Exiting the EU: impact in key UK policy areas

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Summary

UK policy areas and the impact of a UK exit from the EU

Trade

The EU is the UK’s most important trading partner. In 2014 it accounted for 45% of UK goods and services exports (£230 billion) and 53% of UK imports (£289 billion).

The share of UK exports going to the EU has declined in recent years. In 2002 the EU accounted for 55% of UK exports. As the Review of the Balance of Competences put it, the central argument is whether the benefits of membership of a large trading bloc exceed the costs. Some argue that membership of the EU allows the UK to benefit from better trade deals than it would be able to negotiate on its own. On the other hand, EU membership entails some compromises and limits the UK’s ability to prioritise its own interests. Leaving the EU would allow the UK to set its own trade and investments policies but there could be costs in doing so on its own rather than as part of a group of countries.

Overall economic impact

The impact of withdrawal would be most felt in areas such as foreign direct investment (FDI), the UK’s contribution to the EU Budget and the effect of immigration on the labour market. There is disagreement as to the severity of the impact on FDI of a UK withdrawal. On the whole, it can be concluded that membership of the single market is one of a number of important determinants of FDI; but outside the EU, the UK may be able to establish a regulatory regime more favourable to overseas investors, which could offset the effect of its departure.

The Government contributed an estimated £8.5 billion to the EU in 2015, around 1% of total public expenditure and equivalent to 0.5% of GDP.

Although the UK is a net contributor to the EU, certain regions where living standards fall short of the EU average receive significant levels of support from the budget through the European Regional Development Fund and the European Social Fund, boosted by matched funding from government or the private sector. Withdrawal would leave a policy vacuum which the Government would have to fill to avoid certain regions and sectors losing out.

Immigration and labour market

If the UK wished to remain in the single market but outside the European Economic Area (EEA), like Switzerland, it would probably have to accept certain EU rules by arrangement. Whether these would include the free movement of people would depend on the outcome of UK-EU negotiations. Most studies on the impact of migration on the UK economy have found weak or ambiguous effects on economic output, employment and wages on average. However, impacts vary according to the characteristics of migrants and wider economic performance at that time, and across different groups of workers. Research on the impact of immigration on the public finances generally suggests the overall effect is small. Studies indicate differing impacts for migrants from inside and outside the EU, and for recent migrants compared to those who have been in the UK for longer.

Business and financial services
The argument centres on whether the benefits of having a more tailored and flexible national regulatory regime outweigh the loss of access to the single market that may come with pursuing an independent agenda.

A huge amount of existing financial services regulation is derived from the EU. The UK has frequently led reform in this area. It is likely therefore that a significant amount of this legislation would remain post-withdrawal, though not necessarily in the same form or to the same extent. The majority opinion of City firms is that the UK should remain within the EU.

**Employment**

An EU exit could foreshadow significant change to UK employment law, much of which flows from Europe. The Government would face pressure from employers’ associations to repeal or amend some of the more controversial EU-derived employment laws, such as the *Working Time Regulations 1998* and *Agency Worker Regulations 2010*. But trade unions would probably strongly oppose any perceived rowing back on rights originating from the ‘Social Chapter’. Withdrawal from the EU would allow for change to the following areas of employment law, which stem largely from Europe: annual leave, agency worker rights, part-time worker rights, fixed-term worker rights, collective redundancy, paternity, maternity and parental leave, protection of employment upon the transfer of a business and anti-discrimination legislation.

**Agriculture**

Departure from the EU and the Common Agricultural Policy (CAP) and its subsidy and regulatory regimes would have an impact on UK farms and their income. The CAP represents almost 40% of the EU budget and the largest element of the UK’s EU costs. Leaving the regime would probably reduce farm incomes, as past Government positions on CAP reform have indicated UK Government and Devolved Administrations may be unlikely to match the current levels of subsidy and/or would require more ‘public goods’ in return for support, such as environmental protection, which the UK Government views as the overarching market failure in this sector. However, it might bring wider benefits to the economy as a whole, as the UK would be free to negotiate bilateral trade deals with countries outside the EU and at the World Trade Organization (WTO), and would have more flexibility on pricing.

**Fisheries**

The failure of the Common Fisheries Policy (CFP) has led some to suggest that fisheries management would be more effective if the UK withdrew from the EU. One issue that would have to be determined from the outset of withdrawal is whether the UK would allow access by foreign vessels to the UK Exclusive Economic Zone (EEZ). If so, the UK would have to maintain a very close working relationship with the EU to enable the monitoring of landings and to co-ordinate on wider regulation in the sector. It would also have to agree some kind of mechanism for agreeing catch limits. If the UK decided to exclude foreign vessels and assume full responsibility for fisheries in the UK EEZ, there would be a number of implications for the UK and the management of fisheries in the area.

**Environment**

The environment is an area in which UK and EU law have become highly entwined. The effects of an EU exit would depend on whether the UK decided to lower, raise or maintain current environmental requirements in areas such as air and water quality, emissions, waste, chemicals regulation or habitats protection. If the UK left the EU, it would have
more scope for changing environmental objectives in the UK and there would also be a less far-reaching judicial process to enforce the implementation of environmental policy and challenge its interpretation.

**Energy and climate change**

The Government is unlikely to want to reverse the trend for more transparency and a level playing field at EU level which is currently being implemented by the Commission’s Third Energy Package and by the 2015 Framework for Energy Union. An EU exit would not remove the legally binding UK climate targets under the Climate Change Act 2008 although it could increase focus on all aspects of UK-based generation. This could especially be the case if exit resulted in poorer security of supply through decreased interconnectivity to Europe, reduced harmonisation of EU energy markets, or less investment into the UK by multinational companies.

An exit would affect the UK’s international climate targets under the United Nations Conference on Climate Change (UNFCCC). Currently the UK negotiates as a part of the EU block and has internally set targets that together with those of other Member States aims to meet the EU’s overall target. Withdrawal from the EU would have to address that lack of a UK specific target under UNFCCC. It was also widely recognised in the competency review that the negotiating as part of an EU block was beneficial as it had more influence at an international level than if individual Member States acted alone.

**Human rights**

If the UK withdrew from the EU, it would no longer have to comply with the human rights obligations of the EU Treaties, including with the EU Charter of Fundamental Rights. Although the Charter was not intended to create any new rights, a breach can result in the UK courts disapplying UK Acts of Parliament – something they cannot do under other human rights instruments. The impact of the Charter is now being considered as part of the Government’s consultation paper on a new British Bill of Rights.

**International development**

The UK channels funds for development cooperation and humanitarian aid through two budget lines, both of them managed by the European Commission: the development part of the EU budget, and the European Development Fund. In 2014, about 10% of the UK’s aid budget would have required reallocation if the UK had not been an EU Member State.

**Transport**

The UK would remain a member of the UN and its attendant agencies, and it is thus unlikely that the broad framework of UK law on aviation and shipping would change; similarly we would also likely apply those vehicle rules set down by the United Nations Economic Commission for Europe (UNECE). One could also envisage the UK and the EU agreeing to maintain common rules on driver and vehicle licensing to ensure continued free movement across the continent. The UK might negotiate an agreement with the EU on air routes, safety and security etc. There would likely be some areas where the UK would liberalise the arrangements agreed to across the EU.

**Immigration**

Depending on the nature of any future EU-UK relationship, leaving the EU could have significant implications for the rights of UK citizens to travel to and live in EU/EEA Member States, and for EU/EEA nationals wishing to come to the UK. On the other hand, if the UK were to negotiate a relationship with the EU similar to the EEA states or Switzerland, it
might find that it did not have any greater scope to control EU immigration to the UK than it did as an EU Member State.

The UK already maintains its own border controls. It is not part of the internal border-free Schengen Area, and Border Force officers conduct checks on EU/EEA travellers crossing UK ports of entry, as well as British citizens and non-EU/EEA nationals. It has not opted in to EU measures facilitating legal migration of third-country migrants. But the UK recognises that there are benefits to practical co-operation and information-sharing with other Member States, for example to strengthen responses to organised immigration crime and current and future migratory pressures.

**Police and justice co-operation**

The European Arrest Warrant (EAW) has been controversial in this area. An independent review by Lord Justice Scott Baker in 2011 concluded that the EAW had improved the scheme of surrender between Member States and that broadly speaking it operated satisfactorily. Opponents argue that it is used too frequently and favours procedural simplicity over the rights of suspects and defendants. In immigration and asylum, criminal justice and police cooperation, the UK is not bound by EU law, but has an opt-in arrangement. It is likely that the UK would wish to replace some EU measures with various forms of bilateral or multilateral cooperation. Some would argue that although this would be possible, there may be legal complications and uncertainties.

A UK withdrawal would have a minimal impact in some areas, e.g. family law. In other areas, e.g. data protection, the consequences of a UK withdrawal could be more complicated.

**Social security**

Entitlement to welfare benefits for people moving between EU Member States is closely linked to free movement rights. UK withdrawal from the EU could have significant implications both for EU/EEA nationals living in or wishing to move to the UK, and for UK expatriates elsewhere in the EU/EEA and those considering moving abroad.

The UK could seek to secure bilateral social security agreements on reciprocal rights with individual EU/EEA states, but negotiations could be difficult and protracted. Alternatively, the UK could seek a single agreement with the EU/EEA as a whole. If a UK withdrawal meant the end of free movement rights, the UK would be able to impose restrictions on access to many social security benefits via immigration law. Entitlement to contributory social security benefits could be limited by limiting access to employment. It would also be possible to restrict the ability of EU nationals to apply for social housing. Withdrawal might also have implications for UK nationals living in other EU/EEA countries, since Member States would be free to impose corresponding restrictions on entitlement to their benefits.

**Health**

EU citizens benefit from reciprocal access to healthcare through the European Health Insurance Card (EHIC). If the UK remained in the EEA it might be able to continue to participate in the EHIC scheme, or, subject to negotiation with EU Member States, participate on a similar basis to Switzerland.

**Higher education**

If the UK left the EU, the Government would not have to provide student loans or maintenance funding for EU students. However, the UK would probably lose access to EU research funding and student mobility schemes. Overall, universities and students would
probably lose out, and universities are very concerned about their research funding. But the Government would save money on student finance. If EU students were classed in the same way as overseas students and charged higher fees, this could have an impact on numbers coming to the UK to study and on fee income for universities.

**Consumer policy**

A huge amount of UK consumer protection regulation is derived from the EU. For example, directives implemented in the UK protect consumers from unsafe products, unfair practices, misleading marketing practices, distance selling etc. If the UK sought to remain in the EEA, it would join the EEA/EFTA states (Iceland, Liechtenstein and Norway), which have participated in EU consumer programmes since the EEA Agreement came into force in 1994.

**Foreign and defence policy**

Acting through the EU means a larger aid budget, the promise of access to the largest consumer market in the world and a louder political voice. All of these can be significant ‘soft power’ tools in the pursuit of European interests. If the UK no longer co-ordinated its policy with Member States, it would lose access to these shared tools. However, many UK actions are taken in conjunction with the US rather than the EU. Without the UK’s defence capacity and foreign policy experience, the EU’s voice in the Middle East, for example, would be less influential. But it can also be argued that an EU exit would not make much difference to the UK’s capacities in this region, that the US remains the most significant power there and that the UK could co-ordinate its Middle East policies more closely with those of the US.

In terms of military power and projection, a UK withdrawal would more likely place the EU at a disadvantage, with fewer assets and capabilities at its disposal, particularly certain strategic assets such as tactical airlift and intelligence, surveillance and reconnaissance assets. The UK’s ability to project military power would be largely unaffected, and any military shortfalls could be compensated for through bilateral arrangements. Ensuring the success of Common Security and Defence Policy (CSDP) operations remains in the UK’s interest, but outside the EU the UK could choose to continue its participation in CSDP operations as a third party state.

**The devolved legislatures**

If the UK left the EU, there could be further policy and legislative divergence in areas of devolved competence, as the UK Government and Devolved Administrations would no longer be required to implement the common requirements of EU Directives. This would probably be particularly noticeable in policy areas such as the environment or agriculture and fisheries, which are currently strongly governed by EU policy and legislation.

**Scotland**

Scotland is more pro-EU than England and has benefited from both pre-allocated and competitive European funds over the last four decades. The Scottish Government has set out its own ideas for EU reform. The first priority identified by the Scottish Government is to encourage the EU’s prioritisation of key economic and social policies such as delivering the growth and competitiveness agenda, tackling youth unemployment, developing workers’ rights and supporting freedom of movement. The SNP called for a ‘double majority’ rule for the EU referendum, whereby all four nations of the UK would have to back withdrawal before exit is possible.

**Wales**
Support for continued EU membership had consistently led polls over the past 15 months in Wales. The country has access to considerable funding opportunities from the EU, notably from the Common Agriculture Policy and Structural Funds (as well as many other funding streams), estimated to be worth over €5 billion to Wales for the period 2007-2013. EU membership has also given Wales a direct representative voice in the EU Institutions and in the EU decision-making process, which would be affected by UK withdrawal.

**Northern Ireland**

Northern Ireland benefits significantly from EU funding: a total of €1,211 million in EU Regional Policy Funding 2014-20. The impact of a UK withdrawal on Northern Ireland would also be different from that in the rest of the UK because NI is the only region of the UK to share a land border with another EU Member State. UK withdrawal would mean that an external border of the EU would run through the island of Ireland.
1. Introduction

Following on from a 2010 election and Coalition Government pledge to ‘repatriate’ EU competences to the UK, in July 2012 the Government launched a Review of the Balance of Competences, which it described as “an audit of what the EU does and how it affects the UK”. The Review involved Government Departments collecting evidence from experts and interested parties, including other EU Member States and the EU institutions, across a range of policy areas. The 32-volume Review was completed in autumn 2014. The Review was to form the basis for the Government’s proposed reform of the UK’s relationship with the EU. Although it did not identify grossly unacceptable or wide-scale abuse of competences, the final reports picked up on a number of recurring themes:

- Subsidiarity and proportionality are not always sufficiently implemented, EU action is not always necessary, is overly harmonising or has resulted in disproportionate costs to business or governments.
- There is a need for greater democratic accountability of EU institutions. The EU Court of Justice has too wide a margin over interpretation of competence. Accountability could be improved by giving national parliaments a greater role in decision-making.
- The UK has often been successful in shaping the EU agenda, particularly in the EU enlargement process. EU programmes have benefitted the UK.
- There is a need for less and better EU regulation, and more effective implementation and enforcement of existing legislation. The rights of all EU Member States need to be protected as the Eurozone integrates further, to ensure the integrity of the single market.
- The EU should focus on areas where it adds genuine value. Member States should retain the ability to take actions appropriate to national circumstances (one size does not always fit all), particularly in areas where questions are raised over how far the single market provides a rationale for action. ¹

The following sections look at the current position of the UK and the EU in a range of important policy areas and how this might change in the event of a UK withdrawal from the EU. As to whether UK citizens would benefit from leaving the EU, this would depend on how the UK Government filled any policy gaps left by withdrawal. In some areas, the environment, for example, where the UK is bound by other international agreements, much of the content of EU law would probably remain. In others, it might be expedient for the UK to retain the substance of EU law, or for the Government to remove EU obligations from UK statutes. Much would also depend on whether the UK sought to remain in the European Economic Area (EEA) and therefore continue to have access to

¹ From summary of final conclusions, Government press release, 18 December 2014.
the single market, or preferred to go it alone and negotiate bilateral agreements with the EU along the lines of the Swiss model.

The Government’s reform proposals, the withdrawal process, legal and constitutional issues and possible alternatives to EU membership, are discussed in CBP 7214, _EU Exit the EU: UK reform proposals, legal impact and alternatives to membership_.


The technicalities of the referendum campaign are discussed in CBP 7486, _The EU referendum campaign_, 27 January 2016.
2. Trade relations

2.1 How does it work at the moment?

EU Member States are part of a customs union, with no tariffs on goods moving between them and a common tariff applied to goods entering from outside the EU. Member States cannot operate independent trade policies, for instance by pursuing bilateral free trade agreements with non-EU countries. Instead, external trade relationships are co-ordinated at EU level through the Common Commercial Policy (CCP). The EU Trade Commissioner acts as the negotiator in multilateral and bilateral trade talks, with the Council and European Parliament making certain formal decisions regarding the commencement and mandate for the negotiations, and approving their final result. The EU recently concluded a trade agreement with Canada and is currently negotiating the Transatlantic Trade and Investment Partnership (TTIP) with the US.2

The principle of free trade in services between EU Member States (i.e. that businesses should be free to provide services within the EU, either on a cross-border basis or through establishing in the countries of their choosing) is also enshrined in the EU Treaties.

The previous Government noted that less progress had been made in the single market for services compared with that for goods:

Services make a very important contribution to the overall EU economy but the trade in services within the Single Market is much less integrated than that of goods. Notwithstanding the fact that services are typically less tradable than goods, evidence submitted to this review attributes this underperformance of the single market in services to a number of factors, but particularly to poor implementation of the Services Directive, with national restrictions remaining as barriers to trade.3

2.2 Statistics on UK-EU trade4

Taken as a group, the EU is by far the UK’s most important trading partner. In 2014 it accounted for 45% of UK goods and services exports (£230 billion) and 53% of UK imports (£289 billion). These figures are shown in the chart and table below.5

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2 Further information on TTIP is in The Transatlantic Trade and Investment Partnership, Commons Library Standard Note 06688, 4 December 2015.
4 Another House of Commons Library note sets out some basic figures on the UK’s economic relations with the UK. See In brief: UK-EU economic relations, 19 January 2016.
5 ONS Statistical Bulletin, Balance of Payments Quarter 3 (July to September) 2015, 23 December 2015, Tables B and C.
Looking at trade in goods only, UK exports to the EU were £134 billion in 2015 (47% of the total), down from £146 billion in 2014. UK goods imports from the EU were £223 billion (54% of the total) in 2015.

Turning to trade in services, UK exports to the EU were £84 billion in 2014 (38% of all UK service exports) and UK imports from the EU were £63 billion (48% of all UK imports of services).6

The share of UK exports going to the EU has declined in recent years. In 2002, the EU accounted for 55% of UK exports. This had fallen to 45% by 2014. The decline in the share of exports going to the EU over the past decade is not surprising. Apart from the much more rapid population and output growth witnessed over the past decade in emerging economies, external trade barriers have been reduced over this period too. Since 2000, the EU has concluded free trade agreements with Mexico, South Africa, Chile and South Korea, while, arguably more importantly, many economies have taken unilateral action to lower tariffs and liberalise trade. The share of UK imports from the EU declined from 58% in 2002 to 51% in 2011 before increasing slightly to 53% in 2014.

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6 ONS Statistical Bulletin, Balance of Payments Quarter 3 (July to September) 2015, 23 December 2015, Tables B and C.
The tables below show the top 10 UK export markets and the top 10 sources of UK imports, based on individual nations. The tables also show the EU total. On the export side, the US is largest single market at £88 billion. Seven of the top 10 export markets in 2014 were in the EU. Germany was the largest source of UK imports in 2014. The UK imported nearly £71 billion from Germany. Seven of the top 10 countries from which the UK imported in 2014 were members of the EU – the exceptions were the US, China and Norway.

### Top 10 UK export markets
**Goods and services, 2014**

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<th>£ billion</th>
<th>% of total</th>
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<tr>
<td>1</td>
<td>US</td>
<td>88.0</td>
</tr>
<tr>
<td>2</td>
<td>Germany</td>
<td>43.3</td>
</tr>
<tr>
<td>3</td>
<td>Netherlands</td>
<td>34.1</td>
</tr>
<tr>
<td>4</td>
<td>France</td>
<td>30.6</td>
</tr>
<tr>
<td>5</td>
<td>Ireland</td>
<td>27.9</td>
</tr>
<tr>
<td>6</td>
<td>Switzerland</td>
<td>22.9</td>
</tr>
<tr>
<td>7</td>
<td>China</td>
<td>18.7</td>
</tr>
<tr>
<td>8</td>
<td>Italy</td>
<td>16.3</td>
</tr>
<tr>
<td>9</td>
<td>Belgium</td>
<td>15.6</td>
</tr>
<tr>
<td>10</td>
<td>Spain</td>
<td>14.6</td>
</tr>
<tr>
<td>EU total</td>
<td>228.9</td>
<td>44.4%</td>
</tr>
<tr>
<td>World Total</td>
<td>515.2</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Source: ONS Pink Book, 2015, Table 9.3
The UK imports more from the EU than it exports to it:

- In 2014, the UK’s deficit on trade in goods and services with the EU was £59 billion.
- A surplus of £21 billion on trade in services was outweighed by a deficit of £80 billion on trade in goods.
- The UK had a balance of trade surplus of £24 billion in 2014 with countries outside the EU.

The chart below shows the UK balance of trade since 1999 with EU and non-EU countries. The recent decline in the UK’s balance of trade with the EU has been driven by a stagnation of UK exports, while UK imports from the EU have continued to grow.7

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<th>Top 10 UK Import Markets</th>
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<tr>
<td>Goods and services, 2014</td>
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<tr>
<td>£ billion</td>
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<tr>
<td>1 Germany</td>
</tr>
<tr>
<td>2 US</td>
</tr>
<tr>
<td>3 China</td>
</tr>
<tr>
<td>4 France</td>
</tr>
<tr>
<td>5 Netherlands</td>
</tr>
<tr>
<td>6 Spain</td>
</tr>
<tr>
<td>7 Belgium</td>
</tr>
<tr>
<td>8 Italy</td>
</tr>
<tr>
<td>9 Norway</td>
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<td>10 Ireland</td>
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<tr>
<td>EU total</td>
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<tr>
<td>World total</td>
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</tbody>
</table>

Source: ONS Pink Book, 2015, Table 9.3

The chart below shows the UK balance of trade since 1999 with EU and non-EU countries. The recent decline in the UK’s balance of trade with the EU has been driven by a stagnation of UK exports, while UK imports from the EU have continued to grow.7

7 There is more detail on how individual trading partners contribute to the UK’s balance of trade in ONS Economic Review, February 2016.
The “Rotterdam effect”

It has been claimed that the importance of the UK’s trade with the EU is exaggerated by the “Rotterdam effect”. This refers to the fact that the UK does a large amount of trade with the Netherlands. In 2014, UK exports of goods to the Netherlands were worth £22.4 billion, 15% of total exports of goods to the EU, and more than the UK exported to France, Ireland, Italy or Spain. It has been argued that some of this trade may ultimately be with countries outside the EU, for example if UK goods are shipped to China via Rotterdam. If this is the case, and some of the goods bound eventually for China are recorded as exports to the Netherlands, the volume of UK trade with the EU will be overstated. However, if trade with the Netherlands is ultimately with another EU member state, the volume of trade with the EU will not be affected. An article published by the ONS explains the Rotterdam effect as follows:

The Rotterdam effect is the theory that trade in goods with the Netherlands is artificially inflated by those goods dispatched from or arriving in Rotterdam despite the ultimate destination or country of origin being located elsewhere.

Some commentators feel that the Rotterdam effect distorts the UK’s trade relationship with EU and non-EU countries. For example, oil exported from Saudi Arabia to Rotterdam and re-exported to the UK (possibly without processing) may be counted as an EU import rather than a non-EU import. Conversely, a product exported by the UK to Rotterdam and subsequently transited to a non-EU country may be counted as an export to the EU rather than the rest of the world.

The ONS has said that the scale of the Rotterdam effect is unknown. It has published 2013 estimates on the assumption that either 50% or 100% of recorded UK trade in goods with the Netherlands should be excluded from the EU total. The chart below updates this using 2014 data.

![The Rotterdam effect chart]

This shows that if all goods trade with the Netherlands is counted as EU trade, then 49.7% of UK goods exports go to the EU and 54.1% of goods imports are from the EU. If, to take an extreme assumption, all trade with the Netherlands is excluded from the EU total (and reallocated to the non-EU category), these figures fall to 42.1% for exports and 46.2% for imports. If 50% of trade with the Netherlands is excluded, the figures are 45.9% for exports.

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8 ONS, [UK Trade](https://www.ons.gov.uk) 8 January 2016, Tables 2 and 11.
9 ONS, [UK Trade in goods estimates and the Rotterdam effect](https://www.ons.gov.uk), 6 February 2015.
and 50.1% for imports. This 50% assumption is described by ONS as “perhaps a more realistic assumption” but also “perhaps towards the top end of the range”. In conclusion, the Rotterdam effect may reduce the headline figures for UK trade with the EU, but the EU nevertheless remains the UK’s largest trading partner.

2.3 Scenarios for EU exit

As the Coalition Government’s review of competences put it, the central argument is whether the benefits of membership of a large trading bloc exceed the costs. Some argue that membership of the EU allows the UK to benefit from better trade deals than it would be able to negotiate on its own. On the other hand, EU membership entails some compromises and “limits the UK’s ability to prioritise its own interests”.10 Leaving the EU would allow the UK to set its own trade and investment policies, doing so on its own rather than as part of a group of countries.

EU exit without a free trade agreement

Were it to leave, the UK’s new trading relationship with the EU would be the product of negotiation. A vast number of different arrangements could result, but for the purposes of analysis, considering a situation in which the UK negotiates no preferential market access with the EU offers a clearly defined point of reference. In this instance, the terms of World Trade Organization (WTO) membership limit the range of outcomes. The details of such an arrangement are discussed below.

Tariff barriers

The principle of non-discrimination requires World Trade Organization (WTO) members not to treat any member less advantageously than any other: grant one country preferential treatment, and the same must be done for everyone else. There are exceptions for regional free trade areas and customs unions like the EU, but the principle implies that, outside of these, the tariff that applies to the ‘most-favoured nation’ (MFN) must similarly apply to all.

In practice, this would prevent discriminatory or punitive tariffs being levied by either the EU on the UK, or vice versa. The maximum tariff would be that applied to the MFN. The EU’s MFN tariff has generally fallen over time, meaning that in this particular context the ‘advantage’ of membership has declined. In 2013, the EU’s trade weighted average MFN tariff was 2.3% for non-agricultural products.11 This is an average figure: tariffs on some individual products are much higher, however, especially on agricultural goods. The EU tariff on cars, for example, is 10%.

However, given that MFN tariffs would be imposed on many of the UK’s goods exports to the EU, it would necessarily mean many exporters

becoming less price competitive, to varying degrees, than their counterparts operating within the remaining EU, and those within countries with which the EU has preferential trading relationships. Similarly, because the UK has negotiated as part of the EU at the WTO, it is likely that it would inherit the EU’s tariff regime at the time of leaving, meaning, at least initially, higher prices would be faced by UK consumers buying imports from the EU.

The implications of a move to an MFN trading arrangement for exporters and domestic consumers would vary considerably by sector. EU tariffs on agricultural products are particularly high. UK consumers would face higher prices, although the precise effects would depend on how the Government altered the tariff structure it ‘inherited’ on leaving the EU.

**Non-tariff barriers**

Non-tariff barriers to trade refer to a range of measures that have the effect of reducing imports, either intentionally or unintentionally. They include anti-dumping measures that prevent goods being exported at a price below production cost (usually by the application of an additional duty), and product standards, such as labelling, packaging and sanitary requirements. Support to domestic producers and export subsidies, such as those provided under the Common Agricultural Policy (CAP), can also be interpreted as non-tariff barriers since they inhibit market access by foreign producers on equal terms. In the context of falling tariff barriers, such non-tariff measures have become more widely used as a means to protect domestic producers from foreign competition.

The terms of WTO agreements limit the circumstances in which such measures can be applied, and in particular uphold the principle of non-discrimination that would prohibit punitive measures against the UK were it to leave. Many of the EU’s anti-dumping measures are against China and other Asian countries. Few are against other advanced Western countries.\(^\text{12}\)

Just as important in a trade context, however, are the standards required of products imported from outside the EU. All UK businesses must comply with these standards already, although as in other areas of regulation, withdrawal raises the prospect of costly divergences between the UK and EU product standards. On the other hand, some proponents of withdrawal argue that, were it to leave the both EU and the single market, only exporters would have to be bound by the EU’s product standards, leaving other businesses free to operate under a UK regime.

**Services trade**

As noted above, exports of services to the EU are significant: in 2014, the UK exported services worth £84 billion to the EU (37% of all UK exports to the EU). UK imports of services were worth £63 billion (22%

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of all imports from the EU). Without further negotiation, the UK’s trade in services with the EU would be governed by the WTO General Agreement on Trade in Services (GATS). Under this agreement, EU Member States (and other parties to the agreement) have chosen which sectors they are prepared to liberalise, and the time scale over which they wish to do so. As with trade in goods, GATS also operates on the principle of non-discrimination, meaning broadly that outside preferential agreements, restrictions on market access must be applied uniformly across all countries.

Barriers to services trade are usually in the form of non-tariff barriers, such as domestic laws and regulations, also known as ‘behind the border’ measures. In general, services markets are more highly regulated than the market for goods. Often, regulation is intended to meet social objectives, or to correct failures in supply, rather than directly to restrict foreign suppliers, but the effect on market access for foreign companies can in some cases be highly restrictive. EU Member States retain considerable national discretion over services regulation and supervision. Just as a fully level playing field in services trade does not exist within the EU, so exporters from outside the EU face different levels of market access in individual Member States. However, the level of market access would generally be far more limited for UK exporters under a GATS arrangement than it is currently.

As well as affecting cross-border trade in services, these restrictions could also have implications for UK companies providing services through a commercial presence (effectively outward direct investment) in other Member States. The EU Treaties require that a service provider from one Member State be legally free to establish in another, while continuing to be regulated by the authorities of its home country. A UK company that provides services through establishments in other Member States may find, if the UK is no longer a member of the EU, that it has to comply with the requirements of a foreign regulatory authority.

EU exit under a negotiated arrangement

Beyond the MFN position, there are a host of more preferential trade arrangements between the EU and UK that may be negotiated. For example, the UK might be able to negotiate a free trade agreement with the EU. Unlike a customs union, a free trade agreement would allow the UK to set its own tariffs on trade with countries outside the free trade agreement.

It is not clear how keen the EU would be to enter into a FTA with a UK which had left the EU. The UK is, however, an important market for the rest of the EU. The rest of the EU had a trade surplus with the UK of

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13 ONS Statistical Bulletin, Balance of Payments, Quarter 3 (July to September) 2015, 23 December 2015, Table C.
14 This is recognised as a form of services ‘trade’ under GATS, but is not measured in trade statistics, which are intended to record cross-border trade.
15 Other European trade groups, such as the European Free Trade Association and the European Economic Area (EEA) are discussed in Commons Library Briefing Paper, Exiting the EU: UK reform proposals, legal impact and alternatives to membership.
The UK had a trade deficit with 20 of the other 27 EU member states in 2014 and a deficit of £27 billion with Germany alone. These commercial considerations might lead to pressure for a UK-EU free trade agreement. There is, however, likely to be a trade-off between the level of access to the single market (i.e. freedom from tariff and non-tariff barriers to trade), and freedom from EU product regulations, social and employment legislation, and budgetary contributions.

Under a ‘Swiss’ or a European Economic Area (EEA) model, assuming such an arrangement could be negotiated, restrictions on trade would be significantly reduced. In particular, the EEA has full, tariff-free access to the internal market, and the EU’s ‘four freedoms’ concerning movement of goods, services, capital and labour, apply equally to Norway, Iceland and Liechtenstein as they do to full Member States. However, relative to a position of full membership, a number of restrictions on trade would still apply under an EEA or ‘Swiss’ approach. These are discussed below.

**Rules of origin**

Because the EU, as a customs union, operates with a common external tariff, goods entering from outside can travel freely within the Union once that tariff has been paid (e.g. a mobile phone imported into the UK from China can be re-exported to the rest of the EU tariff free). The same is not true of goods that enter the EU via the EEA (e.g. a mobile phone from China re-exported to the EU from Norway) or via other countries with which the EU has a free or preferential trading relationship, because they do not share the EU’s common external tariff. Determining where a good originated, and hence whether it should attract tariffs, is done through the EU’s Rules of Origin. Given the complexity of some global supply chains and the range of preferential trading relationships the EU operates, this can be a difficult, time-consuming and often subjective process. The costs of rules of origin were discussed in research published alongside the Coalition Government’s Balance of Competences Review:

> With the UK as a customs union member within the European Union, British firms are saved the compliance and administrative costs linked to proving the origin of products shipped in the European market. With the UK instead taking direct control over its external trade policies, and so operating outside the customs union, rules of origin would become necessary under free trade with the customs union. This means British firms would be exposed to a combination of administrative and compliance costs linked to rules or origin, ranging (based on existing estimates) from 4 percent to perhaps 15 percent of the cost of goods sold. For low tariff products, it is therefore likely that firms would instead simply opt to pay the common external tariff of the EU.

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16 ONS Statistical Bulletin, *Balance of Payments, Quarter 3 (July to September) 2015*, 23 December 2015, Table C.
17 ONS *Pink Book 2015*, Table 9.3.
18 The EEA is comprised of the 28 EU member states, plus Iceland, Norway and Liechtenstein.
19 In very simple terms, origin is determined on the principle of goods being wholly obtained in the exporting country, or substantially transformed there.
and so avoid costs linked to rules of origin. This means that, for
low tariff products, there would be very little difference between
no trade agreement, and one involving free trade combined with
rules of origin.  

Anti-dumping and other non-tariff barriers

Were the UK in the EEA or adopted the Swiss model, goods would still
be susceptible to anti-dumping action by the EU; for instance, in 2005,
the EU imposed a 16% duty on Norwegian salmon. Membership of the
EEA or the negotiation of bilateral agreements analogous to those in
Switzerland would also require the UK to continue to adopt EU product
standards (and other regulations) across the whole economy. The
Coalition Government’s Balance of Competences Review of Trade and
Investment commented on the EEA and Swiss arrangements as follows:

EEA members implement EU regulations that apply to the
commerce covered by the EEA accord. But non-EU members of
the EEA do not take part in the collective decision-making process
that determines the regulations which govern commerce in the
EEA.

[...]

In Switzerland’s case, it does not implement or is subject to
current and future EU laws but instead agrees to adopt equivalent
laws to those of the EU, covering the Four Freedoms. The Swiss
argue that this allows for tailor-made solutions yet retains the
Swiss Confederation’s independence in decision-making.
Switzerland adopts equivalent legislation, rather than applying EU
law directly and so can use different legislation to achieve the
same objective.  

Restrictions on services trade

As part of the EU’s internal market, EEA countries like Norway are able
to conduct services trade on the same basis as other Member States.
However, as in other areas, they lack direct influence over how services
are regulated at EU level. The loss of influence over the regulatory
agenda and the ability to push directly for further services trade
liberalisation may be particularly important for the UK, given that it has
a comparative advantage in a number of sectors, and runs a services
trade surplus with the EU (£21 billion in 2014). Many voices in the
financial services industry believe that the UK’s ongoing influence over
the regulatory agenda is important. In evidence to the Foreign Affairs
Committee, TheCityUK, the lobbying body for the UK financial services
industry, wrote:

... the provision of financial services in the UK by non-UK firms has
become to a large degree dependent on the maintenance of [a]
common EU legal framework and the UK’s part in devising it and
operating within it. The evolutionary character of this common

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20 CEPR, Trade and Investment: Balance of Competence Review, Project Report,
November 2013, p58.
21 HM Government, Review of the Balance of Competences between the United
Kingdom and European Union: Trade and Investment, February 2014, p75.
22 ONS Statistical Bulletin, Balance of Payments, Quarter 3 (July to September) 2015,
23 December 2015, Table C.
legal framework means that the UK must be engaged at all levels of policy development. 23

Implications of EU exit for trade relationships outside the EU

As mentioned above, the UK exports more to non-EU countries than to members of the EU and the share of non-EU countries is rising. The UK’s trade relations with countries outside the EU are therefore particularly important.

The EU has negotiated an array of preferential trade agreements with other countries. 24 This raises the questions of what would happen to these agreements in the event of Brexit. A number of opinions have been put forward on this issue. For example, in evidence to the Foreign Affairs Committee, Sir Alan Dashwood QC, Emeritus Professor of European Law, Cambridge University, said:

Take the example … of the free trade agreement with South Korea, which has been very favourable to the UK. […]. The UK will not be able to—well, it could not—stay as a part. Although it is a free trade agreement, it is still a mixed agreement because it goes a little further than the core area of the common commercial policy. Nevertheless, I don’t believe that the UK could retain the rights and obligations that apply to it under the agreement. We would have to renegotiate … 25

The issue was also raised in evidence to the Treasury Committee. Philippe Legrain (LSE European Institute) and Simon Tilford (Centre for European Reform) were both of the opinion that the agreements would all need to be renegotiated. Roger Bootle (Capital Economics), however, was not sure that this was the case and said the Committee should investigate the matter further. 26

Also in evidence to the Treasury Select Committee, the Chancellor said that the UK would no longer be party to some of the EU’s trade agreements with other countries in the event of Brexit. The Chancellor said:

those who advocate our exit, without setting out to try to improve arrangements as they are, need to explain what the alternative is, not just support for farmers, but also the trade agreements that the EU has signed with numerous other countries, some of which we would not be party to if we exited from the European Union. 27

A paper by the Institute of Economic Affairs took a different view:

As a WTO Member and signatory of the EU’s Free Trade Agreements (FTAs) in its own right, the UK will continue to be bound by these obligations and should expect other countries to reciprocate.

24 Map of EU trade agreements.
25 Foreign Affairs Committee, Costs and benefits of EU membership for the UK’s role in the world, HC 545, Q219 Q217.
26 Treasury Committee, The economic and financial costs and benefits if UK membership of the EU, 27 October 2015, HC 499, Qq47-51.
27 Treasury Committee, The economic and financial costs and benefits if UK membership of the EU, 1 December 2015, HC 499, Q372.
The UK, like all other EU Member States, is a member in its own right of the WTO. Though currently its tariffs and services obligations are incorporated in the schedules for the EU, they would still stand as an obligation on the UK if the country exited the EU. Similarly, the UK signs and ratifies EU trade agreements in its own right, even though all negotiation is done by the Commission.28

Unless the UK provided the same level of access to its market as under the current arrangements, there is a possibility that the EU would have to pay compensation to the affected countries with which it has a trade agreement, as a result of the ‘shrinking’ of the market from what was originally agreed. This concern was raised by the European Commission in 1983 in the run-up to Greenland’s departure from the EU:

> The free trade agreements concluded by the Community with the EFTA countries, which at present enjoy exemption from customs duties and free access without quantitative restrictions to the Greenland market, would automatically cease to apply to Greenland. The question whether the Community would have to negotiate with its partners compensation for the rights and benefits which those countries would lose as a result of the ‘shrinking’ of the Community would not arise if the same rights and benefits were granted by Greenland.29

Any negotiated solution may therefore require the UK to maintain consistency in its trade treatment with countries outside the EU, thereby limiting the extent of trade policy independence it would gain on withdrawal.

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**Would independence over trade policy lead to better results?**

It is often suggested that independence over trade policy would allow the UK to forge its own bilateral free trade agreements, tailored to its particular economic circumstances; as part of the EU, this is legally impossible. This freedom, it is argued, would allow the UK to refocus its trade on economies with brighter prospects and rectify its persistent trade deficit.

It is open to debate whether the UK’s capacity to export to the rest of the world, and particularly to high growth emerging economies, is significantly held back by EU membership. The share of UK exports going to China and India doubled between 2004 and 2014 from 2.5% to 5.3%. In cash terms, the value of UK exports to India and China increased from £7.6 billion to £27.6 billion over this period.30 Germany, meanwhile, exported four times more to China than the UK did in 2014.31

Even outside the EU, the structure and orientation of the UK economy are likely to place important constraints on its capacity to reorientate its trade in the medium term. From a British perspective, the EU’s trade policy does not appear to be wholly misguided in geographical terms. The EU is negotiating the Transatlantic Trade and Investment Partnership (TTIP) with the US which is by a long way the UK’s largest export market. The EU already has preferential trading agreements with Switzerland and South Korea and finished negotiating a trade agreement with Canada in 2014. The EU is also in negotiations with Japan and India, although negotiations with the latter started in 2007. All these countries are

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30 ONS *Pink Book 2015*, Table 9.3.

31 UNCTAD Statistical database. Trade in goods only.
among the UK’s largest non-EU export markets. The EU already has preferential trading arrangements with 18 of the 52 other Commonwealth members and is in negotiations with many others. The European Commission has requested authorisation to negotiate free trade agreements with Australia and New Zealand.

Whether the UK’s trade negotiating strength and efficiency would be greater outside the EU is uncertain. On the one hand, concluding deals might be easier for the UK alone, given the greater diversity of interests involved when the EU negotiates as a group. Roger Bootle told the Treasury Committee:

if you were part of a larger bloc, in fact, it might be quite difficult to get your interests effectively represented by that bloc and you would end up with a worse trade deal than if you negotiated one separately. It is very difficult to be sure of the answer to that, but we do know that lots of small countries around the world have successfully negotiated free trade deals, including with very large countries like China.

On the other, the smaller size of the UK market may mean other countries give higher priority to deals with the EU. Typically, the EFTA countries follow in the EU’s path when it comes to Free Trade Agreement negotiation (i.e. agreements are reached with the EEA and EFTA shortly after those with the EU), although in the case of the South Korea free trade agreement, the EFTA countries led the way.

A particular area where UK interests may be poorly represented in EU trade negotiations is services market access. Language, time zone and structural features of the UK economy give it a comparative advantage in cross-border services trade, but, according to the Open Europe think-tank, “the EU’s lack of domestic liberalisation in services trade limits the enthusiasm of member states to push and prioritise these issues with third countries”. The exclusion of audio-visual services from the US free-trade negotiations, following pressure from France, is an example of the sensitivities attached to this area of trade liberalisation and the compromises that must be struck when 28 countries negotiate as a group.

32 Map of EU trade agreements.
33 European Commission, Trade for all. Towards a more responsible trade and investment policy, October 2015, p32.
34 Treasury Committee, The economic and financial costs and benefits if UK membership of the EU, 27 October 2015, HC 499, Q36.
35 Open Europe, Trading places: is EU membership still the best option for UK trade?, 2012, p26.
3. Other economic impacts of EU-exit

As mentioned above, there are considerable difficulties in assessing the overall economic impact of the UK’s EU membership. The following sections consider the impact of withdrawal in areas of the economy where membership has the most obvious impact. These include foreign direct investment (FDI), the UK’s contribution to the EU Budget, the effect of immigration on the labour market and the impact on business.

3.1 Foreign direct investment

Broadly speaking, FDI became part of the Common Commercial Policy (CCP) after the 2009 Lisbon Treaty. The EU has exclusive competence over the CCP meaning that only it, and not the Member States, has the power to act in this area.

Statistical context

The UK is a major recipient of inward FDI and also an important investor in overseas economies. The UK had the third highest stock of inward FDI in the world in 2014, behind the US and China.

In 2014, EU countries accounted for just under half the stock of FDI in the UK (£496 billion out of a total of £1,034 billion, 48%). This compares with 24% from the US and 28% from other countries. The share accounted for by the EU has fluctuated between 47% and 53% over the last decade. In terms of UK investment abroad, the EU accounted for 40% of the total stock of UK FDI in 2014.

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36 There is a discussion of EU Competence over FDI and the arguments over how far this extends in Chapter 2 of HM Government, Review of the Balance of Competences between the United Kingdom and the European Union: Trade and Investment, February 2014.
According to the EY European attractiveness survey, the UK attracted more FDI projects than any other European country in 2014.\(^{41}\)

According to EY’s UK survey:

> The UK achieved a leading market share of 29% of US projects in Europe and was the main destination for investment in Europe from France, Japan, Australia, Canada, India and Ireland.\(^{42}\)

### Implications of exit

It is often argued that being part of the EU means that the UK is a more attractive place to invest, as it provides access via the single market to all Member States. If it involves the construction of new operational facilities (‘greenfield’ investment), this can have benefits for the economy directly through the creation of jobs; and even where it does not, FDI can theoretically benefit the economy indirectly by improving productivity through the introduction of new working practices and transfers of technology that can also spread to indigenous firms. However, establishing the existence of these theoretical benefits empirically, particularly the ‘spillover effects’ of FDI on the domestic economy, has proved challenging, and the statistical analysis has produced, at best, mixed results.\(^{43}\)

Moreover, establishing the existence and estimating the magnitude of the ‘EU effect’ on UK inward FDI, and hence the consequences of withdrawal, is very difficult; the decision to invest is motivated by any number of factors, including the integrity of the UK legal system, the availability of particular skills and services and the status of the English language. Disentangling these motivations from those arising from the single market, and accounting for other factors that have caused a surge in FDI over the period of EU integration, including the removal of capital restrictions and the development of capital-intensive...

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\(^{41}\) EY, European attractiveness survey 2015.  
\(^{42}\) EY, UK attractiveness survey 2015.  
\(^{43}\) See, for instance, Rodrik, D. (2008) *One economics, many recipes: globalisation, institutions and economic growth*. 

![Graph showing Inward FDI into the UK by source](image)
technologies, is, in the words of a 2005 Treasury paper ‘fraught with problems’. 44

A study of historical flows of FDI by Civitas found that EU membership is likely to have boosted flows of FDI into the UK in the decade after 1973 but that the effect did not persist after this. The study says:

… the benefit of joining for FDI in the UK lasted no more than a decade. There is no evidence, either from FDI flows or stock, that membership of the EU has been of lasting benefit to FDI in the UK.45

The same paper also questioned the importance of the Single Market in attracting inward investment into the UK saying:

… there is no evidence to suggest that the Single Market as a whole has been a magnet to foreign investors, or that it has encouraged FDI in the UK specifically. Many non-members have attracted more FDI.46

On the other hand, a 2014 paper by the Centre for European Reform argued that EU exit would make the UK less attractive for firms looking to sell to other EU markets. While noting the difficulties of quantifying the effects of EU membership on FDI, the report said some FDI would be threatened if the UK left the EU.47

Going on to judge the contribution of such investment to UK output and productivity is still more problematic. On the one hand, the removal of barriers to trade eliminates an important incentive to physically locate abroad, meaning it could be argued that the single market discourages intra EU investment. On the other hand, membership of the single market should stimulate inward investment in the UK from outside the EU, as there is access to 27 other EU markets tariff-free. The choice of foreign car manufacturers, including Honda, Nissan, BMW, Toyota and General Motors, to locate in the UK, is often cited as an example of companies locating in the UK as a bridgehead to other EU markets.

In a survey of 2,272 multinationals, the UN Conference on Trade and Development found that size of the local market was the most important criterion determining the location of FDI for both the manufacturing and services sectors, and the third most important for the primary sector.48

However, the results of the Ernst and Young UK Attractiveness Survey on this issue are more equivocal: 72% of companies interviewed in North America thought reduced integration with the EU would make the UK more attractive as a destination, against 38% of those interviewed in Western Europe.49

44 HM Treasury, EU membership and FDI, 2005.
47 John Springford and Simon Tilford, The Great British trade-off: The impact of leaving the EU on the UK’s trade and investment, Centre for European Reform, January 2014.
49 Ernst and Young, 2013 UK attractiveness survey, p35.
The 2015 EY UK attractiveness survey said that “the referendum has the potential to change perceptions of the UK dramatically, posing a major risk to FDI.” The survey also indicated that 31% of investors would either freeze or reduce investment until the result of the referendum is known.\(^{50}\)

On the whole, it is reasonable to conclude that membership of the single market is one of a number of important determinants of FDI; but outside the EU, the UK may be able to establish a regulatory regime more favourable to overseas investors that could offset the effect of its departure. In particular, the UK would regain competence to negotiate international agreements on foreign direct investment with third countries, something which it has not been able to do since the Lisbon Treaty entered force in 2009.

### 3.2 EU Budget contributions

The UK’s budgetary contribution to the EU is one of the more quantifiable costs of its membership. Net of receipts under the Common Agricultural Policy, EU regional funding, and the budget rebate, the Government contributed an estimated £8.5 billion to the EU in 2015, around 1% of total public expenditure and equivalent to 0.5% of GDP.\(^{51}\)

The EU’s budget is used to pay for policies carried out at a European level, including agricultural subsidies via the Common Agricultural Policy, regional funding to assist poorer parts of the EU, research, and some aid to developing countries.

The basis for budgeting in the EU is a financial framework set for a period of years. The current framework runs from 2014 to 2020 and was agreed in 2013. The framework sets out annual expenditure ceilings, and allocates spending to broad priorities. A separate, but concurrently negotiated decision sets out the limits and sources of revenue for the budget. Year-to-year expenditure and revenue are set through an annual budgeting process that takes place within the limits set by the financial framework.

Contributions by Member States to the Budget consist of four elements, called ‘own resources’. These are described in more detail in Library Briefing Paper The EU budget 2014-20. By far the most important element, accounting for around 75% of total revenue, are GNI-based contributions, which are calculated by taking the same proportion of each Member State’s Gross National Income (0.7481% in 2015).\(^{52}\)

Around 6% of the EU’s budget is spent on administration and a further 5% on the EU’s foreign policies, international development, and pre-accession aid. The remainder is redistributed back to Member States in

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\(^{50}\) EY, UK attractiveness survey 2015.  
^{51} HM Treasury Annual Statement on EU Finances 2014; Office for Budget Responsibility Public Finances Databank Table 4.1; ONS National Accounts Series YBHA.  
^{52} OJ L 69, 13 March 2015, Chapter 1.4.
the form of agricultural and regional funding. Depending on its standards of living in relation to the EU average, and depending on the size of its agricultural sector, a Member State may get more or less back than they ‘put in’. In 2014, 10 of the EU Member States, including the UK, were net contributors to the budget. Per capita, contributions ranged from net receipts of €569 in Hungary to net contributions of €378 in the Netherlands. The UK’s per capita contribution was €110.53.

The UK has been a net contributor to the EU budget in 42 out of its 43 years of membership (the exception being 1975), contributing a total of £496 billion in real terms gross, and £177 billion net of receipts and the budget rebate. The chart illustrates the trends in the UK’s contribution since it joined. The UK has received an abatement, or rebate, on its budget contribution since 1985, worth £4.9 billion in 2015 and £116 billion (in real terms) since it was first agreed; this was originally negotiated due to the high proportion of EU expenditure that went towards the CAP, and consequently benefitted the UK, with its smaller farming sector, less than other Member States. Details of the UK’s contribution since accession are shown in the chart below.

UK nations, 2008/09

Although the UK is a net contributor to the EU, certain regions where living standards fall short of the EU average receive significant levels of support from the budget through the European Regional Development Fund and the European Social Fund, boosted by matched funding from government or the private sector. Farmers, too, receive payments under the Common Agricultural Policy. Receipts from the EU budget for the financial year 2008/09 (the latest year for which data underpinning the calculations are available) are broken down by the four UK nations in the table below. Wales, a significant part of which is eligible for the highest level of regional funding and has a large agricultural sector received £163 per head. England, by contrast, received just £52.

53 European Commission Interactive: EU expenditure and revenue. These figures exclude Luxembourg as administrative expenditure significantly effects their figures.
54 Before this, refunds to the UK were negotiated annually.
55 All statistics in this paragraph and the chart are based on HM Treasury European Union Finances (various editions).
### Indicative receipts from the EU budget in 2008/09

<table>
<thead>
<tr>
<th>UK constituent nations</th>
<th>Wales</th>
<th>England</th>
<th>Scotland</th>
<th>N Ireland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structural funding</td>
<td>207</td>
<td>659</td>
<td>103</td>
<td>63</td>
</tr>
<tr>
<td>Agricultural/fisheries funding</td>
<td>290</td>
<td>1990</td>
<td>512</td>
<td>289</td>
</tr>
<tr>
<td>Other</td>
<td>0</td>
<td>53</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>497</td>
<td>2702</td>
<td>615</td>
<td>364</td>
</tr>
</tbody>
</table>

**£ per capita**  
- Structural funding: 68, 13, 20, 35  
- Agricultural/fisheries funding: 95, 38, 99, 162  
- Other: 0, 1, 0, 7  
- **Total**: 163, 52, 118, 204

Source: HM Treasury Consolidated statement on the use of EU funds in the UK for year ended 31 Mar 2009:  
ONS mid-year population estimates

This divergence in public sector receipts means that some parts of the UK (Wales and Northern Ireland) are effectively net recipients from the EU budget while others (England and, more marginally, Scotland) are net contributors, as illustrated in the table below.

#### EU budget contributions and receipts, 2008/09 - indicative disaggregation by UK constituent nations

**£m unless stated**

<table>
<thead>
<tr>
<th></th>
<th>UK</th>
<th>Wales</th>
<th>England</th>
<th>Scotland</th>
<th>N Ireland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross</td>
<td>13,155</td>
<td>474</td>
<td>11,287</td>
<td>1,092</td>
<td>303</td>
</tr>
<tr>
<td>Less abatement</td>
<td>5,595</td>
<td>201</td>
<td>4,801</td>
<td>464</td>
<td>129</td>
</tr>
<tr>
<td>Less public sector receipts</td>
<td>4,558</td>
<td>497</td>
<td>2,702</td>
<td>615</td>
<td>364</td>
</tr>
<tr>
<td>Net</td>
<td>3,002</td>
<td>-225</td>
<td>3,784</td>
<td>12</td>
<td>-190</td>
</tr>
<tr>
<td><strong>Net per capita (£)</strong></td>
<td>48</td>
<td>-74</td>
<td>72</td>
<td>2</td>
<td>-160</td>
</tr>
</tbody>
</table>

Note: Gross contributions are disaggregated using GVA share. Public sector receipts are disaggregated using HMT Consolidated Statement on use of EU funds

Sources: ONS Regional, sub-regional and local Gross Value Added 2009; ONS mid-year population estimates; HM Treasury European Union Finances 2010, Table 3.2A; HM Treasury Consolidated statement on the use of EU funds in the UK for year ended 31 Mar 2009, Table 2

The tables do not show the net ‘cost’ of withdrawal for each of the UK nations; rather, they indicate that, as with other policy areas where the EU has competence, withdrawal from the EU will leave a policy vacuum which the Government must fill if it wants to avoid certain regions and sectors losing out. How it chooses to do so has important implications for the fiscal and broader economic consequences of withdrawal.

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### 3.3 Immigration and the labour market

#### Context

The ‘free movement of labour’ is one of the four fundamental principles of the EU, entitling citizens of EU Member States and their families to reside and work anywhere in the EU. This right also applies to citizens of EEA Member States not part of the EU, and Switzerland.56

The inability of the UK to impose limits on immigration from the EEA and Switzerland is a controversial aspect of EU membership, particularly since the expansion of the EU to Eastern Europe in 2004 and the

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56 Subject to a few exceptions and the possibility of transitional arrangements for new EU members (such as Bulgaria and Romania).
accession of Romania and Bulgaria in 2007. The economic consequences of immigration are often a key part of this debate. This section provides an overview of the research that has been conducted on the effects of immigration on different aspects of the economy, as well as analysis of the possible implications of a UK withdrawal from the EU.

**Impact of UK exit from the EU**

Should the UK wish to remain in the single market but outside the EEA, like Switzerland, it would probably have to accept certain EU rules. Whether these would include the free movement of people would depend on the outcome of UK-EU negotiations: the EU might press the UK to accept the free movement of people principle in return for access to the single market, for example. If the UK did not sign up to the free movement of people principle, it would be free to impose its own controls on EU/EEA immigration, as it currently does on non-EU/EEA nationals. The impact of such controls on the economy would depend on the new rules. If the government decided to introduce a more restrictive immigration system for EU/EEA nationals, one option would be to simply extend current rules for non-EU/EEA to all non-UK nationals. This would largely restrict economic migration to high-skilled migrants (via a points-based system) and reduce the flow of migrant workers doing low-skilled jobs. The London Chamber of Commerce and Industry (LCCI) has previously warned of the possibility of labour shortages in such a scenario:

> Such an approach could lead to a shortage of low- and high-skilled workers that a lot of businesses are dependent on, affecting the economy and businesses’ ability to trade both nationally and internationally.

The impact of such a change in policy would likely be felt more in sectors which currently employ a higher share of EU migrants in their workforce (even assuming existing EU workers were allowed to stay in the UK) as they might be more likely to hire EU workers in the future. As discussed below, the sectors with the highest proportion of non-UK EU-born workers are accommodation and food services (13% at Q3 2015), manufacturing (11%) and administration and support services (10%). The parts of the economy with the lowest share of EU workers are the sectors associated with the public sector: public administration and defence (3%), education (5%) and health and social work (6%). Geographic impacts would also differ: areas such as London with relatively high concentrations of workers from elsewhere in the EU are more likely to be affected than areas with low shares of EU workers.

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57 The UK chose to impose transitional restrictions on free movement rights of Romanian and Bulgarian ‘workers’ following their accession to the EU. These restrictions were lifted at the end of 2013.

58 Irish nationals may be affected differently to other EU/EEA nationals in this scenario as they have a special status in UK immigration and nationality law that predates EU membership.


60 The immigration status of existing EU migrants in the UK would have to be resolved at the time of EU withdrawal. Sudden large scale expulsions of EU workers from the UK would cause large-scale disruption to businesses that employed them.
Frequent changes to the immigration system are unpopular with businesses that hire foreign staff, as keeping up to date with new developments creates an administrative burden. This is especially problematic for small businesses that generally do not have in-house expertise and rely on lawyers and consultants.\(^{61}\) In February 2012 the British Chambers of Commerce (BCC) complained, “After innumerable rule changes and consultations, business now needs the government to leave both the cap and the system alone”.\(^{62}\) Evidence submitted to a Migration Advisory Committee review by the Department for Business, Innovation and Skills also noted the need for business to have certainty, particularly given companies often do strategic planning on two to five year cycles.\(^{63}\)

**Summary of evidence on economic effects of immigration**

There is no widely accepted estimate of the effects of immigration on employment, output, or any other economic indicators. Most studies on the impact of migration on the UK economy have found weak or ambiguous effects on economic output, employment and wages on average. However, impacts vary according to the characteristics of migrants and wider economic performance at that time, and across different groups of workers.

Similarly, although geographical differences are not considered in this discussion, the impacts of immigration will differ between local areas. Some parts of the UK have much higher immigrant populations than others and the extent to which public services are used by immigrants or rely on migrant labour will vary.\(^{64}\)

**Labour market**

In the short term, theory tells us that the most important factor in determining the impact of immigration on employment and wages of the existing workforce is the extent to which immigrant labour is either a substitute for, or complement to, existing employees. The more migrant workers (defined in most studies as workers born outside the UK) can be considered a direct substitute for existing workers, the more downward pressure there is likely to be on wages for those jobs. If migrant labour is complementary to existing workers, if they possess different skills, for example, there is likely to be upward pressure on wages for existing workers.

The effects are also likely to be time-dependent; migrants will have a different impact on wages and employment during an economic downturn than during an upswing. The impact of immigration in the short run (i.e. in a period over which markets do not have time to adjust

\(^{61}\) Migration Advisory Committee, *Limit on Tier 2 (General) for 2012/13 and associated policies*, February 2012, p13, para 63 and p144, paras 7.79-7.80.

\(^{62}\) BCC press release, “Migration policy must prove that Britain is open for business, says BCC”, 28 February 2012.

\(^{63}\) Migration Advisory Committee, *Limit on Tier 2 (General) for 2012/13 and associated policies*, February 2012, p143, para 7.76.

\(^{64}\) A briefing by the Migration Observatory at the University of Oxford gives a brief overview of research: *Impacts of Migration on Local Public Services*, May 2015.
to increases in the labour supply) may also differ from the long run (when an increase in demand for goods and services from migrants translates to increased hiring and investment).

The academic literature generally finds that immigration does not displace non-migrant (sometimes called ‘native’) workers but there may be short-term effects when the economy is performing poorly (as there is more competition between workers and the economy takes longer to adjust). A good summary of the existing research is presented in a report by the Department for Business, Innovation and Skills and the Home Office, Impacts of migration on UK native employment: An analytical review of the evidence, March 2014.65

A 2012 study by the Migration Advisory Committee, which advises government on immigration issues, found some evidence that a rise in migrant numbers from outside the EU during periods of economic weakness could be associated with a decline in native employment.66 No statistically significant effects were found for immigration from the EU (while this does not rule out a relationship, it means that the statistical evidence is not strong enough to support that conclusion). The study also found that migrants who had lived in the UK for over five years were not associated with any displacement of British workers, suggesting displacement effects dissipate over time.

A study by the National Institute of Economic and Social Research (NIESR) used National Insurance registrations of foreign nationals to investigate the effects of immigration on local labour markets in the UK between 2002/03 and 2010/11. They found that there is a “general lack of an aggregate impact of migration on unemployment”.67 In addition, they “find no evidence of a more adverse impact of immigration during the recent recession”.

**Wages**

Most of the literature concludes a rise in the number of migrant workers has little effect on wages on average but adverse effects tend to be focused on low-skilled workers. These adverse effects are likely to be greatest for migrants already living in the UK. As noted by Manacorda et al (2012) new immigrants tend to be closer substitutes in terms of skills for previous immigrants than they are for UK-born workers.68

Focusing on the effect of immigration on wages of UK-born workers during the period 1997-2005, Dustmann et al (2013) found that immigration appeared to depress the pay of the 20% lowest paid UK-born workers but to increase pay for the other 80%. A 1% point increase in the share of migrants decreased wages by around 0.5% for

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65 See Chapter 6, page 41.
66 Migration Advisory Committee, Analysis of the Impacts of Migration, January 2012.
67 NIESR Discussion Paper 386, Examining the relationship between immigration and unemployment using national insurance number registration data, January 2012.
the 10% lowest paid workers but increased wages by 0.6% at the middle of the distribution.69

Nickell and Salaheen (2015) on the other hand found an increase in the share of immigrants relative to the native population had a small negative impact on average wages, based on data for the period 1992-2014 (their analysis looked at wages of all workers, rather than just the UK-born population). Larger negative effects were observed in the unskilled and semi-skilled service sector, where a 1% point increase in the proportion of migrants decreased wages by around 0.2% pay. It appeared to make little difference to the results whether immigrants came from inside or outside the EU.70

Employers and migrant workers

An August 2011 paper from the UK Commission for Employment and Skills (UKCES) looked at the impact of migration on opportunities for low-skilled people in Coventry.71 It found evidence that migrants, in general, were more flexible in meeting employer demands. For example, migrants were more likely than non-migrant low-skilled workers to work longer hours, at more unsocial hours and in temporary jobs. As a result, employers were offering more temporary jobs, which were not as attractive to native low-skilled workers. The Migration Advisory Committee has also identified flexibility and work ethic as reasons why some employers recruited migrant workers into low-skilled jobs. Other reasons reported by employers included superior numeracy and literacy skills, higher qualification levels among migrants, as well as better “soft skills” such as reliability, teamwork and confidence.72

Qualitative research commissioned by the Department for Business, Innovation and Skills (March 2015) found that “for many businesses the primary impact of migrants was providing additional or complementary skills and filling roles with a shortage of applicants.” It also found business benefits related to migrants sharing knowledge with co-workers, while for some firms the diverse perspectives brought by migrants supported innovation. In some businesses, there were issues around integration of migrant workers and language barriers, which occasionally offset the gains from migrants’ skills.73

Public finances

Existing research on the impact of immigration on the public finances generally suggest the overall effect is small. Studies indicate differing impacts for migrants from inside and outside the EU, and for recent migrants compared to those who have been in the UK for longer.

71 UKCES, The impact of student and migrant employment on opportunities for low-skilled people, August 2011.
72 Migration Advisory Committee, Migrants in low-skilled work, July 2014.
73 BIS, The impacts of migrant workers on UK businesses, February 2015.
Such research depends on various key assumptions. For instance, should spending on services for children born to one migrant parent and a UK-born parent be counted as spending on the ‘native’ population or on the immigrant population? Other considerations include the allocation of items of public spending between the native and immigrant populations (for example, how to treat spending on transport or debt interest), any possible displacement of UK-born workers, and if immigrants use public services differently to natives.\(^{74}\)

Dustmann and Frattini (2014) found that over the period 1995 to 2011, immigrants from countries in the EEA contributed more to the public finances than they received in benefits and transfers. Both the native population and immigrants from non-EEA countries, on the other hand, made a negative net contribution.\(^{75}\) Migration Watch, a think tank, has criticised the headline figures presented by the authors as “the best case scenarios” and argues that revenues from recent migrants (those arrived in the UK since 2000) are lower under alternative methodologies.\(^{76}\) Rowthorn (2014) considered Migration Watch’s criticisms of an earlier working paper. He concluded that “depending on the method of estimation, recent EEA migrants to the UK have either paid their way or generated a modest surplus”, but pointed out the aggregate effect is still very small as a share of GDP.\(^{77}\)

OECD estimates for 2007-2009 suggest that in aggregate, immigrants’ net fiscal contribution was between -0.26% and +0.46%. The estimates depend on which items of public spending (e.g. transport, policing, debt interest) are counted as shared between the native and immigrant population.\(^{78}\)

The Office for Budget Responsibility (OBR), in its annual Fiscal Sustainability Report, published July 2015, considers the impact of migration on the long-term sustainability of public finances. Higher net migration scenarios are estimated to lead to lower debt due to the assumption that immigrants are more likely to be of working age than the existing UK population, meaning they would likely increase tax receipts but would not add much to age-related spending.

The OBR projections use a baseline scenario of net inward migration of 165,000 per year.\(^{79}\) Under a “high migration scenario” (net inward migration of 225,000 per year), public sector net debt would reduce by 17% of GDP in 2064/65 relative to this baseline. On the other hand, in

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\(^{74}\) The Migration Observatory, University of Oxford, The fiscal impact of immigration in the UK, March 2015.
\(^{76}\) Migration Watch, Response to UCL paper on the fiscal effects of immigration to the UK, December 2014.
\(^{77}\) Rowthorn, R., Large-scale immigration: Its economic and demographic consequences for the UK, August 2014.
\(^{78}\) OECD, International Migration Outlook 2013, Chapter 3: The fiscal impact of immigration in OECD countries, June 2013.
\(^{79}\) Net inward migration to the UK was 336,000 in the year ending June 2015 and 254,000 in the year ending June 2014 (source: ONS, Migration Statistics Quarterly Report, November 2015).
a “low migration scenario” (net inward migration of 105,000 per year), net debt is projected to be higher by 20% of GDP by 2064/65. Any calculations looking this far into the future are highly uncertain. Small changes in the underlying assumptions can have extremely large effects over the long term.

**Overall impact on living standards**

In terms of overall benefit to the economy, there is much debate as to how this should be measured. Using simple change to overall economic output (GDP) does not take into account the change in living standards of individuals. Instead, it simply reflects the fact there are more people in the economy as a result of immigration, producing more output. To take this into account, one can use GDP per head instead. Although by no means a perfect measure, it does at least give some idea of the proportionate per capita change in economic output.

Most of the evidence on GDP per capita predates the economic downturn. However, as discussed above, economic impacts of immigration appear to differ between periods when the economy is strong and periods of weaker economic performance and impacts vary by characteristics of migrants.

Evidence from the previous Labour Government to the House of Lords Economic Affairs Committee 2008 inquiry, *The Economic Impact of Immigration*, estimated that migration contributed 0.15% per year to the GDP per capita of the native population in the decade to 2006. The Lords Committee concluded that “the economic benefits to the resident population of net immigration are small”. Responding, the then Government stated that any effect would necessarily not be very large given the relatively small change to the overall working population resulting from net immigration in a given year. It also stated that the 0.15% figure was not as small as the Lords Committee believed, arguing that in the context of economic growth rates it was quite substantial.

It is worth noting that these average figures disguise enormous variation. Young, highly skilled, employed immigrants without dependants, who do not tend to save their income or send it home, are likely to make a larger “contribution” in these crude terms than other types of immigrant. The Lords Committee also identified those it believed were economic winners (the migrants and their UK employers) and losers (those in low-paid jobs directly competing with migrants) from immigration.

Research published in 2011 by the NIESR looked at the impact in the UK of migration between 2004 and 2009 from the A8 Eastern European

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80 Projections are based on old OBR forecasts from March 2014. These forecasts have since been updated.
82 Government response to House of Lords Select Committee on Economic Affairs report on *The Economic Impact of Immigration*, June 2008, Cm7414.
83 Lords Committee, op cit, page 32, para 97.
countries that acceded to the EU in 2004. After adjusting for the age structure and the educational level of the migrants, the study found that there was a small but positive impact on the UK’s GDP per capita of around 0.2% in the long run.

Subsequent NIESR research (2014) modelled the long-run impact of reducing net inward migration to the UK from a baseline scenario of 200,000 to just below 100,000. It estimated that GDP per capita would be 2.7% lower by 2060 in the lower migration scenario, although clearly estimates looking this far ahead are highly uncertain and are very sensitive to changes in the underlying assumptions.

Labour market statistics for EU migrants in the UK

Employment by country and sector

2.11 million people born elsewhere in the EU were working in the UK at Q3 2015, 7% of the total number in employment (31.32 million). The number started to increase more sharply after 2004, following the accession to the EU of the A8 Eastern European countries.

People of working age born elsewhere in the EU are more likely to be employed than those born in the UK. 80.5% of people aged 16-64 born in other EU countries but living in the UK were in work at Q3 2015, compared to 74.5% of people born in the UK. The employment rate is

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84 NIESR Discussion Paper 379, Labour mobility within the EU - impact of enlargement and transitional arrangements, August 2011.
85 In one scenario, described as “an extreme position” by the authors, where migrant productivity is only one-fifth that of the resident workforce, the impact on long-run GDP per capita was negative at -0.13% in the UK.
87 Data on employment levels and rates by country of birth and nationality are taken from ONS, Labour Market Statistics, November 2015, Table EMP06 unless otherwise stated.
88 The A8 countries are Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Slovenia and Slovakia. The EU14 countries are the EU members prior to 2004 (excluding the UK): Belgium, Denmark, Germany, Ireland, Greece, Spain, France, Italy, Luxembourg, Netherlands, Austria, Portugal, Finland and Sweden.
even higher for people born in the A8 Eastern European countries, which acceded to the EU in 2004, at 84.6%. For those born outside the EU, the employment rate is lower at 67.0%.

These figures are based on people’s country of birth, rather than nationality. Some UK nationals may have been born in other countries and vice versa. The number of individuals in employment who were born outside the UK is higher than the number who are nationals of other countries, because some will have become UK citizens since moving to the UK. Employment levels and rates are broadly similar for people who are nationals of other EU countries as for people born elsewhere in the EU.

The sectors with the highest proportions of workers from other EU countries are accommodation & food services (13% of workers born elsewhere in the EU, as of Q3 2015); manufacturing (11%); and administration & support services (10%), as shown in the table.

### Employment of people born elsewhere in EU working in the UK, by industry, Q3 2015

People aged 16+, data not seasonally adjusted

<table>
<thead>
<tr>
<th>Sector</th>
<th>Number employed (000s)</th>
<th>% of total employment in sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturing</td>
<td>313</td>
<td>11%</td>
</tr>
<tr>
<td>Construction</td>
<td>162</td>
<td>7%</td>
</tr>
<tr>
<td>Services</td>
<td>1,556</td>
<td>6%</td>
</tr>
<tr>
<td>of which:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accommodation &amp; food services</td>
<td>218</td>
<td>13%</td>
</tr>
<tr>
<td>Admin &amp; support services</td>
<td>152</td>
<td>10%</td>
</tr>
<tr>
<td>Transport &amp; storage</td>
<td>128</td>
<td>8%</td>
</tr>
<tr>
<td>Professional, scientific &amp; technical</td>
<td>131</td>
<td>6%</td>
</tr>
<tr>
<td>Wholesale &amp; retail</td>
<td>242</td>
<td>6%</td>
</tr>
<tr>
<td>Finance &amp; insurance</td>
<td>69</td>
<td>6%</td>
</tr>
<tr>
<td>Information &amp; communication</td>
<td>90</td>
<td>7%</td>
</tr>
<tr>
<td>Health &amp; social work</td>
<td>228</td>
<td>6%</td>
</tr>
<tr>
<td>Other services</td>
<td>53</td>
<td>6%</td>
</tr>
<tr>
<td>Education</td>
<td>150</td>
<td>5%</td>
</tr>
<tr>
<td>Public admin &amp; defence</td>
<td>50</td>
<td>3%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,087</strong></td>
<td><strong>7%</strong></td>
</tr>
</tbody>
</table>

Note: total includes agriculture, extraction and utility sectors not listed in table.

### Low-skilled work

Around 860,000 workers born outside the UK were working in low-skilled jobs in Q3 2015, 16.9% of all workers born outside the UK. In total, 3.49 million people in the UK were employed in low-skilled jobs at Q3 2015.\(^89\)

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\(^{89}\) This analysis assigns jobs to different ‘skill levels’ based on the worker’s occupation, following a framework used by the Office for National Statistics. Figures refer to skill level of a person’s main job only. See ONS, [Standard Occupational Classification](https://www.ons.gov.uk)
A much higher proportion of workers born in the A8 Eastern European countries work in low-skilled jobs (30% of all A8 workers) compared to those born in either the UK (10%), EU14 countries (11%), or outside the EU (13%). Conversely, a lower proportion of A8 workers are employed in high-skilled jobs (8%) compared with those born in the UK (27%), EU14 (36%) and outside the EU (31%).

A 2014 study by the Migration Advisory Committee (MAC) looked in detail at the employment of migrants in low-skilled jobs. In particular, it found that one million migrants working in low-skilled jobs in 2013 had come to the UK within the last 10 years – half of all migrants in low-skilled jobs – including half a million from Central and Eastern Europe.

The total number of people working in high-skilled jobs increased between 1997 and 2013 but employment in low-skilled jobs stayed about the same. The MAC study found that a reduction in the number of UK-born people working in low-skilled jobs was offset by a rise in the number of migrants employed in low-skilled work.

* Other EU includes A8 countries, Romania, Bulgaria, Malta, Cyprus and Croatia.

Source: House of Commons Library analysis of ONS Labour Force Survey microdata for July-September 2015

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2010 volume 1, section 4.2 for more information. Data are from House of Commons Library analysis of ONS Labour Force Survey microdata for Q3 2015.

3.4 Business

The EU has various powers that affect businesses directly. Through successive Treaties, the policy areas in which the EU has competence to legislate have been gradually expanded, although the volume of new ‘hard’ law (regulations and directives) emanating from the EU has declined from a peak in the early 1980s. New EU aims and areas of activity, for example in social protection and sustainable development, have raised concerns about the impact of EU membership on business and the wider economy. Regulation in these areas, some argue, has little to do with the EU’s founding purpose of establishing a common market between Member States, imposing burdens that offset the trade benefits of membership.

EU powers

The EU legislates in a number of areas that impact directly on businesses. These include:

- Product specifications, e.g. Directive 2000/36/EC on cocoa and chocolate products intended for human consumption
- Competition, e.g. Council Regulation 139/2004 on the control of concentrations between undertakings (also known as the merger regulation)
- Employment terms, e.g. Directive 2008/104/EC on temporary agency work
- Health and safety, e.g. Directive 2009/148/EC on exposure to asbestos at work
- Consumer protection, e.g. Directive 93/13/EC on unfair terms in consumer contracts.

Specific areas are discussed in more detail elsewhere in this paper.

Costs and benefits of regulation to business

Various studies have attempted to estimate the total cost of EU law to the UK using impact assessments prepared by the Government. These estimate the potential costs and benefits associated with particular measures, generally ahead of implementation. In the UK, impact assessments are usually published in response to EU Directives (where the Government will have some discretion over how EU requirements will be transposed into national law), but not Regulations or Decisions, which do not trigger a new piece of domestic legislation.

Costs come from administrative burdens on companies (e.g. notifying the authorities about the possible presence of asbestos dust before commencing work) and from the additional practical obligations of putting the policy of the regulation into practice (e.g. providing employees who may come into contact with asbestos with relevant training). There may also be wider consequences arising from regulation though these are less often quantified; benefits to groups other than businesses tend to be less often estimated.

In a study of impact assessments, Open Europe estimated that the cost to the economy of the 100 “most burdensome” EU regulations that
could be analysed was £33.3 billion a year. The associated benefits were estimated as £58.6 billion a year in total, but Open Europe claimed that certain of the largest of these regulations had had their benefits vastly over-stated. The individual measures with the highest recurring costs were the UK Renewable Energy Strategy (£4.7 billion a year), the Capital Requirements Directive IV package for banking (£4.6 billion a year) and the Working Time Directive (£4.2 billion a year).91

A sense of the costs solely from more recent EU regulation can be found in the UK impact assessments checked by the independent Regulatory Policy Committee. In 2013 and 2014, they found that £1.6 billion per year in net costs to business – costs minus benefits – came from two of new pieces of regulation, the Alternative Investment Fund Managers Directive and the Bank and Recovery Resolution Directive, which were introduced to protect against financial systemic risk. Other EU measures led to an estimated total of £730 million per year in net costs on UK business, including £400 million from the Air Pollution from Shipping Directive.92

The CBI have pointed to the negative effects on business of EU legislation, both individually and in total:

… the impact of poorly thought-out and costly EU legislation is a major issue for businesses: 52% of businesses believe that, were the UK to leave the EU, the overall burden of regulation on their business would fall. Areas where UK firms are frustrated with EU regulation include labour market regulation, highlighted by nearly half of businesses as having had a negative impact – with particular frustrations around the Temporary Agency Workers Directive and Working Time Directive.93

According to the Federation of Small Businesses, regulations on employment, health and safety and data protection are said to be particularly burdensome for small businesses.94

It is worth noting that EU-level rules also create benefits for British businesses, for example by removing barriers and creating common standards. In November 2013, the CBI said that:

Competitive and respected EU rules can also open up new markets to UK firms without having to duplicate standards as other regions often design their own rules around EU benchmarks. Despite frustrations, over half of CBI member companies (52%) say that they have directly benefitted from the

91 Open Europe, Top 100 EU rules cost Britain £33.3 billion, 16 March 2015. See other sections of this briefing paper for more detailed discussions of individual policy areas.
92 Regulatory Policy Committee, Securing the evidence base for regulation: Regulatory Policy Committee scrutiny during the 2010 to 2015 parliament, March 2015. Note that these figures only cover impacts that have been checked by the Regulatory Policy Committee, that have an implementation date from 1 January 2013 onwards and that were submitted for scrutiny after October 2012. They do not include “gold plating”, where the UK government goes beyond minimum EU requirements when implementing European legislation.
A separate section of this briefing paper discusses EU influences on employment law.
introduction of common standards, with only 15% suggesting this had had a negative impact. 95

Reducing the burden

There are efforts to reduce business burden, some driven by the UK Government and others led within the EU. For example in October 2013 the UK Government’s EU Business Taskforce published a report which contained 30 recommendations addressing particular barriers to overall competitiveness. A year later, a third had been implemented, “saving UK businesses around £100 million a year, preventing additional costs of at least £100 million a year and banking one-off savings to firms of another £40 million.” 96

The European Commission’s work to “simplify and reduce regulatory costs while maintaining benefits” has stepped up in recent years, for example with a programme of “screening the entire stock of EU legislation on an ongoing and systematic basis to identify burdens, inconsistencies and ineffective measures and [identify] corrective actions”. 97 The Commission claim that administrative burdens for businesses was reduced by a third in 13 priority areas between 2007 and 2012, leading to savings of €41 billion. In 2016, planned actions include work to:

• simplify rules and reduce regulatory burdens in areas like renewable energy and VAT;
• follow up on the results of evaluations in areas like fuel quality and health and safety at work;
• evaluate regulations in the areas of consumer protection cooperation and telecoms to assess whether they remain fit for purpose. 98

The UK has said it would like to see more action in this area. In his November 2015 letter on a new settlement for the UK to Donald Tusk, President of the European Council, the Prime Minister said that “for all we have achieved in stemming the flow of new regulations, the burden from existing regulation is still too high. So the United Kingdom would like to see a target to cut the total burden on business.” 99 In February 2016, Donald Tusk proposed that “progress in simplifying legislation and reducing burden on business” be regularly assessed “so that red tape is cut”. 100

Withdrawal

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96 BIS Press Release, Hancock hails boost to economy as UK cuts EU red tape, 6 November 2014.
98 European Commission, REFIT: Making EU law lighter, simpler and less costly, January 2016.
99 Prime Minister, A new settlement for the United Kingdom in a reformed European Union, 10 November 2015.
100 Letter by President Donald Tusk to the Members of the European Council on his proposal for a new settlement for the United Kingdom within the European Union, press release, 2 February 2016.
The single market was itself established through a vast legislative programme to remove technical and legal barriers to trade, and current models of access to the single market involve acceptance of associated EU law to some degree, often without a say in shaping it. There is more generally a trade-off between national sovereignty and the sort of integration and harmonisation necessary to achieve completely free trade.

If the UK withdrew completely from the EEA, and shunned bilateral negotiation on access to the single market, it would be free to regulate largely as it saw fit. Because the Government would undoubtedly decide to retain the substance of at least some EU law, and because the costs of EU regulations are (at least partially) offset by benefits, the costs of regulation given above are emphatically not equivalent to the economic benefit of withdrawal. Those in favour of withdrawal, however, argue that the UK would be better able to balance the costs and benefits of regulation according to its own domestic priorities; and that it would be easier to amend the regulatory regime in response to changing circumstances. However, businesses that export to the EU would still have to comply with many EU product standards.

The argument over the effect of withdrawal in this context, then, boils down not to the size of the ‘burden’ on businesses, but to whether the benefits of having a more tailored and flexible national regulatory regime outweigh the loss of access to the single market that may come with pursuing an independent agenda.

3.5 Restructuring and Insolvency

The EU Regulation on insolvency proceedings (EC) 1346/2000 (known as the ‘Insolvency Regulation’), came into force on 31 May 2002. On 20 May 2015, the European Parliament approved the new European Insolvency Regulation (EIR) in the text adopted by the Council at first reading on 12 March 2015. This marks the end of a revision process which started with the Commission proposal of 12 December 2012 (COM/2012/744 final). The recast Regulation will apply to insolvency proceedings commencing on or after 26 June 2017 and will have direct effect in all member states (other than Denmark).

The current Insolvency Regulation established procedural rules on jurisdiction and applicable law in relation to insolvency proceedings. The aim is to facilitate the mutual recognition of cross-border insolvency proceedings in EU Member States and to deter parties from ‘shopping’ around within the EU for the most beneficial insolvency proceedings. It is important to note that the Insolvency Regulation does not harmonise substantive insolvency law between EU member states.

If the UK left the EU, then the ‘Insolvency Regulation’ would no longer automatically apply to the UK. What this would mean for the treatment of UK insolvency proceedings in the courts of the remaining Member States (and the treatment of EU insolvency proceedings in the UK courts) would depend on the approach taken. One option may be for the UK to adopt a similar regime to the current Insolvency Regulation,
but to achieve this the Government would need to come to agreement with the EU. A second option may be to rely on other mechanisms already in place in English law, intended to assist cross-border insolvency proceedings outside the EU. Notably, the ‘UNCITRAL Model Law on Cross-Border Insolvency’ has been adopted in national law in the UK as well as in other jurisdictions such as Australia, the US, and some EU Member States.

3.6 Public procurement

Much UK public procurement is regulated by EU rules, which are set out the core European treaty, in EU directives and in UK regulations that implement the directives. These rules are controversial because they are often seen as overly bureaucratic and because they limit the ability of public bodies to ‘buy British’. They do, however, offer UK firms the opportunities to supply the public sectors of other countries, as well as making it easier for the UK public sector to reach a wider range of potential suppliers, potentially increasing value for money in its purchases.

In practice, the extent of direct cross-border public procurement is limited. An estimated 1.3% of the value of larger UK public sector contracts was awarded directly abroad in 2009–2011. Some 0.8% of the value of larger public contracts secured by UK companies was directly from abroad.¹⁰¹

Alternatives and withdrawal

At present, the EU rules that apply to public procurement in the UK also apply to other EEA countries, under the EEA agreement. Switzerland is subject to a separate arrangement.

If the UK were to leave the EU and the EEA, it would need to decide whether it wanted agreements with other countries to mutually open up their public procurement markets. One way of doing this would be to participate as an individual country in the WTO’s General Procurement Agreement (GPA) for certain goods and services. However, this would mean that the UK had to allow suppliers in other countries to bid for UK public procurement opportunities and it would have to follow certain procedures in its procurement processes – potentially doing away with some of the reduction of burden that could follow from no longer having to apply EU rules.

3.7 Financial services

Background

¹⁰¹ Source: Study for European commission, DG Internal Market and Services, SMEs’ access to public procurement markets and aggregation of demand in the EU, February 2014.

Note that figures are for direct cross-border procurement only, where the single contractor or a leader of a joint bid is located in a different country. They are also restricted to procurement over certain values, where the EU procurement directives apply.
A huge amount of existing financial services regulation is derived from the EU. Because of its size and influence, the UK has frequently led reform of financial services, particularly since the financial crisis, with retrospective checking for alignment with EU requirements. It is likely therefore that a significant amount of this legislation would remain post-withdrawal, though not necessarily in the same form or to the same extent. There remain a large number of initiatives currently being discussed at EU level, notably the Capital Markets Union and a wide review programme of the workings of the roughly 40 measures passed but only now being implemented. All of these will have an impact on the UK.

An alternative relationship?

There are various different models of interaction between non-EU Member States and the EU and it is not obvious which of these models, if any, would apply. A possibly informative comparator is the relationship between Switzerland and the EU.

Financial services trade is an area that could be particularly affected by a ‘Swiss’ approach. Currently, non-EEA financial services providers must generally establish a subsidiary or branch in the EU in order to provide cross-border services. The precise requirements are currently a matter for national regulators in individual Member States, but developments in EU-level financial regulation, and in particular the forthcoming implementation of the Markets in Financial Instruments Directive II (MiFID II), due to come into effect in January 2017, make the provision of financial services to the EU from outside the EEA increasingly difficult. A non-EU firm will still be able to incorporate an EU subsidiary, as now, but new rules will apply to the provision of services into the EU or through an EU branch. The new rules do not, however, prevent a non-EU firm from providing services to EU clients or transacting with EU counterparties at the “own exclusive initiative” of a prospective EU client/counterparty.\(^\text{102}\) However, the requirements for registration, according to a briefing note by KPMG, will be “strict and difficult to fulfil”.\(^\text{103}\)

The study *Switzerland’s Approach to EU Engagement* notes that, to date, the Swiss have largely circumvented any disadvantages caused by non-membership by establishing subsidiaries within the EU, most notably in London, and where problems have arisen, they have benefited from a degree of EU ‘goodwill’. The study agrees that new EU financial regulation could put the sector under pressure:

> The prevailing situation now seems under threat, as the Swiss financial sector faces tougher EU rules on third country operations. These can be discriminatory. MiFID II is seen as creating new barriers for Swiss firms by forcing more of them to open (larger) subsidiaries in the EEA and to obtain authorisation from an EEA Member State in order to gain an ‘EU passport’.


\(^\text{103}\) KPMG; *Provision of services by financial intermediaries from third countries in EU financial markets regulation*, May 2015.
Hence, once the new EU legislation is fully in force and the four new supervisory agencies operational (the European Banking Agency, the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority and the European Systemic Risk Board), the problem for Swiss-based financial institutions will be two fold. First, to access the EU market, an equivalence certificate is needed. To obtain this, the Swiss authorities must demonstrate that not only are they able to supervise their own, but that they can also control EU-based businesses. Second, there are at least 20 different equivalence requirements in place, due to the (sub) sector specific approach of EU regulation. Both factors make obtaining equivalence a burdensome process.

Hence, the financial industry in particular will be faced with a choice of fully adapting to EU standards, once they are in place, or simply being shut out of the EU market. The ‘letterbox’ provision in AIFMD, according to which hedge funds have to locate significant management functions in the EU, might have similarly far-reaching consequences. If Swiss firms can no longer provide cross-border services into the EU, this could be very damaging in terms of job losses, decreasing tax revenue and prestige. For example, unofficial estimates from the Swiss banking sector speak of up to 29,000 jobs that could be lost in this way.104

Were it to withdraw from the EU, the UK might be in the position of participating in setting the new rules and negotiating a position to operate outside them. This would give the UK a different perspective from that of the Swiss, and given London’s enormous financial market, possibly a greater degree of ‘clout’. The study above notes “Swiss relationships with the EU are not a formal model and the Swiss approach does not lend itself to being readily replicated”.

**City opinion**

Majority opinion of City firms is that the UK should remain within the EU. TheCityUK – a representative body of a range of London financial firms – said in a recent report:

> Given this environment, the new Commission’s strategy for a Capital Markets Union in Europe is highly significant and we strongly welcome it. This is a strategy which is in the vital interests of all twenty eight Member States. We believe there can be no question of opt-outs or exceptionalism. On the contrary, the City as Europe’s financial centre has a central role to play in working with the authorities both in Brussels and with the Member States to achieve a single capital market. London’s capital market is a European asset that benefits the whole EU.105

TheCityUK accept that there is a long way to go and that for a real single market in capital to exist, some surrendering of national control is inevitable:

> Much of the work required to fully realise a Capital Markets Union will be detailed and technical. For example, it will involve working to reduce the extent to which bankruptcy laws and procedures differ from one Member State to another. We are under no illusions about the complexity of the challenge: but we are

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104 University of Kent, *Switzerland’s Approach to EU Engagement: a financial services perspective*, April 2013.

convinced of its overwhelming importance. It will take many years to fully develop capital markets in Europe. There will be no overnight transformation of Europe’s growth prospects but the achievement of a single capital market would make the financial system more resilient in the event of another crisis. And there will be important policy decisions to be reached: it is inevitable that a real single capital market will need strong regulatory coordination at the EU level.106

In written evidence to the Parliamentary Commission on Banking Standards, Goldman Sachs and JPMorgan (as overseas investors) both noted the importance of EU membership to the UK financial services industry:

We believe that a key risk to London's retaining its status as a financial hub is an exit by the UK from the European Union. In common with financial institutions across the City our ability to provide services to clients and engage in investment activities throughout Europe is dependent on the passport that London-based firms enjoy to operate on a cross-border basis within the Union. If the UK leaves, it is likely that the passport will no longer be available, thereby forcing firms that wish to access EU markets to move their operations to within those markets.107

And:

We value the flexibility London offers as a platform for access to the single market in a variety of formats. Our trading activity in London benefits from an EU passport across the EU.108

Just after the General Election result became clear a representative of the City of London commented in the Financial Times that “None of the alternatives to EU membership look particularly palatable”.109

3.8 Taxation

Taxation is very largely a Member State competence. The potential implications of the UK lying outside the EU would be less significant for taxation compared with other policy areas.

The major exception to this generalisation is indirect tax: primarily VAT – for which there is a substantive body of EU law establishing common rules across Member States – and, to a lesser extent, excise duties. It has long been recognised that the harmonisation of indirect taxes across Member States is an essential element to the achievement of an effective single market. Unlike most internal market measures, which use qualified majority voting, the harmonisation of taxation is decided by unanimity. The consequences of the EU’s shared competence in indirect tax is most frequently discussed in the context of the UK’s limited discretion in setting the rates of VAT on individual goods and services. In addition many commentators have raised concerns about the UK’s ability in the future to maintain its existing range of VAT reliefs (such as the zero rates of VAT which apply to food and children’s

107 Written evidence to Banking Standards Commission.
108 Ibid.
Exiting the EU: impact in key UK policy areas

clothes) from any further harmonisation of VAT law. However, the relative importance of VAT to the Exchequer – accounting for around 17% of all government receipts – suggests that future governments would be unlikely to substantially increase these reliefs or abolish the tax, even while exit from the EU gave them this power.

There are no equivalent provisions with regard to other taxes, though all national legislation has to comply with the overarching provisions of the Treaty guaranteeing the free movement of goods, persons, services and capital across the single market and prohibiting discrimination. There is a substantive body of case law where the European Court of Justice has ruled that individual provisions of a Member State’s tax code fail this test. Member States’ powers to act in relation to taxation must also be exercised in accordance with state aid rules.

Finally, there are a number of EU instruments relating to administrative cooperation to exchange information and help tackle tax evasion. In the latter case it seems likely that, if outside the EU, the UK would seek to maintain some form of bilateral agreement akin to these provisions, given the growing consensus between governments that there is a very important international dimension to taxing multinational corporations fairly and effectively tackling tax avoidance.

In July 2013 the Coalition Government published its report on the respective powers of the UK and the EU with regard to taxation, as part of its Balance of Competence Review. This report found that “respondents and interested parties were content with the current balance of competence on taxation, taking account of the protections offered by unanimity voting. Whilst individual respondents suggested areas where existing measures could be updated to reflect modern business practice and development, no respondents identified any major gaps in the existing tax legislation.”

Some respondents to the review cited proposals for an EU-wide financial transactions tax as an area “where they questioned the appropriateness and utility of EU-level action.” The European Commission had proposed an EU-wide tax on financial transactions in September 2011. As this failed to attract unanimity, in January 2013 eleven countries, excluding the UK, agreed to pursue this option on a smaller scale. Negotiations have continued, although there has never been any question of the UK having to take part.

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110 This issue is discussed at length in, VAT: European law on VAT rates, Commons Briefing Paper SN2683, 25 November 2015.
111 VAT receipts are projected to be just over £111 billion in 2014/15. Public sector receipts are set out in table 4.6 of the Office for Budget Responsibility, Economic and Fiscal Outlook, Cm 9153, November 2015.
112 This issue is discussed at length in, Corporate tax reform (2010-2015), Commons Briefing Paper SN5945, 12 June 2015 (see section 5.3)
114 For more details see, The Tobin tax: recent developments, Commons Briefing Paper, SN6184, 15 May 2014. See also, PQ22411, 18 January 2016.
Details of the areas of EU competence in taxation are given on the site of the Commission’s Taxation & Customs Union Directorate.115

115 European Commission, EU Tax Policy Strategy [accessed 20/1/2016]. The site also provides a full list of EU tax legislation.
4. Employment

Introduction

An EU exit could foreshadow significant change to UK employment law, much of which flows from Europe. A post-withdrawal government would face conflicting pressures. On the one hand, it would face pressure from employers’ associations to repeal or amend some of the more controversial EU-derived employment laws, such as the Working Time Regulations 1998 and Agency Worker Regulations 2010.116 On the other, trade unions would probably strongly oppose any perceived rowing back on rights originating from the so-called ‘Social Chapter’.117 The only relatively clear conclusion that can be drawn at this stage is that withdrawal from the EU would allow for change to the following areas of employment law, which stem largely from Europe: annual leave, agency worker rights, part-time worker rights, fixed-term worker rights, collective redundancy, paternity, maternity and parental leave, protection of employment upon the transfer of a business and anti-discrimination legislation.118

Over the past 40 years UK governments have pursued varying policies regarding EU employment law. In the 1950s (under the Treaty of Rome) employment law was seen as a national responsibility, with Europe adopting a non-interventionist approach.119 This changed in the 1970s with the beginnings of a European social policy, of which employment law formed a part. At that stage, employment legislation was founded on the EC’s power to create a common market, rather than on any specific power to legislate in the social field.120 The Thatcher Government of the 1980s sought to limit the development of an EU social policy; it advocated deregulation of the labour market and played a key role in preventing the adoption of new laws, including the draft Vredling directive on the consultation of employees in corporate decision-making.121 By the 1990s a more ambitious social policy resulted in proposals to expand Europe’s social competence. These proposals became provisions of the 1992 Maastricht Treaty and led to what some have described as “the first clear example of a two-speed Europe”.122 In the face of strong opposition from the UK, the proposals were removed from the main body of the Treaty and placed in a separate ‘Social Chapter’ which did not apply to the UK.123

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118 ‘Europe’s legacy in UK workplaces is not to be sniffed at’, Guardian, 24 January 2013.


120 For example: Directive 75/117/EEC; see Defrenne v Sabena (No 2) (1976) C-43/75.

121 HC Deb 31 July 1984 cc203-4.


Government’s support for this opt-out was heavily criticised by the Labour Party, which pledged in its 1992 and 1997 manifestos that a Labour government would opt back in.\textsuperscript{124} Following Labour’s election in May 1997, the UK agreed to sign the Social Chapter and the Agreement on Social Policy was incorporated into the Treaty of Amsterdam, providing an express legal basis for EU employment law.

**Balance of Competences Review**

The Department for Business, Innovation and Skills (BIS) investigated the impact on the UK of EU employment legislation. The report was published in July 2014, and noted mixed views on EU employment and social competence.\textsuperscript{125} Employee representatives were supportive of an active EU social policy, whereas business representatives were more ambivalent. Businesses saw EU competence in this area as not altogether undesirable, given potential savings in transnational compliance costs, but criticised the tendency of EU legislation to be “solely focused on further regulation and tightening or extending existing law, and not upon its impact upon jobs, growth and businesses”.\textsuperscript{126} The review found somewhat conflicting evidence as to whether this approach would continue. On the one hand, it observed that the European Council had emphasised the link between economic and social policy, and noted:

... the French Minister for European Affairs and his German counterpart were recently quoted as saying that ‘we shall, of course, be very vigilant to ensure that the social dimension is not the poor relation of European integration’.\textsuperscript{127}

On the other, it discussed Professor Catherine Barnard’s expert legal evidence to the review, which indicated that the EU is showing signs of a new, more deregulatory approach:

Barnard cites the response to the Eurozone crisis as marking a new EU trend towards deregulation of national labour standards. She argues that this is demonstrated by the fact that the Memoranda of Understanding that countries in receipt of a bailout have signed up to include reforms of national labour law systems.\textsuperscript{128}

The report summarised that it:

... remains to be seen what the focus of these processes will be and whether the recent push for deregulation of national labour laws will have an impact on the broader EU agenda in this field. However, what is clear is that there remain forces within the EU who want to see the Commission adopt an active social agenda looking forwards.\textsuperscript{129}


\textsuperscript{126} Ibid., p67.

\textsuperscript{127} Ibid., p68.

\textsuperscript{128} Ibid.

\textsuperscript{129} Ibid.
5. Agriculture

5.1 Common Agricultural Policy

Departure from the EU would mean departure from the Common Agricultural Policy (CAP) and its subsidy and regulatory regimes. This would have a significant impact. The CAP represents almost 40% of the EU budget and the largest element of the UK’s EU costs.

The CAP gives direct support to UK farmers through the Basic Payment Scheme (Pillar 1 funding) and the wider rural economy through Pillar 2 funding for Rural Development Programmes. The Table below shows how the total UK CAP allocations for 2014-2020 have been allocated across the UK.

<table>
<thead>
<tr>
<th></th>
<th>Pillar 1 (€ million, approx. non-inflation adjusted)</th>
<th>% share</th>
<th>Pillar 2 (€ million, approx non-inflation adjusted)</th>
<th>% share</th>
</tr>
</thead>
<tbody>
<tr>
<td>England</td>
<td>16,421</td>
<td>65.5</td>
<td>1,520</td>
<td>58.9</td>
</tr>
<tr>
<td>Northern Ireland</td>
<td>2,299</td>
<td>9.2</td>
<td>227</td>
<td>8.8</td>
</tr>
<tr>
<td>Scotland</td>
<td>4,096</td>
<td>16.3</td>
<td>478</td>
<td>18.5</td>
</tr>
<tr>
<td>Wales</td>
<td>2,245</td>
<td>8.96</td>
<td>355</td>
<td>13.7</td>
</tr>
<tr>
<td>Total UK allocation</td>
<td>25.1 billion</td>
<td>9.66</td>
<td>2.6 billion</td>
<td>13.7</td>
</tr>
</tbody>
</table>

Note: Figures are in nominal terms (i.e. they have not been adjusted for inflation over the period).

Source: UK Government, November 2013.130

The UK Government stance in the CAP reform discussions for 2014-2020, and that indicated for post-2020, give some indication of the principles and overall approach the UK Government might adopt given a free rein in agriculture.

The UK has sought cuts in the overall EU budget supporting the CAP and has made it clear that it wants to see a more market-orientated policy with competitiveness at its heart, to ensure that farmers can prepare for a future without income support.131

It has also ensured that there is flexibility for the UK to effectively devolve CAP arrangements across the UK administrations. However, this devolution brings its own complications, as currently the Devolved Administrations shape their own CAP implementation decisions within the EU rules and have chosen very different paths. How would the UK

131 HC Deb 25 January 2012 c 250W.
approach farming policy without common EU rules as the overall working framework for the UK Government and the Devolved Administrations?

**Rural Development Programmes**

The EU CAP subsidies under Pillar 2 relate to payments for rural development programmes which benefit the wider rural economy.

Across the UK, a large component of these programmes is directed at agri-environment schemes where farmers receive additional payments for practices which especially protect and enhance the environment. It is very likely that these would continue in some form across the UK outside a CAP regime as they are well-established mechanisms to promote environmental policy objectives.

The RDP programmes in the UK also support the wider rural economy with priorities relating to tourism, rural broadband and SMEs. The Pillar 2 funding will be supporting various growth programmes across the UK for 2014-2020 with little additional Exchequer funding. For example, the £3.5bn RDP for England has around 15% Exchequer funding.132 Thus, without CAP funding and a required RDP approved by the EU, it is not clear how much specific support would be prioritised and directed to rural areas.

**A reduction in subsidies?**

Leaving the regime would probably reduce farm incomes as CAP subsidies form a significant part of most farm incomes.133 Previously stated CAP reform positions indicate that UK Government and Devolved Administrations may be unlikely to match the current levels of subsidy and/or would require more ‘public goods’ in return for support, e.g. in environmental protection, which the UK Government views as the “overarching market failure in this sector”.134

However, it might also bring wider benefits to the economy as a whole, as the UK would be free to negotiate bilateral trade deals with countries outside the EU and at the WTO, and would have more flexibility on pricing.135 The benefits would depend on the terms on which the UK joined a different trade area, if it chose to do so.

However, economist, Professor Patrick Minford told the House of Commons Foreign Affairs Committee in November 2015 that the Brexit debate was focussing too much on what trade agreements the UK would be able to forge outside the EU, when actually avoiding such

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133 For example, Defra, *Total Income from Farming 2014 - 2nd estimate United Kingdom*, 26 November 2015 shows that subsidies made up around 54% of UK Total Farm Income in 2014 and HM Government, *Review of the Balance of Competencies between the United Kingdom and the European Union: Agriculture*, Summer 2014, paras 2.34 -2.38, indicted that in 2012 this figure had been as much as 68%.


135 BIS, Government Office for Science, *Should Britain withdraw from the EU?* Sigma Scan 2.0, 21 January 2012.
protectionist approaches and capitalising on the UK’s competitiveness would be more advantageous.\textsuperscript{136} He advised the Committee that it is “infinitely preferable to be in the global market under conditions of free trade”.\textsuperscript{137}

He also told the Committee that he had simulated the impacts of leaving the EU and on day one there was an 8% drop in the cost of living because of the move from EU prices to world prices.\textsuperscript{138}

\textbf{New Zealand}

Many look to the example of New Zealand for an example of successful farming with minimal subsidy. Agricultural policy was reformed in the mid-1980s in response to budget problems and subsidies removed. The country retained 99% of its farms, despite predictions that 10% of farms would go bankrupt, herds were consolidated and pesticide use declined by 50% as farms introduced efficiencies. Almost all domestic prices are now aligned with world market prices and the overall impact has been seen as positive and improving the country’s competitiveness.\textsuperscript{139}

\textbf{Farmers’ concerns}

The National Farmers’ Union’s (NFU) main concern is how far the UK Government would support farming to ensure it remains competitive following an EU exit. The NFU has said that farmers would accept a reduction in farm subsidies, as long as it was across the board i.e. UK farming was not disadvantaged compared to its EU competitors.\textsuperscript{140}

The NFU is also concerned about how the UK would seek access to the Single Market and seasonal labour. The Union has highlighted that EU withdrawal would require very careful transitional arrangements to ensure that the uncertainty of future incomes does not lead to problems with lending and succession of ownership.

The NFU is currently undertaking a piece of work that will show the impact of Brexit on UK farming through three different scenarios. It is also generally seeking to have regular local meetings with members to help them make an informed decision on the EU “In or Out” debate.\textsuperscript{141}

Current NFU surveys show that 50% of their members would vote to stay in the EU, 25% would vote to exit, and 25% are undecided.\textsuperscript{142}

\textsuperscript{136} Evidence to the House of Commons Foreign Affairs Committee, \textit{Costs and benefits of EU membership for the UK’s roles in the world}, HC 545, 3 November 2015.

\textsuperscript{137} Evidence to the House of Commons Foreign Affairs Committee, \textit{Costs and benefits of EU membership for the UK’s roles in the world}, HC 545, 3 November 2015.

\textsuperscript{138} Wales online, \textit{Leading Welsh economist says EU funding is “chicken feed” compared to the gains waiting to be made}, 3 November 2015.

\textsuperscript{139} Environmental Performance Index, \textit{Removal of Agricultural Subsidies in New Zealand}, 14 June 2014.

\textsuperscript{140} NFU online, \textit{EU debate: Raymond stresses need to guarantee competitiveness}, 13 January 2016.

\textsuperscript{141} Ibid.

\textsuperscript{142} NFU must remain ‘apolitical’ about Europe vote (Opinion piece from Guy Smith, NFU Vice-President, Farmers Weekly, 15 January 2016.}
EU CAP simplification process
The current EU Agriculture Commissioner, Phil Hogan (Ireland) made CAP simplification a priority in 2015. It is now an ongoing process and, having implemented some early changes, the Commission will be presenting a further tranche of measures before the summer of 2016 to apply in 2017. Thus, a simplification agenda will be rolling into preparations for the next CAP reform negotiations 2021-2027 as preparations usually start 4-5 years ahead.

Pesticides Approval
The regulation and licensing of pesticides has a major impact on agricultural and horticultural businesses and is undertaken on a pan-European basis, sharing the burden of evaluating scientific evidence. However, the process still requires a lot of UK ‘machinery’ which could be used if the UK had full control over its own pesticide use.

This process has recently received a great deal of attention because of the European Commission’s introduction of a ban on a number of the most commonly used neonicotinoid insecticides because of their negative impact on bees. The UK Government does not agree that the scientific evidence supports the restrictions but the Commission had sufficient support to introduce them (bookmark1). These restrictions are currently being reviewed by the European Food Safety Authority (EFSA) by 31 January 2017. The NFU has raised concerns that UK crop production is ‘flatlining’ because EU regulation is steadily reducing the range of crop protection products that they can use.

The rules for pesticide controls apply across the EU and allow Member States to authorise individual pesticide products following a national risk assessment process. The UK’s pesticide authority is the Health and Safety Executive’s Chemicals Regulation Directorate. The House of Commons Environmental Audit Committee has described the system for approving pesticides as “opaque”.

Before a pesticide can be used in the EU it must be scientifically evaluated by its manufacturer. The European Food Safety Authority (EFSA) evaluates the scientific evidence on the impact of the active substance to human health and the environment and on its effectiveness against pests. The conclusions are provided to the EU Commission which proposes approval or non-approval. This recommendation is subject to a vote by all Member States in the Standing Committee on the Food Chain and Animal Health. Pesticide approvals can be reviewed in the light of new scientific evidence. Once listed on the approved substance list the pesticide must gain consent at a national level.

GM crops

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143 European Commission Press Release, Commissioner Hogan proposes a fairer and more transparent penalty system for direct payments, 19 January 2016.
144 HC Written Answer 24715, 3 February 2016.
145 NFU Online, A healthy harvest? Vice-President’s blog, 1 June 2014.
146 HC 668, Pollinators and Pesticides, Seventh report of Session 2012-13, House of Commons Environmental Audit Committee, p.3.
The UK regulatory process for approving GM crops is also part of an EU-wide system of evaluation and authorisation for Genetically Modified Organisms (GMOs) based on scientific evidence and evaluation. However, the final decision on authorisation rests with Member States in a vote which somewhat politicises the process, as such votes can reflect the Member State’s overall position on GM rather than the specific authorisation being considered.

Since 1990, only 3 GMOs have been authorised for cultivation in the EU and only one product (MON810 maize) is currently authorised. It is cultivated in five Member States (not the UK) on an area representing only 1.5% of the total area of maize production in the EU. This has implications for EU trade and innovation.

The Commission has acknowledged this shortfall in the authorisation process and has been seeking to address it. For example, since April 2015 Member States have had more discretion to restrict or prohibit the use of GM crops in their own jurisdiction, even if EU-authorised, without having to vote against the whole authorisation of a particular GM crop to achieve this. The EU Commission has also reviewed the whole decision-making process for authorising GMOs and has proposed that this approach should also be taken for GM food and feed (which is more widely authorised).147

However, in October 2015, the European Parliament voted against these proposals on the grounds that they were unworkable and could lead to border controls between countries that disagree on GMOs, which would affect the internal market. The Parliament has asked the Commission to come forward with new ideas.148

**Plant and Animal Health and Food Safety**

The Competency Review noted that an extensive body of EU legislation on animal health, veterinary medicines, medicated feeding stuffs, animal welfare, food and feed safety and hygiene, food labelling and compositional standards has developed. This is mainly to facilitate trade and to provide the EU with comprehensive disease and food safety alert systems.149

Many of these areas have international standards, food for example, where an EU exit would not greatly change standards. Some also already allow Member States to maintain stricter rules if they have them: e.g. UK slaughter rules and animal welfare. However, Member States also share expertise, intelligence and resources to support these systems. Without access to such resources the UK would have to replicate some of the services currently provided or seek to participate in them on other terms.

147 COM (2015) 176 final, 22 April 2015, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Reviewing the decision-making process on Genetically Modified Organisms (GMOs).

148 European Parliament News, Eight things you should know about GMOs, 27 October 2015.

6. Common Fisheries Policy

The basic principles of the Common Fisheries Policy (CFP), including that fisheries are a European matter, were agreed in 1970 prior to UK accession. The policy was intended to address the mobile nature of the resource, to protect local fishing grounds, and to share resources within adjacent seas fairly. This has given rise to one of the more controversial areas of European policy.

When the UK joined the EEC in 1973, the Members agreed to exclusive national fishing rights to 12 nautical miles, unless another Member State could prove historic fishing activity between 6 to 12 miles. As a result, UK fishing fleets have access to some fishing grounds within 6-12 miles of four other Member States, and five Member States have access to fishing grounds within 6-12 miles of the UK. The late 1970s saw a significant change in international law with the creation of Exclusive Economic Zones (EEZs) within 200 nautical miles of coastal countries.

Previously, seas further than 12 miles from the coast were considered high seas, and not under the control of anyone. This extended EU competence for fisheries to 200 miles off the coast and it applied the principle of equal access to the area.

In 1983, after seven years of negotiations, it was agreed that fisheries in the EEZ would be shared on the basis of "relative stability", which aimed to:

Prevent repeated arguments over how quotas should be allocated, and to provide fishers with an environment which is stable relative to the overall state of the stock in question.

In effect, this shared out fisheries according to where countries were actually fishing from 1973 to 1978. Therefore, the introduction of EEZs would not have dramatic consequences for any Member State. Relative stability also gave certain fishing-dependent communities in the UK and Ireland special protection in the form of additional quotas that would be taken from other Member States in the event of quotas falling below certain levels. In retrospect it could be argued that this situation disadvantaged the UK, which might have asserted control over a significant proportion of the EU's catch through enforcement of a 200-mile EEZ. However, the UK government may have accepted the terms because:

- enforcing the EEZ might have led to significant conflict with other Member States;
- enforcing the EEZ might have been incompatible with EU membership;
- the agreement had little effect on UK fisheries at the time;

153 “How we manage our fisheries”, European Commission, viewed 27 May 2015
154 ibid
155 HC Deb 16 December 2004 c1220W.
• some UK fishing communities were given special protections.156

A more detailed history of the CFP can be found in the House of Lords European Union Committee report The Progress of the Common Fisheries Policy published in 2008.

6.1 Effectiveness of the CFP

It is generally accepted that the CFP has failed to effectively manage fish stocks The House of Lords European Union Committee concluded in 2008 that 88% of EU stocks were over-fished—compared to a global average of 25%.157 The 2009 EU Commission Green Paper on reform of the Commons Fisheries Policy concluded that 30% of EU commercial stocks were being fished beyond biological limits. The commission also highlighted the impact of fishing immature stock. For example, 93% of the cod in the North Sea were fished before they could breed.

In the summer of 2014, the Government published “Review of the Balance of Competences between the United Kingdom and the European Union: Fisheries Report”. This concluded that the CFP “had failed in the past to achieve key objectives namely to successfully maintain fish stocks or provide an economically sustainable basis for the industry.”158

In addition to poor fish stocks, the policy also failed to reform the fishing industry. Most fishing fleets in the EU run losses or return low profits. These problems are related to chronic overcapacity in the sector. CFP programmes to reduce fleet capacity have only achieved reductions in capacity of about 2% per year, even though technological improvements to boats have translated to a 2-4% increase in fishing effort per year. As a result there has been little change in overall fishing capacity. Fishing effort remains two to three times the sustainable level.159

NGOs have been critical of Member States giving in to political pressures, leading to the protection of the short term interests of fishing industries over the long-term effective management of the stocks. According to World Wide Fund for Nature (WWF) European Ministers, including from the UK, have historically set fish quotas on average around 48% higher than the levels recommended by scientists.160

159 “A fleet for the future”, European Commission, viewed on 1 June 2015.
6.2 CFP reform, 2014-2020

The 2002 base regulation for the CFP required that a review of the CFP be conducted before the end of 2012. In 2009, the European Commission launched a wide-ranging public debate on the way EU fisheries were managed. The Green Paper on reform of the CFP outlined the challenges facing Europe's fisheries. On 13 July 2011, the European Commission presented its proposals for the reform of the CFP and, on 2 December 2011, it proposed a new fund for the EU's maritime and fisheries policies for the period 2014-2020: the European Maritime and Fisheries Fund (EMFF). These reforms aimed to put the CFP on a more sustainable footing.

Following on from extensive negotiations between Member States, on 1 January 2014, the reforms to the CFP were agreed. The reforms announced include:

- A ban on the wasteful practice of discarding edible fish (the discards ban);
- A legally binding commitment to fishing at sustainable levels; and
- Decentralised decision making, allowing Member States to agree the measures appropriate to their fisheries.

The ban on discarding in pelagic fisheries (such as mackerel and herring) took effect from 1 January 2015 and the ban on discarding in demersal fisheries (such as haddock, sole and plaice) on 1 January 2016. The ban will be fully implemented across all quota species by 2019.

6.3 Balance of competences fisheries report

The UK balance of competences fisheries review overwhelmingly concluded that the CFP had failed in the past to ensure economically and ecologically sustainable fishing across EU waters. However, it also reported that the recent CFP reforms have taken major steps to address the policy’s fundamental problems. Moreover, there was majority support for “some form of supranational management of fisheries due to the transboundary nature of fish stocks” while some preferred regional management. The report found:

- The current powers and objectives in relation to fisheries do not differ greatly from those in the Treaty of Rome establishing the European Economic Community (EEC), though the substance of the policy has changed significantly.
- There was conflicting evidence on the cause of declining fish stocks and landings since the UK’s accession to the EU and CFP.

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161 European Commission, “Green paper on reform of the common fisheries policy (CFP)’’ (22 April 2009).
Some attributed the declining fish stocks to the UK being part of the CFP, whilst others argued that the declining trend preceded UK accession to the EU and was a global phenomenon.

- There was majority support for some form transboundary management of fisheries given their shared and migratory nature in addition to support for the new regionalisation process. A small number of respondents supported a role for more Member State-level decision-making, particularly for the management of the inshore (0-12 nautical mile) area.
- There were concerns expressed with regards to the pace of decision making in the EU, and difficulties ensuring consistent interpretation and enforcement of EU legislation.
- There were possible benefits to be had from greater access to the high-quality fishing grounds surrounding the UK were it to leave the CFP. However, environmental NGOs and other experts in the field questioned how achievable these benefits would be given the shared nature of fisheries and the potential reduced strength of the UK’s negotiating position.
- The 2014-2020 CFP reforms were thought to have gone a long way in addressing the CFP’s failings and provided a constructive framework for future fisheries management. However, it was noted that the measures introduced were as yet unproven.\(^\text{167}\)

### 6.4 EU Exit

The failure of the CFP has led some to suggest that fisheries management would be more effective if the UK withdrew from the EU. It is impossible to say exactly what would happen to UK fisheries without knowing the full terms and wider political impacts of an EU withdrawal. However, many of the underlying issues that affect fisheries management would remain unchanged. Under the UN Law of the Sea Convention, to which the UK is a signatory, States are required to conserve and manage marine resources, including fisheries. They are “also required to cooperate to conserve and manage specific stocks, particularly straddling fish stocks and highly migratory species”. The trade-offs between conservation of stocks and supporting the fishing industry that have caused problems for the CFP would also still remain.\(^\text{168}\)

Within this context one of the main questions that would need to be decided if the decision was to leave the EU is whether the UK would allow access by foreign vessels to the UK EEZ. If it decided to do so, the UK would need to maintain a close working relationship with the EU to enable the monitoring of landings and to co-ordinate on wider regulation in the sector. It would also have to agree some kind of mechanism for agreeing catch limits.

The UK could decide to exclude foreign vessels and assume full responsibility for fisheries in the UK EEZ. In this case the issue of management of transboundary fish stocks would have to be addressed.


\(^{168}\) Agriculture and Fisheries, Brexit Seminar Series, All Souls College Oxford, 6 November 2015.
as would the potential loss of existing fishing rights for UK vessels outside the EEZ.

There would also need to be a negotiation between the UK Government and devolved administration on how fisheries would be divided.

Whichever approach was decided on the UK, as in other trade areas, would still in all likelihood have to comply with any EU import conditions and certification requirements to export fishery products to the EU, while having limited influence over what those requirements should be.
7. Environment

The environment and energy are two key areas of competence where either the EU or Member States may act. The environment was added specifically as a legal EU competence in the *Single European Act* of 1986, and energy in the Lisbon Treaty of 2008. However, the EU adopted many environmental measures before there was any specific legal base, in order to facilitate the operation of the common market.\(^{169}\)

The environmental principles enshrined in the Single European Act are now central to EU environmental law and provide that environmental action by the EU aims “to preserve, protect and improve the quality of the environment; to contribute towards protecting human health; and to ensure a prudent and rational utilization of natural resources”.\(^{170}\)

In addition, EU law provides that “preventive action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay... [and that] environmental protection... shall be a component of the Community’s other policies”.\(^{171}\) As a result, the environment is an area in which UK and EU law have become highly entwined. The effects of an EU-exit would depend on whether the UK decided to lower, raise or maintain current environmental requirements.

In some cases (e.g. the Birds and Habitats Directives, see below), it would be difficult for the UK to retreat too far from EU requirements because they were largely based on the UK’s long running legislative arrangements for protected areas and well-established Town and Country Planning restrictions on development in those areas. On animal welfare, too, the UK has generally adopted more stringent requirements than other Member States, with UK legislation dating back over 100 years. In other cases, EU law has driven or at least accelerated UK action, often initiated by Germany, Finland and Sweden (which are regarded as being more ‘environmentally progressive’). A key example is the *Urban Waste Water Treatment Directive*, best known for limiting the discharge of raw sewage into rivers and the sea. On air pollution, the UK has been in breach of *Air Quality Standards Directive* limits in some areas. The *Large Combustion Plants Directive* is currently being blamed for the closure of some older and dirtier fossil fuel fired power plants. The *Industrials Emissions Directive* is also likely to impact coal fired power stations which have to meet new nitrogen dioxide emissions standards by 2023 at the latest.

It is not clear whether a UK government would reverse EU standards if outside the EU. It would have more scope for changing environmental objectives in the UK and there would also be a less far-reaching judicial process to enforce the implementation of environmental policy and


\(^{170}\) Ibid.

challenges its interpretation. However, most contributors to the *Balance of Competences Review Environment and Climate Change report* thought it was “in the UK’s national interest for the EU to have a degree of competence in the broad areas of environment and climate change because of the advantages that this brings for the Single Market and environmental protection”. Despite this, there were concerns about extending this competence and whether the EU always complied with subsidiarity and proportionality.

### Environmental Leaders’ Open Letter

In January 2016, a group of eminent environmental policy-makers, academics, and advocates wrote an open letter to the Department for Environment, Food and Rural Affairs (Defra) Secretary of State, Liz Truss, stressing the importance of the UK’s EU membership for the environment. They included former Chair of the Environment Agency Lord Chris Smith and Professor Sir John Lawton former Chair of the Commission on Environment and Pollution. Sir John was also Chair of the Labour Government commissioned review of England’s wildlife sites and ecological network which was continued by the Coalition Government. This resulted in the report *Making Space for Nature* (September 2010) which fed into the Government’s 2011 Natural Environment White Paper – *The Natural Choice: Securing the Value of Nature*.

The open letter urged the UK Government to:

> “…continue to use our membership of the EU to strengthen environmental action including to continue to improve agriculture and fisheries policies, and to deal with growing threats like climate change and anti-biotic resistance.”

and highlighted that:

> “…EU co-ordination, legislation and policy has been critical to improving the UK’s environmental quality.”

> “…Higher European manufacturing standards for cars, lights and household appliances have lowered consumer energy costs, and stimulated business innovation.”

### House of Commons Environmental Audit Committee Inquiry

The Environmental Audit Committee launched an inquiry in October 2015 to assess the extent to which EU environmental objectives and policies have succeeded in tackling environmental issues in the UK. The aim is to inform the debate ahead of a referendum on EU membership. The Committee report is due to be published in early 2016.

The Committee did not focus on the implications of an EU exit. Instead it examined the merits and drawbacks of determining environmental policy at an EU level for the UK and looked at the implications of such

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174 Open letter to Liz Truss, Secretary of State for Environment, Food and Rural Affairs from environmental leaders as published by the Green Alliance, January 2016.
policies on the UK environment. Ministers did not comment in any
detail on the implications of an EU exit but did state that a lot of what
the UK did would probably need to continue if it were not part of the
EU. 175

Air Quality
EU legislation sets limits for a range of air pollutants and requires
Member States to have plans in place setting out how they will be met.
As part of this Member States were required to prepare adequate plans
to reduce NO2 to acceptable levels by 2010, or 2015 at the latest. The
UK failed to do so. Currently, legal limits for NO2 will not be met in 16
of the UK’s 40 air quality zones until after 2020, including Greater
Manchester and Leeds; in London, the limits will not be met until after
2025. The Government’s failure to meet NO2 targets led to a Supreme
Court unanimous judgement that the Government must submit new air
quality plans to the European Commission no later than 31 December
2015. The Government has now done consulted on and published a
new plan

The UK is not the only country struggling to meet these targets and the
air quality agenda has been strongly driven by the European
Commission rather than Member States. An EU exit would allow the UK
to relax air quality standards and review any deadlines for meeting
them. The UK is currently subject to EU infraction proceedings, so
exiting would also remove the threat of fines for non-compliance.
However, the increasing awareness in the UK of the broad range of
adverse health effects and increased mortality resulting from air
pollution exposure could make any substantial watering down of targets
politically sensitive.

Emissions Trading Scheme
The EU Emissions Trading Scheme (ETS) sets a decreasing cap for
emissions from energy intensive sectors, and allocates or auctions
emissions allowances (EUAs), which can be traded on the open market.
Phase II, which imposed reductions of 6.8% compared to 2005
emissions, ended in 2012. Phase III will run from 2013 to 2020, when
over half of allowances will be auctioned, and will set an overall
reduction in emissions of 1.74% per year compared to Phase II levels.
This will represent a 21% reduction by 2020 in emissions for all sectors
in Europe covered compared to 2005 levels.

The recession and over-allocation of allowances resulted in a collapse of
the price of EUAs. As a result the EU is taking several measures to
reduce the supply of allowances going forward, including removing
surplus allowances from the market. In the meantime, the UK
introduced a floor price for carbon in April 2013 by amending the
climate change levy to apply to fossil fuels used for energy generation,
which applies when the EUA price falls below a certain level. The

175 Oral evidence: Assessment of EU/UK environmental policy, HC 537, 20 January 2016
Q343.
projected increases in floor price were reduced in the 2014 budget and was set at £18 per tonne until 2020.\(^{176}\)

Revenue from both EUAs and the carbon floor price are retained by the Treasury, which could be viewed as an incentive to continue with both measures. The 2015 budget forecast receipts from EU ETS auctions of £0.3 billion in 2014-15 rising to £0.6 billion in 2019-20.\(^{177}\) The Carbon Floor Price expected revenue has now been reduced but it will still raise around £0.3 billion a year to 2017.\(^{178}\)

Leaving the EU would not automatically remove the floor price, as this is a UK measure; neither would it necessarily mean the UK would have to leave the EU ETS. If a market approach continues to be the favoured approach to reducing carbon emissions globally, then there are recognised benefits of being part of a bigger rather than smaller market. Nor is membership of the EU a prerequisite of participation: Switzerland is in negotiations to join the scheme, as was Australia until there was a change of government. Following the Paris Climate Agreement in December 2015, there is an added impetus for the expansion of emissions trading. The UK is directly involved in this process, with the announcement in January 2016 that UK government officials are working with China to ensure Chinese carbon cap-and-trade system is compatible with EU ETS.

**Habitats Protection**

The Commission has described the Habitats Directive as the “cornerstone of Europe’s nature conservation policy”.\(^{179}\) Its requirements can be a deal-breaker in small and large development projects that affect the areas it protects. Along with the Wild Birds Directive, it represents a significant EU environmental policy instrument and one which is not covered by the EEA Agreement.\(^{180}\)

The Directives provide for a network of Member State designated conservation areas across Europe relating to specified habitats and birds known as Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) respectively.\(^{181}\)

In the UK, SACs and SPAs correspond to our Sites of Special Scientific Interest (SSSIs). The Directive requires these sites to be suitably managed and protected by Member States, and certain assessments have to be carried out if there would be any significant impact on such a site from a proposed plan or project. If there would be, mitigation measures have to be put in place before plans or projects can proceed. If such measures are not possible, the project can only proceed if there are ‘Imperative Reasons of Overriding Public Interest’ (IROPI), and then

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178 Ibid.
180 Paper prepared for Friends of the Earth by Dr Charlotte Burns, University of York, *Implications for UK Environmental Policy of a vote to exit the EU*, 20 June 2013.
compensatory measures are required, such as the creation of an alternative habitat elsewhere. Meeting these requirements is often a major consideration in large infrastructure projects such as the High Speed Two rail network (HS2) and potential tidal barrage schemes, as well as smaller, localised development proposals.

In the UK the Directive has been transposed into national law by means of the *Conservation of Habitats and Species Regulations 2010* (the Habitats Regulations) and *The Conservation of Habitats and Species (Amendment) Regulations 2012*, which consolidate earlier legislation.

**EU Fitness Check of the Directives**

The European Commission is undertaking an in-depth evaluation of the Habitats Directive and the Birds Directives, as part of its Smart Regulation policy and its Regulatory Fitness and Performance Programme (REFIT). The review is due to conclude in the spring of 2016 and evidence gathering began in January 2015. The Commission will be assessing the potential for merging the Directives into a more modern piece of legislation, but it is not yet clear whether this is going to lead to any major changes in the detail of the Directives’ requirements.

The Royal Society for the Protection of Birds (RSPB) is among 100 organisations across the UK who are collaborating, along with international networks such as the European Environmental Bureau, to warn that this review is the “single biggest threat to UK and European nature and biodiversity in a generation”.

**UK implementation review**

The Coalition Government conducted an implementation review of the Habitats and Wild Birds Directives from November 2011 to March 2012. This found that implementation generally works well with minimal burdens whilst maintaining environmental integrity. It identified necessary improvements relating to facilitating nationally significant infrastructure projects, data sharing and quality, streamlining guidance and generally improving the customer experience.

A key outcome of the review was the establishment of the cross-government *Major infrastructure and Environment Unit (MIEU)* to help to quickly resolve any issues arising from the Directive at pre-application stage.

It is not clear how far the UK might withdraw from the Directive’s requirements if it withdrew from the EU because the UK has a heritage in this policy area and the UK Government has expressed ‘strong support’ for its aims. When the EU requirements were introduced, it was one of only a few Member States which already had a long

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182 HC Deb 29 January 2014 c.989.
183 Cloud Sustainability, European Commission to review Habitats and Birds Directive as viewed on 11 February 2015.
184 RSPB, Martin Harper’s Blog (Head of Conservation), Defend the laws that defend our nature, 12 May 2015.
legislative history of designating and protecting specific areas. The UK has a long history of wildlife protection and has had specifically designated areas for protection since 1949. Hence, although the Habitats Directive introduced some new concepts and higher protection levels for species, the UK’s existing legislative arrangements for Sites of Special Scientific Interest and Town and Country Planning already imposed specific management requirements and restrictions on development in protected areas. In this respect it was ahead of many Member States.

A number of Member States, including the UK, have been challenged domestically and in the EU Court of Justice regarding their interpretation of the Directive in the last 15 years. These challenges have usually been brought on grounds of alleged insufficient protection of wildlife under the Directive. UK cases have concerned the responsibilities of planning authorities to account for the requirements in considering planning permission and economic trade-offs - areas where the UK might perhaps like greater freedom.186

EU Commission guidance on interpreting the Habitats and Birds Directives now incorporates these legal judgments and has resulted in some stringent tests for compliance.

**Water quality**

Water legislation and policy in the UK is largely driven by EU law. Of particular note are the Urban Waste Water Treatment Directive 1991 and the Water Framework Directive 2000, but a large number of other areas are also regulated at EU level, including drinking water, bathing water and priority substances.

The Urban Waste Water Treatment Directive (UWWTD) aims to protect the environment from the adverse effects of discharges of urban waste water from public sewers and treatment plants. In 2012 the European Court of Justice found that the UK was in breach of the UWWTD as a result of frequent and large spillages of waste water in London. In order to address these infractions, Defra is currently involved with a big project to develop a Thames Tideway Tunnel – a large sewer running under the River Thames. The project has been underway for a number of years with preliminary construction planned for 2016 and the project aims to tackle the problem of waste water overflows for the next 100 years. The scale and importance of this project may mean that leaving the EU may not impact its future. However, leaving the EU would remove the threat of large EU infraction fines.

The European Water Framework Directive (WFD) provides a common framework for water management and protection in Europe. The WFD seeks to draw together what has in the past been a fragmented policy area, and establishes a system for the protection and improvement of all aspects of the water environment including rivers, lakes, estuaries, coastal waters and groundwater. The Directive requires all inland and coastal waters to reach at least “good status” by 2015 (or later if

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relevant waivers are relied on). In 2012, only 36% of water bodies in the UK were classified as ‘good’ or better. More information is set out in the Library Briefing Paper on the EU Water Framework Directive: achieving good status of water bodies. Exit from the EU would allow the UK to relax water quality standards and/or review any deadlines for meeting them. However, this may be met with political resistance, given the importance of good quality water across many sectors including health, farming, food and leisure.

Leaving the EU would mean, assuming that national implementing legislation was repealed, that EU legal requirements and targets would no longer apply and this may result in a loss of impetus for action in the UK. However, this does not necessarily mean that action taken at a national level would be halted or reversed. In some cases (such as drinking water standards) UK requirements are actually stricter, or in addition, to those required by the EU and it would be difficult for the UK to retreat too far from these requirements. Reporting requirements would be likely to change and this could mean that less information is available in the public domain.

In some cases there are international guidelines that would continue to apply to the UK following a withdrawal from the EU. For example the World Health Organisation publishes international guidelines on water quality (specifically for drinking water). Some EU targets reflect WHO guidance (for example on nitrate levels). It is worth noting that these are guidelines rather than legal requirements and so not subject to the same enforcement or compliance standards.

Waste

UK waste policy and legislation is largely driven by EU law, which seeks to prevent the production of waste where possible and to reduce its overall environmental impact. The key piece of EU waste legislation is the Waste Framework Directive 2008 which includes key definitions, sets a hierarchy for how waste should be managed, introduces the “polluter pays principle” and “extended producer responsibility” and includes targets for recycling. There is a suite of EU legislation which supplements the framework Directive, including Directives on packaging and packaging waste; landfill; end-of-life vehicles; waste batteries and waste electrical and electronic equipment. This is an area which has also been the subject of a great deal of case law, both in Europe and domestic courts.

The waste debate in Europe has shifted to keeping resources in use for as long as possible and reducing waste’s negative implications for the environment and the economy (a circular economy rather than a traditional linear economy). The European Commission adopted a new Circular Economy Package in December 2015 to stimulate and harmonise the transition towards a circular economy across Europe. The Commission states that the measures could bring net savings of €600 billion or 8% of annual turnover for businesses in the EU and will reduce total annual greenhouse gas emissions by 2-4%. It includes a number of new EU legislative waste proposals, an Action Plan and funding support at both EU and national level. These proposals need to be agreed at an EU level and then implemented at a UK level before they have effect. Defra is still considering some of the more detailed
elements of these proposals and the impact they will have on the UK. More information is available in the Library Briefing Paper on the EU Circular Economy Package.

A Defra-commissioned study into business resource efficiency identified up to £22 billion in savings available to UK businesses from more efficient use of raw materials and avoiding waste. Global resource scarcities for various materials, such as strategically important metals, are focusing minds on the need to recover and recycle these materials for the economy.

The benefits of effective waste management to both the environment and the economy may mean that UK withdrawal would not lead to a substantial change in approach, but it would reduce the impetus to meet legislative targets within clear timeframes and remove the threat of legal challenge for any failure. Leaving the EU would also lead to more uncertainty for investors and raise questions about the longer-term approach to management of waste in the UK. It could therefore undermine economically efficient decision-making in the sector due to the long term planning needed for investment in waste infrastructure and innovation.

An economist from the Environmental Services Association stated that an EU exit “would leave a huge void for the industry as it would be unclear to what degree we would retain any elements of the European path towards higher levels of environmental sustainability” and “billions of pounds of fresh investment in green jobs and growth [could dry] up overnight”.

**Chemicals Regulation**

Regulating the safe use of chemicals is undertaken at EU level. The REACH (Registration, Evaluation, Authorisation and restriction of Chemicals) Regulation, which came into force on 1 June 2007, provides the over-arching framework. REACH applies to substances manufactured or imported into the EU in quantities of 1 tonne or more per year and generally applies to all individual chemical substances on their own or in preparation. It requires that substances are registered and tested and evaluated for safe use. A major part of REACH is the requirement for manufacturers or importers of substances to register them with a central European Chemicals Agency (ECHA) which administers much of the registration process.

Some substances, such as human medicines (covered elsewhere in this paper), are covered by specific legislation. Pesticides and other products that protect plants/crops are regulated by Regulation (EC) 1107/2009. Biocides (wood preservatives and insect repellent, for example) are regulated by the Biocidal Products Regulation (EU) 528/2012. Other legislation requires that food additives must be authorised, following

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187 Defra, *the Economics of Waste and Waste policy*, July 2011,

188 A number of reports, such as the UN’s Millennium Ecosystem Assessment and Beyond Carbon by the Aldersgate Group, indicate that natural resource availability is declining so that many resources will become more scarce and costly.

189 MRW, Waste sector warns of EU referendum danger, 23 January 2013,
advice by the European Food Standards Authority (EFSA), before they can be used in foods.

The Classification, Labelling and Packaging Regulation (CLP) provides a standardised system for classifying and labelling chemicals in the EU. The Regulation adopts the United Nations’ Globally Harmonised System on the classification and labelling of chemicals (GHS) across all European Union countries, including the UK. The CLP Regulation ensures that the hazards presented by chemicals are clearly communicated to workers and consumers in the EU through the classification and labelling of chemicals. As a result, standard systems are in place that Member States rely on to ensure chemicals are safe for use. If the UK no longer participated in these systems the burdens applied to industry might be reduced, and there might be more flexibility in testing the risks presented by some substances and a reduction in the administrative burden of registering these with the European Agencies. However, some form of safety testing would probably have to take its place. Any benefits would have to be balanced against the inconvenience to both local and international industry caused by a UK withdrawal from these established systems. It is worth considering that a substantial investment has been made by industry during the transition to the new harmonised European systems. Further changes, and in particular any reversal, might well prove unpopular. The most realistic result of an EU withdrawal would see the UK adopting similar positions to Norway, Iceland and other non-member States which have chosen to adopt EU REACH legislation independently.

Considering health and safety legislation more generally, it is the case that over the last quarter century much of this has originated in the form of EU Directives – Article 118A of the Treaty of Rome gives health and safety prominence in the objectives of the EU. These Directives have built on the pre-existing UK safety systems underpinned by the Health and Safety at Work etc. Act 1974 and associated secondary legislation. Over the years there have been concerns over the potential for overzealous application of modernised health and safety law, be it the result of “gold-plating” when transposing the Directives into UK law or of misunderstandings as to what the law actually requires. These concerns prompted the establishment of reviews by Lord Young of Graffham and Professor Ragnar Löfstedt and subsequent reforms by the Coalition Government. In his report, Löfstedt commented: “Many of the requirements that originate from the EU would probably exist anyway, and many are contributing to improved health and safety outcomes. There is evidence, however, that a minority impose unnecessary costs on business without obvious benefits.”

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192 DWP, Reclaiming health and safety for all: An independent review of health and safety legislation, Cm 8219, November 2011.
8. Energy and Climate Change

The previous Government said that one of its priorities was to widen and deepen the single market in energy.\textsuperscript{193} The larger the market and the fewer the barriers to trade, in theory the higher the level of competition and the lower the prices for consumers should be. A single market in energy and greater harmonisation would be likely to increase security of supply, as would greater physical interconnection. Many of the UK’s large suppliers are multinationals and they are also looking for a stable investment regime. The report by the House of Lords European Sub-Committee D, \textit{No Country is an Energy Island: Securing Investment for the EU’s Future}, considered this issue in detail and concluded that there are “clear benefits to be derived from working within the EU on the energy challenge”.\textsuperscript{194} The Chief Executive of BP, Bob Dudley, was interviewed at the start of 2016 and argued that it would be better for the energy business in general, if Britain were a part of Europe.\textsuperscript{195}

This Government is unlikely to want to reverse the trend for more transparency and a level playing field at EU level, which is currently being implemented by the Commission’s ‘Third Energy Package’ and by the 2015 \textit{Framework for Energy Union}.

Given the multinational nature of energy markets and companies, even withdrawal from the EU would probably not affect the direction of travel. Similarly, the last Leader of the Opposition said that negotiating on climate change and energy is easier within Europe, and called for the completion of the single market in energy.\textsuperscript{196}

Energy security and supply

The EU Large Combustion Plants Directive (2001/80/EC – LCPD), and its successor the Industrial Emissions Directive (2010/75/EU – IED) require new power plants to comply with stricter emission limits on pollutants, while older plants have to close or clean up (by 2015 under the LCPD and by 2023 for the IED). This coincides with warnings from Ofgem on the UK’s decreasing capacity margins (the surplus of energy supply over demand); the closures thus have implications for UK energy security as generating plants come to the end of their life under the Directives.

Power stations are shortly due to close in many Member States, but since coal is attractive at the moment\textsuperscript{197} some still have new coal fired plants under construction. These will need to be ‘clean’ coal. Outside the EU, the Government might choose to allow longer lifetimes, given falling capacity margins and, to date, no demonstration of carbon capture and storage at scale.

\textsuperscript{195}BBC News, BP boss: Threat to investment if UK leaves EU, 20 January 2016.
\textsuperscript{196}Rt Hon Ed Miliband MP \textit{Speech to the CBI Annual Conference}, 19 November 2012.
\textsuperscript{197}Gloystein, H. and J. Coelho, “European slump leads utilities to burn more coal”, Reuters, 8 May 2012.
Beyond determining environmental standards for generation, the EU plays a broader role in determining the security of the UK energy supply. At one level, government support for generation technologies must be approved under state aid rules. More broadly, responses in the Energy Report of the Review of the Balance of Competences demonstrated the complexity of EU energy policy and the conflicts with external policies. For example, in the petroleum sector stakeholders were split on the role of the EU. Respondents from the oil sector considered that EU legislation had been unnecessary and duplicative of world-leading UK controls. On shale gas exploitation, whilst some stakeholders felt there was no need for additional EU legislation, others representing environmental groups suggested that existing national or EU controls were not sufficient to mitigate the potential environmental impacts.198

A further dimension is the flow of oil and gas imports into and within Europe. The EU imports over half of the energy it consumes and dependency is particularly high for oil and gas. Many countries are also heavily reliant on Russia for their natural gas. In response to concerns, the European Commission released its Energy Security Strategy in May 2014.

Renewable Energy and Climate Targets

The UK’s existing renewables targets are set by the 2009 Renewables Directive (2009/28/EC). In 2008 renewables constituted 2.25% of energy sources in the UK. Under the Directive we have a target for renewable energy use of 15% by 2020, to fit within the EU’s overall target of 20%. In 2013, the latest year for which there is data, renewable energy use in the UK had increased to 5.2%.199 The renewable electricity share of total generation in 2014 quarter 1 was 19.4%, an increase of 6.9% on 2013 quarter 1. This was a 1.5% increase on 2013 quarter 4’s previous share of 17.9%.200 For a realistic chance of meeting the EU target this figure will need to rise to around 30% by 2020. The previous Government was confident of meeting these targets and identified nine renewable technologies that it considered would help achieve the target in the Renewable Energy Roadmap.201

The driver for the focus on renewables in the UK has been EU targets, but it is difficult to say how much would change if those targets disappeared as a result of leaving the EU. DECC’s Carbon Plan set out the drivers for focusing on emissions reduction as both climate change impacts and energy security, neither of which are necessarily EU driven.202 The UK Government has also asserted strong ambitions for the growth of sectors such as offshore wind to 2020 and beyond.203 An EU exit would create further uncertainty in the renewables sector, following early closure of the Renewables Obligation to onshore wind

199 DECC, Renewable energy in 2013, June 2014.
and other recent changes. The stability provided by EU long-term renewables targets was something highlighted by a wide range of respondents to the Review of Balance of the Competences on Environment and Climate Change as very helpful. 204

An EU exit would not remove the legally binding UK climate targets under the Climate Change Act 2008,205 but it could increase the focus on all aspects of UK-based generation, especially if exit resulted in poorer security of supply through decreased interconnectivity to Europe, reduced harmonisation of EU energy markets or less investment into the UK by multinational companies.

An exit would also affect the UK’s international climate targets under the United Nations Conference on Climate Change (UNFCCC). Currently the UK negotiates as a part of the EU block and has internally set targets that together with other Member States aim to meet the EU’s overall target. An EU withdrawal would have to address that lack of a UK-specific target under UNFCCC. It was also widely recognised in the competency review that negotiating as part of an EU block was beneficial, as the EU had more influence at an international level than individual Member States acting alone. 206

205 The Climate Change Act 2008.
9. International development

9.1 Development cooperation and humanitarian aid

The EU is one of the UK’s largest multilateral aid partners.

The UK’s total aid budget was £11.726 billion in 2014 – of this, £1.144 billion was channelled through the European Commission.\(^{207}\)

The UK channels funds for development cooperation and humanitarian aid through two budget lines, both of them managed by the European Commission:

- The development part of the EU budget
- The European Development Fund

The development part of the EU budget

According to DFID:

Development investment provided through the European Union (EU) budget funds programmes in Asia, Latin America, Eastern Europe, the Middle East and North Africa. It also funds some thematic programmes and the EU’s humanitarian assistance, through ECHO.\(^{208}\)

DFID describes its engagement with the development part of the EU budget as follows:

The EU budget-development is managed by the EC. Funding is split by regional and thematic lines, with decisions taken by committees for the regional instruments. The UK uses its position in the Council of the EU to influence EU development policy.\(^{209}\)

In 2012 the development part of the EU budget was the largest recipient of UK aid. In 2013 and 2014, it was second.\(^{210}\) The UK contributed £816 million to the development part of the EU budget in 2014.\(^{211}\)

In the 2011 Multilateral Aid Review, the development part of the EU budget (excluding its humanitarian arm, ECHO) was assessed as “adequate value for money”.\(^{212}\)

The Review acknowledged strengths in the development part of the EU budget: for example, it funded programmes in countries which were UK priorities but which did not receive UK aid; it funded programmes which promoted EU enlargement and the European Neighbourhood Policy.\(^{213}\)

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\(^{207}\) DFID, Statistics on International Development 2015, December 2015, Tables 2 and 9


\(^{209}\) Ibid

\(^{210}\) DFID, Statistics on International Development 2015, December 2015, Table 9.

\(^{211}\) DFID, Annual Report and Accounts 2013-14, HC 11, 15 July 2014, p98

\(^{212}\) Some observers argue that these programmes mean that EU development cooperation is insufficiently focused upon poverty-reduction in the poorest countries.
and financial accountability was found to be strong and well-established.

However, the development part of the EU budget was assessed as weak in the following categories: gender equality; focus on poor countries; contribution to results; strategic and performance management; financial resources management.\(^{214}\)

A 2013 DFID review of the progress made in addressing weaknesses identified during the Multilateral Aid Review reached the following conclusions:

- Progress on aid allocation and ensuring staff have development expertise. Some progress on gender and a results framework.
- More progress needed on evaluation and managing for value for money.\(^{215}\)

In the UK Government’s 2011 Multilateral Aid Review, the humanitarian arm of the Commission, ECHO, was assessed as “very good value for money”.\(^{216}\)

**European Development Fund**

According to DFID:

The European Development Fund (EDF) is the main funding instrument for European Commission (EC) development spending in 78 African, Caribbean and Pacific countries (ACPs) and 25 European Union (EU) overseas countries and territories. The EDF is a separate Member State fund that sits outside the EU’s budget.

The EDF has a strong poverty focus with 80% of funds going to low income countries. Its size, focus on poverty and cross-cutting development impact makes the EDF critical for progress on the MDGs and poverty reduction.\(^{217}\)

DFID describes its engagement with the EDF as follows:

The EDF is a fund managed on behalf of EU Member States by the EC. EDF decisions are taken by a Member State committee, by consensus wherever possible. The UK also uses its position in the Council of the EU to influence EU development policy.\(^{218}\)

In 2014 the EDF was the third largest recipient of UK aid.\(^{219}\) The UK contributed £328million to the EDF in 2014.\(^{220}\)

The UK is set to contribute 14.7% of the EDF during the 2014-2020 funding round.\(^{221}\)

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\(^{215}\) DFID, *Multilateral Aid Review update 2013*


\(^{218}\) Ibid


\(^{221}\) *Internal Agreement* between the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on the financing of European Union aid under the multiannual financial framework for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement, and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the Treaty on the Functioning of the European Union applies. Official Journal, L210/1, 6 August 2013.
In the 2011 Multilateral Aid Review, the EDF was assessed as “very good value for money”.\textsuperscript{222}

The Review assessed the EDF as strong or satisfactory against a majority of categories but as weak in two: gender equality; and strategic and performance management.\textsuperscript{223}

A 2013 DFID review of the progress made in addressing these weaknesses reached the following conclusions:

- Progress on aid allocation and ensuring staff have development expertise. Some progress on gender and a results framework.
- More progress needed on evaluation and managing for value for money.\textsuperscript{224}

Another Multilateral Aid Review is currently being conducted and is expected to report in Spring 2016.

**Balance of Competences Review**

In July 2013 the previous UK Government published its report on the outcome of the Balance of Competences Review on development cooperation and humanitarian aid.\textsuperscript{225} The report identified a number of “advantages and disadvantages of working through the EU”. These are summarised in the boxes below.

### Advantages

The EU is a major contributor to global efforts to reduce poverty and make progress towards the other Millennium Development Goals.

The Commission’s large aid budget, which is pooled from mandatory contributions by all Member States, provides economies of scale and strengths in key areas, for example infrastructure and regional projects.

The EU’s global reach is greater than that of any of the Member States acting individually.

Working through the EU gives the UK access to the EU’s comprehensive range of external actions, which can be combined to tackle problems in fragile states and address a range of global development challenges.

The close alignment of UK and EU development objectives, and the EU’s perceived political neutrality and global influence, mean the EU can act as a multiplier for the UK’s policy priorities and influence.


\textsuperscript{224} DFID, *Multilateral Aid Review update 2013*.

Disadvantages

Although policy making at the EU level is often critically important, it can sometimes result in compromise positions that do not give full effect to UK priorities or that lack impact.

EU development programme management and delivery are overly complex and inefficient, and the EU does not systematically measure the results that EU aid achieves.

The division of roles between the Commission Directorates-General and the EEAS\(^{226}\) is unclear and there can be a lack of co-ordination between Brussels and EU Delegations overseas.

The EU institutions’ capacity and development expertise is limited in relation to their scope and scale, although ECHO’s humanitarian expertise is widely recognised.

Although the EU’s size and global influence make it one of the most important platforms for achieving Policy Coherence for Development (PCD), the EU is not implementing it with full effect.\(^{227}\)

Has there been any public debate?

While there continues to be extensive public debate about aspects of UK policy on development cooperation and humanitarian aid, the implications of leaving the EU have not been part of that debate up to now. For example, think-tanks and NGOs that focus on international development issues have not discussed the issue. This may begin to change as the UK referendum draws nearer.

\(^{226}\) European External Action Service – the European Union’s diplomatic service

\(^{227}\) According to the European Commission’s ‘International Cooperation and Development’ website: “Through Policy Coherence for Development, the EU seeks to take account of development objectives in all of its policies that are likely to affect developing countries. It aims at minimising contradictions and building synergies between different EU policies to benefit developing countries and increase the effectiveness of development cooperation.” Over the years, commentators have often criticised the EU for a lack of coherence in its development policy.
10. Transport

Background

Generally speaking, the EU acts on transport issues where there is a transnational element – such as on almost all aviation and maritime issues, type approval of road vehicles, licensing, transport networks etc.228

The EU’s authority to act on transport policy ultimately derives from Article 4(2)(g), Title VI (transport), and Title XVI (Trans-European Networks) TFEU. Specifically, it provides for:

- common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;
- the conditions under which non-resident carriers may operate transport services within a Member State;
- measures to improve transport safety; and
- any other appropriate provisions.

EU action on transport really only gained momentum in the mid-1980s after the European Parliament took the Council to the European Court of Justice (ECJ) for its failure to act in adopting a common transport policy under (former) Articles 3 and 74 TEC (now Article 90 TFEU).229

A ‘common transport market’ has largely been achieved, apart from rail transport. It essentially involves opening transport markets to competition and creating fair conditions in which that competition can flourish. This has involved the harmonisation of national legal and administrative regulations, including the prevailing technological, social and tax conditions. The successes of this model have been falling prices and increasing patronage since the 1980s across the EU as a whole. However, this is increasingly offset by concerns about how to safeguard “fairly priced and efficient mobility for people and goods“ and minimise external costs (mainly environmental and health-related).

The most recent White Paper from the Commission was published in 2011. It set out an ambition to reduce greenhouse gas (GHG) emissions by at least 60% by 2050 compared with 1990 without curbing transport growth or impairing mobility. The Paper set out 10 objectives for transport to 2030 (e.g. shifting a third of road freight to rail or waterborne modes, and tripling the length of the high speed rail network). It also provided details of the measures required to deliver these objectives, the most fundamental of which were the Single European Sky, Single European Railway Area; a ‘Blue Belt’ in the seas around Europe; opening markets in combination with quality jobs and good working conditions; improved security and transport safety; better guarantees of passenger rights across all modes of transport and better

228 Further information on EU transport policy can be found in a suite of briefing papers produced by the EP and available on its website [accessed 8 April 2015].
229 Case 13/83, 22 May 1985.
accessibility of infrastructure. It also posited that in future transport users would have to pay a larger proportion of costs, and cities in particular would face higher energy taxation and emission trading systems.\(^{230}\)

Other notable international bodies that have a significant impact on UK transport policy formation are the UN’s shipping and aviation agencies – the *International Maritime Organization (IMO)* and the *International Civil Aviation Organization (ICAO)* – and the *UN Economic Commission for Europe (UNECE)*. IMO and ICAO are the international fora in which the global frameworks regarding safety and security in those sectors are established; the treaties signed under their auspices usually form the foundation of both EU and UK law. UNECE is particularly influential when it comes to road transport as its vehicle regulations form the basis of EU and UK law on vehicle design and construction.

**The transport ‘balance of competences’**

There is much to be said for trans-national arrangements in some areas of transport. Aviation and shipping clearly lend themselves to this sort of agreement, as the international nature of those industries means that common rules on safety, security, aircraft and ship design, passenger treatment and compensation, are generally more appropriate than dozens of differing national rules. One could also make the case that Europe as a continent of nations, where movement of people and goods by road and rail across borders is continually increasing, benefits from common rules on infrastructure, vehicle and driving standards – up to a point.

However, it is self-evidently the case that over the past 20 years or so the EU has begun to legislate in ever more areas with ever more complexity. This has led to concerns that the ‘balance of competences’ between the EU and Member States has tilted too far in the former’s favour. In its February 2014 report on this issue the UK Government found general support from stakeholders for liberalised free trade in the EU, and a desire for this to go further (e.g. in aviation) and frustration where this aspiration had been held back by ineffective implementation or lack of enforcement of existing regulation. Stakeholders also recognised the value of common operating and technical product standards (e.g. in rail interoperability), but there was some concern at the perceived use of common standards in other fields (e.g. safety) to “claw back market freedoms and allow the potential imposition of national barriers, possibly in a protectionist way”. There was a broad welcome for EU-level action internationally where that can open world markets, but there was also frustration:

> … particularly in maritime transport, 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.\(^ {231}\)

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While stakeholders supported EU action where transport crossed borders between Member States, there was a feeling that in some cases EU action failed to take account of the distinct circumstances of Member States with peripheral geographic locations, such as the UK:

> It imposes the same cross-border rules on local and domestic transport which operates solely within the UK and so does not affect the Single Market. While the concept of the single market in transport services is generally strongly supported, so too are the principles of subsidiarity and proportionality. 232

The review looked at future options and challenges under two broad headings: improving the single market, and better regulation. In terms of the former, stakeholders broadly wanted the EU to focus on implementing the existing laws underpinning the single market (e.g. in rail, where there was concern at the failure of some Member States to open their domestic rail markets). Regarding the latter, there was a general view that the European Commission should focus less on making proposals for new legislation and concentrate more on enforcement of existing legislation. Furthermore, stakeholders felt that before making proposals for legislation, the Commission should undertake more openly evidenced impact assessments setting out clearly the potential costs and benefits, and generally “legislate with a less heavy hand, or not at all, when it comes to non-intra-European issues and to allow greater scope for national handling of purely domestic issues”. 233

In terms of powers that should revert to Member States, some (e.g. those representing recreational aviation and motorcycle training interests) suggested delegating responsibilities back to the national level where they felt that recent EU action had harmed essentially local interests with no significant single market dimension.

Generally, the evidence received from transport stakeholders reflected a broad consensus that:

> … the single market in transport services is at the core of the EU’s transport policy, that it has driven growth and prosperity in the UK and in other Member States, and that it should continue to do so.

However, the evidence suggested that much further liberalisation is possible and that barriers, both formal and informal, remain. There was a general view among stakeholders that the way to achieve further liberalisation was, in many cases, through more effective implementation and enforcement of existing legislation rather than through continually seeking new legislation. 234

If the UK left the EU, as a member of the UN and its attendant agencies, it is unlikely that the broad framework of UK law on aviation and shipping would change; similarly the UK would also likely apply those vehicle rules set down by the UNECE. One could also envisage the UK and the EU agreeing to maintain common rules on driver and vehicle

233 Ibid.
234 Ibid.
licensing to ensure continued free movement across the continent. It may well be that the UK would then negotiate an agreement with the EU in the same way that other countries such as Russia and the US have, on air routes, safety and security etc. There would likely be some areas (e.g. general aviation and motorcycling, perhaps) where the UK would liberalise the arrangements agreed to across the EU. However, it is important to note that this is merely speculative and it would of course depend on the Government of the day and its priorities.
11. Immigration

11.1 Controlling EU immigration

Depending on the nature of any future EU-UK relationship, leaving the EU could have significant implications for the rights of UK citizens to travel to and live in EU/EEA Member States, and for EU/EEA nationals wishing to come to the UK.

On the other hand, if the UK were to negotiate a relationship with the EU similar to the non-EU EEA states or Switzerland, it might find that it did not have any greater scope to control EU immigration than it did as an EU Member State. Switzerland and the non-EU EEA states are both bound by free movement of people laws and, unlike the UK, are both part of the internal border-free Schengen Area.

The current position

The right to move and reside freely in another Member State is one of the rights granted by EU citizenship (as per Article 21 of TFEU). Anyone who has nationality of an EU Member State is also an ‘EU citizen’, and as such, has ‘free movement’ rights across the EU (subject to certain restrictions, as set out in the ‘Free Movement of Persons’/’Citizens’ Directive).235

The ‘free movement of people’ principle entitles citizens of EU Member States and their families to reside and work anywhere in the EU. This right also applies to citizens of non-EU EEA States (Iceland, Norway and Liechtenstein) and Switzerland.236

As well as the freedom to “move and reside freely” throughout the EU under EU citizenship provisions, the TFEU contains Articles specifying the free movement rights of workers and self-employed persons.237 Free movement is supported by a broader set of rights, such as protection against discrimination on the grounds of nationality for employment, and provisions to co-ordinate social security so that people do not lose entitlements when they exercise their free movement rights.

In practice, free movement law means that EU/EEA nationals do not require a visa in order to come to the UK, and no time limit may be placed on their stay. Exclusion must be justified on the grounds of public policy, public security or public health. All EU nationals (and their family members) have an ‘initial right to reside’ in another Member State for up to three months for any purpose. They have a right to reside for longer than three months if they qualify as a worker, job-seeker, student, or self-employed or self-sufficient person (or a family member of one of those), and are not subject to knowledge of English requirements. A ‘right of permanent residence’ is acquired after five years’ continuous residence in the host Member State.

235 Directive 2004/38/EC.
236 The EEA includes EU countries and also Iceland, Liechtenstein and Norway. It allows them to be part of the EU’s single market. Switzerland is neither an EU nor EEA member but is part of the single market. Gov.UK at https://www.gov.uk/eu-eea.
237 Articles 45-48 TFEU and Articles 49-53 TFEU respectively.
The comparable provisions for non-EU/EEA nationals, including British citizens’ family members, are specified in the UK’s Immigration Rules and are significantly more restrictive.

For example, opportunities for non-EU/EEA nationals to come to work in the UK under the points-based system are generally restricted to skilled migrants who already have a job offer. Non-EU/EEA national spouses of British citizens must satisfy various visa eligibility criteria, including that their British partner has an annual income of at least £18,600 (or a higher amount in savings).

Most non-EU/EEA visa categories require that applicants already have some English language skills, and only give temporary permission to stay in the UK initially. The scope to extend the permission, switch into a different immigration category, or stay in the UK permanently, varies depending on the visa category.

The differences between EU free movement rights and visa restrictions for non-EU/EEA nationals have become more striking in recent years, as the UK’s Immigration Rules have become more restrictive. The UK and its European partners have recognised the potential for exploitation of EU free movement law, for example, through ‘sham marriages’ between EU and non-EU nationals who would otherwise struggle to qualify for entry under national immigration legislation. The draft proposal for a new settlement for the United Kingdom within the European Union published on 2 February included some proposals to clarify and extend the scope to prevent non-EU/EEA national family members from using EU law to obtain a right of residence.238

How might exit affect UK and EU citizens’ immigration rights?

If the UK were no longer part of the EU or EEA, it could impose its own controls on which EU/EEA citizens were admitted to the UK and under what circumstances. This is assuming that it did not negotiate a future agreement with the EU (or certain Member States) which required the continued application of free movement law.239

The UK’s approach to controlling EU/EEA migration would be informed by broader considerations of the national interest, including the extent to which the UK wanted to continue to attract certain types of migrant to the UK and ensure that its own citizens had access to other states.

Would the UK be able to apply different visa requirements to different EU/EEA nationalities (as it currently does for visitors from non-EU/EEA states, for example)? Some experts have noted that the EU’s strong preference is for its third-country partners to apply the same visa

238 European Council, Draft declaration of the European Commission on issues related to the abuse of the right of free movement of persons, 2 February 2016.
239 Irish nationals may be affected differently to other EU/EEA nationals. They enjoy free movement rights under the Common Travel Area arrangements with the UK and have a special status in British immigration and nationality law which pre-dates British and Irish membership of the EU.
conditions to all EU Member States. That makes a ‘pick and mix’ approach potentially difficult to achieve.240

Broadly speaking, if EU/EEA nationals became subject to the same visa rules and requirements that currently apply to non-EU/EEA nationals, they would only be able to come to the UK if they qualified individually for a visa as a visitor, student, worker, or family member of someone already settled here.

The UK might find that it had more powers to deter the presence of certain categories of EU/EEA migrant if it was no longer bound by free movement law. For example, EU/EEA national foreign offenders would no longer have a greater degree of protection from removal/deportation than other nationalities, and the UK would have greater powers to remove EU/EEA national immigration offenders and prevent them from re-entering the country. The draft proposal for a new settlement for the UK included a pledge to clarify the scope for excluding EU/EEA national offenders, and to give further consideration to the issue in the event of a future revision of the Free Movement Directive.241

The previous government’s Balance of Competences Review on free movement of people noted that the majority of EU migrants come to the UK to work.242 EU free movement law has ensured that UK employers have relatively easy access to labour from EU/EEA states. This has offset some of the obstacles to non-EU/EEA economic immigration imposed by the UK’s Immigration Rules. For example, successive governments have taken action to ensure that the points-based system only caters for ‘high skill/high value’ non-EU/EEA migrants. It has been assumed that any need for lower-skilled labour can be met by workers from within the UK and EU/EEA. If EU/EEA nationals became subject to similar controls as non-EU/EEA nationals, it is possible that there would be some pressure to relax some visa restrictions or expand certain categories, depending on the needs of the economy.243

Just as the UK would be able to impose its own controls on EU/EEA immigration, so the rights of UK citizens to visit or move to an EU/EEA Member State would depend on what visa requirements those states chose to apply. The EU tends to require reciprocity from its third-country partners, so the extent of access/control that the UK wanted to apply to EU/EEA nationals could affect British citizens’ opportunities to travel to or live in Europe.

How might people exercising free movement rights at the point of UK exit be affected?

240 Steve Peers, EU Law Analysis, ‘What happens to British expatriates if the UK leaves the EU?’, 9 May 2014; Helena Wray, EU Law Analysis, ‘What would happen to EU nationals living or planning to visit or live in the UK after a UK exit from the EU?’, 17 July 2014.
241 European Council, Draft declaration of the European Commission on issues related to the abuse of the right of free movement of persons, 2 February 2016.
243 See, for example, Migration Watch UK, ‘UK immigration policy outside the EU’, 27 January 2016, Annex A.
One issue that would arise during the course of exit negotiations between the UK and EU/EEA States is how to ensure continuity of immigration status for the British and other European citizens who were exercising their free movement rights at the time of Brexit. Sudden curtailments of immigration status or mass expulsions/returns could create significant costs and upheavals, and generate legal challenges.

One possibility is that EU/EEA citizens would continue to be allowed to live in the UK on the same basis after the UK’s exit (and vice versa), if they had a ‘right to reside’ in the UK at the time. This would mean that EU free movement laws would continue to be a significant influence over UK immigration controls for years after the UK’s exit.244

Section 5 of Library briefing Exiting the EU: UK reform proposals, legal impact and alternatives to membership has additional commentary on what could happen to EU rights (more generally) in the event of Brexit.

11.2 Border controls, non-EU immigration and asylum

The current situation

The 2014 Balance of Competences Review on asylum and non-EU migration concluded that currently the balance of competence on these matters “lies predominantly with the UK”.245

The UK is not automatically bound by EU legislation on border controls, non-EU immigration and asylum. Under special Treaty-based arrangements, the UK is able to participate in measures selectively, deciding on a case-by-case basis whether opting in would be in its best interests. Successive UK governments have taken the view that it is preferable for the UK to retain responsibility for its own borders and have flexibility to adjust its immigration policy in response to the circumstances in the UK.

The UK has opted into around a third of all EU legislative measures on migration.246 In recent years, the UK has tended to favour measures which enhance practical co-operation between Member States, rather than further EU legislation in this area.

The Government’s response to the European Commission’s proposals for a new ‘European Agenda on Migration’, published in May 2015, have reflected this approach.247 The Agenda proposed some immediate measures in response to irregular migration in the Mediterranean, as well as longer-term solutions to better manage all types of migration to the EU. The UK Government has given practical support for some of the measures, such as those directed against people smugglers and

244 Helena Wray, EU Law Analysis Blog, ‘What would happen to EU nationals living or planning to visit or live in the UK after a UK exit from the EU?’, 17 July 2014.
246 Ibid, paragraph 1.17
traffickers, and action to establish ‘hotspot’ registration centres in Italy and Greece. It has declined to participate in other measures, notably legislation establishing an emergency relocation scheme for asylum seekers in Europe.

The UK has received approximately £240 million from EU migration funding streams. This has included funding for Assisted Voluntary Returns schemes, which facilitate irregular migrants’ departure from the UK, as well as projects to support refugee resettlement and community integration in the UK.248

How might UK border controls be affected by exit?

The UK already maintains its own border controls. It is not part of the internal border-free Schengen Area, and Border Force officers conduct checks on EU/EEA travellers crossing UK ports of entry, as well as British citizens and non-EU/EEA nationals.

Many submissions to the Balance of Competences Review were in favour of the UK maintaining its own border controls, and the review noted that there were “significant security benefits” to the UK not being part of the Schengen Area.249

However, it also recognised that the UK misses out on some opportunities to share data on people travelling within the EU, which might be useful for border security purposes, as a result of not participating in the border and visa aspects of the Schengen body of law. For example, the UK is excluded from the EU's Visa Information System, which is used by Member States and Europol to exchange information about visa applications in order to combat abuse and prevent crime.250

The UK does have access to certain other sources of information which support border security processes. This access could be lost if it left the EU. The UK gained access to the Schengen Information System database (SIS-II) in April 2015. The database gives UK law enforcement agencies (including some border control staff) access to real-time information about wanted or missing people, public security threats, and missing or stolen property. The Home Office said at the time that this information would ensure that “more foreign terrorists, murderers and paedophiles will be kept out of the country”.251 The UK does not have access to the immigration-related information it holds.

The collection and screening of Advance Passenger Information has become an integral part of UK border security mechanisms over the past decade. The UK has opted in to EU legislation on collecting passenger data from transport carriers from outside the EU, and is a strong advocate for the EU to adopt similar measures to collect passenger data

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250 Ibid., paragraph 9.
on intra-EEA journeys.\textsuperscript{252} It is likely to be keen to ensure continued access to such information in the event of an EU withdrawal.

The UK lends informal support to the work of Frontex, the EU’s agency for co-ordinating the management of the EU’s external borders. For example, it provided some staff and assets to assist the Operation Triton mission in the Mediterranean Sea.\textsuperscript{253} It wanted to be more involved in Frontex, but the European Court of Justice determined that the UK could not formally participate, because it had not opted into the underlying legislation.\textsuperscript{254}

There has been some speculation that Brexit could lead to the ending of the juxtaposed border control agreements the UK has with France, and consequently, an increase in cross-Channel irregular migration flows.\textsuperscript{255} However, views on this are mixed. The juxtaposed border control arrangements derive from bilateral agreements between the UK and French governments rather than EU law.

The existence of the Common Travel Area between the UK and Ireland means that the land border between the Republic of Ireland and Northern Ireland could potentially become a weak spot in the UK’s ability to control EU/EEA immigration after leaving the EU, given that EU free movement law would continue to apply in the Republic of Ireland. Some Irish commentators have warned that border and passport controls at the land border would be an inevitable consequence of Brexit.\textsuperscript{256}

In any case, changing the immigration entitlements of citizens from 27 Member States would have significant implications for the workload (and required resourcing) of the UK’s border agencies.

**How might UK asylum policies be affected?**

The Balance of Competences Review concluded that the UK’s immigration system has been most affected by EU action on migration in the field of asylum.\textsuperscript{257}

The EU has been working for almost 20 years to establish a Common European Asylum System (CEAS). TFEU Article 78 stipulates that the CEAS must be in accordance with the 1951 Geneva Convention relating to the Status of Refugees, and other relevant treaties. Article 18 of the

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\textsuperscript{252} Written Statement HCWS425 [Justice and Home Affairs post-Council Statement], 19 March 2015.

\textsuperscript{253} Written Question HL5863 [on Mediterranean Sea], answered on 24 March 2015.

\textsuperscript{254} Case C-77/05.

\textsuperscript{255} See, for example, Open Europe, *Would Brexit leave the UK better able to control the Calais crisis?*, 4 August 2015; Rt Hon Damian Green MP, ‘From Africa to Calais: Britain, the EU, and the Refugee Crisis’, in Conservative European Mainstream for Europe, *The UK and EU: Making Britain Stronger*, 1 September 2015; BBC News [online] ‘EU referendum: PM says Brexit could bring Calais ‘Jungle’ to UK’, 8 February 2016.

\textsuperscript{256} Irish Times, ‘Brexit would see return of physical border between Republic and North’, 25 March 2015; John Bruton, The Huffington Post, ‘What to expect of the UK leaves the EU’, 18 December 2012.

EU’s Charter of Fundamental Rights provides for a right to asylum, with reference to the standards specified in the 1951 Geneva Convention. However, the UK would continue to have responsibilities to people seeking asylum in the event of a Brexit, since it has obligations under the 1951 Geneva Convention (and the European Convention on Human Rights) which are separate to its status as a member of the European Union.

The UK opted into the six pieces of legislation adopted during CEAS’ first phase (2000-2005). These comprised four directives specifying minimum standards for processing asylum claims and the treatment of asylum seekers, and two sets of regulations establishing the ‘Dublin system’ for determining which Member State is responsible for processing an asylum claim.258 These measures are integrated into the UK’s asylum policies and procedures.

The Coalition Government did not opt into the recast versions of these directives, which were adopted between 2011 and 2013, with the intention of improving harmonisation between Member States and setting higher standards.259 The then Government cited concerns that the recast directives would have undermined the UK’s asylum system (particularly efforts to deter abuse), for example by extending asylum seekers’ rights to work in the UK, extending judicial oversight of the use of immigration detention, and restricting the UK’s ability to operate a detained fast track for processing asylum claims.260

On the other hand, the UK has been a strong supporter of the Dublin system, and has opted into the revised Dublin regulations.261

The Dublin system is intended to prevent the phenomena of ‘asylum shopping’ (asylum seekers lodging multiple claims in several EU Member States) and ‘refugees in orbit’ (no state taking responsibility for an asylum claim). In particular, the EURODAC fingerprint database enables Member States to check whether an asylum seeker has previously claimed asylum in another Member State, and the Dublin III Regulation identifies a hierarchy for determining which Member State is responsible for the asylum claim (in practice, this often means the country that played the greatest part in the asylum seeker’s entry to the EU).

Litigation has prevented or delayed some returns. In particular, judgments from the European Court of Human Rights and European Court of Justice in 2011 found that returns to Greece would be unlawful, due to serious inadequacies in the Greek asylum system.262 The UK has not enforced Dublin removals to Greece since 2010.263 It has

258 Namely, the Asylum Procedures Directive, the Qualifications Directive, the Reception Conditions Directive, the Temporary Protection Directive, the Dublin II Regulation and the EURODAC Regulation.  
259 The UK remains bound by the terms of the original directives.  
260 HC Deb 13 October 2011 cc44-SW5; HL Deb 12 January 2012 cc495-7.  
261 Regulation 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).  
263 HC Deb 2 December 2014, 2MC.
supported EU initiatives to provide practical support to Greece, co-ordinated through the European Asylum Support Office (EASO), so that Greece establishes an effective asylum process and Dublin removals can resume.\footnote{HM Government, \textit{Review of the Balance of Competences between the United Kingdom and the European Union: Asylum and non-EU Migration}, February 2014, paragraph 3.29.}

The Dublin system has been regarded by successive UK governments as greatly beneficial to the UK, since it tends to assign responsibility for asylum claims more often to countries which are closer to the EU’s external borders. The system has enabled the removal of over 12,000 individuals from the UK to other EU/EEA Member States since 2003.\footnote{Written Statement HCWS219 [on EU opt-in decision], 23 January 2015.} In the Government’s view, it has generated significant financial savings and contributed to efforts to deter abuse of the UK’s asylum system.\footnote{HC Deb 25 February 2013 c86W.}

However, the ongoing ‘migration crisis’ in Europe has highlighted the vulnerabilities and imbalances within the system, and there is some doubt over the long-term future of the Dublin system in its current form. The European Commission has identified a need for a permanent crisis relocation mechanism to assist specific Member States in the event of extreme migration pressures, and is considering additional changes to the rules for determining which Member State is responsible for a claim. There has been some speculation that new proposals may impose more responsibilities on Member States without external EU borders than the current arrangements. New proposals are expected to be published by the European Commission for negotiation this spring. The UK government’s view is that the principles underlying the existing Dublin regulation should be retained.\footnote{HCWS386, 10 December 2015.}

How might the UK’s approach to non-EU immigration, irregular immigration and removals be affected?

As discussed earlier in this chapter, the UK’s approach to controlling non-European immigration is already determined by domestic legislation, and its Immigration Rules, rather than EU law. The UK has chosen not to opt in to EU measures facilitating legal migration of third-country migrants (e.g. directives establishing common eligibility rules and entitlements for certain categories of immigrants, such as workers, students, migrants’ family members, and long-term residents).\footnote{However, the UK does apply EU regulations establishing a uniform format for residence permits for third-country nationals.}

This approach has protected UK governments’ flexibility to adjust immigration policy in response to changing UK requirements.\footnote{There are some EU competences which indirectly impact on UK immigration policy, such as the EU-Turkey Association Agreement, Erasmus student exchange programme, and EU Free Trade Agreements, as briefly discussed in Home Office, \textit{Call for evidence, Review of the Balance of Competences: Asylum and Immigration}, May 2013.} For example, a points-based system for non-EU/EEA labour and student
immigration was introduced from 2008/9, and limits have been introduced on the number of visas available in various categories, including those for sponsored skilled workers and migrants with ‘exceptional talent’.

There is some practical co-operation between the UK and other Member States on the removal of irregular migrants, such as through the use of shared charter flights. Also, the UK has opted into some of the EU’s Readmission Agreements with third countries. The Balance of Competences Review cited this as an example of how the UK can secure more advantageous outcomes by working with other Member States:

On Readmission Agreements, working as a bloc with other Member States rather than independently has often resulted in a better deal for the UK, with Member States acting as a bloc able to wield greater leverage against third countries than when acting individually.270

More generally, the UK recognises that there are benefits to practical co-operation and information-sharing with other Member States, for example to strengthen responses to organised immigration crime and current and future migratory pressures.

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12. Justice and Home Affairs matters

Summary: The UK currently has an opt-out on certain police and justice matters. Would Brexit be any different?

If the UK were to leave the EU, the effect would be similar to the opt-out. There would be no possibility of opting back in, but bilateral agreements along the same lines might be agreed. It is likely that the UK would wish to replace at least some of the existing EU measures with various forms of bilateral or multilateral cooperation. As noted above, there has been in the past, and is currently, international police cooperation outside the auspices of the EU. The question would be whether the UK would have the necessary goodwill from, and influence over, other States to achieve the results it desired.

A UK withdrawal would have a minimal impact in some areas - family law, for example - where individual Member States generally have their own laws. In other areas, such as data protection, the consequences of a UK withdrawal could be more complicated. In immigration and asylum, criminal justice and police cooperation the situation is different, as the UK is not bound by EU law in these areas or has an opt-in arrangement, allowing it to pick which laws it would like to implement.

Theresa May’s written statement to Parliament following the meeting of the EU Justice and Home Affairs Council in December 2015 sets out the topics of current discussion and debate in EU criminal justice cooperation.

12.1 Police and Justice Cooperation

Between 1995 and 2009, the Member States of the EU agreed unanimously about 135 measures relating to police and judicial cooperation in criminal justice matters. They included

- measures to combat drug trafficking
- mutual legal assistance in criminal matters, including investigations and prosecutions
- prisoner transfers, so that criminals can be sent home to serve their sentence and
- the European Arrest Warrant (see below)

The Treaty of Lisbon incorporated these pre-2009 ‘third pillar’ measures into the main body of EU law, to which the powers of the Commission and EU Court of Justice (CJEU) apply.

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271 Family law problems related to cross-border implementation and jurisdiction may arise between any countries, not only between EU Member States, and a number of international conventions deal with conflicts of laws.

272 HCWS 386 of 10 December 2015.

273 The total keeps changing as pre-Lisbon measures are repealed and replaced by post-Lisbon measures which the UK participates in and to which the opt-out does not apply.
12.2 The block opt-out decision

The UK notified the Council in July 2013 of its decision to opt out of these measures. It immediately sought to opt back in to 35 of the same measures, accepting the enforcement powers of Commission and CJEU jurisdiction with regard to them.

The opt-out was the subject of some scrutiny. The Lords EU Committee, for example, concluded that the Government had “not made a convincing case for exercising the opt-out” and that doing so would have “significant adverse repercussions”. This report, and other analyses from a variety of perspectives, are collected on the EU Committee’s website.

12.3 European Arrest Warrant

Part 1 of the *Extradition Act 2003* implements the framework decision on the EAW. The European Arrest Warrant (EAW) scheme is managed by the National Crime Agency (NCA).

The NCA issued 219 EAWs in 2013 and 228 EAWs in 2014. It received 5,522 EAWs in 2013 and 13,460 EAWs in 2014.

The operation and future of the EAW has proved contentious.

The Home Secretary announced an independent review, led by Sir Scott Baker, of extradition arrangements, including the operation of the EAW, in September 2010. The report of the review was published in September 2011 and the previous Government’s response to that report in October 2012. The Government remarked that (amongst many other things) the review had concluded that the EAW operated “broadly satisfactorily”, but conceded that there were concerns about proportionality.

A House of Lords EU Committee report in April 2013 on the UK’s decision to opt out of police and justice measures considered the operation of the EAW. The Committee concluded, amongst other
things, that the EAW was the most important of the measures subject to the opt-out decision. Its operation (it said) had resulted in serious injustices, although these might still have arisen without the EAW.  

12.4 Prüm Convention

On 8 December 2015, the House of Commons voted to approve a motion to opt back into a number of measures called the Prüm Decisions. These would allow the reciprocal searching of EU Member States’ databases for: DNA profiles, fingerprints and vehicle registration information. The purpose of the Prüm Treaty (after which the measures are named) was to improve the exchange of information in order to step up cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal immigration.

Existing legislation already allows for the international sharing of fingerprints, DNA profiles and vehicle registration data for the prevention, detection, investigation or prosecution of crime. Opting into Prüm will allow (it is said) for faster, easier access with great automation. The Government set out its case for joining Prüm:

The extensive evidence presented to us, including that provided by our own law enforcement agencies, offers a clear and compelling case for signing up to the Prüm agreements.

Giving our police access to the tools they need to rapidly and efficiently identify foreign criminals who have committed serious offences in the UK – and detecting crimes which may otherwise go unsolved – will help to keep the public safe and is clearly in the national interest.  

It will now take some time before the arrangements can be put in place.

12.5 The European public prosecutor

On 17 July 2013 the European Commission published proposals dealing with the establishment of a European Public Prosecutor’s Office (EPPO).

The Government believes the creation of the EPPO is unnecessary and has not opted into the measure. Under section 6 of the European Union Act 2011, a referendum would be required to approve the UK’s participation in the creation of the EPPO. On 3 November 2014 the House of Lords’ EU Committee published a report on The impact of the European Public Prosecutor’s Office on the United Kingdom.
Committee received the Government’s response on 6 January 2015. Whilst ministers from Member States reached agreement in principle on articles of the proposed Regulation to establish the EPPO, the UK maintains it will not participate.

12.6 Data protection

The right to privacy is a highly developed area of law in Europe. All EU Member States are also bound by the European Convention on Human Rights (ECHR), which guarantees the right to respect for private and family life, home and correspondence in Article 8 of the European Convention on Human Rights. EU data protection derives from Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The Data Protection Act 1998 gives effect to this Directive. Although the Act has been criticised on various grounds – for example, that the penalties on offer are insufficient to act as a deterrent – there is little likelihood that it would be repealed if the UK were to leave the EU. Most countries now have similar legislation, and the trend is towards harmonising standards internationally in order to facilitate the safe flow of data across national boundaries.

The EU proposed replacing the 1995 Directive with a new Regulation. Under that Regulation, companies across the EU would only have to deal with one set of data protection rules and be answerable to a single data protection authority – the national authority in the EU Member State where they have their main base. The draft framework was a matter of contention among Member States; the UK Ministry of Justice had argued (for example) that the burdens the proposed regulation would impose outweighed the net benefit estimated by the Commission.

In December 2015, the EU reached agreement on the new data protection rules. The Regulation and Directive have yet to be formally adopted by the European Parliament and Council and will come into effect two years after that.

EU citizenship: the franchise

The EU Treaty provides for EU citizenship in Articles 20 - 25 TFEU. EU citizenship is dependent on holding the nationality of an EU Member State and is additional to national citizenship. While EEA nationals enjoy free movement and residence provisions, non-EU EEA nationals are not strictly speaking Union citizens within the terms of the Treaty.

The Directive on Voting Rights for EC Nationals in Local Elections (Directive 94/80/EC) agreed in 1994 made provision for EU nationals to vote in local elections in the country in which they were resident but in

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287 Response to the House of Lords’ European Union Committee’s Report on ‘The impact of the European Public Prosecutor’s Office on the United Kingdom’
288 Home Office, Justice and home affairs: post-council statement, December 2015, 10 December 2015
289 See Standard Note 6669, The draft EU data protection framework.
which they were not nationals. EU Member State nationals who are resident in the UK are therefore able to vote in local elections, devolved legislature and EP elections. There is no qualifying time limit. This right has not been extended to UK Parliamentary elections. A UK withdrawal would remove this reciprocal arrangement.

There are exceptions to the current arrangements. Citizens of the Republic of Ireland who are resident in the UK are able to vote in all elections. Citizens of Malta and Cyprus who are resident in the UK are also able to vote in all UK elections as qualifying Commonwealth citizens. A UK withdrawal would not affect the voting rights in the UK of the citizens of these EU countries.

Some EU Member States have bilateral reciprocal arrangements with non-EU states with regard to voting rights. For example, Portugal grants Norwegian citizens the local franchise because Portuguese nationals living in Norway can vote in Norwegian local elections. Spain has also signed agreements with several countries, including Norway, on reciprocal voting rights of nationals in local elections.

Citizens of other Commonwealth countries who are resident in the UK are able to vote in all elections but this is dependent on their immigration status. There are no formal reciprocal arrangements between the UK and other Commonwealth countries but a number of Commonwealth countries allow resident British citizens to vote in their elections.

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290 See Research Paper 94/23, Votes and seats for European Parliament elections, for details of this Directive.
13. Human rights

13.1 Overview

If the UK withdrew from the EU, it would no longer have to comply with the human rights obligations of the EU Treaties, which include the controversial EU Charter of Fundamental Rights.

The EU’s human rights obligations are sometimes overlooked, as they were largely drawn from other human rights instruments to which the UK was already a party, and they were not intended to create any new rights. They apply to the EU institutions, and also to Member States but only when they are acting within the scope of EU law.

However, EU human rights can provide new remedies. The Charter is now being relied on increasingly in the UK, largely because if the courts find a breach they can be required to disapply UK Acts of Parliament – something which they cannot do under other human rights instruments. This could affect the ongoing controversy over prisoner voting.

The topic of EU human rights ties the EU membership debate to the more general one on human rights in the UK. The Government’s concerns about how human rights operate in the UK have largely focused on the European Convention on Human Rights (which is a Council of Europe document, not an EU one) and the UK’s Human Rights Act 1998. But now it seems that the EU Charter too is going to be considered in the Government’s consultation paper on a new British Bill of Rights. Furthermore, if the UK withdrew from the Convention it could have an impact on the UK’s membership of the EU; and another complication is that the EU is meant to accede as a body to the European Convention on Human Rights (although that is not likely to happen soon).

13.2 What are the EU’s human rights obligations?

Article 2 Treaty on European Union (TEU) declares that respect for human rights is one of the values on which the EU is founded:

> The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

The EU’s Charter of Fundamental Rights provides much more detail and substance. The Charter includes Convention rights (those incorporated into UK law by the Human Rights Act 1998 and others), as well as more progressive social and economic rights. Since 2009, when the Treaty of Lisbon entered into force, the Charter acquired equal legal status to the EU Treaties themselves.291

291 Article 6(1) TEU.
The reason for introducing the Charter was to ensure that the EU institutions comply with human rights obligations. It also therefore applies to EU Member States when they are implementing, derogating from or acting within the scope of EU law.\(^\text{292}\)

The EU Court of Justice in Luxembourg can hear actions against the institutions and the Member States for breaches of these rights. If the breach is serious and persistent, the Member State’s voting rights in the Council can be suspended.\(^\text{293}\)

13.3 Does the Charter of Rights give additional rights or remedies in the UK?

There has been considerable debate over whether the Charter simply restates existing rights in the UK or creates new ones. When it was being drawn up, many in the UK were concerned that it might create new rights and extend the reach of the EU Court of Justice.

The UK and Poland secured a Protocol that some have seen as an opt-out from the Charter but which is more usually considered to be an interpretative guide that possibly limits the effect of the Charter for the UK and Poland as regards social rights.\(^\text{294}\)

The Charter does not necessarily provide a wider set of enforceable rights than is otherwise available. Not all of the Charter’s provisions are directly effective; some of them are ‘principles’ rather than directly enforceable individual rights; and none of it was intended to create new justiciable rights.

However, it does mean new remedies are sometimes available, and provides a new forum for human rights cases in the EU Court of Justice.

The most striking effect of the Charter is that any domestic legislation that conflicts with a directly-effective provision of the Charter must be disapplied by the UK courts.\(^\text{295}\)

This a more powerful remedy than the *Human Rights Act 1998* provides. Under the 1998 Act the courts cannot disapply UK Acts of Parliament: they can only issue a declaration of incompatibility, and Parliament can then fast-track amendments to the legislation in the light

\(^{292}\) For examples, see Professor Michael Dougan’s oral evidence to the House of Lords EU Justice sub-committee, 15 December 2015, Q57.

\(^{293}\) Article 7 TEU.


\(^{295}\) *European Communities Act 1972 s2(1).*
of the judgment. The courts can however strike out legislation from the
devolved assemblies that conflict with rights under the 1998 Act.296
Furthermore, compensatory damages for breaches of EU law can be
granted as of right, whereas they are discretionary under the 1998 Act.
There have already been several cases in England where claimants have
relied on the Charter either to assert rights that aren’t covered by the
1998 Act or to produce remedies unobtainable under the 1998 Act.297
In 2015 the Court of Appeal decided in two cases that UK legislation
had to be disapplied because it conflicted with directly-effective
provisions of the Charter.298

Box 1: The EU and the prisoner voting controversy

One of the main controversies around human rights in the UK is whether prisoners should be
able to vote.
The European Court of Human Rights in Strasbourg ruled in 2005 that the UK’s blanket ban
on prisoner voting breached the European Convention on Human Rights. The UK has not yet
introduced legislation to comply with this ruling.
But this issue also concerns EU law. In October 2014 the EU Court of Justice in Luxembourg
said that the right to vote in European Parliamentary elections is protected by the Charter
despite representations to the contrary from the UK and others). However, it held that a
French ban on some prisoners voting was proportionate.299
UK prisoners could bring a case under the Charter alleging that the UK’s blanket ban was
disproportionate, in advance of the next European elections in 2019. If they won, this could
potentially lead to UK legislation being disapplied.
The Government has said it will produce a full report on prisoner voting after publishing its
consultation paper on a British Bill of Rights.
There is more information on prisoner voting in two other House of Commons Library briefing
papers:
• Prisoners’ voting rights (2005 to May 2015), CBP1764, 11 February 2015
• Prisoners’ voting rights: developments since May 2015, CBP 7461, 12 January 2016

In 2014 the Commons European Scrutiny Committee called for
urgent clarification on the application of the Charter in the UK, for the
Government to intervene in proceedings in the EU Court of Justice to
limit the scope of the Charter in the UK, and even for primary legislation
to disapply the Charter from the UK.300
In response, the Government agreed on the need for clarification, and
said that it would publish ‘a report on the balance of competence

296 Scotland Act 1998 s29(1); Government of Wales Act 2006 s94; and Northern Ireland
297 For discussion see for example Joshua Folkard, ‘Horizontal Direct Effect of the EU
Charter of Fundamental Rights in the English Courts’, UK Constitutional Law Blog,
23 September 2015; Richard Clayton and Cian C. Murphy, The Emergence of the EU
Charter of Fundamental Rights in UK Law, 5 EHRLR 469 [2014].
298 Benkharbouche v Sudanese Embassy [2015] EWCA Civ 33 and Vidal-Hall v Google
Inc [2015] EWCA Civ 311.
299 Thierry Delvigne v Commune de Lesparre-Médoc and Préfet de la Gironde, Case C-
650/13, 6 October 2014.
300 European Scrutiny Committee, The application of the EU Charter of Fundamental
between the EU and the UK on fundamental rights’. The report duly followed, but served mainly to emphasise the disagreements in this area:

The evidence shows there is a divergence of views on where the balance of competence should lie between the EU and the UK on the protection of human rights. There is little consensus on what constitutes the national interest in this context beyond the principle that the EU and Member States should act consistently with human rights. Views vary on whether the EU’s competence on fundamental rights is being exercised consistently with interests in the UK, depending on perspectives on the role of supranational human rights mechanisms, national sovereignty and how fundamental rights are balanced against other interests in society, such as trade.

It did, however, recognise that the Charter could have a greater impact than the Convention:

… the evidence revealed no instances where the domestic courts have interpreted fundamental rights to provide a greater standard of protection than corresponding guarantees in the ECHR. However, the evidence acknowledged that, in comparison to Convention rights, fundamental rights can have a wider scope of application and can result in the disapplication of primary legislation. Some legal practitioners and think tanks considered that the resulting impact of fundamental rights on parliamentary sovereignty is even more significant than the ECHR.

With growing awareness of the Charter in the legal profession as well as the public, this impact is likely only to increase.

The Government’s response to the Committee also confirmed that the Government would intervene in EU Court of Justice cases where necessary, but it seemed to reject primary legislation to disapply the Charter in the UK:

Any decision to unilaterally disapply legislation, including the Charter which has the same status as the Treaties, would no doubt have political, legal and diplomatic consequences.

However, in December 2015 the Lord Chancellor said that it would be looking at how the Charter affects UK law in its consultation on a British Bill of Rights (see below).

303 Ibid para 4.87.
305 Michael Gove, oral evidence to the House of Lords Select Committee on the Constitution, 2 December 2015, p15.
13.4 What if the UK withdraws from the European Convention on Human Rights?

The Government has for some time had concerns about the way human rights are applied in the UK. It was due to publish a consultation paper on a new British Bill of Rights in the autumn of 2015, with proposals on ‘preventing abuse of the system, ‘restoring common sense’ to UK human rights laws and ‘making clear where the balance should lie between Strasbourg and British courts’. But this paper has not yet appeared, and in December 2015 the Lord Chancellor, Michael Gove, said the delay was because of concerns about the EU Charter of Fundamental Rights and the EU Court of Justice in Luxembourg (which rules on EU law):

One of the other challenges, and it is a challenge that the Prime Minister has passed directly to me, is to think hard about whether we should use the British Bill of Rights in order to create a constitutional longstop similar to the German Constitutional Court and, if so, whether the Supreme Court should be that body. This was partly a consequence, as we got into the nitty-gritty of thinking about the European Convention on Human Rights and the court, of recognising that the European Court of Justice in Luxembourg and the European Charter of Fundamental Rights, which was adopted as part of EU law in the Lisbon treaty, also have an application in domestic law here.

The Government has not ruled out withdrawing from the Convention. If the UK did withdraw from it but stayed in the EU, the UK courts would be in an odd position. They would still have to apply all the Convention rights when deciding on measures that fall within the scope of EU law (as a result of the EU Treaties and the Charter), but would not be able to apply them generally as part of UK law or even refer to them as an obligation on the Government under international law.

Furthermore, it is conceivable that, as a matter of politics, withdrawing from the Convention could result in the UK having to withdraw from the EU. Although EU Member States cannot be excluded from or compelled to leave the EU, even for a serious and persistent breach of the EU’s values, their voting rights in the Council may be suspended, which would not be tenable in the long term.

The House of Lords EU justice sub-committee is currently holding an inquiry on the potential impact of repealing the Human Rights Act on EU law.

A possible future complication is that Article 6 (2) TEU requires the EU itself to accede to the Convention. However, in December 2014 the EU Court of Justice gave its Opinion on the validity of a draft agreement on the EU’s accession to the Convention. It found that it was not within the EU’s powers to accede to the Convention under the draft agreement, and raised issues about submitting itself to the judgments of the

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Strasbourg court. So, for the time being at least, the UK will not have to deal with complications arising from EU accession to the Convention.
14. Social security

14.1 Welfare benefits

Entitlement to welfare benefits for people moving between EU Member States is closely linked to free movement rights. UK withdrawal from the EU could have significant implications both for EU/EEA nationals living in or wishing to move to the UK, and for UK expatriates elsewhere in the EU/EEA, and those considering moving abroad.

The UK could seek to secure bilateral social security agreements on reciprocal rights with individual EU/EEA states, but negotiations could be difficult and protracted. Alternatively, the UK could seek a single agreement with the EU/EEA as a whole. Such an arrangement could, however, end up closely resembling existing provisions in EU law. Whatever the solution, decisions would have to be made on how to protect social security rights already accrued at the point of withdrawal from the EU.

The current position

Access to welfare benefits for people moving between EU/EEA Member States is governed by EU law on free movement of persons and the associated provisions on the co-ordination of social security. Key measures include:

- The Treaty on the Functioning of the European Union (TFEU), and in particular:
  - Article 18 TFEU (non-discrimination on the grounds of nationality);
  - Articles 20 & 21 TFEU (as they relate to nationality, citizenship and free movement of persons);
  - Articles 45-48 TFEU (free movement of workers); and
  - Articles 49-53 TFEU (freedom of establishment of self-employed persons)
- Regulation 492/2011 on freedom of movement for workers

People moving from one EEA State to another do not under EU law have unrestricted access to benefits in the host state. Broadly speaking, access to benefits is dependent on the person being economically active, or otherwise able to support themselves. However, the rules have evolved over the years, in response to case law and as a result of changes to the Treaties and EU legislation, extending free movement rights to new groups and loosening the link with labour market

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309 See People from abroad: what benefits can they claim?, Commons Library briefing SN06847, section 3.
participation. This, coupled with EU enlargement and the associated increased level of migration, led the UK Government in its July 2014 Review of the Balance of Competences in relation to the free movement of persons to call for a review of the EU rules “with a view to modernisation and ensuring they are fit for purpose”. It conceded, however, that none of the evidence it had received as part of the review was able to point to specific research or analysis on the importance of access to benefits in the decision to migrate, although it also pointed out that it was unlikely to be possible to satisfactorily separate specific pull factors from the range of considerations determining individual decisions to migrate.

In its landmark judgment in the Dano case in November 2014, the EU Court of Justice confirmed that Member States have the power to refuse to grant social benefits to economically inactive migrants exercising their free movement rights solely to obtain benefits from the host state. Some commentators have suggested that the Court – which hitherto had tended to interpret free movement rights broadly – may be taking greater notice of wider political debates about free movement. The judgment was widely welcomed as a clear statement that Member States can take action to tackle ‘benefits tourism’, but the full significance of the ruling is not yet clear.

Since the beginning of 2014 the UK Government has introduced a number of measures limiting access to benefits for EEA migrants. People arriving in the UK looking for work now have to wait three months before they can claim Jobseeker’s Allowance, Child Benefit and Child Tax Credit. EEA jobseekers and former workers must now satisfy a new, strict “genuine prospect of work” test in order to continue to receive benefits. EEA jobseekers can no longer access Housing Benefit, even if they are in receipt of JSA, and will be prevented from claiming Universal Credit.

**Implications of UK withdrawal from the EU**

If a UK withdrawal meant the end of free movement rights, the UK would be able to impose restrictions on access to many social security benefits via immigration law, for example by making EU/EEA nationals’ leave to remain in the UK subject to a condition that they have no recourse to public funds. Entitlement to contributory social security benefits could also be limited by limiting access to employment. The Government would have to decide how to deal with those exercising their free movement rights at the point of withdrawal, e.g. as workers or self-employed persons, and EU/EEA nationals who might have

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310 People from abroad: what benefits can they claim?, Commons Library briefing 06847, para 3.21.
311 Ibid. paras 2.55; 2.61.
312 Case C-333/13; see also the CJEU press release, “Economically inactive EU citizens who go to another Member State solely in order to obtain social assistance may be excluded from certain social benefits”.
313 See Further proposals to restrict migrants’ access to benefits, Commons Library briefing 07145, p7.
314 For details see Measures to limit migrants’ access to benefits, Commons Library briefing 06889.
acquired rights in the UK, e.g. those who have gained permanent residence under Directive 2004/38/EC.

Withdrawal might also have implications for UK nationals living in other EU/EEA countries, since Member States would be free to impose corresponding restrictions on entitlement to their benefits. It is estimated that in 2010, around 1.4 million UK nationals were resident in other EU Member States, with the largest numbers estimated to be in Spain (411,000), Ireland (397,000), France (173,000) and Germany (155,000). The implications for UK nationals resident overseas would depend on the attitude of the Member State in which they resided, but it is possible that restrictions on entitlement to benefits, along with other restrictions on rights of residence and changes to immigration status, could result in significant numbers seeking repatriation.

UK withdrawal from the EU would also mean withdrawal from the long-standing provisions in EU law to co-ordinate social security schemes for people moving within the EU, which also apply to non-EU EEA countries and Switzerland. The main purpose of the co-ordination rules is to ensure that people who choose to exercise the right of freedom of movement do not find themselves at a disadvantage in respect of social security benefits – for example if they should fall ill or become unemployed while working in another EEA State. The Regulations do not guarantee a general right to benefit throughout the EEA; nor do they harmonise the social security systems of the Member States. Their primary function is to support free movement throughout the EEA by removing some of the disadvantages that migrants might encounter. They achieve this by, for example:

- prohibiting discrimination in matters of social security systems on grounds of nationality;
- clarifying which state is responsible for paying benefits in particular cases (the ‘single state principle’);
- allowing a person’s periods of employment, residence and contributions paid in one EEA country to count towards entitlement to benefit in another country (this is referred to as the principle of ‘aggregation’); and
- allowing people to take certain benefits abroad with them to another EEA state (‘exportation’)

Withdrawal from the system of co-ordination would pose questions, such as how to deal with people who have lived and worked in more than one Member State and accrued rights to contributory benefits on the basis of social insurance paid in different countries. At present, an individual in this situation would, on reaching retirement for example, make a claim for a state pension from the country of residence at that time, but under the co-ordination rules each Member State in which the person was insured will calculate its pro rata contribution (using agreed formulae), and put that amount into payment (this is known as

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315 For a discussion of possible scenarios and their implications see Steve Peers, EU Law Analysis, ‘What happens to British expatriates if the UK leaves the EU?’, 9 May 2014.
‘apportionment’). Withdrawal from this system would mean that, unless alternative arrangements were put in place, UK nationals who had spent periods living and working abroad could have their pension rights significantly reduced. Other EU/EEA nationals who had spent periods living and working in the UK would be similarly disadvantaged.

In place of the co-ordination rules, the UK could seek to negotiate bilateral reciprocal social security agreements with individual EU/EEA Member States (the UK already has a number of such agreements with non-EEA states, and agreements with certain EEA states which pre-date the UK’s EC entry). These might cover matters such as reciprocal recognition of periods of insurance/residence for benefits purposes, exportability of benefits (and continued annual uprating of benefits for people living abroad), and aggregation/apportionment for contributory benefits and retirement pensions. However, such bilateral agreements as currently exist are far more limited in scope than the EU co-ordination rules, and no new agreements of this sort have been signed for many years.

The likelihood of the UK securing a bilateral agreement, and the precise terms, could vary from country to country depending on the relationship between that country and the UK. The UK might not be able to extract terms favourable to UK nationals, or might not be able to reach agreement at all, if there is an imbalance between the number of UK nationals living in that country and that country’s nationals living in the UK, or if the country perceives the UK’s immigration/benefit rules as impacting disproportionately on its own nationals. Negotiations could prove difficult and protracted.318

As an alternative to seeking individual bilateral social security agreements, the UK could seek to negotiate a single agreement with the EU/EEA as a whole, which would simplify matters for people who had worked and been insured in more than two Member States. However, such an agreement might end up closely resembling the existing EU/EEA social security co-ordination rules. The EU would almost certainly refuse to accept any arrangement that discriminated between different Member States, so the UK would have to grant the same rights to all EU nationals, including those from less prosperous Eastern European accession states.319320

14.2 Access to social housing
Social (council) housing in the UK is a public resource. Therefore, as with entitlement to social security benefits, EEA nationals’ access to social housing is based on the principle of free movement and the entitlement

318 See Helena Wray, EU Law Analysis, ‘What would happen to EU nationals living or planning to visit or live in the UK after a UK exit from the EU?’, 17 July 2014.
319 Ibid.
320 The expectation is however that, following a UK exit from the EU, Irish nationals would continue to be treated differently from nationals of other EU States as regards free movement rights. For example, Irish nationals are “habitually resident” for benefits purposes, since the Republic of Ireland is part of the “Common Travel Area,” and Irish nationals also have a “right to reside”.

of EEA nationals to enjoy equal treatment with UK nationals in accessing social advantages.

There is no automatic entitlement to social housing for anyone in the UK. The basis on which an EEA national might be eligible to apply for an allocation of social housing is summarised in this extract from a parliamentary answer:

European Economic Area nationals who have a right to reside in the UK on the basis that they are self-sufficient are eligible for social housing, if they are habitually resident in the common travel area (the UK, Channel Islands, Isle of Man and Republic of Ireland). To be considered self-sufficient, a person must have (i) sufficient resources not to become a burden on the social assistance system of the UK and (ii) comprehensive sickness insurance cover in the UK.

To be allocated social housing an eligible applicant must also meet the local authority’s own qualification criteria and have sufficient priority under the local authority’s allocation scheme.

An allocation scheme must be framed to ensure that certain categories of people are given ‘reasonable preference’ for social housing, because they have an identified housing need, including people who are homeless, overcrowded households, and people who need to move on medical or welfare grounds.321

Housing policy in the UK is a devolved matter; different regulations govern eligibility to apply for an allocation of social housing in England, Scotland, Wales and Northern Ireland.322

If the UK withdraws from the EU and if this were to result in the cessation of free movement rights, it would be possible to restrict the ability of EEA nationals to apply for social housing. Currently, ‘Persons Subject to Immigration Control’ (PISCs) cannot be allocated social housing and are ineligible for housing assistance unless they are of a class prescribed in regulations. Broadly, the PISCs that are able to apply for social housing have been granted leave to enter or remain in the UK with recourse to public funds (for example, people granted refugee status or humanitarian protection).

At the point of withdrawal the Government would have to decide how to deal with those EEA nationals who have already acquired a social housing tenancy, some of whom will be reliant on full/partial Housing Benefit in order to meet their rent commitments.

321 HC Deb 22 April 2013 c586W (for more detailed information see Library note SN04737).
322 For example, in England the relevant provisions are in The Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (2006/2007). These regulations have been amended several times, most recently by the Allocation of Housing and Homelessness (Eligibility) (Amendment) Regulations 2014 (2014/435). In Wales the relevant regulations are The Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014.
15. Pensions

The design of pension systems is largely the responsibility of Member States. The regulatory framework at EU level covers four main points: cross border co-ordination of social security; establishing an internal market for funded occupational pension schemes and the minimum standards to protect scheme members; minimum guarantees concerning accrued rights in occupational pension schemes in case of the insolvency of the sponsoring employer; and anti-discrimination rules.\footnote{European Commission Memo 10/302, Green Paper on Pensions, July 2010; European Commission, Green Paper. Towards adequate, sustainable and safe European pension systems, Brussels 7 July 2010, SEC(2010)830.}

State Pensions

Long-standing rules enable the co-ordination of social security entitlements for people moving within the EU.\footnote{Now in EC Regulations 883/2004 and 987/2009.} The rules also apply to EEA countries and Switzerland.

The aim of the provisions is not to harmonise social security systems, but to remove barriers to workers moving between Member States. They enable periods of insurance to be aggregated, so an individual who has worked in other Member States can make one application to the relevant agency in the country of residence (in the UK, the International Pension Centre), which then arranges for each state where a person was insured for at least a year to pay a pension. They also enable a pension built up in one Member State to be drawn in another (exportability).\footnote{DWP tabulation tool}

UK state pensioners resident in EEA countries also receive annual increases to their state pension. Elsewhere, the UK state pension is only uprated if there is a reciprocal social security agreement requiring this.\footnote{Social Security Contributions and Benefits Act 1992, s 113; The Social Security Benefit (Persons Abroad) Regulations 1975 (SI 1975/563); Library Briefing Paper SN01457 Frozen Overseas Pensions (February 2016).}

In May 2015, the Department for Work and Pensions paid pensions to some 472,000 people in EEA countries, with the largest number of recipients in the Republic of Ireland (28%), Spain (23%) and France (13%).\footnote{HM Government, Review of the Balance of Competences between the United Kingdom and the European Union. Single Market: Free Movement of Persons, Summer 2014, para 2.56 and 2.69-70.}

In its review of the Balance of Competences between the UK and EU, the Government commented that the social security co-ordination provisions were of “significant benefit to UK citizens, particularly retirees, who are living in other Member States”. It said:

The export of pensions to those who have accrued the necessary entitlements is perhaps the clearest example of the necessary role of coordination rules as originally envisaged, and the EU rules...
superseded bi-lateral agreements already in place for example with the Republic of Ireland.\textsuperscript{328}

In place of the co-ordination rules, the UK could seek to negotiate bilateral reciprocal agreements with individual EU/EEA Member States.

**Workplace pension schemes**

The Pension and Lifetime Savings Association explains that UK workplace pension schemes tend to operate on a national basis but want access to investment opportunities and service providers in the EU:

6. Workplace pension schemes in the UK are not generally looking to provide pensions to workers in other Member States. So, in this respect, there is little interest in taking up the opportunities that might - in theory at least – be provided by an effective EU-wide Single Market.

7. However, workplace pension schemes do want ready access to investment opportunities and service providers in EU and across the world, and this is where a strong Single Market has a role to play. Having ready access to the widest possible range of service providers helps schemes to invest their assets and administer their schemes with a minimum of cost in order to provide the best value to their members.\textsuperscript{329}

EU legislation has an impact on them:

- directly, through pensions-specific EU legislation such as the Directive on Institutions for Occupational Retirement Provision (‘IORP Directive’), through the regulatory activities of EIOPA, and through EU employment law, such as the Equal Treatment Directive; and
- indirectly, because the costs of complying with the EU’s investment markets legislation (such as EMIR, MiFID, the draft Money Market Funds Regulation and the potential Financial Transaction Tax) are passed to pension fund clients by asset managers, brokers and banks.\textsuperscript{330}

The objectives of the Institutions for Occupational Retirement Provision (IORP) Directive included removing the obstacles to cross-border provision so that funds could operate across the Single Market.\textsuperscript{331} To protect scheme members, cross-border schemes are required to be ‘fully funded’ at all times.\textsuperscript{332} Despite the Directive, there are still relatively few cross-border schemes. In 2013, there were just 82, almost half of which (39) were between the UK and Republic of Ireland, reflecting historic business links. In June 2015, there were 88.\textsuperscript{333} This may reflect the fact

\textsuperscript{328} Ibid, para 2.70.
\textsuperscript{329} The PLSA was previously known as the National Association of Pension Funds (NAPF), HM Treasury review of the balance of competences: Single Market – financial services and the free movement of capital: a response by the National Association of Pension Funds, January 2013.
\textsuperscript{330} Ibid, Executive Summary and page 7.
\textsuperscript{332} Occupational Pension Schemes (Cross-border activities) regulations 2005 (SI 2005 No. 3381).
\textsuperscript{333} NAPF, HM Treasury review of the balance of competences: Single Market – financial services and the free movement of capital: a response by the National Association of
that there are barriers to establishing cross-border schemes, including stringent funding requirements and national differences in tax and social and labour law. However, it is also possible that there is little demand to establish them.\textsuperscript{334}

The UK Government’s Balance of Competences Review said workplace pension providers acknowledged the role the Single Market could play in facilitating access to investment opportunities and services. However, they also argued for a strong national dimension to decision-making relating to occupational pensions, given the very different traditions of provision across Member States.\textsuperscript{335}

The impact on pension schemes of being outside the EU would depend on the model of interaction the UK had with the EU and the extent to which it had a say in the development of legislation affecting schemes. Also important could be the way in which EU legislation provided for firms from outside the EU providing services or conducting transactions within it.

\begin{itemize}
\item \textbf{Pension Funds}, January 2013; EIOPA, \textit{2015 Report on Cross Border IORP Market Developments}, Table D.
\end{itemize}
16. Health policy and medicines regulation

While health care systems in the Member States are a matter of national responsibility, other aspects of health care – reciprocal access, pharmaceuticals, the working hours of doctors and mutual recognition of qualifications, for example - are regulated to a greater or lesser extent by EU law. There is therefore a significant role for the EU in supplementing national policies and also in ensuring a cross-border approach to important public health issues, such as preventing pandemics and anti-smoking measures.

Public health systems

The EU Public Health Strategy, Together for Health was adopted in 2007. Objectives within the strategy include: improving the health of the EU’s aged population, targets to improve surveillance between Member States to combat pandemics and bioterrorism, and support for new technologies for health care and disease prevention.

One area of importance is the early warning and response system for the prevention and control of communicable diseases. This allows for a network of communication between Member States to monitor, communicate and assist in the response to a threat of communicable disease. The European Centre for Disease Prevention and Control is at the centre of this network, collecting information, providing expertise and co-ordinating related bodies.

NHS Blood and Transplant implements EU rules on the procurement, storage, use and monitoring of all human tissue and blood in the UK. Directive 2002/98/EC of 27 January 2003 ensures a harmonised approach throughout the EU, in the context of an ever-increasing use of tissues in human treatments and the increase in intra-community trade for treatment and research.

The EU has also played a leading role in other significant public health strategies, such as reducing alcohol misuse, promoting good nutrition and banning smoking in public places.

EU Tobacco Products Directive

Tobacco control is an area where the EU has been very active. Most recently, the revised EU Tobacco Products Directive came into force in

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336 Europa: Public health: EU action “shall not include the definition of health policies, nor the organisation and provision of health services and medical care”.
340 DIRECTIVE 2014/40/EU of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC.
May 2014. Member States have two years to transpose the Directive into domestic law.

The Directive strengthens the rules on tobacco products. It introduces a condition that 65% of the packet be covered in picture and text health warnings, that packets in future will contain a minimum of 20 cigarettes, and it bans flavourings of tobacco. The Directive also introduces a new regulatory approach to electronic cigarettes. Following a consultation on draft regulations last year, the Government have said that the Regulations to implement the directive will be laid before Parliament in order to come into force in May 2016. The Directive is currently being challenged by a number of tobacco companies and a UK electronic cigarette manufacturer at the European Court of Justice.

Healthcare professionals and the recognition of qualifications

Under the European directive on the recognition of qualifications, health and social care professionals who qualified within the EEA will automatically have their qualifications recognised by the relevant regulatory body in any EEA country. For example, doctors who qualify from recognised medical schools within the EEA are able to register with the General Medical Council without additional checks, allowing them to practise in the UK (whereas healthcare workers from outside the EEA will generally be subject to additional checks on their competence and communications skills before they are allowed to register).

While withdrawal from the EU would allow UK regulatory bodies to introduce the same checks for EEA applicants as for non-EEA applicants, restricting the free movement of healthcare workers could also have workforce implications for health service providers in the UK, as well as restricting UK healthcare professionals’ ability to work in Europe.

Junior doctors and the EU Working Time Directive

The European Working Time Directive (EWTD), which includes a general limit of 48 hours on the working week, has applied to most health service staff since 1998. Initially junior doctors were exempt from the working hours limit because there were concerns about the impact on NHS services and training, but from 2004 to 2009 junior doctors were gradually brought within the provisions of the Directive.

The previous Government commissioned an independent review, chaired by Professor Sir John Temple, of the impact of the EWTD on the quality of training. A report of this review, Time for Training, was published in May 2010. Its findings concluded that high quality training can be delivered in 48 hours but traditional models of training and service delivery waste training opportunities and will need to change. Although it is still possible for doctors and other NHS staff to work

longer hours by signing an opt-out clause, UK withdrawal from the EU would allow greater flexibility in devising NHS work and training rotas.343

**Reciprocal access to healthcare**

EEA residents and Swiss residents are entitled to hold a European Health Insurance Card (EHIC) which gives access to medically necessary, state-provided healthcare during a temporary stay in another EEA country. The EHIC entitles EEA visitors to the UK to free NHS treatment that is medically necessary during their visit, including treatment of pre-existing medical conditions, as long as they have not travelled to the UK purposefully for treatment. EEA/Swiss residents can be referred to the UK for pre-planned treatment with an E112/S2 Form. The costs of treatment under these schemes can be reclaimed from the visitor’s country of residence. EU citizens who can show that they are either employed or self-employed in the UK or non-active but ordinarily resident in the UK are entitled to free NHS treatment, so any cessation of free movement rights following withdrawal would make it harder for EU citizens to receive free healthcare on the basis of residence in the UK.

If the UK remained in the EEA it might be able to continue to participate in the EHIC scheme, or, subject to negotiation with EU States, participate on a similar basis to Switzerland.

**Pharmaceuticals**

EU legislation provides a harmonised approach to medicines regulation across Member States. The most recent revision of EU medicines legislation in 2004 led to the establishment of the European Medicines Agency (EMA), which is based in London.344 The EMA is responsible for the scientific evaluation of human and veterinary medicines developed by pharmaceutical companies for use in the EU. It can grant marketing authorisations for medicines which allow for their use across the EU, Iceland, Liechtenstein and Norway.

Pharmaceutical companies can apply to the EMA for a centralised authorisation as long as the medicine concerned is a significant therapeutic, scientific or technical innovation, or if its authorisation would be in the interest of public or animal health. This centralised procedure is compulsory for some groups of drugs.345 Alternatively, companies may apply for national marketing authorities of EU countries simultaneously; or, through the mutual-recognition procedure, companies that have a marketing authorisation in one country can apply to have it recognised in other EU countries.346

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343 In January 2012 there was a short Lords debate on the impact of the EU on healthcare in the UK, which included references to the impact of the Working Time Directive, *HL Deb 11 January 2012 c176-90.*


345 European Medicines Agency (accessed 11 June 2013).

The inclusion of Iceland, Lichtenstein and Norway for the centralised marketing authorisations may mean that despite the UK leaving the EU, the UK could continue this relationship with the EMA and benefit from the centralised marketing authorisations. If this were not the case, however, pharmaceutical companies might need to apply for marketing authorisations separately to the MHRA for every medicine they wished to supply in the UK.

EU medicines legislation also applies to herbal medicinal products. A simplified registration procedure for traditional herbal medicines, introduced by Directive 2004/24/EC, came into force in 2011. This registration process is controlled by the MHRA in the UK.347

347 Gov.uk, MHRA, Apply for a traditional herbal registration (THR) (accessed 3 June 2015).
17. Higher education

Support for EU students

Arguably the most significant consequences of EU membership on the UK higher education (HE) sector are the provision of support to EU students studying in the UK and access to European research funding.

Membership of the EU also gives UK students access to European student mobility schemes such as Erasmus+. Furthermore, the UK is a signatory to the Bologna Process which aims to create a harmonised HE system across Europe.

Under EU legislation on free movement citizens moving to another Member State should have the same access to education as nationals of that Member State. With regard to higher education this means that every eligible EU student pays the same tuition fees and can apply for the same tuition fee support as nationals of the hosting EU country. UK higher education institutions therefore charge incoming EU students the same tuition fees as home students and the Government provides tuition fee loans to cover the cost of these fees on the same basis as loans to UK home students. In 2013/14 there were 125,300 EU students at UK universities\(^348\) and in that year £224 million was paid in fee loans to EU students on full-time courses in England - 3.7% of the total student loan bill.\(^349\)

A host Member State is not obliged, however, to provide maintenance support to citizens of other EU States, although some EU nationals who have lived in the UK for three years prior to the start of their course are eligible to apply for the full package of grants and loans for maintenance support.

European research funding

The European Research Area (ERA) was launched by the European Commission in 2000 with the aim of co-ordinating research and innovation activities across the EU. ERA initiatives are developed through periodic framework programmes; the current programme, Horizon 2020, aims to allocate €80 billion for research and innovation from 2014 to 2020. Funding is allocated on a competitive basis through the European Research Council. UK universities are predicted to receive about £2 billion from Horizon 2020 in the first two years of the programme.\(^350\)

The 24 Russell Group universities receive about £400 million a year in EU research funds - some 11% of their research income.\(^351\)

\(^{348}\) Higher Education Statistics Agency SFR 210 Higher Education Student Enrolments and Qualifications Obtained at Higher Education Providers in the United Kingdom 2013/14.

\(^{349}\) SN/SG/917 Tuition fee statistics 1 December 2014.


\(^{351}\) “UK’s big guns make a stand for research in Europe”, Times Higher Education 23 April 2015.
EU student mobility programmes

The Erasmus+ scheme is an EU programme open to education, training, youth and sports organisations, and it offers opportunities for UK participants to study, work, volunteer, teach and train in Europe. The scheme will allocate almost €1 billion to the UK over seven years and it is expected that nearly 250,000 people will undertake activities abroad with the programme.\(^{352}\)

The Bologna Process

In 1999 the UK signed the Bologna Declaration, which set in train a process aimed at creating a European higher education area through the harmonisation of systems across Europe in matters such as credit transfer and comparability of degrees, and by promoting academic mobility.

If the UK left the EU

If the UK withdrew from the EU, the Government would not have to provide student loans or maintenance funding for EU students, which would save money. However, the UK would probably lose access to EU research funding and student mobility schemes. Overall, universities and students would probably lose out - universities are very concerned about their research funding. But the Government would save money on student finance. If the UK withdraws and EU students are classed in the same way as overseas students and charged higher fees, this could have an impact on numbers coming to study in the UK and on fee income for universities.

\(^{352}\) Erasmus + Key Erasmus+ facts and figures.
18. Culture, copyright, broadcasting, sport

Culture
The EU’s competence in relation to culture dates back to the Maastricht Treaty of 1992. Funding from EU programmes has been an important source of financial support for the UK’s cultural and creative sectors. Creative Europe is the current framework programme giving support to these sectors and has a budget of €1.46 billion.353

One of the main issues for the cultural sector if the UK left the EU would be the possible loss of funding – although Creative Europe is open to non EU countries that have concluded agreements with the European Commission.354

Broadcasting
Broadcasting in the EU is currently subject to the Audiovisual Media Services Directive (AVMSD).355 This updated the earlier ‘Television Without Frontiers’ Directive of 1989. Provisions in the current Directive include:

- a quota for works by independent European producers
- controls on advertising and sponsorship, including a prohibition on sponsoring news and current affairs programmes
- provisions for the protection of minors, particularly from pornography and violence
- a right of reply for people whose legitimate interests have been damaged by the broadcasting of incorrect facts

The later Directive aimed to take into account technological developments in broadcasting, including the growth of on-demand services. These pose a challenge to advertiser-funded broadcasters and the Commission responded by proposing a relaxation of some of the existing rules on advertising, including providing for product placement in programmes.

Since the adoption of the AVMSD, the audiovisual media landscape has changed significantly due to media convergence. The Commission is therefore proposing a further revision of the AVMSD in 2016. In preparation for this, there was a public consultation in 2015.356 The Commission identified the following issues to be considered in the evaluation and review of the AVMSD:

1. Ensuring a level playing field for audiovisual media services;

353 Europa website, Creative Europe [accessed 3 February 2016].
354 Ibid.
355 2010/13/EU. For a summary of its provisions, see Europa website, Audiovisual Media Services (AMS) Directive.
2. Providing for an optimal level of consumer protection;
3. User protection and prohibition of hate speech and discrimination;
4. Promoting European audiovisual content;
5. Strengthening the single market;
6. Strengthening media freedom and pluralism, access to information and accessibility to content for people with disabilities.

The consultation floated the possibility of broadening the type of services covered by the Directive beyond television and “television-like services” further into the online sphere, and even of altering the core principle that determines where the regulation of these services takes place (under the current Directive, jurisdiction is based on the “country-of-origin” principle, and services are regulated by the Member State in which they originate.) The UK Government responded to the consultation in January 2016. In its response the Government said that it regarded the regulation of the European audiovisual market through the AVMSD as a “success story”. However, it insisted that it saw the country-of-origin principle as “vitaly important”. Furthermore, whilst recognising that there was scope to develop common standards, the Government saw a “tangible difference between the concepts of broadcasting regulation and internet regulation”. 357

If the UK were to leave the EU, the Government might choose to look again at these pan-European requirements. The extent to which broadcast models of regulation can or should be applied to new media such as the internet is one area of controversy which would persist whether the UK were inside or outside the EU.

Copyright

Areas of UK copyright law derive from EU law. For example, the 1993 Directive on Copyright Duration harmonised upwards the terms of authors’ rights to the highest factor operating in a Member State. The 2001 Copyright Directive (also known as the Information Society Directive or the InfoSoc Directive) further harmonises aspects of copyright law across Europe, such as copyright exceptions; it also affects the application of copyright and control techniques on the internet and restricts the range of defences to copyright infringement.

Faced with the challenges of the ever-expanding digital market, in December 2015 the Commission announced plans to update EU copyright law. As a first step, the Commission adopted a legislative proposal on cross-border portability, which will ensure that subscribers to online content services can continue using them while temporarily...

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358 93/98/EEC.
359 2001/29/EC.
present in another Member State. (The UK Government supports this proposal.) Further measures are expected to follow in 2016. The emphasis is on

- Widening online access to content across the EU
- Adapting exceptions to copyright rules to a digital and cross-border environment
- Creating a fair marketplace, including as regards the role of online intermediaries when they distribute copyright-protected content
- Strengthening the enforcement system

Copyright is otherwise governed by a series of interlocking international agreements, among them the Berne Convention of 1886 and the World Intellectual Property Organization (WIPO) Copyright Treaty of 1996. It seems unlikely that, if Britain were outside the EU, the Government would seek to unpick these arrangements, since they bring reciprocal benefits to UK creators and rights-holders.

**Single Digital Market**

A Single Digital Market is one of the elements of the European Commission’s Digital Agenda for Europe. The Agenda “proposes to better exploit the potential of Information and Communication Technologies (ICTs) in order to foster innovation, economic growth and progress.”

A Single Digital Market Strategy was adopted in May 2015 and sets out 16 actions to be delivered by the end of 2016. It is a wide-ranging programme and includes initiatives in the following areas:

- e-commerce
- consumer protection
- copyright
- telecommunications
- VAT
- audiovisual media
- data protection
- cybersecurity
- e-government

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361 Intellectual Property Office, *Call for Views on the European Commission’s proposal for legislation on cross-border portability: Ensuring that British consumers will be able to access digital subscriptions when travelling in other EU countries*, 2016
362 European Commission News, *Towards a modern, more European copyright framework: Commission takes first steps and sets out its vision to make it happen*, 9 December 2015.
363 By way of example, the amended Directive on copyright duration (2011/77/EU) gives recording artists the same rights already enjoyed by songwriters. Since this amendment was vigorously campaigned for by veteran British entertainers, notably Sir Cliff Richard, it might be viewed as an unpopular move to repeal it once it has been translated into UK law. (The Directive’s implementation was the subject of a consultation by the Intellectual Property Office in 2013.)
364 Europa website, *Digital Agenda in the Europe 2020 strategy* [accessed 3 February 2016].
365 Ibid.
A European Commission press release gives further detail.366

In October 2015, the Government said that the Digital Single Market was “a key priority… It offers huge potential for jobs and growth and could increase UK GDP by up to 2%, and it can also benefit citizens, as shown by our recent deal within the European Council on roaming”.367

Sport

The Lisbon Treaty made sport an area of EU competence. Detailed information on the EU’s role in this area, including a Work Plan for Sport 2014-17, is available from the Europa website.368

Access to funding could be lost if the UK withdrew from the EU – the Erasmus+ programme, for example, funds grassroots sports projects and cross-border challenges such as combating match-fixing, doping, violence and racism.369

367 PQ 901740 on the digital single market, answered 22 October 2015.
368 Europa website, Sport – discover EU’s role [accessed 29 May 2015].
369 Europa website, Erasmus+ [accessed 29 May 2015].
19. Consumer policy

Introduction

The Charter of Fundamental Rights and the European Treaties since the Single European Act guarantee a high level of consumer protection in the EU. Promoting consumers’ rights is also a core value of the EU, enshrined in Article 12 TFEU.

Over the years, the importance of consumer policy has grown within the EU. It is now an integral part of internal market policy; it aims to ensure that the internal market is open, fair and transparent so that consumers can exercise real choice and receive fair treatment. A huge amount of existing consumer protection regulation in the UK is derived from the EU in one form or another. For example, Directives implemented in the UK protect consumers from unsafe products, unfair practices, misleading marketing practices, distance selling, and so on.

EU consumer programme 2014-2020

The strategy for consumer policy at European level is regularly reviewed by the European Commission, not least because the EU’s 500 million consumers play a central role in driving innovation and enterprise. Consumer spending accounts for approximately 56% of the EU’s GDP. The European Commission adopted in May 2012 the European Consumer Agenda, its strategic vision for EU consumer policy. This Agenda replaced the Consumer Policy Strategy 2007-2013. It aims to maximise consumer participation and trust in the market, and in turn achieve the objectives of the EU’s economic growth strategy, Europe 2020. The Consumer Agenda has four pillars, or overriding objectives, which are:

- Promoting consumer safety
- Enhancing knowledge of consumer rights
- Strengthening the enforcement of consumer rules
- Integrating consumer interests into the key sectoral policies

The Consumer Agenda also addresses imminent challenges, such as those linked to the digitalisation of daily life, the desire to move towards more sustainable patterns of consumption, and the specific needs of vulnerable consumers. According to the Commission’s second Report on Consumer Policy, most of the 62 measures presented in the Consumer Agenda have been completed.

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370 Charter of Fundamental Rights of the European Union, OJC 83/02, 30 March 2010.
372 Ibid.
373 Ibid.
The Consumer Programme 2014-2020 has a budget of €188.8 million to support EU consumer policy. Direct beneficiaries will be national authorities in charge of consumer policy, safety and enforcement, the network of European Consumer Centres, EU-level consumer organisations, and national consumer organisations. The programme will fund actions across all 28 EU Member States and countries of non-EU EEA Members. It aims to help consumers enjoy their consumer rights and actively participate in the single market, thereby supporting growth, innovation and meeting the objectives of Europe 2020.

The main challenges to be addressed by the 2014-2020 programme have been grouped under four headings:

- **Safety**: to reinforce the co-ordination of national enforcement authorities, and to address the risks linked to the globalisation of the production chain.
- **Consumer information and education**: to address the issue of poor knowledge of key consumer rights by consumers and retailers alike (particularly in respect of cross-border purchases and sales); to gather robust data on how the market is serving consumers; and to improve the capacity of consumer organisations etc.
- **Consumer rights and effective redress**: to further strengthen consumer rights and to address problems faced by consumers when trying to secure redress, notably cross-border, so that consumers are confident that their rights are well protected in any other Member State as well as at home.
- **Strengthening enforcement cross-border**: to increase awareness among consumers about the network of European Consumer Centres and to further strengthen the efficiency of the network of national enforcement authorities.

**If the UK left the EU**

The potential implications of an EU exit may be significant. Consumer protection covers a very wide range of goods and services and it is impossible to calculate the impact of withdrawal in any meaningful way without knowing the basis on which the UK would continue to interact with the EU.

The EEA/EFTA States, for example, have participated in EU consumer programmes since the EEA Agreement came into force in 1994. In addition, the Consumer Council in Norway has established close links with bodies at European level such as BEUC (an alliance of European consumer organisations). The Icelandic Consumer Agency and the Norwegian Consumer Council also belong to the European Consumer Centres Network (ECC-Net), which provides information and support to EU consumers. However, it is also the case that in return for access to the internal market, EEA/EFTA states are required to adopt all EU

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377 The EU Consumer Programme 2007-2013 had a budget of €156.8 million.
consumer protection provisions without access to the EU’s decision-making institutions.

An important question is whether a non-EU UK would keep all or some of the rules and procedures of EU consumer protection legislation. Existing consumer legislation could be unpicked and changed, but in practice this might be difficult to achieve.
20. Foreign and defence policies

20.1 Foreign policy

Relations with the United States

The quotation often attributed to Henry Kissinger about whom to dial in Europe sums up the view in US foreign policy circles that a co-ordinated or even a unified Europe would make a better ally than a continent with myriad divergent foreign policies - particularly in relation to defence. The US has often encouraged European countries to take more responsibility for the defence of their continent. The US pivot to Asia is in part dependent on Europeans taking more responsibility, too, for the security of their region. A taste of this policy was the US approach to the 2011 conflict in Libya: ‘leading from behind’. Europeans were encouraged to take the lead in the Libya action, with the US providing support. In the event, much more US support was needed than had been envisaged at the outset.

NATO is the main vehicle for transatlantic defence cooperation, but successive US administrations have not sought to stop the EU from developing its Security and Defence Policy, as long as the policy is not seen to undermine NATO. The US values the UK contribution to the EU defence debate for two major reasons: UK defence capabilities and the ‘special relationship’. Firstly, the UK and France are often regarded as the only two EU nations with a serious defence capability and the UK is one of the few NATO Member States to spend at least 2% of GDP on defence. (Commenting before the Government committed to fulfilling that target for the rest of this Parliament, one former US Defence Secretary said that cuts limited the UK’s ability to be a full partner of the US.) In spite of defence cuts, a UK exit would sharply reduce EU defence capacity and the UK could no longer act as an example of military capability to other EU Member States.

Secondly, the US relies on the UK to mould EU defence co-ordination. The US wants EU defence structures to evolve in such a way as not to undermine the US relationship with Europe, which means they should not be seen to be in competition with NATO. UK governments have traditionally advocated preserving the importance of NATO, while at the same time working, particularly with the French, to cooperate in defence matters and maximise the effectiveness of European forces. Both these positions suit US interests. The US has also viewed the UK’s support for EU enlargement as a sensible way for the EU to take more responsibility for its neighbourhood and to draw countries such as Turkey more firmly into the Western camp. While further EU enlargement after the Western Balkans is thought to be unlikely for some time (the parallel process of NATO enlargement to the east also appears to have stalled), Washington appreciates the traditionally more open approach supported by UK politicians.

378 ‘UK not ‘full partner’ with US, says former defence chief’, Daily Telegraph, 16 January 2014. The UK Government explicitly committed to spending 2% of GDP on defence for the remainder of the decade in the Summer Budget, July 2015
Conservative commentators in the US and the UK have suggested that the Obama Administration abandoned traditional allies such as Britain (and countries in Eastern Europe) in pursuit of the ‘Reset’ with Russia and the ‘pivot’ to Asia. However, the failure of the ‘Reset’ policy and the outbreak of conflict in Ukraine have given NATO a new lease of life. European integration with strong British influence is traditional Republican as well as Democratic policy.

The Middle East

The UK plays a limited but significant role in the Middle East. British influence is based on deep foreign policy experience and a tissue of connections acquired through many years of engagement in the region, as well as international cooperation, a large aid programme and a significant military capability.

The historical baggage can be a liability as well as an asset. Most UK policy in the region is conducted with EU partners, although there are relationships, particularly with the Gulf monarchies, that seem to develop without so much reference to the EU. Sanctions regimes (including arms embargoes), terrorist designations and the criteria for arms export control all tend to be decided at EU level. In the case of Israel and the Palestinians, the UK acts largely in concert with other EU Member States and the EU Council adopted policies such as the arms embargo on Syria and its lifting.

Some UK policies, the sanctions against Iran over its nuclear programme, for example, may be based both on decisions taken at the United Nations Security Council (UNSC) and decisions at the EU level. Iran was an example of EU Member States playing a strong role in Middle East diplomacy, with the UK in the forefront. For several years, the big three EU members, France, Germany and the UK, took the lead on nuclear negotiations with Iran, although the other members of the UN Security Council participated later in the process (and it is difficult to imagine it being brought to a conclusion without the active involvement of the US).

The United States, remains the biggest actor in the region and many UK interventions have been in conjunction with the US, for example the invasion of Iraq (with the UK part of a ‘coalition of the willing’) and the occupation of Afghanistan (as part of NATO’s International Security Assistance Force). The picture in the Middle East, as in other regions, is a complex one of UK policy being co-ordinated with partners in a variety of multilateral fora, including the UN, EU and NATO, as well as bilaterally with the US and with governments in the region.

Many in the region have not forgotten Britain’s historic Middle East role: the Sykes-Picot agreement setting up troubled states such as Iraq and Syria and ‘denying’ the Kurds a state, and the intervention in Iran to bring down the democratically-elected Mossadegh government in 1953 remain part of popular legend. Many, indeed, seem to have an exaggerated idea of the continuing importance of the ‘Little Satan’.

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Acting through the EU may go some way to alleviating the negative effects of Britain’s historical baggage in the Middle East.

Pooling UK influence with that of other EU Member States sharing many of the same interests looks like a sensible idea in the international arena. Acting through the EU means a larger aid budget, the promise of access to the largest consumer market in the world and a louder political voice, one that in some quarters carries more authority because it is not American (this is likely to have been a factor in the negotiations with Iran). All of these can be significant ‘soft power’ tools in the pursuit of European interests. If the UK were to withdraw and no longer coordinate its policy with Member States, it would no longer have access to these shared tools.

UK withdrawal would be a blow to the credibility of EU foreign policy in the region. Without the UK’s defence capacity and foreign policy experience, the EU’s voice in the Middle East would be less influential. Without the UK, the EU might also be more likely to adopt policies that were more at odds with US views, although the UK position on Israel and the Palestinians has traditionally been closer to that of its EU partners than to Washington’s.

It can also be argued, however, that withdrawal from the EU would not make much difference to the UK’s capacities in the Middle East; since the US remains the most significant power in the region, the UK could co-ordinate its Middle East policies more closely with those of the US. Despite the much-discussed pivot to Asia, the US will remain very influential in the Middle East for some time to come; some critics see the EU as little more than America’s sidekick in the region. US decisions have more impact than UK actions, within the EU or outside. The power of the West to impose its decisions on the Middle East is in any case declining. UK policy-making in the Middle East could continue to be worked out in important multilateral fora other than the EU, such as the UN Security Council and NATO.
20.2 Common Security and Defence Policy

Summary

While generally supportive of the EU’s Common Security and Defence Policy (CSDP), successive UK governments have been cautious in their approach to greater European defence integration, regarding it as entirely complementary to NATO and essential for strengthening European military capabilities within that alliance, as opposed to the pro-European view that the EU should establish an independent military capability outside the NATO framework.

Were the UK to withdraw from the EU, the impact on the UK’s military would arguably be minimal:

- EU military operations - The UK is one of the largest and most advanced military powers in the EU and is one of only five EU countries capable of deploying an operational HQ, and therefore of taking command of a mission. Militarily, any UK withdrawal would more likely place the EU at a disadvantage, with fewer assets and capabilities ultimately at its disposal. From the UK’s standpoint its ability to project military power would be largely unaffected, and any military shortfalls could be compensated for through bilateral arrangements with countries such as France. The UK could also choose to continue its participation in CSDP operations as a third party state.

- Capabilities development - The UK has consistently sought to develop the operational capability of CSDP as a means of strengthening both the EU and NATO. That position is unlikely to change with any UK withdrawal from the EU, as capabilities development remains a central tenet of NATO’s smart defence agenda. The UK is also involved in an increasing number of bilateral capability development initiatives with other European nations, such as France. The UK could also continue to participate in European Defence Agency projects as a third party country.

- EU defence directives - If, during withdrawal negotiations, the substance of the two defence directives agreed in 2011 were retained in the withdrawal agreement, the applicability of their provisions to the UK would not change. If a non-EU UK chose to operate outside of the directives, however, it would have little impact on the UK’s general procurement approach. Any changes would focus more on the specific rules that the UK would no longer have to abide by.

- Future Development of CSDP - The most significant implication of a UK withdrawal would be the very limited ability that the UK would then possess to influence or shape the CSDP agenda going forward.

Given that the UK has been one of the main driving forces behind the development of CSDP, it has been suggested that, without the UK’s support, the strategic ambition of a “common European defence” could ultimately falter. However, it has also been argued that, as the main source of opposition to integrationist proposals thus far, the absence of the UK from CSDP decision making could be an opportunity for pro-European states to further the EU defence project in the longer term.

The EU’s security and defence policy (CSDP) has had a chequered past. First set down as an aspiration in the 1992 Maastricht Treaty, the intergovernmental nature of this policy area has meant that its evolution has been entirely dependent upon political will and the convergence of competing national interests among the EU Member States, in particular
the UK, France and Germany. The major turning points for CSDP over the last 10 years have come about largely as a result of Franco-British proposals.

While generally supportive, successive UK governments have been cautious in their approach to greater European defence integration. The development of an EU defence policy has been regarded as entirely complementary to NATO and essential for strengthening European military capabilities within that alliance, as opposed to the more pro-European, and French, view that the EU should establish an independent military capability outside the NATO framework. To that end, UK involvement in the evolution of CSDP has been significant in that it has allowed the UK to influence and shape its development.

Significant CSDP Developments
The history of CSDP is charted in a number of Library briefing papers. Over the last 10 years there have been several significant developments worthy of mention within the context of a possible UK withdrawal from the EU:

- **Military Capabilities**: since 1999 and the establishment of the Helsinki Headline Goal, there have been numerous initiatives to improve EU Member States’ military assets and capabilities. The initial intention was for EU Member States to be able to deploy a 60,000 strong EU rapid reaction force capable of autonomous action across the range of Petersburg tasks where NATO as a whole chose not to be engaged. Following a re-examination of the objectives of the Helsinki Headline Goal in 2004, Headline Goal 2010 was endorsed. At its heart was a specific focus on developing the qualitative aspects of capabilities, including interoperability, deployability and sustainability. To that end, the EU Battlegroups concept, which allows the EU to rapidly respond in a military capacity to a crisis or urgent request from the UN, was identified as the foundation through which those priorities and objectives could be realised. The EU Battlegroup concept achieved full operational capability in 2007, although to date no EU battlegroup has been deployed on operations.

To support efforts to improve the EU’s military capabilities, the European Defence Agency (EDA) was established in 2004. In addition to several multinational procurement projects, among its most recent initiatives is the Code of Conduct on Pooling and Sharing, which was signed in 2012.

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**Article 42 (2), Treaty on European Union**

“The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides […]”

The policy of the Union in accordance with this Section shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework”.

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381 Originally agreed in 1992, they defined the remit of military operations that the EU could expect to engage in, including disarmament operations, humanitarian and rescue tasks, military advice and assistance, conflict prevention, peacekeeping and crisis management.

382 Further information on EU Battlegroups is available at: EU Battlegroups, April 2013.

• **Decision Making and Planning Structures**: in 2000 the Nice European Council agreed the creation of permanent political and military structures within the EU for CSDP purposes. In 2003 an EU civil-military planning cell, which would operate in parallel with a European cell based with NATO’s operational planning HQ (SHAPE), was also created. Initially France, Germany, Belgium and Luxembourg had proposed the creation of an entirely independent EU military planning cell. It was only UK influence that led to the proposals being watered down, placing the new EU planning capability firmly within the NATO framework and subject to an operational planning hierarchy that would give first refusal to NATO and then to any national operational HQ before the EU planning cell would play a role. The EU Operations Centre was activated for the first time in May 2012.  

• **Permanent Structured Co-operation**: the 2008 Lisbon Treaty made provision for permanent structured co-operation between a smaller group of eligible Member States, which would allow greater military capability co-operation, including operational planning. Among its aspirations were capability harmonisation, the pooling of assets, cooperation in training and logistics, regular assessments of national defence expenditure and the development of flexibility, interoperability and deployability among forces. A possible review of national decision-making procedures with regard to the deployment of forces was also emphasised. Significantly, once established, only participating Member States would be able to take part in adopting decisions relating to the development of structured cooperation, including the future participation of other Member States. Many analysts suggested at the time that the development of PSC could eventually lead to a “two-tier” Europe in defence.

• **EU Defence Directives**: in 2009 the European Commission passed two defence directives, which apply to the UK, aimed at regulating defence procurement across the EU and the intra-community transfer of defence goods and services. The first introduces harmonised EU rules on the procurement of defence and sensitive non-military security equipment. The second simplifies national licensing procedures governing the movement of defence products and services within the EU.

### Implications of a UK withdrawal

Analysts largely concur that over the last seven years, rather than seize upon the opportunities provided by the 2008 Lisbon Treaty, the EU’s defence policy has lost much of its momentum. While there has been

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384 To improve co-ordination and strengthen civil-military synergies between the three CSDP operations being conducted in the Horn of Africa: Operation Atalanta (EUNAVFOR), EU training Mission Somalia and the civilian mission EUCAP Nestor which operates throughout the region.

385 See for example “The CER’s guide to the constitutional treaty”, Centre for European Reform, 7 July 2004.

386 For more detail on these directives see Standard Note 4640, EC Defence Equipment Directives, June 2011.
progress in civilian crisis management, with the EU becoming a notable ‘soft power’ actor, and in efforts to achieve greater regulation of the defence market; arguably very little notable progress has been made in developing the ‘hard power’ aspects of CSDP.

Despite over a decade of work on capabilities development the EU collectively still suffers from major capability shortfalls and the flagship EU battlegroups have never been deployed in nearly eight years since their creation. Crucially, there continues to be no consensual EU approach to foreign policy crises or, in the longer term, a vision for CSDP at the highest political level. While the EU Treaty makes reference to the eventual development of “a common defence”, sharp divisions remain among EU Member States about what they want CSDP to achieve. Decision making also remains cumbersome and the financing of operations is complex often resulting, at a time of financial austerity, in states reluctant to commit assets.

EU Military Operations and Financing

The UK is one of the largest and most advanced military powers in the EU in terms of manpower, assets, capabilities and defence spending. It is also one of only five EU countries capable of deploying an operational HQ, and therefore of taking command of a mission. Military assets are provided to CSDP missions on a case-by-case basis and, with the exception of common costs, operations are financed on a national basis. Thus far, the UK has been a consistent contributor to EU-led operations, often as lead nation, and since the Battlegroups

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387 The EU has launched more than 30 CSDP missions in Africa, Asia and Europe, the majority of which are focused on crisis management, security sector reform, training, monitoring and humanitarian aid. Further information is available at: http://www.eeas.europa.eu/csdp/missions-and-operations/index_en.htm

388 The approach of the major European military powers to events in Libya and Mali in 2013 has been seized upon as evidence of the EU’s inertia. A collective EU response was largely absent in both cases with France and the UK opting to pursue military action outside of the EU framework. The EU battlegroups, which were devised with Africa in mind, remained unused. The EU’s involvement in both theatres has instead focused on the delivery of soft power initiatives such as border assistance and training.

389 According to The Military Balance 2015 the UK defence budget is currently 2.47% of GDP, compared to France which spends 1.9%, Germany which spends 1.2%, Italy which spends 1.16% and Spain which spends 1.07%. The 2015 Strategic Defence and Security Review stated that “the UK’s defence budget is the second largest in NATO, after the US, and the largest in the EU” (Cm 9161, p.13). It also stated that “we are strengthening our armed forces so that they remain the most capable in Europe...” (p.24)

390 France, Germany, Greece, Italy and the UK.

391 CSDP operations with military implications cannot be financed from EU funds. For the common costs, the Council established a special mechanism (ATHENA) in 2004. Common costs are financed on the basis of a GNI-based indicator. The UK share is presently 14.82% of eligible common costs. The total UK cost share for 2014 was €8.8m. Funding is drawn from the Peacekeeping budget which is managed by the FCO.

392 The expenditure arising from the deployment of assets to an EU-led military operation is met by the individual member States on a “costs lie where they fall basis”.

393 Over the last ten years the UK has made a notable military contribution to Operation Althea in the Balkans, the counter-piracy Operation Atalanta off the Horn of Africa (which the UK has operational command of) and Operation Sophia EU NAVFORMED which is currently tackling people smuggling in the Mediterranean.
concept was launched in 2004, the UK has provided, or led, a Battlegroup four times.  

In terms of military power and projection, any UK withdrawal would more likely place the EU at a disadvantage, with fewer assets and capabilities ultimately at its disposal. This is particularly true of certain strategic assets such as tactical airlift and intelligence, surveillance and reconnaissance assets. From the UK’s standpoint its ability to project military power would be largely unaffected, and any military shortfalls could be compensated for through bilateral arrangements with countries such as France and Germany.

Indeed, some may argue that fewer military commitments at a time of economic austerity and significant reductions in the size of the Armed Forces should be welcomed. Yet as the Ministry of Defence (MOD) itself has acknowledged, EU-led operations can play a key role in achieving stability in certain situations, thereby avoiding a more costly intervention by either NATO or the UN:

When successful, EU action can achieve results where others find it difficult to act. CSDP has helped to establish stability in the Balkans, Georgia and Indonesia, and in the process avoided the need for more costly and risky interventions through NATO or the UN. In Afghanistan the EU police mission plays an essential role alongside NATO in increasing capacity of the Afghan National Police. The EU continues to lead the international effort to counter piracy and protect World Food Programme aid.

Ensuring the success of CSDP operations remains in the UK’s interest. However, being a member of the EU is not necessarily a prerequisite for achieving this aim. Outside the EU the UK could choose to continue its participation in CSDP operations as a third party state. Indeed, under the Berlin-plus arrangements agreed in 2002 the EU already has recourse to NATO assets and capabilities for the conduct of EU operations, where the alliance as a whole chooses not to be engaged. Several non-EU countries, including Canada, Norway and the US have also implemented framework agreements that allow them to participate in EU military and civilian crisis management operations. As a result, Canada and Norway have both contributed forces to Operation Althea in Bosnia; Canada has provided personnel for EU police Missions in

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394 In the first half of 2005, the latter half of 2008 and 2010 and the latter half of 2013, in conjunction with Sweden, Latvia, Lithuania and the Netherlands.

395 In 2010 the UK and France agreed a series of measures intended to enhance defence co-operation between both country’s armed forces, including the signing of two new defence treaties. Among other things those agreements sought to establish joint expeditionary forces and achieve greater interoperability of military assets. Further detail is available in Library briefing CBPSN05750, Franco-British Defence Co-operation, November 2010. Summits held in 2012 and 2014 agreed further measures such as the establishment of a Joint Maritime Task Group that would allow for the deployment of an UK-French integrated carrier strike group by the early 2020s. The 2015 Strategic Defence and Security Review places an emphasis on further developing the UK-France defence and security relationship. It also makes specific reference to the deepening defence relationship between the UK and Germany (Cm 9161, November 2015, p.52).

396 MOD Policy: Meeting NATO and EU Treaty Defence Commitments.

397 See Research Paper 03/05, NATO: The Prague Summit and Beyond, January 2003.

Bosnia and the Democratic Republic of Congo, while Norway has contributed assets to Operation *Atalanta* (EUNAVFOR) and has provided forces to the EU Nordic Battlegroup.

**EU Military and Planning Capabilities**

The development of the EU’s military capabilities has been on the agenda for over a decade through a mixture of EU and NATO initiatives. The UK has consistently sought to develop the operational capability of CSDP by encouraging other EU Member States to invest their defence equipment budgets more wisely, particularly in the current economic climate, as a means of strengthening both the EU and NATO. That position is unlikely to change with any UK withdrawal from the EU, as capabilities development remains a central tenet of NATO’s smart defence agenda. The UK also remains a member of the Organisation for Joint Armament Cooperation (OCCAR)\(^\text{399}\) and is involved in a number of bilateral capability development initiatives with other EU Member States, such as France.

Even though a non-EU UK could not participate in the European Defence Agency, it could continue participating in EDA projects as a third party country.\(^\text{400}\) In 2006 Norway, for example, signed an administrative agreement with the EDA which allows it to participate in the Agency’s research and technology projects. Switzerland also has a similar cooperation agreement.

Any withdrawal or change of status as a result of the UK leaving the EU is therefore unlikely to have a major impact. The UK already adopts a multi-faceted approach to defence procurement and is likely to continue doing so.

**EU Defence Directives**

The defence directives agreed in 2011 were originally conceived as a means of making the EU internal defence market work better, and in the case of the directive on defence procurement, to increase competition in the EU defence sector by making more EU governments put non-sensitive defence contracts out to tender. If, during withdrawal negotiations, the substance of the two defence directives were retained in the withdrawal agreement, the applicability of their provisions to the UK would not change. Indeed, in May 2013 the Government expressed its support for efforts to open up the EU defence market to more competition, including through proper implementation of the defence directives, suggesting that “We would expect this in time to eliminate economically driven “buy national” policies in the defence market, while respecting Member States’ right to maintain certain strategic industrial capabilities for reasons of national security.”\(^\text{401}\)

\(^{399}\) Further information on OCCAR is available at: [http://www.occar.int/185](http://www.occar.int/185).

\(^{400}\) Although it would no longer have a seat on the Steering Board and would not have any say on how the EDA is run or the projects it focuses on. The UK would no longer, however, be obliged to pay towards the common costs of the EDA, which costs the UK between £3m and £4m per annum.

\(^{401}\) Defence Select Committee, *Defence Acquisition: Government Response to the Committee’s Seventh Report of Session 2012-2013, HC73, May 2013.*
Both directives were transposed into UK law in August 2011. Being relatively new, little official assessment of their success or impact on UK policy has been made to date.\textsuperscript{402} Therefore it is unclear whether withdrawal from their provisions would have any serious impact on the UK. The UK Government already seeks to procure where possible through open and fair competition.\textsuperscript{403} Within the framework of the directive on defence procurement, the Government also retains liberty of action in what contracts it chooses to exempt from EU public procurement rules, under Article 346 TFEU. Government-to-government sales and 100\% research and development contracts are also excluded from the directive’s provisions. Therefore, operating outside the EU directive on defence procurement would arguably have little impact on the UK’s general procurement approach. Any changes are likely to focus more on the specific rules that the UK would no longer have to abide by. It would not, for example, be obliged to tender contracts EU-wide, and it would not have to ensure non-discrimination among EU Member States in its assessment of bids.

Indeed, since its inception, the usefulness of the procurement directive has been questioned, as numerous EU Member States have either delayed transposing the directive into law,\textsuperscript{404} or have flouted its provisions by continuing to promote protectionist procurement practices or by exploiting the government-to-government sales exemption, in order to safeguard their respective domestic defence industrial bases.\textsuperscript{405} In October 2010, for example, the Greek Defence Minister was reported to have commented that “countries must have the right to nourish their own industries”.\textsuperscript{406} In 2013 the European Commission also expressed its concern over the intention of several European countries, notably Bulgaria and Romania, to fulfil their fighter aircraft requirements through a single source government-to-government purchase in order to bypass the competitive provisions of the directive.\textsuperscript{407} In June 2014 the Commission subsequently presented a roadmap of measures intended to strengthen the European defence market. Among those intended reforms was a commitment to issue guidance on the acceptable use of exclusions under the defence directives.\textsuperscript{408}

\textsuperscript{402} The European Commission’s first report on the functioning and impact of the directives is not due until later in 2016. In June 2015 the Directorate General for External Policies within the European Parliament published a report which attempted to make an initial assessment of the success of the directives, thus far.

\textsuperscript{403} This approach was set down in the MOD’s 2002 Defence Industrial Policy, and more recently in the 2005 Defence Industrial Strategy and the 2012 White Paper National security through Technology: Technology, Equipment and Support for UK Defence and Security.

\textsuperscript{404} See Commission list of the infringement cases it has opened in the past with respect to this directive.

\textsuperscript{405} See “EU procurement directive prompts industry concern”, Jane’s Defence Weekly, 9 February 2011.

\textsuperscript{406} “Greece to boost industry with contentious contracts”, Jane’s Defence Weekly, 4 May 2011.

\textsuperscript{407} See “Europe poised for confrontation over Bulgarian F-16 procurement”, Jane’s Defence Industry, 13 February 2013.

\textsuperscript{408} Further information is available at: European Commission: Actions for a more competitive and efficient defence and security sector, 24 June 2014. In November 2015 the Government set out its opinions on that defence roadmap during a session of the House of Commons’ European Union Committee B.
Indeed a European Parliament report published in June 2015 on the impact of the defence directives concluded that:

While the number of documents published on TED over these past two years has been increasing, this increase is not as significant as expected, and above all it is due to a small group of Member States (France, Germany, and the United Kingdom). This initial survey demonstrates an important disparity in the Member States’ publication practices (contract notices and contract awards). This poses the question of reciprocity. In value, contract awards notified between the 21st August 2011 and the 31st December 2014 represent around €10.53 billion. The year 2014 accounts for around 65% of the total, due to significant contracts notified by the United Kingdom in the field of services and facilities management, and by France on the segments covering Repair and maintenance services of military aircrafts.

The Directive 2009/81/EC is today favoured for contracts dealing with services, the acquisition of equipment deemed to be of a low strategic value, and sub-systems. Over the past three years, all of the major military equipment contracts, thus those that have had a structural effect on the DTIB, were notified without going via the Directive. Previous practices have continued, notably the use of Article 346 […]

Concretely today acquisition practices seem to show an incomplete and incorrect application of the Directive, with de facto a limited or even non-existent impact on the DTIB. It is indeed too hasty and premature to draw conclusions from such a short period, all the more so given that it generally takes 5 to 10 years for a directive to be fully applied, and this is referring to the civilian sector. Although this new regime is not yet functioning satisfactorily at the present time, the Directive represents an important step in a sector such as defence, which is marked by a significant degree of opacity in acquisition practices.409

Future Development of CSDP

The most significant implication of a UK withdrawal is arguably the very limited ability that the UK would then possess to influence or shape the CSDP agenda going forward. Periodically, proposals to enhance CSDP become a priority for the EU, or the focus of individual countries. In 2008, for example, France intended to use its then Presidency of the EU to push through some major reforms of CSDP, including expansion of the civil-military planning cell into a standing EU military headquarters, entirely independent of NATO, that would be responsible for tasking all future EU military operations.410 The development of such capacity was regarded as a fundamental tenet of the package of measures intended to improve the EU’s ability to field an intervention capability and avoid becoming tagged as a mechanism purely for civilian crisis management. The implication of a permanent planning capability, however, is that the operational hierarchy where the EU would deploy under its own HQ as a last resort would essentially be made redundant. At the time those proposals made little progress in light of the crisis over the Irish ‘no’ vote on the Lisbon Treaty.

410 For more detail see Standard Note 4807, Priorities for ESDP under the French Presidency of the EU.
There have long been concerns about the potential for the EU operational planning cell to evolve into a larger independent planning capability, thereby duplicating structures which already exist within NATO. Proposals for an independent operational military HQ to be established using the Permanent Structured Co-operation mechanism (see above) re-surfaced again during the Polish EU presidency in 2011, which prompted the UK Government to threaten to wield its veto over the issue. Former Foreign Secretary, William Hague, stated at the time:

I have made very clear that the United Kingdom will not agree to such a permanent OHQ. We will not agree to it now, we will not agree to it in the future. That is a red line for us...

We are opposed to this idea because we think it duplicates NATO structures and thirdly, a lot can be done by improving the structures that already exist.411

The likelihood of such proposals re-surfacing at some point in the future is high. In September 2012, for example, 11 EU Member States (excluding the UK)412 published a communiqué on The Future of Europe which called for, among other things, a new model defence policy, designed to create a “European Army” and more majority based decisions in defence and foreign policy, in order to “prevent one single member state from being able to obstruct initiatives”.413 Those proposals were supported in a further communiqué issued by France, Germany, Italy, Poland and Spain in November 2012, which also called for a “new military structure” for EU-led operations to be established.414

In March 2015 the EU Commission President, Jean-Claude Juncker, also suggested that an EU army should be created “to build a common foreign and national security policy, and to collectively take on Europe’s responsibilities in the world”. He also argued that it would “show Russia that we are serious when it comes to defending the values of the European Union”.415 In May 2015 German Defence Minister, Ursula von der Leyen, was reported to have stated that “a European Army is Germany's long term goal”, but added that the European Defence Union needed to be strengthened first.416 It has also been suggested that German Chancellor, Angela Merkel, will seek the support of the UK for the creation of a European Army, in exchange for German support over UK renegotiation of its relationship with the EU.417

Any decision to expand the remit of the planning cell or further European defence integration would require unanimity among the EU Member States. However, if the UK were not in the EU it would not be party to any discussions or decision-making, and therefore its ability to influence the progress, or otherwise, of any of these proposals (as it did

412 Austria, Belgium, Denmark, France, Germany, Italy, Luxembourg, Netherlands, Poland, Portugal and Spain.
413 As reported in “Ministers call for stronger EU foreign policy chief”, EU Observer, 18 September 2012.
415 “Create and EU army to keep back the Russians”, The Daily Telegraph, 8 March 2015.
416 “Our goal is an EU Army says Germany’s defence chief”, The Daily Mail, 4 May 2015
417 “Merkel expects Cameron to back EU army in exchange for renegotiation”, The Daily Telegraph, 12 September 2015.
in 2003 and 2011), would be limited to the diplomatic pressure it could bring to bear through other foreign policy channels.

The challenges for CSDP going forward are complex. Many analysts have argued that, at the highest political level, it is first and foremost essential that EU leaders reconcile their differing long-term aims for CSDP with the political and financial realities that now exist. While the effects of the global economic crisis continue to be felt across EU defence budgets, at the same time the security context within which the EU operates continues to evolve. The US is increasingly focusing its attention on the Asia-Pacific region and has made clear that it expects Europe to take on more responsibility for its own defence and that of its “own backyard”. New security challenges also continue to present themselves. Energy security, cyber security, and emerging conflicts of interest in the Arctic, a region of vast potential untapped resources, have all been highlighted as issues for the EU to address.

Some analysts have suggested that as the UK, along with France, has been the main driving force behind the development of the CSDP, without the UK’s support, the impetus to further the CSDP agenda amidst all of these challenges could falter. Others, however, highlight the fact that pro-European members such as France could also see the absence of the UK from decision-making as an opportunity to progress CSDP without opposition from one of Europe’s largest military powers and arguably the main source of opposition thus far to further EU defence integration. As Philip Worré, Director of ISIS Europe, noted in a January 2013 briefing:

A British exit would undoubtedly cause much turmoil, and CSDP will have lost a key contributor and supporter. From a strictly CSDP – and European defence integration – perspective, however, Britain’s departure could create opportunities in terms of military cooperation and accelerate the establishment of permanent structured cooperation, because of a more unified approach among the remaining Member States.

418 See the discussion in The World Today, October/November 2013, p.22-27.
21. The devolved legislatures

If the UK left the EU there could be further policy and legislative divergence in areas of devolved competence, as the UK Government and Devolved Administrations would no longer be required to implement the common requirements of EU Directives. This would probably be particularly noticeable in policy areas such as the environment or agriculture, which are currently strongly governed by EU policy and legislation.

The following sections look at the relationship of the devolved legislatures with the EU and possible effects on these nations of a UK withdrawal.

21.1 Scotland

Scotland’s constitutional relationship with the European Union

Schedule V of the Scotland Act 1998 reserves all aspects of foreign affairs to the UK Government and Parliament including relations with the European Union. This means the United Kingdom Government is responsible for managing relations with the European Union including leading on all policy and legislative negotiations. However, the Scotland Act does give the Scottish Government and Scottish Parliament responsibility for implementing European obligations where they relate to devolved matters.

This means, as with the other devolved legislatures, the Scottish Parliament is responsible for transposing and implementing a wide spectrum of EU legislation. This includes areas such as agriculture, fisheries and the environment. The Scottish Government is also responsible for administering the spending of European funds such as Structural Funds and the Common Agricultural Policy in Scotland. In other areas where the UK Government has competence, such as EU economic policies and areas of Single Market legislation, the Scottish Government and Scottish Parliament have an interest in monitoring how EU laws will impact on Scotland including in devolved areas.

Section 29(2)(d) of the Scotland Act 1998 also requires that all legislation of the Scottish Parliament is compatible with EU law. This means that any decision for the United Kingdom to leave the European Union may also lead to the amendment of the Scotland Act to remove the requirement to comply with EU law. Sionaidh Douglas-Scott from Oxford University has suggested that although the Westminster Parliament may repeal the European Communities Act 1972, this would not bring an end to the domestic incorporation of EU law in the devolved nations. She suggested:

> It would still be necessary to amend the relevant parts of devolution legislation. But this would be no simple matter and could lead to a constitutional crisis. Although the UK Parliament may amend the devolution Acts, the UK government has stated that it will not normally legislate on a devolved matter without the
consent of the devolved legislature. This requires a Legislative Consent Motion under the Sewel Convention. However, the devolved legislatures might be reluctant to grant assent, especially as one feature of the ‘Vow’ made to the Scottish electorate was a commitment to entrench the Scottish Parliament’s powers, thus giving legal force to the Sewel Convention. So the need to amend devolution legislation renders a UK EU exit constitutionally highly problematic.420

The value of the EU to Scotland

In October 2015, the Scottish Parliament Information Centre (SPICe) published a briefing analysing “The impact of EU membership in Scotland”. The briefing set out what EU membership means for Scotland including an analysis of the data relating to Scotland’s economic and social links with the EU.

Access to the Single Market

The European Union is the main destination for Scotland’s international exports, ‘accounting for around 42% of Scotland’s international exports in 2014, with an estimated value of around £11.6 billion’.421

The latest Scottish Export Statistics for 2014 show that of Scotland’s top ten international export destinations, six are EU Member States (Netherlands, France, Germany, Ireland, Spain and Denmark. However, the Scottish Government’s export figures for 2014 also indicate that international exports to countries outside the EU are forming an increasing share of all Scotland’s international exports – in 2014 they made up 58% of Scotland’s international exports.

Since 2002 exports to the EU, as a share of total Scottish exports, have actually decreased from 54% to 42%. This is because whilst exports to the EU have grown by 6% since 2002, exports to the rest of the world have grown by 74%. One reason for the declining reliance on the EU market may be the increase in bilateral free trade agreements being negotiated by the European Union which has exclusive competence to negotiate international trade agreements.

The single market also allows businesses from across the EU to invest across member state borders. Figures from the Financial Scrutiny Unit in SPICe, show that in Scotland in 2013, nearly 4,600 business sites owned by non-UK European companies had a combined turnover of £42.1 billion and added £15.8 billion in Gross Value Added (GVA) to the Scottish economy. This made up 15.6% of all Scotland’s GVA making it the most reliant region of the UK on European owned companies. The figures exclude some financial service activities and public sector activities.422 Whilst European owned companies are an important component of Scotland’s economy, their investments lean towards the energy and food and drink sectors. It is not clear whether any of this investment would be lost if Scotland were to leave the EU.

420 http://www.centreonconstitutionalchange.ac.uk/blog/british-withdrawal-eu-existential-threat-united-kingdom.
In terms of jobs, the Financial Scrutiny Unit in the Scottish Parliament Information Centre (SPICe) has calculated that around 150,000 jobs were sustained directly in Scotland from exports to the EU in 2013.

Migration and Freedom of Movement

The principle of free movement has allowed Scots to travel to other European Union Member States to work or study. Likewise, other EU nationals are able to come and work or study in Scotland.

In the period between the UK joining the EU in 1973 and 2003, the Scottish population either saw minimal growth or decreased. The average change over the period was a population reduction of 0.1% per year. From 2004 when the European Union expanded with the accession of eight central and eastern European countries and Malta and Cyprus, the Scottish population has increased by at least 0.3% a year. The latest estimates suggest that in 2014 there were around 173,000 people in Scotland who had the nationality of another EU member state, equating to 3.3% of the overall population.423

Higher Education

EU membership has also influenced Scotland’s higher education sector both in terms of student mobility and access to funding. Non-UK EU nationals are entitled to study at Scottish universities for free. In 2013-14, 13,550 EU students studied at Scottish universities at a cost to the Scottish Government of £25.6 million.424 Although few Scottish students choose to undertake their full degree in another Member State, the main study abroad option for UK nationals wishing to spend part of their time studying at an institution in another EU Member State is ERASMUS+. The total number of UK students taking part in these schemes rose from 11,723 in 2009-10 to 15,566 in 2013-14. The proportion of students from Scottish HEIs taking part in these programmes remains at around 13% during this period. Scottish participation in the programme is slightly higher than in other parts of the UK (relative to Scotland’s overall population in UK).425

European funding

Scotland has benefited from both pre-allocated and competitive European funds over the last four decades. European funding programmes such as Structural Funds and the CAP see funds pre-allocated to Member States. The allocation of CAP funds and European Structural Funds between the countries of the UK is negotiated by the UK Government with the Devolved Administrations.

Between 2007 and 2013 Scotland benefited from around €4.5 billion of Common Agricultural Policy (CAP) funding. Between 2014 and 2020 Scotland is likely to benefit from around a further €4.6 billion.426

Between 2007 and 2013 Scotland received around €800 million in European Structural Funds. During the 2014 to 2020 Multiannual

Financial Framework, Scotland’s programmes will benefit from a total of €985 million; with match funding from the Scottish Government and other public sector organisations total funding will be around €1.9 billion.\textsuperscript{427}

Scotland has also been successful in accessing competitive funding. The biggest programme that Scotland has benefited from is the research and development programme. Around 10 per cent of the overall programme budget was awarded in the first 18 months of the Horizon 2020 programme, until the end of June 2015. In this time, Scottish organisations were awarded over €111 million which is 1.5 per cent of the total awarded Horizon 2020 budget to date\textsuperscript{428}. This figure also equates to 10.5 per cent of the funding awarded to the UK (over €1 billion).

Scottish HEIs and research institutes have been the main beneficiaries of Horizon 2020 awards to date, securing almost 80 per cent (€89 million) of the funding to Scottish organisations. The remaining awards have been to businesses, the public sector and other types of organisations, including charities.

Prior to the start of the programme, Scotland had also successfully accessed EU research and innovation funding via the 7th Framework Programme (which ran from 2007 to 2013). Figures provided to SPICe by Scotland Europa in September 2015 indicated that Scotland was awarded €741 million in total under this programme\textsuperscript{429}.

Whilst Scotland has benefited from European funds being spent in Scotland, it has also contributed payments to the EU budget as part of the UK. Projections done by the Scottish Government in 2009 and by the Financial Scrutiny Unit in the Scottish Parliament Information Centre (SPICe) suggests Scotland is a net contributor to the EU budget.\textsuperscript{430}

**Scottish public attitudes to EU membership**

The Scottish Government has repeatedly argued that it believes Scottish public opinion is more pro-European than opinion in the rest of the United Kingdom. The First Minister Nicola Sturgeon set out this view in a speech at the European Policy Centre in Brussels on 2 June 2015.

> It’s maybe not surprising, given what I’ve just said, that polls in Scotland consistently show strong support for EU membership. In last month’s general election, less than 2 per cent of the population voted for parties which want to leave the EU. Euroscepticism exists in Scotland – of course it does - but, in my view, not to a great extent, and not with the same virulence as we sometimes see in some other parts of the UK. That’s why the


\textsuperscript{428} Scotland Europa: Scotland’s engagement in Horizon 2020: Second performance monitoring and analysis update. August 2015

\textsuperscript{429} This is the most accurate figure currently available. It may not represent the final figure as not all of the Grant Agreements from the final round of calls in 2013 were signed by the time of the March 2015 statistical release (upon which the figures given to the Committee in June 2015 were provided).

\textsuperscript{430} http://www.scottish.parliament.uk/S4_EuropeanandExternalRelationsCommittee/Inquiries/SPICe_briefing_paper_on_EU.pdf.
Scottish Government did not support a referendum on EU membership – it’s simply not a priority for most people in Scotland.\(^431\)

Over the last two years there have been many polls examining the views on EU membership of the UK and, within that, the Scottish population. The latest WhatUKThinks/EU poll of polls on the question of UK membership of the EU shows 52% would vote to remain and 48% would vote to leave. The poll is based on six recent polls, the fieldwork for which was conducted between 21 January and 4 February 2016\(^432\).

The most recent YouGov poll, asking about voting intentions for the EU referendum was carried out on 3-4 February 2016. It showed that in Scotland, 53% of voters would vote to remain in the EU with 32% voting to leave and 14% saying they didn’t know how they’d vote. This compared with overall figures for the UK of 36% voting to remain and 45% voting to leave with 17% saying they didn’t know how they’d vote\(^433\). It is important to note that the Scottish weighted polling sample for this poll was just 146 people.

Writing in October 2015, Professor John Curtice analysed the polling data available at that time and concluded that there were potential geographic differences between those voting to stay and those voting to leave across the United Kingdom:

“Three of the four recent polls that we have been examining in this paper find a higher level of support in Scotland for remaining in the EU, though we should bear in mind that the sample sizes of these polls mean that in some cases they interviewed fewer than 100 people north of the border.

However, no such limitation affects the British Election Study, which interviewed 30,000 people across Britain as a whole, including booster samples in Scotland and Wales. This exercise finds that, whereas in England 45% said that they wanted to stay in the EU and 35% to leave\(^434\), in Wales support for staying in the EU was somewhat higher – 50% wanted to stay, 33% to leave – while in Scotland, no less than 58% backed staying and only 28% wanted to leave. Should the UK as a whole vote narrowly to leave the EU, it seems highly likely that Scotland and perhaps Wales will have voted at least narrowly in the opposite direction, thereby potentially creating new debates about the future of the United Kingdom.”\(^435\)

Whilst the British Election Study and recent polling indicates that at the moment the Scottish electorate looks more likely to vote to stay in the


\(^{432}\) http://whatukthinks.org/eu/opinion-polls/poll-of-polls/.


\(^{434}\) Within England, support for remaining was highest in London, where 48% said they would vote to stay and 32% that they would vote to leave.

European Union than the electorate in England and Wales, Dr Daniel Kenealy from the University of Edinburgh has suggested that although Scots continue to remain positive about EU membership, the proportion of Scots who hold negative views about the UK’s membership of the EU is increasing. In written evidence to the Scottish Parliament’s European and External Relations Committee on 4 June 2015, Dr Kenealy cited Scottish Social Attitudes data which shows that:

Although the number of people in Scotland saying they think the UK should leave the EU has roughly doubled in the past 15 years the figure remains low, at around 20%. What we can see in this data is a hardening of views on the EU, with more people saying we should leave, and more people saying we should work to reduce the powers of the EU. Equally fewer Scots now say we should try to increase the EU’s powers or work towards a single EU government than was the case 15 years ago.\(^{436}\)

Scottish Government policy on EU reform

On the issue of EU reform, the First Minister of Scotland is on record as saying:

We don’t think it’s perfect, we think reform is both desirable and necessary, but we believe very strongly that Scotland’s interests are best served by being members of the European Union and we will argue that case strongly and positively.\(^{437}\)

Nicola Sturgeon’s speech at the European Policy Centre in June 2015 set out how the Scottish Government believes change should be achieved.

We believe that reforms can be implemented within the existing Treaty framework, rather than requiring Treaty change.\(^{438}\)

In August 2014, the Scottish Government published *Scotland’s Agenda for EU Reform* which set out two possible ways to reform the EU without the need for renegotiation of the Treaties.

The first priority for EU reform identified by the Scottish Government is to encourage the EU’s prioritisation of key economic and social policies such as delivering the growth and competitiveness agenda, tackling youth unemployment, developing workers’ rights and supporting freedom of movement.

The First Minister suggested in her address to the European Policy Centre in June 2015 that the EU should focus on areas where international cooperation can make the biggest difference. In particular she suggested more could be done to complete the single market in services, along with delivering the digital single market and working towards an integrated EU energy market.

The Scottish Government’s Agenda for EU Reform also set out regulatory reform as another priority, stating that:

\(^{436}\) [http://www.scottish.parliament.uk/S4_EuropeanandExternalRelationsCommittee/Meeting%20Papers/Public_papers_4_June_2015.pdf](http://www.scottish.parliament.uk/S4_EuropeanandExternalRelationsCommittee/Meeting%20Papers/Public_papers_4_June_2015.pdf).


The Scottish Government considers that it is vital that the prioritisation of economic and social policies goes hand-in-hand with regulatory reform. This will ensure that the EU regulates in a more democratic, effective and efficient manner, facilitating economic growth.439

The First Minister built on this priority in her speech to the European Policy Centre, saying:

Regulations should be based on the principles of proportionality and subsidiarity. Better regulation will contribute to economic growth. And by doing so, it will help to restore public trust in the decisions made by European institutions.440

In essence, the Scottish Government’s proposals set out in Scotland’s Agenda for EU Reform and by the First Minister outline the ways in which the Scottish Government believe the powers the EU already has can be made to work better for EU citizens, and argue that treaty or other structural reforms are unnecessary.

The double lock

The Scottish National Party manifesto for the 2015 General Election included a proposal that any referendum on leaving the EU should include a ‘double majority’ rule whereby all four nations of the UK must back withdrawal before exit is possible.

This proposal was developed by the First Minister in interviews and speeches. In particular, speaking to the European Policy Centre in Brussels, Nicola Sturgeon linked the upcoming referendum to the previous independence referendum saying:

One of the things that Scotland was consistently told, in the two years leading up to the independence referendum, is that we are a valued and equal partner in a UK family of nations. And, remember, the UK is just that - a multinational state. Surely, therefore, none of the nations that make up the UK should be at risk of being forced out of the EU against their will.

That is why we are arguing for a “double majority” provision – where the UK can only leave the EU, if each nation of the UK votes to leave. That sort of territorial requirement is used in some federal states such as Canada or Australia. It’s time to apply it to the UK as well. The equal status of England, Northern Ireland, Scotland and Wales should be reflected in the reality of legislation, as well as the rhetoric of campaigning.441
During the parliamentary passage of the European Union Referendum Act, the SNP tabled an amendment proposing that:

“The Secretary of State will present to Parliament a declaration of intent for withdrawal from the European Union if—

(a) a majority of total votes cast in the referendum in the United Kingdom are against the United Kingdom remaining a member of the European Union, and

(b) a majority of the votes cast in the referendum in each of England, Scotland, Wales and Northern Ireland are against the United Kingdom remaining a member of the European Union.”

This change was tabled as part of a reasoned amendment to decline the Bill a Second Reading, this was also because the Bill did not include 16 and 17 years old in the franchise and did not provide that the referendum cannot be held on the same days as elections to the devolved legislatures. The House voted against the SNP’s amendment (Division no. 5: Ayes 59, Noes 338) and in favour of giving the Bill its Second Reading (Division no. 6: Ayes 544, Noes 53).

A second independence referendum?

When the Scottish First Minister launched her party’s General Election manifesto and proposed the inclusion of a double majority rule for any EU referendum, she also suggested that a UK vote to leave the European Union could pave the way for a second referendum on Scottish independence in the event that the Scottish electorate supported remaining in the European Union.

In an interview with The Times newspaper, Nicola Sturgeon said:

I’m quite clear - a vote for the SNP at this election, I’m not taking that as a mandate for another referendum.

So it would have to be something like the EU situation, if there was an out vote across the UK and Scotland wants to stay in.

The First Minister developed this theme in her speech to the European Policy Centre, telling them:

I have previously stated my view that if Scotland were to be taken out of Europe, despite voting as a nation to have remained, it would provoke a strong backlash among many ordinary voters in Scotland.

Quite what the result of that would be, no one knows. But I have stated before that this could be one scenario producing the kind of material change in circumstances which would precipitate popular demand for a second independence referendum.

Bluntly, I believe the groundswell of anger among ordinary people in Scotland in these circumstances could produce a clamour for another independence referendum which may well be unstoppable.

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Of course, it is open to the UK government to stop that happening, by agreeing to the ‘double majority’ provision I referred to earlier.445

Writing in the *Daily Telegraph* on 22 December 2015, the former Foreign Secretary, William Hague cited the risk of Scottish independence and the United Kingdom splitting up as one of the reasons he would be campaigning for the United Kingdom to remain in the European Union:

> Whatever the shortcomings of the European “project” it is manifestly not in our interests for either it or the United Kingdom to fall apart. Such will be the challenges to the western world in the coming years, from a turbulent Middle East and a volatile world economy, that the dismembering of our own country by nationalists or the breaking up of Europe into uncontrolled rivalry would make many dangers more threatening still.

> There is no doubt that without the United Kingdom, the EU would be weaker. It would lose the fifth largest economy of the world, the continent’s greatest centre of finance, and one of its only two respected military powers. We will have to ask, disliking so many aspects of it as we do, whether we really want to weaken it, and at the same time increase the chances, if the UK left the EU, of Scotland leaving the UK.

> Scottish nationalists would jump at the chance to reverse the argument of last year’s referendum – now it would be them saying they would stay in Europe without us. They would have the pretext for their second referendum, and the result of it could well be too close to call.

> To end up destroying the United Kingdom and gravely weakening the European Union would not be a very clever day’s work. So, even as a long-standing critic of so much of that struggling organisation, I am unlikely in 2016 to vote to leave it.446

### 21.2 Wales

#### Introduction

This section flags up some areas of particular importance to Wales, highlighting the financial implications to Wales of a UK withdrawal from the EU, the potential impact on some of the ‘representative’ functions that EU membership brings, and some of the networking and other forms of co-operation with EU regions, nations and countries that have developed over the past 40 years.

Wales’ engagement in the EU takes place in a number of different ways and at different levels, all of which could be substantially affected by changes to the UK’s (and by default Wales’) membership of the EU.

Wales has access to considerable funding opportunities from the EU, notably from the Common Agriculture Policy and Structural Funds (as well as a plethora of other funding streams), estimated to be worth £500m a year for the 2014–2020 funding round.

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Wales has primary responsibility for transposing and implementing EU legislation—that falls within the 20 areas of devolved competence set out in Schedule 7 to the Government of Wales Act 2006—as well as direct interest in influencing and shaping relevant EU policy and legislative proposals within these areas.

These include a number of areas where the EU has extensive competence, such as agriculture, fisheries and rural affairs, animal health and welfare, food, and environment, and where there is an established body of EU law and regulation that Wales must already comply with. Notably for two of the other main Welsh competences—education and health—the scope for EU intervention is limited (with the exception of the impact of ‘horizontal’ EU legislation such as anti-discrimination law, public procurement rules, and rights of equal access for EU citizens). EU-level action in these areas is primarily focused around information exchange, benchmarking of best practice, and mobility of professionals and learners.

For other policy areas where the UK retains the lead competence, the Welsh Government, National Assembly for Wales and other Welsh stakeholders and organisations also have an interest in the potential impact that changes in EU policy and legislation could have in Wales. These include a number of aspects of economic development and employment policy, competition policy (including public procurement), financial services, and (most aspects of) energy policy.

Withdrawal from the EU would modify the Welsh devolution settlement and as such will, in principle, require the consent of the Assembly via the Legislative Consent Motion process. This is because the current settlement provides that Acts of the National Assembly for Wales must be compatible with EU law; if not, those Acts are ‘not law’. The same applies to secondary legislation. However, this raises difficult constitutional issues, as it would not be possible for only part of the UK to withdraw from the EU. Moreover, the view of the population of Wales on withdrawal will be known only if the votes in the referendum are counted separately for Wales, England, Scotland and Northern Ireland.

Similarly, although concerning the European Convention of Human Rights rather than membership of the EU, the discussion around repealing the Human Rights Act 1998 and replacing it with a British Bill of Rights is of direct interest and relevance to the Assembly, because, again the Government of Wales Act 2006 provides that Acts of the National Assembly for Wales or secondary legislation which are incompatible with European Convention on Human Rights are ‘not law’. Therefore repealing the Human Rights Act 1998 would modify the Welsh devolution settlement and, as such, would require the consent of the Assembly via the Legislative Consent Motion process. However, in this case, it would in principle be possible to repeal the Act

447 See blog of 5 November 2014 prepared by the Assembly’s Chief Legal Adviser and officials from the Assembly Research Service: https://assemblyinbrief.wordpress.com/2014/11/05/a-british-bill-of-rights-implications-for-devolution/
only in so far as it applied to England and so the same level of constitutional issues do not arise, although such a result would of course attract considerable attention.

Value of EU membership to Wales

The First Minister for Wales, Carwyn Jones AM, has made statements (at the London School of Economics, in Brussels, and in Wales) setting out the financial value and economic benefits of EU membership to Wales through access to the single market and the trading opportunities this brings.

Carwyn Jones outlined what he saw as the economic benefit of EU membership to Wales at an event in Cardiff in April 2015:

About 500 firms from other EU Member States are based in Wales, employing over 54,000 people. The Single Market is also Wales’ primary export destination. The total value of Welsh exports to the EU in 2014 was £5.6 billion.448

He expressed his concerns about the potential negative impact that leaving the EU could have on Wales economically, including in a statement on 23 January 2013:

…Let me be clear – the UK and Wales’ continued membership of the EU is vital for our economic success. It gives us access to the biggest single market on earth and Wales’ membership is central to what we can offer inward investors.

As we strive for economic growth following the deep global recession, anything that puts a question mark over our membership of the EU is a mistake. Such an uncertain future for the UK in Europe could put a break on potential inward investors. The last thing we need as a country is uncertainty. Governments of all levels should be focusing their efforts on the drive for jobs and growth, not engaging in renegotiations with Brussels.

The inescapable truth is that as far as Wales is concerned, companies from outside of the EU establish a presence in Wales for the prime purpose of accessing the vast European market. If Wales and the UK were not in the EU, this prime purpose would disappear and that investment and those jobs would go elsewhere…449

These comments have been restated subsequently by the First Minister on numerous occasions and by a number of his Ministers, notably the Minister for Finance and Government Business Jane Hutt. Ms Hutt has responsibility for EU Structural Funds implementation in Wales, and also for encouraging participation by Welsh Government departments in other EU funding programmes relevant to their policy areas. In November 2014, in response to an inquiry by the Enterprise and Business Committee (EU Funding Opportunities 2014-2020)450 the Minister announced the appointment of three EU Funding

Ambassadors\(^{451}\) to promote stronger engagement from Wales in centrally-managed EU programmes.

Between 2014 and 2020, Wales will receive around £1.8 billion in EU Structural Funds from the Cohesion Policy for programmes covering West Wales and the Valleys (‘Convergence’ region) and East Wales (‘Competitiveness’ region). Welsh farmers’ payments from the Common Agriculture Policy are estimated to be worth £240 million a year.\(^{452}\) In addition Wales will receive €355 million for its rural development plan for 20014-2020.\(^{453}\) It has been estimated that the CAP provides around 80-90% of the basic farm income in Wales.\(^ {454}\) The Deputy Minister for Farming and Food, Rebecca Evans, has stated that the cessation of direct payments to farmers without any domestic replacement from the UK Government would be ‘hugely damaging’ to the farming industry.\(^ {455}\) The Welsh Government’s 2014 Wales and the European Union: Annual Report states the following accomplishments of the 2007-14 round of Structural Funding in Wales:

…these include the investment of over £1.9bn of EU Structural Funds in 290 projects, representing £3.7bn of total project investment (including match funding) across Wales, cumulatively up to the end of 2014 for the 2007-2013 programmes. This investment has helped EU projects to deliver important benefits for people, businesses, the environment, and communities during 2014, supporting some 190,800 people to gain qualifications and over 62,800 into work, and creating some 30,600 jobs and over 10,400 enterprises.

In addition to these two main sources of EU finance, organisations from Wales are eligible to participate in a range of different EU funding programmes supporting a number of different EU policy goals. Examples of this include:

- Horizon 2020, the EU Research Development and Innovation Programme;
- the Territorial Co-operation Programmes (including a Wales-Ireland Cross Border Co-operation programme worth around €100 million in EU funding);
- Erasmus+ (supporting innovative mobility and co-operation activities in the fields of education, training, youth and sport);
- Creative Europe Programme (support for media, cultural and other creative industries);
- European Maritime and Fisheries Fund and many more.\(^ {456}\)

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\(^{451}\) Former Director General of DG Employment Hywel Ceri-Jones, academic and businessman Dr Grahame Guilford and for the voluntary sector Gaynor Richards MBE. See:

\(^{452}\) Welsh Government, Press Release, EU exit would have “catastrophic consequences for Wales” says Rebecca Evans, 20 July 2015.


\(^{455}\) Welsh Government, Press Release, EU exit would have “catastrophic consequences for Wales” says Rebecca Evans, 20 July 2015.

\(^{456}\) http://gov.wales/funding/eu-funds/?lang=en [last accessed 8 February 2016].
Welsh MEP Jill Evans has undertaken research which estimates the net financial benefit per capita to Wales from EU membership is around £40 per head per annum.\textsuperscript{457}

**Wales’ role in the EU**

Both the National Assembly and Welsh Government have important roles in implementing certain EU laws and in getting Wales’ voice heard at the EU level by influencing the negotiating position of the UK Government and other EU Institutions (in particular the European Parliament) in the decision-making process.

The Welsh Government has a number of formal and direct responsibilities in relation to implementation and compliance with EU legislation. This includes:

- Transposition of EU Directives in areas which have been devolved to the National Assembly and Welsh Ministers. In Wales this is undertaken through Statutory Instruments which are laid in the National Assembly by Welsh Ministers and scrutinised as subordinate legislation by the Constitutional and Legislative Affairs Committee. The power to make such statutory instruments may be contained either in specific Acts of Parliament or the Assembly, or by virtue of section 2(2) of the *European Communities Act 1972* (for those subjects for which Welsh Ministers have been designated by Order in Council).

- Complying with all EU laws. The Welsh Government, along with other designated authorities in Wales (such as local authorities), also has a responsibility to ensure compliance with other EU laws (including Regulations in addition to Directives) that come within the scope of the National Assembly’s legislative powers or the functions of Welsh Ministers. This requirement is contained in section 80 of the *Government of Wales Act 2006*. Any fine paid by the UK Government as a result of Wales’ failure to implement EU obligations would be reclaimed from the Welsh block grant. The National Assembly aims to ensure that such laws are complied with by holding Welsh Ministers to account for their decisions and responsibilities through its business and committee structures.

In 2012 the First Minister raised concerns, however, about the existing mechanisms in place to represent ‘devolved’ interests in Brussels and in the formulation of a UK Government view. Speaking at the *Wales and the Changing Union* conference in Cardiff on 30 March 2012, the First Minister called the current arrangements ‘increasingly unsatisfactory and unsustainable’ and said that ‘a revised way of dealing with EU business should also form a wider debate about the UK’s future’.

The First Minister also raised concerns in the *Unlock Democracy Lecture* on 7 September 2012 about the impact on Wales (and the UK more widely) of the debate about the UK’s future within the EU:

> Undoubtedly, the Prime Minister’s speech has constitutional repercussions for the UK itself. It plays into the hands of those who want to break up the United Kingdom.

…The Prime Minister’s position also raises questions about the ability of the UK Government to effectively represent Wales’ interests in Europe over the long term.

…These developments could present real difficulties. Wales is supportive of the EU, and will want the UK to remain part of it.

In response to these concerns, the Assembly’s Constitutional and Legislative Affairs (CLA) Committee (chaired by the Deputy Presiding Office David Melding) undertook an inquiry into Wales’ role in EU decision-making. This focused primarily on the role of the Welsh Government, and how Welsh interests are represented in Brussels. The Committee inquiry gave a generally positive assessment of the ‘informal’ inter-governmental workings within the UK that are used to formulate a UK position in Council, whilst also underlining the strengthened and growing importance of the European Parliament since the Treaty of Lisbon, and the importance of direct relationships between the Assembly and the European Parliament.

The CLA Committee also has lead responsibility for the Assembly’s participation in the subsidiarity ‘early warning system’ introduced by the Treaty of Lisbon, and the Chair participates in the EC-UK Forum, an informal twice-yearly meeting of the Chairs of the European (or equivalent) Committees in the House of Commons, House of Lords, Scottish Parliament, Northern Ireland Assembly and National Assembly for Wales. Subsidiarity is a prominent theme at these meetings.

One theme that the CLA Committee has been pursuing is strengthened recognition of the role of sub-Member State parliaments in the EU policy and legislative process, noting that the debate on the role of parliaments focuses primarily (and at EU level exclusively) on national or Member State level parliaments. This was included in the Committee’s response to the UK Government’s Balance of Competences consultation on subsidiarity and proportionality in June 2014. The CLA Committee also wrote to the European Commission, European Parliament and Latvian Presidency of the Council at the beginning of 2015 to reiterate the need for greater recognition of sub-Member State legislatures in discussions about reform of the EU, in the context of enhancing democratic accountability and strengthening the voice of national parliaments.

Since October 2015 the CLA Committee has been undertaking work on the UK Government’s EU Reform agenda with the aim of:

- Understanding the detail of the UK Government’s EU reform agenda, including the possible impact on devolved competences in Wales.
- Understanding the process by which the UK Government is undertaking its EU reform discussions and how it is, and will be, involving the Devolved Administrations and Legislatures in this.

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Better understanding the views of the EU Institutions and other Member States of the UK Government’s EU reform agenda.

The Committee visited Brussels in October 2015 and gave evidence to the House of Lords EU Committee on 19 October 2015. The work will be concluded by Easter 2016.

Wales’ representatives in the EU

EU membership has given Wales a direct representative voice in the EU Institutions, in the EU decision-making process, and in a range of different formal and informal networking fora. All of these would be affected by UK withdrawal from the EU in one way or another.

Wales has:

- Four Welsh MEPs
- Four Committee of the Regions representatives (two from the National Assembly for Wales and two from the Welsh Local Government Association)
- Two representatives on the Economic and Social Committee

Wales is a member of a number of formal EU networks:

- National Assembly for Wales is a member of the Conference of European Regional Legislative Assemblies (CALRE)
- Welsh Government is a member of the Conference of European regions with legislative power (REGLEG) and the Conference of Peripheral and Maritime Regions (CPMR)
- Wales has its own representation in Brussels, Wales House (Tŷ Cymru), with representatives from the Welsh Government (linked into the wider UK Permanent Representation), the National Assembly for Wales, Welsh Local Government Association and Welsh Higher Education.
- Welsh organisations also participate in a host of other formal and informal EU networks including (non-exhaustive): Council of European Municipalities and Regions (CEMR), European Local Authority Network (ELAN), Smart Specialisation Platform, Autism Europe, Eurochild, European Regions for Research and Innovation (ERRIN), Network for Promoting Linguistic Diversity, various other EU research/technology and innovation platforms, and many more.
- The European Commission has an office in Wales as part of its UK representation, and Wales also hosts three Europe Direct Centres, a European Enterprise Network, a number of national contact points for different EU funding programmes, and numerous Honorary Consuls from different EU countries.

Wales in or out

The most recent poll (December 2015) by ITV Wales/Wales Governance Centre/YouGov461 on Welsh voting intentions in a referendum on UK membership of the EU shows 40% support for remaining within the EU, 42% in favour of leaving and 19% undecided. This is the first time that supporters of an EU exit have led the poll since December 2013.

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For political, economic, geographic and social reasons, the impact on Northern Ireland of UK withdrawal from the EU might be expected to differ in important ways from the impact of withdrawal on other parts of the UK. Northern Ireland is the only region of the UK to share a land border with another EU Member State and UK withdrawal would, therefore, mean that “an external border of the European Union would run through the island of Ireland”. The final terms of any withdrawal agreement would undoubtedly mitigate some potential impacts identified and the Common Travel Area is an example of such cooperation which predates the UK’s and Ireland’s entry into the European Communities.

Like the UK, the Republic of Ireland (RoI) joined the then EC in January 1973 and this common membership facilitated the development of improved relations between the two States, as they worked together to resolve the conflict in Northern Ireland. In March 2012 a Joint Statement by Taoiseach Enda Kenny and Prime Minister David Cameron set out a programme of work to reinforce the British-Irish relationship over the following ten years. It emphasised the importance of the two countries’ shared common membership of the EU for almost forty years and described them as ‘firm supporters of the Single Market’ who would “…work together to encourage an outward-facing EU, which promotes growth and jobs’. It has been suggested that a ‘British withdrawal, however unlikely, would be a source of enormous instability and turbulence for Ireland’, and it is possible that the political arrangements established by the Belfast (Good Friday) Agreement would not be entirely protected from this instability. The Agreement, which included the establishment of a Northern Ireland Executive and Northern Ireland Assembly, also enshrined North-South and East-West co-operation, effected constitutional changes and established cross-border bodies. The status of the UK and Ireland as EU Member States is woven throughout the Agreement. Both the Northern Ireland Assembly and the Executive have been working to develop ‘European engagement’ and the Northern Ireland Assembly has

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462 Further updates pending.
463 The Institute of International and European Affairs (Aug 2012) Towards an Irish Foreign Policy for Britain.
464 For an overview of the possible consequences of a UK exit, see Centre for Cross-Border Studies, EU Referendum Briefing Papers Briefing Paper 1 The UK Referendum on Membership of the EU: What does it mean for us? February 2016.
465 Joint statement by the Prime Minister David Cameron and the Taoiseach, Enda Kenny, 12 March 2012.
466 The Institute of International and European Affairs (Aug 2012) Towards an Irish Foreign Policy for Britain.
467 This refers to co-operation between Northern Ireland and the Republic of Ireland.
468 This is co-operation between the Republic of Ireland and Great Britain.
469 Indeed, the section entitled ‘Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland’ speaks of “close co-operation between (the) countries as friendly neighbours and as partners in the European Union”.
increasingly sought to engage with European issues (there have been two Committee inquiries examining this issue).\(^{471}\)

**Policing and border issues**

It has been argued that “the devolved institutions and EU programmes have facilitated engagement and embedded Northern Ireland as a region deeper into EU than at any time before”.\(^{472}\) A UK withdrawal could represent a significantly changed context for the work of the institutions, which might be subject to any stresses emerging in UK-Ireland relations following a UK EU exit.\(^{473}\) UK withdrawal might also have implications for Anglo-Irish co-operation in dealing with cross-border crime and terrorist activity. In discussions on the UK opt-out from policing and justice measures in 2014, the Northern Ireland Executive’s Justice Minister, David Ford, highlighted the enhanced co-operation between authorities on both sides of the border as a result of the devolution of policing and justice powers to the Northern Ireland Assembly.\(^{474}\) The former RoI Justice Minister, Alan Shatter, was concerned that a UK withdrawal from police and justice measures “would be a retrograde step in the area of security co-operation”.\(^{475}\)

The UK and the RoI make great use of the EAW. Figures indicate that in 2004-2012, of the 50 EAW requests that Northern Ireland made to other Members States, 30 were made to Ireland.\(^{476}\) Prior to the introduction of the EAW in 2004, a number of European and domestic measures in the UK and Ireland regulated extradition proceedings, including the 1957 Council of Europe (CoE) Convention on Extradition, the Backing of Warrants (Republic of Ireland) Act 1965 in the UK and the Extradition Act 1965 in Ireland. The Convention system no longer applies in Ireland with respect to the UK, and although it would be possible to enact legislation to bring this back into force, one commentator suggested this would not “provide a satisfactory basis for an alternative system of extradition between the two countries, with all the defects, its imperfections, all its outdatedness, all its afflictions and all its potential for endless litigation with an uncertain outcome in relation to the surrender of individuals”.\(^{477}\) The Lords EU Committee concluded that while the EAW was not perfect and had resulted in serious injustices such as long periods of pre-trial detention in poor

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\(^{471}\) Committee of the Centre (March 2002), Approach of the Northern Ireland Assembly and the Devolved Government on EU Issues Committee for the Office of the First Minister and deputy First Minister (January 2010), Report on its Inquiry into Consideration of European Issues.


\(^{473}\) The Agreement set up the North-South Ministerial Council, a British-Irish Council and a British-Irish Intergovernmental Conference. It also gave rise to the North-South Implementation Bodies: Waterways Ireland, Intertrade Ireland, the Special European Programmes Body, Food Safety Promotion board, the Language Body, Foyle, Carlingford and Irish Lights Commission. One might expect the impacts described to also impact on these bodies.

\(^{474}\) Evidence given by David Ford, Northern Ireland Justice Minister to House of Lords European Union Select Committee “EU police and criminal justice measures.


\(^{476}\) Lords EU Committee “EU Police and Criminal Justice Measures: The UK’s opt-out decision”, 2012-2013, p 91.

\(^{477}\) Ibid para 264, p 92.
prisons, the 1957 Convention was not an adequate alternative between the UK and Ireland.\footnote{Ibid para 264, see executive summary and p 92.}

### EU funding

Northern Ireland benefits significantly from EU funding. Table 1 below provides information on funding from six EU Regional Policy Programmes for 2014-2020:

<table>
<thead>
<tr>
<th>EU Regional Policy Programme</th>
<th>€m</th>
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<tbody>
<tr>
<td>European Regional Development Fund</td>
<td>308 million</td>
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<tr>
<td>European Social Fund Programme</td>
<td>183 million</td>
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<tr>
<td>INTERREG VA</td>
<td>240 million</td>
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<tr>
<td>PEACE IV</td>
<td>229 million</td>
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<tr>
<td>European Fisheries and Maritime Fund</td>
<td>24 million</td>
</tr>
<tr>
<td>Rural Development Programme</td>
<td>227 million</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,211 million</td>
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These are relatively significant sums which Northern Ireland could lose if the UK withdrew from the EU. An EU exit would also impact on the future of the Special EU Programmes Body, which is responsible to the European Commission, the Northern Ireland Executive and the Irish Government for the delivery and management of the INTERREG and PEACE Programmes. In addition to the direct impact on spending, there could also be a particular impact on the community and voluntary sector, which in Northern Ireland plays an important role in addressing social and economic deprivation, training and employment, social enterprise, health and well-being, ‘peace building’ and building cross-community and cross-border relationships. The annual income of the Northern Ireland community and voluntary sector is reported to be around £741.9 million, of which approximately £70.1 million is estimated to derive from various EU funding programmes.\footnote{Northern Ireland Council for Voluntary Action (2012) State of the Sector VI, p2. This is not an exact reflection of the contribution of programmes to the voluntary and community sector. The figure includes funding for projects led by a voluntary or community organisation, but does not include the involvement of community and voluntary organisations in EU funded projects led by a public sector body.} The sector is also an important employer in Northern Ireland, constituting around 4% of the total N.I. workforce.\footnote{Northern Ireland Council for Voluntary Action (2012) State of the Sector VI, p9.} A loss of EU funding could contribute to higher levels of unemployment, particularly among women, given the predominance of women employed in this sector. Additionally, EU withdrawal could compromise the sustainability of many voluntary organisations in contributing to EU-sponsored networks and programmes.

### Manufacturing, R&D and innovation

Business leaders in Northern Ireland have expressed concern about the possible effects of a UK withdrawal on trade in general and with the RoI in particular.\footnote{See for example The Belfast Telegraph 24 January 2013. \url{http://www.belfasttelegraph.co.uk/business/business-news/take-care-before-you-rip-up-eu-deal-16265390.html}.} A worst case scenario might see the introduction of tariff controls on the border. Table 2 shows exports to the RoI
accounted for a quarter (25%) of total exports and just under a quarter (24%) of exports to the rest of the EU.\textsuperscript{482}

<table>
<thead>
<tr>
<th>Destination of NI Manufacturing Exports 2013/14</th>
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<tbody>
<tr>
<td>(£m)</td>
</tr>
<tr>
<td>Ireland</td>
</tr>
<tr>
<td>Other EU</td>
</tr>
<tr>
<td>Outside EU</td>
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<tr>
<td><strong>Total</strong></td>
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</table>

The destination of exports by ‘high potential’ service companies in Northern Ireland is outlined in the table below (the most recent data available is for 2011/12). Exports from this sector to the RoI were valued at £69.8million in 2011-12 and accounted for 29% of all sectoral exports, which represents over three quarters of sectoral exports to the EU. Total exports to the EU were valued at £88.4million and were the equivalent of 37% of all exports in the sector. The sector did, however, export a greater proportion of total exports to countries outside of the EU (63% of total sectoral exports). \textsuperscript{483}

<table>
<thead>
<tr>
<th>Destination of exports by NI ‘high potential’ service companies 2011/12</th>
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</thead>
<tbody>
<tr>
<td>(£m)</td>
</tr>
<tr>
<td>Ireland</td>
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<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

The data in the table above shows that both the RoI and the other EU countries represent significant trade partners for Northern Ireland. Any changes to trade relations that might limit Northern Ireland’s ability to trade with these regions would likely have a substantive and negative impact on Northern Ireland’s economy. It is also possible that uncertainty itself about the UK’s potential withdrawal from the EU might impact on trading with EU partners.

The importance of the EU Horizon 2020 programme to developing research & development and innovation (R&D&I) is recognised in the Department of Enterprise, Trade and Investment’s Horizon 2020 Action Plan. UK withdrawal from the EU would prevent Northern Ireland from accessing Horizon 2020 and subsequent EU R&D&I funding and could negatively affect its ability to improve its capacities in this area. Of the 121 projects with Northern Ireland involvement supported under


\textsuperscript{483} DFP Exporting Northern Ireland Services Study 2010 July 2012.
Horizon 2020’s predecessor, the Framework 7 programme, included participation by the regions’ universities. Through the work of the Barroso Task Force the European Commission directly engaged with the Northern Ireland Executive to support efforts in Northern Ireland to improve competitiveness, create sustainable employment, reduce dependence on the public sector and create a more dynamic private sector.\footnote{European Commission COM(2008) 186 final - Communication from the Commission to the Council and to the European Parliament on the Report of the Northern Ireland Task Force (p3).}

On 14 January 2016 the European Commission announced its intention to continue the work of the Northern Ireland Task Force and its future priorities will be prepared with the Commission for finalisation in the first half of 2016.\footnote{NI Executive press release, 14 January 2016.} Withdrawal from the EU would mean the termination of the NI Task Force and possibly the closure of the NI Executive Brussels Office.\footnote{For an assessment of the value of the Northern Ireland Task Force, see the Centre for Cross Border Studies’ \textit{Written Evidence} to the Committee for the Office of the First and Deputy First Minister: Inquiry into the Barroso Task Force.}

\textbf{Agriculture, the agri-food industry and the environment}

Agriculture and the wider agri-food industry are key industries in Northern Ireland. Based on 2014 data, agriculture accounted for 1.4% of total Gross Value Added (GVA) as compared to the overall UK figure of 0.6%.\footnote{DARD (2012) Statistical Review of Northern Ireland Agriculture 2012.} Agriculture also accounted for 3.4% of total civil employment in Northern Ireland as compared to the overall UK figure of 1.2%.\footnote{Ibid} The biggest single EU-related benefit for Northern Ireland agriculture is the direct payments which totalled £293 million in 2014 (£246 in Single Farm Payment alone). Many local farmers rely on these direct payments to be viable, and the loss of such funding could significantly reduce the number of farms and farmers as well as farm production in Northern Ireland, while increasing the levels of rural unemployment and land dereliction. The loss of significant agricultural production could also restrict the ability of the Northern Ireland Executive to deliver on its ambitious plans for the development of the local agri-food industry (60% growth in turnover to £7 billion and a 15% growth in employment to 115,000 by 2020).\footnote{Agri-Food Strategy Board (April 2013) Going for Growth, A Strategic Action Plan in support of the Northern Ireland Agri-Food Industry.} Without direct support the diversity of Northern Irish agriculture could diminish, as currently economically challenging sectors such as the beef and pig sectors could contract. This could see the creation of what would effectively be a monocultural system in Northern Ireland based, for example, upon the currently commercially viable dairy sector.

The issue of increased access to and development of export markets is a key challenge for the Northern Ireland agri-food industry. If the UK left the EU, Northern Ireland, along with the rest of the UK, might be able
to negotiate more quickly and easily new or enhanced access to countries outside the EU. Questions do, however, remain as to whether these terms would be better than those that can be secured within the auspices of the EU. By leaving the single market, Northern Ireland could find it difficult to gain the access to many EU markets that is currently crucial to the industry’s profits. Being subject to import tariffs or conditions could increase the costs and reduce profits. These factors would present a particular challenge for Northern Ireland, as it is the only part of the UK to share a land border with another EU Member State, and as significant elements of the food supply chain effectively operate on an all-island basis.

Many of the improvements to water quality in N.I. have been delivered by providing financial support to local farmers under agri-environment schemes funded under the EU Rural Development Programme. EU regulation has also increased the financial burdens on farmers, however, through the need to improve facilities. An EU exit might reduce, maintain or even enhance the level of environmental regulation. The loss of EU agri-environment scheme support may well see a reduction in overall environmental quality and biodiversity, as farmers move from environmental protection to production as a sole means of securing income. In addition, the loss of direct payments and agri-environment schemes could lead to land dereliction levels soaring. A reduction in environmental regulation or a more pragmatic approach to implementation and enforcement could benefit the local agri-food sector, however. The poultry sector in particular may well be able to expand significantly, as the storage and removal of litter required in EU regulations is currently a major limiting factor.

Sea fishing

In UK terms Northern Ireland’s sea fishing industry is very small, employing a total of 832 fishermen in 2014.490 But despite its relatively small size, the industry makes a significant contribution to the economy of the three South Down villages (Kilkeel, Portavogie and Ardglass) where the majority of boats are based. In 2014 the total value of fish landed in Northern Ireland’s fishing ports amounted to £24.8 million, with shellfish making up the most significant part of the overall catch. As a result of Total Allowable Catch (TAC) changes, the majority of the Northern Irish fleet has focused on catching prawns in the Irish Sea. The local industry could be characterised as being single species dependent. If the UK could set its own fisheries rules and restrict access to the UK EEZ by foreign vessels, the Irish Sea could potentially support a more species diverse industry with the potential for growth and development. A key factor would be the way scientific data was collected, analysed and used in relation to the management of stocks, and it is not clear whether this would be more effective if the UK left the CFP.

The European Maritime and Fisheries Fund (EMFF), effectively the replacement for the existing European Fisheries Fund, is an integral part of the recently reformed Common Fisheries Policy. The Northern Ireland

EMFF has been allocated a total of €23.5 million for 2014-2020. If the UK left the EU, Northern Ireland’s local fishing ports and their vessels would lose access to this funding, which has been critical to the modernisation of the fleet and the facilities it requires.

The prawn fishery within the Irish Sea is the main focus for the Northern Irish fleet and is also fished by boats licensed in the RoI. If the UK left the EU and decided to enforce the UK EEZ, there could be serious ramifications for the relationship between the local and RoI-based fleets. Determining who can fish where and when would present considerable difficulties for all the fisheries within the Irish Sea. Eel fishing is also a comparatively large industry in Northern Ireland. If the UK were no longer bound by the EU Regulation Establishing Measures for the Recovery of the Stock of European Eel, eel management could continue, although the Northern Ireland Executive might alter its obligations regarding monitoring, restocking and minimum catch sizes. Given that the Lough Neagh eel industry produces around 25% of the total EU wild eel catch, a UK withdrawal might have an impact on Europe-wide re-stocking, control and monitoring systems currently operated under EU law. If the UK were outside the single market, there might be an effect on the exportability of eels into European markets such as the Netherlands.

Free movement of people

The 2011 census shows 45,331 people in Northern Ireland were born in another EU state (excluding the Republic of Ireland). Many of Northern Ireland’s agricultural and in particular food processing businesses rely heavily upon workers from outside Northern Ireland. Free movement of labour within the EU has been crucial to the growth of many of these businesses, and an EU exit could cause problems in terms of the ability of these businesses to prosper or develop further if access to labour was restricted. Around 900 migrant worker households in Northern Ireland, primarily Polish but also Portuguese, Lithuanian and Latvian, receive social housing.

The Common Travel Area (CTA) governs movement of persons between the UK and the RoI, the Channel Islands and the Isle of Man. As an EU Member State, Ireland could not restrict the entry of EU citizens, so if the UK wanted to increase controls on EU citizens entering the UK through the Republic, it might reconsider the operation of the CTA. Any such reconsideration would have to be undertaken within the new context created by the Belfast (Good Friday) Agreement.

It is worth noting that, whilst the population of Northern Ireland is projected to increase steadily for the foreseeable future (2 million by 2033), the net contribution of migration is becoming less significant than was the case during the period 2004–2009. Given the continuing

491 2011 Census Table QS206NI Country of Birth:  


493 This is established in Section 1(3) of the Immigration Act 1971.
economic downturn in Northern Ireland, which makes the region a less attractive destination for migrants, should the UK withdraw from the EU the effects on population dynamics may be less significant than other impacts.

Social security, welfare and education

A UK withdrawal might impact disproportionately upon people in border areas, that is, those living in Northern Ireland but working in the RoI (and vice versa) in terms of the transferability of EU/EEA social protection entitlement, including social security, child maintenance and pensions. If the UK opted to impose restrictions on EU/EEA nationals’ access to the UK social protection system, it is likely that under parity Northern Ireland would impose similar restrictions because of financial constraints.

Although the EU has limited competence in the area of health care, UK withdrawal could impact indirectly on the mobility of persons across the border through changes to the provision of cross-border health services and the way in which these services are accessible to users.

The EU has supported the development of cross-border projects and provided a legislative basis for cross-border access to services in specific circumstances. CAWT (Co-operation and Working Together), for example, aims to address the economic and social disadvantage that can result from the existence of a border and is part financed by the European Regional Development Fund through the INTERREG IVA cross-border programme, managed by the Special EU Programmes Body.\(^{494}\) CAWT is the managing partner for a range of cross-border health and social care programmes on behalf of both Departments of Health in Northern Ireland and the RoI\(^{495}\) and for the period 2007-2013, £30 million was attributed to funding a range of programmes\(^{496}\) separately from the core Departmental funding.\(^{497}\)

In addition to the impact resulting from a reduction in programmes supporting professional and patient mobility, there might also be implications for cross-border access to services (and for those who visit Northern Ireland from EU Member States) regarding the European Health Insurance Card, as Northern Ireland would no longer be considered a part of the European Economic Area.\(^{498}\)


\(^{495}\) Personal correspondence with Special EU Programmes Body 18.6.13.

\(^{496}\) There are 12 EU INTERREG IVA funded cross-border health and social care themes, e.g. the development of cross-border acute hospital services and practical initiatives to enable health care staff to work more easily across both jurisdictions. CAWT, Project Overview, Cross-border Workforce Mobility, accessed 26/03/13.

\(^{497}\) Personal correspondence with Special EU Programmes Body 18.6.13.

\(^{498}\) The European Economic Area (EEA) comprises the countries of the European Union (EU), plus Iceland, Liechtenstein and Norway.
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