



## BRIEFING PAPER

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# Brexit: impact across policy areas

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More information has been published on many of the topics discussed in this briefing paper. Check the sub-headings on the parliamentary Brexit hub, [Brexit: next steps of UK's withdrawal from the EU](#), for more recent papers in a particular area.

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# Summary

## Key statistics

### Social

#### Population, 2016

|             | million | % of EU total |
|-------------|---------|---------------|
| EU incl. UK | 510.1   | 100%          |
| Germany     | 82.2    | 16%           |
| UK          | 65.3    | 13%           |
| France*     | 63.7    | 12%           |
| Italy       | 60.7    | 12%           |
| Spain       | 46.4    | 9%            |

#### Unemployment rate (%), Q1 2016

|             | %    | Rank (1=highest) |
|-------------|------|------------------|
| EU incl. UK | 8.8  | ..               |
| UK          | 5.0  | 25               |
| Greece      | 24.3 | 1                |
| Spain       | 20.4 | 2                |
| Germany     | 4.3  | 27               |
| Czech Rep.  | 4.2  | 28               |

\* Figure from 2013, excluding overseas territories

### Economy

#### Gross Domestic Product, 2015

|             | £ billion | % of EU total |
|-------------|-----------|---------------|
| EU incl. UK | 10,625    | 100%          |
| UK          | 1,870     | 18%           |
| Germany     | 2,197     | 21%           |
| France      | 1,583     | 15%           |
| Italy       | 1,188     | 11%           |
| US          | 12,208    | ..            |

#### GDP growth (annual average, 2010-2015)

|             | %    |
|-------------|------|
| EU incl. UK | 1.2  |
| UK          | 2.0  |
| Germany     | 2.0  |
| France      | 1.1  |
| Italy       | -0.3 |
| US          | 2.0  |

### Trade

#### UK's largest export markets, 2014

|             | £ billion | % of total |
|-------------|-----------|------------|
| Total EU    | 228.9     | 44.4%      |
| USA         | 88.0      | 17.1%      |
| Germany     | 43.3      | 8.4%       |
| Netherlands | 34.1      | 6.6%       |
| France      | 30.6      | 5.9%       |
| Ireland     | 27.9      | 5.4%       |

#### UK's largest import markets, 2014

|             | £ billion | % of total |
|-------------|-----------|------------|
| Total EU    | 290.6     | 52.9%      |
| Germany     | 70.6      | 12.8%      |
| USA         | 51.6      | 9.4%       |
| China       | 38.3      | 7.0%       |
| France      | 37.0      | 6.7%       |
| Netherlands | 36.1      | 6.6%       |

### EU budget contributions

#### Highest net contributions, 2014

|             | £ billion |
|-------------|-----------|
| Germany     | 14.2      |
| France      | 6.0       |
| UK          | 5.7       |
| Netherlands | 5.1       |
| Italy       | 4.2       |

#### Highest net contributions per head, 2014

|             | £                |
|-------------|------------------|
| Netherlands | 305              |
| Sweden      | 218              |
| Germany     | 177              |
| Denmark     | 143              |
| UK          | 89 (8th highest) |

Note: EU budget contributions include EU receipts to the private sector. This is the main reason why the UK's net contribution is lower than the £9.8bn [reported by HM Treasury](#).

Sources: Eurostat (social and economy); ONS, *Pink Book 2015* (trade); Commons Library briefing, *EU budget and the UK's contribution*; HMRC for exchange rates



## Trade

Taken as a group, the EU is by far the UK's most important trading partner. In 2015 it accounted for 44% of UK goods and services exports (£222 billion) and 53% of UK imports (£291 billion). The UK imports more from the EU than it exports to it. In 2015 the UK's deficit on trade in goods and services with the EU was £69 billion, while the surplus with non-EU countries was £30 billion. The share of UK exports going to the EU has declined in recent years. In 2002 the EU accounted for 55% of UK exports. This had fallen to 44% by 2015. The share of UK imports from the EU declined from 58% in 2002 to 50% in 2011, before increasing slightly to 53% in 2015.

The UK's new trading relationship with the EU will be the product of negotiation. Options range from membership of the European Economic Area (EEA) to trading under World Trade Organization (WTO) rules. The EEA option would be the closest to EU membership and would largely maintain access to the EU single market but would mean accepting free movement of people and contributions to the EU Budget. The UK would have no direct influence over EU rules if it were a member of the EEA. The WTO option would be the biggest change from the current arrangements. There would be no requirement to accept free movement of people or make EU Budget contributions, but trade between the EU and UK would be subject to tariffs and other barriers to trade.

The EU has negotiated an array of preferential trade agreements with other countries. It is not yet clear what will happen to these agreements with Brexit but most analysts believe they will need to be renegotiated.

## Overall economic impact

Besides the effect on trade, the long-term impact of withdrawal is likely to be on areas such as foreign direct investment (FDI), the UK's contribution to the EU Budget and the effect of immigration on the labour market. The effect on FDI is uncertain, with much depending on the trade arrangements reached with the EU and other countries. Access to the single market is an important determinant of FDI but by no means the only one. Outside the EU, the UK may be able to establish a regulatory regime more favourable to overseas investors, which could offset the effect of its departure.

The UK will continue to make contributions to the EU Budget while it remains an EU Member State. The UK's contribution was an estimated £8.5 billion in 2015, around 1% of total public expenditure and equivalent to 0.5% of GDP. Any future contributions will depend on what arrangements are agreed for the UK's relationship with the EU after leaving. Members of the EEA, for example, contribute to the EU Budget, so if the UK joins the EEA, it is likely to pay into the EU Budget.

Possible changes to immigration rules following the UK's withdrawal from the EU are likely to affect businesses and the economy, if it becomes more difficult for employers to recruit workers from other EU/EEA countries. The extent to which employers are affected will depend on the new rules, but one possibility would be to restrict economic migration to high-skilled migrants (via a points-based system). This would reduce the flow of migrant workers doing low-skilled jobs. Employers may be able to compensate for any changes to immigration rules by recruiting more UK nationals, but this will depend on their ability to find workers with the same skills and to attract workers from a smaller pool of potential recruits.

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

## Business and financial services

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

A huge amount of existing financial services regulation is derived from the EU. The UK has frequently led reform in this area. It is likely, therefore, that a significant amount of this legislation would remain post-withdrawal. The majority opinion of City firms was that the UK should remain in the EU. The main question financial firms have is over the future of 'passporting' – the ability to sell across the EU with a non EU regulator.

## Employment

A substantial component of UK employment law is based on EU law. EU employment law often provides a minimum standard below which domestic employment law must not fall. In some cases EU law has entrenched at an international level provisions that already existed in domestic law: for example, sex and race discrimination and certain maternity rights. In others, new categories of employment rights have been transposed into domestic law to comply with emerging EU obligations. Some of these were resisted by the UK government during EU negotiations (e.g. agency workers' rights and limitations on working time). Commentators differ in their opinions on what the Government will do with EU employment law, but the Brexit Minister, David Davis, said in mid-July: "All the empirical studies show that it is not employment regulation that stultifies economic growth, but all the other market-related regulations, many of them wholly unnecessary".

## Agriculture

Brexit, in all scenarios, means a departure from the Common Agricultural Policy (CAP) and its subsidy and regulatory regime.

EU farm subsidies currently make up to around 50-60% of UK farm income. The UK Government has [guaranteed](#) the current level of direct subsidies to 2020 "as part of the transition to new domestic arrangements".

This is in line with the current CAP funding period and hence the timescale over which farmers and regulators have already invested and planned.

However, it is not clear what levels of support the UK Government will be willing to provide beyond this, or whether it will target subsidies in a different way.

Previous Government positions on CAP reform have indicated that the UK Government and Devolved Administrations would be unlikely to match the current levels of subsidy and would require more 'public goods' in return for any support, such as environmental protection, which the UK Government views as the overarching market failure in this sector.

Farming organisations are anxious to know what support will be available after 2020, the degree of future access to the Common Market and migrant labour, and how imports will be regulated.

On the positive side, they also see opportunities in UK trade deals outside Europe and a simpler farming policy which can focus on UK priorities for a competitive industry. Although, under some exit models e.g. EEA, key areas of frustration in the sector such as elements of EU pesticide and GM regulation would continue where there are concerns that scientific assessment processes have become overtly politicised.

Meanwhile, environmental groups are concerned about the overall level of funding for agri-environment schemes outside CAP and how far future UK agriculture policy would support environmental goals.

### Fisheries

The implications of Brexit for fisheries are highly uncertain. Based on the views of different stakeholders and evidence from existing non-EU European countries, they may include:

- The UK obtaining exclusive national fishing rights over its Exclusive Economic Zone (EEZ) up to 200 miles from the coast. However, the UK may trade off some of these rights in order to obtain access to the EU's EEZ or access to the EU market for fisheries products;
- Impacts on the UK's ability to negotiate favourable fish quotas for UK fishers with the EU. It is not possible to say whether the UK will be more or less able to obtain satisfactory quotas for fishers;
- The identification of a mechanism to enable the UK to negotiate and agree annual fishing quotas with the EU and other countries;
- The introduction of a UK fisheries management and enforcement system. This in many respects may mirror the existing arrangements for managing fisheries, albeit with additional resources required;
- Restrictions on EU market access for fishery products (depending on the outcome of negotiations) and less influence in discussions on determining EU market rules for fish;
- Less certainty around public funding of support for fishing communities or environmental sustainability; and
- Challenges related to coordinating the protection of the marine environment with the EU.

### Environment

The environment is an area in which UK and EU law have become highly entwined. Depending on the terms of Brexit, it may be easier for future UK governments to change environmental standards.

Some have raised concerns that as a result some environmental standards could be lowered. There may be fewer incentives for the UK Government to meet environmental standards if EU enforcement mechanisms do not apply to the UK.

However, some incentives to maintain environmental standards will remain. The Government would still have certain international environmental commitments and some EU standards may still apply if the UK seeks to keep access to the single market. Future governments may also decide to increase standards in some areas.

A particular challenge following Brexit may be ensuring effective ongoing coordination with other countries, as many environmental challenges cannot be tackled in isolation. New mechanisms for coordinating with the EU and between the four nations of the UK might be needed.

## Energy and climate change

EU policy on energy has been to develop a more transparent and open European Energy Market. The UK has a competitive and open energy market, with multinational companies and investors. Links with the EU market are likely to continue. However, it is uncertain how Brexit will affect UK energy policy; emission targets are set into UK law through the [Climate Change Act 2008](#), but exit may give the Government more scope in the way it meets climate targets and how it ensures UK security of supply. A key issue for the industry will be investor confidence in the UK energy market so that capital projects continue. The UK is likely to want to ensure the UK industry continues to interact with the EU market.

An exit would affect the UK's international climate targets under the United Nations Conference on Climate Change (UNFCCC), which it currently negotiates as a part of the EU block. It was recognised in the Balance of Competences Review that negotiating as part of an EU block was beneficial, as it had more influence at an international level than if individual Member States acted alone. Withdrawal from the EU would have to address that lack of a UK-specific target under UNFCCC.

One currently unresolved question is how Brexit would affect the UK's ratification of the Paris Agreement, which the UK signed in April this year. Recently, ministers have reiterated the UK's commitment to tackling climate change but have made no comment on whether, when or how the UK might ratify the Paris Agreement. Some commentators have suggested that Brexit may mean that the Paris Agreement itself has to be recalibrated. A recent briefing from the Department for Energy and Climate Change (DECC) has said "We remain committed to ratifying as soon as possible".

The Select Committee on Energy and Climate Change has recently launched two inquiries exploring [the implications of leaving the EU for UK energy policy](#) and [UK climate change policy](#).

The new Government announced on 14 July 2016 that the previous Department for Energy and Climate Change would become part of a new Department for Business, Energy and Industrial Strategy (DBEIS).

## Transport

On transport, it is far too early to say what impact Brexit will have on aviation, shipping, public transport including rail and bus, and road haulage. Much will hinge on whether the UK remains a part of the EEA or whether it concludes bilateral treaties which oblige it to apply much of the current framework as regards single transport markets (such as Switzerland has). More generally transport prices may be affected by the general economic impact of Brexit – for example if inflation rises so will rail fares; and if the economy experiences a downturn big expensive infrastructure projects might be more difficult to finance.

## Immigration

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

The UK has not opted in to EU measures facilitating legal migration of third-country migrants, but has recognised that there are benefits to practical co-operation and information-sharing with other Member States, for example to strengthen responses to organised immigration crime and current and future migratory pressures.

At the moment, it is very unclear what kind of future relationship the UK might have with the EU and EEA/Swiss states after leaving the EU. A key question, when considering the impact of leaving the EU on immigration policy and the immigration rights of British and EU/EEA citizens, is to what extent the UK might remain bound by EU free movement of people laws post-Brexit. There is unlikely to be any clarity about this until the withdrawal negotiations are underway. The legal status of British and EU expats post-Brexit will be one of the issues to resolve during the UK's withdrawal negotiations.

Leaving the EU does not automatically affect the UK's border controls in northern France, which are based on a bilateral treaty between the UK and France.

The UK will continue to be bound by the 1951 *Geneva Convention on the Status of Refugees* and related pieces of international law

### **Police and justice co-operation**

The UK currently has an opt out arrangement with the EU on policing and criminal justice measures, whereby it can choose which measures to opt in to. The UK has chosen, with parliamentary approval, to opt in to a number of measures, the most significant of which is the European Arrest Warrant (EAW). Others relate to information sharing and participation in EU law enforcement agencies.

Predictions about the consequences of Brexit are of course speculative at this stage and depend on the outcome of negotiations. However, it is likely that the UK would wish to recreate at least some of the existing arrangements. Some matters are covered by Council of Europe treaties (e.g. Convention on the Transfer of Sentenced Persons), although in practice these are generally less detailed and may prove to be less effective. In other areas it may be possible to negotiate bilateral treaties with individual Member States, or with the EU as a whole. It is possible that, without the mutual recognition and trust between EU Member States that underpins the EAW and other measures, these arrangements would be more complicated, expensive or time consuming.

### **Human rights**

A UK withdrawal from the EU would mean that the UK no longer has to comply with the human rights obligations of the EU Treaties. The controversial EU Charter of Fundamental Rights would not apply, and the EU Court of Justice would not have jurisdiction over the UK (except possibly for transitional cases that arose before withdrawal).

Withdrawing from the EU does not mean withdrawing from the separate European Convention on Human Rights. The Government is planning a British Bill of Rights, but Theresa May has said that she does not intend to withdraw from the Convention.

### **Social security**

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

If Brexit means the end of free movement rights, the UK will be able to impose restrictions on access to many social security benefits via immigration law. Entitlement to contributory social security benefits could be limited by limiting access to employment. It will also be possible to restrict the ability of EU nationals to apply for social housing.

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

## Health

Although health care systems are a matter of national responsibility, other aspects of health care – reciprocal access to healthcare through the European Health Insurance Card (EHIC), pharmaceuticals, the working hours of doctors and mutual recognition of qualifications, for example - are regulated to a greater or lesser extent by EU law. The EU also has a significant role in ensuring a cross-border approach to important public health issues, such as preventing pandemics and anti-smoking measures.

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

## Higher education

Universities are concerned about the impact of Brexit on students and research. Brexit could mean the Government will not have to provide student loans or maintenance funding for EU students, which would save money. But the loss of funding for EU students could have an impact on the numbers of EU students coming to study in the UK and this could have a detrimental impact on fee income for universities and on the culture and diversity of universities. But it can also be argued that Brexit could increase places for UK students and charging EU students higher fees as overseas students could maintain, or increase, fee income if UK higher education continued to attract EU students.

The UK may lose access to EU research funding and there are also concerns that the movement of high calibre staff and researchers could be impacted, which could detrimentally affect the quality of research projects.

## Consumer policy

Consumer protection in the UK is currently a complex combination of EU and national law. A huge amount of UK consumer protection regulation is derived from the EU. For example, directives implemented in the UK protect consumers from unsafe products, unfair practices, misleading marketing practices, distance selling etc. It is unclear whether any EU-derived consumer laws would need to be repealed or replaced on Brexit because that will depend to a considerable degree on what form Brexit takes.

## Foreign and defence policy

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

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

Until the UK formally leaves the EU it will remain part of its CSDP planning structures and the EU military operations to which the UK has committed forces.

The impact of Brexit on the UK's military is arguably minimal in the near term. However, the UK's ability to influence or shape the CSDP agenda going forward will be significantly curtailed. Questions have also been raised over future UK defence spending if economic growth predictions fail to materialise in the aftermath of the Brexit vote. The affordability of the MOD's Defence Equipment Plan, should the defence budget be cut at some point in the future, could be brought into question.

The UK's relationship with NATO will be unaffected.

### **International development**

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

### **The devolved legislatures**

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

#### **Scotland**

Around two-thirds of Scots voted to stay in the EU, and the Scottish First Minister, Nicola Sturgeon, would like to find a way for Scotland to remain, despite the overall UK vote to leave.

Scotland has benefited from both pre-allocated and competitive European funds over the last four decades. Between 2014 and 2020 Scotland is set to benefit from around a further €4.6 billion. During the 2014 to 2020 Multiannual Financial Framework, Scotland's programmes will benefit from a total of €985 million; with match funding from the Scottish Government and other public sector organisations, total funding will be around €1.9 billion.

#### **Wales**

Wales has access to considerable funding opportunities from the EU, notably from the Common Agriculture Policy and Structural Funds (as well as many other funding streams). Between 2014 and 2020 Wales is set to benefit from around £1.8bn European Structural Funds investment. Together with match funding, these funds will result in investment of at least £2.7bn across Wales. Nevertheless, Wales voted by 52.5% to 47.5% to leave the EU.

### **Northern Ireland**

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



# 1. Background

## 1.1 Review of the balance of competences

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

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

## 1.2 Negotiating a new UK relationship with the EU

To address these and other UK concerns, in 2015 the then Prime Minister, David Cameron, and other members of the Government, held talks with EU leaders to drum up support for proposals which the Government said would benefit not only the UK but the EU as a whole.<sup>2</sup>

David Cameron had pledged in his [Bloomberg speech](#) in January 2013 to put the final reform package to a referendum by the end of 2017. The [European Union Referendum Act 2015](#), which received Royal Assent on 17 December 2015, provided for a referendum on continued EU membership to be held on 23 June 2016.

At the December 2015 meeting of the European Council, Member States [agreed](#) to work together closely to find "mutually satisfactory solutions" in four broad areas set out in the [Prime Minister's letter](#) to European Council President Donald Tusk on 10 November 2015.

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<sup>1</sup> From summary of final conclusions, [Government press release, 18 December 2014](#).

<sup>2</sup> The EU-UK negotiations are discussed in Commons Briefing Papers 7311, [EU referendum: reform negotiations June to December 2015](#), and 7497, [referendum: UK's EU reform negotiations and the Tusk package](#).

On 17-19 February 2016 the Heads of State or Government of the EU Member States, meeting within the European Council, considered [draft texts](#) submitted by Donald Tusk on 2 February 2016 to address the UK's EU membership concerns.

Agreement was reached on 19 February 2016 on a 'New Settlement for the United Kingdom within the European Union'. The package is set out in Annexes to the [European Council Conclusions](#), 19 February 2016, and in the [Official Journal of the EU, 23 February 2016](#).

### 1.3 The New Settlement for the UK within the EU

The New Settlement contained provisions on economic governance, competitiveness, sovereignty, and social benefits in the context of free movement.<sup>3</sup> David Cameron, satisfied with the New Settlement, announced that "the Government's position will be to recommend that Britain remains in a reformed European Union".<sup>4</sup>

#### **Economic Governance**

There should be no discrimination against non-eurozone countries (such as the UK) because they are outside the eurozone. Non-eurozone countries would not impede further integration in eurozone matters and would not face financial losses due to eurozone 'bail-outs'. Discussion of matters that affect all EU Member States, such as Eurogroup matters, would involve all EU Member States, including non-eurozone members. The Bank of England would remain responsible for supervising the financial stability of the UK.

#### **Competitiveness**

The aims of the single market and free movement of people, goods, services and capital were confirmed. The EU and member States "must enhance competitiveness" and take steps to lower the regulatory burden on businesses. The Commission would review the EU acquis for compliance with subsidiarity and proportionality and will consult national parliaments.

The Commission would introduce by the end of 2016 a new burden review mechanism, monitor progress against the targets set and report to the European Council every year. The EU remained committed to an "ambitious trade policy".

#### **Sovereignty**

The UK would not be committed to further political integration in the EU and the concept of "ever closer union" would not apply to the UK.

National parliaments would have 12 weeks in which to object to a legislative proposal on subsidiarity grounds. There would be a 'red card' procedure: 55% of national parliaments would be able to prevent further discussion in the Council of EU legislative proposals, where they believed power should lie with national legislatures.

The UK would retain its opt-out and opt-in arrangements in measures on policing, immigration and asylum policy, and national security would remain the sole responsibility of the UK Government.

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<sup>3</sup> The New Settlement is discussed in CBP 7524, [EU Referendum: analysis of the UK's new EU Settlement](#), updated 26 May 2016.

<sup>4</sup> [Commons statement, 22 February 2016](#).

### **Social benefits and free movement**

There were clarifications of the interpretation of current EU rules, including that Member States could take action to prevent abuse of rights or fraud, such as marriages of convenience, and that in assessing the potential threat of an individual's behaviour, Member States could take into account the individual's past conduct and act on preventative grounds. The Commission and Member States would improve efforts to prevent abuse and fraud. The UK's position on restricting free movement rights with future EU enlargements was acknowledged.

The free movement rights of non-EU family members of EU citizens would be restricted by amendments to the free movement directive. Another EU law amendment would provide an 'emergency brake' to limit full access to in-work benefits by newly arrived EU workers if a Member State was experiencing an "exceptional situation" (the UK already met the criteria for this). A third amendment would give all Member States an option to index exported child benefits to the conditions of the Member State where the child resided.

The Settlement would come into effect the day after a vote to stay in the EU.<sup>5</sup>

## **1.4 The referendum outcome**

The New Settlement featured little in the referendum campaigns, which focused mainly on the economy and EU immigration.

On 23 June 2016 the UK voted in favour of leaving the European Union. Turnout was 72.2% and Leave won 51.9% of the vote across the UK. Remain took 48.1% of the vote.

The New Settlement did not come into effect.

David Cameron announced on 24 June 2016 that he would step down as Prime Minister. He did not think it was right for him "to try to be the captain that steers our country to its next destination".<sup>6</sup>

Brexit recriminations gave rise to leadership challenges in both the Conservative and Labour parties.

A debate began over when and how the UK would notify the European Council of the UK's intention to withdraw from the EU under Article 50 of the *Treaty on European Union* (TEU).

There were calls for Parliament to approve triggering the Brexit process rather than the Government through Royal Prerogative powers. There have been judicial review claims challenging the Government's ability to trigger Article 50 TEU without recourse to Parliament. A case is being brought by law firm Mishcon de Reya.<sup>7</sup> The Divisional Court (Lord Justice Leveson and Mr Justice Cranston) has ordered the various claims to be joined together and has set a provisional hearing date before the Lord Chief Justice for 15 October 2016, with a possible 'leapfrog' procedure straight to the Supreme Court after that, with a view to it being heard by the Supreme Court in December.<sup>8</sup>

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<sup>5</sup> Questions were raised as to whether it was legally binding or not. This is discussed in CBP 7524.

<sup>6</sup> [Statement](#) in Downing Street, 24 June 2016.

<sup>7</sup> See Mishcon de Reya, 3 July 2016, [Article 50 process on Brexit faces legal challenge to ensure parliamentary involvement](#).

<sup>8</sup> See Brexit Law blog, 20 July 2016, [Article 50 judicial reviews to be heard this year](#).

Remain supporters called for a second referendum. The Scottish First Minister did not rule out a second Scottish independence referendum, given that a majority in Scotland had voted to stay in the EU.

The then Home Secretary, Theresa May, became the new UK Prime Minister on 13 July 2016. She said that Brexit meant Brexit [and](#) “As we leave the European Union, we will forge a bold new positive role for ourselves in the world”. She said she would not trigger Article 50 before the end of 2016, so negotiations will not start until 2017.

As to whether UK citizens will benefit from leaving the EU, this will depend on how the UK Government fills any policy gaps left by withdrawal. In some areas, the environment, for example, where the UK is bound by other international agreements, much of the content of EU law will 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 will also depend on whether the UK seeks to remain in the European Economic Area (EEA)<sup>9</sup> with a view to retaining access to the Single Market - but along with free movement for EEA nationals; or decides to go it alone and negotiate bilateral agreements with the EU along the lines of the Swiss model; or whether it negotiates a different relationship altogether.

This paper looks at the current position of the UK and the EU in a range of important policy areas and how this might change with UK withdrawal from the EU (here referred to as Brexit).

## 1.5 Commons and Lords Library Papers on Brexit-related themes

### Constitutional issues

CBP 7214, [Brexit: some legal and constitutional issues and alternatives to EU membership](#), 28 July 2016

Lords Library note (LLN) 2016-0034, [Leaving the EU: Parliament's Role in the Process](#), 4 July 2016

CBP 7632, [Brexit: what happens next?](#) 30 June 2016

CBP 7551, [Brexit: how does the Article 50 process work?](#) 30 June 2016

### Policy

CBP 7629, [Brexit - implications for pensions](#), 10 August 2016

LLN 2016-0043, [UK-Commonwealth Trade](#), 5 August 2016

CBP 7675, [Brexit and UK immigration and asylum policy: a reading list](#), 2 August 2016

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<sup>9</sup> The EEA consists of all 28 EU Member States, Norway, Iceland and Liechtenstein. The right to free movement throughout the EEA is covered by Article 28 of the [EEA Agreement, Annex V](#) on the Free Movement of Workers and [Annex VIII](#) on the Right of Establishment. Nationals of the EEA EFTA States have the same right as EU citizens to take up an economic activity anywhere in the EU/EEA without being discriminated against on the grounds of their nationality. EU citizens also have the right to work and reside in the EEA EFTA States. Non-economically active persons such as pensioners, students and family members of EEA nationals are also entitled to move and reside anywhere in the EU/EEA subject to certain conditions set out in EU legislation. (From [EFTA website](#), accessed 22 August 2016).

## 21 Brexit: impact across policy areas

- CBP 7628, [Brexit and financial services](#), 1 August 2016
- CBP 7669, [What next for UK fisheries?](#) 28 July 2016
- CBP 7633, [Brexit: how will it affect transport?](#) 25 July 2016
- CBP 7659, [Impacts of immigration on population and the economy](#), 25 July 2016
- CBP 7664, [Brexit and local government](#), 20 July 2016
- CBP 7662, [The UK's points-based system for immigration](#), 18 July 2016
- CBP 7661, [The Common Travel Area and the special status of Irish nationals in UK law](#) 15 July 2016
- Lords Library Note 2016-0039, [NHS and Social Care Workforce: Implications of Leaving the European Union](#), 15 July 2016
- CBP 7393, [Climate change: Ratifying the Paris Agreement](#), 15 July 2016
- CBP 7237, [Support for science](#), 15 July 2016
- CBP 7630, [UK tax after the EU referendum](#), 14 July 2016
- CBP 7435, [Financial Services: European aspects](#), 30 June 2016
- CBP 7638, [UK economy: information for debate on 29 June 2016](#), 29 June 2016
- CBP 7525, [Leaving the EU: How might people currently exercising free movement rights be affected?](#) 27 June 2016
- CBP 6455, [EU budget and the UK's contribution](#), 27 June 2016

### Referendum

- CBP 7678, [Referendum campaign literature](#), 8 August 2016
- CBP 7249, [European Union Referendum Bill 2015-16: Progress of the Bill](#), 7 July 2015.
- CBP 5923, [Overseas voters](#), 4 July 2016
- CBP 7639, [Analysis of the EU Referendum results 2016](#), 29 June 2016
- CBP 7212, [European Union Referendum Bill 2015-16](#), 3 June 2015
- CBP 7486, [The EU referendum campaign](#), 27 January 2016
- CBP 7220, [Reading list on UK-EU relations 2013-16: reform, renegotiation, withdrawal](#), 24 June 2016

## 2. Trade relations

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

EU Member States are part of a customs union, with no tariffs on goods moving between them and a common tariff applied to goods entering from outside the EU. Member States cannot operate independent trade policies, for instance by pursuing bilateral free trade agreements with non-EU countries. Instead, external trade relationships are co-ordinated at EU level through the Common Commercial Policy (CCP). The EU Trade Commissioner acts as the negotiator in multilateral and bilateral trade talks, with the EU Council (ministers from the Member States) and European Parliament making certain formal decisions regarding the commencement and mandate for the negotiations, and approving their final result. The EU recently concluded a trade agreement with Canada and is currently negotiating the Transatlantic Trade and Investment Partnership (TTIP) with the US.<sup>10</sup>

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

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

Services make a very important contribution to the overall EU economy but the trade in services within the Single Market is much less integrated than that of goods. Notwithstanding the fact that services are typically less tradable than goods, evidence submitted to this review attributes this underperformance of the single market in services to a number of factors, but particularly to poor implementation of the Services Directive, with national restrictions remaining as barriers to trade.<sup>11</sup>

The Prime Minister made clear in his statement on the outcome of the referendum that there would be no immediate change to these arrangements: “Let me stress that nothing changes in the UK’s trading relations with Europe until we actually leave the European Union”.<sup>12</sup> He emphasised this point: “The true position is that as long as we are in this organisation—until we exit—all the rules about trade, services, financial passports and access to markets do not change”.<sup>13</sup>

### 2.2 Statistics on UK-EU trade

Taken as a group, the EU is by far the UK’s most important trading partner. In 2015 it accounted for 44% of UK goods and services exports (£222 billion) and 53% of UK imports (£291 billion). These figures are shown in the chart and table below.<sup>14</sup>

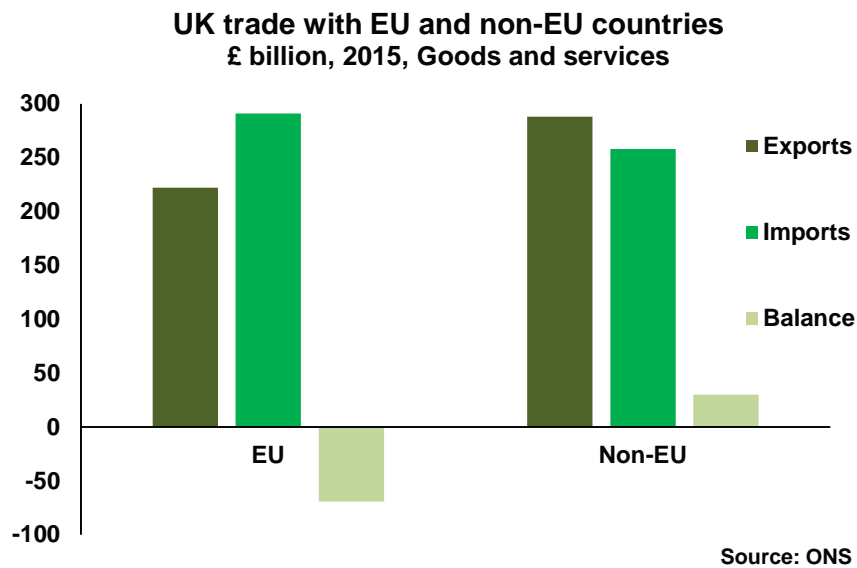
<sup>10</sup> Further information on TTIP is in [The Transatlantic Trade and Investment Partnership](#), Commons Library Standard Note 6688, 4 December 2015.

<sup>11</sup> HM Government, [Review of the Balance of Competences between the United Kingdom and the European Union, The Single Market: Free Movement of Services](#), June 2014, p6.

<sup>12</sup> [HC Deb 27 June 2016 c32](#)

<sup>13</sup> [HC Deb 27 June 2016 c38-9](#)

<sup>14</sup> ONS Statistical Bulletin, [Balance of Payments Jan to Mar 2016](#), 30 June 2016, Tables B and C.



**UK trade with EU and non-EU countries 2015**  
Goods and services

|        | Exports   |      | Imports   |      | Balance   |
|--------|-----------|------|-----------|------|-----------|
|        | £ billion | %    | £ billion | %    | £ billion |
| EU     | 222       | 44%  | 291       | 53%  | -69       |
| Non-EU | 288       | 56%  | 258       | 47%  | +30       |
| Total  | 510       | 100% | 549       | 100% | -39       |

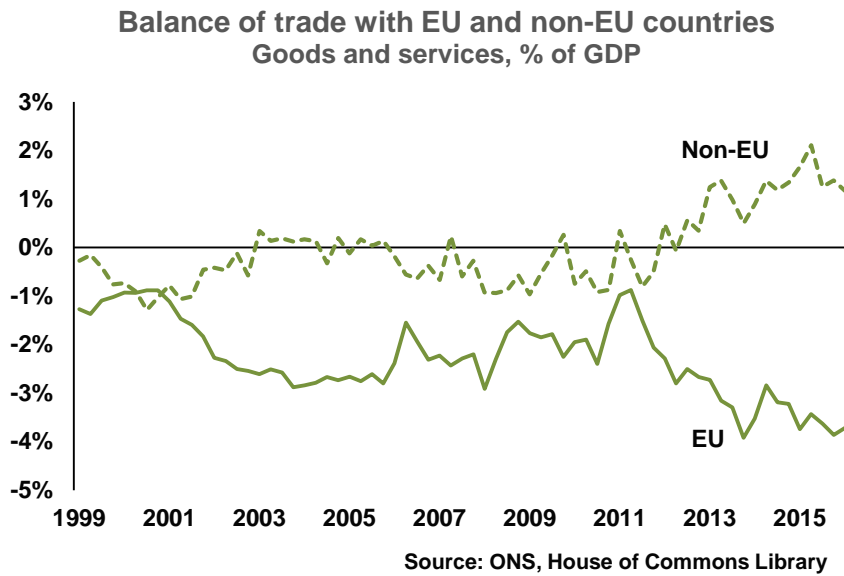
Source: ONS Balance of Payments Stat Bulletin, 30 Jun 2016, Tables B & C

These estimates take no account of the 'Rotterdam effect'. This is the argument that UK trade with the EU is overstated by these figures. The UK does a large amount of trade with the Netherlands, some of which may ultimately be with countries outside the EU but recorded as EU trade. There are no official estimates of how big this effect might be and, even making allowance for it, the EU is still the UK's largest trading partner by a large margin.<sup>15</sup>

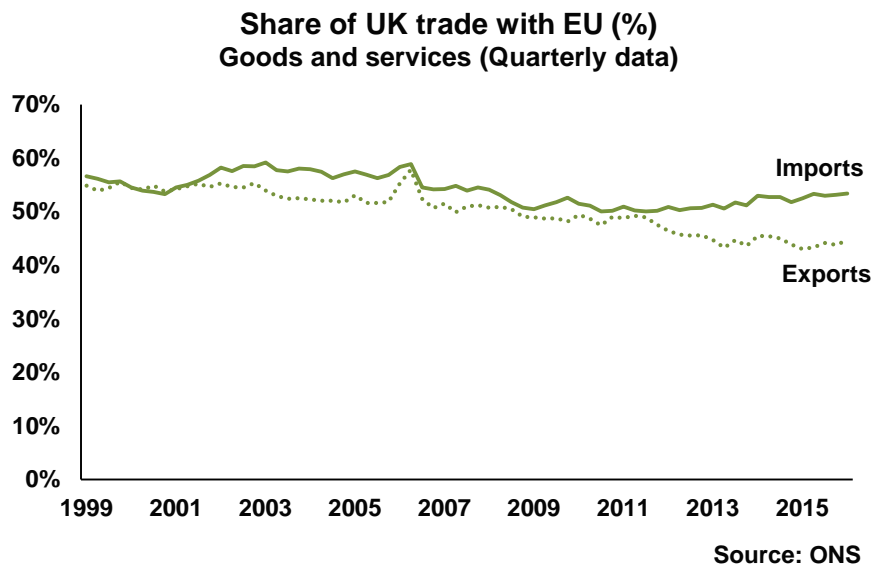
The UK imports more from the EU than it exports to it. In 2015, the UK's deficit on trade in goods and services with the EU was £69 billion, while the surplus with non-EU countries was £30 billion. The chart below shows the UK balance of trade since 1999 with EU and

<sup>15</sup> There is more information on the Rotterdam effect and more detailed statistics on UK trade with the EU in Commons Briefing Paper 6091 [In brief: UK-EU economic relations](#).

non-EU countries.



The share of UK exports going to the EU has declined in recent years. In 2002 the EU accounted for 55% of UK exports. This had fallen to 44% by 2015. The share of UK imports from the EU declined from 58% in 2002 to 50% in 2011, before increasing slightly to 53% in 2015.



## 2.3 Scenarios for EU exit

### Introduction

The UK's new trading relationship with the EU will be the product of negotiation. There are a number of different options. These range from membership of the European Economic Area (EEA) to trading under World Trade Organization (WTO) rules. The EEA option would be the closest to EU membership while the WTO option would be the biggest break. Most economic analyses published before the referendum found that the EEA option would do the least harm to the UK economy, with the WTO option having the largest negative impact.



The renegotiation of the UK's trading relationship with the EU will require a number of considerations to be balanced. These include access to the single market, free movement of people, contributions to the EU budget, the extent to which the UK needs to adopt EU rules and the extent of UK influence over those rules. According to a document published by the Government before the referendum, "none of the alternative relationships to full EU membership offer full access to the Single Market".<sup>16</sup> The EU has said that access to the single market depends on accepting all four freedoms – including free movement of labour. It has said that "there will be no single market 'a la carte.'"<sup>17</sup>

Theresa May has said the UK's future relationship with the EU will not necessarily be based on the models that already exist.<sup>18</sup>

## EU exit without a free trade agreement

### 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. The EU's MFN tariff has generally fallen over time, meaning that in this particular context the 'advantage' of membership has declined. In 2013 the EU's trade weighted average MFN tariff was 2.3% for non-agricultural products.<sup>19</sup> This is an average figure: tariffs on some individual products are much higher, however, especially on agricultural goods. The EU tariff on cars, for example, is 10%. The average EU tariff on sugars and confectionery is nearly 30% and on beverages and tobacco over 20%.<sup>20</sup>

However, given that MFN tariffs would be imposed on many of the UK's goods exports to the EU, it would necessarily mean many exporters becoming less price competitive, to varying degrees, than their counterparts operating within the remaining EU, and those in countries with which the EU has preferential trading relationships.

The UK would also need to decide the level of tariffs on imports into the UK. Under WTO rules, the UK would not be able to discriminate between imports from different countries. At the moment, it is not clear whether the UK could simply "inherit" the EU tariff and apply these to UK imports (including those from the EU).<sup>21</sup> Setting the level of tariffs would involve a trade-off between lower prices for domestic consumers on the one hand, and bargaining power in future trade negotiations on the other. Setting relatively high tariffs would increase prices for consumers but give a bargaining chip in future negotiations. Eliminating or setting low tariffs would tend to reduce prices, but give trading partners little incentive to reduce their tariffs in any future negotiations.

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<sup>16</sup> HM Government, [Alternatives to membership: possible models for the united Kingdom outside the European Union](#), March 2016, p11.

<sup>17</sup> [Remarks by President Donald Tusk after the informal meeting of 27 EU heads of state or government](#), 29 June 2016.

<sup>18</sup> UKpolitics.org.uk, [Theresa May press statement in Slovakia](#), 30 July 2016.

<sup>19</sup> World Trade Organization, [WTO Tariff Profiles 2015](#), page 75.

<sup>20</sup> HM Government, [Alternatives to membership: possible models for the United Kingdom outside the European Union](#), March 2016, p36, based on WTO data.

<sup>21</sup> Brexit: Silence from leave camp leaves options in the air", Financial Times, 27 June 2016.

The WTO option would impose the fewest obligations on the UK. There is no requirement to implement EU legislation, although UK businesses would still have to comply with EU rules in order to export to the Single Market. Under the WTO option, there would be no obligation to accept free movement of people or make a contribution to the EU Budget. The WTO option would give the UK no say over EU decisions.<sup>22</sup>

Before the referendum, Roberto Azevedo, the Director-General of the WTO, warned that the UK would face “tortuous negotiations” over the terms of its WTO membership. He said “pretty much all of the UK’s trade [with the world] would somehow have to be negotiated”. The UK joined the WTO as a member of the EU and Mr Azevedo said the UK would not be allowed simply to cut and paste those terms. The WTO has never been through this kind of negotiation with an existing member and even the procedures for doing so are unclear.<sup>23</sup>

### **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. Many of the EU’s anti-dumping measures are against China and other Asian countries. Few are against other advanced Western countries.<sup>24</sup>

Just as important in a trade context, however, are the standards required of products imported from outside the EU. All UK businesses must comply with these standards already, although as in other areas of regulation, withdrawal raises the prospect of costly divergences between the UK and EU product standards. On the other hand, some proponents of withdrawal argue that leaving the EU would mean only exporters to the EU 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 timescale 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.

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<sup>22</sup> HM Government, [Alternatives to membership: possible models for the United Kingdom outside the European Union](#), March 2016, paras 3.70-71.

<sup>23</sup> “WTO warns on tortuous Brexit trade talks”, Financial Times, 25 May 2016.

<sup>24</sup> European Commission, [Anti-dumping, Anti-Subsidy Statistics covering first 11 months of 2015](#), November 2015.

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

As well as affecting cross-border trade in services, these restrictions could also have implications for UK companies providing services through a commercial presence (effectively outward direct investment) in other Member States.<sup>25</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, when the UK is no longer a member of the EU, that it has to comply with the requirements of a foreign regulatory authority.

## EU exit under a negotiated arrangement

Beyond the MFN position, there are a host of more preferential trade arrangements between the EU and UK that may be negotiated. For example, the UK might be able to negotiate a free trade agreement (FTA) with the EU.<sup>26</sup> A free trade agreement would be likely to mean less access to the Single Market but also fewer obligations in terms of accepting free movement of people and making a contribution to the EU budget. Exporters to the Single Market must comply with its rules.<sup>27</sup> Unlike a customs union, an FTA would allow the UK to set its own tariffs on trade with countries outside the FTA.

It remains to be seen how keen the rest of EU is to enter into an FTA with the UK, or what the terms of such an agreement might be. A comprehensive economic and trade agreement between the UK and the EU would need the agreement of all EU Member States’ governments (and some parliaments of EU Member States).<sup>28</sup> The UK is, however, an important market for the rest of the EU. In 2014 18 of the other 27 EU Member States had a trade surplus with the UK. Germany’s surplus was £25 billion. These commercial considerations might lead to pressure for a UK-EU FTA. Also, negotiations would start from a position of close integration between the EU and the UK. The aim of the negotiations would be to loosen this to some extent. As the Treasury Committee noted, this is different from most trade negotiations which aim to increase economic co-operation.<sup>29</sup> On the other hand, some EU countries may have domestic political incentives to drive a hard bargain with the UK to disadvantage anti-EU parties in their own countries.

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<sup>25</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.

<sup>26</sup> Other European trade groups, such as the European Free Trade Association (EFTA) and the European Economic Area (EEA) are discussed in Commons Briefing Paper 7214, [Brexit: some legal and constitutional issues and alternatives to EU membership](#), 28 July 2016.

<sup>27</sup> HM Government, [Alternatives to membership: possible models for the United Kingdom outside the European Union](#), March 2016, para 3.52.

<sup>28</sup> Treasury Committee, [The economic and financial costs and benefits of the UK’s EU membership](#), HC 122, 27 May 2016, para 141.

<sup>29</sup> *Ibid*, para 149.

There is, however, likely to be a trade-off between the level of access to the Single Market (i.e. freedom from tariff and non-tariff barriers to trade), and freedom from EU product regulations, social and employment legislation, and budgetary contributions.

### **Rules of origin**

Because the EU, as a customs union, operates with a common external tariff, goods entering from outside can travel freely within the Union once that tariff has been paid (e.g. a mobile phone imported into the UK from China can be re-exported to the rest of the EU tariff free). The same is not true of goods that enter the EU via the EEA (e.g. a mobile phone from China re-exported to the EU from Norway) or via other countries with which the EU has a free or preferential trading relationship, because they do not share the EU's common external tariff. Determining where a good originated, and hence whether it should attract tariffs, is done through the EU's Rules of Origin. Given the complexity of some global supply chains and the range of preferential trading relationships the EU operates, this can be a difficult, time-consuming and often subjective process.<sup>30</sup> The costs of rules of origin were discussed in research published alongside the Coalition Government's Balance of Competences Review:

With the UK as a customs union member within the European Union, British firms are saved the compliance and administrative costs linked to proving the origin of products shipped in the European market. With the UK instead taking direct control over its external trade policies, and so operating outside the customs union, rules of origin would become necessary under free trade with the customs union. This means British firms would be exposed to a combination of administrative and compliance costs linked to rules of origin, ranging (based on existing estimates) from 4 percent to perhaps 15 percent of the cost of goods sold. For low tariff products, it is therefore likely that firms would instead simply opt to pay the common external tariff of the EU, and so avoid costs linked to rules of origin. This means that, for low tariff products, there would be very little difference between no trade agreement, and one involving free trade combined with rules of origin.<sup>31</sup>

### **Anti-dumping and other non-tariff barriers**

Were the UK in the EEA or if it adopted the Swiss model, goods would still be susceptible to anti-dumping action by the EU; for instance, in 2005, the EU imposed a 16% duty on Norwegian salmon. Membership of the EEA or the negotiation of bilateral agreements analogous to those in Switzerland would also require the UK to continue to adopt EU product standards (and other regulations) across the whole economy.

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

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

The EU has negotiated an array of preferential trade agreements with other countries (see box below).<sup>32</sup> In addition, negotiations for a trade and investment agreement with Canada have been completed, although this has still to be ratified. The EU is also negotiating seven bilateral trade and investment agreements (with the US, Japan, the Philippines, India, Mercosur - a trading bloc made up of a number of South American countries -

<sup>30</sup> In very simple terms, origin is determined on the principle of goods being wholly obtained in the exporting country, or substantially transformed there.

<sup>31</sup> Centre for Economic Policy Research (CEPR), [Trade and Investment: Balance of Competence Review. Project Report](#), November 2013, p58.

<sup>32</sup> [Map of EU trade agreements.](#)

Morocco and Tunisia). Bilateral investment treaties are being negotiated with China and Burma. The EU is also involved in two “plurilateral” negotiations: the Trade in Services Agreement and the Environmental Goods Agreement.<sup>33</sup>

#### List of countries with which the EU has Free Trade Agreements

Mexico, Chile, Peru, Morocco, Algeria, Tunisia, Egypt, Jordan, Israel, Occupied Palestinian Territory, Lebanon, Syria, FYR Macedonia, Albania, Serbia, Montenegro, Bosnia and Herzegovina, Switzerland, Korea, Antigua, Barbuda, Belize, Bahamas, Barbados, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, Colombia, Honduras, Nicaragua, Panama, Guatemala, Papua New Guinea, South Africa, Madagascar, Mauritius, Seychelles, Zimbabwe, Costa Rica, El Salvador, Fiji, Cameroon, Georgia, Moldova, Ukraine, EU Customs Union (Andorra, Monaco, San Marino, Turkey), EEA (Norway, Iceland, Liechtenstein).<sup>34</sup>

A number of opinions have been put forward on what will happen to these agreements now that the UK has voted to leave the EU. For example, in evidence to the Foreign Affairs Committee, Sir Alan Dashwood QC, Emeritus Professor of European Law, Cambridge University, said:

Take the example ... of the free trade agreement with South Korea, which has been very favourable to the UK. [...]. The UK will not be able to—well, it could not—stay as a part. Although it is a free trade agreement, it is still a mixed agreement because it goes a little further than the core area of the common commercial policy. Nevertheless, I don't believe that the UK could retain the rights and obligations that apply to it under the agreement. We would have to renegotiate ...<sup>35</sup>

The issue was also raised in evidence to the Treasury Committee. Philippe Legrain (LSE European Institute) and Simon Tilford (Centre for European Reform) were both of the opinion that the agreements would all need to be renegotiated. Roger Bootle (Capital Economics), however, was not sure that this was the case and said the Committee should investigate the matter further.<sup>36</sup>

Also in evidence to the Treasury Committee, the then Chancellor, George Osborne, said that in the event of Brexit the UK would no longer be party to some of the EU's trade agreements with other countries. He said:

those who advocate our exit, without setting out to try to improve arrangements as they are, need to explain what the alternative is, not just support for farmers, but also the trade agreements that the EU has signed with numerous other countries, some of which we would not be party to if we exited from the European Union.<sup>37</sup>

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

<sup>33</sup> PQ HL601 21 June 2016

<sup>34</sup> Source: HM Government, [Alternatives to membership; possible models for the United Kingdom outside the European Union](#), March 2016, p45 (based on European Commission data)

<sup>35</sup> Foreign Affairs Committee, [Costs and benefits of EU membership for the UK's role in the world](#), HC 545, Q219 Q217

<sup>36</sup> Treasury Committee, [The economic and financial costs and benefits if UK membership of the EU](#), 27 October 2015, HC 499, Qq47-51

<sup>37</sup> Treasury Committee, [The economic and financial costs and benefits if UK membership of the EU](#), 1 December 2015, HC 499, Q372

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

The UK, like all other EU Member States, is a member in its own right of the WTO. Though currently its tariffs and services obligations are incorporated in the schedules for the EU, they would still stand as an obligation on the UK if the country exited the EU. Similarly, the UK signs and ratifies EU trade agreements in its own right, even though all negotiation is done by the Commission.<sup>38</sup>

The Treasury Committee's conclusion on this issue was as follows:

Were the UK to leave the EU, it is very uncertain whether it would be able to continue to participate in these agreements. The extent to which the UK would have to enter into negotiations to ensure its continued participation would probably depend on the attitude of the contracting parties, about which little is known.<sup>39</sup>

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

The free trade agreements concluded by the Community with the EFTA countries, which at present enjoy exemption from customs duties and free access without quantitative restrictions to the Greenland market, would automatically cease to apply to Greenland. The question whether the Community would have to negotiate with its partners compensation for the rights and benefits which those countries would lose as a result of the 'shrinking' of the Community would not arise if the same rights and benefits were granted by Greenland.<sup>40</sup>

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

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<sup>38</sup> Iain Mansfield, [A Blueprint for Britain: Openness not Isolation](#), Winner Brexit Prize, 2014, p14 and footnote 16.

<sup>39</sup> Treasury Committee, [The economic and financial costs and benefits of the UK's EU membership](#), HC 122, 27 May 2016, para 226.

<sup>40</sup> European Commission (1983) *Status of Greenland: Commission opinion*, COM (83) 66 final, Annex A, p.22.

## 3. Other economic impacts

The following sections consider the impact of withdrawal in areas of the economy where EU membership currently has the most obvious impact. These include foreign direct investment (FDI), the UK's contribution to the EU Budget, the effect of immigration on the labour market and the impact on business.

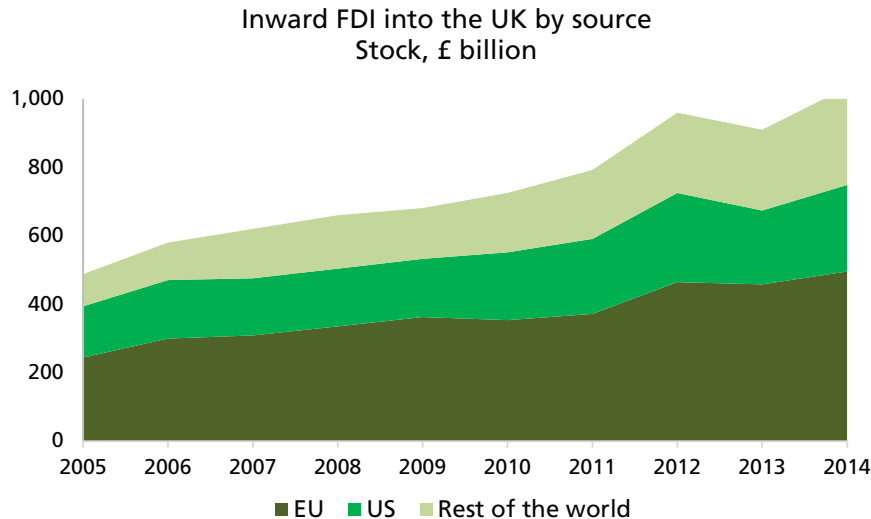
### 3.1 Foreign direct investment

Broadly speaking, foreign direct investment (FDI) became part of the EU's Common Commercial Policy (CCP) under the 2009 Lisbon Treaty.<sup>41</sup> The EU has exclusive competence over the CCP, meaning that only it, and not the Member States, has the power to act in this area.<sup>42</sup>

#### Statistical context

The UK is a major recipient of inward FDI and also an important investor in overseas economies. The UK had the third highest stock of inward FDI in the world in 2014, behind the US and China.<sup>43</sup>

In 2014 EU countries accounted for just under half the stock of FDI in the UK (£496 billion out of a total of £1,034 billion, 48%).<sup>44</sup> This compares with 24% from the US and 28% from other countries. The share accounted for by the EU has fluctuated between 47% and 53% over the last decade. In terms of UK investment abroad, the EU accounted for 40% of the total stock of UK FDI in 2014.<sup>45</sup>



#### Implications of exit

FDI is important to the economy. As the Institute for Fiscal Studies (IFS) explains:

<sup>41</sup> There is a discussion of EU Competence over FDI and the arguments about how far this extends in Chapter 2 of the Government's [Review of the Balance of Competences between the United Kingdom and the European Union: Trade and Investment](#), February 2014.

<sup>42</sup> Ibid.

<sup>43</sup> UK Trade and Investment, [Inward Investment Report 2014/15](#), p4.

<sup>44</sup> ONS Statistical Bulletin, [Foreign Direct Investment Involving UK Companies 2014](#), 3 December 2015.

<sup>45</sup> Ibid.

Foreign direct investment directly increases national income and can also have subsequent beneficial impacts on productivity levels. Investments made in the UK by entities or companies outside of the UK can raise productivity through bringing new ideas and approaches (which may spill over to other firms) or simply being productive themselves and raising the overall average.<sup>46</sup>

Membership of the EU is one of many factors which may attract foreign investment to the UK. The Treasury Committee report explains this as follows:

Membership might act as a draw for inward investment to the UK because it allows multinationals based outside the EU to access EU markets without facing tariff and non-tariff barriers. For similar reasons, companies headquartered elsewhere in the EU can bring UK-based operations into their supply chain at a lower cost.<sup>47</sup>

The IFS points out that the EU does not restrict movement of capital, which might make it easier for EU countries to invest in the UK. Exiting the EU might affect future flows of investment into the UK or the existing stock of investment, if, for example, a UK HQ was relocated overseas.<sup>48</sup>

However, many other factors besides EU membership may affect foreign investors. These other factors include: the UK's flexible labour market, the skills of the UK labour force, political stability, the rule of law, language, openness of the UK economy, the UK's relaxed attitude towards foreign ownership of assets.<sup>49</sup> These reasons for investing in the UK will continue even when the UK has left the EU.

The Treasury Committee concluded that EU membership did help to attract inward investment. The Treasury Committee did not attempt to quantify the negative impact of Brexit on FDI, saying it would depend on a range of factors:

How far FDI was negatively affected by Brexit would depend both on the extent of market access that the UK negotiated on leaving the EU, and how far it was able to increase its attractiveness to foreign investors by changing its regulatory framework and striking trade deals with non-EU countries. It is beyond the scope of this report accurately to assess or predict the size of the impact.<sup>50</sup>

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 other countries, something which it has not been able to do since the Lisbon treaty entered into force in 2009.

## 3.2 EU Budget contributions

### The UK will continue to contribute to the EU Budget until it departs the EU

Whilst the UK remains a member of the EU, until the day of its departure, it will continue to contribute to the EU Budget. Following a negotiated departure, the UK may still make contributions to the EU Budget.

<sup>46</sup> IFS, [Brexit and the UK's public finances](#), IFS Report 116, May 2016 p39.

<sup>47</sup> Treasury Committee, [The economic and financial costs and benefits of the UK's EU membership](#), HC 122, 27 May 2016, para 205.

<sup>48</sup> IFS, [Brexit and the UK's public finances](#), IFS Report 116, May 2016 p40.

<sup>49</sup> Treasury Committee, [The economic and financial costs and benefits of the UK's EU membership](#), HC 122, 27 May 2016, paras 206-7.

<sup>50</sup> Ibid, paras 213.



Any future contributions will depend on what arrangements are agreed for the UK's relationship with the EU after leaving. EEA Members, for example, contribute to the EU Budget, so if the UK joins the EEA, it is likely to pay into the EU Budget. There is more on alternatives to EU membership the Library briefing [Brexit: some legal and constitutional issues and alternatives to EU membership](#), 28 July 2016.

## The UK's contribution

The UK's budgetary contribution to the EU is one of the more quantifiable costs of its membership. Net of receipts under the Common Agricultural Policy, EU regional funding, and the Budget rebate, the Government contributed an estimated £8.5 billion to the EU in 2015, around 1% of total public expenditure and equivalent to 0.5% of GDP.<sup>51</sup>

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

Contributions by Member States to the Budget consist of four elements, called 'own resources'. These are described in more detail in Commons Briefing Paper [EU budget and the UK's contribution](#). By far the most important element, accounting for around 75% of total revenue, are GNI-based contributions, which are calculated by taking the same proportion of each Member State's Gross National Income (0.7481% in 2015).<sup>52</sup>

Around 6% of the EU's budget is spent on administration and a further 5% on the EU's foreign policies, international development, and pre-accession aid. The remainder is redistributed back to Member States in the form of agricultural and regional funding. Depending on its standard of living in relation to the EU average, and depending on the size of its agricultural sector, a Member State may get more or less back than they 'put in'. In 2014, 10 of the EU Member States, including the UK, were net contributors to the Budget. Per capita, contributions ranged from net receipts of €569 in Hungary to net contributions of €378 in the Netherlands. The UK's per capita contribution was €110.<sup>53</sup>

The UK has been a net contributor to the EU Budget in 42 out of its 43 years of membership (the exception being 1975), contributing a total of £496 billion in real terms gross, and £177 billion net of receipts and the budget rebate. The chart below illustrates the trends in the UK's contribution since it joined. The UK has received an abatement, or rebate, on its budget contribution since 1985, worth £4.9 billion in 2015 and £116 billion (in real terms) since it was first agreed;<sup>54</sup> this was originally negotiated due to the high proportion of EU expenditure that went towards the CAP, and consequently benefitted

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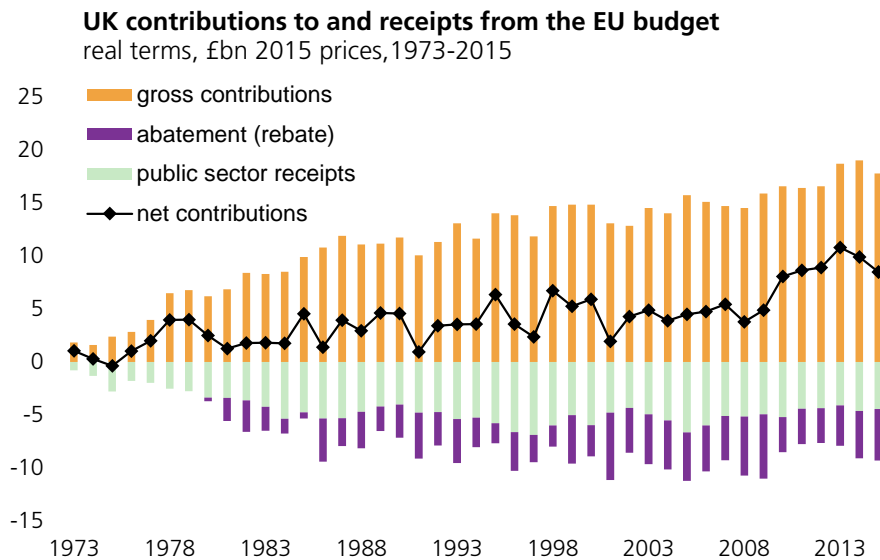
<sup>51</sup> HM Treasury [Annual Statement on EU Finances 2014](#); Office for Budget Responsibility [Public Finances Databank](#) Table 4.1; ONS National Accounts [Series YBHA](#).

<sup>52</sup> OJ L 69, 13 March 2015, [Chapter 1.4](#).

<sup>53</sup> European Commission [Interactive: EU expenditure and revenue](#). These figures exclude Luxembourg as administrative expenditure significantly affects their figures.

<sup>54</sup> Before this, refunds to the UK were negotiated annually.

the UK, with its smaller farming sector, less than other Member States. Details of the UK's contribution since accession are shown in the chart.<sup>55</sup>



### 3.3 Immigration and the labour market

Possible changes to immigration rules following the UK's withdrawal from the EU would be likely to impact upon businesses and the economy.

Currently, the UK is unable to impose limits on immigration from within the EU, as the free movement of labour, one of the four fundamental principles of the EU, entitles citizens of 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>56</sup>

Should the UK wish to remain in the Single Market but outside the EEA, 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. If the UK did not sign up to the free movement of people principle, it could impose its own controls on EU/EEA immigration as it currently does on non-EU/EEA nationals.<sup>57</sup>

The extent to which employers are affected by controls on EU/EEA immigration will depend on the new rules. If the Government wishes to introduce a more restrictive immigration system for EU/EEA nationals, one option would be to simply extend current rules for non-EU/EEA nationals 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 Social Market Foundation estimates that if EEA employees had to meet the visa requirements that currently apply to non-EEA workers, only 12% of EEA employees

<sup>55</sup> All statistics in this paragraph and the chart are based on HM Treasury *European Union Finances* (various editions).

<sup>56</sup> Subject to a few exceptions and the possibility of transitional arrangements for new EU members (such as Bulgaria and Romania).

<sup>57</sup> Irish nationals may be affected differently from other EU/EEA nationals in this scenario as they have a special status in UK immigration and nationality law that predates EU membership.

currently working in the UK would qualify.<sup>58</sup> The London Chamber of Commerce and Industry (LCCI) has previously warned of the possibility of labour shortages in such a scenario:

Such an approach could lead to a shortage of low- and high-skilled workers that a lot of businesses are dependent on, affecting the economy and businesses' ability to trade both nationally and internationally.<sup>59</sup>

A more restrictive system would also place an additional burden on businesses recruiting workers from the EU, who would have to spend time arranging visas and ensuring they complied with immigration rules. Employers may be able to compensate by recruiting more UK nationals, but this would depend on the extent to which they are able to find workers with the same skills and are able to attract workers from a smaller pool of potential recruits. The Federation of Small Businesses highlighted access to skills as a key concern for small business in a letter to then Cabinet Office Minister Oliver Letwin following the referendum:

Free movement of people has enabled small firms to access the skills they need, shoring up the UK's ever growing skills gap and retaining our competitive advantage. Without the need to engage with the UK's costly and complex immigration system, small firms have been able to hire from an EU wide talent pool, and to obtain low skilled labour, a category currently excluded from the UK's immigration system.<sup>60</sup>

Whatever the change in policy, the impact would likely be felt most strongly in sectors which currently employ a higher share of EU migrants in their workforce (even assuming existing EU workers can continue to work in the UK as before), as they might be more likely to hire EU workers in the future.<sup>61</sup> Impacts would also be likely to vary by geography: areas such as London with relatively high concentrations of workers from elsewhere in the EU are more likely to be affected than areas with low shares of EU workers.

The sectors with the highest proportion of workers from other EU countries are accommodation and food services (13% at Q1 2016 – see table below) and manufacturing (10%). The sector with the lowest share of EU workers is public administration and defence (3%), while EU workers also form a relatively small proportion of the total workforce in education (5%) and health and social work (5%).

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<sup>58</sup> N Broughton, N Keohane and T Ketola, [Working Together? The impact of the EU referendum on UK employers](#), Social Market Foundation, May 2016, p6.

<sup>59</sup> LCCI, [Help or hindrance? The value of EU membership to London business](#), April 2013, p23.

<sup>60</sup> [Letter from Mike Cherry FSB Chairman to Rt Hon Oliver Letwin MP](#), 5 July 2016.

<sup>61</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.

## Employment of people born elsewhere in EU working in the UK, by industry, Q1 2016

People aged 16+, data not seasonally adjusted

|                                      | Number<br>employed<br>(000s) | % of total<br>employment<br>in sector |
|--------------------------------------|------------------------------|---------------------------------------|
| Manufacturing                        | 307                          | 10%                                   |
| Construction                         | 194                          | 9%                                    |
| Services                             | 1,641                        | 7%                                    |
| <i>of which:</i>                     |                              |                                       |
| Accommodation & food services        | 222                          | 13%                                   |
| Admin & support services             | 135                          | 9%                                    |
| Transport & storage                  | 141                          | 9%                                    |
| Information & communication          | 97                           | 8%                                    |
| Finance & insurance                  | 90                           | 7%                                    |
| Professional, scientific & technical | 147                          | 7%                                    |
| Wholesale & retail                   | 261                          | 6%                                    |
| Health & social work                 | 225                          | 5%                                    |
| Education                            | 159                          | 5%                                    |
| Arts, recreation & other services    | 77                           | 5%                                    |
| Public admin & defence               | 56                           | 3%                                    |
| <b>Total</b>                         | <b>2,197</b>                 | <b>7%</b>                             |

Source: ONS *Labour Force Survey* microdata, January-March 2016

Note: Total includes agriculture, extraction and utility sectors not listed in the table. Arts, recreation & other services includes Standard Industrial Classification (SIC) codes R and S.

### 3.4 Business

The EU has various powers that affect businesses directly. Through successive EU 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.

New EU aims and areas of activity, for example in social protection and sustainable development, have raised concerns about the impact of EU membership on business and the wider economy. Regulation in these areas, some argue, has little to do with the EU's founding purpose of establishing a common market between Member States, imposing burdens that offset the trade benefits of membership.

#### EU powers

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

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

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

## Costs and benefits of regulation to business

There is no definitive picture of the overall costs and benefits of EU regulation on businesses in the UK.

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

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

In one study of impact assessments, Open Europe estimated that the cost to the economy of the 100 “most burdensome” EU regulations that could be analysed was £33.3 billion a year. The associated benefits were estimated as £58.6 billion a year in total, but Open Europe claimed that certain of the largest of these regulations had had their benefits vastly over-stated. The individual measures with the highest recurring costs were the UK Renewable Energy Strategy (£4.7 billion a year), the Capital Requirements Directive IV package for banking (£4.6 billion a year) and the Working Time Directive (£4.2 billion a year).<sup>62</sup>

A sense of the costs solely from more recent EU regulation can be found in the UK impact assessments checked by the independent Regulatory Policy Committee. In 2013 and 2014, they found that £1.6 billion per year in net costs to business – costs minus benefits – came from two new pieces of regulation, the Alternative Investment Fund Managers Directive and the Bank and Recovery Resolution Directive, which were introduced to protect against financial systemic risk. Other EU measures led to an estimated total of £730 million per year in net costs on UK business, including £400 million from the Air Pollution from Shipping Directive.<sup>63</sup>

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

... the impact of poorly thought-out and costly EU legislation is a major issue for businesses: 52% of businesses believe that, were the UK to leave the EU, the overall burden of regulation on their business would fall. Areas where UK firms are frustrated with EU regulation include labour market regulation, highlighted by nearly half of

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<sup>62</sup> Open Europe, [Top 100 EU rules cost Britain £33.3 billion](#), 16 March 2015. See other sections of this briefing paper for more detailed discussions of individual policy areas.

<sup>63</sup> Regulatory Policy Committee, [Securing the evidence base for regulation: Regulatory Policy Committee scrutiny during the 2010 to 2015 parliament](#), March 2015.

Note that these figures only cover impacts that have been checked by the Regulatory Policy Committee, that have an implementation date from 1 January 2013 onwards and that were submitted for scrutiny after October 2012. They do not include “gold plating”, where the UK government goes beyond minimum EU requirements when implementing European legislation.

businesses as having had a negative impact – with particular frustrations around the Temporary Agency Workers Directive and Working Time Directive.<sup>64</sup>

According to the Federation of Small Businesses, regulations on employment, health and safety and data protection are said to be particularly burdensome for small businesses.<sup>65</sup>

There is work to reduce business burden from EU regulations, some driven by the UK Government and others by the EU.<sup>66</sup>

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

Competitive and respected EU rules can also open up new markets to UK firms without having to duplicate standards as other regions often design their own rules around EU benchmarks. Despite frustrations, over half of CBI member companies (52%) say that they have directly benefitted from the introduction of common standards, with only 15% suggesting this had had a negative impact.<sup>67</sup>

## UK withdrawal

The Single Market was itself established through a vast legislative programme to remove technical and legal barriers to trade, and current models of non-EU access to the Single Market involve acceptance of associated EU law to some degree, often without a say in shaping it. There is more generally a trade-off between 'national sovereignty' and the sort of integration and harmonisation necessary to achieve completely free trade.

If the UK withdrew completely from the EEA, and shunned bilateral negotiation on access to the Single Market, it would be free to regulate largely as it saw fit. Because the Government would undoubtedly decide to retain the substance of at least some EU law, and because the costs of EU regulations are (at least partially) offset by benefits, the costs of regulation given above are emphatically not equivalent to the economic benefit of withdrawal. Overall, regulation in the UK is already fairly favourable to business, relative to other countries.<sup>68</sup>

Those in favour of withdrawal argue that the UK would be better able to balance the costs and benefits of regulation according to its own domestic priorities; and that it would be easier to amend the regulatory regime in response to changing circumstances.

Whatever the future arrangement, businesses that export to the EU would still have to comply with many EU product standards.

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

<sup>64</sup> CBI, [Our Global Future – The Business Vision for a reformed EU](#), November 2013. A separate section of this briefing paper discusses EU influences on employment law.

<sup>65</sup> Federation of Small Businesses, [FSB Manifesto European Elections 2014](#), February 2014.

<sup>66</sup> See for example:

- BIS Press Release, [Hancock hails boost to economy as UK cuts EU red tape](#), 6 November 2014;
- European Commission, [Regulatory Fitness and Performance Programme \(REFIT\): State of Play and Outlook](#), COM(2014)368, 18 June 2014.
- European Commission, [REFIT: Making EU law lighter, simpler and less costly](#), January 2016.

<sup>67</sup> CBI, [Our Global Future – The Business Vision for a reformed EU](#), November 2013.

<sup>68</sup> Based on OECD, [Indicators of Product Market Regulation 2013](#) – these figures measure the degree to which policies promote or inhibit competition in areas of the product market where competition is viable.

### 3.5 Public procurement

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

In practice, the extent of direct cross-border public procurement is limited. An estimated 1.3% of the value of larger UK public sector contracts was awarded directly abroad in 2009-2011. Some 0.8% of the value of larger public contracts secured by UK companies was directly from abroad.<sup>69</sup>

#### Alternatives and withdrawal

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

If the UK were to leave the EU and the EEA, it would ultimately need to decide whether it wanted agreements with other countries to mutually open up their public procurement markets. This could be done through individual trade agreements, or the UK could participate as an individual country in the WTO's General Procurement Agreement (GPA) for certain goods and services. However, this would mean that the UK would have to allow suppliers in other countries to bid for some UK public procurement opportunities, and the WTO route would mean that the UK had to follow certain procedures in its procurement processes – potentially doing away with some of the reduction of burden that could follow from no longer having to apply the EU rules.<sup>70</sup>

### 3.6 Financial services

#### Background

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. Where it has not been ahead of the EU it has played a significant part in the determination of EU legislation. The Commissioner for Financial Stability, Financial Services and Capital Markets Union was, until he resigned on 25 June 2016, Jonathan Hill, the ex-Conservative Minister in the former Coalition Government.

The concern of the financial community and of UK regulators and the Government is not what changes they want to make to existing EU legislation; it is likely that a significant amount of this legislation would remain post-withdrawal, though not necessarily in the same form or to the same extent.

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<sup>69</sup> Source: Study for European commission, DG Internal Market and Services, [SMEs' access to public procurement markets and aggregation of demand in the EU](#), February 2014. Note that figures are for direct cross-border procurement only, where the single contractor or a leader of a joint bid is located in a different country. They are also restricted to procurement over certain values, where the EU procurement directives apply.

<sup>70</sup> Michael Bowsher QC's blog on [Procurement law after Brexit?](#) (16 March 2016) is an interesting discussion of the issues and options for the future.

## The issues now

Although it is always well to remember that there can be conflicting interests in the 'City' – what suits a fund management firm may be of less concern to an insurance house - but there is a pretty broad consensus on what the main worry is: access.

The primary concern, across all financial institutions, is the future status of the country in terms of access to the EU financial markets. This is a concern for many parts of the economy, but for few can it be as critical as in financial services, where the universal requirement to be authorised places a premium on the ability of firms to have 'passporting' rights to other jurisdictions (see below).

Put simply, to function in EU countries, financial firms carrying out authorised activities have to be regulated. If they are headquartered and regulated in one Member State, they can operate in and sell to, other Member States without getting authorisation from each one. Hence, given its attractive location, the size and liquidity of its markets, the depth of skills and infrastructure, London is a very attractive place to establish an HQ if one is, for example, a large American bank. With a UK authorisation, an American/Japanese/Chinese bank can establish operations in all other Member States.

If the UK is outside the EU, it remains an attractive place to set up in, but it could mean that an overseas firm might need to choose between a centre with natural and historic advantages (London) and one with a regulatory advantage (EU). Authorisation of a big organisation is a complex and costly matter and there is no certainty that firms would simply carry on as before with a main operation in London.

This is called 'passporting'. The Bank of England described passporting in its booklet about EU membership: [EU Membership and the Bank of England](#).

A pro-market think tank, New Capital, set out the implications (from its pessimistic viewpoint) that City firms will generally be considering in the aftermath in a report, [Beyond Brexit: what happens next for European capital markets?](#) In summary they include:

- 1) Pulling the trigger:** The decision by David Cameron not to pull the trigger on Article 50 means that capital markets will be in limbo for at least the next few months until a new government or Parliament start the clock on the formal two year process of leaving the EU.
- 2) First mover advantage:** Banks and asset management firms cannot afford to wait. They have to assume the worst case scenario of complete separation with no access to the single market and start the process of relocating legal entities, operations and staff immediately.
- 3) Relocation, relocation, relocation:** In order to future proof their business, banks, asset managers and other market participants will need to have a separately authorised subsidiary with a sufficient management presence inside the EU. Dublin, Frankfurt, Paris and other cities will be vying for that business.
- 4) An acrimonious divorce (and a protracted custody battle):** Most firms seem to be planning for an acrimonious divorce. While the divorce process itself may be reasonably swift, the separate negotiations to establish the terms of the future relationship between the UK and the EU will be slowed down by the competing domestic political imperatives in all 28 member states and could take years. [...]
- 6) A regulatory backlash?:** Brexit could trigger a concerted regulatory backlash in the rest of the EU against elements of the single market and capital markets union that are seen to play to the UK's advantage, such as the location of euro-denominated clearing.



**7) A loss of influence:** Whatever the outcome, the UK will lose influence over the future direction and nature of EU regulation that it may have to implement. The departure of Lord Hill will significantly change the tone of the future regulatory dialogue.

**8) Equivalence vs divergence:** In order to retain access to the single market from outside the EU, the UK would have to retain an 'equivalent' regulatory framework. While it would be equivalent on day one, over time changes to EU legislation may lead to costly regulatory divergence.

**9) The future of EU citizens:** In some sectors of the capital markets EU27 citizens account for as much as a quarter of all staff in the UK. Assurances over their future legal status have so far been too vague to instil confidence [Note there have been several statements subsequent to this publication which have addressed this question]. [...]

The issue that it takes time (in years) for large organisations to complete authorisation and establish a new HQ abroad, and that this timetable appears to be at odds with the more 'slowly, slowly' approach of some politicians and ministers, has been highlighted in several commentaries. Few international offices seem prepared for a delay of indeterminate length before they begin to act. An article in the Financial Times<sup>71</sup> estimates that there are about 70,000 overseas banks' employees in London

In terms of current issues, a large number of initiatives are being discussed at EU level, notably the Capital Markets Union and a wide review programme of the workings of the roughly 40 measures passed but only now being implemented.<sup>72</sup> All of these will have an impact on the UK and work will continue on implementing these until such time as the UK is no longer in the EU.

The Financial Conduct Authority (FCA) is the main regulator of financial conduct in the UK. On the day after the EU referendum it put out the following [statement](#):

The FCA is in very close contact with the firms we supervise as well as the Treasury, the Bank of England and other UK authorities, and we are monitoring developments in the financial markets.

Much financial regulation currently applicable in the UK derives from EU legislation. This regulation will remain applicable until any changes are made, which will be a matter for Government and Parliament.

Firms must continue to abide by their obligations under UK law, including those derived from EU law and continue with implementation plans for legislation that is still to come into effect.

Consumers' rights and protections, including any derived from EU legislation, are unaffected by the result of the referendum and will remain unchanged unless and until the Government changes the applicable legislation.

The longer term impacts of the decision to leave the EU on the overall regulatory framework for the UK will depend, in part, on the relationship that the UK seeks with the EU in the future. We will work closely with the Government as it confirms the arrangements for the UK's future relationship with the EU.

## An alternative relationship?

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

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<sup>71</sup> Financial Times, 26 June 2016

<sup>72</sup> Details are in Commons Briefing Paper 7435, [Financial Services European Aspects](#).

Financial services trade is an area that could be particularly affected by a ‘Swiss’ approach. Currently, non-EEA financial services providers must generally establish a subsidiary or branch in the EU in order to provide cross-border services. The precise requirements are currently a matter for national regulators in individual Member States, but developments in EU-level financial regulation, and in particular the forthcoming implementation of the [Markets in Financial Instruments Directive II](#) (MiFID II), due to come into effect in January 2017, make the provision of financial services to the EU from outside the EEA increasingly difficult. A non-EU firm will still be able to incorporate an EU subsidiary, as now, but new rules will apply to the provision of services into the EU or through an EU branch. The new rules do not prevent a non-EU firm from providing services to EU clients or transacting with EU counterparties at the “own exclusive initiative” of a prospective EU client/counterparty.<sup>73</sup> However, the requirements for registration, according to a briefing note by KPMG, will be “strict and difficult to fulfil”.<sup>74</sup>

The 2013 study [Switzerland’s Approach to EU Engagement](#) notes that, to date, the Swiss have largely circumvented any disadvantages caused by non-EU/EEA 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 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>75</sup>

Brexit might mean the UK will 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

<sup>73</sup> Travers Smith Briefing, [Financial Services and Markets MiFID II – A Short Introduction for Asset Managers](#), 30 April 2015.

<sup>74</sup> KPMG, [Provision of services by financial intermediaries from third countries in EU financial markets regulation](#), May 2015.

<sup>75</sup> University of Kent, [Switzerland’s Approach to EU Engagement: a financial services perspective](#); April 2013.

EU are not a formal model and the Swiss approach does not lend itself to being readily replicated”.

## City opinion

The majority opinion of City firms has been that the UK should remain within the EU. TheCityUK, a representative body of a range of London financial firms, said in a report in 2014:

Given this environment, the new Commission’s strategy for a Capital Markets Union in Europe is highly significant and we strongly welcome it. This is a strategy which is in the vital interests of all twenty eight Member States. We believe there can be no question of opt-outs or exceptionalism. On the contrary, the City as Europe’s financial centre has a central role to play in working with the authorities both in Brussels and with the Member States to achieve a single capital market. London’s capital market is a European asset that benefits the whole EU.<sup>76</sup>

“the City as Europe’s financial centre has a central role to play in working with the authorities both in Brussels and with the Member States to achieve a single capital market. London’s capital market is a European asset that benefits the whole EU”.

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

Much of the work required to fully realise a Capital Markets Union will be detailed and technical. For example, it will involve working to reduce the extent to which bankruptcy laws and procedures differ from one Member State to another. We are under no illusions about the complexity of the challenge: but we are convinced of its overwhelming importance. It will take many years to fully develop capital markets in Europe. There will be no overnight transformation of Europe’s growth prospects but the achievement of a single capital market would make the financial system more resilient in the event of another crisis. And there will be important policy decisions to be reached: it is inevitable that a real single capital market will need strong regulatory coordination at the EU level.<sup>77</sup>

“it is inevitable that a real single capital market will need strong regulatory coordination at the EU level”.

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

We believe that a key risk to London’s retaining its status as a financial hub is an exit by the UK from the European Union. In common with financial institutions across the City our ability to provide services to clients and engage in investment activities throughout Europe is dependent on the passport that London-based firms enjoy to operate on a cross-border basis within the Union. If the UK leaves, it is likely that the passport will no longer be available, thereby forcing firms that wish to access EU markets to move their operations to within those markets.<sup>78</sup>

And:

We value the flexibility London offers as a platform for access to the single market in a variety of formats. Our trading activity in London benefits from an EU passport across the EU.<sup>79</sup>

Just after the 2015 General Election result became clear, a representative of the City of London commented in the *Financial Times* that “None of the alternatives to EU membership look particularly palatable”.<sup>80</sup>

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<sup>76</sup> TheCityUK; [EU Reform: A view from TheCityUK](#); November 2014, p4.

<sup>77</sup> Ibid, p8.

<sup>78</sup> [Written evidence to Banking Standards Commission](#).

<sup>79</sup> Ibid.

Despite much comment about leaving and threats to leave, no big commercial institution has announced any significant departures. The one definite statement of intent has come from the European Banking Authority which is the regulator for the euro-zone area. It has announced that it will move from its current London headquarters within the next two years.<sup>81</sup>

### 3.7 Restructuring and Insolvency

[The EU Regulation on insolvency proceedings \(EC\) 1346/2000](#) (known as the ‘Insolvency Regulation’) came into force on 31 May 2002.<sup>82</sup> It is directly applicable in all EU Member States, excluding Denmark.

On 20 May 2015, the European Parliament [approved](#) the new [European Insolvency Regulation](#) (EIR) in the text adopted by the Council at first reading on 12 March 2015.<sup>83</sup> This marked the end of a revision process which started with the Commission [proposal](#) of 12 December 2012 (COM/2012/744 final). The recast Regulation will apply to insolvency proceedings commencing on or after 26 June 2017 and will apply in Member States except Denmark.

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

With Brexit the ‘Insolvency Regulation’ will no longer automatically apply to the UK. What this will mean for the treatment of UK insolvency proceedings in the courts of the remaining Member States (and the treatment of EU insolvency proceedings in the UK courts) is unclear. One option may be for the UK to adopt a similar regime to the current Insolvency Regulation, but to achieve this the Government would need to come to agreement with the EU.<sup>84</sup> A second option may be to rely on other mechanisms already in place in English law, intended to assist cross-border insolvency proceedings outside the EU. Notably, the ‘UNCITRAL Model Law on Cross-Border Insolvency’ has been adopted in national law in the UK as well as in other jurisdictions such as Australia, the US, and some EU Member States.

### 3.8 Taxation

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

The major exception to this generalisation is indirect tax: primarily VAT – for which there is a substantive body of EU law establishing common rules across Member States – and, to a lesser extent, excise duties. It has long been recognised that the harmonisation of indirect taxes across Member States is an essential element in 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

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<sup>80</sup> *Financial Times* quoting Mark Boleat of City of London Corporation, 8 May 2015.

<sup>81</sup> *Financial Times*, 30 June 2016.

<sup>82</sup> OJL 2000 160/1

<sup>83</sup> OJL 2015 141/19

<sup>84</sup> Any agreement may need to be amended each time the ‘Insolvency Regulation’ is amended.

EU's shared competence in indirect tax is most frequently discussed in the context of the UK's limited discretion in setting the rates of VAT on individual goods and services. In addition, many commentators have raised concerns about the UK's ability in the future to maintain its existing range of VAT reliefs (such as the zero rates of VAT which apply to food and children's clothes) from any further harmonisation of VAT law.<sup>85</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 though leaving the EU would give them this power.<sup>86</sup> Writing in the *Tax Journal* before the referendum, Ben Jones, partner at Eversheds LLP, noted: "there is no practical likelihood that VAT will be abolished by the UK following Brexit. It is not even the case that it would be necessary to take significant legislative steps to preserve VAT in the UK, given that the EU VAT rules have been mainly implemented by UK legislation". Mr Jones went on to note: "UK governments would have greater flexibility to use changes to the VAT system to further political objectives" (e.g. by widening zero-rating, exemption rules or the use of lower rates).<sup>87</sup> Indeed, during the referendum campaign it had been argued that Brexit would enable the Government to introduce a zero rate of VAT on domestic supplies of fuel and power.<sup>88</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 Court of Justice of the EU (CJEU) 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 outside the EU the UK will 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>89</sup>

In July 2013, as part of its Balance of Competences Review, the Coalition Government published a report on the respective powers of the UK and the EU with regard to taxation. This report found that:

... respondents and interested parties were content with the current balance of competence on taxation, taking account of the protections offered by unanimity voting. Whilst individual respondents suggested areas where existing measures could be updated to reflect modern business practice and development, no respondents identified any major gaps in the existing tax legislation.<sup>90</sup>

<sup>85</sup> For details see, [VAT: European law on VAT rates](#), Commons Briefing Paper SN2683, 20 May 2016.

<sup>86</sup> VAT receipts are projected to be £116 billion in 2015/16. Public sector receipts are set out in [table 4.6](#) of the Office for Budget Responsibility, [Economic and Fiscal Outlook, Cm 9212, March 2016](#).

<sup>87</sup> "Brexit: the tax issues at stake", *Tax Journal*, 15 June 2016. Mr Jones concluded, "the conclusion is that no conclusions can be drawn at this stage."

<sup>88</sup> "EU Referendum: Vote Leave wants power to axe fuel VAT", *BBC News online*, 31 May 2016.

<sup>89</sup> This issue is discussed at length in, [Corporate tax reform \(2010-2016\)](#), Commons Briefing Paper 5945, 20 June 2016 (see sections 5.3 & 6.2).

<sup>90</sup> HMG, [Review of the Balance of Competences between the United Kingdom and the European Union: Taxation](#), July 2013 p6.

Some respondents to the review cited proposals for an EU-wide financial transactions tax as an area “where they questioned the appropriateness and utility of EU-level action”. The European Commission had proposed an EU-wide tax on financial transactions in September 2011. As this failed to attract unanimity, in January 2013 eleven Member States, excluding the UK, agreed to pursue this option on a smaller scale. Negotiations have continued, although there has never been any question of the UK having to take part.<sup>91</sup>

Details of the areas of EU competence in taxation are given on the site of the Commission’s Taxation & Customs Union Directorate.<sup>92</sup>

## Reaction to Brexit vote

Following the referendum vote, there have been a number of statements by relevant organisations – such as the Bank of England – as well as some speculation about the possible impact of Brexit on the tax system.<sup>93</sup> No immediate changes have been made to taxes, as HM Revenue & Customs have been advising taxpayers on their helpline.<sup>94</sup>

On 27 June the then Chancellor, George Osborne, suggested that there was likely to be a Budget statement this autumn. Prior to the vote Mr Osborne had indicated that in the event of a vote to leave the EU, the Government would have to make immediate changes to its tax and spending plans.<sup>95</sup> In a statement Mr Osborne said:

... as I said before the referendum, this will have an impact on the economy and the public finances – and there will need to be action to address that. Given the delay in triggering Article 50 and the Prime Minister’s decision to hand over to a successor, it is sensible that decisions on what that action should consist of should wait for the Office for Budget Responsibility (OBR) to assess the economy in the autumn, and for the new Prime Minister to be in place.<sup>96</sup>

Subsequently Mr Osborne argued that as part of its ongoing strategy to attract business investment, the Government should aim to cut the rate of corporation tax further to its existing plans for a 17% rate from 2020.<sup>97</sup>

However, the new Chancellor, Philip Hammond, in his first interview ruled out an emergency Budget, while confirming that he would set out the Government’s revised economic strategy in the Autumn Statement.<sup>98</sup>

Beyond this, there does not appear to have been any substantive discussion of the implications of the referendum outcome for UK taxes.

<sup>91</sup> For more details see, [The Tobin tax: recent developments](#), Commons Briefing Paper, SN6184, 15 May 2014. See also, [PQ22411, 18 January 2016](#).

<sup>92</sup> European Commission, [EU Tax Policy Strategy](#) [accessed 14/7/2016]. The site also provides a full list of [EU tax legislation](#).

<sup>93</sup> In the latter case see, “20 questions on Brexit”, *Tax Journal*, 1 July 2016 & “Breaking away”, *Taxation*, 30 June 2016.

<sup>94</sup> [“EU referendum: HMRC issues 'carry on' message”](#), *BBC News online*, 27 June 2016.

<sup>95</sup> See, for example, [“George Osborne: vote for Brexit and face £30bn of taxes and spending cuts”](#), *Guardian*, 15 June 2016.

<sup>96</sup> HM Treasury press notice, [Statement by the Chancellor following the EU referendum](#), 27 June 2016.

<sup>97</sup> “Osborne puts corporation tax cut at heart of Brexit recovery plan”, *Financial Times*, 2 July 2016. In answer to an urgent question on his plans, Mr Osborne said, “we should aim for a rate of 15% and preferably lower, because if we are pro-business, we are pro-jobs, pro-living standards and pro-working people” ([HC Deb 4 July 2016 c622](#)).

<sup>98</sup> [“Philip Hammond: Financial markets 'rattled' by Out vote”](#), *BBC news online*, 14 July 2016; “New chancellor Philip Hammond to scale back austerity”, *Financial Times*, 14 July 2016.



## 4. Employment

### 4.1 Introduction

A substantial component of UK employment law is grounded in EU law. EU employment law provides a minimum standard below which domestic employment law must not fall. In some cases EU law has entrenched at an international level provisions that already existed in domestic law: sex and race discrimination and certain maternity rights, for example. In others, new categories of employment rights have been transposed into domestic law to comply with emerging EU obligations. These new rights were often resisted by the UK Government during EU negotiations; for example, agency workers' rights and limitations on working time.<sup>99</sup> Indeed, due largely to this resistance, proposals to expand the EU's competence to legislate in the social sphere were removed from the main body of the 1992 Maastricht Treaty and placed in a separate 'Social Chapter',<sup>100</sup> which did not apply to the UK until it was later incorporated into the Treaty of Amsterdam, which came into force in 1999. While any analysis of EU employment law or its history can provide only limited instruction as to what might happen to employment rights post-Brexit, the forgoing shows that EU law exhibits two broad modes of influence on domestic employment law - underpinning rights and creating new ones - by reference to which we can assess the potential implications of leaving the EU.

### 4.2 Underpinning rights

Subject to the provisions of the withdrawal arrangements or subsequent trade agreement, withdrawal from the EU will mean that UK employment rights currently guaranteed by EU law would no longer be so guaranteed; a post-Brexit government could seek to amend or remove any of these. The precise mechanism by which this could be achieved would vary depending on the right in question:

- some rights are enshrined in primary legislation, alterable only by primary legislation (e.g. discrimination law, codified in the *Equality Act 2010*);
- some EU-derived rights are located in secondary legislation, and are therefore susceptible to revocation by secondary legislation;
- some EU rights have direct effect, meaning that individuals can rely directly on EU law (for example the right to equal pay contained in the EU Treaty).<sup>101</sup> These rights would automatically cease to apply upon exit from the EU, absent any domestic legislation saving them, or new international obligation to maintain them.

The only relatively clear conclusion that can be drawn at this stage is that Brexit will allow for change to the following areas of employment law, which are underpinned by EU law:

- annual leave
- agency worker rights
- part-time worker rights

<sup>99</sup> Having negotiated concessions in the proposal that became the Working Time Directive and then abstaining in the final vote, the UK challenged the Directive's legal basis; see: [Case C-84/94 UK v. EU Council](#) [1996] ECR I-5755.

<sup>100</sup> The unofficial name for the Social Policy Agreement and Social Policy Protocol.

<sup>101</sup> [Treaty on the Functioning of the European Union](#), Article 157.



- fixed-term worker rights
- health and safety obligations
- state-guaranteed payments upon an employer's insolvency
- collective redundancy rights
- information and consultation rights
- the right to a written statement of terms and conditions
- posted worker rights
- paternity, maternity and parental leave
- protection of employment upon the transfer of a business
- anti-discrimination legislation

EU employment rights contained in primary legislation would be relatively insulated from the effect of leaving the EU, but would be newly susceptible to the possibility of change. This is because leaving the EU would not automatically repeal provisions in Acts of Parliament. Much greater uncertainty surrounds the implications of Brexit for secondary legislation, in which much employment law is contained.

### 4.3 Case law

A somewhat thornier but important question concerns the status of CJEU case law. There is a sizeable body of CJEU case law interpreting EU employment rights, which domestic courts are currently bound to follow. In many cases, the CJEU has enlarged the scope of rights beyond the limits that would have been set by domestic courts. Post-Brexit, UK courts may no longer be required to follow existing and future CJEU decisions, and may merely regard them as having persuasive force. An inevitable consequence of that approach would be the re-litigation of settled principle – for example, whether holiday pay needs to take account of non-guaranteed overtime and commission payments, or whether sleep-in shifts count as working time. Commentators have voiced uncertainty as to how best to prevent this. Some suggest that transitional legislation, dealing with the issues discussed above, could also freeze in place principles derived from case law. For example, Stephen Laws (First Parliamentary Counsel 2006-2012) wrote:

How far should UK law originally deriving from EU law, so far as it survives, continue to be construed in its EU context? What relevance should ECJ judgments, past and future, continue to have on the construction of law with an EU inspiration?

A single Bill could apply a transitory patch - keeping most things in place, with general transitional modifications - until later primary or secondary legislation can produce more comprehensive solutions. But there will undoubtedly be demands for more of the detail to be settled early. It will be difficult, in practice to prevent a consideration of the issues involved in any later legislation from arising during the passage of a paving, patching Bill; but, if the legislation is not to become totally unwieldy, some matters are bound to have to be postponed and so patched in the meantime.<sup>102</sup>

### 4.4 Creation of new employment rights

Once the UK withdraws from the EU it will no longer be required to transpose new EU law into domestic law. This, again, would be subject to the terms of any future legal

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<sup>102</sup> Stephen Laws, '[Article 50 and the Political Constitution](#)', U.K. Constitutional Law Blog, 18 July 2016.

relationship with the EU. The employment law implications of this are twofold. First, the UK will not be required to implement new EU laws promulgated in the employment sphere. Secondly, new CJEU decisions interpreting Directives that have already been implemented in the UK will have no binding effect on UK law. In consequence, UK employment law and that of EU Members States could follow gradually diverging paths.

## 4.5 Comment

Prior to the referendum commentators took varying positions on the consequences of Brexit for employment law. While there was consensus as to the potential scope of change (i.e. all EU employment rights could be removed), views differed as to its likely magnitude. Some took the view that UK employment rights in many cases predate comparable EU rights and often exceed the minimum floor that they set, indicating that Brexit would be unlikely to result in a diminution in rights other than, perhaps, at their margins. Others argued that a deregulatory-minded UK government might seek to remove or limit certain rights, substantiating this view by reference to examples of the UK Government's resistance to new EU rights and hostility towards CJEU case law. These commentators tended to single out agency worker rights, working time rights and uncapped discrimination compensation as being likely candidates for change.<sup>103</sup>

The Leader of the Opposition, Jeremy Corbyn, suggested that Brexit might lead to a "bonfire of rights" for workers.<sup>104</sup> Others still argued that, on balance, the potential for reducing employment rights following Brexit pales in comparison to the impact of changes permissible under purely domestic legislation and already enacted, such as employment tribunal fees and the increased qualifying period for unfair dismissal claims.<sup>105</sup>

Inevitably, all these views were speculative and generally based on predications as to the political complexion of a post-Brexit government. The most recent indication from the Government as to the approach it might take came from David Davis MP, who wrote:

At the moment all businesses in the UK must comply with EU regulation, even if they export nothing to the EU. This impacts on our global competitiveness. Instead, we should look to match regulation for companies to their primary export markets.

To be clear, I am not talking here about employment regulation. All the empirical studies show that it is not employment regulation that stultifies economic growth, but all the other market-related regulations, many of them wholly unnecessary. Britain has a relatively flexible workforce, and so long as the employment law environment stays reasonably stable it should not be a problem for business.

There is also a political, or perhaps sentimental point. The great British industrial working classes voted overwhelmingly for Brexit. I am not at all attracted by the idea of rewarding them by cutting their rights. This is in any event unnecessary, and we can significantly improve our growth rate by stopping the flood of unnecessary market and product regulation.<sup>106</sup>

<sup>103</sup> See, for example, Ford, M., [Workers' Rights From Europe: The Impact of Brexit](#), March 2016.

<sup>104</sup> [Jeremy Corbyn: leaving EU would lead to 'bonfire of rights'](#), *Guardian*, 14 April 2016.

<sup>105</sup> [Brexit & workers' rights. Meh.](#), Labour Pains blog, 29 March 2016.

<sup>106</sup> [Trade deals. Tax cuts. And taking time before triggering Article 50. A Brexit economic strategy for Britain](#), Conservative Home, 14 July 2016.



## 5. Agriculture

### 5.1 Brexit: key issues

#### Agriculture and Brexit: Key Issues for the food and farming industry

##### Main areas of uncertainty

- Levels of direct financial support and rural development funding after 2020
- Trade models and level of continued access to the Common Market, degree of protection from cheap imports
- Provision of market safety nets
- Access to labour
- Overall national farm policy and regulation and approach across the Devolved Administrations
- Food labelling requirements
- Pesticides and GM food and crops approval approach
- What kind of future CAP UK farmers will be competing with as the policy is currently being simplified and will be reformed for 2021.

##### Potential areas of opportunity

- A simpler and more targeted approach to agricultural policy and support, incentivising farmers to UK priorities
- Potential for greater deregulation and innovation outside CAP.
- New trade deals
- New agri-environment schemes, tailored to UK needs and environmental priorities.
- No disallowance fines for incorrect CAP payments

For agriculture, the key impact of Brexit is the departure from the Common Agricultural Policy (CAP). This will occur whichever trading arrangement is sought with the EU.

Almost 40% of the EU's budget is related to agriculture and rural development through the CAP. It provides an EU framework of regulation for direct payments to farmers, market support measures and rural development programmes to support the wider rural economy.

House of Commons Library Briefing Paper [EU Budget and the UK's contribution](#) (August 2016) provides further details and trends.

In the UK, EU farm subsidies currently make up around 50-60% of farm income.<sup>107</sup> So the big question for farmers is the nature and scale of any further financial support for their industry.

The terms of a UK exit will also affect pesticides approval, approval for genetically modified organisms (GMOs) and plant and animal health regulatory regimes. All of these are currently harmonised at an EU level.

<sup>107</sup> Defra, [Total Income from Farming 2014 - 2nd estimate United Kingdom](#), 26 November 2015 shows that subsidies made up around 54% of UK Total Farm Income in 2014 and the Government's [Review of the Balance of Competencies between the UK and the EU: Agriculture](#), Summer 2014 paras 2.34 –2.38 indicated that in 2012 this figure had been as much as 68%.

This section sets out some of the current thinking that has been emerging since the EU referendum.

House of Commons Library Briefing Paper [EU referendum: Impact on UK agricultural policy](#) (May 2016) sets out the thinking and analysis that was available prior to the vote and further detail on the operation of CAP.

There is to some extent a blank page to be filled for UK agriculture policy and UK farming, and landowning bodies are starting to set out their wish list for the future. They are asking the Government to act quickly to reduce uncertainty and take the opportunity to devise simpler approaches to farming regulation which support competitiveness.

Before the referendum, the UK Government was clear that it had no 'Plan B' for agriculture and that EU exit was a "leap in the dark" for UK farmers.<sup>108</sup> The previous Prime Minister, David Cameron, had committed to ensuring that an agricultural support system is "properly maintained" in the event of a UK exit, but said that he could not make the same guarantee for future governments.<sup>109</sup>

More recent comments by farming Minister George Eustice indicate that the UK Government is considering a more outcome-focussed and targeted support system.

Farming unions across the UK had, pre-referendum, council resolutions supporting a 'remain' stance because the uncertainties on the 'leave' side were too great in terms of the future level of support for UK agriculture and the basis of future UK trade with the EU.

However, their members seemed to be more evenly split. A *Farmers Weekly* survey in April 2016 found that 58% of farmers planned to vote to leave and only 31% were planning to vote to remain.<sup>110</sup> This is in contrast to CBI reports at the same time that almost 80% of UK businesses wanted to remain in the EU.<sup>111</sup>

Although there is as yet no UK vision for an agricultural sector operating outside the CAP, successive UK governments have consistently sought to reduce the overall CAP budget and levels of direct subsidies, and to ensure that direct subsidies are linked to the delivery of wider public goods such as environmental protection to give value for money to the tax payer.<sup>112</sup>

Farming organisations are now taking a proactive approach to setting out their aims for a competitive and sustainable UK agricultural policy outside the EU.

The House of Lords [debated the impact of Brexit on farming](#) on 21 July 2016.

## 5.2 What does CAP currently provide?

The CAP gives direct support to UK farmers through the Basic Payment Scheme (Pillar 1 funding) and the wider rural economy through Pillar 2 funding for Rural Development Programmes.

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<sup>108</sup> DEFRA Press Release, [Environment Minister addresses the NFU Conference](#), 23 February 2016.

<sup>109</sup> CLA, [PM David Cameron responds to CLA EU referendum concerns](#), 14 April 2016.

<sup>110</sup> 58% leave, 31% remain, 11% undecided, *Farmers Weekly*, 29 April 2016.

<sup>111</sup> CBI, [Two futures: What the EU referendum means for the UK's prosperity](#), April 2016, p.2.

<sup>112</sup> See for example, House of Commons EU Scrutiny Committee [Seventh Report of Session 2007–08](#), 9 January 2008 and overall explanation of the Health Check in National Assembly for Wales Members' Research Service, [EU Common Agricultural Policy 2008: CAP Health Check](#), February 2008.

Over 2014-2020 the UK is expected to receive €25.1 billion in direct payments (Pillar 1) and €2.6 billion in rural development funds (Pillar 2) for the environment and rural development.

This represents a reduction in real terms of 12.6% and 5.5% respectively compared with CAP payments to the UK in the period 2007-2013.<sup>113</sup>

The table below shows how the total UK CAP allocations for 2014-2020 have been allocated across the UK.

### UK CAP allocations 2014-2020

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

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

**Source:** UK Government, November 2013.<sup>114</sup>

Depending on how the UK Government chooses to continue and phase in its support to agriculture, leaving the regime would probably reduce farm incomes in the short term. This is because, based on past CAP reform negotiating positions, the UK Government and Devolved Administrations would be unlikely to match the current levels of subsidy and/or would require more 'public goods' in return for support, e.g. in environmental protection, which the UK Government views as the "overarching market failure in this sector".<sup>115</sup>

The Country Land and Business Association's March 2016 report, *Leave or Remain: The decisions that politicians must make to support the rural economy* suggested that the £3.87bn EU CAP spend in the UK in 2013 resulted in a £10bn contribution to the EU economy, including more than 350,000 jobs and £3.5bn in tax revenue.<sup>116</sup>

### Rural Development Programmes

The EU CAP subsidies are made up of direct payments (Pillar 1 funding) and payments for rural development programmes which benefit the wider rural economy (Pillar 2 funding).

Across the UK, a large component of these Pillar 2 Rural Development Programmes is directed at agri-environment schemes where farmers receive additional payments for practices which especially protect and enhance the environment. It is very likely that these

<sup>113</sup> GOV.UK Press Release, [CAP allocations announced](#), 8 November 2013.

<sup>114</sup> GOV.UK Press Release, [CAP allocations announced](#), 8 November 2013.

<sup>115</sup> Defra, [The Rural Development Programme for England 2014-2020: Final Impact Assessment](#), 10 April 2014.

<sup>116</sup> CLA, *Leave or remain: The decisions that politicians must make to support the rural economy*, March 2016.

would continue in some form across the UK outside a CAP regime, as they are well-established mechanisms to promote environmental policy objectives. The UK Government has opted to transfer almost maximum funds from the direct subsidies allocation (Pillar 1) for England to the Rural Development Programme for England (Pillar 2).

The RDP programmes in the UK also support the wider rural economy with priorities relating to tourism, rural broadband and SMEs. The Pillar 2 funding will be supporting various growth programmes across the UK for 2014-2020 with little additional Exchequer funding. For example, the £3.5bn RDP for England has around 15% Exchequer funding.<sup>117</sup> Thus, without CAP funding and a required RDP approved by the EU, it is not clear how much specific support would be prioritised and directed to rural areas.

### 5.3 Impacts of losing the CAP

The loss of the CAP and a future EU/UK trading relationship raise lots of uncertainties for farmers in terms of income, tariffs, commodity and consumer prices and environmental management requirements in the future. The likely impacts, trade-offs and potential scenarios are complex.

House of Commons Library Briefing [EU referendum: Impact on UK agricultural policy](#) (May 2016) discusses these topics in more detail.

A snapshot of some of the key analysis of Brexit's impact on farming is provided below:

#### **Worshipful Company of Farmers' analysis (February 2016)**

Professor Alan Buckwell produced a report for the Worshipful Company of Farmers, [Possible Agricultural Implications of Brexit](#) (February 2016).

He concluded that the EU trade question was fundamentally a choice between remaining close to the EU single market and therefore having to retain most existing EU regulation, or leaving the single market in order to allow some deregulation.

Whatever the outcome of the referendum, he predicts more customs controls and thus higher trading costs than now on trade with the EU (both ways). This could depress UK farm prices and raise some consumer costs. If the UK then chooses lower protection levels on agriculture with the rest of the world, this would also depress some UK farmer prices, but reduce consumer costs. Therefore, together, farmers might face weaker prices, whilst consumer food prices, on balance, may not be much affected.

#### **LEI for the NFU (April 2016)**

Detailed analysis was commissioned by the NFU before the referendum from a leading agricultural research institute, LEI at Wageningen University (The Netherlands).

This analysis, [Implications of a UK exit from the EU for British Agriculture](#) (April 2016) looked at three trade scenarios with different levels of agricultural support:

- 1) UK-EU Free Trade Arrangement (FTA)
- 2) WTO default position; and,
- 3) UK Trade Liberalisation (TL) scenario

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<sup>117</sup> Defra, [The Rural Development Programme for England 2014-2020: Final Impact Assessment](#), 10 April 2014.

In each of these scenarios the effects of three different levels of agricultural support were estimated:

- status quo, i.e. a continuation of all direct payments
- 50% reduction of direct payments and
- no direct payments

It was assumed that there was no change in the level of environmental (Pillar II) payments to farmers.

The researchers found that:

- for most sectors the biggest driver of UK farm income changes was the level of public support payments available. The loss of these support payments offset positive price impacts in all of the scenarios.
- The positive price impacts seen through both the FTA and WTO default scenarios were offset by the loss of direct support payments.
- A reduction of direct payments, or a complete elimination, exacerbated the negative impact on farm incomes seen under the UK TL scenario.
- The UK TL scenario implied a lowering of the UK's external import tariffs by 50%. This scenario was found to have significant impacts on UK meat and dairy prices as current import rates are higher for these products. Consequently, the overall effect of the TL scenario was a price decline for animal products which leads to a reduction in meat and milk production in the UK.<sup>118</sup>

### **Agra Europe Analysis (October 2015)**

Agra Europe, an EU agriculture and food publication, prepared a detailed analysis of the impact of Brexit and likely farm policies on EU exit: [Preparing for Brexit: What UK withdrawal from the EU would mean for the agri-food industry](#) (October 2015).

This report highlights how an EU exit would be “traumatic” for the farming industry, with large cuts in farm incomes, bankruptcies, falling land prices and the elimination of small and medium sized farms, as well as increased barriers to exports and lost markets.<sup>119</sup>

### **IEEP: environmental concerns**

Although environmental NGOs have often been critical of the CAP and especially the latest reforms in terms of environmental benefits, there is also some concern that support for agri-environmental schemes and wider rural development funding will be reduced outside the EU.

The Institute for European Environmental Policy (IEEP) has said that it is “far from clear whether the UK environment would be better serviced by a new set of national agriculture policies which would follow from an EU Brexit”, especially as there would be major variations across the UK administrations.<sup>120</sup>

The IEEP highlights the following key environmental factors:

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<sup>118</sup> Berkum, S. van, et al, 2016, Implications of a UK exit from the EU for British agriculture; Study for the National Farmers' Union (NFU). Wageningen, LEI Wageningen UR (University & Research centre), LEI Report 2016-046.

<sup>119</sup> Analysis: *The CAP and its role in the UK's Brexit debate*, Agra Europe, 14 October 2015.

<sup>120</sup> IEEP, [The potential policy and environmental consequences for the UK of a departure from the European Union](#), March 2016.



- Established UK policy, strongly supported by the Treasury, is to cut expenditure on agriculture. Consequently, there are major questions about how far a future government would maintain funding for managing the rural environment as well as for agriculture.
- The majority of experts on the topic are sceptical and expect significant cuts.
- Incentives for greener farming could decline, and there are also concerns about the extent to which governments would be willing to impose environmental obligations on a sector subject to competition from more subsidised counterparts in the remaining EU Member States.

### **Campaign to protect rural England**

The [Campaign to Protect Rural England](#) is highlighting the need for farming in England to become more diverse, in terms of farm size and production and demographics, in order to prove environmentally resilient and publicly accessible in the future. Its August 2016 report, [New Model Farming: Resilience through Diversity](#), advocates that the Government should encourage a mix of farms. It advises:<sup>121</sup>

- redirecting funding to help smaller, more innovative and mixed farms;
- making land available for new farmers to enter the market;
- encouraging more dynamism and diversity in farming through a community right to bid, and a transparent register of landholdings;
- encouraging the use of low cost technologies and techniques to benefit all farmers;
- ensuring that a much higher proportion of public funds are directly linked to delivering public benefits.

The report has had a muted response from farming and landowner bodies. The CLA disputed the assumptions that smaller, mixed farms would have more positive environmental impacts.<sup>122</sup>

## **5.4 What has the UK Government said about EU exit and agriculture so far?**

The UK Government has not yet given many clues as to how it is likely to approach UK agriculture policy outside the CAP.

However, in terms of financial support, the Chancellor of the Exchequer has given farmers a level of certainty by guaranteeing the current level of agriculture funding under Pillar 1 to 2020 as part of the “transition to new domestic arrangements”.<sup>123</sup> This has been welcomed by farming organisations.<sup>124</sup>

HM Treasury has also given assurances that all structural and investment fund projects, including agri-environment schemes, signed before the Autumn Statement will be fully

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<sup>121</sup> CPRE, [New farmers and new small farms can kick-start agricultural revolution](#), 17 August 2016.

<sup>122</sup> CLA, [CLA responds to CPRE's report on the future of farming outside the EU](#), 17 August 2016.

<sup>123</sup> HM Treasury, [Chancellor Philip Hammond guarantees EU funding beyond date UK leaves the EU](#), 13 August 2016.

<sup>124</sup> See for example, NFU, [NFU says announcement from HMT is 'positive'](#), 15 August 2016.

funded, even in cases where these projects continue beyond the UK's departure from the EU.<sup>125</sup>

In July 2016 Lord Gardiner of Kimble gave some idea of the overall elements of the UK Government's future 'vision' for farming. Responding to the most recent parliamentary debate on agriculture and Brexit, the Defra Minister said that the Government was "committed to working with the industry and to developing an exciting new vision for British agriculture—a vision based on sustainable, productive and competitive industry".<sup>126</sup>

Defra's proposed 25-Year Food and Farming Plan is currently on hold following the referendum. George Eustice set out further detail in answer to a written question in July 2016:

We now have an opportunity to consider our long term vision for food and farming outside of the EU. We look forward to continuing to work with a wide range of interests to develop that vision and to work together to deliver it.

It remains essential that the UK has a thriving food and farming industry with high animal welfare and environmental standards, access to international markets and a long term commitment to boosting productivity through innovation and skills. We are now focused on taking forward the actions that support these objectives, and continuing to develop our long term vision, in a different context.<sup>127</sup>

In relation to a replacement for the CAP specifically he has said:

Defra is currently working on a range of proposals to inform discussions about the shape of a future agricultural policy to replace the CAP and we will be involving stakeholders in those discussions.<sup>128</sup>

At the Livestock Event in July 2016, George Eustice gave an indication of Defra's thinking so far. He said that the goal was to "unbundle farm policy objectives" so that it was clear which policies are required to deliver a productive, competitive and sustainable agricultural industry.

He identified the need to reassure people that the UK would not leave the EU's Single Market until a free trade agreement was in place.

He emphasised that the final shape of farm policy would be a matter for the new Prime Minister but that options already being discussed included:

- market measures
- renewed focus on agri-environment schemes with a more holistic approach to protecting the environment, perhaps on a catchment management basis to join up soil management with the UK's existing approach to managing water.<sup>129</sup>

He also said that Defra officials were looking at risk management tools such as futures markets and crop insurance.

The Rural Payments Agency has confirmed that the EU referendum result "does not mean there will be immediate changes" and that "until the UK formally leaves the EU, it still has

<sup>125</sup> HM Treasury, [Chancellor Philip Hammond guarantees EU funding beyond date UK leaves the EU](#), 13 August 2016.

<sup>126</sup> [HL Deb 21 July 2016 c797](#)

<sup>127</sup> [HC Written Question 42061](#), 11 July 2016.

<sup>128</sup> [HC Written Question 43181](#), 22 July 2016.

<sup>129</sup> Defra signals shift away from direct payments, *Farmers Weekly*, 8 July 2016.

a legal obligation to comply with the Common Agricultural Policy and all BPS scheme rules and regulations will apply".<sup>130</sup>

Past CAP negotiating positions and comments on future reform are the only other clues to the possible principles and overall approach that the UK Government might adopt given a free rein in agriculture.

UK policy over successive governments in the last 20 years has been to seek to reduce CAP direct subsidies in EU negotiations on CAP reform and to shift any support to farmers towards provision of public goods to provide more value for money for the UK tax payer, e.g. environmental benefits and services through habitat and farm management.

Overall, regardless of the referendum outcome, farming unions had been expecting support for farming to fall as a result of reducing budgets and changing policy thinking on subsidies at both EU and UK level.<sup>131</sup>

In the last CAP round (2014-2020), which was agreed at EU level in 2013, the UK sought cuts in the overall EU budget supporting the CAP. It also made clear that it wanted to see a more market-orientated policy with competitiveness at its heart, to ensure that farmers can prepare for a future without income support.

In January 2015 the UK Government's response to a written parliamentary question reiterated a commitment to moving away from farming subsidies in the long run:

We continue to believe that expenditure on market price support and direct payments to farmers under Pillar 1 of the CAP represents very poor value for money. The UK has always made clear that we would like to move away from subsidies in the long run. However, we recognise that there is scope for using taxpayers' money to pay farmers for public goods that the market otherwise would not reward, such as protecting the natural environment, supporting biodiversity and improving animal welfare.<sup>132</sup>

Northern Irish Farming Minister Michelle O'Neill also said in February 2016 that she did not believe the current UK Government would match the current level of subsidies if there was an EU exit:

The British Government have consistently pushed for reductions in the support going to farmers and rural development under the CAP. They do not regard that spending as value for money, so I believe that the Treasury would be unsympathetic to our calls for some of the money saved from withdrawing as a member state from the EU to be used to maintain support to farmers and rural communities. A significant reduction in direct support would leave many of our farmers in real and long-term financial difficulty. A reduction of funding for farmers and rural communities would have knock-on effects for the environment.<sup>133</sup>

In the last CAP round, the UK Government also secured the flexibility for the UK to effectively devolve CAP arrangements across the UK administrations. However, this devolution brings its own complications, as currently the Devolved Administrations shape their own CAP implementation decisions within the EU rules and have chosen very different paths. It is not clear how the UK would approach farming policy without common EU rules as the overall working framework for the UK Government and the Devolved Administrations.

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<sup>130</sup> RPA, [RPA sets out plans for resolving farmers' BPS 2015 queries](#), 29 June 2016.

<sup>131</sup> The future for subsidies in and out of the EU, *Farmers Weekly*, 13 May 2016.

<sup>132</sup> HC Deb [Written Answer 221523](#), 27 January 2015.

<sup>133</sup> Northern Ireland Assembly, [Agriculture Questions](#), 2 February 2016.

## 5.5 EU Commission views

The NFU met EU Agriculture Commissioner Phil Hogan at the end of June 2016, seeking assurance that farmers would have the full CAP subsidies until 2020 - the end of this 'round'.<sup>134</sup>

Commissioner Hogan has clarified the Commission's position in a number of areas:

- The UK will have all CAP benefits until Article 50 negotiations are concluded.<sup>135</sup>
- Market access negotiations and negotiations for a bilateral trade agreement between the EU and UK will not commence until exit negotiations are completed.<sup>136</sup>

It is this potential gap between leaving the Single Market and starting a new free trade agreement which is of concern to farmers and economists alike.

## 5.6 Farmers want a "new vision for British Agriculture"

The [NFU](#) has called for Theresa May to "back a new vision for British agriculture". A letter to the new Prime Minister in July 2016 stressed the "historic opportunity to shape the future of British farming and food production" for generations to come and underlines the importance of the sector to the economy.<sup>137</sup> The NFU has described farming as "the bedrock for a vibrant supply chain" and "essential" for the UK's £108bn food and drink industry.<sup>138</sup> The farming union launched its biggest consultation of members "in a generation" in August 2016, which will conclude on 14 September 2016 after 50 meetings across the country.<sup>139</sup>

In a joint statement, the Scottish Land and Estates and Country Land and Business Association (CLA) have called for immediate action from all levels of government to provide some certainty and clarity for farming and other rural businesses.<sup>140</sup>

The [CLA](#) has expressed concern that agriculture was not mentioned in the new Department for International Trade's [announcement](#) of its responsibilities.<sup>141</sup> The Department has since clarified that agriculture would be part of Parliamentary Under Secretary Mark Garnier's portfolio, but the CLA is concerned that agriculture is being treated as an "after thought".

The CLA has acknowledged that leaving the EU creates a "chance for rural businesses to thrive" but highlights that it is "notoriously difficult to establish open trade deals for farming products" and that there was a history of agriculture being treated as a "low priority or excluded from international trade negotiations altogether".<sup>142</sup>

The NFU has set out its wish list for EU exit terms and the union has launched a consultation with their members about what the new UK farming policy should look like.<sup>143</sup>

<sup>134</sup> NFU Online, [Commissioner Hogan's clarity for UK farmers](#), 4 July 2016.

<sup>135</sup> NFU Online, [Commissioner Hogan's clarity for UK farmers](#), 4 July 2016.

<sup>136</sup> UK is likely face tariffs on trade, warns EU, *Farmers Weekly*, 15 July 2016, p.6.

<sup>137</sup> NFU online, [NFU calls on new PM to champion a new vision for farming](#), 13 July 2016.

<sup>138</sup> NFU online, [NFU launches post-Brexit options paper and consultation](#), 15 August 2016.

<sup>139</sup> NFU online, [NFU launches post-Brexit options paper and consultation](#), 15 August 2016.

<sup>140</sup> [Landowners want CAP replacement action now](#), *The Scotsman*, 12 July 2016.

<sup>141</sup> Gov.uk [Ministerial portfolios at Department for International Trade confirmed](#), 4 August 2016.

<sup>142</sup> Food security at risk in future trade talks, *Farmers Weekly*, 12 August 2016, p.7.

<sup>143</sup> NFU online, [NFU launches biggest farming conversation for a generation](#), 8 July 2016.

The NFU is keen for the UK to take the opportunity of leaving the EU's "over-politicised approach and excessive use of the precautionary principle" in relation to product approvals, e.g. GM crops and pesticides.

### The key asks

Farming and landowning organisations realise that they need to have some commonality in their proposals if they are to get traction with Defra and the Treasury. Some common themes have been emerging and it has been reported that there are "fledgling" talks of farming organisations forming a coalition to support the Government's Brexit policy-making.<sup>144</sup>

So far farming and landowner bodies have been seeking the following outlook and reassurances from the UK Government:<sup>145</sup>

#### Farming support and regulation

- Swift action to develop a new domestic agricultural policy, with a long term approach, adapted to farmers' needs; easy to understand and administer.
- Guarantees that support given to UK farmers is on a par with that given to farmers in the EU, who will still be the UK's principle competitors.
- Ensuring that future arrangements for pesticide and GM approvals are proportionate and based on sound science.
- A UK-wide policy to be developed with all of the UK devolved administrations to take into account the differing characteristics and needs of the rural sectors in each country. Each administration would implement it in accordance with their own needs and aspirations, and there should be sufficient funds for the policy across the whole of the UK.
- Careful transitional arrangements to ensure that the uncertainty of future incomes does not lead to problems with lending and succession of ownership.

#### Trade and markets

- Best possible access to markets in the rest of Europe.
- Similar level of trade agreements as currently with the rest of the world (EU farmers benefit from over 50 such agreements at present).
- Assurances that the UK will not be open to imports which are produced to lower standards.
- Ensure that British agriculture does not become the lever used to develop export markets in non-farming areas by granting unfavourable market access deals which will impact upon domestic markets in agricultural produce.

#### Labour

- Access to migrant labour, both seasonal and full-time.

#### Rural Development Programmes

- A rural development policy which focuses on enhancing UK competitiveness, taking the opportunity to devise better agri-environment schemes.

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<sup>144</sup> Single voice to yield best results, *Farmers Weekly*, 15 July 2016, p.16.

<sup>145</sup> Drawn from NFU online, [NFU launches biggest farming conversation for a generation](#), 8 July 2016; CLA and Scottish Land and Estates, [New opportunities for a world leading food and farming and environmental policy](#), July 2016.

## Suggested alternative models for farm support

Before the referendum farming minister, George Eustice, set out how a fresh approach to farm support and policy could look outside the EU.<sup>146</sup> UKIP did the same.<sup>147</sup> Both of these positions suggested maintaining some level of subsidies. Mr Eustice suggested that the UK Government could invest £2bn, compared with the £3bn that UK farmers receive today, towards a new policy because of the budget savings of leaving the EU.<sup>148</sup> He also suggested a more targeted policy focused on outcomes rather than blanket subsidies.

The [Tenant Farmers Association](#) has now also put forward a proposal for a three-pillar farm support. This assumes current levels of support, although these cannot be guaranteed if the UK Government maintains its last CAP reform negotiating position of wanting to reduce subsidies.

The Tenant Farmers Association has updated a plan for farming and agricultural policy in a leave scenario which it published before the referendum. Its proposal abolishes basic support for all farms and splits the current funding between:

- an outcome-focused agri-environment scheme
- an infrastructure grant scheme to encourage the development of farm businesses
- public funding to develop and promote British food both at home and abroad through market research and development and technology transfer.<sup>149</sup>

## 5.7 Wider EU agricultural policy issues

Although the CAP is a key feature of UK farming policy, there are a number of other important areas of EU regulation that will be affected by Brexit.

- The UK Government's [Review of the Balance of Competences between the UK and the EU](#) (Summer 2014) highlighted pesticides regulation and plant and animal health regulation as key areas of interest from stakeholders. The NFU has also highlighted EU funding of agricultural research and development.<sup>150</sup>
- *Farmers for In* argued before the referendum that it is "pointless" trying to tackle environmental threats, and animal and plant diseases at country level. The group highlighted that EU common standards and thresholds give farming the security that it needs in "today's uncertain landscape".<sup>151</sup>

## Pesticide Regulation

The regulation and licensing of pesticides has a major impact on agricultural and horticultural businesses and is currently undertaken on a pan-European basis, sharing the burden of evaluating scientific evidence through the European Food Safety Authority (EFSA) and through different Member States taking the lead in evaluating different applications.

<sup>146</sup> [Eustice outlines £2bn plan for farming as Defra Ministers stand divided on Brexit](#), *Farmers Guardian*, 25 February 2016.

<sup>147</sup> [Leaving the EU 'too risky' warn farm leaders](#), *Farmers' Weekly*, 5 March 2016.

<sup>148</sup> [Eustice outlines £2bn plan for farming as Defra Ministers stand divided on Brexit](#), *Farmers Guardian*, 25 February 2016.

<sup>149</sup> Tenant Farmers Association, [TFA promotes Brexit vision at the Great Yorkshire Show](#), 11 July 2016.

<sup>150</sup> NFU online, [NFU Council agrees resolution on the EU referendum](#), 18 April 2016.

<sup>151</sup> Britain Stronger In Europe, [Farmers for In launched](#), 5 March 2016.

The EEA agreement includes [Directive 91/414/EC on the placing of plant protection products on the market](#). However, other trade deals may not.

Even under current EU arrangements, the UK has its own machinery to provide consent for products containing EU approved active ingredients with a national risk assessment process. This could be used for a UK approach to pesticides regulation and approval.

The UK's pesticide authority is the Health and Safety Executive's Chemicals Regulation Directorate. The Expert Committee on Pesticides provides the Government with advice on this process.

Ultimately, the evaluation of an approval for a pesticide at EU level gets put to a vote by all Member States in the Standing Committee on the Food Chain and Animal Health. It is this politicisation of a science-based assessment that has frustrated the NFU.

Differences in opinion at this stage have delayed recent decisions on key pesticides (see below).

## Implications of Brexit

The NFU has raised concerns that UK crop production is "flatlining" because EU regulation is steadily reducing the range of crop protection products that farmers can use.<sup>152</sup>

The EU approval and assessment process has recently received a great deal of attention because of the European Commission's introduction of restrictions on 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 restrictions but the Commission had sufficient support to introduce them. These restrictions are currently being reviewed by the EFSA, which is expected to provide an assessment by 31 January 2017.<sup>153</sup>

In addition, the renewal of the approval for the herbicide glyphosate has been delayed at EU level after conflicting scientific assessments. It now has approval for 18 months pending a further study by the EU Chemicals Agency. The UK is arguing that the scientific assessments carried out so far do not suggest that certain uses of glyphosate should be restricted at EU level, and that it should be for Member States to consider whether restrictions are needed as part of their national re-approval processes.<sup>154</sup>

The UK resistance to these decisions indicates that there would be a very different approach to pesticides approval with more UK autonomy. Before the referendum, farming Minister George Eustice said that the EU's precautionary principle needed to be reformed in favour of a US-style, risk-based approach, allowing faster authorisation.<sup>155</sup>

## Genetically Modified Organisms (GMOs)

Outside the EU, the UK's regulation of genetically modified crops and products would depend on its future arrangements with the EU. For example, the EEA Agreement covers a wide range of food law, including biotechnology and GMOs.<sup>156</sup>

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<sup>152</sup> NFU Online, [A healthy harvest?](#) Vice-President's blog, 1 June 2014 and NFU online, [Lobbying for a Healthy Harvest](#), 5 February 2015.

<sup>153</sup> [HC Written Answer 24715, 3 February 2016.](#)

<sup>154</sup> [HL Written Question HL8 171 11 May 2016.](#)

<sup>155</sup> Brexit [would free UK from 'spirit crushing green directives' says Minister](#), *The Guardian*, 30 May 2016

<sup>156</sup> EFTA, [Food safety: Food and Veterinary Matters](#) as viewed on 20 July 2016.

The UK regulatory process for approving GM crops is also part of an EU-wide system of evaluation and authorisation for Genetically Modified Organisms (GMOs) based on scientific evidence and evaluation. However, the final decision on authorisation rests with Member States in a vote which somewhat politicises the process (as per pesticides approval), as such votes can reflect the Member States' overall position on GM rather than the specific authorisation being considered.

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

The European Commission has acknowledged this shortfall in the authorisation process and has been seeking to address it. For example, since April 2015 Member States have had more discretion to restrict or prohibit the use of GM crops in their own jurisdiction, even if EU-authorised, without having to vote against the whole authorisation of a particular GM crop to achieve this. The EU Commission has also reviewed the whole decision-making process for authorising GMOs and has proposed that this approach should also be taken for GM food and feed (which is more widely authorised).<sup>157</sup>

However, in October 2015 the European Parliament voted against these plans on the grounds that they were unworkable and could lead to border controls between countries that disagree on GMOs, which would affect the internal market. The EP asked the Commission to come forward with new ideas.<sup>158</sup>

## Plant and Animal Health and Food Safety

As noted by the UK Government's 2013 Balance of Competences Review, there is an extensive body of EU legislation on animal health, veterinary medicines, medicated feeding stuffs, animal welfare, food and feed safety and hygiene, food labelling and compositional standards. This is mainly to facilitate trade and to provide the EU with comprehensive disease and food safety alert systems.<sup>159</sup>

Many of these areas have international standards, food for example, where an EU exit would not greatly change standards. Some also already allow Member States to maintain stricter rules if they have them, e.g. UK slaughter rules and animal welfare. However, Member States also share expertise, intelligence and resources to support these systems.

Without access to such resources the UK will have to replicate some of the services currently provided or seek to participate in them on other terms.

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<sup>157</sup> COM (2015) 176 final, 22 April 2015, [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Reviewing the decision-making process on Genetically Modified Organisms \(GMOs\)](#).

<sup>158</sup> European Parliament News, [Eight things you should know about GMOs](#), 27 October 2015.

<sup>159</sup> HM Government, [Review of the balance of competency between the UK and EU: Animal Health and Welfare and Food Safety report](#), July 2013.





## 6. Fisheries policy

This chapter describes the views of different stakeholders on the implications of Brexit for UK fisheries. It also seeks to draw on evidence from non-EU European countries, such as Norway, to give an indication of possible outcomes for the UK.

It is important to note that the outcomes will in large part depend on the nature of the UK's withdrawal and the negotiations that will take place.

There is significant uncertainty.

### 6.1 The Common Fisheries Policy

Fisheries in the EU are managed under the Common Fisheries Policy (CFP). The policy aims to ensure that fishing is “environmentally, economically and socially sustainable” and to allow fair competition between fishers.<sup>160</sup>

The CFP covers a number of policy areas including:

- **Fisheries management:** controls on how fish can be taken, with the goal of ensuring that fish stocks are healthy enough that the maximum sustainable amount of fish possible can be caught. The measures include technical regulations on what kinds of gear can be used and quotas for the amount of fish landed.
- **Funding:** The CFP provides funding to fishers and fishing communities for a number of purposes including supporting sustainable fishing and helping coastal communities to diversify their economies. The UK was allocated €243.1 million in fisheries funding from 2014-2020.<sup>161</sup>
- **Market organisation:** the CFP puts into place measures such as common marketing standards, common consumer information rules and competition rules, and provides market intelligence via the European Market Observatory for Fishery and Aquaculture Products.
- **Import tariffs:** the CFP allows for import tariff reductions for certain fish and fish products from outside the EU to help increase supply at times when EU supply cannot meet the demand of fish processors.

### 6.2 Fisheries post-Brexit

The analysis below seeks to consider the main CFP policy areas and how they might change in the UK post-Brexit.

#### Fisheries management

Brexit will have a number of implications for fisheries management. While it is possible to identify some possible broad implications, the specific outcomes are highly uncertain.

The following issues are likely to be important during and after the negotiations:

- Control over a greater area of sea
- Renegotiating the UK's share of fish quotas
- The power to walk away from negotiations

<sup>160</sup> [The Common Fisheries Policy \(CFP\)](#), European Commission, 29 May 2015.

<sup>161</sup> *Ibid.*

- The degree to which the UK could exclude non-UK vessels
- Cooperation with the EU and other countries on setting quotas
- UK influence on the management of stocks shared with the EU, and
- A new UK fisheries policy and management system.

These points are elaborated on below.

### **Control over a greater area of sea**

Norway and Iceland are responsible for fishing in their Exclusive Economic Zone (EEZ) up to 200 nautical miles from the coast. This is the norm in international law.

This contrasts with the situation in the EU, where Member States share access to fishing grounds from 12-200 miles from the coast (see box 1 below).

Following Brexit the UK could take full responsibility for fisheries in the UK's EEZ. However, this does not necessarily mean that the UK will as a result have greater access to fish. This point is elaborated on below.

In addition, there could be legal arguments under international law about the extent to which the current fishing rights of foreign fishers could be abolished.<sup>162</sup>

#### **Box 1: Why do we not control fisheries out to 200 miles from the UK coast?**

When the UK joined the EEC in 1973 the Member States 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>163</sup> This was broadly in line with international law at the time. 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 seas further than 12 miles from the coast were considered 'high seas', and not under the control of anyone. However, this changed in the late 1970s, when it was agreed under international law that countries had rights over the sea up to 200 nautical miles from their shores.<sup>164</sup>

When these new Exclusive Economic Zones (EEZ) were introduced, EU competence for fisheries was extended to 200 miles off the coast. The principle of equal access was applied to this new area.

### **Renegotiating the UK's share of fish quotas**

George Eustace, arguing for Brexit, stated that "outside the EU [we would be] in the strongest possible position to re-open the issue of 'relative stability' and argue for a fairer share of quota allocations in many fish stocks".<sup>165</sup> He said that this could be conducted

<sup>162</sup> [Traditional fishing rights: analysis of state practice](#), Polite Dyspriani, published by Division for ocean affairs and the law of the sea office of legal affairs, the United Nations, 2011.

<sup>163</sup> House of Lords European Union Committee, [The Progress of the Common Fisheries Policy](#), 22 July 2008, HL 146-i.

<sup>164</sup> Ibid.

<sup>165</sup> [The Fishing Industry and Brexit](#), George Eustice MP, 13 April 2016.

on the basis of an “assessment of spawning grounds and this science would help inform a new settlement”.<sup>166</sup>

Mr Eustace said that Brexit would enable the UK Government to represent itself at quota negotiations. This would mean that UK interests could not be bargained with in order to “give advantages to other EU countries”.<sup>167</sup>

The current agreement between the EU and Norway provides that quotas are shared on the basis of ‘zonal attachment’. This is the extent to which a stock is distributed in an area over time.

However, changes in “fish distribution, abundance and migration patterns can be caused by changing environmental conditions and increases or decreases in spawning stock biomass (among other factors)”. This fact can “cause problems for agreements based on zonal attachment” as disagreements can occur over the sharing of fish stocks as they change.<sup>168</sup>

Others have questioned the extent to which the UK will be in a position to renegotiate greater quotas outside the EU.<sup>169</sup> Elizabeth Truss MP, who was Secretary of State for Environment at the time and who campaigned to remain, questioned the impact of losing “the collective bargaining power of the EU”. She believed the UK “would be hard-pressed to get agreements as favourable as those we currently enjoy with third countries like Norway, Iceland, Russia, the Faroe Islands and Greenland”.<sup>170</sup>

The National Federation of Fishermen's Organisations noted that “we can certainly seek to renegotiate quota shares as well as access arrangement but it is realistic to expect that there will be a price of some sort. Who will pay that price is a critical question”.<sup>171</sup>

### **The power to walk away from negotiations**

Perhaps an additional bargaining tool available to the UK post-Brexit will be the ability to “walk away” from negotiations if it is unhappy with its share of quota.

Dr Bryce Stewart from the University of York said that “although this may sound appealing, it is likely to result in the setting of unsustainably high catch limits, as occurred during the recent ‘Mackerel Wars’ when Iceland, Norway and the Faroes all argued for (and set) a higher quota / share of the catch than that advised by the EU”.<sup>172</sup>

If the UK chose to walk away from negotiations, and unilaterally set higher quotas, the EU could respond harshly. For example, when a dispute emerged between the EU and the Faeroes regarding herring quotas, the EU responded with trade sanctions, introduced a ban on Faeroese herring imports and prohibited the entry into European ports of Faeroese fishing vessels.<sup>173</sup>

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<sup>166</sup> Ibid.

<sup>167</sup> [The Fishing Industry and Brexit](#), George Eustice, 13 April 2016.

<sup>168</sup> [Brexit: Where next for UK fisheries?](#), Marine Environmental Research, July 2016.

<sup>169</sup> [Brexit](#), The National Federation of Fishermen's Organisations, 24 June 2016.

<sup>170</sup> [We must not lose our voice in EU fishing policy](#), Elizabeth Truss, The National Federation of Fishermen's Organisations, 13 May 2016.

<sup>171</sup> [What would Brexit really mean for the UK's fishing industry?](#), The UK in a Changing Europe, 24 March 2016.

<sup>172</sup> Ibid.

<sup>173</sup> [EU lifts fish sanctions on Faroe Islands, WTO dispute closed](#), International Centre for Trade and Sustainable Development, 27 August 2014.

Ultimately the Faeroes agreed to reduce its quota from 100,000 tonnes to 40,000 tonnes (albeit up by 9,000 tonnes from a previous agreement).<sup>174</sup> This was much less than the Faroese believed they should have been entitled to on the basis of the science related to the distribution of herring in its waters, and in spite of the Faroese Government claiming that the EU's actions were illegal under international law.<sup>175</sup>

There appears to be significant uncertainty about the implications of Brexit in terms of the UK's bargaining power in fish quota negotiations.

### Box 2: Relative stability

In 1983, after seven years of negotiations, it was agreed that fisheries and quotas in the EEZ would be shared on the basis of who was already fishing in those areas (the principle of relative stability). This meant that when the EEZ was introduced, there would not be any dramatic consequences for any Member State.<sup>176</sup> It was also felt that this would help to "prevent repeated arguments over how quotas should be allocated, and to provide fishers with an environment which [was] stable relative to the overall state of the stock in question".<sup>177</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>178</sup>

In retrospect it could be argued that this situation disadvantaged the UK, which might have asserted control over a greater proportion of the EU's catch through enforcement of a 200-mile EEZ. However, the UK government may have accepted the terms because:

- the agreement had little effect on UK fisheries at the time, as the UK fleet was focused on other areas ([see Library briefing on the Cod Wars](#) for more information);
- enforcing the EEZ might have led to significant conflict with other Member States;
- enforcing the EEZ might have been incompatible with EU membership;
- some UK fishing communities were given special protections.<sup>179</sup>

### Excluding foreign vessels from UK waters

Aside from giving the UK the ability to walk away from talks, an argument for Brexit has been that it would enable the UK to exclude EU fishers from the UK's EEZ.<sup>180</sup>

Some have questioned the extent to which that option would be feasible. Issues that might arise include:

- increased political tensions during a time when the UK will be negotiating EU market access. The Danish fish producer organisation stated that the UK should only be granted access to the EU market on the basis that it still permitted access to UK waters;<sup>181</sup>

<sup>174</sup> Ibid.

<sup>175</sup> [Government of the Faroes: Coercive economic measures are illegal and 26.07.2014 counterproductive](#), The Government of the Faroe Islands, 26 July 2014

<sup>176</sup> Ibid.

<sup>177</sup> [How we manage our fisheries](#), European Commission, viewed 27 May 2015.

<sup>178</sup> [HC Deb 16 December 2004](#) c1220W.

<sup>179</sup> House of Lords European Union Committee, [The Progress of the Common Fisheries Policy](#), 22 July 2008, HL 146-i.

<sup>180</sup> Burns, C., A. Jordan, V. Gravey, N. Berny, S. Bulmer, N. Carter, R. Cowell, J. Dutton, B. Moore S. Oberthür, S. Owens, T. Rayner, J. Scott and B. Stewart, [The EU Referendum and the UK Environment: An Expert Review. How has EU membership affected the UK and what might change in the event of a vote to Remain or Leave?](#), UK in a Changing Europe, 2016.

<sup>181</sup> [UK market access has to mean fishing access](#), FiskerForum, 28 June 2016.

- the possible retaliatory exclusion of UK vessels from EU waters. That could be “a major concern in the fishing industry as 20% of the fish caught by the UK fleet is landed elsewhere in the EU”, and because the UK fleet currently has access to areas outside the UK’s EEZ;
- a ban possibly contravening international law;
- the implications of damaging fish trading relationships with Europe, as “at present the UK exports around 80% of its wild-caught seafood, with four of the top five destinations being European countries”.<sup>182</sup>

Other non-EU European countries have granted access to EU vessels (including UK vessels) to their EEZ as part of negotiations on fisheries. For example, when Greenland left the European Economic Community in 1982 it negotiated “tariff-free access to the EEC market for fisheries products” and in return “it allowed continued European access to its waters”.<sup>183</sup>

Norway also has mechanisms for allowing access to its EEZ by EU (and therefore UK) vessels. These long-standing arrangements were put into place to enable fishers from both the EU and Norway to maintain access to historic fishing grounds in each other’s EEZ.<sup>184</sup>

<sup>185</sup>

It therefore seems possible that some form of agreement on continued EU access to UK waters, and vice versa, could be part of a post-Brexit negotiated settlement.

### **Cooperation with the EU and other countries on setting quotas**

After Brexit the UK would need to cooperate with the EU on quota setting. Cooperation on sharing stocks is required, as many fish stocks are migratory and therefore cross EEZ boundaries. Fish populations could be damaged if countries failed to coordinate on fishing effort.

Such cooperation is enshrined in international law. The UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks and the UN Convention on the Law of the Sea in 1996<sup>186</sup> require cooperation on the conservation and management of fish stocks that straddle national jurisdictions. The UK has ratified these agreements.

This kind of cooperation is currently seen in Norway and other non-EU European countries. Around 90% of Norway’s fisheries are shared with other countries,<sup>187</sup> even though it is much more geographically isolated than the UK. The Norwegians set fish quotas and management strategies for important fish stocks in negotiation with other countries, including the EU and Russia. Norway and the EU have developed management strategies for several joint stocks including cod, haddock and herring.<sup>188</sup>

<sup>182</sup> [What would Brexit really mean for the UK’s fishing industry?](#), The Conversation, 24 March 2016.

<sup>183</sup> [Reality Check: How would Brexit affect the UK’s fishing waters?](#), BBC News, 31 May 2016.

<sup>184</sup> [Committee on Fisheries: Hearing CFP reform; the external dimension by Johán H. Williams, Director General, Norwegian Ministry of Fisheries and Coastal Affairs](#) European Parliament, viewed 14 July 2016.

<sup>185</sup> [Fisheries cooperation with the EU](#), Norwegian Ministry of Trade, Industry and Fisheries, 8 March 2010.

<sup>186</sup> [Fishery and Aquaculture Country Profiles: The Kingdom of Norway](#), Food and Agriculture Organization of the United Nations, 14 July 2016.

<sup>187</sup> Ibid.

<sup>188</sup> [Norwegian fisheries management](#), The Ministry of Fisheries and Coastal Affairs, 2007.

The EU cooperates and negotiates with non-EU countries on behalf of Member States. The outcome of negotiations on one stock may be influenced by negotiations on another.<sup>189</sup>

Following Brexit the UK will have to:

- maintain a close working relationship with the EU to enable the effective management of fisheries;
- agree a mechanism for agreeing quotas and management measures with the EU and other countries. This could be a bilateral mechanism between the UK and EU “in the case of stocks that are shared only between the EU and UK”, or through the North East Atlantic Fisheries Commission (NEAFC) for stocks shared with other countries “as is currently the case with mackerel, which is negotiated between the EU, Norway, Iceland and the Faroe Islands”.<sup>190</sup>

### **A new UK fisheries policy and management system**

George Eustace, arguing for Brexit, thought the UK Government would seek to retain a number of fisheries management measures, such as fishing within sustainable limits through a quota system, and that the UK “would still strive to eliminate the wasteful practice of discarding dead fish back into the sea”.<sup>191</sup>

“Managing cod stocks is not rocket science—it is much more complicated than that.”

Brexit could also help to address cases where it is argued that the EU has taken decisions on fisheries management that may be inappropriate to UK circumstances.<sup>192</sup>

The experience from Norway and other countries would suggest that the UK will need to introduce a potentially complex system of fisheries management.<sup>193</sup>

Management will need to be well-coordinated with the EU, given the extent to which stocks are shared. But the UK might have less influence over the management measures of some stocks, as it may be less able to participate in discussions with EU Member States.

A Norwegian marine scientist commented that “managing cod stocks is not rocket science—it is much more complicated than that”.<sup>194</sup> In many cases the management system may need to be negotiated and agreed with the EU. Key elements of the Norwegian approach to fisheries management include:

- limiting access to fisheries;
- basing quotas on scientific evidence about the maximum amount of fish that can be sustainably caught;
- reducing overcapacity in the sector (i.e. limiting or reducing the number of vessels);
- abandoning subsidies for fishing;
- controls on the types of fishing gear permitted;

<sup>189</sup> [Committee on Fisheries: Hearing CFP reform; the external dimension by Jóhán H. Williams, Director General, Norwegian Ministry of Fisheries and Coastal Affairs](#), European Parliament, viewed 14 July 2016.

<sup>190</sup> [Brexit: Where next for UK fisheries?](#), Marine Environmental Research, July 2016.

<sup>191</sup> [The Fishing Industry and Brexit](#), George Eustice, 13 April 2016.

<sup>192</sup> [Drift Net Ban pushed onto back burner](#), The National Federation of Fishermen's Organisations, 22 September 2014.

<sup>193</sup> [Cod almighty: the secret of Norway's monster fish bonanza](#), The Guardian, 25 April 2016.

<sup>194</sup> Ibid.

- a discard ban;
- control and enforcement measures at port and at sea to ensure compliance;
- measures to protect marine habitats and biodiversity.<sup>195</sup>

It seems likely that the UK will develop a domestic system for managing fisheries, which will broadly reflect the system adopted in Norway and which may largely reproduce the existing EU arrangements.

## Funding

The CFP provides funding to fishers and fishing communities for a number of purposes, including supporting sustainable fishing and helping coastal communities to diversify their economies. The European Commission [consulted](#) in early 2016 on a possible post-2020 fisheries fund, although no decision has yet been made.

The UK was allocated €243.1 million in fisheries funding for 2014-2020.<sup>196</sup> These funds are then matched by the UK Government. The Government's strategy for spending these funds can be found [here](#). The strategy provides for funding to be available for a range of projects, including those related to:

- innovation and training;
- economic growth;
- environmental sustainability;
- port and equipment upgrades;
- health and safety on vessels; and
- financing of small and medium enterprises.

Questions have been asked as to whether future UK governments would continue to make these funds available after Brexit.<sup>197</sup> If as a result of Brexit there is a contraction in the economy, fewer funds may be available for fisheries.<sup>198</sup>

The EU provides substantial scientific funding, of which the UK is one of the largest recipients, and also supports joint marine science activities. Dr Bryce Stewart from the University of York indicated that the "UK's involvement in such programmes would likely be limited after a Brexit".<sup>199</sup>

Following Brexit, spending decisions on fisheries support or science would become a decision solely for the UK Government.

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<sup>195</sup> [Changing attitudes 1970 – 2012. Evolution of the Norwegian management framework to prevent overfishing and to secure long-term sustainability](#), Norwegian Directorate of Fisheries, 4 November 2015.

<sup>196</sup> [European Maritime and Fisheries Fund \(EMFF\)](#), European Commission, 22 June 2016.

<sup>197</sup> Burns, C., A. Jordan, V. Gravey, N. Berny, S. Bulmer, N. Carter, R. Cowell, J. Dutton, B. Moore S. Oberthür, S. Owens, T. Rayner, J. Scott and B. Stewart, "[The EU Referendum and the UK Environment: An Expert Review. How has EU membership affected the UK and what might change in the event of a vote to Remain or Leave?](#)", UK in a Changing Europe, 2016.

<sup>198</sup> <http://www.bbc.co.uk/news/uk-politics-eu-referendum-36527323>.

<sup>199</sup> Burns, C. et al, "[The EU Referendum and the UK Environment: An Expert Review. How has EU membership affected the UK and what might change in the event of a vote to Remain or Leave?](#)", UK in a Changing Europe, 2016.



## Market access

The EU is “the largest single fisheries market in the world and a net importer of fish and fish products”.<sup>200</sup> Tariffs on fish imports are applied on a range of fisheries products from non-EU European countries such as Norway.

According to the think tank Civitas, while Norway does not benefit from completely free trade in fisheries products, it has managed to agree “preferential or tariff-free access to EU markets” for many of its products. As a result, Civitas argued that Norway had successfully defended its interests and market access, even though it is outside the EU.

However, the CBI noted that tariffs have had an impact on fish processing in Norway. It stated that tariffs had led to “most of Norway’s fish-processing industry relocating within the EU, principally to Scotland, to continue to benefit from full market access”.<sup>201</sup>

It is also relevant to note that Norway has provided reciprocal access to its waters and contributes to the EU Budget. In order to negotiate reduced or tariff-free access to the EU, it is possible that the UK would need to make concessions on fisheries or in other areas unrelated to fisheries.<sup>202</sup> The Danish fish producer organisation has stated that the UK should only be granted access to the EU market on the basis that it still permits access to UK waters for EU vessels.<sup>203</sup>

Outside the EU the UK may no longer have tariff-free access to the EU market, although access to the market would depend on the negotiations and the future nature of UK-EU relations. The UK, as in other trade areas, would still in all likelihood have to comply with any EU market regulations to export fishery products to the EU. But the UK may have less influence over what those regulations would be.

## Environmental management

A number of EU laws relate to the protection of the marine environment. The protection of the environment can deliver benefits to the management of fish stocks.

For example, the Birds and Habitats Directives have contributed to the creation of a network of marine protected areas around the UK. According to Dr Bryce Stewart, such areas can “have a direct influence on fisheries (by restricting where they can operate) but are also likely to be beneficial to fisheries in the long run”.<sup>204</sup> Such European protected areas “have generally offered much higher levels of protection” than marine protected areas created by the Government under domestic legislation.<sup>205</sup>

If the UK negotiates membership of the EEA, it may be required to continue to apply the Marine Strategy Framework Directive and Water Framework Directive, but not the Birds or Habitats Directives.<sup>206</sup> The Government’s nature conservation advisors, the Joint Nature Conservation Committee, have said that the Birds and Habitats Directives have helped the UK to effectively coordinate with other EU countries on conservation action and science.<sup>207</sup> The extent to which Brexit will effect coordination on marine conservation is not clear.

<sup>200</sup> [Fishing outside the EU](#), European Commission, 10 December 2015.

<sup>201</sup> [The Norway Option](#), CBI, viewed 14 July 2016.

<sup>202</sup> [Norway wants to remove trade barriers for seafood exports to the EU](#), Undercurrent News, 13 January 2015.

<sup>203</sup> [UK market access has to mean fishing access](#), Fisker Forum, 28 June 2016.

<sup>204</sup> Dr Bryce Stewart, Personal Communication, 13 July 2016.

<sup>205</sup> Burns, C. et al, “[The EU Referendum and the UK Environment: An Expert Review. How has EU membership affected the UK and what might change in the event of a vote to Remain or Leave?](#)”, UK in a Changing Europe, 2016.

<sup>206</sup> Ibid.

<sup>207</sup> [Directive 2009/147/EC on the conservation of wild birds \(codified version\)](#), JNCC, October 2014.



## 7. Environment

This section describes broad environmental issues possibly arising from Brexit. More detailed consideration of specific environment-related issues is given in following chapters.

### 7.1 The environment and EU law

The environment and energy are two key areas of competence where either the EU or Member States may act. The EU was given authority to legislate in this area “in the recognition that there were significant benefits to solving some environmental problems multilaterally”.<sup>208</sup> The EU has legislated on a range of environmental issues including air quality, climate change, water quality, species protection and habitats protection.

The environment was added specifically as an 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>209</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>210</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>211</sup>

### Concerns that environmental standards may be lowered after Brexit

Following Brexit it may be easier for the government of the day to lower environmental standards.

Evidence was given to the Environmental Audit Committee in which stakeholders said that the UK Government had sought to slow or block EU environmental protection legislation where it considered that it was not in the UK’s interest.<sup>212</sup> Some witnesses thought, therefore, that “if the UK were free to set its own environmental standards, it would set them at a less stringent level than has been imposed by the EU”.<sup>213</sup>

It has also been noted that EU enforcement mechanisms provide a strong incentive for the UK Government to take action on the environment where it might otherwise not.<sup>214</sup>

Similar concerns were raised by a number of Members during an Opposition Day debate on 12 July 2016. Some Members asked for guarantees from the Government that environmental standards would not change following Brexit. Geraint Davies MP, for Labour/Co-operative, said that the Government should “give a cast-iron guarantee that

<sup>208</sup> Environmental Audit Committee, *EU and UK Environmental Policy*, 23 March 2016, HC 537, 2015–16.

<sup>209</sup> Department for Environment, Food & Rural Affairs and Department of Energy & Climate Change, *Environment and climate change: review of balance of competences*, February 2014.

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

<sup>212</sup> Environmental Audit Committee, *EU and UK Environmental Policy*, 23 March 2016, HC 537, 2015–16.

<sup>213</sup> Ibid.

<sup>214</sup> “Brexit an ‘opportunity’ to improve water quality”, ENDS Report, 6 July 2016.

they will honour, post-Brexit, the environmental standards and undertakings that we have made in the EU to date".<sup>215</sup> Calum Kerr for the SNP said that "Ministers must do everything in their power to clarify how they will take forward the protection of the UK's environment in this new political situation. There is so much about the EU that we do not want to abandon".<sup>216</sup>

### Environmental standards may remain the same or increase

During the Opposition Day debate on 12 July 2016, the then Secretary of State for Energy and Climate Change, Amber Rudd, said that the Government's commitment to "protect the environment, tackle climate change and provide homes and businesses across the country with secure and clean energy... has not changed and will not change". She went on:

While much remains the same, there is no point pretending that the vote to leave the EU is not of huge significance. There are risks for us to overcome, but this Government will continue to do our part to deliver on the energy and environmental challenges our country faces.<sup>217</sup>

Some commentators have made the case that future governments could increase standards in comparison to the EU. A witness to an Environmental Audit Committee inquiry noted that in the past the UK had pushed the EU to adopt tougher environmental standards in some areas.<sup>218</sup> A commentator noted that Brexit may create "opportunities" to improve water management in a replacement for the CAP.<sup>219</sup> Peter Lilley MP said that EU biofuels subsidies had had a negative environmental impact and that outside the EU the UK would "probably abandon this policy".<sup>220</sup>

There are other reasons why a post-Brexit government may not reduce environmental standards in comparison with the EU. These include:

- If the UK remains in the EEA, it may need to comply with elements of EU environmental law, such as the Water Framework Directive.<sup>221</sup> The UK would have less influence over the determination of such standards, as it would be obliged to accept EU standards in order to obtain access to the internal market;<sup>222</sup>
- The UK is a signatory to a number of international agreements. EU and UK law reflect these agreements. The UK would still be bound to meet its international obligations following Brexit, and therefore certain standards may not change;<sup>223</sup>
- Many environmental measures pre-date EU legislative arrangements, which may indicate broad political and public support for the maintenance of some environmental standards;
- The desire to maintain policy stability for business. Stability has benefits related to investor confidence and it can enable "a degree of long-term planning".<sup>224</sup>

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<sup>215</sup> [HC Deb 12 July 2016 vol 613](#), c 177.

<sup>216</sup> *Ibid*, c 212.

<sup>217</sup> *Ibid*, c 183.

<sup>218</sup> Environmental Audit Committee, *EU and UK Environmental Policy*, 23 March 2016, HC 537, 2015–16

<sup>219</sup> "Brexit an 'opportunity' to improve water quality", ENDS Report, 6 July 2016.

<sup>220</sup> Environmental Audit Committee, *EU and UK Environmental Policy*, 23 March 2016, HC 537, 2015–16.

<sup>221</sup> "Environmental sector faces huge challenge from Brexit", ENDS Report, 24 June 2016.

<sup>222</sup> "Brexit an 'opportunity' to improve water quality", ENDS Report, 6 July 2016.

<sup>223</sup> Environmental Audit Committee, *EU and UK Environmental Policy*, 23 March 2016, HC 537, 2015–16.

<sup>224</sup> *Ibid*

## Updating the UK legislative framework

Questions have been raised about how the UK environmental legislative framework will be updated following Brexit, and how laws would be consistent with the UK's position outside the EU.

Kerry McCarthy MP for Labour said that EU Regulations posed a particular challenge:

Many EU directives have been transposed into UK law through primary or secondary legislation under Acts other than the European Communities Act 1972, and that legislation would continue to apply until it was changed by Parliament. EU regulations would present a different problem for the Government, however. They are directly applicable in the member states, so they could immediately cease to apply.<sup>225</sup>

She called for "a thorough audit" of the legislation to be carried out and "clear guidance given to the House and the general public" on this matter.<sup>226</sup> DEFRA faced challenges in conducting this work as a result of large budget and staff cuts.<sup>227</sup>

## Enforcement of EU law

Following Brexit there may be a less far-reaching judicial process to enforce the implementation of environmental policy and to challenge its interpretation. The CJEU can issue fines to Member States that fail to comply with EU laws.

In the debate on 12 July Rachael Maskell MP, Shadow Secretary of State for Environment, Food and Rural Affairs, asked: "how will we regulate, police and enforce the new UK-based law system as it affects the environment in respect of what currently occurs in the EU courts?"<sup>228</sup> Caroline Lucas, for the Green Party, said that following Brexit "we will need to create a new enforcement mechanism that is as rigorous as possible".<sup>229</sup>

## Coordination on transboundary issues

Barry Gardiner MP, Labour, highlighted the importance of the EU in coordinating the management of transboundary environmental issues:

The fact is that fish and birds and insects do not carry passports; pollution is oblivious to the strictures of national airspace or inshore waters. If we wish to manage all of these, whether as pests, problems or resources, then it is better to do so in concert with our regional neighbours. The vote to leave the EU has made that harder.<sup>230</sup>

Two examples of the role of the EU in coordinating action are the Birds and Habitats Directives. These have helped to coordinate the creation of a pan-EU network of protected areas. The Government's nature conservation advisors, the Joint Nature Conservation Committee, have said that the Birds and Habitats Directives have helped the UK to effectively coordinate with other EU countries on conservation action and science.

The extent to which Brexit will effect coordination on these matters is not clear. Barry Gardiner MP called on the Government to "outline how they propose to overcome that problem".<sup>231</sup>

In addition to EU coordination, coordination between the four UK nations would need to be considered. Various aspects of environmental policy, such as waste, have been

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<sup>225</sup> HC Deb 12 July 2016 v613 c209.

<sup>226</sup> Ibid.

<sup>227</sup> Ibid, c 180.

<sup>228</sup> Ibid, c 217.

<sup>229</sup> Ibid, c 193.

<sup>230</sup> Ibid, c 181.

<sup>231</sup> Ibid.

devolved from Westminster. The different governments across the UK could take distinct approaches in future, without the more uniform approach provided under an EU framework.

## 7.2 Air Quality

EU legislation sets limits for a range of air pollutants and requires Member States to have plans in place setting out how they will be met. They are required to prepare adequate plans to reduce NO<sub>2</sub> to acceptable levels by 2010, or 2015 at the latest. The UK failed to do so. Currently, legal limits for NO<sub>2</sub> will not be met in 16 of the UK's 40 air quality zones until after 2020, including Greater Manchester and Leeds. In London the limits will not be met until after 2025. The Government's failure to meet NO<sub>2</sub> targets led to a unanimous judgement of the Supreme Court that the Government had to submit new air quality plans to the European Commission no later than 31 December 2015.<sup>232</sup> The Government has [published a new plan](#)<sup>233</sup> but a further legal case was launched this year by the organisation ClientEarth, with support from the Mayor of London, Sadiq Khan.<sup>234</sup> This challenges the Government to change its plans in order to reduce air pollution more quickly.

The UK is not the only country struggling to meet targets and the air quality agenda has been strongly driven by the European Commission rather than Member States. The impact of leaving the EU on air quality regulation will depend on negotiations, including whether the UK remains in the EEA.<sup>235</sup> An EU exit could allow the UK to relax air quality standards and review any deadlines for meeting them. The UK is currently subject to CJEU infringement proceedings but following Brexit (and not becoming part of the EEA), the threat of fines for non-compliance will be removed. However, the increasing awareness in the UK of the broad range of adverse health effects and increased mortality resulting from air pollution exposure could make any substantial watering down of targets politically sensitive.

Following the referendum result, some Members of Parliament from each side of the House have highlighted the importance of improving air quality, and have called on the Government to uphold standards. The Chair of the Environmental Audit Committee, Mary Creagh, reported that EU membership had been key for air quality, and had allowed campaigners to hold the Government to account. She said there were "question marks about what will happen to air pollution standards in the brave new Brexit world".<sup>236</sup> The then Secretary of State for Energy and Climate Change, Amber Rudd, stated that the Government remained committed to a clean environment and its climate change commitments.<sup>237</sup>

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<sup>232</sup> The Supreme Court, [Press Summary, R \(on the application of ClientEarth\) \(Appellant\) v Secretary of State for the Environment, Food and Rural Affairs \(Respondent\) \[2015\] UKSC 28 On appeal from \[2012\] EWCA Civ 897](#), 29 April 2015.

<sup>233</sup> Defra, [Air quality plan for the achievement of EU air quality limit values for nitrogen dioxide \(NO<sub>2</sub>\) in the UK, 2015](#).

<sup>234</sup> ClientEarth, [Mayor of London joins our air pollution case](#), 26 May 2016.

<sup>235</sup> IEEP, [The potential policy and environmental consequences for the UK of a departure from the European Union](#), March 2016.

<sup>236</sup> [HC Deb 12 July 2016, c193](#)

<sup>237</sup> [HC Deb 12 July 2016, c183](#)

Some environment and health organisations have expressed concerns that policies on air pollution could be weakened following Brexit. ClientEarth has challenged the Government to affirm its commitment to environmental laws such as those on air pollution.<sup>238</sup> The Institute of Environmental Management and Assessment has reported that a poll of their members prior to the referendum showed that:

Half of environment and sustainability professionals believe that legal standards for UK air quality would be reduced if the UK were to leave the EU. 88% of respondents think that the EU policy approach is needed to complement and support national level policies in addressing air pollution.<sup>239</sup>

## Emissions Trading Scheme

The [EU Emissions Trading Scheme](#) (ETS) sets a decreasing cap for emissions from energy intensive sectors, and allocates or auctions EU 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 last recession and over-allocation of allowances in phase 2 resulted in a collapse of the price of EUAs. As a result the EU is taking [several measures](#) to reduce the supply of allowances going forward, including removing surplus allowances from the market. In the meantime, the UK introduced a floor price for carbon in April 2013 by amending the climate change levy to apply to fossil fuels used for energy generation, which applies when the EUA price falls below a certain level. The projected increases in [floor price](#) were reduced in the 2014 UK Budget and the price was set at £18 per tonne until 2020. At Budget 2016 the Government stated the £18 per tonne would be maintained and then uprated by inflation in 2020-21. Budget 2016 also stated that the Autumn statement would set out the 'long-term direction' for the Carbon Price Support rate.<sup>240</sup>

Revenue from both EUAs and the Carbon Floor Price are retained by the Treasury, which could be viewed as an incentive to continue with both measures. Receipts from ETS auctions were £0.6 billion in 2014-15, but this is expected to fall to £0.5 billion in 2015-16 and 2016-17, and to £0.4 billion in the years that follow through to 2020-21.<sup>241</sup>

Leaving the EU does not automatically remove the floor price, as this is a UK measure; neither would it necessarily mean the UK would have to leave the EU ETS, but it would depend on the approach to exit the UK chooses to take. EU Membership is not a prerequisite of participation: Switzerland is in negotiations to join the scheme, as was Australia until there was a change of government. Following the [Paris Climate Agreement](#) in December 2015, there is an added impetus for the expansion of emissions trading. The UK has been directly involved in this process, with the [announcement](#) in January 2016 that UK Government officials are working with China to ensure the Chinese carbon cap-and-trade system is compatible with the EU ETS.

<sup>238</sup> ClientEarth, [Brexit "challenge" to politicians over UK environmental laws](#), 24 June 2016.

<sup>239</sup> IEMA, [Our third and final EU referendum poll shows 86% of members believe that voters have insufficient information to be able to take environment and sustainability issues into account when they cast their vote](#), 9 June 2016

<sup>240</sup> HM Treasury, [Budget 2016](#), HC901, March 2016.

<sup>241</sup> Ibid. Table B5.

Following the referendum the price for carbon allowances fell; BusinessGreen reported this was due to uncertainty over UK policy towards the ETS in the future.<sup>242</sup>

## 7.3 Habitats Protection

The UK is currently subject to the requirements of the [Habitats Directive](#) and [Wild Birds Directive](#), collectively known as the 'Nature Directives'.

- **The 'Habitats Directive' (92/43/EEC)** aims to ensure the protection of species and habitat types of EU conservation concern.
- **The 'Birds Directive' (2009/147/EC)** is the codified version of Directive 79/409/EEC as amended. This Directive provides a legal framework for the conservation of all wild bird species naturally occurring in the EU.

The Commission has described these as the "cornerstone of Europe's nature conservation policy".<sup>243</sup> They provide protection for designated sites and can require mitigation measures in terms of alternative habitats for development on or near these sites. These requirements can be a deal-breaker in small and large development projects, but a government review found that the requirements have largely worked well in the UK.

The Nature Directives represent a significant EU environmental policy instrument and one which is not covered by the EEA Agreement.<sup>244</sup>

Outside the EU, the UK would not be bound to continue these requirements which are implemented in UK law via a range of regulations. It is also unlikely to be a requirement of any UK trade deal with the EU.

So far the UK Government has given little indication of how far it might maintain the protections and processes currently required by these Directives but has said that they would be considered as part of a long term vision for the environment.

However, the UK has a strong legislative framework for wildlife and habitat protection and not all protection is completely entangled with EU requirements; e.g. the UK system of Sites of Special Scientific Interest (SSSIs). The UK is also a signatory to the [Bern Convention](#), an international agreement on nature conservation across Europe.

### What protection do the Nature Directives currently provide?

The Nature Directives provide for a network of Member State designated conservation areas across Europe relating to specified habitats and birds known as Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) respectively.<sup>245</sup>

In the UK, SACs and SPAs correspond to domestic 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

<sup>242</sup> BusinessGreen, [EU carbon price tumbles in wake of Brexit uncertainty](#), 24 June 2016.

<sup>243</sup> *Europa*, [About the Habitats Directive](#) 20 June 2013.

<sup>244</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>245</sup> [Council Directive 92/43/EEC](#) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. Directive includes measures to establish sites to protect wild birds under the Birds Directive ([Council Directive 79/409/EEC](#) of 2 April 1979).



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 projects such as the High Speed Two rail network (HS2) and potential tidal barrage schemes, as well as smaller, localised development proposals.

### **EU Fitness Check of the Directives**

The European Commission is currently undertaking an [in-depth evaluation of the Habitats Directive and the Birds Directives](#), as part of its Smart Regulation policy and its Regulatory Fitness and Performance Programme (REFIT).<sup>246</sup> The review – known as a 'fitness check' – started in January 2015 and is due to conclude in the last quarter of 2016.<sup>247</sup>

The Commission will be assessing the potential for merging the Directives into a more modern piece of legislation, but it is not yet clear whether this is going to lead to any major changes in the detail of the Directives' requirements.<sup>248</sup>

An initial evaluation report for the Commission, drawing on Member State input and that of wider stakeholders, has indicated that the principles and approach of the Directives remain valid and in line with EU objectives on biodiversity and wider economic objectives. However, it also highlights that implementation is complex and challenging. It shows that businesses and environmental groups differ in their views about whether the associated administrative burdens are unnecessary, but share the view that burdens are often caused by "inefficient implementation at national, regional and local level".<sup>249</sup>

The Royal Society for the Protection of Birds (RSPB) is among 100 organisations across the UK who are collaborating, along with international networks such as the European Environmental Bureau, to warn that this review is the "single biggest threat to UK and European nature and biodiversity in a generation".<sup>250</sup> These organisations are concerned that a Commission focused on growth and jobs will be seeking to weaken the Directives.

### **How are the Nature Directives currently enshrined in UK law?**

The Nature Directives have been transposed into UK law by a range of regulations since 1994.

The [Joint Nature Conservation Committee](#) (JNCC), the Government's nature conservation advisor in European and global fora, oversees their implementation and reports to the European Commission on UK compliance with the Directives. If the UK leaves the EU, these laws will remain part of UK legislation until or unless they are revoked, replaced or amended.

UK domestic laws refer to the Directives in references to lists of protected species in Annexes to the Directives. After Brexit the laws will need to be updated to be consistent with the UK's position outside the EU.

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<sup>246</sup> European Commission, [Fitness Check of the Birds and Habitats Directives](#) as viewed on 19 July 2016.

<sup>247</sup> HC Deb 29 January 2014 c.989.

<sup>248</sup> Cloud Sustainability, [European Commission to review Habitats and Birds Directive](#) as viewed on 11 February 2015.

<sup>249</sup> European Commission, [Evaluation study to support the Fitness Check of the Birds and Habitats Directives: Draft Final Report](#), 4 January 2016.

<sup>250</sup> RSPB, Martin Harper's Blog (Head of Conservation), [Defend the laws that defend our nature](#), 12 May 2015.

If the UK wishes to keep the definitions and EU terms in the Directives, the wording could be taken from the Directives and put into UK legislation. This happens with legislation implementing international treaties, which are not automatically part of UK domestic law.

In England and Wales, the Nature Directives have been implemented mainly by the [Conservation of Habitats and Species Regulations 2010](#) (the Habitats Regulations) and [The Conservation of Habitats and Species \(Amendment\) Regulations 2012](#), which consolidate earlier legislation. The Wildlife & Countryside Act 1981 (as amended) also implements the Wild Birds Directive across the UK, as amended – in particular by various orders and regulations in Northern Ireland.

In Scotland, the Habitats Directive is transposed through this combination where there are reserved matters. This is the same for Northern Ireland, where these regulations update The Conservation (Natural Habitats, &c) Regulations (Northern Ireland) 1995 (as amended).

For UK offshore waters (i.e. from 12 nautical miles from the coast out to 200nm, or to the limit of the UK Continental Shelf Designated Area), the Habitats Directive is transposed into UK law by the Offshore Marine Conservation (Natural Habitats & c.) Regulations 2007 (as amended).

A very wide range of other statutory and non-statutory activities also support the implementation of the Birds Directive in the UK. This includes national bird monitoring schemes, bird conservation research, and the UK Biodiversity Action Plan which involves action for a number of bird species and the habitats which support them.

## What is the UK Government's Brexit position on the Nature Directives?

The UK Government has said that until the UK leaves the EU "current arrangements for our environment remain in place" and that "Defra will continue to ensure the right policies are in place for a cleaner, healthier environment for everyone".<sup>251</sup>

In terms of the sites protected by the Nature Directives, the UK Government has said:

The Government will wish to consider the Impacts of the decision to leave the EU, including for the UK's Natura 2000 and other protected sites, We have a manifesto commitment to produce a 25 Year Plan for the Environment. We all now have an opportunity to consider our long-term vision for the environment following the referendum vote.<sup>252</sup>

Past evaluation of the Nature Directives from a UK perspective provides some evidence base for future approaches.

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

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<sup>251</sup> [HC Written Question 42311 14 July 2016.](#)

<sup>252</sup> Ibid.

A key outcome of the review was the establishment of the cross-Government [Major Infrastructure and Environment Unit \(MIEU\)](#) to help to quickly resolve any issues arising from the Directive at pre-application stage.

The [UK Government's contribution](#) to the EU review (April 2015) supported continued EU habitats legislation as a helpful means to ensure parity across Member States and co-ordinated action. It indicated that there could be scope for greater flexibility in how Member States achieve the required outcomes and also that the legislation could be updated to account for new approaches being pursued under the Water Framework Directive and the Marine Strategy Framework Directive (MSFD).<sup>253</sup>

## Impact of Brexit

### Potential change in the UK's approach to wildlife and habitats protection

It is not clear how far the UK might withdraw from the Nature Directives' requirements outside the EU because the UK has a heritage in this policy area and the UK Government has previously expressed "strong support" for its aims.<sup>254</sup>

The Coalition Government's Habitats and Wild Birds Directives Implementation Review found that implementation generally works well with minimal burdens, while maintaining environmental integrity.

When the EU requirements were introduced, the UK was one of only a few Member States which already had a long legislative history of designating and protecting specific areas dating from 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 the last 15 years a number of Member States, including the UK, have been challenged domestically and in the CJEU 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 Government might perhaps like greater freedom.<sup>255</sup>

The [Review of the balance of competencies between the UK and EU: Environment and Climate Change](#) (February 2014) set out examples of where business found that the costs of meeting the Directives has been disproportionate to the environmental benefits. The requirements relating to bat and newt relocation were identified as being particularly difficult. Outside the EU, the UK will be freer to decide how to respond to these practical issues.

Depending on the terms of exit, the UK will no longer face the potential for infraction proceedings from the EU for failing to comply with the Nature Directives. While the UK

<sup>253</sup> 150430 Final, [Evidence gathering questions for the Fitness Check of the Nature Directives: United Kingdom](#), April 2015.

<sup>254</sup> GOV.UK, Defra page on [Report of the Habitats and Wild Birds Directives Implementation Review](#), 22 March 2012, viewed 2 June 2015.

<sup>255</sup> See for example case of Lappel Bank (April 2004) and EU Commission Press Release IP/03/1109, [Wild Birds and Habitats Directives: Commission pursues legal action against Member States](#), 24 July 2003.

will still be subject to international conservation and biodiversity conventions, these tend not to have associated enforcement processes.

The UK has a strong international reputation for ratifying international environmental requirements. However, it is not clear how far the considerable threat of EU fines has previously ensured relatively strong compliance.

Countries that are only signatories to Bern have been found to have less successfully implemented its provisions.<sup>256</sup>

### **New approach to conservation co-ordination with the EU**

The continued protection of UK and Europe-wide wildlife and habitats will require some future co-ordinated conservation action with the EU, not least to meet international commitments, e.g. the Bern Convention to which the UK is a signatory. Conservation is more successful with a network of habitat and species protections over a large range of countries and this is the basis of current UK, EU and international conservation policy.

The Birds and Habitats Directives help the EU to meet its obligations under the Bern Convention and Norway already co-ordinates on nature conservation with the EU under this convention.<sup>257</sup>

The European Commission's current [fitness check of the Nature Directives](#) may lead to key changes in their form and implementation. The UK has contributed to this review process so far but may have limited influence now and in the future, and this will affect its own conservation efforts and approach if European conservation policy starts to diverge greatly from the UK's preferred direction.

### **Revision of role of the UK Major Infrastructure and Environment Unit (MIEU)**

The UK Major infrastructure and Environment Unit (MIEU) was set up specifically to resolve issues relating to the Habitats Directive at infrastructure projects pre-application stage. Its future role will depend on how much of the Nature Directives the UK maintains.

## **7.4 Water quality**

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

- The [Urban Waste Water Treatment Directive \(91/271/EEC\)](#) (UWWTD) aims to protect the environment from the adverse effects of discharges of urban waste water from public sewers and treatment plants. In March 2016, the European Commission referred the UK to the CJEU over failures to meet the UWWTD in 17 areas and this case is ongoing.<sup>258</sup> Separately, in 2012, the CJEU found that the UK was in breach of the UWWTD as a result of frequent and large spillages of waste water in London. In order to address the infractions in London, Defra is currently involved with the Thames Tideway Tunnel – a large sewer running under the River Thames. The project has been underway for a number of years with preliminary

<sup>256</sup> Consortium led by Mileu Ltd, [Evaluation Study to support the fitness check of the Birds and Habitats Directives. Draft Final Report](#), January 2016.

<sup>257</sup> Norwegian Environment Agency, [Norway helps preserve European biodiversity](#), 19 March 2015.

<sup>258</sup> European Commission Press release, [Commission refers the UK to Court over poor waste water collection and treatment](#), 26 March 2016 [accessed 29 June 2016].

construction planned for 2016. The project aims to tackle the problem of waste water overflows for the next 100 years.

- The [European Water Framework Directive \(2000/60/EC\)](#) (WFD) provides a common framework for water management and protection in Europe. The WFD established a system for the protection and improvement of all aspects of the water environment including rivers, lakes, estuaries, coastal waters and groundwater. The Directive requires all inland and coastal waters to reach at least “good status” by 2015 (or later if relevant waivers are relied on). In 2012 only 36% of water bodies in the UK were classified as ‘good’ or better. More information is set out in the Library Briefing Paper on the [EU Water Framework Directive: achieving good status of water bodies](#).
- The EU has had rules in place to safeguard public health and clean bathing waters since the 1970s. The revised [Bathing Water Directive \(2006/7/EC\)](#), replacing Directive 76/160/EEC) requires the UK to monitor and assess beaches and inland sites used by large numbers of bathers (referred to as bathing waters) for certain parameters of bacteria. It includes a classification and notification system so the public are aware of the status of the bathing water. In 2015 the UK reported 4.9% (31) of bathing water were in poor quality and 0.5% (3) were not possible to classify. All others were of sufficient, good or excellent quality.<sup>259</sup>

### The impact of Brexit on water quality

In general, the impact of Brexit on water quality will depend on the deal that is negotiated by the UK Government, in particular whether the UK negotiates membership of the EEA.

Most EU water legislation would continue to apply if the UK remained in the EEA.<sup>260</sup> Any infractions would be subject to EEA enforcement processes. However, the Bathing Water Directive is excluded from the EEA agreement, so the UK Government would be able to amend or repeal the domestic legislation that implements its requirements. Opposition Members have urged the Government to clarify whether the UK’s beaches and bathing water quality will still receive the same standard of protection after Brexit.<sup>261</sup>

If the UK does not stay in the EEA, then the Government and devolved administrations will be able to amend and/or repeal the domestic legislation that gives effect to the full range of EU water legislation. However, as the majority of EU water law has been transposed directly into domestic law, the relevant legislation will not be automatically or immediately affected by Brexit. Any potential amendment or repeal of domestic law is likely to be very complicated and prolonged.

Outside the EEA the UK will no longer be subject to a threat of large infraction fines. In addition, different governments across the UK could take even more distinct approaches without the uniform approach of the EU framework, as water is largely a devolved area. This would require discussions regarding any diverging approaches and possible cross-border impacts.

Some are concerned that exit from the EU and the EEA might result in a loss of impetus for action on improving water quality in the UK. The Government will be able to relax

<sup>259</sup> European Environment Agency Report No 9/2016, [European bathing water quality in 2015](#), Annex 2 [accessed 13 July 2016].

<sup>260</sup> Political Studies Association, [What does Brexit mean for the UK’s environment?](#) 28 June 2016 [accessed 29 June 2016].

<sup>261</sup> HC Deb 12 July 2016, [Col 181](#).

water quality standards and/or review any deadlines for meeting them. EU reporting requirements will fall away and this could mean that less information is available in the public domain. Since the referendum, ClientEarth has warned that bathing water and waste water regulations could be “scrapped or weakened”.<sup>262</sup>

Specifically in relation to the Thames Tideway Tunnel, its scale and importance could mean that Brexit will not impact its future, particularly as it is already a major ongoing project. However, the former Prime Minister warned that its financing may be impacted, on the basis that Brexit would terminate Britain’s link with the European Investment Bank, which had confirmed a £700 million injection of loan finance.<sup>263</sup>

But leaving the EU and the EEA will not necessarily mean action taken at a national level will be halted or reversed. Any such decisions may be met with political resistance, given the importance of good quality water across many sectors, including health, farming, food and leisure. Following the referendum, the RSPB’s Chief Executive called on the UK Government to “improve the implementation of existing legal protection and, where necessary, to increase it”.<sup>264</sup> In some cases (such as drinking water standards) existing UK requirements are stricter, or in addition to those required by the EU, which may make it difficult for the UK to retreat too far from these requirements.

International guidelines will continue to apply to the UK following Brexit. For example, the World Health Organisation publishes international guidelines on water quality (specifically for drinking water). But these are guidelines rather than legal requirements and not subject to the same enforcement or compliance standards as the EU Directives.

## 7.5 Waste

UK waste policy and legislation is largely driven by EU law, which seeks to prevent the production of waste where possible and to reduce its overall environmental impact.

The key piece of EU waste legislation is the [Waste Framework Directive \(2008/98/EC\)](#), which includes key definitions, sets a hierarchy for how waste should be managed, introduces the “polluter pays principle” and “extended producer responsibility”, and sets targets for recycling by 2020. There is a suite of EU waste legislation which supplements the framework Directive, including Directives on packaging and packaging waste, landfill, end-of-life vehicles, waste batteries, and waste electrical and electronic equipment. This is an area which has also been the subject of a great deal of case law, both in European and domestic courts. Until the date of a formal exit from the EU, the UK remains subject to EU requirements and any relevant court judgments.

### The impact of Brexit on waste

The majority of EU waste management law has been transposed into domestic law in the UK. This means that the relevant legislation will not be automatically or immediately affected by the UK’s exit from the EU. As almost all UK waste law derives from the EU, any potential amendment or repeal of domestic law is likely to be very complicated and prolonged. As with the other areas of environmental policy, the impact of Brexit will depend on the deal that is negotiated by the UK Government, in particular whether the

<sup>262</sup> ClientEarth, [Brexit “challenge” to politicians over UK environmental laws](#), 24 June 2016 [accessed 29 June 2016].

<sup>263</sup> Water Briefing, [Brexit: Prime Minister warns UK will lose £billions in infrastructure funding](#), 16 May 2016 [accessed 29 June 2016].

<sup>264</sup> RSPB, [A reaction from the RSPB’s Chief Executive, Dr Mike Clarke, to the result of the referendum](#), 24 June 2016 [accessed 29 June 2016].

UK negotiates membership of the EEA. Most waste management legislation will continue to apply if the UK remains in the EEA<sup>265</sup> and any infractions will be subject to EEA enforcement processes.

Outside the EU and the EEA, the UK Government and devolved administrations will be able to amend and/or repeal the domestic legislation that gives effect to EU waste legislation. As waste is largely a devolved area, different governments across the UK could take distinct approaches without the uniform approach of the EU framework.

The benefits of effective waste management to both the environment and the economy may mean that an EU exit will not lead to a substantial change in approach by the UK Government. Global law firm Norton Rose Fulbright suggests that there are “very few positive messages central Government could make for moving significantly away from EU targets in [waste] without impacting on other environmental policies”.<sup>266</sup>

However, the referendum result has raised questions about the longer-term approach to waste policy in the UK. Leaving the EU and the EEA could reduce the impetus to meet legislative targets within clear timeframes, as the threat of legal challenge for any failure will be removed. Commentators have suggested that in this scenario it is likely that legislators would repeal or weaken EU requirements with the objective of reducing the regulatory burden on businesses.<sup>267</sup>

In 2013 an economist from the Environmental Services Association (ESA) 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>268</sup> Brexit could therefore undermine economically efficient decision-making in the sector due to the long term planning needed for investment in waste infrastructure and innovation.

In a press statement following the referendum result, the ESA’s Executive Director warned that “the danger now is that the waste and recycling sector is placed at the bottom of the Government’s in-tray”.<sup>269</sup> Recent analysis has identified recycling policy as an issue which may be weakened at a domestic level following Brexit, which in turn could “blunt the incentive for UK firms to develop programmes” in this area.<sup>270</sup> The Guardian also reported that “two-thirds of the professionals” in the sector think progress in recycling and waste will “go into reverse, with 30% saying it will stay the same and just 4% thinking it will improve”.<sup>271</sup>

In relation to future policy, the waste debate in Europe has shifted to keeping resources in use for as long as possible and reducing waste’s negative implications for the environment and the economy (a ‘circular economy’ rather than a traditional ‘linear economy’). The European Commission adopted a new Circular Economy Package in December 2015 to

<sup>265</sup> Institute for European Environmental Policy, *Brexit – the implications for UK Environmental Policy and Regulation*, March 2016 [accessed 29 June 2016].

<sup>266</sup> Norton Rose Fulbright, *Impact of a Brexit on infrastructure, mining and commodities*, June 2016 [accessed 12 July 2016].

<sup>267</sup> See: Cornerstone Barristers, *Brexit: Planning and the Environment outside the EU*, July 2016 [accessed 12 July 2016].

<sup>268</sup> MRW, Waste sector warns of EU referendum danger, 23 January 2013.

<sup>269</sup> ESA, *Referendum result must be taken as an opportunity*, 24 June 2016 [accessed 29 June 2016].

<sup>270</sup> Sustainalytics, *Brexit: Assessing the ESG Implications Report*, June 2016 [accessed 29 June 2016].

<sup>271</sup> Guardian, *UK’s out vote is a ‘red alert’ for the environment*, 24 June 2016 (Damien Carrington’s blog) [accessed 29 June 2016].

stimulate and harmonise the transition towards a circular economy across Europe.<sup>272</sup> The Commission stated that the measures could bring net savings of €600 billion or 8% of annual turnover for businesses in the EU and would reduce total annual greenhouse gas emissions by 2-4%. The package includes a number of new EU legislative waste proposals, an Action Plan and funding support at both EU and national level. These proposals will be agreed at EU level over the coming years.

The waste industry has called on the UK Government, in the absence of an EU framework, to put in place a long-term framework of policy and legislation consistent with circular economy principles, so that the industry can invest in waste and resource management.<sup>273</sup> Opposition Members have also called for the Government to reassure Parliament that Brexit will not derail progress on the circular economy.<sup>274</sup> This may be an area where different governments across the UK diverge to a greater extent in future approach - for example, the Scottish Government introduced its own national circular economy strategy in February 2016 in advance of any EU-wide approach.<sup>275</sup>

## 7.6 Chemicals regulation

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

Some substances, such as human medicines (see section 16.6), are covered by specific legislation. Pesticides and other products that protect plants/crops are regulated by [Regulation \(EC\) 1107/2009](#). Biocides (wood preservatives and insect repellent, for example) are regulated by the [Biocidal Products Regulation \(EU\) 528/2012](#). Other legislation requires that food additives must be authorised, following advice by the European Food Standards Authority (EFSA), before they can be used in foods.

The Classification, Labelling and Packaging Regulation (CLP) provides a standardised system for classifying and labelling chemicals in the EU. The Regulation adopts the United Nations' [Globally Harmonized System of Classification and Labelling of Chemicals](#) (GHS) across all EU Member States, including the UK.<sup>276</sup> The CLP Regulation ensures that the hazards presented by chemicals are clearly communicated to workers and consumers in the EU through the classification and labelling of chemicals. As a result, standard systems are in place that Member States rely on to ensure chemicals are safe for use. If the UK no longer participated in these systems, the burdens applied to industry might be reduced, 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.

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<sup>272</sup> More information is available in the [Library Briefing Paper on the EU Circular Economy Package](#).

<sup>273</sup> ENDS Report, [Brexit uncertainties plague the waste sector](#), 1 July 2016 [subscription needed] [accessed 4 July 2016].

<sup>274</sup> HC Deb 12 July 2016, [Col 210](#).

<sup>275</sup> The Scottish Government, [Making Things Last – A Circular Economy Strategy for Scotland](#), 23 February 2016 [accessed 13 July 2016].

<sup>276</sup> HSE, [The CLP Regulation](#), [website as of] 6 July 2016.



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 industry caused by a UK withdrawal from these established systems. A substantial investment has been made by industry during the transition to the new harmonised European systems. Further changes, and in particular any reversal, might prove unpopular. The most realistic result of EU withdrawal would see the UK adopting similar positions to Norway, Iceland and other non-member States which have chosen to adopt EU REACH legislation independently.

Considering health and safety legislation more generally, it is the case that over the last quarter century much of this has originated in the form of EU Directives – Article 118A of the Treaty of Rome gave health and safety prominence in the objectives of the EU. These Directives have built on the pre-existing UK safety systems underpinned by the [Health and Safety at Work etc. Act 1974](#) and associated secondary legislation. Over the years there have been concerns over the potential for overzealous application of modernised health and safety law, be it the result of “gold-plating” when transposing the Directives into UK law or of misunderstandings as to what the law actually requires. These concerns prompted reviews by Lord Young of Graffham and Professor Ragnar Löfstedt, and subsequent reforms by the Coalition Government.<sup>277</sup> In his report, Löfstedt commented: “Many of the requirements that originate from the EU would probably exist anyway, and many are contributing to improved health and safety outcomes. There is evidence, however, that a minority impose unnecessary costs on business without obvious benefits”.<sup>278</sup>

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<sup>277</sup> DWP, [2010 to 2015 government policy: health and safety reform](#), 8 May 2015.

<sup>278</sup> DWP, [Reclaiming health and safety for all: An independent review of health and safety legislation](#), Cm 8219, November 2011.

## 8. Energy and Climate Change

### 8.1 Government energy policy

The Coalition Government said that one of its priorities was to widen and deepen the single market in energy.<sup>279</sup> The larger the market and the fewer the barriers to trade, in theory the higher the level of competition and the lower the prices for consumers should be. A single market in energy and greater harmonisation would be likely to increase security of supply, as would greater physical interconnection. Many of the UK's large suppliers are multinationals and they are also looking for a stable investment regime. Article 194 of the [Treaty on the Functioning of the European Union](#) (TFEU) sets out EU competence for energy policy, which includes the functioning of an Energy Market, security of supply, energy efficiency and promoting interconnection. These are all subject to a Member State's right to "to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply".

The report by the House of Lords EU Sub-Committee D, *No Country is an Energy Island: Securing Investment for the EU's Future*, considered the role of an EU market and concluded that there are "clear benefits to be derived from working within the EU on the energy challenge".<sup>280</sup> Prior to the referendum, companies in the energy industry indicated elements of the industry would see negative impacts from an exit.<sup>281</sup> After the vote *The Guardian* reported that a number of industry commentators and companies felt that an exit may damage investment in the sector and that the impact would depend on the UK's future involvement in the Internal Energy Market (IEM).<sup>282</sup>

During the campaign it was suggested that leaving the EU could cost consumers £500 million a year in rising energy bills. This was examined by *Full Fact* which found that this estimate might not be accurate, that any cost depended on the reaction to Brexit of investors in the UK energy sector and the position within the IEM.<sup>283</sup> Leave campaigners suggested energy bills may fall as a result of changing energy policy and potential reductions in VAT on domestic energy.<sup>284</sup>

### 8.2 EU energy policy

EU energy policy is currently being implemented by the Commission's [Third Energy Package](#) (2009) and the Commission's 2015 [Energy Union Package](#). The framework has five elements: energy security, a fully integrated European energy market, energy efficiency, carbon reduction, and research, innovation and competitiveness. This 2015 framework follows three liberalisation packages since the 1990s.<sup>285</sup> Ofgem set out on its

<sup>279</sup> HM Government [Review of the Balance of Competences: Energy](#) Summer 2014.

<sup>280</sup> 14<sup>th</sup> 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>281</sup> [Brexit bad for UK energy system, says industry](#), *Daily Telegraph*, 15 June 2016.

<sup>282</sup> [Leave vote makes UK's transition to clean energy harder, say experts](#), *The Guardian*, 28 June 2016.

<sup>283</sup> [Energy bills and Brexit](#), *Full Fact*, 16 May 2016.

<sup>284</sup> See Vote Leave, [The EU has forced up the price of energy](#) [accessed 25 July 2016] and BBC News, ["EU Referendum: Vote Leave wants power to axe fuel VAT"](#), 31 May 2016.

<sup>285</sup> European Parliament Research Service, [Energy supply and energy security](#), 30 June 2016, p2. Further information on EU energy policy and legislation is available from [European Parliament Fact Sheet: Internal Energy Market](#), May 2016.

website how European policy impacts on UK policy.<sup>286</sup> In withdrawing from the EU, the UK will need to consider how the UK energy market interacts with the EU's internal energy market. Examples of policy that would need to be considered are interconnector regulation and energy efficiency labelling and eco-design.

The impact of withdrawal depends on the relationship formed with the EU. Given the increasingly multinational nature of energy markets and companies, withdrawal from the EU would probably not affect the direction of travel towards a more integrated energy economy, although differences in approach may emerge. Energy projects are typically capital intensive, and following the Brexit vote, investor confidence and access to finance will be key issues for the industry in the coming years. For example, the *Financial Times* raised the potential for uncertainty over future energy investment in the UK, particularly for renewables, but reported that projects were continuing after the vote, noting the argument that investment was driven by the UK's need for new generation capacity.<sup>287</sup> There have been some suggestions that uncertainty in energy markets since the referendum could increase prices.<sup>288</sup>

The Select Committee on Energy and Climate Change has recently launched an inquiry [exploring the implications for UK energy policy of leaving the EU](#).

### 8.3 Impact of Brexit

The impact of withdrawal depends on the future relationship formed with the EU. Given the increasingly multinational nature of energy markets and companies, withdrawal from the EU will probably not affect the direction of travel towards a more integrated energy economy, although differences in approach may emerge. Energy projects are typically capital intensive, and following the Brexit vote, investor confidence and access to finance will be key issues for the industry in the coming years. For example, the *Financial Times* raised the potential for uncertainty over future energy investment in the UK, particularly for renewables, but reported that projects were continuing after the vote, noting that some argued that investment was driven by the UK's need for new generation capacity.<sup>289</sup> There have been some suggestions that uncertainty in energy markets since the referendum could increase prices.<sup>290</sup>

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#### Energy security and supply

The EU Large Combustion Plants Directive (2001/80/EC – LCPD), and its successor the Industrial Emissions Directive (2010/75/EU – IED) require new power plants to comply with stricter emission limits on pollutants, while older plants have to close or clean up (by 2015 under the LCPD and by 2023 for the IED). The Directives are transposed into UK law via Environmental Permitting Regulations. The closure of plants coincides with warnings from Ofgem on the UK's decreasing capacity margins (the surplus of energy supply over

The UK's [Carbon Plan](#) identified climate change impacts and energy security - neither of which are necessarily EU-driven - as the drivers for focusing on emissions reduction.

(DECC, [The Carbon Plan: Delivering our Low Carbon Future](#), December 2011)

<sup>286</sup> [Ofgem, European Market](#).

<sup>287</sup> [Brexit doubt weighs on green energy groups](#), *Financial Times*, 3 July 2016 [subscription required].

<sup>288</sup> [Brexit to add £350m to energy bills](#), *Daily Telegraph*, 16 July 2016.

<sup>289</sup> [Brexit doubt weighs on green energy groups](#), *Financial Times*, 3 July 2016 [subscription required].

<sup>290</sup> [Brexit to add £350m to energy bills](#), *Daily Telegraph*, 16 July 2016.

demand); the closures thus have implications for UK energy security as generating plants come to the end of their life under the Directives.

Power stations are shortly due to close in many Member States, but since coal is attractive at the moment,<sup>291</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.

Beyond determining environmental standards for generation, the EU plays a broader role in determining the security of the UK energy supply. At one level, government support for generation technologies must be approved under state aid rules. More broadly, responses in the Energy Report of the Review of the Balance of Competences demonstrated the complexity of EU energy policy and the conflicts with external policies. For example, in the petroleum sector stakeholders were split on the role of the EU. Respondents from the oil sector considered that EU legislation had been unnecessary and duplicative of world-leading UK controls. On shale gas exploitation, whilst some stakeholders felt there was no need for additional EU legislation, others representing environmental groups suggested that existing national or EU controls were not sufficient to mitigate the potential environmental impacts.<sup>292</sup> An EU exit will need to take these views into account, depending on the shape of any trade deal with the EU.

A further dimension is the flow of oil and gas imports into and within Europe. The EU imports over half of the energy it consumes and dependency is particularly high for oil and gas. Many countries are also heavily reliant on Russia for their natural gas. In response to concerns, the European Commission released its [Energy Security Strategy](#) in May 2014. In terms of UK security of supply, a report for the National Grid on Brexit in March 2016 found that in the near-term there were unlikely to be issues for UK gas as it has strong security of supply from diverse sources; there could be 'exposure' to greater risks in the longer run.<sup>293</sup>

## Renewable Energy

The UK's existing renewables targets are set by the 2009 [Renewables Directive](#).<sup>294</sup>

Some statistics:

- In 2008 renewables constituted 2.25% of energy sources in the UK.
- Under the Directive, we have a target for renewable energy use of 15% by 2020, to fit within the EU's overall target of 20%.
- In 2015 renewable energy use in the UK increased to 8.3%, up from 7.1% in 2014.<sup>295</sup>
- The renewable electricity share of total generation in 2015 (measured on the basis required by the 2009 Renewables Directive) was 22.3%, up from 17.9% in the previous year.<sup>296</sup>

EU targets have driven the focus on renewables in the UK. It is difficult to say how much would change if those targets disappeared as a result of Brexit.

<sup>291</sup> Gloystein, H. and J. Coelho, [European slump leads utilities to burn more coal](#), Reuters, 8 May 2012.

<sup>292</sup> HM Government [Review of the Balance of Competences: Energy](#) Summer 2014.

<sup>293</sup> Vivid Economics, [The impact of Brexit on the UK energy sector](#), 29 March 2016.

<sup>294</sup> 2009/28/EC.

<sup>295</sup> DECC, [Renewable Energy in 2015, Table 3](#).

<sup>296</sup> DECC, [Renewable Energy in 2015, Table 4](#).

For a realistic chance of meeting the EU target, this last figure will need to rise to around 30% by 2020. The previous Government was confident of meeting these targets and identified nine renewable technologies that it considered would help achieve the target in the [Renewable Energy Roadmap](#).<sup>297</sup>

## 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 last recession and over-allocation of allowances in phase 2 resulted in a collapse of the price of EUAs. As a result the EU is taking [several measures](#) to reduce the supply of allowances going forward, including removing surplus allowances from the market. In the meantime, the UK introduced a floor price for carbon in April 2013 by amending the climate change levy to apply to fossil fuels used for energy generation, which applies when the EUA price falls below a certain level. The projected increases in [floor price](#) were reduced in the 2014 Budget and was set at £18 per tonne until 2020. At Budget 2016 the Government stated that the £18 per tonne would be maintained and then uprated by inflation in 2020-21. Budget 2016 also stated that the Autumn statement would set out the “long-term direction” for the Carbon Price Support rate.<sup>298</sup>

Revenue from both EUAs and the Carbon Floor Price are retained by the Treasury, which could be viewed as an incentive to continue with both measures. Receipts from ETS auctions were £0.6 billion in 2014-15, but this is expected to fall to £0.5 billion in 2015-16 and 2016-17, and to £0.4 billion in the years that follow through to 2020-21.<sup>299</sup>

Leaving the EU would not automatically remove the floor price, as this is a UK measure; neither would it necessarily mean the UK would have to leave the EU ETS, but it would depend on the approach to exit the UK chooses to take. Membership of the EU is not a prerequisite of participation: Switzerland is in negotiations to join the scheme, as was Australia until there was a change of government. Following the [Paris Climate Agreement](#) in December 2015, there is an added impetus for the expansion of emissions trading. The UK has been directly involved in this process, with the [announcement](#) in January 2016 that UK government officials are working with China to ensure that the Chinese carbon cap-and-trade system is compatible with the EU ETS.

Following the referendum the price for carbon allowances fell; BusinessGreen reported this was due to uncertainty over UK policy towards the ETS in the future.<sup>300</sup>

## Climate targets

An EU exit would not remove the legally binding UK climate targets under the [Climate Change Act 2008](#), but it could increase the focus on all aspects of UK-based generation, especially if exit resulted in poorer security of supply through decreased interconnectivity

<sup>297</sup> DECC, [UK Renewable Energy Roadmap Update](#), 2012.

<sup>298</sup> HM Treasury, [Budget 2016](#), HC901, March 2016.

<sup>299</sup> Ibid. Table B5.

<sup>300</sup> BusinessGreen, [EU carbon price tumbles in wake of Brexit uncertainty](#), 24 June 2016.

to Europe, reduced harmonisation of EU energy markets or less investment into the UK by multinational companies.

Brexit would also affect the UK's international climate targets under the United Nations Conference on Climate Change (UNFCCC). Currently the UK negotiates as a part of the EU block and has internally set targets that together with those of other Member States aim to meet the EU's overall target. An EU withdrawal would have to address that lack of a UK-specific target under UNFCCC. It was also widely recognised in the Competency Review that negotiating as part of an EU block was beneficial, as the EU had more influence at an international level than individual Member States acting alone.<sup>301</sup>

More recently, ministers have reiterated the UK's commitment to tackling climate change but giving somewhat mixed messages about whether Brexit will make any difference at all.

The former Secretary of State for energy and climate change, Amber Rudd, [was quoted](#) as suggesting that Brexit would not lessen the UK's commitment to tackling climate change, but may make it more difficult for the UK to act internationally.<sup>302</sup> Andrea Leadsom, the then energy minister, took a different view, arguing that nothing would change.<sup>303</sup>

The UK Government has also expressed strong ambitions for the growth of sectors such as offshore wind to 2020 and beyond.<sup>304</sup> An EU exit could create further uncertainty in the renewables sector, following early closure of the Renewables Obligation to onshore wind and other recent changes. The stability provided by EU long-term renewables targets was something identified as very helpful by a wide range of respondents to the [Review of Balance of the Competences on Environment and Climate Change](#).<sup>305</sup>

## The Paris Agreement

One currently unresolved question is how Brexit would affect the UK's ratification of the Paris Agreement, which the UK signed in April 2016. **The UK's vote to leave the EU has the potential to affect progress towards ratification.**

Ministers have made no recent comment on when the UK might ratify the Paris Agreement, beyond indicating that it will be "as soon as possible". Some commentators have suggested that Brexit may mean that the Agreement itself has to be recalibrated.<sup>306</sup>

Amber Rudd said in early June 2016 that the UK would ratify the Agreement "as soon as possible", possibly after the summer when the European Commission published legislation on the 2030 climate and energy framework.<sup>307</sup> In the debate on the *Finance Bill* in July

<sup>301</sup> HM Government, [Review of Balance of Competences on Environment and Climate Change](#), February 2014.

<sup>302</sup> Adam Vaughan, "[Climate change: Leaving EU will make it harder for UK to tackle climate change, says minister](#)", *Guardian* online, 29 June 2016.

<sup>303</sup> *Ibid.*

<sup>304</sup> UKTI, [UK Offshore Wind: opportunities for trade and investment](#), December 2014.

<sup>305</sup> HM Government, [Review of Balance of Competences on Environment and Climate Change](#), February 2014.

<sup>306</sup> A lengthy discussion of the issues can be found in the Commons Library briefing [Climate change: Ratifying the Paris Agreement](#) (CBP 7393, 15 July 2016).

<sup>307</sup> [PQ 38382, 7 June 2016](#)

2016, the Exchequer Secretary, Damian Hinds, drew attention to the UK's role in securing the Paris Agreement but made no further comment about ratification.<sup>308</sup>

Most recently, some commentators have asked whether - with the demise of DECC and climate change not appearing in the title of the new Department for Business, Energy and Industrial Strategy (BEIS) - climate change might receive less government attention. But Baroness Neville Rolfe, minister of state at BEIS, said that climate change will be at the heart of BEIS and that [the UK intends to ratify the Paris Agreement](#) as soon as possible:

The title of a department matters far less than its DNA and what it does ... Energy and climate change will be at the heart of the new department. For example, I can confirm that this Government remain committed to ratifying the Paris agreement, which was agreed last year by 195 countries, as soon as possible. Our policy will also look at affordable and reliable energy, and generally join things up in the way that I described in my opening remarks.

At the heart of our commitment is the Climate Change Act. While the vote to leave the European Union is hugely significant, the Government will continue to play their part in tackling the energy and environmental challenges our country faces.<sup>309</sup>

In its [most recent report](#), the Committee on Climate Change (CCC) has commented on both the Paris Agreement and the UK's vote in favour of leaving the EU. It notes that the latter does not alter the need to reduce emissions or the scale of that reduction, but might have an impact on how the UK's carbon budgets are met.<sup>310</sup>

The *Financial Times* has suggested that the long-term implications of Brexit for energy are "highly uncertain" and quoted the view of Christiana Figueres (the executive secretary of the UNFCCC) that the Agreement might need to be recalibrated.<sup>311</sup>

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<sup>308</sup> [HC Deb 27 June 2016, c109](#)

<sup>309</sup> [HL Deb 19 July 2016 c618](#)

<sup>310</sup> CCC, [Meeting Carbon Budgets – 2016 Progress Report to Parliament: Executive Summary](#), June 2016.

<sup>311</sup> Ed Crooks, "Brexit and Brent", *FT Energy Source*, 24 June 2016.





## 9. Transport

### 9.1 EU's current role in UK transport policy

Competence for transport is 'shared', meaning that either the EU or the Member States may act, but Member States may be prevented from acting once the EU has done so.<sup>312</sup>

The development of the EU's Common Transport Policy (CTP) has resulted in the focusing of action in a number of policy areas, specifically:

- **Economic** – including the creation of a single market in transport services that facilitates the free movement of goods, services and people, and the creation of an integrated transport system;
- **Social** – including the promotion of high safety standards, security and passengers' and workers' rights;
- **Environmental** – including ensuring that the transport system works in a way that does not impact negatively on the environment (including reducing the impact of noise, pollution, harmful emissions and greenhouse gases);
- **Infrastructure** – including the creation of a trans-European transport network (TEN-T) connecting national networks together, making them interoperable and linking outside regions of the EU; and
- **External relations** – including developing relations with third countries and, in some cases, allowing the EU to act collectively at an international level.<sup>313</sup>

The specific provisions of the CTP are contained in Title VI TFEU on Transport (Articles 90 to 100).

Broadly, there is a balance between the common perceived benefits of EU Membership (e.g. the single market for transport services which has brought down costs through liberalisation and competition) and the burdens (e.g. disproportionate or excessive regulation). There have long been concerns about EU regulatory burdens and the costs these impose, and about the difficulties in finding the right level of legislative prescription which achieves the stated aims without being disproportionate. This is particularly important in an area like transport, which is heavily regulated at a European level.

One of the common issues discussed with relation to specific examples below is how much Brexit will impact the standards and regulations the UK chooses to apply in its transport sector. In many instances they are likely to be similar if not identical to the EU's. This is because of the role the UK played in establishing those standards to our own satisfaction in the first place. For example, the UK has been a leading advocate for the development of the single market in transport across all modes; to which end the UK has usually found itself aligned with the European Commission in promoting liberal market-based aviation and maritime sectors. In rail, UK domestic policy was often seen as one of the models for EU proposals, given the experience of the market reforms and liberalisation introduced in the UK twenty years ago.

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<sup>312</sup> HMG, *Call for Evidence on the Government's Review of the Balance of Competences between the UK and the EU: Transport*, 14 May 2013, p5.

<sup>313</sup> *Ibid*, pp9-10.

All of this suggests that transport post-Brexit may not look wildly different from how it looks now; but much remains unclear and will continue to do so until negotiations are at a much more mature stage.<sup>314</sup>

## Switzerland, Norway & elsewhere

Switzerland has two bilateral agreements on aviation and land transportation (road and rail). Broadly, these apply the rules, regulations and their associated costs and benefits of the European Common Aviation Area to Switzerland and much of the common rules on road and rail without the market pillars.<sup>315</sup>

Annex XIII of the EEA Agreement covers all methods of transport, including road, rail, aviation, maritime transport and horizontal transport issues.

## 9.2 Impact of Brexit

- **State aid** is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the EU.<sup>316</sup> For transport state aid rules are particularly pertinent in aviation and maritime and effectively allow the state to subsidise routes and services that would not otherwise be available commercially. They also create a 'level playing field' across the EU and helps to prevent anti-competitive practices. Others have argued that they are not tough enough and allow states to support failing companies with subsidy which creates an unfairness.<sup>317</sup> Out of the EU, the UK could provide subsidies at its own discretion, in line with national competition and procurement regimes.
- **Passenger rights & compensation:** there has long been a 'patchwork' approach across transport modes towards passenger rights and compensation. The UK has long-established domestic rules which have gradually been supplanted by European ones in rail, bus and coach, air and sea (ferries and cruise ships). However, the UK has 'opted out' of or applied exemptions from a number of EU requirements on different modes. It may well be that these will be maintained at the current level after Brexit. The sector most likely to see change is aviation. Responses to the Government's 2013-14 Balance of Competences review reflected wide-spread concerns amongst the travel industry that obligations must be proportionate and not unduly prescriptive.<sup>318</sup> The UK will almost certainly develop its own system of passenger rights and compensation in the aviation sector post-Brexit but how similar these would be to current arrangements or how it would affect non-UK airlines or passengers is unknown.
- **Aviation:** throughout Europe there is a move to restructure European **airspace**, add capacity, improve safety and increase the overall efficiency of the European air transport network through the Single European Sky (SES) project. The UK and

<sup>314</sup> Further details on how Brexit might affect transport can be found in HC Library briefing paper [CBP7633, Brexit: how will it affect transport?](#) 25 July 2016.

<sup>315</sup> [Agreement between the European Community and the Swiss Confederation on Air Transport](#), 30 April 2002; and [Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road](#), 30 April 2002. Information on Switzerland and Norway's relationships with the EU can be found in two HC Library papers: [Switzerland's relationship with the EU](#) (SN6090), 20 October 2011, and [Norway's relationship with the EU](#) (SN6522), 14 January 2013.

<sup>316</sup> BIS, [State Aid Guidance](#), 10 July 2015.

<sup>317</sup> DfT, [Review of the Balance of Competences between the UK and the EU: Transport](#), February 2014, p57.

<sup>318</sup> Op cit., [Review of the Balance of Competences between the UK and the EU: Transport](#), p43

Ireland is planning to meet the SES requirements through the Future Airspace Strategy (FAS) which sets out a plan to modernise airspace by 2020.<sup>319</sup> There is general support for proceeding with this work at a European level.<sup>320</sup> Norway and Switzerland, which are both outside of the EU, are a part of SES so this may be something to which the UK would want to be party even after Brexit. The liberalisation of air transport across the EU and the **single aviation market** created a number of ‘freedoms’ for EU-registered airlines which have allowed them to have a base on one Member State and operate on a ‘cabotage’ basis between other Member States.<sup>321</sup> Respondents to the Government’s Balance of Competencies Review generally were of the view that liberalisation had broken down restrictive trade and operating barriers that had previously existed, and was credited with encouraging growth in the sector.<sup>322</sup> Airlines clearly want the UK Government to negotiate continuing access to this liberalised regime. The most obvious way of doing this would be by becoming part of the European Common Aviation Area (ECAA).<sup>323</sup> Liberalisation has helped bring down **fares** across the EU at a much greater rate than in other parts of the world.<sup>324</sup> It may be that if the UK is unable or unwilling (for whatever reason) to replicate the existing market access arrangements for airlines post-Brexit, this could potentially lead to higher air fares.<sup>325</sup> Fares could also be affected by dramatic currency fluctuations. However, higher fares are by no means a certainty and it will depend on the deal the UK secures.<sup>326</sup>

- **Railways:** the main legislation as it relates to railways is contained in the three ‘rail packages’ that have been passed; the fourth is in the process of being agreed at the moment.<sup>327</sup> The individual pieces of legislation which make up these packages are far-reaching and, for example, legislated for the [European Railway Agency](#) – with extensive powers – and the detailed [Technical Standards of Interoperability \(TSIs\)](#) which set out the technical requirements for the whole railway. They also prescribe how railways can be structured, financed and run. The Balance of Competencies review revealed some, though not a great deal of, dissatisfaction with interoperability.<sup>328</sup> There is a commonly-held belief that EU law ‘bans’ the **renationalisation** of the rail network. This is a misconception: the current laws do not prevent the state owning and managing the rail infrastructure and (separately) operating train services – this model is commonly employed in other Member States.<sup>329</sup> That said, the ‘market pillar’ of the fourth rail package is slightly ambiguous. Brexit would make all of this irrelevant and would mean that a future government that was so inclined could renationalise the railways. It would also allow a Government that no longer applied EU procurement rules to award rail services,

<sup>319</sup> CAA, [Future Airspace Strategy for the United Kingdom 2011 to 2030](#), June 2011.

<sup>320</sup> Ibid., p33

<sup>321</sup> More details are given in HC Library briefing paper [SN182](#)

<sup>322</sup> Op cit., [Review of the Balance of Competences between the UK and the EU: Transport](#), p24.

<sup>323</sup> CAPA, [Brexit and aviation Part 1: Open Pandora’s box and anything can happen. But status quo is likely](#), 27 June 2016.

<sup>324</sup> Op cit., [Review of the Balance of Competences between the UK and the EU: Transport](#), p25.

<sup>325</sup> CAPA, [Brexit and aviation Part 2: lower air traffic, economic uncertainty. UK-EU relations up in the air](#), 28 June 2016.

<sup>326</sup> [The boss of one of Europe’s biggest budget airlines says Brexit would not end cheap fares](#), *ITV News*, 31 March 2016.

<sup>327</sup> The main legislation is summarised on the [ORR’s website](#).

<sup>328</sup> Op cit., [Review of the Balance of Competences between the UK and the EU: Transport](#), p28.

<sup>329</sup> For a summary of the infrastructure management of and private sector involvement with other EU rail systems, see annexes 18 and 19 of: EC, [Fourth report on monitoring development in the rail market](#), COM(2014) 353 final, 13 June 2014.

train contracts etc. to British-based companies. There is no reason why Brexit should have significant impact on **HS2**. However, some have suggested that, given the financial uncertainty caused by Brexit a big expensive project like HS2 may no longer be a priority and could be scaled back.<sup>330</sup> Regulated rail **fares** could rise as a result of Brexit if it leads to an uptick in inflation.<sup>331</sup>

- **Roads, driving and vehicles:** there are potentially a lot of uncertainties for **UK haulage** companies as a result of Brexit, particularly in terms of employment, drivers' hours rules, access to markets and border controls.<sup>332</sup> The Agreement on the EEA basically extends the EU internal market to Norway, Iceland and Liechtenstein. As regards road transport, this entails that these three countries apply the EU road transport rules just like EU Member States. The EU has a separate agreement with Switzerland.<sup>333</sup> The UK might find itself in a similar situation to one of these countries. Legislation on **driver licensing and testing** derives from EU law. The collected European Driving Licence Directives require Member States to adopt a common format licence, to harmonise categories and to provide common standards of competence and fitness to drive. While the benefits of Common forms of licensing and testing insofar as they have helped the single market are clear, there are some concerns in specific areas. For example, the Certificate of Professional Competence (CPC) for HGV and bus drivers was heavily criticised by the industry for its inconsistent application and enforcement.<sup>334</sup> There is also the issue of automatic driving licence exchange if you permanently move from one EU state to another.<sup>335</sup> The setting of common standards in many areas of EU legislation, such as **vehicle standards**, has generally had positive impacts in terms of helping to reduce costs and allowing for the free flow of vehicles.<sup>336</sup> Further, harmonisation of vehicle design and construction standards helps with economies of scale, thus keeping costs down. While there has been some criticism of the EU-wide type approval process for vehicles in the wake of the VW emissions scandal, a return to UK-only type approval, with some sort of mutual recognition scheme for all other countries, seems unlikely and has not been suggested.<sup>337</sup>
- The **Blue Badge** scheme provides a national arrangement of parking concessions for disabled people. A separate scheme operates in London. There are reciprocal arrangements for disabled drivers allowing them to park across the EU. The Blue Badge scheme does not apply to off-street car parks, whether local authority- or privately-owned.<sup>338</sup> In 1998 EU Member States made an informal agreement to recognise badges of a common format issued in EU countries.<sup>339</sup> It seems unlikely

<sup>330</sup> E.g. "Heathrow runway ruling may come in weeks, says Grayling", *The Times*, 18 July 2016.

<sup>331</sup> See, e.g. [Rail fares will rise more than £100 a year after Brexit, Remain campaigners say](#), *The Independent*, 21 June 2016.

<sup>332</sup> Some of these are explored in: [Brexit: What next for the road transport industry?](#), *The Lorry Lawyer*, 27 June 2016.

<sup>333</sup> EC, [Roads: non-EU countries](#) [accessed 29 June 2016].

<sup>334</sup> Op cit., [Review of the Balance of Competences between the UK and the EU: Transport](#), pp45, 52 & 56

<sup>335</sup> Details of these countries can be found in DVLA, [Driving in Great Britain \(GB\) as a visitor or a new resident \(INF38\)](#) [accessed 29 June 2016].

<sup>336</sup> Op cit., [Review of the Balance of Competences between the United Kingdom and the European Union Transport](#), p38.

<sup>337</sup> E.g. this is not suggested in the Transport Select Committee's recent report: [Volkswagen emissions scandal and vehicle type approval](#) (third report of session 2016–17), HC 69, 15 July 2016.

<sup>338</sup> More details can be found in HC Library briefing paper [SN1360](#).

<sup>339</sup> [Recommendation 98/376/EC](#), as amended by [Recommendation 2008/205/EC](#); and DfT, [The Blue Badge Scheme Local Authority Guidance \(England\)](#), February 2012, section 8.3.

that Brexit would necessitate the UK changing the format of the Blue Badge, so there is no obvious reason why it would not continue to be recognised across Europe in the same way as those issued in Switzerland and Norway.

- **Shipping and ports:** At present, over 90% of UK trade is handled by ports and the EU is the UK's largest trading partner. Much **shipping** law is derived from international forums such as the IMO, the ILO, the OECD and UNCITRAL, but undoubtedly access to the European single market has benefitted the UK shipping industry. UK shipping post-Brexit is likely to be concerned about general policy areas such as employment law, immigration, border controls and contract law. More specifically on transport issues, it is likely to be concerned about securing freedom to trade; safety and the environment; tonnage tax and security. The UK **ports** sector, being largely privately owned and competitively run, is very different to those of many other EU Member States. Consequently, it has long had concerns about public subsidy in other EU countries distorting competition, particularly between the larger international ports.<sup>340</sup> The greatest concern for UK ports over the past decade or so has been the repeated attempt by the EU to legislate on port services, which they have argued would impose disproportionate and potentially harmful regulation in an area where the UK is already competitive.<sup>341</sup> The proposed 'Port Services Regulation' was cited several times during the referendum campaign as a reason to leave the EU.<sup>342</sup>

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<sup>340</sup> [Report of the exchange of views between ports CEOs and Transport Commissioner Bulc 19 January 2015 Brussels](#), p7.

<sup>341</sup> More details can be found in HC Library briefing paper [CBP7457](#).

<sup>342</sup> E.g. [It's not just the plot to let in 1.5 million Turks.. Daniel Hannan outlines ten bombshells the EU's keeping secret until after you've voted](#), *Daily Mail*, 14 June 2016.

## 10. Immigration

At the moment, it is very unclear what kind of future relationship the UK might have with the EU and EEA/Swiss states after leaving the EU. A key question, when considering the impact of leaving the EU on immigration policy and the immigration rights of British and EU/EEA citizens, is to what extent the UK might remain bound by EU free movement of people laws post-Brexit. There is unlikely to be any clarity about this until the withdrawal negotiations are underway.

### 10.1 Controlling EU immigration

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

Changing the immigration entitlements of citizens from 27 Member States would have significant implications for the workload (and required resourcing) of the UK's border agencies. One very visible consequence is that EU nationals travelling to the UK (and British citizens travelling to European countries) might find themselves queuing at passport control alongside non-EU nationals, rather than in the same category as returning national citizens.

On the other hand, if the UK were to negotiate a relationship with the EU similar to the non-EU EEA states or Switzerland, the immigration rights of UK and EU citizens might not change very much. Switzerland and the non-EU EEA states are both bound by free movement of people laws, although the EEA Agreement does give them some scope to apply some safeguarding measures unilaterally, "If serious economic, societal or environmental difficulties of a sectorial or regional nature liable to persist are arising."<sup>343</sup>

#### The pre-Brexit position

##### EU 'Free movement' rights

For as long as the UK remains a Member State of the EU, it is subject to EU free movement of people laws.

The [right to move and reside freely](#) in another Member State is one of the rights granted by EU citizenship (as per Article 21 of TFEU). Anyone who has nationality of an EU Member State is also an 'EU citizen', and as such, has '[free movement' rights across the EU](#) (subject to certain restrictions, as set out in the 'Free Movement of Persons'/'Citizens' Directive).<sup>344</sup>

The 'free movement of people' principle entitles citizens of EU Member States and their families to reside and work anywhere in the EU. This right also applies to citizens of non-EU EEA States (Iceland, Norway and Liechtenstein) and Switzerland.<sup>345</sup>

As well as the freedom to "move and reside freely" throughout the EU under EU citizenship provisions, the TFEU contains Articles specifying the free movement rights of

<sup>343</sup> [Agreement of the European Economic Area](#) OJ No L 1, 3.1.1994 page 3, (as amended), Article 112

<sup>344</sup> Directive 2004/38/EC.

<sup>345</sup> The EEA includes EU countries and also Iceland, Liechtenstein and Norway. It allows them to be part of the EU's single market. Switzerland is neither an EU nor EEA member but is part of the single market. GOV.UK at <https://www.gov.uk/eu-eea>.

workers and self-employed persons.<sup>346</sup> Free movement is supported by a broader set of rights, such as protection against discrimination on the grounds of nationality for employment, and provisions to co-ordinate social security so that people do not lose entitlements when they exercise their free movement rights.

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

### **Comparison with controls for non-EU nationals**

The comparable provisions for non-EU nationals, including British citizens' family members, are specified in the [UK's Immigration Rules](#) and are significantly more restrictive.

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

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

The differences between EU free movement rights and visa restrictions for non-EU nationals have become more striking in recent years, as the UK's Immigration Rules have become more restrictive. The UK and its European partners have recognised the potential for exploitation of EU free movement law, for example, through 'sham marriages' between EU and non-EU nationals who would otherwise struggle to qualify for entry under national immigration legislation. The proposed new settlement for the United Kingdom within the European Union agreed in February 2016 included some proposals to clarify and extend the scope to prevent non-EU national family members from using EU law to obtain a right of residence.<sup>347</sup> However these measures will not come into force, due to the UK's vote to leave the EU.

### **How might exit affect UK and EU citizens' immigration rights in the long-term?**

Leaving the EU means that the UK could set its own criteria for deciding which EU citizens can be admitted to the UK. This is assuming that it did not negotiate a future agreement with the EU (or certain Member States) which required the continued application of free movement law.

The UK's approach to controlling EU migration is likely to be informed by broader considerations of the national interest, including the extent to which it wants to continue to attract certain types of migrant to the UK and ensure that British citizens have

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<sup>346</sup> Articles 45-48 TFEU and Articles 49-53 TFEU respectively.

<sup>347</sup> European Council, [European Council meeting \(18 and 19 February 2016\) Conclusions](#), 19 February 2016.

continued access to EU states, and whether it wants to continue to have access to the single market.

Will the UK be able to apply different visa requirements to different EU nationalities (as it currently does for visitors from non-EU states, for example)? Some experts noted in advance of the referendum that the EU's strong preference is for its third-country partners to apply the same visa conditions to all EU Member States. That makes a 'pick and mix' approach potentially difficult to achieve.<sup>348</sup>

### **Harmonising the visa rules for European and non-EU nationals**

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

No longer being bound by free movement law could give the UK more powers to prevent the presence of certain categories of EU migrant. For example, European foreign offenders would no longer have a greater degree of protection from removal/deportation than other nationalities. The proposed new settlement for the UK in the European Union had included a pledge to clarify the scope for excluding EU national offenders, and to give further consideration to the issue in the event of a future revision of the Free Movement Directive, although there was some ambiguity over when that might have been done.<sup>349</sup>

The Coalition Government's Balance of Competences Review on free movement of people noted that the majority of EU migrants come to the UK to work.<sup>350</sup> EU free movement law has ensured that UK employers have relatively easy access to labour from EU states. This has offset some of the obstacles to non-EU economic immigration imposed by the UK's Immigration Rules. For example, successive governments have taken action to ensure that [the points-based system](#) only caters for skilled non-EU workers, and it does not generally cater for job-seekers.<sup>351</sup> It has been assumed that any need for lower-skilled labour can be met by workers from within the UK and EU. If EU nationals become subject to similar controls as non-European nationals, it is possible that there will be some pressure to relax some visa restrictions or expand certain categories, depending on the needs of the economy.<sup>352</sup>

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

### **What other options might be available?**

As commentators have noted, there are any number of options between maintaining full free movement rights and introducing full visa restrictions for EU nationals, which the

<sup>348</sup> Steve Peers, EU Law Analysis, [What happens to British expatriates if the UK leaves the EU?](#), 9 May 2014; Helena Wray, EU Law Analysis, [What would happen to EU nationals living or planning to visit or live in the UK after a UK exit from the EU?](#), 17 July 2014.

<sup>349</sup> European Council, [European Council meeting \(18 and 19 February 2016\) Conclusions](#), 19 February 2016

<sup>350</sup> HM Government, [Review of the Balance of Competences between the United Kingdom and European Union Single Market: Free movement of people](#), summer 2014, paragraph 2.29.

<sup>351</sup> Library briefing [The UK's points-based system for immigration](#) has more information about current controls on non-European economic immigration.

<sup>352</sup> See, for example, Migration Watch UK, [UK immigration policy outside the EU](#), 27 January 2016, Annex A.



Government may wish to consider when preparing its negotiation strategy. Some of these are similar to previous ideas for free movement reform raised by UK Government Ministers.<sup>353</sup> Proposals which have attracted some attention in the immediate aftermath of the referendum result include:<sup>354</sup>

- Allowing for the free movement of workers only, as originally provided for in the 1957 Treaty of Rome.
- The “EEA option”, i.e. free movement rights with scope to unilaterally apply restrictions in the event of “serious economic, societal or environmental difficulties”. Furthermore, Liechtenstein has a special ‘Sectoral Adaptations’ agreement with the EU, which enables it to apply a quota system to control the number of EEA citizens given permission to reside in the country. The agreement is based on a recognition of Liechtenstein’s ‘specific geographic situation’, and is subject to review every five years.<sup>355</sup>
- An “EEA minus” option – some restrictions on free movement rights, such as quotas for work permits, in return for restricted access to the single market.

The advantages and disadvantages of different models, and prospects for securing agreement from the EU, are likely to continue to generate considerable commentary and debate in the months ahead.

### **Might the implications for Irish nationals be different?**

[Irish nationals have a special status](#) in UK law as “non-aliens”. They also enjoy free movement rights between Ireland and the UK, under the Common Travel Area arrangements. Both of these pre-date Ireland and the UK’s EU memberships. It is therefore possible that Brexit might have different implications for Irish nationals than other EU citizens. Equally, there has been some speculation that Brexit might lead to some changes to those special arrangements.<sup>356</sup>

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

One of the most prominent questions to arise in the immediate aftermath of the referendum result is how leaving the EU will affect the legal status and entitlements of British citizens living in other EU Member States, and EU nationals living in the UK.

For the time being, the UK remains a Member State of the EU, and these rights are unaffected.

The post-Brexit legal status of British and EU expats will be one of the issues to be discussed during the course of the UK’s exit negotiations. A Cabinet Office statement of 12 July set out the Government’s initial position:

The legal status of British and EU expats post-Brexit will be one of the issues to resolve during the UK’s withdrawal negotiations

<sup>353</sup> See, for example, BBC News [online], ‘[Theresa May: Free EU movement ‘for those with jobs’](#)’, 30 August 2015, FT.com, David Cameron, ‘Free movement within Europe needs to be less free’, 26 November 2013

<sup>354</sup> See, for example, IPPR, [Beyond free movement? Six possible futures for the UK’s EU migration policy](#), July 2016; NIESR blog, ‘[The “EEA minus” option: amending not ending free movement](#)’, 3 July 2016; FT.com, ‘[Brexit: Silence from Leave camp leaves options in the air](#)’, 27 June 2016; EU Law Analysis, ‘[What next after the UK vote to leave the EU?](#)’, 24 June 2016.

<sup>355</sup> See European Commission Communication COM(2015) 411 final, [Liechtenstein Sectoral Adaptations – Review](#), 28 August 2015.

<sup>356</sup> Professor Bernard Ryan, [ILPA EU Referendum Position Papers 8: The implications of UK withdrawal for immigration policy and nationality law: Irish aspects](#), 18 May 2016.

When we do leave the EU, we fully expect that the legal status of EU nationals living in the UK, and that of UK nationals in EU member states, will be properly protected.<sup>357</sup>

There will be no certainty on this until a deal is reached between the UK and EU. On the other hand, there is widespread agreement that sudden curtailments of immigration status or mass expulsions would be impractical, undesirable and legally dubious.

One possibility is that EU citizens could continue to be allowed to live in the UK (and vice versa) after the UK's exit on the same basis as now, if they had a 'right to reside' in the UK on a certain cut-off date. This would mean that EU free movement laws would continue to be a significant influence over UK immigration controls for years after the UK's exit.<sup>358</sup>

Some of the practical issues to consider in such a scenario include:

- What cut-off date will be used to determine expats' rights? E.g. the date of the referendum? The date of UK withdrawal from the EU?
- Will people who have already acquired a right to permanent residence under EU law be treated differently to those who have moved more recently, or who move after the withdrawal negotiations begin? Or would all EU nationals present on that date be given a permanent immigration status, irrespective of length of residence?
- Would certain categories, such as EU nationals with a history of offending, be treated differently?
- Would EU migrants with a 'right to reside' need to apply to transfer to a different immigration status category under the UK Immigration Rules, such as Indefinite Leave to Remain, or would they retain their rights and status under EU law?
- If EU migrants are required to apply for documentation confirming their status in the UK, what evidential requirements would apply, given that EU citizens have not been obliged to apply for documentary proof of their right to reside in the UK under EU law, and there are no comprehensive records of EU nationals' movements to/from the UK?
- If EU migrants retain their status under EU law, would this continue in the event of a change in their circumstances in the future (e.g. if they ceased to be a worker)?
- How will the status of EU migrants who do not have a right to reside be resolved?
- Will EU migrants continue to have the same entitlements to welfare benefits, healthcare, etc. as they currently do?
- Will non-EU national family members similarly retain their rights under EU law?

## 10.2 Border controls, non-EU immigration and asylum

### The pre-Brexit position

The UK has not been automatically bound by EU legislation on border controls, non-EU immigration and asylum. Under special Treaty-based arrangements, the UK has been able to participate in measures selectively, deciding on a case-by-case basis whether opting in would be in its best interests. Successive UK governments took the view that it was

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<sup>357</sup> GOV.UK, Cabinet Office, *News*, '[The status of EU nationals in the UK](#)', 12 July 2016.

<sup>358</sup> Helena Wray, EU Law Analysis Blog, '[What would happen to EU nationals living or planning to visit or live in the UK after a UK exit from the EU?](#)', 17 July 2014.

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 2014 Balance of Competences Review on asylum and non-EU migration concluded that the balance of competence on these matters lay “predominantly with the UK”.<sup>359</sup>

The UK has opted-in to around a third of all EU legislative measures on migration.<sup>360</sup> In recent years, the UK has tended to favour measures which enhance practical co-operation between Member States, rather than further EU legislation in this area.

The Government’s response to the European Commission’s ‘[European Agenda on Migration](#)’, published in May 2015, reflected this approach.<sup>361</sup> The Agenda proposed some immediate measures in response to increases in irregular migration flows in the Mediterranean, as well as longer-term solutions to better manage all types of migration to the EU. The UK has been giving practical support for some of the measures, such as those directed against people smugglers and traffickers, and action to establish ‘hotspot’ registration centres in Italy and Greece. It declined to participate in other measures, notably legislation establishing an emergency relocation scheme for asylum seekers in Europe.

### **Home Office funding from the EU**

The UK has received approximately £240 million from current EU migration funding streams. This has included funding for Assisted Voluntary Returns schemes, which facilitate irregular migrants’ departure from the UK, as well as projects to support refugee resettlement and community integration in the UK.<sup>362</sup>

### **How might UK border controls be affected by exit?**

The UK has not been part of the internal border-free Schengen Area (unlike the non-EU EEA states and Switzerland). Border Force officers conduct checks on EU travellers crossing UK ports of entry, as well as on British citizens and non-EU nationals.

It has been recognised that there have been some significant security benefits to not participating in the border and visa aspects of the Schengen body of law.<sup>363</sup> However it does mean that the UK has been missing out on some potentially useful opportunities to share data on people travelling within the EU. For example, it has been excluded from the EU’s Visa Information System, which is used by Member States and Europol to exchange information about visa applications in order to combat abuse and prevent crime.<sup>364</sup>

The UK has had access to non-immigration parts of the Schengen Information System database (SIS-II) since April 2015. This access could be lost when it leaves the EU. The database gives UK law enforcement agencies (including some border control staff) access to real-time information about wanted or missing people, public security threats, and missing or stolen property. The Home Office said at the time of joining the database that

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<sup>359</sup> HM Government, [Review of the Balance of Competences between the UK and the EU: Asylum & non-EU Migration](#), February 2014, paragraph 1.8.

<sup>360</sup> Ibid, paragraph 1.17.

<sup>361</sup> European Commission, *press release*, ‘[Managing migration better in all aspects: A European Agenda on Migration](#)’, IP/15/4946, 13 May 2015.

<sup>362</sup> [Review of the Balance of Competences between the UK and the EU: Asylum & non-EU Migration](#), February 2014, paragraph 1.20.

<sup>363</sup> Ibid, paragraph 2.14.

<sup>364</sup> Ibid, paragraph 9.

this information would ensure that “more foreign terrorists, murderers and paedophiles will be kept out of the country”.<sup>365</sup>

The collection and screening of Advance Passenger Information has become an integral part of UK border security mechanisms over the past decade. The UK has opted-in to EU legislation on collecting passenger data from transport carriers from outside the EU, and is a strong advocate for the EU to adopt similar measures to collect passenger data on intra-EEA journeys.<sup>366</sup> It is likely to be keen to ensure continued access to such information.

As an EU Member State, the UK has been lending some informal support to Frontex, the EU’s agency for co-ordinating the management of the EU’s external borders. For example, it provided some staff and assets to assist the Operation Triton mission in the Mediterranean Sea.<sup>367</sup> It has been unable to fully participate due to having exercised related opt-out rights.<sup>368</sup> The EEA states participate in Frontex, but this is in the context of their membership of the Schengen Area.

## What will happen to the juxtaposed border controls in northern France?

Leaving the EU does not automatically terminate the [Treaty of Le Touquet](#), which established the ‘juxtaposed’ immigration controls for France and the UK. The Treaty is a bilateral agreement between the UK and French governments, rather than a matter of EU law.

There was some speculation in the run-up to the referendum that France would terminate these arrangements in the event of a UK vote to leave the EU. Some commentators suggested that the arrangements benefit the UK more than France, and that Brexit would provide France with a useful opportunity to terminate them.<sup>369</sup> Others suggested that this was less likely, for example because doing so would have adverse economic consequences for the port of Calais and France. It has also been argued that ending the Le Touquet Treaty arrangements could encourage greater numbers of irregular migrants to gather in northern France and attempt to enter the UK.<sup>370</sup>

Mixed views have been expressed about the likely future of the Treaty in the aftermath of the referendum result (so far).<sup>371</sup>

Article 23 of the Treaty of Le Touquet contains specific rules on how it can be terminated, modified or revised. Either France or the UK can terminate the arrangements at any time, although the time-scales and conditions for doing so need to be agreed with the other country. The two parties can also agree (by exchanging diplomatic notes) to modify the treaty (apart from those provisions that need the approval of parliament). And either party

<sup>365</sup> GOV.UK, *news*, [UK joins international security alert system](#), 10 February 2015.

<sup>366</sup> Written Statement [HCWS425](#) [Justice and Home Affairs post-Council Statement], 19 March 2015.

<sup>367</sup> Written Question [HL5863](#) [on Mediterranean Sea], answered on 24 March 2015.

<sup>368</sup> [Case C-77/05](#).

<sup>369</sup> See, for example, Open Europe, [Would Brexit leave the UK better able to control the Calais crisis?](#), 4 August 2015; Rt Hon Damian Green MP, ‘From Africa to Calais: Britain, the EU, and the Refugee Crisis’, in Conservative European Mainstream for Europe, [The UK and EU: Making Britain Stronger](#), 1 September 2015; BBC News [online] [‘EU referendum: PM says Brexit could bring Calais ‘Jungle’ to UK’](#), 8 February 2016.

<sup>370</sup> Stevenwoolfe.uk, [Beware #BREXIT scaremongering, misinformation on French renegeing on UK Border Calais agreement](#), 16 July 2015; Migration Watch UK Blog, [The Future of Juxtaposed Controls in Calais](#), 8 February 2016; Migration Watch Briefing Paper MW376, [The implications of Brexit for Border Controls in Calais](#), 14 March 2016

<sup>371</sup> International Business Times [online], [Francois Hollande rejects suspension of Le Touquet treaty at Calais despite UK Brexit](#), 30 June 2016

can ask for consultations if they want to revise the treaty “in the light of new circumstances or needs”.

There is also a provision which allows the ‘local representatives of the authorities concerned’ to agree to a temporary change in the area where juxtaposed controls are operated (Article 1.5).

Moreover, under Article 24 “Each of the Contracting Parties reserves the right to take any measures necessary for the safeguarding of its sovereignty or security”.

UK-French cooperation on border security matters has extended beyond the agreements establishing the juxtaposed controls. See, for example, the [joint statement](#) agreed in September 2014, which outlined a “comprehensive action plan” in response to the growing migrant population in Calais, and the further [joint declaration agreed on 20 August 2015](#). Both of these were made in the context of both countries’ membership of the EU, and included expressions of support for broader EU action to manage migration flows in Northern Europe and across the EU.

### **What would be the consequences of ending juxtaposed controls?**

UK immigration officers would no longer be able to conduct immigration checks on travellers, and potentially deny them entry to the UK, whilst they are still in French territory.

Instead, UK immigration controls would be applied to cross-Channel passengers upon their arrival in the UK (as was the case prior to the introduction of juxtaposed controls, and as already happens with arrivals to the UK from other departure points).

Immigration officers would be able to refuse entry to people found ineligible for entry to the UK and return them to their country of departure. But not if they claimed asylum upon arrival - the claim would have to be processed in the UK.

Other obstacles to gaining irregular entry to the UK would also remain, since French border controls and carriers’ liability legislation would continue to apply.

### **What will happen to the border in Northern Ireland and the Common Travel Area?**

Mixed opinions expressed by commentators in the run-up to the referendum about the future of the [Common Travel Area between Ireland and the UK](#) in the event of a Brexit.<sup>372</sup> The UK and Irish governments also indicated uncertainty, whereas ‘Leave’ campaigners did not generally envisage a need for significant changes.<sup>373</sup>

The Common Travel Area pre-dates the UK (and Ireland)’s membership of the EU. EU law recognises Ireland and the UK’s right to maintain the special arrangements with the UK.<sup>374</sup>

Professor Bernard Ryan, who has written extensively on the Common Travel Area, has said that there is “no obvious legal reason” why Ireland could not retain this benefit after the UK leaves the EU.<sup>375</sup>

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<sup>372</sup> Library briefing [The Common Travel Area, and the special status of Irish nationals in UK law](#), considers the potential implications of Brexit in more detail.

<sup>373</sup> *The Guardian*, [Irish prime minister says border controls could return if Britain exits EU](#), 29 May 2016; Cabinet Office, [The process for withdrawing from the European Union](#), Cm 9216, February 2016, p.19; HM Government, [Alternatives to membership: possible models for the United Kingdom outside the European Union](#), March 2016, p.16

<sup>374</sup> [TFEU](#), Protocol 20

The Northern Ireland Affairs Committee received evidence (before the referendum), including from the EU's Brexit Taskforce, which led it to believe that there may be some doubt as to whether the current arrangements could continue, and that a future agreement between the UK and Ireland may need to be agreed by the whole of the EU.<sup>376</sup>

Since the referendum result, the Irish and UK governments have confirmed a shared intention to preserve the benefits of the Common Travel Area.<sup>377</sup> The Irish Government has said that this will be a "key priority" in the context of UK-EU negotiations.

### 'Hard' border controls?

There are mixed views about whether Brexit might lead to more cross-border customs and immigration controls, and how easily these could be implemented. Again, the nature of the UK's future relationship with the EU/EEA is a relevant consideration.

One of the potential difficulties is that, if EU nationals no longer have the same 'free movement' rights in both countries, the land border between the Republic of Ireland and Northern Ireland could become a weak spot in the UK's ability to control EU immigration.

The Northern Ireland Affairs Committee considered three possible scenarios in the event of a significant change to UK immigration controls towards EU/EEA nationals post-Brexit. It recognised that each of these have certain disadvantages and limitations:<sup>378</sup>

- **A harder land border between the Republic of Ireland and Northern Ireland** – this would cause significant disruption to cross-border travellers, and it is doubtful how effective and comprehensive the controls could be in practice, considering the nature of the border.
- **A harder border between the island of Ireland and Great Britain** – this would imply imposing checks on people travelling between different parts of the UK.
- **A harmonised approach to UK and Irish immigration and border controls** – whilst this would overcome the need for hard border controls, Ireland's continued membership of the EU might restrict the policy options available.

### How might UK asylum policies be affected?

Although various parts of EU law commit Member States to adhering to the terms specified in the 1951 *Geneva Convention on the Status of Refugees* and its 1967 Protocol, the UK is a signatory to the 1951 Convention (and other related pieces of international law) in its own right.<sup>379</sup> It will continue to be bound by these after leaving the EU, unless it decides to withdraw from them.

On a practical level, EU law on asylum is interwoven into the UK's asylum system. The 2012 Balance of Competences Review concluded that the UK has been most affected by EU action on non-EU migration in the field of asylum.<sup>380</sup>

The EU has been developing a Common European Asylum System (CEAS) since the 1990s. The UK opted into the six pieces of legislation adopted during CEAS' first phase (2000-

<sup>375</sup> Professor Bernard Ryan, *ILPA EU Referendum Position Papers 8: The implications of UK withdrawal for immigration policy and nationality law: Irish aspects*, 18 May 2016

<sup>376</sup> Northern Ireland Affairs Committee, *Northern Ireland and the EU referendum*, HC 48, 26 May 2016, para 74

<sup>377</sup> [Written Question 41433](#), answered on 7 July 2016; Irish Government News Service, *Appendix: summary of key actions to manage contingencies*, 24 June 2016

<sup>378</sup> Northern Ireland Affairs Committee, *Northern Ireland and the EU referendum*, HC 48, 26 May 2016, paras 75-80.

<sup>379</sup> For example, TFEU Article 78, EU Charter of Fundamental Rights, Article 18.

<sup>380</sup> HM Government, *Review of the Balance of Competences between the UK and the EU: Asylum and non-EU Migration*, February 2014, paragraph 3.7.

2005). There were 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>381</sup>

In recent years there has been less UK engagement in new EU initiatives on asylum, as a consequence of the UK exercising its special 'opt-out' rights in this area.

For example, the UK did not adopt the recast asylum directives introduced over 2011-2013, due to concerns that they would have undermined the UK's asylum system (particularly efforts to deter abuse).<sup>382</sup> Similarly, as previously noted, the UK has only selectively engaged with the EU's response to the 'migration crisis' over the past year or so.

### **Could the UK continue to participate in the 'Dublin' system?**

One of the issues which the Government will need to consider during the EU withdrawal negotiations is whether it will seek continued UK participation in the Dublin system.

#### **Box 3: What is the Dublin system?**

The Dublin system was 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). The EURODAC fingerprint database enables Member States to check whether an asylum seeker has previously claimed asylum in another Member State. The Dublin III Regulation identifies a hierarchy of criteria for determining which Member State is responsible for the asylum claim and sets out the process for handling requests to transfer responsibility between Member States. Put simply, this hierarchy prioritises family reunion considerations, followed by which Member State issued a visa to the applicant or was the first state entered by the applicant (in the case of irregular arrivals). In practice, most transfer requests are based on the irregular entry criterion. This has led to criticisms that the current Dublin arrangements place an unfair burden of responsibility on a few states at the EU's external borders.

### **Are any other non-EU Member States currently part of the Dublin system?**

Norway, Switzerland, Liechtenstein and Iceland participate in the Dublin III Regulations (but not other pieces of legislation related to the CEAS), via separate agreements with the EU.

### **Would the Government want to seek continued participation?**

Successive UK governments have been strong supporters of the Dublin system. The UK has opted-in to all of the revised versions of the Dublin regulations.<sup>383</sup> However, the ongoing 'migration crisis' in Europe has highlighted the vulnerabilities and imbalances within the system. There is some doubt over the long-term future of the Dublin system in its current form, although the UK Government does not favour major changes to it.

The Dublin system has been regarded by successive UK governments as greatly beneficial to the UK. The system has enabled the removal of over 12,000 individuals from the UK to

<sup>381</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.

<sup>382</sup> [HC Deb 13 October 2011 cc44-5WS](#); [HL Deb 12 January 2012 cc495-7](#).

<sup>383</sup> [Regulation 604/2013](#) of 26 June 2013 *establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*.

other EU Member States between 2003 and January 2015.<sup>384</sup> In the Government's view, it has generated significant financial savings and contributed to efforts to deter abuse of the UK's asylum system.<sup>385</sup>

In May 2016 the European Commission published some proposals for recast Dublin regulations, as part of a wider set reforms of the CEAS.<sup>386</sup> The proposals include:

- Shorter timescales for Member States to process transfer requests
- Introducing a "corrective allocation mechanism" to be automatically activated in the event that a State receives a disproportionate number of asylum claims, in order to ensure more equitable sharing of responsibilities between Member States
- Measures to discourage abuse and prevent secondary movements of asylum seekers within the EU

The Government had not confirmed before the referendum vote whether it would opt-in to the recast Directive. It had previously indicated a preference for retaining the principles of the existing Dublin regulation.<sup>387</sup>

Furthermore, it is not clear whether the UK could choose to selectively apply the Dublin regulations but not other parts of the CEAS in the future as a non-Member State. As a briefing published in advance of the referendum vote by an immigration law practitioner noted:

... the European Commission announced in April 2016 that it would be proposing a new consolidated instrument on asylum bringing all the CEAS measures into one Directive. It has also proposed substantial changes to the system with a view to creating a more regulated and coherent asylum system across the continent. If the UK wants to participate in this new system, it will only be able to do so if it remains in the EU.<sup>388</sup>

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

As discussed earlier in this chapter, the UK's approach to controlling non-European immigration is already determined by domestic legislation, including the UK's Immigration Rules, rather than EU law. The UK chose not to opt in to EU measures facilitating legal migration of third-country migrants (e.g. directives establishing common eligibility rules and entitlements for certain categories of immigrants, such as workers, students, migrants' family members, and long-term residents).<sup>389</sup>

This approach protected UK governments' flexibility to adjust immigration policy in response to changing UK requirements.<sup>390</sup> For example, a points-based system for non-EU labour and student immigration was introduced from 2008/9, and limits have been

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<sup>384</sup> Written Statement [HCWS219](#) [on EU opt-in decision], 23 January 2015.

<sup>385</sup> [HC Deb 25 February 2013 c86W](#).

<sup>386</sup> [COM \(2016\) 270 final](#), 4 May 2016.

<sup>387</sup> [HCWS708, 28 April 2016](#)

<sup>388</sup> Elspeth Guild, *ILPA EU Referendum Position Paper 10: The UK Referendum on the EU and the Common European Asylum System*, 29 April 2016.

<sup>389</sup> However, the UK does apply EU regulations establishing a uniform format for residence permits for third-country nationals.

<sup>390</sup> There are some EU competences which indirectly impact on UK immigration policy, such as the EU-Turkey Association Agreement, Erasmus student exchange programme, and EU Free Trade Agreements, as briefly discussed in Home Office, [Call for evidence, Review of the Balance of Competences: Asylum and Immigration](#), May 2013.



introduced on the number of visas available in various categories, including those for sponsored skilled workers and migrants with 'exceptional talent'.

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

On Readmission Agreements, working as a bloc with other Member States rather than independently has often resulted in a better deal for the UK, with Member States acting as a bloc able to wield greater leverage against third countries than when acting individually.<sup>391</sup>

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

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<sup>391</sup> HM Government, [\*Review of the Balance of Competences between the UK and the EU: Asylum and non-EU Migration\*](#), February 2014, paragraph 1.19.

# 11. Justice and Home Affairs

## Summary

The UK currently has an opt out arrangement with the EU on policing and criminal justice measures, whereby it can choose which measures to opt in to. The UK has chosen, with parliamentary approval, to opt in to a number of measures, the most significant of which is the European Arrest Warrant. Others relate to information sharing and participation in EU law enforcement agencies.

## 11.1 Police and Justice Cooperation

Between 1995 and 2009, the Member States of the EU agreed on 130 measures relating to police and judicial cooperation in criminal justice matters. These covered aspects of the substantive criminal law (the definition of crimes); mutual recognition in criminal matters; harmonisation of criminal procedure; exchange of information; and EU law enforcement agencies. These measures, known as the 'third pillar' of EU law, were subject to a different legal framework in which the role of EU institutions was more restricted.

The Treaty of Lisbon incorporated these pre-2009 third pillar measures into the main body of EU law, to which the powers of the Commission and EU Court of Justice (CJEU) apply. From this point the UK had the ongoing option of opting in to any new measures in this area, and of opting out of any laws that were adopted before the Treaty.

### The block opt-out decision

The UK notified the Council in July 2013 of its decision to opt out of these measures. It immediately sought to opt back in to 35 of the same measures, accepting the enforcement powers of Commission and CJEU jurisdiction with regard to them.<sup>392</sup>

Prior to the vote in Parliament, the Government published its [\*Decision pursuant to Article 10\(5\) of Protocol 36 to the Treaty on the Functioning of the European Union\*](#),<sup>393</sup> setting out the 35 measures that the UK was seeking to opt back in to.

In November 2014 the House of Commons voted to endorse the Government's formal application to re-join the 35 Home Affairs and Justice measures by 421 votes to 29.<sup>394</sup>

### Measures in which the UK currently participates

Some of the more significant measures in which the UK participates are considered below.

#### European Arrest Warrant

The Government highlighted the importance of the European Arrest Warrant (EAW) in setting out its case to remain in the EU:

<sup>392</sup> The Commons Library briefing [The UK block opt-out in police and judicial cooperation in criminal matters: recent developments](#) (November 2014) provides further context.

<sup>393</sup> Cm 8897, HM Government, July 2014.

<sup>394</sup> For further detail of the debate around whether or not to opt back in to the EAW, see Commons Library Briefing Paper 7016 [The European Arrest Warrant](#), Part 6.

4.10 The European Arrest Warrant (EAW) makes it easier to extradite foreign suspects back to where they are wanted for crimes – and bring suspects back to the UK to face justice for crimes committed here. Since 2004 the EAW has allowed 7,000 people to be extradited from the UK to face trial or serve a sentence and has resulted in just over 1,000 people being returned to the UK to face justice.<sup>395</sup>

The EAW is given effect in domestic law by the *Extradition Act 2003*. The scheme is managed by the National Crime Agency (NCA). The NCA issued 219 EAWs in 2013 and 228 EAWs in 2014. It received 5,522 EAWs in 2013 and 13,460 EAWs in 2014.<sup>396</sup>

The EAW is based on the principle of mutual recognition of Member States' legal systems within the EU. Unlike extradition arrangements with countries outside the EU, the EAW requires acceptance of a foreign warrant by national judicial authorities without an inquiry into the facts or circumstances giving rise to the warrant. It also limits the grounds on which extradition may be refused. It was intended to streamline the process of extradition and relies on trust between Member States.

The EAW has faced criticism in the past. Opponents have argued that it is used too frequently and favours procedural simplicity over the rights of suspects and defendants. A review conducted under the Coalition Government resulted in amendments to the *Extradition Act 2003* aimed at addressing concerns about proportionality and other matters.

### **Schengen Information System**

The Schengen Information System II (SIS II) is another measure highlighted by the Government as significant for domestic security. SIS II is a large-scale database that supports external border control and law enforcement cooperation. It enables police and border guards to enter and consult real time alerts on certain categories of wanted or missing persons or objects (such as documents or vehicles).

The Government's Impact Assessment on the opt-in decision provided the following reasoning as to why SIS II was deemed necessary:

#### Improving law enforcement access to real time information on persons and objects of interest

The UK currently receives and shares law enforcement information with European partners through bilateral arrangements and through Interpol channels. Processes rely on Member States directing information to appropriate law enforcement agencies in the UK in order for action to be taken. These processes do not allow for real time access to alerts and rely on UK law enforcement manually updating systems (e.g. the PNC). This incurs significant resource burdens on law enforcement agencies as well as impairing the UK's ability to detect individuals and objects of interest.

#### Secure the UK Border

Securing the border is a key priority for the Government and security is a primary focus. Over 100 million passengers arrive in the UK each year and in total there are around 200 million passenger journeys across the UK border. Providing border staff with the right information to stop potential threats before they can enter the UK is vital. [...]

SISII, through the use of real-time information, will enable the UK to better combat domestic and transnational crime and protect the border. It will also strengthen public

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<sup>395</sup> [The best of both worlds: why the UK should remain a member of a reformed EU, February 2016](#)

<sup>396</sup> [PQ 22922 of 22 January 2016](#)

protection by extending the reach of UK law enforcement across Europe through enhanced information sharing and increased operational effectiveness.<sup>397</sup>

The Home Secretary made a statement to the House on 5 January 2016 on the Government's counter-terrorism work, in which she mentioned SIS II as one of the measures taken by the UK to combat the threat of terrorism:

In addition, the UK has joined the European watch list system—so-called SIS II—meaning we are now alerted when any individual is stopped at a border checkpoint or by police anywhere in Europe and is checked against the system.<sup>398</sup>

## Europol

Europol is the European Union's law enforcement agency. It assists EU Member States to conduct investigations in relation to terrorism and organised crime by providing intelligence exchange and support, and analysis.

The Government's Impact Assessment on the opt-in decision pointed to the strategic importance of Europol in combatting cross-border threats:

It also has a vital role in assessing threats from a cross-border perspective, producing relevant threat assessments and strategic analyses. This is important in identifying priority threats at EU level, which informs the coordination of practical cooperation amongst Member States. The agency acts as an analysis hub for data and information on serious international crime and terrorism and takes a key role in working with national law enforcement agencies to coordinate action between Member States.<sup>399</sup>

## Brexit consequences

Predictions about the consequences of Brexit are of course speculative at this stage and depend on the outcome of negotiations. However, it is likely that the UK would wish to recreate at least some of the existing arrangements.

Some issues are covered by Council of Europe treaties,<sup>400</sup> although in practice these are generally less detailed and may prove to be less effective.

In other areas it may be possible to negotiate bilateral treaties with individual Member States, or with the EU as a whole. For example, a form of the EAW has been agreed with Norway and Iceland (although this is not yet in force).

It is possible that, without the mutual recognition and trust between EU Member States that underpins the EAW and other measures, these arrangements would be more complicated, expensive or time consuming. In [Alternatives to membership: possible models for the United Kingdom outside the European Union](#), the Government suggested that the outcome of any future negotiation is uncertain:

1.4 Under any of these alternatives, there would also be a non-economic cost, in terms of the UK's security and strength. The European Arrest Warrant and the Schengen Information System, for instance, allow our law-enforcement agencies to obtain and act on information from their EU counterparts. Even if over time we manage to negotiate replacement bilateral agreements, there is no guarantee that we could fully replace our access to current EU measures for police and security cooperation.

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<sup>397</sup> [Decision pursuant to Article 10\(5\) of Protocol 36 to The Treaty on the Functioning of the European Union](#), Cm 8897, July 2014, page 54.

<sup>398</sup> [HC Deb 5 January 2016, c57](#)

<sup>399</sup> Page 149

<sup>400</sup> See for example the [Convention on the Transfer of Sentenced Persons](#).

With respect to EU agencies, the UK may be able to enter into agreements to cooperate, as other non-EU countries have done. Although Europol's role and remit are focussed on EU member states it does work with partners outside the EU. The Europol website points out that organised crime does not stop at international boundaries and so cooperation agreements with non-EU states are needed:

Europol assists EU Member States in combating organised crime within the European Union, but because organised crime does not stop at international borders, it is also essential to have cooperation initiatives with non-EU countries and international organisations.

The Justice and Home Affairs Council therefore adopted the Council decision of 27 March 2000 (amended by the Council decision of 6 December 2001 and the Council decision of 13 June 2002) which authorises the Director of Europol to enter into negotiations on cooperation agreements with third states and non-EU related bodies. The nature of the cooperation agreements can vary, ranging from operational cooperation, including the exchange of personal data, to technical or strategic cooperation.<sup>401</sup>

Europol has a number of operational and strategic agreements with non-EU states, listed on the website, including Australia, Canada and the USA.

## 11.2 Data protection

The right to privacy is a highly developed area of law in Europe.<sup>402</sup>

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

The EU proposed replacing the 1995 Directive with a new Regulation. Under that Regulation, companies across the EU would only have to deal with one set of data protection rules and be answerable to a single data protection authority – the national authority in the EU Member State where they have their main base. The draft framework was a matter of contention among Member States; the UK Ministry of Justice had argued (for example) that the burdens the proposed regulation would impose outweighed the net benefit estimated by the Commission.<sup>403</sup>

In December 2015, the EU reached agreement on the [new data protection rules](#). The Regulation and Directive were formally adopted by the European Parliament and Council in April 2016 and will come into effect in May 2018 (the latter requiring transposition into national law by that date). Following the referendum result, the UK Information Commissioner's Office issued a [statement](#):

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<sup>401</sup> Europol, [External Co-operation](#) [accessed 1 July 2016].

<sup>402</sup> Further background is available in the Commons Library briefing [The draft EU data protection framework](#) June 2013.

<sup>403</sup> See Standard Note 6669, [The draft EU data protection framework](#).

The Data Protection Act remains the law of the land irrespective of the referendum result.

If the UK is not part of the EU, then upcoming EU reforms to data protection law would not directly apply to the UK. But if the UK wants to trade with the Single Market on equal terms we would have to prove 'adequacy' - in other words UK data protection standards would have to be equivalent to the EU's General Data Protection Regulation framework starting in 2018.

With so many businesses and services operating across borders, international consistency around data protection laws and rights is crucial both to businesses and organisations and to consumers and citizens. The ICO's role has always involved working closely with regulators in other countries, and that would continue to be the case.

Having clear laws with safeguards in place is more important than ever given the growing digital economy, and we will be speaking to government to present our view that reform of the UK law remains necessary.

### 11.3 EU citizenship

EU citizenship was formally introduced in Article 2 of the *Treaty on European Union* in 1992, which stated that the Union aims to "strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union". In addition to the earlier right to move, work and reside freely in any Member State, Maastricht introduced voting and election rights in European Parliament (EP) and local elections, and extra consular protection for EU citizens.

The *Treaty of Amsterdam* extended citizens' rights with a new anti-discrimination clause, while Article 17 stipulated that Union citizenship "shall complement and not replace national citizenship".

The *Treaty of Lisbon* replaced "complement" with "additional to". The EU Treaty provides for EU citizenship in Articles 20 - 25 TFEU. EU citizenship is dependent on holding the nationality of an EU Member State and is additional to national citizenship. It does not replace national citizenship, but adds an extra layer of rights (and obligations).

#### Will Brexit mean loss of EU citizenship?

EU citizenship does not fall under the UN's [Universal Declaration of Human Rights](#) and is not the same as having the nationality of a state, to which the UN Declaration refers.<sup>404</sup>

The EU Treaty text asserts that the rights of citizenship "shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder". It is acquired automatically by virtue of being a national of an EU Member State; you don't have to apply for it. The EU Treaties apply to and in the EU Member States. If the UK leaves the EU, its citizens – unless they have dual nationality - will no longer be citizens of the EU within the terms of the EU Treaties.

However, there has been a debate about the possibility that citizens of a withdrawing State have 'acquired rights'. This is discussed in section 4.4 of Commons Briefing Paper 7551, [Brexit: how does the Article 50 process work?](#) 30 June 2016. The former Director

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<sup>404</sup> Article 15 of the Universal declaration states: (1) Everyone has the right to a nationality; (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

General of the EU Council's Legal Service, Jean-Claude Piris, thought this could **not** be the case with regard to EU citizenship:

I would not think that one could build a new legal theory, according to which "acquired rights" would remain valid for millions of individuals ... who, despite having lost their EU citizenship, would nevertheless keep its advantages for ever (including the right of movement from and to all EU Member States? Including the right to vote and to be a candidate in the European Parliament?). Such a theory would not have any legal support in the Treaties and would lead to absurd consequences.<sup>405</sup>

### Court of Justice case law

The Court of Justice of the EU (CJEU) has stated several times that citizenship of the Union is intended to be the "fundamental status of nationals of the Member States". It would appear to follow then that leaving the EU would result in a loss of EU citizenship. But CJEU case law is not always so clear on this.

Professor Sionaidh Douglas-Scott, while saying that if the UK was no longer in the EU, "this would suggest its citizens are no longer EU citizens",<sup>406</sup> pointed to the CJEU ruling in the [Rottmann](#) case in March 2010, which held that "deprivation of EU citizenship [though in circumstances different from Brexit] might not be a matter just for Member States, but that the EU might have a role as well". In the [Opinion](#) of Advocate General Poiares Maduro in the reference for a preliminary ruling in [Rottmann](#), 30 September 2009, Union citizenship can be independent of nationality. A Member State's decision to withdraw naturalisation was a matter of EU law because that action would also mean removing the status of EU citizenship. Could it therefore be argued that EU citizenship would remain even after Brexit or would this be one of J-C Piris' "absurd consequences"? Poiares argued:

Any attempt at an answer presupposes a sound understanding of the relationship between the nationality of a Member State and Union citizenship. Those are two concepts which are both inextricably linked and independent. (29) Union citizenship assumes nationality of a Member State but it is also a legal and political concept independent of that of nationality. Nationality of a Member State not only provides access to enjoyment of the rights conferred by Community law; it also makes us citizens of the Union. European citizenship is more than a body of rights which, in themselves, could be granted even to those who do not possess it. It presupposes the existence of a political relationship between European citizens, although it is not a relationship of belonging to a people. On the contrary, that political relationship unites the peoples of Europe. It is based on their mutual commitment to open their respective bodies politic to other European citizens and to construct a new form of civic and political allegiance on a European scale. It does not require the existence of a people, but is founded on the existence of a European political area from which rights and duties emerge. In so far as it does not imply the existence of a European people, citizenship is conceptually the product of a decoupling from nationality.

Some analysts also point to the CJEU ruling in [Grzelczyk](#) that EU citizenship is "destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for".

In [Ruiz Zambrano](#), the CJEU added the requirement that EU citizens must be able to "genuinely enjoy the substance of their EU citizenship rights". Writing in the

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<sup>405</sup> Robert Schuman Foundation, European issues n°355, 5 May 2015. [Should the UK withdraw from the EU: legal aspects and effects of possible options.](#)

<sup>406</sup> BBC News, 4 July, [EU referendum: Would Brexit violate UK citizens' rights?](#)

*Verfassungsblog*, Mark Dawson and Daniel Augenstein conclude: “Hence, while the European Union has no original or autonomous competence to confer European citizenship, it can and will protect it once acquired against interference by the Member States”.<sup>407</sup> The authors also suggest that individuals may have the right to retain or reject EU citizenship:

The most obvious move is to think radically. A further de-coupling of EU citizenship from national membership would allow the Union to replicate the emancipatory move of *Van Gend en Loos* – to liberate individuals from the preferences of their states. De-coupling would signify a constitutional recognition that rights acquired as European citizens really are ‘fundamental’: integral to individual personhood and therefore inscribed into the deep structure of an autonomous EU legal order such that they cannot simply be done away with by inter-governmental agreement. De-coupling would allow those UK nationals – be they from London, Scotland or any other part – to retain their European citizenship rights of free movement and non-discrimination in other EU states if they so wished, by virtue of their continued membership in the European polity. While the decision to grant Union citizenship may still rest with the Member States, via Member State nationality, the decision to withdraw it would rest with the individual EU citizen (who may also wish to renounce that citizenship if they so choose).

CJEU cases to date have not been required to respond to questions about EU citizenship and EU withdrawal. The Court may yet be asked about this, but in the meantime the weight of legal opinion is that Brexit will mean loss of EU citizenship.

The existing alternatives to EU membership do not provide the kind of supplementary citizenship provided by the EU. The EEA Agreement guarantees equal rights and obligations within the Single Market for citizens and economic operators in the EEA. It covers the four freedoms of movement of goods, persons, services and capital, as well as ‘flanking policies’ such as social policy, consumer protection and environment policy. But while EEA nationals enjoy free movement and residence provisions, non-EU EEA nationals are not strictly speaking Union citizens within the terms of the Treaty.

## The franchise

The Directive on Voting Rights for EC Nationals in Local Elections ([Directive 94/80/EC](#)) agreed in 1994 made provision for EU nationals to vote in local elections in the country in which they were resident but in which they were not nationals.<sup>408</sup> EU Member State nationals who are resident in the UK are therefore able to vote in local elections, devolved legislature and EP elections. There is no qualifying time limit and this right was not extended to UK Parliamentary elections. A UK withdrawal will leave the future of this reciprocal arrangement open to question.

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

Some EU Member States have bilateral reciprocal arrangements with non-EU states with regard to voting rights. For example, Portugal grants Norwegian citizens the local franchise because Portuguese nationals living in Norway can vote in Norwegian local

<sup>407</sup> [After Brexit: Time for a further Decoupling of European and National Citizenship?](#) Mark Dawson, Daniel Augenstein 14 July 2016.

<sup>408</sup> See Research Paper 94/23, *Votes and seats for European Parliament elections*, for details of this Directive.



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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.

## 12. Human rights

### Summary

A UK withdrawal from the EU would mean that the UK no longer has to comply with the human rights obligations of the EU Treaties. The controversial EU Charter of Fundamental Rights would not apply, and the EU Court of Justice would not have jurisdiction over the UK (except possibly for transitional cases that arose before withdrawal).

Withdrawing from the EU does not mean withdrawing from the separate European Convention on Human Rights. The Government is planning a British Bill of Rights, but Theresa May has said that she does not intend to withdraw from the Convention.

### 12.1 Overview

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

However, EU human rights have in practice provided new remedies. The Charter has been relied on increasingly in the UK, not least because if the courts find a breach they can be required to disapply UK Acts of Parliament – something which they cannot do under other human rights instruments.

Leaving the EU would mean that the Charter no longer applied in the UK, and that the EU's enforcement mechanisms could no longer be used against the UK for any breach (although there would presumably need to be transitional provisions for cases arising before the date of withdrawal).

However, withdrawing from the EU and the Charter does not mean withdrawing from the European Convention on Human Rights. Indeed it might give the Convention a greater significance.

The Convention is not an EU document but a Council of Europe one. It binds the UK government under international law and is given effect in the UK through the Human Rights Act 1998. The Government's concerns about how human rights operate in the UK have largely focused on the Convention and the Human Rights Act, although the Charter did also begin to feature in 2015. The Queen's Speech 2016 included a commitment to bringing forward 'proposals' for a British Bill of Rights: although it is not clear what that might entail, Theresa May has said that she will not call for the UK to withdraw from the Convention.

Leaving the EU might even result in the Council of Europe having a more prominent role in UK politics. And human rights under the Convention could well be raised in negotiations over the UK's withdrawal agreement or future relations with the EU, for instance around free movement of persons, and/or in legal challenges in that area.

It is worth noting that the EU is meant to accede as a body to the Convention (although this is not likely to happen soon).

## 12.2 What are the EU's human rights obligations?

Article 2 TEU declares that respect for human rights is one of the values on which the EU is founded:

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

The EU's [Charter of Fundamental Rights](#) provides much more detail and substance. The Charter includes Convention rights (those incorporated into UK law by the Human Rights Act 1998 and others), as well as more progressive social and economic rights. In 2009, when the Treaty of Lisbon entered into force, the Charter acquired equal legal status to the EU Treaties themselves.<sup>409</sup>

The main reason for introducing the Charter was to ensure that the EU institutions complied with human rights obligations. But it also applies to EU Member States when they are implementing, derogating from or acting within the scope of EU law.<sup>410</sup>

The EU Court of Justice in Luxembourg can hear actions against the institutions and the Member States for breaches of these rights. If the breach is serious and persistent, the Member State's voting rights in the Council can be suspended.<sup>411</sup>

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

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

The UK and Poland secured a [Protocol](#) that some have seen as an opt-out from the Charter but which is more usually considered to be an interpretative guide that possibly limits the effect of the Charter for the UK and Poland as regards social rights.<sup>412</sup>

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

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

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<sup>409</sup> Article 6(1) TEU

<sup>410</sup> For examples, see [Professor Michael Dougan's oral evidence to the House of Lords EU Justice sub-committee, 15 December 2015](#), Q57.

<sup>411</sup> Article 7 TEU

<sup>412</sup> See for example Vaughne Miller, [Effects of the EU Charter of Rights in the UK](#), Commons Library Standard Note 6765, 17 March 2014; European Scrutiny Committee, [The application of the EU Charter of Fundamental Rights in the UK: a state of confusion](#), 2 April 2014, HC 979 2013-14; Ministry of Justice, [Government response to the House of Commons European Scrutiny Committee Report, 43rd Report, 2013-14, HC979, The Application of the EU Charter of Fundamental Rights in the UK: A state of Confusion](#), July 2014; Anthony Arnall, 'Protocol (No 30) on the Application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom', in Peers *et al* (eds), *The EU Charter of Fundamental Rights: a Commentary*, 2014, p1595 at p1608.

Perhaps the most striking effect of the Charter is that any domestic legislation that conflicts with a directly-effective provision of the Charter must be disapplied by the UK courts.<sup>413</sup>

This a more powerful remedy than the Human Rights Act 1998 provides. Under the 1998 Act the courts cannot disapply UK Acts of Parliament: they can only issue a declaration of incompatibility with the Convention, and Parliament can then fast-track amendments to primary legislation in the light of the judgment (the courts can however strike out secondary legislation and legislation from the devolved assemblies that conflicts with rights under the 1998 Act).<sup>414</sup>

Furthermore, compensatory damages for breaches of EU law can be granted as of right, whereas they are discretionary under the 1998 Act.

There have already been several cases in England where claimants have relied on the Charter, either to assert rights that aren't covered by the 1998 Act or to produce remedies unobtainable under the 1998 Act.<sup>415</sup> In 2015 the Court of Appeal decided in two cases that UK legislation had to be disapplied because it conflicted with directly-effective provisions of the Charter.<sup>416</sup>

#### Box 4: The EU and the prisoner voting controversy

One of the main controversies around human rights in the UK is whether prisoners should be able to vote.

The European Court of Human Rights in Strasbourg ruled in 2005 that the UK's blanket ban on prisoner voting breached the European Convention on Human Rights. The UK has not yet introduced legislation to comply with this ruling.

But this issue also concerns EU law. In October 2014 the EU Court of Justice in Luxembourg said that the right to vote in European Parliamentary elections is protected by the Charter (despite representations to the contrary from the UK and others). However, it held that a French ban on some prisoners voting was proportionate.<sup>417</sup>

UK prisoners could bring a case under the Charter alleging that the UK's blanket ban was disproportionate, in advance of the next European elections in 2019. If they won, this could potentially lead to UK legislation being disapplied.

The Government has said it will produce a full report on prisoner voting after publishing its consultation paper on a British Bill of Rights (see below).

There is more information on prisoner voting in two other House of Commons Library briefing papers:

- [Prisoners' voting rights \(2005 to May 2015\)](#), CBP1764, 11 February 2015
- [Prisoners' voting rights: developments since May 2015](#), CBP 7461, 15 February 2016

In April 2014 the Commons European Scrutiny Committee had called for urgent clarification on the application of the Charter in the UK, for the Government to intervene in proceedings in the EU Court of Justice to limit the scope of the Charter in the UK, and even for primary legislation to disapply the Charter from the UK.<sup>418</sup>

<sup>413</sup> *European Communities Act 1972* s2(1)

<sup>414</sup> *Scotland Act 1998* s29(1); *Government of Wales Act 2006* s94; and *Northern Ireland Act 1998* s6.

<sup>415</sup> For discussion see for example Joshua Folkard, '[Horizontal Direct Effect of the EU Charter of Fundamental Rights in the English Courts](#)', UK Constitutional Law Blog, 23 September 2015; Richard Clayton and Cian C. Murphy, '[The Emergence of the EU Charter of Fundamental Rights in UK Law](#)', 5 EHRLR 469 [2014].

<sup>416</sup> [Benkharbouche v Sudanese Embassy](#) [2015] EWCA Civ 33 and [Vidal-Hall v Google Inc](#) [2015] EWCA Civ 311.

<sup>417</sup> [Thierry Delvigne v Commune de Lesparre-Médoc and Préfet de la Gironde](#), Case C-650/13, 6 October 2014.

<sup>418</sup> European Scrutiny Committee, '[The application of the EU Charter of Fundamental Rights in the UK: a state of confusion](#)', 2 April 2014, HC 979 2013-14.

In response, the Government agreed on the need for clarification, and said that it would publish 'a report on the balance of competence between the EU and the UK on fundamental rights'.<sup>419</sup> The [report](#) duly followed, but served mainly to emphasise the disagreements in this area:

The evidence shows there is a divergence of views on where the balance of competence should lie between the EU and the UK on the protection of human rights. There is little consensus on what constitutes the national interest in this context beyond the principle that the EU and Member States should act consistently with human rights. Views vary on whether the EU's competence on fundamental rights is being exercised consistently with interests in the UK, depending on perspectives on the role of supranational human rights mechanisms, national sovereignty and how fundamental rights are balanced against other interests in society, such as trade.<sup>420</sup>

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

the evidence revealed no instances where the domestic courts have interpreted fundamental rights to provide a greater standard of protection than corresponding guarantees in the ECHR. However, the evidence acknowledged that, in comparison to Convention rights, fundamental rights can have a wider scope of application and can result in the disapplication of primary legislation. Some legal practitioners and think tanks considered that the resulting impact of fundamental rights on parliamentary sovereignty is even more significant than the ECHR.<sup>421</sup>

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

Any decision to unilaterally disapply legislation, including the Charter which has the same status as the Treaties, would no doubt have political, legal and diplomatic consequences.<sup>422</sup>

In December 2015 the then Lord Chancellor said that it would be looking at how the Charter affects UK law in its consultation on a British Bill of Rights (see below).<sup>423</sup>

The outcome of the EU referendum may well have overtaken this, because from the date of withdrawal the EU's human rights obligations, including the Charter, would no longer apply to the UK and the EU Court of Justice would no longer have jurisdiction over the UK (except possibly for transitional cases that arose before withdrawal).

## 12.4 What about the Human Rights Convention?

### Brexit would not mean leaving the Convention

Leaving the EU would not automatically mean that the UK withdraws from the European Convention on Human Rights. The Convention is not an EU treaty but comes from the 47-member Council of Europe.

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<sup>419</sup> Ministry of Justice, [Government response to the House of Commons European Scrutiny Committee Report, 43rd Report, 2013-14, HC979, The Application of the EU Charter of Fundamental Rights in the UK: A state of Confusion](#), July 2014, p4.

<sup>420</sup> HM Government, [Review of the Balance of Competences between the UK and the EU: Fundamental Rights](#), Summer 2014.

<sup>421</sup> *Ibid* para 4.87

<sup>422</sup> Ministry of Justice, [Government response to the House of Commons European Scrutiny Committee Report, 43rd Report, 2013-14, HC979, The Application of the EU Charter of Fundamental Rights in the UK: A state of Confusion](#), July 2014, pp17-18.

<sup>423</sup> [Michael Gove, oral evidence to the House of Lords Select Committee on the Constitution, 2 December 2015](#), p15.

The UK has signed and ratified the Convention, and so the UK Government is bound by it under international law. If the UK no longer wished to be bound by the Convention, it would have to withdraw from the Convention separately.

The UK has also given effect to Convention rights under the Human Rights Act 1998.

## Government proposals for a Bill of Rights

The Government has for some time had concerns about the way human rights are applied in the UK, which latterly included concerns about the Charter as well as the Convention and the Human Rights Act.<sup>424</sup>

It was due to publish a consultation paper on a new British Bill of Rights in the autumn of 2015, with proposals on 'preventing abuse of the system, 'restoring common sense' to UK human rights laws and 'making clear where the balance should lie between Strasbourg and British courts'.<sup>425</sup>

In December 2015, when no paper had appeared, Michael Gove (then Justice Secretary and Lord Chancellor) said the delay was partly over concerns about the EU Charter of Fundamental Rights and the EU Court of Justice:

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

The referendum result might override this particular reason for the delay.

The Queen's Speech in May 2016 made a brief reference to bringing forward proposals for a British Bill of Rights. The [Government's notes](#) explained that the proposed Bill would 'restore common sense to the way human rights law is applied', and include:

- Measures to reform and modernise the UK human rights framework.
- Protections against abuse of the system and misuse of human rights laws.

The rights would be 'based on' those set out in the Convention, but would also take account of 'our common law tradition'.

David Cameron's administration did not rule out withdrawing from the Convention. However, Theresa May, who in a [speech in April 2016](#) had called for the UK to withdraw from the Convention and remain in the EU, then said when she launched her campaign for leadership of the Conservative Party on 30 May 2016 that she would not call for the UK to withdraw from the Convention. The Bill of Rights proposals will now be a matter for the new Justice Secretary and Lord Chancellor, Liz Truss.

## The Convention after Brexit

If the UK does not withdraw from the Convention, it is likely to play an important part in the Brexit negotiations and afterwards.

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<sup>424</sup> See [A British Bill of Rights?](#), House of Commons Library Briefing Paper CBP 7193, 18 May 2016.

<sup>425</sup> [Letter from Rt Hon Michael Gove, Lord Chancellor and Secretary of State for Justice, 27 November 2015.](#)

Human rights could well be raised in negotiations over the UK's withdrawal agreement or future relations with the EU, for instance around free movement of persons, and/or in legal challenges. Even though the Government has declared its intention to protect the residence rights of those exercising free movement rights before a UK withdrawal, the details of this are likely to be subject to reciprocal arrangements with other EU countries, and even the most thorough withdrawal agreement could have gaps. It is quite conceivable that there could be challenges on human rights grounds either to an agreement itself or to how individuals are affected by it.<sup>426</sup>

Leaving the EU might also result in the Council of Europe (which is responsible for the Convention) having a more prominent role in UK politics, as it would become the main pan-European political organisation of which the UK was a member.

### **EU accession to the Convention**

Finally, it is worth noting that Article 6(2) TEU requires the EU itself to accede to the Convention. However, in December 2014 the EU Court of Justice gave its [Opinion](#) on the validity of a draft agreement on the EU's accession to the Convention. It found that it was not within the EU's powers to accede to the Convention under the draft agreement, and raised issues about submitting itself to the judgments of the Strasbourg court.

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<sup>426</sup> See other sections of this paper for more information on immigration and acquired rights.

## 13. Social security

### 13.1 Welfare benefits

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

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

#### The current position

EU law does not require that Member States allow EU/EEA migrants unrestricted access to social benefits.<sup>427</sup> Broadly speaking, a person who moves from one Member State to another has access to benefits in the host country if they are economically active, or are able to support themselves. Working EU/EEA migrants enjoy full free movement rights and are entitled to in-work benefits on the same basis as nationals of the host country. Social security coordination regulations also enable working EU migrants to claim 'family benefits' from the State in which they work for their dependent children resident in another Member State (although payments may be reduced if family benefits are already being paid by the state where the child resides).<sup>428</sup>

EU/EEA migrants who are looking for work, especially those who have never worked in the host Member State, have much more limited access to benefits. EU/EEA migrants not looking for work, or unable to work because of sickness or disability, may have no access to benefits. Starting from 2014, the UK Government introduced a series of measures further limiting access to benefits for non-working migrants.<sup>429</sup> Recent judgments by the Court of Justice of the EU have also clarified the situations where Member States may refuse social assistance to non-active EU migrants, and to migrants only entitled to reside in the host state because of their job-search.<sup>430</sup>

The Settlement for the United Kingdom within the European Union agreed at the European Council on 17-19 February 2016 included proposals to change EU law to provide an 'emergency brake' limiting full access to in-work benefits by newly arrived EU migrants for up to four years (with agreement from the Commission that the UK could invoke this straight away), and an option for Member States to index exported child benefits to the conditions of the Member State where the child resides.<sup>431</sup> With the UK voting to leave the EU, the Settlement has lapsed and the changes to EU law will not now be made.

<sup>427</sup> See CBP-06847, [People from abroad: what benefits can they claim?](#)

<sup>428</sup> [Articles 67-69 of EC Regulation 883/2004](#); CBP-06561, [Child Benefit and Child Tax Credit for children resident in other EEA countries](#).

<sup>429</sup> CBP-06889, [Measures to limit migrants' access to benefits](#).

<sup>430</sup> [Cases C-333/13 – Dano](#), 11 November 2014; [C-16/74 - Alimanovic](#), 15 September 2015; [C-299/14 - García-Nieto and Others](#), 25 February 2016.

<sup>431</sup> See CBP-7524, [EU Referendum: analysis of the UK's new EU Settlement](#), 26 May 2016, section 3.5.



## Implications of Brexit

Until such time as the UK formally leaves the EU, the existing social security rules continue to apply and migrants' entitlements remain unchanged. In the longer term, the situation depends crucially on the outcome of negotiations between the UK and the EU on free movement of people.

If Brexit means an end to 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. While the long-term position of existing EU/EEA migrants in the UK is uncertain, the legal charity the AIRE Centre suggests that steps EU/EEA nationals concerned about their future could take now to mitigate against the possible effects of Brexit include applying for a residence card or a document certifying permanent residence (if they satisfy the conditions), or applying for British citizenship.<sup>432</sup>

Brexit also has implications for UK nationals living in other EU/EEA countries, since Member States would be free to impose corresponding restrictions on entitlement to their benefits.<sup>433</sup> According to United Nations estimates, around 1.22 million UK nationals were resident in other EU Member States in 2015 (compared with 2.88 million migrants from other EU countries living in the UK), with the largest numbers estimated to be in Spain (309,000), Ireland (255,000), France (185,000) and Germany (103,000).<sup>434</sup> The implications for UK nationals resident overseas would depend on the attitude of their Member State of residence, 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>435</sup> which also apply to non-EU EEA countries and Switzerland. The main purpose of the co-ordination rules is to ensure that people who choose to exercise the right of freedom of movement do not find themselves at a disadvantage in respect of social security benefits – for example if they should fall ill or become unemployed while working in another EU/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 EU/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;

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<sup>432</sup> AIRE Centre, [Information note on the UK referendum decision and its potential implications](#), July 2016

<sup>433</sup> For a discussion of possible scenarios and their implications see Steve Peers, EU Law Analysis, '[What happens to British expatriates if the UK leaves the EU?](#)', 9 May 2014.

<sup>434</sup> United Nations Global Migration Database, [International migrant stock by destination and origin](#), Table 16

<sup>435</sup> Now in EC Regulations 883/2004 and 987/2009.

- clarifying which state is responsible for paying benefits in particular cases (the 'single state principle');
- allowing a person's periods of employment, residence and contributions paid in one EEA country to count towards entitlement to benefit in another country (this is referred to as the principle of 'aggregation'); and
- allowing people to take certain benefits abroad with them to another EU/EEA state ('exportation')

Withdrawal from the system of co-ordination would pose questions, such as how to deal with people who have lived and worked in more than one Member State and accrued rights to contributory benefits on the basis of social insurance paid in different countries. At present, an individual in this situation would, on reaching retirement for example, make a claim for a state pension from the country of residence at that time, but under the co-ordination rules each Member State in which the person was insured will calculate its *pro rata* contribution (using agreed formulae), and put that amount into payment (this is known as '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 EEA nationals who had spent periods living and working in the UK would be similarly disadvantaged. The provider of audit, tax and advisory services Mazars warns that uncertainty around the impact of Brexit on the EU social security framework for mobile workers "may give rise to a number of unexpected risks and costs".<sup>436</sup>

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

The likelihood of the UK securing a bilateral agreement, and the precise terms, could vary from country to country depending on the relationship between that country and the UK. The UK might not be able to extract terms favourable to UK nationals, or might not be able to reach agreement at all, if there is an imbalance between the number of UK nationals living in that country and that country's nationals living in the UK, or if the country perceives the UK's immigration/benefit rules as impacting disproportionately on its own nationals. Negotiations could prove difficult and protracted.<sup>437</sup> Writing before the referendum, one commentator noted that "Striking mutually acceptable partnership agreements with countries that fundamentally oppose a UK exit from the EU may prove problematic".<sup>438</sup>

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.

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<sup>436</sup> Mazars, [Brexit – Implications for social security](#), 15 July 2016.

<sup>437</sup> See Helena Wray, EU Law Analysis, '[What would happen to EU nationals living or planning to visit or live in the UK after a UK exit from the EU?](#)', 17 July 2014.

<sup>438</sup> Richard Machin, [Social security in the aftermath of the EU referendum](#), Legal Action, June 2016.

However, such an agreement might end up closely resembling the existing EU/EEA social security co-ordination rules. It seems highly unlikely that the EU would accept any arrangement that discriminated between different Member States, so the UK may have to grant the same rights to all EU nationals, including those from less prosperous Eastern European accession states.<sup>439/440</sup>

## 13.2 Access to social housing

Social (council) housing in the UK is a public resource. Therefore, as with entitlement to social security benefits, EEA nationals' access to social housing is based on the principle of free movement and the entitlement of EU/EEA nationals to enjoy equal treatment with UK nationals in accessing social advantages.

There is no automatic entitlement to social housing for anyone in the UK. The basis on which an 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>441</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, Wales and Northern Ireland.<sup>442</sup>

If Brexit results in the cessation of free movement rights, it will be 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 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

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<sup>439</sup> Helena Wray, EU Law Analysis, [What would happen to EU nationals living or planning to visit or live in the UK after a UK exit from the EU?](#), 17 July 2014.

<sup>440</sup> The expectation is however that, following UK exit from the EU, Irish nationals would continue to be treated differently from nationals of other EU States as regards free movement rights. For example, Irish nationals are "habitually resident" for benefits purposes, since the Republic of Ireland is part of the "Common Travel Area," and Irish nationals also have a "right to reside". Some commentators believe that, for people moving between the Irish Republic and the UK, Brexit may not result in significant changes – see Colm Waters, [Brexit and social security](#), PwC Ireland, 29 June 2016; [Brexit may not impact on common travel area, expert claims](#), Irish Times, 6 July 2016.

<sup>441</sup> HC Deb 22 April 2013 c586W (for more detailed information see Library note [SN04737](#)).

<sup>442</sup> For example, in England the relevant provisions are in [The Allocation of Housing and Homelessness \(Eligibility\) \(England\) Regulations 2006](#) (2006/2007). These regulations have been amended several times, most recently by the [Allocation of Housing and Homelessness \(Eligibility\) \(England\) \(Amendment\) Regulations 2014](#) (2014/435). In Wales the relevant regulations are [The Allocation of Housing and Homelessness \(Eligibility\) \(Wales\) Regulations 2014](#).

UK with recourse to public funds (for example, people granted refugee status or humanitarian protection).

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

### 13.3 Pensions

The design of pension systems is largely the responsibility of Member States. The regulatory framework at EU level covers four main points: cross border co-ordination of social security, establishing an internal market for funded occupational pension schemes and the minimum standards to protect scheme members; minimum guarantees concerning accrued rights in occupational pension schemes in case of the insolvency of the sponsoring employer; and anti-discrimination rules.<sup>443</sup>

#### State Pensions

Long-standing rules enable the co-ordination of social security entitlements for people moving within the EU.<sup>444</sup> The rules also apply to EEA countries and Switzerland.

The aim of the provisions is not to harmonise social security systems, but to remove barriers to workers moving between Member States. They enable periods of insurance to be aggregated, so an individual who has worked in other Member States can make one application to the relevant agency in the country of residence (in the UK, the [International Pension Centre](#)), which then arranges for each state where a person was insured for at least a year to pay a pension. They also enable a pension built up in one Member State to be drawn in another (exportability).<sup>445</sup>

UK state pensioners resident in EEA countries also receive annual increases to their state pension. Elsewhere, the UK state pension is only uprated if there is a reciprocal social security agreement requiring this.<sup>446</sup>

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

The export of pensions to those who have accrued the necessary entitlements is perhaps the clearest example of the necessary role of coordination rules as originally envisaged, and the EU rules superseded bi-lateral agreements already in place for example with the Republic of Ireland.<sup>447</sup>

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<sup>443</sup> European Commission Memo 10/302 *Green Paper on Pensions*, July 2010; European Commission, [Green Paper Towards adequate sustainable and safe European pension systems](#), Brussels 7 July 2010, SEC(2010)830

<sup>444</sup> Now in EC Regulations 883/2004 and 987/2009.

<sup>445</sup> [DWP tabulation tool](#)

<sup>446</sup> [Social Security Contributions and Benefits Act 1992](#), s 113; The [Social Security Benefit \(Persons Abroad\) Regulations 1975 \(SI 1975/563\)](#); Library Briefing Paper SN01457 [Frozen Overseas Pensions](#) (February 2016)

<sup>447</sup> *Ibid*, para 2.70

The arrangements that will apply in future will be considered as part of negotiations for the UK's exit from the EU.<sup>448</sup> The UK could seek to negotiate bilateral agreements with individual Member States, or an agreement with the EU/EEA as a whole.<sup>449</sup>

On 8 July 2016, when asked what assessment the Government had made of the implications of Brexit for UK pensions and healthcare provision for UK citizens currently residing in other EU Member States and those wishing to retire to other EU Member States, the Leader of the House of Commons David Lidington said there would be no immediate change:

As the Prime Minister, my Rt Hon. Friend the Member for Witney (Mr Cameron) has said, there will be no immediate changes in the circumstances of British citizens living in European countries. It will be for the next Prime Minister to determine, along with their Cabinet, exactly the right approach to take in negotiating these provisions going forward but the Government's guiding principle will be ensuring the best possible outcome for the British people.<sup>450</sup>

## Workplace pension schemes

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

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

However, workplace pension schemes do want ready access to investment opportunities and service providers in EU and across the world, and this is where a strong Single Market has a role to play. Having ready access to the widest possible range of service providers helps schemes to invest their assets and administer their schemes with a minimum of cost in order to provide the best value to their members.<sup>451</sup>

EU legislation has had an impact on them:

- directly, through pensions-specific EU legislation such as the Directive on Institutions for Occupational Retirement Provision ('IORP Directive'), through the regulatory activities of EIOPA, and through EU employment law, such as the Equal Treatment Directive; and
- indirectly, because the costs of complying with the EU's investment markets legislation (such as EMIR, MIFID, the draft Money Market Funds Regulation and the potential Financial Transaction Tax) are passed to pension fund clients by asset managers, brokers and banks.<sup>452</sup>

The UK Government's Balance of Competences Review said workplace pension providers acknowledged the role the Single Market could play in facilitating access to investment opportunities and services. However, they also argued for a strong national dimension to

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<sup>448</sup> [PO 37724, 27 May 2016](#); See also [PO HL 6342](#), 23 February 2016.

<sup>449</sup> For more detail, see Library Briefing Paper CBP 7213 [EU referendum: Impact of an EU exit in key UK policy areas](#) (February 2016), p106-7.

<sup>450</sup> [PO41482](#) 8 July 2016.

<sup>451</sup> The PLSA was previously known as the National Association of Pension Funds (NAPF), [HM Treasury review of the balance of competences: Single Market – financial services and the free movement of capital: a response by the National Association of Pension Funds](#), January 2013.

<sup>452</sup> *Ibid*, Executive Summary and page 7.

decision-making relating to occupational pensions, given the very different traditions of provision across Member States.<sup>453</sup>

Following the vote on 23 June 2016, the regulators explained that existing regulations would continue to apply until changed by the UK Government or Parliament. The Financial Conduct Authority said:

Much financial regulation currently applicable in the UK derives from EU legislation. This regulation will remain applicable until any changes are made, which will be a matter for Government and Parliament.

Firms must continue to abide by their obligations under UK law, including those derived from EU law and continue with implementation plans for legislation that is still to come into effect

Consumers' rights and protections, including any derived from EU legislation, are unaffected by the result of the referendum and will remain unchanged unless and until the Government changes the applicable legislation.

The longer term impacts of the decision to leave the EU on the overall regulatory framework for the UK will depend, in part, on the relationship that the UK seeks with the EU in the future. We will work closely with the Government as it confirms the arrangements for the UK's future relationship with the EU.<sup>454</sup>

The Pensions Regulator warned pension scheme trustees against "knee-jerk reactions" to market volatility but said trustees should review their position to understand the risks in the scheme's investment strategy and employer covenant (their legal obligation and financial ability to support the scheme).<sup>455</sup>

Initial reports in the pensions press suggested many pensions experts expect much of the existing EU-derived legislation to remain in place (partly on the grounds that it was designed to protect members – anti-discrimination provisions, for example).<sup>456</sup> Further detail is in Commons Library Briefing Paper 7629 [Brexit – implications for pensions](#) (10 August 2016), which will be updated as the situation develops.

More detail about the legislation that currently applies is on the [Europe and International](#) section of the PLSA website.<sup>457</sup> Library Briefing Paper 7435 [Financial Services: European aspects](#) (June 2016) brings together recent European legislative and regulatory developments in the sphere of financial or corporate regulations.

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<sup>453</sup> HM Government, [Review of the Balance of Competences between the UK and the European Union. The Single Market: Financial Services and the Free Movement of Capital](#), Summer 2014, Appendix 1; NAPF, [HM Treasury review of the balance of competences: Single Market – financial services and the free movement of capital: a response by the National Association of Pension Funds](#), January 2013.

<sup>454</sup> [FCA Statement on European Union referendum result](#), 24 June 2016; See also [Market volatility following the EU referendum: guidance statement from TPR](#)

<sup>455</sup> [TPR warns trustees against knee-jerk reactions to market volatility](#), 14 July 2016; [Market volatility following the EU referendum: guidance statement from TPR](#)

<sup>456</sup> See, for example, 'How could Brexit affect pensions?' *Professional Pensions*, 21 June 2016; Brexit: experts look at the impact for pensions, *Pensions World*, 24 June 2016; 'Brexit: implications for pensions industry', *Occupational Pensions*, August 2016

<sup>457</sup> See also: *'Playing by the rules'*, PensionsAge July 2016



## 14. Health policy and medicines regulation

While health care systems in EU Member States are a matter of national responsibility,<sup>458</sup> other aspects of health care – reciprocal access, pharmaceuticals, the working hours of doctors and mutual recognition of qualifications, for example - are regulated to a greater or lesser extent by EU law. There is therefore a significant role for the EU in supplementing national policies and also in ensuring a cross-border approach to important public health issues, such as preventing pandemics and anti-smoking measures.

There has been a great deal of speculation about the impact that the vote to leave the EU will have on the NHS, public health and medical research and regulation. The chief executive of NHS England, Simon Stevens, has commented on the range of issues to consider during Brexit negotiations, including the movement and regulation of health professionals, procurement rules, medicines and devices, cross-border patient entitlements and certain public health measures. He has also noted that a new NHS Europe Transition Team will be established to work with the Cabinet Office and Department of Health to ensure “the NHS voice and patient interests are properly heard” in the negotiation of post-Brexit arrangements.<sup>459</sup>

Following the referendum, concerns have been raised about how the UK’s future economic performance will impact on public funding for the NHS,<sup>460</sup> and the effect on health and social care staff from the EU.<sup>461</sup> Ultimately decisions about the extent of free-movement for health and care workers from the EU and other issues of health policy and medical regulation will be subject to negotiations on the UK’s future relationship with the EU.

### 14.1 Public health

The EU Public Health Strategy, *Together for Health*<sup>462</sup> was adopted in 2007. Objectives within the strategy include: improving the health of the EU’s aged population, targets to improve surveillance between Member States to combat pandemics and bioterrorism, and support for new technologies for health care and disease prevention.

One area of importance is the early warning and response system for the prevention and control of communicable diseases.<sup>463</sup> This allows for a network of communication between Member States to monitor, communicate and assist in the response to a threat of communicable disease. The European Centre for Disease Control and Prevention (ECDC) is at the centre of this network, collecting information, providing expertise and coordinating related bodies. Some commentators have said that a resulting lack of UK involvement with the ECDC would be a concerning health outcome of Brexit.<sup>464</sup> Following negotiations, the UK may be able to continue to participate in the ECDC, and this may be

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<sup>458</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>459</sup> *Health Service Journal*, 13 July 2016.

<sup>460</sup> See for example, [Health Foundation, “NHS Finances outside the EU”](#), 5 July 2016.

<sup>461</sup> [BMJ, What does Brexit mean for doctors working in the UK?](#), 30 June 2016.

<sup>462</sup> European Commission, [White Paper: Together for Health. A strategic approach for the EU 2008-2013](#), 2007.

<sup>463</sup> [Europa: Early warning system and response system for the prevention and control of communicable diseases](#) (accessed 3 June 2015).

<sup>464</sup> [BMJ, How Brexit might affect public health](#), 16 May 2016.



in a similar way to Norway and Switzerland. Both these countries work with the agency, but these countries do not have a role in decision making within the organisation.<sup>465</sup>

The EU has played a role in other significant public health strategies, such as reducing alcohol misuse, promoting good nutrition and tackling antimicrobial resistance. The UK has been active on a number of public health issues within Europe, most recently with tobacco control policy and antimicrobial resistance. The President of the Faculty of Public Health, Professor John Middleton has said that the referendum decision to leave the EU was disappointing for many in the public health community. He has said that the public health community must work to ensure that the UK retains a leadership role in public health:

[...]The public health community needs to lead action to tackle air pollution, climate chaos and migrant health. In this time of self-interest, we need to be the collective voice and conscience for the dispossessed, the disabled and disenfranchised, and to protect the health of this and future generations. We must not allow ourselves or our political leaders to withdraw from our global responsibilities.

The UK has been a European leader in tackling antimicrobial resistance, in securing better standards in pharmaceuticals and in tobacco control. We need everyone in the public health community to work together to debate calmly and constructively, to speak with authority and to the evidence. I will be discussing with senior national colleagues in public health how we retain a UK leadership role in public health for our UK citizens, in Europe and internationally. We need to ensure that health and life expectancy gained over 40 years in the EU are not lost, but built on. And we need to lead international efforts to tackle new public health scourges in our global village.<sup>466</sup>

## 14.2 Tobacco control

Tobacco control is an area of public health where the EU has been very active. Most recently, the revised [EU Tobacco Products Directive](#)<sup>467</sup> was implemented in the UK in May 2016.<sup>468</sup> The Directive strengthens the rules on tobacco products. It introduces a condition that 65% of the packet be covered in picture and text health warnings, that packets in future will contain a minimum of twenty cigarettes; and it bans flavourings of tobacco. The Directive also introduces a new regulatory approach to electronic cigarettes.

There have been concerns expressed by e-cigarette users and manufacturers that the new regulations of these products will reduce the availability of e-cigarettes and impact their potential as a means of assisting smoking cessation. In May 2016 the European Court of Justice decided that the Directive was valid in the face of legal challenges from a number of tobacco companies and a UK electronic cigarette manufacturer.<sup>469</sup> In response to a July 2016 House of Lords debate on the regulation of e-cigarettes in the new legislation, the Health Minister, Lord Prior of Brampton, stated that he thought the approach was

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<sup>465</sup> FPH, [UK Faculty of Public Health Report on the Health-Related Consequences of the European Union Referendum](#), 7 June 2016.

<sup>466</sup> FPH, ['We need to ensure the best aspirations of the Leave campaign are delivered and the worst predictions of the Remain campaign are avoided'](#) 24 June 2016.

<sup>467</sup> [DIRECTIVE 2014/40/EU](#) of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC.

<sup>468</sup> Department of Health, [Government response to the consultation on implementation of the revised Tobacco Products Directive \(2014/40/EU\)](#), January 2016.

<sup>469</sup> Court of Justice of the European Union, [Press release: The new EU directive on tobacco products is valid](#), 4 May 2016.

proportionate; and that the Government would review the regulation within five years of its implementation.<sup>470</sup>

In the area of tobacco control, the UK has already gone further than the provisions of the EU Tobacco Product Directive as the first EU country to introduce standardised packaging for tobacco products. These [regulations](#) came into force in May 2016.<sup>471</sup>

### 14.3 Healthcare professionals and the recognition of qualifications

The latest information shows that there are around 130,000 people from the EU working in health and social care.<sup>472</sup> As at September 2015 there were around 55,400 EU nationals working in NHS hospital and community health service in England - representing 5% of the overall workforce (around 5% of the total UK population are citizens of another EU country, and around 7% of the total UK workforce). The proportion varies by category of staff, with 9% of hospital doctors (10,136), and 6% of nurses (20,634), in England being EU nationals.<sup>473</sup>

The Health Secretary Jeremy Hunt, Simon Stevens, and other senior NHS leaders, have sought to provide reassurance to NHS employees from the EU that they continue to be welcome in the UK and have praised their huge contribution to the country.<sup>474</sup> However, there have been concerns that even if the residency status of EU nationals working in the NHS is confirmed, it could become more difficult to retain staff and attract new recruits from EU countries, at a time when services are already under pressure.

Under the [European Directive on the recognition of qualifications](#), health and social care professionals who qualified within the EEA automatically have their qualifications recognised by the relevant regulatory body in any EEA country. For example, doctors who qualified from recognised medical schools within the EEA have been able to register with the General Medical Council (GMC), allowing them to practise in the UK without additional checks on their competence and English language skills (whereas healthcare workers from outside the EEA will generally be subject to pre-registration checks).

Following the clarifications contained in a revised Directive in 2014, the Department of Health has given the power, through legislation, to a number of the health and care regulators to introduce “proportionate” language controls for EEA applicants.<sup>475</sup> However, the President of the Royal College of Surgeons has commented that leaving the EU could allow regulators to introduce stronger pre-registration checks on EEA trained healthcare professionals.<sup>476</sup> The Nursing and Midwifery Council has raised concerns that applying checks currently applied to nurses from non-EEA countries to those coming from the EEA would have a major impact on the regulator’s ability to process applications.<sup>477</sup>

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<sup>470</sup> [HL Deb 4 July 2016, c1828](#)

<sup>471</sup> [The Standardised Packaging of Tobacco Products Regulations 2015.](#)

<sup>472</sup> NHS Confederation, 29 June 2016, [The UK voted to leave the EU: what now for the NHS?](#) Elisabetta Zanon.

<sup>473</sup> Source: [NHS HSCIC NHS Staff Groups by Nationality September 2015.](#)

<sup>474</sup> [HSJ, 27 June 2016](#) and [Telegraph, 18 July 2016.](#)

<sup>475</sup> Further background can be found in the Library briefing CBP 7267, [Language testing for healthcare professionals.](#)

<sup>476</sup> See for example, [Telegraph, 17 July 2016.](#)

<sup>477</sup> [Health Service Journal](#), 13 July 2016.

The GMC has said it will seek to understand the implications for UK doctors wishing to work in the EU once the UK is no longer a member.<sup>478</sup>

## 14.4 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, and a requirement for 11 hours of rest between working periods, 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 EWTD (although it is still possible for doctors and other NHS staff to work longer hours by signing an opt-out clause).

There have been long-standing concerns that the EWTD has restricted training opportunities for junior doctors and damaged continuity of care. The previous Labour 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 could be delivered in 48 hours, but traditional models of training and service delivery had wasted training opportunities.<sup>479</sup>

The Royal College of Physicians (RCP) and other bodies involved in the training and regulation of doctors have raised particular concerns about restrictions around on-call time and compensatory rest requirements resulting from the EU Court of Justice judgments in [SiMap](#) (which stated that all time when a worker was required to be present on site whilst on call counted as actual working hours) and [Jaeger](#) (which confirmed that time on call at a place of work counted as working hours even if workers could sleep, and that compensatory rest must be taken immediately after the end of the working period).<sup>480</sup>

Although leaving the EU could in theory allow the NHS to ignore the requirements of the EWTD, allowing greater flexibility in devising work and training rotas, this may be subject to wider negotiations on employment rights and access to the Single Market. The EWTD is also implemented through UK regulations and staff contracts, and any attempted changes in this area could face opposition from unions.<sup>481</sup>

## 14.5 Reciprocal access to healthcare

EU citizens who can show that they are either employed or self-employed in the UK, or non-active but ordinarily resident in the UK, are entitled to free NHS treatment, so any changes to free movement rights could make it harder for EU citizens to receive free healthcare on the basis of residence in the UK. Similarly, the rights of UK nationals living in the EU to access state provided healthcare will be subject to negotiation of the terms under which the UK leaves the EU.

Continuing participation in a number of other reciprocal healthcare schemes will also be a matter for negotiation. For example, if the UK remains in the EEA it might be able to

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<sup>478</sup> [GMC, "Statement following the result of the EU referendum"](#), 24 June 2016.

<sup>479</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>480</sup> HM Government, [Review of the Balance of Competences between the UK and the EU: Health](#), July 2013.

<sup>481</sup> [BMJ editorial, Goodbye to the European Working Time Directive?](#) 9 July 2016.

continue to participate in the European Health Insurance Card scheme, or, subject to negotiation, for the UK to participate on a similar basis to Switzerland.

EEA residents and Swiss residents are entitled to hold an EHIC, which gives access to medically necessary, state-provided healthcare during a temporary stay in another EEA country.<sup>482</sup> In certain circumstances EEA/Swiss residents can also be referred to other Member States for pre-planned treatment. The costs of treatment under these schemes can be reclaimed from the visitor's country of residence. Furthermore, EEA States are required to reimburse the healthcare costs of their state pensioners, and their families, who chose to live in another part of the EEA.<sup>483</sup>

In October 2014, the Government published a [Quantitative Assessment of Visitor and Migrant Use of the NHS in England](#). The research found that EEA visitors and non-permanent residents cost the NHS about £305m, of which £220m is potentially recoverable under the EHIC scheme. However, the Department of Health accounts for 2012-13 show that only about £50m was actually recovered from EEA countries. The report also stated that the £50m the UK recovers "is less than is paid out for British visitors to EEA countries, namely £173m".<sup>484</sup> A PQ in December 2014 showed that the UK paid a total of £580m for its pensioners living abroad in the EEA in 2013-14, and received £12m from other EEA countries for its pensioners who live in the UK.<sup>485</sup>

## 14.6 Medicines regulation

EU legislation provides a harmonised approach to medicines regulation across Member States. The most recent revision of EU medicines legislation in 2004 led to the establishment of the European Medicines Agency (EMA), which is based in London.<sup>486</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 currently 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>487</sup> Alternatively, companies may apply to 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>488</sup>

The inclusion of non-EU EEA countries in the centralised marketing authorisation procedure may mean that the UK could continue to participate if it negotiates to stay in

<sup>482</sup> 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.

<sup>483</sup> The Government estimates that approximately 400,000 British pensioners reside in Spain at any one time – see [Review of the Balance of Competences between the UK and the EU: Health](#), July 2013.

<sup>484</sup> [Quantitative Assessment of Visitor and Migrant Use of the NHS in England](#) (independent report commissioned by the Department of Health), October 2014, p87. This £173m (for 2012/3) only relates to the EHIC scheme and does not include British pensioners who permanently live abroad.

<sup>485</sup> [PO HL3430 \[on Pensioners: Health Services\], 16 December 2014.](#)

<sup>486</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>487</sup> [European Medicines Agency](#) (accessed 28 July 2016).

<sup>488</sup> EMA, [Mutual recognition and decentralised procedures –human \(CMDh\)](#) (accessed 28 July 2016).

the EEA. However, if this were not the case, pharmaceutical companies would need to apply for marketing authorisations separately to the Medicines and Healthcare Products Regulatory Agency (MHRA) for a medicine they wished to supply in the UK.

In response to the referendum result, the MHRA has said that it will continue to make a global contribution to improving public health through effective regulation of medicines and medical devices:

Following the result of the referendum on the UK's membership of the European Union, the focus of the Medicines and Healthcare products Regulatory Agency continues to be on our public health role. We will continue to work to the highest levels of excellence and quality, working with and supporting our customers, partners and stakeholders to protect health and improve lives.

Working closely with government we will consider the implications for the work of the Agency. We will continue to make a major contribution globally to improving public health through the effective regulation of medicines and medical devices, underpinned by science and research.<sup>489</sup>

Following the referendum, it has been reported that the EMA is likely to move its headquarters and that a number of other EU countries have expressed interest as potential new sites for the agency.<sup>490</sup> The EMA has said in response to the referendum result that its work will continue as normal and, as there is no precedent for a Member State leaving the EU, the implications for the location and operation of the EMA are unknown. The EMA also stated that any decision about the location of the agency's headquarters will be decided by common agreement of the Member States:

EMA welcomes the interest expressed by some Member States to host the Agency in future. The decision on the seat of the Agency will however not be taken by EMA, but will be decided by common agreement among the representatives of the Member States. We are confident that the Member States will take the most appropriate decision on EMA's location and arrangements in due course, taking also into account the complex political and legal environment generated by the outcome of the UK referendum.

The European Regulatory Network as a whole is a very strong and flexible system that is able to adapt to changes without jeopardising the quality and effectiveness of its work. The Agency is in close contact with the EU institutions. As soon as concrete information will become available, EMA will share it with its stakeholders.<sup>491</sup>

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<sup>489</sup> MHRA, [Medicines and Healthcare products Regulatory Agency statement on the outcome of the EU referendum](#), 27 June 2016.

<sup>490</sup> The Times, [More than 800 jobs put at risk if medicine watchdog is forced out](#), 2 July 2016.

<sup>491</sup> EMA, [Statement on the outcome of the UK referendum](#), 6 July 2016.

## 15. Higher education

Higher education in the UK is a major business and revenue generator, and operates in a global market. Arguably the most significant consequences of EU membership on the UK higher education (HE) sector are the provision of support to EU students studying in the UK and access to European research funding.

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

### 15.1 Support for EU students

Under EU legislation on free movement citizens moving to another Member State should have the same access to education as nationals of that Member State. With regard to higher education this means that every eligible EU student pays the same tuition fees and can apply for the same tuition fee support as nationals of the hosting EU country. UK higher education institutions therefore charge incoming EU students the same tuition fees as home students and the Government provides tuition fee loans to cover the cost of these fees on the same basis as loans to UK home students. In 2013/14 there were 125,300 EU students at UK universities<sup>492</sup> and in that year £224 million was paid in fee loans to EU students on full-time courses in England - 3.7% of the total student loan bill.<sup>493</sup> A host Member State is not obliged, however, to provide maintenance support to citizens of other EU States, although some EU nationals who have lived in the UK for three years prior to the start of their course are eligible to apply for the full package of grants and loans for maintenance support.

### 15.2 European research funding

The European Research Area (ERA) was launched by the European Commission in 2000 with the aim of co-ordinating research and innovation activities across the EU. ERA initiatives are developed through periodic framework programmes; the current programme, [Horizon 2020](#), aims to allocate €80 billion for research and innovation from 2014 to 2020. Funding is allocated on a competitive basis through the European Research Council. UK universities are predicted to receive about £2 billion from Horizon 2020 in the first two years of the programme.<sup>494</sup>

The 24 Russell Group universities receive about £400 million a year in EU research funds - some 11% of their research income.<sup>495</sup>

In addition to Horizon 2020 funding, €1.6bn of the UK's allocation of EU Structural and Investment Funds for 2014–2020 will be spent on research and innovation projects. This makes the UK one of the largest beneficiaries of EU research funding.<sup>496</sup>

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<sup>492</sup> Higher Education Statistics Agency SFR 210 [Higher Education Student Enrolments and Qualifications Obtained at Higher Education Providers in the United Kingdom 2013/14](#).

<sup>493</sup> SN/SG/917 [Tuition fee statistics](#) 1 December 2014.

<sup>494</sup> [Horizon 2020: UK launch for EU's £67bn research budget](#), *BBC News* 31 January 2014.

<sup>495</sup> [UK's big guns make a stand for research in Europe](#), *Times Higher Education* 23 April 2015.

<sup>496</sup> House of Commons Science and Technology Committee, [EU regulation of the life sciences](#), 11 June 2016, HC 158 2017-17 p6 para 3.

In the run-up to the referendum the Science and Technology Committees of both Houses of Parliament published reports on the impact of EU membership on UK science<sup>497</sup>. The evidence received by the committees pointed to the importance of the EU as a facilitator of collaboration and as a source of funding for research.

### 15.3 EU student mobility programmes

The [Erasmus+](#) scheme is an EU programme open to education, training, youth and sports organisations, and it offers opportunities for UK participants to study, work, volunteer, teach and train in Europe. The scheme will allocate almost €1 billion to the UK over seven years and it is expected that nearly 250,000 people will undertake activities abroad with the programme.<sup>498</sup>

### 15.4 The Bologna Process

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

### 15.5 Leaving the EU

Universities are highly concerned about their situation post-Brexit – Universities UK have a webpage which outlines their issues.<sup>499</sup> Their concerns focus on two main areas: the impact on students and the impact on research.

#### Impact on students

Leaving the EU potentially means that the Government will not have to provide student loans or maintenance funding for EU students, which would save the Government money. However, the loss of student funding for EU students could have an impact on the numbers of EU students coming to study in the UK and this could consequently have a detrimental impact on fee income for universities and on the culture and diversity of universities.

The Government has said there will be no change to arrangements for EU students studying in the UK in 2016-17. However, there may be changes in future years and universities have urged the Government to clarify the position for students from 2017-18 onwards.<sup>500</sup>

Conversely, it has been argued that the situation post-Brexit could be more nuanced and that Brexit could increase places for UK students, and that this could maintain institutions' fee incomes. It has even been suggested that charging EU students higher fees as overseas students could increase fee income if UK higher education continued to attract EU students.<sup>501</sup>

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<sup>497</sup> House of Lords Science and Technology Committee, [EU membership and UK science](#), 20 April 2016, HL 127 2015–16 and House of Commons Science and Technology Committee, [EU regulation of the life sciences](#), 11 June 2016, HC 158 2017-17.

<sup>498</sup> Erasmus + [Key Erasmus+ facts and figures](#).

<sup>499</sup> Universities UK, [Brexit FAQs for universities and students](#).

<sup>500</sup> [Universities head: EU students need urgent Brexit reassurance](#), *BBC News*, 7 September.

<sup>501</sup> Higher Education Policy Institute, [HePi director: Brexit may bring 'new opportunities' in sector](#), 12 July 2016.

The UK could also potentially lose access to the Erasmus + programme. This could be a particular difficulty for students whose degree courses include compulsory time abroad. For now UK students will continue to be allowed access to the Erasmus + programme and will be able to study overseas as part of that scheme. The UK's future access to the programme is undecided but it should be noted that some non-EU countries participate in the Erasmus + programme as partner countries.<sup>502</sup>

## Impact on research

There is widespread concern that UK higher education may lose access to EU research funding post Brexit. Some universities are anecdotally already experiencing difficulties with grant applications and UK researchers are being dropped, or excluded from funding bids.<sup>503</sup> There are also concerns that the movement of staff and researchers could be affected, and that this could detrimentally impact on the quality of research projects if the UK cannot continue to attract high calibre individuals from across Europe. Also, UK research may be damaged if the UK is less able to work collaboratively on international projects. It has been suggested that the combined effect of these changes could lead to a decline in the status of UK higher education.<sup>504</sup>

However, the Prime Minister stressed her support for UK science in a letter to Sir Paul Nurse, director of the Francis Crick Institute in London<sup>505</sup> Sir John Kingman, chairman of the newly created UK Research and Innovation (UKRI) body, has suggested that research could be at the heart of Britain's post-Brexit industrial strategy.<sup>506</sup>

"I would like to reassure you about the government's commitment to ensuring a positive outcome for UK science as we exit the European Union. While we negotiate a new relationship with our European partners, we are not turning our backs on European scientists".

Theresa May, Prime Minister, 28 July 2016

The Commons Science and Technology Committee is conducting an inquiry to examine the implications and opportunities of leaving the EU for science and research.<sup>507</sup> The Chair of the Committee, Nicola Blackwood, has written to the Chancellor of the Exchequer "to highlight Brexit issues for science and research in the UK that should be addressed during negotiations with the EU".<sup>508</sup>

The impact of Brexit on science research is discussed in library briefing CBP 7237, [Support for Science](#), 15 July 2016.

## Government Statement 28 June 2016

On 28 June 2016 Jo Johnson, Minister of State for Universities and Science, issued a [statement on higher education and research following the EU referendum](#) setting out the current position for universities and students post Brexit. The statement said that current arrangements would apply for this coming academic year, and future access to the Erasmus+ programme and research funding would be determined as a part of wider Brexit negotiations with the EU.

<sup>502</sup> [Erasmus + Programme Guide](#) version (2) 2016

<sup>503</sup> "[UK scientists dropped from EU projects because of post-Brexit funding fears](#)", *The Guardian*, 12 July 2016

<sup>504</sup> "[Post-Brexit uncertainty and long-term funding issues hit UK higher education, university rankings show](#)", *The Independent*, 7 September

<sup>505</sup> "[PM wants positive outcome for science in Brexit talks](#)", *BBC News* 28 July 2016

<sup>506</sup> "[Research head urges UK to seize Brexit opportunity](#)", *BBC News*, 2 August 2016

<sup>507</sup> House of Commons Science and Technology Committee, [Leaving the EU: implications and opportunities for science and research](#), 28 June 2016

<sup>508</sup> Science and Technology Committee letter, [Protecting and promoting science after the EU referendum result](#), 28 June 2016



## Government EU Research Funding Guarantee

On 13 August 2016 the Government issued a [statement](#)<sup>509</sup> announcing that successful bids for European Commission research funding, including the Horizon 2020 programme, made while the UK is still a member of the EU would be guaranteed by the Treasury. This will apply even when the project continues beyond the UK's departure from the EU. A [letter](#)<sup>510</sup> from the Treasury to the Secretary of State for Exiting the European Union gives the following assurances:

.. a number of UK organisations bid directly to the European Commission on a competitive basis for EU funded multi-year projects. Partner institutions in other EU countries have raised concerns about whether to collaborate with UK institutions on EU funding projects, such as universities and businesses participating in Horizon 2020, and some UK participants are concerned about longer-term participation.

The Commission have made it clear that the referendum result changes nothing about eligibility for these funds. UK businesses and universities should continue to bid for competitive EU funds while we remain a member of the EU and we will work with the Commission to ensure payment when funds are awarded. The Treasury will underwrite the payment of such awards, even when specific projects continue beyond the UK's departure from the EU. The UK will continue to be a world leader in international research and innovation collaboration, and we expect to ensure that close collaboration between the UK and the EU in science continues.

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<sup>509</sup> Gov.Uk, [Chancellor Philip Hammond guarantees EU funding beyond date UK leaves the EU](#), 13 August 2016.

<sup>510</sup> [Letter from the Chief Secretary to the Secretary of State for Exiting the European Union](#), 12 August 2016.

## 16. Culture, communication, copyright, broadcasting, sport

### 16.1 Culture

The EU's competence in relation to culture dates back to the Maastricht Treaty of 1992. Funding from EU programmes has been an important source of financial support for the UK's cultural and creative sectors. Creative Europe is the current framework programme giving support to these sectors and has a budget of €1.46 billion.<sup>511</sup>

Creative Europe is open to non EU countries that have concluded agreements with the European Commission.<sup>512</sup>

#### Post-referendum comment

John Whittingdale, the then Secretary of State for Culture, Media and Sport, [said](#) that his department would work closely with all of its sectors "to make sure they have a voice" in negotiations to leave the EU. He also said the sectors would be supported in seeking new arrangements and opportunities across the world.<sup>513</sup>

Since the referendum, a number of organisations have raised concerns about the impact of economic uncertainty and potential loss of funding on the cultural sector.<sup>514</sup>

### 16.2 Digital Single Market

#### Background

A Digital Single Market is one of the elements of the European Commission's Digital Agenda for Europe.<sup>515</sup> The Agenda "proposes to better exploit the potential of Information and Communication Technologies (ICTs) in order to foster innovation, economic growth and progress".<sup>516</sup>

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

- e-commerce
- consumer protection
- copyright
- telecommunications
- VAT
- audiovisual media

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<sup>511</sup> Europa website, [Creative Europe](#) [accessed 28 July 2016]

<sup>512</sup> Ibid

<sup>513</sup> ["Culture Secretary statement on DCMS sectors following the EU referendum"](#), DCMS news story, 29 June 2016

<sup>514</sup> For some discussion see: ["Economic fall-out of Brexit will impact museums warns MA"](#), Museums Association News, 24 June 2016; Robert Hewison, ["Brexit will happen. The British culture sector needs a new plan"](#), Apollo Magazine, 5 July 2016; Rosie Collier, ["What will Brexit mean for arts and culture in the UK?"](#), *New Statesman*, 11 July 2016

<sup>515</sup> Europa website, [Digital Agenda in the Europe 2020 strategy](#) [accessed 28 July 2016]

<sup>516</sup> Ibid

- data protection
- cybersecurity
- e-government

The strategy has three pillars:

- Better online access to digital goods and services
- An environment where digital networks and services can prosper; and
- Digital as a driver for growth

A European Commission [press release](#) gives further detail.<sup>517</sup>

## UK policy

In January 2015, the Coalition Government published the [UK vision for the EU's digital economy](#).<sup>518</sup>

In October 2015, the Government said that the Digital Single Market was “a key priority... It offers huge potential for jobs and growth and could increase UK GDP by up to 2%, and it can also benefit citizens, as shown by our recent deal within the European Council on roaming”.<sup>519</sup>

## Post-referendum comment

The relevance of the Digital Single Market for UK businesses will depend on the terms of the UK's exit from the EU and future trade arrangements.<sup>520</sup>

The Government has [said](#) that it has not made an assessment of the cost to the economy of businesses being unable to access the Digital Single Market.<sup>521</sup>

In July 2016, the Business, Innovation and Skills Committee published a [report](#) on the digital economy. While the implications of the European Single Digital Market were beyond the remit of the Committee's inquiry, the report did say that the Government “needs to address the issue of whether businesses will be able to access the European Single Digital Market, if they want to do so”:

In broader terms, we recommend that the Government sets out in its digital strategy the implications of withdrawal from the European Union, in reference to specific, current EU negotiations relating to the digital economy. The Government must address this situation as soon as possible, to stop investor confidence further draining away, with firms relocating into other countries in Europe, to take advantage of the Digital Single Market.<sup>522</sup>

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<sup>517</sup> [“A Digital Single Market for Europe: Commission sets out 16 initiatives to make it happen”](#), European Commission press release, 6 May 2015

<sup>518</sup> Further detail can be found on a [Digital Single Market](#) section of the Number10 website [this refers to policy under the Coalition Government]

<sup>519</sup> [PQ 901740 on the Digital Single Market](#), answered 22 October 2015

<sup>520</sup> For some discussion see: [“Brexit and the Digital Single Market: what does this mean for your business?”](#), Osborne Clarke, 4 July 2016; James Hammersley, [“Comment: Should Brexit negotiations protect the Digital Single Market?”](#), *Essential Retail*, 16 July 2016

<sup>521</sup> [PQ 41682](#) [answered 7 July 2016]

<sup>522</sup> Business, Innovation and Skills Committee, [The Digital Economy](#), HC 87 2016-17, July 2016, para 71

## 16.3 Broadcasting

Broadcasting in the EU is currently subject to the Audiovisual Media Services Directive (AVMSD).<sup>523</sup> This updated the earlier 'Television Without Frontiers' Directive of 1989. Provisions in the current Directive include:

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

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

Since the adoption of the AVMSD, the audiovisual media landscape has changed significantly due to media convergence. The Commission therefore proposed a further revision of the AVMSD in 2016. In preparation for this, there was a public consultation in 2015.<sup>524</sup> The Commission identified the following issues to be considered in the evaluation and review of the AVMSD:

1. Ensuring a level playing field for audiovisual media services;
2. Providing for an optimal level of consumer protection;
3. User protection and prohibition of hate speech and discrimination;
4. Promoting European audiovisual content;
5. Strengthening the single market;
6. Strengthening media freedom and pluralism, access to information and accessibility to content for people with disabilities.

The consultation floated the possibility of broadening the type of services covered by the Directive beyond television and "television-like services" further into the online sphere, and even of altering the core principle that determines where the regulation of these services takes place. (Under the current Directive, jurisdiction is based on the "country-of-origin" principle, and services are regulated by the Member State in which they originate.) The UK Government responded to the consultation in January 2016. In its response the Government said that it regarded the regulation of the European audiovisual market through the AVMSD as a "success story". However, it insisted that it saw the country-of-origin principle as "vitally important". Furthermore, whilst recognising that there was scope to develop common standards, the Government saw a "tangible difference between the concepts of broadcasting regulation and internet regulation".<sup>525</sup>

<sup>523</sup> [2010/13/EU](#). For a summary of its provisions, see Europa website, [Audiovisual Media Services \(AMS\) Directive](#).

<sup>524</sup> European Commission News, [Commission seeks views on Europe's audiovisual media rules](#), 6 July 2015

<sup>525</sup> HM Government, [UK Government response to the European Commission consultation on the review of the Audiovisual Media Services Directive \(AVMSD\)](#), 2016, pp1,5

A new legislative proposal amending the AVMSD was adopted by the European Commission on 25 May 2016. Building on the consultation proposals, it aims “to create a fairer environment for all players, promote European films, protect children and tackle hate speech better” while also reflecting “a new approach to online platforms, addressing challenges in different areas”.<sup>526</sup>

Now that the UK is 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.

Elsewhere in the broadcasting industry, ITV is reportedly expecting a downturn in advertising revenues following the ‘Brexit’ vote, with cost cuts of £25m planned for next year.<sup>527</sup> A poll conducted by PACT, the independent TV producers’ group, before the referendum showed 85% of members in favour of remaining in the EU and only 15% against. Concerns have been expressed for the future of London as the centre for international channel groups dependent on the AVMSD (and Ofcom licences) to broadcast from the UK into all EU countries. Despite widespread pessimism in the industry, some – for example, Lord Dobbs, author of *House of Cards* – are hopeful of new creative possibilities in a market freed from European regulation.<sup>528</sup>

## Copyright

Areas of UK copyright law derive from EU law. For example, the 1993 Directive on Copyright Duration<sup>529</sup> harmonised upwards the terms of authors’ rights to the highest factor operating in a Member State. The 2001 Copyright Directive<sup>530</sup> (also known as the Information Society Directive or the InfoSoc Directive) further harmonises aspects of copyright law across Europe, such as copyright exceptions; it also affects the application of copyright and control techniques on the internet and restricts the range of defences to copyright infringement.

Faced with the challenges of the ever-expanding digital market, in December 2015 the Commission announced plans to update EU copyright law. As a first step, the Commission adopted a legislative proposal on cross-border portability, which will ensure that subscribers to online content services can continue using them while temporarily present in another Member State.<sup>531</sup> (The UK Government supports this proposal.<sup>532</sup>) Further measures are expected to follow in 2016.<sup>533</sup> The emphasis is on

- Widening online access to content across the EU
- Adapting exceptions to copyright rules to a digital and cross-border environment

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<sup>526</sup> European Commission press release, [Commission updates EU audiovisual rules and presents targeted approach to online platforms](#), 25 May 2016.

<sup>527</sup> “ITV makes a drama out of impending crisis”, *Times*, 28 July 2016, p43.

<sup>528</sup> Raymond Snoddy, “A vote for change”, *Television*, July/August 2016, pp9-11.

<sup>529</sup> [93/98/EEC](#)

<sup>530</sup> [2001/29/EC](#)

<sup>531</sup> [COM\(2015\)627](#)

<sup>532</sup> Intellectual Property Office, [Call for Views on the European Commission’s proposal for legislation on cross-border portability: Ensuring that British consumers will be able to access digital subscriptions when travelling in other EU countries](#), 2016.

<sup>533</sup> European Commission News, [Towards a modern, more European copyright framework: Commission takes first steps and sets out its vision to make it happen](#), 9 December 2015; European Commission News, [Commission seeks views on neighbouring rights and panorama exception in EU copyright](#), 23 March 2016.

- Creating a fair marketplace, including as regards the role of online intermediaries when they distribute copyright-protected content
- Strengthening the enforcement system

Copyright is otherwise governed by a series of interlocking international agreements, among them the Berne Convention of 1886 and the WIPO [World Intellectual Property Organization] Copyright Treaty of 1996. It seems unlikely that, once Britain is outside the EU, the Government would seek to unpick these arrangements, since they bring reciprocal benefits to UK creators and rights-holders.<sup>534</sup>

Following speculation about the future of intellectual property (IP) rights after the referendum, the Intellectual Property Office issued a statement. This sets out the current position on trademarks, designs, patents, copyright and enforcement, emphasising that nothing will change until the negotiations to exit are concluded.<sup>535</sup> In a detailed article on the consequences of the vote, an IP lawyer comments that “the primary areas of concern will be working out what to do about EU rights currently valid in the UK and how to handle ongoing litigation involving such rights”.<sup>536</sup>

## 16.4 Sport

The Lisbon Treaty made sport an area of EU competence. Detailed information on the EU’s role in this area, including a Work Plan for Sport 2014-17, is available from the Europa website.<sup>537</sup>

When the UK leaves the EU, funding could be lost. The Erasmus+ programme, for example, funds grassroots sports projects and cross-border challenges such as combating match-fixing, doping, violence and racism.<sup>538</sup>

The impact of leaving the EU on professional sport will depend on the terms of the UK’s exit. However, if free movement were to end, this could have a significant on football in particular – players from EU countries could require work permits in future.<sup>539</sup>

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<sup>534</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, it might be viewed as an unpopular move to repeal it once it has been translated into UK law. (The Directive’s implementation was the subject of a [consultation](#) by the Intellectual Property Office in 2013).

<sup>535</sup> Intellectual Property Office, [IP and Brexit: the facts](#), 2 August 2016.

<sup>536</sup> Jo Joyce, “[Less harmony, more divergence? Intellectual property rights and enforcement in a post-Brexit UK](#)”, Taylor Wessing, June 2016.

<sup>537</sup> Europa website, [Sport – discover EU’s role](#) [accessed 28 July 2016]

<sup>538</sup> Europa website, [Erasmus+](#) [accessed 28 July 2016]

<sup>539</sup> For further discussion see: “[What will Brexit mean for UK sport?](#)”, *Telegraph*, 24 June 2016; “[Brexit vote: what does it mean for professional sport in the UK?](#)”, *Guardian*, 24 June 2016; “[Brexit vote could change the landscape of Premier League, says financial expert](#)”, *Sky Sports News*, 24 June 2016.

## 17. Consumer policy

Consumer protection in the UK is currently a complex combination of EU and national law. It is unclear whether any consumer laws would need to be repealed or replaced on Brexit because that will depend to a considerable degree on what form Brexit takes.

### 17.1 Background

The consumer protection regime in the UK has recently been reviewed, dismantled and completely rebuilt. Legislative reforms have been made against a backdrop of structural changes to consumer law enforcement. There have been two drivers for change – one an EU initiative, the other a domestic initiative. First, the adoption in October 2011 of the [Directive on Consumer Rights](#) (2011/83/EC). Most of the requirements of the Directive have now been implemented in the UK through the [Consumer Contracts \(Information, Cancellation and Additional Payments\) Regulations 2013](#). The second driver was the findings of a series of consultations on consumer laws held in the UK between March and November 2012. This led to the [Consumer Rights Act 2015](#) (the CRA 2015). The CRA 2015, which came into force on 1 October 2015, represents the biggest overhaul of consumer law for decades. The Act deals with consumer rights and remedies in relation to the supply of goods, digital content and services.

For businesses, who have just got to grips with this new consumer landscape (and a body of new provisions), there is understandable concern that Brexit will bring more change. For consumers, there is concern that Brexit may lead to a ‘watering down’ of their existing rights and protections. Certainly, it is difficult to predict how or when Brexit will be achieved and the longer term commercial and consumer implications.

Various commentators have argued that it is extremely unlikely that the Government will replace the majority of its EU-derived law (although it may have the option to do so). Practically, if the UK does not comply with EU law in certain areas, it may not be able to trade with the EU. Consumer protection, data protection and product liability are areas of law which are thought to be particularly unlikely to change.

### 17.2 Current EU consumer programme 2014-2020

For the moment at least, little has changed; the UK has to continue to comply with EU consumer law and policy. The [Charter of Fundamental Rights](#)<sup>540</sup> and the European Treaties since the [Single European Act](#) guarantee a high level of consumer protection in the EU. Promoting consumers’ rights is also a core value of the EU, enshrined in Article 12 TFEU.

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

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<sup>540</sup> [Charter of Fundamental Rights of the European Union](#), OJ C 83/02, 30 March 2010.

The strategy for consumer policy at European level is regularly reviewed by the European Commission, not least because the EU's 500 million consumers play a central role in driving innovation and enterprise.<sup>541</sup> Consumer spending accounts for approximately 56% of the EU's GDP.<sup>542</sup> The European Commission adopted in May 2012 the [European Consumer Agenda](#), its strategic vision for EU consumer policy.<sup>543</sup> This Agenda replaced the [Consumer Policy Strategy 2007-2013](#).<sup>544</sup> It aims to maximise consumer participation and trust in the market, and in turn achieve the objectives of the EU's economic growth strategy, [Europe 2020](#). The Consumer Agenda has four pillars, or overriding objectives, which are:

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

The Consumer Agenda also addresses imminent challenges, such as those linked to the digitalisation of daily life, the desire to move towards more sustainable patterns of consumption, and the specific needs of vulnerable consumers. According to the Commission's second [Report on Consumer Policy](#), most of the 62 measures presented in the Consumer Agenda have been completed.<sup>545</sup>

The [Consumer Programme 2014-2020](#)<sup>546</sup> has a budget of €188.8 million to support EU consumer policy.<sup>547</sup> Direct beneficiaries will be national authorities in charge of consumer policy, safety and enforcement, the network of European Consumer Centres, EU-level consumer organisations, and national consumer organisations. The programme will fund actions across all 28 EU Member States and countries of non-EU EEA Members. It aims to help consumers enjoy their consumer rights and actively participate in the single market, thereby supporting growth, innovation and meeting the objectives of [Europe 2020](#).

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

- **Safety:** to reinforce the co-ordination of national enforcement authorities, and to address the risks linked to the globalisation of the production chain.
- **Consumer information and education:** to address the issue of poor knowledge of key consumer rights by consumers and retailers alike (particularly in respect of cross-border purchases and sales); to gather robust data on how the market is serving consumers; and to improve the capacity of consumer organisations etc.
- **Consumer rights and effective redress:** to further strengthen consumer rights and to address problems faced by consumers when trying to secure redress,

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<sup>541</sup> [A European Consumer Agenda – Boosting Confidence and Growth](#), COM(2012) 255 FINAL, 22 May 2012

<sup>542</sup> Ibid

<sup>543</sup> Ibid

<sup>544</sup> [EU Consumer Policy Strategy 2007-2013](#), COM(2007) 99 FINAL, 13 March 2007

<sup>545</sup> European Commission, [Report on Consumer Policy 2012-2013](#), (accessed 3 August 2016)

<sup>546</sup> ["Regulation \(EU\) No. 254/2014 of the European Parliament and of the Council of 26 February 2014 on a multiannual consumer programme for the years 2014-20"](#), OJ L84/42, 20 March 2014

<sup>547</sup> The EU Consumer Programme 2007-2013 had a budget of €156.8 million



notably cross-border, so that consumers are confident that their rights are well protected in any other Member State as well as at home.

- **Strengthening enforcement cross-border:** to increase awareness among consumers about the network of European Consumer Centres and to further strengthen the efficiency of the network of national enforcement authorities.

## 17.3 What will Brexit mean for UK consumer policy?

As already mentioned, the consumer protection regime in the UK is a complex combination of EU and national law and covers a very wide range of goods and services. It is impossible to calculate the impact of withdrawal in any meaningful way without knowing the basis on which the UK would continue to interact with the EU. Clearly, the crucial question is whether the UK retains any sort of access to the European Single Market, and if so, how much and in return for what?

The EEA/EFTA States, for example, have participated in EU consumer programmes since the EEA Agreement came into force in 1994. In addition, the Consumer Council in Norway has established close links with bodies at European level such as [BEUC](#) (an alliance of European consumer organisations). The [Icelandic Consumer Agency](#) and the [Norwegian Consumer Council](#) also belong to the [European Consumer Centres Network](#) (ECC-Net), which provides information and support to EU consumers. However, it is also the case that in return for access to the internal market, EEA/EFTA states are required to adopt all EU consumer protection provisions without access to the EU's decision-making institutions.

The [CRA 2015](#), which now dominates the UK's consumer regime, and other home-grown consumer laws, will not be directly affected by Brexit. However, an important question is whether a non-EU UK would keep all or some of the rules and procedures of EU consumer protection legislation. Existing consumer legislation could be unpicked and changed, but in practice this might be difficult to achieve.

# 18. Foreign policy

## 18.1 Introduction

Whatever position politicians and commentators took during the referendum, it was widely agreed that leaving the EU would have enormous consequences for British foreign policy.

But it is still far from clear what the exact implications will be of the decision to leave. In the immediate aftermath of the result, Lord Hennessy said: "Never in our peacetime history have so many dials been reset as a result of a single day's events."<sup>548</sup>

In the run up to the referendum, the Government led by former Prime Minister David Cameron decided that there should be no pre-planning for Brexit, whether on foreign policy or other policy areas. Parliamentarians are amongst those who have criticised this decision.<sup>549</sup>

Some of the consequences for UK foreign policy of leaving the EU will be the product of design. For example, much will depend on the precise terms for Brexit that are ultimately agreed. However, other consequences will be largely or wholly 'unintended'.

The contours of a reconfigured UK foreign policy are likely to emerge only gradually over the next decade. For now, there are only initial reactions (many of them based as much on instinct as evidence) to go on. Inevitably, there are pessimists (mainly from the Remain side of the referendum debate) and optimists (mainly from the Brexit side). A minority is reserving judgement.

Given the high degree of uncertainty at present, it seems sensible at this stage to restrict ourselves to formulating some tentative 'key questions' about the possible implications for UK foreign policy of leaving the EU – to which we might have some answers by 2026.

To do this, we have made two important assumptions that might conceivably turn out to be incorrect. We have assumed that the UK is going to leave the EU and that the EU will survive in one form or another. In addition, we have not sought to address the implications for UK foreign policy of a vote for Scottish independence in a second referendum.

Here then are our four key questions for assessing the impact of Brexit on UK foreign policy by 2026:

### 1 Will the UK successfully have 'gone global'?

*Will the UK be liberated or find itself relatively isolated after leaving the EU? Will 'globalisation' survive or might it go permanently into reverse? How committed in practice will 'rising powers' such as China and India be in giving priority to boosting economic ties with the UK (and on what terms)?*

### 2 Will there still be a UK-US "special relationship"?

*Will the NATO relationship be sufficient to sustain it? Can the UK continue to act as a 'bridge' between the EU and the US from outside the EU? Might the US pivot towards Germany instead? Will the UK remain a stalwart ally of the US in Asia?*

<sup>548</sup> Peter Hennessy, [Brexit: 'An unprecedented geopolitical shift'](#), *BBC News Online*, 25 June 2016.

<sup>549</sup> In its most recent [report](#) (HC 153, July 2016), the Joint Committee for the National Security Strategy has criticised the fact that the November 2015 National Security strategy did not include Brexit as 'risk'.

### 3 Will the UK retain the capacity to intervene in the world?

*What will be the UK's appetite for intervention in future crises abroad? What diplomatic and military weight will such interventions carry? What will be the future balance between 'hard power' and 'soft power' expenditure?*

### 4 Will the UK still have a permanent seat on the UN Security Council?

*If the Security Council is reformed, might the UK end up losing its permanent seat – while the EU perhaps secures one instead?*

All this said, we now proceed to ignore our own advice by looking at the very early signs of the impact of Brexit for two important aspects of UK foreign policy, namely the **Middle East** and **relations with the US**. In this regard, see also section 21, **Defence and the Armed Forces**.

## The Middle East

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

The historical baggage can be a liability as well as an asset. Most UK policy in the region has been 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 have all tended to be decided at EU level. In the case of Israel and the Palestinians, the UK has acted largely in concert with other EU Member States and the EU Council adopted policies such as the arms embargo on Syria and its lifting.

Some UK policies – the sanctions against Iran over its nuclear programme, for example – could be based both on decisions taken at the United Nations Security Council (UNSC) and decisions at the EU level.

Iran was an example of EU Member States playing a strong role in Middle East diplomacy, with the UK in the forefront. For several years, the big three EU members, France, Germany and the UK, took the lead on nuclear negotiations with Iran, although the other members of the UN Security Council participated later in the process (and it is difficult to imagine it being brought to a conclusion without the active involvement of the US).

The United States, remains the biggest actor in the region and many UK interventions have been in conjunction with the US, for example the invasion of Iraq (with the UK part of a 'coalition of the willing') and the occupation of Afghanistan (as part of NATO's International Security Assistance Force). The picture in the Middle East, as in other regions, is a complex one. With EU membership UK policy was co-ordinated with partners in a variety of multilateral fora, including the UN, EU and NATO, as well as bilaterally with the US and with governments in the region. After the UK leaves the EU, informal coordination of UK policies with those of EU member states will remain a possibility.

Many in the region have not forgotten Britain's historic Middle East role: the Sykes-Picot agreement's part in 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.

Pooling UK influence with that of other EU Member States sharing many of the same interests was, for many in the foreign policy 'establishment', a sensible idea in the international arena. As well as diluting some of the UK's negative historical baggage, acting through the EU means a larger aid budget, the promise of access to the largest consumer market in the world and a louder political voice, one that in some quarters carries more authority because it is not American (this is likely to have been a factor in the negotiations with Iran). All of these can be significant 'soft power' tools in the pursuit of European interests. If the UK no longer coordinates its Middle East policy with EU member states, it will no longer have access to these shared tools.

UK withdrawal could also 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 could be less influential. Without the UK, the EU may also be more likely to adopt policies that were more at odds with US views, although the UK position on Israel and the Palestinians has traditionally been closer to that of its EU partners than to Washington's.

It can also be argued, however, that withdrawal from the EU will not make much difference to the UK's capacities in the Middle East; since the US remains the most significant power in the region, the UK could co-ordinate its Middle East policies more closely with those of the US or it could continue coordination with the EU, but informally.

Despite the much-discussed pivot to Asia, the US will remain very influential in the Middle East for some time to come; some critics see the EU as little more than America's sidekick in the region. US decisions have more impact than UK actions, within the EU or outside. The power of the West to impose its decisions on the Middle East is in any case declining. UK policy-making in the Middle East could continue to be worked out in important multilateral fora other than the EU, such as the UN Security Council and NATO.

## **Relations with the United States**

The quotation often attributed to Henry Kissinger about whom to dial in Europe sums up the view in US foreign policy circles that a co-ordinated or even a unified Europe would make a better ally than a continent with myriad divergent foreign policies - particularly in relation to defence.

The US has often encouraged European countries to take more responsibility for the defence of their continent. The US pivot to Asia is in part also dependent on Europeans taking more responsibility for the security of their region. A taste of this policy was the US approach to the 2011 conflict in Libya: 'leading from behind'. Europeans were encouraged to take the lead in the Libya action, with the US providing support. In the event, much more US support was needed than had been envisaged at the outset.

NATO is the main vehicle for transatlantic defence cooperation, but successive US administrations have not sought to stop the EU from developing its Security and Defence Policy, as long as the policy is not seen to undermine NATO. The US values the UK contribution to the EU defence debate for two major reasons: UK defence capabilities and the 'special relationship'. Firstly, the UK and France are often regarded as

the only two EU nations with a serious defence capability and the UK is one of the few NATO Member States to spend at least 2% of GDP on defence. (Commenting before the Government committed to fulfilling that target for the rest of this Parliament, one former US Defence Secretary said that cuts limited the UK's ability to be a full partner of the US.)<sup>550</sup> In spite of defence cuts, a UK exit will sharply reduce the remaining EU member states' combined defence capacity and the UK's role as an example of military capability to EU Member States will be diminished.

Secondly, the US relied on the UK to mould EU defence co-ordination. The US wants EU defence structures to evolve in such a way as not to undermine the US relationship with Europe, which means they should not be seen to be in competition with NATO. UK governments have traditionally advocated preserving the importance of NATO, while at the same time working, particularly with the French, to cooperate in defence matters and maximise the effectiveness of European forces. Both these positions suit US interests.

The US has also viewed the UK's support for EU enlargement as a sensible way for the EU to take more responsibility for its neighbourhood and to draw countries such as Turkey more firmly into the Western camp. While further EU enlargement after the Western Balkans is thought to be unlikely for some time (the parallel process of NATO enlargement to the east also appears to have stalled), Washington used to appreciate the traditionally more open approach supported by UK politicians.

Conservative commentators in the US and the UK have suggested that the Obama Administration abandoned traditional allies such as Britain (and countries in Eastern Europe) in pursuit of the 'reset' with Russia and the 'pivot' to Asia.<sup>551</sup> However, the failure of the 'reset' policy and the outbreak of conflict in Ukraine have given NATO a new lease of life. European integration with strong British influence has been traditional Republican as well as Democratic policy.

Although NATO has been invigorated and the UK's NATO role is not in itself undermined by the vote to leave the EU, it is possible that leaving the EU will make the UK less relevant to US foreign policy. The UK will no longer be able to argue from within against EU defence structures that might compete with NATO.

Nor will the UK be useful in supporting traditional US free markets and free trade economic policies for Europe. The US-European Transatlantic Trade and Investment Partnership, for example, may face more difficulties in the EU: France has recently indicating stiffening opposition to it and France's voice will be relatively stronger after the UK leaves.

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<sup>550</sup> ['UK not 'full partner' with US, says former defence chief'](#), *Daily Telegraph*, 16 January 2014. The UK Government explicitly committed to spending 2% of GDP on defence for the remainder of the decade in the Summer Budget, July 2015

<sup>551</sup> See for example ['Five Conservative Principles That Should Guide U.S. Policy on Europe'](#), Heritage Foundation, 1 March 2013.

The UK's relationship with the US had already been undermined by a number of factors, with German unification and economic success changing the balance in the EU. After the referendum, former US State Department official Nicholas Burns said that Henry Kissinger's question about who to phone had now been answered:

Henry Kissinger's famous question about 'Who do I call in Europe?' has now been settled. The answer is that we call the German chancellor's office. That means we have to invest in the relationship with Germany.<sup>552</sup>

However, some commentators have argued that the Germany will not be such a natural fit as the UK as the main EU interlocutor for the US – German positions on austerity and the use of military force are likely to remain further from the US. This could signal a longer-term distancing between the US and the EU.

Nevertheless, practical cooperation between the US and the UK, in areas such as intelligence sharing, are likely to continue.

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<sup>552</sup> [UK-US special relationship shaky following Brexit vote](#), *Financial Times*, 27 June 2016.

## 19. International development

### 19.1 Development cooperation and humanitarian aid

The EU has been one of the UK's largest multilateral aid partners.

The UK's total aid budget was £11.726 billion in 2014 – of this, £1.144 billion was channelled through the European Commission.<sup>553</sup> The UK channels funds for development cooperation and humanitarian aid through two budget lines, both of them managed by the European Commission:

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

#### The development part of the EU budget

According to DFID:

Development investment provided through the European Union (EU) budget funds programmes in Asia, Latin America, Eastern Europe, the Middle East and North Africa. It also funds some thematic programmes and the EU's humanitarian assistance, through ECHO.<sup>554</sup>

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

The EU budget-development is managed by the EC. Funding is split by regional and thematic lines, with decisions taken by committees for the regional instruments. The UK uses its position in the Council of the EU to influence EU development policy.<sup>555</sup>

In 2012 the development part of the EU budget was the largest recipient of UK aid. In 2013 and 2014, it was second.<sup>556</sup> The UK contributed £816m to the development part of the EU budget in 2014.<sup>557</sup>

In the 2011 Multilateral Aid Review, the development part of the EU budget (excluding its humanitarian arm, ECHO) was assessed as "adequate value for money".<sup>558</sup>

The Review acknowledged strengths in the development part of the EU budget: for example, it funded programmes in countries which were UK priorities but which did not receive UK aid; it funded programmes which promoted EU enlargement and the European Neighbourhood Policy;<sup>559</sup>

In 2014, nearly 10% of the UK's aid budget would have required reallocation if the UK had not been an EU member state

<sup>553</sup> DFID, [Statistics on International Development 2015](#), December 2015, Tables 2 and 9.

<sup>554</sup> DFID, [Annual Report and Accounts 2013-14](#), HC 11, 15 July 2014, p98. ECHO is the Directorate-General for Humanitarian Aid and Civil Protection – the humanitarian arm of the Commission.

<sup>555</sup> Ibid

<sup>556</sup> DFID, [Statistics on International Development 2015](#), December 2015, Table 9.

<sup>557</sup> DFID, [Statistics on International Development 2015](#), December 2015, Table 9.

<sup>558</sup> DFID, [Annual Report and Accounts 2013-14](#), HC 11, 15 July 2014, p98.

<sup>559</sup> Some observers argue that these programmes mean that EU development cooperation is insufficiently focused upon poverty-reduction in the poorest countries.

and financial accountability was found to be strong and well-established. However, the development part of the EU budget was assessed as weak in the following categories: gender equality, focus on poor countries, contribution to results, strategic and performance management, and financial resources management.<sup>560</sup>

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

Progress on aid allocation and ensuring staff have development expertise. Some progress on gender and a results framework. More progress needed on evaluation and managing for value for money.<sup>561</sup>

In the UK Government's 2011 Multilateral Aid Review, the humanitarian arm of the Commission, ECHO, was assessed as "very good value for money".<sup>562</sup>

## European Development Fund

According to DFID:

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

The EDF has a strong poverty focus with 80% of funds going to low income countries. Its size, focus on poverty and cross-cutting development impact makes the EDF critical for progress on the MDGs and poverty reduction.<sup>563</sup>

DFID has described its engagement with the EDF as follows:

The EDF is a fund managed on behalf of EU Member States by the EC. EDF decisions are taken by a Member State committee, by consensus wherever possible. The UK also uses its position in the Council of the EU to influence EU development policy.<sup>564</sup>

In 2014 the EDF was the third largest recipient of UK aid.<sup>565</sup> The UK contributed £328m to the EDF in 2014.<sup>566</sup> The UK is set to contribute 14.7% of the EDF during the 2014-2020 funding round.<sup>567</sup>

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<sup>560</sup> DFID, [Multilateral Aid Review: Assessment of European Commission budget](#), February 2011.

<sup>561</sup> DFID, [Multilateral Aid Review update 2013](#).

<sup>562</sup> DFID, [Annual Report and Accounts 2013-14](#), HC 11, 15 July 2014, p98.

<sup>563</sup> Ibid, p97.

<sup>564</sup> Ibid

<sup>565</sup> DFID, [Statistics on International Development 2015](#), December 2015, Table 9.

<sup>566</sup> DFID, [Statistics on International Development 2015](#), December 2015, Table 9.

<sup>567</sup> [Internal Agreement](#) between the EU Member States on the financing of EU aid under the multiannual financial framework for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement, and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the TFEU applies. OJL 210/1, 6 August 2013.



## Balance of Competences Review

The Government's [Balance of Competences Review on development cooperation and humanitarian aid](#), July 2013, identified a number of "advantages and disadvantages of working through the EU". These are summarised in the boxes below.

### Advantages

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

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

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

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

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

### Disadvantages

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

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

The division of roles between the Commission Directorates-General and the EEAS<sup>568</sup> is unclear and there can be a lack of coordination between Brussels and EU Delegations overseas.

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

Although the EU's size and global influence make it one of the most important platforms for achieving Policy Coherence for Development (PCD), the EU is not implementing it with full effect.<sup>569</sup>

<sup>568</sup> [European External Action Service](#) – the European Union's diplomatic service.

<sup>569</sup> According to the European Commission's 'International Cooperation and Development' [website](#): "Through Policy Coherence for Development, the EU seeks to take account of development objectives in all of its policies that are likely to affect developing countries. It aims at minimising contradictions and building synergies between different EU policies to benefit developing countries and increase the effectiveness of development cooperation." Over the years, commentators have often criticised the EU for a lack of coherence in its development policy.

## Public debate in the run-up to the referendum

While there continued to be extensive public debate about aspects of UK policy on development cooperation and humanitarian aid during the first half of 2016, the implications of leaving the EU were not a major part of that debate. However, some think-tanks and NGOs in the field did begin to discuss the issue as the referendum approached.<sup>570</sup>

## Post-referendum reaction

### Official statements

DFID ministers have made several statements on the implications of the vote to leave the EU for UK aid policy.

**Baroness Northover (LD):** My Lords, is DfID now looking at the implications of Brexit and the potential end of the UK's major influence over the EU's aid budget? If so, what are the implications for what the UK might do bilaterally now?

**Baroness Verma:** My Lords, we expect some challenges and change following the decision to leave the EU, which will affect some parts of the development work that we are undertaking, but it is a very small percentage of the work that we deliver through the European Development Fund. We will very much continue to work with our partners through multilateral institutions. I emphasise that we have committed ourselves to the 0.7%—that will be our commitment and we will continue to help shape global events and work with our multilateral partners to do so.<sup>571</sup>

### Other reaction

Think-tanks and NGOs in the field are beginning to publish reactions to the vote in favour of leaving the EU.<sup>572</sup> Experts at the Overseas Development Institute have looked at how developing countries might be affected by Brexit. Below is a summary of the key findings of their report:

- Brexit will have major implications for developing countries.
- Different countries will be affected in different ways, in the short-term and in the long-term, depending on how the UK exits. There are mostly negative effects for developing countries, but there may also be opportunities.
- The pathways of impact are through trade, financial markets and investment, growth, aid and development finance, migration and remittances, and global collaboration.

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<sup>570</sup> For example, see K. Watkins, "[What would a Brexit mean for EU development assistance?](#)", devex.com, 6 June 2016; K. Watkins, "[What would Brexit mean for UK aid and trade?](#)", devex.com, 15 June 2016.

<sup>571</sup> [HL Deb 6 July 2016 c2006](#). See also [HC Deb 29 June 2016 c286](#). Further details about the official response may come when the Bilateral and Multilateral Aid Reviews are finally published. Publication was delayed until after the referendum.

<sup>572</sup> See, for example, "[Brexit: first post-referendum thoughts](#)", European Centre for Development Policy Management, 1 July 2016.

- In the short-term, the threat of Brexit led to currency and stock market fluctuations, which have not spared emerging markets and poorer countries.
- We estimate that the 10% devaluation of the pound in the first week post-Brexit, coupled with lower GDP in the UK (estimated at 3%), will lead to lower exports by developing countries (\$500 million in least developed countries).
- The devaluation will also reduce the value of aid by roughly \$1.9 billion. The combined cost (through aid, trade and remittances) of the devaluation for developing countries is expected to be \$3.8 billion. If the pound continues to fall, the effects could increase.
- The long-term effects will depend on UK trade deals, EU trade deals (with the UK no longer influencing them), the way aid and other development finance will be maintained and allocated, the way in which global collaborations is affected, the way financial markets react, and the way immigration and remittances are maintained. This will be a long process.
- The opportunities of Brexit for developing countries rely on specific commodity price changes (e.g. gold exporters gain), changes in distribution of aid, cheaper imports from the UK, and the ability to gain from new trade deals, including through targeted Aid for Trade.
- Greater policy consideration is needed on what the UK alone can and should offer to developing countries on trade.<sup>573</sup>

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<sup>573</sup> M. Mendez-Parra, P. Papadavid and D. Willem te Velde, "[Brexit and development: how will developing countries be affected?](#)" Overseas Development Institute briefing, July 2016". On the same topic, see also Ian Scoones, "[Uncertain trade, less progressive aid and a new colonial-minded PM? What Brexit means for Africa](#)", *African Arguments*, 27 June 2016.

## 20. Defence and the armed forces

### Summary

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

Until the UK formally leaves the EU it will remain part of its CSDP planning structures and the EU military operations to which the UK has committed forces.

The impact of Brexit on the UK's military is arguably minimal in the near term. In the longer term, however, the UK's ability to influence or shape the CSDP agenda going forward will be significantly curtailed. Questions have also been raised over future UK defence spending if economic growth predictions fail to materialise in the aftermath of the Brexit vote. The affordability of the MOD's Defence Equipment Plan, should the defence budget be cut at some point in the future, could be brought into question.

The UK's relationship with NATO will be unaffected.

### Projection of military power

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

### Capabilities development

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

### EU defence directives

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

### Future direction of CSDP

The most significant implication of Brexit is the very limited ability that the UK will possess to influence or shape the EU's defence agenda going forward. Given that the UK has been one of the main driving forces behind the development of CSDP, it has been

suggested that, without the UK's support, the strategic ambition of a "common European defence" could ultimately falter. However, as the main source of opposition to integrationist proposals thus far, the absence of the UK from CSDP decision making could equally be the opportunity that pro-European states, such as Germany, have been looking for to further the EU defence project in the longer term. Once outside the EU the UK will, for example, have no negotiating power in discussions over recently published German proposals for a permanent military planning headquarters, which will duplicate existing NATO assets.

### **Impact on the UK defence budget and equipment plan**

There have also been questions over future UK defence spending if economic growth predictions fail to materialise in the aftermath of the Brexit vote. The affordability of the MOD's Defence Equipment Plan if the defence budget is cut at some point in the future could subsequently be brought into question.

### **A second Scottish independence referendum?**

The prospect of a second referendum on Scottish independence in the aftermath of Brexit has reignited the debate about the location of the UK's strategic nuclear deterrent at Faslane in Western Scotland.

The EU's security and defence policy (CSDP) has had a chequered past. First set down as an aspiration in the 1992 Maastricht Treaty, the intergovernmental nature of this policy area has meant that its evolution has been entirely dependent upon political will and the convergence of competing national interests among the EU Member States, in particular the UK, France and Germany. The major turning points for CSDP over the last 10 years have come about largely as a result of Franco-British proposals. Thus far the goal of a "common union defence policy" under Article 42 (2) has failed to be realised.

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

To that end, UK involvement in the evolution of CSDP has been significant in that it has allowed the UK to influence and shape its

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

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

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

development.<sup>574</sup> This has been particularly evident in efforts to improve EU Member States' military assets and capabilities, including the creation of the EU battlegroups,<sup>575</sup> and the establishment of the European Defence Agency.<sup>576</sup> The UK has also been influential in determining the parameters of the EU military decision making and planning structures that have developed, in particular ensuring their complementarity with NATO.<sup>577</sup>

In 2009 the European Commission also passed [two defence directives](#), which currently 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>578</sup>

Analysts largely concur, however, that over the last seven years the EU's defence policy has lost much of its momentum. While there has been progress in civilian crisis management, with the EU becoming a notable 'soft power' actor,<sup>579</sup> and in efforts to achieve greater regulation of the defence market; arguably very little notable progress has been made in developing the 'hard power' aspects of CSDP.

Despite over a decade of work on capabilities development the EU collectively still suffers from major capability shortfalls and the flagship

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<sup>574</sup> The history of CSDP is charted in a number of Library briefing papers: RP00/20, *European Defence: From Pörttschach 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*, SN04807, *Priorities for ESDP under the French Presidency of the EU* and SN06771, *The EU's Common Security and Defence Policy: a Fresh Impetus?*, December 2013.

<sup>575</sup> The EU Battlegroup concept was launched in 2004 and designed to allow the EU to rapidly respond, in a military capacity, to a crisis or urgent request from the UN. They achieved full operational capability in 2007 although, to date, no EU battlegroup has been deployed on operations. Further information on the EU Battlegroups is available at: [EU Battlegroups](#), April 2013.

<sup>576</sup> To support efforts to improve the EU's military capabilities, the European Defence Agency 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>577</sup> 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.

<sup>578</sup> For more detail on these directives see Standard Note 4640, [EC Defence Equipment Directives](#), June 2011.

<sup>579</sup> The EU has launched more than 30 CSDP missions in Africa, Asia and Europe, the majority of which are focused on crisis management, security sector reform, training, monitoring and humanitarian aid. Further information is available at: [http://www.eeas.europa.eu/csdp/missions-and-operations/index\\_en.htm](http://www.eeas.europa.eu/csdp/missions-and-operations/index_en.htm)

EU battlegroups have never been deployed in nearly eight years since their creation. Crucially, there continues to be no consensual EU approach to foreign policy crises<sup>580</sup> or, in the longer term, a vision for CSDP at the highest political level. While the EU Treaty makes reference to the eventual development of “a common defence”, sharp divisions have remained among EU Member States about what they want CSDP to achieve. Decision making also remains cumbersome and the financing of operations is complex often resulting, at a time of financial austerity, in States reluctant to commit assets.

## 20.1 Implications of Brexit

Until the UK formally leaves the EU it will remain part of its CSDP planning structures and the military operations to which the UK has committed forces, including EU naval operations in the Mediterranean (Operation *Sophia*) and off the Horn of Africa (Operation *Atalanta*) and the longstanding EU operation in Bosnia (Operation *Althea*), among others.

Arguably the near term impact of Brexit on the UK military will be minimal. In the longer term, however, the UK’s ability to influence or shape the CSDP agenda going forward will be significantly curtailed. Questions have also been raised over future UK defence spending if economic growth predictions fail to materialise in the aftermath of the Brexit vote. The affordability of the MOD’s Defence Equipment Plan, should the defence budget be cut at some point in the future, could be brought into question.

The UK’s relationship with the United States<sup>581</sup> and NATO, which the Government has referred to as “the bedrock of our defence in the United Kingdom”,<sup>582</sup> will be unaffected.

### 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>583</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>584</sup>

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<sup>580</sup> The approach of the major European military powers to events in Libya and Mali in 2013 have been seized upon as evidence of the EU’s inertia. A collective EU response was largely absent in both cases with France and the UK opting to pursue military action outside of the EU framework. The EU battlegroups, which were devised with Africa in mind, remain unused. The EU’s involvement in both theatres has instead focused on the delivery of soft power initiatives such as border assistance and training.

<sup>581</sup> See Pentagon press release, [Readout from Secretary Carter’s call with UK State Secretary for Defense Michael Fallon](#), 24 June 2016

<sup>582</sup> HC Deb 27 June 2016, c2

<sup>583</sup> According to [NATO’s compendium of defence expenditure 2016](#), the UK defence budget is currently 2.21% of GDP, compared to France which spends 1.78%, Germany which spends 1.19%, Italy which spends 1.11% and Spain which spends 0.91%. The 2015 Strategic Defence and Security Review stated that “the UK’s defence budget is the second largest in NATO, after the US, and the largest in the EU” (Cm 9161, p.13). It also stated that “we are strengthening our armed forces so that they remain the most capable in Europe...” (p.24)

<sup>584</sup> France, Germany, Greece, Italy and the UK.

Military assets are provided to CSDP missions on a case-by-case basis and, with the exception of common costs,<sup>585</sup> operations are financed on a national basis.<sup>586</sup> Thus far, the UK has been a consistent contributor to EU-led operations, often as lead nation,<sup>587</sup> and since the Battlegroups concept was launched in 2004, the UK has provided, or led, a Battlegroup five times, including the current EU battlegroup which will deploy until December 2016.<sup>588</sup>

In terms of military power and projection, therefore, the UK's withdrawal is more likely to place the EU at a disadvantage, with fewer assets and capabilities ultimately at its disposal. This is particularly true of certain strategic assets such as tactical airlift and intelligence, surveillance and reconnaissance assets. From the UK's standpoint its ability to project military power would be largely unaffected, and any military shortfalls could be compensated for through bilateral arrangements with countries such as France and Germany.<sup>589</sup>

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

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

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<sup>585</sup> CSDP operations with military implications cannot be financed from EU funds. For the common costs, the Council established a special mechanism (ATHENA) in 2004. Common costs are financed on the basis of a GNI-based indicator. The UK share is presently 14.82% of eligible common costs. The total UK cost share for 2014 was €8.8m. Funding is drawn from the Peacekeeping budget which is managed by the FCO.

<sup>586</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".

<sup>587</sup> Over the last ten years the UK has made a contribution to 11 CSDP military operations. Most notably: [Operation Althea](#) in the Balkans, the counter-piracy [Operation Atalanta](#) off the Horn of Africa (which the UK has operational command of) and Operation [Sophia \(EU NAVFOR MED\)](#) which is currently tackling people smuggling in the Mediterranean.

<sup>588</sup> In the first half of 2005, the latter half of 2008 and 2010 and the latter half of 2013, in conjunction with Sweden, Latvia, Lithuania and the Netherlands. The current battlegroup (July-December 2016) will also include personnel from Ireland and Lithuania.

<sup>589</sup> In 2010 the UK and France agreed a series of measures intended to enhance defence co-operation between both country's armed forces, including the signing of two new defence treaties (the Lancaster House treaty). The 2015 Strategic Defence and Security Review places an emphasis on further developing the UK-France defence and security relationship. It also makes specific reference to the deepening defence relationship between the UK and Germany (Cm 9161, November 2015, p.52).



Police. The EU continues to lead the international effort to counter piracy and protect World Food Programme aid.<sup>590</sup>

Ensuring the success of CSDP operations remains in the UK's interest. However, being a member of the EU is not necessarily a prerequisite for achieving this aim. Outside the EU the UK could choose to continue its participation in CSDP operations as a third party state. Indeed, under the Berlin-plus arrangements agreed in 2002 the EU already has recourse to NATO assets and capabilities for the conduct of EU operations, where the alliance as a whole chooses not to be engaged.<sup>591</sup> Several non-EU countries, including Canada, Norway and the US<sup>592</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.

### Capabilities development

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 the UK's 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>593</sup> and is involved in a number of bilateral capability development initiatives with other EU Member States, such as France.

Even though outside of the EU the UK could not participate in the European Defence Agency, it could continue participating in EDA projects as a third party country.<sup>594</sup> In 2006, for example, Norway 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.

Withdrawal from the EU is therefore unlikely to have a major impact. The UK already adopts a multi-faceted approach to defence procurement, and is likely to continue doing so. Exit from the EU will also not prohibit the UK from participating in exercises with individual,

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<sup>590</sup> MOD Policy: [Meeting NATO and EU Treaty Defence Commitments](#).

<sup>591</sup> See Research Paper 03/05, *NATO: The Prague Summit and Beyond*, January 2003.

<sup>592</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>593</sup> Further information on OCCAR is available at: <http://www.occar.int/185>.

<sup>594</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.

or groups of, EU nations; nor will it prevent them from deploying together on military operations that fall outside of the EU's remit. During Defence Questions on 27 June the Secretary of State acknowledged that the UK will have to "work hard to ensure that these bilateral relationships are kept in good repair". He went on to comment:

We have strong defence relationships and defence sections in these embassies across Europe, and we will have to look at them independently and make sure in the Brexit negotiations that none of that co-operation – the joint training, the exercising and the co-operation in capabilities – is put at risk.<sup>595</sup>

## EU defence directives

The defence directives agreed in 2011 were originally conceived as a means of making the EU internal defence market work better, and in the case of the directive on defence procurement, to increase competition in the EU defence sector by making more EU governments put non-sensitive defence contracts out to tender.

Both directives were transposed into UK law in August 2011. If, during withdrawal negotiations, the substance of the two defence directives is retained in the withdrawal agreement, the applicability of their provisions to the UK will not change.

Being relatively new, little official assessment of their success or impact on UK policy has been made to date.<sup>596</sup> Therefore, if the UK chooses not to retain the two directives, it is unclear whether withdrawal from their provisions would have any serious impact on the UK. The Government already seeks to procure where possible through open and fair competition.<sup>597</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

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<sup>595</sup> HC Deb 27 June 2016, c4

<sup>596</sup> The European Commission's first report on the functioning and impact of the directives is not due until later in 2016. In June 2015 the Directorate General for External Policies within the European Parliament published a [report](#) which attempted to make an initial assessment of the success of the directives, thus far.

<sup>597</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*.

delayed transposing the directive into law,<sup>598</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 respective domestic defence industrial bases.<sup>599</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>600</sup> In 2013 the European Commission also expressed its concern over the intention of several European countries, notably Bulgaria and Romania, to fulfil their fighter aircraft requirements through a single source government-to-government purchase in order to bypass the competitive provisions of the directive.<sup>601</sup> In June 2014 the Commission subsequently presented a roadmap of measures intended to strengthen the European defence market. Among those intended reforms was a commitment to issue guidance on the acceptable use of exclusions under the defence directives.<sup>602</sup>

Indeed a European Parliament report published in June 2015 on the impact of the defence directives concluded that:

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

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

Concretely today acquisition practices seem to show an incomplete and incorrect application of the Directive, with de facto a limited or even non-existent impact on the DTIB. It is indeed too hasty and premature to draw conclusions from such a

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<sup>598</sup> See [Commission list](#) of the infringement cases it has opened in the past with respect to this directive.

<sup>599</sup> See “EU procurement directive prompts industry concern”, *Jane’s Defence Weekly*, 9 February 2011.

<sup>600</sup> “Greece to boost industry with contentious contracts”, *Jane’s Defence Weekly*, 4 May 2011.

<sup>601</sup> See “Europe poised for confrontation over Bulgarian F-16 procurement”, *Jane’s Defence Industry*, 13 February 2013.

<sup>602</sup> Further information is available at: [European Commission: Actions for a more competitive and efficient defence and security sector](#), 24 June 2014. In November 2015 the Government set out its opinions on that defence roadmap during a [session of the House of Commons’ European Union Committee B](#).

short period, all the more so given that it generally takes 5 to 10 years for a directive to be fully applied, and this is referring to the civilian sector. Although this new regime is not yet functioning satisfactorily at the present time, the Directive represents an important step in a sector such as defence, which is marked by a significant degree of opacity in acquisition practices.<sup>603</sup>

## Evolution of EU defence

Since 2003 proposals to enhance CSDP, most notably the creation of a standing EU military headquarters independent of NATO and/or a 'European Army', have periodically become a priority for the EU, or the focus of individual countries.

Proposals for an independent operational military HQ to be established using the Permanent Structured Co-operation mechanism were, for example, reinvigorated as part of France's Presidency priorities in 2008.<sup>604</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. At the time those proposals made little progress in light of the crisis over the Irish 'no' vote on the Lisbon Treaty.

This idea re-surfaced again during the Polish EU presidency in 2011, which prompted the UK Government to threaten to wield its veto over the issue. Former Foreign Secretary, William Hague, stated at the time:

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

We are opposed to this idea because we think it duplicates NATO structures and thirdly, a lot can be done by improving the structures that already exist.<sup>605</sup>

In September 2012, 11 EU Member States (excluding the UK)<sup>606</sup> published a communiqué on *The Future of Europe* which called for 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>607</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>608</sup> In March 2015 the EU Commission President, Jean-Claude Juncker, also suggested that an EU army should be created "to build a common foreign and national security policy, and to collectively

<sup>603</sup> European Parliament, Directorate General for External Policies, *The impact of the 'defence package' directives on European defence*, June 2015.

<sup>604</sup> For more detail see Standard Note 4807, *Priorities for ESDP under the French Presidency of the EU*.

<sup>605</sup> "UK blocks bid for permanent EU security headquarters", *EurActiv*, 19 July 2011.

<sup>606</sup> Austria, Belgium, Denmark, France, Germany, Italy, Luxembourg, Netherlands, Poland, Portugal and Spain.

<sup>607</sup> As reported in "Ministers call for stronger EU foreign policy chief", *EU Observer*, 18 September 2012.

<sup>608</sup> "Five EU countries call for new military structure", *Stratrisks*, 18 November 2012.

take on Europe's responsibilities in the world". He also argued that it would "show Russia that we are serious when it comes to defending the values of the European Union".<sup>609</sup>

This is a position supported by the current German government which stated in 2015 that "a European Army is Germany's long term goal".<sup>610</sup> Indeed, a [German defence White Paper](#) published on 13 July 2016 reiterated that "Germany is striving to achieve the long-term goal of a common European Security and Defence Union". Specifically it proposes the greater use of permanent structured cooperation and the creation of "a permanent civil-military operational headquarters in the medium term. This will be a civil-military planning and command and control capability that is not yet available in this form in the EU member states".<sup>611</sup>

Any decision to expand the remit of the planning cell or further European defence integration will require unanimity among EU member states. While the UK is still a formal member of the EU it will still have a veto, which Earl Howe recently suggested would be used in the event of proposals to establish a European Army:

The noble Lord asked about the long-running issue of an EU army. I take this opportunity to emphasise that, while the UK remains a full member of the EU until such time as we leave it, UK forces will not be part of an EU army. In no circumstances could Brussels, in any case, direct deployment of UK forces without the specific agreement of the UK Government. That agreement will not be forthcoming. Defence is entirely a national competence and if an EU army were to be proposed, it would be subject to national veto.<sup>612</sup>

Following Brexit, however, the UK will not be party to any discussions or have any formal powers over decision-making on EU defence. The UK's ability to influence the progress, or otherwise, of any EU defence proposals (as it did in 2003 and 2011), would therefore be limited to the diplomatic pressure it could bring to bear through other foreign policy channels.

Without the UK's support it has been suggested that the strategic ambition of a "common European defence" could ultimately falter. However, the absence of the UK from CSDP decision making could equally be the opportunity that pro-European states, such as Germany, have been looking for to further the European defence project, in the longer term. As Philip Worré, Director of ISIS Europe, noted in a January 2013 briefing:

A British exit would undoubtedly cause much turmoil, and CSDP will have lost a key contributor and supporter. From a strictly CSDP – and European defence integration – perspective, however,

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<sup>609</sup> "Create an EU army to keep back the Russians", *The Daily Telegraph*, 8 March 2015.

<sup>610</sup> "Our goal is an EU Army says Germany's defence chief", *The Daily Mail*, 4 May 2015

<sup>611</sup> German Federal Government, [White paper on German security policy and the future of the Bundeswehr](#), 13 July 2016.

<sup>612</sup> HC Deb 11 July 2016, c46

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>613</sup>

## Impact on the UK defence budget and future equipment plan

At present the Government is committed to meeting the NATO target of spending 2% of GDP on defence, until 2020/2021. It has also committed to continue funding the equipment budget at 1% above inflation until the end of this Parliament.<sup>614</sup> The MOD is currently earmarked to spend £178 billion on defence equipment over the next 10 years, to 2025.<sup>615</sup>

Within the context of Brexit a number of analysts have raised concerns over the impact of currency fluctuations on existing defence procurement programmes, such as the F-35 Joint Strike Fighter. In a commentary piece for RUSI Professor Trevor Taylor has argued that "the depreciation of the pound against the dollar in the wake of Britain's decision to leave the European Union raises major doubts about the affordability of the country's current defence equipment plans".<sup>616</sup>

Speaking in the House on 11 July 2016 the Defence Secretary, Michael Fallon, suggested that it is too early to determine what the impact of Brexit would be on the defence equipment plan. He commented:

It is a little too early to be sure exactly where the sterling-dollar exchange rate will end up. Like any large commercial organisation, we take precautions against fluctuations in the currency, but it is too early to say whether that current level is likely to be sustained.<sup>617</sup>

In the longer term questions have also been raised over whether it will be possible to maintain the commitment to spending 2% of GDP if economic growth predictions fail to materialise in the aftermath of the Brexit vote. Malcolm Chalmers of RUSI has argued, for example, that "it is unrealistic to expect that the defence budget can be entirely exempted from the expenditure cuts that will probably be needed in a post-exit spending review".<sup>618</sup> In a report published on 10 July 2016 the Joint Committee on the National Security Strategy also expressed this view:

A May 2016 report by the UK-based Institute for Fiscal Studies (IFS) highlighted analysis that UK GDP might be reduced by between 2.1% and 3.5% in 2019 as a result of Brexit. The IFS continued: "A hit to GDP of this magnitude would imply a hit to the public finances, after taking account of the reduced EU contribution, of between £20 billion and £40 billion in 2019–20."

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<sup>613</sup> Philip Worré, "[The consequences of a British exit from the EU and CSDP: An Analytical Timeline](#)", *ISIS Europe Occasional Paper*, January 2013.

<sup>614</sup> Ministry of Defence, "[Defence Equipment Plan 2015](#)"

<sup>615</sup> [Ministry of Defence press release](#), 23 November 2015

<sup>616</sup> Trevor Taylor, "Brexit and UK defence: put the equipment plan on hold?" *RUSI Commentary*, 6 July 2016.

<sup>617</sup> HC Deb 11 July 2016, c52

<sup>618</sup> "After the Brexit, what's next for defense?", *Defense News*, 24 June 2016

In that context, even if the new Government were again to commit to spending at least 2% of GDP on defence, a stagnant or contracting UK economy might mean that the defence budget would be reduced in real terms. This would impact on the ambition and capabilities set out in the NSS & SDSR 2015.<sup>619</sup>

The Committee goes on to state that “economic contraction caused by Brexit could limit the ability of the armed forces to fulfil their role effectively”.<sup>620</sup>

In defence questions on 27 June 2016 the Government reiterated its commitment to spending 2% of GDP on defence until the end of this Parliament. The level of defence spending beyond 2020 has yet to be determined. Philip Dunne stated:

As was made clear in last year’s comprehensive spending review at the same time as the strategic defence and security review, and as I have already said this afternoon, the defence budget is going up in real terms in each year of this Parliament [...]

I am not going to join those in the Opposition who seek to talk the economy down. We have a clear commitment to meet the NATO defence spending pledge and that is what we will do.<sup>621</sup>

The need for a new SDSR in the event of Brexit, and earlier than the next scheduled review in 2020 is now the subject of debate.

## Impact of a second independence referendum in Scotland?

The prospect of a second referendum on Scottish independence in the aftermath of Brexit has also reignited the debate about the location of the UK’s strategic nuclear deterrent at Faslane in Western Scotland. For the present the MOD has said that it is not anticipating another referendum and there are no plans to move nuclear weapons from Scotland.<sup>622</sup> How political events unfold with respect to Scotland over the next few years will determine whether the MOD needs to revisit its position in the longer term. The biggest concerns for the MOD would be identifying suitable alternative locations, and the costs of relocation which in 2014 they described as “a gargantuan sum of money”.<sup>623</sup>

### Box 5: Brexit and defence: suggested reading

- Royal United Services Institute: [Brexit Briefings](#)
- Chatham House: [After Brexit: Britain’s Future](#)
- International Institute for Strategic Studies: [Brexit](#)

<sup>619</sup> Joint Committee on the National Security Strategy, *National Security Strategy and Strategic Defence and Security Review 2015*, HC153, July 2016.

<sup>620</sup> *ibid*

<sup>621</sup> HC Deb 27 June 2016, c12

<sup>622</sup> “No plans to move nuclear weapons from Scotland”, *BBC News Online*, 15 July 2016.

<sup>623</sup> Scottish Affairs Committee, *The referendum on separation for Scotland: Terminating Trident – days or decades*, HC 676, October 2012.





## 21. The devolved legislatures

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

The following sections look briefly at the relationship of the devolved legislatures with the EU and possible effects on these nations of a UK withdrawal.

### 21.1 Scotland

#### Introduction

##### **The EU Referendum result in Scotland**

In Scotland, 62.0% of voters on a turnout of 67.2% voted to Remain in the European Union. Just over 1.02 million people voted Leave and 1.66 people million voted Remain.

Electorates in all 32 Scottish Local Authorities voted to Remain. The biggest Remain vote was in the City of Edinburgh, where 74.4% of those who voted did so to Remain, whilst Moray saw the lowest Remain vote with 50.1%. A [Scottish Parliament Information Centre \(SPICe\) Infographic](#) provides details of the result by Scottish local authority area.

##### **Scotland's current constitutional relationship with the European Union**

Schedule V of the [Scotland Act 1998](#) reserves all aspects of foreign affairs to the UK Government and Parliament including relations with the European Union. This means the UK Government is responsible for managing relations with the EU, including leading on all policy and legislative negotiations. However, the Scotland Act does give the Scottish Government and Scottish Parliament responsibility for implementing European obligations where they relate to devolved matters.

This means, as with the other devolved legislatures, the Scottish Parliament is responsible for transposing and implementing a wide spectrum of EU legislation in areas such as agriculture, fisheries and the environment. The Scottish Government is also responsible for administering the spending of European funds such as Structural Funds and the Common Agricultural Policy in Scotland. In other areas where the UK Government has competence, such as EU economic policies and areas of Single Market legislation, the Scottish Government and Scottish Parliament have an interest in monitoring how EU laws will impact on Scotland including in devolved areas.

## The value of the EU to Scotland

In October 2015, the Scottish Parliament Information Centre (SPICe) published a briefing analysing "[The impact of EU membership in Scotland](#)". The briefing set out what EU membership means for Scotland, including an analysis of the data relating to Scotland's economic and social links with the EU. Data in the briefing was updated in [papers](#) provided to the Scottish Parliament's European and External Relations Committee in July 2016.

On 23 August 2016, the Scottish Government published a paper outlining the [Potential Implications of the UK leaving the EU on Scotland's Long Run Economic Performance](#). The paper summarised the impact that leaving the EU could have on Scotland's GDP and public spending up to 2030. The key conclusions presented by the Scottish Government were that by 2030 "Scottish GDP is projected to be between £1.7 billion and £11.2 billion per year lower than it would have been if Brexit does not occur" and "Tax revenue is projected to be between £1.7 billion and £3.7 billion lower."<sup>624</sup>

### Access to the Single Market

The EU is the main destination for Scotland's international exports, "accounting for around 42% of Scotland's international exports in 2014, with an estimated value of around £11.6 billion"<sup>625</sup>.

The latest Scottish Export Statistics for 2014 show that of Scotland's top ten international export destinations, six are EU Member States (Netherlands, France, Germany, Ireland, Spain and Denmark). However, the Scottish Government's export figures for 2014 also indicate that international exports to countries outside the EU are forming an increasing share of all Scotland's international exports – in 2014 they made up 58% of Scotland's international exports.

Since 2002 exports to the EU, as a share of total Scottish exports, have actually decreased from 54% to 42%. This is because whilst exports to the EU have grown by 6% since 2002, exports to the rest of the world have grown by 74%. One reason for the declining reliance on the EU market may be the increase in bilateral free trade agreements being negotiated by the EU, which has exclusive competence to negotiate international trade agreements.

Food and drink is Scotland's biggest export in terms of sector. The value of food and drink exports to the EU was £1,775m in 2014. This reflects an increase of 57% (£645m) since 2002. However, exports have fallen by 3% (£55m) since 2013<sup>626</sup>. As a proportion of all food and drink exports, those going to the EU have shrunk from a peak of 45% in 2008 to 37% in 2014.

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<sup>624</sup> Scottish Government, [Brexit research shows economic risk to Scotland](#), 23 August 2016.

<sup>625</sup> Scottish Government, [Export Statistics Scotland](#).

<sup>626</sup> Scottish Government, [Export Statistics Scotland 2014](#).

The Single Market also allows businesses from across the EU to invest across Member State borders. Figures from the [Financial Scrutiny Unit in SPICe](#) show that in Scotland in 2013, nearly 4,600 business sites owned by non-UK European companies had a combined turnover of £42.1 billion and added £15.8 billion in Gross Value Added (GVA) to the Scottish economy. This made up 15.6% of all Scotland's GVA, making it the most reliant region of the UK on European-owned companies. The figures exclude some financial service activities and public sector activities. Whilst European-owned companies are an important component of Scotland's economy, their investments lean towards the energy and food and drink sectors. It is not clear whether any of this investment would be lost when the UK leaves the EU.

In terms of jobs, the Financial Scrutiny Unit in SPICe has calculated that around 150,000 jobs were sustained directly in Scotland from exports to the EU in 2013.

### **Migration and Freedom of Movement**

The principle of free movement has allowed Scots to travel to other EU Member States to work or study. Likewise, other EU nationals are able to come and work or study in Scotland.

In the period between the UK joining the EU in 1973 and 2003, the Scottish population either saw minimal or decreased growth. The average change over the period was a population reduction of 0.1% per year. From 2004 when the EU expanded with the accession of eight central and eastern European countries and Malta and Cyprus, the Scottish population has increased by at least 0.3% a year. The latest estimates suggest that in 2014 there were around 173,000 people in Scotland who had the nationality of another EU Member State, equating to 3.3% of the overall population.<sup>627</sup>

### **Higher Education**

EU membership has influenced Scotland's higher education sector both in terms of student mobility and access to funding. Non-UK EU nationals are entitled to study at Scottish universities for free. In 2014-15, 14,440 EU students studied at Scottish universities at a cost to the Scottish Government of £27.1 million.<sup>628</sup> Although few Scottish students choose to undertake their full degree in another Member State, the main study abroad option for UK nationals wishing to spend part of their time studying at an institution in another EU Member State is ERASMUS+ which replaced ERASMUS in 2014. The total number of UK students taking part in the ERASMUS scheme rose from 11,723 in 2009-10 to 15,566 in 2013-14. The proportion of students from Scottish HEIs taking part in ERASMUS remained at around 13% during

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<sup>627</sup> National Records of Scotland, [Mid-2014 Population Estimates Scotland Population estimates by sex, age and administrative area](#), 30 April 2015, Correction: 8 May 2015.

<sup>628</sup> Student Awards Agency Scotland, Higher Education Student Support in Scotland 2014-15. [Statistical summary of financial support provided to students by the Student Awards Agency for Scotland in academic session 2014-15](#), October 2015.

this period. Scottish participation in the programme is slightly higher than in other parts of the UK (relative to Scotland's overall population in UK).<sup>629</sup> There are not yet any figures available on participation in ERASMUS+.

## European funding

Scotland has benefited from both pre-allocated and competitive European funds over the last four decades. European funding programmes such as Structural Funds and the CAP see funds pre-allocated to Member States. The allocation of CAP funds and European Structural Funds between the countries of the UK is negotiated by the UK Government with the Devolved Administrations.

Between 2007 and 2013 Scotland benefited from around €4.5 billion of CAP funding. Between 2014 and 2020 Scotland is likely to benefit from around a further €4.6 billion.<sup>630</sup>

Between 2007 and 2013 Scotland received around €800 million in European Structural Funds. During the 2014 to 2020 Multiannual Financial Framework, Scotland's programmes will benefit from a total of €985 million; with match funding from the Scottish Government and other public sector organisations, total funding will be around €1.9 billion.<sup>631</sup>

Scotland has also been successful in accessing competitive funding. The biggest programme that Scotland has benefited from is the research and development programme, now named Horizon 2020. By March 2016, Scottish organisations were awarded over €217 million.<sup>632</sup> This figure equates to 11.6% of the funding awarded to the UK (over €1 billion).

Higher education institutions (HEIs) and research institutes have been the main beneficiaries, securing almost 80% (€173 million) of the funding awarded to Scottish organisations. Of this total, €157 million went to HEIs and over €16 million to research institutes. A further €39 million of Horizon 2020 funding was awarded to Scottish businesses, almost €29.5 million of this going to small and medium enterprises.

Figures up to February 2016 show that the University of Edinburgh is currently the most successful Scottish HEI within the UK for Horizon 2020 funding – ranking 6<sup>th</sup> across the EU and gaining over €59 million in funding to date. The University of Glasgow ranks 18<sup>th</sup> in the EU, having gained over €35 million in Horizon 2020 funding to February 2016.<sup>633</sup>

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<sup>629</sup> [Erasmus + website](#).

<sup>630</sup> Gov.uk, 8 November 2013, [UK CAP allocations announced](#).

<sup>631</sup> Scottish Government, 19 December 2014, [Scottish economy to benefit from multimillion European investment](#).

<sup>632</sup> Scotland's engagement in Horizon 2020: Third performance monitoring and analysis, update March 2016; provided by Scotland Europa.

<sup>633</sup> Information provided to SPICe by Universities Scotland (July 2016) (personal communication).

Prior to the start of the programme, Scotland had also successfully accessed EU research and innovation funding via the 7<sup>th</sup> Framework Programme (which ran from 2007 to 2013). Figures provided to the Scottish Parliament Information Centre by Scotland Europa in September 2015 indicated that Scotland was awarded €741 million in total under this programme.

While Scotland has benefited from European funds being spent in Scotland, it has also contributed payments to the EU Budget as part of the UK. Projections done by the Scottish Government in 2009 and by the Financial Scrutiny Unit in SPICe suggests Scotland is a net contributor to the EU budget.<sup>634</sup>

## The Scottish Government's position on the UK decision to leave the EU

Following the announcement of the EU referendum result, the First Minister of Scotland, Nicola Sturgeon, made a [statement](#) on Friday 24 June in which she said that she regarded it as "democratically unacceptable" that Scotland should face the prospect of being taken out of the EU against its will. The First Minister also said:

I want to make it absolutely clear that I intend to take all possible steps and explore all options to give effect to how people in Scotland voted - in other words, to secure our continuing place in the EU and in the single market in particular.

To that end, I have made clear to the Prime Minister this morning that the Scottish Government must be fully and directly involved in any and all decisions about the next steps that the UK government intends to take.

We will also be seeking direct discussions with the EU institutions and its member states, including the earliest possible meeting with the President of the European Commission.

I will also be communicating over this weekend with each EU member state to make clear that Scotland has voted to stay in the EU - and that I intend to discuss all options for doing so.<sup>635</sup>

The First Minister also used her speech to address the issue of a second independence referendum in light of the EU referendum result. She said:

Lastly, let me address the issue of a second independence referendum.

The manifesto that the SNP was elected on last month said this:

"The Scottish Parliament should have the right to hold another referendum...if there is a significant and material change in the circumstances that prevailed in 2014, such as Scotland being taken out the EU against our will."

Scotland does now face that prospect - it is a significant and material change in circumstances - and it is therefore a statement

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<sup>634</sup> SPICe, [Scotland in the European Union](#).

<sup>635</sup> Scottish Government, 24 June 2016, [First Minister - EU Referendum Result](#).

of the obvious that the option of a second referendum must be on the table. And it is on the table.

Clearly, though, there are a lot of discussions to be had before final decisions are taken.

It would not be right to rush to judgment ahead of discussions on how Scotland's result will be responded to by the EU.

However, when the Article 50 process is triggered in three months' time, the UK will be on a two year path to the EU exit door.

If Parliament judges that a second referendum is the best or only way to protect our place in Europe, it must have the option to hold one within that timescale.

That means we must act now to protect that position. I can therefore confirm today that in order to protect that position we will begin to prepare the legislation that would be required to enable a new independence referendum to take place if and when Parliament so decides.

In the week following the EU referendum, the Scottish Parliament debated the outcome. At the conclusion of the debate, the Parliament passed the [following motion](#) by 92 votes to 0 votes with 31 abstentions:

That the Parliament welcomes the overwhelming vote of the people of Scotland to remain in the European Union; affirms to citizens of other EU countries living here that they remain welcome and that their contribution is valued; mandates the Scottish Government to have discussions with the UK Government, other devolved administrations, the EU institutions and member states to explore options for protecting Scotland's relationship with the EU, Scotland's place in the single market and the social, employment and economic benefits that come from that, and instructs the Scottish Government to report back regularly to parliamentarians, to the European and External Relations Committee and the Parliament on the progress of those discussions and to seek Parliament's approval of the outcome of that process.

During the debate, the First Minister announced the formation by the Scottish Government of a Standing Council on Europe to advise on legal, financial and diplomatic issues.

On 29 June the First Minister visited Brussels and met with the President of the European Commission, Jean-Claude Juncker, as well as the President of the European Parliament, Martin Schulz, and the leaders of a number of the political groups in the European Parliament. According to the Scottish Government, she "stressed that Scotland chose to remain part of the European Union, and her determination to ensure all options are considered to enable Scotland to remain in the EU". Following the First Minister's meetings she held a [press conference](#) at which she said:

In my discussions during the day, I've heard, as you would expect, deep concern about the impact of the referendum not just on Scotland, the UK and the European institutions, but on people in all our countries and on the EU itself.

For my part, I've emphasised that Scotland voted to remain part of the EU.

If there is a way for Scotland to stay, I am determined to find it.

We are in uncharted territory, and none of this is easy. My task is to bring principles, purpose and clarity to the situation, and to speak for all of Scotland.

We are early in this process. The referendum is not yet a week behind us - a long week for all of us.

My concern at this stage is to ensure that once the UK negotiation with the EU starts, all the options are on the table. I don't underestimate the challenges but I am heartened by the discussions. Here, I've found a willingness to listen: open doors, open ears and open minds.

In the weeks following the referendum, the Scottish Government has also sought to send a message to the 173,000 non-UK EU citizens living in Scotland that they continue to be welcome in the country. In addition, the Scottish Government has called for the rights of European Union nationals living in Scotland to be protected.<sup>636</sup>

## The Scottish Parliament and the EU

### The Scottish Parliament and EU law

Under the current devolution settlement, when the UK leaves the EU, the competences exercised by the EU will be repatriated to the UK. Where those competences relate to devolved matters, an effect of UK withdrawal from the EU will be that the Scottish Parliament will obtain a competence to legislate on those matters, which it did not have before the withdrawal takes effect.

Section 29(2)(d) of the Scotland Act 1998 also requires that all legislation of the Scottish Parliament is compatible with EU law. As a result, a decision by the UK to leave the EU may require amendments of the Scotland Act 1998 to remove various references to the EU or EU law.

In addition, a repeal of the European Communities Act 1972 would not of itself end the domestic incorporation of EU law in the devolved nations, given that EU law is implemented in Scotland within very many pieces of primary and secondary legislation, and not all legislation implementing EU law relies on the 1972 Act.

### Scotland's role in the triggering of Article 50

Neither the Scottish Government nor the Scottish Parliament has a formal role in the UK Government's decision on the notification of Article 50. However, the UK Government may choose to consult with the Devolved Administrations ahead of notifying the European Council of its intention to leave the EU. Following her meeting with Scotland's First Minister, the new Prime Minister, Theresa May, said:

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<sup>636</sup> Scottish Government, 3 July 2016, [Protection for EU citizens' rights](#) and Scottish Government, 5 July 2016, [Reassurance following EU referendum](#).

I have already said that I won't be triggering Article 50 until I think that we have a UK approach and objectives for negotiations - I think it is important that we establish that before we trigger Article 50.<sup>637</sup>

The Prime Minister also indicated that she "wanted the Scottish Government to be fully engaged in our discussion" about the UK Government's approach to negotiations with the EU.

### **The Scottish Parliament's role in the leaving process**

As mentioned above, the Scottish Parliament does not have a formal role in the notification of Article 50. However, the Scottish Parliament has taken an active interest in the process following the referendum vote.

In addition to the debate held in the Scottish Parliament on 28 June 2016, the Parliament's European and External Relations Committee has started an inquiry into the [EU referendum and its implications for Scotland](#). The Committee took evidence on the implications for Scotland of the decision to leave the EU at its meeting on 28 July, with a focus on economic issues and on some of the sectors affected by the decision to leave. The Committee has also issued a [call for evidence](#) to gather more information on the impact of the decision to leave the EU. The Committee's inquiry will continue over the coming months.

## **21.2 Wales**

### **Introduction**

Wales has primary responsibility for transposing and implementing EU legislation within the 20 areas of devolved competence set out in Schedule 7 to the [Government of Wales Act 2006](#), as well as direct interest in influencing and shaping relevant EU policy and legislative proposals within these areas.

These include a number of areas where the EU has extensive competence, such as agriculture, fisheries and rural affairs, animal health and welfare, food, and environment, and where there is an established body of EU law and regulation that Wales must already comply with. Notably, for two of the other main Welsh competences – education and health – the scope for EU intervention is limited (with the exception of the impact of 'horizontal' EU legislation such as anti-discrimination law, public procurement rules, and rights of equal access for EU citizens). EU-level action in these areas is primarily focused around information exchange, benchmarking of best practice, and mobility of professionals and learners.

For other policy areas where the UK retains the lead competence, the Welsh Government, National Assembly for Wales and other Welsh stakeholders and organisations also have an interest in the potential impact of EU policy and legislation in Wales. These include aspects of economic development and employment policy, competition policy

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<sup>637</sup> BBC News, 15 July 2016, [Brexit: PM is 'willing to listen to options' on Scotland](#).



(including public procurement), financial services, and (most aspects of) energy policy.

## Value of EU membership to Wales

At an event in Cardiff in April 2015, the First Minister for Wales, Carwyn Jones AM, [outlined](#) what he saw as the economic benefit of EU membership to Wales:

About 500 firms from other EU Member States are based in Wales, employing over 54,000 people. The Single Market is also Wales' primary export destination. The total value of Welsh exports to the EU in 2014 was £5.6 billion.

Wales has access to considerable funding opportunities from the EU, notably from the CAP and Structural Funds (as well as a plethora of other funding streams). "Under the current round of CAP, 2014-2020, Wales will receive approximately £250 million of funding per annum in direct payments to farmers in addition to €655 million for its 2014-2020 rural development programme".<sup>638</sup>

Between 2014 and 2020, Wales will receive around £1.8 billion in EU Structural Funds from the Cohesion Policy for programmes covering West Wales and the Valleys ('Convergence' region) and East Wales ('Competitiveness' region). Welsh farmers' payments from the CAP are estimated to be worth £240 million a year.<sup>639</sup> In addition, Wales will receive €355 million for its rural development plan for 2014-2020.<sup>640</sup> "Together with match funding, the funds will drive a total investment of at least £2.7bn across Wales".<sup>641</sup>

It has been estimated that the CAP provides around 80-90% of the basic farm income in Wales.<sup>642</sup> The Deputy Minister for Farming and Food, Rebecca Evans, has said that the cessation of direct payments to farmers without any domestic replacement from the UK Government would be 'hugely damaging' to the farming industry.<sup>643</sup> The Welsh Government's 2014 [Wales and the European Union: Annual Report](#) outlined the following accomplishments of the 2007-14 round of Structural Funding in Wales:

...these include the investment of over £1.9bn of EU Structural Funds in 290 projects, representing £3.7bn of total project investment (including match funding) across Wales, cumulatively

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<sup>638</sup> National Assembly for Wales, Research Briefing, [Wales and the EU: What does the vote to leave the EU mean for Wales?](#) Research Service, Legal Service and EU Office, June 2016.

<sup>639</sup> Welsh Government, Press Release, [EU exit would have "catastrophic consequences for Wales" says Rebecca Evans](#), 20 July 2015.

<sup>640</sup> House of Commons Library, House of the Oireachtas Library & Research Service, Northern Ireland Assembly, National Assembly for Wales, and the Scottish Parliaments Information Centre, [CAP Reform 2014-2020](#), November 2014.

<sup>641</sup> Welsh Government, [European Structural Funds 2014-2020](#), updated 28 July 2016

<sup>642</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>643</sup> Welsh Government, Press Release, [EU exit would have "catastrophic consequences for Wales" says Rebecca Evans](#), 20 July 2015.

up to the end of 2014 for the 2007-2013 programmes. This investment has helped EU projects to deliver important benefits for people, businesses, the environment, and communities during 2014, supporting some 190,800 people to gain qualifications and over 62,800 into work, and creating some 30,600 jobs and over 10,400 enterprises.

In addition, organisations from Wales are eligible to participate in a range of different EU funding programmes supporting a number of different EU policy goals. Examples include:

- Horizon 2020, the EU Research Development and Innovation Programme;
- the Territorial Co-operation Programmes (including a Wales-Ireland Cross Border Co-operation programme worth around €100 million in EU funding);
- Erasmus+ (supporting innovative mobility and co-operation activities in the fields of education, training, youth and sport);
- Creative Europe Programme (support for media, cultural and other creative industries);
- European Maritime and Fisheries Fund and many more.<sup>644</sup>

## Implications of Brexit

In the EU referendum Wales voted to leave by 52.5% to 47.5%. The Environment and Rural Affairs Secretary, Lesley Griffiths, spoke on ITV Wales about the uncertainty following the referendum result, but also said he wanted to “make sure that we embrace all the opportunities that will come our way, as well as rising up to the challenges”.<sup>645</sup>

On 9 August the First Minister announced that he would be setting up a European Advisory Group made up of “business people, politicians and experts with a detailed understanding of the European Union” to advise the Welsh Government “on the wide-ranging impact on Wales of the UK’s exit from the EU and how Wales can overcome challenges to secure a prosperous future and a continued positive relationship with Europe”.<sup>646</sup>

In August the Chancellor Philip Hammond said that EU funding for farmers, scientists and other projects would be replaced by the Treasury after Brexit for EU-funded projects signed before this year’s Autumn Statement. Agricultural funding currently provided by the EU would also continue until 2020.<sup>647</sup> Carwyn Jones said on 13 August in response to these statements:

We need a ‘full guarantee’ that funding will continue for our existing EU programmes to 2023. It’s also not unreasonable to expect further funding to address Wales’ economic and social needs, particularly support for our most deprived areas after this date. We have made clear to the UK Government that there is now an overwhelming case for a major and immediate revision of

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<sup>644</sup> [EU funds in Wales](#), updated 16 August 2016.

<sup>645</sup> [ITV Wales, 18 July 2016](#).

<sup>646</sup> Welsh Government, [Work underway to shape Wales’ future relationship with Europe](#), 9 August 2016.

<sup>647</sup> BBC News, 13 August 2016, [Brexit: Government guarantee for post-EU funds](#).

the Barnett Formula, to take into account Wales' needs arising from EU withdrawal.<sup>648</sup>

The Welsh Secretary, Alun Cairns, told the House of Commons in July that Wales would "get its fair share" of funding but did not guarantee that Wales would receive the same amount of funding as it would from the EU after Brexit.<sup>649</sup>

On 18 July Theresa May met Carwyn Jones in Cardiff, telling him she wants the Welsh Government to be "involved and engaged" in Brexit negotiations.<sup>650</sup>

## 21.3 Northern Ireland

### Introduction

In the EU referendum Northern Ireland voted by 55.8% against 44.2% to remain. 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>651</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.<sup>652</sup>

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 Irish Taoiseach Enda Kenny and former 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>653</sup> It has been suggested that a 'British withdrawal, however unlikely, would be a source of enormous

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<sup>648</sup> Welsh Government, [Statement](#) by the First Minister of Wales on the UK Government's announcement on EU funds, 13 August 2016.

<sup>649</sup> Independent, 14 July 2016, [Wales told not to expect same level of funding as it got from the EU - despite voting Brexit](#).

<sup>650</sup> [BBC News, 18 July 2016](#); see also Wales Online, 18 July 2016, [Carwyn Jones reveals he laid out Wales 'bottom line' on Brexit to Theresa May](#).

<sup>651</sup> The Institute of International and European Affairs (Aug 2012) [Towards an Irish Foreign Policy for Britain](#).

<sup>652</sup> For an overview of the possible consequences of a UK exit, see Centre for Cross-Border Studies, EU Referendum Briefing Papers Briefing Paper 1, [The UK Referendum on Membership of the EU: What does it mean for us?](#) February 2016.

<sup>653</sup> [Joint statement](#) by the Prime Minister David Cameron and the Taoiseach, Enda Kenny, 12 March 2012.

instability and turbulence for Ireland',<sup>654</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>655</sup> and East-West<sup>656</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>657</sup> Both the Northern Ireland Assembly and the Executive have been working to develop 'European engagement'<sup>658</sup> and the Northern Ireland Assembly has increasingly sought to engage with European issues (there have been two Committee inquiries examining this issue).<sup>659</sup>

Stormont's first minister, Arlene Foster, has said that Northern Ireland and Scotland cannot stay in the EU when the rest of the UK leaves.<sup>660</sup> She added that her job was, with Deputy First Minister Martin McGuinness, "to get the best deal possible for all of the people of Northern Ireland".<sup>661</sup> But Martin McGuinness has said the wishes of the people of Northern Ireland "must be respected" by the British Government. It is not clear how these views will be reconciled, but both the SDLP and Sinn Fein have suggested creating an all-Ireland national forum to consider the implications of Brexit.<sup>662</sup>

Enda Kenny has raised the prospect of a referendum on uniting Ireland.<sup>663</sup>

Proceedings have been brought in Northern Ireland about triggering Article 50.<sup>664</sup> The N.I. case was lodged in the High Court in Belfast on 19 August 2016. The claimants include members of the Northern Ireland Assembly, people with links to the voluntary and community sector, and human rights organisations. The press release states that the claim differs from the judicial reviews brought in the Divisional Court in London in that, among other things, they raise issues of N.I. constitutional law, the Good Friday Agreement, and EU law incorporated into N.I. law by the European Communities Act 1972.

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<sup>654</sup> The Institute of International and European Affairs (Aug 2012) [Towards an Irish Foreign Policy for Britain](#).

<sup>655</sup> This refers to co-operation between Northern Ireland and the Republic of Ireland.

<sup>656</sup> This is co-operation between the Republic of Ireland and Great Britain.

<sup>657</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>658</sup> Northern Ireland Executive (May 2012) [European Priorities 2012-13 – Winning in Europe](#).

<sup>659</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>660</sup> BBC News, 17 July 2016, [Brexit vote: NI first minister says 'whole of UK is leaving EU'](#).

<sup>661</sup> Ibid.

<sup>662</sup> BBC News, 2 July 2016, [What are the implications of Brexit for Northern Ireland?](#)

<sup>663</sup> RTÉ News, 18 July 2016, [Kenny raises prospect of border poll](#).

<sup>664</sup> See [press release](#), 19 August 2016.

## 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>665</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>666</sup> UK withdrawal might also have implications for Anglo-Irish co-operation in dealing with cross-border crime and terrorist activity. In discussions on the UK opt-out from policing and justice measures in 2014, the Northern Ireland Executive’s Justice Minister, David Ford, highlighted the enhanced co-operation between authorities on both sides of the border as a result of the devolution of policing and justice powers to the Northern Ireland Assembly.<sup>667</sup> The former RoI Justice Minister, Alan Shatter, was concerned that a UK withdrawal from police and justice measures “would be a retrograde step in the area of security co-operation”.<sup>668</sup>

The UK and the RoI make great use of the EAW. Figures indicate that in 2004-2012, of the 50 EAW requests that Northern Ireland made to other Members States, 30 were made to Ireland.<sup>669</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>670</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>671</sup>

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<sup>665</sup> *Northern Ireland: 40 Years of EU Membership*, Journal of Contemporary European Research, vol. 8 Issue 4 (2012).

<sup>666</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.

<sup>667</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>668</sup> Alan Shatter, TD “[Official Report of Dáil Eireann](#)” 15 May 2013.

<sup>669</sup> Lords EU Committee “EU Police and Criminal Justice Measures: The UK’s opt-out decision”, 2012-2013, p 91.

<sup>670</sup> *Ibid* para 264, p 92.

<sup>671</sup> *Ibid* para 264, see executive summary and p 92.

Before the referendum the former N.I. Secretary Theresa Villiers said a post-Brexit border could remain free-flowing. This view was shared by the ruling Democratic Unionist party (DUP), which backed Brexit. But the UK Government did not think the situation would continue as it is. The then Chancellor, George Osborne, said on a visit in June that “a hardening of the border” would be unavoidable.<sup>672</sup> The border issue is also discussed in Section 11.2 (above) of this paper.

The UK Government’s March 2016 document [Alternatives to Membership: possible models for the United Kingdom outside the European Union](#), “It is not clear that the Common Travel Area could continue to operate with the UK outside the EU, and Ireland inside, in the same way that it did before both countries joined the EU in 1973”.

The new UK Prime Minister, Theresa May, said during the EU referendum debate that it was “inconceivable” that there would not be any changes to border arrangements in the event of Brexit.

## Free movement of people and the Common Travel Area

The 2011 census shows 45,331 people in Northern Ireland were born in another EU state (excluding the Republic of Ireland).<sup>673</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, receive social housing.<sup>674</sup>

The Common Travel Area (CTA) governs movement of persons between the UK and the RoI, the Channel Islands and the Isle of Man.<sup>675</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. There is no settled opinion on how Brexit will impact on the continued existence of the CTA and both the UK and Irish governments have expressed uncertainty about its future. The new Northern Ireland Secretary James Brokenshire [said on 14 July 2016](#): “Another huge challenge is to ensure that we make a success of the UK’s decision to leave the European Union. It is vital that Northern Ireland’s interests are fully protected and

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<sup>672</sup> [Belfast Telegraph, 6 June 2016](#).

<sup>673</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>674</sup> As at 31 July 2012. Northern Ireland Housing Executive. Equality Bulletin No. 41 – BME and migrant worker mapping update, February 2013.

<sup>675</sup> This is established in Section 1(3) of the [Immigration Act 1971](#).

advanced including in relation to the border". An opinion article in [The Irish News, 18 July 2016](#), commented:

Unfortunately, while every rational observer accepts that imposing what is ominously described as a hard border would be disastrous, it is difficult to see how the existing open arrangements can be left entirely intact if and when the UK proceeds with its deeply contentious plans to withdraw from the EU.

## EU funding

Northern Ireland benefits significantly from EU funding. Table 1 below provides information on funding from six EU Regional Policy Programmes for 2014-2020:<sup>676</sup>

| <b>EU Regional Policy Funding 2014-20 Programme</b> | <b>€m</b>            |
|---|----------------------|
| European Regional Development Fund                  | 308 million          |
| European Social Fund Programme                      | 183 million          |
| INTERREG VA   | 240 million          |
| PEACE IV  | 229 million          |
| European Fisheries and Maritime Fund                | 24 million           |
| Rural Development Programme                         | 227 million          |
| <b>Total</b>  | <b>1,211 million</b> |

These are relatively significant sums which Northern Ireland could lose if the UK leaves the EU. Brexit would also impact on the future of the Special EU Programmes Body, which is responsible to the European Commission, the Northern Ireland Executive and the Irish Government for the delivery and management of the INTERREG and PEACE Programmes. In addition to the direct impact on spending, there could also be a particular impact on the community and voluntary sector, which in Northern Ireland plays an important role in addressing social and economic deprivation, training and employment, social enterprise, health and well-being, 'peace building' and building cross-community and cross-border relationships. The annual income of the Northern Ireland community and voluntary sector is reported to be around £741.9 million, of which approximately £70.1 million is estimated to derive from various EU funding programmes.<sup>677</sup> The sector is also an important employer in Northern Ireland, constituting around 4% of the total N.I. workforce.<sup>678</sup> A loss of EU funding could contribute to higher levels of

<sup>676</sup> For further information, see [The impact of EU Funding on the Region](#). The following paper illustrates the impact of PEACE and INTERREG Funding in Northern Ireland, the border region of Ireland (including Western Scotland 2007- 2013 INTERREG) over the past and future Programming periods: Part A 1995 to 2013. Part B 2014 to 2020.

<sup>677</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>678</sup> Northern Ireland Council for Voluntary Action (2012) State of the Sector VI, p9.

unemployment, particularly among women, given the predominance of women employed in this sector. Additionally, EU withdrawal could compromise the sustainability of many voluntary organisations in contributing to EU-sponsored networks and programmes.

## Manufacturing, R&D and innovation

Business leaders in Northern Ireland have expressed concern about the possible effects of a UK withdrawal on trade in general and with the RoI in particular.<sup>679</sup> A worst case scenario might see the introduction of tariff controls on the border. Table 2 shows exports to the RoI accounted for a quarter (25%) of total exports and just under a quarter (24%) of exports to the rest of the EU.<sup>680</sup>

Destination of NI Manufacturing Exports 2013/14

|              | (£m)         | %         |
|--------------|--------------|-----------|
| Ireland      | 1,553        | 25        |
| Other EU     | 1,470        | 24        |
| Outside EU   | 3,089        | 51        |
| <b>Total</b> | <b>6,113</b> | <b>51</b> |

The destination of exports by 'high potential' service companies in Northern Ireland is outlined in the table below (the most recent data available is for 2011/12). Exports from this sector to the RoI were valued at £69.8million in 2011-12 and accounted for 29% of all sectoral exports, which represents over three quarters of sectoral exports to the EU. Total exports to the EU were valued at £88.4million and were the equivalent of 37% of all exports in the sector. The sector did, however, export a greater proportion of total exports to countries outside of the EU (63% of total sectoral exports).<sup>681</sup>

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         |
|            | <b>240.3</b> | <b>100</b> |

The data in the table above shows that both the RoI and the other EU countries represent significant trade partners for Northern Ireland. Any changes to trade relations that might limit Northern Ireland's ability to

<sup>679</sup> See for example The [Belfast Telegraph 24 January 2013](#).

<sup>680</sup> DFP [Results from the Northern Ireland Manufacturing Sales & Exports Survey 2011/12](#) (December 2012).

<sup>681</sup> DFP [Exporting Northern Ireland Services Study 2010](#) July 2012.



trade with these regions would likely have a substantive and negative impact on Northern Ireland's economy. It is also possible that uncertainty itself about the UK's potential withdrawal from the EU might impact on trading with EU partners.

The importance of the EU Horizon 2020 programme to developing research & development and innovation (R&D&I) is recognised in the Department of Enterprise, Trade and Investment's [Horizon 2020 Action Plan](#). UK withdrawal from the EU would prevent Northern Ireland from accessing Horizon 2020 and subsequent EU R&D&I funding and could negatively affect its ability to improve its capacities in this area. Of the 121 projects with Northern Ireland involvement supported under Horizon 2020's predecessor, the Framework 7 programme, 84 included participation by the regions' universities. Through the work of the Barroso Task Force the European Commission directly engaged with the Northern Ireland Executive to support efforts in Northern Ireland to improve competitiveness, create sustainable employment, reduce dependence on the public sector and create a more dynamic private sector.<sup>682</sup>

On 14 January 2016 the European Commission announced its intention to continue the work of the Northern Ireland Task Force and its future priorities will be prepared with the Commission for finalisation in the first half of 2016.<sup>683</sup> Withdrawal from the EU would mean the termination of the NI Task Force and possibly the closure of the NI Executive Brussels Office.<sup>684</sup>

## Agriculture, the agri-food industry and the environment

Agriculture and the wider agri-food industry are key industries in Northern Ireland. Based on 2014 data, agriculture accounted for 1.4% of total Gross Value Added (GVA) as compared to the overall UK figure of 0.6%.<sup>685</sup> Agriculture also accounted for 3.4% of total civil employment in Northern Ireland as compared to the overall UK figure of 1.2%.<sup>686</sup> The biggest single EU-related benefit for Northern Ireland agriculture is the direct payments which totalled £293 million in 2014 (£246 in Single Farm Payment alone). Many local farmers rely on these direct payments to be viable, and the loss of such funding could significantly reduce the number of farms and farmers as well as farm production in Northern Ireland, while increasing the levels of rural unemployment and land dereliction. The loss of significant agricultural production could also restrict the ability of the Northern Ireland Executive to deliver on its ambitious plans for the development of the

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<sup>682</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>683</sup> [NI Executive press release, 14 January 2016](#).

<sup>684</sup> For an assessment of the value of the Northern Ireland Task Force, see the Centre for Cross Border Studies' [Written Evidence](#) to the Committee for the Office of the First and Deputy First Minister: Inquiry into the Barroso Task Force.

<sup>685</sup> [DARD \(2012\) Statistical Review of Northern Ireland Agriculture 2012](#).

<sup>686</sup> Ibid

local agri-food industry (60% growth in turnover to £7 billion and a 15% growth in employment to 115,000 by 2020)<sup>687</sup>. Without direct support the diversity of Northern Irish agriculture could diminish, as currently economically challenging sectors such as the beef and pig sectors could contract. This could see the creation of what would effectively be a monocultural system in Northern Ireland based, for example, upon the currently commercially viable dairy sector.

The issue of increased access to and development of export markets is a key challenge for the Northern Ireland agri-food industry. If the UK left the EU, Northern Ireland, along with the rest of the UK, might be able to negotiate more quickly and easily new or enhanced access to countries outside the EU. Questions do, however, remain as to whether these terms would be better than those that can be secured within the auspices of the EU. By leaving the single market, Northern Ireland could find it difficult to gain the access to many EU markets that is currently crucial to the industry's profits. Being subject to import tariffs or conditions could increase the costs and reduce profits. These factors would present a particular challenge for Northern Ireland, as it is the only part of the UK to share a land border with another EU Member State, and as significant elements of the food supply chain effectively operate on an all-island basis.

Many of the improvements to water quality in N.I. have been delivered by providing financial support to local farmers under agri-environment schemes funded under the EU Rural Development Programme. EU regulation has also increased the financial burdens on farmers, however, through the need to improve facilities. An EU exit might reduce, maintain or even enhance the level of environmental regulation. The loss of EU agri-environment scheme support may well see a reduction in overall environmental quality and biodiversity, as farmers move from environmental protection to production as a sole means of securing income. In addition, the loss of direct payments and agri-environment schemes could lead to land dereliction levels soaring. A reduction in environmental regulation or a more pragmatic approach to implementation and enforcement could benefit the local agri-food sector, however. The poultry sector in particular may well be able to expand significantly, as the storage and removal of litter required in EU regulations is currently a major limiting factor.

## Sea fishing

In UK terms Northern Ireland's sea fishing industry is very small, employing a total of 832 fishermen in 2014.<sup>688</sup> In 2014 the total value of fish landed in Northern Ireland's fishing ports amounted to £24.8 million, with shellfish making up the most significant part of the overall catch. As a result of Total Allowable Catch (TAC) changes, the majority of the Northern Irish fleet has focused on catching prawns in the Irish

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<sup>687</sup> Agri-Food Strategy Board (April 2013) Going [for Growth, A Strategic Action Plan in support of the Northern Ireland Agri-Food Industry](#).

<sup>688</sup> [Marine Management Organisation, UK Sea Fisheries Statistics 2014](#), 2015.

Sea. The local industry could be characterised as being single species dependent. If the UK could set its own fisheries rules and restrict access to the UK EEZ by foreign vessels, the Irish Sea could potentially support a more species diverse industry with the potential for growth and development. A key factor would be the way scientific data was collected, analysed and used in relation to the management of stocks, and it is not clear whether this would be more effective if the UK left the CFP.

The European Maritime and Fisheries Fund (EMFF), effectively the replacement for the existing European Fisheries Fund, is an integral part of the recently reformed Common Fisheries Policy. The Northern Ireland EMFF has been allocated a total of €23.5 million for 2014-2020. Brexit will mean Northern Ireland's local fishing ports and their vessels losing 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 with Brexit the UK decides to enforce the UK EEZ, there could be serious ramifications for the relationship between the local and RoI-based fleets. Determining who can fish where and when would present considerable difficulties for all the fisheries within the Irish Sea. Eel fishing is also a comparatively large industry in Northern Ireland. If the UK were no longer bound by the *EU Regulation Establishing Measures for the Recovery of the Stock of European Eel*, eel management could continue, although the Northern Ireland Executive might alter its obligations regarding monitoring, restocking and minimum catch sizes. Given that the Lough Neagh eel industry produces around 25% of the total EU wild eel catch, Brexit might have an impact on Europe-wide re-stocking, control and monitoring systems currently operated under EU law. If the UK is outside the single market, there might be an effect on the exportability of eels into European markets such as the Netherlands.

### **Social security, welfare and education**

Brexit 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 imposes restrictions on EU/EEA nationals' access to the UK social protection system, it is likely that Northern Ireland would impose similar restrictions because of financial constraints.

The EU has supported the development of cross-border projects and provided a legislative basis for cross-border access to services in specific circumstances. CAWT (Co-operation and Working Together), for example, aims to address the economic and social disadvantage that can result from the existence of a border and is part financed by the European Regional Development Fund through the INTERREG IVA cross

border programme, managed by the Special EU Programmes Body.<sup>689</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>690</sup> and for the period 2007-2013, £30 million was attributed to funding a range of programmes<sup>691</sup> separately from the core Departmental funding.<sup>692</sup>

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<sup>689</sup> CAWT website <http://www.cawt.com/>.

<sup>690</sup> Personal correspondence with Special EU Programmes Body 18.6.13.

<sup>691</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>692</sup> Personal correspondence with Special EU Programmes Body 18.6.13.

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