly evaluate risk”, the Commission will establish a Taskforce to assess proposed projects “of European significance”, a Hub to advise on their implementation, and a series of talking-shops for stakeholders – which sounds like a rudimentary European system of certification for viable investment projects;⁴⁴
- “Improving the investment environment”: which means more EU regulation to harmonise the rules, but also the implementation of a Digital Single Market and a Capital Markets Union to “reduce fragmentation in the EU’s financial markets” and overcome the reliance on bank financing (even though the legal basis for any of this under the Lisbon Treaty is unclear).⁴⁵

The Plan calls for “simpler, better and more predictable regulation at all levels”:

Optimal framework conditions for business across the Single Market are essential to unlock the full potential of investment in Europe. The regulatory framework, at national as well as European level, needs to be simple, clear, predictable and stable to incentivise investments with a longer-term horizon. Efforts to reduce administrative burdens and simplify regulations remain slow and uneven, despite significant efforts by the Union and its member states. This is particularly problematic for SMEs, the job creators and backbone of Europe’s economy.⁴⁶

It would be difficult to disagree with these sentiments. Small and medium-sized enterprises are the main job creators in a modern economy, and they do suffer disproportionately from both regulatory burdens and restricted access to capital. Whether more regulation from the EU will achieve the objectives of the Plan, given its track record in other fields, is more doubtful.⁴⁷

However, the fact that this issue takes up so much of the detail in the “Investment Plan for Europe” is an admission that, since the inception of the European Economic Community (EEC) in 1958, action at the EU level has done little or nothing to facilitate such investment as has taken place. The Plan also indicates that, if the Commission gets its way, the investment environment across the EU is going to change completely.

Thus, a multinational corporation contemplating making a direct investment into the EU does not really know which international rules will protect its money, nor which officials it will have to deal with, but does know that the regulations governing the investment after it has been made are almost certainly going to be re-written at some point by the Commission and then taken through the European Court of Justice (ECJ). Somehow, supporters of the EU do not believe that this creates ‘damaging uncertainty’.

43 Investment Plan for Europe, section 2.2, page 9.

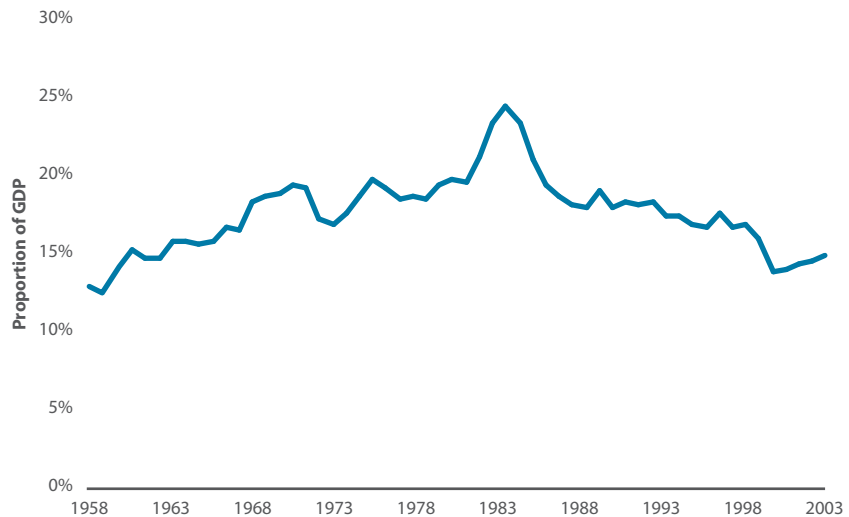
44 Investment Plan for Europe, section 3.1, page 12.

45 Investment Plan for Europe, section 4.2, page 14.

46 Investment Plan for Europe, section 4.1, page 13.

47 See Section 29.

Figure 28.i: UK private investment as a proportion of GDP, 1958–2013



Source: see Annex A

28.2 Joining the EU: the investment boom that never happened

In the 1971 White Paper, which explained the UK's decision to enter the EEC, the Heath Government did not concentrate on trade as the main benefit of membership. Exporters would enjoy an initial short-term gain on their margins from the removal of tariffs:

But secondly, and in the long run far more significant than this response to relatively small annual changes in tariffs, will be industry's decisions on how to take advantage by structural changes of the opportunities opened up by the creation at the end of the transitional period of a permanent, assured, and greatly enlarged market. Manufacturers will be operating in a "domestic market" perhaps five times as large as at present, in which tariff barriers cannot be put up against them however well they do. There will in consequence be a radical change in planning, investment, production and sale effort.⁴⁸

The argument was that British business would enjoy a much higher rate of investment, spurred on by the improved returns created by the greater productivity and efficiency of operating in a common market with larger economies of scale. With one bound, the British economy would shake off its 'familiar problems' as the Sick Man of Europe: balance of payments crises; disappointing industrial investment; and inadequate economic growth.⁴⁹ Although the 1971 White Paper did not quite say so, the implicit assumption was that this new investment would be self-generated by reinvesting the flood of earnings which businesses would reap within the EEC. How did that work out?

48 HM Government "The United Kingdom and the European Communities" (1971, Cmnd. 4715), page 13.

49 HM Government "The United Kingdom and the European Communities" (1971, Cmnd. 4715), pages 11–12.

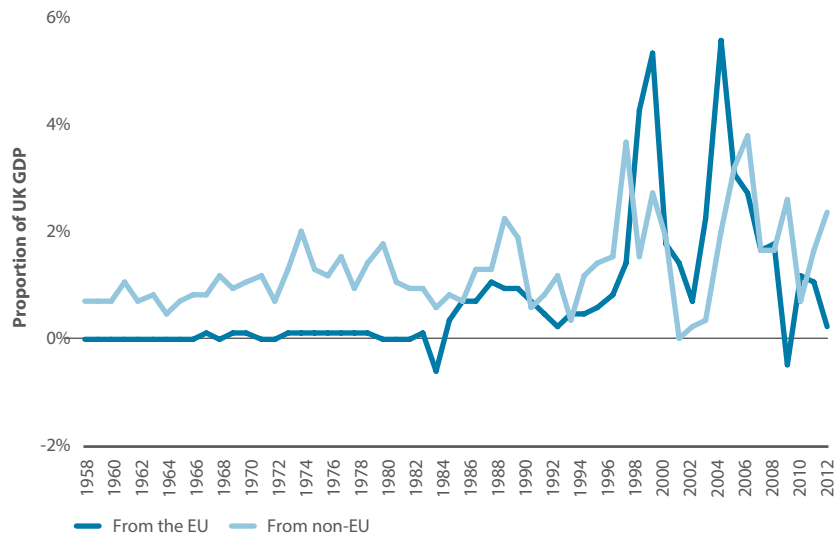
Figure 28.i depicts private investment in the UK as a proportion of GDP over the period from 1958 (the first year of operation of the EEC) to 2013 (the most recent available year).

The British investment rate fell immediately after the country entered the EEC. That is attributable to the wider economic travails of 1973 (the oil price shock, the three day week, the miners' strike etc.) and cannot be blamed on the EEC, and investment soon recovered. In fact, the chief impression is that the British economy had been enjoying a gradual rise in investment levels for some years and joining the EEC had little long-term impact on this trend.

The most noticeable feature of Figure 28.i is that, after the recession of 1990–91, investment levels began a decline from which they have never recovered. The ending of the Cold War, the completion of the Single Market, the onset of globalisation, the expansion from EU-12 to EU-28, the dot-com boom, etc. had no material effect. British business has resolutely failed to respond to the exciting 'challenge of Europe' in the way the Heath Government hoped.

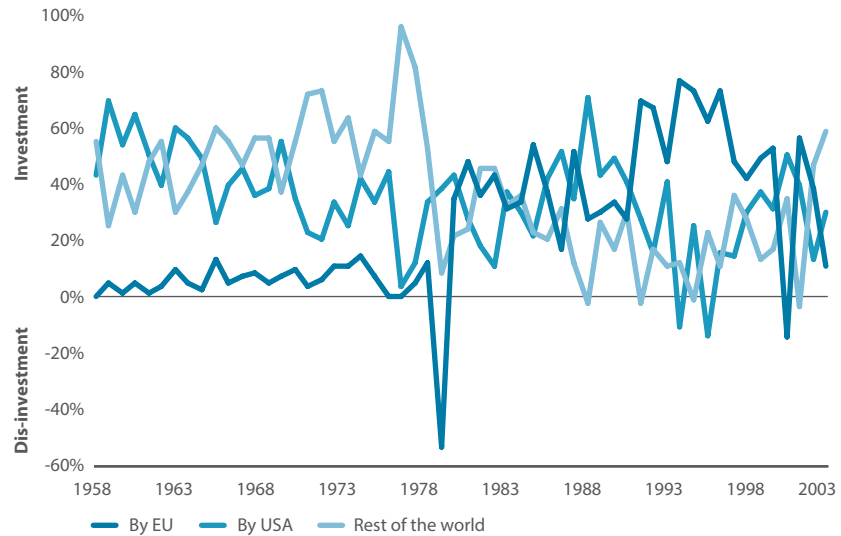
Many explanations have been advanced for the disappointing investment rate in the UK. Figure 28.i suggests that membership of the EU has had no significant influence on overall investment levels in the British economy.

Figure 28.ii: Net direct investment into the UK as a proportion of GDP, 1958–2013



Source: see Annex A

Figure 28.iii: Annual share of direct investment into the UK, 1958–2013



Source: see Annex A

28.3 EU countries have not been major investors in Britain

Perhaps because overall private investment has not appeared to be affected by EU membership, supporters of the EU now prefer to concentrate on the positive effects on foreign direct investment, i.e. where a non-UK business finances or acquires a UK branch or subsidiary. As the lobbying group British Influence claims:

Being in the EU Single Market attracts companies from outside the EU to invest in the UK (e.g. car manufacturers from Japan, pharmaceutical companies from the US and Chinese infrastructure investors).

EU FDI is vital to the UK's economy: European FDI in the UK is worth £543.7bn.

Net earnings for UK companies with FDI in Europe totalled £30.8bn in 2012.

The EU has facilitated FDI flows between the UK and the EU: 53.7 per cent of UK's FDI goes to the EU.

Withdrawal from the EU would cost the UK 2.25 per cent of GDP over time, largely from lost FDI flows.⁵⁰

Such assertions can only be considered in the context of how investment flows have operated across the whole lifespan of the EU. Figure 28.ii depicts net direct investment into the UK for the years 1958 to 2013, divided between investment from EU and from non-EU countries, as a proportion of GDP to indicate its economic significance.

If access to the EU's Single Market were really a driving force behind third-country investment in the UK, it should be obvious from Figure 28.ii. There was indeed a rise in non-EU direct investment in Britain in 1974, although not a massive one, and it would not reach a similar proportion of GDP again until 1989. The average net contribution for the 10 years after the actual imple-

50 British Influence "Information Hub", accessed 23/04/2015 at: <www.britishinfluence.org/information_hub#prosperity>.

“The EU has disinvested from Britain in the past, and has done so in proportionately heavier terms than either the US or the Rest of the World.”

mentation of the Single Market (1993–2002, 1.5 per cent of GDP) is little more than for the 10 years after British entry (1973–1982, 1.3 per cent). Neither investment rate can be considered a resounding vote of confidence in the EU. Non-EU multinationals are keeping their enthusiasm for the Single Market on a tight rein.

The immediate reaction to Figure 28.ii is that EU countries have not historically contributed very much direct investment into Britain at all. They only overtook the Rest of the World between 1999 and 2005, when there was a wholly untypical surge in EU investment. The EU was also our major inward investor in 2007, when EU investment did not fall as fast as that from non-EU countries. For 33 out of the 41 years of UK membership, EU countries have been minority investors in Britain.

The timing for these changes is not difficult to explain. The period of ‘EU dominance’ in net direct investment into the UK coincides with the onset of ‘easy money’ in the late 1990s, and perhaps also the misguided optimism that accompanied the launch of the euro when many continental companies went on something of a spending spree.⁵¹ The end of this period coincides with the onset of the credit crunch and the Eurozone crisis. EU countries are unlikely to be major investors in Britain again until they recover the same levels of confidence they enjoyed prior to the onset of the crisis. The period of ‘EU dominance’ in net inward investment, 1999–2005, is therefore something of a historical accident.

The relative unimportance of EU inward investment is made clearer by Figure 28.iii, which compares the annual shares of inward investment between the EU, the USA and the Rest of the World. Prior to 1985, the EU was simply not an important source of inward investment to the UK. There was then over a decade when importance was shared equally between the EU, the USA and the Rest of the World. The EU’s significance has fallen away considerably since the start of the Eurozone crisis. The USA, one country, has made more of a contribution to Britain in investment terms than the EU-28 countries over the entire period.

Figure 28.iii also makes clear that the EU has disinvested from Britain in the past, and has done so in proportionately heavier terms than either the US or the Rest of the World:

- In 1980, there was a slight net disinvestment by the EU as a whole;
- In 1984, the Netherlands disinvested very heavily from non-manufacturing industries (and to a much lesser extent, Germany disinvested from the financial sector) so that the withdrawals outweighed the effect of incoming investment from everywhere else;⁵²
- In 2010, there were significant disinvestments from the food and utilities sectors by France and the Netherlands (and a slightly smaller disinvestment from the support services sector by Germany).⁵³

It is reasonable to ask whether non-EU countries would withdraw their investments from Britain if it ceased to be a member of the EU. But the risk needs to

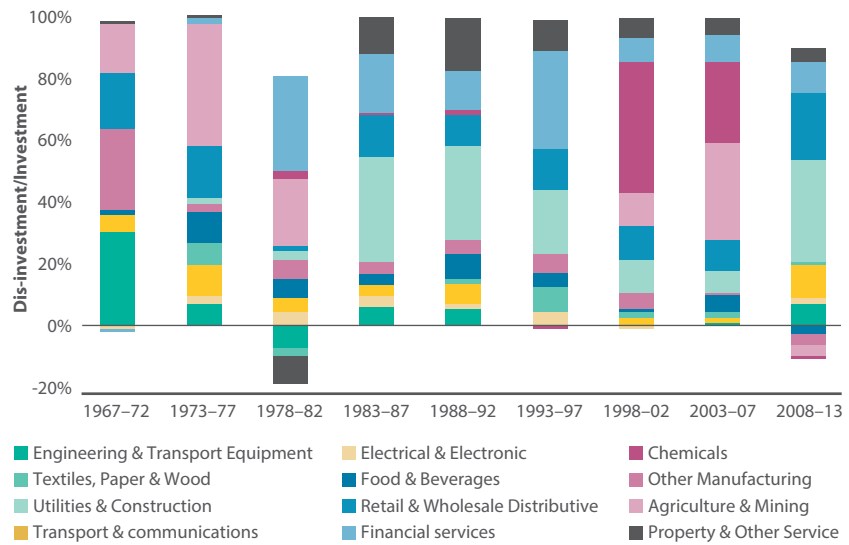
51 See Section 1.

52 BM 1984, Table 29: “Net investment analysed by industrial activity of United Kingdom affiliates and by area and main country of overseas investor, 1980–1984” (see Annex A).

53 BM 2010, Table 5.3: “Net FDI investment flows into the United Kingdom analysed by area & main country and by industrial activity of UK affiliates, 2009 to 2010” (see Annex A).

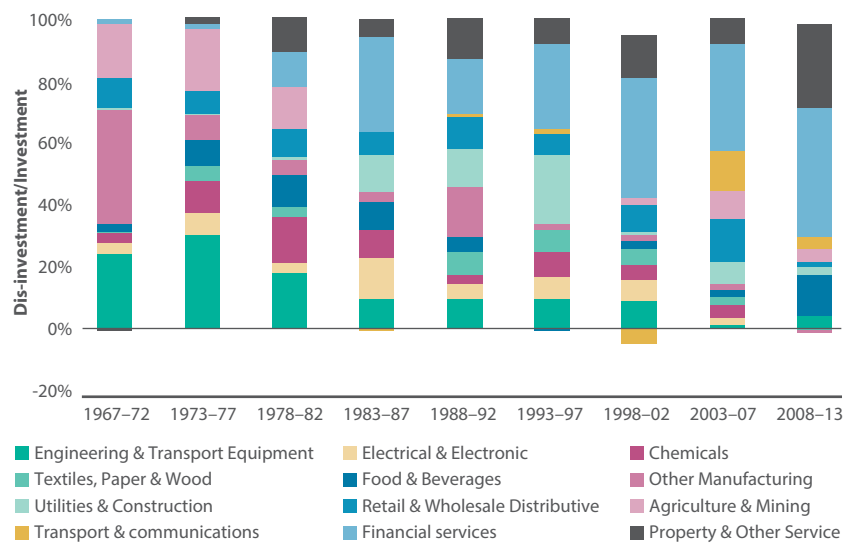
be seen against the fact that, in the past, Britain's European partners have disinvested most from the UK anyway, and they did so while Britain was still a member state.

Figure 28.iv: Direct investment into the UK by sector: EU countries 1967–2013



Source: see Annex A

Figure 28.v: Direct investment into the UK by sector: non-EU countries, 1967–2013



Source: see Annex A

28.4 The sectors which have benefited most from inward investment are not dependent upon EU membership

Supporters of the EU regularly evoke the 'doomsday scenario' Britain would apparently face if it left the European Union. This assumes that all the inward investment which has occurred while the UK has been a member state would cease the moment membership ended.

“It is therefore unlikely that both groups were motivated by a single factor across the whole period, such as Britain’s membership of the EU.”

Figure 28.iv shows the distribution of investment from EU countries in the different sectors of the British economy, to the extent that this data is now available. Figure 28.v gives the equivalent figures for non-EU investors. The two different types of investor have chosen radically different sectors in which to place their money. It is therefore unlikely that both groups were motivated by a single factor across the whole period, such as Britain’s membership of the EU. A more credible interpretation is that each individual investor from each country has been pursuing its own separate commercial objectives. Those objectives would not disappear if Britain’s relationship with the EU changes.

Between 1998 and 2013, the three sectors that received the most support from non-EU investors were Financial Services (40 per cent of total direct investment); Property & Other Services (19 per cent); and Retail & Wholesale Distribution (8 per cent). Such investment is unlikely to suffer if Britain left the EU:

- **Financial Services:** Despite the financial crisis, the City of London is still a leading global financial centre. In fact, the greatest threat to the viability of the City, and hence the willingness of overseas investors to continue to place finance in the sector, is likely to be an unreformed EU.⁵⁴ Particularly due to the other cost and personnel issues involved in relocation, non-membership of the EU does not appear to be a sufficient motive by itself for an overseas bank to withdraw from London.
- **Property:** The supply of land for construction will not be affected by membership of the EU, so the question becomes whether the demand side would suffer. British (especially London) land values recovered surprisingly quickly following the recession. It is highly unlikely that this asset class will be undermined over the long term if Britain is outside the EU.
- **Retail & Wholesale:** The interest of foreign investors in this sector is explained by high consumer spending levels in Britain. The investment stream will only dry up if withdrawal from the EU were to lead to the outbreak of another recession, and there is no reason to believe this will happen. Certainly, a looser trading relationship with the EU – one that, for example, placed more cash in consumers’ wallets – would have no negative effect and would potentially make the sector even more attractive to foreign investors.

In the same period, the three most popular sectors for EU investors were Transport & Communications (27 per cent of the total, mainly concentrated in the Information & Communication sub-sector); Agriculture & Mining (17 per cent, mainly composed of investment in the Mining & Quarrying sub-sector, and which has recently seen considerable disinvestment, bringing down its overall weighting); and Utilities & Construction (15 per cent, of which the overwhelming majority went into the Electricity, Gas, Water & Waste sub-sector).⁵⁵

- **Information & Communications:** According to UK Trade & Investment (UKTI), the government agency responsible for encouraging inward investment, “*The UK’s mobile market is the largest in Europe with a value of £14bn annually and 80m mobile subscribers. This means companies are always look-*

⁵⁴ See Section 10.

⁵⁵ Information on sub-sectors contained within the Tables on Net Inward Investment by Industrial Activity of United Kingdom affiliates and by area and main country in BM 1998 to BM 2013 inclusive (see Annex A).

“Realistically, the event most likely to trigger disinvestment in the UK by EU investors is a requirement for capital at home because of continuing problems within the Eurozone.”

ing at new opportunities to use mobile technology.⁵⁶ It highlights mobile payment, superfast broadband, 4G services, cyber security and cloud computing as investment opportunities opening up in Britain. The existence of a regular workforce of skilled graduates, and at least four technical trade associations for support, are cited as further incentives to relocate to the UK. There is no reason to doubt the validity of these claims, and they probably explain the recent high level of inward investment from EU countries. Neither the mobile phones nor the graduates are likely to vanish should Britain’s relationship with the EU become looser. The investment case may in fact become stronger as time passes, particularly since the UK would be able to remain within the key international communications bodies.⁵⁷

- **Mining:** This sector has experienced disinvestment in recent years. This has not been driven by uncertainty over Britain’s relationship with the EU, but by world commodity prices. The prospects for EU investment in this sector are dependent on the future path of the world economy, not the UK’s membership of the EU.
- **Utilities:** Britain will still require electricity, gas, water and waste services, whether the UK country is a member of the EU or not. So it is likely that the commercial objectives behind the original investments would remain valid. Further, even outside the EU, Britain would remain within European energy networks.⁵⁸ UKTI predicts investment opportunities within Britain in the fields of energy transmission, distribution and demand management, as well as openings for sophisticated new methods such as energy storage and smart grids.⁵⁹ These will be just as attractive to EU businesses with an established UK presence.

Realistically, the event most likely to trigger disinvestment in the UK by EU investors is a requirement for capital at home because of continuing problems within the Eurozone. That is unlikely to be affected by whether Britain is a member of the EU or not.

28.5 EU membership is not the decisive factor behind inward investment

UKTI produces a 60-page brochure “Invest in the UK: Your springboard for global growth” (April 2015) setting out the reasons a business should invest in Britain.⁶⁰ It is reasonable to review these arguments to see how dependent they are upon Britain’s continued membership of the EU.

The brochure cites 15 reasons. The first four, **Gateway to the World**, **Centre for Global Trading**, **Magnet for Talent** and **Hub of Innovation**, are really executive summaries of the subsequent sections. Europe is cited principally in the

56 UKTI “Communications industry in the UK”, accessed 23/04/2015 at: <www.gov.uk/government/publications/communications-industry-in-the-uk-investment-opportunities/communications-industry-in-the-uk-investment-opportunities>.

57 See Section 20.

58 See Section 16.

59 UKTI “Energy networks in the UK: investment opportunities”, accessed 23/04/2015 at: <www.gov.uk/government/publications/energy-networks-in-the-uk-investment-opportunities/energy-networks-in-the-uk-investment-opportunities#uk-energy-distribution>.

60 Available from the UKTI website, accessed 24/04/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/423728/Invest_in_the_UK_Brochure_-_Mar15.pdf>.

“Britain has four of the top six best universities in the world.”

context of league tables on which Britain is top, e.g. *“first for online retail exports in Europe”*.

In fairness, **Gateway to the World** does say that Britain *“is also the gateway to Europe, the world’s largest single market with more than 500m consumers”* and mentions duty-free access to the EU and other countries via trade treaty arrangements.⁶¹ But exactly the same could be said of Iceland or Turkey. So a suitable treaty with the EU short of outright membership would deliver the same benefits, and thus the same reason for inward investment.

Reason two, **Centre for Global Trading**, also states that *“we are a strong voice in the EU, and will continue to use our influence to make it more open, competitive, flexible and democratically accountable”* – which is a subtle way of accusing the EU of being closed, uncompetitive, inflexible and unaccountable.⁶² The next sentence adds that *“we retain sovereignty over our currency, allowing your UK business to react flexibly to changing market conditions”*, neatly drawing attention to the main disadvantages of investing in the Eurozone.

Reason five, **Talent**, claims that *“the UK ranks second only to the USA among the powerhouse economies for growing, retaining and attracting talent according to the Global Talent Competitiveness Index.”*⁶³ Britain has the highest proportion of adults with tertiary education in Western Europe; and is the only major European economy expecting an increase in labour supply up to 2030. More employed people moved to the UK in 2012 and 2013 than to any other EU member state, and apparently half of Europe’s graduates who are willing to relocate to find work would choose the UK. Britain has four of the top six best universities in the world.

The quality of British universities has little to do with EU membership. They may receive grant funding from the EU, but could continue to do so outside the EU.⁶⁴ The schools system is so far beyond the reach of the EU. It must be assumed that some of the explanation for the liberal supply of talent is the freedom of movement of workers within the EU. But outside the EU, Britain could set its own immigration policy and decide to admit these people anyway – perhaps even more of them, making an even stronger case for investing in the UK.⁶⁵

In section six, **Skills for the 21st Century**, UKTI says that Britain is second only to the USA for the number of universities in the world top 200. It has the highest number of “leading MBA institutions” in Europe; the highest proportion of the workforce in professional occupations of all the world’s major economies; and the government runs an apprenticeship programme for developing employee skills. None of these features have anything to do with the EU.

The next reason, **Labour Market**, states that Britain has “some of the most business-friendly employment laws in Europe”.⁶⁶ It has been rated as having the second most efficient labour market of the world’s major economies, according to the World Economic Forum, and has the most competitive labour costs in Western Europe.⁶⁷ Applications for a skilled worker visa take 30 minutes, and 98 per cent are granted. The World Values Survey shows the British to be among the world’s most tolerant people.

61 UKTI “Invest in the UK: your springboard for global growth” (2015), page 2.

62 UKTI “Invest in the UK: your springboard for global growth” (2015), page 5.

63 UKTI “Invest in the UK: your springboard for global growth” (2015), page 10.

64 See Section 19.

65 See Section 12.

66 UKTI “Invest in the UK: your springboard for global growth” (2015), page 16.

67 Probably “Flexibility of wage determination”, in which the UK is ranked 10, after Japan at 9 – but also behind Estonia (1), Latvia (6) and Lithuania (8).

“The long-term threat comes from politically-motivated action from within the EU to demote London in favour of an alternative financial centre such as Frankfurt.”

The UK labour market is flexible precisely because Britain does not subscribe to the full panoply of employment regulations enforced elsewhere in the EU. The brochure underlines this point with a graphic citing the worse scores of France, Germany, Italy, Netherlands and Spain on the World Bank’s Rigidity of Employment Index. In this area, the most obvious risk for investors is continued membership of the EU and the threat that more rigid regulation will be imposed at a later date by the Commission.

One of the largest sections in the UKTI brochure is Tax. “We have a low tax burden, flexible and competitive rules, and generous reliefs for innovation – essential conditions for successful and profitable businesses.”⁶⁸ Corporation tax rates, capital gains tax rates, R&D credits, employer and employee national insurance rates, income tax rates and allowances, the Patent Box for intellectual property rights, VAT rates and private pensions are all cited as reasons for investing in Britain.

All of these are within the competence of the British Government. To the extent that its freedom of action is constrained by EU membership, the system could be made even more attractive for investors after withdrawal.⁶⁹

The next section, **Finance and Banking**, informs the overseas investor that “the UK is Europe’s leading financial services hub.”⁷⁰ London competes with New York for the title of the world’s number one financial centre, is the largest centre for cross-border banking and accounted for 41 per cent of global foreign exchange trading in April 2013. Britain is one of the largest exporters of financial and related professional services in the world, Europe’s premier centre for Islamic banking and has the fastest-growing financial technology sector in the world. The London Stock Exchange is the most international in the world. Schemes exist to arrange finance for smaller firms and for export credits.

None of this has anything to do with EU membership. The long-term threat comes from politically-motivated action from within the EU to demote London in favour of an alternative financial centre such as Frankfurt.

According to UKTI’s argument **Property and Planning**, Britain “has a more efficient planning process than Switzerland, the Netherlands, France and Ireland” with 79 per cent of major building projects decided within 13 weeks and a faster application process for major infrastructure projects (with a 96 per cent consent rate).⁷¹ Designated areas have simpler and more flexible planning processes. The UK has one of the most active property and mortgage markets in the world. Clusters have been established for businesses in the fields of digital technology, biomedical, automotive industry, aerospace, agri-tech and research & development generally, allowing entrepreneurs to exchange knowledge and ideas, access a larger pool of skilled labour, share costs and improve their supply chains. Britain has “four iconic capital cities” in London, Cardiff, Belfast and Edinburgh, as well as three of Europe’s ten most populated urban areas. “Yet all of our cities lie within easy reach of beautiful countryside – all within an area less than half that of France.”⁷²

These are again all domestic matters outside the scope of EU membership. They will be just as attractive as places to visit or invest in if Britain reformed its relationship with the EU.

Of particular importance to the foreign investor is **Ease of Doing Business**. Britain is the easiest major economy in Europe to do business in, according to

68 UKTI “Invest in the UK: your springboard for global growth” (2015), page 20.

69 See Section 24.

70 UKTI “Invest in the UK: your springboard for global growth” (2015), page 25.

71 UKTI “Invest in the UK: your springboard for global growth” (2015), page 28.

72 UKTI “Invest in the UK: your springboard for global growth” (2015), page 28.

“Investment is most attracted to countries which are most worthwhile investing in.”

the World Bank. Corporate governance is based on principle, not burdensome regulation, and there is wide flexibility to choose a company structure that suits an investor’s specific needs. The British legal framework is recognised for its stability and consistency. London is the world’s leading centre for commercial litigation and arbitration, and there are fair and open public procurement procedures. The Government has adopted a “ground-breaking” approach to reducing regulatory burdens which France, Italy and Spain are trying to copy.⁷³ Britain’s economy grew at the fastest rate in the G7 country in 2014 and it has the largest deficit reduction programme of any advanced economy.

Some of the factors cited in the UKTI brochure, such as company law and public procurement, can be traced back to EU regulation. But that does not mean that those factors would change if Britain were to cease to be a member of the EU. They could be retained. They could even be made more flexible. Britain is undoubtedly an easier place in which to do business than other EU countries, and that chiefly stems from local decisions not to follow their practices and procedures.

The references in the brochure to Britain’s recent growth rate, and the Government’s policy for reducing the public sector deficit, could be dismissed as transient factors with no real bearing on the subject of investment. That would be a mistake. They focus on a key point often obscured in discussions of Britain’s relationship with the EU: investment is most attracted to countries which are most worthwhile investing in.

The section on **Infrastructure** covers a wide field. UKTI highlights Britain’s vibrant port infrastructure, with the second largest ports industry in Europe in terms of tonnage handled, and three deep water ports (London Gateway; Liverpool; Milford Haven). It has the largest air transport system in Europe, serving more destinations on a daily basis than any other European country. It has the fourth-longest rail network, which is also the “most improved in the EU”. An investment programme is underway to create “a world-class strategic road network that helps stimulate local economic growth, relieve congestion and improve safety and environmental outcomes”.⁷⁴ Digital infrastructure includes the best superfast broadband service of any major European economy and the biggest e-commerce market in Europe. Britain’s open and competitive telecoms market means lower prices and more choice for business users. Privatisation of the major utilities means the same for industrial energy consumers. Britain is one of only three countries world-wide with a World Energy Council ‘AAA’ rating. Investment in ‘smart grid’ technology will support the security of Britain’s energy supply for future decades. The Government has capped the carbon price for businesses for the rest of the decade.

A user of some of this infrastructure may not recognise it from UKTI’s glowing description. But they all constitute excellent reasons for investing in Britain. Most have nothing to do with EU action or membership. (Indeed, in regard to the digital aspects, the “Investment Plan for Europe” indicates that the Commission wants the rest of the EU to catch up with the level of provision in Britain.) In the energy sector, where EU influence is most apparent, that influence is most likely to be adverse over the long term, and suitable alternative arrangements could be made from outside the EU.⁷⁵ Each of the examples cited in the brochure would remain the same, or could even be improved, with a looser relationship with the EU.

73 UKTI “Invest in the UK: your springboard for global growth” (2015), page 32.

74 UKTI “Invest in the UK: your springboard for global growth” (2015), page 38.

75 See Section 16.

“The brochure makes an impressive case. However, it is difficult to find any aspect mentioned which depends upon EU membership.”

UKTI provides a lot of detail about the UK’s **Innovation Ecosystem**. Britain is “not simply a nation of inventors. We continue to invest heavily in an innovation system that turns ideas into commercial success”.⁷⁶ Collaboration between universities and business is rated as the most effective among Europe’s major economies and the country has the highest research productivity among “top research nations”. Britain has the highest proportion of its workforce in knowledge-intensive jobs among the G20 and is ranked ahead of all its major competitors for the quality and security of its intellectual property system. “Eight great technologies” have been pioneered in Britain using public grants: big data; satellites; robotics and autonomous systems; synthetic biology; regenerative medicine; agri-science; advanced materials (e.g. nanotechnology); and energy storage. “The UK has everything you need for successful, commercialised innovation”.⁷⁷

The brochure makes an impressive case. However, it is difficult to find any aspect mentioned which depends upon EU membership. Neither the intelligence level of British inventors, nor any enterprising spirit they may possess, will be dimmed by a looser relationship with the EU. Possibly some of the research may have benefited at some stage from EU grants, but EU membership is not an essential requirement for participation in such programmes, and alternative arrangements are available from outside the EU.⁷⁸

Industrial Strategy & Capability is largely devoted to praising the British Government for its business-friendly policies, with no mention of the European Commission. To the extent that a British Government can have a positive influence on an entrepreneur’s decision to invest in the UK, it can have just as much influence outside the EU.

In its final section, **UKTI**, the brochure highlights the services and assistance UKTI itself can provide incoming investors. It would be able to undertake such work even if Britain were not a member of the EU.

The UKTI brochure represents the best possible case that could be put to an overseas business for investing in Britain. When each of its reasons is examined in detail, it is difficult to find any point on which EU influence is more than tangential (if not negative), and in every case it is easy to suggest alternative arrangements which would be just as good, if not better.

The inference is that being outside the EU would have a neutral or even beneficial effect on the reasons for investing in Britain. A looser relationship with the EU will not have the adverse impact on inward direct investment that has been predicted. The only point of any significance would be the terms of Britain’s access to the Single Market. But during renegotiation, that would be a priority concern for the British Government in any case. Ultimately, the decisive factor is whether the British economy would perform better if outside the EU.

Multinational companies can and do move their head offices between countries in response to political events and decisions. For example, the advertising group WPP located its executive offices in Ireland between 2008 and 2012, to minimise the amount of UK tax it would have paid under provisions introduced by the then Labour Government but later reversed by the Coalition.⁷⁹ Some banks have recently discussed moving their headquarters out of London to minimise the impact of tighter regulations and the Bank Levy on their operations.⁸⁰

76 UKTI “Invest in the UK: your springboard for global growth” (2015), page 44.

77 UKTI “Invest in the UK: your springboard for global growth” (2015), page 48.

78 See Section 19.

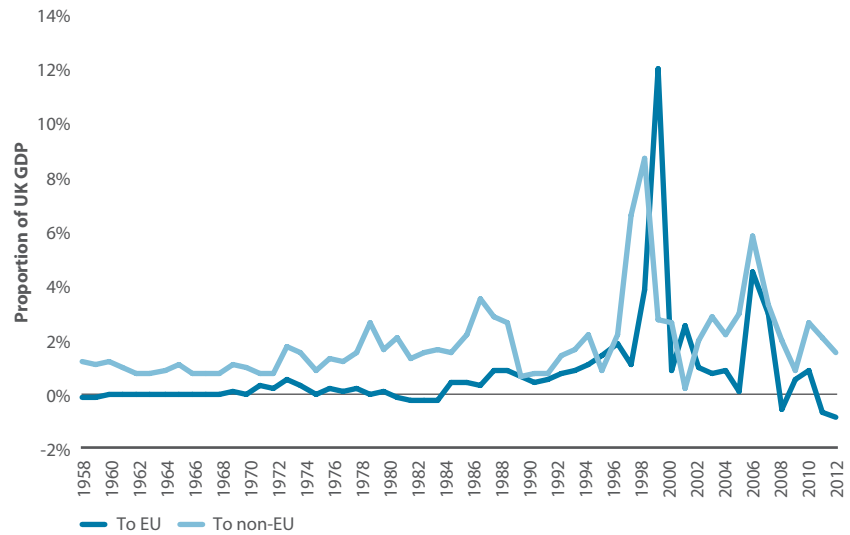
79 Financial Times “WPP investors vote to move back to UK”, R. Budden (11 December 2012), accessed 14/05/2015 at: <www.ft.com/cms/s/0/66303bf8-43a9-11e2-a48c-00144feabdc0.html#axzz3a6tC1xJc>.

80 Financial Times “HSBC threatens to move headquarters from UK”, M. Arnold, D. Oakley and J. Hughes (24 April 2015), accessed 14/05/2015 at: <www.ft.com/cms/s/0/265619cc-ea59-11e4-96ec-00144feab7de.html#slide0>.

Although such cases can have a significant impact on government tax revenues, they tend to have less impact on the scale of the company's actual operations in a country. The number of people WPP employed in Britain between 2008 and 2012 was mainly determined by the effects of the global recession that took place at the same time, not by the location of the group's head office.

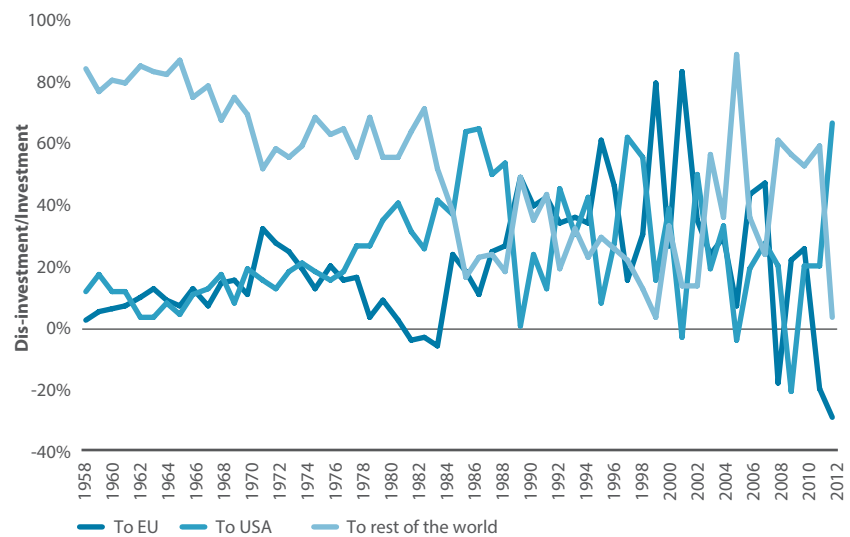
The specific factors which are known to have affected decisions about corporate location, including high taxation and burdensome regulation, are more associated with being inside the EU than with outside. The EU does not represent the future. In the long run, investment patterns are likely to reflect that.

Figure 28.vi: Net direct investment by the UK as a proportion of GDP, 1958–2013



Source: see Annex A

Figure 28.vii: Annual share of outward direct investment by the UK, 1958–2013



Source: see Annex A

“Britain has always had a global, not European, investment orientation.”

28.6 EU countries have not been the major destination for Britain’s overseas investments

Commentators frequently point to the benefits to Britain of foreign direct investment, and claim that it depends upon EU membership. But money also flows in the other direction: outwards. As the equivalent to Figure 28.ii, Figure 28.vi depicts direct investment by the UK for the years 1958 to 2013, divided between investment into EU and non-EU countries, as a proportion of GDP to indicate its economic significance.

It is difficult to understand the claim by British Influence, quoted previously that “53.7 per cent of UK’s FDI goes to the EU”. Over the whole period since the formation of the EEC in 1958, there have been only three years in which British direct investment in the EU has exceeded that into non-EU countries:

- 1996: when the largest investment was into the chemicals and financial services sectors in the Netherlands;⁸¹
- 2000: when the heaviest investment was in transport & communications in Germany, explained by the £112bn takeover of Mannesmann by Vodafone, at that time the largest corporate merger in history;⁸²
- 2002: when there were large investments into the Netherlands and Germany.

These are the counterpart to the anomalous ‘EU dominance’ in inward investment into Britain in 1999–2005, and they may have occurred for much the same reasons, i.e. easy money and irrational exuberance over the introduction of the euro. The single most important contribution by far, the Vodafone takeover of Mannesmann, was driven by its own commercial logic and the then state of the mobile telephone market.

Figure 28.vii gives the corresponding annual shares of outward investment by British companies divided between EU countries, the USA and the Rest of the World. There are similarities with the equivalent graph for inward investment (Figure 28.iii). There is a period of disinvestment in the early 1980s and the EU is not particularly significant before 1985, when a period begins in which none of the three destinations is dominant. Towards the end of the period there is a blip where the EU represents the dominant sector. But this is cut short by the start of the Eurozone crisis.

The differences are worth noting. Britain invested far more in the EU, even before it joined, than it received in investments from EU countries – and has also reacted to the Eurozone crisis by disinvesting far more:

- 2009: from the services sectors in Belgium, Denmark, France, Italy and the Netherlands;⁸³
- 2012: from the food sector in Germany, and financial services in Luxembourg and the Netherlands;⁸⁴

81 BM 1996, Table 1.7 “Net investment analysed by industrial activity of overseas affiliates and by area and main country 1993–1996”, page 16 (see Annex A).

82 BM 2000, Table 2.3 “Net foreign investment flows abroad analysed by area & main country and by industrial activity of foreign affiliates, 1999 to 2002”, page 20 (see Annex A).

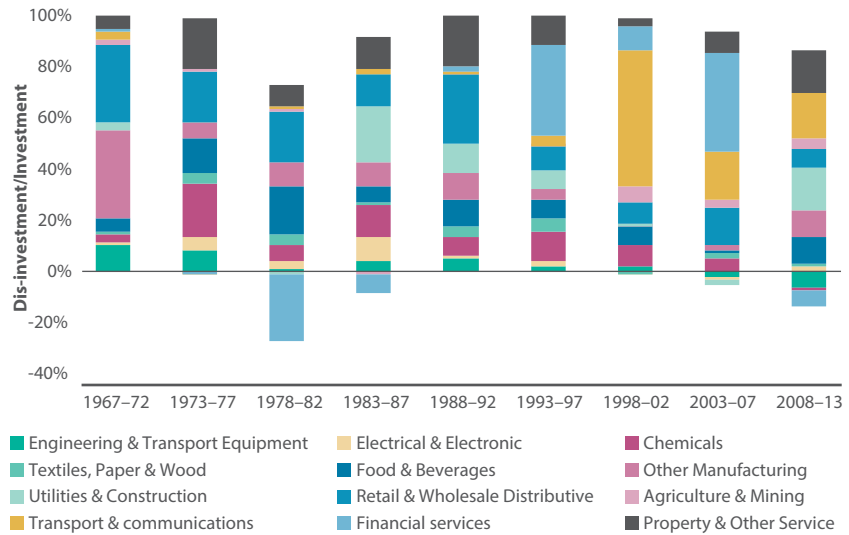
83 BM 2009, 2013, Table 2.3 “Foreign direct investment flows abroad analysed by area and main country and by industrial activity of foreign affiliates, 2008 to 2009” (see Annex A).

84 BM 2012, Table 2.3 “Foreign direct investment flows abroad analysed by area and main country and by industrial activity of foreign affiliates, 2009 to 2012” (see Annex A).

- 2013: from the financial services sector in France, the chemicals sector in Ireland, and generally from Belgium and Luxembourg.⁸⁵

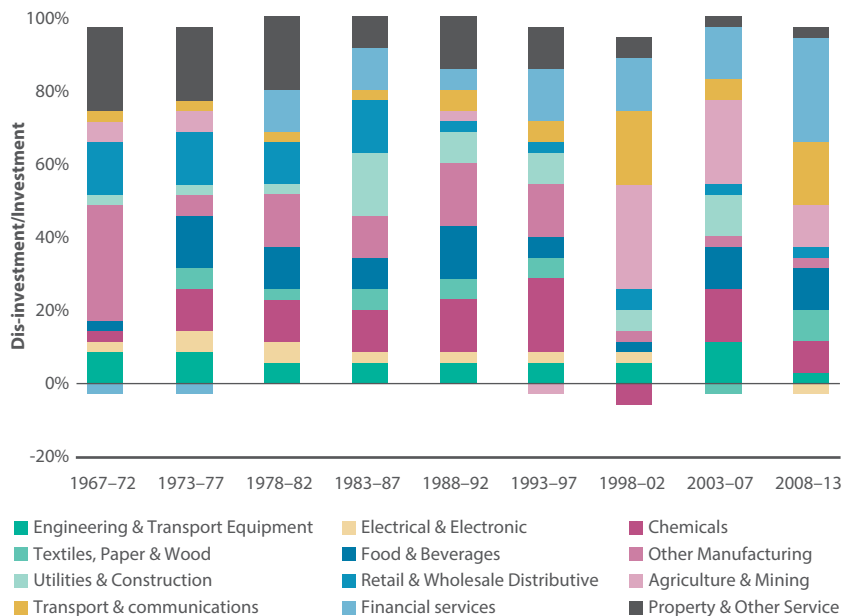
Most noteworthy of all, however, is that across the entire period the Rest of the World is far more significant as a destination for UK outward investment than as a source of inward finance. Britain has always had a global, not European, investment orientation.

Figure 28.viii: Direct investment by the UK by sector: in EU countries 1967–2013



Source: see Annex A

Figure 28.ix: Direct investment by the UK by sector: in non-EU countries 1967–2013



Source: see Annex A

⁸⁵ BM 2013, Table 2.3 “Foreign direct investment flows abroad analysed by area and main country and by industrial activity of foreign affiliates, 2010 to 2013” (see Annex A).

“When making overseas investments, it appears that British businesses take little notice of whether a country is a member of the EU or not.”

28.7 The sectors where Britain has invested most are not dependent upon EU membership

Figure 28.viii gives the distribution of British investment in the different sectors of the EU economy, to the extent that this data is now available. Figure 28.ix gives the equivalent figures for non-EU countries. In marked contrast to the equivalent charts for inward investment (Figures 28.iv and 28.v), investment is distributed more evenly by sector, with less concentration on a few heavyweight categories, and the two charts are more closely aligned. When making overseas investments, it appears that British businesses take little notice of whether a country is a member of the EU or not.

The same assessment can be made for outward investment as was made for inward assessment over the period 1998–2013. The three sectors in the EU receiving the most British investment were Transport & Communications (40 per cent of the total, which is almost entirely represented by the Information & Communications sub-sector); Financial Services (18 per cent); and Retail & Wholesale (11 per cent).⁸⁶

- **Communications:** Britain could still remain a participant in the relevant EU-wide bodies and arrangements governing this industry.⁸⁷ British businesses would not be locked out of this sector.
- **Financial Services:** There is a risk of politically-motivated retaliation against the dominance of the City of London in European capital markets. But that risk is present whether Britain remains within the EU or not. The degree of EU regulation of the financial sector, and its effect on profitability, would be the major factor affecting whether investment will remain attractive.
- **Retail & Wholesale:** Investment attractiveness depends not on EU membership, but on a recovery of the Eurozone economy. Only when EU consumers are in a position to resume spending are British businesses likely to want to increase their investments in this sector. Until then, preserving the value of investments which have been made already will be a more prominent concern. In the longer term, the health of Retail & Wholesale will depend upon the ability to exploit the freedom of movement of goods within the EU. The terms of access to the Single Market in any looser relationship with the EU is a priority renegotiation point in any event, and there is every reason for optimism.⁸⁸

The three sectors in non-EU countries receiving the most British outward investment were Agriculture & Mining (22 per cent of the total, which is almost entirely represented by the Mining & Quarrying sub-sector); Financial Services (20 per cent); and Transport & Communications (16 per cent, which is almost entirely represented by the Information & Communication sub-sector).⁸⁹ Being outside the EU would have little or no impact on these investments.

86 Information on sub-sectors contained within the Tables on Net Outward Investment by Industrial Activity of United Kingdom affiliates and by area and main country in BM 1998 to BM 2013 inclusive (see Annex A).

87 See Section 20.

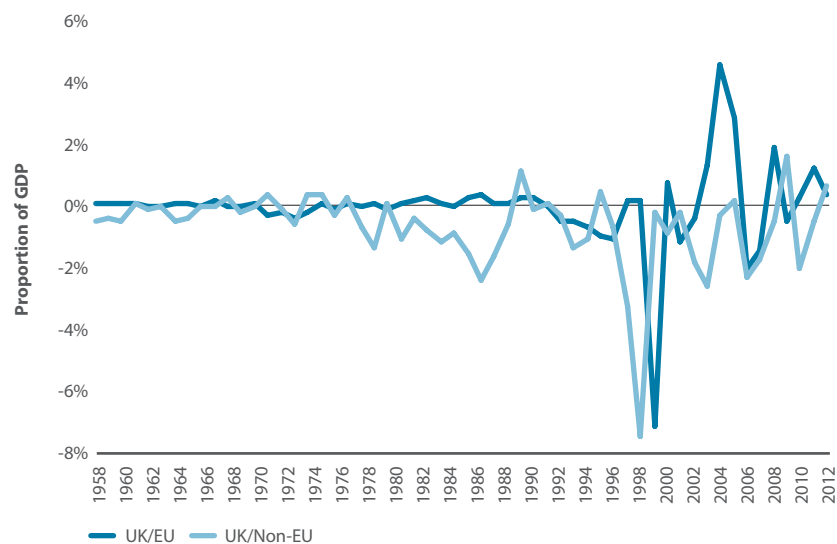
88 See Section 6.

89 Information on sub-sectors contained within the Tables on Net Outward Investment by Industrial Activity of United Kingdom affiliates and by area and main country in BM 1998 to BM 2013 inclusive (see Annex A).

- **Mining:** The prospects for this sector depend upon global demand for commodities. London is also an international centre for such trading, and a looser relationship with the EU is unlikely to affect either in the foreseeable future.
- **Financial Services:** Given the increased capital requirements for banks world-wide following the financial crisis, it is likely that further investment would be required to satisfy local regulators. No longer being an EU member state would not affect UK investment in non-EU countries in this area.
- **Communications:** Since Europe is now a fairly mature market for mobile telephones, the growth areas are likely to lie outside that region, for example in Africa. There would be no reason for British businesses to be locked-out of those markets just because the UK had ceased to be a full member of the EU. The prospects for investment thus depend entirely on the degree to which third countries open up their telecoms markets to outsiders, whether those outsiders are based in the EU or not.

EU membership is not a critical factor in whether investment opportunities abroad would remain available to British business.

Figure 28.x: Overall direct investment as a proportion of UK GDP, 1958–2013



Source: see Annex A

28.8 Britain is a net provider of investment to the world

Figure 28.x depicts the net investment flows into the UK over the period 1958 to 2013. For each year, this represents the inward investment into Britain from EU and non-EU countries minus the capital which flowed outward to the same destinations from the UK. A positive value in either case indicates that Britain received more than it invested abroad. Conversely, a negative value indicates that Britain was a net exporter of capital to the relevant destination. Disinvestment is ignored, to avoid confusing the position.

Two periods stand out as being untypical in that the EU was then a net investor in Britain. They do not indicate the emergence of a ‘new normal’. In the first, 2004–06, Britain reduced its level of investment in the EU rather than the EU

“Perhaps EU countries should be concerned about Britain deciding to stop investing in them.”

increasing its investment in the UK. The second, 2012–13, can be explained as a consequence of the Eurozone crisis:

- As Figure 28.vii shows, Britain has been disinvesting, withdrawing funds because the crisis has meant that the likelihood of making a return on an investment in the Eurozone has declined. The EU has continued to invest in Britain, however, although the absolute amount of EU inward investment in Britain has fallen (as Figure 28.ii indicates). In other words, British investors have moved faster than their European counterparts;
- EU countries have made a net contribution to the UK only because no investment was being made in the other direction. At the same time Britain was making a greater net withdrawal (as Figure 28.vi indicates);
- If the Eurozone crisis continues, a lack of available funds means that this inadvertent net investment by the EU into the UK will dwindle away. If the Eurozone crisis is resolved, British businesses can be expected to resume investment on the continent.

The chart indicates that, throughout the existence of the EU, Britain has tended to be a net investor in both EU and non-EU countries and, if anything, has invested most heavily outside the EU. Rather than being concerned at the prospect of Britain losing inward investment if it adopted a looser relationship with the EU, perhaps EU countries should be concerned about Britain deciding to stop investing in them.

Conclusion

It is important to avoid the mistake of the 1971 White Paper, of wishfully predicting a glorious investment future on the basis of a political hunch. Unanticipated events can derail the brightest expectations. For example, an implosion of the Eurozone will damage Britain whether it is inside the EU or not at the time.

It is too simplistic to say that, because Britain has tended to invest more abroad than it has received, the country ‘does not need’ foreign direct investment. The positions depicted in the charts aggregate the outcomes for thousands of individual businesses acting on their own motives. Each subsidiary in Britain which benefits from being financed by an overseas parent company is not going to be compensated by the fact that its British owned-rivals are able to finance their own overseas subsidiaries to a greater extent. The two will not net-off at the level of the individual firm.

However, the aggregate positions in the charts do indicate that, overall, ‘UK plc’ has a more robust investment-generating capacity, or a greater propensity to make overseas direct investment, than its rival, ‘EU AG’. The question therefore becomes whether this capacity and propensity will be weakened by being outside the EU. Put simply: is the Eurozone model capable of delivering a more vibrant, expansive economy?

The evidence of this report is that it is not.⁹⁰ This Section has also shown that EU membership is not a decisive factor in the UK’s attractiveness to foreign investors. On that basis, it is possible to conclude that a looser relationship with the EU, which permitted Britain to avoid further integration with a dysfunctional Eurozone – and especially if the UK then enacted further business-friendly policies – will both make the UK a more attractive place in which to invest and better able to make investments itself.

90 See Section 1.

ANNEX A: Data sources for Section 28

The main source of data is the publication which was issued by the Business Statistics Office as “Business Monitor M4: Overseas Transactions” from 1970 to 1973, then by the Department of Industry from 1974 to 1978. From 1979 to 1983, it was issued by the Government Statistical Service as “Business Monitor MA4: Overseas Transactions”, and from 1984 to 1989 by the Department of Trade & Industry. From 1992 to 1996, it was published by the Central Statistical Office as “Business Monitor MA4: Overseas Direct Investment”, and from 1997 it was published by the ONS. In 2003, it was renamed “Business Monitor MA4: Foreign Direct Investment”. Since 2012, it has been published as “Business Monitor MA4: Foreign Direct Investment by UK companies”. It is cited throughout as “BM”. Data is published two years in arrears, so “BM 1968” is the edition published in 1970.

Another key source of data is the “United Kingdom Balance of Payments”, cited as “Pink Book”. Each edition generally provides 10 years of data, one year in arrears. Between 1974 and 1978, the title specified the time range of the data which the edition covered, e.g. the 1974 edition being “1963–1973”. Since 1979, practice has reverted to issuing each edition with the year of publication in the title. It is cited here by reference to the title under which it was published.

Figure 28.i: UK private investment as a proportion of GDP, 1958–2013

Data downloaded from the ONS website. ‘Private Investment’ derived as the annual difference between Total Gross Fixed Capital Formation at Current Prices (series NPQS) and General Government Gross Fixed Capital (series NNBF). (The ONS website now carries only values for series NNBF from 1987 onwards. Earlier values used in producing the chart derived from data in the possession of the authors obtained from the ONS in the past.) Figures calculated as percentages of ‘GDP’, the annual figure for Gross Domestic Product at Market Prices: Current Price (series YBHA).

Figure 28.ii: Net direct investment into the UK as a proportion of GDP, 1958–2013

Data for 1958–1961 inclusive derived from Pink Book 1969 Table 24, Pink Book 1970 Table 29, Pink Book 1971 Table 28, Pink Book 1972 Table 26. Data for 1962–2013 inclusive derived from the Table of Net Inward Investment by Area and Main Country in each of BM 1968 to BM 2013 inclusive. Prior to 1984 both the Pink Book and BM only provide geographic analysis for inward investment excluding the oil industry. For 1958 to 1983 inclusive therefore, figures for the inward investment attributed to the oil industry is taken from Pink Book 1967–77 to Pink Book 1994 and deemed to constitute part of the non-EU contribution to total inward direct investment.

Data for GDP derived as for Figure 28.i.

Figure 28.iii: Annual share of direct investment into the UK, 1958–2013

Data derived as for Figure 28.ii. For 1958–1961, the value for ‘North America’ in the relevant Pink Book is taken as the value for the USA, since more precise analysis is not possible from the available figures.

In order to avoid an arithmetical quirk involving percentages and negative numbers, the total for each year is the sum of the absolute values of each of the three components, ignoring whether they are positive (net investment) or neg-

ative (net disinvestment) and not netting off disinvestment against investment. The percentage share, whether positive or negative, is then calculated. This preserves the relative magnitude of each component for each year.

Figure 28.iv: Direct investment into the UK by sector: EU countries 1967–2013

Data derived from the table “Net inward investment analysed by industrial activity of United Kingdom affiliates and by area and main country” in each of BM 1968 to BM 2013 inclusive. The sectors in each edition of BM differ over time and have been grouped into the categories in the table for consistency. The shares have been calculated using the same adjustment for negative (disinvestment) figures discussed for Figure 28.iii.

Figure 28.v: Direct investment into the UK by sector: Non-EU countries 1967–2013

Data derived as for Figure 28.iv.

Figure 28.vi: Net direct investment by the UK as a proportion of GDP, 1958–2013

Data for 1958–1961 inclusive derived as for Figure 28.ii. Data for 1962–2013 inclusive derived from the Table of Net Outward Investment by Area and Main Country in each of BM 1968 to BM 2013 inclusive. The same adjustment for investment in the oil sector prior to 1983 is made as with Figure 28.ii.

Figure 28.vii: Annual share of direct investment by the UK, 1958–2013

Data derived as for Figure 28.vi. The same adjustment for negative investment values has been made as for Figure 28.iii.

Figure 28.viii: Direct investment by the UK by sector: EU countries 1967–2013

Data derived from the table “Net outward investment analysed by industrial activity of United Kingdom affiliates and by area and main country” in each of BM 1968 to BM 2013 inclusive. The sectors in each edition of BM differ over time and have been grouped into the categories in the table for consistency. The shares have been calculated using the same adjustment for negative (disinvestment) figures discussed for Figure 28.iii.

Figure 28.ix: Direct investment by the UK by sector: Non-EU countries 1967–2013

Data derived as for Figure 28.viii.

Figure 28.x: Overall direct investment as a proportion of UK GDP, 1958–2013

Data represents the value for each year in Figure 28.ii minus the equivalent value in Figure 28.vi, with one modification. Disinvestment in one direction (a negative value for net direct investment) is not the same as positive investment in the other direction. To avoid giving an incorrect result, therefore, any instance of disinvestment for any capital flow in either Figure 28.ii or Figure 28.vi is treated as a zero flow in compiling Figure 28.x. The chart therefore leaves out of account the flow of funds received or paid in the form of disinvestment.

29 How the cost of regulation could be cut

Regulations	743	29.3 The UK could seek to repeal existing laws after it leaves the EU	748
Directives	743		
Decisions	743	29.4 The UK could introduce a whole new regulatory system, within limits	753
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The amount of regulation produced by the European institutions each year is one of the most contentious elements of Britain's EU membership. Fear of the spectre of 'EU red tape' has gone beyond the confines of Westminster and entered the public consciousness, articulated in TV shows like *Yes Minister* and even children's comics like *The Dandy*.⁹¹ Today, across the Union, business groups oppose the EU's tendency to introduce ever more regulation. The EU's regulatory burden has in fact been a source of concern for many years, in 2007, the businessman Lord Wolfson and Conservative MP John Redwood both warned:⁹²

*The EU... is in regulatory overdrive. There are now 170,000 pages of live legislation on the EU's books... the amount of current EU legislation would stretch for 31.7 miles in printed form, taking someone more than four hours to run its length. Commissioner Verheugen reckons the cost at 5.5 per cent of EU GDP, a huge €600bn (£400bn) of cost on business. It means that EU based businesses have to race against China, India and the USA sandbagged by forty-five stones (285 kg) of law code.*⁹³

The EU derives its ability to introduce so many rules from both specific Treaty powers and the central philosophy of the EU's Treaties, which commits the EU to the creation "of an ever closer union among the European peoples" by "progressively approximating the economic policies of member states."⁹⁴ This means that legislation once introduced is inherently difficult to repeal. It becomes "acquis communautaire", and as such a foundation for further and deeper EU law-making. It is extremely hard for even the EU to block existing laws or proposals, as the Commission Vice President Frans Timmermans found when he was overruled on his plans to block plastic bag regulation.⁹⁵

Leaving the EU could, potentially, offer an opportunity to repeal a number of burdensome laws, though there are practical limits as to how far any deregulation drive could go.

The current supremacy of EU law over national laws and customs is well established. In 1962, in its judgment on the case of *Van Gend en Loos*, the European Court of Justice (ECJ) declared that: "*The Community constitutes a new legal order... for the benefit of which the [member] states have limited their Sovereign rights.*"⁹⁶ The supremacy of EU law in the UK was firmly established in *R (Factortame Ltd) v Secretary of State for Transport*. This lengthy legal case, brought by the British Government against a Spanish fishing firm, saw the ECJ rule that a British law, the Merchant Shipping Act 1988, was incompatible with EU law and had to be amended. The House of Lords then confirmed that EU law

How much does EU regulation cost?

Estimates of EU regulatory costs vary massively, but the Commission has indiscreetly provided pointers. Peter Mandelson's reported comments in 2004 imply a UK cost of £75bn today. Those by Gunter Verheugen, also a Commissioner, suggest £61bn. However, it is not clear how much could be cut given international agreements and EU TBTs. The Commission itself has calculated €150bn of all EU red tape costs were redeemable (but has done little to repeal them). Even these cautious estimates though suggest £15bn potential savings for the UK. More recent estimates by Open Europe put the recurring figure at £33.3bn (gross).

91 *Yes Minister* featured an EU directive that renamed sausages as 'Emulsified High-Fat Offal Tubes'. *The Dandy's* criticism came in the form of a Bananaman comic strip which featured the titular superhero having his bananas confiscated under the terms of the 'bendy banana directive'.

92 EurActiv "Gender equality and environment laws on business lobby hit list" (21 November 2014), accessed 13/05/2015 at: <www.euractiv.com/sections/social-europe-jobs/gender-equality-and-environment-laws-business-lobby-hit-list-310236>.

93 "Freeing Britain to compete", S.Wolfson & J. Redwood (2007), page 53.

94 Treaty Establishing the European Economic Community, preamble and Article 2.

95 EurActiv "Timmermans overruled on plastic bag deal" (21 November 2014), accessed 13/05/2015 at: <www.euractiv.com/sections/sustainable-dev/timmermans-overruled-plastic-bags-deal-310152?utm_source=EurActiv+Newsletter&utm_campaign=ec3c19a51b-newsletter_daily_update&utm_medium=email&utm_term=0_bab5f0ea4e-ec3c19a51b-245774101>.

96 *Van Gend en Loos v Nederlandse Administratie der Belastingen* (1963) Case 26/62.

“This is very concerning for those who are worried about British sovereignty.”

was supreme over national law in areas where the EU has competence, as set out in the Treaties. During the judgment, Lord Bridge stated that it has *“always been clear that it was the duty of a United Kingdom court when delivering final judgment, to override any rule of national law found to be in conflict with any directly enforceable rule of Community law.”*⁹⁷

This is very concerning for those who are worried about British sovereignty, as eloquently put by the highly respected judge Lord Denning in 1990:

*“Our sovereignty has been taken away by the European Court of Justice... Our courts must no longer enforce our national laws. They must enforce Community law... No longer is European law an incoming tide flowing up the estuaries of England. It is now like a tidal wave bringing down our sea walls and flowing inland over our fields and houses – to the dismay of all.”*⁹⁸

There are different types of EU law that the UK would need to reconsider after it leaves the EU. The EU describes these laws in the following way:

Regulations

A ‘regulation’ is a binding legislative act. It must be applied in its entirety across the EU. For example, when the EU wanted to protect the names of agricultural products coming from certain areas such as Parma ham, the Council adopted a regulation.

Directives

A ‘directive’ is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to decide how. This was the case with the Working Time Directive, which stipulates that too much overtime work is illegal. The directive sets out minimum rest periods and a maximum number of working hours, but it is up to each country to devise its own laws on how to implement this.

Decisions

A ‘decision’ is binding on those to whom it is addressed (e.g. an EU country or an individual company) and is directly applicable. For example, when the Commission issued a decision fining software giant Microsoft for abusing its dominant market position, the decision applied to Microsoft only.

Recommendations

A ‘recommendation’ is not binding. When the Commission issued a recommendation that pay structures for financial-sector employees should not encourage excessive risk taking, this did not have any legal consequences. A recommendation allows the institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed.

Opinions

An ‘opinion’ is an instrument that allows the institutions to make a statement in a non-binding fashion, in other words without imposing any legal obligation on those to whom it is addressed. An opinion is not binding. It can be issued by the main EU Institutions (Commission, Council, Parliament), the Committee of the Regions and the European Economic and Social Committee. While laws are being made, the committees give opinions from their specific

97 “UK Public Law and European Law”, G. Anthony (Oxford, 2002), page 88.

98 Bruges Group “The European Court of Justice: Judges or Policy Makers?” (1990).

“Ultimately, the scope for repeal will depend on what sort of relationship the UK decides to have with the EU after leaving.”

regional or economic and social viewpoint. For example, the Committee of the Regions issued an opinion on how regions contribute to the EU’s energy goals.⁹⁹

How to address these different types of law poses a challenge. A future UK Government outside the EU may wish to repeal existing laws, but would have to consider the extent to which it would be able to do so within the international commitments it will remain bound by and the political climate it finds itself in. Ultimately, the scope for repeal will depend on what sort of relationship the UK decides to have with the EU after leaving.

Were the UK to join the European Economic Area (EEA), for example, it would be expected to retain many laws that are deemed to be ‘EEA relevant’, including 94 per cent of the most burdensome EU laws.¹⁰⁰ However, outside the EU (and EEA), substantial savings could be made – they would not be immediate but secured over time as individual EU laws on the statute books are reconsidered by the British Parliament and amended or repealed (EEA membership would allow for some, more limited, repeal of legislation). More importantly, by leaving the EU, the UK would gain a much greater say in the key global fora, which are setting more and more international standards and regulations.

29.1 EU regulation would have to initially be retained after the UK leaves the EU

To finalise the UK’s withdrawal from the EU, the 1972 European Communities Act would have to be repealed. While EU directives that have been transposed into UK law via Acts of Parliament and Statutory Instruments would be unaffected, EU regulations would cease to apply. These rely on section 2(1) of the European Communities Act (ECA) 1972 to have effect. EU regulations have, on occasion, been used to replace original British safeguards that were on the statute books, leaving the prospect of a serious vacuum in UK law. New domestic laws would be needed to cover potential legal gaps.

This does not, however, prevent the substantial re-enactment of regulations that are deemed to be in the UK’s interest and in the interest of business and consumers. There is precedent for copying laws from other seceding states: the Indian Constitution, for example, stipulates that *“all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority”*.¹⁰¹ Indonesia, after it gained independence from the Dutch in 1945, retained the law in force and was also willing to use pre-1945 Dutch cases as a basis for judgments (though the courts were not bound to accept these interpretations). Alternatively, the draft bill for repeal of the ECA proposed by Philip Hollobone MP included a provision that stated: *“Secondary legislation made under that Act shall continue in force unless it is subsequently amended or repealed, and any such amendments or repeals may be made by statutory instrument subject to annulment in pursuance of a resolution*

99 Definitions taken from the “Europa” website. Accessed 03/05/2015 at: <http://europa.eu/eu-law/decision-making/legal-acts/index_en.htm>.

100 Open Europe “Top 100 EU rules cost Britain £33.3bn”, accessed 01/04/2015 at: <<http://openeurope.org.uk/intelligence/britain-and-the-eu/top-100-eu-rules-cost-britain-33-3bn/>>. Some commentators have suggested that, were Britain to leave the EU and regain membership of the European Economic Area (EEA), it should seek to maintain all existing Single Market regulation. As Britain would retain full access to the Single Market, this would amount to a ‘cost neutral’ approach.

101 1949 Constitution of India, Article 372.

“Over the last few years, the EU has increasingly become merely an implementing agency, ‘gold-plating’ international rules.”

*of either House of Parliament.”*¹⁰² Such devices could ensure that regulations are not automatically repealed and could be considered on a case by case basis.

Several EU regulations make reference to an EU institution for an ongoing activity or function. This means the UK might need a specific replacement institution or a time-limited memorandum of understanding with the EU to fill the hiatus. In addition, numerous UK regulations have been introduced under section 2(2) of the ECA in order to implement directives. These regulations use the ‘Henry VIII’ powers of section 2(2) to introduce wide-ranging changes to the law, including the amendment of Acts of Parliament.¹⁰³ Via the mechanisms suggested above, these could continue to remain part of the UK’s statute books, preventing legal disruption.

29.2 The UK could reduce the burden of international regulation by taking back its seat in the key global bodies

Any future UK Government seeking to reduce the burden of regulation needs to ensure that it has a strong say over the introduction of international laws. This means having a presence on the key global bodies that set such rules, bodies in which the UK currently lacks representation – with the EU standing in Britain’s stead.

International bodies have an important role in setting international standards, providing global regulations that the EU often uses as templates for its own rules. Because the EU has agreed to incorporate many international standards, there are questions about whether the UK’s membership of the EU really benefits Britain. Over the last few years, the EU has increasingly become merely an implementing agency, ‘gold-plating’ international rules (also known as ‘quasi-legislation’). This means that there are limits to the UK’s ability to repeal some EU laws, as they are based on international standards that the UK would continue to be bound by, even outside the EU.

The UK has little say in the bodies that initially come up with these rules, with the EU taking the lead in many of these fora under the terms of Article 220 of the Treaty on the Functioning of the European Union (TFEU). This states: *“The Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialised agencies, the Council of Europe, the Organization for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development. The Union shall also maintain such relations as are appropriate with other international organisations.”*¹⁰⁴ As we see regularly across the management of competences, this has resulted in the UK being sidelined in many of the most important bodies that devise international rules.

102 A Bill to repeal the European Communities Act 1972, accessed 03/04/2015 at: <www.publications.parliament.uk/pa/bills/lbill/2014-2015/0028/15028.pdf>.

103 ‘Henry VIII’ powers are clauses in laws which allow ministers to make supplementary laws or regulations. It is named in reference to the arbitrary power of the crown before the Civil War.

104 TFEU, Article 220.

“It would be a mistake to see the EU as the ‘top table’ – today other international bodies have a more important role in framing regulations.”

It would be a mistake to see the EU as the ‘top table’ – today other international bodies have a more important role in framing regulations.¹⁰⁵ This means that, ironically, by leaving the EU and by retaking its seat in the key international bodies that come up with the initial proposals, the UK would gain more influence over the laws that the EU finally adopts and later ‘gold-plates’.

There are several bodies that the UK would remain a member of – such as the UN and its various bodies which set international statistical standards, like the United Nations Statistics Division. However, more important are the various bodies in which the UK would gain a direct voice. For example, gaining an ability to speak for itself in the World Trade Organization (WTO) will allow the UK to have a more significant role in the setting of international trade rules. The WTO’s standards not only provide a basis for the EU’s rules, but often also supplant them. Article 2.4 of the 1992 WTO Agreement on Technical Barriers to Trade (agreed during the ‘Uruguay Round’) made it clear that international standards should supplant national standards:

Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.¹⁰⁶

This effectively establishes the WTO as a superior body to the EU. Other global bodies also play a very significant role over the development of EU rules, not least the United Nations Economic Commission for Europe (UNECE). The UNECE, under the guidance of its first Executive Secretary Gunnar Myrdal, set out a clear policy of empowering the member states: *“no economic problem, indeed no important problem whatsoever, concerning sovereign governments can be solved by a majority decision in an intergovernmental organisation, but only by agreements between as many governments as are willing to consent.”¹⁰⁷*

The UNECE plays a significant role in the development of many laws. For example, the EU has ensured that rules on Advanced Emergency Braking Systems (AEBS) and Lane Departure Warning Systems (LDWS) for commercial vehicles comply with norms that were set by one of its working parties, WP.29.¹⁰⁸ The Commission has also acknowledged that, when there is a conflict between a regulation in the Official Journal and the UNECE law, *“the applicable text is determined by UNECE law only”* and that *“UNECE law... prevails over EU law.”¹⁰⁹* However, the EU *“exercises the right to vote in WP.29 on behalf of the EU and its*

105 This has been noted by several commentators, including Dr Richard North in “Flexcit”.

106 WTO Agreement on Technical Barriers to Trade, Article 2.4, accessed 20/05/2015 at: <www.wto.org/ENGLISH/res_e/booksp_e/analytic_index_e/tbt_01_e.htm#article2>. Note that the Article states that members “shall” use international standards.

107 United Nations Economic Commission for Europe “Short History of the United Nations Economic Commission for Europe”, Y. Berthelot & P. Rayment (2007), accessed at: <www.unece.org/fileadmin/DAM/publications/oes/LookingBackPeeringForward_1947-2007.pdf>.

108 European Commission “Safer vehicles through international harmonisation”, accessed 19/05/2015 at: <http://europa.eu/rapid/press-release_IP-12-1209_en.htm>.

109 European Commission “Application of UNECE Regulations and references to them in directives”, accessed 19/05/2015 at: <<http://ec.europa.eu/enterprise/sectors/automotive/documents/unece/application/>>.

[...] *member states*”, which means that the UK currently has no say in this key international forum.¹¹⁰

Leaving the EU would not compromise the UK’s membership of this organisation – on the contrary, it would give the UK the ability to speak and vote on its own accord. Even if Britain decided and was able to join the European Economic Area (EEA) after leaving the EU, it would be able to vote in WP.29. This group has been tasked with establishing “*a unique framework for globally harmonised regulations on vehicles*” via what are now called ‘UN Regulations’.¹¹¹ Many countries, and the EU, participate in this forum (see Figure 29.i) and use its standards as a basis for their own vehicle regulations.¹¹²

Figure 29.i: WP.29 member states



Source: UNECE

Another notable organisation is the UNECE Working Party on Regulatory Cooperation and Standardization Policies (WP.6), which looks at technical regulations, standardisation, conformity of technical regulations, conformity assessment, metrology, market surveillance and risk management. Again, having a voice in this body would give the UK a strong and direct say over regulatory policies that would later inform the EU’s own laws.

Beyond the UNECE, another important international organisation is the Codex Alimentarius Commission, established in early November 1961 by the Food and Agriculture Organization of the United Nations. It produces the “Codex Alimentarius”, a collection of internationally recognised standards, codes of practice, guidelines and other recommendations relating to foods, food production and food safety. All EU countries are members of the Codex Alimentarius Commission and, in 2003, the EU also joined, sharing competence with EU countries.¹¹³ The UK introduces codex judgments via EU directives and regulations. Outside the EU, the UK would be free to introduce them without any EU ‘gold-plating’.

110 European Commission, “2010 Activities of the World Forum for Harmonisation of Vehicle Regulations”, accessed 19/05/2015 at: <http://ec.europa.eu/enterprise/sectors/automotive/files/unece/sec-2011-0689_en.pdf>.

111 United Nations Economic Commission for Europe “World Forum for Harmonization of Vehicle Regulations (WP.29)”, accessed 20/05/2015 at: <www.unece.org/trans/main/wp29/meeting_docs_wp29.html>.

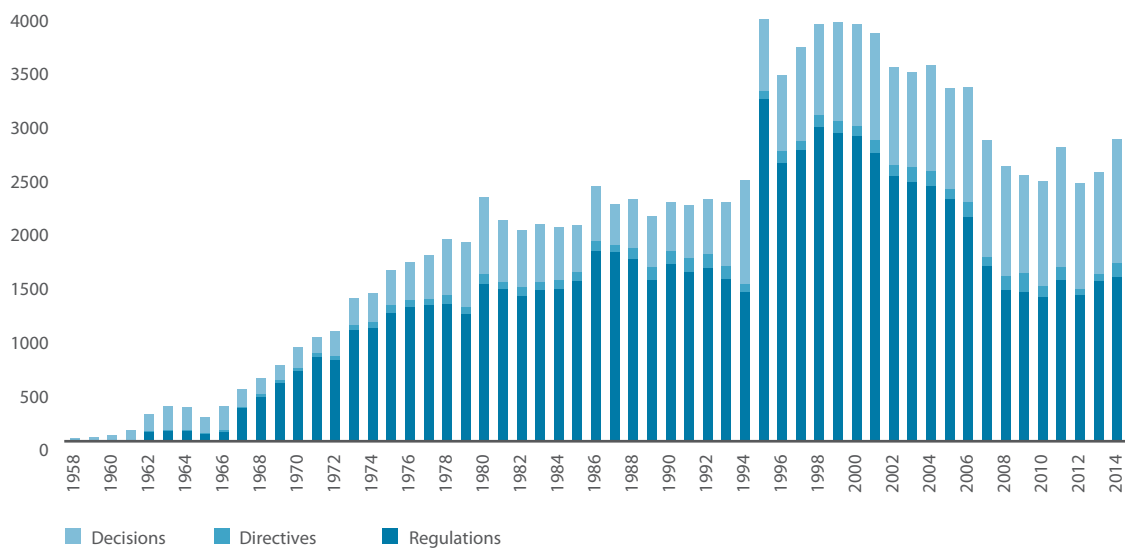
112 The EU acceded via Council Decision 97/836/EC and Council Decision 2000/125/EC.

113 Decision 2003/822/EC.

29.3 The UK could seek to repeal existing laws after it leaves the EU

EU regulation is pervasive. Evidence of how intrusive it has become can be found by consulting the *acquis communautaire*. According to Eur-Lex (the service which provides legal texts of the European Union), as of 16 June 2014, there were 16,526 documents in the *acquis communautaire*, amounting to 154,130 pages.¹¹⁴ Figure 29.ii totals the number of regulations, directives and decisions issued in each year since the foundation of the EU.¹¹⁵

Figure 29.ii: Legislative activity by the EU 1958–2014



Source: Eur-Lex¹¹⁶

It is telling that the historically-favoured method of passing laws by the EU is by introducing regulations. This legislation also tends to be cumulative in nature. Some laws may apply for transitional periods, lapse on the accession of a country, or be superseded by subsequent legislation. However, the concept of a sunset clause is alien to the European system of governance, reliant as it is on the *acquis* to maintain political momentum towards integration.

Supporters of the European Commission have argued that such figures show the total count of new rules declining since a peak in the mid-1990s. While this is, to an extent, true (though as the graph shows, there has been a moderate increase in EU laws since 2010), many questions remain about why the EU, which has been in existence for over 50 years, requires a steady flow of at least 1,500 new regulations each year. It should also be noted that, while some claim that the burden of EU regulation stems from ‘gold-plating’, this was not the view of business representatives who submitted evidence to the Government’s

114 Freedom of information request from Business for Britain to Eur-Lex. It was subsequently warned that this figure may not be completely accurate, though it gives some indication of the number of laws.

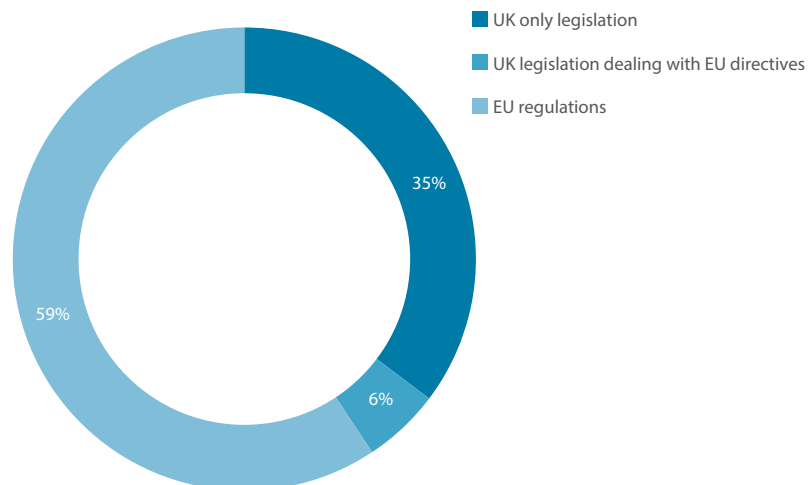
115 To some extent, this is a crude measure as it does not factor in the different impact that various directives have had. However, this information gives some indication of the level of Commission activity.

116 Data derived from Eur-Lex, the website of the Official Journal of the EU, maintained by the Publications Office, accessed at: <<http://eur-lex.europa.eu/homepage.html>>. Figures derived by entering each year in the search engine and noting the total items recorded for ‘regulation’, ‘directive’ and ‘decision’.

Balance of Competences Review, which blamed the regulations themselves for being ill-thought out.¹¹⁷

The increasing amount of EU regulation has had a significant impact on the UK and other member states. While estimates for the percentage of total regulation in the UK arising from the EU vary widely according to method, date and emphasis on impact, it can be calculated that, between 1993 and 2014, around two-thirds of laws introduced in Britain were EU-influenced (see Figure 29.iii).¹¹⁸

Figure 29.iii: The proportion of EU regulation introduced to the UK body of law 1993–2015



This is in line with other estimates: German MEP Jorgo Chatzimarkakis claimed on the record that 85 per cent of member states' laws derived from the EU.¹¹⁹ In the UK Parliament, Lord Malloch-Brown, then Minister for the Foreign and Commonwealth Office (FCO), suggested that *“around half of all UK legislation with an impact on business, charities and the voluntary sector”* comes from the Commission.¹²⁰ Similarly, Lord Triesman, then Parliamentary Under-Secretary of the FCO, told Parliament in 2005 that: *“Based on the analysis of regulatory impact assessments carried out on EU and domestic legislation, we estimate that around half of all UK legislation with an impact on business, charities or the voluntary sector emanates from the EU.”*¹²¹

While this large quantity of regulation is concerning, even more worrying is that research into the detail of parliamentary interaction with EU regulations has shown that only 743 (2.7 per cent) of the 27,911 EU documents depos-

117 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Social and Employment Policy” (2014), pages 48–49. Gold-plating has reduced since the Coalition Government introduced new rules to prevent it from happening. Before this point, gold-plating had been frequently highlighted as a significant concern (see, for example, J. Redwood and S. Wolfson (2007)).

118 Business for Britain “7% or 75%? The EU’s influence over British law: the definitive answer”, T. Philpott (2015). N.B. that this refers to laws *introduced*.

119 EUObserver (14 April 2009). This figure almost certainly derives from the 84 per cent claim of ex-President of Germany Roman Herzog, made in 2007.

120 Lords Hansard, 28/04/2009

121 Lords Hansard, 14/11/2005. For reference, there is also debate over what ‘true’ percentage of the *acquis* Norway has to implement as part of the EEA ‘living agreement’ process – anywhere from nine per cent to 75 per cent can be reasonably argued. See: “How much EU law does Norway have to adopt?”, Christopher Howarth (10 February 2015), accessed at: <<http://christopherhowarth.uk/how-much-eu-law-does-norway-have-to-adopt-9-or-75/>>.

“Many EU laws do not improve on the Single Market.”

ited in the UK Parliament between 1974 and 2013 had been debated by MPs in the House of Commons, less than a quarter of the number of documents highlighted as important by MPs (3,438).¹²²

Leaving the EU would offer the UK a unique opportunity to prevent this ‘mission creep’ by making the automatic introduction of EU regulation impossible (barring any provision made in a ‘special deal’ such as EEA membership, which would oblige the introduction of EEA specific laws). While the UK would have the power to mirror EU rules it wanted to introduce, the EU would no longer be able to force their introduction. Failing to have an equivalent regulatory system in certain sectors (notably finance) may jeopardise the UK’s access to EU markets, but it would be a decision that the UK Parliament could make.

The EU has promised numerous times to introduce deregulation, yet has repeatedly failed to deliver satisfactory results. In 2002, the Commission proposed a plan for *“simplifying and improving the regulatory environment”*.¹²³ After this scheme failed to deliver results, it introduced a new proposal for *“reducing administrative burdens in the European Union.”*¹²⁴

Under the new Vice-President Frans Timmermans, the Commission is once again examining the possibility of deregulation (it released a report in 2014 looking at possible avenues for achieving more deregulation). Though it is questionable how much deregulation could be secured based on poor past performance – previous attempts at ‘scrapping red tape’ have seen the EU merely delete items which were already obsolete either because they were “an act of temporary nature”, because they have been replaced by another text, or because the country in question then joined the EU.

Many of the EU’s laws are not even needed in the UK and simply add to the regulatory burden without providing clear benefits. Many EU laws do not improve on the Single Market, but appear to be designed to secure the philosophical objective of ‘ever closer union’. These laws are often very expensive. In one example from 2008, the EU introduced a new directive that aimed to help member states recover financial penalties for road traffic offenses by citizens of other EU member states. While this appears reasonable, the Government pointed out that the UK does not have a high proportion of non-resident traffic from other member states, making the rule largely redundant.¹²⁵

The Government concedes that the initiative has now passed to the EU. On average, since the Single European Act of 1986, each year there have been two directives issued by the EU covering social and employment policy alone.¹²⁶ Figure 29.iv is the Government’s own representation of the cumulative volume of directives currently in force in that area. (As can be seen from Figure 29.ii, directives are the smallest in number of the three categories of legislation through which the EU exerts control.)

122 Business for Britain, “Cut red tape: is the EU listening?” (2014), accessed 01/04/2015 at: <<http://forbritain.org/EURedTape14.pdf>>.

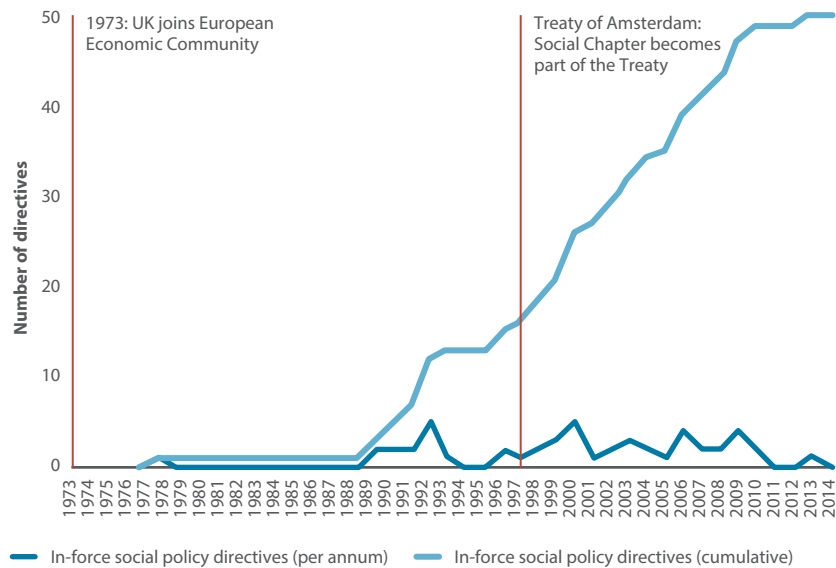
123 European Commission “Action plan for simplifying and improving the regulatory environment” (COM(2002) 278 final) (2002).

124 European Commission “Action Programme for Reducing Administrative Burdens in the European Union” (COM(2007) 23 final) (2007).

125 European Journal “Directive creates new burdens for road safety agency and UK police force” (Nov/Dec 2008), page 28.

126 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Social and Employment Policy” (2014), page 28.

Chart 29.iv: EU directives on social and employment policy currently affecting the UK¹²⁷



Source: HM Government¹²⁸

The original grounds for EU intervention lay in health and safety and, in the words of the Government, there is now “a comprehensive set of laws” in this area.¹²⁹ Indeed, there is one main directive aimed at employers, and a further 23 covering specific types of worker, specific types of risk and specific working sectors.¹³⁰ There is also now a directive that, among other things, protects musicians against the risk of being exposed to excessive noise.¹³¹ In recent years, pubs have been prevented from playing music without a licence, harming the local entertainment industry. This derived from the Licensing Act 2003, which was itself driven by the Environment Noise Directive (Directive 2002/49/EC).

Reducing this regulatory burden will have to take into consideration the role of international bodies, such as WP.29 and the Codex, as damaging EU regulations and directives may find their origin in rules from these bodies. However, leaving the EU does offer the UK the chance to implement the international obligation in its own way, reducing the risk of the EU ‘gold-plating’ international standards. This will require a case-by-case analysis, as the process for uncovering whether a British law is informed by EU rules is notoriously difficult.

Were it to decide to introduce a policy of deregulation after leaving the EU, the UK would also have to ensure that any rules it repeals do not compromise other international agreements the UK has signed up to. Europe Economics, for example, has identified a number of financial services rules that the UK – if it

127 The UK dropped out of its opt out of the social chapter in 1997, ending a key competitive advantage it had over other member states.

128 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Social and Employment Policy” (2014), page 28.

129 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Social and Employment Policy” (2014), page 30.

130 See Directive 89/391/EEC, Directive 89/391/EEC s and HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Social and Employment Policy” (2014), page 31.

131 Directive 2003/10/EC. This applied to all workers generally, coming into effect on 15 February 2006, with a further two year transitional period for the musical and entertainment industries.

“There would be considerable scope for a re-examination of existing laws and the removal of many others.”

were willing to sacrifice its market access – could repeal without compromising international rules:

- Creation of the Committee of European Securities Regulators;
- Financial Collateral Directive;
- Prospectus Directive;
- 10th Company Law Directive;
- Payment Services Directive;
- Alternative Investment Fund Managers Directive;
- ESMA Short Sale Restrictions;
- Financial Transaction Tax under Enhanced Cooperation;
- CRD IV.¹³²

Deregulation would be a complicated process. There is a large volume of law that would need to be examined, and professional expertise would be required to consider the consequences of repeal. However, despite these limitations, there is no doubt that there would be considerable scope for a re-examination of existing laws and the removal of many others. There may be advantages in establishing a department or body to specifically look at the transitional arrangements, to determine which laws will need to be retained and which could be repealed. Precedent exists in the nomination of a Cabinet Minister without portfolio in the mid-1990s to focus entirely on deregulation. Certainly, several parliamentary committees would see their workload dominated by any review of ‘optional acquis’, and three or four dedicated new ones could profitably be set up solely to audit it (perhaps based on expert and sectorally-recommended priorities).¹³³

Some commentators have called for the establishment of a Royal Commission on Regulatory Reduction, based on the USA’s Bases Realignment and Closure Commission (BRAC), which was established in 1988 and given special legal standing by the US Congress in the Defence Base Realignment and Closure Act of 1990. This Royal Commission would consider any proposed removal of an EU regulation, holding public meetings.

In their study, Lord Wolfson and John Redwood proposed a number of solutions for curbing and reducing the amount of regulation in force:

- More debate of regulatory statutory instruments in the House of Commons;
- Better use of Regulatory Impact Assessments (RIAs);
- Independent verification of RIAs;
- The removal of special regulators;
- The introduction of an annual deregulation bill.¹³⁴

Another suggestion for reviewing and replacing EU law has been put forward by Martin Howe QC:

The exercise of reviewing... EU laws and deciding what if anything to put in their place would be a substantial exercise and would have to be carried out rapidly. The best solution would be simply to press into service the existing regulation-making power under section 2(2) of the 1972 Act and extend it so that it can be used to allow existing Acts and regulations which implement EU obligations to be repealed in an orderly way or replaced as appropriate with or

132 Business for Britain “How EU Wholesale Financial Regulation Differs from what the US would Choose for Itself”, Europe Economics (2014), pages 9-13.

133 Additional analysis of ways of managing deregulation can be found in the IEA ‘Brexit’ prize entries.

134 “Freeing Britain to Compete” S. Wolfson & J. Redwood (2007), pages 55-60.

“Alternatively, there would be no reason why the UK, after leaving the EU, could not mirror the introduction of new EU regulations if it deemed them appropriate.”

without changes after exit. Thus, these sweeping ‘Henry VIII’ powers, which have been used so effectively and extensively to implement the incoming tide of EU law, would be used rapidly to unravel EU law. The advantage of using this existing well oiled machinery would be that there is an existing system for making these regulations by the appropriate government department or by the devolved legislatures where the regulations fall within the scope of their devolved powers. There are further changes to UK law which would be essential or at least desirable. The section 2(2) power should also be extended to allow EU laws to be disapplied within the UK in advance of exit if this proves necessary, for example if there were an attempt to impose damaging or discriminatory measures during the two year transition period, or where it is advantageous to dismantle EU laws and regulations before actual exit.¹³⁵

In addition, Martin Howe also makes some important recommendations for clarifying the legal position of the EU institutions upon leaving the EU:

It would be important to clarify the legal position after exit. The ECJ or EU institutions might argue that they should still have power after exit to take decisions or adjudicate on matters which happened before exit, for example by giving judgment after exit on ECJ cases which are still pending at the date of exit. Article 50, unlike withdrawal clauses in some other Treaties, does not provide for any continuing right of the ECJ or other institutions to adjudicate on events which happened before withdrawal. It would be wholly unacceptable if this were to occur and so the 1972 Act should be amended to ensure that acts of the EU institutions to adjudicate after withdrawal on events which happened before withdrawal are accorded no legal recognition in the UK.¹³⁶

Alternatively, there would be no reason why the UK, after leaving the EU, could not mirror the introduction of new EU regulations if it deemed them appropriate. This does not require any sort of ‘special deal’ and could be done unilaterally, with the UK Parliament simply passing laws that replicate EU standards. It would also be perfectly possible for the UK to arrange a special deal with the EU that saw trade-related Single Market law automatically added to the statute books, for example by joining the EEA – which would require the UK to introduce all regulation that is deemed ‘EEA relevant’.

29.4 The UK could introduce a whole new regulatory system, within limits

Much EU regulation is framed in the continental practice, which derives from the example of Roman Law, rather than from an outlook informed by the Anglo-Saxon tradition. The distinction between the two can be over-stressed, but it remains valid. As put by Lord Vinson: *“EU law is written in Roman Law under which nothing is allowed except that which is allowed. Hitherto British Law was written as Common Law under which everything is allowed except that which is not allowed.”¹³⁷*

A Westminster statute is typically highly specific, because historically the aim of Parliament has been as much to control the executive as the citizen, and it has been left to the courts to interpret the law by assembling a body of case law

135 Politea “Zero Plus”, M. Howe (2014), page 7.

136 Politea “Zero Plus”, M. Howe (2014), page 7.

137 European Journal “Regulation without rectification”, Vinson (October 2006), page 24. Scots Law follows a different legal tradition to that of England and Wales but is no more immune from the difficulties caused by EU membership.

“Leaving the EU offers the prospect of the UK Government being free to move against this trend.”

precedents. By acceding to the European Economic Community (EEC) under the terms of the 1972 Act, this traditional balance was inverted, fundamentally altering the relationship of the executive to Parliament, and creating a channel for EEC directives and regulations to flow into the UK from the Commission, unchecked by traditional parliamentary methods. In addition, EU directives both set out broad principles which are to be followed and the policy objectives of the executive, often with the executive holding considerable discretion as to how to apply the measures or implement the provision in question. It is often claimed that the Whitehall tendency to ‘gold-plate’ the EU’s directives arises from necessity of marrying these two approaches. This tendency is also likely informed by the need to guarantee watertight conformity to avoid being subsequently taken to the ECJ by the Commission for failure to fully transpose.

Even supporters of European integration have acknowledged that the EU is an exercise in top-down control:

The Community has no direct means of enforcing its authority; it has neither an army nor a police force. It has only a small administrative machine and even for this purpose it must rely to a large extent on the member states... [The] institutions of the European Union are relatively invisible, but European power is exercised through a process of surveillance in which politicians, civil servants, and citizens internalise European power and become agents of European integration.¹³⁸

This has resulted in some very unfair outcomes, such as British businesses being accused of breaking the law for using non-metric measurements. The legal basis for this central control is now contained in the Lisbon Treaty in Article 288, which states:

To exercise the Union’s competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all member states. A directive shall be binding, as to the result to be achieved, upon each member state to which it is addressed, but shall leave to the national authorities the choice of form and methods. A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them. Recommendations and opinions shall have no binding force.¹³⁹

Leaving the EU offers the prospect of the UK Government being free to move against this trend, and introduce rules that better fit the British model. However, there would be practical difficulties in repealing EU laws and introducing a new system of regulatory governance. The EU is, for now, a significant global power and its regulatory standards tend to ‘creep’ beyond its shores, adopted by other countries which may seek to establish a broadly parallel system. This is called the ‘Brussels effect’ and was identified in an academic analysis in 2012:

Europe [has a] unilateral power to regulate global markets. The European Union sets the global rules across a range of areas, such as food, chemicals, competition, and the protection of privacy. EU regulations have a tangible impact on the everyday lives of citizens around the world.¹⁴⁰

138 “Why Europe Will Run The Twenty-First Century”, Leonard (Fourth Estate, 2005), Chapter 3 ‘The Surveillance Society’, page 42.

139 Treaty on the Functioning of the European Union (Lisbon Treaty), Article 288.

140 Northwestern University Law Review “The Brussels Effect”, A. Bradford (Northwestern University School of Law 2012).

“While accepting EU regulatory standards may make sense for a few sectors, it certainly doesn’t hold true for the whole economy.”

This is similar to the ‘California effect’, whereby California, as an important economic hub within the US with very high standards, is able to effectively force other states to raise their regulatory standards as well. Companies that are based in other states, but sell in California, encourage their home states to emulate those rules, in effect importing their business costs to their in-state competitors. Clearly, this damages small businesses in the smaller state, and in the process adds costs to local consumers.

The EU has a similar effect at an international level, as noted by the CBI:

The development of EU-level rules that support the world’s largest Single Market can also bring global opportunities. First, the adoption of regulations at EU level has led to their international adoption and thus created benefits for EU firms who are then able to compete on the global stage without additional compliance costs and with the assurance of fair competition with international competitors.¹⁴¹

While this may be reassuring for exporters, the same logic does not hold for non-exporting companies that would suffer under this arrangement. While accepting EU regulatory standards may make sense for a few sectors, it certainly doesn’t hold true for the whole economy.

Moreover, there are obvious limitations to this: the time that this status quo holds true is dependent on how long the EU remains a large economy. The rise of emerging markets looks set to challenge the EU’s pre-eminence. While businesses should be free to comply within higher regulatory standards if they so wish, there is no reason for other firms to have to follow suit.

29.5 Unwanted social regulations could be reviewed

Social regulations are frequently misunderstood. Social and employment policy exist, primarily, to ensure that people have access to work. But there are many instances in which EU social laws have, ironically, created additional barriers to employment, while ECJ rulings on whether overtime should be included in holiday pay have raised the prospect of firms having to pay billions of pounds to workers, with economically ruinous results.¹⁴²

The EU long ago moved beyond the narrow confines of a Common Market into “*the social dimension of Europe*”.¹⁴³ It was inherent in the original plan of the founders of the EEC, even if it was mentioned only obliquely when Britain joined.¹⁴⁴ Starting from vague aspirations and a specific competency over health and safety at work in the Treaty of Rome, and prompted by the activism of the ECJ, successive Treaty changes have resulted in the EU having extensive jurisdiction to enforce explicit social objectives without having to justify them by reference to the needs of the Single Market.¹⁴⁵ Estimates of the cost of EU social law to the UK economy vary: in 2011, it was put at £8.6bn, up from £4.2bn in 2002.¹⁴⁶

141 CBI “Britain’s Global Future” (2014), page 70.

142 BBC News “Holiday pay ruling may affect millions of workers” (4 November 2014), accessed 20/05/2015 at: <www.bbc.co.uk/news/business-29884867>.

143 A phrase popularised by Jacques Delors when he was President of the Commission 1985–1995.

144 See Historians for Britain “Lessons from the 1975 renegotiation”, O. Lewis (2014), pages 41–43.

145 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Social and Employment Policy” (2014) pages 13–23.

146 Open Europe “Repatriating EU social law: The best choice for jobs and growth?” (2015).

“The EU’s remit over social and employment law has been a long-standing source of contention.”

The EU formally adopted a ‘Social Policy Agenda’ at the Nice Summit in December 2000 after prior discussion in Lisbon. The thinking was that this would provide a distinctive European form of modernisation and growth. According to the Commission:

- 1 *The rationale of the Commission’s communication has been articulated in the preparation of the Lisbon European Council (March 2000), which resulted in a political agreement designed to promote ‘the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion’.*
- 2 *The Commission’s new agenda aims to provide a comprehensive and coherent approach for the European Union to confront the new challenges to social policy. This new agenda stresses the essential linkage between Europe’s economic strength and its social model, and is also designed to permit positive and dynamic interaction of economic, employment and social policy.*
- 3 *It is based on a series of measures designed to reinforce social policy as a productive factor: employment and quality of work, the knowledge-based economy, the social situation in the member states, enlargement and internationalisation.*¹⁴⁷

The Agenda ran from 2000 to 2005, and then from 2005 to 2010. Some commentators at the time queried whether the extension of social rights would deliver these benefits, especially in the absence of compensating reforms elsewhere.¹⁴⁸ Less has been said about the Agenda since the onset of the Eurozone crisis.¹⁴⁹

The EU’s remit over social and employment law has been a long-standing source of contention. When he stood for leader of the Conservative Party in 2005, David Cameron made it clear that *“I think that we should have a very clear strategic imperative, which is that we need to bring back the powers over social employment and employment policy that are causing so much damage to British business.”*¹⁵⁰ In 2009 he made this point again, arguing that *“we will want to negotiate the return of Britain’s opt-out from social and employment legislation in those areas which have proved most damaging to our economy and public services, for example the aspects of the Working Time Directive which are causing real problems in the NHS and the Fire Service.”*¹⁵¹

Following the introduction of the Lisbon Treaty, the EU now has the power to combat discrimination of almost any form; to set minimum requirements for working conditions, including not just health and safety but also employment protection and consultation; to require member states to coordinate their employment strategies; and has set itself the ‘essential objective’ of delivering

147 Document COM/2000/379 Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions Social policy agenda.

148 See for example CPS “The Essential Guide to the European Union”, R. Lea (2004), especially pages 81–87.

149 The Commission no longer updates the relevant page on its website. Accessed 09/02/2015 at: <http://europa.eu/legislation_summaries/employment_and_social_policy/index_en.htm>.

150 BBC “Question Time” (11 March 2005).

151 BBC “Cameron Speech on EU” (4 November 2009), accessed 20/05/2015 at: <<http://news.bbc.co.uk/1/hi/8343145.stm>>.

“The EU acquired jurisdiction over corporate mergers by the simple expedient of passing a regulation to that effect.”

*“constant improvements of the living and working conditions of their peoples”.*¹⁵² These powers replicate duties that the UK previously had, and run in parallel with the EU’s overriding general rights under the Treaty to enforce the Four Freedoms and the Single Market, and its specific ability to police both distortions of that market through competition policy (notionally confined to areas that have an effect on cross-border trade between member states) and State Aid.¹⁵³ The EU acquired jurisdiction over corporate mergers by the simple expedient of passing a regulation to that effect.¹⁵⁴

Employment and social policy is today a shared competency between the EU and member states. As such, action at the EU level is supposedly constrained by the principles of subsidiarity (decisions should only be taken at the lowest appropriate level) and proportionality (decisions should only be taken to enforce Treaty objectives). On these grounds, ‘the Monti II’ proposals on the freedom of establishment and the freedom to provide services, and their relationship to workers’ right to strike, were rejected in 2012 after objections from a number of national parliaments. However, as the Government’s Balance of Competency Review explains, the EU has tended to proceed from a legal basis of anti-discrimination or freedom of movement in order to achieve objectives in this area.¹⁵⁵ The Commission also has the ability to use grants to national governments from the European Social Fund and European Globalisation Fund to assist in implementing EU-level employment policies.¹⁵⁶

Consider the 2006 EU Screening Report for Turkey, from 4 September 2009. Chapter 19 (of a total of 29) examines Turkey’s suitability in regard to social policy and employment. As the document acknowledges, this was a country which (at that time) wanted to join the EU and was doing everything it could: *“Turkey indicated that it can accept the acquis regarding social policy and employment. Turkey indicated that it does not expect any difficulties to implement the acquis by accession.”*¹⁵⁷ The country had a *“satisfactory level of alignment in the field of social policy and employment”*.¹⁵⁸ Nevertheless, Turkey could not, in the opinion of the inspectors, yet be admitted to the EU for the following reasons:¹⁵⁹

- Labour law as it applied to agricultural businesses with fewer than 50 employees was not stringent enough;
- The inspectors did not believe some of the country’s labour laws were constitutional;
- Further harmonisation was required on working time rules;
- Further harmonisation was required on the rules governing the posting of workers;
- Further harmonisation was required to establish works councils and enforce worker consultation;

152 Treaty on the Functioning of the European Union, Preamble and Articles 19, 145, 141, 142, 143, 144, 153, and 157.

153 Treaty on the Functioning of the European Union, Articles 101–109.

154 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Competition and Consumer Policy Report” (2014), page 17.

155 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Social and Employment Policy” (2014), page 33.

156 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Social and Employment Policy” (2014), pages 33–34.

157 European Commission “Screening Report Turkey” (2006), Chapter 19, page 2.

158 European Commission “Screening Report Turkey” (2006), Chapter 19, page 11.

159 European Commission “Screening Report Turkey” (2006), Chapter 19, pages 11–14.

- Further harmonisation was required on company law and the rules governing co-operative societies;
- There were shortcomings in the laws governing the transfer of businesses;
- The rules governing collective redundancies were inadequate;
- The rules governing individual employment conditions were inadequate;
- The rules governing child labour were inadequate;
- The Government was not employing enough civil servants and was not training them to EU standards;
- Further harmonisation was required on health and safety at work;
- Turkey's health and safety laws did not cover the public sector correctly;
- Turkey was not doing enough to raise awareness of health and safety issues or train workers about them;
- Turkey needed to employ more health and safety inspectors and improve their geographical spread;
- The Government had to do more to include 'social partners' in the work of the health and safety inspectors;
- The rules on the workplace recognition of trade unions should be relaxed;
- The rules limiting the ability of civil servants to join a trade union should be relaxed;
- The rules allowing affiliation to a trade union should be relaxed;
- The inspectors had heard 'reports' that workers had been fired because of trade union activity;
- More should be done to facilitate the right of trade unions to hold demonstrations;
- The Government should overhaul the working of the national body for consultation between state, employers and trade unions;
- The Government should reduce the number of its representatives on the national body for consultation between state, employers and trade unions;
- The Government should improve the capacity of its 'social partners' (which probably means: make them grants out of taxpayers' money);
- The labour force participation rate for women was too low;
- The unemployment rate among young people was too high;
- The Government was not doing enough to crack down on undeclared or informal working;
- The Government was not doing enough to provide skills development and adult training;
- The Government was not doing enough to 'improve public employment services at all levels';
- The Government was not doing enough to 'ensure an inclusive labour market';
- The Government should hire more planners;
- Turkish law would have to be amended to ensure proper compliance with the European Social Fund requirements;
- Turkey's administrative structure would have to be adjusted to comply with the requirements of the European Social Fund;
- More needed to be done to include 'social partners' and NGOs in discussions to establish a framework to decide what to do with grants under the European Social Fund;
- The Government was not doing enough to analyse social exclusion and poverty among vulnerable groups;
- Government statistics about social exclusion were being compiled in the wrong way;
- The Government should involve its quangos with 'stakeholder groups' to formulate a "*national integrated strategy on promoting social inclusion*";

- *The Government should create ‘community-based services’ to help the disabled;*¹⁶⁰
- The Government should improve educational access for disabled children;
- The new social security system (apparently implemented in order to satisfy the *acquis*) suffered from a “*lack of financial stability*”;¹⁶¹
- *Social security coverage is inadequate;*
- *An ageing population will require further reforms of the pension and health care system that ensure both financial sustainability and social effectiveness;*¹⁶²
- The administrative capacity of the new social security system should be upgraded (apparently this means, again, hiring more civil servants);
- The Government should establish an independent Equality Agency to oversee the new anti-discrimination laws (once more, it would seem, implemented by Turkey to satisfy the *acquis*);
- The new anti-discrimination legislation fails to mention all the categories of discrimination mentioned in EU regulations;
- The new anti-discrimination laws do not permit third party bodies to prosecute complaints on behalf of individual citizens;
- The Government should do more to raise public awareness about discrimination problems;
- The Government is not doing enough to compile statistics about discrimination;
- The new Penal Code still does not include a right to parental leave;
- The new Penal Code should include more protection for women over equal pay;
- The new Penal Code should include more protection for women over access to employment;
- The new Penal Code should include more protection for women over access to and supply of goods and services;
- The new Penal Code should include more protection for women over the burden of proof of any sex discrimination case against an employer;
- The new Penal Code should include more protection for women over dismissal from work because of pregnancy;
- The new Penal Code should reduce the over-protection of women in regard to “*night work, physically heavy work, underground and underwater work*”;
- Turkey is still allowing the sale of insurance and pension products which use different actuarial factors for men and women (i.e. ones which take morbidity statistics for men and women into account);
- Turkey is only equalising the retirement age for men and women by 2048, which is not fast enough;
- Turkey has different retirement ages for men and women in the civil service (60 and 58 respectively);
- The new sex discrimination laws do not permit third party bodies to prosecute complaints on behalf of individual citizens;
- The Turkish Government does not produce enough “gender segregated statistical indicators”;

160 This seems to be an observation that there were not many voluntary civil society organisations in Turkey equivalent to, say, Leonard Cheshire Disability or Royal MENCAP in the UK. That may be a valid point. However, the EU inspectors did not ask themselves whether, if the Government creates such organisations, they would have been examples of genuinely voluntary civil society.

161 The report was compiled in 2006, when the Eurozone’s problems were far in the future.

162 The report was compiled in 2006, when the Eurozone’s problems were far in the future.

“While there would be no political appetite for the repeal of laws which undermine workers’ rights such as paid holidays, it is likely that some amendments to the existing laws would be widely welcomed.”

- The Government should establish an independent Equality Agency to oversee the new sex discrimination laws;
- Although women’s participation in certain professions is relatively strong (approximately 30 per cent of lawyers, academics and doctors are women) there were not enough elected female politicians.¹⁶³

This, remember, is a country which the inspectors considered ‘satisfactory’. The obvious implication is that, under its current membership terms, a country like Britain, which is already complying in full with the acquis, cannot undo what has already been implemented and is having to deal with even more regulation. Leaving the EU would give the UK a powerful opportunity to reconsider the existing laws in this area. While there would be no political appetite for the repeal of laws which undermine workers’ rights such as paid holidays, it is likely that some amendments to the existing laws would be widely welcomed.

In addition, the ECJ has always been willing to take an elastic view of what constitutes a health matter or of whether something was needed on safety considerations. When the Major Government objected to the original Working Time Directive, on the grounds that it was not a health and safety issue, the ECJ rejected that challenge. Such judgments have allowed the EU to avoid a restrictive definition of ‘social policy’.¹⁶⁴ This means that, despite the directive only authorising the establishment of ‘minimum requirements’, the Commission was entitled to interpret ‘health’ and ‘safety’ as widely as it liked.¹⁶⁵ Nor was the Commission obliged to demonstrate that its proposals would actually improve health and safety, since the ECJ was not able to assess scientific evidence or even the practical merit of any measure – it could only rule on the legality of the process.¹⁶⁶

The Government is probably correct to claim that EU legislation was originally based on the UK Health and Safety At Work Act 1975, with its principle of imposing burdens on employers “*so far as is reasonably practicable*”, as the Government won a challenge in the ECJ against the Commission in 2007 over whether British law adequately reflected the higher obligations of EU legislation.¹⁶⁷ The Commission’s stance in that case was that EU law imposed absolute liability on any employer and did not leave room for any defences. While it is reassuring that not even the ECJ supported that interpretation, it does indicate the Commission’s likely attitudes when drafting the next directive. The Government concedes that the trend in EU legislation is away from the spirit of the British 1975 Act.¹⁶⁸

In the employment field, since the incorporation of the ‘Social Chapter’ into EU-wide law by the Amsterdam Treaty of 1997, British law has largely been superseded by EU law. The only freedom of action which remains to Westminster is to grant more extensive rights than those conferred already. Thus, the Acquired Rights Directive (Council Directive 77/187/EEC) grand-fa-

163 European Commission “Screening Report Turkey” (2006), Chapter 19, page 11.

164 ECJ Case C-84/94 United Kingdom v European Commission, Judgment of the Court, 12 November 1996, judgment para 12.

165 ECJ Case C-84/94 United Kingdom v European Commission, Judgment of the Court, 12 November 1996, judgment paras 15 and 17.

166 ECJ Case C-84/94 United Kingdom v European Commission, Judgment of the Court, 12 November 1996, judgment paras 23 and 39.

167 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Social and Employment Policy” (2014), page 31. See also ECJ Case C-127/05 European Commission v United Kingdom, Judgment of the Court (Third Chamber), 14 June 2007.

168 HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Social and Employment Policy” (2014) page 31.

“There is a very good chance of amending many laws, including the 100 most costly rules which, when taken together, cost a total of £33.3bn (gross) per year.”

thers employees’ terms and conditions, even though the Government accepts that it creates severe administrative difficulties for employers who want to harmonise various subsidiary businesses.¹⁶⁹

Perhaps the most notorious example of EU intrusion has been in the area of ‘positive discrimination’, where EU regulatory creep has been aided by the activism of the ECJ.¹⁷⁰ The case of *Barber v Guardian Royal Exchange* turned on the ECJ finding that pension benefits constituted a form of pay, and that therefore it was prohibited to have different terms for men and women.¹⁷¹ That forced an equalisation of the statutory retirement age in Britain. The case of *Stringer and others v HMRC* ruled that a worker’s rights to sick leave and annual leave could not be mutually exclusive. Since the purpose of EU law was to guarantee a minimum period of ‘rest’, and someone on sick leave could clearly not be enjoying a rest, it followed that an employee on indefinite leave due to illness was entitled to accrue holiday time for use after they had recovered.

Leaving the EU offers the UK a chance to retake control of social and employment law and make the UK Government and Parliament the sole arbiter on these policies. It is very unlikely that having divergent policies to the EU would significantly compromise access to EU markets (the EU has shown its willingness to open trade discussions with countries that have very different standards, notably the United States, and cooperates on health and safety issues with a number of countries).¹⁷²

29.6 Deregulation could bolster up to 95 per cent of British businesses

Just how much regulation can be repealed? The problems that would face any future deregulation drive must be appreciated, but there is a very good chance of amending many laws, including the 100 most costly rules which, when taken together, cost a total of £33.3bn (gross) per year.

The main economic argument for joining the EU as set out in the 1971 White Paper was the anticipated beneficial impact on investment and productivity:

In the light of the experience of the Six themselves, and their conviction that the creation of the Community materially contributed to their growth, and of the essential similarity of our economies, the Government are confident that membership of an enlarged Community will lead to much improved efficiency and productivity in British industry, with a higher rate of investment and a faster growth of real wages. The studies, mentioned earlier, made by the Confederation of British Industries show that this belief is shared by a substan-

169 See Council Directive 77/187/EEC on the approximation of the laws of the member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of businesses, and HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Social and Employment Policy” (2014), page 63. Grandfather rights are those old rules which continue to apply in specific circumstances, when new rules apply to all new cases. For harmonising businesses, then, it means the employees of different former subsidiaries keep their ‘grandfathered’ terms and conditions even when the subsidiaries are conglomerated, when new employees would be given a harmonised set of terms and conditions.

170 See the complaints cited in HM Government “Review of the Balance of Competences between the United Kingdom and the European Union: Social and Employment Policy” (2014) Chapter 3, pages 49–50, and para 3.46, page 52.

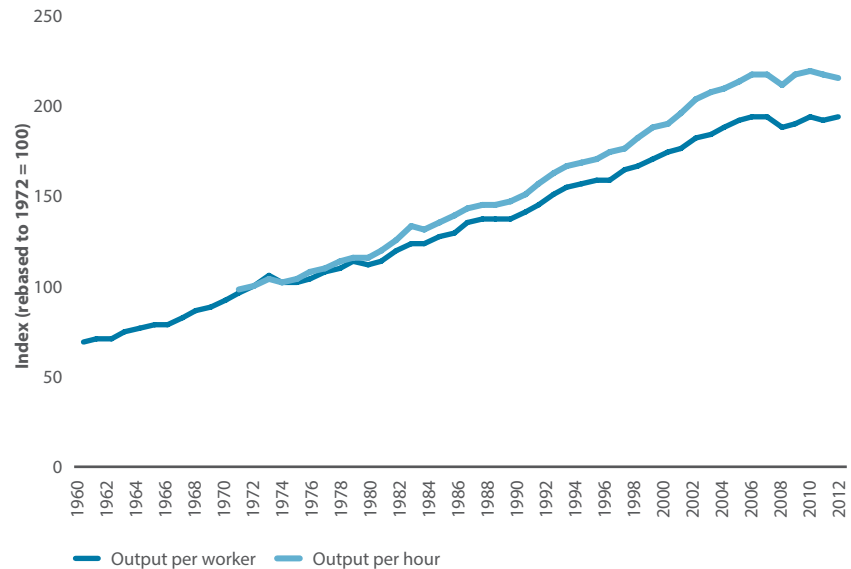
171 ECJ Case C-262/88 judgment 17 May 1990.

172 Accessed at: <www.useuosh.org/> and <www.eu-ccohs.org/>.

tial majority of British industry, whose own interests are at stake, and who are in the best position to judge.”¹⁷³

There is limited consistent data which covers the periods before and after Britain joined the EU. Figure 29.v gives indexed values for output per worker and output per hour worked (which is almost certainly how the political class of 1971 would have thought of productivity).

Figure 29.v: UK productivity 1958–2013



Source: ONS¹⁷⁴

A cursory glance at Figure 29.v might suggest that, until about the time of the financial crisis, productivity has steadily increased since the UK joined the EU. However, there was no one-off jump at the time of accession and it is not possible to identify a rise in the rate of productivity growth after Britain joined. Although the evidence is not conclusive either way, the strident views of the Government and the CBI in the 1970s about membership bolstering “*efficiency and productivity*” are clearly open to question.¹⁷⁵

But it is clear that removing EU-inspired regulation that is poorly-suited to the needs of Britain’s businesses (especially the 95 per cent who do not export to the EU) could have a significant long-term impact on productivity growth.¹⁷⁶

173 HM Government “The United Kingdom and the European Communities” (1971, Cmnd. 4715), pages 15-16.

174 Data derived from the ONS website for “Output per worker: Whole Economy, Seasonally adjusted, Index 100=2010” (series A4YM), no complete annual figures available for earlier than 1960, and for “Output per hour worked: Whole Economy, Seasonally adjusted, Index 100=2010” (series LZVB), no complete annual figures available for earlier than 1971. The measure of ‘output’ used by ONS is the inflation-adjusted Gross Value Added (GVA), i.e. the value of goods and services produced less the cost of raw materials and other inputs. For convenience, the ONS figures have been rebased to 1972 = 100 in both cases.

175 See for example speeches by members of the Bank of England Monetary Policy Committee: “The UK productivity puzzle – a sectoral perspective”, Ian McCafferty (19 June 2014); or “The UK productivity puzzle: an international perspective”, Martin Weale (8 December 2014).

176 There is also a vigorous ongoing debate about why UK productivity has been so problematic since the financial crisis, showing the potentially huge number of factors in play

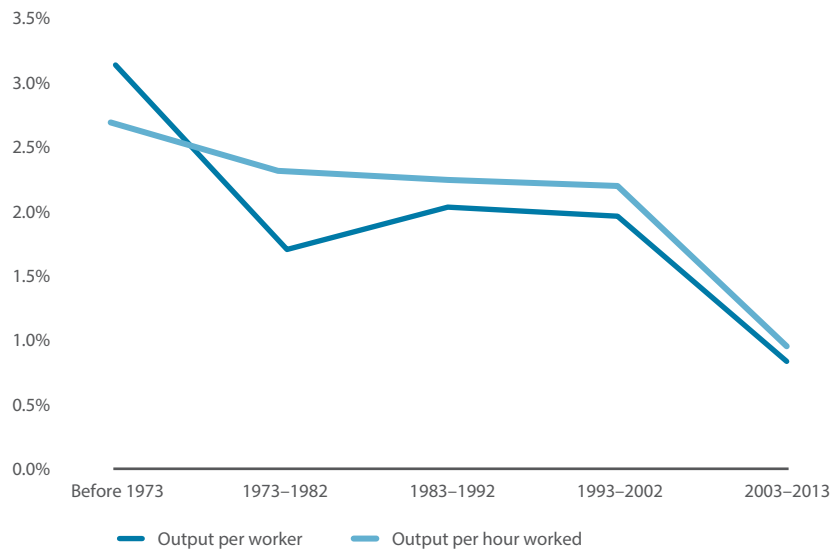
One interpretation correspondingly is that EU membership has been a non-event. There was not a massive leap in productivity after we joined in 1973. The costs of EU regulation are not immediately definable either. Aside from the drop immediately after accession, the UK has been able to maintain much of its relative competitiveness, notwithstanding attempts at EU level to harmonise.¹⁷⁷

However, a somewhat different picture emerges from studying the rate of this growth over constituent periods, as set out in Figure 29.vi. Even using the excuse of poor economic conditions in the 1970s and in recent times, the downward trend is obvious. This matters because, in the words of the ONS:

Labour productivity is the main determinant of living standards. Increasing labour productivity means a greater output of goods and services can be produced from a given set of labour inputs.¹⁷⁸

Not only has EU entry not delivered the shot in the arm the Heath Government expected, but Britain does not seem to have maintained the ‘dire’ performance of the 1960s which caused the UK to enter the EEC in the first place. The law of diminishing returns appears to be asserting itself.¹⁷⁹

Figure 29.vi: Annual compound growth in UK productivity



Source: ONS¹⁸⁰

177 See for example speeches by members of the Bank of England Monetary Policy Committee: “The UK productivity puzzle - a sectoral perspective”, Ian McCafferty (19 June 2014); or “The UK productivity puzzle: an international perspective”, Martin Weale (8 December 2014). Arguably though, competitiveness stalled just at the time that the EU regulatory role aggregated.)

178 ONS “Infographic”, accessed 09/02/2015 at: <www.ons.gov.uk/ons/rel/productivity/labour-productivity/q3-2013/info-labour-productivity.html>.

179 The implication of the figures is that a good deal of Britain’s growth in recent years has been generated by importing a lot of cheaper-than-average workers, to compensate for the slowing productivity growth of the existing workforce.

180 Data derived from the ONS website for “Output per worker: Whole Economy, Seasonally adjusted, Index 100=2010” (series A4YM), no complete annual figures available for earlier than 1960, and for “Output per hour worked: Whole Economy, Seasonally adjusted, Index 100=2010” (series LZVB), no complete annual figures available for earlier than 1971. The measure of ‘output’ used by ONS is the inflation-adjusted Gross Value Added (GVA), i.e. the value of goods and services produced less the cost of raw materials and other inputs. For convenience the ONS figures have been rebased to 1972 = 100 in both cases.

“In polls, business leaders have made it clear that they believe the cost of EU regulation outweighs the benefits of EU membership.”

The claim that ‘gold-plating’ constitutes the bulk of regulatory costs has always been somewhat simplistic. Often ‘gold-plating’ is little more than an attempt to adapt very different continental laws into the UK statute books. This was already noted in 1993 by the *Review of the Implementation and Enforcement of EC Law in the UK*:

“We have found little evidence to support the allegation that the UK deliberately adds requirements when transposing EC law. UK implementing legislation does, however, tend to go beyond the requirements of the EC directive for two main reasons. First... there is a tendency to carry over existing national provisions, wider scope and tougher penalties than in other member states ... Second, the UK legal system is based on a tradition of precise drafting which aims to eradicate doubt in contrast with the purposive approach of continental jurisprudence on which EC law and that of other member states is based.”¹⁸¹

The UK Government recognised this as an issue in the mid-1990s. By 2006, the Davidson Review suggested that *“over-implementation may not be as widespread in the UK as is sometimes claimed.”*¹⁸² That might be contested, but further efforts to tackle the amount of ‘gold-plating’ arrived in 2010 with the formation of the Coalition Government, which issued new ‘Guiding principles for EU Legislation’ (supported by detailed transposition guidance).¹⁸³

The continued need for such deregulatory measures should not be underappreciated: businesses have, consistently, said that EU regulation is very burdensome and is a key factor in holding back their growth and ability to hire people. In polls, business leaders have made it clear that they believe the cost of EU regulation outweighs the benefits of EU membership.¹⁸⁴ The Federation of Small Businesses has criticised various aspects of the EU’s aegis and its manner of producing regulation, with its members citing the Working Time Directive, Data Protection Impact Assessment, REACH, the Temporary Agency Workers Directive, the Road Worthiness Package and rules on self-employed truck drivers’ working time.¹⁸⁵ They call for exemptions for SMEs, more transparency in the rules-drafting process, clearer guidance and advice for businesses, and for legislators to consider how rules that affect big manufacturers would have knock-on consequences for businesses that rely on their specific products to trade or provide services.¹⁸⁶ Even the extremely pro-EU CBI has acknowledged that *“the impact of poorly thought out EU legislation is a major issue for businesses. In a survey of CBI members, 52 per cent of businesses said that they believed the overall burden of regulation on their business would fall if the UK were to leave the EU.”*¹⁸⁷

Several reports have provided lists of burdensome EU regulations. The Government’s “Cut EU red tape” report, as well as making 30 specific recommendations for reducing the regulatory burden on British business, also identified over 60 EU regulations and directives that, in its view, *“should be subject to further examination, in order to identify the scope for additional reductions of burdens on business”*.¹⁸⁸ These included:

181 Efficiency Scrutiny Report – a Review of the Implementation and Enforcement of EC Law in the UK.

182 HM Government “Davidson Review”, N. Davidson (2006).

183 HM Government “Guiding Principles for EU Legislation” (2013).

184 Business for Britain “Britain and the European Union: What business thinks” (2013).

185 Civitas “Softening the Blow”, J. Lindsell, (2014), page 59.

186 Civitas “Softening the Blow” J. Lindsell (2014), pages 60–63.

187 CBI “Britain’s Global Future”, page 68.

188 HM Government “Cut EU red tape: report from the business taskforce” (2013), page 53.

- 1 Animal Health Directives and proposal;
- 2 Aromatic Mineral Oils in Food Packaging – a then anticipated proposal;
- 3 Artificial Optical Radiation Directive;
- 4 Audiovisual Media Services Directive (AVMSD);
- 5 Batteries Directive and proposal;
- 6 Biocidal Products Regulation;
- 7 Biotechnology Directive;
- 8 Boatmasters – then an anticipated proposal;
- 9 Capital Requirements Directive and Regulation (CRD IV);
- 10 Chemical Agents Directive;
- 11 Common European Sales Law proposal;
- 12 Computer Screens Directive;
- 13 Cosmetic Products Regulations;
- 14 Driver Certificates of Professional Competence Directive;
- 15 Driver Licensing Directive (motorised tricycles);
- 16 eCall proposal;
- 17 E-Commerce Directive;
- 18 Emissions Trading Scheme Regulation;
- 19 Energy Efficiency Directive;
- 20 Energy Performance of Buildings Directive (Energy Performance Certificates);
- 21 E-Privacy Directive;
- 22 Equal Treatment Directive;
- 23 Ergonomics;
- 24 European Aviation Safety Agency Regulation;
- 25 European Tissue and Cells Directive;
- 26 Exclusions for Seafaring Workers proposal;
- 27 Feed Oils and Fats Regulation;
- 28 Food Information Regulation;
- 29 Food Safety;
- 30 Food Supplements Directive;
- 31 GM low level presence in food – then an anticipated proposal;
- 32 Habitats Directive;
- 33 Hygiene for Food of Animal Origin Regulation (minced meat controls);
- 34 In Vitro Diagnostic Medical Devices proposal;
- 35 Institutions for Occupational Retirement Provisions (IORPs) – an anticipated proposal;
- 36 Intrastat Reporting Directive;
- 37 Labelling of Additives in Feed Regulation;
- 38 Medical Devices Directive and proposal;
- 39 Minced Meat Labelling;
- 40 Mobile Workers on Inland Waterways Social Partner Agreement;
- 41 Network and Information Security proposal;
- 42 Nitrates Directive;
- 43 Nutrition and Health Claims Regulation;
- 44 Olive Oil Action Plan;
- 45 Packaged Retail Investment Products (PRIIPS) proposal;
- 46 Passenger Ship Safety Directive and an anticipated proposal;
- 47 Plant Health Directive and proposal;
- 48 Plant Reproductive Material Directive and proposal;
- 49 Ports Policy proposal;
- 50 Prior Informed Consent Notification Regulation;
- 51 REACH Regulation (nickel);
- 52 Reporting Formalities for Ships Directive;

- 53 Restriction of Hazardous Substances in Electrical and Electronic Equipment (RoHS) Directive;
- 54 Road Charging – then an anticipated proposal;
- 55 Roadworthiness Package of three proposals;
- 56 Roll-on/Roll-off Passenger Ship Safety – an anticipated proposal;
- 57 Sale of High Resolution Satellite Data – an anticipated proposal;
- 58 Simplification of the Re-registration of Vehicles proposal;
- 59 Solvency II Directive;
- 60 Solvent Emissions Directive;
- 61 Telecoms Package proposal;
- 62 Temporary and Mobile Construction Sites Directive;
- 63 Train Driver Licensing Directive;
- 64 Transmissible Spongiform Encephalopathy (TSE) Control Regulation;
- 65 Type Approval for Motor Vehicles Directive;
- 66 Veterinary Medicines Directive and an anticipated proposal.

In addition, the EU's own public consultation with SMEs also revealed significant discontent with current regulations.¹⁸⁹ It is particularly telling that the Commission's consultation generated such a devastating report. Individual SMEs identified the following regulations as being particularly burdensome:

- 1 Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (Regulation (EC) No 1907/2006);
- 2 Refund of value added tax to taxable persons not established in the Member State of refund but established in another Member State (Council Directive 2008/9/EC);
- 3 Common system of value added tax (Council Directive 2006/112/EC);
- 4 General product safety (Directive 2001/95/EC);
- 5 Working time directive (Directive 2003/88);
- 6 Measures to encourage improvements in the safety and health of workers at work (Council Directive 89/391/EEC);
- 7 Recognition of professional qualifications (Directive 2005/36/EC);
- 8 Packaging and packaging waste (Directive 94/62/EC);
- 9 Procedures for the award of public works contracts, public supply contracts and public service contracts (Directive 2004/18/EC);
- 10 Modernised Customs Code (Regulation (EC) No 450/2008);
- 11 Statistics relating to the trading of goods between member states (Regulation (EC) No 638/2004);
- 12 Recording equipment in road transport for driving and rest periods (Council Regulation (EEC) No 3821/85);
- 13 Safety of toys Directive (Directive 2009/48/EC);
- 14 Waste framework directive (Directive 2008/98) and List of waste (Decision 2000/532/EC);
- 15 Shipments of waste (Regulation (EC) No 1013/2006);
- 16 Unfair business-to-consumer commercial practices (Directive 2005/29/EC);
- 17 Temporary agency work (Directive 2008/104/EC);
- 18 Statistical thresholds for trade statistics between member states (Regulation (EC) No 1901/2000);
- 19 Posting of workers in the framework of the provision of services (Directive 96/71/EC);

189 European Commission "Results of the public consultation of the TOP10 most burdensome legislative acts for SMEs", accessed 20/05/2015 at: <http://ec.europa.eu/enterprise/policies/sme/files/smes/top10report-final_en.pdf>.

“The 100 most burdensome regulations, taken together, impose £33.3bn of administrative costs per year.”

- 20 Data protection (Directive 95/46/EC);
- 21 Misleading and comparative advertising (Directive 2006/114/EC);
- 22 Waste electrical and electronic equipment (WEEE) (Directive 2012/19/EU);
- 23 Machinery (Directive 2006/42/EC amending Directive 95/16/EC (recast));
- 24 European order for payment procedure (Regulation (EC) No 1896/2006);
- 25 Pharmaceuticals (Directive 2001/83/EC);
- 26 Social legislation relating to road transport (Regulation (EC) No 561/2006);
- 27 General arrangements for excise duty (Council Directive 2008/118/EC);
- 28 Implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC (Council Directive 2010/18/EU);
- 29 Restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) (Directive 2011/65/EC);
- 30 Materials and articles intended to come into contact with food (Regulation (EC) No 1935/2004);
- 31 Minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration) (Directive 2002/44/EC);
- 32 Services in the internal market (Directive 2006/123/EC);
- 33 Framework for the taxation of energy products and electricity (Directive 2003/96/EC);
- 34 Food hygiene (Regulations (EC) No 852/2004 and 853/2004);
- 35 Certain aspects of the sale of consumer goods and associated guarantees (Directive 1999/44/EC).

Finally, an analysis by Open Europe recently identified the 100 most burdensome regulations. Taken together, they impose £33.3bn of administrative costs per year. Any sensible deregulation drive should aim to tackle these most expensive laws first (a full list is provided in Appendix H).

It is important to note that £33.3bn is not the definitive figure for the cost of regulation, but gives a baseline: an indication of the savings that could be made were the UK to leave the Union and then to repeal the most expensive EU laws on the statute books. While the UK's ability to target some of these laws will be hampered by international obligations, or possibly by a future deal with the EU (if, for example, the UK subsequently decided to join the EEA, it would find itself having to accept many of these laws), this list provides a useful starting point of the main laws to consider repealing or amending.

Just under five per cent of British companies directly export to the EU (the value of UK exports to Europe equates to as much as 14 per cent of UK GDP), yet the full burden of EU regulation applies to virtually all businesses and organisations in the UK.¹⁹⁰ Leaving offers a chance to right this wrong.

Conclusion

There would be scope for substantial regulatory savings if Britain decided to leave the EU. While any regulatory changes would have to take into account the role of international bodies in setting regulations, which would potentially limit the UK's room for action in certain areas, up to £33.3bn of savings could be secured by leaving.

Such savings have to be seen as an estimate, and one at the upper threshold of what is feasible. The scope for removing regulatory costs would be determined by a number of factors, including the political circumstances in the UK (for example, it is highly unlikely that any party would seek to repeal laws that

The £33.3bn gross costs

More detail on how the gross costs can be worked out – and the problems with the net cost – are provided in Appendix H.

190 Business for Britain “Setting out the British Option” M. Elliott, O. Lewis (2014).

have protected workers' rights), and in the sort of relationship the UK secures with the EU in the future (were the UK to join the EEA, the scope for repealing laws would be substantially smaller). However, in both instances, the UK would have regained democratic control over the deregulatory drive and would have far more power to address the burdens facing British business than it does today.

30 Tariff costs on exports are manageable

30.1 Britain is over-paying for the trading benefits of EU membership	771	30.6 Transitional financial assistance for affected industries is complicated by three unknown variables	789
30.2 Being outside the EU would be manageable	773	30.6.1 Complete assistance worth £2.8bn can be provided to exporters of agricultural products	790
30.3 EU membership principally benefits the exporters of goods to a few countries	775	30.6.2 Assistance worth £2.7bn could be provided to exporters of highly affected non-agricultural products through a package of measures	793
30.4 Being outside the EU would have a different impact on different industries	777	30.6.3 Assistance worth £2bn could be targeted at other exported products	799
30.5 The Government does not have complete freedom of action in framing assistance for affected industries	785	30.6.4 There is considerable flexibility to tailor assistance measures to satisfy other policy objectives	801
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“The total extra costs which British businesses would face on their exports would be far lower than the amount Britain currently pays into the EU Budget.”

Access on favourable terms to overseas markets, whether direct to other EU member states or into third countries via a trade treaty negotiated by Brussels, is held to be a principal benefit of Britain’s membership of the EU. This Section assesses the value of that benefit compared to its cost, namely the UK’s contribution to the EU Budget. Meaningful renegotiation of Britain’s membership terms (or, for that matter, evaluation of the alternatives) cannot take place without an understanding of the value of the present relationship.

This Section assesses that value through a study of the tariff costs which British exporters would bear if they were not covered by Brussels’ trading arrangements. That position is sometimes called the ‘World Trade Organization (WTO) Option’ for Britain outside the EU. In choosing this basis for the study, we are not recommending it as a course of action. We have selected it because it represents the ‘Worst Case Scenario’ from the point of view of a supporter of the EU: trading under WTO rules only on Most Favoured Nation (MFN) terms, without the benefit of favourable trade treaty access to the EU or any other market.

The study undertakes a line-by-line analysis of Britain’s goods exports to the 27 other EU member states and to another 29 countries with which the UK had an EU-arranged trade treaty in 2013.¹⁹¹ In this way, across the full 56 countries covered by the study, a total of 128,488 sub-categories of export are matched up against a potential total of 647,553 tariff lines. The year 2013 is taken as a reference base because it provides the most recent data comparable across the full 56 countries. Further information about how the study has been conducted is given in Annex A to this Section.

Assessing the cost British exporters would have to bear if we were outside the EU is the simplest method for placing a value on what EU membership is worth. When that assessment is made, it is found that the ‘Worst Case Scenario’ is quite manageable.

If a five per cent increase in cost is considered the threshold of significance, then the ‘WTO Option’ would not be a materially adverse change for the UK economy as a whole. The study finds that the extra tariff borne by British exporters if we were outside the EU would be an average rate of 4.4 per cent, and the tariff borne on exports to the EU (the overwhelming majority of sales) only 4.3 per cent. More importantly, the total extra costs which British businesses would face on their exports would be far lower than the amount Britain currently pays into the EU Budget. We are not getting a very good deal on trade from Brussels.

Of course, an overall gain for ‘UK plc’ would still represent an aggregate outcome and there would be individual winners and losers. This Section identifies the industries which might be worse off, and by how much. Again, however, the extent of the problem is manageable. Businesses responsible for less than 15 per cent of Britain’s exports to the whole world bear nearly three-quarters of the cost, a degree of concentration that would allow targeted assistance to be delivered.

In this Section, we review the WTO rules that would regulate the provision of any ‘compensation’ a British Government might wish to give affected industries under this ‘Worst Case Scenario’.

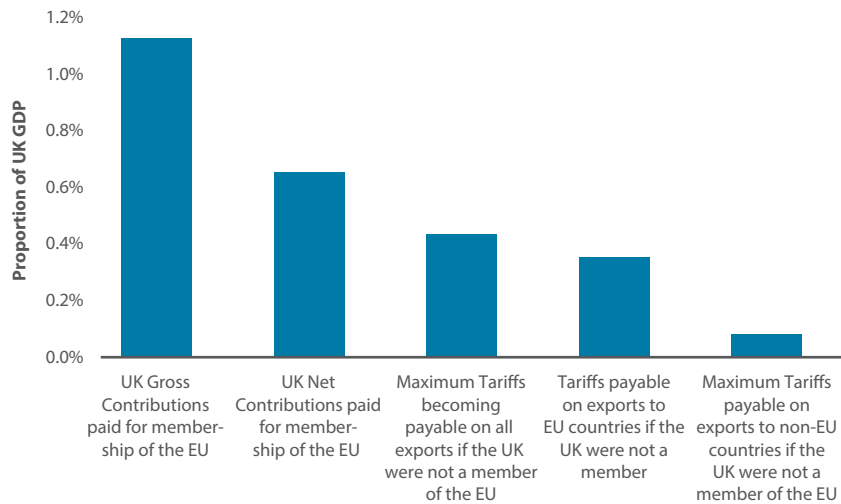
Indeed, there is ample scope to provide financial assistance for the £2.8bn of tariff costs which would affect agricultural products, and the £2bn of costs attaching to non-agricultural products are incurred at levels where assistance to the exporters would not trigger ‘serious prejudice’ of overseas competitors under WTO rules. The material tariff cost borne by 22 non-agricultural products could be ameliorated by a package of transitional measures which would place

191 Liechtenstein reports its trade data to UN COMTRADE combined with those for Switzerland, and it also follows the same tariff schedule on imports. In this Section, therefore, ‘Switzerland’ refers to Switzerland-Liechtenstein.

emphasis upon support for research and development. Thus, coping with being outside the EU could lead to a strengthening of the long-term innovative capacity of the British economy.

Being outside the EU tariff-free umbrella would not force a British government to follow either a 'neo-liberal free market' policy or take a highly interventionist, protectionist stance. The electorate would have to freedom to vote for whichever they wanted. The 'Worst Case Scenario' is quite affordable.

Figure 30.i: Costs and trade benefits of UK membership of the EU



Source: see Annex B

30.1 Britain is over-paying for the trading benefits of EU membership

Figure 30.i presents a summary of the findings of the study. Britain's contribution to the EU is compared against the costs exporters would have suffered had Britain only been able to obtain access to foreign markets in the 'Worst Case Scenario' under WTO rules in 2013. The figures are given as proportions of UK GDP in order to indicate their affordability.

The high gross contribution which Britain made to the EU in 2013 (1.13 per cent of GDP) was reduced to a net level of 0.66 per cent of GDP due to receipts. Yet this net contribution still dwarfs the burden which British exporters would have suffered (0.43 per cent of GDP) had they been forced to operate on a 'WTO only' basis. Furthermore, when the tariff cost on our exports is analysed, the overwhelming majority (0.35 per cent of GDP) is represented by exports to other EU members, a trade in which Britain runs a significant deficit.¹⁹² Favourable access to non-EU markets, likely to represent the future growth engines of the world economy, constitutes the equivalent of a rounding error, at 0.08 per cent of GDP.¹⁹³

192 See Section 2.

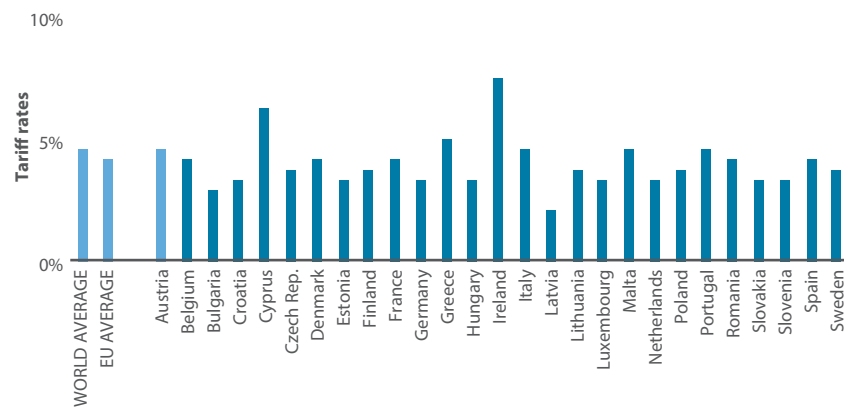
193 See Chapters 1 and 27.

In simple terms, Britain is paying £1 to the EU in order to avoid 66p of tariff costs on its exports. That does not seem to be a good deal. As discussed in Annex A, the figures in Figure 30.i represent a deliberate overestimate of the extra tariffs which British exporters would have suffered in 2013.

Importantly, 0.43 per cent of GDP, as a maximum trade cost of being outside the EU, is an extremely manageable amount to bear. It is far smaller than the amounts Britain currently pays into the EU Budget. The ‘Worst Case Scenario’ does not look quite so bad after all.

In 2013 money terms, from a gross transfer of £19.4bn, Britain paid £11.3bn net to Brussels in order to be a member of the EU.¹⁹⁴ In the ‘Worst Case Scenario’, businesses would have borne a tariff cost of at most £7.4bn on exports if the UK had been outside the EU. The obvious inference is that Britain is over-paying for its trading privileges by at least £3.9bn per annum. That is equivalent to £145.36 per household¹⁹⁵ or £82.58 for every adult in the country.¹⁹⁶

Figure 30.ii: Effective tariff rates in the ‘Worst Case Scenario’: exports to EU countries



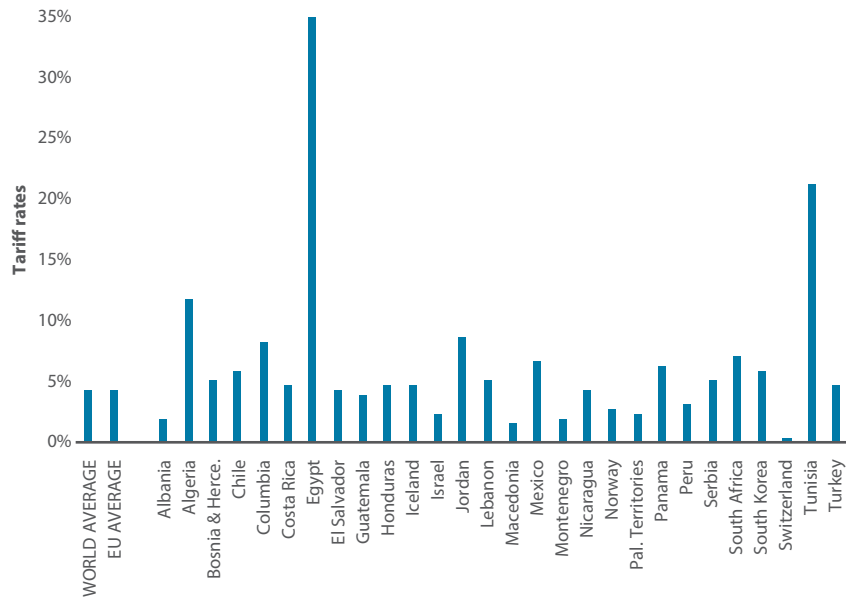
Source: see Annex B

194 These figures do not necessarily coincide with the OBR figures for British contributions to the EU. OBR estimates are concerned with transactions by the UK Exchequer. They are therefore based on the fiscal year, not the calendar year used in the Balance of Payments data, and more importantly disregard public sector receipts from EU institutions in calculating the final values of the ‘gross’ and ‘net’ contributions.

195 ONS data show that there were 26.4m households in the UK in 2013. Accessed 06/04/2015 at: <www.ons.gov.uk/ons/rel/family-demography/families-and-households/2013/stb-families.html>.

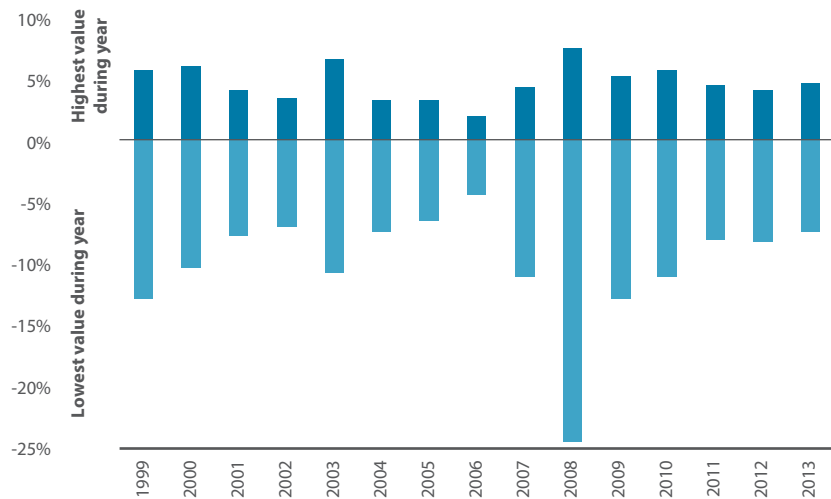
196 ONS data show that there were 46.7m people of 18 years or more at the mid-point of 2013. Accessed 16/04/2015 at: <www.ons.gov.uk/ons/dcp171778_367167.pdf>.

Figure 30.iii: Effective tariff rates in the 'Worst Case Scenario': exports to non-EU countries



Source: see Annex B

Figure 30.iv: Exchange rate fluctuations sterling-euro 1999–2013



Source: see Annex B

30.2 Being outside the EU would be manageable

Figure 30.ii shows the average tariff that would have been borne on goods exports to other EU members in 2013, and Figure 30.iii gives the equivalent position for non-EU countries. For ease of comparison, the two charts are presented to the same scale.

At first sight, these burdens appear to be manageable. Very few of the countries would have an effective tariff of more than 5 per cent. Both the average tariff on exports to all 56 countries, at 4.4 per cent, and the even lower average for exports to the EU-28, of 4.3 per cent (which comprises the vast majority of the goods in question), fall below our threshold of significance.

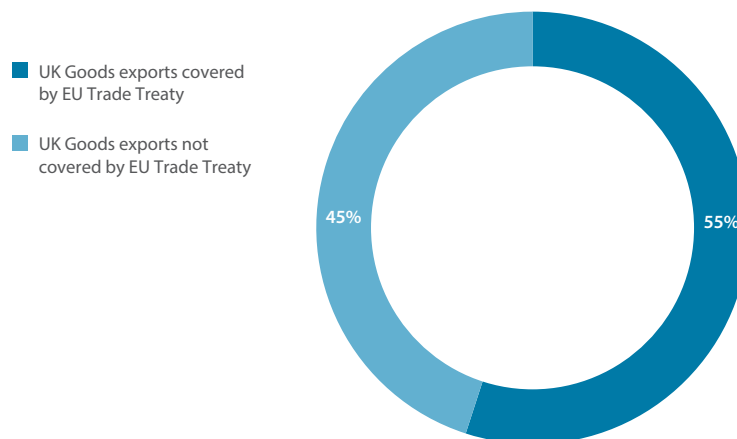
Exports to some non-EU countries (Figure 30.iii) would face steep tariffs. But these Middle Eastern and North African countries are not major export markets for Britain anyway. The only market where there might be cause for concern is Ireland, where our exports would suffer an effective tariff of 7.2 per cent. Problems arising from that outcome would be addressed through measures to assist the particular export industries affected.

It is worth recalling that, during 2013, the exchange rate between sterling and the US dollar at its highest and lowest points varied from the average by about 5 per cent either side. Yet British businesses were able to deal with a 10 per cent variation in their dollar cost, alongside the American tariff system, and make the USA the largest single destination for exports. With an average tariff of around 4 per cent, being outside the EU would not create an insurmountable burden.

Supporters of the EU are keen to stress that it represents Britain's most important market. This would suggest that the exchange rate between sterling and the euro is of critical importance to the value of British exports. Figure 30.iv gives the variation from the annual average of the highest and lowest values of that exchange rate between 1999 (the year the euro was launched) and 2013 (the base year for the study). There was a fluctuation either upwards or downwards from the average exchange rate of more than 5 per cent in all but one year: 2006.

So even in the Single Market, British exporters are already coping with a factor that has a far more material impact on their pricing than the average tariffs they might face under the 'Worst Case Scenario'.¹⁹⁷

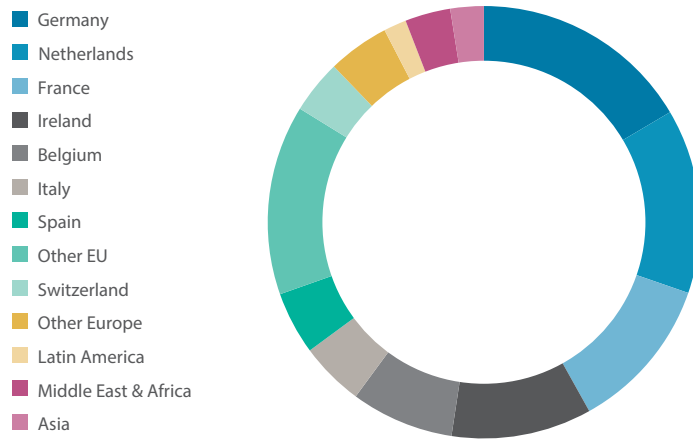
Figure 30.v: Exports of goods from the UK



Source: see Annex B

197 The impact of fluctuating exchange rates was, of course, an argument advanced by supporters of the EU as to why Britain ought to adopt the euro. That argument has been heard less frequently in recent years.

Figure 30.vi: Destination of the exports covered by the Tariff Study



Source: see Annex B

30.3 EU membership principally benefits the exporters of goods to a few countries

We have already examined the claim that the EU is the destination of ‘about 50 per cent’ of Britain’s exports of goods.¹⁹⁸ However, the addition of a further 29 trade treaty partners as negotiated by the EU does not greatly increase the proportion of such exports which benefit from favourable trade terms. Figure 30.v shows the proportion of goods exports that are covered by EU trade treaties and those that are not. Only 55 per cent of British goods exports are covered by Brussels’ trading arrangements, which is not much more than we export to other member states anyway (46 per cent).

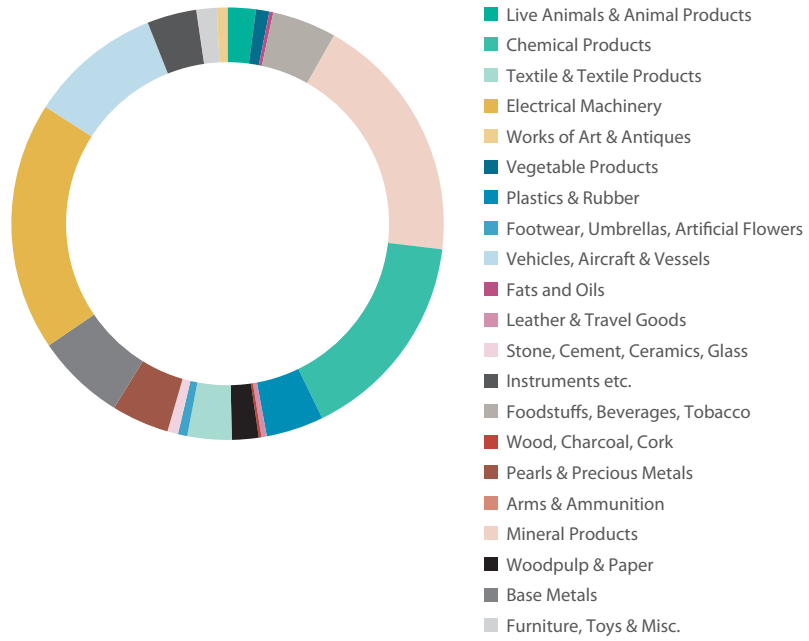
Figure 30.vi gives a further breakdown of the destinations of the exports covered in the study. Not only do 83.7 per cent of the ‘favoured’ exports go to EU members, a majority of the sales are made to just four countries (Germany, Netherlands, France and Ireland).

These findings reinforce the argument that EU membership does not add much value beyond trading with other member states.¹⁹⁹ The implication is that, if Britain were to leave the EU, a single trade agreement between the UK and Brussels could replicate much the same benefits we currently enjoy as a member (although how adequate a replacement such an agreement would be depends upon its precise terms).

198 See Section 2

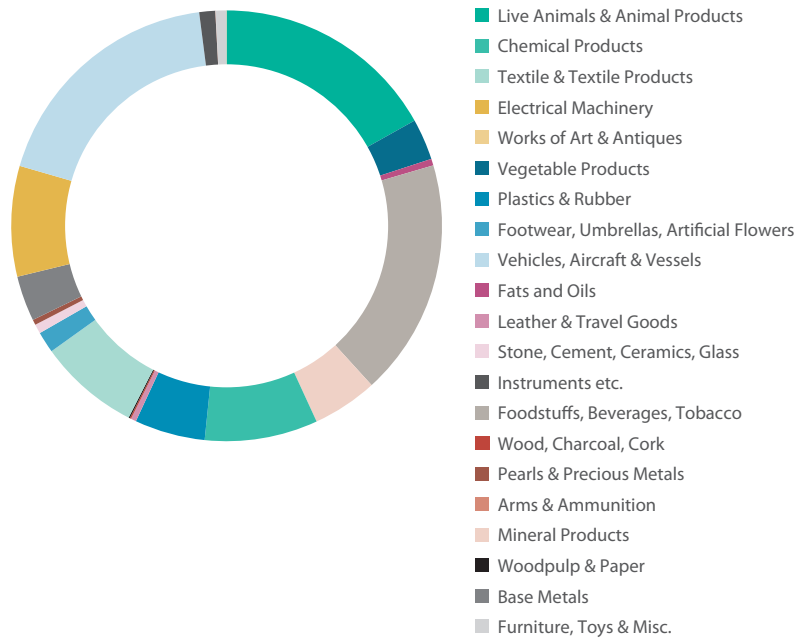
199 See Section 2

Figure 30.vii: Composition by value of the goods covered by EU Trade Treaties



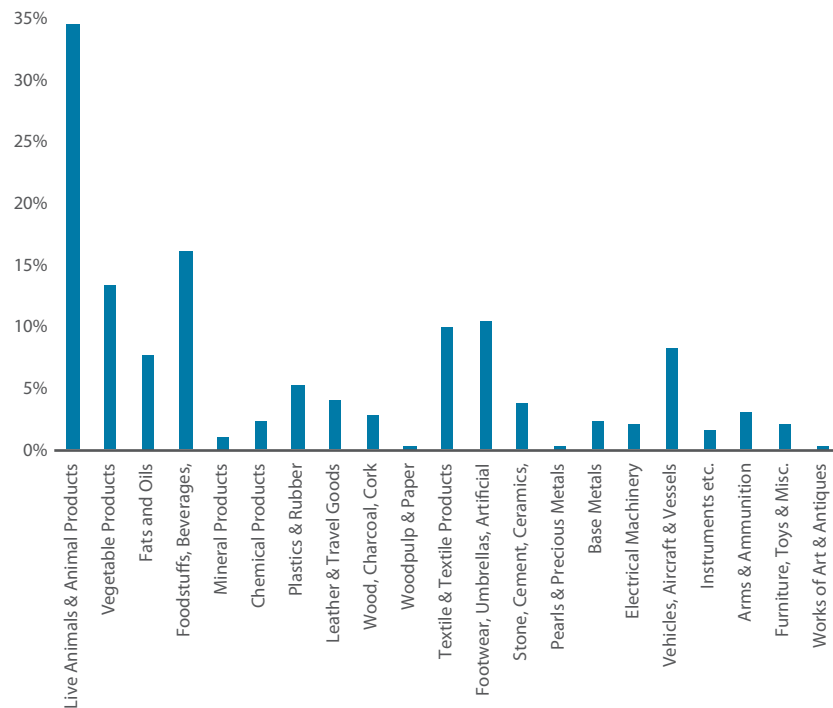
Source: see Annex B

Figure 30.viii: Share of the tariff cost in the 'Worst Case Scenario' by category of export



Source: see Annex B

Figure 30.ix: Effective tariff rates on UK exports by category in the 'Worst Case Scenario'



Source: see Annex B

30.4 Being outside the EU would have a different impact on different industries

Although the aggregate cost of being outside the EU appears manageable for the UK economy as a whole, this should not obscure the fact that this cost would not be borne equally by all of our export industries.

Figure 30.vii analyses the exports to the 56 countries by reference to the 21 major categories into which the WTO divides world trade (and which are explained more fully in Annex B). Figure 30.viii gives the equivalent shares of the tariff costs for each sector. These results are combined and given further context by Figure 30.ix, which gives the effective tariffs which each sector would bear on exports to the 56 countries. For ease of comparison, Figure 30.ix is presented to the same scale as Figures 4.4.ii and 4.4.iii earlier.

The largest groups of exports by value within the study are 'Mineral Products' at 18.7 per cent of the total; 'Electrical Machinery' at 18.6 per cent; and 'Chemical Products' at 15.9 per cent. Under the 'Worst Case Scenario', by contrast, the largest shares of the cost would fall on 'Vehicles, Aircraft & Vessels' (18.5 per cent); 'Foodstuffs, Beverages & Tobacco' (17.8 per cent); and 'Live Animals & Animal Products' (16.9 per cent).

Some sectors would obviously suffer higher tariffs than others, and it is not at all surprising that the agricultural sectors would be hit heavily, given the general tendency for countries to try to protect their domestic food production. Figure 30.ix offers some reassurance that roughly two-thirds of sectors (13 out of 21 WTO sectors) would receive tariffs below our 5 per cent threshold of significance. (In addition to being a fair measure of whether the impact is significant, 5 per cent is also important in the context of WTO rules, as discussed later).

The categories used by the WTO are broad, aggregating whole industries that we usually consider as distinct. Table 30.x therefore provides results based on

the 'chapters' of goods that comprise its 21 main 'sections'. This lists the specific industries that would be subject to a tariff of over 5 per cent under the 'Worst Case Scenario' and estimates the total cost to those industries.

Table 30.x: Effective tariffs incurred by specific industries in the 'Worst Case Scenario'

WTO Chapter	Industry	Example	Effective Tariff	Share of exports in study	Industry Cost in £m
02	Meat and Edible Meat Offal	Beef and Lamb	49.6%	0.8%	649
04	Dairy produce; bird's eggs; natural honey; edible products of animal origin not otherwise specified	Milk and Cheese	48.5%	0.6%	513
24	Tobacco and manufactured tobacco substitutes	Cigarettes	44.4%	0.1%	98
16	Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	Sausages and Fish fingers	43.3%	0.2%	136
11	Products of the milling industry; malt; starches; inulin; wheat gluten	Flour	37.7%	0.1%	80
23	Residues and waste from the food industries; prepared animal fodder		34.8%	0.4%	265
10	Cereals		28.6%	0.2%	78
17	Sugars and sugar confectionery	Sweets	28.3%	0.2%	84
20	Preparations of vegetables, fruit, nuts or other parts of plants	Jam	18.4%	0.2%	55
18	Cocoa and cocoa preparations	Chocolate	17.1%	0.3%	84
19	Preparations of cereals, flour, starch or milk; pastry cooks' products	Bread and Biscuits	15.0%	0.6%	164
61	Articles of apparel and clothing accessories, knitted or crocheted	Sweaters	11.8%	1.0%	201
62	Articles of apparel and clothing accessories, not knitted or crocheted	Shirts	11.6%	1.1%	225
64	Footwear, gaiters and the like; parts of such articles	Shoes	11.3%	0.6%	118
21	Miscellaneous edible preparations	Ice cream	10.7%	0.7%	120
03	Fish and Crustaceans, Molluscs and other aquatic invertebrates	Fresh fish	9.1%	0.5%	84
22	Beverages, spirits and vinegar	Beer and Whisky	8.8%	2.1%	316
87	Vehicles other than Railway and Tramway rolling stock, and parts and accessories	Motor cars	8.5%	9.5%	1,362
60	Knitted or crocheted fabrics		8.2%	0.0%	5
06	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	Horticulture	8.1%	0.0%	5

WTO Chapter	Industry	Example	Effective Tariff	Share of exports in study	Industry Cost in £m
57	Carpets and other textile floor coverings		8.1%	0.1%	14
63	Other made-up textile articles; sets; worn clothing and worn textile articles; rags	Linen and Blankets	8.1%	0.2%	32
52	Cotton		8.0%	0.0%	6
07	Edible vegetables and certain roots and tubers	Potatoes	7.9%	0.2%	24
15	Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	Margarine and Lard	7.7%	0.3%	36
58	Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	Lace	7.5%	0.1%	7
53	Other vegetable textile fabrics; paper yarn and woven fabrics of paper yarn	Flax	7.3%	0.0%	1
54	Man-made filaments; strip and the like of man-made textile material	Synthetic yarn	7.1%	0.1%	17
08	Edible fruit and nuts; peel of citrus fruit or melons	Apples	6.9%	0.1%	14
59	Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use	Linoleum	6.9%	0.2%	20
35	Albuminoid substances; modified starches; glues; enzymes	Enzymes and Gelatin	6.8%	0.1%	14
55	Man-made staple fibres	Synthetic fabrics	6.8%	0.1%	16
69	Ceramic products	Bricks and Crockery	6.4%	0.1%	16
50	Silk		6.3%	0.0%	1
09	Coffee, tea, maté and spices	Beverages	6.3%	0.2%	16
36	Explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations	Fireworks	6.2%	0.0%	2
39	Plastics and articles thereof		5.9%	3.4%	345
37	Photographic or cinematographic goods		5.9%	0.2%	22
32	Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	Paint	5.8%	1.0%	103
76	Aluminium and articles thereof		5.5%	0.8%	71
31	Fertilisers		5.1%	0.0%	4
TOTAL				26.8%	5,423

Source: see Annex B

“55 out of the 96 WTO industry categories would not be hit by a material tariff of more than 5 per cent.”

Table 30.x is reassuring to the extent that 55 out of the 96 WTO industry categories would not be hit by a material tariff of more than 5 per cent. Furthermore, the 41 industries which are included in Table 30.x are responsible between them for only slightly above a quarter (26.8 per cent) of all of the exports covered by the tariff study. That is equivalent to only 14.8 per cent of all of Britain’s exports of goods for 2013, and an even smaller proportion of all exports once services are taken into consideration. The adverse effects of the ‘Worst Case Scenario’ would be quite narrow.

However, the 41 industries in Table 30.x would also bear 73 per cent of the total tariff costs on all exports within the study. So the ‘Worst Case Scenario’ might be narrow in its effects, but where it hits it will hit heavily. That concentration will also mean that it will be possible to target assistance to help businesses over any transitional period. Without trying to minimise the problems that might arise for an individual company, many of the absolute cost figures for each industry in Table 30.x are comparatively small, especially in the context of the potential £3.9bn in savings which the study has identified.

Clearly, some sectors could be hit disproportionately hard by Britain being outside the EU. The impact of tariffs is not necessarily the same as the headline tariff rate. A business which has been used to exporting to the EU for 40 years under the freedom of movement of goods could find even a mild tariff to be an onerous disruption. A sector which provides 1 per cent of the exports but bears 5 per cent of the costs is going to feel more of a pinch than, say, a sector which provides 99 per cent of the exports but ends up bearing only 95 per cent of the tariffs.

Table 30.xi supplements the headline tariff figures in Figure 30.ix and Table 30.x with a measure of the ‘shock value’ for businesses in each sector that the ‘Worst Case Scenario’ would involve. These figures represent the ratio between a sector’s share of the extra tariff costs and its share of the total exports. A score of 100 indicates that a sector bears the same share of the total cost as its share of the total exports, i.e. that it would bear its ‘fair share’ under the ‘Worst Case Scenario’. A score below 100 indicates that a sector would be treated relatively mildly. The larger the index value, the more heavily the sector is being affected.

Table 30.xi: Index of proportionate cost burden of tariffs borne in the ‘Worst Case Scenario’

WTO Category of Export	Index
Live Animals & Animal Products	785
Foodstuffs, Beverages, Tobacco	369
Vegetable Products	306
Footwear, Umbrellas, Artificial Flowers	239
Textile & Textile Products	229
Vehicles, Aircraft & Vessels	187
Fats and Oils	175
Plastics & Rubber	122
Leather & Travel Goods	91
Stone, Cement, Ceramics, Glass	87
Arms & Ammunition	71
Wood, Charcoal, Cork	64
Chemical Products	53

WTO Category of Export	Index
Base Metals	52
Furniture, Toys & Misc.	51
Electrical Machinery	45
Instruments etc.	33
Mineral Products	26
Pearls & Precious Metals	8
Woodpulp & Paper	6
Works of Art & Antiques	2

Source: see Annex B

The figures in Table 30.xi are a reasonable guide to the financial hardship which a sector would feel under the 'Worst Case Scenario'. Above all, the index number is likely to be a reliable predictor for which sectors of Britain's economy would object most strongly to leaving the EU without negotiating a replacement trade agreement. These are the sectors on which policy-makers need to concentrate their attention when devising mechanisms for handling the fallout of any withdrawal from the EU, and they should be at the forefront of the renegotiation of our membership terms.

Table 30.xii: Index of proportionate cost burden borne by specific industries in the 'Worst Case Scenario'

WTO Chapter	Industry	Example	Index	Industry Cost in £m
02	Meat and edible meat offal	Beef and Lamb	1,133	649
04	Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included	Milk and Cheese	1,109	513
24	Tobacco and manufactured tobacco substitutes	Cigarettes	1,016	98
16	Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	Sausages and Fish fingers	990	136
11	Products of the milling industry; malt; starches; inulin; wheat gluten	Flour	861	80
23	Residues and waste from the food industries; prepared animal fodder		794	265
10	Cereals		654	78
17	Sugars and sugar confectionery	Sweets	648	84
20	Preparations of vegetables, fruit, nuts or other parts of plants	Jam	421	55
18	Cocoa and cocoa preparations	Chocolate	392	84
19	Preparations of cereals, flour, starch or milk; pastrycooks' products	Bread and Biscuits	343	164

WTO Chapter	Industry	Example	Index	Industry Cost in £m
61	Articles of apparel and clothing accessories, knitted or crocheted	Sweaters	270	201
62	Articles of apparel and clothing accessories, not knitted or crocheted	Shirts	266	225
64	Footwear, gaiters and the like; parts of such articles	Shoes	259	118
21	Miscellaneous edible preparations	Ice cream	244	120
03	Fish and crustaceans, molluscs and other aquatic invertebrates	Fresh fish	208	84
22	Beverages, spirits and vinegar	Beer and Whisky	202	316
87	Vehicles other than railway or tramway rolling stock, and parts and accessories thereof	Motor cars	194	1,362
60	Knitted or crocheted fabrics		187	5
06	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	Horticulture	186	5
57	Carpets and other textile floor coverings		185	14
63	Other madeup textile articles; sets; worn clothing and worn textile articles; rags	Linen and Blankets	184	32
52	Cotton		182	6
07	Edible vegetables and certain roots and tubers	Potatoes	181	24
15	Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	Margarine and Lard	175	36
58	Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	Lace	170	7
53	Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	Flax	166	1
54	Manmade filaments; strip and the like of manmade textile materials	Synthetic yarn	162	17
08	Edible fruit and nuts; peel of citrus fruit or melons	Apples	158	14
59	Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use	Linoleum	157	20
35	Albuminoidal substances; modified starches; glues; enzymes	Enzymes and Gelatin	156	14
55	Manmade staple fibres	Synthetic fabrics	155	16
69	Ceramic products	Bricks and Crockery	147	16
50	Silk		144	1
09	Coffee, tea, maté and spices	Beverages	143	16
36	Explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations	Fireworks	142	2

WTO Chapter	Industry	Example	Index	Industry Cost in £m
39	Plastics and articles thereof		136	345
37	Photographic or cinematographic goods		135	22
32	Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	Paint	134	103
76	Aluminium and articles thereof		126	71
31	Fertilisers		116	4
70	Glass and glassware		113	30
56	Wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	Ropes and Fishing nets	113	8
42	Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)	Handbags	110	23
46	Manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork	Basketry	110	0
66	Umbrellas, sun umbrellas, walking sticks, seatsticks, whips, ridingcrops and parts thereof	Umbrellas	109	0
81	Other base metals; cermets; articles thereof	Tungsten, manganese	103	15
51	Wool, fine or coarse animal hair; horsehair yarn and woven fabric	Woollen yarn	102	9
38	Miscellaneous chemical products	Insecticides, anti-freeze, biodiesel	102	132

Source: see Annex B

Table 30.xiii: Gross tariff cost borne by specific industries in the 'Worst Case Scenario'

WTO Chapter	Industry	Example	Effective Tariff	Industry Cost in £m
87	Vehicles other than railway or tramway rolling stock, and parts and accessories thereof	Motor cars	8.5%	1,362
02	Meat and edible meat offal	Beef and Lamb	49.6%	649
04	Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included	Milk and Cheese	48.5%	513
39	Plastics and articles thereof		5.9%	345
22	Beverages, spirits and vinegar	Beer and Whisky	8.8%	316
23	Residues and waste from the food industries; prepared animal fodder		34.8%	265

WTO Chapter	Industry	Example	Effective Tariff	Industry Cost in £m
62	Articles of apparel and clothing accessories, not knitted or crocheted	Shirts	11.6%	225
61	Articles of apparel and clothing accessories, knitted or crocheted	Sweaters	11.8%	201
19	Preparations of cereals, flour, starch or milk; pastry cooks' products	Bread and Biscuits	15.0%	164
16	Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	Sausages and Fish fingers	43.3%	136
21	Miscellaneous edible preparations	Ice cream	10.7%	120
64	Footwear, gaiters and the like; parts of such articles	Shoes	11.3%	118
32	Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	Paint	5.8%	103
24	Tobacco and manufactured tobacco substitutes	Cigarettes	44.4%	98
03	Fish and crustaceans, molluscs and other aquatic invertebrates	Fresh fish	9.1%	84
18	Cocoa and cocoa preparations	Chocolate	17.1%	84
17	Sugars and sugar confectionery	Sweets	28.3%	84
11	Products of the milling industry; malt; starches; inulin; wheat gluten	Flour	37.7%	80
10	Cereals		28.6%	78
76	Aluminium and articles thereof		5.5%	71
20	Preparations of vegetables, fruit, nuts or other parts of plants	Jam	18.4%	55
15	Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	Margarine and Lard	7.7%	36
63	Other made up textile articles; sets; worn clothing and worn textile articles; rags	Linen and Blankets	8.1%	32
07	Edible vegetables and certain roots and tubers	Potatoes	7.9%	24
37	Photographic or cinematographic goods		5.9%	22
59	Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use	Linoleum	6.9%	20
54	Manmade filaments; strip and the like of manmade textile materials	Synthetic yarn	7.1%	17
55	Manmade staple fibres	Synthetic fabrics	6.8%	16
09	Coffee, tea, maté and spices	Beverages	6.3%	16
69	Ceramic products	Bricks and Crockery	6.4%	16

WTO Chapter	Industry	Example	Effective Tariff	Industry Cost in £m
35	Albuminoidal substances; modified starches; glues; enzymes	Gelatin	6.8%	14
57	Carpets and other textile floor coverings		8.1%	14
08	Edible fruit and nuts; peel of citrus fruit or melons	Apples	6.9%	14
58	Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery		7.5%	7
52	Cotton		8.0%	6
60	Knitted or crocheted fabrics		8.2%	5
06	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage		8.1%	5
31	Fertilisers		5.1%	4
36	Explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations	Fireworks	6.2%	2
53	Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn		7.3%	1
50	Silk		6.3%	1
	TOTAL			5,423

Source: see Annex B

As with Figure 30.ix, the 21 high-level WTO sectors are too broad for useful analysis. Table 30.xii therefore analyses the position at the next level down, presenting the results for each industry with an index score of more than 100, i.e. those which could be said to be bearing more than a 'fair share' of the costs of the 'Worst Case Scenario'.

Not unexpectedly, Table 30.xii ranks industries in the same order as Table 30.xi. Compared to a zero-tariff regime, the impact of the 'Worst Case Scenario' is likely to rise in line with the tariff which an industry would suffer on its exports. However, the relative magnitudes of the scores in Table 30.xii are still instructive. The index value is also a measure of the 'return' which policy-makers can expect from any transitional measures deployed to assist the industries listed.

To round off the analysis, Table 30.xiii lists the affected industries in terms of the absolute costs which they would suffer in the 'Worst Case Scenario', where the cost exceeds the 5 per cent significance threshold. The final group of 41 industries (out of a potential pool of 96) might be considered the 'most highly affected'. This is where policy-makers will concentrate assistance. The additional tariff cost borne by these industries, at £5.4bn, is less than half of Britain's net contribution to the EU for 2013 (£11.3bn).

30.5 The Government does not have complete freedom of action in framing assistance for affected industries

In the 'Worst Case Scenario', Britain could not subsidise the affected industries to 'compensate' them for the tariffs that would become payable in other coun-

“A subsidy does not become actionable unless it is ‘specific’.”

tries without creating a risk that those countries would take ‘countervailing measures’ which reversed the impact of any subsidies. Nor would the fact that British exports became liable for tariffs entitle Britain to take retaliation itself.

The WTO Agreement on Subsidies and Countervailing Measures of 1994 (the SCM Agreement) limits both the ability of a government to subsidise its exporting industries and its ability to retaliate against the subsidies of other states. It contains more relaxed rules for developing countries, which would not apply to Britain. The terms are overridden by special provisions covering agricultural products, enshrined in the Uruguay Round Agriculture Agreement.

Under the SCM Agreement, a ‘subsidy’ is a public financial contribution (whether a grant, a direct investment, a loan guarantee, a tax incentive, or purchases and sales of goods and services by government) which confers a ‘benefit’ on an industry.²⁰⁰ ‘Benefit’ is not defined, but the Agreement does provide guidelines for quantifying the benefit which an industry receives, in the context of assessing the extent of justifiable countervailing measures by other countries. These guidelines effectively compare a government’s assistance with normal commercial practice and market rates, to see whether an industry has received a non-arm’s length benefit.²⁰¹ So a British government could not ‘compensate’, say, the motor industry by offering to buy a single vehicle for £500m.

No WTO member is permitted to operate ‘prohibited subsidies’ that are directly linked to the volume of exports or which encourage locally produced goods over imports.²⁰² So a British government could not compensate an industry facing a 10 per cent tariff in Country X by paying it a grant of 10p for every £1 of exports to that country.

‘Actionable subsidies’ are those which entitle other countries to retaliate. They cause adverse effects for another WTO member,²⁰³ either:

- injury to a domestic industry (i.e. subsidised imports undercutting the prices of local sellers, judged by reference to changes in import volumes and domestic market prices);²⁰⁴
- nullifying the effects of the GATT 1994 Agreement (i.e. creating an effective increase in the tariff on imports by subsidising the price of domestic sellers);
- ‘serious prejudice’ to another WTO member’s interests (i.e. subsidising the price of a product by more than 5 per cent; covering an industry’s operating losses; covering an individual business’ operating losses other than one-off transitional measures to avoid acute social problems; debt forgiveness and grants to cover debt repayment).²⁰⁵

However, a subsidy does not become actionable unless it is ‘specific’, i.e. targeted at designated businesses, industries or regions. If the terms of any benefit restrict it to certain industries, the subsidy is specific. But if the benefit is available according to objective, non-discretionary criteria for which any business is eligible, then it is not specific.²⁰⁶ This exclusion has been the subject of many

200 SCM Agreement 1994, Article 1.

201 SCM Agreement 1994, Article 14.

202 SCM Agreement 1994, Article 3.

203 SCM Agreement 1994, Article 5.

204 SCM Agreement 1994, Article 15.

205 SCM Agreement 1994, Article 6.

206 SCM Agreement 1994 Article 2.

“A subsidy that is sufficiently broadly available throughout an economy so as not to benefit certain enterprises is not specific.”

disputes filed with the WTO.²⁰⁷ A subsidy that is sufficiently broadly available throughout an economy so as not to benefit certain enterprises is not specific, although the WTO will always investigate the facts to check whether, in practice, it predominantly or disproportionately favours a particular group. A cut in corporation tax for all companies would not be specific,²⁰⁸ and neither would a tax allowance aimed at businesses below a certain turnover or size of workforce.

A subsidy is not offensive if it constitutes a grant for industrial research (not exceeding 75 per cent of the costs) or product development (50 per cent); if it is for regional development of disadvantaged areas; or if it is designed to support businesses adapting to new environmental regulations (not exceeding 20 per cent of the cost) – provided in each case that the programme receives prior clearance from the WTO.²⁰⁹

There are also limits to what constitutes serious prejudice. A complaining state would have to show that a measure had impeded its exports (whether to the offending country or a third country), or had led to significant price-undercutting or a consistent trend for the subsidised product to increase its world market share.²¹⁰ Serious prejudice is not created by a state monopoly deciding to switch supplier, force majeure disruptions of trade, or a failure to conform to new standards or regulatory requirements (although in the last case, the parallel WTO Agreement on Technical Barriers to Trade would prevent a country from using impossibly high standards as a disguised means of excluding exports).²¹¹

The WTO Agriculture Agreement of 1994 applies specifically to ‘agricultural products’, which is defined quite widely.²¹² It embraces everything in Section I (Live Animals & Animal Products), Section II (Vegetable Products); Section III (Animal and Vegetable Fats and Oils); and Section IV (Prepared Foodstuffs, Beverages and Spirits, and Tobacco) – but excluding fish and fish products – together with some organic compounds from Section VI (Chemical Products), such as essential oils, modified starches and glues; hides and raw furskins from Section VIII (Leather and Travel Goods); and the raw base materials of silk, wool, hair, cotton, flax and hemp from Section XI (Textile and Textile Products). A total of 33 industries, from the WTO classification scheme of 96, are included to some degree, and 19 of them are listed within Table 30.xiii as falling among the 41 British industries which would incur material extra cost under the ‘Worst Case Scenario’.

Within the agriculture regime, there is no equivalent of prohibited subsidies, although WTO members did make a binding commitment to reduce the overall level of export subsidies over an implementation period that ended in 2003. The rules distinguish between measures which are colloquially referred to via a colour coding. For a developed country such as Britain, the rules cover financial assistance in three types:

207 See for example: US – Anti-Dumping and Counter-vailing Duties (China); US – Upland Cotton; EC and certain Member States – Large Civil Aircraft; Japan – DRAMs (Korea); US – Large Civil Aircraft (2nd complaint); US – Softwood Lumber IV.

208 SCM Agreement 1994, Article 2.2: “It is understood that the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Agreement.”

209 SCM Agreement 1994, Article 8.

210 SCM Agreement 1994 Article 6.

211 See Section 2.

212 Agriculture Agreement 1994, Annex 1.

“Although strict, there is nevertheless sufficient scope for a British government to provide financial assistance.”

- The ‘Green Box’.²¹³ There is no restriction on subsidies in this category, provided that they do not have the effect of distorting trade, encouraging production or acting as price supports. They are, broadly, the counterpart of the R&D exemption for non-agricultural products: public money used for general services such as research, disease control, training, information, inspection, marketing and infrastructure; together with the accumulation of emergency food stockpiles and provision of domestic food aid to the needy (at market price, in reasonable quantities). However it also includes direct payments to producers: ‘decoupled income support’,²¹⁴ i.e. a minimum income level not linked to production amounts; ‘income safety-net programmes’,²¹⁵ i.e. compensation for annual losses within prescribed limits; relief for the effects of natural disasters, nuclear accidents and wars;²¹⁶ ‘structural adjustment assistance’ designed to encourage the retirement of producers or products or to enable investment for modernisation (again, decoupled from any production level);²¹⁷ environmental or conservation programmes;²¹⁸ and regional assistance on objective criteria with no connection to price or production levels.²¹⁹
- The ‘Amber Box’.²²⁰ This covers domestic support measures where the country is subject to a binding commitment to reduce over time the Aggregate Measurement of Support (“Total AMS”) paid to producers.²²¹ It catches anything which does not fall into either the Green Box or the Blue Box. Excluded from the calculation are ‘de minimis’ support measures which do not exceed 5 per cent of the value of a country’s annual agricultural product, whether product-specific or not. (There is also an exemption for emergency tariffs introduced under the ‘special safeguard provisions’ to protect domestic producers in the event of a sudden price collapse or surge in imports, but this is not relevant to our discussion.)²²²
- The ‘Blue Box’.²²³ These are support measures which would otherwise fall into the Amber Box. They cover payments to producers to limit production. There is no restriction on the amount of Blue Box payments on condition that they are tied to fixed areas and yields; they do not exceed 85 per cent of the base level of production, or they are made for a fixed head of livestock.

Britain participates in the WTO Agriculture Agreement through the EU and its Common Agricultural Policy (CAP). It is bound by the aggregate Amber Box limit applying to the EU as a whole.

All the restrictions described above are policed by the WTO through a system of annual reporting by members – and by members reporting each other to the WTO for any infringements. Although strict, there is nevertheless sufficient scope for a British government to provide financial assistance.

213 Agriculture Agreement 1994, Annex 2.

214 Agriculture Agreement 1994, Annex 2 para 6.

215 Agriculture Agreement 1994, Annex 2 para 7.

216 Agriculture Agreement 1994, Annex 2 para 8.

217 Agriculture Agreement 1994, Annex 2 paras 9–11.

218 Agriculture Agreement 1994, Annex 2 para 12.

219 Agriculture Agreement 1994, Annex 2 para 13.

220 Agriculture Agreement 1994, Article 6.

221 Calculated according to Agriculture Agreement 1994, Annex 3 and Annex 4.

222 Agriculture Agreement 1994, Article 5.

223 Agriculture Agreement 1994, Article 6, para 5.

“The political complexion of the British Government will affect the choice of transitional measures adopted.”

30.6 Transitional financial assistance for affected industries is complicated by three unknown variables

The costs suffered by industries under the ‘Worst Case Scenario’ could be handled quite easily. The issue of ‘compensation’, however, is complicated by three unknown variables.

The industries and costs listed in Table 30.xiii represent the ‘Worst Case Scenario’: where Britain leaves the EU and is unable to negotiate replacement access to 56 overseas markets on terms equivalent to those enjoyed in 2013. If Britain were able to retain such access, either by a renegotiation of its membership of the EU or as part of the negotiations over exit, British industries would be unlikely to suffer materially adverse costs and there would be less need to ‘compensate’ them. The prospects for avoiding the ‘Worst Case Scenario’ are far better than supporters of Brussels like to suggest.²²⁴ So in all likelihood, the question of ‘compensation’ will not arise in practice, or would be less significant depending on the actual tariffs which British exporters would face.

Furthermore, the political complexion of the British Government will affect the choice of transitional measures adopted. Different parties favour different types of government action, and that would shape how the ministers at the time decided to provide any ‘compensation’ – or, indeed, whether they decided to offer specific financial assistance at all. The Government could opt for an across-the-board cut in corporation tax rates, to assist all businesses whether they export or not, or for a cut in income tax rates to assist consumers and thereby boost the domestic economy. Alternatively, ministers might prefer to use the savings to finance large-scale infrastructure works. It is impossible to predict the Government’s stance in advance. Similarly, it cannot be known how a future government would approach reducing regulatory burdens on business after leaving the EU, which has obvious consequences for the overall extra costs suffered by specific industries.²²⁵

The final unknown quantity is what would happen to tariffs on imports into the UK. If Britain renegotiated the terms of its membership and remained inside, the answer is almost certainly ‘nothing’: the common EU tariff schedule would remain in force and imports would continue on the same terms. However, if Britain were to leave the EU, it would have to devise its own tariff schedule for third-country imports, even if any agreement over withdrawal permitted imports from the remaining EU members to enter toll-free. That will clearly affect both the financial position of British businesses and the revenues received by the Exchequer. The Government might choose to assist an industry by reducing the tariffs on one of its key material imports. Or it might raise tariffs on competing imports. The study on which this Section is based does not take these factors into account.²²⁶

224 See Section 6.

225 See Section 29.

226 It would require research equivalent to the study on which this chapter is based to derive an accurate estimate of the revenue which the UK Exchequer foregoes by not being able to levy tariffs on imports from the other EU-28 countries, or from third countries with which the UK has a trade treaty negotiated by the EU. However, a crude estimate could be obtained by reversing the findings of the study. Applying the average tariff on exports from the UK to each country derived in the study to the ONS data for the value of imports into the UK from those countries would give an indication of the scope which Britain might have to levy new tariffs if it were outside the EU. On that basis, the ‘lost tariff income’ on imports from the EU would be around £8.8bn annually and on imports from third countries would be around £1.7bn. The availability of such funds would clearly make it easier for the UK Exchequer to finance assistance for British exporters affected by any tariffs under the ‘Worst Case Scenario’. Equally, however, this raises questions of wider economic policy – and more significantly, the spectre of possible trade wars. Those matters fall outside the scope of this Section and the argument it presents.

On the assumption that the Government decided to offer direct assistance to the industries concerned, the first step is to distinguish them by reference to the WTO Agreement under which their products are regulated. This results in three categories:

- (A) 'agricultural products' (as defined);
- (B) non-agricultural products exported by highly-affected industries;
- (C) everything else.

30.6.1 Complete assistance worth £2.8bn can be provided to exporters of agricultural products

Table 30.xiv shows the British exports which fall within the WTO Agriculture Agreement and the associated costs they would face under the 'Worst Case Scenario'. Together, these industries comprise 8 per cent of the exports covered by the study, but would face 37 per cent of the tariff costs.²²⁷ This list includes all 10 industries with the highest index scores in Table 30.xii, i.e. those which are affected most disproportionately by the 'Worst Case Scenario'.

Table 30.xiv: 'Worst Case Scenario' costs for industries within the WTO Agricultural Products regime

WTO Chapter	Industry	Industry Cost in £m
01	Live animals	3
02	Meat and edible meat offal	649
04	Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included	513
05	Products of animal origin, not elsewhere specified or included	0
06	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	5
07	Edible vegetables and certain roots and tubers	24
08	Edible fruit and nuts; peel of citrus fruit or melons	14
09	Coffee, tea, maté and spices	16
10	Cereals	78
11	Products of the milling industry; malt; starches; inulin; wheat gluten	80
12	Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder	9
13	Lac; gums, resins and other vegetable saps and extracts	1
14	Vegetable plaiting materials; vegetable products not elsewhere specified or included	0
15	Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	36
16	Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	136

²²⁷ The industries comprised in the Table include costs for some fish and glue exports, but excludes some animal and textile products which would qualify as 'agricultural products'. This does not materially alter the reported totals. See Annex B for further details.

WTO Chapter	Industry	Industry Cost in £m
17	Sugars and sugar confectionery	84
18	Cocoa and cocoa preparations	84
19	Preparations of cereals, flour, starch or milk; pastry cooks' products	164
20	Preparations of vegetables, fruit, nuts or other parts of plants	55
21	Miscellaneous edible preparations	120
22	Beverages, spirits and vinegar	316
23	Residues and waste from the food industries; prepared animal fodder	265
24	Tobacco and manufactured tobacco substitutes	98
35	Albuminoidal substances; modified starches; glues; enzymes	14
	Total	2,765

Source: see Annex B

What scope would the Government have for providing assistance, and would such help fall under the Green Box, the Amber Box or the Blue Box?

When the WTO Agriculture Agreement was agreed at the close of the Uruguay Round, the then EU-12 was assigned an aggregate maximum for its permitted agricultural subsidies, its "Total AMS Commitment". Enlargement had the effect of increasing this amount by adding on the individual commitments for each new member. Table 30.xv details how the EU has reported its agricultural support to the WTO within this limit for the three most recently available years.

Table 30.xv: WTO treatment of agricultural support in the EU, 2009–10 to 2011–12

Marketing Year	2009–10	2010–11	2011–12
EU-27 Total AMS Commitment, € million	72,244.0	72,244.0	72,244.0
Amber Box measures, € million:	10,883.2	6,501.8	6,858.9
Product-specific AMS: market price support	8,089.1	4,222.8	4,458.5
Product-specific AMS: direct payments	3,399.2	2,921.4	2,747.2
Product-specific AMS: other	0.0	0.0	0.0
Product-specific equivalent AMS	198.8	49.8	-34.9
Non-product specific AMS	598.1	700.8	690.9
Less: disregard of de minimis items	-1,402.0	-1,393.0	-1,002.8
Blue Box measures, € million:	5,323.6	3,141.8	2,981.1
Payments based on fixed area and yield	3,063.9	1,136.0	977.0
Payments based on base level of production	0.0	0.0	0.0
Payments based on head of livestock	2,259.7	2,005.9	2,004.1
Green Box measures, € million:	63,798.1	68,051.5	70,976.8
Research	986.0	1,113.1	1,028.6
Pest & disease control	1,318.6	1,129.8	1,102.0
Training	225.7	246.8	261.5

Marketing Year	2009-10	2010-11	2011-12
Advisory services	779.2	773.2	817.7
Inspection services	384.2	418.7	408.1
Marketing services	1,021.1	1,053.6	1,029.8
Infrastructure	1,866.0	2,310.5	2,691.8
Other farm services	813.4	1,458.7	1,843.7
Food Security Stockpiling	27.5	25.0	1.2
Domestic Food Aid	624.8	729.9	971.1
Decoupled income support	31,481.6	32,913.1	32,756.0
Income Safety-net programmes	16.9	21.9	31.4
Disaster relief payments	1,297.6	802.7	840.8
Structural Adjustment - producer retirement	956.6	778.8	742.9
Structural Adjustment - resource retirement	306.6	349.9	330.7
Structural Adjustment - investment	6,152.5	7,134.4	7,338.5
Environmental programmes	6,553.1	7,237.9	8,302.0
Regional Assistance programmes	4,504.8	4,452.0	4,511.2
Other (Single Area Payment Scheme)	4,481.7	5,101.6	5,967.9
Total EU-27 Agricultural Spending	80,004.9	77,695.1	80,816.8
Proportion counting as WTO 'subsidies'	14%	8%	8%
Agricultural output of the EU-27, € millions	334,274.0	357,836.0	392,542.0
Agricultural output of the UK, € millions	21,729.0	23,969.0	27,001.0
UK share	7%	7%	7%
Notional UK Commitment, € millions	4,696.1	4,839.1	4,969.3
Notional UK Commitment, £ millions	4,186.1	4,154.9	4,313.4

Source: see Annex B

The EU-27 subsidy limit under WTO Rules was €72.2bn. In each of the three years detailed in Table 30.xv, the EU spent far more than this total. Yet the proportion of this expenditure which counted towards the WTO limit was never higher than 14 per cent. The effect of CAP reform has been to transfer agricultural support into the Blue and Green Boxes, apparently creating a vast unused reserve of subsidy.

A standalone UK would likely have a Total AMS limit of its own in the region of £4.3bn. The agricultural subsidies received by Britain from the EU for 2009, 2010 and 2011 were £3.4bn, £3.1bn and £3.2bn respectively.²²⁸ At first sight, that does not leave enough room for a further £2.7bn of 'compensation' for additional tariff costs on top of whatever CAP equivalent Britain would operate outside the EU. But Britain's existing CAP receipts would have been structured with the same bias towards the Blue and Green Boxes as the aggregate totals for the EU show in Table 30.xv.

The CAP is discussed in Section 13. For our purposes, it is clear that there is more than sufficient headroom for a British government to deliver £2.8bn of financial assistance for the wider agricultural products sector without infringing WTO rules. Assistance for cases such as industries 09 (coffee and tea), 18 (chocolates) and 22 (beer and whisky) delivered in the form of overseas market-

228 ONS "United Kingdom Balance of Payments 2014", Table 9.9.

“A British government would be able to fully ‘compensate’ those industries hit most disproportionately by tariffs.”

ing and promotion initiatives would be Green Box expenditures which did not constitute subsidies for WTO purposes at all. A British government could replicate the existing agricultural support for farmers under the CAP if it wished.

If Britain were to come close to using 100 per cent of its full Total AMS commitment, UK negotiators could expect to experience resistance from other WTO members over the longer term.

But the important point is that a British government would be able to fully ‘compensate’ those industries hit most disproportionately by tariffs, particularly such high-profile exports as whisky. The EU’s current practice shows that any transition to a ‘Worst Case Scenario’ for agricultural producers and manufacturers of food and drink could be managed very easily.

30.6.2 Assistance worth £2.7bn could be provided to exporters of highly affected non-agricultural products through a package of measures

Table 30.xvi lists the ‘Worst Case Scenario’ for the 22 ‘most highly affected industries’ falling outside the WTO agricultural products regime. This group is responsible for 19 per cent of the exports within the study, a far larger proportion than Category (A) (agricultural products), and suffers a smaller proportion of the tariff cost, 36 per cent.²²⁹

Although the Table lists ‘highly affected’ industries, that is only a relative judgement. In absolute terms, most of these businesses would incur quite small costs: of the 22 industries involved, a third suffer tariffs of less than £10m. Over half of the costs are also borne by a single industry: Vehicles.

The main problem facing our hypothetical Government is that there is no single silver bullet that would cover all 22 of these industries at once. Even if there were, it would fall foul of the WTO rules against ‘serious prejudice’, i.e. a subsidy exceeding 5 per cent of the value of the recipient firm’s sales,²³⁰ and which displaces another country’s sales or undercuts the prices of its products.²³¹ By definition, that applies to all of the ‘highly affected’ industries in Table 30.xvi, which have been selected because they face a tariff in excess of that level.²³² The Government would also have to implement measures which did not ‘injure the domestic industry’ of another country,²³³ or nullify or impair the benefits of WTO membership.²³⁴ All the specific subsidies that benefit a firm, whichever body delivers them, are aggregated in applying this test.²³⁵ Non-actionable subsidies, however, are ignored,²³⁶ and action cannot be taken against a non-specific subsidy.²³⁷

229 The industries in the Table include the costs of some raw textile materials which would qualify as ‘agricultural products’ and excludes foodstuffs made from aquatic products. This does not materially alter the reported totals. See Annex B.

230 SCM Agreement 1994, Article 5(c), Article 6.1(a) and Annex IV para 2.

231 SCM Agreement 1994, Article 6.3.

232 Strictly speaking, the threshold test applies to a subsidisation of more than 5 per cent of the value of a firm’s sales in a particular market, and the effective tariff rates found by the study aggregate costs on products across the markets of 56 countries. The effect on price in any individual country, or at the world level, would thus differ from firm to firm, and would have to take into account the dynamic impact on tariffs on sales. For the purposes of this exercise, it is reasonable to rely on the static findings of the study to illustrate the argument.

233 SCM Agreement 1994, Article 5(a).

234 SCM Agreement 1994, Article 5(b).

235 SCM Agreement 1994, Annex IV, para 6.

236 SCM Agreement 1994, Annex IV, para 8.

237 SCM Agreement 1994, Article 1.2 and Article 8.1(a).

Table 30.xvi: Highly affected non-agricultural products in the 'Worst Case Scenario'

WTO Chapter	Industry	Industry Cost in £m
03	Fish and crustaceans, molluscs and other aquatic invertebrates	84
31	Fertilisers	4
32	Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	103
36	Explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations	2
37	Photographic or cinematographic goods	22
39	Plastics and articles thereof	345
50	Silk	1
52	Cotton	6
53	Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	1
54	Manmade filaments; strip and the like of manmade textile materials	17
55	Manmade staple fibres	16
57	Carpets and other textile floor coverings	14
58	Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	7
59	Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use	20
60	Knitted or crocheted fabrics	5
61	Articles of apparel and clothing accessories, knitted or crocheted	201
62	Articles of apparel and clothing accessories, not knitted or crocheted	225
63	Other made-up textile articles; sets; worn clothing and worn textile articles; rags	32
64	Footwear, gaiters and the like; parts of such articles	118
69	Ceramic products	16
76	Aluminium and articles thereof	71
87	Vehicles other than railway or tramway rolling stock, and parts and accessories thereof	1,362
	Total	2,672

Source: see Annex B

In practice, our hypothetical Government is likely to establish a Transitional Assistance Programme, to be wound down over the period that begins with withdrawal from the EU and ends with the successful negotiation of replacement trade treaties. 'Compensation' would have to be negotiated with the WTO. Placing an end-point on the overall package, and making it clear that it is a response to an extraordinary situation, might make the measures more palatable to other countries.

The Programme would have to navigate the WTO rules by providing a range of measures aimed at assisting an industry as a whole while minimising the benefit actually received by an individual ‘recipient firm’. The measures would need to be tailored to satisfy three requirements:

- Non-specificity: eligibility for the benefit is on non-discretionary objective criteria clearly spelled out in law.²³⁸ (“*Objective criteria or conditions, as used herein, mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise.*”²³⁹) As we have seen, the test here is how broadly the measure is applied across the economy;
- Non-actionable: the benefit is exempt as research and development assistance,²⁴⁰ regional development (measured by criteria for deprivation set out in the SCM Agreement),²⁴¹ or one-off payments to assist adaptation to new environmental regulations;²⁴²
- Non-severity: the benefit, although specific and actionable, does not impede the exports of another country or breach the threshold of exceeding 5 per cent of the value of the firm’s export sales.

This leaves a government considerable flexibility, but that comes at a cost. The 5 per cent threshold is unbreakable, and this limits a government’s ability to deliver precisely tailored benefits to the individual firms which need them most. The ‘non-specific’ requirement is the route through which government will wish to pass a lot of assistance, on the basis that it does not represent a specific subsidy to industry/firm because the benefit is generally available across the economy. However, that means opening up the assistance to industries which do not, strictly, require it. That involves spending more than the ‘compensation’ sums in Table 30.xvi. It also raises the question of what other policy objectives government might have.

For example, a hypothetical government might look at the list in Table 30.xvi, note that it includes a number of energy-intensive industries, and decide to deliver ‘compensation’ by way of a cut in the rate of VAT on the industrial use of electricity. It would certainly be possible to structure this measure in such a way that it represented a non-specific, generally available benefit. Such a VAT cut might well cover the tariff costs of the Category (B) businesses, as well as a good many within Categories (A) and (C) – although probably not the Vehicles industry.²⁴³ But exactly because the benefit would be spread so widely, such an approach would quickly become extremely expensive and cost far more than the tariff burden it sought to remove.

238 SCM Agreement, Article 2.1(b).

239 Foot note 2 to WTO SCM Agreement, Article 2.1(b).

240 SCM Agreement, Article 8.2(a).

241 SCM Agreement, Article 8.2(b).

242 SCM Agreement, Article 8.2(c).

243 In 2013, the ‘Vehicles’ sector used 5,065 GWh of electricity (DECC “Digest of United Kingdom Energy Statistics, 2014”, Table 5.1, page 134). The average price of electricity in 2013 was 9.52p per kWh before VAT and Climate Change Levy. So the VAT charge at 20 per cent on the electricity used by all vehicles manufacturers in 2013 would have been in the region of £96m. Abolishing VAT on electricity would cover about 7 per cent of the tariff costs for the Vehicles industry.

“The measures would need to be tailored to satisfy three requirements.”

Fisheries (industry 03) offers an example of the range of measures which the Government could adopt. It suffers total tariff costs of £84m under the ‘Worst Case Scenario’. The 5 per cent trigger in regard to the value of the industry’s exports as a whole is equivalent to £46m. Assistance which allegedly encourages over-exploitation is a controversial topic within the Doha Round of WTO talks, with proposals tabled to reduce the size of shipping fleets and subsidies for operating costs through a new Annex to the SCM Agreement devoted to the industry alone.²⁴⁴ Those talks have, however, stalled.

The following package, or selection of options from it, could deliver the desired outcome within the existing rules:

- There is already a statutory body, the Sea Fish Industry Authority (‘Seafish’), which has the role of promoting the efficiency of the industry as a whole, while having regard to the interests of consumers.²⁴⁵ It is funded by a levy on the first sale of seafood products in the UK, including imports, and by fees charged for research work undertaken on behalf of both companies and government. In 2013–14, the levy raised £8.4m and the body earned £1.8m in fees (of which £400,000 came from the EU) and £1.1m in other income.²⁴⁶ The SCM Agreement permits governments to fund ‘industrial research establishments’, provided this does not exceed 75 per cent of the total running costs, and ‘pre-competitive development’ of up to 50 per cent of its cost.²⁴⁷ It would be unattractive to increase the levy, as this would have consequences for end-prices in the shops.²⁴⁸ Assuming that the levy remained at the same level and was used to cover the balance of any expanded running costs, government could therefore provide grant-in-aid to the Authority of between £8.4m and £25.2m for enhanced services to the industry provided free of charge, depending on the desired balance between research and development – or by how much of the overall package the Government needed to move into the non-actionable category.
- Fishing boats are fuelled by ‘gas oil’, otherwise known as ‘red diesel’. This already attracts a lower rate of excise duty than other fuels, at 11.14p per litre, which has given rise to a number of disputes between London and Brussels.²⁴⁹ In 2013, the British fishing fleet, across 32 classes of vessel, used a total of 268,337,830 litres of fuel.²⁵⁰ Allowing the owners to reclaim duty from the Exchequer would return £29.9m of costs. The duty on gas oil raised £574m for the Exchequer in 2013–14.²⁵¹ If the Treasury were prepared to spend

244 WTO “Introduction to fisheries subsidies in the WTO”, accessed 29/04/2015 at: <www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_intro_e.htm>.

245 Fisheries Act 1981 section 2.

246 Sea Fish Industry Authority Annual Report and Accounts 2013/14, Notes to the Financial Statements, Note 2 “Income”, pages 48–49.

247 WTO SCM Agreement 1994, Article 8.2(a).

248 In recent years, the Sea Fish Industry Authority has cut its levy for this very reason.

249 The EU objects to the owners of pleasure boats being able to pay a lower duty on fuel which it believes should be confined exclusively to commercial vessels. There have even been attempts to charge the owners of boats arriving in Continental ports with duty evasion. At present, UK owners of pleasure vessels have to sign a declaration that they will not sail outside British territorial waters when they purchase fuel at the reduced rate. For a full account of this dispute, see the website of the Royal Yachting Association at <www.rya.org.uk/infoadvice/regssafety/reddiesel/Pages/reddieselhistory.aspx> (accessed 29/04/2015).

250 Source: Sea Fish Industry Authority “Fleet Economic Performance Dataset 2005–2014” available at <www.seafish.org/research-economics/industry-economics/seafish-fleet-economic-performance-data> (accessed 29/4/2015).

251 Source: HMRC “Hydrocarbon Oils Bulletin” (March 2015), Table 5.

“Fisheries offers an example of the range of measures which government could adopt.”

a little more money, the rebate could be extended to other groups of users and allow the benefit for fishermen to qualify as a generally available and non-specific subsidy.

- Fishing crews are traditionally paid with a share of the proceeds of each catch, which for taxation purposes makes them members of a partnership rather than employees. In 2013, the total value of ‘crew share’ came to £139.8m.²⁵² The most recent available data (2012) indicates that this was shared between at least 8,086 individuals in amounts varying between £9,000 and £40,000, although those figures do not cover all vessel types.²⁵³ At those levels, it is likely that the average share-fisherman would be paying full Class 4 national insurance contributions at 9 per cent on profits over £7,755 (for 2013–14) as well as a Class 2 flat rate of £2.78 per week. Exempting share-fishermen from both liabilities would remove costs of around £8.1m. Because the individuals are treated as partners, they constitute the ‘firm’ and it would not be possible to argue that this assistance was not a specific subsidy. The Treasury would not be prepared to make an across-the-board abolition of Class 4 NICs for other forms of partnership, because it would open up too great a tax leakage.
- Under the EU Common Fisheries Policy, no new licences are issued for fishing. Instead, someone wishing to enter the industry has to purchase (or inherit) a boat which already carries a licence. Whether that system would continue in the ‘Worst Case Scenario’ is a moot point, but it suggests a means for providing ‘compensation’. The Transitional Assistance Programme could make loans to fishermen on favourable terms to enable them to buy new boats. For the purposes of the SCM Agreement, the ‘subsidy’ in such an arrangement would be the amount of interest which the borrower paid below a normal commercial rate.²⁵⁴ The loan would have to be on otherwise arm’s length terms, with no element of debt-forgiveness, to avoid ‘serious prejudice’ to overseas competitors.²⁵⁵ With an appropriate choice of interest rate, the balance of any compensation not covered by the previous three measures (perhaps around £30m) would facilitate the modernisation of a considerable proportion of the UK fishing fleet (because if the ‘benefit’ is equal to, say, a 2 per cent interest rate saving, the capital value of the new vessels would be 50 times the benefit). If eligibility for such loans were subject to objective criteria, limiting them to smaller vessels or those which better fulfilled the conservation objectives of any Common Fisheries Policy equivalent adopted by Britain after exit, the scheme could be crafted so that it was a non-specific subsidy.²⁵⁶ That becomes easier if the scheme is opened up to other classes of coastal vessel, which might help to meet wider objectives, for example in the waterborne carriage of freight instead of by road. It is unlikely to be politically feasible to extend the scheme to private yachts.

Thus in the case of fisheries, where the objective is to deliver £84m of ‘compensation’ without breaching the WTO rules, there is sufficient flexibility to craft a package which delivered less than £46m as potentially actionable spe-

252 Sea Fish Industry Authority “Fleet Economic Performance Dataset 2005–2014”, accessed 29/04/2015 at: <www.seafish.org/research-economics/industry-economics/seafish-fleet-economic-performance-data>.

253 Source: Sea Fish Industry Authority “2012 Economic Survey of the UK Fishing Fleet”, Table 5, page 17.

254 SCM Agreement 1994 Article 14(b).

255 SCM Agreement 1994 Article 6.1(d).

256 WTO SCM Agreement 1994 Article 2.1(b).

“The measures would have to be reported to the WTO and justified. But it is evident that the issues could be managed.”

cific subsidies (the serious prejudice threshold), with the remainder covered by WTO exemptions. The final mix between the four measures might require the Treasury to spend slightly more than £84m, but it would only do so where that achieved other government policy objectives.

This is just one example, and issues such as these would have to be managed in respect of each of the other 21 Category (B) industries. The measures would have to be reported to the WTO and justified. But it is evident that the issues could be managed.

There would be limitations to the UK devising assistance through the WTO’s non-actionable gateway. Although firms would benefit as part of an industry, there is a practical maximum to the amount of research and development that a company can undertake in any given year before such spending ceases to provide any useful benefit. That raises the question of Britain’s capacity to absorb an expansion of research and development, as a means of delivering ‘compensation’ for tariffs. Table 30.xvii provides the most recent figures.

Table 30.xvii: Business sector expenditure on R&D performed in the UK, by R&D product group, 2013

	£ billion	%
Pharmaceuticals	4.1	22.1
Motor vehicles and parts	2.1	11.2
Computer programming and information service activities	2.0	10.9
Aerospace	1.7	9.0
Machinery and equipment	1.0	5.6
Miscellaneous business activities; Technical testing and analysis	1.0	5.3
Telecommunications	0.8	4.6
Consumer electronics and communication equipment	0.8	4.5
Precision instruments and optical products; Photographic equipment	0.6	3.2
Other	4.3	23.6
Total	18.4	

Source: see Annex B

Within Category (B), the Vehicles industry would seem to pose the most significant problem, with tariff costs of nearly £1.4bn in the ‘Worst Case Scenario’. Yet by itself, the industry and its wider affiliates already spend £2.1bn on research and development. This is from the industry’s own resources and is in addition to spending by Government and the various Research Councils (about £2.3bn).²⁵⁷ It should be possible to recompense the various businesses for some of this expenditure, or to enable their activities to be expanded further, in ways that satisfy the research and development exemptions in the WTO rules, with £1.3bn of Government funds. Although the precise policies of any future government cannot be predicted, it is unlikely to be opposed to an increase in support for British innovation.

257 ONS “UK Gross Domestic Expenditure on Research and Development, 2013” (March 2015), Figure 3 supporting data.

30.6.3 Assistance worth £2bn could be targeted at other exported products

Table 30.xviii lists the 50 industries not included in the previous two categories.

All of these products are within the SCM Agreement, and as such any assistance they receive could invite retaliation from other countries. However, these are not 'highly affected' industries. The tariff costs they would suffer under the 'Worst Case Scenario' are less than 5 per cent of the value of their exports. So assistance would not pass the 'severe prejudice' threshold for triggering countervailing measures. Provided the Government structured its assistance in a way that did not constitute a 'prohibited subsidy', or otherwise injured an overseas industry, it would be possible to compensate these businesses in full.

Not only is Category (C) larger than the other two combined, but it contains many high-profile export industries, such as Pharmaceuticals and Aircraft. In both cases, the levels of their R&D expenditure given in Table 30.xvii suggests a suitable avenue for the delivery of 'compensation'.

The 'Worst Case Scenario' would present many challenges for British exporters. But the budgetary logic still remains. The UK currently spends a net £11.3bn for the privilege of being a member of the EU and obtaining (mostly) tariff-free access to 56 markets. Outside, in the 'Worst Case Scenario', access to those same 56 markets would cost £7.4bn. Britain can not only afford to 'compensate' the exporters who bear those new costs, it can do so in ways that not only stay within the WTO rules but would make an investment in the long-term innovative capacity of the economy.

Table 30.xviii: Exports not included in Tables 30.xvii and 30.xiv

WTO Chapter	Industry	Industry Cost in £m
25	Salt; sulphur; earths and stone; plastering materials, lime and cement	2
26	Ores, slag and ash	0
27	Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	361
28	Inorganic chemicals; organic or inorganic compounds of precious metals, of rare earth metals, of radioactive elements or of isotopes	31
29	Organic chemicals	133
30	Pharmaceutical products	30
33	Essential oils and resinoids; perfumery, cosmetic or toilet preparations	43
34	Soap, organic surfaceactive agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, 'dental waxes' and dental preparation	132
38	Miscellaneous chemical products	132
40	Rubber and articles thereof	47
41	Raw hides and skins (other than furskins) and leather	4
42	Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)	23
43	Furskins and artificial fur; manufactures thereof	1

WTO Chapter	Industry	Industry Cost in Em
44	Wood and articles of wood; wood charcoal	8
45	Cork and articles of cork	0
46	Manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork	0
47	Pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper or paperboard	0
48	Paper and paperboard; articles of paper pulp, of paper or of paperboard	5
49	Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans	3
51	Wool, fine or coarse animal hair; horsehair yarn and woven fabric	9
56	Wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	8
65	Headgear and parts thereof	3
66	Umbrellas, sun umbrellas, walking sticks, seatsticks, whips, ridingcrops and parts thereof	0
67	Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair	1
68	Articles of stone, plaster, cement, asbestos, mica or similar materials	5
70	Glass and glassware	30
71	Natural or cultured pearls, precious or semiprecious stones, precious metals, metals clad with precious metal, and articles thereof; imitation jewellery; coin	27
72	Iron and steel	62
73	Articles of iron or steel	54
74	Copper and articles thereof	15
75	Nickel and articles thereof	4
78	Lead and articles thereof	3
79	Zinc and articles thereof	1
80	Tin and articles thereof	0
81	Other base metals; cermets; articles thereof	15
82	Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal	15
83	Miscellaneous articles of base metal	16
84	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	377
85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	241
86	Railway or tramway locomotives, rolling stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electromechanical) traffic signalling equipment of all kinds	2
88	Aircraft, spacecraft, and parts thereof	0
89	Ships, boats and floating structures	5

WTO Chapter	Industry	Industry Cost in £m
90	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	86
91	Clocks and watches and parts thereof	5
92	Musical instruments; parts and accessories of such articles	1
93	Arms and ammunition; parts and accessories thereof	1
94	Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like; prefabricated buildings	24
95	Toys, games and sports requisites; parts and accessories thereof	16
96	Miscellaneous manufactured articles	15
97	Works of art, collectors' pieces and antiques	1
	Total	1,998

Source: see Annex B

30.6.4 There is considerable flexibility to tailor assistance measures to satisfy other policy objectives

This Section does not prescribe a particular solution a government must follow in order to 'compensate' exporters if the 'Worst Case Scenario' occurred. It merely points out that such 'compensation' could be delivered. Nor would a government's assistance need to be limited to the amount it saves from Britain's net contribution to the EU.

The WTO rules on subsidies permit assistance measures which are general and non-specific. A measure that covered more than one industry, or all industries, such as a cut in the headline rate of corporation tax, would incur an Exchequer expense that was far larger than the tariff cost to a particular sector. But a government that had decided to follow a policy of lower corporation tax would have already factored that wider cost into its annual Budget.

For example, a government with a strong policy commitment to regional development could tailor 'compensation' for certain industries as part of a much larger programme of structural and cohesion funding for distressed areas. The WTO rules permit assistance to 'disadvantaged areas' provided that they represent a recognisable defined geographic area, and that deprivation has been assessed on 'neutral and objective criteria', with per capita income no more than 85 per cent of the national average and an unemployment rate at least 110 per cent of the national average, measured over a three year period.²⁵⁸ Again, the essential test is that measures are not designed to benefit a specific enterprise:

'Neutral and objective criteria' means criteria which do not favour certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional development policy. In this regard, regional subsidy programmes shall include ceilings on the amount of assistance which can be granted to each subsidized project. Such ceilings must be differentiated according to the different levels of development of assisted regions and must be expressed in terms of investment costs or cost of job creation. Within such ceilings, the distribution of assistance shall be sufficiently

258 SCM Agreement 1994 Article 8.2(b).

“The amount which the UK would save overall under even the ‘Worst Case Scenario’ is around 0.2 per cent of GDP, currently equivalent to about £3.9bn.”

broad and even to avoid the predominant use of a subsidy by, or the granting of disproportionately large amounts of subsidy to, certain enterprises as provided for in Article 2.²⁵⁹

Alternatively, a government might prefer supply-side reforms. Such an approach, being ‘horizontal’ across an entire economy, is expressly allowed under the WTO rules.²⁶⁰ Measures within such a package might include a reduction in business rates for small and medium-sized enterprises, or reductions in the tax rates they have to charge under the VAT flat rate scheme for low-turnover businesses (and where there is already differentiation between enterprises in different sectors²⁶¹). While initially benefiting small businesses, which are less likely to export directly,²⁶² such measures could have a multiplier effect on business as a whole through their impact on the wider supply chain. Trade promotion and marketing assistance for ‘agricultural products’ would cover some of the larger exporters and would not be regarded as a subsidy at all.²⁶³

Being outside the EU tariff-free umbrella would not preclude a government from providing ‘compensation’ measures for British exporters. Most importantly, however, it would not force any future Government to adopt one particular policy outlook to the exclusion of all others. The ‘Worst Case Scenario’ would not force the Government to follow either a ‘neo-liberal free market’ policy or a highly interventionist, protectionist stance. The British electorate would have the freedom to vote for whichever outlook they wanted.

Conclusion: the ‘Worst Case Scenario’ is affordable

Figure 30.i indicates that Britain is overpaying for the privilege of EU membership. The amount which the UK would save overall under even the ‘Worst Case Scenario’ is around 0.2 per cent of GDP, currently equivalent to about £3.9bn. That sets the benchmark for any renegotiation of British membership: it has to deliver benefits of at least equal value if membership of the EU is to be justified compared to the most unfavourable form of non-membership.

However, it is necessary to guard against complacency. Under the ‘Worst Case Scenario’, in which British exporters have no trade treaty coverage, some industries will undergo transitional hardship. They are listed in Table 30.xiii. Those are the parts of the UK economy which policy-makers will need to defend in any renegotiation. Alternatively, in the event of a British withdrawal, they are the industries which will require transitional assistance, either directly through financial measures or indirectly through diplomacy to arrange alternative trade treaties.

The WTO rules on state aid and subsidies do not prevent a British Government from providing ‘compensation’. There is ample scope to provide financial assistance for the £2.8bn of tariff costs that would affect agricultural products, and £2bn of costs attaching to non-agricultural products would be incurred at levels where assistance to the exporters would not trigger ‘serious prejudice’ of overseas competitors. The 22 non-agricultural products that bear a material tariff cost could be assisted by a package of transitional measures which would place emphasis upon support for research and development. Thus, coping with being

259 Foot note 32 to the SCM Agreement 1994, explaining Article 8.2(b) (Identification of Non-Actionable Subsidies).

260 Foot note 2 to the SCM Agreement 1994, explaining Article 2.1(b) (Specificity).

261 The scheme applies to businesses with a turnover of less than £150,000 (at present). Accessed 19/05/2015 at <www.gov.uk/vat-flat-rate-scheme/overview>.

262 See Section 2.

263 Agriculture Agreement 1994, Annex 2, Para 2(f).

“Such measures could have a multiplier effect on business as a whole through their impact on the wider supply chain.”

outside the EU would lead to a strengthening of the long-term innovative capacity of the British economy. The ‘Worst Case Scenario’ is affordable.

ANNEX A: The static tariff study

The nature of the study

The study undertakes a line-by-line analysis of Britain’s goods exports to the EU and other countries with which Britain had an EU-arranged trade treaty in 2013. The year 2013 has been chosen for reference purposes, as the most recent for which comparable data is available. Using the WTO’s Harmonised System for classifying trade, each category of export (data obtained from UN COMTRADE) is matched up against the tariffs operated by each country (data obtained from the WTO) to estimate the tariff which would have been levied by the importing country if Britain had not been a member of the EU in 2013.

So, for example, the EU levies a total of 14,823 separate tariffs. British goods exported to, say, Ireland fall into 4,746 separate product sub-headings recognised by the WTO. Each of those sub-headings is matched up against the applicable Most Favoured Nation (MFN) tariff levied by the EU to derive a notional cost as if Britain had not been an EU member. In this way, across the full 56 countries covered by the Study, a total of 128,488 sub-categories of export are matched up against a potential total of 647,553 tariff lines. Exports of services are not considered, since they are not subject to tariffs.

This review is a ‘static’ study in the sense that it does not incorporate dynamic effects. It takes the reported exports for 2013 and calculates what the cost to the UK’s businesses would have been had those sales been subject to MFN tariffs. No attempt is made to assess whether a lower level of goods would have been exported in those circumstances.

Equally, however, the study ignores the possibility of any dynamic gains which Britain might enjoy from being outside the EU. For example, taxpayers’ money paid to Brussels could instead have been diverted to other uses at home with more positive effects on the British economy, such as increased investment in infrastructure projects, extra spending on public services or tax cuts. Alternatively, domestic businesses might experience positive benefits from being released from EU regulations.²⁶⁴ Nor does the study consider the potential economic effects of Britain operating a tariff schedule of its own, such as revenues received by the Exchequer.

The purpose of the study is to assess whether Britain’s contribution to the EU represents value for money, by comparing the cost of membership to the trade benefits which that membership provides our exporters. Since the amounts that Britain paid into the EU in 2013, and received back in rebates and grants, cannot be reclaimed, and the amounts exported by the country in that year are equally fixed, a ‘static’ assessment is the fairest basis for making such an assessment.

264 See Section 29.

The countries covered by the study

The study encompasses British trade in 2013 with 56 countries in three categories.²⁶⁵

30.6.4.1 Members of the EU

Austria; Belgium; Bulgaria; Croatia; Cyprus; the Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Ireland; Italy; Latvia; Lithuania; Luxembourg; Malta; Netherlands; Poland; Portugal; Romania; Slovakia; Slovenia; Spain; and Sweden.

Croatia was not a member of the EU for all of the period under review, only joining on 1 July 2013. Prior to that point, however, it was bound by a treaty with the EU to admit the exports of EU members on favourable terms, so it is reasonable to deem it to have been within the EU throughout.

For the purposes of the study, British exports to all of these countries are charged the applicable EU tariff at the MFN rate. That provides an accurate measure of the benefits of EU membership because, inside the EU, British businesses can sell to those countries without any restriction (other than, of course, the requirements imposed by EU regulation).

30.6.4.2 Countries which had a free trade treaty with the EU before 2013

Albania; Algeria; Bosnia & Herzegovina; Chile; Egypt; Iceland; Israel; Jordan; Lebanon; Liechtenstein; Macedonia; Mexico; Montenegro; Norway; the Palestinian Territories; Serbia; South Africa; Switzerland; Tunisia; and Turkey.²⁶⁶ (Note: Liechtenstein reports its trade data to UN COMTRADE combined with those for Switzerland, and it also follows the same tariff schedule on imports. In this Section, therefore, 'Switzerland' refers to Switzerland-Liechtenstein. Since British standalone exports to Liechtenstein in 2013 were worth only £24m, this is not a point of significance.)²⁶⁷

The terms of these treaties differ widely. Some limit the preferential access to a narrower range of goods than others. Many of the treaties provide for a transitional phasing of tariff liberalisation, accompanied by rising quotas.²⁶⁸ So during the period under review, in practice British exporters would not have received zero-tariff entry to the market in question.

For the purposes of this study, however, British exports to all of these countries are charged the applicable local tariff at the MFN rate for 2013. This overestimates the value in 2013 to Britain of the trade treaty negotiated by the EU with the country in question.

30.6.4.3 Countries with which a free trade treaty with the EU came into effect during 2013

Colombia; Costa Rica; El Salvador; Guatemala; Honduras; Nicaragua; Panama; and Peru.

The EU treaties with these countries all came into effect at some point during 2013. Many of the treaties provide for a transitional phasing of tariff liberalisation, accompanied by rising quotas,²⁶⁹ so during the period under review,

265 The study does not include countries where a trade treaty has been concluded subsequent to this cut-off point, or which has not yet come into force. See Appendix C for further details.

266 Following the practice of the World Bank, and other international organisations, inclusion of the Palestinian Territories in this list is not a recognition of statehood.

267 ONS "Pink Book" 2014.

268 See Appendix C.

269 See Appendix C.

in practice, British exporters would not have received zero-tariff entry to the market in question.

For the purposes of this study, British exports to all of these countries are charged the applicable local tariff at the MFN rate for the whole of 2013. This overestimates the value to Britain in 2013 of the trade treaty negotiated by the EU with the country in question.

Even though, in 2013, British exports to countries in groups (2) and (3) would have borne some tariffs on entry, we have deliberately ignored these sums in calculating the costs British exports would bear if we were outside the EU. The intention under these treaties is that, at some point, tariffs between the trading partners will be eliminated, even if this is likely to be an extended period of time and not every single category of trade is included in the agreement.²⁷⁰ Had we netted off these actual 'EU preferential' 2013 tariffs against the potential MFN 2013 tariffs, it would have produced a smaller cost of being outside the EU for Figure 30.i.

But it would also mean that an equivalent calculation for 2014 would have produced a different result. That would not provide a firm basis for assessing the value of Britain's membership of the EU. It is fairer to deliberately overestimate the cost of being outside, in order to provide a maximum long-run figure for the benefit of EU membership (rather than one tied to the specific facts of 2013). After all, the study is meant to assess the 'Worst Case Scenario'.

The data used in the Study

Data on exports from the UK was obtained from UN COMTRADE (accessed 25/02/2015). Information was downloaded about exports reported for 2013 by the UK in terms of each product line identified by the six digit code attached to each sub-heading of goods under the Harmonised System used by the WTO (Fourth nomenclature, 2012 version). That is the most detailed comparable data available for all of the countries within the Study. The information potentially used about each product is: its f.o.b. (free on board) value at the point of departure from the UK, its net weight in kilograms and other details about its quantity e.g. litres of liquids, metres length, number of individual items, etc. One technical adjustment is made, discussed below.

Data on MFN tariffs on imports to each country was obtained from the WTO (accessed 25/02/2015). Information was downloaded about the tariffs in force for 2013, or the most recent year reported by nine countries where 2013 figures had not been supplied to the WTO (Algeria: 2009; Costa Rica: 2010; Egypt: 2009; Honduras: 2009; Israel: 2012; Jordan: 2009; Lebanon: 2007; Macedonia: 2012; Tunisia: 2008). Those nine countries are not major trading partners of the UK. The number of tariff lines operated by a country is a measure of how discriminating they are in specifying precise sub-categories of imports to which different tariffs might be applied.

For 2013, trade figures for Liechtenstein were reported to UN COMTRADE combined with those for Switzerland, and it also followed the same tariff schedule on imports. In this study, therefore, 'Switzerland' refers to Switzerland-Liechtenstein.

The Palestinian Territories apply the same tariff schedule as Israel. In common with the practice of the World Bank and other international organisations, the inclusion of the Palestinian Territories in the study is not a recognition of statehood.

The study does not consider whether any non-tariff barriers such as quotas would have applied to scale back other countries' imports from Britain. The

270 See Appendix C.

problems such barriers would pose, and the ways in which they could be handled, are discussed in Appendix D, where the conclusion is reached that these could be managed successfully. However, the analysis does identify the particular industries where problems are likely to arise, and where policy-makers should focus their attention.

How the study generates its findings

Each product line of exported goods is matched against the tariffs applying in that country using the six digit WTO code. Where more than one tariff applies to a sub-heading of goods, because the tariffs are levied on further specific sub-categories of export for which individual export data is not obtainable, an arithmetical average tariff is calculated and applied to the whole sub-heading. The cost of ad valorem tariffs are calculated as a percentage of the value of the exports in each sub-category of good. Non-ad valorem tariffs are calculated on the quantity of the goods in each sub-heading according to their own terms. For example, a monetary charge per kilogram is calculated by reference to the net weight of the exports reported in the sub-heading, etc. Some countries levy ad valorem tariffs on the c.i.f. (cost insurance freight) value of imports as they enter the country. The minimal extra cost which would have arisen through the discrepancy between f.o.b. and c.i.f. values is ignored in the study, because its focus is to estimate the value of the EU's trading arrangements to exporters in the UK, not importers located overseas.

No account is taken of the fact that, in 2013, under the terms of the applicable trade treaty, some of the exports covered in the study would still have been subject to an 'EU preferential tariff' in non-EU countries, rather than being able to enter tariff-free. This significantly overestimates the true cost which the UK economy would have suffered had it not been an EU member in 2013. This choice has been made deliberately in order to provide the most favourable assessment possible of the long-run value of EU membership to the UK, rather than focusing on a single year.

UN COMTRADE figures report trade on a consistent basis in US dollars. Therefore, the study works throughout in US dollars and a final conversion to sterling is made to report the findings. Where relevant, currencies are converted using an average calculated from the daily mid rates which applied throughout 2013. Exchange rate data was obtained from <www.oanda.com/currency/historical-rates/> (accessed 04/04/2015).

The total coverage of the study is summarised in the following table, which also provides an indication of the diversity of British exports (and the discriminating approach towards imports adopted by the EU and other countries).

Country	Product lines exported by the UK	Total tariff lines operated by the country
Albania	376	9,377
Algeria	999	5,904
Austria	3,425	14,823
Belgium	4,080	14,823
Bosnia & Hercegovina	520	10,098
Bulgaria	2,678	14,823
Chile	1,559	7,785
Columbia	1,179	7,454

Country	Product lines exported by the UK	Total tariff lines operated by the country
Costa Rica	493	9,841
Croatia	2,056	14,823
Cyprus	2,922	14,823
Czech Republic	3,454	14,823
Denmark	3,707	14,823
Egypt	2,033	5,453
El Salvador	266	6,983
Estonia	2,645	14,823
Finland	3,485	14,823
France	4,389	14,823
Germany	4,444	14,823
Greece	3,238	14,823
Guatemala	400	7,201
Honduras	213	6,566
Hungary	3,158	14,823
Iceland	1,903	8,591
Ireland	4,647	14,823
Israel	2,432	8,407
Italy	4,109	14,823
Jordan	1,532	6,382
Latvia	2,519	14,823
Lebanon	1,610	5,710
Lithuania	2,758	14,823
Luxemburg	2,298	14,823
Macedonia	667	9,628
Malta	3,098	14,823
Mexico	1,816	12,272
Montenegro	269	9,371
Netherlands	4,203	14,823
Nicaragua	139	7,368
Norway	3,198	7,212
Palestinian Territories	36	8,407
Panama	641	8,773
Peru	1,007	7,554
Poland	3,676	14,823
Portugal	3,508	14,823
Romania	3,028	14,823
Serbia	1,224	9,841
Slovakia	2,697	14,823
Slovenia	2,506	14,823

Country	Product lines exported by the UK	Total tariff lines operated by the country
South Africa	3,025	7,265
South Korea	2,682	12,261
Spain	4,169	14,823
Sweden	3,914	14,823
Switzerland	3,400	8,615
Tunisia	1,089	16,492
Turkey	2,969	16,521
Total	128,488	647,553

30.6.5 A technical adjustment

The UN COMTRADE figures include an amount of \$60bn as an export of goods from the UK to 'Switzerland' under the sub-heading 'Other semi-manufactured forms of gold' (product code 710813). This single item is larger than the value of the entire UK trade with Switzerland and Liechtenstein for 2013 as reported by the ONS. It is reasonable to conclude that it has been reported to UN COMTRADE as a movement of commodities, but not treated as a current account item by the ONS.

To avoid giving a misleading result, such as the impression that Switzerland is by far Britain's leading trading partner, but ensuring a like-for-like comparison between countries, in the study, all exports under product code 710813 to any country, and any tariffs which might be levied upon them, are excluded from the results. This technical adjustment does not make a significant alteration to any of the countries concerned apart from Switzerland.

ANNEX B: DATA SOURCES FOR THIS SECTION

Figure 30.i: Cost and trade benefits of UK membership of the EU

Data on UK GDP for 2013 derived from ONS website (accessed 04/04/2015).

Data on UK contributions to the EU derived from ONS Pink Book 2014.

Data on tariff costs derived from the results of the study.

Figure 30.ii: Effective tariff rates in the 'Worst Case Scenario': exports to EU countries

Data on tariffs derived from WTO.

Data on exports derived from UN COMTRADE (adjusted as discussed previously).

Data on tariff costs derived from the results of the study.

Figure 30.iii: Effective tariff rates in the 'Worst Case Scenario': exports to non-EU countries

Data on tariffs derived from WTO.

Data on exports derived from UN COMTRADE (adjusted as discussed previously).

Data on tariff costs derived from the results of the Study.

Figure 30.iv: Exchange rate fluctuations sterling-euro 1999–2013

Exchange rates for sterling-euro are the average for each calendar year calculated from the daily mid rates which applied throughout 1999 to 2013. Deviations calculated as the difference between the yearly high (or yearly low) and the yearly average, expressed as a percentage of the yearly average. Exchange rate data was obtained from <www.oanda.com/currency/historical-rates/> (accessed 19/5/2015).

Figure 30.v: Exports of goods from the UK

Data on total UK goods exports for 2013 derived from ONS Pink Book 2014.

Data on goods exports covered by Trade Treaty derived from UN COMTRADE and as used in the study (adjusted as discussed previously).

Figure 30.vi: Destination of the exports covered by the Tariff Study

Data on destination of goods exports derived from UN COMTRADE and as used in the study (adjusted as discussed previously).

Figure 30.vii: Composition by value of the goods covered by EU Trade Treaties

Data on goods exports derived from UN COMTRADE and as used in the study (adjusted as discussed previously).

The goods have been divided according to the WTO Classification system, as follows:

Product Code	Product Description
SECTION I: LIVE ANIMALS & ANIMAL PRODUCTS	
01	Live animals
02	Meat and edible meat offal
03	Fish and crustaceans, molluscs and other aquatic invertebrates
04	Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included
05	Products of animal origin, not elsewhere specified or included
SECTION II: VEGETABLE PRODUCTS	
06	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage
07	Edible vegetables and certain roots and tubers
08	Edible fruit and nuts; peel of citrus fruit or melons
09	Coffee, tea, maté and spices
10	Cereals
11	Products of the milling industry; malt; starches; inulin; wheat gluten
12	Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder
13	Lac; gums, resins and other vegetable saps and extracts
14	Vegetable plaiting materials; vegetable products not elsewhere specified or included

Product Code	Product Description
SECTION III: ANIMAL OR VEGETABLE FATS AND OILS	
15	Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes
SECTION IV: PREPARED FOODSTUFFS, BEVERAGES AND SPIRITS, TOBACCO	
16	Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates
17	Sugars and sugar confectionery
18	Cocoa and cocoa preparations
19	Preparations of cereals, flour, starch or milk; pastry cooks' products
20	Preparations of vegetables, fruit, nuts or other parts of plants
21	Miscellaneous edible preparations
22	Beverages, spirits and vinegar
23	Residues and waste from the food industries; prepared animal fodder
24	Tobacco and manufactured tobacco substitutes
SECTION V: MINERAL PRODUCTS	
25	Salt; sulphur; earths and stone; plastering materials, lime and cement
26	Ores, slag and ash
27	Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes
SECTION VI: CHEMICAL PRODUCTS	
28	Inorganic chemicals; organic or inorganic compounds of precious metals, of rare earth metals, of radioactive elements or of isotopes
29	Organic chemicals
30	Pharmaceutical products
31	Fertilisers
32	Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks
33	Essential oils and resinoids; perfumery, cosmetic or toilet preparations
34	Soap, organic surfaceactive agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, 'dental waxes' and dental preparation
35	Albuminoidal substances; modified starches; glues; enzymes
36	Explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations
37	Photographic or cinematographic goods
38	Miscellaneous chemical products
SECTION VII: PLASTICS AND RUBBER	
39	Plastics and articles thereof
40	Rubber and articles thereof
SECTION VIII: LEATHER AND TRAVEL GOODS	
41	Raw hides and skins (other than furskins) and leather
42	Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)
43	Furskins and artificial fur; manufactures thereof

Product Code	Product Description
SECTION IX: WOOD, CHARCOAL, CORK	
44	Wood and articles of wood; wood charcoal
45	Cork and articles of cork
46	Manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork
SECTION X: WOOD PULP, PAPER AND PAPERBOARD ARTICLES	
47	Pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper or paperboard
48	Paper and paperboard; articles of paper pulp, of paper or of paperboard
49	Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans
SECTION XI: TEXTILE AND TEXTILE PRODUCTS	
50	Silk
51	Wool, fine or coarse animal hair; horsehair yarn and woven fabric
52	Cotton
53	Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn
54	Manmade filaments; strip and the like of manmade textile materials
55	Manmade staple fibres
56	Wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof
57	Carpets and other textile floor coverings
58	Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery
59	Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use
60	Knitted or crocheted fabrics
61	Articles of apparel and clothing accessories, knitted or crocheted
62	Articles of apparel and clothing accessories, not knitted or crocheted
63	Other made up textile articles; sets; worn clothing and worn textile articles; rags
SECTION XII: FOOTWEAR, UMBRELLAS AND ARTIFICIAL FLOWERS	
64	Footwear, gaiters and the like; parts of such articles
65	Headgear and parts thereof
66	Umbrellas, sun umbrellas, walking sticks, seatsticks, whips, ridingcrops and parts thereof
67	Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair
SECTION XIII: STONE, CEMENT, CERAMICS AND GLASS	
68	Articles of stone, plaster, cement, asbestos, mica or similar materials
69	Ceramic products
70	Glass and glassware
SECTION XIV: PEARLS AND PRECIOUS METALS	
71	Natural or cultured pearls, precious or semiprecious stones, precious metals, metals clad with precious metal, and articles thereof; imitation jewellery; coin

Product Code	Product Description
SECTION XV: BASE METALS	
72	Iron and steel
73	Articles of iron or steel
74	Copper and articles thereof
75	Nickel and articles thereof
76	Aluminium and articles thereof
78	Lead and articles thereof
79	Zinc and articles thereof
80	Tin and articles thereof
81	Other base metals; cermets; articles thereof
82	Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal
83	Miscellaneous articles of base metal
SECTION XVI: ELECTRICAL MACHINERY	
84	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof
85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles
SECTION XVII: VEHICLES, AIRCRAFT AND VESSELS	
86	Railway or tramway locomotives, rolling stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electromechanical) traffic signalling equipment of all kinds
87	Vehicles other than railway or tramway rolling stock, and parts and accessories thereof
88	Aircraft, spacecraft, and parts thereof
89	Ships, boats and floating structures
SECTION XVIII: OPTICAL INSTRUMENTS, CLOCKS AND WATCHES, MUSICAL INSTRUMENTS	
90	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof
91	Clocks and watches and parts thereof
92	Musical instruments; parts and accessories of such articles
SECTION XIX: ARMS AND AMMUNITION	
93	Arms and ammunition; parts and accessories thereof
SECTION XX: FURNITURE, TOYS AND MISCELLANEOUS MANUFACTURES	
94	Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like; prefabricated buildings
95	Toys, games and sports requisites; parts and accessories thereof
96	Miscellaneous manufactured articles
SECTION XXI: WORKS OF ART AND ANTIQUES	
97	Works of art, collectors' pieces and antiques

Figure 30.viii: Share of the tariff cost in the 'Worst Case Scenario' by category of export

Data generated in the study. The goods have been divided according to the WTO Classification system, as described under Figure 30.vii.

Figure 30.ix: Effective tariff rates on UK exports by category in the 'Worst Case Scenario'

Data generated in the study. The goods have been divided according to the WTO Classification system, as described under Figure 30.vii.

Table 30.x: Effective tariffs incurred by specific industries in the 'Worst Case Scenario'

Data generated in the study. The goods have been divided according to the WTO Classification system, as described under Figure 30.vii.

Table 30.xi: Index of proportionate cost burden of tariffs borne in the 'Worst Case Scenario'

Data derived by dividing the figures in Figure 30.viii by the corresponding values in Figure 30.vii. The goods have been divided according to the WTO Classification system, as described under Figure 30.vii.

Table 30.xii: Index of proportionate cost burden of tariffs borne by specific industries in the 'Worst Case Scenario'

Data generated in the study. The goods have been divided according to the WTO Classification system, as described under Figure 30.vii.

Table 30.xiii: Gross tariff cost borne by specific industries in the 'Worst Case Scenario'

Data generated in the study. The goods have been divided according to the WTO Classification system, as described under Figure 30.vii.

Table 30.xiv: 'Worst Case Scenario' costs for industries within the WTO Agricultural Products regime

Data generated in the study. The goods have been divided according to the WTO Classification system, as described under Figure 30.vii and as detailed in Annex 1 to the WTO Agreement on Agriculture 1994. Some industries have been included even though not all of their sub-categories would qualify because those that qualify are the more significant export.

Industry 16 has been included even though the whole of product codes 1604 (fish) and 1605 (crustaceans and molluscs), and some of product code 1603 (extracts and juices of meat and fish) would be excluded. Sub-categories 1601 (sausages) and 1602 (other meat) are far more significant as exports.

Industry 35 has been included even though only products with the codes 3501-3505 inclusive (casein; albumins; gelatin; peptones; dextrans) are within the Agreement, and product codes 3506-3507 (other glues and adhesives; enzymes) are not.

Industry 41 has been excluded because, although product codes 4101-4103 inclusive (raw hides) are within the Agreement, exports under codes 4104-4115 (other leather goods) are more significant.

Industry 43 has been excluded because, although product code 4301 (raw furskins) is within the Agreement, exports under codes 4302–4304 (dressed fur-skin; fur-skin clothing; artificial fur) are more significant.

Industry 50 has been excluded because, although product codes 5001–5003 inclusive (silk worms; raw silk, silk waste) are within the Agreement, exports under codes 5004–5007 inclusive (silk yarn and silk fabric) are more significant.

Industry 52 has been excluded because, although product codes 5201–5203 inclusive (cotton and cotton waste) are within the Agreement, exports under codes 5204–5212 (cotton thread, yarn and fabrics) are more significant.

Industry 53 has been excluded because, although product codes 5301–5302 inclusive (raw flax and raw hemp) are within the Agreement, exports under codes 5303–5311 (other vegetable textile fibres) are more significant.

Table 30.xv: WTO treatment of agricultural support in the EU, 2009–10 to 2011–12

Data on EU agricultural subsidies derived from the EU Commission notifications to WTO. Figures for 2009–10 taken from WTO notification G/AG/N/EU/10/Rev.1 dated 13 February 2014. Figures on EU agricultural subsidies for 2010–11 taken from WTO notification G/AG/N/EU/17 dated 13 February 2014. Figures on EU agricultural subsidies for 2011–12 taken from WTO notification G/AG/N/EU/20 dated 22 October 2014.

Data on EU agricultural output derived from the annual report of the EU Commission Directorate-General for Agriculture and Rural Development “Agriculture in the European Union: Statistical and Economic Information”. Figures for 2009–10 taken from 2010 Report, Table 3.1.4, page 58. Figures for 2010–11 taken from 2011 Report, Table 3.1.4, page 57. Figures for 2011–12 taken from 2012 Report, Table 3.1.4, page 59.

Exchange rates for euro-sterling are the average calculated from the daily mid rates which applied throughout the calendar years 2009, 2010 and 2011. Exchange rate data was obtained from <www.oanda.com/currency/historical-rates/> (accessed 27/04/2015).

Table 30.xvi: Highly affected non-agricultural products in the ‘Worst Case Scenario’

Data generated in the study. The goods have been divided according to the WTO Classification system, as described under Figure 30.vii and with the opposite inclusions and exclusions to those discussed under Table 30.xiv.

Table 30.xvii: Business sector expenditure on R&D performed in the UK, by R&D product group, 2013

Table taken from the supporting data for Figure 4 “Business sector expenditure on R&D performed in the UK, by R&D product group, 2013” in ONS “UK Gross Domestic Expenditure on Research and Development, 2013” published 20 March 2015 available at <www.ons.gov.uk/ons/dcp171778_398876.pdf> (accessed 29/04/2015).

Table 30.xviii: Exports not included in Tables 30.viii and 30.xiv

Data generated in the Study. The goods have been divided according to the WTO Classification system, as described under Figure 30.vii and with the opposite inclusions and exclusions to those discussed under Table 30.xiv.

31 How households could be £933 better off through lower prices

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“The most obvious saving would come from no longer having to pay membership fees after withdrawal from the EU.”

There would be significant potential advantages to the UK leaving the European Union. But what could this equate to in terms of the savings that might be generated every year for the average household?

There are considerable difficulties in attempting to quantify such a figure. The biggest single obstacle is that of opportunity. Outside the EU, the UK could choose to be heavily protectionist or radically free market. It could opt to deregulate down to minimum standards under global trading rules, or resolve to replace EU red tape like with like, only more tailored to particular UK requirements. It could just bank its savings from cutting its contributions to the EU Budget, or it could boldly repudiate all the negatives of EU membership and redraw the political and economic map.

In all likelihood, Britain would choose a path somewhere in between. It is in this context that we explore how leaving the EU could make the average household better off by £933 per year, under the WTO option.

31.1 Net contributions

The most obvious saving would come from no longer having to pay membership fees after withdrawal from the EU. As with any saving, once realised, it risks being earmarked for a dozen different projects, turning it into an investment or an additional, but funded, spending commitment.

But how much would it be worth if earmarked specifically for a tax cut for the average family? There are three key variables involved. These are:

- The mean future UK payment to the EU Budget, taking into account the Rebate, were the UK to remain a member (i.e. if the payment is set to go up, what this would represent as an additional future saving);
- Whether the UK would seek to be part of some form of alternative system, whether the European Economic Area (EEA) or a Swiss-style bilateral deal, which itself carries associated though smaller ‘membership fees’;
- The extent to which the money saved is set aside for tax cuts for families, as opposed to going into government spending, supporting industry and jobs, or cutting the deficit.

First, it is important to note that the UK’s payment to the EU is both variable and not entirely predictable over the long term. The Office for Budget Responsibility (OBR) anticipates a drop over 2016–2017 followed by a marginal increase, and subsequently a larger increase over the following two years taking payments back up to previous levels.²⁷¹ The long-term annual figure settles in the region of £9bn net (the gross figure is considerably higher). This remains subject to pressures – political, on cutting the UK Rebate further; economic, as payment is based on national income and Eurozone countries are currently facing difficulties, there could be proportionally higher demands of the UK in the future; and outgoing, as a greater share of EU budgetary expenditure will be diverted to support Eurozone states in recession, future cuts to UK receipts are likely. This latter pressure has already had an impact (though received no press coverage) during the infamous £1.7bn ‘top up bill’ row in 2014. For the purposes of our calculation, however, we continue to treat £9bn as the working figure.

Second, in terms of ‘new deal’ membership fees, we might look at two alternatives to arrive at a reasonable estimate. Norway makes a national payment for membership of the EEA. In fact, Norway’s example is very much a worst case

²⁷¹ OBR “Economic and fiscal outlook March 2015”, pages 106 onwards.

“Britain might stay out of the big projects, keeping cooperation budgets to the tens of millions, and thus not requiring UK taxpayers to subsidise other countries.”

scenario. When Swiss voters rejected membership of the EEA, the Norwegian Government unilaterally decided to assume the Swiss portion of the fees on its own count, in order to accelerate the signing of the agreement – thus Norway is paying a double membership fee. With this in mind, Norwegian EEA gross membership costs presently run at just over €300m but are set to rise to around €500m by 2020.²⁷² It should be noted, however, that Norway is particularly keen on maximising its involvement in trans-European expenditure and is involved in areas outside the purview of the EEA. Even so, Norway’s net costs amount to around €100m a year, and we can assess proportionately that this will increase by 2020 to around €165m. If this figure is scaled up to the size of the UK population, and if GDP variations are taken into account, it would suggest that the UK would be paying about £1.5bn net for EEA membership by 2020. If we adjust instead for GDP per capita, however, this works out at about £850m, and even this figure reflects Norway’s extra-EEA opt-ins.

To check their validity, these estimates can be compared against the Swiss model. Switzerland has previously calculated that the difference between its current bilateral fees and those that would be charged under full EU membership entails a net hike from CHF600m (now CHF700m) to CHF3.4bn.²⁷³ Reverse-applying those figures to the UK economy, under the same model used for Norway, suggests that the UK would end up paying around £1.6bn net a year under a Swiss bilateral deal. Consequently, we can take the figure of £1.5bn-£1.6bn as a respectable ball park estimate of what the UK would be paying if it had a new treaty status outside the EU but was still prepared to pay in more than it receives back.

Of course, this could be reduced even further. Britain might stay out of the big projects, keeping cooperation budgets to the tens of millions, and thus not requiring UK taxpayers to subsidise other countries.

Finally, there is the question of how much of what Britain saves from its EU membership fees ultimately proves to be bankable. This is clearly an issue for political parties, and they will all have their own priorities. However, for the purposes of this analysis, we will assume that no deal has been reached with the EU on a free trade agreement successor treaty; that the UK has not transferred across to an EEA deal; that current levels of grants and payments continue to be made to British recipients of EU grants, but now by UK authorities; that tariffs are being levied against UK businesses at maximum permitted World Trade Organization (WTO) trade terms; and that money is being set aside by the Treasury at an equal rate to the tariffs levied to support those businesses through indirect WTO-permissible means.

Additionally, this analysis does not take into account any potential new tariffs levied on imports from the EU. The UK would be perfectly entitled to take such reciprocal action: it would raise additional revenue (a substantial sum, given the mismatch in EU-UK exports) that could be used to cut specific taxes; and it could act as a deterrent against EU tariffs being imposed on UK goods.²⁷⁴ However, we assume a continued unilateral free trade approach on the UK side, no reciprocal duties levied, and continued market prices for EU imports in UK shops.

This assessment of the savings Britain would make after leaving the EU also pays no consideration to the relative benefit of the net EU Budget receipts the UK does receive compared to if Britain had spent that money directly. Without

272 Norwegian Mission to the EU “Norway’s participation in EU programmes and agencies”, accessed 11/05/2015 at: <www.eu-norway.org/eu/Cooperation-in-programmes-and-agencies/#.VSu9gPnF8g9>.

273 Swiss Government Audit, 2006.

274 See Section 2

“An identikit CAP that removes the subsidy of foreign farmers from the equation would achieve cost savings for the UK of £1bn a year.”

paying into the central EU Budget, the UK would make administrative savings by removing an extra tier of administration, add new options for efficiency savings, and could identify projects where it saw greater investment return. With the end of the Rebate’s implications for paired funding, the Treasury might in some instances be more prepared to support state investment.²⁷⁵

In summary, in an environment in which no new deal has yet been agreed, we assume that all current costs stand and that all additional costs faced by businesses are compensated. Even with these caveats, as we have seen across Part 4, the UK gains economically. By transitioning from EU membership to ‘WTO-only’ status, Britain would generate annual savings of around £3.9bn.²⁷⁶

31.2 Areas for savings

Across this publication, we have highlighted EU-related policy commitments that add direct or indirect burdens to the consumer. Their background histories have been explored in the relevant Sections.

31.2.1 Common Agricultural Policy (CAP)

The CAP is deleterious to the UK.²⁷⁷ An identikit CAP that removes the subsidy of foreign farmers from the equation would achieve cost savings for the UK of £1bn a year.²⁷⁸ A more radical approach, however, would address the CAP’s impact on food prices, the associated social welfare costs, regulatory burdens, and the subsidy system taken as a whole. This could result in overall savings of £10.3bn.²⁷⁹

This figure, however high it might appear, is in fact somewhat conservative. The analysis behind it used food price figures that have since increased significantly, as revealed by subsequent ONS cost of living analysis. For this review, however, while recognising that potential gains from radical reform of the CAP would be even higher, we retain the original lower estimate, since in any given year world food prices might drop.

Naturally, a key variable is the extent to which a UK government would seek to protect its farmers, both through continued subsidy (perhaps retargeted) or by maintaining tariffs against cheap imports. The CAP largely does both; the historic British approach after the war was solely the former. Another variable is the world price of food: higher gate prices globally mean competitive gains for UK farmers. Prices will be further affected over the long term by variable protectionist attitudes towards genetically modified food production, and by increases in the world population (and particularly by growth in income) impacting on global food markets and prices.

For the purposes of this assessment, we assume that UK farmers will continue to receive current levels of grants from the successor national policy to the CAP, but note the prospect of a shift in the nature of this support that could still end in reduced supermarket prices.²⁸⁰

275 The Fontainebleau terms of the Rebate often have left the Treasury paying 85 per cent and not 50 per cent of matched national/EU funding. This explains low UK support for bids compared with other countries: this in turn generally exacerbates lower UK receipts from the EU Budget.

276 See Section 30.

277 See Section 13.

278 This would fall out from repatriating the Budget, and is separated out from the end total to avoid double counting.

279 See Section 13 for full workings.

280 The CAP payments to UK farmers are counted as continued outgoings in the reckoning of the net receipts tally.

“The long-term risk is that families will be hit by full rates of VAT.”

31.2.2 Common Fisheries Policy (CFP)

The CFP is covered in Section 14. The key variables in the estimated cost savings involve how policy in this area changes after Britain leaves the EU. Third parties that currently have access rights to UK waters will inevitably demand that these are continued. Realistically, UK negotiators would likely make concessions on two points: first, that fishermen with existing access rights would find these grandfathered for a transitional period rather than thrown out overnight (this would likely be a *quid pro quo* to gain Spanish acquiescence in other areas); second, after decades of overfishing, the grounds will not recover instantly, and the financial gains will not suddenly materialise. Indeed, it may take a generation, and only then if secure methods of environmental protection are adopted and the waters adequately policed.

With that caveat, as Section 14 concluded, the potential gains come to around £2.8bn annually.²⁸¹

31.2.3 VAT

As we explore in Section 24, the EU’s influence over VAT is as much a future risk as a current problem. While some areas currently enjoy opt-outs from having the full rate of VAT levied on them, once the principle of higher-rated VAT starts to be applied on any of those areas, harmonisation is triggered.

Consequently, the long-term risk is that families will be hit by full rates of VAT (in excess of 20 per cent) on goods that either have a reduced rate (5 per cent) or are zero-rated. Key examples at risk over time from this consumption tax include:²⁸²

- Betting (exempt)
- Bingo (exempt)
- Lottery (exempt)
- Museum entry (exempt)
- Goods from charity shops (exempt)
- Energy saving material installation (5%)
- Charitable donations and events (0%)
- Building services for disabled people, e.g. ramps (0%)
- Burial/cremation (exempt)
- Mobility aids like stair lifts (5%)
- Nicotine patches (5%)
- Hospice and hospital care (exempt)²⁸³

281 This will be reduced by an estimated £130m if the EU switches to a coherent policy on landings.

282 HM Government “VAT rates on different goods and services”, accessed 21/05/2015 at: <www.gov.uk/rates-of-vat-on-different-goods-and-services>.

283 Hospices themselves were given a VAT rebate from 2015 to cover purchases, putting them on a par with hospitals and thus remedying a VAT anomaly in play since 1994. VAT anomalies are not unique, with newspapers highlighting cases over whether VAT applies to rabbits (despite being pets and not always food), ferret feed (as they are deemed to be no longer working animals), and garlic smugglers masquerading as ginger importers to dodge VAT rates.

“Such goods will be increasingly at risk if the public finances remain under pressure.”

- Health care by doctors, dentists, opticians (exempt)
- Sanitary protection (5%)
- Education services (exempt)
- Domestic fuel (5%)
- Utilities (0%)
- Boiler controls (5%)
- Radiators (5%)
- Heating (5%)
- Renovating a dwelling empty for two years (5%)
- Holiday caravans (5% variable)
- Books (0%)
- Newspapers (0%)
- Baby/children’s clothes (0%)
- Children’s safety seats (5%)
- Helmets (0%)
- Credit cards (exempt)
- Insurance (exempt)

Such goods will be increasingly at risk if the public finances remain under pressure, given that VAT provides a collection mechanism that is comparatively simple to introduce.²⁸⁴

After Britain regained control over VAT, a radical approach would be to end the tax on a number of items currently charged the higher rate, such as supply of energy saving materials, privately-operated tolls and other areas. But VAT is a major source of Government revenue, amounting to about 6 per cent of GDP.²⁸⁵ As a government would be unlikely to want to slash swathes of VAT rates overnight, Table 31.i suggests five examples of what might be targeted by choice:²⁸⁶

284 The IMF has now begun to encourage VAT standardisation when it spots a need to generate tax revenue: see <www.thisismoney.co.uk/money/news/article-2650827/Ministers-levy-VAT-books-childrens-clothes-IMF-says.html>.

285 In the 2008 recession, this dropped to around 4.7 per cent. These figures exclude both alcohol and tobacco duty.

286 All figures unless otherwise cited are ONS extrapolated. See <www.ons.gov.uk/ons/rel/family-spending/family-spending/2013-edition/sum-headlines.html>.

“VAT affects poorer households disproportionately.”

Table 31.i: VAT tax rates

VAT	Rate	Current VAT revenue	Family cost annually
Hot takeaway food (“pasty tax”)	20%	£70m ²⁸⁵	£3
Beer/wine in pubs and licensed places	20%	£3bn ²⁸⁶	£111
House repairs	20%	£1.75bn ²⁸⁷	£65
Petrol for family car ²⁸⁸	20%	£5bn	£170
UK package holidays ²⁸⁹	20%	£405m	£16

In practical terms, zero-rating these taxes would also mean support for high street food outlets; support for declining pubs (especially those that are the social hub of small communities); a reduction in house insurance premiums; lower car running bills; and a boost to UK tourism.

However, any VAT cuts would need to be factored into the Treasury’s broader plans, as they obviously have an initial impact on tax revenue generated.²⁹² In turn, any comprehensive study of these VAT cuts would need to dynamically assess whether their stimulative effect on trade would increase the tax take over the longer term. In the above cases, for instance, it might lead to more revenue in hard-pressed seaside towns as family holiday patterns are shifted to cheaper alternatives in the UK. Household savings from running a car will not necessarily encourage increased car use but instead be used to buy a long-needed kitchen appliance, with an impact on a different part of the economy.

It is certainly the case, however, that VAT affects poorer households disproportionately, as an ONS study from 2011 explored.²⁹³ It discovered that the poorest fifth of households in the UK spent a higher proportion of their expenditure on goods and services that attracted VAT in 2009–10 than in 1986. That meant spending on VAT-rated items had increased to 55 per cent as a proportion of

287 Campaigns against the ‘pasty tax’ ended up limiting the original plans from all food sold warm to those specifically designed to be sold and eaten warm. In practical terms, this means a reduction in the tax take from £110m. See Guardian “George Osborne forced into pasty tax U-turn”, accessed 11/05/2015 at: <www.theguardian.com/politics/2012/may/28/george-osborne-u-turns-pasties-caravans>.

288 See <www.vatclubjacquesborel.co.uk/index.html> for one estimate of the number of jobs that might be created through increased trade. To the argument that VAT has a moral value as a dissuading sin tax, a counter in this case is that licensed locations mean that supply can be restricted if people drink too much; and councils apply democratic control over venues. VAT is a blunt instrument as it is intended to be universal.

289 This policy was included in the 2015 Green Party manifesto, but only to the 5 per cent minimum threshold allowed under EU VAT rules. See <www.greenparty.org.uk/news/2015/04/07/greens-pledge-to-cut-vat-on-housing-repairs/>.

290 VAT can currently be reclaimed for fuel used on (proven) business trips. VAT on hauliers, meanwhile, is a further important issue. There is a separate Green Party argument for dissuading use of vehicles, but VAT acts as a blunt instrument as it takes no account of rural communities lacking public transport alternatives.

291 There is an argument for cutting VAT across all hotels and similar services. See for example: <www.gov.uk/government/publications/vat-notice-7093-hotels-and-holiday-accommodation/vat-notice-7093-hotels-and-holiday-accommodation> and <www.cuttourismvat.co.uk>. The trade industry estimates VAT cuts of £1.2bn could generate ten year annual gains of £2.6bn.

292 Not necessarily on a 1:1 ratio of cut to tax revenue, as reduced rates can generate additional consumption. This can occur in other items, as family income is now freed up, and this spending may prove more productive for the economy. (Or it might then go on EU imports.)

293 ONS “Poorest Households Spending More on VATable Items than in 1986”, accessed 11/05/2015 at: <www.ons.gov.uk/ons/dcp171776_239565.pdf?format=contrast>.

all expenditure. Technology has also had an impact. After taking into account changes in prices, the poorest fifth of households spent, on average, around 250 per cent more on new cars, holidays abroad, meals out, audio-visual goods (including TVs), and photographic equipment combined in 2009–10 than in 1986.

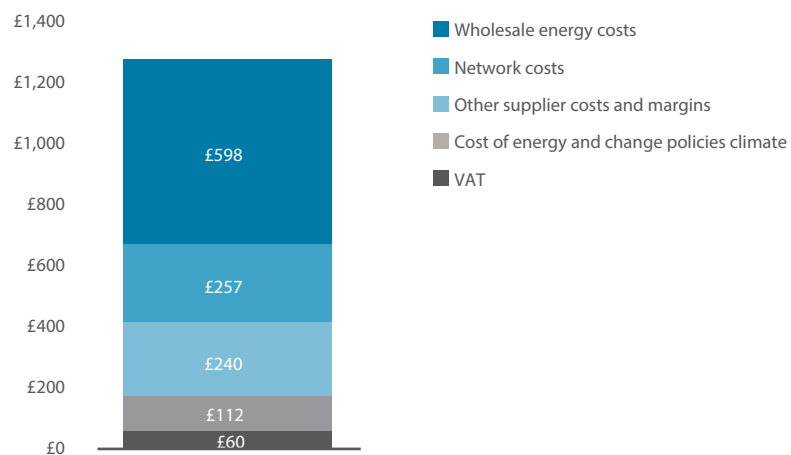
31.2.4 Household energy costs

Household energy bills are affected by more than just VAT. The EU’s energy policy drives up bills by adding extra costs to energy suppliers, which are inevitably passed onto consumers – or failing that, consumers as taxpayers if the state decides to subsidise them.

Examples of well-intentioned laws that have little appreciation of the practical compliance costs include emissions targets, the Renewables Directive and wind subsidies, and the Large Combustion Plants Directive. As explained in Section 16, the Carbon Levy and other methods of adding costs to existing forms of energy production do not generate cheaper alternatives without a price, particularly when the model adopted is flawed and invites subsidised structural abuse on such a scale.

In 2013, UK household dual fuel (electricity and gas) energy bills were estimated to be around £1,267. The UK Government estimated that the costs of energy and climate change policies represented 9 per cent (or around £112) of the same bill.²⁹⁴ This is broken down in Figure 31.ii.

Figure 31.ii: Estimated breakdown of average household dual fuel bill in 2013



Source: Department of Energy & Climate Change

The extent to which a government outside the EU would seek to reverse its commitments in this area remains an open question. However, there are clearly major possible gains.

294 DECC “Estimated impacts of energy and climate change policies on energy prices and bills”, accessed 11/05/2015 at: <www.gov.uk/government/uploads/system/uploads/attachment_data/file/172923/130326_-_Price_and_Bill_Impacts_Report_Final.pdf>.

“The public sector is equally affected by unduly burdensome regulations covering health and safety, environmental gold-plating, and record keeping.”

31.2.5 Council tax

The cost of red tape doesn't just impact businesses. The public sector is equally affected by unduly burdensome regulations covering health and safety, environmental gold-plating, and record keeping. Given the scale of the public sector, this means that a large portion of what are classified as 'business burdens' are actually additional levies on the taxpayer, either directly or as surcharges carried across by contractors. An example is the extra costs arising from the Working Time directive on the NHS.

These are, however, largely invisible, as the Government does not tend to differentiate between the sectors that end up paying. It is, however, possible to begin to separate the extra tax burden that arises as far as councils are concerned.

Councils are affected by all EU laws, and this then gets carried across into council tax bills. A prime example is the tax on landfill. This has led to twin side effects. Councils have attempted to limit domestic waste generation by only collecting bins fortnightly, with obvious implications. When dustbins do get emptied, councils are charged a levy on it, and this cost is paid through the council tax. As at 2015, the charge was £18 per tonne, increasing by £3 per year, and biodegradable material that exceeds the annually-reducing cap then faces a massive fine of £150 per tonne. Cumbria Council alone has to pay £4m a year in landfill tax.²⁹⁵ Total receipts from the tax for 2013–14 amounted to £1.189bn, a figure that will only grow.²⁹⁶

Other examples of EU costs to councils include:²⁹⁷

- **Buses.** The Drivers' Hours Directive 2006/561/EC requires bus operators to fit tachographs to services that run for more than 31 miles, increasing operating costs;
- **School Run.** Children under 12 years old and less than 135cm tall are required to sit in booster seats in cars under Directive 2003/30/EC. Bigger cars fitting more passengers with these seats cause local parking and congestion problems, and marginally increase costs for local councils who use taxis;
- **Road Charging.** Councils wishing to introduce road charging schemes have to abide by Directive 2004/52/EC, which lays down specific technical requirements for electronic road charging schemes regardless of local conditions;
- **Delays in public service contracts.** Public Procurement Remedies Directive 2007/66/EC delays the time between tendering and implementing contracts by forcing councils to set aside a standstill period for appeal. There is also a requirement to publish contracts above around £90,000, again increasing costs and tendering time;

295 Cumbria County Council "The cost of landfill", accessed 11/05/2015 at: <www.cumbria.gov.uk/planning-environment/waste-management/wasteissue/costlandfill.asp>.

296 HM Revenue and Customs Bulletins, accessed 11/05/2015 at: <www.uktradeinfo.com/Statistics/Pages/TaxAndDutyBulletins.aspx>.

297 These examples are all collated at <www.syedkamall.co.uk/guides/Local_Government.pdf>.

“Councils are not immune.”

- **Loss of local discretion on noise abatement.** Environmental Noise Directive 2002/49/EC requires member states to make Strategic Noise Maps. In effect, the EU – not local authorities – determines what noise levels are acceptable and what measures should be taken to monitor and enforce them;
- **Dictating council procedures.** Environmental Impact Assessment Directive 85/337/EEC (as amended by Directive 97/11/EC) requires councils to carry out a detailed study of the environmental impact of certain types of development prior to granting planning permission. This has automatically halted expensive developments where small colonies of protected species or plant life have been identified;
- **Waste & Recycling Costs.** The Recycling of Hazardous Waste Directive 91/689/EEC and Waste Electrical and Electronic Equipment Directive 2003/108/EC (see below) exacerbate the impact of the Landfill Directive 99/31/EC;
- **Higher Food Bills.** The CAP and CFP also mean that food for residential homes and meals on wheels costs more;
- **Higher Staff Costs.** The European Agency Workers Directive COD 2002/0149 requires councils to provide temporary staff – with only 12 weeks’ experience – with the same entitlement to holidays, pensions and sick pay as more experienced permanent staff. Meanwhile, the Working Time Directive 93/104/EC reduces flexibility by restricting the overtime of council employees;
- **Environmental standards for vehicles.** Compliance with the Energy End Use and Efficiency Directive 2006/32/EC could encourage councils to bring forward the acquisition of new vehicle fleets;
- **Loss of council freedom to set local standards.** The EU publishes energy efficient guidelines and assessments in public tender contracts, forcing suppliers to provide energy use statistics, introducing compulsory energy audits, and directing councils to purchase vehicles and equipment from a list of approved product specifications. The EU applies similarly stringent rules to the purchase and rent of buildings. A costly bureaucracy is needed to enforce such regulations, reducing the ability of local councils to set standards that they deem appropriate for the local communities that they represent.

It is uncertain what these burdens translate into in terms of additional council tax costs. We can, however, attempt a ball park estimate. Local authorities in England and Wales have a combined budget of around £115bn, though this figure is fluctuating due to austerity measures. In Section 29, we explore the generic drivers behind EU regulation, and the enduring threats that internal-to-the-Single-Market Technical Barriers to Trade and Non-tariff Barriers represent.²⁹⁸ The examples above underline that councils are not immune. Estimates vary considerably on the impact across the whole economy of these rules; very little study, by contrast, has been done on their specific impact on local government, certainly when compared to business costs. But based on business analyses, we take an ultra-cautious estimate of a bankable 0.5 per cent of savings that

298 Also covered in Appendix D.

“Rules that add costs to making products have an impact on their end shelf price.”

could be realised by councils by setting rules to suit local needs and situations. That suggests overall savings in excess of £500m coming off council bills – either as council tax cuts or as savings to be recommitted elsewhere. Further study would clarify these figures, but it is entirely plausible that a sum several times this saving might be achievable, depending once again on the nature of the UK legislation that replaces the EU original.

31.2.6 Products

Rules that add costs to making products have an impact on their end shelf price. Two examples in particular prove the point.

The Waste Electrical and Electronic Equipment recycling directive (WEEE) is intended to cut waste disposal of used electrical goods. This is a laudable objective, but the cost is passed onto the consumer, either at the point of disposal or of purchase if the supplier assumes the burden.²⁹⁹ It is thus an indirect and hidden tax. The extent to which UK policy-makers would be prepared to ditch it is uncertain, however, given that fees from compliance with similar rules globally are expected to triple by 2020.³⁰⁰

Similarly, the REACH rules – the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals – impose costs on the development of products. In the Extended Impact Assessment, the direct costs of REACH to the chemicals industry were estimated to total €2.3bn over the first 11 years after the entry into force of the Regulation. The additional costs to downstream users of chemicals were estimated at €500m-€1.3bn in a ‘normal expectation’ case and €1.7bn-€2.9bn in a scenario with higher substitution costs assumed.

The estimated total costs therefore ranged between €2.8bn and €5.2bn. As the Commission breezily observed, *“how much of the total costs will be borne by the downstream users depends on the amount of the cost pass-through of the direct costs from the chemicals suppliers downstream.”*³⁰¹ Given the size of the UK economy, this suggests a UK impact share of between £325m and £600m on the basis of the Commission’s own estimates. However, this cost is now largely inescapable as REACH has been in place for some years. But it is a warning of the future costs that will arise as new products are created. As no estimates exist for this, they can only be an observed but unquantified enduring risk.³⁰²

Once again, there is no easy mechanism for translating potential UK savings in these areas into a cohesive single assessment. We might take a conservative broad brush approach. Again dismissing the more optimistic estimates of what might be pruned from the EU regulatory burden on UK businesses, and assuming that at least some of the savings are passed onto consumers, we might predict a 0.5 per cent red tape gain for businesses selling products in UK shops. Focusing on household goods here at least gives us a starting point for debate.

On a conservative estimate, the average family could thus save £3.40 a year on furniture and carpets, 89p on household appliances, 36p on kitchen-

299 HM Government compliance costs count the fees generated as gains.

300 EUWID “Worldwide e-waste revenues to more than triple by 2020” (12 February 2015), accessed 11/05/2015 at: <www.euwid-recycling.com/news/business/single/Artikel/worldwide-e-waste-revenues-to-more-than-triple-by-2020.html>.

301 European Commission “Reach in brief” (2007) page 16, accessed 11/05/2015 at: <www.hse.gov.uk/reach/resources/inbrief.pdf>.

302 Energy saving products (light bulbs, vacuum cleaners) generate long-term cost savings at higher initial price and we pass over those here, except to note the reduction in consumer choice impacts most on low income families having to pay more up front.

“Ordinary households could see significant reductions to their annual bills if Britain left the EU.”

ware, and 60p on cleaning materials.³⁰³ Individually they appear nugatory. Collectively (even on the basis of a cautious estimate), the items begin to add up, especially if the full range of purchases is considered.

31.2.7 Cheaper clothing

Tariff barriers hinder access to the EU market by producers of cheap clothing. This is largely done in support of southern European manufacturers, since their northern European counterparts have mostly downsized and shifted to quality products with higher individual mark-ups.

The impact of these tariffs on bills for less well-off households is particularly damaging, pushing up the cost of clothing. The UK could opt, outside the Common Customs Tariff, to slash or remove these barriers. This might be linked with reciprocal action in the corresponding export markets to facilitate higher-end exports by UK producers, on top of agreements to combat local counterfeiting.

Average household annual expenditure on clothing is £1,217. We can get a very broad brush estimate of the potential gain from a glance at the tariffs applied at the EU border. If we take it at the 12 per cent applied rate, that suggests a potential (though speculative) saving of about £146 per year.

31.3 Potential household savings

Stepping away from the burdens imposed by EU membership allows the UK to correct current imbalances and redress costs. It may choose not to do so; or it may choose only to partially follow that route.

But from the above examples, it seems clear that ordinary households could see significant reductions to their annual bills if Britain left the EU. These are summarised in Table 31.iii.

303 ONS “The Headlines: Household Expenditure at a Glance”, accessed 11/05/2015 at: <www.ons.gov.uk/ons/rel/family-spending/family-spending/2013-edition/summary-headlines.html>.

Table 31.iii: Potential savings per household from leaving the EU

Saving	Variable	Potential annual saving per household
Net national payment to EU Budget	Continuing to pay current level of EU grants; support businesses pound for pound for all new tariffs that might be levied	£145 ³⁰²
CAP	Global food price; extent of liberalisation	£361 ³⁰³
CFP	Time	£186
20% VAT issues	Short-term tax hit for long-term tax gain	Variable
Landfill tax	UK civil service itself a global driver	£70
EU burdens passed on through council tax	Lack of official audit: savings highly speculative but likely to be higher	£20
Product shelf price	Lack of official audit: savings highly speculative but likely to be much higher	£5
Cheaper clothing	Extent of market liberalisation; variable tariff application by country of origin	£146
Total		£933

It is vital to underline that these figures are dependent and variable. They also provide only a partial snapshot, as other potential household savings might be identifiable and quantifiable through other data sets.³⁰⁶ On the other hand, they are conservative, excluding potential reciprocal tariff revenue, and assume WTO deals rather than free trade agreement terms are relied on.

These reasons alone should justify the Government undertaking far deeper research into the factors in play, and to generate some counter-statistics of its own.

But a ballpark figure in the order of £933 a year suggests that leaving the EU would result in financial gains for every household sufficient to cover a large slice of average annual energy or clothing bills, themselves negatively affected by EU rules.

304 Excludes revenue generated by levying any reciprocal tariffs.

305 £1bn (subsidy for non-UK farmers) is here removed in order to avoid double counting against net gains from repatriating the EU Budget. Subsidy for UK farmers is assumed to continue and is counted against net national payment gains, identified above.

306 As examples, it does not consider possible savings from changing aviation tax systems, which would be a matter of political debate, or attempt to quantify how changes to immigration policy would affect domestic unemployment levels and therefore reduce benefits bills.

32 Conclusion

Britain would prosper outside the EU. It could expect to see investment opportunities continue and its businesses thrive, bolstered by the advantages of deregulation. Crucially, British firms would have continued access to European markets, as WTO rules would prevent the EU from imposing unfair tariffs on UK exports. Furthermore, with the savings made from no longer having to contribute to the EU's Budget, the UK would, quite legally, be able to 'compensate' exporting firms for any new costs they may face. This applies not only to exports to the EU, but to exports to other countries that currently have a free trade agreement with the EU.

Most importantly of all, being outside an unreformed EU would limit the UK's exposure to the problems created by the euro. A full meltdown of the Eurozone would have a global impact, and no advanced economy would escape some of the effects, whether it was inside the EU or not. Clearly, however, if Britain were not an EU member it would have greater control over some of the consequences - most obviously, the cost of any new 'Marshall Plan' style rescue packages, or the movement of people. If a meltdown were avoided by further and deeper integration, being outside would mean that the UK did not face being in a permanently-outvoted minority within a 'New EU-4'.

These are tangible benefits. As Section 31 has shown, leaving the EU could make the average family £933 better off per year. The prospect of cheaper food, less expensive clothing, and lower council taxes should appeal across the country.

The advantages will not materialise immediately. As Section 29 found, it would take time to repeal unwanted EU regulation, and in some cases the UK will be constrained from doing so due to its international commitments. However, with the top 100 most expensive EU rules costing the UK £33.3bn per year, there would be considerable scope for making serious savings.

From an economic perspective, Britain has nothing to fear from leaving the EU. The economic opportunities outside are real and considerable, while the oft-cited claim that Britain would lose access to a large market fails to stand up to scrutiny. The considerable work that has been done over the last 40 years to bring down international tariffs has, in many ways, made the EU redundant. Ironically, leaving the EU and adopting a WTO trading relationship with it would be closer to the 'Common Market' idea that many voted for in 1975 than the status quo.

The UK may well choose to adopt a closer relationship with the EU after it leaves by, for example, negotiating a free trade agreement or joining the European Economic Area. These options, and many variations on them, all have their own advantages and disadvantages. But all are better than the status quo. As Section 30 has shown, even if the EU refused to sign a free trade deal with the UK after leaving - the so-called World Case Scenario - Britain would still make a net saving.

Britain should be renegotiating the terms of its membership now, both to protect itself against the consequences of either Eurozone integration or disintegration, and to secure the other benefits highlighted in this report. Our negotiators should have the confidence to walk away if these gains are not obtainable.

We should hold no fear about leaving the EU.



Conclusion

Britain is at a crossroads.

The forthcoming EU referendum will be a vital decision for our country.

Our current terms of EU membership are unacceptable and are holding Britain back.

Renegotiation offers a once in a lifetime opportunity to secure meaningful Treaty changes that will exempt Britain from political union and return us to a trading relationship.

Should we fail to secure such Treaty change, leaving an unreformed EU offers the prospect of greater influence and prosperity. The decline in international tariff rates means that Britain cannot be held to ransom by the EU.

We are in a win-win situation:

Change, or go.

Britain is at a crossroads.

At some point within the next two and a half years, the British people will have their say over whether their country should remain a member of the European Union. It is the most important vote in a generation and, for many, will be a difficult decision. 'Change, or go' has been written for those who have not yet made up their minds on whether Britain should be inside or outside of the EU.

As our analysis has shown, the current terms of membership are unacceptable and are only going to get worse. Britain's economy has been held back by the demands of a regional bloc whose economy has become increasingly inward-looking and uncompetitive, and whose policies, not least the flawed single currency, have created the conditions for ongoing, persistent economic crisis.

Far from offering every consumer and business the benefits of a wider domestic market, after 40 years of membership, less than five per cent of UK companies directly export to the EU and yet all are forced to bear the burden of its regulations. The EU is not a free trade area but a customs union, and one which has spectacularly failed to deliver trade deals with rising economic giants like China. This is a damning failure: over the last few years, countries far smaller than the UK but, crucially, outside the EU (including Iceland and Switzerland) have been able to secure free trade agreements with Beijing.

Perhaps most importantly, for over 40 years, the British public have been forced to endure the unwanted philosophy of 'ever closer union'. It is a political ideal that has led to a steady transfer of powers to institutions that are distant and opaque. These are bodies in which Britain's representatives are increasingly likely to be outvoted by the Eurozone states. As George Osborne has said, if Britain remains in an unreformed EU, it may soon face the dire prospect of having to join the euro. Quite simply, Britain's future has been taken out of Britain's hands.

That philosophy has attained its latest culmination in the euro: a poorly-prepared initiative which put political aspirations before economic realities. Due to inherent flaws, the Eurozone must either integrate or disintegrate. Britain cannot avoid confronting the question of how to prepare itself for either outcome.

However, before we think about leaving, we must first ask ourselves whether we can resolve these problems while remaining a member of the EU. The Government's promise to renegotiate Britain's EU membership is a crucial moment in the history of our country. It is a unique opportunity to address the many serious problems that stem from our current terms of membership. David Cameron's pledge of "*full-on Treaty change*" is, potentially, the most significant promise made by a British Prime Minister in the last 40 years.

There are many things that will need to change to make Britain's relationship with the EU work, and securing such reforms will require political skill and absolute determination. However, there is now widespread recognition of the need for a 'special deal' for the UK. Even committed EU federalists, like the former President of the European Commission Jacques Delors, now say that Britain "*could be offered a different form of partnership*".

But what if the EU refuses to offer such a new deal? We cannot assume that all those seated around the negotiation table will be reasonable. Were the EU to be intransigent then, given the fundamental problems that define our membership, we believe that Britain should vote to leave. As this study has shown, the UK – as the world's fifth largest economy – has nothing to fear from such a vote and, indeed, much to gain.

If it leaves the EU, the UK would not see its influence fade away. It would have a much louder voice, able to speak for itself in important international bodies like the World Trade Organization, where the terms of trade between nations are now being set. While, today, British representatives at these key

bodies either find themselves compelled to toe a European Commission line or find their seats usurped by the EU, leaving would allow them to stand up for the British people and their interests. This is even more important when one considers that international organisations are increasingly devising the regulations that the EU then imposes on the UK. Being directly represented at the source of new global rules – including those related to the UK’s crucial financial services sector – would give Britain more influence over them, not less.

Nor would leaving necessarily diminish Britain’s influence with its European neighbours. The UK would have no interest in bad relations with its European allies. Equally, the EU has committed itself to developing a ‘special relationship’ with neighbouring countries. As our study has shown, across a range of policy areas, the EU already works effectively and cooperatively with non-member states. Britain and the EU would find themselves friendly allies, trusted partners and good neighbours.

Most importantly, leaving the EU would increase Britain’s influence over its own affairs. Returning power from the opaque institutions of the EU to the British Parliament – and to the devolved assemblies – would make politics meaningful again. Political debate would no longer be hampered by mega-lobbying, corridor trading and back-room crisis deals in Brussels, but would reflect the views and opinions of the British public. This is the single most important advantage of leaving an unreformed EU: people would be able to vote for a government that reflects their values and beliefs. Britain’s future would be in Britain’s hands.

Finally, there would also be a chance to increase prosperity for everyone. From an economic perspective, Britain has nothing to fear from leaving the EU, and the oft-cited claim that it would lose access to a large and important market fails to stand up to scrutiny. The considerable work that has been done over the last 40 years to bring down international tariffs has, in many ways, made the EU redundant. Were the UK to leave, it would continue to have access to the EU’s markets, as World Trade Organization rules prevent the EU from imposing unfair, punitive tariffs on UK exports. Furthermore, Britain could quite legally ‘compensate’ exporting firms for costs that they may face, and this would be more than covered by the savings that would arise from no longer having to contribute to the EU’s Budget.

Were the UK to leave the EU, it could expect to see investment opportunities continue to develop and businesses continue to thrive. Employers could more easily expand without the deadweight cost of excessive EU regulation. Households would be better off too: for each family, the gains from being outside the EU could be up to £933 per year. These savings would come in many forms, including cheaper food and clothes. Often the savings would be in areas where less well-off families stand to gain the most.

Best of all, being outside an unreformed EU would limit the UK’s exposure to the problems created by the euro. If Britain were not an EU member it would have greater control over some of the consequences of the Eurozone meltdown – most obviously, the cost of any new ‘Marshall Plan’-style rescue packages, or the movement of people. In the event of further and deeper integration, being outside would mean that the UK did not face being in a permanently-outvoted minority.

This is the vision of the new Britain that could be secured if we make the right decisions in the next few months. In the modern world, where tariff rates are so low, such a relationship would, in many ways, be closer to the idea of a ‘Common Market’ that many people voted for in 1975. Freed from the risk of ‘ever closer union’, the UK could once again have a relationship with the EU that it could accept.

This is a vision that can now be secured by either rewriting the EU’s Treaties or by leaving the European Union itself. We are, in short, in a win-win situation: Change, or go.

Appendix A:

The root causes of divergence in the EU

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Economic divergence, both between member states and with the rest of the world, is a source of official anxiety in the EU, especially in the context of a rapidly-changing and increasingly competitive global economy. At the present juncture, it is easy to see opinions on how to address this as divided between Germany (and economies like it) on the one hand and Greece (and other struggling member states like Italy) on the other.

Throughout the Eurozone crisis, the spotlight has, perhaps understandably, remained firmly fixed on the weaker economies of the single currency bloc, with Greece taking a wholly disproportionate amount of media attention and, of course, EU officials' time as the game of brinkmanship over its unsustainable debts.

A.1 Is the Germany the role model for Europe to follow or is it guilty of hollowing out its partners?

There are two, at times rather bad tempered, schools of thought over how to achieve genuine economic convergence in Europe.

The first is that EU countries need to get 'real' about the impact of globalisation, reform their economies and shape up for the challenges of tomorrow's world. This is what Germany appears to have done already but, in the process, it has created a marked 'divergence' with its EU partners, which have been somewhat left behind. The German view is that all countries should be undertaking similar reforms to itself. The rest of the Eurozone should be seeking to 'catch up' with Germany, rather than demanding that Germany should slow down its economic progress or, in some way, actually go backwards.

Germany has been highly critical of the profligacy displayed by some of its fellow Eurozone economies – notwithstanding the role that German exports and German creditors played in the external deficits of these economies. Many in Germany want to see an ironclad debt discipline imposed across the Eurozone. Hans-Werner Sinn, President of the Ifo Institute for Economic Research and a member of the German economy ministry's advisory council, is a long-time advocate of Greece leaving the Eurozone. He has argued:

What is needed are modified debt rules, hefty sanctions, and most of all, a system of rules that automates the levying of penalties, leaving no room for political meddling.¹

In summary: Germany should be a model for emulation for many other EMU members. Economic convergence, ideally, should take place through convergence toward Germany, rather than forcing Germany to converge to the 'norm' of the Eurozone, e.g., to require the country to go against its cultural thinking and fiscal prudence and undertake deficit spending just because it can and just because the rest of Europe needs a stimulus.

The second school of thought is that all countries within the Eurozone should stick to the agreed, original 'official' script that "*euro area members must conduct sound national policies in line with the agreed rules and should be aware of their shared responsibility for the economic and financial stability in the area.*"²

1 Ifo Viewpoint No. 113 "How to Save the Euro" (29 April 2010), also published in the Wall Street Journal (20 April 2010) accessed 06/06/2015 at: <www.cesifo-group.de/ifoHome/policy/Viewpoints/Standpunkte-Archiv/stp-2010/Ifo-Viewpoint-No--113--How-to-Save-the-Euro.html>.

2 Statement by the Heads of State and Government of the Euro Area, (25 March 2010) accessed 06/06/2015 at: <www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/113563.pdf>.

But what is a 'sound' policy, and what does a Eurozone member's 'responsibility' require it to do? It is argued that, while under-performing countries do indeed need to get their houses in order, endless austerity in countries like Greece is not only counterproductive, but perpetuates the crisis. Germany should be doing more to strengthen domestic demand – by reforming its high taxation system, increasing its minimum wage and committed to more public investment in infrastructure. If Germany were to 'do its bit', the imbalances in its favour would dissipate somewhat, and the resultant increase in consumer demand in Germany would help to pull the likes of Greece out of the economic mire.

In summary: Germany's current account surplus is out of control. The EU now possesses a Macroeconomic Imbalance Procedure (MIP), described as a "new surveillance and enforcement mechanism", and an Excessive Imbalances Procedure (EIP), which aims to reduce macroeconomic imbalances and force nations to submit "a clear roadmap and deadlines for implementing corrective action". Complainants are urging that these new rules for central intervention in a nation's budgetary process should be put into effect in Germany's case.

A.2 Argument (a): The German engine of prosperity is a model for emulation

Sustainable economic growth is key to resolving the many challenges facing the EU. To generate such growth, countries need to encourage innovation, not avoid exposing themselves to competitive pressures. Countries need to adopt a proactive approach to embrace globalisation, rather than relying on short-term stimuli such as money printing, increased government spending, or currency devaluations.

The Eurozone's current account surplus has reached €236bn per year (or about 2.3 per cent of GDP). However, much of this, as is the case with other aggregate macro variables for the EMU, is distorted by the extraordinary performance of Germany. Removing Germany from the sample, the Eurozone's surplus collapses to €9 bn (0.1 per cent of GDP).

German exports now account for over 40 per cent of GDP, up from 30 per cent in 2000 and some 25 per cent a decade earlier. The economic prowess of Germany reflects various strengths, one of which is its strong manufacturing sector, especially its auto industry (accounting for about 20 per cent of the total industrial revenues).

The automobile industry provides an excellent example to better appreciate the origins of the German economic prowess. The key ingredients of its success are:

- Technological innovations and product quality are key. The burgeoning global consumer base has ample demand for quality products. What has made Germany particularly successful in the auto industry is its long history of inventions and innovations.
- The German auto industry has thrived through intense competitive pressures, mostly from its domestic rivals. Further, innovations have been compelled by the need to meet an increasingly stringent regulatory environment. In short, German car makers have thrived under pressure, not under protection.
- In contrast to many of its neighbours, Germany has taken a proactive approach to capitalise on the opportunities of globalisation. In addition to exports, German cars manufactured abroad will soon be double the number produced at home, resulting in foreign car sales equivalent to some two thirds of total sales.

Observation 1 – A history of ingenuity

As a former CEO of Siemens has stated, Germany's technological competitiveness today is based on its long-standing culture and tradition of engineering which, broadly speaking, dates back to medieval times. A long list of inventors and innovations, especially in the automotive sector, has been the the bedrock of this industry. Notable and familiar examples include Gottlieb Daimler (who invented the world's first motorcycle in 1885), Karl Benz (who put together the world's first modern automobile in 1885) and Rudolf Diesel (the inventor of the diesel engine in 1892). Continuous innovations and inventions since 1945 have distinguished German cars from cars designed and built elsewhere.

Observation 2 – The role of the Mittelstand

Much of German industry's distinction stems from the 'microeconomic' structure of the economy, namely the strong network of small and medium-sized companies, most of which are family-owned and run. The 'Mittelstand' accounts for about half of total economic output, two thirds of full-time employment, and more than 80 per cent of all trainees. The ownership structure, and the way these businesses are managed, leads them to pursue very long-term strategies and to prioritise the quality and inventiveness of their products. Small and medium-sized enterprises (SMEs) employ around 70 per cent of the total German workforce. They represent 99.5 per cent of all companies in Germany. About 95 per cent of those German companies are family-owned. Spending on R&D by these firms has increased by 71 per cent in the past half-decade, compared to 19 per cent by large corporations.

In many ways, the modern German industry is very much a product of the 'federal' history of the country itself. Until late in the 19th Century, Germany was fragmented between numerous microstates and principalities. Small businesses were forced to compete in 'foreign' markets early on in order to grow.

The Mittelstand creates the backbone of the car industry's innovation capacity. No other country exhibits such interwoven structures between large-scale enterprises and SMEs, especially in the complex automobile supply chain. This intense international and domestic competition has hardened German car makers over the years, and has contributed to meticulousness in designing, handling and building every single part of a car to form a complex and functional final product, which ultimately results in very quality output.

Finally, in the Mittelstand, the ownership structure of the firms and tradition encourage longer-lasting relationships between employers and employees. This longer-term horizon aligns the interests of the business and the employees, encouraging dedication and high performance, while helping firms to retain experienced and skilled staff.

Observation 3 – A well-trained labour force

While, in many other countries, college education or education in general does not properly prepare the students for their professional careers, Germany has a unique 'Dual Vocational Training System' that allows students to practice, learning on the job, so as to make them a productive part of the economy even before they have their first real employment. Other countries have tried to adopt this system, including most recently Singapore where Lee Hsien Loong's Government has promoted 'earn and learn' programmes to place young people into professional activities.

In addition to the dual education system, the German automotive industry strongly attracts workers. According to recent surveys, automotive companies in general, and particularly the original equipment manufacturers (OEMs)

like Audi, BMW, and Mercedes, are among the most popular employers for students. The supply of good, trained workers and the demand for them seem well matched.

The thriving auto industry has also helped Germany's overall job creation. The car industry is the country's most important employer with a consistently high level of employment of between 750,000 and 775,000 workers over the past decade. Every fourth R&D in the German economy works in the auto sector.

Combined, these traits have allowed the brand value of 'Made in Germany' to remain strong, and have enabled German products to stay competitive in an increasingly globalised world. Germany has been successful at delivering innovation at a much faster rate than any of its European peers. It has twice the number of patents when compared to France, and five times the number of the UK. The auto sector, which deploys a third of the research effort in the country, has been particularly notable for delivering innovation.

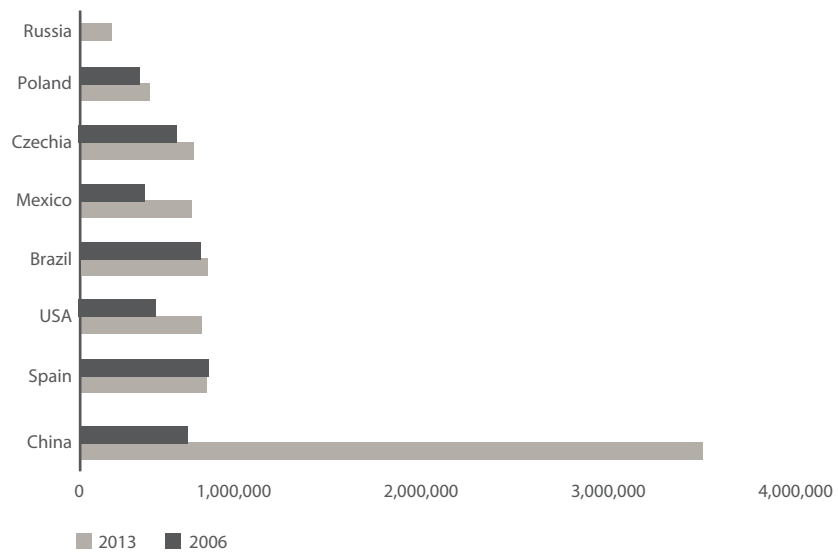
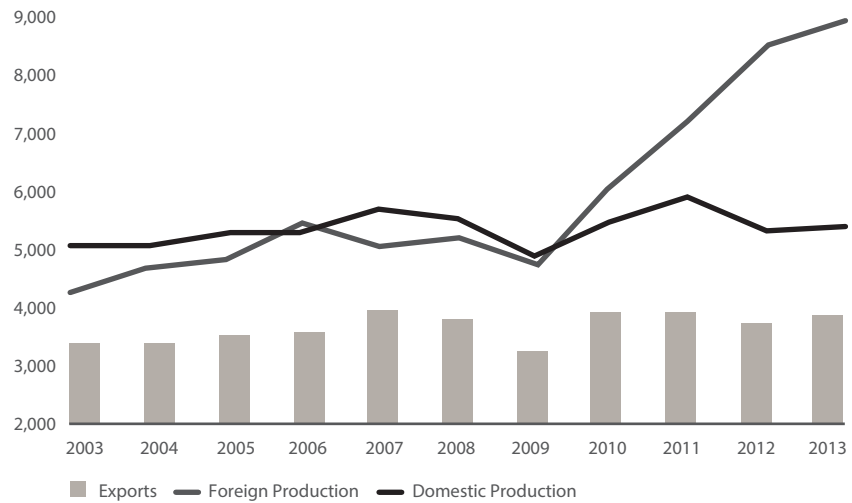
Observation 4 – A proactive posture toward globalisation

Perhaps because of its national heritage, Germany's companies were well prepared at the turn of the century to cope with the rise of China and other emerging market economies in the global economy. The integration of these countries into the global supply chain along with the rise of these new consumer markets, marked a watershed in the global economy. While most industrialised economies (in Europe and elsewhere) have struggled to remain competitive in this new world, many German companies have thrived in this environment. The success of Germany has been a reason for celebration as well as a cause for concern within Europe.

It is usual to think of Germany as an 'export power-house' with much of the industrial output shipped off to the fast-growing emerging markets such as China. In fact, much actual production, particularly in the auto sector, is now carried out overseas. Over 60 per cent of German cars are now produced outside Germany. Exports paint only a partial picture of the influence of German products in the world.

German automakers started to move production into their consumer markets early on. Volkswagen began assembling vehicles in Brazil as early as the 1950s, and now claims a market share of some 20 per cent of light vehicles. In China, some 3.5 m German cars are produced a year, while fewer than 1m are built in any of Germany's other key markets and 5.4 m cars are produced at home. Figure A.i summarises this shift in production.

Figure A.i: Foreign production of German cars 2013



Production in million units (total production was 8.6 m units abroad and 5.4 domestically). Source: VDA and SLJ Macro Partners

By shifting production overseas early on, German car makers have been able to take advantage of both the lower production costs and the expansion of the host countries' domestic markets. Suppliers have also cut production costs significantly by bypassing trade barriers which, in many cases, particularly in emerging markets, can be very high. In India and Brazil, for example, car importers can be forced to pay duties that exceed 100 per cent. By relocating production to the consumer markets, the industry has also hedged out a significant portion of foreign currency risk between production and sale.

Observation 5 – Reform does pay off

Particularly in the context of the euro crisis, it is noteworthy that Germany's unit labour costs have remained unchanged since the early 2000s, while most of the EU economies have experienced sharp increases. Rising labour costs have only made life more difficult in those countries, as much of the global manufacturing production shifted to Asia and other regions with lower labour costs.

In the early 2000s, and even earlier following reunification, Germany reformed its labour market institutions (the so-called Hartz reforms), allowing for a broad decentralisation of wage bargaining from the industry level to that of the level of the single firm or single worker. These changes were crucial to preserving the competitiveness of German industry.

Observation 6 – New challenges to competition

Even if the German model has proved successful in the past half century, it is an open question whether this success story can be sustained into the future. Can German companies continue to ‘out-compete’ their rivals in America and Asia in their offering of manufactured goods in the next 50 years?

Germans have excelled at ‘endogenous growth’ by constantly improving the technological base available (motor cars, machines, etc.). But the past decade has seen a series of truly ‘disruptive’ technologies – inventions such as the iPhone, Google Maps and Amazon – which have affected our lives in ways that are hard to measure. While Germans have delivered constant improvements in the quality of manufactured goods, other businesses have revolutionised much of the way people live and work.

Companies like Apple continue to invest heavily in revolutionary technology, such as the Apple car, or ‘Project Titan’. Will the technology giant be able to comprehensively transform travelling from A to B in the same way as it has revolutionised consumer electronics? Just as the Japanese manufacturers of consumer goods were suddenly supplanted by disruptive technologies, could the auto industry, and other industries in which Germany has thrived, also be vulnerable to competitors employing transformative technologies? How Germany copes with this threat will be important.

A.3 Argument (b): Germany is an out-of-control giant that should be reined in

Germany’s external surplus may be a source of national pride for its Government, but elsewhere and across the Eurozone it is more contentious. At a time when weaker members of the single currency are being forced to reduce their deficits and become more competitive, German success is viewed as harmful, and even offensive. Figure A.ii summarises how the position has developed over time, and Figure A.iii separates the balance between exports and imports over a more recent period, to illustrate how Germany has expanded its surplus.

Figure A.ii: Actual and projected current account surplus of Germany as a proportion of GDP, 1980–2015

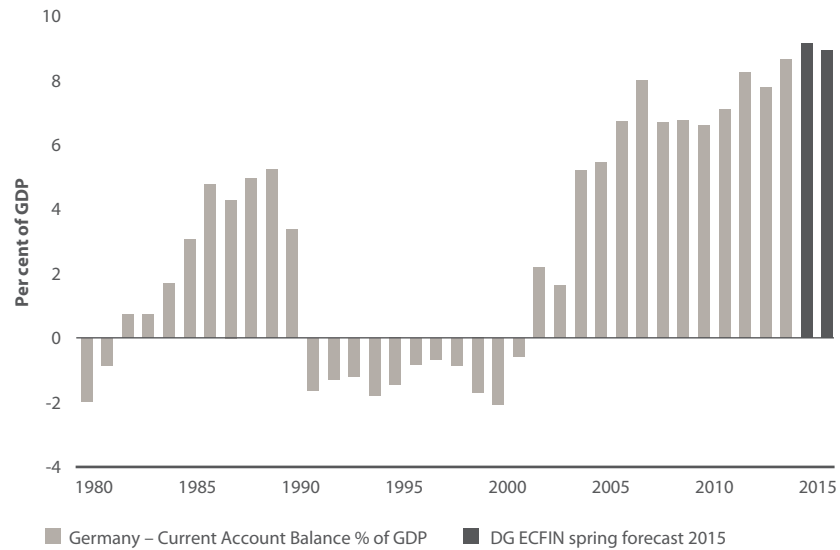
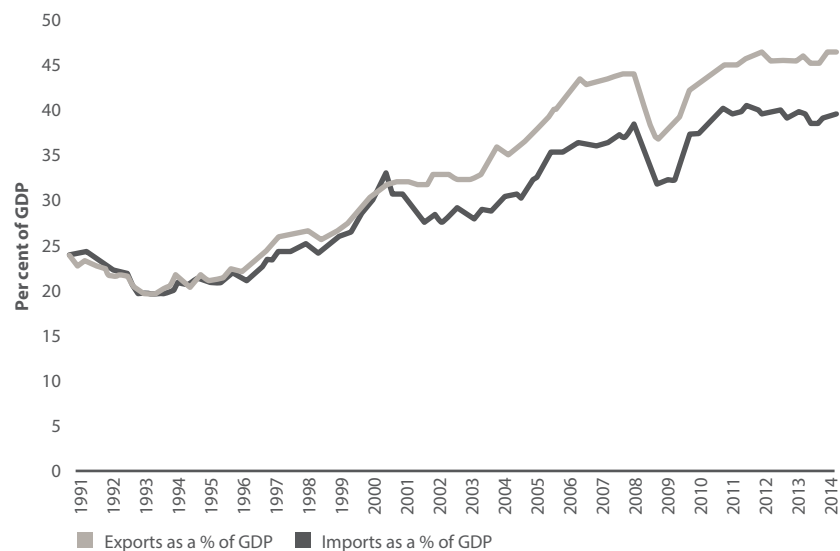


Figure A.iii: Exports from and imports into Germany as a proportion of GDP, 1991–2014



Berlin has long been under pressure to boost domestic consumption, increase government spending and reduce its reliance on foreign export markets, to help the process of internal readjustment within the Eurozone. The US Treasury and the International Monetary Fund, as well as the EU, are among those institutions who have long called for Germany to do more to reflate the Eurozone.

The European Commission’s Directorate-General for Economic and Financial Affairs (ECFIN), in its Spring 2015 European Economic Forecast, detailed what it expects to happen to 180 variables across the next two years. It highlighted what some consider is the nub of what is wrong with the Eurozone: in 2015, Germany’s already ‘excessive’ current account surplus is forecast to peak at 7.9 per cent of GDP, falling only to 7.7 per cent in 2017.

The March 2015 Country Report for Germany, under the “In-depth review of the prevention and correction of macroeconomic imbalances”, noted that:

- “The current account consistently shows a very high surplus, which is projected to increase to 8 % of gross domestic product (GDP) in 2015”.
- This is attributed to “strong competitiveness in the export-oriented manufacturing sector, and high revenues from private sector investment abroad, which have not been offset by increased domestic demand, in particular due to weak investment.”
- “Consistently weak business investment and insufficient public investment remain a drag on growth”.³

The report also concluded that Germany had made only “limited progress in addressing the 2014 country-specific recommendations”, noting that:

- Germany had not increased public investment as recommended and action had been “insufficient to address the investment backlog in infrastructure, education and research.”
- Germany had made no progress in reforming its high taxation system.
- Germany had not increased its minimum wage adequately.
- Other disincentives to work remained.
- Germany had not taken “significant efforts” to implement the reforms recommended for the transport and service sectors.

The Commission has in place a set of rules that require nations to restrict external surpluses to not exceed six per cent of GDP and yet Germany repeatedly fails to abide by those rules, whilst lecturing the rest of its Eurozone partners about their failures to meet the targets.

Technically, Germany could be subjected to a fine worth 0.1 per cent of its GDP if it fails to show it is doing enough to reduce the imbalances in its economy. For five consecutive years Germany’s surplus has been above six per cent of GDP. The EU’s Macroeconomic Imbalance Procedure states that the Commission should launch infringement proceedings if this threshold is breached for three years in a row, unless there is a clear reason not to.

There appear to be few extenuating circumstances to avoid such proceedings, since Germany’s surplus is not caused, for example, by a one-off shock. The surplus still remains ‘excessive’ even if adjusted for lower energy import costs. However, thus far, Germany has rebuffed its critics, seeing its surplus as evidence of economic strength rather than a dangerous imbalance.

Critics of Germany claim that early in its Eurozone membership, its leaders realised that they had to find a new way to maintain their country’s external competitiveness, in the absence of the ability to manipulate the exchange rate. They are accused of having set out in a deliberate manner to out-compete their fellow EU partners in an overly aggressive commercial way, and one which has penalised its own citizens, widening the income gap.

For instance, the Hartz reforms reduced the capacity of workers to gain real wage increases which would allow them to share in the productivity growth of the economy. This also suppressed domestic spending, and hence the demand for imports. Profitable domestic investment opportunities became limited. As a

3 European Commission “Country Report Germany 2015” (COM/2015) 85 final), accessed 06/06/2015 at: <http://ec.europa.eu/europe2020/pdf/csr2015/cr2015_germany_en.pdf>.

result, capital was exported in search of a return abroad. Hence Germany's persistently large external surpluses explain how so much debt became incurred in Spain and elsewhere.

The 'prosecution' case against Germany is that it is wilfully engaging in a chronic structural abuse, further complicating the debt dynamics within the Eurozone in ways which will render monetary union unworkable over time. Critics argue that Germany should be fined, with its surplus being treated in the same way as the deficits of the 'Eurodrachma' countries.⁴ Both should be regarded as comparable threats to Eurozone stability.

With the German jobless rate at a post-reunification low of 4.7 per cent, its people should be enjoying a surge of consumption. However the Hartz reforms and tough fiscal policies have suppressed this. With the ECB introducing its own version of Quantitative Easing (QE), the fear is that any durable induced recovery in Southern Europe will simply lead to the same build-up in intra-EMU trade imbalances, and therefore in the same offsetting capital flows, vendor-debt financing, and asset bubbles that led to the Eurozone crisis in the first place.

A.4 The real cause of EU divergence: the wrong type of closeness, no actual union

The technical explanation for divergence within the Eurozone is not difficult to divine. It is set out in Section 2. In the absence of the genuine internal flexibility that would create an 'optimal currency area', a single monetary policy has reinforced both the over-performance and under-performance of member states and encouraged their drift away from the average Eurozone position by which the policy is determined. The solution is either to allow the worst-affected members to achieve a correction through new national currencies, or to implement cross-area fiscal transfers to compensate for those worsening effects. Unfortunately, both courses of action are prohibited under the EU Treaties as they currently stand.

Therefore, the root cause is that, throughout the history of the euro, politics has always trumped economics. But one particular political stance has been privileged above all others.

During the Eurozone crisis, attention and criticism has been directed towards Germany. But it should not be overlooked that France is a serial offender, too. The unwillingness of the European Commission to enforce its own rules in relation to Germany and France is perhaps one of the major drivers of the present disharmony within the Eurozone and discontent amongst the southern countries. After all, this is not the first time that Germany has fallen foul of the euro's fiscal rules. Germany and France struggled in the early years of their membership of the Eurozone with deficits well in excess of the Maastricht fiscal rules (maximum of 3% of GDP).

The seeming reluctance of the EU's to take action against either of the Eurozone's two largest economies, Germany and France, when both have transgressed in the past and are now both again persistently in breach of the rules is something that many in other parts of the Eurozone, especially in those countries who have had to endure extreme austerity measures, have found especially offensive, discriminating and duplicitous.

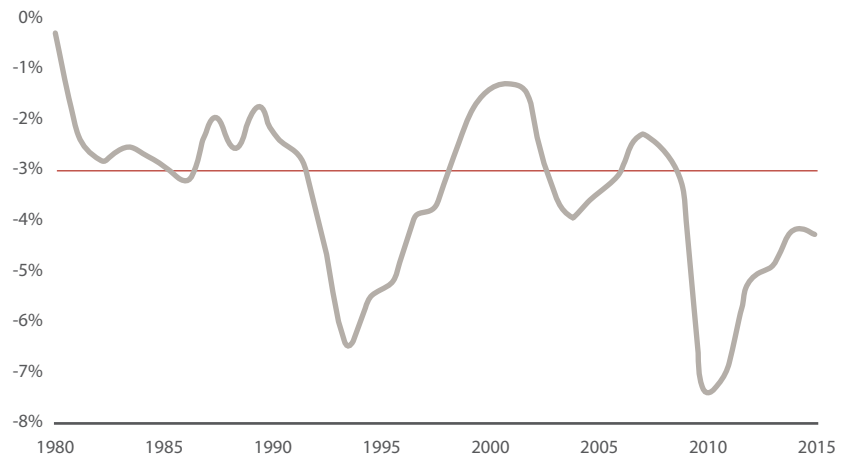
Back in 2003, both France and Germany were able to flout the conditions of the Stability and Growth Pact, after they ran budget deficits in excess of three per cent of their GDP. Neither was sanctioned. At the present time, not only is Germany in breach of the "excessive" imbalance rules on its current account

4 See Section 1.1 for an explanation of the divisions between Eurozone members

surplus, France is, yet again, in breach of the three per cent budget deficit limit and the 60 per cent debt-to-GDP ratio ceiling set under the Maastricht Treaty.

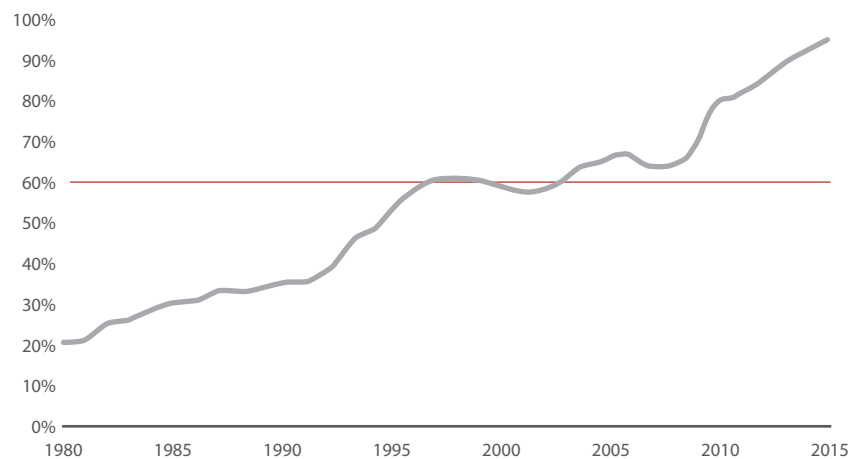
France has been a persistent non-complier with these requirements of the Stability and Growth Pact, as Figure A.iv (budget deficit) and Figure A.v (debt-to-GDP ratio) illustrate. However, EU enforcers appear to be dragging their feet in what seems to be a deliberate attempt to overlook this continual failure to meet targets. This has been met with howls of protest from smaller states that have suffered under EU bailout terms and who say the rules will lose credibility if Paris is able to flout them.

Figure A.iv: French budget deficit as a proportion of GDP, 1980–2015



Source: The ECU Group plc, IMF

Figure A.v: French debt-to-GDP ratio, 1980–2015



Source: The ECU Group plc, IMF

No French Government has balanced its books for over 40 years. France was granted two extra years by EU finance ministers in June 2014 to bring its deficit below the three per cent threshold, after having missed a previous deadline for doing so at the end of 2013. The French Government has since stated that it will miss its 2015 deadline, too. Technically, the country is now liable for a fine of up to 0.2 per cent of national income. The domestic political impact of that at the present time is not difficult to imagine. It remains to be seen whether the EU enforcers will have the mettle to sanction the Eurozone's second largest economy.

By not enforcing the rules and imposing sanctions on France, the EU authorities have created a clear moral hazard and cause for resentment in the other countries that have been brow beaten by mandatory austerity measures in return for bailouts. There is nothing ambiguous about the direction in which France's debt-to-GDP ratio is heading, and it rather suggests that France is not playing by the rules or even attempting to do so. This is a situation capable of causing a complete breakdown in fiscal disciplines within the Eurozone and disharmony amongst its constituent member countries.

The irresistible inference is that France will allow Germany to continue to run its exorbitant trade surplus (and insist on repayment of its intra-EU debts), in return for Germany permitting France to continue to run its chronic budget deficit and borrow excessively. In the meanwhile, the citizens of the other Eurozone countries are being squeezed and constrained in return for the privilege of being governed by a Franco-German axis.

At some point, it is going to occur to someone that they might be better off if their affairs were run in a different way.

Appendix B: The EU is not fit for the 21st Century: the path towards Eurozone break-up

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The Eurozone was founded as a political project, divorced from underlying economic reality. Just as the 2008 financial crisis exposed over-valued banking assets, so the Eurozone crisis has exposed the flaws and deficiencies of the euro. The EU authorities have gone as far as they reasonably can under the current rules in order to sustain an unworkable and broken system.

Either the Eurozone will break-up, or there will have to be Treaty change involving a fundamental redesign and realignment of political objectives. Most likely, a solution to the problems will involve a bit of both. The immediate costs to the world economy will be severe, but the prospects for a near-to-medium term recovery are good.

B.1 From Single Market to single currency: political dream, social nightmare

The objective of the Single Market is to bring down barriers and simplify existing rules to enable everyone in the EU – individuals, consumers and businesses – to make the most of the opportunities offered by direct access to 28 countries and 503m people.

The cornerstones of the Single Market are often said to be the “Four Freedoms” – the free movement of people, goods, services and capital. These freedoms are enshrined in the EC Treaty and form the basis of the Single Market framework. In practice, this means:

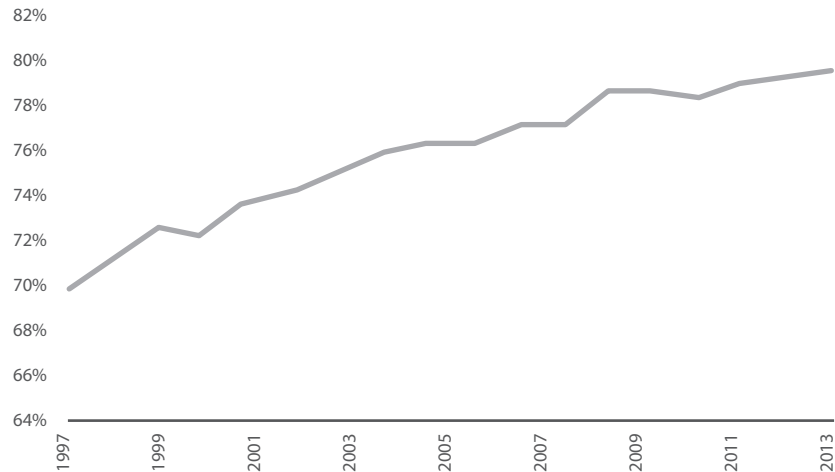
- Individuals: The right to live, work, study or retire in another EU country;
- Consumers: Increased competition leading to lower prices, a wider choice of things to buy and higher levels of protection;
- Businesses: Easier and cheaper to do business across EU borders.

The Single Market is also enabled by additional laws (either Directives or Regulations) that bring down further barriers in specific areas and are implemented at national level by member states.⁵ However, none of the above objectives required economic and monetary union or a single currency. Indeed, although the EU has achieved great strides in the free trade in goods, it has still not managed to fully complete the Single Market, with the trade in “services” encountering many ‘hidden’ barriers.

This has been particularly detrimental to the UK where services continue to exhibit a powerful growth trend and contribute an ever greater share of the UK’s GDP. Some 80 per cent of Britain’s GDP is now made up from the services sector, as Figure B.i illustrates.

5 Discussed further in Section 29, page 740.

Figure B.i: Growth of the contribution of services as a proportion of UK GDP, 1997–2015



Source: The ECU Group plc

The introduction of monetary union and the single currency has served as a considerable diversion away from achieving the aims of the Single Market, forcing the focus of attention on resolving a continuing sovereign debt crisis. These premature and unnecessary measures not only directly contributed to the Eurozone debt crisis, but they have impeded their swifter “market forces” led self-correcting mechanisms.

Countries within Europe may be geographically close but their histories, cultures and social compositions are extremely divergent. They not only have differing languages, economies, and political and demographic backdrops, but also distinctive defence policies and military capabilities, and bases for law, welfare and taxation. Trying to manage the constituent parts of the EU (and especially the Eurozone) into one vision (and enduring economic and monetary union) with centralised powers and collective legislation is like trying to herd a large group of stray cats into the back of a taxi.

There is a distinct ‘reality deficit’ among the EU’s political elite. What started as a quest for peace and the free movement of goods, services, capital and people has metamorphosed into a quagmire of expansionist bureaucracy, conflict of interest and a lack of democratic legitimacy and accountability. The result has been social disharmony and chronic economic underperformance.

Introduction of the EMU and the single currency, without first achieving sound political, fiscal and banking convergence, was a significantly ill-judged step. Furthermore, the only rational argument for trying to forge an economic and monetary union the countries that are so far involved in the Eurozone (both existing and those in line to join) stems from their geographical proximity. Under no other criteria would anyone attempt to create an economic and monetary union with these particular participants.

This has rendered the EU an increasingly incompatible and troubled union, compromised by an unsustainable monetary system, weighed down by excessive regulation, and governed by increasingly conflicted, ineffective and undemocratic practices. Bad decision making, driven by naked self-interest, and political expediency, has trumped careful economic forward thinking and planning, social harmony and cultural reality.

In short, the Eurozone project has ‘hijacked’ the wider EU project and its original objectives. This threatens to condemn many of its citizens to a future

of economic divergence within the union and underperformance outside of it, rising social disharmony and mounting financial risks. By not then managing the convergence objectives and enforcing the rules, the EU authorities have compounded their original folly and set the stage for a full blown crisis.

Leading by example does not seem to have been a discipline that resonated with the two principal architects and drivers of the EMU project, Germany and France. They were early offenders against the three per cent deficit ceiling rules they themselves created. Unsurprisingly, they chose not to punish themselves, but this ‘bad example’ was an important signal to others that rules were there to be broken and the ‘sanction’ for rule breach was likely to amount to very little. Hence, politicians in many Eurozone countries made little or no effort to reform, choosing instead to pay lip service to the rules. For them, the real benefit of a single currency was a ‘one-size-fits-all’ interest rate which was appreciably lower than what they had been used to and to which they would have been subjected to in the “real world”.

B.2 The EU has aggregated a collection of ‘sub-prime’ economies

Indeed, in the real world, free floating exchange rates and free market determined interest rates are critically important factors in balancing (or rebalancing) economies and keeping politicians in check. Without them, important checks and balances are removed from the political and economic process.

The Taylor Rule⁶ provides an objective measure of the appropriate interest rate for any given level of GDP growth and inflation, on the assumption that the central bank pursues a policy of price stability. In crude terms, it has been popularised as the proposition that, for each one per cent rise in inflation, the central bank should increase interest rates by more than one per cent. It is possible to use published data for the Eurozone economies to calculate what interest rate should have been in force if their central banks had been following the Taylor Rule.

Figures B.ii to B.ix set out the notional Taylor Rule interest rates which should have applied for a sample of Eurozone constituents: the Eurozone as a whole; a notional ‘core group’ (those that have been least affected by the crisis: Austria, Belgium, Finland, France, Germany, Netherlands); the peripheral countries (any non-core member of the Eurozone); Germany as the dominant member; and those members who have experienced the most difficulty during the Eurozone Crisis (Spain, Italy, Greece and Cyprus). For convenience each is accompanied by a subsidiary chart giving the ‘spread’, i.e. the difference between the actual ECB interest rate and the theoretical rate which a perfectly objective national central bank would have set for that country or group of countries. Where the spread is negative, the ECB can be regarded as having set an interest rate which was too lax, and if positive, then the rate can be judged as having been too tight.

Visually, this illustrates that the ‘one-size-fits-all’ interest rate policy that the ECB has the misfortune of having to administer has been woefully inappropriate. Right from the start, insufficient genuine convergence amongst the founding euro members created a dichotomy that was always going to be difficult for the ECB to manage. It is perhaps not all that surprising that a ‘one-size-fits-all’ rate might at some point be inappropriate for some of the member states. But even in regard to the average position for all members (Figure B.ii), where the ECB has the greatest excuse for clinging to the average, policy has veered

6 Named after John B Taylor, Professor Economics at Stanford University, who proposed it as a guidance principle for central banks in setting interest rates in 1993.

sharply from being too tight (1999–2002), then too lax during the ‘boom years’ and, perhaps more forgivably, the beginning of the recession (2002–2012), and finally too tight again (2012–2015).

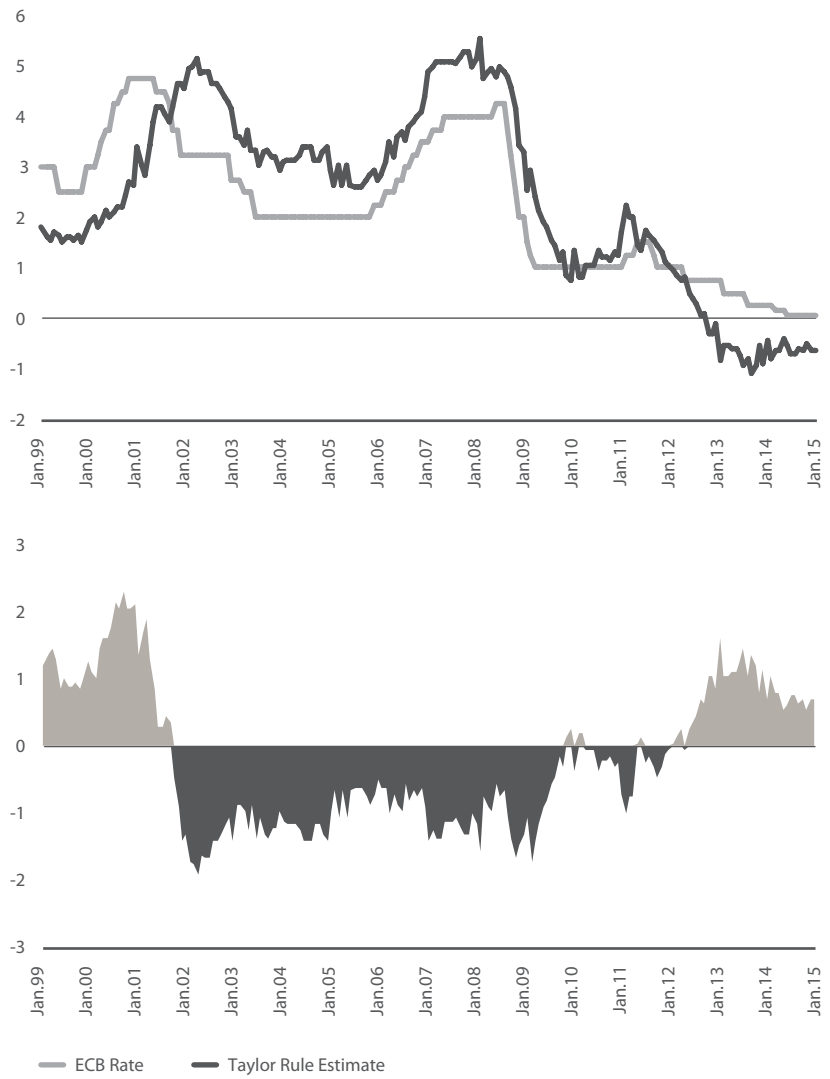
The individual country charts tell their own story. Since the onset of the crisis in 2009, the ECB has set an interest rate which is too lax for Germany (Figure B.v) and yet too strict for successively Spain (Figure B.vi), Cyprus (Figure B.ix, from 2010), Greece (Figure B.viii, from 2011) and Italy (Figure B.vii, from 2013). The mental image of a set of dominos being lined up is unavoidable. ECB policy is actively reinforcing the divergence within the Eurozone, forcing the two extremes ever further from the mean.⁷

Another analogy also comes to mind. Much criticism has been directed towards the practice, during the boom years, of bundling together mortgages and repackaging them as ‘collateralised debt obligations’. This involved slicing the bundle into tranches carrying different priorities for receiving payments from the underlying mortgage borrowers. Analysts only ever provided ratings for the senior tranche, which was passed as being of acceptable quality – which in all likelihood it was, since it represented the ‘cream’ at the top. However, this obscured the fact that, in order to produce a bundle that was ‘sub-prime’ on average, the junior tranches had to represent extremely ‘sour milk’ in order to produce a senior tranche of ‘cream’, and stood to incur considerable losses in the event of a downturn in the market. When it was realised that this risk had been mis-priced, it triggered the 2008 financial crisis.

Similarly, the EU had a fundamentally sub-prime economy, but the euro allowed the member states to be bundled together and passed off as having German quality. The difference with sub-prime debt, however, is that through the divergences fostered by EMU, the strength of Germany is actively degrading the quality of the weaker member economies.

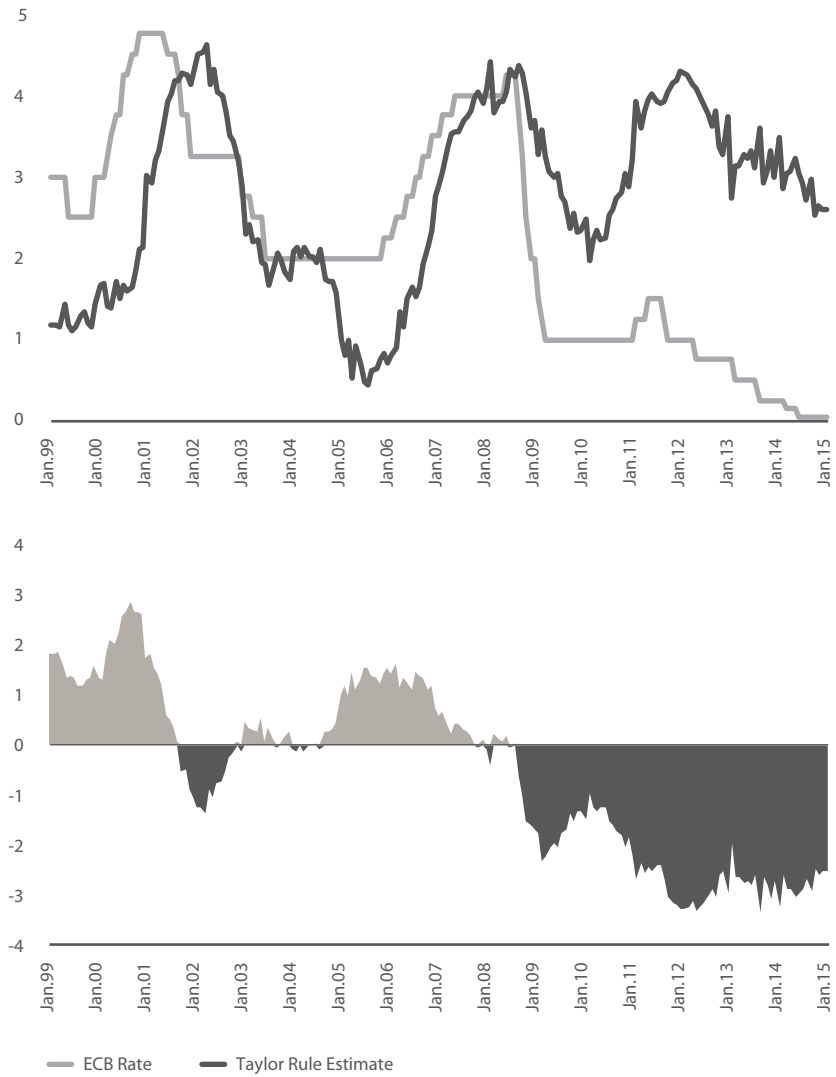
7 See the discussion in Section 2.

Figure B.ii: Actual ECB interest rate compared to notional Taylor Rate for the Eurozone, 1999–2015



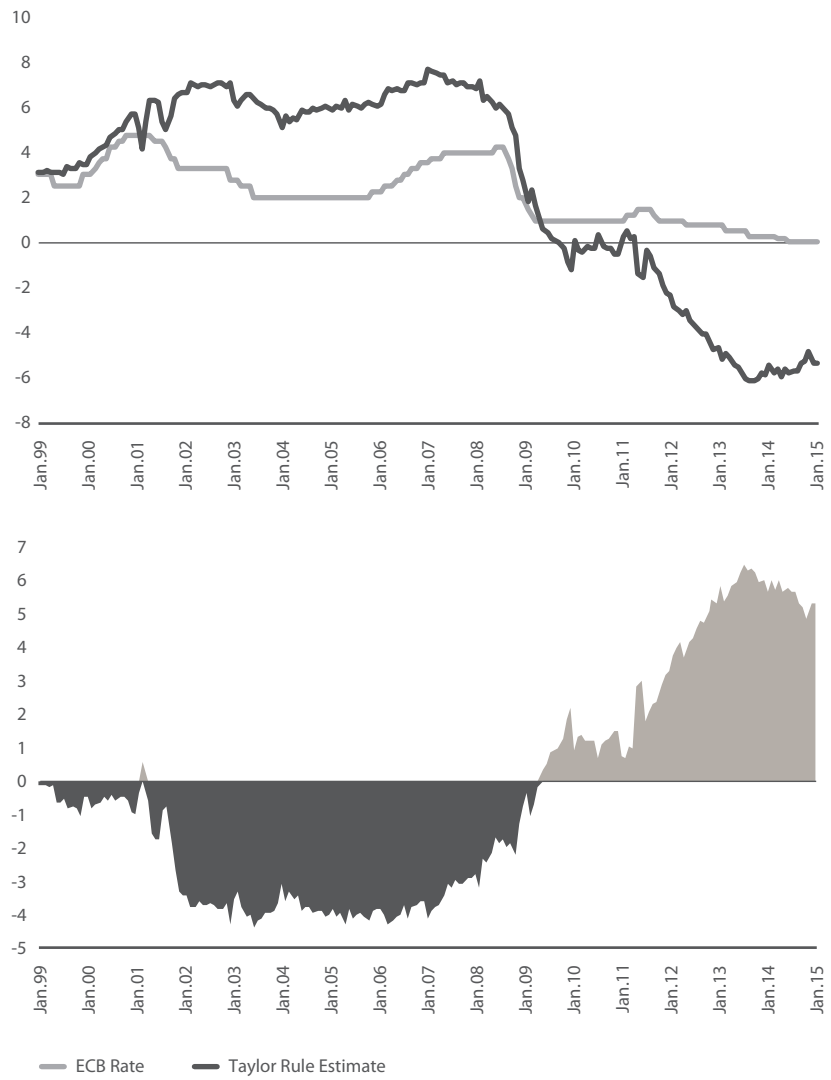
Source: ECU Group plc

Figure B.iii: Actual ECB interest rate compared to notional Taylor Rate for the notional core Eurozone group, 1999–2015



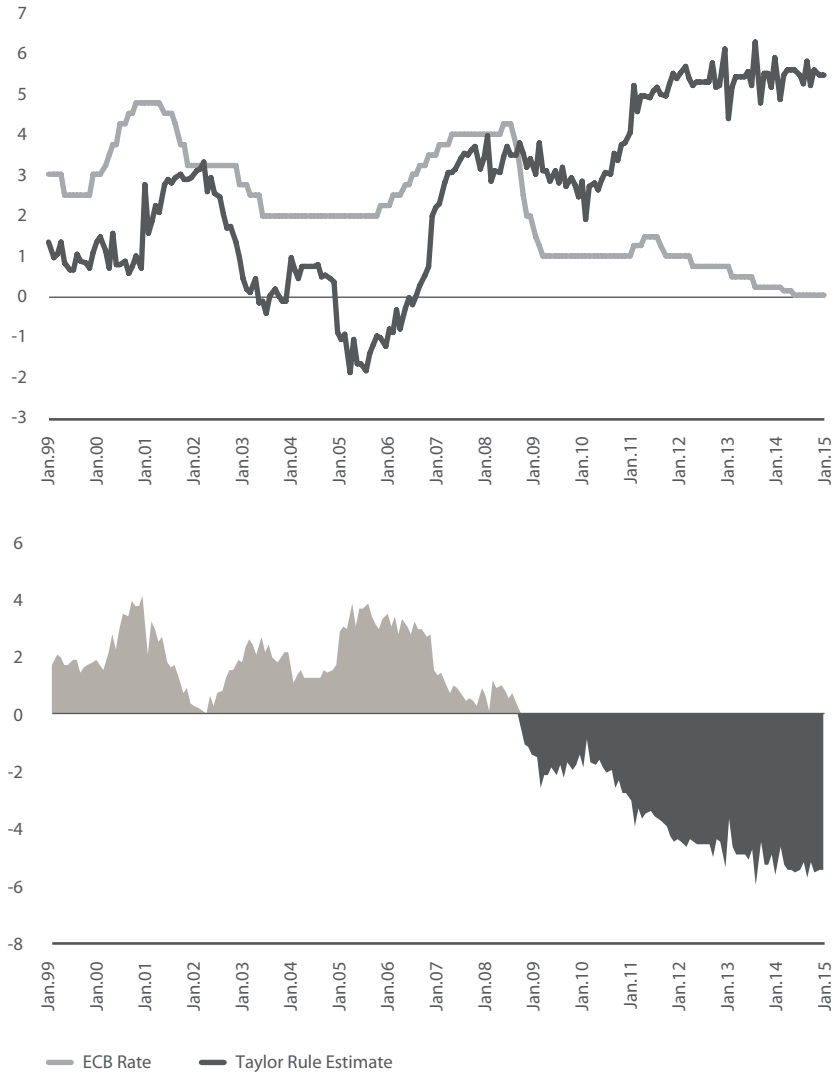
Source: ECU Group plc

Figure B.iv: Actual ECB interest rate compared to notional Taylor Rate for the notional peripheral Eurozone group, 1999–2015



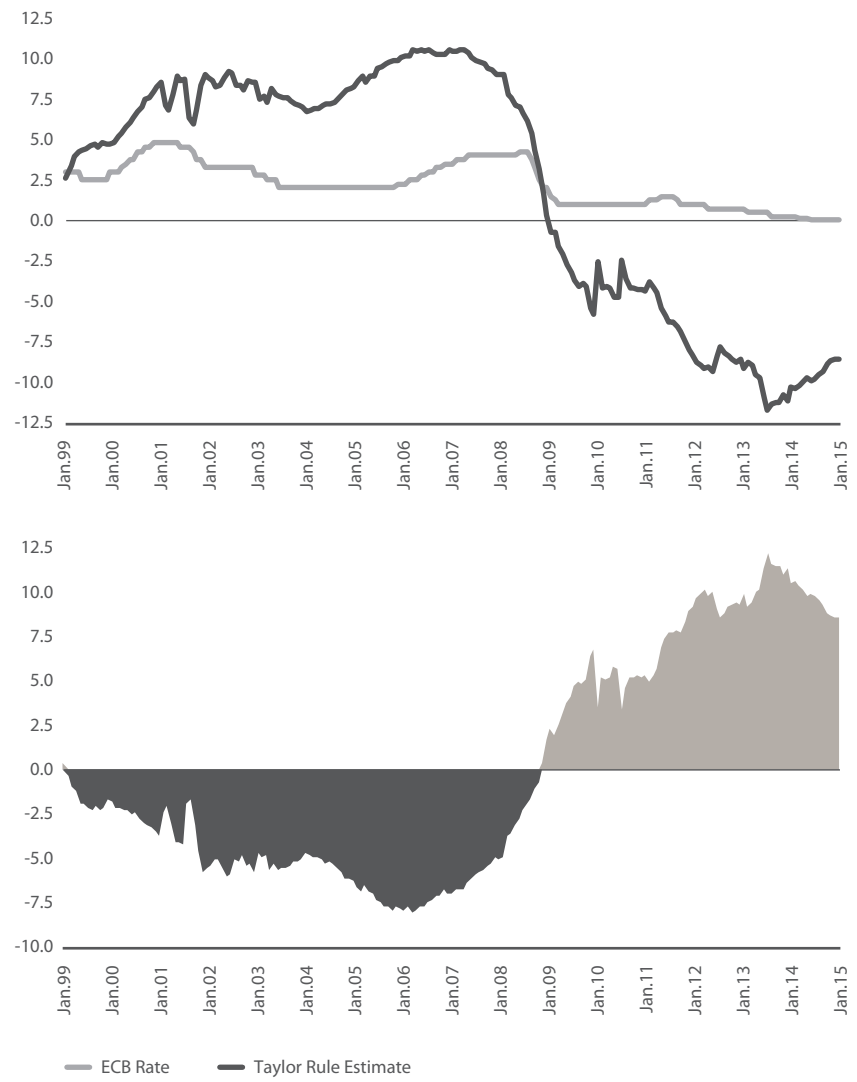
Source: ECU Group plc

Figure B.v: Actual ECB interest rate compared to notional Taylor Rate for Germany, 1999–2015



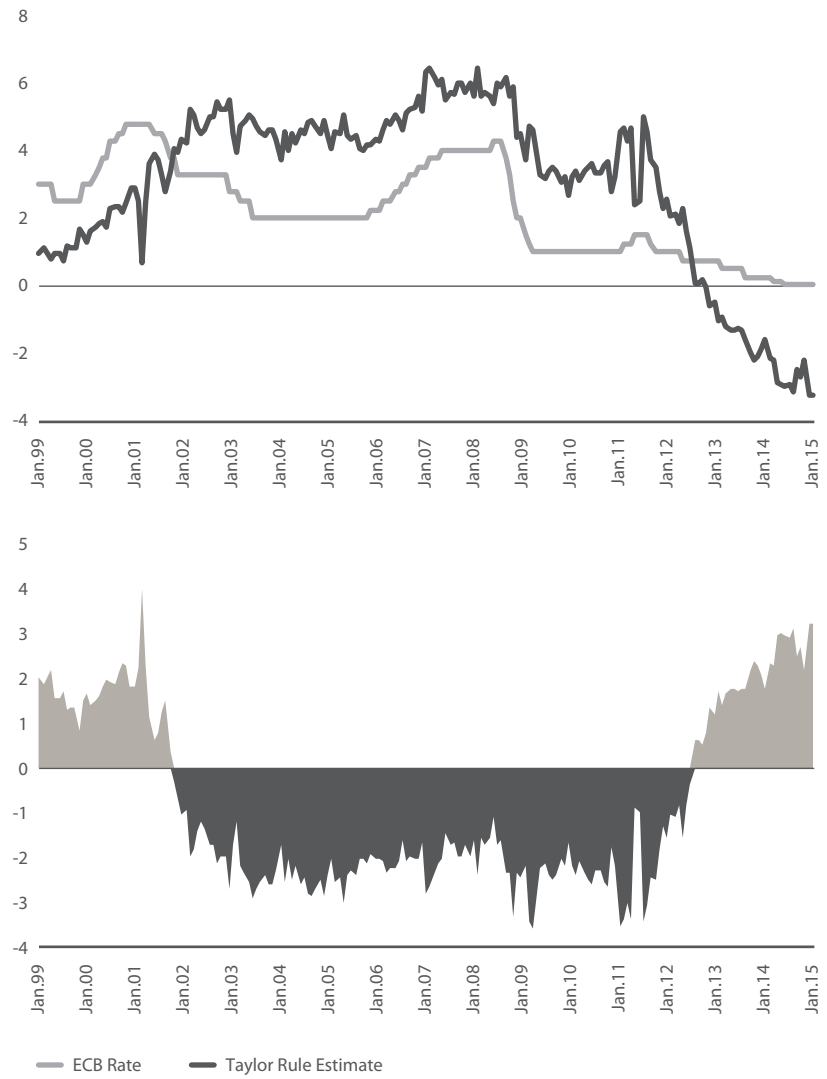
Source: ECU Group plc

Figure B.vi: Actual ECB interest rate compared to notional Taylor Rate for Spain, 1999–2015



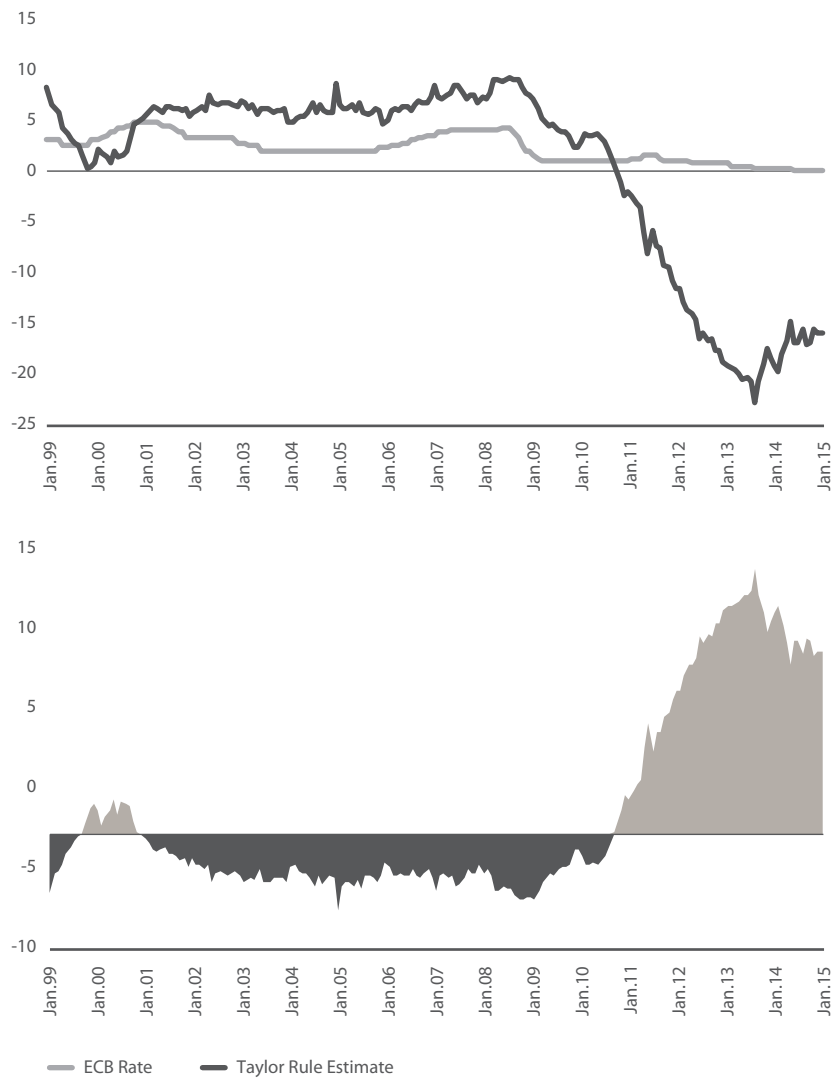
Source: ECU Group plc

Figure B.vii: Actual ECB interest rate compared to notional Taylor Rate for Italy, 1999–2015



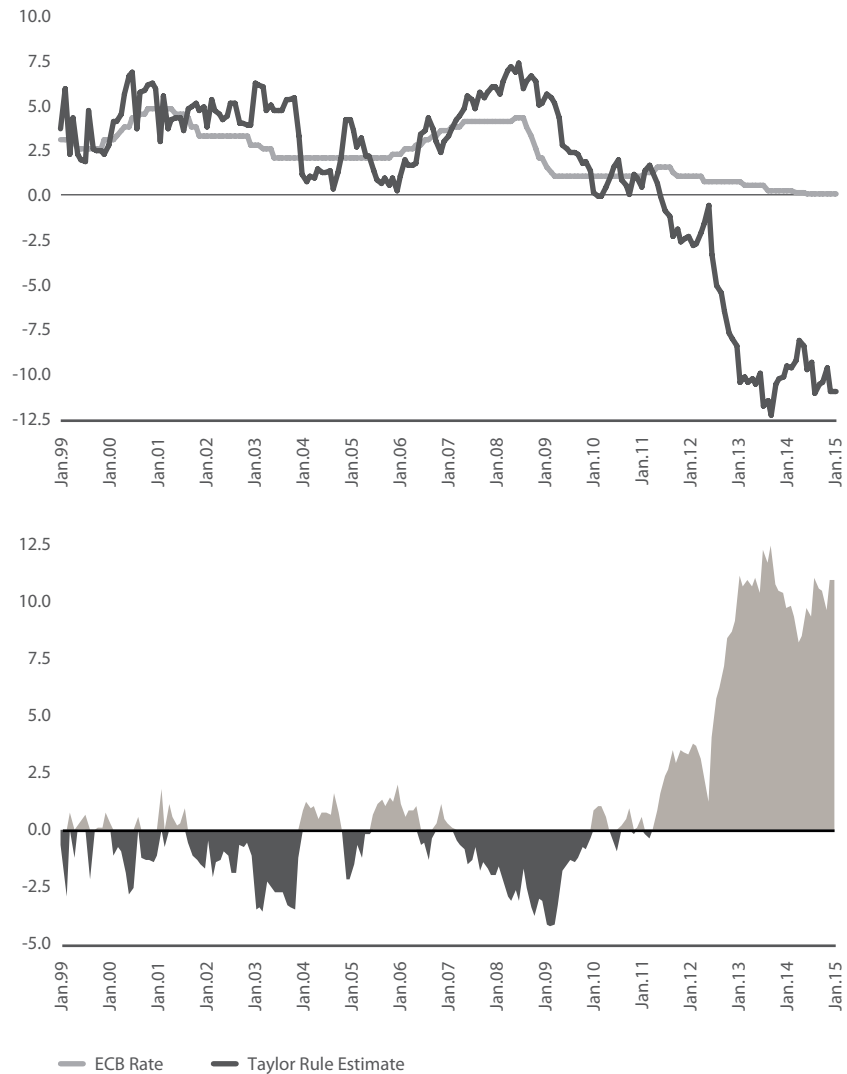
Source: ECU Group plc

Figure B.viii: Actual ECB interest rate compared to notional Taylor Rate for Greece, 1999–2015



Source: ECU Group plc

Figure B.ix: Actual ECB interest rate compared to notional Taylor Rate for Cyprus, 1999–2015



Source: ECU Group plc

B.3 The Eurozone debt crisis is in reality a long-overdue market correction

The government debt crisis that followed the wider global financial crisis of 2008 was thus always an accident waiting to happen and only a matter of time. Triggered by the unmasking of Greece’s true indebtedness, this resulted in a rapid re-evaluation of the economic situation and creditworthiness of other Eurozone states. Credit rating downgrades followed, triggering a sharp rise in borrowing costs, credit default swaps and widening interest rate spreads. As a consequence, the ability of many peripheral states to borrow new money to further finance their budget deficits or to refinance existing (and unsustainable) debt levels has been strongly reduced.

The official analysis of the crisis is:

- 1 **Joining the currency union without sufficient financial convergence and stability**
'Some' member states adopted the euro without having fulfilled the agreed stability and convergence criteria on a sufficiently long-term basis. These criteria had been fixed in the intergovernmental treaties beforehand, supposedly to prevent financial tensions and imbalances between the Eurozone states.
- 2 **Further deterioration of financials**
After joining the euro, 'some' Eurozone states made no effort to keep their public debt and budget deficit within prescribed parameters as laid out in the Maastricht Treaty. These are the countries which are now being forced to undergo austerity and an 'internal devaluation'.
- 3 **Cheap money**
'Some' new entrants to the single currency obtained considerably lower rates of interest and borrowing costs than their citizens and businesses had hitherto encountered. The result was an unbridled spending boom in many countries. Bank lending surged until the impact of the sub-prime mortgage crisis in the United States crossed the Atlantic and led to a banking liquidity crisis across Europe.
- 4 **Poor financial sector supervision**
'Some' Eurozone states relaxed their national financial sector supervision to allow banks and other financial institutions to finance projects with excessive growth rates and inflated collateral. This fostered property bubbles in Spain and Ireland that in turn delivered huge shocks to those economies and their banking sectors when they burst, necessitating bank and financial institution bail-outs throughout the region. The bursting of these bubbles led to a collapse in the unsustainable tax revenues derived from the unsustainable boom phase. This led to unsustainably high public debt and budget deficits for 'some' countries.
- 5 **Destruction of competitiveness**
'Some' Eurozone countries experienced above-average wage and costs increases after joining the euro, thereby reducing their competitiveness. Capital invested in those countries was misallocated. Additionally, 'some' continued to have above-average corruption and inefficiency levels. Increasing trade deficits were an important sign of the continuous loss of competitiveness in a number of Eurozone countries.
- 6 **No insolvency, crisis, or exit mechanisms**
No policy tools or mechanisms had been prepared to prevent or handle a debt crisis in the Eurozone states, as it was not foreseen that nation states would deviate from the obligatory stability criteria to an extent that a debt crisis would erupt. This was a dangerous and irresponsible assumption and misjudgement. It underlines the flawed preparations and deficiencies of EMU on the part of its architects. Naturally, the 'official' response is that more powers must be given to the EU itself to prevent such matters recurring in the future.

Each point within the 'official' explanation for the crisis can be defended on the facts. Indeed, each point is more or less true. However, together they are being used to absolve the Eurozone itself from blame: the system is fundamentally

sound, but a few rotten apples have spoiled it for everyone else, and nobody could have known this in advance.

The reality is that it is the Eurozone system that is fundamentally rotten. Like the pre-2008 banks who lent against over-valued assets, the EU has now been 'found out' and is suffering the natural correction that follows all such discoveries. Unlike the pre-2008 banks, however, there has not yet been a process of closure and recovery. The EU is persisting with the very system that encourages and magnifies the underlying deficiencies.

The solution is not 'more EU' but a different EU.

B.4 The EU has reached the limit of what can be achieved under the present Treaties

Like many a fixed exchange rate regime that preceded it in history, especially with so many diverse cultures and basic barriers to social and economic cohesion, the Eurozone will break, especially with so many diverse cultures and basic barriers to social and economic cohesion. It is no longer a case of "if", but "when". The key for Europe will not be so much in the technical mechanics of an exit from the euro, but how to manage the process and the aftermath.

Had the Eurozone architects undertaken proper financial, economic, political, fiscal and welfare reforms over the past 15 years, and put themselves on a strict convergence timetable, towards a level playing field on all levels, then "maybe" there might have been a slight chance that this project could have worked for an extended period of time.

This did not happen. And now, the differences in the economic and financial dynamics between the strong and weak economies – especially on competitive grounds and levels of investment – are simply too entrenched to be addressed within a fixed exchange rate regime. Consequently, this crisis has been rotating from a financial, economic and sovereign debt crisis into a political and then a 'social' crisis, which is where, in a democracy, it all ends.

The Eurozone was established without sufficient instruments in place to prevent or solve a debt crisis in a member state. Several systems have since been implemented to fill this gap:

- In 2010, two temporary rescue programmes were initiated, the European Financial Stabilisation Mechanism (EFSM) and the European Financial Stability Facility (EFSF). Together with massive financial support from the International Monetary Fund (IMF), these facilities have provided funds to Greece, Ireland, and Portugal in 2010 and 2011.
- In 2012, the European Stability Mechanism (ESM), with a lending capacity of €500 bn was established to replace the previous temporary rescue programmes. The ESM was intended as a permanent firewall for the Eurozone, to safeguard and provide instant access to financial assistance programmes for member states in difficulty.
- In 2014, the Single Supervisory Mechanism (SSM) was introduced. It grants the ECB a supervisory role to monitor the financial stability of banks across the entire Eurozone and other EU states. This supervision is intended as a first step to prevent bank bail-outs that could trigger a future debt crisis in a member state.

There is a widespread consensus that these rescue funds only buy time. Providing financial support to continuously fund or allow even higher budget deficits or debt levels will only discourage the crisis-hit nations from implementing necessary reforms to regain their competitiveness. So, even though the ECB has chosen to play an active and highly unorthodox role with its own monetary policy instruments to support the troubled states and their financial sectors, it has been extremely reluctant to further stretch or violate its mandate to solve the crisis.

Furthermore, the EU Treaties, and indeed, the German Constitution, forbid the financial bailout of Eurozone countries. There remains a firm opinion that the various Eurozone rescue funds are in place to help crisis hit nations fulfil, but not shirk, their obligations. Financially stable and strong Eurozone countries like Germany remain opposed to any circumvention of the no-bailout clauses in EU Treaties and refuse to take on the burden of financing or guaranteeing the debts of financially unstable Eurozone countries.

This has prompted widespread public debate in a number of Eurozone countries as to whether they might not be better off leaving the Eurozone to regain economic and financial stability, rather than suffer the social hardship caused by implementing the prescribed reforms to strengthen their competitiveness. Greece had the greatest need for reforms but also the greatest opposition to implementing them.

Although the ECB's extreme monetary easing policies will surely create economic upticks, even in the weakest of the afflicted nations, such desperate measures come with significant risks. They are unlikely to generate an enduring GDP growth rate or 'escape velocity' capable of dealing with long term structural imbalances and the horrendous backdrop of excess debt and high unemployment for the weakest nations. They also run the risk of causing undesirable and unsustainable booms in stronger countries as well as creating increasing false and fractious financial markets from which it may be difficult to manage an orderly exit.

Other than to refinance unsustainable borrowing, little or nothing has been done to address the structural problems of many of these weaker economies, committing them to a degenerative spiral with little or no possible redemption within a time scale that is socially realistic or manageable.

Indeed, unemployment remains at shameful levels: 13 per cent in Italy; 14 percent in Portugal; 23 per cent in Spain; and 26 per cent in Greece. Among the young, the jobless numbers are utterly unconscionable: 34 per cent in Portugal; 43 per cent in Italy; and over 50 per cent in both Spain and Greece. The process has been continuing for over three years now. Despite significant and extended monetary stimulus, there has been very limited progress. Over any prolonged length of time, this will become socially intolerable.

In short, the Eurozone has become an insurmountable mess – financially, economically, politically and socially. It is a political dream, based on theoretical ideology, which now has virtually no chance of survival in practice. Fixed exchange rates in history have had an appalling track record of durability at the best of times. The Eurozone, where language and workforce mobility barriers act as impediments to social and economic cohesion, and where member states' cultures, ambitions, values and work ethics are in such stark contrast to one another, is unlikely to be any different.

At this juncture, the only way to perhaps save the Eurozone in its present form would be for the introduction of joint euro-bonds supported by an absolute 'all-for-one and one-for-all' attitude and commitment. Various schemes have been proposed. The essence is that, instead of conventional sovereign debt issued by a national government, and serviced and repaid solely by that govern-

ment, joint euro-bonds would be issued (to an extent) collectively and thus (to an extent) be supported by the collective credit of the entire Eurozone, rather than potentially weaker individual members.

While joint euro-bonds would not deal with the deep rooted cultural and economic difficulties between Germany and the periphery, they would at least provide a temporary relief from market pressures which, otherwise, will keep recurring, notwithstanding the best efforts of the ECB to distort market reality and artificially manipulate bond yields. Markets will exploit weakness and, unlike politicians, they understand when something is unsustainable. Again, unlike politicians, markets can bide their time until the firepower of temporary fixes has run out.

Joint euro-bonds would require Treaty change. However, since it seems clear that there will be no common fiscal backstop, as Berlin will not countenance it, it is inevitable that the Eurozone is headed for a breakup sooner or later.

Whilst European policy makers have successfully, thus far, managed to kick this can a long way down the road, they will eventually run out of road. If a structure is unsustainable, it shall not be sustained. Consequently, European policy makers need to use the time that the ECB has most successfully bought them judiciously in resolving (i) which Eurozone countries are compatible within the same monetary union; (ii) which countries want to remain with the same monetary union; and (iii) what is needed to cement those that are compatible and willing into an enduring economic and monetary union.

In the meantime, following years of chronic economic mismanagement, long-term solvency problems make defaults ultimately unavoidable and exits from the euro highly likely.

As many commentators have pointed out, Greece can only be returned to sustainable debt levels if EU bailout lenders accept significant losses on their existing loans. So far, the lenders have refused to countenance this. That leaves Greece with two options. The first is to reform and default inside the Eurozone – a strategy that requires willing accomplices in other EU capitals and at the ECB. So far, there is limited or no evidence of such support. The second option is to reform and default outside the Eurozone – a decision Greece could take unilaterally, provided the macroeconomic conditions were right. So far, that second option has not been possible. Germany's preferred course, reform without default, makes perfect sense from Germany's point of view (or rather, from the point of view of Greece's creditors within Germany). It is not really an option for Greece.

Short of Germany (and others) committing themselves fully to fiscal and capital transfers to other countries in perpetuity, the current structural, economic and social imbalances are simply incompatible with an enduring single currency and monetary union. Without a change to the current Treaties, the Eurozone, as it stands today, can only break up.

Doing nothing will simply guarantee the worst possible and most acrimonious of outcomes, one which will surely include sovereign defaults and, along with it, financial, economic and social mayhem – in fact, everything the original founders of the EU sought to avoid.

Unless lasting resolutions can be achieved, the real challenge will be how best to disentangle those that can and wish to remain in the euro from those that do not. At present, all eyes are on Greece. However, without the structural changes needed, it is inconceivable that others would not choose to or be forced to follow a Greek exit. This would be highly disruptive to global financial markets and European economic interests.

In many respects, the departure of Germany itself, (if it remains intractably opposed to a fiscal union that involved joint and several liability euro-bonds), along with a few smaller allies, would be far less disruptive. This could then leave a hard 'euromark' and a soft 'eurodrachma' and, at the margins and depending on how debt obligations were then calculated, just possibly, no actual defaults.

The only other viable option lies in disbanding the single currency in its entirety and simply reversing the process, with each country readopting its former national currency. With so much political capital expended, this seems the least likely outcome.

However, the major problem for policy-makers is how to prepare for the future. Clearly, governments and central banks cannot publicly contemplate a Eurozone break-up. Any suggestion of official preparation might, in itself, trigger a chain reaction in markets that would culminate in a chaotic implosion and break-up. On the other hand, stumbling into a collapse, ill-prepared, would exacerbate the sense of crisis in financial markets, thereby deepening the economic impact of such an event globally. That would merely guarantee a much wider and more costly break-up than would otherwise have been the case under a well-prepared and well-managed emergency plan.

Quite apart from the legal uncertainties, preparing for a country to leave the euro comes with logistical problems. For instance, it will not be possible to have new notes and coins immediately for a country exiting the euro. Indeed there are many practical issues which will be extremely difficult to manage and control.

Given politicians' general inability to admit their mistakes until it is already too late, a resolution event is more likely to come through social unrest and/or the ballot box than by careful planning and design. The EU policy making regime will likely fight to the end to try to keep the dream together – even when it has become quite apparent to most observers that EMU, in its present form and structure, is untenable.

B.5 Eurozone break-up would return the EU to economic reality, but the process will be painful for everyone

The precise impact of a country or countries leaving the euro depends entirely on the sequence of events that unfolds and how well prepared and adept – or otherwise – global policy makers are in managing the process and controlling the outcome. Co-ordination between authorities across the world would be required, quickly and decisively.

Any break-up will be extremely painful for any exiting nations in the near term and result in a highly disruptive transition period. Nevertheless, a limited break-up, were it to trigger a swift and decisive move to further integrate the remaining Eurozone core, could put an end to the crisis and set the stage for future stability, continued cooperation and prosperity.

While the break-up of the euro would be an historic event, it is worth pointing out that over the past century, there have been 69 departures from fixed exchange rate regimes. In the past, the key danger for countries exiting such regimes has been hyperinflation due to poor fiscal and monetary policies. Orderly defaults and debt rescheduling, coupled with devaluations are inevitable and form the basis for recovery.

Indeed, if past experiences in emerging markets after defaults and devaluations (Asia in 1997, Russia in 1998 and Argentina in 2002) are anything to go by, any exiting Eurozone periphery countries stand to emerge with de-levered balance sheets, enabling them to begin the path to sustainable growth. After

all, their debt burdens constitute a severe problem for them at the moment – but after a default, that would become their creditors’ problem. In the long term, exit from the euro might be the single biggest injection the peripheral EU economies could ever receive – provided that, in the short term, they can find a domestic means of financing their public sectors while being shut out of international capital markets.

The soundest foundation for managing a euro exit presupposes that EU politicians and the ECB can calmly, rationally and prudently:

- First, agree that a euro break up is unavoidable and necessary;
- Second, to agree a plan for an exit (which may include introducing a new monetary system);
- Third, to do this in absolute secrecy without markets getting a single hint of any such preparations and;
- Fourth, to execute it over a predetermined period when market markets are closed and capital controls can be imposed, avoiding excessive market disruption, contagion and legal uncertainties.

This is where previous exits from fixed exchange rate regimes have, perhaps, been more manageable. Simply to recite the above list supports the theory that there is only a remote prospect of the EU’s leaders acting before a break-up has already become a *fait accompli*. The psychological trauma that would be experienced by the EU political class on discovering that ever closer union was not, after all, ‘irrevocable’ cannot be understated. Nor can their fear that life for an exiting country outside EMU might not prove quite as calamitous as predicted. The real risk to global financial security from a Eurozone break-up comes from the EU’s leaders being behind the game as events unfold. There is every chance that this will indeed be the case, brought on by a collective sense of denial.

As and when this does become a reality, an immediate and substantial recapitalisation by remaining member states of their banking systems will be needed, as knock-on mark-to-market losses, exacerbated by extensive global market turmoil, mount inexorably.

In such a scenario, it is clear that the firepower of the current bail-out funds – the European Financial Stability Facility (EFSF), the European Stability Mechanism (ESM) and its successors – would need to be expanded by several multiples of their current firepower. These measures would almost certainly need to be supplemented by additional support from the IMF and others.

However, such support cannot be taken for granted. Some contributory members of the IMF are already sick and tired of the Eurozone’s inability to deal with its underlying flaws, especially since it already has the ways and means of doing so by itself. For many IMF members, there is a distinct aversion to funding something that a country of the stature and resources of Germany is not prepared to countenance doing itself.

The likeliest route is that a series of continually worse Eurozone crisis moments will eventually cross a threshold where global markets and international policy makers demand that the EU achieves closure. A Rump Eurozone, assuming a desire for any form of monetary union to survive, will be forced to take immediate and decisive steps towards definitive economic and political union (to include joint liability bonds and guarantees) in order to lay to rest, once and for all, misgivings that any contemplated bailout was not merely yet another delaying action.

Given the Eurozone's present constituents, there would need to be a much deeper, wider and more sustainable, long-term solution would need to evolve and have to come into play to prevent a total systemic break-up. This would likely involve a splitting of the euro constituents into two groups (Germany, Austria, Finland, the Netherlands and Belgium in one camp, and another led by France) and, in so doing, creating a two-tier euro structure. In effect, a hard euro ('euro-mark') and a soft euro would come about in a manner which, although still very expensive for Germany, would be technically capable of avoiding a whole series of costly defaults.

Since such new arrangements would require new Treaties, and domestic authority for such action on the part of national governments would be questionable without a direct mandate, it remains, of course, entirely possible that a number of countries may choose (or be forced by their electorates) to leave the Eurozone doing (perhaps in a perceived 'safety in numbers' approach, once the taboo of a country leaving the Eurozone was no longer in play).

Based on current overvaluations, were there to be a "total" reversion back to national currencies for all, in countries like Greece and Cyprus would see significant downward corrections. They (and anyone overseas who was still invested in them) would incur an immediate 'hit'.

At the other end of the scale, Germany's position is less clear. On the one hand a flight to quality and panic redistribution of capital (especially within the EU) would likely see the new German currency surge higher in the first instance. On the other, the scale of unrecoverable Bundesbank and German bank losses would be significant. The German economy would suffer an immediate loss of competitiveness against its major regional trading partners and a lack of demand from elsewhere as an economic shock wave rippled through the entire financial matrix and sapped global aggregate demand. Once these effects had been absorbed, it is likely that any initial currency gains would be relatively short-lived.

Further out, markets would settle down and peripheral former-Eurozone economies would start to rebalance. The new exchange rates would immediately begin to fulfil their function of restoring those countries to competitiveness. With appropriate domestic reforms, they would return to prosperity in the medium-term, if not sooner. Global investors would start to identify investment opportunities in stock markets and new bond markets, and in the corporate and property sectors. There would be an eventual recovery from the initial panic lows in currency values to more moderate levels.

Eurozone break-up is a real risk for which Britain should now plan - if it hasn't already. A prominent and known risk is now 'on the table'.

Appendix C: Free Trade Agreements

Note 1: Alternative forms of international agreement	875	Note 3: Territories to which no economic value can be assigned	876
Note 2: Investment agreements with EU member states	876	Data Sources	876

	USA	EU	CANADA
(A) MULTI-LATERAL DEALS			
Anti-Counterfeiting Trade Agreement (ACTA) Australia; Canada; EU; Japan; Mexico; Morocco; New Zealand; Singapore; South Korea; USA	Started: 2009 Concluded: 2011 Not yet come into force	Started: 2008 Concluded: 2012 Vetoed by the European Parliament 2012	Started: 2009 Concluded: 2011 Not yet come into force
Environmental Goods Agreement (EGA)	Started: 2014 No agreement yet	Started: 2014 No agreement yet	Started: 2014 No agreement yet
Free Trade Area of the Americas (FTAA) Proposal to combine Andean Community; CARICOM; Central America; MERCOSUR; NAFTA; Chile; Dominican Republic	Started: 1994 Abandoned: 2005		Started: 1994 Abandoned: 2005
Trade In Services Agreement (TISA) Australia; Canada; Chile; Colombia; Costa Rica; EU; Hong Kong; Iceland; Israel; Japan; Liechtenstein; Mexico; New Zealand; Norway; Pakistan; Panama; Paraguay; Peru; South Korea; Switzerland; Taiwan; Turkey; US	Started: 2013 No agreement yet	Started: 2013 No agreement yet	Started: 2013 No agreement yet
Trans-Pacific Partnership The P4 Group forming the Trans-Pacific Strategic Economic Partnership (Brunei-Darussalam; Chile; New Zealand; Singapore); plus Australia; Canada; Japan; Malaysia; Mexico; Peru; USA; Vietnam	Started: 2010 No Agreement yet		Started: 2010 No Agreement yet
(B) TRADE BLOC DEALS			
Andean Community (Bolivia; Colombia; Ecuador; Peru)	Separate deals: Peru 2009 Colombia 2012	Started: 2007 Talks suspended 2008 Separate deals: Colombia/Peru 2012 Ecuador 2014	Investment Agreement 1999 Started: 2002 Talks revived 2007 Separate deals: Colombia/Peru 2008
ASEAN or Association of South East Asian Nations (Brunei Darussalam; Cambodia; Indonesia; Laos; Malaysia; Myanmar; Philippines; Singapore; Thailand; Vietnam)	See Note 1	Started: 2007 No agreement yet Separate deal: Singapore 2013	See Note 1
CARICOM (The Caribbean Community) (Antigua & Barbuda; Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Haiti; Jamaica; Montserrat; St Kitts & Nevis; St Lucia; St Vincent & the Grenadines; Suriname; Trinidad & Tobago)	See Note 1	See Note 1	Started: 2007 No agreement yet
Central America (Costa Rica; El Salvador; Guatemala; Honduras; Nicaragua; Panama)	Excluding Panama: Started: 2003 Concluded: 2004 Effective: 2009 equal treatment of most services and investment 2009–2029 For phased elimination of tariffs on most goods and agricultural quotas Separate deal: Panama 2006	Started: 2007 Concluded: 2010 Effective: 2013: Equality of treatment for most services 2013–2028 Phased elimination of tariffs on most manufactured goods and fisheries; quotas to protect agricultural produce	Separate deal: Costa Rica, 2004 Excluding Costa Rica, Panama: Started: 2001 Suspended: 2004 Re-started: 2009 Suspended: 2010 Separate deal: Honduras, 2011

	USA	EU	CANADA
European Free Trade Association (EFTA) European Economic Area (Iceland; Liechtenstein; Norway) plus Switzerland		Started: 1989 Concluded: 1992 Excluding Switzerland: Effective: 1994 Free Trade Area	Started: 1998 Concluded: 2007 Effective: 2009 Elimination of tariffs on most goods (except agriculture)
Euro-Mediterranean Free Trade Area (Algeria; Egypt; Israel; Jordan; Lebanon; Morocco; Palestinian Authority; Syria; Tunisia; Turkey) (Albania; Bosnia-Herzegovina; Croatia; Montenegro) (Libya; Mauretania)	Separate deals: Israel 1985 Jordan 2000 Morocco 2004	Started: 1995 Re-started: 2008 Various Association and Partnership Agreements but no comprehensive free trade agreement yet (NB Croatia subsequently admitted to EU, 2013)	
European Union	Started: 2013 No agreement yet See also Note 2		Started: 2009 Concluded: 2014 Pending ratification See also Note 2
Gulf Co-Operation Council (Bahrain; Kuwait; Oman; Qatar; Saudi Arabia; United Arab Emirates)	Separate deals: Bahrain 2004 Oman 2006	Started: 1991 Talks suspended: 2008	
MERCOSUR (Argentina; Brazil; Paraguay; Uruguay; Venezuela)		Started: 1999 Re-launched: 2010 No agreement yet	Exploratory talks 2012
NAFTA (Canada; Mexico; USA)	Started: 1991 Concluded: 1992 Side agreements: 1993 Effective: 1994 Equality of treatment of most services and investment 1994–2008 Phased elimination of tariffs on most goods		Started: 1991 Concluded: 1992 Side agreements: 1993 Effective: 1994 Equality of treatment of most services and investment 1994–2008 Phased elimination of tariffs on most goods
(C) BILATERAL DEALS			
Albania (117)	Investment Treaty 1995	Started: 2003 Concluded: 2006 Effective: 2009–2019 Phased elimination of tariffs on manufactured goods and fisheries; quotas to protect sensitive agricultural produce	Investment Treaty agreed 2013 but not yet in force
Algeria (33) (See also Euro-Mediterranean Free Trade Area)	See Note 1	Started: 1997 Concluded: 2001 Effective: 2005–2017 Phased elimination of tariffs on goods	
Argentina (22)	Investment Treaty 1991		Investment Treaty 1993
Armenia (130)	Investment Treaty 1992	Started: 2010 Negotiations terminated in 2013 when Armenia aligned itself with the Eurasian Customs Union	Investment Treaty 1999
Australia (19)	Started: 2003 Concluded: 2004 In force: 2005 equal treatment of most services and investment 2010–2023 phased elimination of tariffs on goods and rising quotas	No agreement	See 'Trans-Pacific Partnership'
Azerbaijan (64)	Investment Treaty 1997		

	USA	EU	CANADA
Bahrain (97) (see also Gulf Co-operation Council)	Investment Treaties signed in 1999 and 2002 Started: 2003 Concluded: 2004 In force: 2006 equal treatment of most services 2006–2016 phased elimination of tariffs on goods and rising quotas	No agreement	Investment Treaty agreed 2010 but not yet in force
Bangladesh (37)	Investment Treaty 1986		
Barbados (156)			Investment Treaty 1997
Benin (136)			Investment Treaty 2014
Bolivia (91)	Investment Treaty 1998 Terminated by Bolivia 2012		
Bosnia & Herzegovina (108)		Started: 2005 Concluded: 2006 Effective: 2008–2013 Phased introduction of free trade area	
Burkina Faso (124)			Investment Treaty agreed 2014 but not yet in force
Cameroon (93)	Investment Treaty 1986		Investment Treaty signed 2014 but not yet in force
Canada (16) (see also NAFTA)	Started: 1986 Concluded: 1987 In force: 1989 Superseded by NAFTA	Started: 2009 Concluded: 2014 Pending ratification	
Chile (43)	Started: 2003 Concluded: 2003 Effective: 2004 equal treatment of most services and investment 2004–2016 phased elimination of tariffs on goods and rising quotas	Started: 1999 Concluded: 2002 Effective: 2005 equal treatment of most services 2005–2015 phased elimination of tariffs on goods and rising quotas	Started: 1996 Concluded: 1996 Effective: 1997 equal treatment of most services and investment 1997–1999 Elimination of tariffs on goods apart from specified exceptions (mainly agricultural)
China (2)	Discussions as part of wider forum meetings on specific issues. No bilateral agreement yet.	Investment Treaty Started: 2013 No agreement yet	Investment Treaty 2014
Colombia (30) (see also Andean Community)	Started: 2004 Concluded: 2006 Renegotiated: 2011 Effective: 2012 equal treatment of most services and investment 2012–2029 phased elimination of tariffs on goods with intermediate quotas	Started: 2009 Concluded: 2012 Effective: 2013 equal treatment of most services and investment 2013–2024 phased elimination of tariffs on goods with intermediate quotas	Started: 2007 Concluded: 2008 Effective: 2011 equal treatment of most services and investment 2011–21 phased elimination of tariffs on goods with intermediate quotas Parallel labour and environmental agreements
Congo (122)	Investment Treaty 1990		

	USA	EU	CANADA
Costa Rica (89)	See 'Central America': in force from 2009	See 'Central America': in force from 2013	Investment Treaty 1999 Started: 2000 Concluded: 2001 Effective: 2002-2011 Phased elimination of tariffs on certain goods with intermediate quotas Parallel labour and environmental agreements
Democratic Republic Of Congo (100)	Investment Treaty 1984		
Dominican Republic (72)	Started: 2004 (joined Central American FTA talks) Concluded: 2004 In force: 2009 equal treatment of most services and investment 2009-2029 phased elimination of tariffs on most goods	See Note below	Started: 2007 Suspended: 2009
Ecuador (61) (see also Andean Community)	Investment Treaty 1993 Started: 2004 Talks suspended in 2006 after Ecuador nationalised US corporate assets	Started: 2009 Concluded: 2014 Pending ratification	Investment Treaty 1997
Egypt (24) (See also Euro-Mediterranean Free Trade Area)	Investment Treaty 1986	Started: 1997 Concluded: 2001 Effective: 2004-16 Phased elimination of tariffs (limited to industrial products)	Investment Treaty 1997
El Salvador (102)	See 'Central America': in force from 2009	See 'Central America': in force from 2013	
Georgia (113)	Investment Treaty 1994 See Note 1	Started: 2010 Concluded: 2014 Pending ratification	
Grenada (174)	Investment Treaty 1986		
Guatemala (77)	See 'Central America': in force from 2009	See 'Central America': in force from 2013	
Guinea (143)			Investment Treaty agreed 2013 but not yet in force
Honduras (107)	Investment Treaty 1995 See 'Central America' in force 2009	See 'Central America': in force from 2013	Started: 2009 Concluded: 2011 Effective: 2014 equal treatment of most services and investment 2015-2029 phased elimination of tariffs on goods with intermediate quotas Parallel Investment Treaty and agreements on labour and environment
Iceland (144)		See 'EFTA' In force: 1994	See 'EFTA' In force: 2009
India (3)	Started: 2005 Stalled: 2010 Discussions as part of wider forum meetings on specific issues. No bilateral agreement yet.	Started: 2007 No agreement yet	Investment Treaty agreed 2008 but then placed on hold by India Started: 2010 No agreement yet

	USA	EU	CANADA
Israel (54) (see also Euro-Mediterranean Free Trade Area)	Started: 1984 Concluded: 1985 Effective: 1985-95 (elimination of tariffs on most industrial goods) Further temporary agreements on agricultural produce in 1996, 2004, 2009 Negotiations on-going on agriculture and intellectual property rights	Started: 1993 Concluded: 1995 Effective: 2000 (limited to industrial products and some agricultural goods)	Started: 1994 Concluded: 1996 Effective: 1997 (elimination/reduction of tariffs on some industrial goods) Started: 2014 No further agreement yet
Ivory Coast (92)			Investment Treaty signed 2014 but not yet in force
Jamaica (129)	Investment Treaty 1994	See Note 1	
Japan (4)	See 'Trans-Pacific Partnership'	Started: 2013 No agreement yet	Started: 2012 No agreement yet
Jordan (85) (See also Euro-Mediterranean Free Trade Area)	Investment Treaty 1990 Started: 2000 Concluded: 2000 Effective: 2001 Equal treatment of most services 2001-2010 Phased elimination or reduction of tariffs on goods with increasing quotas	Started: 1995 Concluded: 1997 Effective: 2002-2014 Phased elimination/reduction of tariffs (mainly limited to industrial products)	Started: 2008 Concluded: 2008 Effective: 2012-2017 Phased elimination of most tariffs on goods Investment Treaty 2009
Kazakhstan (42)	Investment Treaty 1992		
Kosovo (142)		Started: 2013 No agreement yet	
Kuwait (53)			Investment Treaty 2014
Kyrgyzstan (137)	Investment Treaty 1993		
Lebanon (84) (see also Euro-Mediterranean Free Trade Area)		Started: 1995 Concluded: 2006 Effective: 2006-2018 Phased elimination/reduction of tariffs (limited to industrial products and some agricultural goods)	Investment Treaty 1999
Libya (69) (see also Euro-Mediterranean Free Trade Area)		Started: 2008 Talks suspended 2011 on the outbreak of the civil war	
Liechtenstein (165)		See 'EFTA' In force: 1994	See 'EFTA' In force: 2009
Macedonia (128)		Started: 2000 Concluded: 2001 Effective: 2004-2014 Phased elimination/reduction of tariffs (manufactured goods and fisheries; quotas to protect sensitive agricultural produce)	
Madagascar (111)			Investment Treaty agreed 2008 but suspended due to political instability
Malaysia (27) (see also ASEAN)	Started: 2006 Talks suspended 2009 by the incoming Obama Administration	Started: 2010 No agreement yet	

	USA	EU	CANADA
Mali (126)			Investment Treaty signed 2014 but not yet in force
Mexico (12) (see also NAFTA)	NAFTA member	Started: 1996 Concluded: 1997 Effective: 2000 (goods) 2001 (services)	NAFTA member
Moldova (140)	Investment Treaty 1994	Started: 2010 Concluded: 2014 Pending ratification	Investment Treaty agreed 2013 but not yet in force
Mongolia (121)	Investment Treaty 1994		
Montenegro (150)		Started: 2005 Concluded: 2007 Effective: 2010-2020 (manufactured goods and fisheries; quotas to protect sensitive agricultural produce)	
Morocco (56) (see also Euro-Mediterranean Free Trade Area)	Investment Treaty 1991 Started: 2003 Concluded: 2004 In force: 2006 Equal treatment of most services and investment 2006-2024 Phased elimination of tariffs on most goods and agricultural quotas	Started: 1995 Concluded: 1996 Effective: 2000 Started: 2013 No new agreement yet	Started: 2011 No agreement yet
Mozambique (118)	Investment Treaty 1998		
New Zealand (66)	See 'Trans-Pacific Partnership'	Started: 2012 No agreement yet	
Nicaragua (119)	See 'Central America': in force from 2009	See 'Central America': in force from 2013	
Nigeria (20)			Investment Treaty signed 2014 but not yet in force
Norway (48)		See 'EFTA' In force: 1994	See 'EFTA' In force: 2009
Oman (67) (see also Gulf Co-operation Council)	Started: 2005 Concluded: 2006 Effective: 2009 Equal treatment of most services and investment 2009-2019 Phased elimination of tariffs on goods with agricultural quotas		
Palestinian Territory (Note 3) (see also Euro-Mediterranean Free Trade Area)		Started: 1995 Concluded: 1997 Effective: 2001 (limited to industrial products) Started: 2005 Concluded: 2011 Effective: 2011-21 (temporary period for agricultural products)	

	USA	EU	CANADA
Panama (87) (see also Central America)	Investment Treaty 1982 Started: 2004 Concluded: 2006 In force: 2012 equal treatment of most services and investment 2012–2022 phased elimination of tariffs on most goods and agricultural quotas	See 'Central America': in force from 2013	Investment Treaty 1998 Started: 2008 Concluded: 2009 Effective: 2013 equal treatment of most services and investment 2013–2022 phased elimination of tariffs on most goods and agricultural quotas Parallel agreements on labour and environment
Peru (47) (see also Andean Community)	Started: 2004 Concluded: 2005 Effective: 2009 Equal treatment of most services and investment 2009–2026 Phased elimination of tariffs on goods with agricultural quotas	Started: 2009 Concluded: 2012 Effective: 2013 equal treatment of most services and investment 2013–2024 phased elimination of tariffs on goods with intermediate quotas	Investment Treaty 2007 Started: 2007 Concluded: 2008 Effective: 2009 Equal treatment of most services and investment 2009–2026 Phased elimination of tariffs on goods with agricultural quotas Parallel agreements on labour and environment
Philippines (29)	See 'Trans-Pacific Partnership'		Investment Treaty 1996
Russia (6)		See Note 1 Started: 2008 No agreement yet	Investment Treaty 1991
Rwanda (139)	Investment Treaty 2008		
Senegal (115)	Investment Treaty 1983		Investment Treaty signed 2014 but not yet in force
Serbia (80) (see also Euro-Mediterranean Free Trade Area)		Started: 2005 Suspended over Serbia's failure to cooperate with War Crimes Tribunal 2006 Re-started: 2007 Concluded: 2008 Effective: 2010–2016 Elimination of tariffs on most goods	Investment Treaty signed 2014 but not yet in force
Singapore (40) (see also ASEAN)	Started: 2000 Concluded: 2003 Effective: 2004 Equal treatment of most services and investment 2004–2014 Phased elimination of tariffs on goods	Started: 2010 Concluded: 2013 Pending ratification	Started: 2001 Suspended: 2009 Superseded by the Trans-Pacific Partnership talks
South Africa (28)		Concluded: 1999 Effective: 2004–2012 Elimination of tariffs on most goods	

	USA	EU	CANADA
South Korea (13)	Started: 2006 Concluded: 2007 Renegotiated: 2011 Effective: 2012 equal treatment of services and investment 2012-2029 Phased elimination of tariffs on most manufactures Quotas for agriculture	Started: 2007 Concluded: 2009 Effective: 2011 equal treatment of most services and investment 2011-2035 phased elimination of tariffs on goods with intermediate quotas	Started: 2005 Concluded: 2014 Effective: 2015 Equal treatment of services and investment 2015-2033 Phased elimination of tariffs on most manufactures Quotas for agriculture
Sri Lanka (60)	Investment Treaty 1991		
Syria (Note 3) (see also Euro-Mediterranean Free Trade Area)		Started: 1997 Concluded: 2004 Ratification suspended on the outbreak of civil war 2011	
Switzerland (38)		Started: 1992 Concluded: 1999 In force: approx. 100 bilateral agreements	See 'EFTA'
Tanzania (82)			Investment Treaty 2014
Thailand (21) (see also ASEAN)	Started: 2004 Talks suspended 2006 follow- ing military coup	Started: 2013 No agreement yet	Investment Treaty 1998
Trinidad & Tobago (106)	Investment Treaty 1994		Investment Treaty 1996
Tunisia (75) (see also Euro-Mediterranean Free Trade Area)	Investment Treaty 1990	Started: 1994 Concluded: 1995 Effective: 1996-2008 Elimination of tariffs on most industrial products Started: 2013 No new agreement yet	
Turkey (17)	Investment Treaty 1985 Discussions running parallel to the TTIP negotiations with the EU, but not yet formal negotiations	Association Agreement 1963 Additional Protocol 1970 Started: 1993 Concluded: 1995 Effective: 1996 Customs Union	
Ukraine (41)	Investment Treaty 1994	Started: 2008 Talks suspended by Ukraine, 2013 Talks restarted following Ukrainian Revolution, 2014 Implementation postponed by EU, 2014	Investment Treaty 1995 Started: 2010 No agreement yet
United Arab Emirates (31) (see also Gulf Co-operation Coun- cil)	Started: 2005 Talks suspended over failure to agree investment provi- sions of any deal	No agreement	
Uruguay (90)	Investment Treaty 2005		Investment Treaty 1999
USA (1)		Started: 2013 No agreement yet	See 'NAFTA'
Venezuela (32)			Investment Treaty 1998
Vietnam (35) (see also ASEAN)	Started discussions on an Investment Treaty 2008	Started: 2012 No agreement yet	
Zambia (98)			Investment Treaty agreed 2013 but not yet in force

These tables summarise the conduct of trade policy by three negotiators, the USA, the EU and Canada, with a variety of other countries (including each other).

- ‘Started’ means the commencement of formal talks with a view to concluding a treaty, as opposed to periodic discussion of matters of mutual interest.
- ‘Concluded’ means the agreement of terms prior to the drafting of a treaty.
- ‘Effective’ means the dates when trade liberalisation measures come into effect after the ratification of a signed treaty, particularly where there is a phased elimination of a tariff over a period of years.

In Section (C) Bilateral Deals, the number after each country is its world ranking by GDP for 2013. This gives a rough indication of the value of any deal with that country.

Note 1: Alternative forms of international agreement

The USA has entered ‘Trade & Investment Framework Agreements’ with a number of countries, either individually or collectively through regional trading communities: Afghanistan; Algeria; Angola; Antigua & Barbuda; Bahamas; Barbados; Belize; Benin; Brunei Darussalam; Burkina Faso; Burundi; Cambodia; Comoros; Democratic Republic of the Congo; Djibouti; Dominica; Egypt; Eritrea; Ethiopia; Georgia; Ghana; Grenada; Guinea-Bissau; Guyana; Haiti; Iceland; Indonesia; Iraq; Ivory Coast; Jamaica; Kazakhstan; Kenya; Kyrgyzstan; Kuwait; Laos; Lebanon; Liberia; Libya; Madagascar; Malawi; Malaysia; Maldives; Mali; Mauritius; Mongolia; Montserrat; Mozambique; Myanmar (Burma); Nepal; New Zealand; Niger; Nigeria; Pakistan; Philippines; Qatar; Rwanda; St Kitts & Nevis; St Lucia; St Vincent & the Grenadines; Saudi Arabia; Senegal; Seychelles; South Africa; Sri Lanka; Sudan; Suriname; Swaziland; Switzerland; Tajikistan; Tanzania; Thailand; Togo; Trinidad & Tobago; Tunisia; Turkey; Turkmenistan; Uganda; Ukraine; United Arab Emirates; Uruguay; Uzbekistan; Vietnam; Yemen; Zambia; and Zimbabwe.

The EU has ‘Economic Partnership Agreements’ with a number of countries, either individually or collectively through regional trading communities: Antigua; Bahamas; Barbados; Barbuda; Belize; Dominica; Dominican Republic; Grenada; Guyana; Haiti; Jamaica; St Kitts & Nevis; St Lucia; St Vincent & the Grenadines; Suriname; Trinidad & Tobago; Papua New Guinea; Madagascar; Malawi; Mauritius; Russia; Seychelles; and Zimbabwe. It is also in the process of negotiating new agreements with Angola; Benin; Botswana; Burkina Faso; Burundi; Cameroon; Cape Verde; Central African Republic; Chad; Comoros; Congo; Democratic Republic of Congo; Djibouti; Equatorial Guinea; Eritrea; Ethiopia; Gabon; Gambia; Ghana; Guinea; Guinea-Bissau; Ivory Coast; Fiji; Cook Island; Kenya; Kiribati; Lesotho; Liberia; Mali; Marshall Islands; Mauretania; Micronesia; Mozambique; Nauru; Namibia; Niger; Nigeria; Rwanda; São Tomé & Príncipe; Senegal; Sierra Leone; Solomon Islands; Sudan; Swaziland; Tanzania; Togo; Tonga; Tuvalu; Uganda; Vanuatu; Zambia and seeking to update agreements with Madagascar; Mauritius; Papua New Guinea; Russia; Seychelles; South Africa; and Zimbabwe.

Canada has ‘Trade and Investment Co-operation Arrangements’, ‘Trade and Economic Co-operation Arrangements’ and ‘Frameworks for Economic Co-operation and Trade’ with a number of countries, either individually or collectively through regional trading communities: Argentina; Australia; Bolivia; Brazil; Ecuador; Palestine Territories; Paraguay; South Africa; Uruguay; and Venezuela.

Although the EU sometimes counts them among the international trade deals which it has reached, these arrangements fall short of being genuine 'free trade agreements'. The details vary between the three negotiators, but in essence these are agreements to agree. They establish broad principles and a forum for formal discussion of trade and investment matters as a first stage before moving towards the elimination of trade barriers. The EU agreements do often contain economic concessions to the other parties but these are primarily designed to fulfil a development aim as part of a wider package to build cultural and political links. They are not intended to deliver trade liberalisation benefits for EU businesses.

Note 2: Investment agreements with EU member states

The USA entered into Investment Treaties with countries that subsequently became members of the EU (Bulgaria, 1992; Croatia 1996; Czechoslovakia 1991; Estonia 1994; Latvia 1995; Lithuania 1998; Poland 1990; Romania 1992). These were all amended to conform to EU law as part of the accession process for those countries.

Canada entered into Investment Treaties with countries that either were or subsequently became members of the EU (Croatia, 2001; Czech Republic 2012; Hungary 1993; Latvia 2011; Poland 1990; Romania 2011; Slovakia 2012). These will all be superseded by the CETA deal negotiated direct with the EU.

Prior to the Lisbon Treaty, the EU's competence over investment was unclear and it did not seek to negotiate equivalent agreements (indeed, the proposed deal with China would be the EU's first investment treaty if one were to be agreed).⁸ However, the requirement to secure freedom of movement of capital from candidate countries allowed it to insist on amendments to pre-existing treaties with the USA.

Note 3: Territories to which no economic value can be assigned

Due to the local circumstances, it has been decided to assign no ranking to either Syria or the Palestinian Territories. That follows from the underlying World Bank data on GDP, which omit values for both territories. Inclusion of the 'Palestinian Territories' in this table carries no indication that its claim to statehood is accepted (which is also the basis for their inclusion in World Bank statistics).

Data Sources

US information taken from the website of the Office of the United States Trade Representative, accessed 17/02/2015 at: <<https://ustr.gov/>>.

EU information taken from EU Commission Trade webpages, accessed 16/02/2015 at: <<http://ec.europa.eu/trade/policy/countries-and-regions/>>.

Canada information taken from the website of Foreign Affairs, Trade and Development Canada, accessed 20/02/2015 at: <www.international.gc.ca/international/index.aspx?lang=eng>.

Country rankings based on data downloaded from the World Bank website, GDP at PPP (current international dollar) code: NY.GDP.MKTP.PP.CD. The absences of 2013 data in that source for Argentina, Barbados, Bermuda, Kuwait, Liechtenstein, Oman and the United Arab Emirates has been supplemented by consulting IMF data.

8 EU DG Trade "EU investment negotiations with China and ASEAN" (18 October 2013). accessed 17/02/2015 at: <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=975>>.

Appendix D: Non-Tariff Barriers

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In any negotiations between the EU and a post-exit Britain, whether preferential tariffs are to be levied on British exports – and which categories would be caught by them – would be of prime importance. But the issue of Non-Tariff Barriers (NTBs) also has to be considered. The question of whether Britain best fits inside the Single Market, the EU Customs Union, or in a free trade agreement is thus affected by more than just the potential level of tariffs. It boils down to a balance between maximising broader trade access to the EU and minimising red tape costs in so doing. There would potentially be a wide range of NTBs to trade with EU member states if Britain were outside, and these are addressed below.

The wide global range of possible barriers

The United Nations Conference on Trade and Development (UNCTAD) divides non-tariff obstacles into 16 types, designated as Chapters A-P.⁹

(A) Sanitary and Phytosanitary Measures ('SPS') – banning a product because it is deemed unfit to eat, for instance the BSE beef ban. Since the precautionary principle applies to member states as well as to non-member states, we might expect no change for better or worse in the application of this potential obstacle as it is overseen by set legal guidelines and judicial appeal. EU membership has not stopped two massive British livestock crises arising.

(B) Technical Barriers To Trade ('TBTs') – such as labelling, environmental protection, or certification, for example specifications that might generate a narrow barrier to an import, such as an inbuilt safety requirement that might not be specified by other countries. For instance, requiring any tractor over a certain size to have a roll-bar protecting the driver. The indigenous manufacturer would thus build these in as default, but its export markets would not ban products that did contain the safety feature.¹⁰

TBTs involve aspects of red tape that not only act as a regulatory burden, but are a legal pre-requisite that, if not met, mean that trade cannot take place. TBTs are thus double-sided; if a business is already compliant, a TBT can act as a protectionist measure against foreign imports. But in the process, TBTs can mean that production costs are higher, making the product globally less competitive. These are of variable concern in a UK-EU context, and will be discussed in greater detail later.

(C) Pre-Shipment Inspection and Other Formalities. UN agreements already cover transshipment rules. Agreements would be needed to confirm that both the British and EU parties recognised the standards of earlier inspections. This should not be an issue for the UK inspectorate, but would create an opportunity for Britain to require safeguards in EU certification processes (which led to the horse meat scandal).

(D) Contingent Trade-Protective Measures – this particularly covers anti-dumping. As Britain has taken the lead in opposing subsidies that generate dumping claims, outside the Single Market it would actually gain negotiating strength due to other countries making particular use of Treaty clauses allowing for subsidies where there would be social consequences if they were removed (they carry "*public service obligations*"). These are Services of General Economic Interest (SGEI). Germany has used this to maintain subsidies for its coal industry. This support is distinct from in-Treaty subsidy as provided by sectoral clauses such as permitted by the CAP and CFP. Outside the EU, Britain could

9 UNCTAD "Classification of Non-Tariff Measures", accessed 22/05/2015 at: <www.tradebarriers.org/docs/UNCTAD%20-%20NTM%20classification%202012%20Version.pdf>.

10 Though the safety feature can add competitive cost when sold in the free market.

choose to develop its own countermeasures or appeal to the WTO against EU decisions that conflicted with its own interpretation of fair competition.

(E) Non-Automatic Licensing, Quotas, Prohibitions And Quantity-Control Measures Other Than For SPS Or TBT Reasons, and (F) Price-Control Measures, Including Additional Taxes And Charges can be grouped together. These are quotas and licences, and also price control measures and para-tariffs, that impact upon the cost of imports. Transitioning to the EEA would not generate these. However, these are fundamental barriers and would need to be negotiated with any move outside the Customs Union. Of course, the principle of reciprocity applies; if an import quota were applied to the UK on a product, Britain could apply a similar quota on an EU export such as French wine or beef. But it is an area that would have to feature as part of any tariff talks in order to ensure that low-tariff trade in both directions did not face a glass ceiling.

(G) Finance Measures refer to foreign exchange rules and payment restrictions. Capital transfer rules and electronic systems have massively progressed over the past two decades, even between Eurozone and non-Eurozone bank accounts, so this is not a problem with developed banking systems.

(H) Measures Affecting Competition cover monopolies and obligatory state procedures. The Commission is already targeting these and will continue to do so without UK membership. Attempts by any British government to introduce new monopolies would be possible outside the EU, but would inevitably be challenged by the EU if it broke WTO rules. The same applies conversely.

(I) Trade-Related Investment Measures (“TRIMs”) involve obligatory local partnerships for FDI or if a government requires that FDI has to go into exporting industries. These are quite common in Asian countries. EU processes mean this will not generate a Non-Tariff Barrier if Britain leaves the Customs Union. This area is also covered by the WTO TRIMs agreement which has removed the egregious potential barriers.

(J) Distribution Restrictions and **(K) Restrictions On Post-Sales Services** relate to post import marketing. Again, these run contrary to normal EU market processes and so it is unlikely that they would be created against Britain.

(L) Subsidies (other than Export Subsidies), **(M) Government Procurement Restrictions**, and **(N) Intellectual Property** are areas subject to particular constraints at WTO level. Of these, the EU already places particular significance on intellectual property rights so no new barriers can be expected there, and the Commission is vigorous in identifying and demanding an end to subsidies. Nevertheless, this has not prevented either issue giving rise to political chips within the EU which means they remain in force. A notable example has been the enduring controversy over Italian milk support, and the bartering that took place to slash the huge fines imposed as a result of persistent inaction by Rome. These cases are the exception rather than the rule. The Commission would continue to oppose subsidies within the Customs Union that breach WTO obligations even if Britain were outside. Where subsidies have occurred, it has been despite British opposition from within the EU.

(O) Rules of Origin are a potentially more serious problem, particularly as trade is often value-added through trading networks. A complex multi-part product like machinery may be made up of raw materials from Country A and Country B, with microchips from Country C, and components initially crafted in Country D, then re-exported for further working to Country E, then with others assembled in a final location, Country F. Where does the product come from, for the purposes of applying the trade treaties agreed with Country G?

Britain's transferral to the EEA would generate no problems, but leaving the Single Market does raise technical issues that need to be addressed. These are already acknowledged in international trade fora and particularly by the European Commission itself (see below).

(P) Export-Related Measures relate to conditions applied to exports, for instance banning them to influence the home market. Given the historical and institutional value attached to the 'Four Freedoms', this category does not really apply to the European market.

British negotiator priorities

In fact, in many cases these NTBs are simply not seen in the European context. Examples of EU-irrelevant but UN-cited sub-categories of global NTBs include infrastructure issues (the lack of ferries to get produce transported), the classification of produce (addressed by masses of technical specification in Britain's existing *acquis* that it stands to inherit on leaving the Single Market), and corruption (not really a first world issue).

However, there are specific areas where negotiators seeking to agree a new set of trading terms with the EU would have to ensure protectionism is avoided. They are summarised in Table D.i.

Table D.i: Negotiating priorities with any new trade deal

Issue	Complexity variables	Resolution risk
Tariffs	Moderate complexity. Covered by WTO context. UK imports more than it exports to the EU. This area will likely break down into trade-offs between different sectors in the UK and EU. Strong UK negotiating hand but some significant issues for all parties if not resolved prior to transition. Key risk is over time taken, suggesting an EEA transition stage may be required.	Medium
Quotas	Moderate complexity. Less WTO standardisation than with tariffs. But note the current default is no quotas: adding politically-selected quotas permits targeted reciprocity. Timing is also the key variable risk here. UK has a strong hand otherwise, though there are some significant sectoral pressure points.	High
Fixation of a minimum import price	As per above.	Medium
Rules of Origin	See later discussion. Frameworks already exist to deal with this but it does need addressing.	Low
Quality conditions	UK administrative standards are considered high, so it would be difficult for the EU to erect new barriers.	Low
Sanitary and Phyto-sanitary conditions	Requires mutual recognition of standards and the UK authorities are - in general - considered competent. This area may also permit either side to make additional marketplace checks on individual products rather than working from an assumption of upstream regulatory compliance which covers all products.	Medium
Complex regulatory environment	Costs of regulation are borne by exporting businesses, which would have to ensure export compliance. But UK exporters have to apply EU regulations and their costs currently anyway (along with everyone else thanks to universal compliance).	Variable

Issue	Complexity variables	Resolution risk
Additional trade documents like Certificate of Origin, Certificate of Authenticity etc.	New bureaucratic burdens are inevitable but can then be standardised for all EEA destinations. Negotiators would seek to simplify the processes required by both sides. Precedents for this exist (Norway).	Low
Occupational safety and health regulation	These would not apply to UK exporters selling outside the EU.	Nil
Employment law	These would not apply to UK exporters selling outside the EU.	Nil
Quota shares	Realistically an attempt by the EU to impose quotas on UK exports is most likely to focus on the termination of Britain's involvement with the Common Fisheries Policy. UK has a strong negotiating hand but Spain may attempt to link the issue to its demands over (a) Gibraltar; and (b) UK expatriates who have retired to Spain, although doing so would in turn carry political risks for Madrid. Compromise would likely follow over transitional rights, e.g. permitting Spanish fishermen continued access to British waters but with rights being phased out over a number of years.	High
Currency revaluation	The Chinese Renminbi demonstrates the potential impact of currency valuation on exports. Some members of the US Congress have pushed for retaliatory measures on the grounds that China is a "currency manipulator" unfairly lowering the price of its exports to the US. ¹¹ Some commentators have suggested a major sterling devaluation is necessary to revitalise the post-crash UK economy by boosting exports. ¹² Regardless of the case's merits for the UK, this is strategically less likely an option within EU structures.	Nil
Lengthy customs procedures	More noticeable to the UK owing to high profile choke points in North France. But again, any such move would invite a reciprocal nuisance that would impact on continental trade entering the UK as well.	Medium
"Buy national" policy	Country of Origin (COO) campaigns are forbidden for individual EU members. ¹³ However they are still possible under international trade rules. ('Buy Kiwi' was ended in 2009 for cost-impact not legal grounds). By contrast, the 'Made in Britain' marque and campaign currently operating are not officially sanctioned, while the 'Buy British' campaign of 2013 was a private venture run by the National Farmers Union. Practical definition difficulties emerge with the transnational manufacture of many complex products in any event. It is likely that the Commission would be extremely keen to include a ban on authorities having a policy of sourcing only national products, but otherwise 'Buy British'/'I'm backing Britain' could re-emerge. This would only be of value if it came with guaranteed quality so there is a broader policy context.	Low

11 For example, see the discussion in Forbes "If China Stops Being A Currency Manipulator Will The Yuan Rise Or Fall?", accessed 22/05/2015 at <www.forbes.com/sites/timworstall/2014/07/14/if-china-stops-being-a-currency-manipulator-will-the-yuan-rise-or-fall/>.

12 For example, see Civitas "There is An Alternative: An Economic Strategy for 2015", accessed 22/05/2015 at: <<http://civitas.org.uk/pdf/ThereIsAnAlternative.pdf>>.

13 ECJ Case 207/83 European Commission v United Kingdom, [1985] E.C.R. 1201, Judgment of the Court dated 25 April 1985 prohibiting a UK law which required the labelling of the country of origin of goods, on the grounds that it discriminated against the free movement of goods within the EU.

Tackling these may be less fraught than it would have been several years ago, as the European Commission has now identified some of the complexities associated with the globalised marketplace and has endeavoured to reduce key obstacles. However, as identified above, probably the single biggest potential risk would be low tariffs being introduced but associated with **quotas**.

Here CETA, the EU-Canada trade deal, provides a particularly relevant example of the risks and opportunities arising due to Britain's own significant import and export trade in this area. Both Canada and the EU began from a high barrier threshold, a key difference.¹⁴ EU duties ranged from 3.5 per cent to 22 per cent, averaging 11.2 per cent. These are overwhelmingly now being phased out over a seven year period. New Rules of Origin allow for significantly improved cumulation, meaning that Canadian factories can incorporate US parts (see later). This is extremely significant given the extent to which the North American car industry is interdependent and highly integrated. But this increased access is accompanied by a quota.

This origin quota is set at 100,000 vehicles. Canada exported 10,023 cars to the EU in 2012 and an annual average of 8,180 cars over the period 2007–2012. Thus the quota is in reality orientated to a potential and massive surge in future Canadian exports, and is intended to set a limit (at a factor of ten) on US production shifting to Canadian factories to exploit increased free trade access to the EU market by NAFTA proxy.

The issue of vehicle safety standards being used as a Technical Barrier to Trade is circumvented by Canada's decision to apply UNECE (not EU) standards, the majority of which have been adopted already. This is in addition to clauses allowing for interested parties in either Canada or the EU to participate in public processes for the development of technical regulations, and the introduction of a committee where trade irritants can be raised as they arise.

Reviewing the Canadian example further suggests that quotas are most likely to be applied to agricultural products. As Britain is a net food importer and would gain consumer competitive choice by leaving the CAP, London has a stronger negotiating hand in avoiding tariffs in these areas. This is particularly true in relation to food processing of EU-farmed produce, and sales of no-equivalence or geographically-branded goods such as whisky.

Global Value Chains encourage the reduction of Non-Tariff Barriers

International production, trade and investments are increasingly organised within global value chains (GVCs) where the different stages of the production process are located across different countries. Globalisation encourages businesses to form partnerships as well as siting their activities in different international locations.

Geographic diversification has been particularly evident in value-added activities across the development of a product, such as design, production, marketing, and distribution. This is rather different from deciding where a multinational might site its HQ offshore, in order to benefit from low corporate tax or (as in shipping) from regulatory advantage, but involves relative advantage in the production process. But when grain becomes a loaf, a strip of leather is made into a belt or a piece of metal becomes a watch, it obviously impacts on tariffs.

A familiar example from Britain might be outsourcing customer relations to India to make use of low salaries, highly educated staff, and fluent English

14 For a summary of the terms of CETA, see the website of Foreign Affairs, Trade & Development Canada, accessed 22/05/2015 at: <<http://international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/understanding-comprendre/technical-technique.aspx?lang=eng>>.

language speakers. The product being sold itself might be made in Birmingham from metalwork from Germany and circuits from Japan.

There are clear consequences. In the case above, defining the nationality of the product when it gets re-exported can become statistically obscure (although the nationality of the call centre staff would not be relevant in determining tariffs and restrictions on the product). This could be a complicating factor for Britain trading into the EU Customs Union from outside. But the issue has been addressed internationally. The formulae now exist to transparently assess proportionality of production; and the EU has further built on the systems to generate its own more developed methodology.

How EU Preferential Rules of Origin handle Global Value Chains

The OECD and WTO together run a Trade in Value Added (TiVA) Initiative. The database they have created also incidentally reveals the national comparative advantage by category, demonstrating why Britain is the place to work on chemicals and Turkey is better for manufacturing footwear.¹⁵ Correspondingly, the OECD's work provides the framework for its Initiative on Global Value Chains (GVCs), Production Transformation and Development. At present, Britain currently has only observer status, though other EU members are among the full participants. It was only launched in 2013 so is very much an emerging field.

From an EU perspective, its Rules of Origin resolve whether (for EU import purposes) a product counts as being produced within (as appropriate) the EU, the EEA, or within the participating states of an EU-third party agreement. Other countries or trading blocs could apply their own rules.

Cumulation within preferential trade agreements is a facility that helps manufactured goods meet the relevant origin rule. Countries are collated into groups or zones. Manufacturers can count materials originating in other countries in the zone as if they originated in the country of manufacture, when incorporated into a product made there. Products are wholly produced (or obtained) if no other country has been involved in their production: this is rarely the case with modern manufacturing. Thus the principle of "*sufficient transformation*" is important, meaning the trigger constituting a significant quantity of outside input.

There are three types of cumulation: **bilateral**, **diagonal** and **full**.

Bilateral cumulation allows for a country to export back to the EU using components from the EU. Arrangements cover the EEA countries, Switzerland, Faroe Islands, Morocco, Tunisia, Egypt, Jordan, Israel, Montenegro, Bosnia-Herzegovina, Serbia, and Turkey. In Turkey's case, it excludes what is separately included in its Customs Union terms; with Norway, Switzerland and Turkey, it excludes fish and food.

An example of bilateral cumulation¹⁶

Israel does not produce poly/cotton fabric but wishes to manufacture poly/cotton shirts for export to the Community. The origin rule for such shirts requires production from non-originating materials that are at a no later stage of manufacture than yarn. If Israel imports fabric from the USA its shirts will not satisfy that rule. That would not be the case if EU-originated fabric were used. The EU fabric would be treated as originating in Israel (the making up of a shirt being more than a minimal process) and the shirts would qualify for entry into the EU at a nil rate of customs duty.

15 OECD "OECD-WTO Trade in Value Added (TiVa) – May 2013", accessed 22/05/2015 at: <http://stats.oecd.org/Index.aspx?DataSetCode=TIVA_OECD_WTO>.

16 Source: HM Revenue and Customs "Notice 828: tariff preferences – rules of origin for various countries", accessed 22/05/2015 at <www.gov.uk/government/publications/notice-828-tariff-preferences-rules-of-origin-for-various-countries/notice-828-tariff-preferences-rules-of-origin-for-various-countries>.

Diagonal cumulation allows for work done by one country and further worked on by another within the group to be counted as still compliant for export to the EU.¹⁷ The groups are:

- 1 the contracting parties to the Pan Euro-Mediterranean Agreements: the EU; Iceland; Liechtenstein; Norway; Algeria; Lebanon; the Palestinian Territories; Egypt; Faroe Islands; Israel; Jordan; Morocco; Tunisia; Turkey; and Switzerland.
- 2 the countries covered by the African, Caribbean and Pacific Market Access Regulation ('ACP (MAR)'):¹⁸ Antigua & Barbuda; Bahamas; Barbados; Belize; Botswana; Burundi; Cameroon; The Comoros; Dominica; Dominican Republic; Fiji; Ghana; Grenada; Guyana; Haiti; Ivory Coast; Jamaica; Kenya; Lesotho; Madagascar; Mauritius; Mozambique; Namibia; Papua New Guinea; Rwanda; St Kitts & Nevis; Saint Lucia; Saint Vincent & The Grenadines; Seychelles; Suriname; Swaziland; Tanzania; Trinidad & Tobago; Uganda; Zimbabwe (with South Africa associated).
- 3 the Cariforum Economic Partnership Agreement states: Antigua & Barbuda; Bahamas; Barbados; Belize; Dominica; Dominican Republic; Grenada; Guyana; Jamaica; St Kitts & Nevis; Saint Lucia; Saint Vincent & The Grenadines; Suriname; Trinidad & Tobago.
- 4 the Overseas Countries & Territories ('OCT'): Greenland; New Caledonia & Dependencies; French Polynesia; French Southern & Antarctic Territories; Wallis & Futuna Islands; Mayotte; Saint Pierre & Miquelon; Aruba; Netherlands Antilles; Bonaire; Curaçao; Saba; Sint Eustatius; Sint Maarten; Anguilla; Cayman Islands; Falkland Islands; South Georgia & the South Sandwich Islands; Montserrat; Pitcairn; Saint Helena & Dependencies; British Antarctic Territory; British Indian Ocean Territory; Turks & Caicos Islands; British Virgin Islands; Bermuda.
- 5 Brunei-Darussalam; Cambodia; Indonesia; Laos; Malaysia; Philippines; Singapore; Thailand; Vietnam.
- 6 Bolivia; Colombia; Costa Rica; Ecuador; El Salvador; Guatemala; Honduras; Nicaragua; Panama; Peru; Venezuela.
- 7 Bangladesh; Bhutan; India; Maldives; Nepal; Pakistan; Sri Lanka.
- 8 Albania; Bosnia & Herzegovina; Kosovo; Macedonia; Montenegro; Serbia; Turkey.

17 Originally the 'Pan-Euro-Med Zone' comprised around 60 bilaterals on Rules of Origin. This has been simplified into a Single Convention, though not all Contracting Parties are yet fully signed up. Significantly, the existence of a single simplified procedure makes for easier transition and 'inheritance' by a state shifting from one form of EU affiliation to another, though this may involve a time delay and staged application that would need to be consciously worked towards accelerating. These terms themselves though are directly associated with the process of transitioning the zone's FTA arrangements, which are also in the interest of these parties to maintain, so this should be achievable.

18 Council Regulation EC 1528/2007.

It should be evident from this list that Britain would naturally fit within the first category, which basically comprises EEA and EU geographic neighbour states. The fact that the Palestinian Authority has been able to negotiate an arrangement (though it is still yet to be ratified) suggests that Britain could do so also.

An example of diagonal cumulation²¹

In Switzerland, cleaning cloths are manufactured using imported fabric and sewing thread of Swiss origin. The imported fabric constitutes 50 per cent of the value of the ex-works-price of the cloths, while the sewing thread accounts for one per cent. In order for the cloths to qualify as originating goods on exportation to a contracting party of the Euromed system (e.g. to the EU), in accordance with the list of requirements for working and processing, the value of the imported input materials of third-country origin must not exceed 40 per cent of the ex-works-price. Origin can thus only be achieved in this case through cumulation. In addition to bilateral cumulation, diagonal cumulation is also possible. The imported fabric must therefore be an originating product from a contracting party participating in the Euromed system (e.g. Morocco). This means the manufacturer has an incentive to use fabric of Swiss origin or from a contracting party participating in the Euromed system, rather than that of a third country.

There is, however, also **full cumulation** which is likely to make this route redundant over the long term. This arrangement provides for the working or processing carried out in one country to be carried forward to another and be counted as if it were carried out in the country of production of the final product. It applies in the agreements between the EU and:

- the EEA countries
- the ACP (MAR) countries
- the Cariforum (EPA) states
- the Maghreb countries of Algeria, Morocco and Tunisia
- the OCT

The existence of this set of agreements, and the importance of Britain as a trading partner compared with any of the above, suggests that, after a period of diagonal cumulation, full cumulation terms would likely be agreed – if they were not immediately offered.

An example of full cumulation²⁰

Poly/cotton shirt manufactured in Morocco from fabric supplied from the EU. The origin rule for such shirts requires production from non-originating materials that are at a no later stage of manufacture than yarn. Under bilateral cumulation rules the fabric would have to be EU-originated fabric (the rules require manufacture from the pre-yarn stage) if the Moroccan produced shirt is to qualify as an originating product. However, under full cumulation the fabric produced in the EU can be produced from non-originating yarn and the processing from yarn to fabric can be counted as if it took place in Morocco. Thus the shirt will have been manufactured from the yarn stage and qualify as an originating product.

From a Commission perspective, the primary concern of any trade deal reached with Britain outside the Single Market would be to ensure that common terms existed defining cumulation (these already exist), and preventing future exploitation by UK exporters to the EU market acting as a Trojan Horse for re-export. This applies as much to complex manufacturing goods as to cheap products.

19 Swiss Federal Customs Authority “Cumulation in Free Trade Agreements”, accessed 22/05/2015 at <www.ezv.admin.ch/pdf_linker.php?doc=Die_Kumulation_in_den_Freihandelsabkommen&lang=en>.

20 HM Revenue and Customs “Notice 828: tariff preferences - rules of origin for various countries”, accessed 13/04/2015 at: <www.gov.uk/government/publications/notice-828-tariff-preferences-rules-of-origin-for-various-countries/notice-828-tariff-preferences-rules-of-origin-for-various-countries>.

The nature of any ‘Trojan Horse’ threat to the EU from Britain is overstated – paradoxically, unless the Commission and member states generate one for themselves by delaying agreement to the transition of Britain to a new post-exit arrangement. Current rules clearly delineate what is permitted and from where, and exporters are already familiar with UK Government documents explaining (not always with clarity) what the rules are. The balance of weight would remain with the status quo ante – at least unless the Commission sought to restrict British exports to the EU on cumulation grounds. At that point, Britain would have an incentive to reduce its harmonisation to suit other markets.

Yet even if the UK/EU negotiators completely overlooked cumulation, the default regime would be the EU’s non-preferential Rules of Origin. If a product is wholly obtained or produced in one country, it is considered to have origin in that country; if produced in more than one country, it has origin in the country where the last substantial transformation took place. At importation into the EU, the non-preferential origin would be indicated on the import declaration but no specific proof of origin would be required. Where difficulties arose, the British Government could assist in facilitating reviews using the current system of Binding Origin Information (BOI) Decisions, allowing for a three year ruling.

Changes in administrative burdens would hardly be different from current obligations to retain documentation to support any official check. Paperwork would be required by non-EU businesses to prove cumulation is authentic; under bilateral cumulation the system requires the Movement Certificate EUR1/EUR-MED and a declaration on an invoice or other commercial document such as a packing list or consignment note.

Overall, Britain is already sufficiently engaged in the EU’s system of Preferential Rules of Origin to suggest that, as part of any tariff settlement, this potential non-tariff barrier would not generate any significant concerns. Were the UK an applicant state today this might be an issue, but the EU’s threshold rules are currently met, and the three types of cumulation model already exist to provide transitional and permanent alternatives. Commission officials anxious to avoid Britain becoming a ‘Trojan Horse’ have it in their own best interests to lock these terms in place.²¹ This is particularly the case if they maintain their current interest in emphasising their own definitions for Rules of Origin in world trade terms rather than the North American ones. Indeed, the competition between the two as the global model is another reason why the Commission would not want to see Britain ‘defect’ to a rival regulatory system.²²

Britain would be able to retain access to the EU public procurement market

The prospect of British businesses losing access to EU government procurement once outside has been somewhat overplayed. In particular, Britain has been at the forefront in opening up public budgets for bidders, just as it has been a lead advertiser of job vacancies to EU nationals via the EURES portal.²³

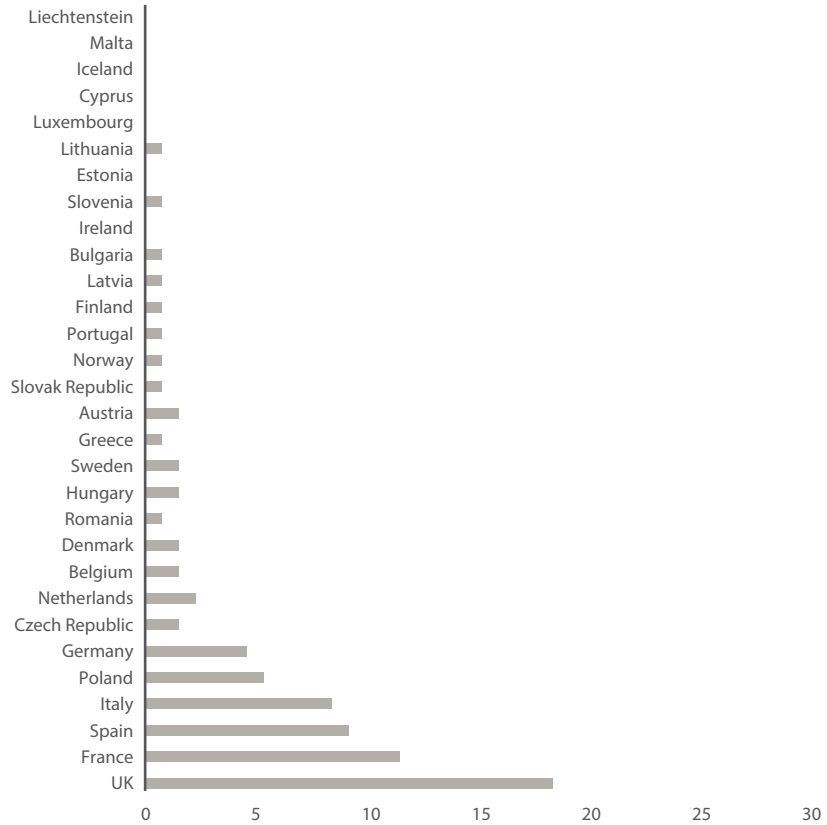
21 This in turn suggests an accelerated arrangement would need to be met by the Commission over settling tariff rates that suited both parties, since the two issues are related.

22 The long term direction of these agreements is explored in “Multilateralising Preferential Rules of Origin around the World”, Estevadeordal, Harris and Suominen (WTO, 2007), particularly pages 50–52, accessed 22/05/2015 at <www.wto.org/english/tratop_e/region_e/con_sep07_e/estevadeordal_harris_suominen_e.pdf> .

23 As of April 2015, the UK was second after Germany in advertising jobs on EURES. The UK’s 162,447 vacancies contrasted with Poland (22,830), Denmark (567) and Greece (56), or for that matter Switzerland (4,213) and Iceland (63) which are also on the system.

Chart D.ii shows that a quarter of all such contracts by value are being put out by Britain alone. With the public sector squeeze particularly affecting Eurozone countries, we can expect this disparity to grow. This means the UK will be increasingly disadvantaged by NTB imbalances even within the EU system, but could demand greater reciprocity if it left.

Chart D.ii: National shares of EU public procurement awards 2006–2010



The controlling system includes EEA countries so would continue to be accessible if Britain switched to having that relationship instead of EU membership. If Britain left the Single Market, it would face a choice of either joining the system alongside a number of other non-EEA states like the USA and Japan; or it could take a more restrictive approach, allowing British companies comparative advantage by returning to a less transparent system. As a country already playing by the rules, it will not fare worse than it currently does.

Outside the EU, Britain would need to secure access to the EU's public contract tender market – and given the scale of public sector spending in EU member states, exclusion would be serious. However, these contracts are open to bidding not just by companies in EEA states, but by any company in a country that has signed up to WTO GPA (Government Procurement Agreement) Rules. That list currently includes Armenia, Aruba, Canada, Hong Kong, Chinese Taipei, Iceland, Israel, Japan, South Korea, Liechtenstein, Norway, Singapore, Switzerland, and the USA. British participation is through a joint EU signature from 1996 so the UK would need to clarify and confirm its position, but this could be achieved by simply acceding in its own right.

Cooperation could be further facilitated by continued British association with public sector administrative counterparts through the Public Procurement Network (PPN), a forum for officials. It is not an EU body but does send reports

to the Commission for review. It is primarily open to EU members, though EEA members can get associate status. However, there is also the category of 'accessing countries', states which apply the common EU rules. Thus Switzerland and the Balkan states are engaged too. In any event, this will to some extent be determined by the practical implication of principles agreed elsewhere, through the WTO-level Committee on Government Procurement.

VAT will only emerge as a Non-Tariff Barrier if Britain changes its tax system

A different risk is what happens to the management of VAT if Britain were to leave the EU.

The United States is the only developed economy that does not have a VAT system. Of the 150 countries that do, all but Japan have a credit-invoice system (Japan prefers the Subtraction Method, subtracting expenses from sales but not removing cost of labour, and calculating on gross trade rather than on individual sales). This means there is already a global standard that goes beyond just the current 28 EU member states. Keeping VAT while being outside the EU is a perfectly feasible option. Switzerland largely applies the VAT Directive but interprets it as it sees fit, and regulates differences through bilateral agreements with the EU. Tellingly, it is able to apply rates of 2.4 per cent, 3.6 per cent or 7.6 per cent, compared to the UK's current standard rate of 20 per cent (which itself is much lower than the rate charged in most EU member states).

In the first instance, therefore, this issue depends on Britain abandoning the VAT system it introduced in the 1970s as part of joining the EEC. As we explore elsewhere, there would be a number of potentially significant social and economic advantages in doing so. But if Britain did abandon the tax, it would raise the question of what would happen with the application of VAT rules as operating through the VAT Directive.

The VAT Directive is a facilitator. It establishes a single set of VAT rules and definitions of application across the Single Market, whether or not a country trading into it applies VAT or not. In this regard, it would be more complex to withdraw from the trading bloc without this agreement than with it.

The key variable is whether exporters' VAT would apply in addition to any other UK domestic taxes that might be introduced as a replacement. The way in which tax issues with Gibraltar are managed at present when trading with Britain offer a useful illustration, since that territory currently has no VAT, Goods and Services Tax or other Sales Tax.

Goods exported to Gibraltar can be zero-rated for UK VAT purposes, as long as documentary evidence is retained. Any extra charges made for freight, shipping, postage or delivery are also zero-rated. The net value of the sale is reported on the UK VAT return, and if offset on the Flat Rate Scheme counts against the total turnover. In terms of imports, a British business may be charged the standard rate and this can be reclaimed from HMRC by including it on the regular quarterly return. UK VAT does not need to be charged on most services relating to land or property situated in Gibraltar. It may need to be charged on services there, depending on the nature of the service supplied. There are special rules for hired goods and telecommunications. The key point is that the Gibraltar example shows that, administratively, variable VAT rules can be managed.

A more revealing comparison is perhaps that of the United States, which has a federal taxation system, no VAT, and varying rates of sales tax. Not all states choose to apply a sales tax, and rates for states that do vary from one per cent to 16 per cent. But this figure is not added onto rates for British importers. UK rates are applied on import (typically 20 per cent), and a UK VAT-registered business

can reclaim that from HMRC. The management of services is more complicated, with a number of exemptions and special rules based on the defined point of consumption. Electronically Supplied Services ('ESS') are a particular complication for American businesses. In practical terms, a US exporter may have to register for VAT with the country of export (in some countries, such as Britain since 2012, this is a requirement).

The US Government lists the following as the options for how its exporters should manage this requirement:²⁴

- Set up a permanent establishment in one of the 28 EU member states and apply the rate of VAT applicable there to all their ESS sales to customers within the EU;
- Register for VAT in each member state where they make sales to non-business customers and collect VAT at the rate applicable in those member states, therefore making separate returns to each national VAT authority (this option is usually preferred);
- Use the Directive's Special Scheme that allows companies to register towards a single VAT authority of their choice and charge a different VAT rate depending on where their customers are based. In this case, VAT returns are submitted to a single authority;
- Sell ESS through local EU-based distributors by redirecting potential customers to their websites. The distributor would apply the local rate of VAT applicable in its country and handle VAT administration with the local authorities;
- Outsource electronic transactions to an e-commerce Service Provider including VAT collection and administration, among other services.

In turn, this means that a US business has the following options:

- 1 It can deduct VAT that was made on purchases if the goods and services are used for economic activity;
- 2 It can receive a VAT refund if input VAT exceeds output VAT;
- 3 US-based companies with no subsidiary in the EU must pay VAT related to their business dealings in a member state where they do not supply goods or services but have a right to a refund in the member state where the VAT was incurred.

The key aspect again is that this demonstrates that processes exist for trade between a VAT and a fully non-VAT system, if Britain opted for a radical overhaul of its tax system.

24 US Commercial Service Guidance "How the EU's Value-Added Tax (VAT) Impacts US exports" (November 2013), particularly page 6, accessed 22/05/2015 at <www.buyusainfo.net/docs/x_7079960.pdf>.

It is possible to anticipate possible EU Non-Tariff Barriers, and work around them

Complaints to the WTO against the EU for purportedly breaching anti-protectionist rules are a useful place to start in considering which points British negotiators might wish to raise with their EU counterparts. Cases for the last decade are set out in Table D.iii:

Table D.iii: WTO trade complaints against the EU 2005–2014

Year	Complainant	Issue
2014	Pakistan	Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan
	Indonesia	Anti-Dumping Measures on Biodiesel from Indonesia
	Russia	Certain Measures Relating to the Energy Sector
2013	Russia	Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia
	Argentina	Anti-Dumping Measures on Biodiesel from Argentina
	Denmark for Faroes	Measures on Atlanto-Scandian Herring
	Argentina	Certain Measures on the Importation and Marketing of Biodiesel and Measures Supporting the Biodiesel Industry
2012	China	Certain Measures Affecting the Renewable Energy Generation Sector
	Argentina	Certain Measures Concerning the Importation of Biodiesels
	Indonesia	Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia
2010	Brazil	Seizure of Generic Drugs in Transit
	India	Seizure of Generic Drugs in Transit
	China	Anti-Dumping Measures on Certain Footwear from China
2009	Norway	Measures Prohibiting the Importation and Marketing of Seal Products
	Canada	Measures Prohibiting the Importation and Marketing of Seal Products
	China	Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China
	United States	Certain Measures Affecting Poultry Meat and Poultry Meat Products from the United States
2008	India	Expiry Reviews of Anti-dumping and Countervailing Duties Imposed on Imports of PET from India
	Chinese Taipei	Tariff Treatment of Certain Information Technology Products
	Japan	Tariff Treatment of Certain Information Technology Products
	United States	Tariff Treatment of Certain Information Technology Products
	Canada	Certain Measures Prohibiting the Importation and Marketing of Seal Products
2007	Panama	Regime for the Importation of Bananas
	Colombia	Regime for the Importation of Bananas

Year	Complainant	Issue
2006	Argentina	Measures Affecting the Tariff Quota for Fresh or Chilled Garlic
	United States	Measures Affecting Trade in Large Civil Aircraft (Second Complaint)
	Norway	Anti-Dumping Measure on Farmed Salmon from Norway
2005	Norway	Definitive Safeguard Measure on Salmon
	Chile	Definitive Safeguard Measure on Salmon

This list does not include third parties who stated an interest in the case owing to the precedent involved. For example, the Faroes herring case saw 19 third parties declare themselves, including Peru and Thailand, while the US poultry meat case and its impact on chlorine washing principles led to seven states effectively declaring an interest. Most are irrelevant to Britain because of the nature of the trade involved. But the complete list is revealing about the nature of EU trade barriers complained about.

Airbus provides a useful case study of the threat from Non-Tariff Barriers which could arise if the UK withdrew from the Single Market. This is because it provides a clear example of an integrated multinational consortium, with businesses supplying cumulation value as finished products are passed further along the development chain and re-exported.

Airbus grew from a trilateral ministerial agreement in 1967 involving Britain and France (which had separately already been cooperating for a decade over Concorde) and West Germany. Hawker Siddeley and an Anglo-French consortium were separately designing large civilian aircraft but concluded that they would separately fail to break the US's 80 per cent market control. A deal was made to divide production: 37.5 per cent to France and the UK, and 25 per cent to Germany. British participation in the programme remains significant 40 years later, a period which has seen Spanish accession, cooperation with Rolls Royce, Hawker Siddeley's incorporation into BAE and many other developments. Perhaps around 100,000 jobs are generated in Britain by Airbus wing work, both directly (around 17,000) as well as indirectly through an extended supply chain of over 400 companies. The Broughton site alone employs more than 6,000 people and demonstrates the variety of support jobs involved: largely in manufacturing, but also in engineering and support functions such as procurement and finance. These aircraft wings are then exported to Toulouse or Hamburg for final assembly.

However, the actual export chain is even more complicated as – despite the original percentile breakdown by country – components are not narrowly restricted to the country of section sourcing. Today, the wings comprise a front spar from Spirit Aerosystems in the US; a rear spar from GKN in Filton; a leading edge from Scotland; an upper cover from Germany; and a lower cover from Spain.²⁵ The internal elements to the wings are also added here, prior to onward delivery.

Meanwhile, the new Trent XWB Rolls Royce engines were designed with 3D print input from a Swedish firm with testing in Italy and the United States, part of an international programme involving 16 manufacturing plants, 11 engineering and testing facilities, 12 engineering partners as well as 75 suppliers worldwide. In any case, not all XWB engines which are built will go on Airbus aircraft, and not all will be built in Britain. This part of the Airbus supply chain has global implications and connections of its own.

25 The Engineer "Composite class: developing the Airbus A350-XWB", S. Nathan (2011), accessed 01/06/2015 at: <www.theengineer.co.uk/in-depth/the-big-story/composite-class-developing-the-airbus-a350-xwb/1009059.article#ixzz3WdjipDLT>.

The reality of these complex links, therefore, is that a change to Britain's trading arrangements with the EU will generate a need for a new agreement among the participants, but it carries with it the inherent incentive for the Commission to remedy any problems that emerge. Production distribution is determined by the governing agreement between the parties, not by the EU Treaties. Changing the latter does not invalidate the commercial contract which is the foundation of the business. Furthermore, given the US opposition to what it perceives to be WTO-illegal European subsidies to Airbus, British diplomatic support will still be needed by its European partners.

But the critical factor is that a failure by the Commission to prevent the emergence of either Technical Barriers to Trade or Non-Tariff Barriers within the Airbus manufacturing process would mean that either Airbus costs increased calamitously, or key components would simply not be supplied. Either costs would have to be passed on to the consumer, making the company uncompetitive, or it would have to stop production, since it cannot magic up wings from an alternate supplier, particularly when that supplier is its critical competitor.²⁶ Either prospect leads to the eventual collapse of Airbus. Business interests on the continent, and a number of governments (Germany, France and Spain in particular), do not have it in their own economic interests to interrupt this trade.

It might be an unwelcome distraction for Paris and Berlin to ensure that trade barriers do not re-emerge to prevent the plane wings from arriving at their factories, but the integrated nature of the European economies (especially where the alternative is to surrender to a long-dreaded American hegemon) suggests that business continuity will become a political priority not just for British negotiators but also for their counterparts in the EU. This will be the case not just with Airbus.

The CETA deal with Canada demonstrates the EU's willingness to cut Non-Tariff Barriers

The example of the Canadian trade deal, CETA, demonstrates that removing barriers is on the European Commission's agenda in dealings with competitive first world economies.²⁷ This agreement will remove all industrial duties and most agricultural duties. Less visibly, it opens up bids for public contracts; increases access to services, particularly financial services, telecommunications, energy and maritime transport; generates a framework for easing mutual recognition of qualifications; and cuts barriers to foreign investment. It still permits EU protectionism in sensitive topics – GMOs, beef hormone bans, and areas of public provision.

A specific chapter of the CETA Agreement is dedicated to Technical Barriers. Both sides are required to strengthen links between the relevant standard setting bodies. A separate protocol has been added to improve the recognition of conformity assessment between the parties. The intent is to seriously reduce the cost of complying with technical regulations, standards and conformity assessment procedures (including marking and labelling provisions).

CETA confirms that the areas most likely to remain protected in the future against any country trading into the Single Market from outside (including

26 The concept of Airbus "withdrawing" from the UK four weeks after a General Election was a central and defining plot element in the Channel 4 docudrama "The First 100 Days of UKIP". Given the above – and notwithstanding costs and administrative problems that do indeed risk arising if cumulation tariff issues and NTBs are left unaddressed – the "drama" nature of the programme appears to have taken priority.

27 See the EU Commission briefing notes. Accessed 22/05/2015 at: <<http://ec.europa.eu/trade/policy/in-focus/ceta/>>.

potentially Britain) relate to environmental protection and health and safety rules, plus national-level protectionism driven by popular concerns and a lack of trust in private sector delivery in the public sector (which remains excluded from the agreement, in common with all EU trade agreements).

Overall, however, CETA demonstrates that NTBs can be addressed by trade deals, while the key stumbling block of continued public sector bidding access for British companies can be avoided by maintaining current standards under WTO rules.

The TTIP negotiations with the US indicate new approaches for removing EU trade barriers

A review of areas currently being raised by TTIP negotiators can provide some insight into how the EU might handle any future negotiations with Britain (though, again, these are based on issues where national systems are presently very divergent, rather than uniform, as the UK presently sits within EU systems).

US negotiators point to hurdles to trade in consumer safety and health matters, accounting standards, and environmental management. Washington estimates the biggest problems lie in barriers covering electrical goods, chemicals, pharmaceuticals, financial services, and insurance. By focusing on a number of these barriers, the TTIP talks demonstrate European Commission intent in tackling them in third party agreements with developed non-EU states. Some barriers it rules out changing; others it concedes need to be cut. Examples are set out in Table D.iv below.

Table D.iv: TTIP and the UK NTB context

TTIP Issue under discussion	Future NTB for UK?
Protection of designated public services from private sector competition; public health and education, social services, and water distribution	No more than currently permitted nationally
Limits on single ownership of media	No more than currently permitted nationally
Mutual recognition of qualifications, such as architects	No
Subsidy/protection for TV, radio, films	No more than currently permitted nationally
Data protection (not under TTIP discussion)	No more than currently permitted by EU
Tendering for public contracts	Possibly not; see earlier

These are priority businesses for London too. In all of these areas, however, Britain currently complies with EU standards. Existing compliance puts the British in a better starting position.

The EU-US trade talks are ongoing and largely secret (notwithstanding certain leaks). But the Commission has put into the public domain its initial TTIP position paper on Technical Barriers.²⁸ From this it is clear that it recognises that there are a number of peculiar sectoral and historical instances that need to be addressed individually. More critically it sets out how the Commission views the barriers and how any talks around them in future should develop.

The EU views for the TBT component of the TTIP are based on a number of guiding principles.

28 EU Commission "Technical Barriers to Trade: Initial EU position paper", accessed 22/05/2015 at <http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151627.pdf>.

First, as far as possible, measures should aim at removal of unnecessary barriers to trade arising from differences in the content and application of technical regulations, standards and conformity assessment procedures.

Second, although compatibility is important, it must be recognised that the systems of the two regions are different, both to meet the specific needs of their economies and for historical reasons, and it is not possible for one side to impose its system on the other; nor can either side be expected to treat its partner more favourably than its own side.

Third, while the need for a high level of protection remains, measures should aim for methods of regulation, standardisation and conformity assessment that are not more trade-restrictive than necessary to achieve the relevant public interest objective, while taking into account the need to give preference to internationally harmonized methods.

Fourth, closer co-operation between the EU and the US should not result in new hindrances to their trade with the rest of the world.

Finally, it should be recognised that there are existing voluntary instruments of transatlantic co-operation in or related to TBT matters, arising from earlier sectoral or general trans-Atlantic initiatives, and that the results of such initiatives should not be compromised in any new Agreement.²⁹

Taken together, this suggests the EU would be amenable to breaking down any Non-Tariff Barriers that emerged as a result of a change in Britain's relationship with the Union. In terms of Technical Barriers, there are four approaches:³⁰

(i) Harmonisation or acceptance of technical regulations.

Where neither side has regulations in place, the making of mutually-applicable technical regulations may be considered by the Parties. Wherever appropriate, consideration should be given to basing such common/coherent regulations on product requirements in terms of performance rather than detailed design prescriptions (what the EU styles the 'New Approach' for setting "essential requirements" for health and safety without prescribing specific technical solutions). Wherever possible, this should be pursued in the framework of international agreements/organisations in which both the EU and the US participate, as was done for instance with the 2004 Mutual Recognition Agreement on marine safety equipment under International Maritime Organisation Conventions, and electric vehicles (EVs) where the EU and US collaborate closely in UNECE on global technical regulations (GTRs) relating to safety and environmental aspects. This is considered unlikely to be a general route but may work for some sectors.

(ii) Reference to standards in technical regulations.

Standards referenced in legislation, as a means of determining compliance with technical regulations, are ideally voluntary. Therefore, there is enough flexibility for industry to choose the technical solution that best suits its needs. Mandatory legislation should neither copy nor reference standards (thereby making them mandatory themselves) but only set general requirements.

(iii) Avoiding sub-regional technical legislation.

Ensuring that national governments, or US states, are not generating additional or divergent requirements for imports to reach trade standards.

29 EU Commission "Technical Barriers to Trade: Initial EU position paper", page 2.

30 EU Commission "Technical Barriers to Trade: Initial EU position paper", pages 3-4.

(iv) Operating under the WTO TBT Agreement.

TTIP's terms would follow rules set out within the WTO TBT Agreement, to which both EU and US are signatories. Consideration, negotiators suggested, should be given to incorporating the TBT Agreement into this agreement, which would also allow disputes to be dealt with bilaterally.

Conducting a review of TBTs (albeit back in 1998), the Commission observed that, even within the Single Market, mutual recognition of standards rather than uniformity of standards played an important part. Around 20 per cent of EU rules, rather than generating a specific EU standard, simply cross-referenced the relevant international agreement (as an MRA, or Mutual Recognition Arrangement). This was particularly useful for avoiding unnecessary costs where health and safety testing was expensive but reviewing authorities could be trusted to be thorough. It is a Single Market model the Commission recognised as valuable but has since largely failed to develop, predominantly it appears owing to the increased number of national regulatory bodies it has had to deal with (and check up on) since expansion.

The approaches the Commission has indicated it intends to follow in negotiating TTIP with the US provide optimistic signs of the likely attitudes that would be adopted in future negotiations with Britain.

WTO agreements exist to restrain Non-Tariff Barriers

NTB issues are often covered by specific WTO rules, and the WTO Court has authority to rule on disputes concerning them. Of particular relevance is the **WTO Agreement on Technical Barriers to Trade**. This treaty is complemented by a WTO Agreement on the Implementation of Article VI (which covers anti-dumping measures); an Agreement on Rules of Origin; an Agreement on Import Licensing Procedures; an Agreement on Subsidies and Countervailing Measures; an Agreement on Safeguards (WTO-permitted state intervention); and key agreements on Services as well as on Intellectual Property Rights.

The TBT Agreement is very clear about the intent:

*products imported from the territory of any [WTO] Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.*³¹

Signatories are required to follow the agreed code of good practice, an annex to the TBT Agreement, and not discriminate against foreign suppliers. This includes any charges for conformity testing. Where an emerging TBT is being generated, even if just in the drafting stage, it has to be passed on to the TBT Agreement Secretariat to be shared with trading partners.

This operates in a manner equivalent to the EEA consultation process that provides even non-EEA members with the ability (however limited) to influence EU legislation. The rules state:³²

2.9 Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Members, Members shall:

2.9.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become

31 WTO Agreement on Technical Barriers to Trade 1994, Article 2.1.

32 WTO Agreement on Technical Barriers to Trade 1994, Article 2.9.

acquainted with it, that they propose to introduce a particular technical regulation;

2.9.2 notify other Members through the Secretariat of the products to be covered by the proposed technical regulation, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

2.9.3 upon request, provide to other Members particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards;

2.9.4 without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

Areas of contention are reviewed by a WTO Committee on Technical Barriers to Trade. This meets thrice yearly, and also conducts an annual review. The largest part of its work consists of reviewing health and safety issues. In a specific EU context, it has largely had to focus on REACH; plus the Renewable Energy Directive, designated origin foodstuffs, tobacco packaging, fluorinated greenhouse gases, endocrine disruptors, sparkling wine, high quality beef, fuel quality, eco-friendly products, medicine certification, GM pollen-free honey, and traditional health products. This is both a finite list and one where Britain could continue to cooperate either through the EU or via alternative mechanisms.

But there are limits to the ability of the WTO to force change in the short term

WTO constraints have certain practical limits. What has emerged from the leaked TTIP documents has been the extent to which national governments currently apply the WTO-permitted opt-outs in protection of vested interests. A 103 page text lists EU-permitted exemptions by sector, along with a column covering limitations on market access, another on national treatment, rounded off with additional commitments. Examples include, for instance:

- A Finnish residency requirement in the mining services;
- A Slovenian requirement that customs clearances require judicial training;
- An Italian needs test for maritime cargo handling;
- An economic needs test for Portuguese limousines;
- A French bar on foreign press agencies collecting and then distributing news;
- Hungarian ministerial approval for someone to become a tourism office manager;
- Official approval for foreign medical staff in Poland;
- Potential limits on work for interpreters in Denmark;
- Spain has a state monopoly on executive recruitment searches and placement services.

Notwithstanding the Four Freedoms, many of these barriers to trade are in force within the Single Market, and many therefore apply to Britain whether it is a member of the Single Market or not.

Within the EU, nationality conditions apply to, for example, Greek teachers, French tobacconists, Portuguese credit reporters, and Bulgarian aerial photographers. There are areas where EU nationals are now permitted under equal access rules to apply for previously restricted posts and where, outside of the

EEA, restrictions might apply. But increased access has still not broken through Non-Tariff Barriers even for EU nationals. Obstruction is sometimes informally done, through illicit discrimination or through back door rules: EU nationals can now become teachers in Greece after an ECJ case, but the Commission has been struggling to ban Athens from ignoring non-Greek parts of a teacher's CV.³³ Correspondingly, the extent to which Britain would lose job access through leaving the EU is questionable, though real in some very specific cases (such as working as ski instructors in France).

Essentially, though, the ability of the Commission to remove Single Market barriers is constrained by the (un)willingness of national governments to assist. This is particularly the case with non-regulatory barriers imposed by users' groups, trade associations, institutions, insurance bodies, or by non-mandatory government guidelines and advice to customers. Here, the role of the ECJ in individual cases becomes paramount, but precedents once set and cases once established apply to everyone with work rights, EU member or not.

Different forms of association with the EU provide different freedom of action

Consider a notional example. Suppose an EU regulation requires tractors to have three rear view mirrors. This might be defensible on, for instance, safety grounds. It would place companies anywhere in the world at a disadvantage if their models included only two mirrors. As an EU member, Britain complies with this Non-Tariff Barrier to access to the Single Market.

Now suppose at a later date the EU decides that five mirrors would be better. (If it decided only one was needed, thus dropping minimum standards, current tractor designs would already be compliant).³⁴ For the sake of argument, let us say that the health and safety grounds for this further regulation cannot be justified. Contrast how the various trade relationships would react to British objections to such a change:

- If Britain were inside the EU: as an outvoted EU member, Britain would have to implement the five mirrors rule, but might gain a temporary derogation allowing manufacturers time to adjust, but at a cost to all tractor makers. Britain could not take the EU to the WTO Court, being constrained by the Treaties. The only remedy would be to take the matter to the ECJ, which would presumably uphold the decision.
- If Britain were in the EEA: Britain could refuse to accept the agreement, ending the Single Market in tractors until the deal was renegotiated and British objections were catered for, if ever (but at a cost to all tractor exporters in the meantime). There is a dispute resolution process under the EEA Agreement, but this might become bogged-down by mutual accusations of non-compliance. Britain could take the matter to the WTO Court.

33 European Commission "Free movement of workers: EU requests Greece to end discrimination against teachers who have worked in other member states", accessed 22/05/2015 at: <http://europa.eu/rapid/press-release_IP-12-671_en.htm?locale=en>.

34 This in turn suggests NTBs are likely to be in emerging technologies, and where the Precautionary Principle is applied to existing products on the basis of an unqualified scare. The UK would be expected to be involved in setting world standards for the former, and be in a position to largely escape the unnecessary trade cost aspects of the latter by not requiring universal application across the whole UK economy (exporters to the EU would apply the new rules as they saw fit to qualify for their export markets).

- If the EU were in a Free Trade Agreement with the EU: Britain could choose to accept either three or five mirror tractors from EU members and would export five mirror tractors to the EU and three mirror tractors globally, with exporters to the EU alone bearing the extra costs. Alternatively, it could claim five mirrors were a distraction and, on health and safety grounds of its own, ban five mirror tractors domestically, thus countering a TBT with one of its own (while making a point for the future). Britain could take the EU to the WTO Court, but the Free Trade Agreement would have its own dispute resolution process which almost certainly incorporated the main WTO Agreements in its terms – which might provide a basis for preventing the new EU five mirror rule coming into effect against British exporters in the first place.
- If Britain had left the EU and had no agreements in place: trading on a WTO-only basis, its only recourse is to take the EU to the WTO Court. British exporters would be locked out of the Single Market until such time as the WTO overturned the new five mirror regulation.

Therefore, the form of Britain's trading relationship with the EU has a critical impact on its ability to uphold and enforce its rights within the WTO system.

International commercial law now provides an additional tier of safeguards

Happily, a number of areas that could develop into future TBTs are already covered by the work of UNCITRAL, the UN Commission on International Trade Law.³⁵ Since 1966, UNCITRAL has acted as the core legal body of the United Nations system. Its aim is to remove or reduce legal obstacles to the flow of international trade, and to progressively modernise and harmonise trade laws. It also seeks to coordinate the work of organisations active in this type of work and promote wider acceptance and use of the rules and legal texts it develops.

The Commission is made up of 60 member states elected by the United Nations General Assembly for a term of six years, representative of global regions. EU member states can be members, and the UK since 1968 in effect has been a permanent member in its own right owing to its G5 status.

UNCITRAL develops legislative documents such as conventions, model laws and legislative guides, as well as non-legislative contractual rules that can be incorporated into commercial contracts and legal guides. These are subsequently legally interpreted to become CLOUT (the Case Law on UNCITRAL Texts system). Currently, CLOUT includes case abstracts on the United Nations Convention on Contracts for the International Sale of Goods (CISG) (Vienna, 1980) and the UNCITRAL Model Law on International Commercial Arbitration (1985).

Since its launch, UNCITRAL has generated agreements on the sale of goods, transport, dispute resolution, procurement and infrastructure development, international payments, electronic commerce and insolvency. International arbitration, transport law, electronic commerce, insolvency law, security interests and public procurement are the focus of current work (see Box D.v).

35 UNCITRAL "United Nations Commission on International Trade Law", accessed 22/05/2015 at: <www.uncitral.org/uncitral/en>.

Box D.v: UNCITRAL agreements on common legal frameworks

Sale of goods

- United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)
- UNCITRAL Legal Guide on International Countertrade Transactions (1992)
- Transport of goods United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978)

Dispute resolution

- UNCITRAL Arbitration Rules (1976)
- UNCITRAL Conciliation Rules (1980)
- Recommendations to assist arbitral tribunals and other interested bodies with regard to arbitrations under the UNCITRAL Arbitration Rules (1982)
- UNCITRAL Model Law on International Commercial Arbitration (1985)
- UNCITRAL Notes on Organizing Arbitral Proceedings (1996)
- UNCITRAL Model Law on International Commercial Conciliation (2002)

Public procurement and infrastructure development

- UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works (1988)
- UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994)
- UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2001) and Model Provisions (2003)

International payments

- UNCITRAL Model Law on International Credit Transfers (1992)
- United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (1995)
- United Nations Convention on the Assignment of Receivables in International Trade (2001)

Electronic commerce

- UNCITRAL Model Law on Electronic Commerce (1996)
- UNCITRAL Model Law on Electronic Signatures (2001)

Once again, potential avenues for red tape, such as modifying the format of an electronic signature, as set out in Community Framework 1999/93/EC, turn out to be sourced from a global agreement to generate far wider regulatory norms.

Conclusion

Non-Tariff Barriers provide an often-overlooked potential cost to trade into the EU from outside. Against them can be set the opportunity gain of limiting Technical Barrier costs to merely those industries required to apply them for their trade access.

Citing them as a reason why the UK has to stay in the EU would, however, be a gross mischaracterisation of their importance. As an advanced economy that is already compliant with current EU trading expectations, and compliant with global trading standards by operating in a range of international fora, for Britain, Non-Tariff Barriers are an issue predominantly of the long-term future. How they affect UK exports will depend on the nature of the treaty which covers British access to the EU Single Market. Simply grandfathering mutual recognition of the authorities that check existing standards will remove at a stroke the bulk of any legacy issues. The rest then falls to the future, and for the new treaty deal to address.

Data Sources

Table D.i: Negotiating priorities with any new trade deal

Own research plus points cited in footnotes.

Chart D.ii: National shares of EU public procurement awards 2006–2010

Taken from PwC “Public Procurement in Europe: Cost and effectiveness” (March 2011), Fig 1.23 on page 29. A report prepared for the European Commission. Accessed 13/04/2015 at: http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/cost-effectiveness_en.pdf.

Table D.iii: WTO trade complaints against the EU 2005–2014

Information obtained from the WTO Chronological database of disputes cases. Accessed 13/04/2015 at: www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm.

Table D.iv: TTIP and the UK NTB context

Own research.

Appendix E: How the UK has different requirements from other countries from its relationship with the EU

A Formula to Calculate Benefits from Full EU Membership	902	Modelling gains and losses from types of treaty association	908
Variable bureaucratic costs to EU members	904	The EU is a bad fit for the UK economy	909
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Two fundamental facts need to be understood by anyone grappling with the form and content of the EU Treaties.

The first is that the nature of the EU membership Treaties, which are identical for all member states (though there are opt-outs, considered temporary by most parties), suits different parties differently. The level of gain and of cost from association with the EU varies considerably. This is only common sense; Greenland's gain from being able to trade with the powerhouse German economy is rather less than, say, that of the Netherlands, owing to the relative level of exports and proximity to the markets.

The second point is that, even if there is basically one deal for EU members, there is in fact a surprising array of different types of treaty that non-EU countries reach with the EU to suit their mutual needs.

Combined, these show that it is possible that EU membership may not be ideal; and that some other form of treaty allowing export access might suit the UK's needs far more.

Thanks to some ground-breaking work reviewing these dynamics, it is possible for treaty analysts to review costs and benefits in the round, and arrive at a dispassionate reasoned perspective.³⁶

A Formula to Calculate Benefits from Full EU Membership

The starting point is to define the variables that attract and repel states from full membership.

$$5a = \frac{f1+f2+f3}{f4+f5+f6} + \frac{s1}{s2} + \frac{w}{d+f7} + \frac{p1}{p2+t} + f8$$

a is the **end calculation**, consisting of five parts to be taken into consideration – hence $5a$. The top side of the fraction (the numerator) supplies advantages of membership, the bottom side (or denominator) the negatives; so added together a figure larger than a baseline of 1 indicates membership is advantageous to a particular state.

The starting variable assesses the concept of **trade gain versus cost**. $f1$ represents the increased trade stimulated by membership of the trading bloc; $f2$ the production advantages gained due to standardisation; $f3$ the administrative benefits accruing from decreased red tape. However, against these have to be set $f4$, the net 'membership' cost of the UK-EU budget deficit; $f5$ or the combined red tape costs as well as the incidental costs of running individual policies, such as the damage inflicted upon coastal communities as well as the consumer by the Common Fisheries Policy; and $f6$, the benefits that would accrue in trade terms anyway from the World Trade Organization and other instruments that would make the EU gains redundant, since standardisation is already taking place here.

The second element relates to the more abstract concept of **sovereignty**. This sets $s1$ or the beneficial impact of 'pooled sovereignty' against $s2$, the negative impact of the sovereignty lost. This is an area for assessment rather than mathematics.

The third element is one of the **strategic picture**. w (more properly 'omega') represents the aspirational end status of the EU, and the end process of salami

36 This section collates and slightly builds on previous work. See: <<http://themidnightgroup.blogspot.co.uk/2011/05/controversies-from-brussels-closer-to.html>>, <www.harriman-house.com/book/view/237/economics/lee-rotherham/the-eu-in-a-nutshell>, <www.tfa.net/wp-content/uploads/2014/10/ManningThePumps.pdf>, and <www.civitas.org.uk/europe/hardbargains>.

slicing. While this does carry with it substantial positives, there are also major negatives, represented as *d* and *f7*. The former is the very real loss of democratic accountability that arises inherently from the process. The accompanying financial element, *f7*, provides the shorthand for the fraud and waste that is encouraged by this distance.

Next, there is the element relating to ‘**Peace in Europe**’. *p1* Represents the concept that the European ‘process’ has brought political and military stability to the continent, and adds value to a nation’s security today. Against this is contrasted *p2*, which postulates that peace has been achieved notwithstanding the EEC/EC/EU, but rather through NATO, a divided Germany, and the Soviet threat. *t* meanwhile represents the action of time cementing the habits of peace and as new democracies become secure.

Finally, there is the **alternative element**. Set against an underlying standard baseline of 1, *f8* represents the departure costs for a state of leaving the EU, which will vary depending on the manner and good will surrounding withdrawal.

This then provides us with our five fractions: **the financial; sovereignty; the strategic destination; peace and stability; and the alternative route**. Combined, they provide one way of assessing whether any given state is better off in or out.

Let us take a couple of examples. Luxembourg is known as a strong supporter of European integration. There is good reason for this. It is a small country with an economy closely tied into its larger neighbours, generating a large export dependency, though this (as with the City of London) is increasingly under threat as its banking sector faces EU regulation. As this comprises a key sector of the economy (especially with the decline of the steel industry) over the long term this gain will be eroded. On a sovereignty front, Luxembourg has only recently emerged as an independent state, having variously been a Hapsburg fief, in personal union with the Netherlands (at cost of major territorial loss to Belgium), part of the German Customs Union, and only fully independent as of 1867. From its history it is more psychologically prepared for pooled sovereignty, and is more accepting of the end federal ambition as a result. Its status as an occupied country during both world wars and with Germany as an immediate neighbour gives it an understandable direct interest (which its leaders readily declare) in politically anchoring a neighbour with a history of volatility and expansionism. Finally, given its geography, leaving the EU could generate significant administrative and technical difficulties. Taken as a whole, the formula suggests Luxembourg’s approach, supporting considerable EU integration and a federal model, is logical.

But compare that with the maths as it applies to Norway, which has done the sums in two referenda now. In terms of trade, the gains are notable yet the country is physically a peripheral state. It has key oil and fish sectors that stand to lose if they fall into the Brussels pool. While it is a major welfare state, it is also aware of red tape risks arising across the large portion of its industry that does not export to the EU. It has decided that trade gain can be met through the EEA while limiting the negatives – though it should be noted that ‘*Nei*’ campaigners object not just to EU membership but also seek to withdraw from the EEA, as they assess the costs of even this level of association as too great for the country.³⁷ These campaigners stress the global theatre in which an independent Norway (and even an EEA Norway) can freely operate. They oppose their country being absorbed into a European entity on sovereign and demo-

37 The Norwegian umbrella campaign, *Nei til EU*, opposes EEA membership on the grounds of democracy, sovereignty, fairness and equality in international trade, retention of natural resources, and an ambitious internationalist approach. Accessed 22/05/2015 at: <www.neitileu.no>.

cratic grounds. To compare with the Luxembourg example, Norway has had a strong national identity for much longer. Its occupation in the Second World War saw a national resistance movement based on cultural identity, and also like Luxembourg then saw it locked into NATO; but a variety of factors (not least its lack of a physical border with Germany) led to its rejection of European federation as an alternative attempt to secure its future independence from a powerful neighbour. As a secure democracy, a majority of its voters have viewed being outside the EU as economically more advantageous – or at least less of an economic handicap and threat.

So for each of the 28 member states and for every potential applicant, the gains and losses will vary. Some will see as their priority the need to shore up recent democratic advances, just as Spain and Greece did on their accession. Some see themselves as emerging frontline states on migration routes and seek help. Others see themselves as actual frontline states next door to a resurgent Russia. Others are economically under-resourced but have low labour costs and want to attract inward investment. Others (like Italy on its accession) may seek to export their unemployed. The maths vary from state to state, and it is important to appreciate what a given state gains and what it risks losing from its membership of the EU.

Variable bureaucratic costs to EU members

Focusing on a key part of the cost helps explain why this formula is so important.

Table E.i compares the UK's traditional approach to regulatory burdens compared with other EU countries. It shows that adapting to a highly regulatory customs union (the EU) will mean added costs and a loss of competitiveness for a country like the UK.

Table E.i: National attitudes to red tape – the UK as a low-burden economy in a high-burden Customs Union³⁸

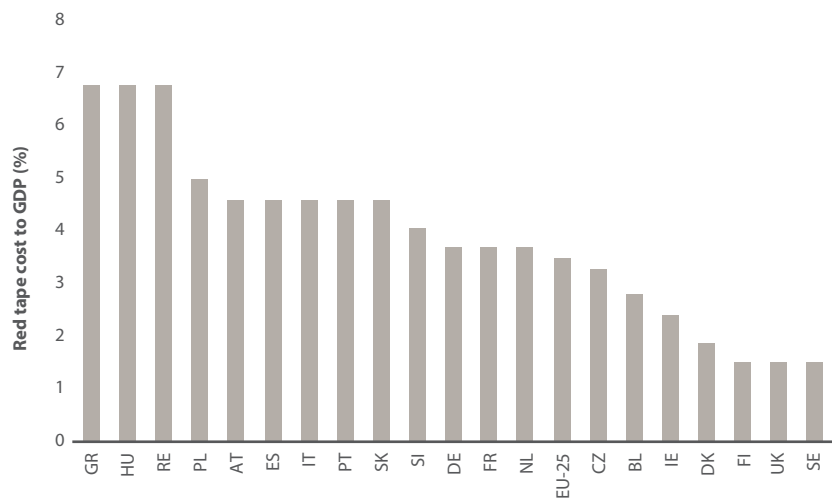
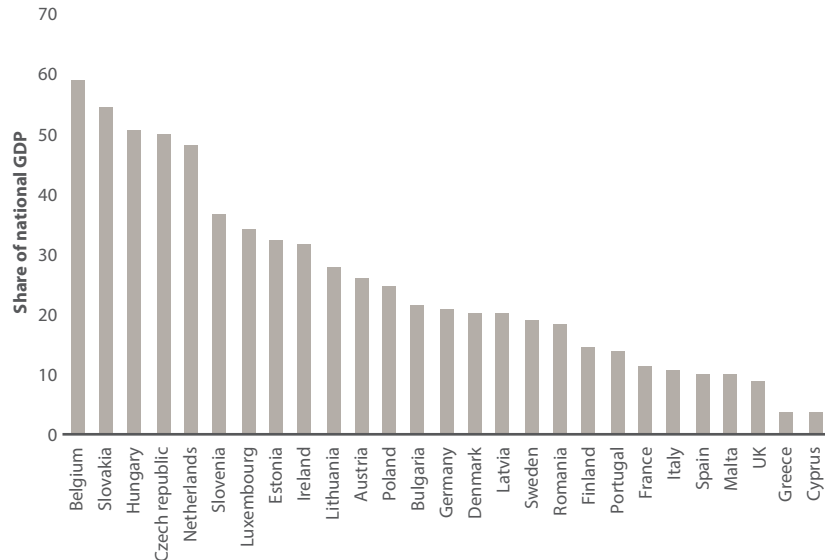


Table E.ii, however, shows the reality is even worse. The UK, in comparison with other countries, relies far less on exports to the EU as a share of its GDP. That inversely means that it is having to apply EU rules – red tape – to parts of the economy that do not need to carry that burden to undertake that trade.

³⁸ Based on Kox: “Intra-EU differences in regulation-caused administrative burden for companies”, CPB Memorandum 136, The Hague, 2005. It thus dates from before the Lisbon Treaty, so we can expect UK rates to have increased.

Table E.ii: Exports to EU as share of national GDP³⁹



The ratio in the UK’s case is among the worst. What this means taken together, therefore, is that the EU’s Single Market is carrying burdens across to business in the UK’s internal single market (i.e. the British domestic economy) by an astonishing factor of around 1:8, or approaching 1:9 if we include the impact on wider exports.

Clearly, some countries with a heavy dependence on EU export markets have a greater interest in heavily regulating their trade than others with higher collateral costs. The UK is very definitely one of the ‘others’. As we see elsewhere, it does not even get net injections of EU cash to compensate.

The conclusion, therefore, is that the UK is subject to a higher level of red tape than it would be inclined to apply to itself if left to its own devices; and it is also having to apply it as dead weight costs far more widely than its competitors.

In other words, membership of the EU’s Single Market carries disproportionate costs to the UK economy, though it may suit an already highly-regulated economy with low labour costs and a high dependency on exports, such as Hungary.

The Pizza Treaty Principle

A considerable number of different forms of treaty exist to link states with the European Commission. We might summarise them as follows:

- EU membership;
- EEA membership;
- Customs Union membership;
- Small territory association;
- Customs access plus broad spectrum competences engagement;
- Customs access plus limited competences engagement;
- Bilateral developed free trade deal;
- Free (free-er) trade arrangement;
- Bilateral inter-trading bloc agreement;

³⁹ Source: Eurostat. The figures are skewed by the Rotterdam and Antwerp effect (masking external transit through these ports), the Amsterdam effect (masking headquartering of companies), and the Ireland effect (hiding UK exports and focus of trade). But they do demonstrate variable overall economic integration.

- Advantageous trade access for a developing country;
- Non-economic treaty;
- WTO-level default.

An audit of the types of agreement that have previously been reached – a majority of which still operate today – reveals that there are even more potential models. There is not an obligation to ‘take the EU or leave it’. There is not even an EU/EEA/Out trichotomy. The answer to the meaning of the EU, the universe and everything genuinely in this case does come to 42.

Table E.iii: Types of agreement

Type of Agreement	Example
EU membership	France
Subsumed political union/merger with nation state ⁴⁰	East Germany
EU membership with opt-out	Denmark
European Economic Area (EEA)	Norway
Transitional Europe Agreement Establishing an Association	Pre-accession Bulgaria
Protocol 3 Association	Guernsey
Outermost Region (OMR) ⁴¹	Guadeloupe
Cooperation and Customs Union (CCU)	San Marino
Customs Union	Turkey
Deep and Comprehensive Free Trade Agreement (DCFTA)	Ukraine
Free Trade Agreement plus bilateral(s)	Switzerland, Faroes
Basic symmetric free trade agreement (eg CEFTA) Macedonia	Macedonia
Transatlantic Trade and Investment Partnership (TTIP, pending)	USA
Comprehensive Trade and Economic Agreement (CETA, ongoing)	Canada
Non-Member Member territory – EU exclave ⁴²	Büdingen am Hochrhein
EU-OCTA (OCT Association)	Falklands
Non-EU OCTA	South Georgia
New Generation Free Trade Agreement	Korea
Bilateral Stabilisation and Association Agreement: Non-reciprocal trade preference agreement with bolt-ons	Macedonia (formerly)
Free Trade Agreement	Malaysia (ongoing)
Agreement on Commercial and Economic Cooperation (ACEC)	Canada (previously)
Agreement on Trade and Commercial and Economic Cooperation (ATCEC)	USSR (previously)
Agreement on Trade and Economic Cooperation	Mongolia
Economic Partnership, Political Coordination and Cooperation Agreement (EPPCCA)	Mexico
Interim Agreement on Trade and Trade-related Matters	Bosnia

40 I.e. a former sovereign state that merges to become part of an existing member.

41 For simplicity, we also include in this bracket the quasi-OMR status held by Saint Martin over 2007-2010.

42 “This community, along its Italian counterpart *Campione d’Italia*, belongs to an EU member state but is treated as part of the Swiss customs union. Each is separated from their main territory by about a mile of Swiss canton.”

Informal backdoor legacy association	Algeria after independence
Trade Agreement	Colombia
Economic Partnership Agreement (EPA)	CARIFORUM (provisional)
Association Agreement and Additional Protocol	Chile
“Association Agreement with a strong trade component”	Central America
Euro-Mediterranean Agreement Establishing an Association (EMAA)	Israel
Interim Partnership Agreement	Madagascar
Comprehensive Partnership and Cooperation Agreement	Vietnam
Partnership and Cooperation Agreement (PCA)	Russia
Trade, Development and Cooperation Agreement (ATDC) – Asymmetric free trade agreement	South Africa
Most Favoured Nation (MFN) plus Joint Programming	Namibia
Generalized/Global System of Preferences Plus status (GSP+)	Honduras
Generalized/Global System of Preferences – WTO default with preferential rates for developing country	Iraq (formerly)
Partnership Agreement	ACP
Cooperation Agreement	Syria
WTO MFN default	China
WTO and Embargo	North Korea

This demonstrates that the EU is used to operating in an environment of variable treaty geometry. There is no single-choice, like-it-or-leave-it ‘Margarita deal’. Different countries have more often than not received their own distinct treaty toppings.

This is hardly surprising when they deal in different exports, have different systems of government and political traditions, have variably developed manufacturers and reliance on raw material exports, and different levels of trade with the EU. What is more surprising is that the Commission seeks to homogenise as a default among its own EU members as much as it does.

So Commission officials may not like it, and claim the Swiss model of pick-and-mix is unstable and messy, but this expression of treaty aesthetics is not borne out by the reality.

The UK would be quite capable of developing a type of association that best works for it. What broadly might that model be?

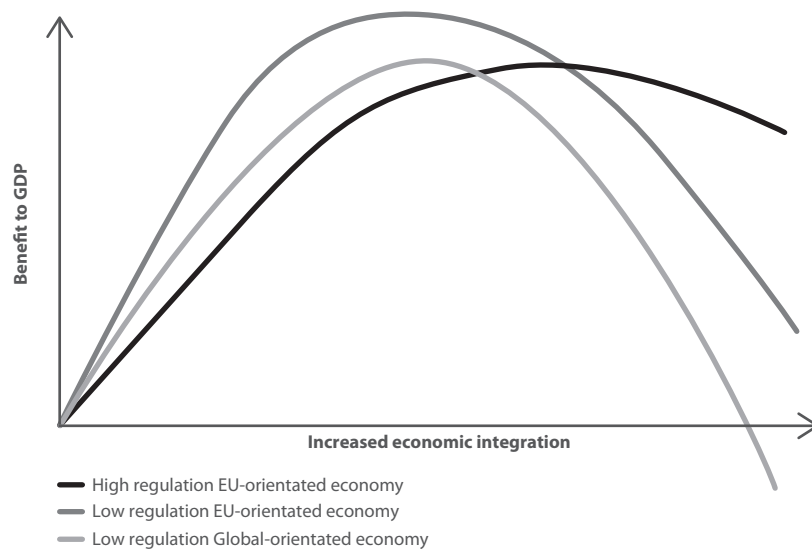
Modelling gains and losses from types of treaty association

An audit has been attempted to help answer this. This breaks down the list of treaty types into 15 main categories, ranging from WTO embargoed status to full EU. It takes a number of known case histories where studies have been released of assessed gains when a country moved or planned to move from one category to another.⁴³

Collectively, these appear to indicate that major gains happen when shifting from limited trade access to significant trade access, and that the gains then level off or risk falling as a result of the costs associated with increased standardised assimilation into the Single Market.

The analysis also suggests that this happens variably, and sets out what it calls the **Freedom Curve** (see below). This is a form of 'sovereignty Laffer Curve', and demonstrates the gain from a level of economic-political integration with the EU. After breaching the tariff walls of the Single Market, increased integration brings extra costs. The impact varies depending on how much the exporting economy is already subjecting itself to the same level of regulation, and the share of the non-EU export market that is also being affected without seeing any gains. This takes us back to the formula we explored before: a nation that is economically dependent on selling to its EU neighbours and is already attuned to red tape costs and social welfare regulations will fare better than one that is not. At some point, moreover, it may be that further integration into the EU causes more economic damage than it does good.

Graph E.iv: The Freedom Curve



Source: Civitas⁴⁴

43 Credible studies are demonstrably lacking for many cases of treaty change, and official audits are not necessarily published. The analysis therefore operates on and acknowledges a limited data set, but the authors themselves appeal for further study (including by government) and more access to currently-classified material.

44 Civitas "Hard Bargains or Weak Compromises", B. Binley and L. Rotherham (2015), accessed 22/05/2015 at: <www.civitas.org.uk/pdf/HardBargains.pdf>.

As a lightly-regulated economy with only a small share of its exports going to the EU, the UK risks integrating beyond its self-interests. Were the EU a static entity, this might be manageable, but the process of ever close union elasticates the curve towards the right.

The EU is a bad fit for the UK economy

The authors draw from this a conclusion that there is a 'happy bandwidth' in treaty terms in which the UK could operate. In terms of an analogy, it is the **temperate range** on a world, neither arctic nor desert but suited for life to flourish. Or it is the **Goldilocks Zone** - the range of planetary orbits in which life can thrive because the distance from the Sun is such that it is neither too hot nor too cold but 'just right'.

Critically, that optimal range in the UK's case excludes full membership of the EU.⁴⁵

Taking the benefits formula, the variable trade costs and red tape practices, the Pizza Treaty Principle, and the Freedom Curve together, the conclusion from the audit is that the UK is better placed in a different treaty structure than full EU membership.

The debate should not be over what amendments need to be made to the current EU Treaties to make UK participation less damaging, but rather over what new shape Britain's treaty of association should take.

45 The authors suggest that the 'Goldilocks Zone' for the UK's EU association lie somewhere between CEFTA (ie a Deep and Comprehensive Free Trade Arrangement) and the EEA (but only if the UK was known to deploy its veto).

Appendix F: Examples of international organisations the UK would remain a member of after leaving the EU

Examples

911

This list includes both inter-state bodies and institutions grouping professionals and interested sectors that the UK would remain a member of if it left the EU. It is only partial and illustrative.

In reality, these bodies are often tiered and interrelated. As an example, since 2002, the Council of Europe hosts a body called the European Commission for the Efficiency of Justice, CEPEJ. Its activity includes a Working Group on Quality of Justice (GT-QUAL) and a Working Group on the Evaluation of Judicial Systems (GT-EVAL). It works in conjunction with the World Bank and the Hague Conference on Private International Law. This latter works round differences in national legal systems in a way subsequently neglected by the European Commission when implementing its conventions.

This is the inter-governmental element. But CEPEJ also works with international NGOs: the Council of Bars and Law Societies of Europe (CCBE), The European Association of Judges, *Magistrats européens pour la Démocratie et les Libertés* (MEDEL), the European Judicial Training Network, the Association of European Administrative Judges, the European Union of Rechtspfleger (EUR), the International Union of Judicial Officers, the European Networks of Councils for the Judiciary (ENCJ) and the American Bar Association Rule of Law Initiative.⁴⁶

Examples

- African Development Bank
- Antarctic Treaty Secretariat (ATS)
- Arrangement on Officially Supported Export Credits
- Asian Development Bank (ADB)
- Assembly of European Regions (AER)
- Association for Commonwealth Literature and Language Studies (ACLALS)
- Association of Commonwealth Amnesty International Sections (ACAIS)
- Association of Commonwealth Archivists and Records Managers (ACARM)
- Association of Commonwealth Examination and Accreditation Bodies (ACEAB)
- Association of Commonwealth Universities (ACU)
- Australia Group (AG)
- Bank for International Settlements
- Basel Committee on Banking Supervision
- British-Irish Council
- Caribbean Development Bank (CDB)
- CERN
- Committee of Experts on Terrorism
- Commonwealth Association for Mental Handicap and Developmental Disabilities (CAMHADD)
- Commonwealth Association of Paediatric Gastroenterology and Nutrition (CAPGAN)
- Commonwealth Association for Public Administration and Management (CAPAM)
- Commonwealth Association of Architects (CAA)
- Commonwealth Association of Indigenous Peoples (CAIP)
- Commonwealth Association of Museums
- Commonwealth Association of Planners (CAP)
- Commonwealth Association of Professional Centres

46 For comparison, a list of UN-accredited groups can be found at: <www.humanrightsvoices.org/assets/attachments/documents/NGO_LIST_2011.pdf>, though this does not just include trade bodies but also campaign lobbies. Even so, it runs to 115 pages.

- Commonwealth Association of Public Sector Lawyers
- Commonwealth Association of Science, Technology, and Mathematics Educators (CASTME)
- Commonwealth Association of Surveying and Land Economy (CASLE)
- Commonwealth Association of Tax Administrators (CATA)
- Commonwealth Broadcasting Association (CBA)
- Commonwealth Business Council (CBC)
- Commonwealth Centre for Electronic Governance (CCEG)
- Commonwealth Consortium for Education (CCFE)
- Commonwealth Council for Education Administration and Management (CCEAM)
- Commonwealth Countries League (CCL)
- Commonwealth Countries League Education Fund
- Commonwealth Dental Association (CDA)
- Commonwealth Education Trust
- Commonwealth Engineers Council (CEC)
- Commonwealth Forestry Association (CFA)
- Commonwealth Foundation
- Commonwealth Games Federation (CGF)
- Commonwealth Geographical Bureau (CGB)
- Commonwealth Group of Family Planning Associations
- Commonwealth Heads of Government
- Commonwealth Historians Society
- Commonwealth Human Ecology Council (CHEC)
- Commonwealth Human Rights Initiative (CHRI)
- Commonwealth Jewish Council and Trust
- Commonwealth Journalists Association (CJA)
- Commonwealth Judicial Education Institute (CJEI)
- Commonwealth Lawyers' Association (CLA)
- Commonwealth Legal Advisory Service (CLAS)
- Commonwealth Legal Education Association (CLEA)
- Commonwealth Library Association (COMLA)
- Commonwealth Local Government Forum (CLGF)
- Commonwealth Magistrates' and Judges' Association (CMJA)
- Commonwealth Medical Association (CMA)
- Commonwealth Medical Trust (Commat)
- Commonwealth Ministers of Women's Affairs
- Commonwealth Network of Information Technology for Development (COMNET-IT)
- Commonwealth Nurses Federation (CNF)
- Commonwealth of Learning (COL)
- Commonwealth Organisation for Social Work (COSW)
- Commonwealth Partnership for Technology Management (CPTM)
- Commonwealth Pharmacists Association (CPA)
- Commonwealth Press Union (CPU)
- Commonwealth Scholarship and Fellowship Plan (CSFP)
- Commonwealth Telecommunications Organisation (CTO)
- Commonwealth Tourism Centre (CTC)
- Commonwealth Universities Study Abroad Consortium (CUSAC)
- Commonwealth Veterinary Association (CVA)
- Commonwealth War Graves Commission (CWGC)
- Commonwealth Women's Network (CWN)
- Commonwealth Youth Exchange Council (CYEC)
- Conference of Commonwealth Meteorologists (CCM)

- Conference on Disarmament
- Congress of Local and Regional Authorities
- Convention on Action against Trafficking in Human Beings
- Convention on Cybercrime
- Convention on Human Rights and Biomedicine
- Convention on the Prevention of Terrorism
- Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse
- Conventions against Corruption and Organized Crime
- Conventions on Action against Trafficking in Human Being
- Council for Education in the Commonwealth (CEC)
- Council of Commonwealth Societies (CCS)
- Council of Europe (CoE)
- Council of Europe Cultural Convention
- Economic and Social Council (ECOSOC)
- Economic Commission for Europe (ECE)
- Euroforum
- English-Speaking Union (ESU)
- European Atomic Energy Community
- European Charter for Regional or Minority Languages
- European Commission against Racism and Intolerance
- European Committee for the Prevention of Torture
- European Convention on Human Rights
- European Convention on Transfrontier Television
- European Data Protection Supervisor
- European Directorate for the Quality of Medicines European Pharmacopoeia
- European Economic and Social Committee
- European Investment Bank
- European Molecular Biology Laboratory (EMBL)
- European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT)
- European Organisation for the Safety of Air Navigation (EUROCONTROL)
- European Patent Organisation (EPO)
- European Science Foundation
- European Space Agency (ESA)
- European Synchrotron Radiation Facility (ESRF)
- European Youth Centre
- Framework Convention for the Protection of National Minorities
- Global Environment Facility (GEF)
- Institut Laue-Langevin (ILL)
- Institute of Commonwealth Studies (ICS)
- International Atomic Energy Agency
- International Bank for Reconstruction and Development (IBRD)
- International Bureau of Education (IBE)
- International Bureau of Weights and Measures (BIPM)
- International Centre for Settlement of Investment Disputes (ICSID)
- International Commission on Civil Status (ICCS)
- International Commission on Radiological Protection
- International Council for the Exploration of the Sea (ICES)
- International Court of Justice
- International Criminal Police Organisation (Interpol)
- International Development Association (IDA)
- International Development Law Organisation (IDLO)
- International Federation of Red Cross and Red Crescent Societies

- International Finance Corporation (IFC)
- International Fund for Agricultural Development (IFAD)
- International Hydrographic Organization
- International Labour Organization
- International Maritime Organization
- International Monetary Fund
- International Money Laundering Information Network
- International Narcotics Control Board
- International Refugee Organisation
- International Seabed Authority
- International Telecommunication Union (ITU)
- International Union for Conservation of Nature (IUCN)
- International Whaling Commission (IWC)
- International Working Group on Export Credits
- ITER International Organization
- Joint United Nations Programme on HIV/AIDS
- Lisbon Recognition Convention
- League for the Exchange of Commonwealth Teachers (LECT)
- Missile Technology Control Regime (MTCR)
- Multilateral Investment Guarantee Agency (MIGA)
- North Atlantic Salmon Conservation Organization
- North Atlantic Treaty Organization (NATO)
- Northwest Atlantic Fisheries Organization
- Nuclear Energy Agency
- Nuclear Suppliers Group (NSG)
- Organisation conjointe de coopération en matière d'armement (OCCAR)
- Office for the Coordination of Humanitarian Affairs (OCHA)
- Office of the United Nations High Commissioner for Human Rights (UNHCHR)
- Organisation for Economic Co-operation and Development (OECD)
- Organisation for Security and Co-operation in Europe (OSCE)
- Organisation for the Prohibition of Chemical Weapons
- Organisation of Commonwealth United Nations Associations (OCUNA)
- Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty
- Royal Agricultural Society of the Commonwealth (RASC)
- Royal Commonwealth Ex-Services League (RCEL)
- Royal Commonwealth Society (RCS)
- Royal Over-Seas League (ROSL)
- Soroptimist International
- The European Commission for the Efficiency of Justice
- The World Customs Organization
- UNIDROIT
- United Nations Atomic Energy Commission
- United Nations Capital Development Fund (UNCDF)
- United Nations Children's Fund (UNICEF)
- United Nations Commission on International Trade Law (UNCITRAL)
- United Nations Conference on Trade and Development (UNCTAD)
- United Nations Development Programme
- United Nations Environment Programme
- United Nations Food and Agriculture Organization
- United Nations High Commissioner for Refugees (UNHCR)
- United Nations Human Settlements Programme
- United Nations Industrial Development Organization (UNIDO)
- United Nations Institute for Disarmament Research (UNIDIR)

- United Nations Institute for Training and Research (UNITAR)
- United Nations Non-Governmental Liaison Service (NGLS)
- United Nations Office for Outer Space Affairs
- United Nations Office on Drugs and Crime
- United Nations Office on Sport for Development and Peace (UNOSDP)
- United Nations Population Fund (UNFPA)
- United Nations Relief and Works Agency for Palestine Refugees in the Near-East (UNRWA)
- United Nations Research Institute for Social Development (UNRISD)
- Universal Postal Union
- Venice Commission
- Victoria League for Commonwealth Friendship (VLCF)
- Wassenaar Arrangement
- Western European Union
- World Association of Nuclear Operators
- World Customs Organization (WCO)
- World Food Programme (WFP)
- World Health Organization (WHO)
- World Intellectual Property Organization (WIPO)
- World Meteorological Organization
- World Trade Organization (WTO)

List based on original by W. Dartmouth MEP. See: "Out of the EU into the world", W. Dartmouth (2014), pages 79–83

Appendix G: How powers would be devolved if the UK left the EU

EU powers that would return to Westminster only	917	EU powers that would be devolved to Wales	918
EU powers that would be devolved to Scotland	918	EU powers that would be devolved to Northern Ireland	918

Were Britain to leave the EU, a large number of powers would return to the UK. However, these would not all be vested in the UK Parliament – many would be devolved to the regional parliaments and assemblies of Scotland, Wales and Northern Ireland.

The situation today

EU exclusive powers:

- Customs union
- Commercial policy
- Competition rules
- Conservation of marine biological resources

In addition, the EU also requires member states to comply with 'free movement of people'

EU powers shared with member states:

- Internal market
- Social policy
- Economic, social and territorial cohesion
- Agriculture and fisheries
- Environment
- Consumer protection
- Transport
- Trans-European networks
- Energy
- Area of freedom, security and justice
- Common safety concerns in public health matters

EU powers to 'support' member states:

- Protection and improvement of human health
- Industry
- Culture
- Tourism
- Education, vocational training, youth and sport
- Civil protection
- Administrative cooperation.

After Britain leaves the EU, these powers would be devolved to the following bodies:

EU powers that would return to Westminster only

- Commercial policy
- Competition rules
- Consumer protection
- Foreign policy
- Financial services
- Defence
- Human rights
- International development
- Immigration
- Energy
- Internal market

EU powers that would be devolved to Scotland⁴⁷

- Agriculture and fisheries
- Culture
- Education and training
- Environment
- Energy⁴⁸
- Health
- Justice
- Sport
- Taxation⁴⁹
- Tourism
- Transport
- Social policy⁵⁰

EU powers that would be devolved to Wales

- Agriculture and fisheries
- Education and training
- Culture
- Economic development
- Environment
- Safety concerns in public health matters
- Transport
- Tourism
- Sport

EU powers that would be devolved to Northern Ireland

- Agriculture and fisheries
- Education and training
- Culture
- Economic development
- Environment
- Consumer safety
- Transport
- Tourism
- Sport
- Justice
- Social development

47 A comprehensive list of devolved Scottish powers can be found at: <www.gov.scot/Publications/2013/11/9348/17>.

48 New energy powers are to be devolved to the Scottish Parliament following the Smith Commission.

49 New taxation powers are to be devolved to the Scottish Parliament following the Smith Commission.

50 Social policy is a devolved responsibility.

Appendix H: Calculating the baseline costs of EU regulation on different UK sectors

Notes

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There have been numerous attempts to quantify the impact and cost of EU regulation to the UK. Recent analysis has been conducted by Open Europe, which produced a list of the Top 100 most costly EU rules. It published two studies: one in 2013 and one in 2015.⁵¹ Both audits provide information on the recurring costs and the recurring benefits of EU legislation. This list is far from definitive, but it provides a useful tool for developing a 'baseline' cost – thus, while the actual regulatory costs will be higher, at least this generates a 'minimum' figure.

The two tables below are modifications of Open Europe's own lists, grouping the different regulations into broad categories so as to provide a more useful analysis of the relative impact of EU law on different sectors. It is very important to note that, were Britain to leave the EU, these costs would not immediately disappear – the regulations would, in all likelihood, remain on the UK statute books for some time, and the ability of the UK to repeal all of these laws would be constrained by both political circumstances and, in some instances, by international laws which the UK would still have to comply with. Furthermore, if Britain were to, for example, join the European Economic Area, it would find that it would have to continue to abide by many of these laws.

It is also crucial to appreciate that, while the costs are a useful indicator of the burden created by EU regulation, the benefits are much more dubious. As Open Europe argued: "*[our report] estimates that up to 95 per cent of the benefits envisaged in the impact assessment have failed to materialise*".⁵² Often the benefits depend on faulty assumptions. Based on Open Europe's analysis, this section does not include three particularly dubious claims: the estimated benefits for the EU Climate and Energy Package (as this was based on the assumption that a world emissions deal would have been secured in 2009), the Payment Services Regulations 2009, and the CRD IV package.

51 Open Europe "Top EU rules cost Britain £33.3bn", accessed 13/05/2015 at: <<http://openeurope.org.uk/intelligence/britain-and-the-eu/top-100-eu-rules-cost-britain-33-3bn>>.

52 Open Europe "Top EU rules cost Britain £33.3bn", accessed 13/05/2015 at: <<http://openeurope.org.uk/intelligence/britain-and-the-eu/top-100-eu-rules-cost-britain-33-3bn>>.

2013 costs and benefits

Policy area	UK legislation	EU legislation	Recurring cost (£m, 2013 prices)	Recurring benefit (£m, 2013 prices)
Agricultural regulation	The Genetically Modified Food (England) Regulations 2004 + two other Regulations ¹	Regulations (EC) No 1829/2003 and 1830/2003	376.78	0
	The Welfare of Animals (Transport) (England) Order 2006	Regulation (EC) No 1/2005	9.1	0
	The Control of Salmonella in Poultry Order 2007	Regulations (EC) No 2160/2003 and 1168/2006	8.06	17.24
	The Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002	Directive 2001/37/EC	7.78	64.16
	The Cocoa and Chocolate Products (England) Regulations 2003	Directive 2000/36/EC	6.85	0
	The Welfare of Farmed Animals (England) (Amendment) Regulations 2010	Directive 2007/43/EC	6.24	112.79
	The Sheep and Goats (Records, Identification and Movement) (England) Order 2009	Regulation (EC) No 21/2004	5.48	2.64
	The Eels (England and Wales) Regulations 2009	Regulation (EC) No 1100/2007	5.04	0
	The Official Feed and Food Controls (England) Regulations 2009	Regulations (EC) No 882/2004 and 669/2009	3.86	0.84
	Baseline cost / benefit of policy area:			429.19
Culture regulation	The Town and Country Planning (Environmental Impact Assessment) Regulations 2011	Directive 2011/92/EU	3.53	3.22
	Baseline cost / benefit of policy area:			3.53
Energy regulation	The EU Climate and Energy Package	Directives 2009/28/EC, 2009/29/EC and 2009/31/EC + Decision No 406/2009/EC	3358.41	-
	The Building and Approved Inspectors (Amendment) Regulations 2006 + The Energy Performance of Buildings (Certificates and Inspectors) (England and Wales) Regulations 2007 ¹	Directive 2010/31/EU	1508	363.77
	The Oil Stocking Order 2012	2009/119/EC	14.87	62.66
	The Electricity and Gas (Internal Markets) Regulations 2011	Directives 2009/72/EC and 2009/73/EC + Regulations (EC)	6.25	16.09
	Baseline cost / benefit of policy area:			4887.53

Policy area	UK legislation	EU legislation	Recurring cost (£m, 2013 prices)	Recurring benefit (£m, 2013 prices)
Environmental regulations	The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003	Directive 2000/60/EC	1039.63	1039.63
	The Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012	Directive 98/70/EC (as amended by Directive 2009/30/EC)	742.94	742.94
	The Waste Electrical and Electronic Equipment Regulations 2006	Directives 2002/96/EC and 2003/108/EC	387.03	80.36
	The Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2006	Directive 2004/26/EC	145.87	0
	The Fluorinated Greenhouse Gases Regulations 2009	Regulation (EC) No 842/2006 and ten associated EU Regulations	126.72	188.07
	The Environmental Permitting (England and Wales) (Amendment) Regulations 2013	Directive 2010/75/EU	109	195.16
	Eco-design Directive - Implementing measures for circulators	Regulation (EC) No 641/2009	104.11	135.46
	The Control of Noise at Work Regulations 2005	Directive 2003/10/EC	76.64	9.59
	The Waste Management (England and Wales) Regulations 2006	Directives 75/442/EEC and 1999/31/EC	66.91	0
	The Nitrate Pollution Prevention Regulations 2008	Directive 91/676/EEC	64.7	9.87
	Eco-design Directive - Implementing measures for standby and off-mode losses	Regulation (EC) No 1275/2008	59.89	290.5
	Eco-design Directive - Implementing measures for electric motors	Regulation (EC) No 640/2009	59.33	295.54
	Eco-design Directive - Implementing measures for TVs	Regulation (EC) No 642/2009	53.73	162.32
	The Air Quality Standards Regulations 2010	Directive 2008/50/EC	52.06	118.66
	Eco-design Directive - Implementing	Regulation (EU) No 206/2012	49.92	139.14
	Eco-design Directive - Implementing measures for household lamps	Regulation (EC) No 244/2009	49.26	208.78
	The Environmental Assessment of Plans and Programmes Regulations 2004	Directive 2001/42/EC	40.28	0
	The Batteries and Accumulators (Placing on the Market) Regulations 2008 + The Waste Batteries and Accumulators	Directive 2006/66/EC	18.14	0.95
	Eco-design Directive - Implementing measures for tertiary lighting	Regulation (EC) No 245/2009	15.11	164.56
	Eco-design Directive - Implementing measures for simple set-top boxes	Regulation (EC) No 107/2009	14.5	78.37

Policy area	UK legislation	EU legislation	Recurring cost (£m, 2013 prices)	Recurring benefit (£m, 2013 prices)
Environmental regulations	Eco-design Directive - Implementing measures for washing machines	Regulation (EU) No 1015/2010	10.08	26.87
	The Control of Major Accident Hazards (Amendment) Regulations 2005	Directive 2003/105/EC	8.51	17.02
	Eco-design Directive - Implementing measures for external power supplies	Regulation (EC) 278/2009	7.61	11.31
	The Waste (England and Wales) Regulations 2011	Directive 2008/98/EC	2.87	0
	Eco-design Directive - Implementing measures for dishwashers	Regulation (EU) No 1016/2010	2.19	15.33
	The Plant Protection Products (Sustainable Use) Regulations 2012	Directive 2009/128/EC	1.72	0
	The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2011	Directive 2009/126/EC	1.29	3.36
	Baseline cost / benefit of policy area:			3374.12
Finance regulation	CRD IV package (not yet transposed into UK law)	Directive 2013/36/EU + Regulation (EU) No 575/2013	4500	-
	The Alternative Investment Fund Managers Regulations 2013	Directive 2011/61/EU	1502.44	0
	The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 + five other Regulations 3	Directive 2004/39/EC	278.31	519.98
	Solvency II Directive (not yet transposed into UK law)	Directive 2009/138/EC	205.55	456.77
	The Consumer Credit (EU Directive) Regulations 2010 + four other Regulations 5	Directive 2008/48/EC	152.05	254.66
	The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003	Directive 2002/92/EC	114.69	0
	The Money Laundering Regulations 2007	Directive 2005/60/EC	58.05	35.81
	The Payment Services Regulations 2009	Directive 2007/64/EC	41.82	-
	The Undertakings for Collective Investment in Transferable Securities Regulations 2011	Directive 2009/65/EC	10.38	0
	The Statutory Auditors and Third Country Auditors Regulations 2007 and The Partnerships (Accounts) Regulations 2008	Directive 2006/43/EC	7.74	0

Policy area	UK legislation	EU legislation	Recurring cost (£m, 2013 prices)	Recurring benefit (£m, 2013 prices)
Finance regulation	The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003	Directive 2002/92/EC	114.69	0
	The Money Laundering Regulations 2007	Directive 2005/60/EC	58.05	35.81
	The Payment Services Regulations 2009	Directive 2007/64/EC	41.82	-
	The Undertakings for Collective Investment in Transferable Securities Regulations 2011	Directive 2009/65/EC	10.38	0
	The Statutory Auditors and Third Country Auditors Regulations 2007 and The Partnerships (Accounts) Regulations 2008	Directive 2006/43/EC	7.74	0
	The Companies Act 2006 (Amendment) (Accounts and Reports) Regulations 2008 + three other Regulations	Directive 2006/46/EC	3.81	42.43
	The Reporting of Savings Income Information Regulations 2003	Directive 2003/48/EC	1.27	76.12
	Baseline cost / benefit of policy area:			6876.11
Health regulation	The Control of Vibration at Work Regulations 2005	Directive 2002/44/EC	432.73	257.75
	The Work at Height Regulations 2005	Directive 2009/104/EC	59.71	62.49
	The Control of Asbestos Regulations 2012	Directive 2009/148/EC	22.53	0
	The Dangerous Substances and Explosive Atmospheres Regulations 2002	Directives 98/24/EC and 1999/92/EC	19.44	0
	The Control of Substances Hazardous to Health (Amendment) Regulations 2004	Directive 2003/53/EC	12.08	44.12
	The Human Tissue (Quality and Safety for Human Application) Regulations 2007	Directives 2004/23/EC, 2006/17/EC, 2006/86/EC	9.18	10.94
	The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012	Directive 2011/65/EU	5.4	0.3
	The Medicines for Human Use (Clinical Trials) Regulations 2004	Directive 2001/20/EC	5.23	0
	The Flavourings in Food (England) Regulations 2010	Regulation (EC) No 1334/2008	1.81	0.92
	The Human Medicines (Amendment) Regulations 2013	Directive 2011/62/EU + Regulation (EU) No 520/2012	1.63	0.01
	The Control of Artificial Optical Radiation at Work Regulations 2010	Directive 2006/25/EC	1.2	0
	The Supply of Machinery (Safety) Regulations 2008	Directive 2006/42/EC	1.12	7.28
	Baseline cost / benefit of policy area:			572.06

Policy area	UK legislation	EU legislation	Recurring cost (£m, 2013 prices)	Recurring benefit (£m, 2013 prices)
Justice	The new EU Consumer Rights Directive (not yet transposed into UK law)	Directive 2011/83/EU	56.8	359.5
	Baseline cost / benefit of policy area:		56.8	359.5
Misc. regulation	The Working Time Regulations 1998 + The Working Time (Amendment) Regulations 2003	Directive 2003/88/EC	4102.97	0
	The Agency Workers Regulations 2010	Directive 2008/104/EC	2078.44	1542.95
	Data Protection Act 1998	Directive 95/36/EC	1038.07	0
	The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002	Directive 1999/70/EC	338.96	342.2
	The Employment Equality (Age) Regulations 2006	Directive 2000/78/EC	309.45	984.65
	The Working Time (Amendment) Regulations 2002	Directives 94/33/EC and 2003/88/EC	302.01	0
	The Construction (Design and Management) Regulations 2007	Directive 92/57/EEC	260.75	168.36
	The Sex Discrimination Act 1975 (Amendment) Regulations 2008	Directive 2006/54/EC	175.67	0
	The Maternity and Parental Leave etc. Regulations 1999 + The Parental Leave (EU Directive) Regulations 2013	Directive 2010/18/EU	58.68	0
	The Pressure Equipment Regulations 1999	Directive 97/23/EC	54.23	0
	The Information and Consultation of Employees Regulations 2004	Directive 2002/14/EC	41.07	0
	The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000	Directives 97/81/EC and 98/23/EC	37.22	31.79
	The Transfer of Undertakings (Protection of Employment) Regulations 2006	Directive 2001/23/EC	31.32	24.62
	The Transnational Information and Consultation of Employees (Amendment) Regulations 2010	Directive 2009/38/EC	5.97	0
	Baseline cost / benefit of policy area:		8834.81	3094.57
Technology	The Electronic Communications and Wireless Telegraphy Regulations 2011	Directives 2009/136/EC and 2009/140/EC	9.34	0.37
	The Data Retention (EC Directive) Regulations 2009	Directive 2006/24/EC	2.47	0
	Baseline cost / benefit of policy area:		11.81	0.37

Policy area	UK legislation	EU legislation	Recurring cost (£m, 2013 prices)	Recurring benefit (£m, 2013 prices)	
Transport	The Motor Vehicles (EC Type Approval) (Amendment) Regulations 20082	Directives 2007/34/EC, 2007/35/EC and 2007/37/EC + Regulations (EC) No 706/2007 and 715/2007	1278.17	1129.73	
	The Road Transport (Working Time) Regulations 2005 + The Road Transport (Working Time) (Amendment) Regulations 2012	Directive 2002/15/EC	612.63	99.04	
	The Vehicle Drivers (Certificates of Professional Competence) Regulations 2007	Directive 2003/59/EC	231.03	705.79	
	The End-of-Life Vehicles (Producer Responsibility) Regulations 2005	Directive 2000/53/EC	90.56	45.59	
	The Motor Vehicles (Replacement of Catalytic Converters and Pollution Control Devices) Regulations 2009	Article 11 of Regulation (EC) No 715/2007	77.24	93.48	
	The Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005	Regulation (EC) No 261/2004	34.2	0	
	The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010	Directive 92/43/EEC	10.2	0	
	The Road Vehicles (Approval) Regulations 2009	Directives 2007/46/EC, 2008/74/EC, 2008/89/EC and 2009/1/EC	10.01	0	
	The Railways and Other Guided Transport Systems (Safety) Regulations 2006 + The Railways (Access to Training Services) Regulations 2006	Directive 2004/49/EC	9.24	0	
	The Road Vehicles (Testing) (Miscellaneous Amendments) Regulations 2013	Directive 2010/48/EU	6.54	3.74	
	The Cleaner Road Transport Vehicles Regulations 2011	Directive 2009/33/EC	6.05	36.11	
	The Ship and Port Facility (Security) Regulations 2004	Regulation (EC) No 725/2004	3.76	0	
	The Railways (Interoperability) Regulations 2011	Directives 2008/57/EC, 2009/131/EC and 2011/18/EU	2.55	13.58	
	The Road Vehicles (Registration and Licensing) (Amendment) (No. 2) Regulations 2012	Regulation (EC) No 595/2009	2.08	0.62	
	The Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013	Regulation (EU) No 181/2011	1.04	0	
	Baseline cost / benefit of policy area:			2375.3	2127.68
	Total Baseline cost/benefit of regulation			27421.26	11956.3

2015 costs and benefits

Policy area	Regulations	Recurring cost (£m, 2014 prices)	Recurring benefit (£m, 2014 prices)
Agricultural regulation	The Genetically Modified Food (England) Regulations 2004 + two other Regulations (Regulations (EC) No 1829/2003 and 1830/2003)	384.32	0
	The Tobacco Products(Manufacture, Presentation and Sale) (Safety) Regulations 2002 (Directive 2001/37/EC)	7.93	65.44
	The Cocoa and Chocolate Products (England) Regulations 2003 (Directive 2000/36/EC)	6.99	
	The Welfare of Farmed Animals (England) (Amendment) Regulations 2010 (Directive 2007/43/EC)	6.37	115.05
	The Sheep and Goats(Records, Identification and Movement) (England) Order 2009 (Regulation (EC) No 21/2004)	5.58	2.69
	The Eels(England and Wales) Regulations 2009 (Regulation (EC) No 1100/2007)	5.14	
	The Official Feed and Food Controls (England) Regulations 2009 (Regulations (EC) No 882/2004 and 669/2009)	3.94	0.86
	The Welfare of Animals(Transport) (England) Order 2006 (Regulation (EC) No 1/2005)	9.28	
	The Control of Salmonella in Poultry Order 2007 (Regulations (EC) No 2160/2003 and 1168/2006)	8.22	17.58
	Baseline cost/benefit of agricultural regulation	437.77	201.62
Culture regulation	The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (Directive 2011/92/EU)	3.6	3.28
	Baseline cost/benefit of culture regulation	3.6	3.28
Energy regulation	UK Renewable Energy Strategy (Directive 2009/28/EC)	4,670.94	333.64
	The EU Climate and Energy Package (Directives 2009/28/EC, 2009/29/EC, 2009/31/EC) (Decision No 406/2009/EC)	3,425.57	-
	The Building and Approved Inspectors(Amendment) Regulations 2006 + The Energy Performance of Buildings(Certificates and Inspectors) (England and Wales) Regulations 2007 (Directive 2010/31/EU)	1,538.16	371.05
	The Oil Stocking Order 2012 (Directive 2009/119/EC)	15.17	63.92
	The Electricity and Gas(Internal Markets) Regulations 2011 (Directives 2009/72/EC and 2009/73/EC + Regulations (EC) No 714/2009 and 715/2009)	6.37	16.41
	Baseline cost/benefit of energy regulation	9,656.21	785.02

Policy area	Regulations	Recurring cost (£m, 2014 prices)	Recurring benefit (£m, 2014 prices)
Environment regulations	The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (Directive 2000/60/EC)	1,060.43	1,060.43
	The Waste Electrical and Electronic Equipment Regulations 2006	394.77	81.97
	The Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2014 (EU Regulation No 421/2014)	245	58
	The Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) (Amendment) Regulations 2006 (Directive 2004/26/EC)	148.79	
	The Fluorinated Greenhouse Gases Regulations 2009 (Regulation (EC) No 842/2006 and ten associated EU Regulations)	129.26	191.83
	The Environmental Permitting (England and Wales) (Amendment) Regulations 2013 (Directive 2010/75/EU)	111.18	199.07
	Eco-design Directive – Implementing measures for circulators (Regulation (EC) No 641/2009)	106.19	138.16
	The Control of Noise at Work Regulations 2005 (Directive 2003/10/EC)	78.17	9.78
	The Nitrate Pollution Prevention Regulations 2008 + The Nitrate Pollution Prevention (Amendment) and Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) (Amendment) Regulations 2013 (Directive 91/676/EEC)	70.43	12.18
	The Waste Management (England and Wales) Regulations 2006 (Directives 75/442/EEC and 1999/31/EC)	68.24	
	Eco-design Directive – Implementing measures for standby and off-mode losses (Regulation (EC) No 1275/2008)	61.09	296.31
	Eco-design Directive – Implementing measures for electric motors (Regulation (EC) No 640/2009)	60.52	301.45
	The Air Quality Standards Regulations 2010 (Directive 2008/50/EC)	53.1	121.04
	Eco-design Directive – Implementing measures for air conditioners (Regulation (EU) No 206/2012)	50.92	141.92
	Eco-design Directive – Implementing measures for household lamps (Regulation (EC) No 244/2009)	50.24	212.96
	The Environmental Assessment of Plans and Programmes Regulations 2004 (Directive 2001/42/EC)	41.09	
	The Motor Fuel (Composition and Content) and Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2010 (Directive 98/70/EC (as amended by Directive 2009/30/EC))	37.92	4.33
	The Environmental Damage (Prevention and Remediation) Regulations 2009 (Directive 2004/35/EC)	18.6	23.56
	The Batteries and Accumulators (Placing on the Market) Regulations 2008 + The Waste Batteries and Accumulators Regulations 2009 (Directive 2006/66/EC)	18.5	0.97
	Eco-design Directive – Implementing measures for tertiary lighting (Regulation (EC) No 245/2009)	15.42	167.85
	Eco-design Directive – Implementing measures for simple set-top boxes (Regulation (EC) No 107/2009)	14.79	79.94
	Eco-design Directive – Implementing measures for washing machines (Regulation (EU) No 1015/2010)	10.28	27.4
	The Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008 (Regulation (EC) No 396/2005)	8.85	

Policy area	Regulations	Recurring cost (£m, 2014 prices)	Recurring benefit (£m, 2014 prices)
Environment regulations	Eco-design Directive – Implementing measures for external power supplies (Regulation (EC) 278/2009)	7.76	11.53
	Regulations 2011 The Cleaner Road Transport Vehicles (Directive 2009/33/EC)	6.18	36.83
	The Waste (England and Wales) Regulations 2011 (Directive 2008/98/EC)	2.93	
	The Plant Health (Fees) (England) (Amendment) Regulations 2014 (Directives 2000/29/EC + 2002/89/EC)	2.82	2.82
	Eco-design Directive – Implementing measures for dishwashers (Regulation (EU) No 1016/2010)	2.23	15.64
	Eco-design Directive – Implementing measures for TVs (Regulation (EC) No 642/2009)	54.81	165.57
	The Plant Protection Products (Sustainable Use) Regulations 2012 (Directive 2009/128/EC)	1.76	
	Baseline cost/benefit of environment regulation	2,932.27	3,361.54
Finance regulation	CRD IV package (Directive 2013/36/EU) (Regulation (EU) No 575/2013)	4590	-
	The Alternative Investment Fund Managers Regulations 2013 (Directive 2011/61/EU)	1532.49	
	The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 + five other Regulations (Directive 2004/39/EC)	283.87	530.38
	Solvency II Directive (not yet transposed into UK law) (Directive 2009/138/EC)	209.66	465.9
	The Consumer Credit (EU Directive) Regulations 2010 + four other Regulations (Directive 2008/48/EC)	155.09	259.75
	The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (Directive 2002/92/EC)	116.99	
	The Money Laundering Regulations 2007 (Directive 2005/60/EC)	59.21	36.53
	The Payment Services Regulations 2009 (Directive 2007/64/EC)	42.65	-
	The Payments to Governments and Miscellaneous Provisions Regulations 2014 (Directives 2013/50/EU + 2014/51/EU)	31.56	
	The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (Directive 2009/65/EC)	10.59	
	The Statutory Auditors and Third Country Auditors Regulations 2007 and The Partnerships(Accounts) Regulations 2008 (Directive 2006/43/EC)	7.89	
	The Reports on Payments to Governments Regulations 2014 (Directive 2013/34/EU)	6.73	
	The Companies Act 2006 (Amendment) (Accounts and Reports) Regulations 2008 + three other Regulations (Directive 2006/46/EC)	3.89	43.28
	Baseline cost/benefit of financial regulation	7050.62	1335.84

Policy area	Regulations	Recurring cost (£m, 2014 prices)	Recurring benefit (£m, 2014 prices)
Health regulation	The Control of Asbestos Regulations 2012 (Directive 2009/148/EC)	22.98	
	The Dangerous Substances and Explosive Atmospheres Regulations 2002 (Directives 98/24/EC and 1999/92/EC)	19.83	
	The Control of Substances Hazardous to Health (Amendment) Regulations 2004 (Directive 2003/53/EC)	12.33	45.01
	The Human Tissue (Quality and Safety for Human Application) Regulations 2007 (Directives 2004/23/EC, 2006/17/EC, 2006/86/EC)	9.36	
	The Control of Major Accident Hazards (Amendment) Regulations 2005 (Directive 2003/105/EC)	8.68	17.36
	The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (Directive 2011/65/EU)	5.51	0.31
	The Flavourings in Food (England) Regulations 2010 (Regulation (EC) No 1334/2008)	1.84	0.94
	Baseline cost/benefit of health regulation	80.53	63.62
Misc. regulation	The Working Time Regulations 1998 + The Working Time (Amendment) Regulations 2003 (Directive 2003/88/EC)	4,185.03	
	The Control of Vibration at Work Regulations 2005	441.39	262.9
	The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (Directive 1999/70/EC)	345.73	349.04
	The Employment Equality (Age) Regulations 2006 (now consolidated in the Equality Act 2010) (Directive 2000/78/EC)	315.63	1,004.34
	The Working Time (Amendment) Regulations 2002 (Directives 94/33/EC, 2003/88/EC)	308.05	0
	The Sex Discrimination Act 1975 (Amendment) Regulations 2008 (now consolidated in the Equality Act 2010) (Directive 2006/54/EC)	179.18	
	The Work at Height Regulations 2005 (Directive 2009/104/EC)	60.9	63.74
	The Maternity and Parental Leave etc. Regulations 1999 + The Parental Leave (EU Directive) Regulations 2013 (Directive 2010/18/EU)	59.85	
	The Information and Consultation of Employees Regulations 2004 (Directive 2002/14/EC)	41.9	
	The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (Directives 97/81/EC and 98/23/EC)	37.97	32.42
	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (Directive 2001/23/EC)	31.94	25.11
	The Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2014 (Directive 94/62/EC)	29.1	29.7
	Construction (Design and Management) Regulations 2015 (CDM 2015) (Directive 92/57/EEC)	10.4	27.03
	The Transnational Information and Consultation of Employees (Amendment) Regulations 2010 (Directive 2009/38/EC)	6.09	
	The Agency Workers Regulations 2010 (Directive 2008/104/EC)	2,120.01	1,573.81
	The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (Directive 2011/83/EU)	57.94	366.69
	Baseline cost/benefit of misc. regulation	8,231.11	3734.78

Policy area	Regulations	Recurring cost (£m, 2014 prices)	Recurring benefit (£m, 2014 prices)
Technology regulation	Data Protection Act 1998 (Directive 95/46/EC)	1058.83	
	The Pressure Equipment Regulations 1999 (Directive 97/23/EC)	55.31	
	Registration, Evaluation, Authorisation & restriction of Chemicals (2006) (Regulation (EC) No 1907/2006)	46.44	1.85
	The Electronic Communications and Wireless Telegraphy Regulations 2011 (Directives 2009/136/EC and 2009/140/EC)	9.53	0.38
	Baseline cost/benefit of technology regulation	1170.11	2.23
Transport regulation	The Motor Vehicles (EC Type Approval) (Amendment) Regulations 2008 (Directives 2007/34/EC, 2007/35/EC, 2007/37/EC) (Regulations (EC) No706/2007, 715/2007)	1,303.73	1,152.33
	The Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012 (Directive 98/70/EC (as amended by Directive 2009/30/EC))	757.8	757.8
	The Road Transport (Working Time) Regulations 2005 + The Road Transport (Working Time) (Amendment) Regulations 2012	624.89	101.02
	The Merchant Shipping (Prevention of Air Pollution from Ships) and Motor Fuel (Composition and Content) (Amendment) Regulations 2014	533.46	171.36
	The Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 (Directive 2003/59/EC)	235.65	719.91
	The End-of-Life Vehicles (Producer Responsibility) Regulations 2005 (Directive 2000/53/EC)	92.37	46.5
	The Motor Vehicles (Replacement of Catalytic Converters and Pollution Control Devices) Regulations 2009 (Article 11 of Regulation (EC) No 715/2007)	78.79	95.35
	The Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005 (Regulation (EC) No 261/2004)	34.89	
	The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 (Directive 92/43/EEC)	10.4	
	The Road Vehicles(Approval) Regulations 2009 (Directives 2007/46/EC, 2008/74/EC, 2008/89/EC and 2009/1/EC)	10.21	
	The Railways and Other Guided Transport Systems(Safety) Regulations 2006 + The Railways (Access to Training Services) Regulations 2006 (Directive 2004/49/EC)	9.42	11.16
	The Road Vehicles(Testing) (Miscellaneous Amendments) Regulations 2013 (Directive 2010/48/EU)	6.67	3.81
	The Ship and Port Facility (Security) Regulations 2004 (Regulation (EC) No 725/2004)	3.83	
	The Railways (Interoperability) Regulations 2011 (Directives 2008/57/EC, 2009/131/EC and 2011/18/EU)	2.6	13.85
	The Road Vehicles(Registration and Licensing) (Amendment) (No. 2) Regulations 2012 (Regulation (EC) No 595/2009)	2.12	0.64
	Baseline cost/benefit of transport regulation	3,706.83	3,073.73
	Total Baseline cost/benefit of regulation	33,269.05	12,561.66

Appendix I: Britain and the European Union profit and loss account for 2013

EARNINGS		EXPENSES	
Receipts from the EU		Contributions to the EU Budget	
UK charge for collecting duties (Note 1)	£731,000,000	Sugar levy (Note A)	£12,000,000
Agricultural Guarantee Fund (revenue grants)(Note 2)	£2,455,000,000	Customs duties and Other agricultural levies (Note B)	£2,914,000,000
Agricultural Fund for Regional Development (capital grants) (Note 3)	£620,000,000	VAT-linked contribution (Note C)	£2,344,000,000
European Social Fund (Note 4)	£247,000,000	GNI-linked contribution (Note D)	£13,531,000,000
European Regional Development Fund (Note 5)	£297,000,000	Miscellaneous net adjustments (Note E)	£576,000,000
Fontainebleau Abatement (Note 6)	£3,675,000,000		
Miscellaneous research grants (Note 7)	£81,000,000		
	£8,106,000,000		£19,377,000,000
Tariffs not paid on exports from the UK			
To EU countries (Note 8)	£6,039,700,000		
To Non-EU countries (Note 9)	£1,378,900,000		
	£7,418,600,000		
Regulatory Gains		Regulatory Costs	
Agricultural regulation benefits (Appendix H)	£197,670,000	Agricultural regulation burdens (Appendix H)	£429,190,000
Cultural regulation benefits (Appendix H)	£3,220,000	Cultural regulation burdens (Appendix H)	£3,530,000
Energy regulation benefits (Appendix H)	£442,520,000	Energy regulation burdens (Appendix H)	£4,887,530,000
Environment regulation benefits (Appendix H)	£3,961,140,000	Environment regulation burdens (Appendix H)	£3,374,120,000
Finance regulation benefits (Appendix H)	£1,385,770,000	Financial regulation burdens (Appendix H)	£6,876,110,000
Health regulation benefits (Appendix H)	£383,810,000	Health regulation burdens (Appendix H)	£572,060,000
Justice regulation benefits (Appendix H)	£359,500,000	Justice regulation burdens (Appendix H)	£56,800,000
Misc. regulation benefits (Appendix H)	£3,094,570,000	Misc. regulation burdens (Appendix H)	£8,834,81,000
Technology regulation benefits (Appendix H)	£370,000	Technology regulation burdens (Appendix H)	£11,810,000
Transport regulation benefits (Appendix H)	£2,127,680,000	Transport regulation burdens (Appendix H)	£2,375,300,000
	£11,956,250,000		£11,956,250,000
		Loss of fisheries access	
		Opportunity loss (Section 14)	£2,110,000,000
			£2,110,000,000
	£27,480,850,000		£2,110,000,000
Net cost of membership in 2013: £12,592,600,000			

Notes

- (1) Source: ONS “United Kingdom Balance of Payments 2014”, Table 9.9 (UK official transactions with institutions of the EU), data set QWUE.
- (2) Source: ONS “United Kingdom Balance of Payments 2014”, Table 9.9 (UK official transactions with institutions of the EU), data set EBGL.
- (3) Source: ONS “United Kingdom Balance of Payments 2014”, Table 9.9 (UK official transactions with institutions of the EU), data set FJXL.
- (4) Source: ONS “United Kingdom Balance of Payments 2014”, Table 9.9 (UK official transactions with institutions of the EU), data set HDIZ.
- (5) Source: ONS “United Kingdom Balance of Payments 2014”, Table 9.9 (UK official transactions with institutions of the EU), data set HBZA.
- (6) Source: ONS “United Kingdom Balance of Payments 2014”, Table 9.9 (UK official transactions with institutions of the EU), data set FKKL.
- (7) Source: ONS “United Kingdom Balance of Payments 2014”, Table 9.9 (UK official transactions with institutions of the EU), data set GCSD.
- (8) Source: findings of the Tariff Study discussed in Section 30.
- (9) Source: findings of the Tariff Study discussed in Section 30.
- (A) Source: ONS “United Kingdom Balance of Payments 2014”, Table 9.9 (UK official transactions with institutions of the EU), data set GTBA.
- (B) Source: ONS “United Kingdom Balance of Payments 2014”, Table 9.9 (UK official transactions with institutions of the EU), data set FJWD.
- (C) Source: ONS “United Kingdom Balance of Payments 2014”, Table 9.9 (UK official transactions with institutions of the EU), data set HCML.
- (D) Source: ONS “United Kingdom Balance of Payments 2014”, Table 9.9 (UK official transactions with institutions of the EU), data set HCSO.
- (E) Source: ONS “United Kingdom Balance of Payments 2014”, Table 9.9 (UK official transactions with institutions of the EU), net result of adjustments that increase the GNI-linked contribution by £781m (data set HCSM), reduce the VAT-linked contribution by £190m (data set FSVL) and a return of £15m secondary income from EU institutions (data set GVEG).

Appendix J:

Official statistics expose Whitehall thinking

Like any modern bureaucratic state, Britain publishes voluminous statistics about the performance of its economy. These figures are not actually produced for the benefit of taxpayers. They are compiled to satisfy the needs of policy-makers. Hence, whatever official statistics might say about the condition of a country, they provide a useful (and often far more accurate) insight into the concerns and outlook of its Government. The “United Kingdom Balance of Payments” reports by the ONS (“The Pink Book”) are an excellent example.

Prior to British entry into the EU, the Pink Book presented figures divided into Visible Trade (i.e. goods) and “Invisibles” (i.e. everything else on the current account, with services, investment income and other transfers grouped together). Most trade still consisted of physical stuff being moved in boats, and different tax agencies were responsible for collecting information about different sectors. Data about exports and imports was not presented on an individual country basis. Visible trade was reported regionally, divided between Western Europe (from 1968, with sub-totals for the EEC and EFTA); North America; Latin America; the Sterling Area; and Everyone Else. Invisibles were divided only between the Sterling Area and Everyone Else.

That format made perfect sense in an era of fixed exchange rates, currency controls and balance of payments crises. Britain’s largest trading partner by far was the Sterling Area, defined as:

*The British Commonwealth other than Canada but excluding Rhodesia from the beginning of 1966; the dependent territories of the United Kingdom; Bahrain, Burma (until the end of 1966), Iceland, Irish Republic (until the end of 1972), Jordan, Kuwait, Libya (until the end of 1971), Qatar, the Republic of South Africa, Southern Yemen, and the United Arab Emirates.*⁵³

Britain was required to maintain sterling at a fixed rate with the dollar (barring the odd hiccup, as Harold Wilson could testify), but some countries also either used sterling themselves or pegged their currency to the pound. The issue was further confused by the ‘Sterling Balances’, liabilities dating back to the Second World War which Britain did not pay but set-off against export receipts (and which greatly complicated our various applications to join the EEC⁵⁴). Obviously, policy-makers needed to track movements of money likely to upset the currency. But it would be fair to say that this presentation of figures was a

53 HM Government “United Kingdom Balance of Payments 1963–73”, Geographical Analysis, page 61.

54 General de Gaulle cited them as a reason for his second veto, in 1967. President Pompidou secured a commitment from Edward Heath to run down sterling’s role as a global currency as a condition of agreeing to British entry (and to remove an obstacle to British participation in economic and monetary union).

relic from the days of sterling as the world's reserve currency and imperial preference in the 1930s.

Between 1975 and 1996 a different analysis operated.⁵⁵ Visible trade was now divided between the EU;⁵⁶ Other Western Europe; North America; Other OECD countries; OPEC countries;⁵⁷ and Everyone Else. The Sterling Area vanishes. There is no explicit geographical analysis for invisibles. Instead, a new table reports total visible and invisible trade with the EU as a whole. Furthermore, as the EU enlarged, past figures were recalculated for what they would have been had those countries been members all along, to provide information about past performance comparable with the new situation.

These are statistics for a 'Post-Suez Mindset'. The EU has replaced the Sterling Area as the Commonwealth in which Britain is a genuinely committed member, the new cornerstone of strategy. It is also a world divided into blocs. What matters is which club you are in.

Since 1997, the statistics have been reported in a 'third way'. Exports and imports are given for individual countries (where the standalone values are material) and countries are grouped by continent: Europe (with sub-groupings for the EU and EEA); North America; South America; Asia (including the Middle East); Australasia/Oceania; and Africa. Trade in goods, services, investment income, other transfers etc. are treated as separate current account items in their own right and on the same basis. Within this format, the ONS has used three different measurement approaches, so that there are separate data series running from 1988 to 1996; from 1992 to 1998, and since 1999. Of these, only data from 1999 is now available on the ONS website.

Such statistics describe the world as a single trading zone. The Cold War has ended, the WTO is in operation and globalisation is a reality. So has the British Official Mind dropped its obsession with the EU? Not really. The EU always leads any table of figures. Countries which are EU members have their individual trade figures reported even if the amounts are so low that they would not be disclosed if they were located in, say, Africa. Nor is it irrelevant that the trade figures are presented in this way, because the ONS is required to comply with the EU's "European System of Accounts".

These comments are not of academic interest only. Comparable official trade statistics across the whole period since the Treaty of Rome came into force are available for only two groupings: the EU and North America. During that time there have been two revolutions in the way that British officialdom thinks of Everyone Else. This has had profound implications for policy and hence for trade. Indeed, it could be argued that official policy has failed to reform itself sufficiently to reflect the end of the Cold War. Perhaps one day the attachment of British civil servants to the EU will seem as quaint as the importance their predecessors gave to the Sterling Area. People used to think that the sun would never go down on the Empire too.

It is also relevant that it is very difficult for a member of the public to access trade data for any period earlier than 1999. Anyone relying on the ONS website will be left with a very misleading impression of Britain's trading history.

55 The Pink Book publishes figures one year in arrears. The Pink Book 1972 gave results up to 1971. It then skipped a year and in 1974 published the Pink Book for "1963-73", giving results up to 1973 for Sterling Area visibles, but not invisibles. The new EU-centric analysis was contained in the Pink Book "1964-74" published in 1975. In 1979 it reverted to naming the Pink Book after the year of publication.

56 Described as "European Economic Community" for the editions from 1975 to 1979; "European Community" for the editions from 1980 to 1995; and "European Union" from 1996.

57 Strictly, 'Oil exporting countries', whose composition occasionally alters, but that is the meaning that the grouping was driving at.

Appendix K: The DCFTA example provides an under- examined way forward

There are advantages and disadvantages in terms of non-tariff barriers (NTBs) and technical barriers to trade (TBT) of Britain taking the EU, the EEA or the free trade agreement (FTA) route. But what of the 'Deep and Comprehensive Free Trade Agreement' (DCFTA) option?

A DCFTA is in essence a developed free trade agreement. It does not need to be a standalone agreement, but can (as the 2014 Ukraine treaties demonstrated) be linked to a broader Association Agreement.⁵⁸ Combined, these allow for bilateral cooperation in every EU area of activity where both parties agree further cooperation might be useful.

As the 2014 Ukraine example also disastrously shows, the level of cooperation that this generates is geopolitically significant. DCFTAs provide an alternative model to EEA membership, covering all the key areas as well as lightening the obstacles to trade, but without uniformly applying red tape across the home economy.

The Ukraine DCFTA, intended as a model for other East-of-Europe states, contains 15 chapters, 14 annexes and three protocols. The agreement means that the EU eliminates a remarkable **98.1 per cent of tariffs by value**. In terms of trade defence instruments, WTO rules are used as the norm, but the intent is to work together on an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) so that trade in given areas is treated as between EU member states.

Given Ukraine's starting point, these terms would constitute a significant move away from the Single Market if taken as the default fall back by a current EU member seeking new arrangements. It confirms, first, that a state departing from the EU could expect few NTB compliance barriers; and second, that the tariff barriers themselves liable to be imposed are likely to prove to be minimal.

This format can be further compared with the **CEFTA model**, or Central European Free Trade Agreement. Originally this was a mechanism that 'parked' post-Communist states while their future relationship with the EU was under review; it has subsequently become a stepping stone for applicant and potential applicants while they become more trade-compliant with EU norms. In effect, CEFTA is a rudimentary EU-associated trade bloc but with a tiny secretariat. Today, its membership is limited to the former Yugoslav states that remain outside the EU, plus Albania and Moldova.

58 Accessed 23/05/2015 at: <http://eeas.europa.eu/ukraine/assoagreement/assoagreement-2013_en.htm>.

CEFTA has particularly focused on identifying and combating NTBs.⁵⁹ Thanks to support from the OECD, it possesses a Multilateral Monitoring Framework (MMF), composed of sets of indicators for each of the key NTBs areas, with the aim of establishing an instrument for the coordination of actions for the elimination of NTBs at multilateral level and complementing actions already taken bilaterally. This is because NTBs had been overwhelmingly removed in trade with the EU but not among the CEFTA countries themselves.

The OECD also examined trade flows to determine where effort could be most profitably spent on reducing these obstacles. It identified 12 trade brackets as a result. But as one reviews the variables affecting each of them, it becomes clear that a state leaving the Single Market will not see TBT retaliation. The expected standards of management practices, transparency, training, IT compatibility, application of WTO standards and so forth identified as TBT removers are already in place in EU countries. In OECD parlance, levels of compatibility in the elimination of NTBs across the various categories is graded from one (low) to five (complete).⁶⁰ Of the 19 categories identified, EU states already qualify at level five for all of them.

These standards are likely to be guaranteed further by UK participation in international bodies, reducing the likelihood of the Commission seeking to engage in a proxy trade war by regenerating old TBTs. For example, EU states already meet the standards of the Multilateral or Bilateral Agreements (MLA/BLA) of the European co-operation for Accreditation (EA). The UK is one of 35 full members of the EA. This non-EU body is an association of national accreditation bodies in Europe that are officially recognised by their national governments to assess and verify – against international standards – organisations that carry out evaluation services such as certification, verification, inspection, testing and calibration (also known as conformity assessment services).⁶¹ It is in effect the quality control guarantee for those who provide quality control.

Standards are further secured by association with other non-EU organisations, as we explore in other Sections. These include:

- ISO, the International Organization for Standardisation
- IEC, the International Electrotechnical Commission
- CEN, the European Committee for Standardization
- CENELEC, its associated committee covering electrotechnical standardisation
- ILAC, the International Laboratory Accreditation Cooperation
- IAF, the International Accreditation Forum
- OIE, the World Organisation for Animal Health
- CAC, the Codex Alimentarius Commission

What is particularly evident in CEFTA is the nature of the standards governing international trade and removing TBTs – for states that sign up to them. This leaves any departing EU state already supplied with anti-TBT top cover from WTO and global rules.

59 Accessed 23/05/2015 at: <www.oecd.org/investment/psd/CEFTA%20Issues%20Paper%204%20Elimination_of_NTBs_in_CEFDA.pdf>.

60 Accessed 23/05/2015 at: <www.oecd.org/investment/psd/CEFTA%20Issues%20Paper%204%20Elimination_of_NTBs_in_CEFDA.pdf>.

61 Accessed 23/05/2015 at: <www.european-accreditation.org/about-us>.

Questions and Answers

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Change and Processes

1 What do we mean by ‘leaving the EU’?

This refers to the UK voting to leave the EU in the upcoming referendum. Were the UK to leave the EU without any special deal, the UK would develop a new trading relationship with the EU based on the World Trade Organization’s (WTO) rules. This would be much closer to the trading relationship with the EU the public was promised in 1975 and not the political relationship we have today. Alternatives to the WTO option include becoming a European Economic Area (EEA) member like Norway, or agreeing a series of bilateral deals like Switzerland, or negotiating a single, comprehensive bilateral Free Trade Agreement (FTA). Each of these is much more attractive than the status quo.

2 Wouldn’t trade be affected if we left the EU? Might I lose my job?

No. You do not need to be a member of the EU to trade with the EU – countries across the world trade with each other without being part of the same political system. Britain exports to the USA and the USA is able to export to the EU without having to have the same political institutions. There is no risk of mass redundancies and such talk is mere scaremongering – usually by the people who were ideologically committed to joining the euro 10 years ago. It is worth remembering that the heads of firms that threatened to leave the UK if we did not join the single currency found that they had to stay in the UK. Any repeat of these threats should be treated with scorn.

3 Isn’t it enough to simply drop the reference to “ever closer union” in the Treaties?

No. The principle of integration is embedded within the institutions, so just tweaking the language would not change the institutions’ philosophy. The expression “*ever closer union*” is as much a term of convenience explaining what is already happening as it is a mandate for more. Former Prime Minister Edward Heath wrote in his autobiography: “*I believed... that there was little point in debating theoretical arguments about federalism. What we were concerned with was making a success of the European Community, and the word ‘Union’ allowed us to do that. In contrast, the words federalism and confederation have always caused no end of confusion. In Britain there is still little understanding of either term.*”⁶²

4 Isn’t it enough to fix what’s broken?

There is a lot that is broken (see Part 1), and the problems are growing over time. Fixing the EU needs Treaty change, not dropping a bad regulation or two. Anything less than this is merely a temporary solution. In order to amend the EU’s poor policies, the UK needs to have much more control over its own affairs.

5 Don’t we need to be at the top table?

Yes – but the EU is not the top table. There are many international bodies, such as the World Trade Organization, where the EU sends a delegate as just one negotiator, and then EU countries are bound by the decision made by the EU, regardless of whether that decision is in Britain’s interests or not.

62 “The Course of My Life”, Sir E. Heath (Hodder and Stoughton 1998), pages 392–393.

6 Doesn't EU membership give us a seat at both tables?

No, increasingly it confines the UK to just the lower one, often giving up a veto at the source of new international rules in exchange for a tenth of the vote later down the line.

7 Why is leaving the EU important?

Leaving the EU would ensure that Britain's future is in its own hands. It would mean that the public no longer has to face the prospect of unwanted, damaging laws because the country has, once again, been outvoted within the EU's institutions. It would also free the UK to retake its seat at the top table in key international bodies like the WTO and have greater influence over world affairs.

8 What are the benefits of leaving the EU?

There would be substantial savings, as the UK would no longer be required to contribute to the EU Budget (Britain currently pays in far more than it takes out, see Section 11). The UK would be free to develop its own trading relationship with the rising economic giants of the world and, most importantly, would regain its lost democratic powers, allowing decision-making to take place closer to voters. Many unpopular policies could be reviewed and changed. Quite simply, leaving the EU puts Britain's future into Britain's hands.

9 What would leaving the EU deliver for me?

The EU impacts upon all walks of life. So leaving would allow greater freedom and flexibility across a vast number of areas. It could also generate £933 of savings for every household every year (see Section 31).

10 How would Britain leave the EU?

There is a legal way for Britain to leave the EU. This would involve the UK deciding via its own constitutional process to leave (i.e. voting to leave in an In/Out referendum) and then enacting Article 50 of the Lisbon Treaty. The UK would then have two years to negotiate a new deal with the EU before leaving. The possible routes and Treaty clauses that affect them are set out in Part 2.

11 How long would it take to leave the EU?

The EU's rules allow for up to two years from the point of notification, but this is a maximum.

12 What if there is no deal struck within the two years?

One option is that negotiators may agree to extend the two year deadline. Another is that the UK is 'parked' inside the EEA while outstanding issues are resolved. The third option is to leave the EU, take up a WTO trading relationship with the EU and continue talks from outside.

13 How likely is getting a transitional agreement like EEA/EFTA membership?

Were the UK to apply for such a relationship, it is very likely to get it. But allowing a country to join EEA/EFTA is ultimately a collective political decision and cannot be guaranteed. Fortunately, a WTO trading relationship is guaranteed and is much more attractive than the current status quo.

14 What types of transition assistance might be available?

The tariffs that the UK would face outside the EU could be paid for from the savings that would come from no longer having to contribute to the EU Budget. 'Compensation' could also be paid without breaking WTO rules (see Section 30).

15 What about the loss of access to the EU's third party agreements and the tariff costs from those?

The UK would have to develop new deals with these countries. However, it would be highly likely that many of the existing agreements between the EU and third countries could be 'photocopied', meaning that the existing deal between the third country and the EU is replicated and amended to apply to the UK. This would allow Britain to continue free trading relations with other countries after it leaves the EU.

16 How long would it take for the red tape to be cut?

EU regulations automatically become national laws without being passed by Parliament. EU directives have to be signed off. This means that, if the UK leaves the EU, regulations would automatically fall and directives would stay on the statute books. It makes sense – in order to avoid confusion – to pass an Act of Parliament confirming that all EU-sourced law is as it currently stands and will remain on the statute books, and to repeal backwards from there. This would be a gradual process but would avoid confusion.

17 How would repeal happen?

Parliamentary Committees would likely be set up dedicated to the prioritisation and review of these laws, with direct input from businesses, unions and other interested parties.

18 What is meant by 'grandfather rights'?

This is an established principle in international agreements where old rules still apply to former practitioners. This means that current expats would continue to be able to live in retirement abroad, in return for current EU migrants to the UK still having residency rights to the UK.

19 Won't leaving generate unexpected technical rifts with the EU, harming imports?

No. Directive 83/189/EEC (as amended by Directive 88/182/EEC), for instance, currently requires that technical regulations produced by a country be notified to the European Commission in draft. If this level of mutual communication is maintained, problems would be identified at an early stage, eliminating the prospect of unexpected barriers emerging.

The Economy

20 Can Britain afford to leave the EU?

Yes. In fact, it cannot afford not to. The UK is a net contributor to the EU: in 2013 it gave £19.4bn to the EU Budget and only received £8.1bn back.

21 How would leaving the EU benefit the UK's economy?

In very broad terms, four fifths of the British economy has very little to do with exports, and is reliant on the 'single market' of the UK. Less than a tenth of the economy exports to the EU, but their access costs are shared out to everybody, regardless of whether they need the regulation or not. Leaving the EU would allow the UK to liberate its non-exporting businesses from the burden of EU

rules and would allow Britain to develop new trading relationships with the rest of the world.

22 Would Britain still trade with the rest of the EU?

Yes. The UK is an important trading partner to the rest of the EU and this would remain the case if Britain left.

23 Would Britain still be able to trade with countries outside the EU?

Yes. The UK would be in a much stronger position, as it would be able to negotiate trade deals by itself. Iceland, outside the EU, has managed to secure a free trade agreement with China, something that the EU has failed to do for many years. The UK would also be able to fully resume its seat on the World Trade Organization and, once again, have a say on the key international trade issues.

24 Would leaving the EU compromise the UK's trade with the EU and other countries?

No – it is in no-one's interest to disrupt trade flows, particularly as many EU businesses depend on UK companies as subsidiaries and suppliers.

25 Isn't the EU best-placed to conduct trade deals with other countries because it is so much larger?

The EU's negotiating hand is actually weakened by a diversity of interests, many of which completely differ from UK interests. This dilutes and slows the process of reaching trade deals. The fact that the EU has failed to get a free trade deal with China, but both Iceland and Switzerland have, is case in point. Major investing countries want access to the UK because they know Britain is a good bet due to a whole list of inherent advantages that have nothing to do with being in the EU, and indeed are harmed by it. There are better prospects for trade deals if the UK is in charge of its own trade policy.

26 Doesn't the UK need the EU more than the EU needs the UK? The EU market makes up 14 per cent of the UK export market, but the UK makes up only 2.5 per cent of the collective EU one.

There is no such thing as an EU-UK export/import market. Trade is bilateral between countries. Some countries, like Ireland, trade a lot with the UK, others trade less. But as we see Section 2, the UK is a significant export market to the core EU countries. Outside the EU, it would become their most important export market.

27 What would leaving the EU do to the national debt?

The UK would no longer be potentially liable to help bail out failed Eurozone states (today the UK has secured its opt-out from the bail out fund, but remains vulnerable via its central contributions).

Taxation

28 What taxes would there be after Britain left an unreformed EU?

After leaving the EU, the tax system could be changed to suit UK needs. VAT could be retained, reduced to Swiss levels, or even replaced by a US-style sales tax.

29 How long would it take to create a better tax system after leaving the EU?

That is a matter first for political debate. It is likely that any changes to VAT would roll out over several Budgets, as ministers decide to cut individual rates to levels that they had previously been banned from achieving.

30 How much tax would I pay after leaving the EU?

Probably less. As Section 31 shows, there would be significant savings from leaving the EU – not least when it comes to VAT. However, this would be a matter for the UK Parliament. Money recouped could alternatively be spent elsewhere, such as on public services or cutting the deficit.

31 Would British taxpayers with overseas interests continue to be protected from double taxation after the UK leaves the EU?

Yes. Double taxation is set out in bilateral agreements, which would not be affected by a vote to leave the EU.

32 What tax relief would be available to specific sectors after Britain leaves the EU?

If EU tariffs are imposed on UK exports, the industries affected could receive assistance from the UK Government, subject to WTO rules. This could be easily afforded via the savings from no longer having to contribute to the EU Budget.

33 Would UK business rates match EU business rates?

If the UK is not in the EEA then it can set its own state aid rules, so long as they are compliant with WTO rules. Or it could decide subsidy was imprudent and spend money elsewhere.

34 Would the fuel duty rate be altered if Britain left the EU?

Fuel duty is largely self-inflicted by the Treasury, so that remains predominantly a matter of domestic choice.

35 What would happen to the banks if Britain left the EU?

Financial firms are very unlikely to leave the UK – it should be remembered that similar threats were made in the late 1990s regarding Britain joining the euro. The UK has many qualities that make it appealing, particularly for financial services, and this would remain the case even if Britain left the EU.

36 What would happen if Britain left the EU and there was another financial crisis?

The response to the financial crisis last time was through international organisations such as the IMF and World Bank, in which the UK has a seat in its own right. Being a member of the EU would not help the UK deal with such a crisis.

37 What would happen to Britain's credit rating if we left the EU?

As the UK would no longer be subject to the extended liabilities of Eurozone countries, analysts might see it as a long-term gain – Eurozone countries are seen as far more of a liability. Limiting exposure to such economies can only bolster the UK's credibility.

38 What would the cost of government borrowing be if Britain left the EU?

If the credit rating does not change, the cost of borrowing will not be affected. The UK has a strong track record in repaying its debts which would not be affected by withdrawal from the EU, and this is the key concern of analysts and lenders.

39 How would leaving the EU help UK businesses to win public sector contracts?

If it joined the EEA, the UK could still participate in the common notification system. Outside, Britain could either follow the route of WTO Global Procurement Agreement rules, or decide to be more protectionist.

40 Won't the EU impose high tariffs on British goods?

The ability of the EU to impose retaliatory tariffs is severely limited under World Trade Organization (WTO) rules. The 'most favoured nation' (MFN) is the status of treatment that the UK could default to after it left the EU, even if no other treaty is agreed. This means that the UK cannot be discriminated against by the EU. The EU could not, legally, impose high tariffs on British goods unless it imposes the same tariffs on every other nation.

Employment

41 Would 3/4 million jobs be lost if the UK left an unreformed EU?

No. There would not be significant job losses if Britain left the EU. The UK could continue to trade with the EU after it leaves. The 'three million jobs' figure refers to jobs that are dependent on trade with the EU, not to jobs that are dependent on EU membership. Some pro-EU political figures have misappropriated these figures to engage in scaremongering.

These claims have been comprehensively and repeatedly refuted, notably by the Institute for Economic Affairs (IEA). As it has pointed out:

*"The worst case scenario will be a failure to negotiate a free trade deal in the result of Brexit. If this were the case, both parties will be bound by the World Trade Organization's 'most favoured nation' (MFN) tariffs paid by other developed countries. This will prevent the imposition of punitive tariffs by the EU following the UK's exit, meaning job losses will not be significant."*⁶³

More broadly, the false claim fails to recognise that the UK's trade is not with the EU as a political union but with the companies and individuals who are based in the EU. There is no a priori reason why not being part of a political union will lead to less trade with that union. Trade will continue even if Britain left the EU and new opportunities would be opened up. As the IEA concludes: *"We can say with certainty that 3-4 million jobs are not at risk if the UK leaves the EU. There may well be net job creation or a range of other possible outcomes which should be debated rationally."*⁶⁴

42 How would leaving the EU help to create jobs?

Stepping outside means having greater freedom to amend domestic red tape. The ability to address certain EU laws that hold back job creation offers the enticing prospect of allowing new business to start up and helping existing businesses to grow.

43 What would happen to the minimum wage?

There would be no change.

44 How would the labour market work more effectively outside the EU?

If the UK decided to tighten up its rules for foreign workers, it could – if it chose – introduce a visa points system. This would allow for the jobs market to draw in more of the UK's unemployed, while at the same time not adding to pressures associated with major increases in population.

45 Would the Working Time Directive be retained if Britain left the EU?

That would become a matter for Parliament to decide, though it would be very unlikely that any major changes would be called for by either party. Amendments

63 IEA "The EU jobs myth", R. Bourne (2015) page 15.

64 IEA "The EU jobs myth", R. Bourne (2015) page 15.

may well be introduced to ensure that it operates more effectively in the health sector. It is very likely paid holidays will remain on the statute books.

46 Would laws on unfair dismissal change?

That too would become an issue for the UK to decide but, again, it is unlikely due to the lack of political opposition to such rules.

47 What would happen to Trade Unions if Britain leaves?

Again, the UK could set its own trade union rules. It is quite possible, with power returning to Westminster, that there would be a new focus by the Trade Unions to lobby Parliament (rather than the EU) to preserve and build upon workers' rights. It becomes a matter of democratic debate.

Business

48 Doesn't business want us to stay in the EU?

The business community is split on the issue. A lot of business people have gone on the record to state that the EU damages their company. That is especially true for SMEs. Some commentators suggest that the EU is a corporatist entity and so best suits a few big business insiders who can personally lobby Commissioners.

49 How could the UK Government support businesses if we left the EU?

Transitional arrangements could help support the small minority of UK businesses that may see any notable tariffs emerge pending the agreement of a new trade deal.

50 Would businesses leave the UK if it left the EU?

The vast majority of businesses will remain in the UK and most sectors will see economic gains from being liberated by EU burdens that will outweigh any tariff costs. It is worth remembering the threats made by some senior business-people about leaving the UK if it refused to join the single currency. The UK did not join and they did not leave.

51 Would intellectual property rights still be protected?

Yes, this is covered under international rules.

Consumer Protection

52 Would the same level of consumer protection be retained?

Yes. Existing rules would carry across until they are reviewed by Parliament.

53 Would consumers who suffer damage as a result of cross-border sales with the rest of the EU be protected?

Yes. WTO rules on cross-border sales would still apply, and this is increasingly the key forum in e-commerce.

54 Would consumers still be protected from unfair trading practices such as price fixing?

Yes. Existing rules that counter price fixing would still be in place.

Personal Finances

55 Would people still have access to a wide choice of financial products and services?

Yes, with the City of London as the central host to these.

56 Would leaving the EU affect my mortgage rate?

No. The removal of institutional financial ties between the UK and the Eurozone reduces the threat of the UK being seen to be liable for any EU bail out of any failing Eurozone state. This would likely improve the credit status of the UK Government, with wider high street gains.

57 How would my bank be affected by Britain leaving the EU?

High-street banks would be unaffected by Britain leaving the EU. There would also be no pressure on head offices to leave the UK. The last few months have seen banks consider moving to a Far Eastern location. This is a result of wider geo-political shifts and would be the case whether Britain is inside or outside the EU.

58 Would I still have access to banks and banking services based in the EU?

Yes. There would be no political demand to limit the access of EU banks or financial institutions to the UK after Britain left the EU. The City of London would retain its traditional open mind set.

59 Would bank deposits and other financial products still be protected?

Yes, this is a domestic matter.

Regulation

60 Would the level of regulation be reduced if Britain left the EU?

Leaving the EU creates opportunities for the UK to review and cut red tape, perhaps replacing it with rules that provide the protection sought but with fewer administrative burdens.

61 Would the regulation of professionals be affected by Britain leaving the EU?

This is agreed multilaterally outside of the EU.

62 Would essential health and safety and consumer protection laws be dropped?

Almost certainly not. This could only happen if Parliament decided to drop these laws. There is no political pressure for a reduction in such rules.

63 Would the UK still be able to work with EU regulators?

Yes, just as other countries cooperate to iron out trade differences. This will be particularly the case at the outset in terms of mutually recognising the institutions that monitor compliance with standards. Once that is agreed, the existing levels of trust would be maintained and many trade barriers avoided.

Health Regulation

64 How would health be regulated?

Existing standards would stand and new ones could be developed over time. EU membership is no guarantee of an efficient and safe health service.

Energy

65 How would the energy market be regulated?

The UK would be free, within international rules, to regulate the energy market as it saw fit. This might include, for example, allowing for new measures to break up any quasi-monopolies that might exist. Energy is covered in Section 16.

66 Would the UK be able to regulate energy prices?

It would have greater leeway than at present. This is also an area the Commission is interested in further developing for itself.

Other Countries

67 Would leaving the EU compromise the UK's good relations with the EU?

Some other EU leaders may express concern that the UK is leaving but, ultimately, if conducted in good faith, it presents an opportunity for both sides to resolve an unhealthy relationship and replace it with something more enduring and mutually advantageous.

68 Would leaving the EU compromise peace in Europe?

No. This claim has been made by a number of leading European politicians, including the former President of the European Commission Jose Manuel Barroso, who intimated that rolling back European integration is synonymous with a return to war: *"let me say to all those who want to roll back our integration and go back to isolation: the pre-integrated Europe of the divisions, the war, the trenches, is not what people desire and deserve..."*⁶⁵

While it is true that the EU was devised as a project to make war in Europe impossible, it is a mistake to see the EU as the main force behind peace in Europe since then. In a letter to the Guardian in 2014, several leading historians put the EU's role in promoting peace into perspective:

*"While we can gladly celebrate the fact that European nations now recognise the importance of peaceful diplomacy, it is historically inaccurate and misleading to put this solely down to the European project. Any historical analysis of postwar Europe must take into account the vital role of NATO, the Cold War and the US in preserving peace. We should also note the dismal failure of the EU to prevent conflicts in the Balkans and the civil strife which the Union's economic policies have created in the Mediterranean."*⁶⁶

What ultimately kept the peace was the presence of the Red Army on the West German border, a force demonstrably interventionist in nature as its interference in East Germany (1953), Hungary (1956) and Czechoslovakia (1968) proved.

It may also be noted that the EU has conspicuously failed to keep the peace in a number of areas: during the early 1990s, despite declaring that the "hour of Europe has come", the EU failed to prevent massacres in the Balkan countries. The EU's role in the Ukraine crisis has also been sub-par, with US officials recorded as saying that the EU had to be excluded from discussions.

Perhaps the best evidence that leaving the EU will not compromise peace in Europe is to note that there is no military tension between EU states and Norway or Switzerland.

69 Would Britain's international influence decline if we left the EU?

The EU does not act as a power multiplier but as a muter, forcing member states to conform to an agreed line. Under the terms of the EU's Treaties, the EU represents its member states in a number of key international forums. This means that the UK is denied its own role. This has led to farcical situations where member states have had to ask non-EU countries to vote on their behalf, because they were unable to go against the EU line themselves. A notable example of this was at the Copenhagen Climate Summit in 2009, where EU member states were

65 European Commission "State of the Union 2013" (11 September 2013).

66 Guardian "The EU and the causes of peace in our time" (28 January 2014).

actively trying to oppose the EU's commonly-agreed position.

70 Won't Foreign Direct Investment (FDI) decline?

No. In a survey by EY, it was found that 72 per cent of US investors and two thirds of Asian investors wanted the UK to have "looser" relations with the EU. Far from fearing the possibility of Britain loosening its political ties to the EU, international investors, aware of the corrosive impact of EU regulation on the economy, are advocating a new relationship.

Other studies have found that the amount of investment into countries outside the EU has been larger than the UK, despite being a EU member state. One study by Michael Burrage showed that the annual flows of FDI into non-members in Europe and beyond have not declined or suffered in any respect because they are not members of the EU.

71 Won't financial firms relocate to other areas?

No. Similar predictions that the UK's financial sector would decline were made in the late 1990s, when pro-European organisations claimed "*if the UK decides not to join a monetary union, the financial services industry will gradually ebb away to the continent*".⁶⁷ However, there has been no evidence that Britain's decision to remain outside the single currency has harmed the financial services industry. In fact, as the Centre for European Reform grudgingly admits, "*fears that the City of London's position as a financial centre will be gradually eroded if Britain did not join the Eurozone have not materialised: to date, the City has thrived outside the currency union*".⁶⁸

In reality, were the UK to leave, it would retain many of its pull factors and remain a "location of choice" for important financial organisations. Even very pro-EU bodies like the Centre for European Reform acknowledge that leaving the EU would not be a disaster for the financial sector:

*"Britain's eurosceptics are right that the City will not collapse in the event of an EU exit. Its central role in foreign exchange and securities trading, in insurance and asset management, and in financial law and accountancy services will continue, as will its position as the location of choice for many leading private equity and hedge funds."*⁶⁹

Leaving the EU does not mean losing access to the EU's capital markets, or sacrificing the principle of free movement of capital. Immediately upon leaving the EU the UK would retain all of the EU directives and regulations that it has already signed up to – by definition, the UK's regulatory system would be, as a starting point, compliant with the EU's. Outside the European Union, the UK would also have much greater say over the detail of its 'equivalent' legislation, and could work towards discarding the provisions of acts like the Alternative Investment Fund Managers Directive, which prevents the UK from fully accessing the growing markets outside Europe.

Culture

72 Won't leaving the EU make the UK less European?

No. Leaving the EU would simply mark an end to participation in a political project that has not worked for the UK, is holding its economy back, and is reducing opportunities for its citizens.

Considerable research from leading historians has shown that there is no

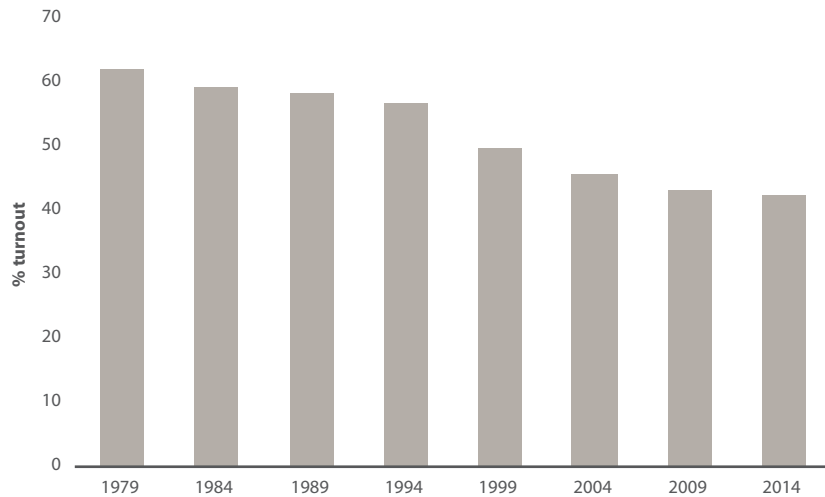
67 BBC News "Euro to 'benefit' UK economy" (2000).

68 Centre for European Reform "The consequences of Brexit for the City of London" J. Springford and P. White (2014), page 1.

69 Centre for European Reform "The consequences of Brexit for the City of London", J. Springford and P. White (2014), page 10.

such thing as a ‘European demos’ and that there is a distinct lack of a European identity. In the words of Professor David Abulafia of Cambridge University, *“It is time to admit that a sense of ‘Europeanness’ cannot be traced far back in time”*.⁷⁰ This lack of a sense of European identity can be found in the ever-declining turnout in European elections, suggesting a lack of interest and identification with the EU and its institutions (see Figure i)

Figure i: European Parliamentary Election turnout (1979–2014)



Source: European Parliament

UK nationals will continue to holiday abroad, learn foreign languages at school (indeed, ideally, much more than currently), watch Scandinavian police dramas, and conduct culinary experiments.

Transport

73 How would Network Rail be regulated?

The EU is heavily involved in regulating rail services, as it sees them as cross-border services. The UK, of course, has only two rail nodes connecting tracks to other countries, one on the Northern Ireland border and the other running through the Channel Tunnel. This means that, like the EU’s involvement in regulating cross-border canal transport, it tends to generate red tape which might not be relevant to the UK. Other international bodies exist that better act as venues for discussing what cooperation might be usefully achieved.

74 What would leaving the EU mean for the UK rail services?

Rail regulation would fall much more closely within the remit of the UK Parliament.

75 Will leaving the EU result in the railways being re-nationalised?

It is not a given, but it becomes an option. Management commitments, meanwhile, could be revisited. Failures associated with the privatisation of Railtrack, for example, might more easily be addressed. Lessons learned from the far more successful privatisation of the freight network might be carried across more readily.

70 Historians for Britain *“European Demos’: a historical myth?”* (2015), page 11.

76 Will the Eurostar continue?

Yes. It is a commercial venture guaranteed by a separate treaty.

77 Will UK consumers be disadvantaged over fare pricing for their services?

No, it will be just as prudent as it is today to shop around.

78 What will happen to rail fares after the UK leaves the EU?

Fares will remain set within the UK, and continue to be affected by the amount of subsidy any future UK Government chooses to supply.

79 Will the UK be able to work with the EU on aviation matters?

Yes. The EU is open to concluding deals with its neighbours – and the UK is parked between its busiest airports and North America.

80 What would happen to Air Passenger Duty?

That is presently a matter for the UK Government and would remain so. But as it is a voluntary tax, entered into to try to meet carbon targets, it is dependent on the UK continuing to adhere to those targets, which it will be free to review.

81 Would the UK be excluded from the Single European Sky?

No, European aviation initiatives are open to non-EU states. For example, EUROCONTROL, the air traffic management system, already includes a number of non-EU member states: Albania, Armenia, Bosnia and Herzegovina, Georgia, Moldova, Monaco, Montenegro, Norway, Switzerland, Macedonia, Turkey, and Ukraine. Geography matters, not EU membership.

82 What would leaving the EU mean for regulation of the road freight sector?

Leaving the EU would allow the UK to review many current regulations, particularly those agreed at source in UN fora, and reduce unnecessary business costs.

83 What would happen to UK driving licences if we left the EU?

Nothing. It is likely that a new format would emerge over time that removes the EU flag. It is also possible that the reduced expiry date might be revisited. But the current system is transitioning with a target date of 2033 so there is no imminent crisis, especially as the UK already meets the minimum standards required.

84 Would my driving licence still be recognised in other EU member states?

Under grandfather rules, the default assumption is that currently compliant documents would continue to be treated as such provided they were already issued. These would remain useable until new agreements were reached. In the meantime, not every country recognises the existing EU licence, so you would still have to apply for an International Driving Permit for a number of other countries.

85 What would be the impact on the maritime sector?

Leaving the EU would secure the long-term control of the UK's territorial waters. If trade increases as predicted, it will generate increased revenue to UK ports.

86 Would the UK remain a member of the International Maritime Organization and the International Civil Aviation Organization?

Yes, and it would regain its full authority there as a participating member state.

Technology

87 What approach will be taken to spectrum management and licensing and the universal service obligation outside the EU?

The key body underpinning the UK allocation of frequencies is not the EU, but the International Telecommunication Union. This is a UN agency. Services would be run by the UK under international rules.

88 Will the UK continue to cooperate on scientific research and space exploration?

The UK will continue to be part of organisations such as the European Space Agency (ESA) and will still cooperate with CERN, just as other non-EU states currently do.

89 Will the UK continue to use the PEGI videogame age rating system or create its own one?

This would be a matter for the UK Parliament to decide. However, were it to choose to carry on using PEGI, it would still be able to use the European system – as Israel does.

Weights and Measures

90 Would the UK develop its own legislation on weights and measures, and would this be metric or imperial?

The existing system would continue after leaving the EU. The UK Parliament could choose to amend it if the public votes for a party offering such a change in its manifesto. However, the European Commission would no longer be promoting attempts to standardise the system into metric forms in the UK.

Time

91 What impact would independence have on the time zone that applies in the UK?

None. It would be a matter of national choice what time zone to follow. It would be more likely that the present one would be retained, with decision-makers taking more account of the problems that would arise for Scottish farmers than any drive for continental conformity.

Welfare and Poverty

92 What would happen to the welfare system if Britain left the EU?

There would be no change.

93 How would leaving the EU benefit the average working family?

Households could be £933 better off outside of the EU. This does depend, though, on how bold political leaders are in paring back the legacy of the EU. But even with an unambitious Government, the savings would be substantial.

94 How would leaving the EU address child poverty?

Many of the savings are on household bills that disproportionately affect poorer families. This means they have the most proportionately to gain.

95 How would leaving the EU benefit the poorest in the world?

The UK would regain a significant proportion of its aid budget, to target according to national aid priorities and not EU political objectives. Examples of the latter have included subsidy to EU applicant states (especially Turkey), and payments to third countries to allow damaging access to their waters by EU fishing vessels. Just as significantly, the UK could opt to liberalise access to its markets for third world producers, lifting subsistence farmers out of poverty.

96 Will I get the same benefits after independence?

Welfare provision will not change for UK nationals. It is likely that foreign nationals in the UK, and UK nationals in the EU, currently receiving benefits will see those rights grandfathered. This particularly applies with respect to those states whose nationals are more eligible, or in receipt of larger sums, thanks to the UK's comparatively more open system. If the UK remains within the EEA, these rights will not be affected.

97 If I am from another country and move to the UK, will I be entitled to benefits?

That would be up to the terms of the new relationship between Britain and the EU. The implication would be that, in the future, a recent migrant would have to pay in for a period of time before they could claim anything out of the system.

98 I've worked most of my life in the UK and have only moved to an EU country to retire. Does that affect who will pay my pension and how much I will get?

This will require a reciprocal administrative agreement but it should lead to no change. UK pensioners are paid by the UK Treasury (this lay behind the Winter Fuel Allowance question over eligibility for retired people in sunnier countries).

99 I live in the UK but I work in various EU countries for different employers. What will happen to the various State Pension pots I have accrued after independence?

You will still qualify under present terms and conditions. Each country decides how it determines eligibility and payment of its own public pensions. There is no EU pension, though qualification periods in other states are taken into account where relevant and this can be anticipated to be grandfathered on. The administration for this is currently complex and it will remain best practice to start with the last country of based occupation.

100 Will private pensions be protected in an independent UK?

As much as the UK Government is itself prepared to protect them. Being outside the EU would secure the UK against the Commission resurrecting its shelved plans for Solvency II, which threatened to wreck private pensions schemes.

Health and Social Care

101 What would happen to the NHS?

The UK would continue to run its NHS. It could elect to halt, limit or extend the use of private sector resources in its running. This includes choosing to exclude or include healthcare provision within the equivalent to the TTIP agreement (the proposed EU-US free trade deal).

102 Would the NHS be safe from privatisation?

Yes. The NHS would no longer fall under the remit of TTIP and provisions that have generated concern about the possibility of the NHS being 'privatised'.

Healthcare is an area under international law where states can opt to be protectionist. The decision would be one for Parliament and for informed public debate.

103 Will an independent UK maintain the current number of doctors and nurses in the NHS?

Yes, because in setting visa limits and points standards it can prioritise sectors where it wants to encourage job take up. But it also provides wider reform opportunities if a Government is prepared to explore how skill shortages arise among the domestic workforce and begins to plug those gaps, rather than draw in healthcare professionals from communities that may have greater need for them.

104 What would be the impact of leaving on funding for medical research in the UK?

None. The UK would continue to be a world leader in medical and pharma research. UK investment would continue, private research would continue, and if the UK decided to cease cooperation in EU research (which is far from a given) it could replicate those grants pound for pound.

105 How would independence affect the length of NHS waiting lists in the UK?

It may slightly improve them, as regulations such as the Working Time Directive could be adapted, allowing NHS managers greater flexibility in plugging staffing gaps.

106 Would an independent UK still have free prescriptions?

Prescription charges would continue to be set by devolved governments, and by Westminster for England.

107 What would happen to blood donor services?

The UK is currently compliant with the EU Cells and Tissues Directive, and therefore already meets the standards required to cooperate with EEA states.

108 Will I be able to get NHS treatment if I am taken ill while in in the EU?

Health cover abroad is currently provided by the European Health Insurance Card (EHIC) system. This agreement will need to be reconfirmed, but this would be achievable. Those who have built up national health cover by working abroad and paying into the country's systems will still be covered in the same way as local nationals, as of course will people under private health care and insurance schemes.

109 What will the law on abortion be in an independent UK?

That will be a matter for national debate and not set by future ECJ judges interpreting human rights.

110 Would independence make the UK a fairer society?

Yes, if the public votes for it. Britain would have more power to decide for itself what policies it wanted to pursue, and how it spends its money. The UK Parliament would gain the power to introduce social democratic policies such as greater state aid/subsidies for struggling industries, leaving the TTIP deal and better protecting the principle of public ownership of the NHS, and ending Britain's participation in an organisation which has imposed austerity on the Mediterranean countries.

Sport

111 Will national football teams still be able to compete in FIFA and UEFA competitions?

Yes. International sport is not run by the EU. Conversely, the FA could review how it has been forced to adapt to EU rules and could introduce new policies to encourage the emergence of home grown talent. There would also be no risk of the UK being drawn into the Commission's plans to create other pan-EU teams.

Early Learning and Childcare

112 What would independence mean for early learning and childcare?

It would have no effect.

113 What would maternity and paternity rights, and flexible parental leave look like in an independent UK?

Parliament could decide time limits.

114 What would independence mean for education in the UK?

Schooling would largely be unaffected, though British children would no longer be at risk of exposure to EU-sourced PR ('propaganda'), as currently applied in most other EU states.

Education

115 What would independence mean for denominational schools?

Currently, attempts to recruit staff based on faith are banned as discriminatory. Parliament could review this.

116 What would independence mean for skills and training?

The UK is greatly improving its track record on vocational training, in which it has long lagged behind. The recognition of CVs would not be harmed.

117 What happens with tuition fees?

That is a matter for national and relevant devolved governments, and for university managers.

118 Will students from parts of the EU pay tuition fees?

Yes, but at full international rates. This will generate more revenue for the colleges in question.

119 Will EU students be attracted to study in an independent UK with these higher rates?

Yes, because the UK is, after the US, the country that hosts the most prestigious universities, in a native English speaking environment, in a country of considerable cultural interest.

120 Will UK students still be able to spend a year abroad teaching?

Yes, because this is not run through the EU, but by a set of global agreements.

121 Will non-EU/international students be charged tuition fees?

Yes. But universities currently arrange bilateral deals allowing for tuition-free years abroad, and these would continue and perhaps expand.

122 Will the policy on visas for international students continue to apply in an independent UK?

Yes, if and for as long as Parliament approved it.

Research Funding in an Independent UK

123 How would research be supported in an independent UK?

Because the UK is a net contributor to the EU Budget, funding to research projects could continue just as it is now.

124 Why would EU research councils continue to fund research in an independent UK?

That depends on whether the UK continues to see value in contributing to those funds. Non-EU countries including Norway and Switzerland do, and get funds back from the common research pot. As the UK has some of the best universities and research institutions in the world, it remains an obvious place to partner with.

125 How would the research councils be funded?

As they are now, or with formerly EU funds matched by the UK Government, pound for pound.

126 Would independence weaken university research in the UK?

No, because the UK is a net contributor to the EU Budget, it would be able to carry on funding all the institutions that currently receive EU grants.

127 How would independence affect jobs of academics and those in related areas?

Residency and work rights would be grandfathered under current arrangements. After the UK leaves the EU there would be an automatic transition period which would provide funding stability and planning. Any future agreements would factor such issues in.

128 How would postgraduate study be supported in an independent UK?

There would be no change for UK nationals.

International Relations and External Affairs

129 What will the relationship be between an independent UK and the rest of the EU?

After leaving the EU, the UK would become the bloc's largest trade partner and its most significant ally. There would be close cooperation between the UK and the EU on a whole range of issues. The UK would seek an arrangement that allows maximum trade access and would push for a relationship that facilitates – but does not force – cooperation in a broad range of policies.

130 Would an independent UK's voice in the EU be weaker or stronger?

As a key trading partner, a major economy, and one of the continent's two global powers, the UK would have a key voice in the EU. Outside of the EU, it would be free to make its own choices, its scope to take action no longer limited to marginal voting power.

131 Would the UK retain its seat on the UN Security Council?

Yes. Not only would it retain it, it would secure it over the long term as the EU increasingly takes over the role of national diplomats.

132 Would independence make the UK's voice weaker or stronger internationally?

The UK would gain freedom to lobby, advise, interact and persuade in its own right. Today the UK is forced to take the EU line on many international issues,

even if it disagrees with that line. Outside the EU, the UK would no longer be bound to follow collective EU decisions that work against the UK's interest. So the question boils down to whether you are happy being just one part of the EU, with a small degree of input equal to just a tenth of the say, or are content with being an independent but still globally important power that makes its own running.

133 What principles would an independent UK follow in regard to foreign policy?

That would be for a future Parliament to decide. The UK would remain bound by international law and would in all likelihood remain a strong advocate of the UN.

134 What international legal obligations that currently apply would an independent UK have to adhere to?

Treaties the UK signed up to would still be followed. Treaties the EU signed up to on behalf of member states would need to be looked at again, but it would be relatively easy to simply 'photocopy' these agreements and reintroduce them. This would require some work by diplomats, but the UK will have two years after leaving the EU to make these changes - which should be more than enough time.

135 Would the UK remain a member of NATO?

Yes, and a more secure one. EU membership is a growing threat to NATO.

136 What impact would independence have on existing aid programmes?

UK funds would be completely managed by the UK rather than, as present, some through the EU. A transitional period would allow for managed change.

137 What opportunities would independence bring to the UK in terms of defence and security?

The UK would guarantee its US alliance, and reinforce its defence collaboration with global partners.

138 Isn't the threat of a Common European Army a 'Euromyth'?

No. The EU has long had ambitions to create a military force - plans for a Common European Army were blocked by French MPs in the 1950s.

This European Defence Community pooled units not used for colonial duties, or dedicated to internal security. The remainder would wear a common uniform and be known as the "European Defence Forces", and included air and naval units. The oversight institution itself would gain legal personality and even a court of justice. Senior appointments would be decided collectively, and logistics would be Europeanised. Even mass mobilisation, court martials, deployment, armaments, and the production of nuclear weapons would become a European lead issue. For the removal of doubt, Article 128 foresaw "*the establishment of a European federation or confederation.*" Everything that has happened with the push for Eurocorps is rooted in this ambition.

139 What security risks would an independent UK face?

Because UK cooperation with European security counterparts would continue, there would be no new risks generated.

140 What do you expect the implications would be for the rest of the EU in terms of defence and security?

There would be no negative implications because NATO would be unaffected by the UK leaving the EU, and this organisation is the most important (and effective) bulwark for European defence cooperation.

141 How would defence policies be used to help economic growth in an independent UK?

The UK would no longer be pushed into the integration of EU defence industries, and therefore the closing of key factories and capabilities.

142 What would an independent UK do to support UK companies to win contracts in export markets?

The UK could continue to sell 'UK plc' to key allies abroad, and would gain greater clarity in doing so.

Security

143 Would the UK be able to protect itself against terrorist attacks?

The UK could still enter into bilateral agreements and cooperate with other security agencies. As terrorism is a global phenomenon, the response to it needs to be international.

144 Would an independent UK present an access route to the rest of the EU for crime and terrorism?

No. Current agencies would still operate.

Membership of the Common Travel Area

145 Would an independent UK remain in the Common Travel Area with Ireland?

This would be for future British and Irish Governments to decide. It would be a matter for the Irish Government to decide whether it places a premium on either maintaining its travel freedoms across the British Isles, or whether it prefers to develop those freedoms with EU member states. The assumption is that Ireland would remain an EU member and a member of the Eurozone. The Ulster border is porous, so if the Republic of Ireland did open up its borders, the likely end result would be the British Government introducing internal passport checks on mainland ports. But this all depends on Dublin first changing its current approach, which might be seen as detrimental to the interests of its own significant expat community in the UK.

146 Could an independent UK be in the Common Travel Area and have different immigration policies?

Yes, if passport/visa checks were introduced at either external or internal transit nodes. A joint policy would be far simpler to run, though.

Immigration

147 What would independence mean for immigration in the UK?

The UK could run a policy to fully suit UK employment needs. Currently, it can only do so with respect to non-EEA nationals, leaving a gaping hole in policy.

148 I am living in the UK - what would happen to me at day one of independence? Would I need to get a visa straight away?

Those currently resident would retain present residency rights until new laws were passed. Transitional arrangements would be set out at the same time.

149 Do you know how many immigrants would come to the UK after independence and how would the UK control this? Would there be a cap on the number of migrants?

UK immigration policy would be set by the UK Government, so it would be for Parliament to vote for the sort of immigration system it wants. Some have suggested that the UK might include a Canadian-style points system – that system changes the points allocated annually to cater for employment shortfalls. In one year, for instance, it awarded sufficient points to allow cooks for timber logging camps to automatically qualify as there was a critical shortfall.

150 How would immigration rules at ports be enforced?

As they are currently.

Asylum

151 What would independence mean for asylum policy?

The UK would run a humane asylum policy for asylum seekers. But it would place continued emphasis on supporting refugees closer to their original home, as this increases the likelihood of displaced persons being able to return there afterwards.

152 What would happen to people who try and cheat the asylum system?

Such a policy would have to be settled by Parliament. A fair system in general terms would not advantage people who try to cheat it over those who seek to get a work visa by legally applying.

153 Would the UK continue to cooperate to fight people trafficking?

Yes. As much of continental Europe is now passport free, any illegal immigrant who arrives in one EU country has much more of a free run than in the past and faces no passport checks until they arrive at Sangatte. It makes sense to cooperate with the EU to tackle this continental problem, deterring migrant boats at source. This too requires a coherent and wide-ranging policy addressing both 'push' and 'pull' factors, and needs to adapt to changing environments and routes.

Citizenship

154 What would independence mean for citizenship in the UK?

Nationals would remain subjects/citizens of their respective countries, depending on their current passports.

155 Must I be a UK national? Can I opt out of UK citizenship and retain my EU citizenship?

No. EU citizenship accompanies nationality of an EU member state. If the UK is no longer in the EU, the individual is no longer an EU citizen as well. The exception is if the person has two passports, and their second passport is for an EU country – in which case they will remain an EU citizen.

156 Can I have joint citizenship?

UK nationals who currently have multiple passports (for instance, as Irish citizens) will retain these. As such they will also retain EU citizenship.

157 As a UK citizen, could I still visit or live in the rest of the EU easily?

Work visas will ultimately depend on future treaty terms. No visa is currently required for all of continental Europe except Kosovo, and also the OECD countries, suggesting continuity would be the default.

Passports

158 What would the rules on passports be after Britain leaves the EU?

Everybody will retain the current passport.

159 What would a British passport look like?

Passports would stay the same for now. But in future the design might be revised, to change the burgundy colour and to remove references to EU citizenship.

160 I still have a number of years left of my UK passport. Can I keep it? And would I be able to renew my UK passport?

Passport changes would not be required and any transition would take place over time. Just as current-design passports were rolled in over some years, the same would happen with any replacements.

Justice, Security and Home Affairs

161 Would existing laws still apply after independence?

It is very likely that Parliament would decide to incorporate all existing EU laws so there is complete clarity. That also allows for clarity in terms of legal precedent in the courts. MPs can then repeal bad laws and new precedent can then be set in the courts.

162 Would the police still work with counterpart forces in the EU after independence?

Yes. Outside the EU, the UK can liaise with Europol and the range of JHA institutions. The UK would also remain a member of Interpol which, in any event, is the key international policing agency.

163 Would the UK be able to extradite cross-border criminals to face justice?

The current flawed EU Arrest Warrant would be replaced with a new system. Extradition is a common feature of international agreements.

164 How would an independent UK deal with cross-border crimes like human trafficking?

Cooperation would happen just as it does with countries that are not EU states.

Courts and Tribunals

165 What impact would independence have on the UK's courts?

The UK's legal systems of Common Law and Scots Law would be protected from being undermined by the incompatible continental legal system.

166 What would happen to court cases currently referred to the European Court of Justice?

Future cases would be subject to normal appeal systems on UK soil.

Prisons

167 Would prisoner transfers continue between prisons across the EU?

This largely does not happen even today. It would, however, become easier to deport foreign criminals on release; lower the threshold for deportation (currently higher for EEA nationals than non-nationals); and permit an absolute ban on entry by convicted criminals in the first place.

Road Traffic Law

168 How would the approach to drink driving limits change in an independent UK?

The UK could set its own limits and would avoid the EU's plans to harmonise these rules.

169 How would people driving across the border know what different traffic laws apply?

As is already the case, it would remain the responsibility of the driver to check via a variety of online sources such as motoring associations.

Drugs

170 How will an independent UK deal with illegal drug use?

Drug laws would be set by Parliament. Enforcing them would be done by national agencies, cooperating globally to interdict world supply routes.

Gambling

171 What would the approach to gambling be in an independent UK?

This would be for Parliament to decide.

Energy Security

172 Would the UK's oil and gas supply be secure?

Yes. Under international maritime law, fields currently within the UK's territorial waters would remain within its economic zone. But it would preserve UK ownership against an enduring and longstanding interest in pooling all European maritime resources.

173 How would an independent UK maximise the benefits of its oil and gas reserves?

The UK would be able to regulate the industry according to its needs, rather than adding health and safety measures predominantly as an excuse to extend EU jurisdiction.

174 Would an independent UK pursue alternative fuel sources and supply, such as 'fracking' and shale gas exploration?

The UK would be free to determine for itself what energy mix it should pursue, and what incentives to apply to encourage suppliers and consumers. Because these matters would be determined by Parliament, there could be a proper national debate about what sort of energy policy the UK should have.

175 Would there be nuclear power generation in an independent UK?

Parliament would decide, based on economics, security and continuity of supply.

176 Would there continue to be a single European market for energy and gas?

Yes. The UK grids are connected to their continental counterparts, and also importantly to Norway. France would continue to sell its surplus electricity to the UK. It would be for the UK to decide whether to tighten up its own energy market, which is comparatively open to EU investors.

Climate change measures

177 Would an independent UK meet statutory climate change targets?

If they are statutory, the UK would. But the central point is that the UK would gain greater leeway in identifying and adopting appropriate international obligations.

178 Would carbon capture and storage be developed after Britain leaves the EU?

Parliament would make that decision.

Energy Prices for Consumers

179 What effect would independence have on energy prices?

If the UK decided to move away from the EU's more expensive energy policies, costs to consumers and to taxpayers would drop significantly. Leaving would also allow greater flexibility on VAT on energy bills.

180 Would independence help to address fuel poverty?

Parliament could opt to pursue policies that reduce fuel bills. This would have a disproportionately positive effect on poorer households.

181 Would an independent UK maintain current levels of support for renewable energy?

This would be for Parliament to decide and prioritise.

182 What priority would be given to protecting the environment in an independent UK?

Current EU laws would continue to be in place. Parliament would be in a position to review any seen as excessive, flawed, or falling short.

Agriculture, Food and Rural Communities

183 How would independence affect the support that UK farmers receive under the EU's Common Agricultural Policy (CAP)?

Current payments systems would be nationalised. By cutting subsidies to non-UK farmers, Britain would save a billion pounds. A national debate would then follow reviewing what agricultural subsidies are meant to achieve, who should receive them, and how much. This is no different from current decision-making but with far more transparency, and therefore greater end levels of public support. But essentially, overnight no change would happen.

184 Would the transition to independence disrupt CAP payments to farmers?

No. The distribution of payments is currently done by national authorities.

185 How would the UK's fishing quotas be determined following independence?

This would be for Parliament to decide, but it is likely that a new system could be developed that pushes decision-making much closer to the communities affected.

186 Would the management of the UK's quotas be any different in an independent UK?

Leaving the EU provides a massive opportunity to completely rethink how fishing is managed.

187 Would vessels from other EU member states still be able to fish in UK waters and vice versa?

Access to what will become UK territorial waters would be open to negotiation. It might be anticipated that access will become a bartering chip with the Spanish Government. It would be fair to concede continued access for those fishermen whose families or vessels enjoyed historic access prior to EEC accession, and to concede a transitional period for the rest. This would certainly require close policing. A small number of UK vessels would be affected reciprocally including in Third Party Arrangements, and these vessels would also need to be taken into account. Overall, however, the balance is considerably in favour of UK fishermen and the emphasis would be to restore previous primacy in their own waters.

History and Media

188 What would happen to the BBC following independence?

No change would be required.

189 Would the TV licence fee remain at current rates?

The UK would be free to continue with or change the current system and rates. The BBC licence fee is, any event, already under review.

190 What would happen to Sky and other private sector cable and satellite broadcasters in an independent UK?

Services would not be interrupted.

191 Would the BBC's membership of the European Broadcasting Union (EBU) be affected?

No. The EBU involves 56 countries. This means, among other issues, that Eurovision would be unaffected.

192 Would the historic environment be managed differently in an independent UK?

No, though taxpayer money would no longer be wasted attempting to project the idea of a common European heritage, in order to underpin the concept of a single demos.

193 What role would culture and heritage play in an independent UK?

There would be no change. The UK is a vibrant, multicultural, historically-grounded society that is confident and outward-looking. It would not become a parochial isolationist society, which is the risk at EU level.

194 Would we have the power to reduce VAT on repair and maintenance work to dwellings, historical buildings, and churches?

Yes. VAT rates would become fully flexible.

195 What would happen to the newly-privatised Royal Mail in an independent UK?

Parliament would be able to decide its future. Privatisation was an EU-generated decision.

196 Would universal postal services be maintained in an independent UK?

Yes.

197 Would the price for stamps be higher in an independent UK?

No. Postal services are internationally governed through the Universal Postal Union, now a UN agency and based in Bern. The European continental system is Posteurop, of which the UK is a member. Rates are determined nationally.

198 Would I have to pay roaming charges on my mobile phone in other parts of the EU?

No. This is a positive achievement by the EU but is now a legacy decision and will not be affected by the UK leaving.

199 What impact would independence have on investment in broadband infrastructure and in satellite broadband technologies?

None.

The Referendum

200 Why should the UK have a referendum on EU membership?

The nature of the UK's relationship with the EU has changed since the public was last asked about this in 1975. So long as the UK is a member of the EU (barring any substantial renegotiation), further integration is inevitable. The 'referendum lock' allows for a referendum if more integration is proposed, while the prospect of getting an improved set of treaty terms should be democratically tested against the alternative.

201 What would a vote to leave mean?

Such a vote would authorise the UK Government to seek to get a better deal with the EU and to return much more closely to a trade-orientated relationship. In other words, the UK would get a new settlement with the EU which did not commit the country to ever-closer union.

202 Is independence about democracy?

Fundamentally, it is about democracy. The EU is so inherently anti-democratic that, institutionally, it would itself fail to meet the minimum criteria for EU membership. But it is also about other matters, such as jobs and the economy.

203 What powers are currently reserved to the EU?

A lot. They are set out in Annex B. Many would, on their return, be passed down to devolved assemblies to manage.

Negotiations with the EU

204 Is there any precedent for negotiations between the EU and a departing state?

Yes, Greenland and Algeria (formerly part of France). The principle of the EU negotiating a change of trade terms with another country has also occurred scores of times before.

205 Is EU membership the only relationship on the cards?

Absolutely not. The latest analysis shows that there are no fewer than 42 types of deal that have been reached by the EU in the past.

206 Shouldn't the UK stay in and try to get a better deal?

The UK has been trying to do this for 40 years and has constantly been refuted, rebutted and rejected. Every time that the UK has voted against a proposal that has made it to the EU Council of Ministers, it has been outvoted. This is not an acceptable situation.

207 What needs to be agreed before the UK can become independent?

Many areas featured in this publication will need to be visited. However, with a two year withdrawal period, the UK has a strong hand to secure all the changes that it needs during that window.

208 Are you confident that the negotiations will go smoothly?

Yes, because even a WTO-based arrangement (the default option) is an improvement on the current situation for a country like the UK.

209 Would an independent UK pay its fair share of shared liabilities?

Yes, especially over things like pensions, and commitments to longer-term research programmes. By the same token, the UK is itself due a share of EU assets.

Following the Vote

210 What happens if there is a majority in favour of staying in?

Then the UK remains a part of the EU on the terms agreed. The onus will be on the EU to honour any promises made during the renegotiation.

211 If the UK votes Out, would there be another referendum on independence at a later date?

This is very unlikely. The EU does have a tendency to make electorates vote again 'to get the right answer' but has traditionally accepted votes to leave or not join. But this would be a matter for the UK Parliament.

212 What would the UK's laws be on the first day of independence?

They would be the same as now, assuming Parliament recognises all existing EU regulations as having statutory force. Any repeal or amendments of these laws would be a matter for Parliament to reflect on.

Government for an Independent UK

213 What would happen to UK MEPs after independence?

MEPs would no longer be required. Presumably any deal would include a financial settlement for their retirement.

214 What would happen to UK staff in the EU institutions?

Continued employment of non-EU nationals within the EU institutions would be a matter for the institutions themselves to resolve.

215 Should an independent UK have a written constitution?

That debate may well feature as part of discussions over human rights reforms. But no constitution technically needs to be developed.

216 Would the Queen be head of state?

The role of the monarchy would remain as before.

217 Would there be institutions we would share with the rest of the EU on a long-term basis?

It is possible that there would be some agencies and institutions that operate on an EU level where the UK decides to sign partnership and cooperation agreements as part of its exit agreement. Part 3 lists many possible examples. Participation in these could also be terminated if they exceeded their original mandate and intent.

Rights

218 Would I still have the same rights, including protection against discrimination, in an independent UK?

Yes. Current rights would be preserved. But Parliament could start (in association with wider reform of human rights law) to correct any imbalances that the public is concerned about.

219 How would the rights and protection guaranteed by existing equality legislation be maintained?

Current laws would stand by default, unless amended, repealed, or changed by subsequent case history in UK courts.

220 How would human rights be protected in an independent UK?

One option being entertained is the full repatriation of all human rights law from the European Court of Human Rights as well as the European Court of Justice, and introducing a domestic Charter of Rights and Obligations. However, this would be for the UK Government to decide.

221 Who would have voting rights after independence?

Current council and General Election suffrage eligibility would continue. There would be no European elections.

222 Who could stand for election after independence?

Current rules would continue. That means UK nationals, Irish nationals, and foreign nationals with an unrestricted right to remain. Consideration would be needed over eligibility for council elections, based on reciprocity.

223 Would Government salaries and expenses be changed after independence?

The UK would get more powers back, and ministers and civil servants would gain a great deal more responsibility: but that is not intended as a justification for any pay increases!

224 Would there be a bigger UK Government after independence?

Not necessarily. Departments would have to reorganise their emphasis as they are presently very orientated towards EU internal politics.

225 Would becoming independent create more jobs in the public sector?

Only if the UK Government decided to commit its savings to that sector, for instance if it prioritised further healthcare expansion.

Local Government

226 What would happen to local government in an independent UK?

Councils would continue as before, but would be able to make efficiency savings by no longer being bound by EU red tape.

227 Would local authorities continue to deliver the services they do now?

Yes. It would not affect services. Councils would, however, be secured against the emerging risk of human rights commitments overriding cost-value analyses, in other words providing services disproportionate to actual need.

228 Would there be opportunities for greater local autonomy and decision-making responsibility in an independent UK?

Absolutely. Many otherwise devolved powers currently operate through the EU. One consequence of an 'Out' vote would be a much strengthened Scottish Parliament, Welsh Assembly and Northern Irish Assembly. The change would also allow MPs to review how powers are presently distributed across the UK, so it might act as a spur to genuine localism.

229 What would independence mean for cross-border relations with neighbouring states?

As is proven by the examples of Norway and other non-EU countries, European states are capable of cooperating with each other without being EU members. Moreover, the EU Treaties themselves now include a 'Good Neighbour Clause', encouraging the institutions to work towards such partnership arrangements.

Charities and the Third Sector

230 Would the third sector be supported in an independent UK?

Existing grants could be carried over into the new budgetary arrangement.

231 Would cross-border charities still be able to operate in an independent UK?

Yes, assuming they qualify for charitable status.

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- **Lord Kalms**, Dixon Retail Plc (Chairman)
- **John Kersey**, Kersey Hairdressing (Managing Director)
- **Paul Killik**, Killik & Co. LLP (Founder)
- **Stuart Lamb**, William Lamb Footwear (Chairman)
- **Ruth Lea CBE**, Arbuthnot Banking Group (Economic Adviser)
- **Michael Liebreich**, Bloomberg New Energy Finance (Founder)
- **Rupert Lowe**, Southampton Leisure Holdings (Former Chairman)
- **Neil MacKinnon**, The ECU Group Plc (Global Macro Strategy Adviser)

- **Alastair MacMillan**, White House Products Ltd (Founding Director)
- **Julie Meyer**, Ariadne Capital (Chairman & CEO)
- **Helena Morrissey CBE**, Newton Investment Management (CEO)
- **Charlie Mullins OBE**, Pimlico Plumbers (Founder and Managing Director)
- **John Nike**, Nike Land Securities (Founder)
- **Richard Patient**, Thorncliffe (Managing Director)
- **Michael Petley**, The ECU Group Plc (CIO)
- **Jeremy Pragnell**, George Pranel Ltd (Chairman)
- **Sir John Ritblat**, British Land Company (Honorary President)
- **Simon Stilwell**, Liberum Capital (CEO)
- **Rhoddy Swire**, Pantheon Ventures (Founder)
- **Nicholas Trimmatis**, Concept Business Group (Chairman)
- **Lord Vinson**, British Airport Authorities (Former Director)
- **David Wall**, MIC (Secretary)
- **Michael Webster**, Gorkana (Co-Founder)
- **Lord Wei**, House of Lords
- **James Woolf**, Flow East (CEO)

Who supports Business for Britain?



"The City and financial services are vital to the UK's economic prosperity, which is why Business for Britain must protect the City from onerous regulation."

Julie Meyer, Ariadne Capital Entrepreneurs Fund (Managing Partner)



"Change, or go shows how, outside an unreformed EU, the British economy would grow and prosper in the decades ahead."

Helena Morrissey CBE, Newton Asset Management (CEO)



"I urge all business people who want to see a better deal to join me and Business for Britain."

Peter Cruddas, CMC Markets (Chief Executive)



"BfB has really earned the right to speak for the large number of British businesses who back EU reform."

Michael Liebreich, Bloomberg New Energy Finance (Founder)



"The voice of business has been weak and at times misrepresented. I welcome BfB expressing what business people really think."

Alexander Hoare, C. Hoare & Co. (Board Member)



"While it might once have been the case that being part of the single market was of net benefit, the costs and over-regulation from Brussels now threaten to significantly outweigh any of those benefits."

John Caudwell, Phones 4u (Founder)

CHANGE YOUR WORLD VIEW



EU TRADE DEAL

CHINA.....	X
INDIA.....	X
USA.....	X
164 OTHER COUNTRIES.....	X

THE EU SPENDS €39 bn ON SELF PROMOTION

BRITAIN'S FUTURE IS GLOBAL