



# Leaving the EU

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The *Treaty on European Union* provides for a Member State to leave the EU, either on the basis of a negotiated withdrawal agreement or without one. If the UK were to leave the EU following a referendum, it is likely that the Government would negotiate an agreement with the EU, which would probably contain transitional arrangements as well as provide for the UK's long-term future relations with the EU. There is no precedent for such an agreement, but it would in all likelihood come at the end of complex and lengthy negotiations.

The full impact of a UK withdrawal is impossible to predict, but from an assessment of the current EU role in a range of policy areas, it is possible to identify issues and estimate some of the impacts of removing the EU role in these areas. The implications would be greater in areas such as agriculture, trade and employment than they would in, say, education or culture.

As to whether UK citizens would benefit from leaving the EU, this would depend on how the UK Government of the day filled the policy gaps left by withdrawal from the EU. 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 depend on whether the UK sought to remain in the European Economic Area (EEA) and therefore continue to have access to the single market, or preferred to go it alone and negotiate bilateral agreements with the EU.

For information on the *European Union (Referendum) Bill*, see [Research Paper 13/41](#).

Edited by Vaughne Miller

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## Research Paper 13/42

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## Summary

There has been renewed debate about the UK's membership of the EU. Various Government and Parliamentary initiatives have sought to examine and evaluate the UK's relationship with the EU, including the Government's wide-ranging *Review of the Balance of Competences*, launched in July 2012, which aims to audit EU activity across policy areas and assess the EU's effects on the UK.

In January 2013 David Cameron pledged that a future Conservative government would hold an EU membership referendum after negotiating a 'new settlement' for the UK within the EU. However, several Conservative Members wanted a firm commitment to an in/out referendum by 2017, regardless of any renegotiation, and drafted a bill to this effect which was successful in the Private Members Bill ballot. The *European Union (Referendum) Bill* provides for a UK-wide referendum on the UK's continued membership of the European Union – an in/out referendum – by 2017. The Liberal Democrats support a membership referendum in principle, but not before Treaty reform. The Labour position is not yet clear. In recent public opinion polls, a majority of Britons have said they want the UK to leave the EU.

Although the EU Treaty provides in Article 50 for a Member State to withdraw from the EU, an EU-exit would not be straightforward and would involve complex and probably lengthy negotiations over the UK's future relations with the EU. The extent to which UK and other EU citizens might have vested rights stemming from the UK's EU membership would have to be addressed.

The UK might seek to rejoin the European Free Trade Area (EFTA) and remain in the European Economic Area (EEA) in order to benefit from the single market. This would mean a continuation of free movement of people, capital, goods and services. Alternatively, it might decide to go it alone like Switzerland (which is in EFTA, but not the EEA) and negotiate bilateral agreements with the EU on a case-by-case basis. Whatever the arrangement, there is likely to be a trade-off between the level of access to the single market, and freedom from EU product regulations, social and employment legislation, and budgetary contributions.

The UK, through its EU membership, is party to many Treaties with third countries, mainly, but not entirely, concerning trade. These would need to be renegotiated to take account of UK withdrawal. There would be specific repercussions for Scotland (complicated by uncertainty over whether it remains part of the UK), Wales and Northern Ireland, particularly with regard to EU regional funding.

The implications of a UK withdrawal would be greater in areas such as agriculture, trade and employment than they would in, say, education or culture. The future financing of the EU has been planned on the basis of continuing UK membership and there would almost certainly be long and complicated negotiations to settle the financial account between the UK and the EU. The overall economic impact of the UK withdrawing from the EU is difficult to predict. This is partly because many of the costs and benefits of membership are subjective, diffuse or intangible, and partly because a host of assumptions must be made about the terms on which the UK would depart the EU, and how the Government would fill the policy vacuum left in areas where the EU currently has competence.

## 1 Introduction

### 1.1 Examining the UK's current relationship with the EU

The enduring difficulties in the Eurozone and the Prime Minister's veto of the EU fiscal treaty in December 2011 reopened the debate on the UK's relationship with the EU, giving rise to Government and Parliamentary initiatives to examine and evaluate the current situation and any possible alternatives.

Following on from an 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".<sup>1</sup> The Review involves Government Departments collecting evidence from experts and interested parties, including other EU Member States and the EU institutions, across a range of policy areas, which will be published in reports over the course of four semesters ending in autumn 2014.

The House of Commons Foreign Affairs Committee (FAC) took up the baton of examining the UK's relationship with Europe, and in spring 2012 announced an inquiry into [the Future of the European Union: UK Government policy](#). The FAC [report](#) was published on 6 June 2013.

The *Fresh Start Project* was set up to "research and propose a new relationship for the UK within the EU that would better meet the interests and aspirations of the British people". Headed by the Conservative MP, Andrea Leadsom, Fresh Start's "[Options for Change Green paper: Renegotiating the UK's relationship with the EU](#)" analyses the EU's role in key policy areas and proposes how UK interests could be "better served".<sup>2</sup>

A further development was the announcement by the Home Secretary Theresa May on 15 October 2012 that the Government was minded to "opt out of all pre-Lisbon police and criminal justice measures and then negotiate with the Commission and other Member States to opt back into those individual measures which it is in our national interest to rejoin".<sup>3</sup>

### 1.2 The Prime Minister's 'Bloomberg Speech'

In a [speech on 23 January 2013](#) at the London headquarters of Bloomberg (the 'Bloomberg speech'), the Prime Minister considered arguments in support of an EU exit and "the appeal of going it alone", countered these with a look at the alternatives, and concluded that even if the UK pulled out of the EU completely, "decisions made in the EU would continue to have a profound effect on our country. But we would have lost all our remaining vetoes and our voice in those decisions". He summarised the debate as follows:

Alone, we would be free to take our own decisions, just as we would be freed of our solemn obligation to defend our allies if we left NATO. But we don't leave NATO because it is in our national interest to stay and benefit from its collective defence guarantee.

We have more power and influence - whether implementing sanctions against Iran or Syria, or promoting democracy in Burma - if we can act together.

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<sup>1</sup> See [FCO Internet page](#)

<sup>2</sup> See also [Executive Summary](#)

<sup>3</sup> See section 5.11 below. For further information, see Standard Note 6268, [The UK's 2014 Jurisdiction Decision in EU Police and Criminal Justice Proposals](#), 20 March 2014, and SN 6087, UK Government opt-in decisions in the Area of Freedom, Security and Justice, 19 October 2011.

If we leave the EU, we cannot of course leave Europe. It will remain for many years our biggest market, and forever our geographical neighbourhood. We are tied by a complex web of legal commitments.

Hundreds of thousands of British people now take for granted their right to work, live or retire in any other EU country. [...]

We would need to weigh up very carefully the consequences of no longer being inside the EU and its single market, as a full member. Continued access to the Single Market is vital for British businesses and British jobs. Since 2004, Britain has been the destination for one in five of all inward investments into Europe. And being part of the Single Market has been key to that success.

In the speech David Cameron confirmed that if the Conservatives won the next election, due by 2015, there would be an in/out referendum on EU membership after the Government had renegotiated a “new settlement” for the UK in a more “flexible” EU. The “New Settlement” would be:

“protected by fair safeguards” in the Single Market; and

“at the forefront of collective action on issues like foreign policy and trade”; and one which is:

“free of spurious regulation”; and

“subject to the democratic legitimacy and accountability of national parliaments”; and in which:

the door is “firmly open to new members”;

“Member States combine in flexible cooperation, respecting national differences not always trying to eliminate them”; and

it has been “proved that some powers can [...] be returned to Member States”.<sup>4</sup>

The Prime Minister and Foreign Secretary have implied that holding an in/out referendum would increase the UK’s leverage in any future negotiations with EU partners on a “new settlement”.<sup>5</sup>

### 1.3 Calls for a referendum bill

The Government has come under increasing pressure from Eurosceptic backbenchers and Peers to introduce legislation in this Parliament to provide for a future referendum on the UK’s continued membership of the EU. Since 2010 there have been several attempts to do this through Private Members’ Bills, but none have succeeded.<sup>6</sup>

A post-renegotiation referendum (around or after 2017, depending on the length of the negotiations) would not be soon enough for several Conservative Members and Peers.<sup>7</sup> A

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<sup>4</sup> Bloomberg speech as summarised in [FAC Report](#), 21 May 2013

<sup>5</sup> See FAC report, 21 May 2013, [para. 145](#).

<sup>6</sup> Research Paper 13/41 on the *European Union (Referendum) Bill* includes information on debates on an EU referendum since 2010!

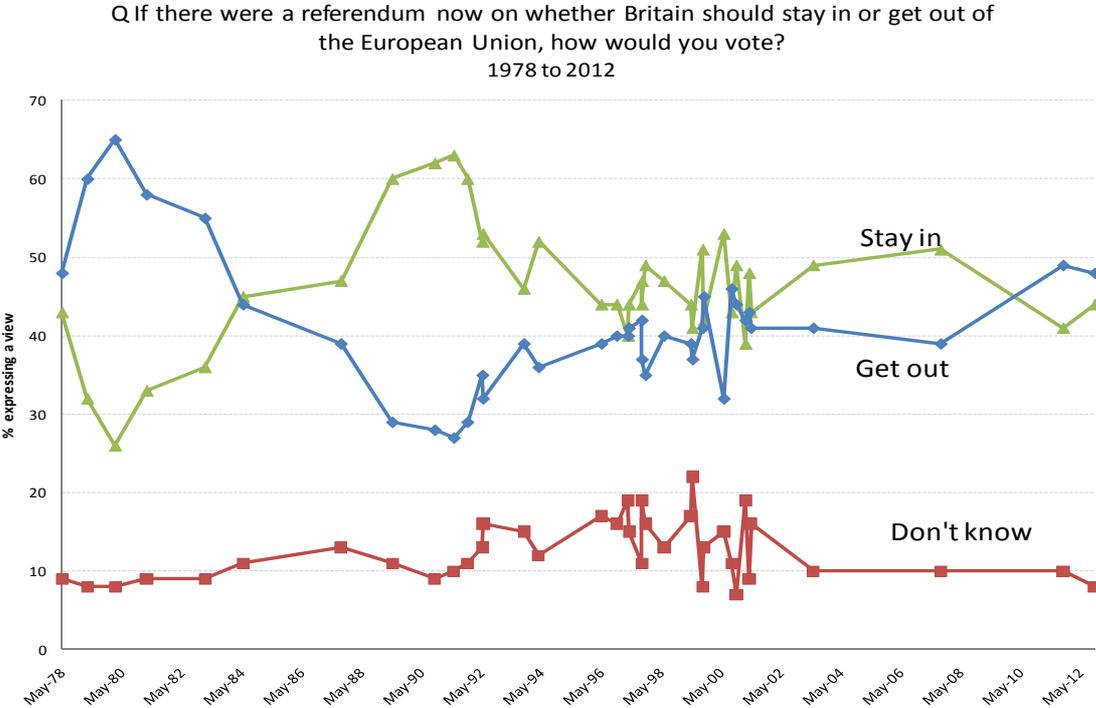
<sup>7</sup> They included former Chancellors Lord Lawson, Lord Lamont and Lord Healey.

[Conservative motion](#)<sup>8</sup> was tabled regretting the fact that an in-out referendum bill had not been included in the Queen’s Speech on 8 May 2013.

In the Private Members Bill ballot, the Conservative backbencher James Wharton’s [European Union \(Referendum\) Bill](#) was top of the list. It was presented on 19 June, with second reading scheduled for 5 July 2013. The Bill provides for an announcement by the end of 2016 of a referendum in 2017 on the UK’s membership of the EU. The referendum would not be predicated on a renegotiation of the EU Treaties. There were reports in mid-June 2013 that Labour Members would abstain from the vote.

**1.4 UK public opinion**

The European Commission has been monitoring public opinion across the EU since 1973. Its latest [Eurobarometer survey](#) confirms the UK population as having less affinity to the EU than that of most other EU countries. In the autumn of 2012, 48% in the UK said they felt they were a citizen of the EU. Only two other EU countries have a lower percentage, Bulgaria (47%) and Greece (46%).



Since 1977 Ipsos MORI has periodically asked the public: “Should the UK remain in the European Union?” In its most recent poll (November 2012) 48% of Britons said they wanted the UK to leave, while 44% believed it should stay, a further 8% were ‘don’t knows’. The latest figures are similar to those seen in 2000, when 46% wanted to leave the EU. While support for remaining in Europe has dropped from the record high of 63%, seen in 1991, the numbers wishing to leave the EU are, however, far from the peak seen in the early 1980s, when 65% of Britons favoured leaving. However, the proportion expressing a desire for the UK to leave the UK has exceeded the proportion wanting to stay in the two most recent

<sup>8</sup> Supported by 133 MPs, including 116 Conservatives and 11 Labour MPs.

surveys, in the autumn of 2011 and 2012.<sup>9</sup> More recent surveys provide the following results:

[YouGov/The Times](#), 7 May 2013: “If there was a referendum on Britain’s membership of the European Union, how would you vote?” 35% would stay in, 46% would leave, 20% didn’t know or would not vote.

[ComRes/Sunday Mirror/Independent](#) 15-16 May 2013, “If a referendum were held on Britain’s membership of the EU, I would vote for Britain to leave the EU”. 46% agreed, 24% disagreed, 30% didn’t know.

[YouGov/Sunday Times](#), 16-17 May 2013: “Do you think that the United Kingdom should remain a member of the European Union?” 36% voted Yes, 45% No, 5% didn’t know.

[Sky News 5 June 2013](#): “Do you think that the United Kingdom should remain a member of the European Union?” 51% voted No, 49% voted Yes.

According to a poll in the French *Le Parisien-Aujourd’hui*, February 2013, 52% of those asked were in favour of the UK leaving the EU.

## 1.5 European reaction

The President of the European Council, Herman van Rompuy, spoke of the complexities of leaving the EU in a [speech on 28 February 2013](#):

... leaving the club altogether, as a few advocate, is legally possible – we have an ‘exit clause’ – but it’s not a matter of just walking out. It would be legally and politically a most complicated and unpractical affair. Just think of a divorce after forty years of marriage... Leaving is an act of free will, and perfectly legitimate, but it doesn’t come for free.

The European Commission has emphasised the importance of the UK’s role in the EU. Its President, José Manuel Barroso, [replied to an EP question on 20 February 2013](#):

It is for the British Government and the British people to set out what they feel is the best approach to the UK’s place within the European Union. Through its membership the UK has positively contributed to the realisation of European policies from the deepening of the single market, to enlargement, to climate and energy policy, to keeping Europe open to the world and developing new trade opportunities. The Commission considers that, provided that the UK so wishes, it is in the European interest and in the UK’s own interest for Britain to continue to be an active member of the EU.<sup>10</sup>

Economic and Monetary Union Commissioner, Olli Rehn, thought the EU was “stronger today because of Britain’s tremendous contribution to it”<sup>11</sup> and believed “it is firmly in Britain’s interest to use its energy for reforming Europe rather than seeking to undo our Community, which would leave us all weaker”.

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<sup>9</sup> Source: [IPSOS-Mori Research Archive](#).

<sup>10</sup> See Commission reply to a question on 10 January 2013 from MEP, Monika Flašíková Beňová (S&D), about the UK’s intention to seek a repatriation of EU powers, [Question for written answer to the Commission](#). On 16 April 2013 Barroso referred Syed Kamall to the same Commission reply (E-002473/2013): see Syed Kamall (ECR) question to [Commission 4 March 2013](#) about the implications of a UK withdrawal.

<sup>11</sup> Speech 28 February 2013: “[Deeper Integration in the Eurozone and Britain’s Place in Europe](#)”.

David Cameron's referendum promise in January 2013 was cautiously acknowledged by other EU leaders.<sup>12</sup> According to [EurActiv 23 January 2013](#) German Chancellor Angela Merkel was "a lone voice in defending the UK's position", but she wanted "Britain to be an important part and an active member of the European Union".<sup>13</sup> In April 2013 the German Defence Minister, Thomas de Maizière, said the German Government was concerned at the prospect of losing an ally on security issues if the UK left the EU. He told [The Guardian on 22 April 2013](#) that a UK exit would weaken NATO and the British influence in NATO and the world. This would be a big disappointment to Germany, which "would lose a strong partner for a pro-Atlantic cooperation with America and a pragmatic British way to deal with security issues".

The French President, François Hollande, told the European Parliament (EP) in early February 2013 that there could be no "a la carte" attitude to the EU. This was widely reported as a criticism of David Cameron's EU reform proposal. The French Foreign Minister, Laurent Fabius, wanted the British "to be able to bring all their positive characteristics to Europe... but you can't do Europe à la carte".<sup>14</sup>

The Swedish Finance Minister, Anders Borg, said that for Sweden a UK referendum on EU membership was "a very serious matter and a matter for some concern" and that the Swedish Government had "been signalling to the British government that we see it as very important that they act cautiously and in a manner that safeguards the British role in the European Union".<sup>15</sup> Stockholm was concerned about a UK withdrawal upsetting the balance of power in the EU: without the UK, Sweden would feel "more exposed and less able to punch above its weight" in relation to France and Germany. The EU could become "more continental, more dirigiste and less flexible and open, so we need a strong British voice in these discussions".<sup>16</sup>

The United States is against a UK exit from the EU. Confirming the 'special relationship' between the UK and the US, President Barack Obama said in May 2013:

... we believe that our capacity to partner with a United Kingdom that is active, robust, outward-looking and engaged with the world is hugely important to our own interests as well as the world. And I think the UK's participation in the EU is an expression of its influence and its role in the world, as well as obviously a very important economic partnership.<sup>17</sup>

He went on to make some more conciliatory comments about the Prime Minister's plans, saying that ultimately it was up to the people of the UK to "make decisions for themselves".

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<sup>12</sup> The FAC Report on the UK's relations with Europe also [noted some EU governments' reactions](#) to the Prime Minister's proposed "new settlement" for the UK. This section looks briefly at views of a UK exit from the EU.

<sup>13</sup> See also [EurActiv, 23 January 2013](#), "UK allies turn cold shoulder on Cameron" and Commission response to Bloomberg speech by Commission spokesperson, Pia Ahrenkilde Hansen.

<sup>14</sup> [BBC News, 5 February 2013](#)

<sup>15</sup> [Financial Times, 27 February 2013](#)

<sup>16</sup> *Ibid.*

<sup>17</sup> White House press release, 13 May 2013, '[Remarks by President Obama and Prime Minister Cameron of the United Kingdom in Joint Press Conference](#)'.

Philip Gordon, US Assistant Secretary of State for European affairs, on a visit to London in January 2013, warned against the UK turning inwards. Britain would always have a 'special relationship' with the US, he said, but British EU membership was in the American interest.<sup>18</sup> He welcomed an "outward looking" EU with the UK in it, continuing:

We benefit when the EU is unified, speaking with a single voice and focused on our shared interests around the world and in Europe. The more the European Union is focused on its internal debates, the less it's able to be our unified partner abroad.

The EU in particular is such a critical partner for the United States on all of these global issues and therefore we also value a strong UK voice in that European Union. Britain has been such a special partner of the United States - that shares our values, shares our interests, and has significant resources to bring to the table. More than most others, its voice within the European Union is essential and critical to the United States.<sup>19</sup>

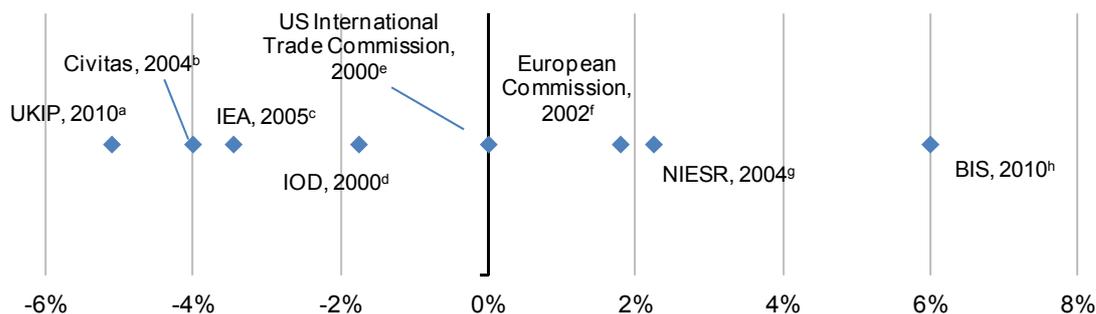
## 1.6 Cost-benefit analyses of EU membership

There is no definitive study of the economic impact of the UK's EU membership, or equivalently, the costs and benefits of withdrawal. Framing the aggregate impact in terms of a single number, or even irrefutably demonstrating that the net effects are positive or negative, is a formidably difficult exercise. This is partly because many of the costs and benefits are, in certain respects, subjective, diffuse or intangible; and partly because a host of assumptions must be made about the terms on which the UK would depart the EU, and how the Government would fill the policy vacuum left in areas where the EU currently has competence. Any estimate of the effects of withdrawal will be highly sensitive to such assumptions, and can thus be embedded with varying degrees of optimism. This perhaps helps to explain why the wide range of estimates from the EU cost-benefit 'literature' can appear influenced by the prior convictions of those conducting the analysis.

### Selected estimates of the net benefits to the UK of EU membership

annual recurring cost/benefit as a proportion of GDP

*N.B. the conclusions from the studies are not precisely comparable; see notes below for further details*



a UK Independence Party *How much does the European Union cost Britain?* Based on conclusion that 'for 2010, the combined direct and indirect costs of EU membership will amount to... £77 billion net'

b Civitas *A cost too far?* 'Most likely' estimate of annual cost is put at 4% GDP per year

c Institute for Economic Affairs (Minford et al) *Should Britain leave the EU?* Midpoint of estimated range of '3.2-3.7 per cent of GDP in ongoing costs'

<sup>18</sup> US State Department, [Remarks Philip H. Gordon Assistant Secretary](#), Bureau of European and Eurasian Affairs, London, January 9, 2013

<sup>19</sup> US State Department *ibid.*

d Institute of Directors [EU membership – what’s the bottom line?](#) Estimated net cost of 1.75% GDP per annum

e US International Trade Commission [The impact on the US economy of including the UK in a free trade agreement with the US, Canada and Mexico](#) Estimate refers to the impact on UK GDP (-0.02%) of the UK withdrawing from the EU and ‘joining’ NAFTA

f European Commission [The internal market – ten years without frontiers](#). Estimate refers to the impact on EU GDP of the existence of the internal market

g National Institute of Economic and Social Research [The macroeconomic impact of UK withdrawal from the EU](#). Estimate refers to the permanent impact on the level of GDP of the UK withdrawing from the EU

h Department for Business Innovation and Skills, [written evidence](#) to Lords EU Select Committee inquiry into Re-launching the Single Market. Estimate refers to the trade benefits of EU membership since the early 1980s and refers to impact of membership of *income per capita*. Based on argument that “EU countries trade twice as much with each other as they would do in the absence of the single market programme” and OECD estimates of the impact of trade exposure on income per capita.

Most studies that find a significant net cost to membership take a static approach, calculating the various impacts – fiscal, regulatory, trade-related etc – in a given year and summing them to produce an overall cost. Those that look forwards generally judge that the process of harmonisation and integration taking place in the EU will exacerbate the costs identified in the static analysis. Those studies that find a net benefit tend to look at the longer-run effects of the UK being a member of the EU versus some more restrictive trading arrangement, with gains accruing each year in the form of higher trade flows and foreign direct investment serving to offset the clear fiscal cost. No recent study has seriously tested the sensitivity of its findings to alternative assumptions or counterfactuals, or attempted to model the impact of alternative policy scenarios or trade relationships following a UK withdrawal.

Whether or not the UK would benefit economically from being outside the EU, withdrawal would have significant impacts on certain sectors (e.g. farming, which currently receives subsidies under the Common Agricultural Policy) and in certain areas (e.g. west Wales, which is currently eligible for the highest level of regional funding from the EU budget – see Section 6.2 on Wales). How the UK Government of the day filled the gaps in economic policy left by withdrawal from the EU would have an important bearing on its consequences. Sections 5.1 and 5.2 look at the areas where EU membership has the most obvious economic impacts, and consider the implications of withdrawal under different scenarios in qualitative terms.

## 1.7 More questions than answers ...

This paper looks at possible economic, political and social impacts of a UK withdrawal from the EU. The scenarios presented here are forward-looking and speculative, because it is impossible to predict the full consequences of a UK withdrawal. As Professor René Schwok and Cenni Najy (University of Geneva) acknowledge in [written evidence to the FAC](#): “a withdrawal of the UK from the EU itself would likely result in an avalanche of consequences that are difficult to assess”.

Withdrawal from the EU would not simply return the UK to the pre-1973 status quo. The mechanics of EU withdrawal might no longer be difficult, as the EU Treaty provides for withdrawal, but disengaging from the EU would not be straightforward, and could well involve a long and difficult negotiation. Apart from all the major policy complexities an EU exit would cause, there would be many loose ends to tie up, such as the position of UK nationals working in the EU institutions.

The paper raises more questions than it provides answers:

What would a withdrawal agreement, assuming there is one, seek to do? Would it provide for a transitional period during which EU law would continue to apply for a limited period, and would the UK be subject to the jurisdiction of the Court of Justice during such a period?

How would the Government deal with the several thousand pieces of EU legislation that are currently part of UK law? Which parts of UK law deriving from the EU, whether directly from the terms of the Treaty or from Regulations or Decisions adopted under it, or indirectly from Directives, should be preserved and which parts repealed?

EU Treaties have created a whole network of rights and obligations, not only between Member States, but also for nationals of those States. Might there be vested rights for EU citizens in the UK and UK citizens in the EU?

What would be the effects of withdrawal in policy areas in which the EU has been very active, such as agriculture, fisheries, the environment and employment?

Would the UK seek membership of other international organisations such as the European Free Trade Area and the European Economic Area, and would it be accepted?

How would the UK's trade relations outside the EU be affected by the ending of UK participation in EU trade agreements?

## 2 The withdrawal process in the EU and the UK

### 2.1 Article 50 TEU

[Article 50](#) of the amended *Treaty on European Union* (TEU) allows a Member State unilaterally to leave the EU in accordance with its own constitutional requirements:<sup>20</sup>

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

Article 218(3) specifies:

The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.

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<sup>20</sup> In the UK this would require an Act of Parliament to repeal *the European Communities Act 1972* and to implement any negotiated agreement with the EU on their future relationship.

The decision to leave does not need the endorsement or formal agreement of the other Member States. Withdrawal can happen, whether or not there is a withdrawal agreement, two years after the leaving State notifies the European Council of its intention to withdraw. However, the terms of Article 50 TEU imply an orderly, negotiated withdrawal.

A State wishing to withdraw must notify the European Council (EU Heads of State and Government), which will consider the matter and set out negotiating guidelines. The Union conducts negotiations with the State based on the European Council Guidelines, and concludes an agreement setting out the arrangements for withdrawal and taking into account “the framework for its future relationship with the Union” (see Section 3.2 below). As Sir David Edward<sup>21</sup> has noted, a long negotiation period under Article 50 TEU would be necessary because “withdrawal from the Union would involve the unravelling of a highly complex skein of budgetary, legal, political, financial, commercial and personal relationships, liabilities and obligations”.<sup>22</sup> The two-year negotiating period would aim to conclude both the withdrawal agreement and any consequent amendments to the EU Treaties.

The negotiations would take place in accordance with Article 218(3) of the *Treaty on the Functioning of the European Union* (TFEU). The European Commission, taking into account the European Council’s guidelines, submits a recommendation to the Council, which adopts a decision authorising the opening of the negotiations and nominates the Union negotiator or the head of the EU’s negotiation team.

The Council of Ministers, having obtained the consent of the EP (i.e. the EP has a right of veto over the withdrawal agreement), concludes the agreement, acting by a Qualified Majority Vote (QMV – roughly two-thirds). During the negotiation, the withdrawing Member State would continue to participate in other EU business as normal, but it would not participate in Council or European Council discussions or decisions on its own withdrawal.

The withdrawing state would be released from its obligations under the Treaties upon entry into force of the withdrawal agreement, or two years after its notification to the European Council. This period may be extended by unanimous agreement.

Article 8 on the EU’s relationship with its neighbours may be relevant to the nature of the withdrawal agreement, since the withdrawing state would remain a part of the Union’s immediate environment. The explanatory notes from the Convention Praesidium in 2003 argued that this removed the need to create a special associate status for withdrawing states. The Prime Minister acknowledged in his Bloomberg speech in January 2013 “If we leave the EU, we cannot of course leave Europe. It will remain for many years our biggest market, and forever our geographical neighbourhood. We are tied by a complex web of legal commitments”.

Under Article 50(5), if a State which has withdrawn from the Union asks to rejoin, it must re-apply under the procedure referred to in Article 49. In other words, it will be dealt with as if it were a new applicant, with no automatic right to rejoin and no special advantages.

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<sup>21</sup> Sir David Edward, KCMG, QC, PC, FRSE, UK Judge at European Court of First Instance 1989 -1992, and at European Court of Justice 1992-2004. Professor Emeritus, University of Edinburgh.

<sup>22</sup> [Scottish Constitutional Futures Forum contribution, 17 December 2012](#)

Article 50 TEU is not the Treaty base for a renegotiation of a Member State's terms of membership, although it could be the basis for negotiating a new relationship between the UK and the EU after the UK has left the EU. William Hague said in [written evidence](#) to the Foreign Affairs Committee on 24 February 2013:

Article 50 of the Treaty on European Union provides a mechanism for states to withdraw from the EU. It is not intended to provide a mechanism for Member States to force a renegotiation of the terms of their existing membership of the EU whilst remaining within the EU. The withdrawal process that Article 50 sets out does include a period of negotiation.

However, Article 50(2) makes clear that this negotiation follows a decision by a Member State to leave and states that the purpose of this negotiation is to set out the arrangements for a Member State's withdrawal, taking account of the framework for its future relationship with the European Union. In addition, Article 50(4) deprives the withdrawing State not only of a vote on the terms of the withdrawal agreement but also of the right to take part in discussions about that agreement in either the European Council or the Council. The Prime Minister, by contrast, envisages a British Government playing an active and positive role in securing reforms of the EU as a whole, including through changes to the Treaties.

## 2.2 The EU-UK withdrawal agreement

What would a withdrawal agreement look like? Would it contain transitional provisions for the withdrawing State allowing EU law and obligations to continue to apply until all loose ends had been tied up? What would the withdrawing State's relations with the EU institutions be during this period and would that State be subject to the jurisdiction of the EU Court of Justice?

It would not be possible to withdraw from, say, the Common Agricultural Policy overnight without causing enormous disruption for farmers. Transitional arrangements for an alternative regime to be put in place would have to form part of the withdrawal agreement. Similar problems would have to be dealt with in relation to projects, joint ventures etc, for example in the field of research, which are being funded by the EU as part of a long-term programme.

In an analysis of the Article 50 TEU provisions, Adam Łazowski looked at the practical issues linked to withdrawal. First, he considered the possibility of three treaties being negotiated: one to allow the departing State to withdraw; another to amend the EU Treaties to remove references to the departing State; and possibly a third to allow the departing State to join EFTA and remain in the EEA.

In accordance with Art. 50(2) TEU, a withdrawal agreement is an international agreement between the EU and a departing country. Taking into account the potential comprehensiveness of such an agreement, it may fall within different categories of competence, which are either shared between the EU and its member states or exclusively of the European Union. Unless it is decided otherwise, a withdrawal treaty may have to be concluded as a mixed agreement, making the ratification procedure much longer and more complex as it will involve the member states. It has to be emphasised that a departing country will be treated as a third country during such negotiations. Moreover, unlike accession treaties, withdrawal agreements do not form part of EU primary law. Thus, unless a special formula is developed, they cannot amend

the treaties on which the EU is based. This implies that alongside an international treaty regulating withdrawal, the remaining member states would have to negotiate between themselves a treaty amending the founding treaties in order to repeal all provisions touching upon the departing country. Further complexities may be added if a departing country chooses to make a rapid move from the EU to the European Economic Area (EEA) instead. That would necessitate a third treaty regulating the terms of accession to EFTA and a fourth to deal with the accession to the EEA. The latter would require the approval of the EU and its member states, the EEA-EFTA countries and the departing/joining country.

Łazowski also looked at the “potential contents of a withdrawal agreement” and how withdrawal might be phased in:

Art. 50(2) TEU merely provides guidance in that it requires arrangements for “withdrawal, taking account of the framework for its future relationship with the Union”. Certainly a comprehensive set of institutional and substantive provisions would be required to turn the political desire to leave the EU into a legal reality. To start with, it would be necessary to delete all provisions and protocols annexed to the founding treaties touching upon the departing country. A decision would also have to be made as to the cut-off date for the participation of a leaving country in the work of all EU institutions, the newly created European External Action Service and the plethora of agencies, organs and advisory bodies. This would have to take place in two stages. Phase one should cover the period of withdrawal negotiations; phase two the ratification of a withdrawal agreement. It seems logical that nationals of the departing country should be allowed to take part in all the meetings until the formal date of exit; however, the key question is to what extent a divorcee should be allowed to shape the legislation it ultimately wishes to withdraw from. Another related issue is the status of EU staff members who hold the nationality of the departing member state. A number of employment law issues will need to be attended to. Moreover, the status of various EU bodies which have their seat in the departing country will have to be regulated.<sup>23</sup>

### 2.3 Greenland’s withdrawal from the EU

Greenland withdrew from the then European Community (EC) in 1985 after gaining a high level of internal autonomy from Denmark in 1979. The Greenland electorate voted on 23 February 1982 on whether to stay in the EC, deciding by 52% to 48% against continued membership (turnout 75%).

There were difficult and protracted negotiations between the Greenland Government and the Danish Government, and the Danish Government and the European Commission, particularly with regard to fisheries. The Council of Ministers adopted a Decision on the terms of Greenland’s withdrawal on 20 February 1984, and Greenland finally withdrew from the EEC on 1 February 1985. Greenland became associated with the EU as an Overseas Country and Territory (OCT) through the Greenland Treaty.<sup>24</sup> This kind of association would not be an option for the UK if it left the EU.

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<sup>23</sup> CEPS Commentary, “[How to withdraw from the European Union? Confronting hard reality](#)”, Adam Łazowski, 16 January 2013.

<sup>24</sup> [OJ L 29, 1 February 1985](#)

The Treaty base for Greenland's withdrawal was former Article 236 of the Treaty of Rome (now Article 48 TEU), which provided for amendments to the EC Treaties and entry into force following ratification by all Member States "in accordance with their respective constitutional requirements". The special status and commercial agreements linked to Greenland's withdrawal were agreed in protocols to the amendment treaty, and various legal instruments were agreed by all the Member States. A fisheries agreement between the parties allowed the EU to keep its fishing rights, while Greenland continued to contribute to the EU after withdrawal and had tariff free access of fisheries products to the EU for the duration of the fisheries agreement.<sup>25</sup> Article 198-204 TFEU, *Association of the Overseas Countries and Territories*, apply to Greenland, subject to provisions set out in Protocol No. 34 annexed to the TFEU on special arrangements for Greenland fisheries.

Article 2 of the [Protocol](#) attached to the Greenland Treaty clarified that there would be a transitional period during which Greenlanders, non-national residents and businesses with acquired rights under EU law would retain these rights (see more on the subject of acquired rights in Section 3 below):

The Commission shall make proposals to the Council, which shall act by a qualified majority, for the transitional measures which it considers necessary, by reason of the entry into force of the new arrangements, with regard to the maintenance of rights acquired by natural or legal persons during the period when Greenland was part of the Community and the regularization of the situation with regard to financial assistance granted by the Community to Greenland during that period.

The terms of Greenland's withdrawal were the subject of a debate in the House of Commons in July 1984 ([HC Deb 20 July 1984, cc671-83](#)) and October 1984 ([HC Deb, 31 October 1984, cc 1319-1334](#)). The implications of the withdrawal were also considered by the European Legislation Select Committee in its Fifteenth Report, HC78-xv, 1983/84.

## 2.4 The withdrawal process in the UK

There is no mention in Article 50 TEU of ratification of the withdrawal agreement by Member States, but this would be necessary under international legal norms. Even if there is no withdrawal agreement, EU Treaty amendments would be needed to take account of the UK's withdrawal two years or more after notification. These would require ratification by the EU Member States either before or after the UK had left (excluding the UK if after withdrawal).

The withdrawal agreement is not subject to any of the constitutional safeguards in the EU Act 2011, but, following the usual procedures for ratification, would have to be laid before Parliament with a Government Explanatory Memorandum for 21 sitting days before it could be ratified, in which time either House could resolve that it should not be. [Part 2 of the Constitutional Reform and Governance Act 2010](#) put the 21-sitting day 'Ponsonby Rule' on a statutory footing and gave legal effect to a resolution of the House of Commons that a treaty should not be ratified. If the Commons resolves against ratification, the treaty can still be ratified if the Government lays a statement explaining why the treaty should nonetheless be ratified and the House of Commons does not resolve against ratification a second time within 21 days (this process can be repeated *ad infinitum*).

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<sup>25</sup> [Greenland representation in Brussels](#)

The withdrawal agreement would have to be implemented by an Act, or Acts, of Parliament. The *European Communities Act 1972* (ECA) would have to be repealed (or possibly amended), and other primary legislation implementing EU law would have to be repealed if the Government did not want it to form part of national law. Secondary legislation whose enabling power was Section 2(2) of the ECA would have to be provided with a new enabling power if the Government wanted it to remain in force; if not, any such legislation would no longer have legal effect once Section 2(2) ECA had been repealed.

### **3 Would individuals and businesses have any vested rights**

#### **3.1 What is the issue?**

If the UK left the EU, would all the complex web of rights and obligations that apply to British citizens and businesses in the EU – and EU citizens and businesses in the UK – simply disappear overnight? If so, UK citizens working in EU countries would suddenly become illegal immigrants. Fishermen from EU countries would be excluded from UK waters. British farmers would lose subsidies under the Common Agricultural Policy. UK citizens would lose the right to bring damages claims based on EU law.

Or would some “vested” or “executed” rights continue, either through a transitional arrangement or automatically as a principle of international law?

#### **3.2 Which rights might be ‘vested’?**

In one view, EU Member States have irreversibly vested the nationals of the Member States with a “legal heritage”<sup>26</sup> of rights.<sup>27</sup>

Many provisions of EU law create individual rights which are directly enforceable in national courts (either horizontally between private individuals, or vertically by an individual against the state). These cover areas such as free movement of workers, free movement of goods and freedom of establishment. If any EU rights can be enforced after withdrawal, it is likely to include these.

In another view, the UK and the EU would probably negotiate a transitional period, as a sort of inverse of what countries joining the EU do. The negotiating period envisaged in Article 50 TEU is there for the purpose of “taking account of the framework for [a State’s] future relationship with the Union”, which would cover issues such as vested rights.

#### **3.3 Transitional measures could resolve issues around rights**

In practice, the UK and the EU would probably negotiate a transitional period, as a sort of inverse of what countries joining the EU do.

This is what happened when Greenland left the EU in 1985. The European Commission saw transitional measures as essential for dealing with the rights acquired when Greenland was part of the EU:

The proposed change of status may, of course, raise certain transitional problems. This applies in particular to the question of the rights acquired by Community nationals in Greenland and vice versa when Community law applied to Greenland. There might

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<sup>26</sup> ECJ, Case C-26/62, *van Gend & Loos*, 1963 ECR 1

<sup>27</sup> Jochum Herbst, “Observations on the Right to Withdraw from the European Union: Who are the ‘Masters of the Treaties’?”, *German Law Journal* (6:2005), p1755

also be a need to review agreements concluded with non-member countries in matters for which the Community has exclusive responsibility, when the contents concern Greenland.

The Commission is therefore of the opinion that the new arrangements must contain a clause allowing the Council, on a proposal from the Commission, to adopt such transitional measures as may be required.<sup>28</sup>

However, even the most thorough transitional agreement is likely to have some gaps.

### 3.4 What might happen without transitional measures?

There might be areas not covered by a transitional agreement. Or the UK may even leave the EU without any negotiated transitional measures (see Section 2.1 above). What then would happen to vested rights?

#### ***The UK might retain some EU principles, e.g. on free movement***

When Greenland left the EU (see Section 2.3 above), the Commission considered that vested rights meant Greenland should retain “the substance” of free movement rights for workers from other EC countries employed in Greenland at the time of withdrawal:

##### **Retention of vested rights**

Provision should be made for appropriate measures to protect companies and persons who have exercised the right of establishment as well as Community workers employed in Greenland. The extremely small number of persons affected and the case-law of the Court of Justice that has already been established in favour of the retention of pension rights acquired by workers during periods of employment in a territory which has subsequently ceased to belong to the Community give no reason to suppose that there will be any major difficulties in this area, even if the future status of Greenland were to rule out the principle of free movement. It would, however, be preferable to retain the substance of the Community rules, at least in respect of Community workers employed in Greenland at the time of withdrawal.<sup>29</sup>

It did not say whether the rest of the EU should retain these rights for workers from Greenland.

#### ***Under general international law, ‘executed’ rights could be protected***

Generally speaking, withdrawing from a treaty releases the parties from any future obligations to each other, but does not affect any rights or obligations acquired under it before withdrawal.<sup>30</sup>

Lord McNair argued that although rights and statuses created under a treaty owe their origin to the treaty, those that have already been executed and had their effect before withdrawal “have acquired an existence independent of it; the termination cannot touch them”. He added that most rights, in these circumstances, would be ‘protected’ by the “well-recognised

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<sup>28</sup> [Status of Greenland: Commission opinion](#), COM (83) 66 final, 2 February 1983, p12

<sup>29</sup> Ibid, Annex A, p21

<sup>30</sup> [Arts 65 to 72 of the Vienna Convention on the Law of Treaties](#) specify the procedures to be followed and the consequences of termination or suspension. See Rebecca MM Wallace and Olga Martin-Ortega, *International Law*, 7<sup>th</sup> edition, 2013, p289; Sir Gerald Fitzmaurice, *The law and procedure of the International Court of Justice*, 1986; AD (Lord) McNair, *The Law of Treaties*, 2<sup>nd</sup> edition 1961, p532; *Oppenheim’s International Law*, Ninth Edition, p1311, para 657; Halsbury’s Laws of England, “Succession of States and Governments: Treaty Rights and Obligations - [Private Rights](#)”

principle of respect for acquired [vested] rights”.<sup>31</sup> This applies to rights acquired by the states parties and by their nationals. For example, a payment made under the treaty does not become repayable on withdrawal from the treaty.

On the other hand, some provisions take the form of continuing obligations: to surrender alleged criminals of certain types, for example. After withdrawal, no more rights or obligations of this type can be created.

### ***In practice, the UK is likely to keep many EU rules***

For practical reasons, the UK is likely to keep significant amounts of laws of EU origin. For instance non-EU exporters are often dependent on sales from the EU market, for which they must meet EU regulatory conditions. And fields such as counterfeiting, anti-terrorism and extradition need bilateral cooperation.<sup>32</sup>

Moreover, as this paper shows, the reach of EU law is huge, and could not be repealed overnight – not least because all UK law (not simply implementing legislation) currently has to be interpreted in the light of EU law where it is touched by it.

### ***Some questions***

- Is there a real likelihood of the UK leaving the EU without negotiating transitional arrangements?
- How much weight does the Commission’s opinion on Greenland carry when thinking about an entire Member State leaving the EU?
- Would the general international law principle of acquired or vested rights apply to individuals’ EU-based rights and obligations?
- If the UK withdrew from the EU without transitional arrangements, is the question whether the right has either been executed and had its effect, or is a continuing obligation? Or is it whether the right stems from provisions of EU law capable of creating individual rights? Or would both apply?
- How much EU law would the UK actually want to repeal, given trade and other cooperation needs?
- Would the UK courts go back to some pre-1972 meaning of UK law, or continue to look at EU law to interpret British law?
- Would the EU Court of Justice hear cases about vested rights of UK citizens in other countries after withdrawal?

## **4 Alternatives to EU membership**

Some proponents of UK withdrawal from the EU look to the other European free trade arrangements as alternatives to EU membership: the European Free Trade Area (EFTA) and the European Economic Area (EEA). The FAC report on the Government’s policy on Europe

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<sup>31</sup> Lord McNair, *The Law of Treaties*, 2<sup>nd</sup> edition 1961, pp531-2

<sup>32</sup> Damian Chalmers, “[Democratic Self-Government in Europe: Domestic Solutions to the EU Legitimacy Crisis](#)”, *Policy Network paper*, 15 May 2013

looked at alternatives to EU membership in [The Single Market and the EU: Norwegian and Swiss options](#). The Committee concluded:

164. We agree with the Government that the current arrangements for relations with the EU which are maintained by Norway, as a member of the European Economic Area, or Switzerland, would not be appropriate for the UK if it were to leave the EU. In both cases, the non-EU country is obliged to adopt some or all of the body of EU Single Market law with no effective power to shape it. If it is in the UK's interest to remain in the Single Market, the UK should either remain in the EU, or launch an effort for radical institutional change in Europe to give decision-making rights in the Single Market to all its participating states.

This section looks briefly at other European groupings, their remit and relationships with the EU. House of Commons Library [Standard Note 6522](#), 14 January 2013, looks at Norway's relationship with the EU, and [Standard Note 6090](#), 20 October 2011, looks at Switzerland's EU relations.

#### 4.1 European Free Trade Area (EFTA)

Iceland, Norway, Switzerland and Liechtenstein are all EFTA members.<sup>33</sup> The original 1960 agreement was reached between countries that sought the benefits of trade without full membership of the then EEC. EFTA countries first lowered tariffs between themselves, and then signed bilateral Free Trade Agreements (FTAs) with the EEC from 1973 onwards. The EEA Agreement superseded those with Norway, Iceland and Liechtenstein. A number of countries that are now EU Member States were formerly EFTA members. The UK was a founder EFTA member, alongside Denmark, Norway, Sweden, Austria, Switzerland and Portugal. EFTA has three intergovernmental institutions: a Secretariat, a Surveillance Authority and the EFTA Court. EFTA is a free trade area, rather than a customs union like the EU. Member States set their own tariffs and can reach independent Free Trade Agreements (FTAs). EFTA currently has 24 free trade agreements (covering 33 countries).

EFTA Free Trade Agreements (FTAs) establish a free trade area between the partners. They provide for free trade in industrial goods, including fish and other marine products; cover trade with processed agricultural products; provide for trade disciplines; govern preferential trade in goods under the FTA and contain elaborate rules on customs and origin matters, including cumulation[1]. Trade in basic agricultural products is covered by separate bilateral agreements relating to the FTA.

FTAs liberalise trade in services, investments and public procurement in more recent agreements, including those with Mexico, Singapore, Chile and the Republic of Korea. Other agreements contain rules allowing for the further development and deepening of relations in these fields through evolutionary clauses, e.g. with partners in the Mediterranean region. They include rules on competition to avoid adverse effects in the case of restraints of competition which could frustrate the liberalisation benefits of an FTA.

They provide for the protection of intellectual property rights in accordance with high standards, and contain provisions for the avoidance and settlement of disputes between the parties. They are adapted and upgraded regularly in order to remain as

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<sup>33</sup> See [EFTA secretariat website](#)

efficient as possible, taking into account developments in the World Trade Organization and in the bilateral trade relations of major trading partners.<sup>34</sup>

Footnote [1]: Cumulation: products originating in one partner country may be used as materials in the production of a product in another partner country without prejudice to the preferential status of the finished product.

EFTA States also often coordinate their foreign policies with EU statements and participate in some Common Security and Defence Policy (CSDP) operations and missions.<sup>35</sup>

In [evidence to the FAC on 25 April 2012](#), Dr. Johanna Jonsdottir, Policy Officer, EFTA Secretariat, considered media reports supporting a UK return EFTA, but pointed to possible problems of a semi-detached status for a “larger and more assertive country” such as the UK, and noted:

... being in with the outs while trading freely in Europe comes at a price. It means paying to administer and police the single market while the in-crowd makes the important decisions about how it works. For a noisy nation accustomed to a place at the table and having its voice heard, that could feel like a very un-splendid isolation’.

## 4.2 European Economic Area (EEA)

Signed in 1992 and operational from 1994, the [EEA Agreement](#) extends the EU single market and free movement of goods, services, people and capital, together with laws in areas such as employment, consumer protection, environmental policy and competition – to include Norway, Iceland and Liechtenstein (but not Switzerland). In practice, this means that the vast majority of the EU regulations identified as most burdensome to businesses, including the Working Time Directive, would still exist if the UK left the EU but remained a member of the EEA. It would also be bound by future EU law in these areas, with arguably less influence over their content.

As with EFTA, the EEA Agreement is a regional free trade agreement, not a customs union. It guarantees equal rights and obligations within the internal market for EEA citizens and economic operators. The non-EU EEA countries also make annual financial contributions to the EU for access to its single market (see below). In addition, the EEA Agreement covers cooperation in research and development, education, social policy, the environment, consumer protection, tourism and culture. It does not cover the following EU policies:

- Common Agriculture and Fisheries Policies (CAP and CFP, although the Agreement contains provisions on various aspects of trade in agricultural and fish products);
- Customs Union;
- Common Trade Policy;
- Common Foreign and Security Policy;
- Justice and Home Affairs (even though the EFTA countries are part of the Schengen area); or

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<sup>34</sup> [EFTA website](#)

<sup>35</sup> See [Council conclusions on EU relations with EFTA countries](#) and Section 5.16 on defence.

- Monetary Union (EMU).

Although it does not cover the CAP or CFP, some market access is allowed. An agreement was reached allowing Iceland access to EU markets free of tariff for most of its marine exports, and partial access to EU waters in return for a quota of catch by EU fishing vessels in Icelandic waters. Norway adheres to EU fisheries conservation measures and the quota system.

Liechtenstein, Norway and Iceland have no representation in any of the EU institutions and only indirect influence – including the right to be consulted – on EU proposals affecting them. An EEA Joint Committee works to extend EU regulations and directives to the non-EU members of the EEA (with the EU represented by the European Commission). The EEA Council – the members of the Council of Ministers in its General Affairs and External Relations formation and one representative each for the EFTA EEA country governments – meets twice a year.

In [evidence](#) to the FAC, Professor René Schwok and Cenni Najy identified some of the advantages of joining EFTA:

- a far lower UK financial contribution, which would exclude the CAP;
- the UK Government would be free to set its VAT level;
- capacity to ratify free-trade agreements faster and with more partners than the EU and greater freedom of manoeuvre to sign free trade agreements worldwide;
- UK bilateral agreements with the EU would better protect British sovereignty, notwithstanding a loss of influence.

They also identified some ‘challenges’:

- Joining EFTA could entail a difficult application process with possibility of veto from existing Member(s)
- EFTA a homogenous bloc in terms of countries' size, economic development and trade preferences. UK might not fit in or might change the dynamic of the group to the disadvantage of existing members.

It is not possible to become a party to the EEA Agreement without being a member of either the EU or EFTA, so the UK would have to rejoin EFTA if it left the EU in order to remain in the EEA.<sup>36</sup> There has also been a suggestion that Article 127 of the EEA Agreement might allow continued free trade and movement between a withdrawing state and the EEA for 12 months after a Member State signals its withdrawal.<sup>37</sup>

If the UK remained in the EEA, UK nationals would be able to work in the EU agencies, of which there are around 36, where many seconded national experts work freelance on contracts, but would not be able to work in the main EU institutions. Changes would not happen overnight, and recruitment from the UK would have to continue during the period of negotiations, but posts would possibly be on a contracted rather than a permanent basis.

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<sup>36</sup> [Financial Times, 12 May 2013](#)

<sup>37</sup> Question from Conservative MEP, Syed Kamall (ECR) to the [Commission 4 March 2013](#)

### **Schengen border-free area**

Border and passport controls have been removed in EU Member States that have ratified the [Schengen agreement](#), with the corollary that external borders will be better controlled. In addition, the network of cooperation between the police and judicial authorities has been improved. A vital element is the Schengen Information System, a data bank providing information about wanted persons and goods, in which the UK also participates.

Norway, Iceland, Liechtenstein and Switzerland all participate in Schengen co-operation although they are not in the EU. For these countries participation in Schengen involves:

- being included in the area without checks at internal borders;
- applying the provisions of the Schengen *acquis* and all Schengen-relevant texts adopted pursuant to it;
- being involved in decisions relating to Schengen-relevant texts, but without the right to vote.<sup>38</sup>

Those countries that are part of both the EEA and Schengen have committed to adopting about two thirds of the EU's *acquis communautaire*.

### **4.3 The Swiss model**

Switzerland is in EFTA and Schengen but is not a member of the EU or the EEA, although it has concluded around 72 bilateral treaties with the EU since the 1950s.<sup>39</sup> Swiss nationals have broadly the same rights as EEA nationals with regard to freedom of movement under the [Agreement of 21 June 1999 between the Swiss Confederation and the EC Member States on the free movement of persons](#) (AFMP):

European and Swiss nationals both enjoy the right of entry, residence, access to paid work, establishment on a self-employed basis and the right to stay in the territory after their employment has finished. The right of entry and residence applies to everyone, including those without an economic activity in the host country.

The host State must accord foreign nationals the same living, employment and working conditions as those accorded to nationals. The Agreement provides protection against discrimination based on nationality.

There are other rights related to the free movement of persons. They concern:

- the right to personal and geographical mobility;
- the right of residence for members of the family and their right to pursue an economic activity, irrespective of their nationality;
- the right to acquire immovable property, specifically in order to establish a main or secondary residence in the host State;
- the right to return to the host State after the end of an economic activity or period of residence there.

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<sup>38</sup> "The Schengen area and cooperation", *Europa summaries of EU legislation*, 3 August 2009

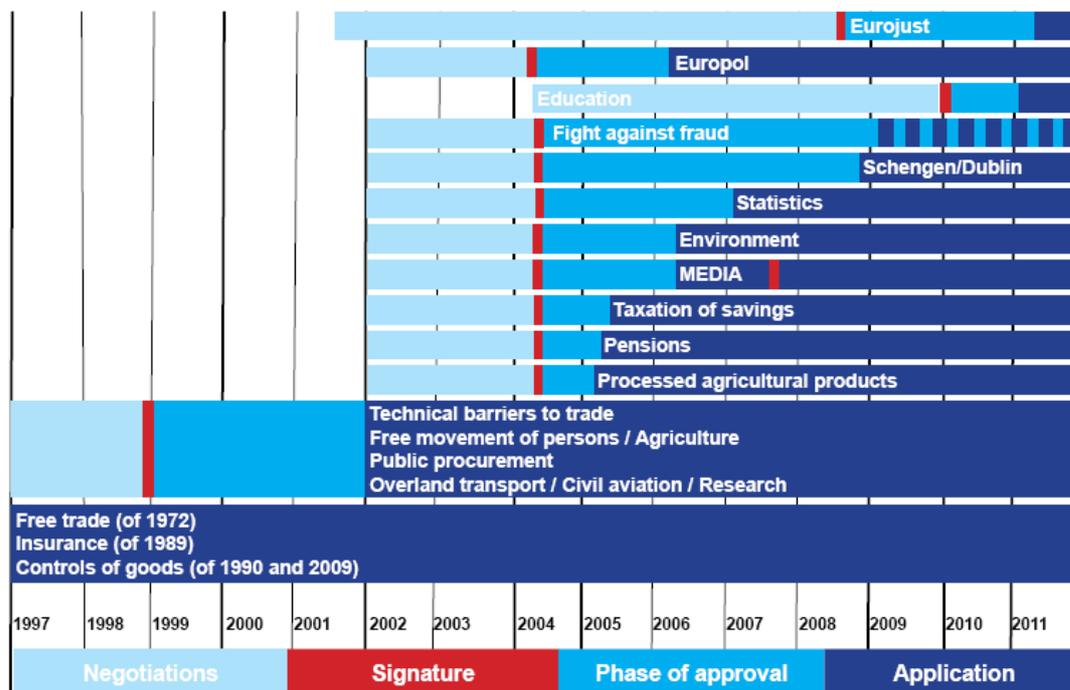
<sup>39</sup> See [EU treaties page for Switzerland](#). Not all of these are in force.

The Agreement also provides for the coordination of social security systems under the principle of equal treatment, as well as the mutual recognition of professional qualifications.<sup>40</sup>

One major difference between the EU/EEA Directive and the bilateral agreements is the temporal nature of the latter. While EU law is flexible and constantly evolving through amendment and case-law, the agreements are comparatively static in what they provide. New protocols must be negotiated from time to time to amend them. Another difference is the lack of an enforcement mechanism under the bilateral agreements.<sup>41</sup>

Switzerland's approach means that, with the exception of civil aviation, it is not bound by horizontal policies,<sup>42</sup> such as environment or competition. However, its Agreement on the Free Movement of Persons means that it must introduce equivalent employment legislation to that in operation throughout the EU, including the Working Time Directive.

### **Switzerland – bilateral agreements with the EU**



Source: Centre for European Reform (2012) *Outsiders on the inside: Swiss and Norwegian lessons for the UK*

Professor Clive H. Church, Dr Paolo Dardanelli and Sean Mueller<sup>43</sup> concluded in their [evidence to the FAC, 21 May 2012](#), that:

... the Swiss model is essentially one of considerable integration without membership, not of rejection of integration. Crucially, it includes acceptance of

<sup>40</sup> [Europa summary](#) of Decision [2002/309/EC](#) which came into force on 1 June 2002, with several accompanying measures in 2004:

<sup>41</sup> See Standard Note 6090, [Switzerland's relationship with the EU](#) 20 October 2011. Information on Swiss relations with the EU can also be found on the [European Commission website](#) and on the Swiss Government website, [The principles of Switzerland's policy on the European Union](#) plus an [evaluation report](#), September 2010.

<sup>42</sup> Horizontal policies are those that cover more than one sector or policy area.

<sup>43</sup> Centre for Swiss Politics, University of Kent

EU economic regulation without a say in shaping such regulation. If support for the Swiss model in the UK is motivated by a desire to escape EU regulation, then the former certainly is not the way to pursue that objective.

#### 4.4 EEA and Swiss financial contributions to the EU

##### **EEA**

Since 1994 the EEA EFTA states have made financial contributions to the EU in two ways. Firstly, they contribute to broad EU regional policy goals by providing grants to ‘reduce social and economic disparities in the EEA’.<sup>44</sup> Since the 2004 enlargement, funds have been provided under two schemes: ‘EEA Grants’, which Norway, Iceland and Liechtenstein all contribute to, and which are targeted at the twelve most recent Member States, plus Greece, Spain and Portugal; and ‘Norway Grants’, which Norway alone contributes to, and are targeted at the twelve new Member States only. €1.79bn has been allocated to both schemes for the period 2009-14, to which Norway provides 97% of the total.<sup>45</sup>

Secondly, EEA countries contribute to the costs of the EU programmes in which they participate under the EEA Agreement, in proportion to their percentage of EU GDP. The EEA states have also committed to second national experts to the Commission as an ‘in kind’ contribution to these programmes.<sup>46</sup>

Norway, which by virtue of its relative size provides the vast majority of EEA contributions, provided £524m in 2011, or £106 per capita. This compares to the UK’s net budget contribution that year of £8.1bn, or £128 per capita. If the UK left the EU and instead contributed to the EU budget on the same basis as Norway, its contributions would fall by around 17%. Further details are shown in the table below.

**Norway and the UK - contributions to the EU and EEA/EFTA in 2011**

<b>Norway<sup>a</sup></b>	£m	£ per capita
Norway Grants	139	28
EEA Grants	162	33
EEA/EFTA commitment to EU operational costs	214	43
EFTA budget	10	2
<b>Total</b>	<b>524</b>	<b>106</b>
<b>UK</b>	£m	£ per capita
Gross EU budget contribution	15,356	243
Net EU budget contribution	8,102	128

<sup>a</sup> EEA/EFTA commitment and grants figures converted from EUR to GBP at 2011 annual average exchange rates; EFTA budget contribution converted from CHF to GBP at 2011 annual average exchange rate

Sources: HM Treasury *European Union Finances 2012*; EFTA 51st Annual Report (2011); Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2009-14; Protocol 38 B of the EEA Agreement

<sup>44</sup> The scheme is also intended to strengthen relations between Norway and the beneficiary states, making it an instrument of Norwegian foreign policy

<sup>45</sup> The basis for these contributions is contained in [Articles 115-117](#) of the EEA Agreement; the specifics of the 2009-14 arrangement can be found in the [Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2009-14](#), and [Protocol 38 B](#) of the EEA Agreement

<sup>46</sup> A list of the programmes that EEA states participate in under the agreement is available [here](#).

### Switzerland

Like the EEA countries, Switzerland contributes to both enlargement costs ‘to reduce economic and social disparities’, and the EU programmes in which it participates under its array of bilateral agreements. Its enlargement contributions are provided under multi-year frameworks, the most recent of which covered the five year period to 2012; negotiations on a new one are ongoing. Switzerland’s contribution in recent years has been around £420m per annum, or **£53 per head**. If the UK left the EU and contributed on the same basis as Switzerland, its contributions would fall by around 60%.<sup>47</sup>

### 4.5 The ‘Anglosphere’

Some who advocate UK withdrawal envisage closer relations with other English-speaking countries, such as the US, Canada, Australia and New Zealand. Others propose a much larger grouping to include India, Ireland, the Caribbean and the Pacific islands. For proponents such as James C Bennett,<sup>48</sup> a US businessman and journalist, the defining characteristics of the ‘Anglosphere’ are the English language, Common Law, individualism, democracy, the rule of law and a strong civil society.<sup>49</sup> Another proponent, British/American historian Robert Conquest,<sup>50</sup> argues that democracy is very much an Anglo-Celtic invention and that its roots in Continental European societies are much weaker. ‘Anglospherists’ argue that the relative safety of the island of Great Britain allowed a culture of individualism and government by consent to develop. For Robert Conquest this meant that the state in Britain was never overwhelmingly strong:

Since the collapse of Rome, there has never been any significant period in Britain when the state was strong enough to enforce its will without considerable concessions to the rights and liberties of important sections of its subjects and without reliance upon consent.

This contributed to an aversion among English-speakers to comprehensive ideologies that risk descending into totalitarianism.

Another historian, Andrew Roberts, inspired by Winston Churchill’s work, wrote a history of English-speakers in the 20<sup>th</sup> Century that made a strong argument that the century was largely a story of English-speaking nations’ fight against tyranny in the form of Prussian expansionism, Nazism, Soviet Communism and ‘Islamofacism’.<sup>51</sup> He particularly criticised Western liberal intellectuals, while praising both Margaret Thatcher and Tony Blair.

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<sup>47</sup> Based on Swiss Government information in 2009 brochure *Bilateral agreements Switzerland-EU*.

<sup>48</sup> James C Bennett, *The Anglosphere Challenge: Why the English-speaking Nations will Lead the Way in the 21<sup>st</sup> Century*, 2004

<sup>49</sup> James C Bennett, *An Anglosphere Primer*, 2001

<sup>50</sup> Robert Conquest, *Reflections on a Ravaged Century*, 1999; *The Dragons of Expectation: Reality and Delusion in the Course of History*, 2004

<sup>51</sup> Andrew Roberts, *A History of the English-Speaking Peoples Since 1900*, 2007

What might a closer relationship with other English-speaking countries entail in practical terms? In his *Primer*, Bennett said that Anglosphere countries had been developing institutions of cooperation since World War I and that this should continue:

The Anglosphere potential is to expand these close collaborations into deeper ties in trade, defense, free movement of peoples, and scientific cooperation, all bound together by our common language, culture, and values.

Anglosphere theorists promote more and stronger cooperative institutions, not to build some English-speaking superstate on the model of the European Union, or to annex Britain, Canada, or Australia to the United States, but rather to protect the English-speaking nations' common values from external threats and internal fantasies. Thus, Anglospherists call on all English-speaking nations to abandon Haushoferian fantasies of geographical blocs: on America to downgrade its hemispherist ambitions, on Britain to rethink its Europeanist illusions, and on Australia to reject its "Asian identity" fallacy. Far from a centralizing federation, the best form of association is what I call a "network commonwealth": a linked series of cooperative institutions, evolved from existing structures like trade agreements, defense alliances, and cooperative programs.

Anglospherists are sceptical about supranational entities, believing instead that cooperation should be a product of genuine cultural links between societies. Conquest argued that the relationships within the Anglosphere should be 'weaker than a federation but stronger than an alliance' and proposed that a secretariat could be set up in Bermuda. Bennett argues for a 'network commonwealth' based on 'variable geometry' participation in shared projects:

- Common markets that focus on the free flow of information, services and people rather than goods. Bennett mentions the proposed EU-US TTIP as a step in the right direction;
- Collaborative science and technology organisations;
- Security cooperation: NATO would be important not only for security but also because it has encouraged democratisation.

The idea of a union of English-speaking peoples is not new. In 1911, with the British Empire facing decline, a rising Germany and a mistrusted France, an Imperial Conference was held at which proposals were made for political collaboration, including an Imperial Parliament that would make common foreign and defence policies for the whole Empire. The proposal was quickly scotched by Canada and South Africa.

## **5 The Impact of an EU-exit in different policy areas**

The Government's Review of Competences will attempt to evaluate the EU's influence across the range of Government departments. While it is impossible to pre-empt the outcome of the review, or how it might be used to re-shape the UK's relationship with the EU in any future negotiations, this section provides some analysis of the role the EU plays across a range of policy areas and the possible impact of a removal of the EU role in those areas.

### **5.1 Trade relations**

#### ***How does it work at the moment?***

EU Member States are part of a customs union, with no tariffs on goods moving between Member States, 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 EP making certain formal decisions regarding the commencement and mandate for the negotiations, and approving their final result.

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. In practice, however, there remain legal, regulatory, administrative and cultural barriers that mean trade in services within the EU is more restricted than trade in goods. These include:

- Differences in the way services are regulated between Member States, particularly in 'network industries' like water, power and telecoms;
- Favourable tax treatment for services purchased from local providers;
- Residence requirements for shareholders, staff and regulated professions;
- Failure to recognise foreign diplomas and professional qualifications.

The main instrument through which regulatory harmonisation and other services trade liberalisation takes place at EU level is the *Services Directive (2006/123/EC)*, adopted in late 2006. Implementation by Member States has in some cases been slow and patchy, however. The structure of the UK economy, and its comparative advantage in certain services sectors, mean the Government has put particular emphasis on the full implementation of the Services Directive, describing it as 'the first priority for boosting competitiveness in services'.<sup>52</sup>

More generally, tackling outstanding barriers to trade within the EU, including those affecting services, is an ongoing exercise. The European Commission and successive meetings of the European Council have recognised the importance of 'completing the single market' while the UK Government has described further reducing intra-EU barriers to trade as 'an opportunity not to be missed', estimating that the UK GDP could be 7% higher as a result.<sup>53</sup> Currently, the principal instruments through which further EU trade liberalisation is undertaken are the Single Market Acts, two packages of legislative and regulatory measures proposed by the European Commission in April 2011 and October 2012.<sup>54</sup>

### **Statistical context**

Taken as a group, the EU is by far the UK's most important trading partner, accounting for 46% of its goods and services exports (£224bn) and 51% of its imports (£265bn) in 2012.<sup>55</sup> The share of UK exports going to the EU has declined from a historical peak of 54% in 2006, shortly after the addition of ten new Member States, but remains above levels seen before the 1995 enlargement. 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 (FTAs) with Mexico, South Africa, Chile and South Korea, while, arguably more importantly, many economies have taken unilateral action to lower tariffs and liberalise trade.

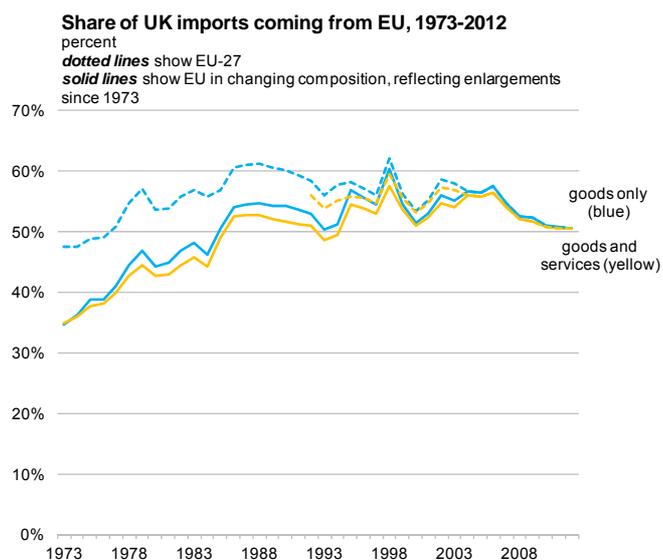
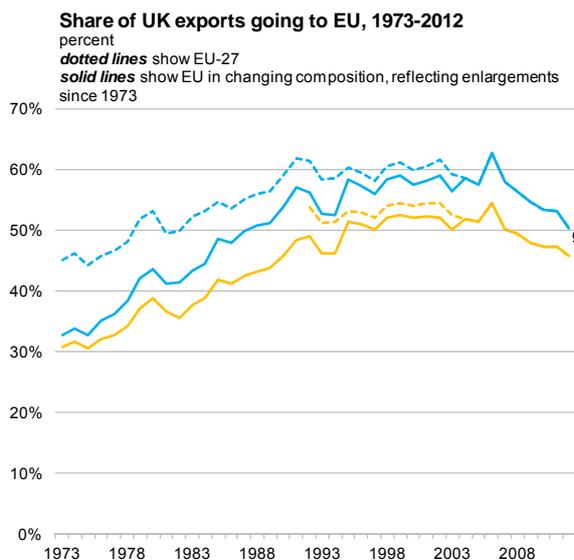
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<sup>52</sup> UK Government response to European Commission consultation on the Single Market Act (2011).

<sup>53</sup> BIS (2011) *Economic consequences for the UK and the EU of completing the single market*.

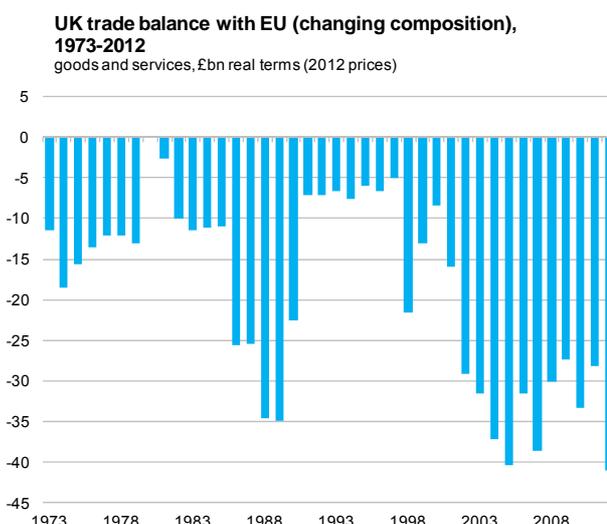
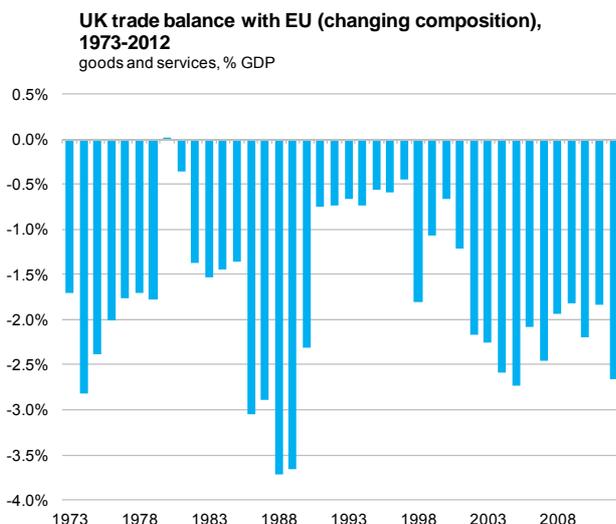
<sup>54</sup> Further details are available on [this page](#) of the European Commission website.

<sup>55</sup> ONS *UK Economic Accounts* Q4 2012.



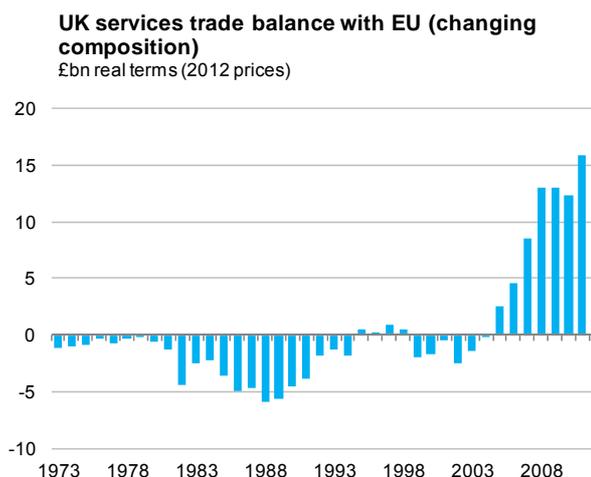
Sources: ONS Balance of Payments statistics (Pink Book), various edns; UK Economic Accounts Q4-2012

The UK runs an overall trade deficit with the EU, and individually with 19 of its 27 other Member States.<sup>56</sup> In 2012 the deficit reached £41bn, the highest level since the UK joined the EU, though as a proportion of GDP, the trade deficit has been larger in the past. It has run an annual trade surplus with the EU in only one year since joining (1980).



Sources: ONS Balance of Payments statistics (Pink Book), various edns; UK Economic Accounts Q4-2012

In recent years, the deficit in goods trade has been increasingly offset by a surplus in services, particularly financial and business services; in 2012 the UK ran a services trade surplus of £13bn with the EU. At 39% of the world total, the UK's services exports to the EU are



<sup>56</sup> Based on 2011 figures from the ONS Pink Book.

proportionally lower than goods exports (the EU accounts for 50% of the UK's goods exports); but unlike goods, this figure has not exhibited significant decline over the past decade.

Sources: ONS Balance of Payments statistics (Pink Book), various edns; UK Economic Accounts Q4-2012

### ***EU-exit without a free trade agreement***

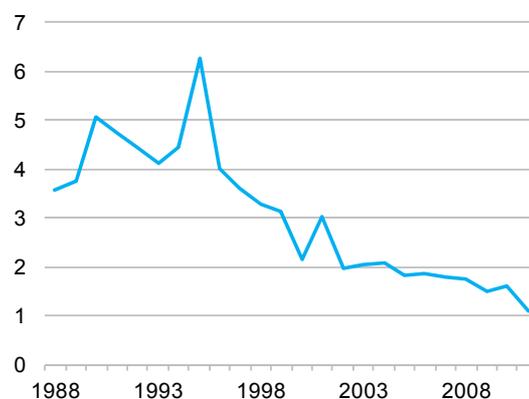
Were it to leave, the UK's trading relationship with the EU would be the product of negotiation. A vast number of different arrangements could result, but for the purposes of analysis, considering a situation in which the UK negotiates no preferential market access with the EU offers a clearly defined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

#### *Tariff barriers*

The principle of non-discrimination requires 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. As the chart shows, the EU's MFN tariff has fallen over time, meaning that in this particular context the 'advantage' of membership has declined. However, given that MFN tariffs would be imposed on around 90% of the UK's goods exports to the EU by value,<sup>57</sup> it would necessarily mean many exporters becoming less price competitive, to varying degrees, than their

**EU average (trade-weighted) MFN tariff**  
percent, 1988-2011



Source: data.worldbank.org

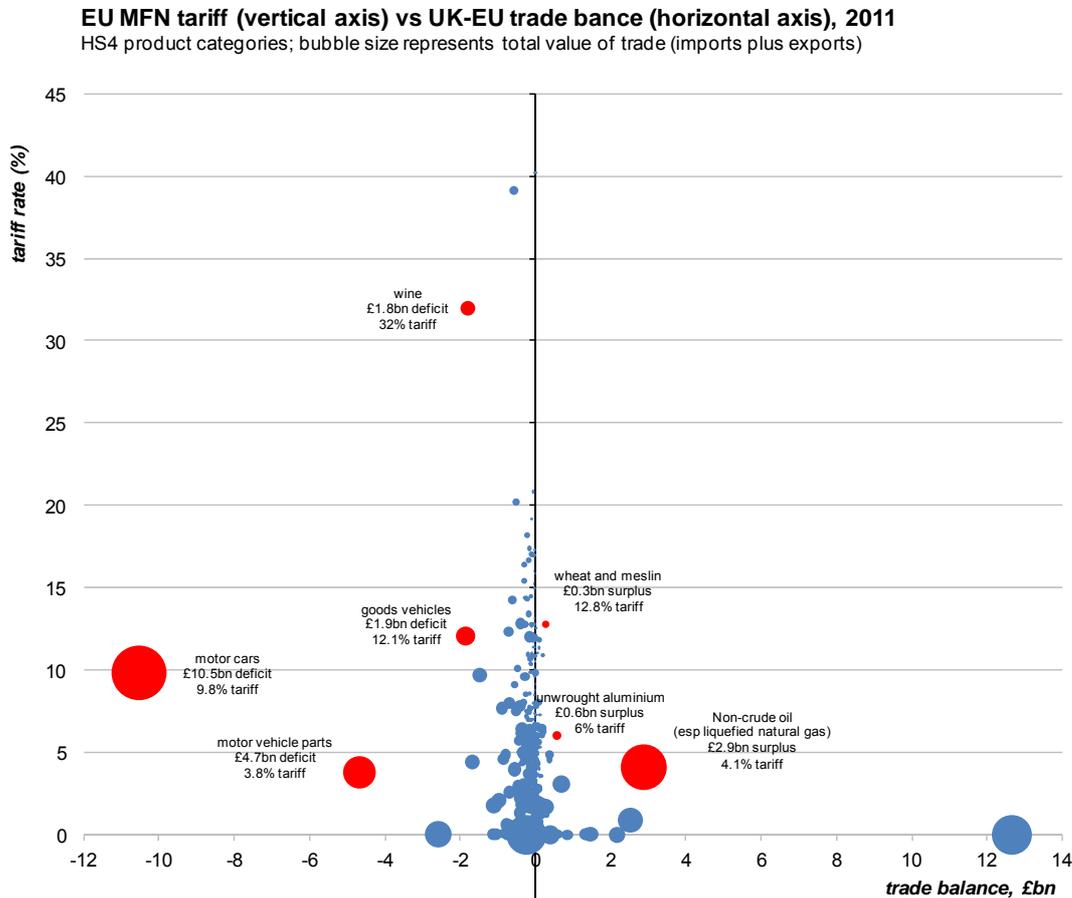
counterparts operating within the remaining EU, and those within countries with which

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 consumers buying imports from the EU and those countries with which the EU has trade agreements.

The implications of a move to an MFN trading arrangement for exporters and domestic consumers would vary considerably by sector, as illustrated in the chart below, which compares the EU's average MFN tariff across over 1,200 product groups with the UK's trade balance in each. The size of the bubbles represents total trade in the commodity (imports plus exports). For instance, without a trade agreement, a tariff of 4.1% would be applied to liquefied natural gas exports from the UK to the EU; a tariff of 12.8% to wheat and meslin;

<sup>57</sup> [Uktradeinfo database](#) and [WTO Tariff Download Facility](#).

and a tariff of 6% to unwrought aluminium, all items which the UK currently runs a trade surplus with the EU. 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. Without any change, a 32% tariff would be levied on imports of wine, for instance, and a 9.8% tariff on motor vehicles.



An interactive version of this chart is available [here](#)

### 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. Nonetheless, the EU has provisional or definitive anti-dumping tariffs in place against more than a hundred other products in 24 countries; recently, its imposition of tariffs on Chinese solar panels has raised fears that retaliatory measures by China will spark a 'trade war'.

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 (see Section 5.4), 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*

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 for a number of reasons:<sup>58</sup>

- many restrictions that are forbidden within the EU remain applicable to firms outside the EU because Member States have made no commitments under the GATS schedules in those areas;
- the right of commercial establishment is guaranteed under EU treaties, significantly facilitating trade in services provided via the commercial presence of a foreign firm;
- the free movement of labour significantly facilitates trade in services provided through the presence of people in the territory of another economy;
- EU competition policy prevents, to an extent, barriers to services trade arising from incumbent firms benefitting from excessive market power;
- the Treaty rights with respect to free movement of services, freedom of establishment, and free movement of labour are enforced supranationally by the EU Court of Justice, underpinned by extensive case law on services exchange. Under GATS, an independent panel can be appointed to settle and enforce disputes, but there is no presumed right of market access; the job of the panel is merely to assess whether the barrier in question non-discriminatory.

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<sup>58</sup> CEPS (2013) [Access barriers to services markets](#).

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.<sup>59</sup> 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, although there is 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. The particular obligations that arise from entering into such arrangements are discussed further in Chapter 4.

Under a ‘Swiss’ or an EEA model, assuming such an arrangement could be negotiated, the restrictions on trade outlined above 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 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.<sup>60</sup> Some of this burden, according to the Trade Policy Research Centre, would fall on UK firms in the form of administrative and compliance costs; they note that “the process of adapting to rules of origin-based duty-free trade under a new UK-EU free trade agreement would be tedious, costly and disruptive to trade”.

In its briefing on Rules of Origin, the US Congressional Research Service also noted that satisfying their requirements could be costly for businesses:

The benefit conferred by the preferential schemes in certain cases becomes marginal in comparison with the administrative workload and cost to plan the product mix to comply with the preferential ROO. This often leads to instances where firms, although

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<sup>59</sup> 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. The effects of withdrawal on *inward* foreign direct investment to the UK are discussed in the following chapter.

<sup>60</sup> In very simple terms, origin is determined on the principle of goods being wholly obtained in the exporting country, or substantially transformed there.

meeting the necessary conditions for origin, decide that it is simpler and cheaper to pay the MFN tariff rates.

The briefing cites a 1992 study in connection with the EC-EFTA agreement that found that the cost of border formalities to determine the origin of products amounted to at least 3% of the value of the goods concerned.<sup>61</sup>

#### *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. As discussed in Chapter 4, membership of the EEA or the negotiation of bilateral agreements analogous to those in Switzerland would also require the UK to adopt EU product standards (and other regulations) across the whole economy.

#### *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. Many voices in the financial services industry believe that the UK's ongoing influence over the regulatory agenda is important, particularly as the eurozone crisis brings about a wave of euro area-specific regulation and reform that could be potentially discriminatory to the City. In evidence to the Foreign Affairs Committee, *TheCityUK*, the lobbying body for the 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 legal framework means that the UK must be engaged at all levels of policy development.

An example of such regulation is the effort by the European Central Bank (ECB), backed by France and Germany, to require clearing houses that deal in significant volumes of euro-denominated transactions to be located within the euro area;<sup>62</sup> the UK Government is currently challenging these proposals at the European Court of Justice on the grounds that they contravene the single market principles of free movement of services and capital across the Union. On the other hand, sceptics might point out that the very fact that the UK failed to secure concessions for its financial services industry, despite demanding them at the December 2011 Council summit at which it eventually wielded its 'veto', illustrates its powerlessness to influence the agenda even within the EU.<sup>63</sup>

Were it to leave both the EU and the EEA, in negotiating a trade relationship with the EU, the UK may face particular difficulties, firstly in securing ongoing access to services markets, and

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<sup>61</sup> The study in question is Waer, P. (1992), "European Community Rules of Origin", in: Edwin Vermulst, Paul Waer and Jacques Bourgeois(eds.), *Rules of Origin in International Trade: A Comparative Study*,

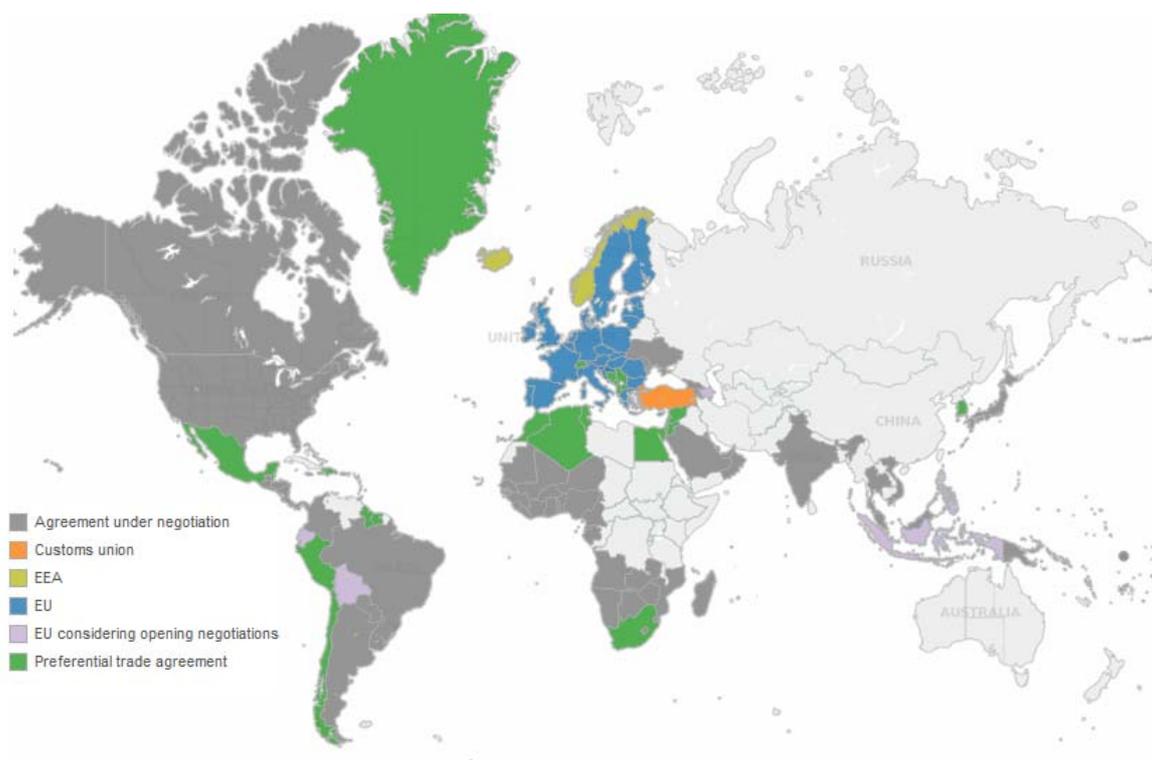
<sup>62</sup> See, for instance, Reuters *ECB's Noyer ups pressure on London as Europe's finance hub*, 22 Apr 2013. Full details of the ECB's 'location policy' proposals were outlined in *Standards for the use of central counterparties in Eurosystem foreign reserve management operations* (Nov 2011).

<sup>63</sup> One of the Government's demands, which it did not get, was that the ECB's location policy proposals be scrapped. The leaked negotiating position is available [here](#).

secondly in ensuring it benefits from further liberalisation of trade in services within the EU. For instance, despite extensive negotiations on the matter, there is no general and encompassing agreement on the free movement of services between the EU and Switzerland. Financial services trade is an area that could be particularly affected by a 'Swiss' approach (see Section 5.3).

### ***Implications of EU-exit for trade relationships outside the EU***

#### ***EU preferential trading agreements completed and under negotiation***



The EU has negotiated an array of preferential trade agreements with other countries (see map). As with its trade relationship with the EU, were it to leave the Union, the UK would have to negotiate ongoing market access with these countries, or else face the MFN tariffs levied by these countries. If an arrangement that was analogous in terms of market access could not be reached, 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 the run-up to Greenland's departure from the EU:<sup>64</sup>

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.

<sup>64</sup> European Commission (1983) *Status of Greenland: Commission opinion*, COM (83) 66 final, Annex A, p.22.

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.

There is no guarantee that the UK would be able to participate in EU trade agreements currently under negotiation. Most important among these is the US-EU Transatlantic Trade and Investment Partnership. According to some reports, US Administration officials have indicated to the UK Government that getting the TTIP through Congress would be made significantly more difficult were the UK to exit, and that even if an agreement could be reached, Britain's inclusion would not be guaranteed.<sup>65</sup> The US supports further development of the EU internal market, particularly its extension to include service industries, and is opposed to anything which might lead to the many UK-based US multinationals being forced to move out of the UK to keep full access to the single market.

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<sup>65</sup> See, for instance, *The Guardian*, [EU exit would put US trade deal at risk, Britain warned](#), 27 May 2013

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

It is often suggested that independence over trade policy would allow the UK to join other free trade areas, such as NAFTA<sup>a</sup> and forge its own bilateral free trade agreements that are 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. Trade between the UK on the one hand, and China and India on the other, has more than doubled since 2006, while the share of exports going to the EU has declined from 54% to 46%. Germany, meanwhile, exported four times more to China than the UK does by value, and came close to a current account balance with it in 2012. Even outside the EU, the structure and orientation of the UK economy are likely to place important constraints on its capacity to re-orientate 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; most of the countries with which the EU is currently negotiating an FTA are among the UK's top trading partners.<sup>b</sup> Some have noted that the EU has less interest in pursuing free trade agreements with Commonwealth countries than the UK: at 9.5%, the UK's export share to the Commonwealth is greater than, for instance, France's (5.7%) or Germany's (5.0%).<sup>c</sup> The EU already has preferential trading arrangements with 16 of the 53 other Commonwealth members, covering around a third of the UK's total Commonwealth exports, and is in negotiations with a further 26, covering an additional 45%; notable exceptions include Australia and Pakistan.<sup>d</sup>

The EU has thus far failed to secure any preferential trade agreements with Brazil, India or China, but 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; on the other, the smaller size of its market may mean deals with the EU, like the Transatlantic Trade and Investment Partnership (the proposed FTA with the United States) are afforded greater priority by non-EU countries than deals with the UK alone. Typically, the EFTA countries follow in the EU's path when it comes to FTA negotiation (i.e. agreements are reached with the EEA and EFTA shortly after those with the EU), although in the case of the recent South Korea FTA, EFTA led the way.<sup>e</sup>

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 Open Europe, "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".<sup>f</sup> The recent exclusion of audiovisual 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.

**References:**

<sup>a</sup> See, for instance, Wall Street Journal *Britain's future lies with America, not Europe*, 29 Dec 2011

<sup>b</sup> These include Canada, India and the US.

<sup>c</sup> UNCTADstat database

<sup>d</sup> European Commission (2013) *EU trade relations world wide – a map*

<sup>e</sup> EFTA also have a free trade agreement with Canada, something that the EU is currently negotiating.

<sup>f</sup> Open Europe (2012) *Trading places: is EU membership still the best option for UK trade?*

**5.2 Other economic impacts of EU-exit**

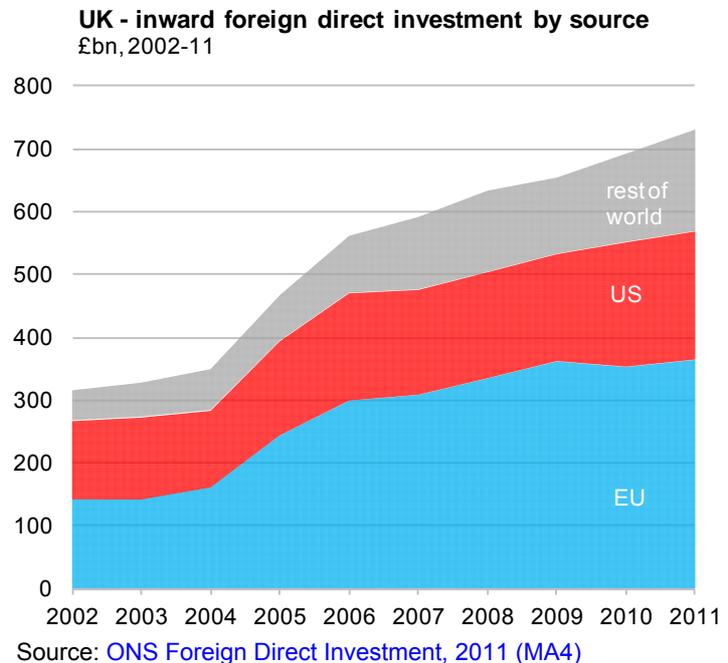
As discussed in Section 1.6, there are considerable difficulties in assessing the overall economic impact of the UK's EU membership. The following sections consider the impact of

withdrawal in areas of the economy where the fact of membership has the most obvious impacts.

### **Foreign direct investment**

#### *Statistical context*

At £770bn, the UK had the second largest stock of inward foreign direct investment (FDI) in the world in 2011, behind the United States,<sup>66</sup> and it was recognised as the most attractive location for investment in the EU in the [2013 Ernst and Young European Attractiveness Survey](#). 48% of the FDI stock is a result of inward investment by other EU countries, a figure that has declined from a peak of 53% in 2009, but remains above levels seen before 2005. In 2011 foreign companies invested £31.9 billion in the UK, a slight fall on 2010 and the lowest investment since 2004. The largest decreases in inward investment flows in 2011 were from the EFTA countries and the Americas.



#### **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 (e.g. the Qatari Government's acquisition of Harrods), 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 econometric analysis has produced, at best, mixed results.<sup>67</sup>

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

<sup>66</sup> FDI, also known as (international) direct investment, forms part of the capital account of the balance of payments. 'Direct Investment' is defined as an investment that adds to, deducts from, or acquires a lasting interest in an enterprise operating in an economy other than that of the investor where the purpose is to have an 'effective voice' in the management of the enterprise.

<sup>67</sup> See, for instance, Rodrik, D. (2008) [One economics, many recipes: globalisation, institutions and economic growth](#).

the removal of capital restrictions and the development of capital-intensive technologies, is, in the words of a 2005 Treasury paper 'fraught with problems'.<sup>68</sup> 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.<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup>

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.

### ***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 CAP, EU regional funding, and the budget rebate, the Government contributed £10bn to the EU in 2012, around 1.5% of total public expenditure and equivalent to almost 0.7% of GDP.

#### *How it works*

The EU's budget is used to pay for policies carried out at a European level, including agricultural subsidies via the CAP, 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 2007 to 2013 and was agreed in 2006; the subsequent one will run from 2014 to 2020. 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.

Member States' contributions to the Budget consist of four elements, called 'own resources'. These are described in more detail in Library Standard Note [The EU budget 2007-13](#). By far

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<sup>68</sup> HM Treasury (2005) [EU membership and FDI](#)

<sup>69</sup> Including Croatia, which acceded to the EU on 1 July 2013

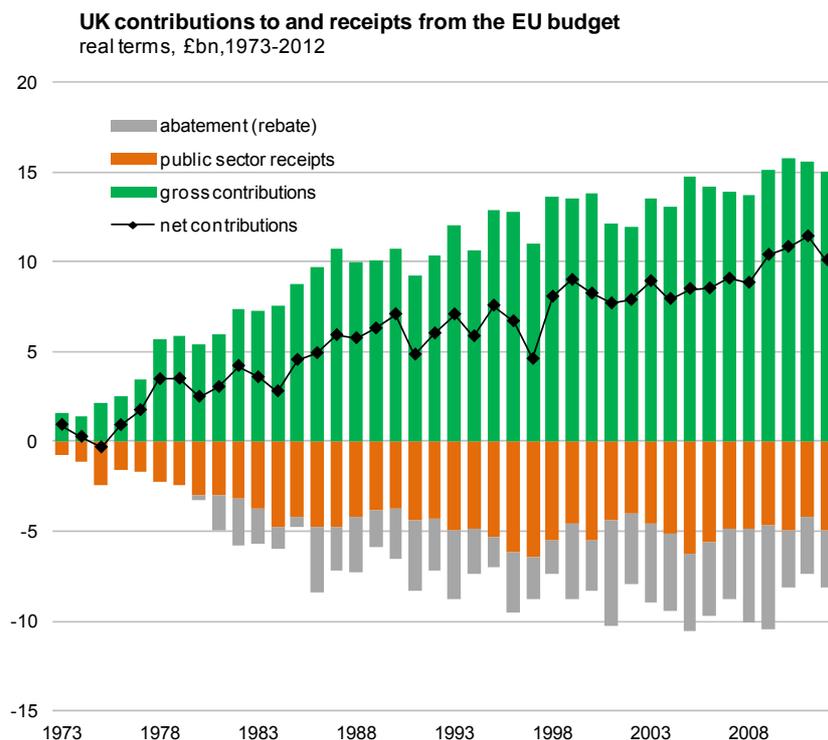
<sup>70</sup> UNCTAD (2009) *World investment prospects survey 2009-2011*, p.18

<sup>71</sup> Ernst and Young 2013 *UK attractiveness survey*, p.35

the most important element, accounting for 87% of total revenue, is GNI-based contributions, which are calculated by taking the same proportion of each Member State's Gross National Income (0.7288% in 2013).

Around 6% of the EU's budget is spent on administration and a further 6% on the EU's foreign policies, international development and pre-accession aid. The remainder is redistributed back to Member States in 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 2011, 10 of the 27 EU Member States, including the UK, were net contributors to the budget. Per capita, contributions ranged from net receipts of €752 in Greece to net contributions of €208 in the Netherlands. The UK's per capita contribution was €150.<sup>72</sup>

The UK has been a net contributor to the EU budget in 39 out of its 40 years of membership (the exception being 1975), contributing a total of £404bn in real terms gross, and £238bn 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 1984, worth £4.9bn in 2012 and £74bn since it was first agreed;<sup>73</sup> 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. In 2012 the abatement was worth £4.9bn. Details of the UK's contribution since accession are shown in the chart below.<sup>74</sup>



<sup>72</sup> European Commission *Financial Report on the EU Budget 2011*

<sup>73</sup> Before this, refunds to the UK were negotiated annually.

<sup>74</sup> All statistics in this paragraph based on HM Treasury *European Community Finances* (various editions)

*Impact of withdrawal*

As discussed in detail in Chapter 4, both EEA countries and Switzerland contribute to the costs of EU programmes in which they participate, and to programmes to reduce economic and social disparities within the Union. Norway, an EEA country, contributed around £106 per capita in 2011, while Switzerland contributes around £53 per capita. These figures are respectively 17% and 60% less than the UK's per capita contribution of £128 in 2011.

**Winners and losers**

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, receives £163 per head. England, by contrast receives just £52.

**Indicative receipts from the EU budget in 2008/09**

UK constituent nations

		Wales	England	Scotland	N Ireland
<b>£m</b>	Structural funding	207	659	103	63
	Agricultural/fisheries funding	290	1,990	512	289
	Other	0	53	0	12
	<b>Total</b>	<b>497</b>	<b>2,702</b>	<b>615</b>	<b>364</b>
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<b>£ per capita</b>	Structural funding	68	13	20	35
	Agricultural/fisheries funding	95	38	99	162
	Other	0	1	0	7
	<b>Total</b>	<b>163</b>	<b>52</b>	<b>118</b>	<b>204</b>

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

	UK	Wales	England	Scotland	N Ireland
Gross	13,155	474	11,287	1,092	303
Less abatement	5,595	201	4,801	464	129
Less public sector receipts	4,558	497	2,702	615	364
Net	3,002	-225	3,784	12	-190
<b>Net per capita (£)</b>	<b>48</b>	<b>-74</b>	<b>72</b>	<b>2</b>	<b>-106</b>

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 would leave a policy vacuum which the Government would have to fill in order to avoid certain regions and sectors losing out. How it chose to do so would have important implications for the fiscal and broader economic consequences of withdrawal.

### ***The European Financial Stabilisation Mechanism (EFSM)***

The EFSM is a facility to provide loans to EU Member States in financial difficulty. It was established in May 2010 against the backdrop of uncertainty about eurozone public finances, sparked by the sovereign debt crisis in Greece. It is financed by borrowing against the EU Budget (up to a total of €60bn); funds are then lent on to the countries concerned at an interest premium. The EFSM is not used independently, but forms part of a loans package, involving another EU facility (the European Financial Stability Facility, or the European Stabilisation Mechanism) and the IMF. Though the EFSM will now no longer be used for any new 'bailouts', the UK faces a contingent liability through the EFSM's lending to date equivalent to its share in the EU Budget. The UK's budget share is around 12%, while the EFSM's total lending will peak at €48.5bn, creating a contingent liability of around €6bn. It remains unlikely that this will ever be called on, but, were the UK to leave, it would no longer be liable for the EFSM's outstanding borrowing unless agreed otherwise during negotiations.

### ***Consumer prices***

#### ***Food prices and the Common Agricultural Policy***

Farmers operating in the EU are supported in two ways: through subsidies via the CAP, and through a common external tariff on agricultural produce imported from outside the EU. Around 70% of the CAP budget is paid out in direct income support to farmers on the condition that they meet safety, environmental and animal welfare standards; the remainder goes towards rural development (farm modernisation, land management, and economic diversification and development in rural areas) and interventions to support the price of agricultural output. The CAP also mandates production quotas for certain products (e.g. sugar).

The wide-ranging criticisms of the CAP and the substantial reform it has undergone over the past two decades are beyond the scope of this analysis. The principal criticism of the policy from an economic perspective is that it artificially inflates food prices for consumers and diverts productive resources from areas in which the EU might have a true trade advantage. The cost of the CAP to the UK is considered to be particularly high because it imports more and produces less agricultural produce than, for instance, France, Italy and Spain.

The OECD produces regular estimates of the extent of support arising from its members' agricultural policies, including the cost to consumers of paying higher prices.<sup>75</sup> The results are shown in the chart, which illustrates the following:

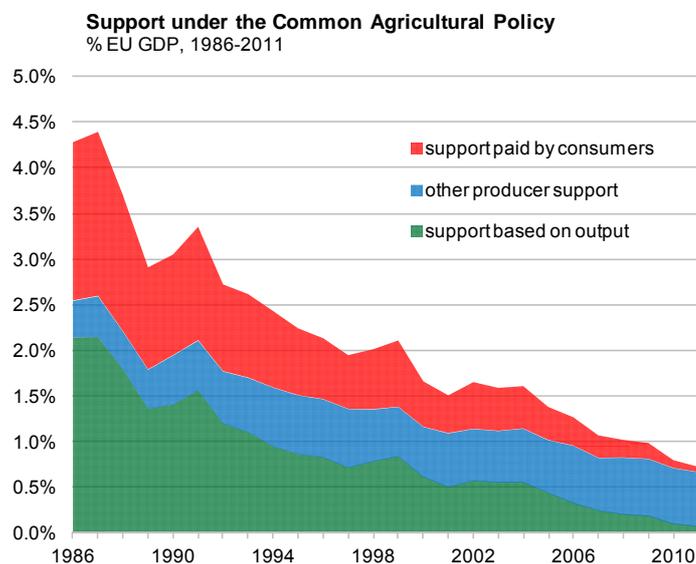
- the overall level of support provided under the CAP has declined from over 4% GDP in 1986 to less than 1% GDP today. This is partly due to a series of reforms over this period, but also because agriculture's share of total output has declined substantially;
- reforms that have largely delinked financial support from farm production have caused a decline in payments based on agricultural output, which have partially been replaced with other forms of producer support;
- the delinking has been accompanied by reforms to reduce other price- and trade-distorting aspects of the CAP. This, combined with the convergence of world food

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<sup>75</sup> OECD (2012) *Agricultural policy monitoring and evaluation*.

prices to target prices under the CAP, has reduced the total support to farmers arising from consumers paying higher prices.

The UK's share of direct support to producers in 2011 from the EU budget was around €6.7bn. Total support paid by consumers in 2011 was estimated by the OECD to be €7bn, of which the share paid by UK consumers would be around €1bn.



Source: OECD *Agricultural policy monitoring and evaluation*

Leaving the EU would require the Government to consider whether and how to support UK farmers who are currently insulated by common external tariff and CAP payments.

### **Other prices**

Consumer prices across a range of other goods imported from outside the EU are raised as a result of the common external tariff and non-tariff barriers to trade imposed by the EU. These include footwear (a 17% tariff), bicycles (15% tariff) and a range of clothing (12% tariff), although tariffs are not applied uniformly, and least developed countries benefit from tariff-free access to EU markets. Although they raise prices for consumers, they also help producers by shielding them from more price competitive imports; so while the Government would be free to set its own tariffs outside the EU, removing the protection they afford to certain industries could prove politically difficult, given that the costs will be specific and localised, but the benefits diffuse.

### **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.<sup>76</sup>

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. 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

<sup>76</sup> Subject to a few exceptions and the possibility of transitional arrangements for new EU members (such as Bulgaria and Romania).

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. More information on the rights afforded to EU, EEA and Swiss nationals, and how these might be affected by UK exit, can be found in Section 5.11.

### *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.<sup>77</sup> 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) 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.<sup>78</sup>

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,<sup>79</sup> as they might be more likely to hire EU workers in the future. As shown in the table on p.46, the sectors with the highest proportion of non-UK EU-born workers are accommodation and food services (9%), manufacturing (7%) and business administration (7%). The parts of the economy with the lowest share of EU workers are the sectors associated with the public sector: public administration and defence (2%), health and social work (4%) and education (4%). Geographic impacts would also differ, with areas such as London with relatively high concentrations EU workers more likely to be affected than areas with low proportions of EU workers.

Constant 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.<sup>80</sup> In February 2012 the British Chambers of Commerce (BCC) complained about constant changes to immigration rules: "After innumerable rule changes and consultations, business now needs the government to leave both the cap and the system alone".<sup>81</sup> Evidence submitted to a Migration Advisory Committee review by the

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<sup>77</sup> 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.

<sup>78</sup> LCCI, [Help or hindrance? The value of EU membership to London business](#), April 2013, p23.

<sup>79</sup> 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.

<sup>80</sup> 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.

<sup>81</sup> BCC press release, ["Migration policy must prove that Britain is open for business, says BCC"](#), 28 February 2012.

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.<sup>82</sup>

#### *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. A few studies, however, show some displacement of resident employment in low-skilled jobs.

#### *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.

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.<sup>83</sup> 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.<sup>84</sup> 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.<sup>85</sup>

Research published in 2011 by the National Institute of Economic Research (NIESR) looked at the impact in the UK of migration between 2004 and 2009 from the A8 Eastern European countries that acceded to the EU in 2004.<sup>86</sup> After adjusting for the age structure and the

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<sup>82</sup> Migration Advisory Committee, *Limit on Tier 2 (General) for 2012/13 and associated policies*, February 2012, p143, para 7.76.

<sup>83</sup> House of Lords Select Committee on Economic Affairs, *The Economic Impact of Immigration*, 1 April 2008, HL 82-I, 2007-08.

<sup>84</sup> [Government response](#) to House of Lords Select Committee on Economic Affairs report on *The Economic Impact of Immigration*, June 2008, Cm7414.

<sup>85</sup> Lords Committee, *op cit*, page 32, para 97.

<sup>86</sup> NIESR Discussion Paper 379, *Labour mobility within the EU - impact of enlargement and transitional arrangements*, August 2011.

educational level of the migrants, the study found that there was a small but positive impact on the UK's long-run GDP per capita of around 0.2%.<sup>87</sup>

### *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 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, and their impact in the short run (i.e. in a period over which markets do not have time to adjust to increases in the labour supply) may 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 on the whole finds that immigration does not displace non-migrant (sometimes called 'native') workers. A good summary of existing research is available from the Migration Advisory Committee's "[Analysis of the Impact of Migration](#)", January 2012.<sup>88</sup> In general, it shows that the increases in immigration in the UK over recent decades had little or no impact on native employment or unemployment levels. Furthermore, most of the literature concludes that the rise in the number of migrant workers did not lead to lower average wages for native workers.<sup>89</sup> Looking beyond the headline conclusions of the literature, some studies find that migrants have a particular impact on the low-skilled native workforce, mostly via downward pressure on wages. Other studies find that immigration led to an increase in wages at the higher end of the wage distribution.

NIESR research used National Insurance registrations of foreign nationals to investigate the effects of immigration on local labour markets in the UK. They found that there is a "general lack of an aggregate impact of migration on unemployment".<sup>90</sup> In addition, they "find no evidence of a more adverse impact of immigration during the recent recession".

A 2012 study by the Migration Advisory Committee, which advises government on immigration issues, found that EU migrants did not affect native employment. There was some evidence that a rise in non-EU migrants during periods of economic weakness could be associated with a decline in native employment. 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.<sup>91</sup>

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<sup>87</sup> 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.

<sup>88</sup> See [Chapter 4.2, page 57](#) and [table 4.2-4.5, page 66](#).

<sup>89</sup> In theory, in the short term an increase in migrant workers would, all other factors remaining unchanged, lead to an increase in the labour supply and lower wages compared to a scenario where there was no increase in migrant workers.

<sup>90</sup> NIESR Discussion Paper 386, [Examining the relationship between immigration and unemployment using national insurance number registration data](#), January 2012.

<sup>91</sup> Migration Advisory Committee, [Analysis of the Impacts of Migration](#), January 2012.

An August 2011 paper from the UK Commission for Employment and Skills (UKCES), tasked by the Government to research long-term employment and skills needs for the UK, looked at the impact of migration on opportunities for low-skilled people in Coventry.<sup>92</sup> 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. This has led to some segmentation of the lower-skilled labour market, with similar kinds of people recruited in existing low-skilled jobs. Native lower-skilled workers were found to be less willing or unable to take temporary employment and had weaker social networks of family and friends to help them find work.

Focussing on immigration during the period 1997-2005, Dustmann et al (2008) found that each 1% increase in the share of migrants in the UK-born working-age population led to a 0.6% decline in the wages of the 5% lowest paid workers, a 0.4% decline for the 10% lowest paid, and to an increase in the wages of higher paid workers.<sup>93</sup> Similarly, another study focusing on wage effects at the occupational level during 1992 and 2006, found that in the unskilled and semi-skilled service sector, a 1 percentage point rise in the share of migrants reduced average wages in that occupation by 0.5%.<sup>94</sup>

### ***Labour market statistics on EU migrants in the UK***

In total, 1.4 million non-UK EU nationals work in the UK, 5% of total employment (29.6 million). Non-UK EU nationals of working age are more likely to be in work than UK nationals. 76.9% of those aged 16-64 and citizens of EU countries apart from the UK were in employment in Q1 2013, compared with 71.5% for UK nationals. Nationals of the A8 Eastern European countries have an even higher employment rate of 79.5%. Non-EU nationals have a lower employment rate, 58.9%, than UK nationals.<sup>95</sup> Analysing data from the ONS Labour Force Survey allows us to see in which sectors people born in EU States outside the UK are employed. The table and chart below show that non-UK EU-born individuals comprise less than 10% of the workforce in all major sectors of the UK economy. The highest proportion is in the accommodation and food sector (9% of all employed) and the lowest is in public administration and defence (2%).

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<sup>92</sup> UKCES, *The impact of student and migrant employment on opportunities for low skilled people*, August 2011.

<sup>93</sup> Dustmann, C., Frattini, T. and Preston, I, *The Effect of Immigration along the Distribution of Wages*, 2008.

<sup>94</sup> Nickell, S. and Salaheen, J., *The Impact of Immigration on Occupational Wages: Evidence from Britain*, 2008.

<sup>95</sup> All data from ONS, *Labour Market Statistics Data Tables*, June 2013, table EMP06.

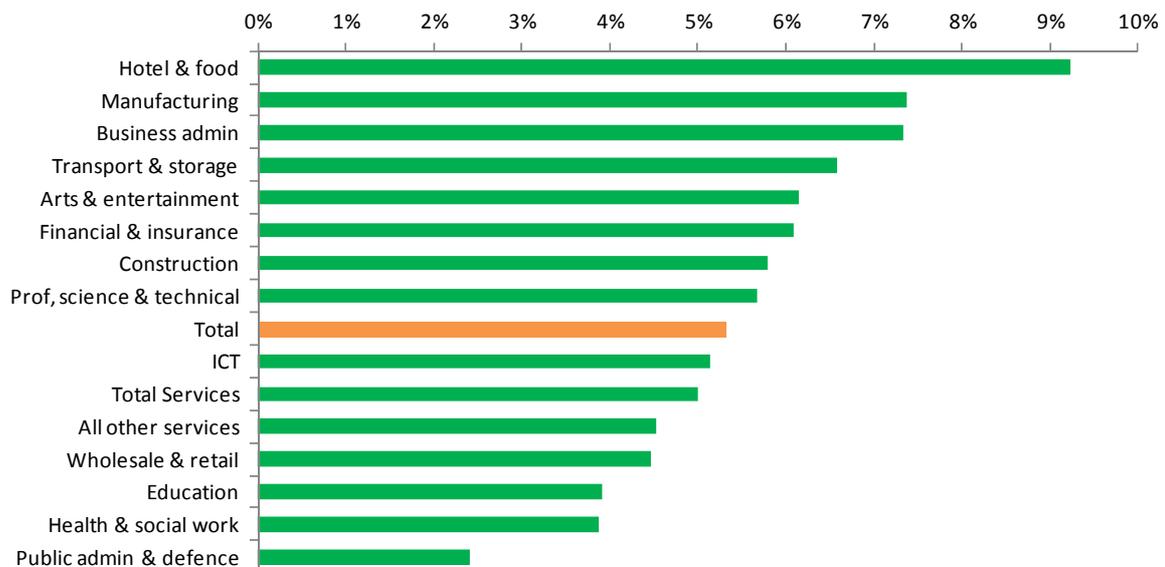
**Employment of non-UK EU-born individuals by industry, Q4 2012**

UK, data not seasonally adjusted

	Number employed (in '000s)	% of total employment in sector
Construction	124	6%
Manufacturing	214	7%
Services	1,179	5%
<i>of which</i>		
Accommodation & food services	139	9%
Business admin & support services	100	7%
Transport & storage	97	7%
Arts, entertainment & recreation	48	6%
Financial & insurance activities	71	6%
Professional, scientific & technical	111	6%
Information & communication	59	5%
Wholesale, retail & vehicle repair	182	4%
Education	122	4%
Health & social work	153	4%
Public administration & defence	44	2%
All other service activities	54	5%
<b>Total</b>	<b>1,557</b>	<b>5%</b>

Source: ONS, Labour Force Survey October-December 2012 microdata

Note: Total includes agriculture, extraction and utilities sectors not shown separately in table.

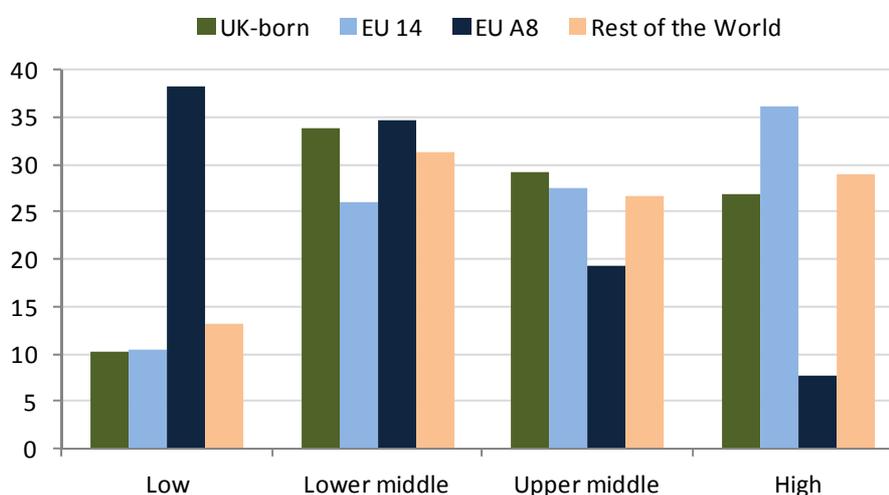
**Share of employment from non-UK EU-born individuals by sector, Q4 2012**

The data above are based on where individuals are born and not their nationality. There are more individuals working in the UK who were born in foreign countries than are nationals of

foreign countries. This is because some individuals have become UK citizens since moving to the UK.

In May 2011, the ONS published an analysis of non-UK born workers and the skill-level of their jobs.<sup>96</sup> It found that the proportion of workers in low-skilled jobs that were born outside the UK rose from 9.0% in Q1 2002 to 20.6% in Q1 2011. In absolute terms, there was an increase of 367,000 non-UK workers in low-skilled jobs over this time period (to 666,000, out of a total 3.2 million workers in low-skilled jobs in Q1 2011). Around two-thirds (235,000) of this increase came from the A8 Eastern European countries. There was a slight fall of 10,000 from EU14 countries over the period.<sup>97</sup> The research also shows that a far higher proportion of workers from A8 countries work in low-skilled jobs (38% of all A8 workers) compared to those born in either the UK (10%), EU14 countries (10%), or the rest of the world (13%). There is also a corresponding lower proportion of A8 workers in high-skilled jobs (8%) compared with those born in the UK (27%), EU14 (36%) and rest of the world (29%).

**% of all workers in country-of-birth group in each job-skill level, Q1 2011**



Figures published by the University of Oxford Migration Observatory based on the ONS Labour Force Survey, show immigrants (from non-EU and EU countries) in 2011 made up the highest proportion of jobs in process plant (39% of jobs are held by foreign-born workers), food preparation (29%), process operative (28%) and cleaning occupations (25%) at the low-skilled end of the occupational spectrum, and in health professional (30%), research professionals (21%) and IT/communications (22%) at the more professional end.<sup>98</sup>

### **Public finances**

Existing research on migrants' fiscal contribution generally find a small positive fiscal contribution from immigration. Such research is very sensitive to how a migrant is defined: for instance, whether spending on services for children born to one migrant parent and a UK-born parent is included in the resident population or immigrant population.<sup>99</sup>

<sup>96</sup> ONS, *Non-UK born workers*, May 2011.

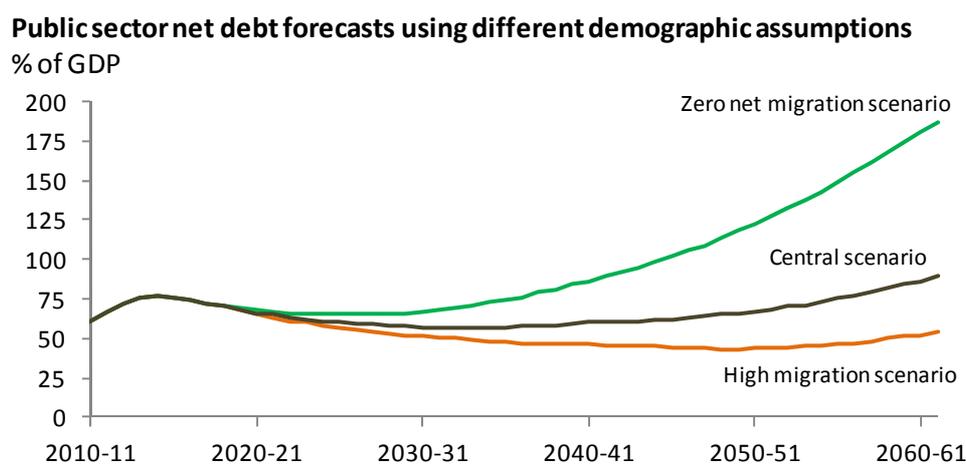
<sup>97</sup> These are the EU members (excluding the UK) prior to 2004: Belgium, Denmark, Germany, Ireland, Greece, Spain, France, Italy, Luxembourg, Netherlands, Austria, Portugal, Finland and Sweden.

<sup>98</sup> University of Oxford Migration Observatory, *Migrants in the UK Labour Market: An Overview*, August 2012.

<sup>99</sup> The Migration Observatory, University of Oxford, *The fiscal impact of immigration in the UK*, February 2013.

The Office for Budget Responsibility (OBR), in its annual report published in July 2012 on the long-term sustainability of public finances, looked at scenarios with “high migration” and “zero net migration”. The OBR’s projections found that public sector net debt under the high migration scenario (annual net migration of 260,000)<sup>100</sup> would fall over the next few decades from 75% in 2013/14<sup>101</sup> to around 43% of GDP in 2048/49 and then rise to 54% in 2061/62, whereas under the zero net migration scenario, debt would rise to over 100% of GDP in 2045/46 and to 187% in 2061/62.<sup>102</sup>

A chart representing the OBR’s projections is reproduced below.<sup>103</sup> 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.



Source: OBR, Fiscal Sustainability report, July 2012, chart 3.13

The OBR states that the higher net migration scenario leads to lower debt, due to the assumption that immigrants are more likely to be of working age than the existing UK population. It also noted that when migrants retire they will push up government spending (via pensions, for example) and therefore inward migration could be viewed as delaying, rather than avoiding, the impact of the fiscal challenges of an ageing population:

The migration scenarios illustrate that higher net migration reduces upward pressure on debt over our projection horizon. Inward migrants are assumed in the ONS projections to be more concentrated in working age than the population in general. So higher inward migration would tend to increase tax receipts and not add much to age-related spending pressures, even whilst allowing for an increase in GDP from extra employment. However, it should be borne in mind that when the inward migrants retire from the workforce, those that remain in the UK will push up spending more than they increase revenues, and even if they leave the UK most will still be entitled to UK state pension payments. So higher migration could be seen as delaying some of the fiscal challenges of an ageing population rather than a way of avoiding them.<sup>104</sup>

<sup>100</sup> Net migration in the UK was 251,000 in 2010 and 215,000 in 2011. See also Standard Note on “[Migration Statistics](#)”.

<sup>101</sup> Please note these are old OBR forecasts for 2013/14 from March 2012 and have since been changed.

<sup>102</sup> Based on Office for Budget Responsibility, [Fiscal Sustainability Report](#), July 2012, chart 3.13.

<sup>103</sup> *Ibid.*, [page 76](#)

<sup>104</sup> *Ibid.*, pp 84-85, para 3.72.

### **Housing market**

The impacts of migrants on the UK housing market depend on their characteristics and how these compare with those of the resident population. For instance the effects will differ depending on how likely migrants are to rent, buy homes or use social housing. Crucially, the impact would also depend on how responsive the supply of housing is to changes in demand. A fixed housing stock would inevitably mean immigration placing upward pressure on rents and/or prices. It is important to note, however, that some evidence suggests that housing shortages in the UK would continue in the absence of migration. Nickell (2011) estimates that at least 270,000 homes would need to be built each year to stabilise the house price to income ratio, even if net migration were zero.<sup>105</sup>

#### **Trade barriers and economic efficiency**

Conventional economic theory shows that tariffs reduce aggregate economic welfare, not only because they raise prices for consumers, but because, by shielding certain sectors from the vagaries of domestic competition, they divert productive resources away from sectors in which there might exist a trade advantage. In other words, some of the labour and capital tied up in the car industry might, absent a tariff, be more productively employed in, say, business services. In evidence to the Foreign Affairs Committee, Patrick Minford summed up this view thus:<sup>a</sup>

If you leave a protectionist organisation, the prices of protected things fall. Consumers gain and certain producers lose... jobs are not lost; jobs are created overall, because you become a more competitive economy, producing the things that you are better at

On this basis, he went on to advocate a withdrawal from the EU and a move towards an abolition of all import tariffs in the UK.

While the UK, on leaving the EU, might wish to alter its tariff regime for the benefit of consumers and to encourage a reorientation of activity to more competitive sectors, it is unlikely that it would unilaterally remove all tariff barriers, despite the theoretical benefits of doing so. Such a move could, at least in the short-term, create unemployment and worsen the trade deficit as domestic producers are forced to compete with cheaper imports. The political imperative to protect domestic industry, and the leverage that existing tariff barriers command in negotiating trade agreements, have meant that all major economies have taken a more measured approach to trade liberalisation.

#### **References**

<sup>a</sup> Foreign Affairs Committee *The future of the European Union: UK Government Policy*, oral evidence

### **5.3 Financial services**

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 are currently 38 outstanding directives or regulations being discussed at EU level, all of which will have an impact on the UK. 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.

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

<sup>105</sup> Stephen Nickell, *Too Many People in Britain? Immigration and the Housing Problem*, June 2012.

EU-level financial regulation, and in particular the MiFID II proposals, are likely to make provision of financial services to the EU from outside the EEA increasingly difficult. After 2019 off-shore (i.e. non-EEA) providers will be able to offer a more limited range of services, and only on condition that they register with the European Securities Markets Authority (ESMA); the requirements for registration, according to a briefing note by KPMG, will be “strict and difficult to fulfil”.<sup>106</sup> In written evidence to the Parliamentary Commission on Banking Standards, Goldman Sachs and JPMorgan 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.<sup>107</sup>

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.<sup>108</sup>

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’.

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

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<sup>106</sup> KPMG *Provision of services by financial intermediaries from third countries in EU financial markets regulation*.

<sup>107</sup> Goldman Sachs International, *written evidence to the Parliamentary Commission on Banking Standards*.

<sup>108</sup> JPMorgan Chase & Co., *written evidence to the Parliamentary Commission on Banking Standards*.

prestige. For example, unofficial estimates from the Swiss banking sector speak of up to 29,000 jobs that could be lost in this way.<sup>109</sup>

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".

## 5.4 Business

### *Regulation*

Through successive Treaty amendments, 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.<sup>110</sup> In particular, new EU aims and areas of activity in sustainable development, social protection and human rights 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, and imposes burdens that offset the trade benefits of membership.

The EU has the power to legislate in a number of areas that directly affect 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, aka the EC Merger Regulation;
- Employment terms, e.g. Directive 2008/104/EC on Temporary and Agency Workers;
- 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).

Several studies have attempted to estimate the 'cost' of EU law to the UK using the Impact Assessments (IAs) prepared by the Government that assess the various potential costs and (sometimes)<sup>111</sup> the benefits associated with a particular measure. IAs are usually produced in response to Directives (where government have some discretion over how EU requirements are transposed into national law), but not Regulations or Decisions, which do not generally trigger new domestic legislation. The potential costs in question arise from administrative burdens on companies and the public sector (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 (e.g. the demise of industries allied to asbestos manufacture) though these are rarely quantified in IAs.

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<sup>109</sup> [Switzerland's Approach to EU Engagement](#), University of Kent Centre for Swiss Politics, for City of London Corporation, p5.

<sup>110</sup> The number of EU laws reached a peak of over 14,000 instruments in the early 1980s and there was a lower peak in the mid-1990s. See HC Library Research Paper 10/62 [How much legislation comes from Europe?](#)

<sup>111</sup> Benefits are only quantified in a minority of Impact Assessments produced since 1998.

A study of 2,500 IAs produced since 1998 by Open Europe estimated that the annual cost of regulation stemming from EU legislation in 2009 was £19.3bn and that the cumulative cost since 1998 had been £124bn.<sup>112</sup> Using a similar approach, but looking at a smaller number of regulations with the largest associated costs, the British Chambers of Commerce estimated the annual cost to be £7.6bn and the cumulative cost since 1998 to be £60.8bn.<sup>113</sup> Among the regulations cited by both as imposing the highest costs are the Working Time Directive, the Pollution Directive, the Data Protection Directive and the Directive on the Sale of Consumer Goods.

The costs to businesses of complying with EU regulations are not equivalent to their economic impact because they will be offset by benefits, most obviously to employees and consumers. Open Europe acknowledge this in their analysis, noting that “the whole point of regulation is for it to produce a total benefit... which outweighs the total cost”, adding that “the benefits of regulations on the whole outweigh the costs”. Their analysis, however, finds that the benefit-cost ratio of EU regulation, at 1.02, is considerably below that of regulation imposed directly by the UK Government (2.35). This may at least partly be due to the particular policy areas in which the EU regulates; it has also been argued that the wider benefits of EU regulation that improves access to the single market are particularly great, but are left unquantified in Impact Assessments.<sup>114</sup>

### ***Impact of withdrawal***

The single market was established through a vast legislative programme to remove technical and legal barriers to trade, and as discussed in Chapter 4, current models of access to it 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, particularly in services markets. Already, concerns are being raised in the US, particularly on the right, about the implications of a comprehensive free trade deal for independence and sovereignty. An article in *The New American*, argued that “the TTIP [Transatlantic Trade and Investment Partnership, the name for the EU-US free trade agreement] has been crafted specifically to bring about US - EU political and economic ‘integration’ in the same manner that the nations of Europe were integrated into the EU.”<sup>115</sup>

If the UK withdrew from the EEA and also shunned bilateral negotiation on access to the single market, it would be free to regulate as it saw fit. Initially, this would leave a policy gap in a range of areas that the EU is currently responsible for regulating, meaning that, in the short-term at least, the EU regime would be ‘inherited’. Over the longer term, the Government would have to decide which parts of this EU inheritance it wanted to reject or reform; such judgements would depend significantly on its political stance.

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 cost of regulation estimated by Open Europe and the BCC is emphatically not equivalent to the economic benefit of withdrawal. Proponents of withdrawal, however, argue that the UK would be better able to balance the costs and benefits of regulation according to its own

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<sup>112</sup> Open Europe (2010) [Still out of control? Measuring eleven years of EU regulation](#).

<sup>113</sup> British Chambers of Commerce (2010) *The burdens barometer*.

<sup>114</sup> See, for instance, Public Service Europe [What is the true cost of Britain's EU membership?](#) 29 May 2013.

<sup>115</sup> The New American [Secretly trading away our independence](#), 9 May 2013.

domestic priorities; and that the regulatory regime would be more responsive to changing circumstances (amending EU law requires negotiations with all Member States and the EP). On the other hand, businesses that export to the EU would still have to comply with product standards which, if the UK pursued an alternative regime may be different from those required to sell to the domestic market.

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.

## 5.5 Taxation

Taxation is very largely a Member State competence. The potential implications an EU-exit would be less significant for taxation compared with other policy areas. The major exception to this would be 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 the EU is essential to the achievement of an effective Single Market. Unlike most internal market measures, which use qualified majority voting (QMV), the harmonisation of taxation is decided by unanimity. The consequences of the EU’s shared competence in indirect tax are 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 clothes) from any further harmonisation of VAT law.<sup>116</sup> 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 if leaving the EU gave them this power.<sup>117</sup>

There are no equivalent provisions with regard to other taxes, though all national legislation has to comply with the overarching provisions of the EU 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 EU 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.<sup>118 119</sup>

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<sup>116</sup> This issue is discussed at length in Standard Note 2683, *VAT: European law on VAT rates*, 9 October 2012.

<sup>117</sup> VAT receipts were just over £100 billion in 2012/13. Public sector receipts are set out in table 4.7 of the Office for Budget Responsibility, *Economic and Fiscal Outlook*, Cm 8573, March 2013.

<sup>118</sup> As indicated by the UK Government’s decision to have fairer taxes as one of the main themes to its Presidency of the G8 in 2013. See 10 Downing Street press notice, *PM letter to the EU on tax evasion*, 26 April 2013.

## 5.6 Employment

An EU exit could well 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*.<sup>120</sup> On the other, trade unions would probably strongly oppose any perceived rowing back on rights originating from the Social Chapter.<sup>121</sup> 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.<sup>122</sup>

Some regard the perceived detriment to labour market flexibility occasioned by EU law as the principal justification for renegotiating the UK's relationship with Europe.<sup>123</sup> The British Chamber of Commerce's 2013 *EU Business Barometer* survey found that, whilst most businesses opposed withdrawal,<sup>124</sup> employment law was their top priority for any renegotiation of competences between Brussels and Westminster.<sup>125</sup>

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.<sup>126</sup> 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.<sup>127</sup> 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.<sup>128</sup> 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

<sup>119</sup> For a detailed summary of the Treaty base for the EU's powers in tax policy and the implications this has had for the UK tax system, see HC Deb 30 November 2012 c30WS; HM Treasury, *The Government's review of the balance of competencies between the United Kingdom and the European Union: call for evidence on taxation*, November 2012. Further details of the areas of EU competence in taxation are given on the site of the Commission's Taxation & Customs Union Directorate.

<sup>120</sup> 'Government must ensure Agency Workers Regulations support job creation', CBI website 1 October 2012; CBI, *Making Britain the Place to Work*, June 2010, p6; *The Fresh Start Project Manifesto For Change*, January 2013, pp20-22.

<sup>121</sup> GMB to advocate "Brexit" if Cameron succeeds in removing UK from Social Chapter, LabourList website, 4 June 2013; 'TUC accuses Tory Eurosceptics of trying to undermine labour law', *Guardian* 16 January 2013.

<sup>122</sup> 'Europe's legacy in UK workplaces is not to be sniffed at', *Guardian*, 24 January 2013.

<sup>123</sup> 'Half of British business wants to stay in EU, but re-negotiate employment law', *HR Magazine* 15 April 2013

<sup>124</sup> "Business fears impact of EU withdrawal", *Financial Times*, 15 April 2013.

<sup>125</sup> "Businesses favour change in Britain's relationship with European Union, says BCC", British Chamber of Commerce website, 15 April 2015.

<sup>126</sup> Barnard, C., *EU Employment Law*, 2012, pp7-8

<sup>127</sup> For example: Directive 75/117/EEC; see *Defrenne v Sabena (No 2)* (1976) C-43/75.

<sup>128</sup> HC Deb 31 July 1984 cc203-4

of a two-speed Europe".<sup>129</sup> 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.<sup>130</sup> The Major 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.<sup>131</sup> 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.

EU-derived employment laws will be reviewed during the third semester of the Government's Review of the Balance of Competences.

## 5.7 Common Agricultural and Fisheries Policies

### ***The 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 drastic 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 and leaving the regime would probably reduce farm incomes. 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.<sup>132</sup> As discussed in Sections 5.1 and 5.2, the benefits would depend on the terms on which the UK joined a different trade area, if it chose to do so.

The UK stance in the current CAP reform discussions gives some indication of the principles and overall approach the current 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. It has also negotiated to ensure that there is flexibility for the UK to effectively devolve CAP arrangements across the UK administrations.

Farmers are already concerned about the impacts of the current reform negotiations on farm incomes within a subsidised regime. 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, as well as an immediate loss of competitiveness compared with European counterparts. It is likely that current agri-environment schemes would continue in some form, as the Government favours this kind of incentive approach to support which delivers public benefits.

### ***Pesticides Approval***

In other agricultural areas, regulation and licensing of pesticides is undertaken on a pan-European basis, sharing the burden of evaluating scientific evidence. However, the process

<sup>129</sup> B. Towers, 'Two Speed Ahead: Social Europe and the UK after Maastricht', 1992, 23 *Industrial Relations Journal* 83 in Barnard, C., *EU Employment Law*, 2012, p16.

<sup>130</sup> The unofficial name for the Social Policy Agreement and Social Policy Protocol.

<sup>131</sup> 'Social Chapter opt-out faces Labour attack', *Independent* 16 February 1993; *It's time to get Britain working again*, Labour Party Manifesto 1992; *New Labour because Britain deserves better*, Labour Party Manifesto 1997.

<sup>132</sup> BIS, Government Office for Science, [Leaving the Ever-Closer Union- Could Britain withdraw from the EU?](#) Sigma Scan 2.0, 31 January 2012.

still requires a lot of UK ‘machinery’ which could be used if the UK had full control over its own pesticide 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 recently described the system for approving pesticides as “opaque”.<sup>133</sup> 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.<sup>134</sup> Once listed on the approved substance list the pesticide must gain consent at a national level.

This process has recently received a great deal of attention because of the Commission’s proposal to ban a number of the most commonly used neonicotinoid insecticides due to their negative impact on bees. The UK Government does not agree that the scientific evidence supports the ban but the Commission has had enough support to advance its plans.<sup>135</sup>

### ***The 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.<sup>136</sup> This has given rise to one of the most 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.<sup>137</sup> 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 dramatic change in international law with the creation of Exclusive Economic Zones (EEZs) within 200 nautical miles of coastal countries.<sup>138</sup> 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 of 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”. In effect, this shared out fisheries according to where countries were actually fishing from 1973 to 1978. Therefore, the introduction of EEZs

<sup>133</sup> HC 668, *Pollinators and Pesticides*, Seventh report of Session 2012-13, House of Commons Environmental Audit Committee, p.3.

<sup>134</sup> See National Assembly for Wales research Paper, *Bee Health*, May 2013, para 5.3. Review of pesticide approval in the light of new scientific and technical knowledge and monitoring data is in accordance with Article 21 of Regulation (EC) No 1107/2009.

<sup>135</sup> See [Library Standard Note SN 6656 Bees and Neonicotinoids, June 2013](#).

<sup>136</sup> “[Common Fisheries Policy](#)”, *Politics.co.uk*, viewed 6 June 2013 .

<sup>137</sup> House of Lords European Union Committee, *The Progress of the Common Fisheries Policy*, 22 July 2008, HL 146-i

<sup>138</sup> Lords European Union Committee, *The Progress of the Common Fisheries Policy*, 22 July 2008, HL 146-i

would not have dramatic consequences for anyone.<sup>139</sup> 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.<sup>140</sup> In retrospect it can 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 may have led to significant conflict with other Member States;
- enforcing the EEZ may have been incompatible with EU membership;
- the agreement had little effect on UK fisheries at the time;
- some UK fishing communities were given special protections.<sup>141</sup>

### ***Failure of the CFP — and its reform***

It is widely accepted that the CFP has failed to effectively manage fish stocks. While changes to the policy have led to some improvements in certain fish stocks in recent years,<sup>142</sup> around 30% of EU commercial stocks are overfished to the extent that their populations may never recover. This is compounded by the fishing of undersized specimens: 93% of the cod in the North Sea are fished before they can breed. Overfishing continues despite large reductions in landings.<sup>143</sup>

In addition to poor fish stocks, the policy has 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.<sup>144</sup> The policy has failed to deliver a sustainable fishing industry for a number of reasons. Political pressures have led Member States to protect the short term interests of fishing industries over the long-term effective management of the stocks: European Ministers, including from the UK, have historically set fish quotas on average around 48% higher than the levels recommended by scientists.<sup>145</sup> The policy is now facing radical reforms which aim to put it on a more sustainable footing. Reforms are likely to include a ban on the discarding of fish, enforcement of sustainable levels of fishing and more regional decision-making. While many have [welcomed the reforms](#), others [have concerns](#) that they will not end over-fishing or permit the recovery of fish stocks within a reasonable timeframe.

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<sup>139</sup> [“How we manage our fisheries”](#), European Commission, viewed 6 June 2013 .

<sup>140</sup> HC Deb 16 December 2004 c1220W

<sup>141</sup> House of Lords EU Committee, *The Progress of the Common Fisheries Policy*, 22 July 2008, HL 146-i

<sup>142</sup> [“Have EU measures contributed to adapting the capacity of the fishing fleets to available fishing opportunities?”](#), European Court of Auditors, 2011.

<sup>143</sup> *Ibid.*

<sup>144</sup> [“A fleet for the future”](#), European Commission, viewed on 6 July 2013. See also “Report from the Commission to the European Parliament and the council on Member States' efforts during 2010 to achieve a sustainable balance between fishing capacity and fishing opportunities”, European Commission, 6 July 2012.

<sup>145</sup> [“WWF mid-term review of the EU Common Fisheries Policy”](#), WWF European Policy Office, 2007.

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. Equally, it is impossible to know how effective management would be under a reformed CFP. However, 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 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 coordinate 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:

- **The UK would have sole access to the fisheries resource.** It has not yet been possible to calculate the potential value of this to the UK. The UK Independence Party claimed that the resource would be worth £2.5 billion per year;<sup>146</sup>
- **The UK would have the power to determine its own rules for fishing** within the region, without the need to negotiate with other parties (although rules would still be developed in line with international environmental agreements). Responsibility for managing fisheries would therefore rest solely with UK politicians, giving a clearer line of responsibility for fisheries decisions, although not necessarily giving better management;
- **UK fishermen may be excluded from areas outside the UK EEZ** in which they currently have fishing rights;
- **There could be wider, and unpredictable, political repercussions.** Many vessels from other EU countries currently have access to the UK EEZ. Excluding them from the area might have wider political repercussions. The Cod Wars, which led to violence between the UK and Iceland, indicated the strength of feeling that can be generated when fishermen are excluded from their traditional fishing grounds;
- **The UK would have the power to negotiate directly with third parties over the division of joint fish stocks, although there could be a number of disadvantages in this,** including:
  - The UK might be in a weaker negotiating position outside the EU—it would not necessarily have the backing of the whole EU to enforce fisheries agreements;
  - Disputes between the UK and other European countries might be more frequent without the principles enshrined in EU treaties, particularly in light of predicted changes to fish distributions;<sup>147</sup>
  - The UK would have less power to influence the management of fisheries in the seas immediately adjacent to the EEZ. Given that fish migrate across large distances, this could have implications for the effective management of fish stocks within the UK EEZ.

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<sup>146</sup> “Fishing”, UK Independence Party, viewed 6 July 2013 .

<sup>147</sup> “EU Fisheries Management”, POST note, May 2010.

- **The UK may in effect be bound by EU fish trade rules, without directly being able to influence them.** The UK would have to comply with EU import conditions and certification requirements to export fishery products to the EU, while having little influence over those requirements;
- **Trade barriers may form between the EU and UK** if the UK was not part of the single market. That could hinder the export of fish products to the EU and have implications for the value of the fisheries.

## 5.8 Environmental issues

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.<sup>148</sup> 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”.<sup>149</sup> 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”.<sup>150</sup> 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. 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 challenge its interpretation.

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<sup>148</sup> [https://consult.defra.gov.uk/eu/balance\\_of\\_competences](https://consult.defra.gov.uk/eu/balance_of_competences)

<sup>149</sup> *Ibid*

<sup>150</sup> *Ibid*. More information about the evolution of EU environmental law can be found in the [legal annex to the Government’s Review of the Balance of Competencies](#).

### **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 have resulted in a collapse of the price of EUAs. As a result the EU is considering [several measures](#) to reduce the supply of allowances going forward.<sup>151</sup> In the meantime, the UK introduced a floor price of carbon, in April 2013, by amending the climate change levy to apply to fossil fuels used for energy generation, and which applies when the EUA price falls below a certain level. The [floor price](#) is currently set at £16 per tonne and will rise to £30 per tonne by 2020.<sup>152</sup> EUAs are currently trading at around £4.<sup>153</sup>

Leaving the EU would not remove the floor price, as this is a UK measure; neither would it necessarily mean the UK would have to leave the EU ETS, as membership of the EU is not a prerequisite of participation: currently both Australia and Switzerland are in negotiations to join the scheme.

### **Habitats Protection**

The Commission has described the [Habitats Directive](#) as the “cornerstone of Europe’s nature conservation policy”.<sup>154</sup> 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.<sup>155</sup> The Directive provides 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.<sup>156</sup>

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 compensatory measures are required, such as the creation of an alternative habitat elsewhere. Meeting these requirements is often a major consideration in large infrastructure

<sup>151</sup> EU Commission, [Structural reform of the European carbon market](#) [as of 24 June 2013].

<sup>152</sup> House of Commons Library Standard Note, [Carbon Price Floor](#), 8 February 2013.

<sup>153</sup> Revenue from EUAs currently goes to the exchequer, as does revenue raised through the carbon floor price. The revenue forecast for 2013-14 is £0.7 billion, rising to £0.8 billion in 2015-16 and £0.9 billion in 2017-18. HM Treasury, [Budget 2013](#), 20 March 2013.

<sup>154</sup> Europa, [About the Habitats Directive](#) 20 June 2013.

<sup>155</sup> 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.

<sup>156</sup> [Council Directive 92/43/EEC](#) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. The Directive includes measures to establish sites to protect wild birds under the Birds Directive ([Council Directive 79/409/EEC](#) of 2 April 1979).

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) which consolidate earlier legislation. The Government has said that it “strongly supports” the aims of the Habitats and Wild Birds Directives and is currently conducting a review of their implementation, with a view to “reducing burdens on business while maintaining the integrity and purpose of the Directives”.

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. When the EU requirements were introduced, it was one of only a few Member States that already had a long 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. 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.

In 1993 the RSPB successfully challenged the Secretary of State’s designation of the Medway Estuary and Marshes as an SPA because he had decided to exclude a neighbouring area of inter-tidal mudflats called Lappel Bank on economic grounds. Planning permission had already been granted for development in this area at the port of Sheerness and it was excluded on the grounds that the economic need not to impair the future expansion of the port outweighed the site’s nature conservation value. The RSPB challenged this decision, bringing a judicial review on the grounds that the *Birds Directive* did not allow economic considerations to be taken into account in the designation of an SPA. The case went as far as the House of Lords which then referred it to the Court of Justice.<sup>157</sup>

[Commission guidance](#) on interpreting the Habitats and Birds Directives incorporates these legal judgments and has resulted in some stringent tests for compliance.

### **Waste**

UK waste management is largely driven by EU law, which seeks to prevent the production of waste and to reduce its overall environmental impact. Waste legislation includes targets for recycling and targets for a reduction in the amount of waste sent to landfill. The waste debate in Europe is now shifting to using waste as a resource and reducing waste’s negative implications for the economy. A Government review of business resource efficiency identified £22 billion in low or no cost savings to UK businesses from more efficient use of materials

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<sup>157</sup> Royal Society for the Protection of Birds website, [Lappel Bank](#) (April 2004) as on 20 June 2013.

and avoiding waste.<sup>158</sup> As a result, waste policy is considered a key competitiveness issue and increasingly policy makers see waste policy as a security issue.<sup>159</sup> 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.<sup>160</sup>

The benefits of effective waste management may mean that UK withdrawal would not lead to a substantial change in approach. However, leaving the EU would raise questions about the longer-term 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 waste infrastructure investment.<sup>161</sup>

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”.<sup>162</sup>

### **Chemicals regulation**

Regulating the safe use chemicals is undertaken at EU level. The REACH (Registration, Evaluation, Authorisation and restriction of Chemicals) Regulations, which came into force on 1 June 2007, provide 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, are covered by more specific legislation (see Section 5.13 on human medicines). 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 Directive ([98/8/EEC](#)). Other legislation requires that food additives must be authorised by European Food Standards Agency (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 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. The Regulations provide that 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, 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 both to local and international

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<sup>158</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69500/pb13548-economic-principles-wr110613.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69500/pb13548-economic-principles-wr110613.pdf)

<sup>159</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:0070:FIN:EN:PDF>

<sup>160</sup> 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.

<sup>161</sup> <http://www.mrw.co.uk/news/waste-sector-warns-of-eu-referendum-danger/8641634.article>

<sup>162</sup> <http://www.mrw.co.uk/news/waste-sector-warns-of-eu-referendum-danger/8641634.article>

industry caused by a UK withdrawal from these established systems. It is worth considering that a substantial investment has recently 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.

## 5.9 Energy

### ***The single market***

The Government has said that one of its priorities is to widen and deepen the single market in energy.<sup>163</sup> The larger the market and the fewer 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 House of Lords European Sub-Committee D's report [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".<sup>164</sup>

The current 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 Package'. Given the multinational nature of energy markets and companies, even withdrawal from the EU would probably not affect the direction of travel. Similarly, the Leader of the Opposition has said that negotiating on climate change and energy is easier within Europe, and called for the completion of the single market in energy.<sup>165</sup>

### ***Energy security of supply and power station closures***

The *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 choose 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 ends of their life under the Directives.

Power stations are due to close in many Member States by 2015, but since coal is attractive at the moment,<sup>166</sup> 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.

### ***Renewable Energy and Climate Targets***

The UK's existing renewables targets are set by the 2009 *Renewables Directive* ([2009/28/EC](#)). As of 2008 renewables constituted 2.25% of energy sources. Under the

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<sup>163</sup> [Review of the Balance of Competencies](#) Cm 8415

<sup>164</sup> 14th Report of Session 2012–13 *No Country is an Energy Island: Securing Investment for the EU's Future* HL Paper 161, 2 May 2013.

<sup>165</sup> Rt Hon Ed Miliband MP Speech to the CBI Annual Conference, 19 November 2012. <http://www.labour.org.uk/one-nation-in-europe>

<sup>166</sup> Gloystein, H. and J. Coelho, "[European slump leads utilities to burn more coal](#)", *Reuters*, 8 May 2012.

Directive the UK has a target for renewable energy of 15% by 2020, to fit within the EU's overall target of 20%. The previous Government's UK Renewable Strategy concluded that each sector would have to deliver close to its maximum potential to achieve this.<sup>167</sup> The Government is now more optimistic about meeting these targets and has identified nine renewable technologies that it thinks will help achieve the target in its [Renewable Energy Roadmap](#).<sup>168</sup> Renewable energy provisionally accounted for 3.8% of energy consumption in 2011 so there is still some to go to achieve the 15% target.<sup>169</sup>

The driver for the focus on renewables in the UK up to now has been EU targets, but it is difficult to say how much would change if those targets were removed as a result of leaving the EU. DECC's [Carbon Plan](#) set out the drivers for focusing on emissions reduction, which were not necessarily EU driven, as both climate change impacts and energy security.<sup>170</sup> An EU exit would not remove the legally binding UK climate targets under the [Climate Change Act 2008](#),<sup>171</sup> and might be a driver for increased focus on aspects of 'home-grown' generation and renewable. This would 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.

### 5.10 Transport

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. The potential implications of a UK exit from the EU would most likely be significant for transport, partly because the EU has assumed responsibility for negotiating agreements with third countries on behalf of all Member States in areas such as aviation and maritime transport. However, where the UK had pre-existing agreements, for example on air services between the UK and a third country such as the US, it may be that the UK could revert to those agreements, rather than having to negotiate anew.

Where the EU sets harmonised rules in areas such as driver licensing, technical specifications for the construction of infrastructure, rolling stock and motor vehicles, in all likelihood these would no longer apply in a UK outside the EU, although the UK might wish to retain those standards. The UK might want to retain the current rules on driver licensing or vehicle standards in order to facilitate continued free movement of goods and people across the continent. So the EU-mandated format of the driving licence, for example, might be retained, as might the testing standards, so as to permit continued licence exchange with EU countries. Similarly, in order to connect the UK rail system with the continent, the UK might want to continue to build new track and trains to the common European standard so that non-stop services to and from the continent could continue and be extended.<sup>172</sup>

### 5.11 Justice and Home Affairs matters

The former inter-governmental 'third pillar' covered justice and home affairs policies, which are now subject to the EU decision-making processes in the Area of Freedom, Security and

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<sup>167</sup> DECC, [The UK Renewable Energy Strategy](#), 2009

<sup>168</sup> DECC, [UK Renewable Energy Roadmap Update](#), 2012

<sup>169</sup> DUKES, [DUKES 2012 Chapter 6: Renewable sources of energy](#), July 2012

<sup>170</sup> DECC, [The Carbon Plan: Delivering our Low Carbon Future](#), Dec 2011

<sup>171</sup> [The Climate Change Act 2008](#)

<sup>172</sup> The Government's May 2013 [call for evidence on the balance of competence between the UK and the EU on transport](#) provides a detailed summary of the Treaty base for EU powers in transport policy and how they have been applied. Further details can be found in EP [Fact Sheets on the European Union: Common Policies](#).

Justice. A UK withdrawal would have a minimal impact in some areas, family law, for example, where individual Member States generally have their own laws.<sup>173</sup> 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.

### ***Police and Justice Cooperation***

There have been many kinds of formal and informal international police cooperation over the past 100 years. The first multilateral arrangements led to the formation of Interpol, which gives technical and operational support to 190 member countries worldwide.<sup>174</sup> There have been Council of Europe treaties,<sup>175</sup> other multilateral arrangements, and the police themselves have set up practitioner-led cooperation arrangements.<sup>176</sup> Justice and home affairs became a formal EU policy under the Maastricht Treaty in 1992-3. Under the Amsterdam Treaty, which came into force on 1 May 1999, the UK and Ireland enjoyed the right to opt in to police and justice measures on a case-by-case basis.

### ***The block opt-out decision***

There are around 130 police and justice measures which were adopted before the Lisbon Treaty came into force on 1 December 2009.<sup>177</sup> They include:

- 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
- the European Arrest Warrant (see below)

The Government has until 31 May 2014 to decide whether it wishes to exercise its right to opt out of this block of measures. If it decides to do so, the measures will not apply to the UK. If it opts in, this will mean that the UK accepts the enforcement powers of the European Commission, and the jurisdiction of the Court of Justice with regard to them, from 1 December 2014.<sup>178</sup> The Government has said that it intends to use this block opt-out, but that it will then seek to opt back into those individual measures which it thinks are in the national interest.<sup>179</sup> In addition to these “pre-Lisbon” measures, there are others which have been agreed since the Lisbon Treaty, and the UK Government has opted into some of these. The opt-out right does not apply to these.

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<sup>173</sup> 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.

<sup>174</sup> The International Criminal Police Commission (ICPC) formed in 1923.

<sup>175</sup> The European Convention on Extradition (1957) and the European Convention on Mutual Assistance in Criminal Matters (1959).

<sup>176</sup> For a discussion of these see Ludo Block, *From Politics to Policing: The Rationality Gap in EU Council Policy-Making*,

<sup>177</sup> 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.

<sup>178</sup> For further details, see Standard Note 6268, *The UK's 2014 Jurisdiction Decision in EU Police and Criminal Justice Proposals*, 20 March 2012.

<sup>179</sup> [HC Deb 15 October 2012 c35](#)

The Lords EU Committee has scrutinised the opt-out in some detail.<sup>180</sup> The Association of Chief Police Officers (ACPO), in its evidence to the Committee, assessed 13 of the pre-Lisbon measures as being “vital” and a further 16 as ones which the UK should opt back into. There were a further 55 which the UK need not opt back into, although if it did, they would have no practical effect. It was, ACPO said, “not in the interest” of the UK to opt back into a further 12.<sup>181</sup> Other measures were likely to have been replaced before December 2014. The most important measure, in their view, was the European Arrest Warrant (see below). In a debate on this issue on 12 June 2013, Dominic Raab said the ACPO analysis showed that the “vast majority of measures that the previous Government signed Britain up to were utterly pointless.”<sup>182</sup> His own analysis, published in October 2012, states that 60 of the measures are of some practical value to the UK, “with that value ranging from marginal to substantial”.<sup>183</sup> However, he argued that each measure could be replaced by:

- ad hoc bilateral and multilateral cooperation;
- cooperation following a Memorandum of Understanding coupled with the necessary domestic legislation; or
- a treaty framework or EU instrument that is not supervised and enforced by the European Commission or the European Court of Justice.<sup>184</sup>

This report, and other analyses from a variety of perspectives are collected on the EU Committee’s website.<sup>185</sup> The Committee itself concluded that the Government had “not made a convincing case for exercising the opt-out” and that doing so would have “significant adverse repercussions”.<sup>186</sup> The effect of opting out of EU police and criminal justice legislation would be similar to the effect in this area if the UK left the EU. 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.

### ***European Arrest Warrant***

The European Arrest Warrant (EAW) is the mechanism by which wanted individuals are extradited from one EU Member State to another, either to face prosecution or to serve a term of imprisonment following an earlier conviction. Part 1 of the [Extradition Act 2003](#) implements the framework decision on the EAW.<sup>187</sup> The EAW scheme is managed by the Serious Organised Crime Agency (SOCA), although the UK’s policy relating to the EAW

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<sup>180</sup> House of Lords European Union Committee, [EU police and criminal justice measures: the UK’s 2014 opt-out decision](#), 23 April 2013, HL159 2012-13.

<sup>181</sup> Association of Chief Police Officers Written Evidence, 8 December 2012, in House of Lords European Union Committee, [UK’s 2014 Opt-Out Decision \(‘Protocol 36’\)](#), *Oral and Written Evidence*, p6.

<sup>182</sup> [HC Deb 12 June 2013 c442](#)

<sup>183</sup> Open Europe, [Cooperation not Control: The Case for Britain Retaining Democratic Control over EU Crime and Policing Policy](#), Dominic Raab MP, October 2012.

<sup>184</sup> Open Europe, p4

<sup>185</sup> House of Lords European Scrutiny Committee, EU Justice, Institutions and Consumer Protection Sub-Committee – Inquiries, [UK’s 2014 Opt-out Decision \(Protocol 36\)](#).

<sup>186</sup> House of Lords European Union Committee, [EU police and criminal justice measures: the UK’s 2014 opt-out decision](#), 23 April 2013, HL159 2012-13, p 10.

<sup>187</sup> For further details, see: Home Office, [Extradition: processes and review](#), 26 March 2013.

system is overseen by the Home Office. The Home Secretary announced an independent review of extradition arrangements, including the operation of the EAW, in September 2010.<sup>188</sup> It is fair to say that the operation and future of the EAW has proved contentious.<sup>189</sup> A House of Lords EU Committee report on the UK's decision to opt out of police and justice measures considered the operation of the EAW.<sup>190</sup> The Committee concluded, amongst other things, that:

The European Arrest Warrant is the single most important of the measures which are subject to the opt-out decision. In some cases, the operation of the EAW has resulted in serious injustices, but these arose from the consequences of extradition, including long periods of pre-trial detention in poor prison conditions, which could occur under any alternative system of extradition. Relying upon alternative extradition arrangements is highly unlikely to address the criticisms directed at the EAW and would inevitably render the extradition process more protracted and cumbersome, potentially undermining public safety. The best way to achieve improvements in the operation of the EAW is through negotiations with the other Member States, the use of existing provisions in national law, informal judicial cooperation, the development of EU jurisprudence and the immediate implementation of flanking EU measures such as the European Supervision Order.<sup>191</sup>

On 20 June 2013 the Home Secretary, Theresa May, provided the following (revised) figures from SOCA relating to outgoing and incoming EAWs:<sup>192</sup>

Part 3 (Outgoing EAWs)

<i>Year</i>	<i>Type</i>	<i>Previous Figure</i>	<i>New Figure</i>
2009-10	Arrests	99	142
	Surrenders	71	110
2010-11	Arrests	145	150
	Surrenders	134	130
2011-12	Arrests	93	148
	Surrenders	86	144

<sup>188</sup> Full details about this review, its report and the Government's response to it can be found in Standard Note 6105, *Extradition and the European Arrest Warrant - Recent Developments*.

<sup>189</sup> See *Guardian*, "David Cameron and Nick Clegg at odds over European arrest warrant" 28 September 2012. The NGO Fair Trial's International has been campaigning in relation to EAW cases for some time. Information is available on [their website](#). See also: Conor Burns MP, *The Case Against the European Arrest Warrant*, Big Brother Watch, June 2012.

<sup>190</sup> House of Lords European Union Committee, *EU Police and Criminal Justice Measures: The UK's decision to opt out*, 13<sup>th</sup> Report 2012–13, HL Paper 159. See also: EU Committee, *Counter-Terrorism: The European Arrest Warrant*, 6<sup>th</sup> Report 2001–02, HL Paper 34; *The European Arrest Warrant*, 16<sup>th</sup> Report 2001–02, HL Paper 89; and *European Arrest Warrant-Recent Developments*, 30<sup>th</sup> Report 2005–06, HL Paper 15, Joint Committee on Human Rights, *The Human Rights Implications of UK Extradition Policy*, 15<sup>th</sup> Report 2010-12, HL Paper 156; and Home Affairs Select Committee, *Extradition Bill* 1<sup>st</sup> Report 2002-3, HC 138.

<sup>191</sup> *Ibid*

<sup>192</sup> A complete breakdown of the corrected figures can be found on the Home Office and SOCA websites: <http://www.soca.gov.uk> and <https://www.gov.uk/government/organisations/home-office>.

## Part 1 (Incoming EAWs)

<i>Year</i>	<i>Type</i>	<i>Previous Figure</i>	<i>New Figure</i>
2009-10	Arrests	1,032	1,057
	Surrenders	699	772
2010-11	Arrests	1,359	1,295
	Surrenders	1,173	1,100
2011-12	Arrests	1,149	1,394
	Surrenders	922	1,076

***Border controls, non-EU immigration and asylum***

The UK is not automatically bound by EU legislation on border controls, non-EU immigration and asylum. Under special Treaty-based arrangements, it participates in measures selectively, deciding on a case by case basis whether opting in would be in its best interests. This reflects the view taken by successive governments 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 current Government's general preference is for the EU to take a flexible approach to migration policymaking which emphasises practical co-operation rather than legislation and common standards.<sup>193</sup> The UK is not part of the internal border-free *Schengen* Area and does not participate in the parts of the Schengen *acquis* related to visas and border controls. The UK has not opted in to measures facilitating legal migration of third country (non-EU) 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).<sup>194</sup> The UK has chosen to participate in some EU measures on irregular immigration, opting into some of the EU's Readmission Agreements with third countries.<sup>195</sup>

The EU has been working for over fifteen years to establish a Common European Asylum System (CEAS). The UK opted into the six pieces of legislation adopted during the first phase (2000-2005), which 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.<sup>196</sup> Over the past five years the EU has been reviewing and replacing the CEAS legislation in order to improve harmonisation and co-operation and set higher standards. The UK has not opted into the recast directives but continues to be bound by the terms of the original directives. Both the Labour and coalition governments cited

<sup>193</sup> House of Lords EU Sub Committee F, *Government response to The EU's Global Approach to Migration and Mobility*, 22 February 2013.

<sup>194</sup> However, it does apply EU regulations establishing a uniform format for residence permits for third country nationals.

<sup>195</sup> For example with Turkey: [HC Deb 24 October 2012 c57WS](#).

<sup>196</sup> Namely, the Asylum Procedures Directive, the Qualifications Directive, the Reception Conditions Directive, the Temporary Protection Directive, the Dublin II Regulation and the EURODAC Regulation.

concerns that the recast directives would impose undesirable restrictions on the UK's asylum system.<sup>197</sup>

However, the UK has opted into revised Dublin regulations. 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 II Regulation identifies a hierarchy for determining which Member State is responsible for the asylum claim (generally, the country that played the greatest part in the asylum seeker's entry to the EU). Over 10,000 asylum seekers have been removed from the UK under the Dublin system since 2004. The Government's position is that it does not support the creation of a CEAS as a whole, but supports the Dublin elements of it.<sup>198</sup> The Government considers that this has resulted in significant financial savings and contributed to efforts to deter abuse of the UK's asylum system.<sup>199</sup>

### ***Free movement of persons (controlling EU immigration)***

The "free movement of people" principle entitles citizens of EU Member States and their families to reside and work anywhere in the EU.<sup>200</sup> This right also applies to citizens of EEA States not part of the EU and Switzerland. 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 Member States, and for EU nationals wishing to come to the UK. Directive 2004/38/EC, often referred to as the 'Rights of Residence' or 'Citizens' Directive, sets out the detailed provisions relating to EU citizens' free movement rights and the circumstances in which they can claim a 'right to reside' in another Member State.<sup>201</sup> It was transposed into domestic legislation by the *Immigration (European Economic Area) Regulations 2006* <http://www.opsi.gov.uk/si/si2006/20061003.htm>.<sup>202</sup> Case law from the EU Court of Justice and national courts has also played a significant role in developing EU free movement and citizenship law. As well as the freedom to "move and reside freely" throughout the EU under EU citizenship provisions, the TFEU also contains Articles specifying the free movement rights of workers and self-employed persons.<sup>203</sup>

Directive 2004/38/EC states that EU nationals do not require a visa to enter another Member State, and no time limit may be placed on their stay. An EU citizen who produces a valid passport or national identity card must be admitted, unless exclusion is 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, a self-employed person, a job-seeker, a self-sufficient person or a student (or a family member of one of those). A 'right of permanent residence' is acquired after five years'

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<sup>197</sup> 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 (HC Deb 13 October 2011 cc44-5WS; HL Deb 12 January 2012 cc495-7).

<sup>198</sup> HC Deb 25 February 2013 c86W

<sup>199</sup> HC Deb 25 February 2013 c86W

<sup>200</sup> Subject to a few exceptions and the possibility of transitional arrangements for new EU members (such as for Bulgaria and Romania).

<sup>201</sup> Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

<sup>202</sup> SI 2006/1003, as amended.

<sup>203</sup> Articles 45-48 TFEU and Articles 49-53 TFEU respectively.

continuous residence in the host Member State. Non-EU EEA and Swiss nationals enjoy broadly similar free movement rights to EU citizens and are treated in line with EU citizens for UK immigration control purposes. The UK would be able to impose its own controls on EU/EEA immigration if it was not part of the EU/EEA and might choose to apply the immigration controls that non-EU/EEA nationals are subject to.<sup>204</sup> If the UK remained in the EEA, the economic effects would be very similar to present effects (the economic effects are explored in more detail below).

Currently, non-EU/EEA citizens of ‘visa national’ countries must obtain entry clearance (a ‘visa’) in advance of travel if they wish to come to the UK for any purpose. Those from ‘non-visa national’ countries do not need a visa if coming as a general visitor, but may need one for other types of visit. All non-EU/EEA nationals must obtain a visa before travel if they intend to stay for longer than six months, for any reason. The main grounds on which non-EU/EEA nationals can come to the UK other than as visitors are to join family members, to work or to study. The eligibility criteria for granting leave to remain in each of these categories are more restrictive than the comparable provisions in EU free movement law. For example, opportunities to come to work in the UK are generally restricted to skilled migrants who already have a job offer in place, and most immigration categories require that applicants already have some English language skills.

Persons who have temporary permission to remain in the UK generally have restricted access to welfare benefits, due to a ‘no recourse to public funds’ condition attached to their immigration status. Depending on the immigration category, they may also be subject to limitations on working or bringing family members to the UK. Only a few temporary immigration categories lead on to eligibility to apply for permanent residence. 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 UK and EU/EEA states would also have to consider how to ensure continuity of immigration status for persons exercising their free movement rights at the time of the UK’s exit from the EU. Sudden mass expulsions/returns of their nationals could create significant costs and upheavals.

### ***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.

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<sup>204</sup> 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.

The EU is currently negotiating a new “draft data protection framework”. Under the new proposals, which involve replacing the 1995 Directive with a new 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 UK Ministry of Justice has argued that the burdens the proposed regulation would impose outweigh the net benefit estimated by the Commission. The draft framework remains a matter of contention among Member States; negotiations are ongoing.<sup>205</sup>

### ***EU citizenship: the franchise***

The EU Treaty provides for EU citizenship in Articles 20 to 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.

Under the European 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 the country in which they were resident but in which they were not nationals.<sup>206</sup> EU Member State nationals who are resident in the UK are 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. Some EU 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.

### **5.12 Social security**

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 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 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

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<sup>205</sup> See Standard Note 6669, [The draft EU data protection framework](#).

<sup>206</sup> See Research Paper 94/23, [Votes and seats for European Parliament elections](#), for details of this Directive.

(397,000), France (173,000) and Germany (155,000).<sup>207</sup> 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,<sup>208</sup> which also apply to 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 – e.g. 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 case (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 (the principle of “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 “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

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<sup>207</sup> Home Office, *Emigration from the UK*, 2<sup>nd</sup> edition, Research Report 68, November 2012.

<sup>208</sup> Now in EC Regulations 883/2004 and 987/2009.

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.

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.

### **Access to social housing**

Social (council) housing in the UK is a public resource. Therefore, as with entitlement to social security benefits, EU/EEA nationals' access to social housing is based on the principle of free movement and the entitlement of EU/EEA nationals to enjoy equal treatment with UK nationals in accessing social advantages. However, there is no general entitlement to social housing. The basis on which an EU/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.<sup>209</sup>

Housing policy in the UK is a devolved matter; different regulations govern eligibility to apply for an allocation of social housing in England, Scotland and Wales.<sup>210</sup>

An end to free movement rights would make it possible to restrict the ability of EU/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

<sup>209</sup> HC Deb 22 April 2013 c586W (for more detailed information see Standard Note 4737).

<sup>210</sup> For example, in England the relevant provisions are in *The Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006* as amended by *The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012*. In Wales the relevant regulations are *The Allocation of Housing (Wales) Regulations 2003* as amended by *The Allocation of Housing (Wales) (Amendment) Regulations 2006* and also *The Homelessness (Wales) Regulations 2006*.

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 EU/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.

### **Pensions**

The design of pension systems is largely the responsibility of Member States. However, the EU regulatory framework covers four main points:

1. Cross border coordination of social security pensions to facilitate the free movement of workers and equal treatment for workers who change country.
2. Establishing an internal market for funded occupational schemes and the necessary minimum standards on prudential rules to protect scheme members and beneficiaries.
3. Minimum guarantees concerning occupational pensions and accrued rights in case of the insolvency of enterprises as sponsors.
4. Anti-discrimination rules apply, although with some differentiation, to both statutory and private pension schemes.<sup>211</sup>

For individuals who work in more than one Member State during their working life, the advantage of EU membership is that the UK is part of a system for cross-border co-ordination of state pension entitlements. These arrangements enable the individual to make an application to the relevant agency in the country of residence (in the UK, the [International Pension Centre](#)), which then arranges for each Member State where a person was insured for at least a year to pay a pension.<sup>212</sup> There is no transfer of pension rights to the pension system of another Member State. In addition, UK state pensioners resident in EEA countries receive annual increases to their UK State Pension. Outside the EEA, the State Pension is only uprated if the UK has a social security agreement with that country requiring this.<sup>213</sup> If the UK were outside the EU, the UK Government could seek to negotiate such agreements with EU/EEA Member States.

Occupational pension schemes vary considerably across Member States. This has implications for people who have worked in, or for companies based in, another Member State. EU legislation aims to protect pension entitlements and enable pension funds to “benefit from the Internal Market principles of free movement of capital and freedom to provide services”.<sup>214</sup> [Directive 2003/41/EC](#) on the activities and supervision of institutions for occupational retirement provision (IORP Directive, adopted 2003), allows pension funds to manage occupational pension schemes for companies that are established in another Member State and allows European-wide companies to have only one pension fund for all subsidiaries in Europe. It also establishes prudential standards to ensure that members and beneficiaries are properly protected, as well as requirements concerning the disclosure of

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<sup>211</sup> [European Commission Memo 10/302, Green Paper on Pensions, July 2010.](#)

<sup>212</sup> [DWP website – State Pension in EEA countries](#) (accessed 24 June 2013); [Accompanying document to the GREEN PAPER towards adequate, sustainably and safe European pension systems, Brussels SEC \(2010\) 830](#), section 1.1.

<sup>213</sup> [Social Security Contributions and Benefits Act 1992](#), s 113; The [Social Security Benefit \(Persons Abroad\) Regulations 1975 \(SI 1975/563\)](#); [DWP website – State Pension in EEA countries.](#)

<sup>214</sup> [Directive 2003/41 on the Activities and Supervision of Institutions for Occupational Retirement Provision.](#)

information.<sup>215</sup> The UK Government argues that the existing provisions enable Member States to implement the Directive in a way that fits the nature of pension funds in their country.<sup>216</sup> European Commission proposals in June 2010 to reform the funding requirements were met with concern in the UK.<sup>217</sup> However, in May 2013 the Commission announced that it would not proceed with the proposals, at least in the short term.<sup>218</sup>

Being outside the EU would have implications for UK citizens who were members of pension schemes that operate on a cross-border basis. In 2012 there were 84 EU cross-border schemes, many of them operating between the UK and Republic of Ireland.<sup>219</sup> Under the IORP Directive, such schemes are subject to more stringent funding requirements.<sup>220</sup> It is probably in the interests of the UK that, where its citizens are receiving a pension from another State, that State's scheme is fully funded. Outside the EU, there would be no mechanism in place to ensure this, so it would have to be done through negotiation.<sup>221</sup> The UK Government might also want to find channels to negotiate improvements in the environment for the operation of cross-border schemes (having previously said that considerable divergence in the approaches taken by Member States to the identification and treatment of institutions wishing to operate across borders, remained a "very significant barrier in enabling such schemes to operate appropriately and effectively").<sup>222</sup>

The *Insolvency Directive* ([Directive 2008/94/EC](#), 22 October 2008) provides for the protection of employees' rights in the event of the insolvency of their employer, including requiring Member States to adopt measures to protect the interests of pension scheme members. In 2007 the European Court of Justice held that the Directive left Member States considerable latitude as regards the level of protection and ruled out any obligation to provide a full guarantee. However, a system that could lead to a guarantee of less than half the scheme member's entitlement could not be deemed to fall within the definition of "protect" as applied in the Directive.<sup>223</sup> This was one factor prompting the UK Government to increase the level of compensation provided by the Financial Assistance Scheme (a taxpayer-funded scheme set up to provide compensation to members of defined benefit pension schemes that started to wind up before April 2005).<sup>224</sup> The Pension Protection Fund (PPF), set up under the *Pensions Act 2004* to provide compensation to members of schemes that started to wind up underfunded from 6 April 2005, is funded by a levy on schemes, the assets of schemes

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<sup>215</sup> *Accompanying document to the GREEN PAPER towards adequate, sustainably and safe European pension systems*, Brussels SEC (2010) 830, section 1.2.

<sup>216</sup> *European Commission's Green Paper - Towards adequate, sustainable and safe European pension systems – UK Government response*, 12 November 2010.

<sup>217</sup> *Ibid*; HC Deb 28 November 2011 c669 [Steve Webb].

<sup>218</sup> Pensions Europe press release, *European Commission postpones quantitative rules for IORPs*, 23 May 2013.

<sup>219</sup> House of Commons Work and Pensions Committee, *EU Pensions Policy - oral and written evidence*, 26 March and 23 April 2012, HC 1192, 7 September 2012; Q103 [Karel Van Hulle] and Q7 [Joanne Segars]; EIOPA 2012 Report on Market Developments, July 2012.

<sup>220</sup> *Occupational Pension Schemes (Cross-border activities) regulations 2005 (SI 2005 No. 3381)*.

<sup>221</sup> See, for example, *Evidence to the Scottish Affairs Committee on The referendum for Separation for Scotland*. To be published as HC 140-i; 14 May 2013, Q3033 [Christine Scott].

<sup>222</sup> *Commission Green Paper - Towards adequate, sustainable and safe European pension systems – UK Government response*, 12 November 2010.

<sup>223</sup> *Accompanying document to the Green Paper, Towards adequate, sustainably and safe European pension systems*, Brussels SEC (2010) 830, section 1.3; *Carol Marilyn Robins and others v Secretary of State for Work and Pensions*. C-278/05. ECR 2007 Page I-01053; See also *Thomas Hogan et al v Minister of State for Social and Family Affairs, Ireland*. Case C-398/11, 25 April 2013.

<sup>224</sup> HC Deb 22 February 2007 c 419; for more detail, see Standard Note 2010 *Financial Assistance Scheme – developments to 2008*, May 2008.

transferred to it and investment returns.<sup>225</sup> If the requirements of the Insolvency Directive no longer applied, the UK Government would probably have greater latitude to decide what levels of protection were appropriate. However, the PPF is now well-established. Its most recent annual report explained that it now directly protects more than 360,000 people who might have otherwise lost their pensions, had a surplus of almost £1.07 billion at 31 March 2012 and was “on course” to achieve its target of being financially self-sufficient by 2030.<sup>226</sup>

The anti-discrimination legislation applying to occupational pensions is enshrined in the *Equality Act 2010*.<sup>227</sup> For state pensions, the Government is “working towards full equality” for men and women, whatever their sexual orientation.<sup>228</sup> The arrangements for cross border co-ordination of social security are covered by the call for evidence on the Free Movement of Persons in the Government’s Review of the balance of competences, May 2013. Further calls for evidence, covering issues such as social and employment policy and the internal market for services and capital are to be issued in Semester 3 (Autumn ’13 – Summer ’14).

### 5.13 Health policy and medicines regulation

While health care systems in the Member States are a matter of national responsibility,<sup>229</sup> other aspects of health care – reciprocal access, pharmaceuticals, herbal medicines, 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**

*Together for Health: A new strategic approach for the EU* 2008-2013 outlined the EU’s principles and objectives for the most recent period. These included an objective to improve 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.<sup>230</sup> This allows for a network of communication between Member States to monitor, communicate and assist in response to a threat of communicable disease. The European Centre for Disease Control and Prevention is at the centre of this network, collecting information, providing expertise and coordinating related bodies.

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<sup>225</sup> [PPF website – about us](#) (viewed 24 June 2013); For more detail, see Standard Note 3085 [Pension Protection Fund](#), August 2012.

<sup>226</sup> *Pension Protection Fund Annual Report 2012*, p3 and 10. See also p18 which explains that “self-sufficiency means that we will be fully-funded with minimal exposure to interest rate, inflation and market risks and with protection against future claims and the risks of people living longer than we estimate”.

<sup>227</sup> See Research Paper 09/32 [Equality Bill](#), section 0.

<sup>228</sup> HM Government, *Equal marriage: The Government’s response*, December 2012, para 9.16-9.22.

<sup>229</sup> [Europa: Public health](#): EU action “shall not include the definition of health policies, nor the organisation and provision of health services and medical care”.

<sup>230</sup> [Europa: Early warning system and response system for the prevention and control of communicable diseases](#) (accessed 14 June 2013).

[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 banning smoking in public places,<sup>231</sup> reducing alcohol misuse and promoting good nutrition.

### ***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.<sup>232</sup> 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.<sup>233</sup>

### ***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-

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<sup>231</sup> [Europa: Banning smoking in public places](#) (accessed 14 June 2013).

<sup>232</sup> Professor Sir John Temple, *Time for Training A Review of the impact of the European Working Time Directive on the quality of training*, May 2010.

<sup>233</sup> 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](#).

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**

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.<sup>234</sup> 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.<sup>235</sup> 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.<sup>236</sup>

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.

### **Herbal medicine**

[Directive 2004/24/EC](#) of 31 March 2004, amending, as regards traditional herbal medicinal products, Directive 2001/83/EC on the Community code relating to medicinal products for human use, has significantly affected the way herbal practitioners can prescribe in the UK. Since 2011 herbal medicines have to be granted a marketing authorisation, as with all other medicines. The only exceptions to this are when they can fulfil the conditions of a traditional herbal medicine registration<sup>237</sup> or when they are made for a specific patient in a one to one consultation. Within this Directive, however, there is a clause that allows for the prescribing of unlicensed medicine by practitioners who are members of a statutory register. In response to this, in February 2011<sup>238</sup> the Secretary of State for Health announced the setting up of such a register for herbal practitioners under the remit of the Health and Care Professions Council. This statutory regulation is yet to be introduced and a UK withdrawal could reinstate for UK practitioners the former prescribing abilities of herbalists.

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<sup>234</sup> [Reg 726/2004, 31 March 2004, laying down Community procedures for the authorisation and supervision of medicinal product for human and veterinary use and establishing a European Medicines Agency.](#)

<sup>235</sup> [European Medicines Agency](#) (accessed 11 June 2013).

<sup>236</sup> EM A, [Mutual recognition and decentralised procedures –human \(CMDh\)](#) (accessed 11 June 2013).

<sup>237</sup> [MHRA Traditional Herbal Medicines registration Scheme](#) (accessed 14 June 2013).

<sup>238</sup> [HC Deb 16 February 2011 C 84WS](#)

## 5.14 Higher education, the arts, copyright, broadcasting, sport

### *Higher education*

Arguably the biggest impact that EU membership has on the UK higher education (HE) sector is the obligation to provide student support to EU students studying in the UK. EU membership also gives UK students access to European student mobility schemes such as the Erasmus programme. The UK is also signed up to the 'Bologna Process', which aims to create a harmonised HE system across Europe.

Under EU free movement legislation 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 the nationals of the hosting EU State. The UK complies with these obligations by charging incoming EU students the same tuition fees as home students and by providing tuition fee loans to cover the cost of these fees on the same basis as loans for UK home students. In 2011/12 nearly £104 million was paid in fee loans to EU students<sup>239</sup> A host Member State is, however, not obliged to grant maintenance support to citizens of other EU States, except in situations where the ruling in the 2005 *Bidar case (C-209/03)* applies; this case established that maintenance support could be granted if applicants could prove a genuine link with the Member State, so some EU nationals who have lived in the UK for three years prior to the start of their course can apply for the full package of student maintenance support.

The European Commission supports the *Erasmus Programme*, which is an exchange scheme designed to increase co-operation between higher education institutions across the EU by providing students with opportunities to study abroad. Between 2011 and 2012, more than 13,500 UK students took part in the Erasmus scheme, studying for part of their degree in another European country.<sup>240</sup> There are also a number of other European programmes such as *Tempus* and *Erasmus Mundus* which promote co-operation in higher education with countries beyond the EU.

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.

### *Copyright, the Arts and Sport*

Areas of UK copyright law derive from EU law. For example, the 1993 Directive on Copyright Duration (93/98/EEC) harmonised upwards the terms of authors' rights to the highest factor operating in a Member State. The 2001 Copyright Directive (2001/29/EC) further harmonises aspects of copyright law, such as copyright exceptions, across Europe; it also affects the application of copyright and control techniques on the internet and restricts the range of defences to copyright infringement. Copyright is otherwise governed by a series of interlocking international agreements, among them the *Berne Convention of 1886* and the WIPO [World Intellectual Property Organization] *Copyright Treaty of 1996*. If the UK left the EU, it seems unlikely that the Government would seek to unpick these arrangements, since

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<sup>239</sup> HC Deb 5 March 2013 c923

<sup>240</sup> HL Deb 31 January 2013 c1695

they bring reciprocal benefits to UK creators and rights-holders.<sup>241</sup> One of the main issues for arts and voluntary sector organisations would be the loss of potential sources of funding.<sup>242</sup>

The Lisbon Treaty made sport an area of EU competence.<sup>243</sup> The first EU *Work Plan for Sport 2011-2014* is being implemented in the areas of anti-doping, good governance in sport, education and training, sport health and participation, sport statistics and sustainable financing of sport.<sup>244</sup> *Erasmus for All*, the Commission's proposed new programme for education, training, youth and sport, will fund initiatives at the grass-roots level of sport. It has proposed funding for sport totalling nearly €240 million in 2014-2020 (although negotiations are ongoing), to which the UK would probably lose access if it left the EU.

### **Broadcasting**

The "Television Without Frontiers" Directive ([89/552/EEC](#)) was adopted in October 1989. It is primarily a single market Directive, designed to facilitate the free movement of television services across frontiers. Central to it is the "country of origin" principle, which means that the law which applies to a given broadcast is that which pertained in the country in which it originated. Thus, where a TV broadcaster is licensed for one Member State, it is able to broadcast in another EU State without the need for further licensing. There is also a requirement in Article 4 that Member States ensure that "where practicable" broadcasters reserve a majority of their transmission time, excluding news, sports, advertising and teletext services, for "European works". Other provisions in the original directive included:

- 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.

This Directive has subsequently been amended by the Audiovisual Media Services Directive ([2007/65/EC](#)), which takes account of 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.<sup>245</sup> 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.

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<sup>241</sup> 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, a move to repeal it once it has been translated into UK law might be viewed as unpopular (it was the subject of a recent [consultation](#) by the Intellectual Property Office).

<sup>242</sup> For further information on EU funding for the Arts, see Europa website, [Creative Europe: support programme for Europe's cultural and creative sectors from 2014](#); EU Culture programme 2007-13 website; Yvette Vaughan Jones, "European arts funding: why don't more UK cultural organisations apply?", *Guardian*, 1 May 2013.

<sup>243</sup> For further detail see [Developing the European dimension in sport](#), January 2011; EU website, [Sport](#).

<sup>244</sup> "EU and IOC pledge to continue 'special relationship' to promote dialogue in sport", *Europa* press release, 10 June 2013. See also Europa website, [Sport - what we do – sustainable financing](#).

<sup>245</sup> [HC Deb 11 March 2009 cc15-18WS](#)

### 5.15 Consumer policy

Promoting consumers' rights is a core value of the EU, enshrined in Articles 12 and 114 TFEU. Consumer protection is 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. As a result, a huge amount of existing consumer protection regulation in the UK is derived from the EU in one form or another. For instance, consumers are protected from unsafe products, misleading advertising, unpredictable roaming costs, and unfair practices.

The importance of consumer policy has grown within the EU. The strategy for consumer policy at European level is regularly reviewed by the Commission according to the following objectives:

- high common level of consumer protection;
- effective enforcement of consumer protection rules; and
- the involvement of consumer organisations in EU policies

The current [European Consumer Agenda](#), published in May 2012, acknowledges the central role of the EU's 500 million consumers in driving innovation and enterprise.<sup>246</sup> It presents measures designed to achieve the objectives of the EU's economic growth strategy, 'Europe 2020'. To this end, the Consumer Agenda has four overriding objectives to increase consumer confidence, they are:

- reinforcing consumer safety;
- enhancing consumer knowledge;
- stepping up enforcement and securing redress;
- aligning consumer rights and policies to changes in society and in the economy

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. It presents a number of key actions to be implemented between now and 2014.

It follows from this that the potential implications of the UK lying outside the EU may be significant. Consumer protection covers a very wide range of goods and services; it is impossible therefore to calculate the impact of withdrawal in any meaningful way without first knowing the basis on which the UK would continue to interact with the EU. There are various different models of interaction between non-EU Member States and the EU. It is not obvious which of these models, if any, would apply.

One model is the EEA Agreement. EEA/EFTA states have participated in EU consumer programmes since the EEA Agreement came into force in 1994. For example, the [Distance Selling Directive](#) applies to any consumer distance contract made under the law of an EU Member State as well as the EEA. In addition, the Consumer Council in Norway has established close links with bodies at European level such as BEUC (an alliance of European

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<sup>246</sup> "A European Consumer Agenda – Boosting confidence and growth", COM(2012) 255 final, 22 May 2012.

consumer organisations). The Council also participates in a European collaboration (EEI-Net), which enables consumers to resolve disputes outside the court. The Icelandic Consumer Agency and the Norwegian Consumer Council also belong to the European Consumer Centres Network (ECC-Net), which provide 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 consumer protection provisions without access to the EU's decision-making institutions.

## **5.16 Foreign and defence policies**

### ***Relations with the United States***

The quotation often attributed to Henry Kissinger about whom to dial in Europe summed up the view in US foreign policy circles that a coordinated 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 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. UK politicians have often urged other EU States to spend more. 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 coordination. The US wants EU defence structures to evolve in such a way as to not 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.

Conservative commentators in the US and the UK have suggested that the Obama Administration has abandoned traditional allies such as Britain (and countries in Eastern

Europe) in pursuit of the 'reset' with Russia and the 'pivot' to Asia.<sup>247</sup> European integration with strong British influence is traditional Republican as well as Democratic policy.

### ***The Middle East***

The UK plays a limited but nevertheless 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. 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, sanctions against Iran, for example, may be based both on decisions taken at the United Nations Security Council (UNSC) and decisions at the EU level. Iran is an example of the heavy involvement of EU Member States 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 negotiations with Iran over its contentious nuclear programme, although that role is now shared with the other members of the UN Security Council.

The most important actor in the Middle East is the United States, however, and many UK actions in the region are taken 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 coordinated 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.

Pooling UK influence with that of other EU Member State sharing many of the same interests looks like a sensible idea. 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. 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.

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

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

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<sup>247</sup> See for example '[Five Conservative Principles That Should Guide U.S. Policy on Europe](#)', Heritage Foundation, 1 March 2013

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, that the US remains the most significant power in the region and that the UK could coordinate its Middle East policies more closely with those of the US. Despite the much-discussed pivot to Asia, the US will remain the single biggest external actor for some time to come; some critics see the EU as little more than America's poodle 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 policymaking in the Middle East could continue to be worked out in important multilateral fora other than the EU, such as the UNSC and NATO.

### ***The rebirth of the Anglosphere?***

What has been described as the US moment of 'unipolarity' stretched from the fall of the Berlin Wall in 1989 until perhaps the end of the first George W Bush administration in 2005. It was no coincidence that this was the period that saw the rebirth of the notion of the Anglosphere. The collapse of the Soviet Union, which could be seen as yet another ideological continental empire, and the emergence of the US as the sole superpower, gave a strong boost to ideas about the virtues of 'Anglo-Saxon culture' and its leading role in the world. Military action in Afghanistan and Iraq at first strengthened such notions. It was English-speaking nations that took the lead in both campaigns, ostensibly against a new and dangerous totalitarian ideology – violent Islamic jihadism. Later, however, as both conflicts began to show the limits of US power, they became less popular with English-speaking publics. As the US no longer looked omnipotent and the whole rationale for the Iraq war looked questionable, the appeal of the Anglosphere too seemed to wane, and James C Bennett's Anglosphere Institute is now defunct.

The present economic upheavals may also have been a blow to the popularity of the concept. The world's worst financial crisis for some time and a global recession was triggered partly by a credit crunch spreading from over-enthusiastic mortgage lending to 'sub-prime' home-buyers in the US, and the subsequent securitisation of these loans and their sale on the bond markets. A preoccupation with owner-occupation and the deregulation of the financial markets are both seen as hallmarks of 'Anglo-Saxon' politics and, in European countries at least, have been widely blamed for recent economic problems. The recession further called into question the dominance of the US and underlined the rise of China and other emerging economies.

Well-known figures who are reported to have been interested in the Anglosphere include John Howard (former Australian Prime Minister), Conrad Black (former owner of the Telegraph), Margaret Thatcher, Tony Abbott (leader of the Australian Liberal Party) and Canadian Prime Minister Stephen Harper. The UK Government has never specifically espoused the Anglosphere as UK policy - indeed, its policy is to remain in the EU - but in a speech setting out the UK's new foreign policy in 2010, the Foreign Secretary William Hague echoed some of the themes and language used by Anglospherists. He placed increased emphasis on the Commonwealth, the English language and the importance of strengthening networks of contacts:

The case for the UK embracing the opportunities of the networked world is very strong. We are richly endowed with the attributes for success. We are a member of one of the world's longstanding global networks - the Commonwealth - which spans continents

and world religions, contains six of the fastest growing economies and is underpinned by an agreed framework of common values.<sup>248</sup>

The concept has been mentioned from time to time in Parliament. During the debate on the *Treaty of Lisbon*, a number of MPs criticised the Treaty and spoke up for the Anglosphere. David Heathcoat-Amory,<sup>249</sup> for example, said:

We must retain the ability to choose in foreign policy. Sometimes we have chosen the continent—sometimes we have had to rescue the continent—but at other times we have chosen a global role, a maritime role and a role that perhaps associates us more closely with the Anglosphere. If the treaty and these provisions go through in their current form, that choice and destiny will be denied us.<sup>250</sup>

For US conservative commentator, Daniel Larison, Anglospherists overstate the difference between English-speaking and other European cultures, overestimating the importance of speaking English for determining cultural and political behaviour and ignoring the importance of Christianity.<sup>251</sup> The historic basis for assertions that Anglo-Saxon culture was essential for the development of liberalism, pluralism and the separation of powers is controversial. Critics such as Larison point out that, contrary to assertions of the Anglospherists, the English monarchy was relatively strong and that theories of absolutism were just as prevalent in England as on the Continent. One conservative commentator, John Laughland, says that liberalism, religious tolerance and prosperity are not the difference between Britain and the Continent, rather it is the orientation towards the sea:

This maritime geo-economic orientation is the defining fact of English political culture, not liberalism. It is so strong, indeed, that “free trade” remains the single taboo which it is impossible to break in England.<sup>252</sup>

Laughland even suggests that euroscepticism is really a resurgence of anti-Catholicism.

English-speaking countries may share some culture, but to what extent do they have shared interests? The Australian writer, Owen Harries, argued in 2001 that the Suez Crisis showed that even when elites of the US and the UK were much closer culturally and had just won a war together, hard calculations of national interest and political expediency resulted in the US publicly humiliating the UK and France, and stopping the attempt to retake the Suez Canal militarily from the Egyptian government.<sup>253</sup> Harries quotes former British Prime Minister Palmerstone with approval: “We have no eternal allies and we have no perpetual enemies. Our interests are eternal and perpetual, and those interests it is our duty to follow”.

The US is becoming increasingly Hispanic and Asian. The US Census Bureau estimates that non-Hispanic whites will be in a minority in the US by 2043.<sup>254</sup> Of course no-one knows how much increasingly Hispanic-origin and other non-European Americans will adopt the English-speaking culture and how much they will change it. The US is increasingly turning towards Asia. The ‘pivot’, a centrepiece of President Obama’s first term, saw US strategy increasingly concentrating on East Asia. Anglospherists would point out that one of the most important

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<sup>248</sup> [Britain's Foreign Policy in a Networked World](#), Speech, Rt Hon William Hague, Thursday, 1 July 2010.

<sup>249</sup> Conservative MP for Wells until 2010.

<sup>250</sup> [HC Deb 20 February 2008, c460-1](#)

<sup>251</sup> Daniel Larison, ‘Does the Anglosphere Make Any Sense?’, *The American Conservative*, 14 January 2006.

<sup>252</sup> John Laughland, ‘Why the “Anglosphere” Is No Alternative for the EU’, *The Brussels Journal*, 2 January 2008.

<sup>253</sup> Owen Harries, ‘The Anglosphere illusion’, *The National Interest*, Spring 2001.

<sup>254</sup> ‘Census: White majority in U.S. gone by 2043’, *Associated Press*, 13 June 2013.

relationships for the pivot to Asia is that between the US and Australia, but the military relationship with Australia is only a part of the pivot. National Security Adviser Tom Donilon restated the priorities of the pivot in 2013. He called for a “stable security environment and a regional order rooted in economic openness, peaceful resolution of disputes, and respect for universal rights and freedoms” in Asia. He said that this would be achieved through:

- Strengthening alliances
- Deepening partnerships with emerging powers.
- Building a stable, productive and constructive relationship with China.
- Empowering regional institutions.
- Helping to build a regional economic architecture.<sup>255</sup>

All this sounded rather like what Anglospherists might recommend, except that it did not include the UK, and points to another problem with the Anglosphere: the imbalance in the weight of its prospective members. If it is not a formal union; it would be one of the less important groupings for the US. Julian Lindley-French of the Atlantic Council thought an informal Anglosphere may become increasingly significant, as the US seeks political legitimacy and some military assistance in a dangerous world. The idea that it should be based on shared ideas would be a strength, but, he argues, it would be difficult to make it work.<sup>256</sup> Christopher Hitchens has argued that the English-speaking culture is powerful and that the significance of the growth of English as the world language is underestimated even by Anglospherists. Nevertheless, he thought any formalisation of the Anglosphere unlikely and undesirable:

I myself doubt that a council of the Anglosphere will ever convene in the agreeable purlieu of postcolonial Bermuda, and the prospect of a formal reunion does not entice me in any case. It seems too close to the model on which France gravely convenes its own former possessions under the narrow banner of *La Francophonie*. It may not be too much to hope, though, that, along with soccer [...], some of the better ideas of 1649 and 1776 will continue to spread in diffuse, and ironic, ways.<sup>257</sup>

### ***Common Security and Defence Policy***

The EU's security and defence policy 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 ten years have come about largely as a result of Franco-British proposals. While generally supportive, successive UK governments have also 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

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<sup>255</sup> 'Remarks By Tom Donilon, National Security Advisor to the President: "The United States and the Asia-Pacific in 2013"', White House press release, 11 March 2013.

<sup>256</sup> Julian Lindley French, 'The Anglosphere: Two Hundred Years On', 18 June 2012.

<sup>257</sup> Christopher Hitchens, 'An Anglosphere Future', *City Journal*, Autumn 2007.

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**

This history of CSDP is charted in a number of Library Research Papers.<sup>258</sup> Over the last ten 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<sup>259</sup> 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.<sup>260</sup>

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.<sup>261</sup>

- **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.<sup>262</sup>

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<sup>258</sup> RP00/20, *European Defence: From Pörschach to Helsinki*; RP00/84, *Common European Security and Defence Policy: A Progress Report*; RP01/50, *European Security and Defence Policy: Nice and Beyond*; RP06/32, *European Security and Defence Policy: Developments Since 2003*; RP08/09, *The Treaty of Lisbon: amendments to the Treaty on European Union* and SN04807, *Priorities for ESDP under the French Presidency of the EU*.

<sup>259</sup> 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.

<sup>260</sup> Further information on EU Battlegroups is available at: [EU Battlegroup Factsheet](#), April 2013.

<sup>261</sup> Further information is available at: <http://www.eda.europa.eu/Aboutus/Whatwedo/pooling-and-sharing>.

<sup>262</sup> To improve co-ordination and strengthen civil-military synergies between the three CSDP operations currently being conducted in the Horn of Africa: Operation Atalanta (EUNAVFOR), EU training Mission Somalia and the planned civilian mission EUCAP Nestor which will operate throughout the region.

- **Permanent Structured Co-operation:** the 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.<sup>263</sup>
- **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.<sup>264</sup>

### **Implications of a UK withdrawal**

#### *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.<sup>265</sup> It is also one of only five EU countries capable of deploying an operational HQ, and therefore of taking command of a mission.<sup>266</sup> Military assets are provided on a case-by-case basis and, with the exception of Common Costs,<sup>267</sup> are financed on a national basis.<sup>268</sup> Thus far, the UK has been a consistent contributor to EU-led operations and since the Battlegroups concept was launched in 2004, the UK has provided a Battlegroup three times (in the first half of 2005, the latter half of 2008 and the latter half of 2010). The UK will also provide a Battlegroup in conjunction with Sweden, Latvia, Lithuania and the Netherlands in the second half of 2013.

If the UK were to withdraw from the EU, from a military power perspective, the EU would arguably be disadvantaged, with fewer assets and capabilities 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. Indeed, some may argue that fewer military commitments at a time of economic austerity and significant reductions in the size of

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<sup>263</sup> See for example “The CER’s guide to the constitutional treaty”, *Centre for European Reform*, 7 July 2004.

<sup>264</sup> For more detail on these directives see Standard Note 4640, [EC Defence Equipment Directives](#), June 2011.

<sup>265</sup> The UK defence budget is currently 2.6% of GDP, compared to France which spends 1.9% and Germany which spends 1.2% (IISS, *Military Balance 2013*).

<sup>266</sup> France, Germany, Greece, Italy and the UK.

<sup>267</sup> The common costs of CFSP and CSDP civilian crisis management activities are met from the general EU budget and divided among EU Member States on a GNI-related basis. In 2012 the UK’s share of common costs was 14.2% which resulted in total payments of £2.246 million. This covered the UK’s contribution to Operation Althea (Balkans), operation Atalanta (counter piracy), phase two of the EU training mission in Somalia and the common costs of administration in Brussels and military exercises (MOD Policy: [Meeting NATO and EU Treaty Defence Commitments](#)).

<sup>268</sup> 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”.

the Armed Forces should be welcomed. Yet as the MOD itself acknowledges, 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.<sup>269</sup>

Ensuring the success of CSDP operations remains in the UK's interest. However, this is based on the assumption that a UK outside the EU would not choose to continue its participation 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.<sup>270</sup> Several non-EU countries, including Canada, Norway and more recently the US<sup>271</sup> 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 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)<sup>272</sup> and is involved in a number of bilateral capability development initiatives with other EU Member States. Even though a non-EU UK could not participate in the EDA, it could continue participating in EDA projects as a third party country.<sup>273</sup> 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. Indeed, the UK has been examining its possible withdrawal from the EDA since 2010 and a further review of membership is expected in late 2013.<sup>274</sup> Therefore, any withdrawal or change of status as a result of the UK leaving the EU is unlikely to have a major impact. The UK already adopts a multi-faceted approach to defence procurement and is likely to continue doing so.

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<sup>269</sup> MOD Policy: [Meeting NATO and EU Treaty Defence Commitments](#).

<sup>270</sup> See Research Paper 03/05, *NATO: The Prague Summit and Beyond*, January 2003.

<sup>271</sup> Respectively, *Official Journal of the EU* L315/21, 1/12/2005; OJL 67, 14/3/2005, and OJ L143/2, 31/5/2011.

<sup>272</sup> Further information on OCCAR is available at: <http://www.occar.int/185>.

<sup>273</sup> 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.

<sup>274</sup> HC Deb 12 February 2013, c40WS

### *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 had 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 for all future EU military operations.<sup>275</sup> 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.

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, and at the time prompted the UK government to threaten to wield its veto over the issue.<sup>276</sup> The likelihood of the proposals re-surfacing at some point in the immediate future is therefore high. In September 2012, for example, eleven EU Member States (excluding the UK)<sup>277</sup> 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".<sup>278</sup> 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.<sup>279</sup> That communiqué has been regarded as a precursor to the European Council summit in December 2013, at which EU defence policy has already been earmarked as one of the main themes. Preparatory work on strengthening CSDP, the enhancement of defence capabilities and strengthening Europe's defence industry, has already begun. On the latter, the European Commission is expected to publish a Communication later in 2013. 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 in 2003 and 2011), would be limited to the diplomatic pressure it could bring to bear through other foreign policy channels.

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 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

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<sup>275</sup> For more detail see Standard Note 4807, *Priorities for ESDP under the French Presidency of the EU*.

<sup>276</sup> See "Britain blocks EU plans for operational military headquarters", *Daily Telegraph*, 18 July 2011 and "Big five tell Baroness Ashton to bypass Britain over EU military HQ", *Daily Telegraph*, 8 September 2011.

<sup>277</sup> Austria, Belgium, Denmark, France, Germany, Italy, Luxembourg, Netherlands, Poland, Portugal and Spain.

<sup>278</sup> As reported in "Ministers call for stronger EU foreign policy chief", *EU Observer*, 18 September 2012.

<sup>279</sup> "Five EU countries call for new military structure", *Stratrisks*, 18 November 2012.

opportunity to progress CSDP without opposition from one of Europe's largest military powers and arguably the main source of opposition thus far too many proposals 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 CDSP – 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.<sup>280</sup>

### *EU Defence Directives*

The defence directives 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”.<sup>281</sup>

Both directives were transposed into UK law in August 2011. Being relatively new, little assessment of their success or impact on UK policy has been made to date.<sup>282</sup> 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.<sup>283</sup> 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,<sup>284</sup> 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

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<sup>280</sup> Philip Worré, “[The consequences of a British exit from the EU and CSDP: An Analytical Timeline](#)”, *ISIS Europe Occasional Paper*, January 2013.

<sup>281</sup> Defence Select Committee, *Defence Acquisition: Government Response to the Committee's Seventh Report of Session 2012-2013*, HC73, May 2013.

<sup>282</sup> The European Commission's first report on the functioning and impact of the directives is not due until 2016.

<sup>283</sup> 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*.

<sup>284</sup> See [Commission list](#) of the infringement cases it has opened in the past with respect to this directive.

respective domestic defence industrial bases.<sup>285</sup> 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”.<sup>286</sup> More recently the European Commission has expressed 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.<sup>287</sup>

## 6 The devolved legislatures

Devolution in the UK is governed by a UK statutory framework: the structures and devolved competences would not be affected automatically by withdrawal from the EU. However, withdrawal would have some implications. EU regional funding tends to benefit areas in Scotland, Wales and Northern Ireland more than it does England. Likewise, to the extent that they have access to EU institutions within areas of devolved competence, the devolved nations enjoy an international profile and connections which would be costly to replicate through a presence in a set of country-specific diplomatic missions.

Finally, there are aspects of the devolved arrangements which reflect EU law. Where these are reserved, and would come under UK law in the future, they would change as the UK Parliament saw fit. Insofar as they affect areas of devolved competence, they would change as the devolved legislatures preferred. In other words, if at present the policy on a devolved matter in Scotland, Wales and Northern Ireland is constrained by EU law, a removal of that constraint, because of a UK withdrawal from the EU, would allow the three nations to develop their own policies. These might diverge from one another, creating greater fragmentation within the UK than at present. Examples might include agriculture, animal welfare and the environment, all of which exist in a relatively strong framework of EU policy and law. The UK Parliament would be able to take an interest in this, and place constraints of its own, since it retains the rights to legislate in devolved matters and to change the devolution arrangements, but there might be a political cost in doing so.

Therefore, one implication of the UK leaving the EU would be greater potential for the devolved legislatures to create policies sensitive to their own circumstances; the corollary would be a removal of standards intended to safeguard rights, and to ease the freedoms of trade and movement.

Withdrawal from the EU would not affect the other international obligations which constrain the exercise of devolved competence, such as European human rights law (which derives mainly from the Council of Europe), the UK’s obligations under non-EU treaties, and general international law.

### 6.1 Scotland

A majority in Scotland supports EU membership. However, Scotland’s position, as opposed to that of Wales or Northern Ireland, is complicated by the uncertainty surrounding its future

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<sup>285</sup> See “EU procurement directive prompts industry concern”, *Jane’s Defence Weekly*, 9 February 2011.

<sup>286</sup> “Greece to boost industry with contentious contracts”, *Jane’s Defence Weekly*, 4 May 2011.

<sup>287</sup> See “Europe poised for confrontation over Bulgarian F-16 procurement”, *Jane’s Defence Industry*, 13 February 2013.

constitutional status with regard to the rest of the UK, as well as some uncertainty over the continuity of Scotland's EU membership if it became independent.<sup>288</sup>

### ***Scottish public opinion on EU membership***

According to an [Ipsos MORI poll](#) published on 14 February 2013, over half of the Scottish electorate (58%) think there should be a referendum on UK membership of the EU, compared with just over a third who disagree (36%). Just over half of Scots (53%) said they would vote to stay in the EU, compared with a third who said they would vote to leave (34%). This was in contrast to [November 2012 data](#) on attitudes in England, when half said they would vote to leave the EU compared with 42% who would vote to stay in.

Ipsos MORI also asked participants in the [February 2013 poll](#): “regardless of how they intend to vote in the 2014 referendum, whether an independent Scotland should or should not be a member of the EU”. According to the results six in ten Scots (61%) think that an independent Scotland should be a member of the EU, compared with around three in ten who think it should not (33%).

### ***Scottish Government views***

Following David Cameron's announcement of an in/out EU referendum after a renegotiation of the UK's relationship with the EU, Alex Salmond, the Scottish First Minister, was reported as saying that David Cameron had “fundamentally changed the debate about Scotland's future by bringing forward a draft Bill for a referendum on European Union membership”, that the plan for a referendum was “the wrong move and is taking us down the wrong path” and that “real uncertainty on Scotland's future is coming from Westminster”.<sup>289</sup> Commentators have suggested that the uncertainty an in/out referendum would create for the future of Scotland, should it vote to remain in the UK, may have an impact on the decision of voters when they vote in the independence referendum.

The SNP has in the past used the possibility of EU membership for Scotland as a balance against those who argue that the country would lose influence and security were it outside the UK, and membership of a union such as the EU would bring Scotland all the underpinning it might need as a relatively small state in the international arena. Arguments might be made about the relative merits of remaining in a non-EU UK versus becoming an independent state within the EU, but it is hard to predict what, if any, profile this might have in the debate ahead of the Scottish referendum.

### ***The Scottish independence referendum***

On 18 September 2014 a referendum will be held in Scotland on the question of independence from the UK. If this is negative, so that Scotland remains in the UK, then the question of the UK's departure from the EU will have a similar impact on Scotland as elsewhere. In other words, Scotland would no longer be part of the EU, but it might still be covered by some legislation or other arrangements from the EU period if that were the outcome of a negotiated exit. As mentioned above, it would not face constraints under EU law in the exercise of its devolved powers, and its regions would not benefit from EU funding.

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<sup>288</sup> For further information on Scotland and the EU, see Standard Note 6110, [Scotland, independence and the EU](#), updated 13 July 2012.

<sup>289</sup> [STV News, 14 May 2013](#), “Draft EU referendum Bill ‘fundamentally changes’ independence debate”.

Scotland's future relationship with the EU has formed a key component of the debate ahead of the independence referendum, with the Scottish Government taking the view that Scotland would negotiate its membership of the EU (to begin on the day of independence) from a position of EU membership as part of the UK. Pro Unionists have emphasised that a vote for independence would bring uncertainty both in terms of:

- whether an independent Scotland would be an automatic member of the EU or would have to reapply;
- what the terms of that membership would be, with issues such as the UK's opt-out from the Schengen free travel area and the Euro, and how these would apply to Scotland, still to be determined.

### ***Timing issues***

At the point of the Scottish referendum, the UK will not be in a different relationship with the EU because the Scottish referendum falls before the next UK general election. If the Scots vote for independence, the Scottish Government's plan is for independence to start in March 2016, ahead of elections in May 2016. The Deputy First Minister, Nicola Sturgeon told the Scottish Parliament on 13 December 2012 that between autumn 2014 and May 2016, "In parallel to negotiations with the UK Government, it would be our intention to negotiate the terms of an independent Scotland's continuing membership of the EU".<sup>290</sup>

It is highly unlikely that the UK would have left the EU by that stage. On current projections it seems likely that, if he is still Prime Minister, David Cameron would either be in the process of negotiating a new relationship with the EU to present to the public in a referendum, and presumably steering legislation through Parliament to allow such a referendum to be held, or conceivably preparing for that referendum. Therefore, the referendum on departure from the EU would take place in a smaller, continuing-UK of England, Wales and Northern Ireland.

A complicated picture might emerge were Scotland to leave the UK after the UK had left the EU, or during negotiations over its departure, since a Scotland in the process of becoming independent and joining the EU might have to protect certain positions, for instance in order to satisfy accession criteria, that a departing UK might be seeking to undo. However, leaving aside the double hypothesis this involves, it seems relatively unlikely that this timescale would arise. It is much more likely, were Scotland to vote for independence, that this would be well under way or even achieved before a UK referendum could be held. It may be that the more interesting question is: what impact would Scottish independence have on attitudes in the continuing-UK towards the EU?

Commentators have examined the potential implications of a UK in/out referendum on the Scottish independence referendum campaign. For example, in a blog for the [Spectator on 9 May 2013](#) Professor Alan Trench argued that:

A very early EU poll would be seriously rushed. But at least it would mean that the issue of the UK's future in Europe would be resolved before Scotland's place in the UK was. Scottish voters would be able to cast their votes on independence knowing whether they were choosing to remain in a UK-in-Europe or leave it, or to stay in the EU but leave the UK, or (conceivably) to

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<sup>290</sup> [Scottish Official Report, 13 December 2012.](#)

find themselves outside both Unions. However difficult those choices, at least Scottish voters will know what the choice is.

Angus Roxburgh, in an article published in the [Guardian, 19 May 2013](#), wrote:

To put it crudely, the simple way for Scotland to avoid the risk of being cast out of the EU would be to vote for independence from the UK before the English get the chance to vote on Europe....

Scotland will hold its own referendum, in September 2014, to decide whether to stay in the UK. Not surprisingly, the SNP is already arguing that leaving the UK might be the only way for Scotland to guarantee it remains in the EU.

### **EU policy issues**

Withdrawal by the continuing-UK would be of relevance to an independent Scotland insofar as states have an interest in and are affected by the affairs of their neighbours. If the UK and an independent Scotland negotiated, for instance, free movement across their borders, then their respective positions in relation to the EU would be of interest. If the UK left the EU and public opinion were against negotiating continued freedom of movement by EU nationals, then there would be a potential loophole if freedom of movement were accepted for Scottish nationals at the same time that Scotland accepted it for other EU nationals.

Scottish independence would also impact on the rest of the UK if it remained in the EU: as Professors James Crawford and Alan Boyle pointed out in December 2012:

150. It does not follow that the rUK's position in the EU would be unaffected by Scottish independence. The consequent reduction in its territory and population could affect any of the UK's terms of membership that depend on those factors. Some might be matters for negotiation, though presumably the UK would have little scope to resist proportionate reductions.<sup>291</sup>

## **6.2 Wales**

Wales' engagement in the EU 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 over €5 billion to Wales for the period 2007-2013.

Wales has primary responsibility for transposing and implementing EU legislation that fall 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. 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 employment law, public procurement rules, and rights of equal access for EU citizens).

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<sup>291</sup> Annex A: [Opinion: Referendum on the Independence of Scotland – International Law Aspects](#), 10 December 2012.

For other policy areas where the UK has the lead competence, the Welsh Government, National Assembly for Wales and other Welsh stakeholders and organisations have an interest in the potential impact that changes in EU policy and legislation within these areas could have on the ground 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.

### ***Value of EU membership to Wales***

The First Minister for Wales, Carwyn Jones AM has, on a number of occasions over the past year, 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 the EU's economic impact on Wales in a statement issued on Europe Day, 9 May 2013:<sup>292</sup>

The EU remains Wales's largest trading partner, with more than 500 firms in Wales exporting nearly £5 billion annually to other Member States and with around 150,000 jobs in Wales, depending on that trade. Additionally, more than 450 firms from other Member States are located in Wales, employing over 50,000 people.

In a [statement on 23 January 2013](#), he expressed his concerns about the potential negative impact that leaving the EU could have on Wales economically and the dangers of uncertainty:

...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. [...]

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...

Wales currently receives around £1.9 billion EU Structural Funds from the Cohesion Policy for programmes covering West Wales and the Valleys ('Convergence' region) and East Wales ('Competitiveness' region). Wales also receives around £350 million from the Common Agriculture Policy per annum in direct income, support to farmers and in addition received €340 million for its rural development plan for 2007-13. It has been estimated that the CAP provides around 80-90% of the basic farm income in Wales.<sup>293</sup> The Finance Minister for the Welsh Government, Jane Hutt AM, said that EU Structural Funds had "helped over 47,000 people in Wales into work and nearly 128,000 to gain qualifications" and had also "helped to create over 5,000 new enterprises and 18,000 jobs".<sup>294</sup>

In addition, organisations from Wales are eligible to participate in a range of EU funding programmes supporting a number of EU policy goals. Examples of this include:

- the EU Research Programme (FP7 for 2007-2013), where Wales has secured around £100 million EU funding through Welsh universities and businesses;

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<sup>292</sup> <http://wefo.wales.gov.uk/news/latest/130510eumembership/?skip=1&lang=en> (accessed 19 June 2013).

<sup>293</sup> [Welsh Government written evidence](#), December 2010, to the House of Commons Environment, Food and Rural Affairs Committee's inquiry: 'The Common Agricultural Policy after 2013'.

<sup>294</sup> <http://wefo.wales.gov.uk/news/latest/130510eumembership/?skip=1&lang=en> (19 June 2013).

- the Territorial Co-operation Programmes (including a Wales-Ireland Cross Border Co-operation programme worth around £40 million in EU funding);
- the Lifelong Learning Programmes (supporting innovation in educational systems and mobility of young people, students, and educational professionals across Europe);
- Culture 2013, LIFE Plus (environmental programme), Intelligent Energy, European Fisheries Fund and many more.<sup>295</sup>

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.<sup>296</sup>

### ***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. These include:

- Transposition of EU Directives in areas which have been devolved to the National Assembly and Welsh Ministers. 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.
- Complying with all EU laws: The Welsh Government, along with other designated authorities in Wales (such as local authorities), has a responsibility to ensure compliance with other EU laws (Regulations and 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 ensures that such laws are complied with by holding Welsh Ministers to account for their decisions and responsibilities through its business and committee structures.

The First Minister has recently raised concerns, however, about the current mechanisms in place to represent 'devolved' interests in Brussels and the formulation of a UK Government view. Speaking at the *Wales and the Changing Union* conference in Cardiff, 30 March 2012, he said the arrangements were "increasingly unsatisfactory and unsustainable" and that "a revised way of dealing with EU business should also form a wider debate about the UK's future". He 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.

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<sup>295</sup> For more background information on Welsh participation in EU Structural Funds 2007-2013 (including Territorial Co-operation programmes) visit: [Welsh European Funding Office \(WEFO\)](#). On Welsh participation in EU research, innovation and lifelong learning programmes see the [report](#) (February 2011) by the Assembly's (then) European and External Affairs Committee, and more recently (on EU research funding) the report Enterprise and Business Committee' [stage two report into Horizon 2020](#) undertaken during 2013.

<sup>296</sup> <http://www.partyofwales.org/news/2012/11/21/plaid-mep-wales-will-lose-out-if-budget-cut/> (accessed 19 June 2013).

...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.

### ***Wales' voice 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, 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 (Ty 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 participate in a host of other formal and informal EU networks including: 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.
- 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, as well as having numerous Honorary Consuls from different EU countries based in Wales.

### ***Wales in or out...***

A [poll in February 2013 by ITV's Sharp End](#) supported the First Minister's statement that Wales supports EU membership. 42% of respondents expressed a desire to remain in the EU, 35% wanted Wales to leave, whilst 22% were undecided.

## **6.3 Northern Ireland**

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”.<sup>297</sup> 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”.<sup>298</sup> It has been suggested that a “British withdrawal, however unlikely, would be a source of enormous instability and turbulence for Ireland”,<sup>299</sup> 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<sup>300</sup> and East-West<sup>301</sup> 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.<sup>302</sup> Both the Northern Ireland Assembly and the Executive have been proactively working to develop ‘European engagement’<sup>303</sup> and the Northern Ireland Assembly has increasingly sought to engage with European issues (there have been two Committee inquiries examining this issue).<sup>304</sup>

### ***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”.<sup>305</sup> 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.<sup>306</sup> UK withdrawal from the EU 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

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<sup>297</sup> The Institute of International and European Affairs (Aug 2012) [Towards an Irish Foreign Policy for Britain](#).

<sup>298</sup> [Joint statement](#) by the Prime Minister David Cameron and the Taoiseach, Enda Kenny, 12 March 2012.

<sup>299</sup> The Institute of International and European Affairs (Aug 2012) [Towards an Irish Foreign Policy for Britain](#).

<sup>300</sup> This refers to co-operation between Northern Ireland and the Republic of Ireland.

<sup>301</sup> This is co-operation between the Republic of Ireland and Great Britain.

<sup>302</sup> 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”.

<sup>303</sup> Northern Ireland Executive (May 2012) [European Priorities 2012-13 – Winning in Europe](#).

<sup>304</sup> 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.

<sup>305</sup> *Northern Ireland: 40 Years of EU Membership*, Journal of Contemporary European Research, vol. 8 Issue 4 (2012)

<sup>306</sup> 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.

both sides of the border as a result of the devolution of policing and justice powers to the Northern Ireland Assembly.<sup>307</sup> The Northern Ireland Justice Minister, Alan Shatter, told the Dáil that the Garda was committed to improving cross border co-operation and that he would work with David Ford and the UK Secretary of State for Northern Ireland to ensure effective responses to terrorism and cross-border terrorism. However Mr Shatter was concerned that a UK withdrawal from police and justice measures “would be a retrograde step in the area of security co-operation”.<sup>308</sup>

The UK and the RoI make great use of the EAW. Figures indicate that since 2004, of the 50 EAW requests that Northern Ireland made to other Member States, 30 were made to Ireland.<sup>309</sup> 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”.<sup>310</sup> 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 prisons, the 1957 Convention was not an adequate alternative between the UK and Ireland.<sup>311</sup>

### **EU funding**

Northern Ireland has benefited significantly from EU funding. Table 1 below provides information on funding from six EU Regional Policy Programmes for 2007-2013:

Table 1 EU Regional Policy Funding 2007/13

<b>Programme</b>	<b>€m</b>
European Sustainable Competitiveness Programme	307 million
European Social Fund Programme	165.7 million
INTERREG IVA	192 million
PEACE III	225 million
European Fisheries Fund	18 million
Rural Development Programme	171 million
<b>Total</b>	<b>1,078 million</b>

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

<sup>307</sup> Evidence given by David Ford, Northern Ireland Justice Minister to House of Lords European Union Select Committee “EU police and criminal justice measures.”

<sup>308</sup> Alan Shatter, TD “[Official Report of Dáil Eireann](#)” 15 May 2013.

<sup>309</sup> Lords EU Committee “EU Police and Criminal Justice Measures: The UK’s opt-out decision”, 2012-2013, p 91.

<sup>310</sup> Ibid para 264, pg 92.

<sup>311</sup> Ibid para 264, see executive summary and pg 92.

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.<sup>312</sup> The sector is also an important employer in Northern Ireland, constituting around 4% of the total N.I. workforce.<sup>313</sup> 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<sup>314</sup> about the possible effects of a UK withdrawal on trade in general and with the RoI in particular. A worst case scenario might see the introduction of tariff controls on the border. Table 2 shows exports to the RoI accounted for just under a quarter (24%) of total exports and just under a half (48%) of exports to the rest of the EU.<sup>315</sup> Just over a half (51%) of all Northern Ireland manufacturing exports were to other EU Member States.

Table 2: Destination of NI Manufacturing Exports 2011/12

	(£m)	%
Ireland	1,269	24
Other EU	1,388	27
Outside EU	2,581	49
	5,238	100

The destination of exports by 'high potential' service companies in Northern Ireland is outlined in the table below. Exports from this sector to the RoI were valued at £69.8m 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 £88.4m 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).<sup>316</sup>

Table 3: Destination of exports by NI 'high potential' service companies 2011/12

	(£m)	%
Ireland	69.8	29
Other EU	18.6	8
Outside EU	151.9	63
	240.3	100

The data in Table 3 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

<sup>312</sup> 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.

<sup>313</sup> Northern Ireland Council for Voluntary Action (2012) State of the Sector VI, p9.

<sup>314</sup> See for example The Belfast Telegraph 24 January 2013.

<http://www.belfasttelegraph.co.uk/business/business-news/take-care-before-you-rip-up-eu-deal-16265390.html>

<sup>315</sup> DFP *Results from the Northern Ireland Manufacturing Sales & Exports Survey 2011/12* (December 2012).

[http://www.detini.gov.uk/mses\\_publication\\_2012\\_-\\_mses\\_publication\\_pdf4.pdf](http://www.detini.gov.uk/mses_publication_2012_-_mses_publication_pdf4.pdf)

<sup>316</sup> DFP *Exporting Northern Ireland Services Study 2010* July 2012.

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 to developing 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 the Framework 7 programme, 84 included participation by the regions' universities. Through the work of the Barroso Task Force the European Commission has 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.<sup>317</sup> The Task Force, the first to be established for a single EU region, would more than likely cease to exist should the UK withdraw from the EU.

### ***Agriculture, the agri-food industry and the environment***

Agriculture and the wider agri-food industry are key industries in Northern Ireland. Based on 2011 data, agriculture accounted for 1.1% of total Gross Value Added (GVA) as compared to the overall UK figure of 0.7%.<sup>318</sup> Agriculture also accounted for 3.3% of total civil employment in Northern Ireland as compared to the overall UK figure of 1.2%.<sup>319</sup> The biggest single EU-related benefit for Northern Ireland agriculture is in the form of direct payments which totalled £292 million in 2012 (£244 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, farmers and 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)<sup>320</sup>. Without direct support the diversity of Northern Irish agriculture could diminish, as economically unviable sectors such as the pig sector 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 same access to many EU markets that are 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

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<sup>317</sup> 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)

<sup>318</sup> [DARD \(2012\) Statistical Review of Northern Ireland Agriculture 2012](#)

<sup>319</sup> Ibid

<sup>320</sup> Agri-Food Strategy Board (April 2013) [Going for Growth, A Strategic Action Plan in support of the Northern Ireland Agri-Food Industry](#).

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 (Pillar 1) and agri environment schemes (Pillar 2) could greatly reduce the number of farms and farmers in Northern Ireland, which could see 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 688 fishermen on 379 licensed vessels<sup>321</sup>. Despite its relatively small size, the industry does however make a significant contribution to the economy of the three South Down villages (Kilkeel, Portavogie and Ardglass) where the majority of boats are based. In 2011 the total value of fish landed in Northern Ireland's three primary fishing ports amounted to £24.2 million, with shellfish - specifically prawns - making up the most significant part of the overall catch. As a result of TAC changes, the majority of the Northern Irish fleet has focussed on the catching of prawns within 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 utilised 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 ongoing Common Fisheries Policy reform process. The current Northern Ireland EMFF has been allocated a total of €18.1 million for 2007-2013. This figure, which is matched by the N.I. Department of Agriculture and Rural Development (DARD), means that fishermen and fishing communities have access to grants worth a total of €36 million. 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 fleet. 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

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<sup>321</sup> [Marine Management Organisation \(2012\) UK Sea Fisheries Statistics 2011 Table 6 pg 16.](#)

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).<sup>322</sup> 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, are in receipt of social housing.<sup>323</sup>

Movement of persons between the UK and the RoI, the Channel Islands or the Isle of Man is undertaken under an immigration agreement which establishes the Common Travel Area (CTA).<sup>324</sup> 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 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 due to 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

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<sup>322</sup> 2011 Census Table QS206NI Country of Birth:  
[http://www.ninis2.nisra.gov.uk/Download/Census%202011\\_Excel/2011/Country%20of%20Birth%20-%20Full%20Detail\\_QS206NI.XLS](http://www.ninis2.nisra.gov.uk/Download/Census%202011_Excel/2011/Country%20of%20Birth%20-%20Full%20Detail_QS206NI.XLS).

<sup>323</sup> As at 31 July 2012. Northern Ireland Housing Executive. Equality Bulletin No. 41 – BME and migrant worker mapping update. February 2013.

<sup>324</sup> This is established in Section 1(3) of the *Immigration Act 1971*.

IVA cross border programme, managed by the Special EU Programmes Body.<sup>325</sup> 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,<sup>326</sup> and for the period 2007-2013, £30 million was attributed to funding a range of programmes<sup>327</sup> separately from the core Departmental funding.<sup>328</sup> 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.<sup>329</sup>

## 7 Further reading

### Books

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Patrick Minford et al, *Should Britain Leave the EU? An Economic Analysis of a Troubled Relationship*. See [Introduction, Summary and Conclusions: Why the UK should Renegotiate or Leave the EU](#)

F Nicholson and R East, *From the Six to the Twelve: the Enlargement of the European Communities*, chapter entitled “Greenland: Withdrawal”, 1987.

### Journal and press articles

Laura Bolado, Pagonia Basia, Albane Mackin, Jonathan Kingham, Simon Dodd, “[If the UK left the EU then...](#)”, *Accountancy Age*, 25 January 2012.

*BBC News*, 14 May 2013, [UK and the EU: Better off out or in?](#)

*Financial Times*, 19 May 2013, “[It makes little sense but I’m a eurofanatic](#)”, Wolfgang Münchau

*IP-Die Zeitschrift*, “[Die britische Frage Um Großbritannien in der EU zu halten, muss vor allem Deutschland mehr tun](#)”, 1 September 2012, Hans Kundnani

Michael Nash, “The Greenland Option”, *New Law Journal*, 12 July 1996.

### Think tanks, foreign and international organisations

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<sup>325</sup> CAWT website <http://www.cawt.com/> .

<sup>326</sup> Personal correspondence with Special EU Programmes Body 18.6.13.

<sup>327</sup> 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.

<sup>328</sup> Personal correspondence with Special EU Programmes Body 18.6.13.

<sup>329</sup> The European Economic Area (EEA) comprises the countries of the [European Union \(EU\)](#), plus [Iceland](#), [Liechtenstein](#) and [Norway](#).

Centre for European Policy Studies (CEPS) Commentary "[How to withdraw from the European Union? Confronting hard reality](#)", Adam Łazowski, 16 January 2013

Centre for European Reform (CER), [The Continent or the Open Sea: Does Britain have a European future?](#) David Rennie, 28 May 2012

CER, [Do Britain's European ties damage its prosperity.](#) Philip Whyte. March 2013.

CER, "[Leaving the EU will not set Britain's economy free](#)", Philip Whyte, *CER Bulletin* Issue 88, Feb/Mar 2013.

CER [Tilting at European windmills](#), Katinka Barysch, 29 May 2013

CER, [The CER commission on the UK and the single market](#), John Springford, 7 June 2013

CER, [Can national parliaments make the EU more legitimate?](#) Charles Grant, 10 June 2013

Civitas, [Time to say no: alternatives to EU membership](#), Ian Milne. 2011. In particular Section 5 "How UK would prosper after withdrawal from the EU".

Council on Foreign Relations "[Britain's Place in Europe](#)",(transcript) Speakers: Charles A. Kupchan, Whitney Shepardson, Adam Posen; Author: Michael Mosettig, Peter G. Peterson Institute for International Economics, 6 June 2013

The Euro Future Project, [The Difficult Case for British Membership in the EU](#), Hans Kundnani, May 2013

Euromove, [Britain and the EU: are there alternatives to membership?](#) October 2011

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- An unofficial translation of [Chapter 13 - Other parties' views on Norway's agreements with the EU](#)
- An unofficial translation of [Chapter 28 - The way forward](#)