

BREXIT: WHAT WOULD HAPPEN IF THE UK VOTED TO LEAVE?

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About British Influence

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FOREWORD

by Sir Anthony Bailey, KGCN, OBE

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The question at the heart of the European referendum is simple yet fundamentally important: how should the UK engage with the rest of the world? Should we remain an open and engaged society that plays its full part in European, Commonwealth and world affairs or should we seek a new path? The future of this country is more in play now than it has been for many decades: the referendum is a battle over the identity of the UK and its constituent nations. The trouble is that the consequences of a Brexit vote have not been fully explored or understood. They need to be.

What happens to Britain in the days, months and years following Brexit is explored in the six chapters of this report. A decision by the UK to stay in or leave the EU is not simply one about what benefits Britain. Brexit would change the balance of power within the EU and the relations countries such as the United States or Japan have with the UK and Europe. The UK is a vital contributor to European foreign, security and defence policies and Europe's place in the world would diminish after a British withdrawal: for the United States, a Brexit would further complicate transatlantic relations; for the Commonwealth, a vital economic link to the Single Market would be lost; and worse, for Britain an English exit majority – with the opposite outcome in Scotland – would almost inevitably lead to a catastrophic result with Scotland departing from the UK and the island of Ireland once again divided. All of this would weaken Britain and enable outside powers to play on Europe's divisions.

This report offers a timely look at a future that might be less than one year away. It concludes with ten key questions that must be answered if the British people are to make an informed choice about their country's future. The public must know not only what the realistic options are for Britain outside the EU but also the political, diplomatic and economic fallout from a Brexit vote. Only then will the correct decision be taken as to whether the UK should or should not leave the EU.



CHAPTER 1

THE AFTERMATH OF THE VOTE: SHOCK AND AWE

“A landslide? It is an asteroid hitting the planet and destroying practically all life on earth”,
Professor Anthony King, 2 May 1997¹

THE POLITICAL CRISIS ENGENDERED BY THE RESULT

A decision by the British people to reject a policy first endorsed by a Prime Minister in July 1961 and endorsed by every government since then would be a seismic, if not a cosmic, political event. Nothing comparable to it can easily be identified in UK political history. There have been unexpected general election results – June 1970 and May 2015 are well-known examples – but the 1975 referendum on EEC membership and the 2011 referendum on the voting system both led to the result the Prime Minister of the day wanted (and the Opposition too in the case of 1975). There have been landslide defeats

¹ Quoted in 'Fatal flaws in chaos theory', Nancy Banks-Smith, *The Guardian*, 3 May 1997; Professor King was on the BBC's election night results programme: <http://www.theguardian.com/theguardian/2010/jun/08/archive-television-fatal-flaws-1997>

for incumbent governments, as in 1945 and 1997, some of which have been very dramatic, as Professor Anthony King's description of Labour's 1997 victory makes clear. But defeat for a British Government in this way would be unprecedented.

So the initial shock would be huge and the consequences unclear. Several factors would make this an exceptionally serious crisis. First of all, the finality of the decision would be of fundamental importance. Parties lose elections but they have another chance five years later. There is no second chance with a referendum, Irish precedents notwithstanding. The Prime Minister has been clear that this is an all or nothing vote: if the country votes out, the UK leaves the EU.²

Secondly, the Prime Minister has effectively gambled his own future and that of his preferred successor on winning the referendum. It is hard to see how David Cameron could remain in office after such a defeat. The Chancellor of the Exchequer would be severely damaged as well. After Britain's forced exit from the Exchange Rate Mechanism in 1992 it was not the financial cost that was the lasting consequence but the loss of the Conservative Party's reputation for economic competence, something it did not regain until January 2009.³

Thirdly, defeat would represent an existential threat to the United Kingdom. Scotland's First Minister, Nicola Sturgeon MSP, has said that a decision by the UK to vote to leave the EU when a majority in Scotland wanted to remain in would be sufficient to justify holding a second referendum on Scottish independence.⁴ In addition, the practical difficulties brought into the UK-Irish relationship by Britain leaving the EU, meaning that (for example) the island of Ireland would have an international boundary between an EU and non-EU country for the first time, would add a further complicating element.⁵

Fourthly, a particularly difficult factor is that there is no majority for Brexit in the current House of Commons. The people would have imposed their will on Parliament on a specific policy – an almost unheard of event – when most MPs (and peers too) would have voted differently from them. If the result was close, some parliamentarians could argue that the referendum might be binding on the Conservative Government but not binding on Parliament as a whole. This could lead to attempts to set aside the result or to hold a further referendum.

Fifthly, this would be a crisis in real time. Rolling news had only just begun in the UK with the launch of Sky News in 1989, three years before the crisis over Britain's departure from the Exchange Rate Mechanism in 1992; the BBC News channel was not launched until

² HM Government, 'Prime Minister's speech on Europe', 10 November 2015: <https://www.gov.uk/government/speeches/prime-ministers-speech-on-europe>

³ 'Tories regain lost ground as ICM poll shows faith in Gordon Brown waning', Julian Glover, *The Guardian*, 26 January 2009: <http://www.theguardian.com/politics/2009/jan/26/icm-poll>

⁴ 'Nicola Sturgeon warns second Scottish independence referendum "unstoppable" if UK leaves EU', Simon Johnson, *Daily Telegraph*, 15 October 2015: <http://www.telegraph.co.uk/news/politics/nicola-sturgeon/11933486/Nicola-Sturgeon-warns-second-Scottish-independence-referendum-unstoppable-if-UK-leaves-EU.html>

⁵ See Chapter 2 for a fuller discussion on this point; the Irish Foreign Minister, Charles Flanagan, spoke about the importance of the EU to the Anglo-Irish relationship at Chatham House in September 2015: see Chatham House, *British-Irish Relations: Implications of a Possible Brexit*, 7 September 2015: https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/08092015BritishIrish.pdf

five years later. The internet was in its infancy in 1992 and real-time services like Twitter did not exist. A crisis of this severity in 2016 or 2017 would take place under unprecedented 24-hour media scrutiny.

Lastly, the response of the markets cannot easily be predicted. If opinion polls had suggested, in the days before the vote, that the country would vote to leave then the result might have been priced in before it was declared. Had the pollsters forecast victory for the in campaign, the shock would be all the greater. Businesses hate instability and political instability would be inevitable in the aftermath of a vote to leave. Given the time that would be needed for the Government to come up with a new policy to replace EU membership, and the political difficulties of persuading Parliament to agree to the UK being outside the EU but bound by much of its rule book, market volatility would be likely to last for some time.

DEFEAT FOR THE INCUMBENT GOVERNMENT: LESSONS FROM OTHER COUNTRIES

As national referendums are rare in the United Kingdom and no government has been defeated in one, it is especially uncertain as to what would happen if the UK voted to leave. Do referendum defeats in other countries provide us with a guide as to the political consequences?

Although there are a number of high profile instances of other EU Member State governments losing a referendum in their country on an EU-related issue, crucially these were all referendums in which a change to the status quo was *rejected*. Ratifying the EU Constitutional Treaty was rejected in France and in the Netherlands in 2005; as was ratifying the Maastricht Treaty in Denmark in 1992; and Sweden turned down joining the euro in 2003. Ireland has held 38 referendums since 1937 as a result of a constitutional requirement; on two occasions the ratification of an EU Treaty was rejected (Nice in June 2001; Lisbon in June 2008) but both decisions were overturned by later referendums.⁶ Crucially, none of these examples involve a country giving up something it already had; instead, they involved deciding they wanted to keep the status quo. So these precedents, while they might tell us something about the difficulties an incumbent government can face in winning a referendum, do not really help us to assess the impact of a vote to leave the EU.

The only example of nation leaving the EU after a referendum is Greenland in 1982 but even this is not a wholly relevant example as Greenland is a territory of Denmark, has a very small population and a majority of Greenlanders had already voted against Denmark joining in 1972. But it is not without relevance that it took two years to negotiate an exit treaty with the EU and Greenland had to allow EU access to its fishing grounds

⁶ Full list of Irish referendums and their results can be found here: <http://electionsireland.org/results/referendum/summary.cfm>

after it left, the value of which to EU Member States was more than twice the compensation that Greenland received.⁷

WILL THE GOVERNMENT FALL?

Defeat on a central plank of the Government's programme always precipitates a political crisis. In this instance, the scale of the defeat for the Government would amount to an international humiliation for the Prime Minister and other leading figures. No doubt a motion of no confidence would be debated in the House of Commons and very probably defeated, as Conservative MPs would not want to bring down their own government but, like the Norway vote in 1940, this could be a hollow victory for the Prime Minister.⁸

The divisions within the Conservative Party, which would already have been exposed by the referendum campaign, would worsen in this situation. The anti-EU wing of the Party (a larger proportion of party members in the country than of MPs) would be elated and feel their years of campaigning to have been vindicated whereas the pro-EU membership wing, and the more centrist part of the Party that would have followed David Cameron's lead, would be devastated. After the UK's exit from the Exchange Rate Mechanism in 1992, divisions in the Party were greatly magnified and the government of John Major quickly lost both credibility and authority. Yet that government had a majority more than double that of David Cameron today.

There are factors that could mitigate the impact on the Conservatives. These include a historically weak Labour Leader in Jeremy Corbyn who, unlike John Smith in 1992, has a negative poll rating, and whose party would also have suffered a defeat.⁹ The SNP, now the third largest party in the Commons, would likely be preoccupied with the Scottish consequences of Brexit and not the UK Government. It would be painfully apparent to Conservatives that, if they did not stick together, the Party could face a catastrophic defeat in the 2020 general election in the manner of 1997 and 2001.

Despite those mitigating factors, the survival of David Cameron's Government would be in doubt. Governments can fall over a single issue or see their majority and authority ebb away in by-election defeats. The 1992-97 Parliament saw 17 by-elections with eight seats lost by the Conservatives, drastically reducing the Party's initial majority of 25.¹⁰ There was an even greater number of by-elections (21) between 2010 and 2015 but only two seats were lost by the parties in government, and in any case their majority was larger. The

⁷ See the debate in the House of Commons on the terms of Greenland's departure in HC Deb 20 July 1984, vol 64, cols 671-683: <http://hansard.millbanksystems.com/commons/1984/jul/20/greenland-withdrawal-from-eeec>

⁸ The Government of Neville Chamberlain won a motion of confidence at the end of the debate on the Norway operation on 8 May 1940 by 81 votes but the abstention of so many Conservative MPs led to Chamberlain's resignation two days later: HC Deb 8 May 1940, vol 360, cols 1251-1366: <http://hansard.millbanksystems.com/commons/1940/may/08/conduct-of-the-war>

⁹ 'Jeremy Corbyn becomes first ever Labour leader ever to score negative debut poll rating', Kate McCann, *Daily Telegraph*, 24 September 2015: http://www.telegraph.co.uk/news/politics/Jeremy_Corbyn/11888380/Jeremy-Corbyn-becomes-first-Labour-leader-ever-to-score-negative-debut-poll-rating.html

¹⁰ See Feargal McGuinness, *UK Election Statistics: 1918-2012*, House of Commons Library Research Paper 12/43: <http://researchbriefings.files.parliament.uk/documents/RP12-43/RP12-43.pdf>

present Government is vulnerable if it loses seats in by-elections because of the smallness of its House of Commons majority, which is currently 12.

In addition, the potential for a collapse in businesses' confidence in the Government is high. Businesses have been loath to criticise the decision to hold a referendum but support for the UK remaining a member of the EU has been made clear by many individual business people as well as trade associations and representative bodies.¹¹ The uncertainty for British business if there was a vote to leave would be damaging and could put at risk both short-term and long-term investment decisions. This uncertainty will influence the attitude of business to the Government and given the traditionally close relationship between the Conservative Party and business, will impact on the Party and on the Government.

The Government would probably hang on because it would not be in the interests of Conservative MPs for it to collapse but it would be badly wounded, having lost authority at home and abroad. Under the Fixed-term Parliaments Act 2011, the Government could not be removed unless it lost a confidence vote in the House of Commons. Without such a vote, there would be no general election until May 2020, meaning that the negotiation of the terms of Britain's exit from the EU would have to be carried out by a government whose policy had just been rejected by voters and whose authority was ebbing away.

WILL THERE BE A RUN ON STERLING?

'Goodbye, Great Britain. It was nice knowing you.'¹²

Sterling crises were a feature of post-war Britain until the UK adopted a floating currency in 1980; "a run on the pound" was a familiar phrase in the political discourse and a concept that sent a chill through Whitehall and Westminster. The political shock of a vote to leave would be accompanied by a prolonged period of uncertainty because the outcome would have been unexpected and one for which government would have been unprepared. Would it cause an adverse market reaction, including a fall in the value of the pound?

The globalised nature of market trading means that large rises or falls can occur suddenly, triggered by a range of factors from significant poor economic news to an unexpected political crisis. In the present context, an example might be that the UK voting to leave causes a fall in the share price of American or Japanese companies with major investments in the UK on stock markets in the USA and Japan. Such a fall does not necessarily register directly on the UK markets (because the shares may not be traded here) but the sentiment it creates can affect our markets.

¹¹ For example, CBI members' poll showing 78 per cent support staying in: CBI, 'Factsheet 2 - Benefits of EU membership outweigh costs', 30 November 2015:

<http://news.cbi.org.uk/campaigns/our-global-future/factsheets/factsheet-2-benefits-of-eu-membership-outweigh-costs/>

¹² A 1975 *Wall Street Journal* headline above an editorial about the collapse of the UK economy; cited in 'Brutal Realism and the Promise of Better Times', Iain Martin, *Wall Street Journal*, 2 December 2009:

<http://www.wsj.com/news/articles/SB10001424052748704107104574570122315830890>

Unexpected political news has caused falls in the pound in the past. While on a trip to Colombia in 1992, it was reported that the Prime Minister, John Major, had been killed in a helicopter crash; sterling fell on this news.¹³ There was market volatility in the run up to the referendum on Scottish independence in September 2014. The pound did fall after two opinion polls from YouGov on 2 and 7 September 2014 showed greater support for Scottish independence than expected.¹⁴ On 8 September, the day after a poll showed the Yes campaign ahead, shares in Scottish businesses fell, with those in Lloyds Banking Group falling more than three per cent, Standard Life 2.7 per cent and RBS 2.05 per cent.¹⁵

What happened in Scotland is a pointer to what might happen in the EU referendum. As one of the experts who attended our specially convened roundtable on the implications of Brexit put it, “the markets will have their vote in advance”.

The consensus of those we consulted was that, while the markets would suffer some turbulence from the shock of the news, the uncertainty would be about the long-term position of the UK outside rather than the immediate result. It is a “mistake to think that there will be an instant, sharp reaction” as another participant put it.¹⁶

The difficulties in the market might well fall on individual companies or perhaps sectors that markets judged to be particularly vulnerable. Share values could fall for those most exposed and the company bond markets could also be affected.

It was suggested that the second order effects might be felt more in the rest of the EU. Markets could well be doubtful about the enthusiasm for competitiveness in the EU without the UK at the table to push through de-regulatory, pro-competition Single Market measures. Companies in other EU countries for whom the UK is a significant export market could see a fall in their share price.

Inevitably there are many imponderables when discussing the question of how the markets would react to the UK voting to leave. There are short-, medium- and long-term effects and all might register in the markets at various times. As long as Britain’s position vis-à-vis the EU was unclear, the expert view was that the markets would be jittery because of the uncertainty. How much that market turbulence would feed through to the real economy is one of many questions that can only be posed, not answered, at this stage.

BEYOND THE FIRST FEW DAYS

In politics, as in the media, the circus tends to move on after a few days. Other pressing issues would distract attention and the issue would fall in significance. Contrary to the

¹³ Cited in John Major, *John Major: The Autobiography* (London: Harper Collins, 1999), p. 510

¹⁴ Cited in ‘Daily question: How is the referendum affecting markets?’, Colletta Smith, *BBC News*, 16 September 2015: <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-29205023>

¹⁵ *Ibid.*

¹⁶ British Influence convened a roundtable of experts on a variety of relevant issues for a discussion conducted under the Chatham House rule.

view of many Brexit supporters, we would not leave the EU the day after the vote. The ordinary business of the EU would continue, with British officials and Ministers in attendance.

But the issue of Britain leaving would not go away and from time to time would flare up dramatically. In due course, there would be another big decision for the Government and the British people: whether or not to accept whatever agreement had been negotiated with the EU or to walk away without such an agreement. In the meantime, the Government would have many decisions to make, reviewing and deciding in each area of EU policy what it wished to do, against the backdrop of uncertainty in politics and in the economy. The first set of problems for the Government would be constitutional and political.

LEAVING THE EU: THE LEGAL MECHANISM

“If we leave the EU, we cannot of course leave Europe. It will remain for many years our biggest market, and forever our geographical neighbourhood. We are tied by a complex web of legal commitments”, the Prime Minister.¹⁷

Article 50 of the Treaty on European Union sets out the procedure for a Member State to leave the European Union. It would begin with the UK informing the President of the European Council of its intention to leave; from that point the clock starts ticking on two years to exit under this procedure. This is because paragraph 2 of Article 50 says that the EU Treaties will cease to apply to the withdrawing state two years after the notification unless the European Council and the Member State concerned unanimously decide to extend that period. The European Council would lay down guidelines for the negotiation, which would then be conducted by the Commission with the UK government. These negotiations are intended to result in an agreement between the UK and the remaining Member States that would be adopted by the Council of Ministers, by qualified majority, after obtaining the consent of the European Parliament. The UK would no longer be bound by its EU Treaty obligations once the agreement came into force or two years after notification of exit.

It should be noted that:

- the UK would not be allowed to attend or vote in Council of Ministers meetings discussing its exit, nor those relating to the agreement;
- a two-year period to come up with new British policies for (for example) trade, farming, fisheries, the environment, extradition of offenders and civil aviation is unlikely to be sufficient;
- the two year period can be extended by unanimous agreement of all Member States;
- the European Parliament would have a veto over the proposed agreement with the UK;

¹⁷ HM Government 'EU Speech at Bloomberg', 23 January 2013: <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>

- the UK could leave without making an agreement with the other Member States but this option, often referred to as a “disorderly exit”, would carry additional risks and increased uncertainty for UK businesses;
- an agreement between the EU and the UK would not form part of the primary law of the EU *i.e.* it would not amend the EU Treaties, making it likely that there would have to be a separate treaty between the remaining Member States in order to repeal provisions concerning the UK from the existing EU Treaties;¹⁸
- separate treaties would be required if the UK wished to join the European Free Trade Area and a further treaty would be required to join the European Economic Area (EFTA’s partnership with the EU);
- an agreement between the UK and the EU might well be a “mixed agreement” *i.e.* one that would require Member States to adopt it through their own constitutional procedure in addition to the EU ratifying it; this would add complexity and delay.¹⁹

As Sir Alan Dashwood has pointed out, the procedure laid down in the Treaty on European Union makes withdrawal sound “deceptively simple” but in reality there would be “a huge mass of complex issues to resolve”.²⁰ These include: the future rights of British citizens and companies operating elsewhere in the EU and vice versa for those from other EU countries in the UK; when the UK should withdraw from the EU’s institutions, including British citizens working for them; the future of EU agencies based in the UK; and, not least, which parts of EU law the UK would wish to keep and those it would wish to repeal or replace. These issues will be considered in the next two chapters of this report.

Nick Kent

¹⁸ Adam Łazowski, *How to withdraw from the European Union? Confronting hard reality*, Centre for European Policy Studies, 16 January 2013: https://www.ceps.eu/system/files/How%20to%20withdraw%20from%20the%20EU_0.pdf

¹⁹ *Ibid.*

²⁰ Sir Alan Dashwood, 'Untying the knot with Europe: The legal implications of UK withdrawal from the EU', Lecture at the UK Association for European Law, 27 February 2015 (summarised: <https://delilawblog.wordpress.com/2015/03/26/alan-dashwood-ending-a-bad-marriage-with-a-messy-divorce-is-this-the-future-of-the-uks-relationship-with-the-european-union/>)



CHAPTER 2

THE CONSTITUTIONAL IMPLICATIONS

INTRODUCTION

Several studies of what would happen if the UK voted to leave have highlighted how complex and difficult that situation would be.²¹ The Government would have to make many important decisions about future policy during a period of great uncertainty and likely political turmoil. One study even suggests that a new government department would be needed, the Ministry of EU Transitional Arrangements (META), backed up by an Advisory Council, to implement the decision to leave.²² Whatever the administrative arrangements, a vote to leave would have considerable constitutional implications. In this chapter, we survey those issues, beginning with the impact at Westminster.

THE IMPACT AT WESTMINSTER

As Chapter 1 noted, a vote to leave would be a seismic decision, rejecting the view of all British Prime Ministers and of the House of Commons since 1961. Even if the Government

²¹ See Gregor Irwin, *BREXIT: the impact on the UK and the EU*, Global Counsel, 25 June 2015: http://www.global-counsel.co.uk/system/files/publications/Global_Counsel_Impact_of_Brexit_June_2015.pdf; and Adam Łazowski, *How to withdraw from the European Union? Confronting hard reality*, Centre for European Policy Studies, 16 January 2013: https://www.ceps.eu/system/files/How%20to%20withdraw%20from%20the%20EU_0.pdf

²² Ben Clements, *Britain outside the European Union*, Institute for Economic Affairs, 9 April 2014, pp. 13-14: http://www.iea.org.uk/sites/default/files/publications/files/Clement%20BREXIT%20entry_for%20web_0.pdf

did not fall, it would be faced with a sharp loss of credibility and authority both at home and abroad. In addition, uncertainty over the Prime Minister's future would be a constant theme in the political and media discourse. David Cameron's already announced intention to retire as Prime Minister during this Parliament would increase the pressure for him to go immediately. It would no doubt be argued that he should allow a new Conservative Party Leader to conduct the negotiations on the details of Britain's departure from the EU and then to take his party into the 2020 general election.

The first question is whether the Government would be able to survive until that general election. The Fixed-term Parliaments Act 2011 has established the date of future general elections as the first Thursday in May every five years. This means that the next general election will be held on Thursday 7 May 2020 unless the procedure in the Act for calling an earlier election is triggered.

The procedure in the Act states that the House of Commons must pass a motion reading "that this House has no confidence in Her Majesty's Government", with a majority of at least two-thirds of all Commons seats (including any that are vacant). This is a very high threshold and once such a motion has been passed, there is then a 14 day period for a new government to be formed.²³ It is only if a new government cannot be formed that Parliament is then dissolved and a general election takes place.²⁴

The difficulty of removing the Government through the 2011 Act procedure would make it likely that, barring the departure from the Conservative Party of the half a dozen MPs needed to deprive the Government of its majority and their voting with other parties in the confidence vote, it would limp on. That is assuming that the Government did not itself want a new mandate from voters; if it did so, it would have to get its own MPs to vote for a motion of no confidence since the Act abolished the prerogative power of the Monarch to dissolve Parliament at the Prime Minister's request.²⁵

A government weakened by the rejection of one of its central policies, facing domestic political turmoil, including in its own party ranks, would have to come up with a series of new policies, most crucial of which would be that concerning our future relationship with the EU. Worse, the Government's loss of authority would reduce its negotiating power in the discussions with the EU on whether, and in what form, the UK should have a relationship with it after leaving.

The more difficult the negotiations, the more difficult the task of persuading Parliament to accept any such agreement. A major question for the Government would be whether it could get Parliament to pass the necessary enabling legislation in order to legally implement such an agreement with the EU. The likelihood of reaching agreement with the EU is considered in Chapter 4.

²³ *Fixed-term Parliaments Act 2011*, Section 2: http://www.legislation.gov.uk/ukpga/2011/14/pdfs/ukpga_20110014_en.pdf

²⁴ See Richard Kelly, Oonagh Gay & Isobel White, *Fixed-term Parliaments Act 2011*, House of Commons Library Standard Note 14/6111, 16 October 2014: <http://researchbriefings.files.parliament.uk/documents/SN06111/SN06111.pdf>

²⁵ House of Lords Select Committee on the Constitution, *8th Report of Session 2010-11: Fixed-term Parliaments Bill*, HL 69, 16 December 2010, p. 34 *et seq.*: <http://www.publications.parliament.uk/pa/ld201011/ldselect/ldconst/69/69.pdf>

Assessing how the public would feel after a vote to leave is in the realms of speculation. But the febrile atmosphere at Westminster would be likely to influence public opinion. There is a danger, in a country where respect for politicians is in any case very low, of a rebound against the political class as a whole.²⁶ This is particularly so because many of those supporting Britain leaving the EU give the impression that the UK's departure from the EU is a simple matter, in which the UK would in any case have the upper hand.²⁷

Whatever people's opinions of UK membership of the EU, it is wholly unrealistic to argue that departure from it would not be time-consuming, complex and politically as well as economically difficult. Those who argue for Brexit cannot on the one hand say that the EU dominates the lives of British people, generates most of our laws and controls much of our economy and then claim that leaving it would be a fairly trivial matter. There is a serious danger that voters who voted out might feel cheated after the referendum on discovering that leaving the EU is more difficult than they had imagined and, in addition, with potential losses to themselves and their families that they had not previously been aware of. As Chapter 4 shows, they would also find that, while the UK can leave the EU, it cannot escape its influence.

UK & EU LAW

An issue of immediate importance for Parliament would be the question of the relationship between UK and EU law. Although there is a tendency to exaggerate the proportion of UK law that has its origins in the EU, the EU is a major regulator and there is now a body of law that derives from the UK's EU membership. Built up over many years, it is particularly important to business (because of the EU Single Market) and to the police and the Crown Prosecution Service (because of the European Arrest Warrant and other aspects of EU crime and justice co-operation). In theory, under Article 50, the situation would not change until the UK left the EU *i.e.* the UK would continue to implement agreed EU laws, attend and vote in the Council of Ministers on proposed legislation and be subject to the jurisdiction of the European Court of Justice. In practice, this would prove difficult. Ministers and Parliament might well balk at spending time (and therefore public money) enacting EU laws that the UK may in the end not be implementing.

This would be a sensitive area requiring careful handling. There would, for example, be immediate decisions about the timetabling of parliamentary debates on EU legislation. It should not be assumed that because the UK was leaving the EU, all EU law would be repealed. Indeed, one advocate of withdrawal has suggested that in the most probable scenario after exit the UK would have to accept two-thirds of the EU's existing laws (the *acquis*) so rapid repeal of EU-derived laws would be unwise as they might need to be re-enacted following agreement with the EU.²⁸

²⁶ Ipsos MORI have been polling on this since 1983; just 16 per cent of adults said they trusted politicians in their most recent poll (almost half the rating for bankers): Ipsos MORI, *Ipsos MORI Veracity Index*, 5 January 2015: <https://www.ipsos-mori.com/Assets/Docs/Polls/Veracity%20Index%202014%20topline.pdf>

²⁷ For example, in the FAQs on the website of Leave.eu, they say that: "A replacement trade deal with the EU, covering at least 90% of trade is a certainty" (FAQ 9): <http://leave.eu/en/faqs>

²⁸ Iain Mansfield, *A Blueprint for Britain: Openness not Isolation*, Institute of Economic Affairs, 9 April 2014, p. 45: http://www.iea.org.uk/sites/default/files/publications/files/Brexit%20Entry%20170_final_bio_web.pdf

Much of the UK's law deriving from the EU has been enacted through Section 2(2) of the European Communities Act 1972, which provides an order-making power for the implementation of EU law in the United Kingdom.²⁹ If the 1972 Act, which is the means by which the UK's Treaty of Accession (and subsequent EU Treaties to which we are a signatory) is implemented, were to be repealed, it would be necessary to introduce fresh legislation to preserve those parts of EU law which wished to retain.³⁰ In addition, the legal precedents established in the courts as a result of them following EU law would remain unless explicitly overturned.³¹

ACQUIRED RIGHTS

Introduction

Since the UK joined the then European Economic Community in 1973, British citizens have been provided with a vast array of rights, freedoms and obligations by the EU Treaties and EU law. But what happens if the UK decides to withdraw from the European Union and the EU Treaties no longer apply? Do those rights immediately cease to exist as soon as there is a vote to leave? Or can some or all of these rights still be relied upon and enforced, at least until the UK Government negotiates a new relationship with the EU?

What are “acquired rights”?

A right is “acquired” or “vested” if it is relied upon during the time that a treaty or law providing the right is in force and is not automatically removed or reversed once the treaty or law no longer applies. In the case of EU law, British citizens and businesses living and operating in the UK or in the wider EU have made use of a variety of rights, such as freedom of movement and freedom of establishment, for over four decades. These rights have now become so engrained in people's lives and the British legal system to the point that they have developed their own significance, independent of the treaties and laws from which they originated.³²

Acquired rights and withdrawal from the EU

There is a general consensus that it would be in the best interests of the UK (and the EU) if it conducted an “orderly” withdrawal from the Union by negotiating transitional arrangements that protect the acquired rights of British citizens and businesses, as well as those of EU citizens and businesses living and operating within the UK.³³ It is not merely the case that both sides are compelled to reach such an agreement by political expediency: general principles of EU law concerning legitimacy and legal certainty as laid down in the Treaty of Lisbon presuppose that the UK and the EU would be required, or at least strongly

²⁹ *European Communities Act 1972*, as amended: <http://www.legislation.gov.uk/ukpga/1972/68/part/I>

³⁰ Vaughne Miller *et al.*, *Exiting the EU: UK reform proposals, legal impact and alternatives to membership*, House of Commons Library Briefing Paper 15/7214, 16 October 2015, p. 33: <http://researchbriefings.files.parliament.uk/documents/CBP-7214/CBP-7214.pdf>

³¹ See, e.g., Lee Curtis & Lauren Somers, ‘What a Brexit would mean for UK and EU trademark law’, *World Trademark Review*, Issue 57 (2015), pp. 47-50

³² Lord McNair, *The Law of Treaties* (2nd Edition, Oxford: Clarendon Press, 1961), pp. 531-532

³³ Sir Alan Dashwood, *supra* n. 20; see also Adam Łazowski, *supra* n. 18, p. 2

recommended by civil servants, diplomats and government lawyers, to agree on the protection of acquired rights.³⁴

Greenland as a precedent?

Greenland withdrew from the EU in 1985 and under the Greenland Treaty a transitional period was established during which Greenlanders and non-nationals and businesses operating in Greenland retained acquired rights.³⁵ But it seems unlikely that such an option would be suitable for a UK withdrawal, despite what has been suggested by those in favour of Brexit.³⁶ First, Greenland is a territory of Denmark, which remained an EU Member State after Greenland withdrew; as such, there was little need for a substantial agreement on post-withdrawal relations between Greenland and the EU since Greenland's interests could still be represented by Denmark – there is no such possibility if the UK withdraws. Secondly, the small population of Greenland and the nature of its economy (predominantly based on fisheries) meant that withdrawal was more straightforward than it would be for the UK.³⁷ In the case of the UK's withdrawal from the EU, a more substantial transitional agreement would be needed due to how integrated the UK is within EU policies and the EU Single Market.

Acquired rights and international law

While it is likely that the UK and the EU will negotiate a transitional agreement covering acquired rights, it is still a possibility that there will be no agreement. Yet even if an agreement is negotiated, the most thorough transitional agreement could still have some gaps through which acquired rights could fall.³⁸ If this occurs, international law should be sufficient to protect acquired rights.³⁹ For example, under the Vienna Convention on the Law of Treaties, while parties to a treaty can be released from future obligations by withdrawing from the agreement, rights and obligations acquired under the same treaty are not affected.⁴⁰ Furthermore, British courts deciding cases brought by or against British individuals and businesses would apply minimum standards of protection of acquired rights derived from international legal principles.

Protection under EU law?

It was mentioned above that general principles of EU law would encourage the UK and the EU to reach at least a transitional agreement on the protection of acquired rights. But there are some who argue that there are no substantive provisions in EU legislation or EU case law

³⁴ Eleanor Sharpston, 'European Community Law and the Doctrine of Legitimate Expectations: How Legitimate, and for Whom', *Northwestern Journal of International Law & Business*, 11(1) (1990), pp. 87-103; see also Katrin Fernekeß, Solveiga Palevičienė & Manu Thadikaran, *The Future of the United Kingdom in Europe: Exit Scenarios and their Implications on Trade Relations*, Graduate Institute of International and Development Studies, 7 January 2014, pp. 6, 24: https://www.tradelab.org/documents/clinics/iheid/The_Future_of_the_United_Kingdom_in_Europe.pdf

³⁵ *Treaty amending, with regard to Greenland, the Treaties establishing the European Communities*, Protocol on special arrangements for Greenland, 1985 OJ L 29/1, p. 7: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:1985:029:FULL&from=EN>

³⁶ See, e.g., Business for Britain, *Change, or go*, 25 September 2014, pp. 382, 964: <http://forbritain.org/cogwholebook.pdf>

³⁷ Sir Alan Dashwood, *supra* n. 20; Phedon Nicolaidis, *Is Withdrawal from the European Union a Manageable Option? A Review of Economic and Legal Complexities*, Bruges European Economic Policy Briefing 28/2013, 23 May 2013, p. 7

³⁸ Vaughne Miller (ed.), *Leaving the EU*, House of Commons Library Research Paper 13/42, 1 July 2013, p. 15: www.parliament.uk/briefing-papers/RP13-42.pdf

³⁹ Sir Alan Dashwood, *supra* n. 20

⁴⁰ *United Nations Convention on the Law of Treaties* (adopted 23 May 1969, entered into force 27 January 1980), 1155 UNTS 331, arts. 65-72: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>; while Article 70 does not directly address individual rights, rules of legal interpretation suggest that they are covered: see Oliver Corten & Pierre Klein (eds.), *The Vienna Conventions on the Law of Treaties: A Commentary – Volume I* (Oxford: Oxford University Press, 2011), pp. 1585-1599; and Mark Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Leiden: Martinus Nijhoff, 2009), pp. 872-874

to support the existence of acquired rights.⁴¹ While it is true that there are no provisions in EU law or the EU Treaties that directly include rules on the possible protection of acquired rights, case law such as *Van Gen den Loos*, which talks of EU law as having conferred rights that have become part of a “legal heritage”, suggests that acquired rights are protected under EU law.⁴²

Conclusion

In all likelihood there will be an agreement reached between the UK and the EU on the protection of acquired rights in the event of Brexit. But what should also be clear is that EU law will not immediately cease to apply in the UK upon withdrawal, despite what some may argue.⁴³ The extent of EU law and its incorporation and entrenchment within the British legal system makes this practically impossible.⁴⁴ But more importantly, the subject matter of the acquired rights derived from that EU law – social policy, discrimination law, fundamental rights, free movement, *etc.* – cover such a wide range of matters affecting the freedoms of millions of individuals and businesses here in the UK and in the wider EU that any repeal would be highly controversial and not quickly attainable.⁴⁵

Erik Cummins

TWO UNIONS OR NONE?

Support for Scotland to remain in the EU was at 65 per cent in November 2015, with supporters of leaving way behind at 22 per cent.⁴⁶ By contrast, the overall picture for Great Britain was far closer, with a 16 per cent lead for those supporting the UK remaining a member of the EU and a much smaller margin between those who would strongly support the UK staying in and those who would definitely vote to leave than in Scotland.⁴⁷

This clear difference has raised concerns that if Scotland voted in favour of staying in the EU but the UK as a whole voted to leave, the movement for Scottish independence would receive a new impetus. Indeed, the First Minister of Scotland has said that such a vote would be the trigger for holding a second referendum on Scottish independence.⁴⁸ Strathclyde University Professor John Curtice has said that if Scotland voted to stay in the EU but the UK as a whole voted to leave:

⁴¹ See Jean-Claude Piris, *Brexit or Britin: is it really colder outside?*, Robert Schuman Foundation Policy Paper No. 369, 26 October 2015, p. 10: <http://www.robert-schuman.eu/en/doc/questions-d-europe/qe-355-bis-en.pdf>

⁴² *NV Algemene Transport en Expenditie Onderneming Van Gen den Loos v. Nederlandse Administratie der Belastingen*, Case C-26/62, [1963] ECR 1, pp. 2, 12: <http://curia.europa.eu/Juris/showPdf.jsf?text=&docid=87120&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=691754>

⁴³ See, e.g., Ben Clements, *supra* n. 22, pp. 12, 16, 48, 81

⁴⁴ Vaughne Miller *et al.*, *supra* n. 30, p. 48

⁴⁵ Sionaidh Douglas-Scott, ‘Constitutional Implications of a UK Exit from the EU: Some Questions That Really Must Be Asked’, UK Constitutional Law Association, 17 April 2015: <http://wp.me/p1cVqo-UN>

⁴⁶ Ipsos MORI, *Scottish Public Opinion Monitor*, 18 November 2015, p. 24 *et seq.*:

<https://www.ipsos-mori.com/Assets/Docs/Scotland/scotland-opinion-monitor-november-2015-tables.pdf>

⁴⁷ Ipsos MORI, *Political Monitor - Europe*, 22 October 2015, p. 12: https://www.ipsos-mori.com/Assets/Docs/Polls/polmon_oct15_tables_EU.pdf; Survation carried out a poll for British Future in June 2015, which had breakdowns for England, Scotland and Wales and showed a gap of about five points between remain and leave in England: Survation, *Issues Poll GB*, 18 May 2015: <http://survation.com/wp-content/uploads/2015/06/Full-Second-Release-Tables.pdf>

⁴⁸ ‘Nicola Sturgeon warns second Scottish independence referendum “unstoppable” if UK leaves EU’, Simon Johnson, *Daily Telegraph*, 15 October 2015: <http://www.telegraph.co.uk/news/politics/nicola-sturgeon/11933486/Nicola-Sturgeon-warns-second-Scottish-independence-referendum-unstoppable-if-UK-leaves-EU.html>

In those circumstances all bets on whether there would be a second referendum and what the outcome might be would be off – certainly it is not just Britain's membership of the EU that is at 'risk' from the EU referendum, but also the future of the Union.⁴⁹

In law, the Scottish Parliament has no power to authorise such a referendum as the Union is a reserved matter under Schedule 5 of the Scotland Act 1998. The 2014 referendum was authorised by the Scottish Parliament but only because the Westminster Parliament gave it the specific power to hold a referendum by the end of 2014.⁵⁰ Such consent might not be so readily forthcoming in this situation but pressure on Westminster to allow a second independence referendum would be considerable, not least because the SNP is now the third largest party in the House of Commons.⁵¹

Even if a second referendum was held on independence, would Brexit increase the likelihood of Scotland voting yes to independence? It is very likely to do so, not least because of the importance of the EU membership issue in the 2014 referendum. A key part of the nationalists' case for independence was that EU membership would enable Scotland to have access to the EU Single Market and play a full part in world affairs. The Scottish National Party had claimed that Scotland would be able to stay in the EU by right if it voted for independence.⁵² But this was challenged by the then President of the Commission who said that Scotland would cease to be a member of the EU if it voted to leave the UK and would have to re-apply for membership.⁵³ The Spanish Government, mindful of the precedent that would be set if part of an existing EU Member State broke away and was quickly allowed to re-join the EU, made it clear that an independent Scotland would have to wait its turn for its application to be considered.⁵⁴

Polls at the time of independence referendum showed that if Scotland was less likely to be in the EU as an independent state that would make Labour voters more likely to vote no to independence.⁵⁵ Although subsequent research doesn't suggest that the EU issue was an important factor overall in the final results (fears about the impact on the Scottish economy were more important), it was one of the major issues of the campaign and its importance reflected the strong support for membership of the EU in Scotland.⁵⁶ All the available evidence indicates that the risk of a vote to leave triggering a renewed Scottish independence campaign is high. Given the apparent differences in view

⁴⁹ Quoted in 'Scots Want In, English want Out: EU Polls Reveals UK Split over Brexit', Donna Rachel Edmunds, *Breitbart*, 20 July 2015: <http://www.breitbart.com/london/2015/07/20/scots-want-to-stay-in-eu-as-poll-shows-uk-split-over-brexit/>

⁵⁰ Jamie Hunter & Rachael Johnston, 'A Second Independence Referendum for Scotland?', *Law-Now*, 4 August 2015: <http://www.cms-lawnow.com/ealerts/2015/08/a-second-independence-referendum-for-scotland>

⁵¹ The SNP has 55 MPs in the 2015-2020 House of Commons: <http://www.parliament.uk/mps-lords-and-offices/mps/current-state-of-the-parties/>

⁵² Discussed in 'Key Topic: European Union', *The Scotsman*, 21 October 2015: <http://www.scotsman.com/scottish-independence/key-topic/european-union/>

⁵³ 'Impossible for Scotland to join EU', says Barroso', Andrew Whitaker, *The Scotsman*, 16 February 2014: <http://www.scotsman.com/news/politics/impossible-for-scotland-to-join-eu-says-barroso-1-3308359>

⁵⁴ 'Scottish independence: Spain warning over EU entry', *The Scotsman*, 03 February 2014: <http://www.scotsman.com/news/politics/scottish-independence-spain-warning-over-eu-entry-1-3292575>

⁵⁵ Suvration, *Scottish Independence Issues Poll – Prepared for the Scottish Daily Mail*, 19 February 2014: <http://suvration.com/wp-content/uploads/2014/02/Scotland-Issues-Poll-Report.pdf>

⁵⁶ The Scottish Referendum Study published the results of detailed opinion research amongst referendum voters: see *Why Scotland voted 'No'*, 29 January 2015: <http://www.scottishreferendumstudy.com/files/2015/01/RHUL-slides.pdf>; see also Emily Randall, Pete Foster & Erik Cummins, *Independence Referendum Watch Report*, Unlock Democracy, 8 December 2014, pp. 9, 13: http://test.unlockdemocracy.com/page/-/publications/Independence_Referendum_Watch_Report.pdf

between Scottish and English voters on EU membership, and the way the EU membership question played in the 2014 Scottish independence referendum, a vote by the UK to leave the EU raises the stakes dramatically on whether the Union with Scotland could survive. So a vote to leave would trigger a constitutional crisis over the future of the Union. Whether that would result in Scotland choosing independence is another matter but the issue would be a major de-stabilising factor in the period after a vote to leave.

The situation in Wales is different. Support for an independent Wales is below 10 per cent and Wales is closer to England in its attitude to the EU.⁵⁷ Nonetheless, the Welsh First Minister has said it would be “unacceptable” for the UK to leave the EU against the wishes of the people of Wales.⁵⁸ How Wales is affected would depend on how its electorate voted in the EU referendum but a majority vote to stay in the EU in Wales with a UK a vote to leave would raise questions about Wales’s relationship with the rest of the UK.

THE IRISH DIMENSION

The UK’s relationship with the Republic of Ireland, and the future of Northern Ireland, is an issue that has gone almost unremarked in the debate about the UK’s future relationship with the EU. This is extraordinary given the historic ties between Britain and Ireland; the interdependence of the two countries’ economies; the fact that both countries joined the EEC together in 1973; and the way in which EU membership has enabled the UK and the Republic to normalise their relations over the last 20 years, to the immense benefit of Northern Ireland. In the event of a UK vote to leave, all of these issues would become of first importance.

The apparent disinterest at Westminster in the Irish dimension to the Brexit debate partly reflects the narrow English nationalism of many opposed to EU membership but also a return to the benign neglect of Ireland (north and south) that was the norm in the period 1922 to 1969. There is not a lot of interest amongst MPs from other parts of the UK in the affairs of Northern Ireland and the significant improvement in Anglo-Irish relations of recent years has gone largely unremarked in British political circles. In so far as it is noticed, it is taken for granted. The notion that the hard-won peace in Northern Ireland might be threatened by the UK’s departure from the EU is barely recognised. Indeed, the crisis in Anglo-Irish relations could well prove to be as big a political problem as the question of the future of the Union in the aftermath of a vote to leave.

The reasons for this lie in the closely interwoven economies of the UK and the Republic; the difficulties of maintaining the currently open border between the two countries if one was inside the EU and the other outside; and the risk to the fragile peace process in Northern Ireland because of the separation of the nationalist community in the north from

⁵⁷ ICM, *ICM Poll for BBC Wales*, 6 March 2015, found support for independence at six per cent: http://www.icmunlimited.com/data/media/pdf/2015_bbcwales_march_poll.pdf; Cardiff University, ‘Welsh attitudes towards EU membership revealed’, 27 February 2015: <http://www.cardiff.ac.uk/news/view/82643-welsh-attitudes-towards-eu-membership-revealed>

⁵⁸ ‘Sturgeon and Welsh First Minister Carwyn Jones in joint call over EU vote’, Magnus Gardham, *The Herald*, 3 June 2015: http://www.heraldsotland.com/news/13411315.Sturgeon_and_Welsh_First_Minister_Carwyn_Jones_in_joint_call_over_EU_vote/

the south. Of course attempts would be made to deal with all of these issues if the UK were to leave but none of them could easily be solved.

The extent to which the economies of Britain and Ireland are intertwined is not often discussed within the UK. For example, the Republic is the UK's largest supplier of food and drink, making the UK (at 40 per cent) the largest export market for Irish agricultural products. Furthermore, the "supply chains of the two countries are dependent on each other's ingredients and products for their respective national demand".⁵⁹ Ireland is the UK's fifth largest export market overall and still ahead of China despite a sharp fall in UK exports to Ireland in 2014 and an even larger rise in exports to China.⁶⁰ That tight economic partnership could be threatened by the UK being outside the EU as (and this is discussed in Chapter 4) the UK would no longer have the same level of access to Irish markets that it has now by virtue of both countries being in the EU. UK exports to Ireland would be subject to the EU's Common Customs Tariff, which would increase the price of UK goods in Ireland thus making them less competitive, and to customs controls, which would delay the movement of goods and further increase exporters' costs. On average, the combined effect of these two costs has been estimated at 8.7 per cent of the transaction value.⁶¹

The border between north and south in Ireland has been an open one for almost the whole of the period since 1922. The UK and the Republic of Ireland are both in the British Isles Common Travel Area (CTA), along with the Channel Islands and the Isle of Man, which means passport-free travel between all the participating countries and dependencies. This open borders policy reflects the reality of an atypical international boundary within the island of Ireland, which is largely a set of county boundaries, in some cases dating from the seventeenth century, and which is so irregular that in places it runs through residential property.⁶² Introducing border controls on that boundary would result in considerable economic and social dislocation, in addition to having political ramifications.

A study of the north-west of Ireland, around the Northern Ireland city of Derry and the neighbouring communities in the Irish Republic, has shown the extent of the cross-border flows, not just for leisure but for work. This is not surprising as Derry has the largest concentration of US businesses who have invested in Northern Ireland offering work.⁶³ The 2011 censuses in Ireland and Northern Ireland found that 14,800 adults regularly commuted between the two parts of Ireland for work or for study. The flow from the Republic to Northern Ireland was greater than that in the opposite direction.⁶⁴ While the

⁵⁹ Food & Drink Industry Ireland, 'Sector Profile', 30 November 2015:

http://www.fdi.ie/Sectors/FDII/FDII.nsf/vPages/Food_Industry_in_Ireland~sector-profile?OpenDocument; Dáithí O'Ceallaigh & Paul Gillespie, *Britain & Europe: the Endgame – An Irish Perspective* (Dublin: Institute of International & European Affairs, 2015), p. 133: http://www.iiea.com/ftp/Publications/Britain-and-Europe-The-Endgame_DigitalVersion.pdf

⁶⁰ HMRC, *UK Exports General Trade: Top 25 Trading Partners*, 1 September: https://www.uktradeinfo.com/Statistics/Documents/ctys_1509.xls

⁶¹ This is on all exports to the EU, not just Ireland: cited in HM Government, *EU Membership & Trade*, 1 December 2010, p. 5: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220968/foi_eumembership_trade.pdf

⁶² KJ Rankin, *The Creation and Consolidation of the Irish Border*, MFPP Working Papers No. 2, 21 February 2007: <http://www.qub.ac.uk/research-centres/CentreforInternationalBordersResearch/Publications/WorkingPapers/MappingFrontiersworkingpapers/Filetoupload,175395,en.pdf>

⁶³ Joe Shiels & Annmarie O'Kane, *Measuring Mobility in a Changing Ireland*, Centre for Crossborder Studies, 13 May 2010: www.crossborder.ie/pubs/eures-05-08-2010.doc

⁶⁴ Central Statistics Office and the Northern Ireland Statistics & Research Agency, *Census 2011: Ireland and Northern Ireland*, 11 June 2014, p. 60: <http://www.cso.ie/en/media/csoie/releasespublications/documents/population/2011/Cen2011IrelandNorthernIreland.pdf>

absolute numbers are small, some communities close to the border would be significantly affected by Northern Ireland no longer being in the EU.

Outside the EU, Northern Ireland's border with the Republic would become a major obstacle, not just to the movement of people but also to the movement of goods. The EU operates customs as well as passport controls with its non-EU neighbours. Current use of the border is not well-monitored but such research as is available shows that there are tens of millions of car journeys between the two parts of Ireland via the most used crossing points.⁶⁵ Over 35 per cent of Northern Ireland's exports go to the Irish Republic, its largest export market (about £2.2 billion in value terms in 2014-15), and it receives nearly 27 per cent of its imports from the Republic.⁶⁶

A key element of the peace process in Northern Ireland has been the determination by the governments of both Britain and Ireland to ensure that nationalists in the north of Ireland no longer feel so isolated. In that context, it is alarming that opinion polls suggest a deep division over EU membership between the nationalist and Unionist communities in Northern Ireland. A November 2015 opinion poll found that while 56.6 per cent of Northern Ireland's voters want the UK to stay in the EU, a majority of Unionists support the UK leaving (54.3 per cent to 24.2 per cent) but the overwhelming majority of Nationalists are for staying in (91.2 per cent to 7.7 per cent).⁶⁷ This stark division between the two communities must be a cause for concern and it vividly demonstrates why the peace process in Northern Ireland could be endangered by Brexit.

Relations between the UK and the Republic of Ireland were poor when both countries joined the European Communities in 1973. The Republic joined the EEC partly because it felt it had to do so if the UK joined because of their close economic ties (although it was also an Irish foreign policy goal).⁶⁸ Relations were badly strained by the troubles in Northern Ireland well into the late 1980s but the EEC/EU provided a neutral forum for the two countries to develop closer ties.

The informal meetings between the Prime Ministers in the margins of European Council and regular meetings of British and Irish colleagues at Council of Ministers meetings enabled relationships to develop away from the political spotlight. Sir John Major sees mutual membership of the EU as one of the building blocks of the peace process. Describing the Troubles as having "fanned old embers" and the relationship between the British and Irish governments as "sour and edgy" he goes on to say:

There is no doubt that our joint membership of the EU was helpful. Ministers met regularly on mutual ground and on non-Irish matters, and this familiarity eased disputes and bilateral tensions.⁶⁹

⁶⁵ There are some statistics from a survey in 2007 in Joe Shiels & Annmarie O'Kane, *op. cit.*, p. 31

⁶⁶ HMRC, *Regional Trade Statistics: Second Quarter 2015*, 3 September 2015, pp. 20, 22:
https://www.uktradeinfo.com/Statistics/RTS/RTS%20Releases/RTS_Q2_2015_commentary.pdf

⁶⁷ 'How will Northern Ireland vote in the upcoming EU referendum?', Bill White, *Belfast telegraph*, 6 November 2015:
<http://www.belfasttelegraph.co.uk/opinion/debateni/bill-white/how-will-northern-ireland-vote-in-the-upcoming-eu-referendum-34176966.html>

⁶⁸ See Government of Ireland, *Ireland in the EU*, 20 May 2013:
<https://www.dfa.ie/media/dfa/alldfawebitemedia/ourrolesandpolicies/irelandintheeu/ireland-in-the-eu-history.pdf>

⁶⁹ John Major, *John Major: The Autobiography* (London: Harper Collins, 1999), p. 439

Importantly, that was the view over the Irish Sea as well. As two Irish writers have put it:

[The EU] demonstrated that the two states had much in common, and it helped to reduce the traditional psychological gap between a global power and its much smaller neighbour.⁷⁰

They also go on to highlight the way in which meetings of the European Council became an opportunity for the two Prime Ministers to discuss the progress of the peace process.

Working together in the EU made the British and Irish realise how much they had in common. A shared policy outlook in the EU on the need to expand the Single Market, on trade and on competitiveness developed over a period of time, such that the Republic of Ireland now sees the UK's departure from the EU as a threat to it in part because it would mean the loss of an important ally in EU decision-making on these and other issues.⁷¹

While these improved political relations were undoubtedly important, a key aspect of the improvement in the Anglo-Irish relationship was the normalisation of the handling of crime and justice matters between the two countries. The 1970s and 1980s had been marred by repeated disagreement over extraditing wanted Provisional IRA personnel from the Republic, as well as persistent belief in British (and Unionist) circles that the Republic was harbouring terrorists who regularly travelled north to commit atrocities. The general prohibition in extradition agreements on extraditing those accused of "political offences" caused major difficulties as the Irish courts interpreted this term as covering those accused of acts of terrorism in the UK.⁷² The European Arrest Warrant and the development of EU police and justice co-operation has healed this breach in Anglo-Irish relations. The European Arrest Warrant does not provide a political defence to terrorist offences, there is no involvement by Ministers in individual extradition decisions and EU institutions and agencies provide a neutral platform for Anglo-Irish police and security co-operation. Extradition between the UK and Ireland is now no different to that between any other pair of EU Member States.

This brief survey shows that the departure of the UK from the EU would profoundly affect the Anglo-Irish relationship in economic, political and security terms. New policies and structures would be required in the event of Brexit to enable the two countries to continue to co-operate in their many areas of mutual interest. Whether these arrangements would be as effective as those that currently operate through the medium of the EU cannot be accurately assessed as many important factors are unknown (such as the framework for the UK's trading relationship with the EU if the UK left) but the dislocation would be considerable and the political risks tangible. No doubt this is why the Irish Government, in its *National Risk Assessment 2015*, described a fundamental change in the UK's relationship with the EU as one of its top geo-political risks.⁷³

⁷⁰ Tom Arnold & James Kilcourse, 'Political Implications for Ireland' in Dáithí O'Ceallaigh & Paul Gillespie, *supra* n. 59, p. 133

⁷¹ Government of Ireland, *National Risk Assessment 2015: Overview of Strategic Risks*, 11 August 2015, pp. 19-20: http://www.taoiseach.gov.ie/eng/Publications/Publications_2015/National_Risk_Assessment_2015.pdf

⁷² Described in Gordon Gillespie, *The A-Z of the Northern Ireland Conflict* (Plymouth: Scarecrow Press, 2009), p. 100 *et seq.*

⁷³ See Government of Ireland, *op. cit.*



CHAPTER 3

THE ECONOMIC POLICY CONSEQUENCES

THE ECONOMIC CONSEQUENCES OF BREXIT

Would a vote to leave be an asymmetric shock to the UK economy? An unexpected vote to leave would be a shock, and given the importance of the UK's economies ties to the rest of the EU, one which would cause considerable uncertainty for business. In the very short-term, as Chapter One noted, one factor determining the mood in global markets would be the opinion polls in advance of the vote and the extent to which they had already taken a view. Another would be whether the vote would trigger a downturn, as investors hold back from making decisions because of the uncertainty, and as business and consumers lose confidence about the direction of the British economy.

One City forecaster sees risks of a loss of investor confidence, partly because of the re-emergence of the Scottish independence question, a spike in the pound/euro valuation, and questioning of the UK's ability to finance its trade deficit. All this would result in a fall in GDP in the aftermath of the vote with a recovery depending on how quickly the UK was able to negotiate new trading relationships with the EU and third countries.⁷⁴

⁷⁴ See ING, *Ready for Brexit?*, 5 February 2015: https://www.ingcb.com/media/.../ready_for_brexit-report-684-kb.pdf

Trade can fall suddenly because of unexpected shocks; for example, after the global financial crisis in 2008, world trade fell by 30 per cent in the last quarter of 2008 and the first quarter of 2009.⁷⁵ But that was a far bigger fall than in the four largest post-war depressions.⁷⁶

Many supporters of the UK leaving disagree with this kind of scenario. They postulate the theory that far from the UK losing economically if it left the EU, it would gain in four important ways. This is because they claim that:

- the EU is economically weak, hobbled by the eurozone and held back by excessive regulation;
- the EU is protectionist and has failed to reach free trade agreements with emerging economies such as China and India, which are where future global growth will be found;
- large-scale immigration from the EU has reduced employment for British-born citizens and increased welfare costs; and
- the UK pays too much to the EU in the form of an annual budget contribution equivalent to 0.5 per cent of UK GDP.⁷⁷

To those making this argument, it follows that if the UK left the EU it would no longer be “held back” by these issues and would be able to adopt new policies instead. Some Brexit campaigners suggest that, outside the EU, the UK could: negotiate advantageous trade deals with the USA and China; substantially reduce the burden of business regulation through no longer having to comply with EU rules; dramatically reduce immigration; and would be able to spend its entire net EU budget contribution on other things. All of these changes, they argue, would result in the UK economy doing better than it does now, inside the EU.

This analysis does beg the question that if this is all so easy and so simple, why has no British Government contemplated such an approach since 1961? In fact, the briefest examination of these four claims shows the situation is not as Brexit campaigners would wish it to be.

It is undeniable that the eurozone has endured a serious crisis, not all aspects of which are resolved as yet. It is also highly likely that economic growth is going to be higher in some of the emerging economies than in the EU over the next 20 or 30 years. But it is a huge leap from recognising that situation to arguing that, if the UK walked out of the EU, it would first be able to replicate its existing trading opportunities with other Member States and then improve on them through developing trade relationships elsewhere. The claim

⁷⁵ IMF, *World Economic Outlook: Recovery, Risk & Rebalancing*, 6 October 2010, p. 126, fig. 4.1: <https://www.imf.org/external/pubs/ft/weo/2010/02/pdf/text.pdf>

⁷⁶ 'The great trade collapse: What caused it and what does it mean?', Richard Baldwin, VOX, 27 November 2009: <http://www.voxeu.org/article/great-trade-collapse-what-caused-it-and-what-does-it-mean>

⁷⁷ Summaries of the outers' arguments can be found in John Springford, Simon Tilford & Philip Whyte, *The economic consequences of leaving the EU*, Centre for European Reform, 9 June 2014; Business for Britain, *Change, or go*, 25 September 2014: <http://forbritain.org/cogwholebook.pdf>; and UKIP *Manifesto 2015*, p. 70 et seq.: <https://d3n8a8pro7vhmx.cloudfront.net/ukipdev/pages/1103/attachments/original/1429295050/UKIPManifesto2015.pdf?1429295050>

that the rest of the EU is a declining economy, suffering variously from the negative effects of an ageing population, over-regulation and the lack of an entrepreneurial culture, is at odds with the fact that 15 of the world's top 50 economies are in the EU and measured per capita, 25 of the EU's 28 Member States are within the top 50 world economies.⁷⁸

Figure 1 illustrates the range of professionally researched estimates for the gains or losses in GDP terms for the UK if it left the EU. It is notable for the virtual absence of gains to GDP from leaving. This is partly because most economic analysts find that the EU's Member States gain additional benefit from membership through the greater tendency to trade with one another and from the productivity benefits deriving from the increased competition in the Single Market.⁷⁹ It also reflects the reduction in foreign direct investment that most commentators expect to follow a UK exit (explained in more detail below).⁸⁰

Figure 1: Estimated GDP gains / losses of Brexit⁸¹

Study	Best case (%)	Worst case (%)
Open Europe	1.6	-2.2
Centre for Economic Performance, LSE	-2.2	-9.5
Bertelsmann Stiftung	-0.6	-14

The alternatives are not that the EU stays the same or that the UK leaves; the EU has been reforming since its inception. If it had not, for example, reformed the Common Agricultural Policy, which absorbed about 80 per cent of the budget in the early 1980s, it might have gone bankrupt by now. The Single Market was not a reality until the early 1990s and is still under-developed in many crucial sectors, notably in services. There are new sectors of the economy that have emerged since the creation of the EU, such as the digital sector, where the Single Market does not yet fully operate. There are also significant sectors where the opportunities and efficiencies that come from greater competition in the Single Market are only just beginning because the market is under-developed. Examples are energy, where there is an urgent need to create more integration in the Single Market to tackle Europe's energy shortages, and public transport.

⁷⁸ Bulgaria, Croatia and Romania are the three EU Member States not within the top 50 world economies: IMF, *World Economic Outlook database*, 8 October 2015: <https://www.imf.org/external/pubs/ft/weo/2015/02/weodata/WEOOct2015all.xls>

⁷⁹ Discussed in CBI, *Our Global Future*, 28 October 2013, p. 59: http://www.cbi.org.uk/media/2451423/our_global_future.pdf

⁸⁰ Alan Barrett *et al.*, *Scoping the Possible Economic Implications of Brexit on Ireland*, Economic and Social Research Institute, 5 November 2015, pp. 30, 33, 34, 40; YouGov / CBI Survey July 2013:

http://cdn.yougov.com/cumulus_uploads/document/6hxpzmzw3u/YG-Archive-CBI-results-300713-EU-business-policy.pdf; Ray Barrell & Nigel Pain, 'The Growth of Foreign Direct Investment in Europe', *National Institute Economic Review*, 160(1) (1997), pp. 63-75

⁸¹ Stephen Booth *et al.*, *What if...?: The Consequences, challenges & opportunities facing Britain outside EU*, Open Europe, 23 March 2015: <http://openeurope.org.uk/intelligence/britain-and-the-eu/what-if-there-were-a-brexit/>; Gianmarco Ottaviano *et al.*, *The Costs and Benefits of Leaving the EU*, Centre for Economic Performance, 13 May 2014: http://cep.lse.ac.uk/pubs/download/pa016_tech.pdf; Ulrich Schoof *et al.*, *Brexit – potential economic consequences if the UK exits the EU*, Bertelsmann Stiftung, 24 April 2015:

<http://www.bfna.org/sites/default/files/publications/Brexit%20-%20potential%20economic%20consequences%20if%20the%20UK%20exits%20the%20EU.pdf>

And there are more free trade deals to be agreed with third countries than have been completed so far, including the USA and Japan. Any analysis of the economic benefits offered by the EU has to reflect those future opportunities for expansion.

The EU is often blamed for burdening business with excessive regulation yet the World Bank finds that the UK is sixth out of 189 countries globally for ease of doing business.⁸² What is this red tape that is holding UK plc back? And if it is such a burden, why is it not (for example) preventing German companies from trading so successfully, inside and outside the EU, when that country is listed at number 15 in the ease of business index?⁸³ Germany exports more to India and China than the UK does, despite being in the eurozone and having a greater regulatory burden. Analyses of future export trends show that while the EU will decline in importance as a destination for UK exports, the growth in emerging markets will be quite small – from a nine per cent share of UK exports now to 13 per cent by 2030.⁸⁴

The EU has over 50 free trade agreements with third countries and it is negotiating more. The Swiss and Icelandic FTAs with China, often heralded as an example of what the UK could achieve if it were outside the EU, are one-sided and favour China. For example, the agreement between China and Switzerland provides for 99.7 per cent of Chinese exports to Switzerland to be free of tariffs but only 84.2 per cent of Swiss exports to China are exempt.⁸⁵

If we turn to the claims about EU migrants, studies have found that they do not take jobs from British born adults; indeed, they show that migration has been one of the drivers of economic growth in the UK.⁸⁶ EU migrants are less likely – not more likely – to claim welfare benefits than British citizens.⁸⁷

Public concern is undoubtedly high about immigration but much of that concern is about immigration from outside the EU over which the UK Government has control. The decision to liberalise the immigration rules after 1997 was a UK government decision, approved by Parliament, and nothing to do with our EU membership. As David Goodhart has pointed out, the overwhelming majority of the four million migrants who came to live in Britain between 1997 and 2012 were from outside the EU.⁸⁸ If the UK left the EU, the Government would have to decide whether or not to accept EU free movement rules; the experience of Norway and Switzerland has been that if you want access to the Single Market, free movement of people is considered by the EU as an integral part of the arrangement (it is

⁸² World Bank, *Doing Business 2016: Measuring Regulatory Quality and Efficiency*, 12 October 2015, p. 242: [http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB16-Full-Report.pdf](http://www.doingbusiness.org/~/media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB16-Full-Report.pdf)

⁸³ *Ibid.*, p. 203

⁸⁴ PWC, *UK Economic Outlook: November 2015*, 4 November 2015, p. 28 et seq.: <http://www.pwc.co.uk/assets/pdf/uk-economic-outlook-full-report-november-2015.pdf>

⁸⁵ Marc Lanteigne, *The Sino-Swiss Free Trade Agreement*, Centre for Security Studies Analyses in Security Policy No. 147, 10 February 2014: <http://www.css.ethz.ch/publications/pdfs/CSSAnalyses147-EN.pdf>

⁸⁶ See Migration Advisory Committee, *Analysis of the Impacts of Migration*, 1 January 2012:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257235/analysis-of-the-impacts.pdf

⁸⁷ Christian Dustmann & Tommaso Frattini, *The Fiscal Effects of Immigration to the UK*, Centre for Research and Analysis of Migration Discussion Paper 22/13, 5 November 2013, p. 27:

http://www.cream-migration.org/publ_uploads/CDP_22_13.pdf; see also Migration Advisory Committee, *Migrants in low-skilled work: The growth of EU and non-EU labour in low-skilled jobs and its impact on the UK*, 8 July 2014, pp. 275-276:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/333083/MAC-Migrants_in_low-skilled_work_Full_report_2014.pdf

⁸⁸ This was double the immigration in the period 1948 to the early 1990s: see David Goodhart, *The British Dream: Success & failure of post-war immigration* (London: Atlantic Books, 2013), p. 210

one of the four freedoms) and is not negotiable.⁸⁹ The Government would have to weigh up the demand from British businesses for the skilled labour we get through free movement against the clamour for less migration as well as the likelihood that the EU will not offer the UK a good trade deal without free movement of people.

Some supporters of the Commonwealth as an alternative to the EU have suggested that the UK could liberalise its immigration laws to allow more Commonwealth migrants to come here.⁹⁰ Indeed, there are those campaigning for freedom of movement between at least some of the Commonwealth countries on the basis of a shared language.⁹¹ Given the far larger population of the Commonwealth and the wide discrepancies in wealth and opportunity within it compared to the EU, there must be doubts about whether such an idea is practical, let alone politically possible.

Finally, the UK's gross contribution to the EU budget per capita in 2013 was €266, just over half that of Denmark's at €517.⁹² The UK is now ninth among Member States in the amount paid per capita. This is due in part to the UK's rebate, the cumulative total of which is now approximately €114.5 billion since 1985 (using today's exchange rate).⁹³ In the event of the UK leaving the EU, it would still have to finance the equivalent of the rebate and the EU receipts to the UK (such as those for farmers and for deprived areas, notably, Cornwall and South Wales). In addition, to gain access to the Single Market, it would have to pay a fee; in 2013, Norway was the tenth largest contributor to the EU budget.

Even this brief survey has demonstrated that there are considerable economic consequences of the UK leaving the EU and that the balance of the evidence is that they would be negative and not positive.

TRADE POLICY: THE BIG DECISION

In the aftermath of a vote to leave, the Government would have to address the conundrum that the nation had chosen Brexit yet the economic reality is that the UK needs easy access to the EU's markets. Even if, in the fullness of time, alternative markets could be found for British goods and services outside, the EU is not going to cease to remain an important market for the UK. Access is unlikely to be easily obtained because the EU will not want leaving to be pain free, and it will want something from the UK in

⁸⁹ See European Council, 'Remarks by President Donald Tusk following the first session of the European Council meeting', 26 June 2015: <http://www.consilium.europa.eu/en/press/press-releases/2015/06/25-tusk-remarks-first-press-conference/>; Martin Ruhs, *Is unrestricted immigration compatible with inclusive welfare states? The (un)sustainability of EU exceptionalism*, Centre on Migration, Policy and Society Working Paper No. 125, 24 June 2015, pp. 16, 31: http://www.compas.ox.ac.uk/media/WP-2015-125-Ruhs_EU_Migration_Welfare_States1.pdf; Sergio Carrera, Elspeth Guild & Katharina Eisele, *No Move without Free Movement: The EU-Swiss controversy over quotas for free movement of persons*, Centre for European Policy Studies Policy Brief No. 331, 23 April 2015: <https://www.ceps.eu/system/files/PB331%20EU-Swiss%20Mobility%20.pdf>

⁹⁰ For example, Steve Baker MP speaking at the UK2020 Conservative Party conference fringe meeting on the EU, 5 October 2015.

⁹¹ The Commonwealth Freedom of Movement Organisation: <http://www.cfmo.org/>

⁹² See European Commission, *EU budget 2013: Financial report*, 23 October 2014: http://ec.europa.eu/budget/financialreport/2013/lib/financial_report_2013_en.pdf; and Lord Ashton of Hyde, *Letter to Lord Hannay of Chiswick in response to oral question asked in the House of Lords*: HL Deb 21 July 2015, vol 764, col 1003: <http://www.publications.parliament.uk/pa/ld201516/ldhansrd/lhan36.pdf>

⁹³ Lord Ashton of Hyde, *ibid.*

return. The UK would be in a weak position to negotiate continued access to the Single Market since the EU purchases more than half of all UK exports but the UK only purchases approximately 10 per cent of all EU exports.⁹⁴

The four options most often proposed for alternative UK-EU trading relations are summarised in figure 2:

Figure 2: Alternative trading models

	EU Member	Norway option	Swiss option	WTO	UK-EU FTA
Full Single Market access	✓	✓	✗	✗	✗
Access for financial services	✓	✓	✗	✗	✗
No tariff barriers on trade in goods	✓	✓	✓	✗	✓
Freedom of Movement	✓	✓	✓	✗	✗
EU Budget contribution	✓	✓	✓	✗	✗
Influence over EU regulations	✓	✗	✗	✗	✗
Able to construct own regulation	✗	✗	?	✓	✓
Able to independently agree FTAs	✗	✗	✓	✓	?

As the first three of these options, in particular, have been exhaustively examined elsewhere, we only summarise briefly the main points concerning each model.

EFTA/EEA (NORWAY-STYLE ARRANGEMENT)

Under this model, the UK would join the European Free Trade Association (EFTA) with Iceland, Liechtenstein, Norway and Switzerland, and by extension the European Economic Area (EEA), the EFTA-EU partnership. Norway is the biggest player in EFTA, the other members being Iceland, Liechtenstein and Switzerland. It is uncertain whether they would (Norway in particular) be willing to let a large economy such as the UK join their small organisation. Article 128 of the EEA agreement requires an applicant to the EEA to have the support of the existing members; Norway has previously (informally) vetoed Slovakia's EEA membership.⁹⁵

Article 128 of the EEA agreement also provides the EU with a veto over membership of the EEA and the negotiation of an Association Agreement with the EU requires ratification by all EU Member States. After a complicated renegotiation and soured relationships resulting from a UK vote to leave, the EU is unlikely to agree to the UK joining the EEA to

⁹⁴ John Springford & Simon Tilford, *The Great British trade-off: The impact of leaving the EU on the UK's trade and investment*, Centre for European Reform, 20 January 2014, p. 7: http://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2014/pb_britishtrade_16jan14-8285.pdf

⁹⁵ Pat McFadden & Andy Tarrant, *What would 'out' look like?: Testing Eurosceptic alternatives to EU membership*, Policy Network, 4 November 2015, pp. 7, 12: http://www.policy-network.net/publications_download.aspx?ID=9287

only benefit from EU trade. Furthermore, when the EEA agreement was adopted, EFTA Member States were treated favourably because they were at some point expected to become members of the EU.⁹⁶ However, the UK would be moving in the opposite direction, and therefore could not expect to get similar treatment.

There are domestic political uncertainties about the EFTA/EEA option as well. Would Parliament agree to it, not least given the fact that David Cameron has ruled it out? The reasons for this were summed up succinctly by the Prime Minister:

Norway is part of the single market but has no say in setting its rules: it just has to implement its directives. 10,000 rules and regulations in the last 20 years, five for every day the Norwegian Parliament has been sitting. So the irony is that if we followed the model of Norway, Europe's political interference in our country could actually grow, rather than shrink.⁹⁷

He could also have mentioned that Norway has to pay into the EU in order to be part of the EEA; it is currently the tenth largest contributor per capita to the EU.

As Policy Network have recently highlighted, EU legislation can only be adopted in the EEA Committee by unanimity and there is a backlog of 6-24 months because Iceland and Lichtenstein cannot cope with the output of the EU.⁹⁸ This delay in the implementation of legislation gives a competitive advantage to businesses in EU Member States and would mean an additional risk for British businesses of not being able to get timely access to the Single Market.

This sort of issue may be one reason why a quantitative analysis has found that:

being a member of the EU leads a country to trade significantly more with other members of the EU than if it were only a member of EFTA. This study could imply that leaving the EU and joining EFTA would similarly reduce trade with EU members by 25% over time.⁹⁹

SWISS-STYLE BILATERAL TRADE AGREEMENTS

Switzerland rejected joining the EEA in 1992 but remains a member of EFTA. It has negotiated over 100 bilateral agreements with the EU, which allow Switzerland some access to the Single Market (albeit not for financial services). Neither the EU nor Switzerland have found this arrangement to be satisfactory.¹⁰⁰

⁹⁶ Pat McFadden & Andy Tarrant, *supra* n. 95, p. 5

⁹⁷ HM Government, 'Prime Minister's speech on Europe', 10 November 2015: <https://www.gov.uk/government/speeches/prime-ministers-speech-on-europe>

⁹⁸ Pat McFadden & Andy Tarrant, *supra* n. 95, pp. 10-11.

⁹⁹ Scott Baier *et al.*, 'Do Economic Integration Agreements Actually Work? Issues in Understanding the Causes and Consequences of the Growth of Regionalism', *World Economy*, 31(4) (2008), pp. 461-497 cited in Pat McFadden & Andy Tarrant, *ibid.*

¹⁰⁰ CBI, *supra* n. 79, p. 147

The EU has found its bilateral arrangements with Switzerland time-consuming and complex and would be unlikely to agree to such an arrangement again.¹⁰¹ As identified in the Policy Network report, the Council of the EU stated in 2010 that:

the approach taken by Switzerland to participate in EU policies and programmes through sectoral agreements in more and more areas in the absence of any horizontal institutional framework, has reached its limits and needs to be reconsidered.¹⁰²

The Swiss view is hardly more positive:

[T]his solution has certain weak points, for example the lack of options for influencing standards that directly concern Switzerland, restrictions on sovereignty in those areas where Switzerland is required to adapt its legislation to that of the EU in order to avoid competitive disadvantages, the lack of full access to the EU single market, and latent legal uncertainty.¹⁰³

If Britain leaves, it will not inherit the EU's bilateral trade agreements; it will have to renegotiate trade agreements with non-European countries from scratch. An open economy such as the UK would enjoy little leverage in negotiating these FTAs, as is seen by the Switzerland-China example. The Swiss-Chinese FTA gives China immediate access to the Swiss market but not vice versa:

As opposed to exports from Switzerland to China, imports into Switzerland are not subject to any transition periods: all tariff reductions occur from day one after the entry into force.¹⁰⁴

WORLD TRADE ORGANISATION

The third suggested model is that the UK would not sign an agreement with the EU at all but instead rely on its membership of the World Trade Organisation (WTO). This approach would leave the UK isolated in international trade negotiations and subject to the EU's external tariffs. While the WTO's most-favoured-nation treatment would keep trade tariffs low, UK exporters would still have to pay the EU's Common External Tariff – 15 per cent on average for food and 10 per cent for cars – to trade with EU Member States.¹⁰⁵

Eurosceptics often argue that the UK would have more influence on global standard bodies as it could represent itself outside of the EU. However, taking the setting of global car standards as an example, if the UK were outside the EU, it would not be able to

¹⁰¹ 'Switzerland and the EU: Many a Slip between Swiss Cup and Lip', Clive Church, *E-International Relations*, 11 April 2014: <http://www.e-ir.info/2014/04/11/switzerland-and-the-eu-many-a-slip-between-swiss-cup-and-lip/>

¹⁰² European Council, *3213th Council meeting: Transport, Telecommunications and Energy*, PR CO 76, 20 December 2012: http://europa.eu/rapid/press-release_PRES-12-523_en.pdf

¹⁰³ Swiss Confederation, *Switzerland's European Policy: An overview of the Federal Council's Report on the Evaluation of Switzerland's European Policy*, 11 March 2011, p. 14 quoted in Pat McFadden & Andy Tarrant, *supra* n. 95, p. 13

¹⁰⁴ Wenfei Law, *A Practical Guide to the New Free-Trade Agreement between Switzerland and China*, 12 December 2013, p. 4: http://www.wenfei.com/fileadmin/pdfs/China_Publications/Wenfei_FTA_Publication_December_2013.pdf

¹⁰⁵ John Springford & Simon Tilford, *supra* n. 94, pp. 9-10

participate in policy-setting in Brussels and would have 1 out of 58 votes in the UNECE, where 80 per cent of vehicle standards are set.¹⁰⁶

Under this model, the UK would have no mechanism to challenge EU policy, even though it would still be affected by it. This would be important in many sectors but critical for financial services, where the UK's dominant position would be under threat from other EU financial centres. The UK's EU membership has given it a vote in the Council of Ministers on financial services legislation (it has only lost twice in over 20 years) and the protection of the European Court of Justice.¹⁰⁷ The value of the latter was seen recently when an attempt by the European Central Bank to force clearing houses to relocate euro-denominated trading from London to the eurozone was rejected by the Court.¹⁰⁸

UK-EU FTA

With detailed examination of the three possible options above leading to widespread criticism of them, some outsiders have suggested that the UK could instead sign a purpose-made free trade agreement with the EU. For example, Business for Britain's *Change, or go* report states that the optimal route for Britain outside the European Union is a 'British Option'. This solution would require "a unique, bespoke treaty tailored to the precise details of Britain's situation and the circumstances of our departure".¹⁰⁹ But Business for Britain do little to expand on what shape this supposed "British option" might take nor do they explain why the remainder of the EU would be willing to give the UK a unique, generous deal, which has never before been offered to a country outside the EU. They do say that goodwill would be necessary, something they admit cannot be guaranteed to be in bountiful supply.¹¹⁰

ENDGAME: WHAT KIND OF AGREEMENT WOULD WE GET WITH THE EU?

An advocate of Brexit who has studied the challenges involved in the UK leaving has concluded that the most likely scenario would involve Britain:

- accepting two-thirds of the EU's rule book (commonly known as the *acquis*);
- continuing to make payments to the EU for five years after leaving and after that to some particular EU programmes;
- maintaining several of the EU's existing free trade agreements with third countries.¹¹¹

¹⁰⁶ Pat McFadden & Andy Tarrant, *supra* n. 95, p. 21

¹⁰⁷ Vaughne Miller, *Voting Behaviour in the EU Council*, House of Commons Library Standard Note 13/6646, 23 May 2013, pp. 17-18: www.parliament.uk/briefing-papers/SN06646.pdf

¹⁰⁸ Pat McFadden & Andy Tarrant, *supra* n. 95, p. 23

¹⁰⁹ Business for Britain, *Change, or go*, 25 September 2014, p. 241: <http://forbritain.org/cogwholebook.pdf>

¹¹⁰ *Ibid.*, p. 242

¹¹¹ Iain Mansfield, *A Blueprint for Britain: Openness not Isolation*, Institute of Economic Affairs, 9 April 2014, p. 45: http://www.iea.org.uk/sites/default/files/publications/files/Brexit%20Entry%20170_final_bio_web.pdf

Some critics would see this apparently rather bleak scenario as an optimistic one. In any event, reaching agreement with the EU would take time and in order to do so the Government would have to start by recruiting a trade policy team to work in the Business Department to work on this and other trade issues.

FOREIGN DIRECT INVESTMENT

A key factor driving economic growth today is the extent of foreign direct investment (FDI) in the economy.¹¹² The UK has been unusually successful in attracting FDI over the last 40 years and is now the largest recipient of FDI in the EU. Research shows that this high level of FDI is linked to the UK's membership of the EU.¹¹³ For example, an econometric study from the National Institute of Economic and Social Research (NIESR) found that the level of FDI from US manufacturing multinationals in the 1990s was significantly higher than it would have been if the countries analysed – including the UK – had not been EU members, even after controlling for GDP, growth, factor prices and unit labour costs.¹¹⁴ Of the nine key determinants of FDI, the UK has advantages in most.¹¹⁵

Foreign investors are attracted to the UK because it reduces their access costs to a bigger market; if they invest in a business in the UK they know that it will have automatic access to the Single Market of 500 million individual consumers and over 25 million businesses.¹¹⁶ Ease of Single Market access coupled with the UK's other advantages of the English language (the world's most spoken second language), a rule of law tradition and a well-educated workforce, have driven a surge in FDI. Between 1998 and 2011, 603 major overseas corporations chose to locate their European headquarters in the UK.¹¹⁷ This tendency for the Single Market to act as an incentive for non-UK firms to be based in the UK means that half of all European headquartered non-EU firms are now based in the UK.¹¹⁸

The Japanese Government has stated that:

the advantage of the UK as a gateway to the European market has attracted Japanese investment – more than 1,300 companies have invested in the UK, creating 130,000 jobs.¹¹⁹

¹¹² See HM Government, *The EU and FDI*, 1 December 2010, pp. 4-10:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180733/foi_eumembership_fdi.pdf.pdf

¹¹³ See, e.g., Andrew Blair, 'The relative distribution of United States direct investment: the UK/EEC experience', *European Economic Review*, 31(5) (1987), pp. 1137–1144; and United Nations, *From The Common Market to EC92: Regional Economic Integration in the European Community and Transnational Corporations* (New York: United Nations, 1993)

¹¹⁴ Nigel Pain & Garry Young, 'The macroeconomic impact of UK withdrawal from the EU', *Economic Modelling*, 21(3) (2004), pp. 387-408: <http://www.niesr.ac.uk/sites/default/files/publications/1-s2.0-S0264999302000688-main.pdf>

¹¹⁵ HM Government, *op. cit.*, pp. 2-3; the exchange rate being the most problematic.

¹¹⁶ Eurostat, 'Business demography statistics', 27 December 2014:

http://ec.europa.eu/eurostat/statistics-explained/index.php/Business_demography_statistics

¹¹⁷ Public Bill Committee, European Union (Referendum) Bill: Third Sitting, PBC (Bill 011), 4 September 2013, col 154:

<http://www.publications.parliament.uk/pa/cm201314/cmpublic/europeanunionref/130904/am/130904s01.pdf>

¹¹⁸ HM Government, *Review of the Balance of Competences between the UK and the EU: The Single Market*, 22 July 2013, p. 39:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/227069/2901084_SingleMarket_acc.pdf

¹¹⁹ HM Government, *The UK Government's Review of the Balance of Competences between the United Kingdom and the European Union: Comment by the Government of Japan*, 11 July 2013, p. 1:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224375/evidence-government-of-japan.pdf

Since that statement, Hitachi Rail Global have chosen to move their HQ from Japan to London, in addition to operating a manufacturing plant in the UK.¹²⁰

Access to skilled staff has been a key driver of FDI into the UK. In over 45 per cent of cases where the UK was chosen as an FDI location by financial services firms, access to skilled staff, including EU nationals, was cited as one of the core reasons for choosing the UK.¹²¹ This is an example of how the four freedoms of the Single Market – of capital, goods, people and services – interact to our benefit. Restrictions on freedom of movement could therefore have a significant impact on FDI into the UK in the future because companies could relocate to other European countries where there is free movement.

What would happen to FDI if the UK left the EU? One study suggests that UK withdrawal from the EU would cut FDI into the UK by over a third and damage household incomes.¹²² Their negative view of the impact of the UK leaving on FDI is shared by members of the CBI, three-quarters of whom think that UK-wide foreign direct investment would fall if we left the EU.¹²³ A number of large investors in the UK have suggested that they might move elsewhere if the UK left the EU. For example, HSBC¹²⁴, Nissan¹²⁵, Deutsche Bank¹²⁶, Bombardier¹²⁷, as well as several other German manufacturers, have all expressed doubts about their future investment in the UK if there is a vote to leave the EU.¹²⁸

The main reasons for international investors turning away from the UK would be the loss of easy access to the Single Market; the potential to have to pay tariffs; the uncertainty about the UK's trading position outside the EU; the fact that almost half of FDI in the UK comes from other EU Member States (worth £365 billion in 2011¹²⁹); and the potential end of free movement of people, which would place restrictions on the ability of foreign investors to recruit skilled people in the UK.

It is of course the case that such studies are estimating what would happen in a hypothetical situation but the scale of the challenge if the UK votes to leave is clear: the Government has to come up with a plan to first retain international investment that is already located here; and second, to devise an appeal to new investors to choose the UK as a location when it is outside the EU. Neither task will be easy. Investment decisions

¹²⁰ 'Hitachi rail Global moves to UK and announces expansion plans', *Railway Gazette*, 20 March 2014: <http://www.railwaygazette.com/news/business/single-view/view/hitachi-rail-announces-uk-headquarters-and-expansion-plans.html>

¹²¹ TheCityUK, *UK and the EU: A mutually beneficial relationship*, 26 November 2013, pp. 3, 10: <http://www.thecityuk.com/assets/Uploads/UK-and-the-EU-A-mutually-beneficial-relationship-Dec-13-F2.pdf>

¹²² Nigel Pain & Garry Young, *supra* n. 114

¹²³ CBI, 'Factsheet 4 - No alternative to EU membership offers better balance of pros and cons', 30 November 2015: <http://news.cbi.org.uk/campaigns/our-global-future/factsheets/factsheet-4-no-alternative-to-eu-membership-offers-better-balance-of-pros-and-cons/>

¹²⁴ 'HSBC threatens to move headquarters from UK', Martin Arnold & David Oakley, *Financial Times*, 24 April 2015: <http://www.ft.com/cms/s/0/265619cc-ea59-11e4-96ec-00144feab7de.html>

¹²⁵ 'Nissan boss warns UK over possible EU exit', *BBC News*, 8 November 2013: <http://www.bbc.co.uk/news/business-24859486>

¹²⁶ 'Deutsche Bank considers UK exit plan', Hazel Sheffield, *The Independent*, 19 May 2015: <http://www.independent.co.uk/news/business/news/deutsche-bank-considers-uk-exit-plan-10259849.html>

¹²⁷ 'Bombardier will leave Northern Ireland if UK exits Europe, claims Naomi Long', Liam Clarke, *Belfast Telegraph*, 14 April 2015: <http://www.belfasttelegraph.co.uk/news/northern-ireland/bombardier-will-leave-northern-ireland-if-uk-exits-europe-claims-naomi-long-31139893.html>

¹²⁸ 'German companies issue a 'please stay' appeal ahead of membership vote', James Cusick, *The Independent*, 26 October 2015: <http://www.independent.co.uk/news/uk/politics/eu-referendum-german-companies-issue-a-please-stay-appeal-ahead-of-membership-vote-10375103.html>

¹²⁹ Office for National Statistics, *Foreign Direct Investment Involving UK Companies, 2011*, 6 December 2012, p. 39: http://www.ons.gov.uk/ons/dcp171778_290183.pdf

are substantial so there is unlikely to be an immediate collapse in FDI but instead a longer, more drawn-out decline as companies (for example) decide not to make new products at existing British plants but to choose another manufacturing centre, one inside the Single Market, instead.

BUSINESS REGULATION

The EU has developed a body of laws and policies that govern the everyday operation of the Single Market. It has replaced 28 separate sets of national regulation in many (but not all) sectors of business. The combination of harmonising some laws across the EU and enabling mutual recognition of national standards and rules has created the Single Market as we know it today. Although there is a tendency on the part of Eurosceptics to exaggerate the extent to which the UK is regulated by the EU, exiting from this aspect of the EU would have profound consequences for British businesses.

Across a range of sectors the UK will have to decide whether it wishes to retain the rules and regulations of the EU or to drop them. The experience of other European countries who have chosen not to join the EU is that much of their economy ends up being subject to EU regulation even if you are not in membership. This is because it is easier to adopt the standards used by the EU, which already apply to most European countries, than to invent new national rules which run the risk of not being compliant with EU rules and therefore excluding the goods or services concerned from EU markets. Furthermore, it is increasingly the case that non-European countries are adopting EU product standards so as to ensure easy access to the Single Market for their goods. China, the world's biggest exporter of toys, now follows EU product standards in toys for this very reason.¹³⁰

Whatever option it chooses for its future relations with the EU, the UK will want to have as easy access as possible for its goods and services to the Single Market. This means that the bonfire of red tape, favoured by Brexit campaigners on the Right of politics, may not be achievable because the EU will simply require the UK to adhere to the bulk of its standards in order to get access to the Single Market. This is what in practice has happened to Iceland, Liechtenstein, Norway and Switzerland.

This regulatory issue is especially acute in financial services. As the Bank of England noted in its recent report on the Bank and the EU:

Around half of the world's largest financial firms – ranging from commercial and investment banks to insurers, asset managers and hedge funds – have their European headquarters in the UK,

and the UK's financial sector is larger as a percentage of GDP, at around 830 per cent, than the equivalent sector in the USA, France or Japan. Only Switzerland has a sector on

¹³⁰ Barbara Flynn & Xiande Zhao (eds.), *Global Supply Chain Quality Management: Product Recalls and Their Impact* (London: CRC Press, 2015), p. 68 et seq.; Francis Snyder, *The EU, the WTO and China: Legal Pluralism and International Trade Regulation* (Oxford: Hart, 2010), p. 80 et seq.

a similar scale but it does not have the UK's huge insurance business (the third largest in the world after the USA and Japan).¹³¹

WHAT IF WE VOTE TO LEAVE?

WHAT HAPPENS, WILL UK FINANCIAL REGULATION LOOK DIFFERENT?

Response to this question is from the perspective of how EU legislation and negotiation works, drawing on experience chairing and negotiating all EU financial services legislation and involvement in the issues around the eurozone crisis.

If the UK votes to leave the EU, then the next step is for the UK to trigger the leave provisions of the Treaty. This leaving 'negotiation' is often presented as if it were a negotiation between equals about some special UK status, but it is not. The remaining countries agree among a majority of themselves what the UK's exit terms will be. It will resemble far more the all-on-one negotiations – a.k.a. ultimatums – that Ireland, Greece and Cyprus suffered in bailout talks. A key factor will be deterrent to stop others following in the path, so cast your mind back to the three per cent additional, punitive interest rate that was imposed on Irish bailout loans. Only on UK exit there will be no ongoing pressure for follow-on fixing of unreasonable terms as there was for Ireland, we don't have 'rock the euro' leverage and the Brexit card is played.

True the remaining countries have skin in the game, Ireland apart they each have single digit export percentages to the UK whereas we have an exposure of around 50 per cent of our exports: in financial services the balance is even more from us to them.

It is already well documented that the Norwegian and Swiss options suffer from things that, after a leave vote, the public will have voted against: making net payments to the EU budget and ongoing freedom of movement, not to mention their 'fax democracy' under which EU legislation is automatically applied without having been around the table.

So that leaves being a 'third country', like the US and the rest of the world. In financial services regulation that means having to seek 'equivalence' decisions from the EU that we have regulations that are 'at least as stringent' as EU regulation. This would apply to every area where there was cross border trade. There might be freedom over bankers bonuses and possibly the most aggressive hedge fund strategies that look away not only from the EU but also from the UK – none of which contributes to the social quality of the country – but there will be no regulation-lite Utopia.

Most financial regulation is now determined in significant detail by national regulators in international bodies such as the Financial Stability Board and the Basle Committee on Banking – with rather less democratic scrutiny than the resulting EU legislation gets – and as far as I can see the UK regulators press for regulatory maxing-out. So it is cloud-cuckoo

¹³¹ Bank of England, *EU membership and the Bank of England*, 21 October 2015, pp. 25-26: <http://www.bankofengland.co.uk/publications/Documents/speeches/2015/euboe211015.pdf>

land to think much will be significantly lighter. I was asked to make many things tougher in banking regulation and the much maligned Solvency II was a British invention, mistakes and all – I was urged to make them and then repair them!

And if you want to know whether the EU can be rigid in the application of its test on equivalence, especially when there is a political axe to grind, look at the problems the US is having in getting an equivalence decision for central counterparty regulation – basically over whether one day of gross collateral is the same as two days of netted (and by the way when legislating we were advised it was).

London will inevitably lose its position as the gateway to Europe when it is no longer inside. Maybe Dublin can fight off Frankfurt and we can hope global institutions opt for presence in both London and Dublin. But even in that benign scenario the drift of all EU legislation away from the things we take for granted would be inevitable, a fear held in Dublin too. Our absence at the table on financial matters would be sorely felt and would be compounded by our absence in the rule making Authorities – making those valuable equivalence decisions progressively harder to get or the terms harder to swallow. No doubt we would try and restore our clout by siding with the US but that is hardly the sovereignty that leaving the EU is meant to bring.

Other changes would also happen. The EU would have no large country with a common law legal system: Ireland, Cyprus and Malta are unlikely to be able to hold the line on legal continental drift. The elimination of British involvement in all the European institutions would devastate the knowledge base that makes the UK and London advisory services important on the international scene.

I leave quantitative estimates of loss to those with that skill, but in qualitative terms damage is clearly significant for little practical gain other than supervisory flexibility over those few areas not touched by European trade.

Sharon Bowles



CHAPTER 4

THE SOCIAL AND ENVIRONMENTAL POLICY CONSEQUENCES

While the economic and trade consequences of a vote to leave are the most important (and immediate), a range of other domestic policies would need to be decided. Some of these, such as food and farming, are closely bound up with the trade and Single Market issues considered in the last chapter but others, such as the environment, crime and justice, relate to aspects of public policy that successive UK governments have decided would also benefit from co-operation with other EU countries.

All these policy areas mean important choices will have to be made by the UK as we adapt to life outside the EU. None are straightforward.

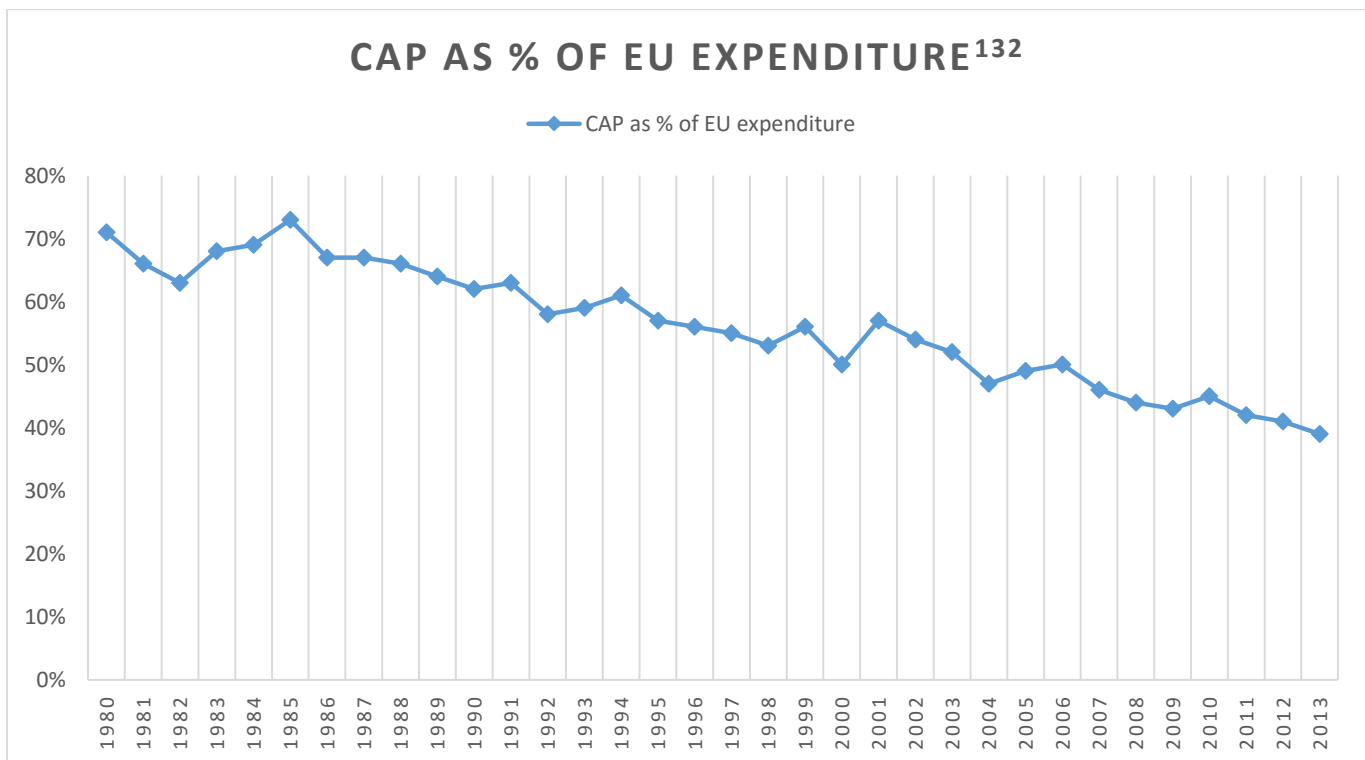
FOOD, FARMING & THE COUNTRYSIDE

The EU's Common Agricultural Policy (CAP) is perhaps its best known, and most often criticised, policy. Leaving the EU would mean leaving the CAP but food and farming policy covers a wider area of EU activity, encapsulating the Single Market's impact on UK food exports, the agricultural aspects of trade policy and the Common Fisheries Policy.

As with most systems of agricultural support in the developed world, support for farmers and rural communities in the CAP has three main purposes:

- to ensure a secure supply of food in a society whose population is mostly resident in urban areas;
- to compensate farmers for working in an essential industry which is subject to varying natural conditions that can lead to dramatic swings in production and therefore economic viability;
- and to protect the rural landscape by paying farmers to maintain it, both for the economic benefits (such as tourism) but also for wider social and amenity benefits.

By the mid-1980s the CAP had become unsustainable because of over-production and the high cost of farming subsidies. A series of major reforms have drastically reduced the level of subsidy and almost eliminated over-production.



Outside the EU, the Government would have to decide what support (if any) the UK should provide to farmers and to rural areas. This is complicated by the fact that in UK domestic terms we have four farming policies and not one, as the implementation of

much of the CAP is devolved to the Parliaments and Assemblies in Northern Ireland, Scotland and Wales. So there would need to be an internal UK negotiation about future farming policy. There are clear differences of view between the parts of the UK, with England most likely to be against farming subsidies. Current UK policy is to phase out the single farm payment by 2020, so that would be the default position.

EU payments to British farmers and for rural development amount to £4.9 billion in 2015, so the impact on the farming community and rural areas of the abolition or reduction of such payments could be considerable.¹³² As Peter Kendall, a former President of the National Farmers Union, has pointed out, the European countries outside the EU to which the UK is most often compared when considering Brexit (Iceland, Norway and Switzerland) all provide a great deal more support to their farmers than is provided to farmers within the EU. Producer support estimates, which measure the level of public subsidy to farmers, show that the EU's figure of 18 per cent is close to the OECD average of 19 per cent but far lower than that for Iceland (44 per cent), Norway (58 per cent) and Switzerland (54 per cent).¹³³ Even more strikingly, these three countries all maintain subsidies that have far more distorting effects (in terms of production and trade) than those operated by the EU (e.g. Norway at 47 per cent compared to the EU's 13 per cent).¹³⁴

UK farming policy outside the EU would have to respond to these various facts, in addition to the political and economic situation inside the UK. A number of complex and inter-linked factors would have to be considered carefully before a firm policy could be adopted. Achieving a workable and financially sustainable policy agreed with the devolved administrations would be likely to take all of the two years allowed for the negotiation of a withdrawal agreement with the EU.

For the food and farming sector, maintaining easy access to the Single Market would be crucial as food is the UK's largest manufacturing industry and 77 per cent of the food we produce goes to the rest of the EU.¹³⁵ For some products the EU market is vital – for example, more than a third of the lamb we produce is exported to the rest of the EU.¹³⁶ Seven out of 10 of the UK's top exports for food, non-alcoholic drink and feed are in the EU.¹³⁷ Iceland, Liechtenstein, Norway and Switzerland are all bound by most of the EU's food safety, environmental and veterinary regulations in order for them to gain access for their agricultural products to the Single Market; the UK would be likely to face a similar requirement if it left the EU.¹³⁸

The success of our food exports is balanced, however, by the UK's dependence on food imports from the EU. Nine out of our top 10 suppliers of food imports are in the EU, with the

¹³² Figure from the Office of Budget Responsibility quoted in 'If Britain Goes: Counting the cost of 'Brexit'', Chris Giles & Ferdinando Giugliano, *Financial Times*, 9 February 2015: <http://www.ft.com/cms/s/0/8e10bb3c-a7d1-11e4-be63-00144feab7de.html>

¹³³ Peter Kendall, 'The Case for British Agriculture', citing OECD figures in John Drew & Martyn Bond (eds.), *The UK & Europe: Costs, Benefits & Options, The Regent's Report 2013* (iCES/Regent's University, 2013), p. 124: <http://www.regents.ac.uk/files/regentsreport2013.pdf>

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*, p. 125

¹³⁶ *Ibid.*

¹³⁷ NFU, *UK Farming's Relationship to the EU*, 2 November 2015, p. 5: <http://www.nfuonline.com/assets/52824>

¹³⁸ *Ibid.*, p. 8

Netherlands, France and the Irish Republic at the top of the league table.¹³⁹ This would appear to give the UK some leverage in negotiations with the EU but that would be balanced by the fact that if we wanted to stay in the agriculture Single Market, we would have to adopt the Common Customs Tariff of the EU, which would prevent us from importing cheaper food from elsewhere in the world.¹⁴⁰ Not adopting the common tariff but imposing higher duties on food from the EU would require us, under WTO rules, to compensate the EU countries adversely affected.¹⁴¹ If we were entirely outside the Single Market for agriculture, we would no longer be able to prohibit imports that do not comply with our environmental or animal welfare standards as we would have to abide by the WTO rules that such restrictions have to be scientifically based; this would mean either a loss of business for our own farmers or a reduction in standards.¹⁴²

How to staff the food and farming sector would be an important question outside the EU. There is a significant dependence on EU migrants to work in these sectors at present, a fact recognised by both farmers themselves and by the Migration Advisory Committee, the official immigration watchdog.¹⁴³ If the UK did agree to free movement in order to gain access to the Single Market, this problem would be eased. If not, something like the now-disbanded Seasonal Agricultural Workers Scheme would be needed because of the reluctance of British-born people to take the seasonal work necessary to bring in the harvest. In the last year of that scheme, 2012, 98 per cent of the places available under it were taken up by the food and farming sector.¹⁴⁴

National policy on food and farming would have to address other issues, particularly the relationship with trade policy. The loss of leverage at the WTO international trade negotiations because we were no longer part of the EU bloc would affect our ability to influence international trade agreements that relate to agriculture.

How EU policy would change without the UK as a member is highly relevant because the UK has been a forceful advocate for a less protectionist, lower-subsidy agriculture policy. With the UK gone there is a danger that the balance within the EU could tip in favour of a more protectionist agricultural policy, reinforced by the lack of progress in the Doha trade round (which would almost certainly have prompted further reductions in agricultural subsidies in the EU if it had been agreed). Such a direction of travel would be unlikely to favour the UK.

FISHERIES

If the CAP is controversial, the Common Fisheries Policy (CFP) can only be described as highly contentious. Since its inception in 1983, it has been the subject of a barrage of criticism inside and outside the EU, by fishermen, by environmentalists and scientists and

¹³⁹ NFU, *supra* n. 137, p. 5

¹⁴⁰ Peter Kendall, *supra* n. 133, p. 125

¹⁴¹ WTO, 'Principles of the Trading System', 9 October 2015: https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm

¹⁴² These restrictions are allowed in the EU because it applies common rules to its Member States: see Peter Kendall, *supra* n. 133, p. 126

¹⁴³ NFU, *supra* n. 137, pp. 6-7

¹⁴⁴ *Ibid.*, p. 7; see also the case study on that page.

by politicians. The subsequent introduction of Exclusive Economic Zones, in place of the old six-mile and 12-mile limits in coastal waters, and the EU's 2013 reforms of the CFP have changed the picture somewhat but it remains a policy with which the UK has substantial difficulties.

As Andy Lebrecht (former UK Deputy Permanent Representative to the EU) has explained, this is a complex and highly politicised area of policymaking. The UK's fisheries sector has both the second largest tonnage and second largest processing industry, as well as the largest mainland exclusive economic zone, in the EU. There is fierce competition between fishing fleets (EU and non-EU) because of historic fishing patterns. EU fishing fleets are diverse and there are many species of fish, resulting in a complex regulatory framework.¹⁴⁵

Given this, the opportunity of the UK leaving the EU to sweep aside all of the regulatory framework of the CFP and introduce purely British regulation has immediate appeal. However, the dilemma here, as with the CAP, is the balance of British interests between leaving an EU which is reforming the CFP, and adopting new policies outside which would in practice be subject to extensive EU influence. Outside the EU the UK could not be certain that its fish stocks would have access to existing markets. Fishermen from Thanet, for example, sell some of their stock in Boulogne, an arrangement French fishermen would be unlikely to tolerate if the UK left the EU.¹⁴⁶

Outside the UK a new policy for fisheries would have to address how:

- it could ban foreign vessels from fishing in UK waters while protecting the rights of British vessels to fish in foreign waters;
- to compensate for the loss of some fisheries to which it gains access through EU agreements (e.g. Artic-Norwegian cod);
- to deal with the need to manage fish stocks across national boundaries, given that several fish stocks critical to the UK move in and out of the waters of other EU countries (and Norway);
- to negotiate an agreement with the EU to deal with all of these issues when the balance on fisheries within the EU would be tilted in an anti-UK fashion by our departure.¹⁴⁷

THE ENVIRONMENT – CROSS-BORDER POLLUTION & CLIMATE CHANGE

There are sharply conflicting views of what UK environmental and climate change policy should look like if the UK left the EU. Dr Charlotte Burns argues that the UK was once the

¹⁴⁵ Andy Lebrecht, 'Fisheries' in John Drew & Martyn Bond (eds.), *supra* n. 133, pp. 130-38

¹⁴⁶ Laura Sandys in Chatham House, *UKIP, the Radical Right and the European Parliament Elections: Q&A*, 31 March 2014, p. 4: https://www.chathamhouse.org/sites/files/chathamhouse/home/chatham/public_html/sites/default/files/20140331%20UKIP%20Q&A.pdf

¹⁴⁷ See Andy Lebrecht, *op. cit.*, pp. 134-5 for a discussion of these issues.

“dirty man of Europe” because of its low environmental standards and it was EU membership that forced the UK to tackle issues such as polluted beaches and nitrates in the water supply.¹⁴⁸ For many Brexit campaigners EU environment policy, including its measures to tackle climate change, embody all that they regard as bad about the EU; leaving, says Daniel Pycock, “would have the additional benefit of withdrawing the United Kingdom from one of the areas in which the European Union does the most damage: Environmental Policies”.¹⁴⁹

Mr Pycock is typical of many Brexit campaigners in seeing EU environmental legislation as bad for the UK. Some also dispute whether climate change is either happening at all or is as serious as most climate scientists claim it is. It is clear that outside the EU there would be political pressure for Britain to scrap much of the current environmental protection and to take a more laissez-faire approach. But that would run up against UK domestic opposition from an articulate and effective environmental lobby. It would also, as Michael Lane has pointed out, run counter to the UK’s international obligations through United Nations’ and other agreements.¹⁵⁰

The EU’s Single Market is also relevant. As evidence to the Government’s Balance of Competences enquiry stated, there are Single Market benefits to having a common system of environmental regulation in the EU. Welsh Water said that Regulation 259/2012, which introduces limits on household detergents, was a good example of a Single Market regulation that produces a level-playing field for business and also will improve water quality, helping to meet the objectives of the EU’s Waste Water Directive.¹⁵¹ Through its EEA membership, Norway has to comply with many of the EU’s environmental directives, including those relating to farming.¹⁵²

It is true that the UK has gone beyond EU requirements in implementing some parts of EU environmental regulation, for example, in the implementation of the Emissions Trading Directive.¹⁵³ UK animal welfare requirements are also more stringent than those required by the EU.¹⁵⁴

Environment policy is another thorny area of policy-making outside the EU; there will be pressure to add EU environmental regulations to a bonfire of regulations but pressure also to maintain them for their intrinsic value and because of the potential impact on British businesses’ ability to trade in the Single Market.

¹⁴⁸ Charlotte Burns, *The Implications for UK Environmental Policy of a Vote to Exit the EU*, Friends of the Earth, 8 May 2013, p. 2: http://www.foe.co.uk/sites/default/files/downloads/eu_referendum_environment.pdf

¹⁴⁹ Daniel Pycock, *The Plan to Leave the European Union by 2020*, Institute of Economic Affairs, 9 April 2014, p. 35: http://www.iea.org.uk/sites/default/files/publications/files/Pycock%20BREXIT%20entry_web_0.pdf

¹⁵⁰ Michael Lane, ‘Environment’ in John Drew & Martyn Bond (eds.), *supra* n. 133, p. 107

¹⁵¹ HM Government, *Review of the Balance of Competences between the United Kingdom & the European Union: Environment & Climate Change*, 13 February 2014, p. 65: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284500/environment-climate-change-documents-final-report.pdf

¹⁵² NFU, *supra* n. 137, p. 9

¹⁵³ Michael Lane, *op. cit.*, p. 107

¹⁵⁴ Vaughne Miller (ed.), *Exiting the EU: impact in key UK policy areas*, House of Commons Library Briefing Paper 15/7213, 4 June 2015, p. 58: <http://researchbriefings.files.parliament.uk/documents/CBP-7213/CBP-7213.pdf>

CRIME & JUSTICE

EU co-operation in the fields of crime and justice began informally in the 1970s and have developed into a formal body of law covering police and judicial co-operation in cross-border crime. The Coalition Government decided in 2014 that the UK should remain a part of the most significant measures adopted under this branch of EU policy, although it did have a right under the Lisbon Treaty, to opt out of them. Its decision reflected the value of these legal instruments and policies to the fight against crime, terrorism and other serious offences.

The most controversial of these 35 measures was the European Arrest Warrant (EAW), a legal order which enables a person to be detained and taken to another EU Member State for serious criminal offences. The Government said, when announcing that it wished the UK to continue to be able to use the EAW, that it is “an effective law enforcement tool that makes a significant contribution to the UK’s ability to investigate and prosecute serious crime”.¹⁵⁵

It seems unlikely that the Government would change its view after a vote to leave but there is no precedent for a non-Member State using the EAW and while a number of non-EU countries have operational agreements with the European Police Office (Europol), they do not have the same level of involvement as the 28 EU Member States.

The reason why the EU’s police and judicial co-operation policies developed was because of the poor quality of the alternatives. Prior to the EAW, for example, it took a year or more to extradite an offender to the UK and some EU countries did not allow extradition at all. Extradition now takes a matter of weeks within the EU, enabling justice to proceed. Without the EAW we would be forced to rely on a number of outdated Council of Europe Conventions, to which not all European countries are signatories and which are considered by experts in the field, both police and lawyers, to be less effective than the EAW.¹⁵⁶

Immigration issues were discussed in Chapter 2 in relation to the Anglo-Irish border and in Chapter 3 in relation to EU migrants and the free movement of people. There are other aspects of immigration that would be affected by the UK leaving the EU. The most notable is the so-called Dublin Regulation, under which asylum-seekers entering the EU must normally apply for asylum in the first Member State they land and they can be returned to that Member State if they travel elsewhere and then apply for asylum. Under this regulation 12,000 would-be asylum seekers have been returned to another EU or EEA state, saving the UK a considerable financial cost.¹⁵⁷

¹⁵⁵ Quoted in Vaughne Miller (ed.), *supra* n. 154, p. 88

¹⁵⁶ See House of Lords European Union Committee, *13th Report of Session 2012-13: EU police and criminal Justice measures: The UK’s 2014 opt-out decision*, HL 159, 23 April 2013, pp. 49-50: <http://www.parliament.uk/documents/The-UKs-2014-Opt-Out-Decision1.pdf>

¹⁵⁷ HC Deb 23 January 2015, vol 591, col 14WS: <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/chan98.pdf>; quoted in Vaughne Miller, *op. cit.*, p. 83

The UK has an agreement with Belgium and France to have UK Border Force officers stationed on their territory to check the passports and visas of those seeking to enter the UK from those countries (known as juxtaposed controls). This arrangement, by which Belgium and France also have their personnel in the UK to check papers at ports of embarkation, is not strictly an EU measure but it is an arrangement that depends on the goodwill of those countries. As the French Minister of Interior has already made clear, it is unlikely that juxtaposed controls would survive the UK leaving the EU; if that happened it would be likely to increase the number of asylum-seekers at UK ports.¹⁵⁸

EMPLOYMENT RIGHTS

Minimum EU standards for employment law aim to create a level playing field between businesses operating within the EU in order to encourage fair competition between employers. Common employment rights that apply across the entirety of the EU workforce provide employees with greater protection and job security, helping to prevent a race to the bottom in terms of employment standards.¹⁵⁹ EU employment laws such as the Acquired Rights Directive, embodied in UK law by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE); the Working Time Directive; the Equal Treatment Directive; Part-time Workers Directive; Parental Leave Directive; and Agency Workers Directive all underpin key aspects of UK employment law. While Brexit proponents on the Left see these as important safeguards for employees, there are those on the Right who would be happy to see all aspects of the EU's Social Chapter dissolved.¹⁶⁰

In the event of Brexit, it is unlikely that there will be any immediate change in the level of employment regulation in the UK. First, all EU laws are incorporated into the UK by domestic legislation; while secondary legislation implementing EU law would fall away with the repeal of the European Communities Act 1972, primary legislation also implementing EU law would remain on the statute book unless expressly repealed.¹⁶¹ Secondly, while that is a possibility, a significant amount of employment law that would remain by way of primary legislation is supported by parliamentarians representing a broad political consensus, unwilling to drastically hack back employment rights, a fact

¹⁵⁸ See 'If Brexit happens, UK won't be able to police French borders to stop migrants, warns France', Henry Samuel & Matthew Holehouse, *Daily Telegraph*, 21 October 2015: <http://www.telegraph.co.uk/news/worldnews/europe/france/11946146/If-Brexit-happens-UK-wont-be-able-to-police-French-borders-to-stop-migrants-warns-France.html>

¹⁵⁹ Sean Connolly, *What does Europe do for the UK? ... And what does the UK do for Europe?*, Mayer Brown International LLP, 5 February 2014, pp. 8, 18: https://www.mayerbrown.com/files/uploads/Three%20Dimensional%20Thinking//UKEU/11554ten_EU_in_or_out_brochure.pdf

¹⁶⁰ 'Labour Leave has no confidence in David Cameron's EU renegotiation', Brendan Chilton, *LabourList*, 10 October 2015: <http://labourlist.org/2015/10/labour-leave-has-no-confidence-in-david-camerons-eu-renegotiation/>; John Mills, 'Labour needs to get real about the EU', Labour for Britain, 27 August 2015: <http://forbritain.org/labour/2015/08/27/labour-needs-to-get-real-about-the-eu/>; Fresh Start Project, *Options for Change: Renegotiating the UK's relationship with the EU*, 4 July 2012, pp. 121-122: <http://www.eufreshstart.org/downloads/fullgreenpaper.pdf>; cited in Business for Britain, *Change, or go*, 25 September 2014, pp. 193-194: <http://forbritain.org/cogwholebook.pdf>

¹⁶¹ Kate McGarity, 'What would be the employment law implications of the UK leaving the EU?', Morton Fraser, 6 July 2015: <http://www.morton-fraser.com/knowledge-hub/what-would-be-employment-law-implications-uk-leaving-eu/>; James Davies & Bethan Carney, 'Voting for a Brexit? Employment law implications if the UK leaves the EU', Lewis Silkin, 6 October 2014: <http://www.lewisilkin.com/Journal/2014/October/Voting-for-Brexit.aspx>

that has been admitted by Brexit proponents.¹⁶² Thirdly, while businesses see the renegotiation of employment law as a top priority¹⁶³, they generally consider employment rights to be a good thing; in fact, support for the more controversial EU-derived employment laws has improved in recent years.¹⁶⁴ Fourthly, employment standards in the UK are generally higher than are necessary under EU law. For example, the then Government extended the scope of the TUPE regulations in 2006 beyond what was necessary under the Acquired Rights Directive. Furthermore, the trend since at least 2010 has been towards stronger, not weaker, employment legislation, often exceeding minimum EU standards, such as rights to shared parental leave.¹⁶⁵

What is likely, however, is uncertainty and confusion for businesses and employees alike. Contracts of employment and workplace policies have been agreed and implemented in line with EU legislation and employment tribunal decisions have been made under EU case law and British precedents based on EU legislation – the leading Supreme Court judgment on justification for age discrimination is based on the reasoning of the EU courts.¹⁶⁶ If there is wide-spread repeal of EU employment law, precedents still stand or remain highly persuasive and employees retain contractual rights.¹⁶⁷

Most importantly, if the UK is to maintain any sort of trading relationship with the EU it will remain bound by the vast majority of EU employment legislation and case law that proponents of Brexit hope to avoid; members of the European Economic Area, like Norway, for example, apply EU employment and social laws such as the Working Time Directive.¹⁶⁸ Not only that but it would be obliged to accept this without having any input or opportunity to veto any of this and therefore limiting the desired effect of Brexit upon UK employment law.¹⁶⁹ While the UK may be able to negotiate limited exemptions from EU employment law, there would be stiff resistance not only from the EU, strongly defending against any possibility of “social dumping”, but also from Member States, such as France and Germany, which are unlikely to permit a key competitor and large economy like the UK to gain a competitive advantage by being able to access the Single Market but with reduced employment standards.¹⁷⁰

¹⁶² CBI, *Our Global Future: The Business Vision for a Reformed EU*, 28 October 2013, p. 138:

http://www.cbi.org.uk/media/2451423/our_global_future.pdf; Business for Britain, *Change, or go*, 25 September 2014, pp. 945-946: <http://forbritain.org/cogwholebook.pdf>

¹⁶³ British Chambers of Commerce, *Businesses EU Barometer: 1st Quarter 2013*, 15 April 2013, p. 1: <http://www.britishchambers.org.uk/press-office/press-releases/businesses-favour-change-in-britain%E2%80%99s-relationship-with-european-union,-says-bcc.html>

¹⁶⁴ See the conclusions of the consultation on improving TUPE: HM Government, ‘Good news for employers and staff as improved TUPE rules come into force’, 31 January 2014: <https://www.gov.uk/government/news/good-news-for-employers-and-staff-as-improved-tupe-rules-come-into-force>; CBI, *Our Global Future: The Business Vision for a Reformed EU*, 28 October 2013, p. 138: http://www.cbi.org.uk/media/2451423/our_global_future.pdf

¹⁶⁵ Nick Elwell-Sutton, ‘BREXIT: some thoughts on employment law implications’, Clyde & Co, 7 July 2015: <http://www.clydeco.com/insight/updates/view/brexit-some-thoughts-on-employment-law-implications>

¹⁶⁶ *Seldon v. Clarkson Wright and Jakes* [2012] UKSC 16: https://www.supremecourt.uk/decided-cases/docs/UKSC_2010_0201_Judgment.pdf

¹⁶⁷ Kate McGarrity, ‘What would be the employment law implications of the UK leaving the EU?’, Morton Fraser, 6 July 2015: <http://www.morton-fraser.com/knowledge-hub/what-would-be-employment-law-implications-uk-leaving-eu>; James Davies & Bethan Carney, ‘Voting for a Brexit? Employment law implications if the UK leaves the EU’, Lewis Silkin, 6 October 2014: <http://www.lewissilkin.com/Journal/2014/October/Voting-for-Brexit.aspx>

¹⁶⁸ Shepherd Wedderburn, *Brexit Analysis Bulletin*, 29 May 2015, p. 4: <https://www.shepwedd.co.uk/sites/default/files/Brexit%20bulletin.pdf>

¹⁶⁹ CBI, *Our Global Future: The Business Vision for a Reformed EU*, 28 October 2013, p. 141: http://www.cbi.org.uk/media/2451423/our_global_future.pdf; Kate McGarrity, ‘What would be the employment law implications of the UK leaving the EU?’, Morton Fraser, 6 July 2015: <http://www.morton-fraser.com/knowledge-hub/what-would-be-employment-law-implications-uk-leaving-eu>

¹⁷⁰ James Davies & Bethan Carney, ‘Voting for a Brexit? Employment law implications if the UK leaves the EU’, Lewis Silkin, 6 October 2014: <http://www.lewissilkin.com/Journal/2014/October/Voting-for-Brexit.aspx>

OTHER POLICIES

The range and scope of the domestic policy consequences of a vote to leave have emerged clearly in the last two chapters. But there are other areas of policy where the EU is important. These range from regional funding within the UK under the EU's cohesion programmes, to the funding of science and research (where the UK gains an exceptional share of competed-for EU funds) and the regulation of civil aviation. In each case the Government would have to try and establish a policy while ensuring that this did not have adverse effects in the UK nor impede the over-whelming need to ensure the negotiation of a trading agreement with the rest of the EU.



CHAPTER 5

THE CONSEQUENCES FOR BRITAIN'S INFLUENCE IN THE WORLD

"Once divorced from Europe, we would have a diminished voice in the world – a lesser voice with our allies, and in every international forum. The UK would sink to a lower level of importance in the world. For the first time in 300 years, we would become a diminished European power. The doors along the corridors of international power would begin to close to us", Sir John Major.¹⁷¹

"From Britain's strategic position, EU membership gives you a second arrow in your quiver: you can do things directly as Britain and things through the European Union. In some countries sometimes it may turn out that the European arrow will look a little less threatening and other times it may be that the British arrow looks a little less threatening... From your point of view, I would think being able to use both makes sense", Professor Joseph Nye.¹⁷²

¹⁷¹ Sir John Major, *Britain and the EU: In or Out?*, Speech at Konrad-Adenauer Stiftung, 13 November 2014: <http://www.johnmajor.co.uk/speechberlin.pdf>

¹⁷² House of Lords, *Revised transcript of evidence taken before The Select Committee on Soft Power and the UK's Influence Inquiry on Soft Power and the UK's Influence*, 15 October 2013, p. 10: <http://www.parliament.uk/documents/lords-committees/soft-power-uk-influence/c151013Ev10.pdf>

INTRODUCTION

One of the most central questions regarding what would happen if the UK left the EU is whether Britain's influence in the world would increase or decrease. Those arguing for the UK to leave claim that the European Union entraps the UK in an out-of-date protectionist bloc. Those arguing for the UK's EU membership to continue say that it enhances British power regionally and globally, as the former Prime Minister Sir John Major explained in his speech in Berlin in 2014. Who is right?

The UK has a leading military and diplomatic position in a Europe that cannot shield it from the realities of a changing economic and political balance. The precariousness of Europe's regional and global position, as economic, military and political power moves from west to east, is a direct threat to British national interests.

In this chapter we look at the influence the UK currently has through its EU membership and what would happen if it were no longer able to pull on those levers of power currently available through EU membership; examine the context of that power from the views of our allies; and the threats and opportunities Brexit will bring.

THE IMPACT ON UK FOREIGN & SECURITY POLICY

The EU's foreign and security policy work has grown out of the political co-operation that took place between the European Community countries in the 1970s and become formalised within the EU's institutions and Treaties. It is still agreed by unanimity and the Member States remain in the driving seat; the Commission is a supporter rather than an initiator in this field of the EU's work.

Britain, as the second largest economy in the EU, a member of the Permanent Five of the UN Security Council, with substantial military assets and a long history of global engagement (including the connections that come through the G8, the G20, the Commonwealth and bilaterally with the United States), is in a highly influential position in European diplomacy. With France, it is the leading Member State in the making of EU foreign and security policy.

More recently, there has been a sense of a British withdrawal from leadership within the EU on foreign, security and defence matters. The UK has been less engaged in EU foreign policy initiatives since 2010 and at times has been absent from critical developments, notably in respect of the talks with Russia over Ukraine. This half-heartedness, driven in part by Euroscepticism in the Conservative Party but also by a national retreat from foreign policy engagement after the wars in Afghanistan and Iraq (symbolised by the House of Commons' rejection of air strikes in Syria in 2013), provides an indication of what might happen if the UK were to leave the EU.

FOREIGN POLICY

The UK's foreign policy goals were spelt out by the then Foreign Secretary in 2012:

My vision is of a distinctive British foreign policy promoting our enlightened national interest while standing up for freedom, fairness and responsibility. It should extend our global reach and influence and be agile and energetic in a networked world. We will use our diplomacy to secure our prosperity; build significantly strengthened bilateral and multilateral relations for Britain; and harness the appeal of our culture and heritage to promote our values, including human rights. We must make the most of the abundant opportunities of the 21st century.¹⁷³

Philip Hammond, Foreign Secretary since 2014, has added:

[T]o protect our security and guarantee our prosperity, we must develop our international influence and use our position on key international organisations to full effect.¹⁷⁴

This emphasis on working in and through international organisations reflects the realities of power for a medium-sized country like the UK. While the UK economy is the fifth largest in the world, our GDP per capita puts us 40th globally.¹⁷⁵ In population terms, the UK's population at 63 million makes us a large country in Europe (but still behind France, Germany, Russia and Turkey) but globally mid-sized. Some of the emerging economies have very large populations – China and India have over a billion people each – but Indonesia (255m), Brazil (212m), Pakistan (199m) and Nigeria (183m) all have populations more than double that of the UK.¹⁷⁶

In addition, while our armed forces are large and have significant capabilities, since 2010 the UK's defence spending has declined, with the UK's total military personnel making its armed forces 22nd in the world, behind France, Germany, Thailand and Turkey.¹⁷⁷ The number of frigates and destroyers has halved since 1996 (to 18) and the number of fighter aircraft has fallen from 220 in 2006 to 149 in 2014. And that is without mentioning the loss of capabilities – such as the scrapping of the UK's maritime patrol aircraft.¹⁷⁸

¹⁷³ From the FCO Annual Report 2012, quoted in HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: Foreign Policy*, 22 July 2013, p. 13:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/227437/2901086_Foreign_Policy_acc.pdf

¹⁷⁴ HM Government, *FCO Annual Report & Accounts: 2014-2015*, 29 June 2015, HC 25, p. 1:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444067/Amended_FCO_Annual_Report_2015_web__1_.pdf

¹⁷⁵ CIA, 'The World Factbook: Country Comparison – GDP per capita', 16 October 2015:

<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html>

¹⁷⁶ 2015 figures from: <http://www.geoba.se/population.php?pc=world>

¹⁷⁷ Global Firepower Index, 'Available Military Manpower: by Country', 28 July 2015:

<http://www.globalfirepower.com/available-military-manpower.asp>

¹⁷⁸ Figures from 'There has been a dramatic decline in the size and capability of the UK's armed forces', Tomas Hirst, *Business Insider*, 20 February 2015: <http://uk.businessinsider.com/the-decline-of-the-uk-armed-forces-in-charts-2015-2>

While the many international fora of which the UK is a member are important, all have their limitations. For example, while the UK retains its seat on the UN Security Council, it has not used its veto since 1989 and not on our own for over 40 years.¹⁷⁹

For all the difficulties in reaching agreement in the EU on foreign and defence policy questions (because of the need for unanimity, the fact that several Member States are officially neutral and because several are small states with limited capability), the EU is still a vital vehicle for the UK to make its voice heard on a larger scale in the world. If it can convince its partners of the case, the result is 28 countries acting together and not one. This has been seen recently over Ukraine and sanctions against Russia over its incursion into Eastern Ukraine. Despite real differences of view between Member States, the EU was still able to agree on economic sanctions against Russia in 2014 and to renew them a year later.¹⁸⁰

The Government has sought greater influence over the European External Action Service (EEAS), the EU's diplomatic service, swelling its ranks with British diplomats. Britons hold senior posts relating to Africa, Australia, Japan, Korea, New Zealand and Turkey, as well as Administration and Finance. The UK plan for the EEAS is to push for a "comprehensive approach" to EU foreign policy, bringing together economic, development, civilian and military tools to respond to crises.

On leaving the EU, the UK would have to find ways to maximise its foreign policy influence. The UK would remain a member of the North Atlantic Treaty Organisation (NATO) and would also have its intelligence relationship with the US but it would have lost the ability to lever the greater weight of the EU behind its foreign policy goals. The EU's foreign policy heft is greater not just because of its population and economic size but also because the attraction of the Single Market as a trading partner makes third countries cautious about alienating the EU. Losing your market in the EU is a serious economic risk for many countries so the threat of economic sanctions is a deterrent to action, just as the attraction of being allowed to trade with the EU on a favoured basis is an important incentive to act in support of the EU. The EU also has the capability to add development aid, humanitarian assistance, capacity-building (e.g. in police and civic institutions), political support and investment capital to its more conventional foreign, trade and defence policy tools. NATO cannot bring all these different measures to bear, which is why the EU has carved out its own (if modest) niche in security policy.

SECURITY POLICY

The EU's Common Security and Defence Policy (CSDP) had its origins in an Anglo-French initiative. Their Saint-Malo declaration in December 1998 stated the following aims:

¹⁷⁹ The issue in 1989 was the situation in Panama; the last sole veto was in 1972 over Southern Rhodesia: see United Nations, 'Security Council – Veto List', 13 July 2015: <http://research.un.org/en/docs/sc/quick>

¹⁸⁰ European Council, 'Russia: EU extends economic sanctions by six months', 22 June 2015: <http://www.consilium.europa.eu/en/press/press-releases/2015/06/22-russia-sanctions/>

The European Union needs to be in a position to play its full role on the international stage. To this end, the Union must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them and a readiness to do so, in order to respond to international crises.¹⁸¹

The leaders went on to say by strengthening “the solidarity between the Member States of the European Union” in order to make Europe’s voice heard in world affairs, “while acting in conformity with our respective obligations in NATO”, the EU would be contributing to the “vitality of a modernised Atlantic Alliance which is the foundation of the collective defence of its members”. In other words they saw a stronger and more active EU as a complement to NATO and not a replacement for it.

For some British politicians promoting the EU’s comprehensive approach is about de-emphasising EU military tools – a key goal for the UK given the importance of NATO. Stressing economic, civilian and development tools helps NATO maintain its position as the only realistic European security provider.¹⁸²

But the UK has been a reluctant partner in the delivery of the CSDP in recent years. Declining to take a leadership role, the UK has contributed less than expected. This can be seen in two ways:

- As a potential military leader: According to the IISS’ publication, *The Military Balance 2014*, last year the UK contributed fewer than 50 personnel to CSDP missions ‘on land’ (so excluding the Atalanta mission off the coast of Somalia). This is a very small contribution considering that the total number of local and international personnel on those missions in 2014 was approximately 4,300. On top of this is the fact that British defence spending – though still higher than many of its European NATO allies – is declining, perhaps below the 2 per cent of GDP figure that all allies are supposed to achieve;
- As a potential diplomatic leader: Potential will be lost in the development and strengthening of the EU’s comprehensive approach, which fits so well with key British foreign policy aims such as preventing conflict. And it deprives the UK of influence in Europe, influence with the US, and influence more widely.

WHY WOULD BREXIT MATTER NOW?

Dealing with Islamic Jihadism will require all of the EU’s law enforcement and security co-operation mechanisms. There will have to be closer co-operation between national security services tracking suspects, money and weapons even after Brexit. Because the

¹⁸¹ Full text at: <http://www.atlanticcommunity.org/Saint-Malo%20Declaration%20Text.html>

¹⁸² See Rosa Balfour, Caterina Carta, & Kristi Raik (eds.), *The European External Action Service and National Foreign Ministries: Convergence or Divergence?* (Farnham: Ashgate, 2015)

European defence and security project arises out of the movement of history's tectonic plates, CSDP would but to continue to develop, even without the UK.

By the same token, the UK, because it is a significant defence player geographically situated in Europe, would have no alternative but to continue to have some sort of relationship with the CSDP. This might involve the negotiation of a special status for the UK within the European security project. But whatever the precise nature of such an arrangement, the UK outside the EU would clearly wield significantly less clout in the CSDP than it has to date.

Of course, the UK might view departure from the CSDP as potentially liberating. From a British point of view, it is debatable whether the EU needed to develop military capabilities in order to exercise influence internationally. Deprived of one of its two military powers, the EU could seize the opportunity to turn its focus to civilian power, to develop its comparative advantage in civilian crisis response, and to develop a comprehensive approach by cooperating more closely with other organisations and states that could provide any necessary military instruments.

So it could be argued a British exit would hardly be noticed. Britain, once outside the integrated structures of the EU, would, in the views of some, be in a good position to prioritise and leverage its bilateral relationship with both the United States and France. But the US has consistently pressured the UK to become a full and active participant in all EU policy areas, including defence and security. That was one fundamental reason behind the 1998 Saint-Malo Agreement. If the UK found itself outside the EU, apart from a traditional role in NATO, which would in any case become more complicated in the hypothesis of a British stand-off with the CSDP, what could it offer the US in terms of security and defence?

Given the 'arc of crisis' that stretches around the EU's southern and eastern borders, it is clear that the US's NATO and EU allies must step up. Following the 9/11 terrorist attacks the EU published an interim action plan in December 2001 leading to the publication of the European Security Strategy in 2004 following the Madrid bombings. Despite this development and the subsequent realisation that the EU is in a dangerous neighbourhood, from 2004 to 2013 defence spending in Europe fell by 6.5 per cent (in constant dollar terms); in some countries, including the UK and Italy, it fell by more than 10 per cent.¹⁸³ Over the same period, Russia's defence expenditure more than doubled, and China's rose by 170 per cent. Saudi Arabia is now spending more on defence than the UK. Indeed, the EU battle groups – which stemmed from a 2004 Franco-British proposal – were envisaged as operating under a UN mandate, helping to prepare the way for the involvement of UN peacekeeping forces but they have never been deployed.

¹⁸³ Stockholm International Peace Research Institute, 'SIPRI Military Expenditure Database', 3 November 2015: http://www.sipri.org/research/armaments/milex/milex_database/milex-data-1988-2014

There are numerous reasons for the lack of (or slow) development of the CSDP, including the impact that the financial and euro crises have had on defence budgets and on ministerial attention. But among these reasons we must also include the fact that the UK and to a certain degree even France have failed to appreciate the use of the CSDP in a changed global environment with threats from the east and south, terrorism, climate change, cyber and energy security. The value that there is in the CSDP could be maximised if the missions truly formed part of the British-led 'comprehensive approach' designed to help states in a wide range of areas. Leaving the EU would end this opportunity and the global leadership it could provide the UK not only in security matters but others such as trade.

THE UK-USA RELATIONSHIP

Brexit would provoke a crisis in UK-US relations as the US would believe the UK is abdicating a key political role in Europe but also a key leadership position in the US global trade policy agenda. Since the 1950s, the US has preferred Britain to be an integral part of the European project. In geopolitical terms, the US considers Britain to be a part of Europe. The American polity would prefer a more tightly integrated European Union than currently exists. For the US, the EU is easier to deal with when the UK is on the inside. The US thinks of Britain as being more in sympathy with an anti-statist and free market approach to political economy than many European countries. As a result, a European Union in which Britain wields some influence is ideologically closer to the United States and less social democratic in outlook. Britain outside these structures is by definition less of an influencer.

As an example of the commercial and geo-political opportunities that could be lost if the UK left the EU, the fate of TTIP – the Transatlantic Trade and Investment Partnership – is crucial. Represented as the world's biggest free trade deal and worth £10 billion per year to the UK economy if completed, this is a major political prize that could be ruined by Brexit. The US is currently negotiating the deal not with a plethora of individual countries, all of which have a far smaller economy than that of the United States, but with the European Union as a whole.

The US sees a successful TTIP as a mechanism to allow the West to set global trade standards, strengthen Western diplomacy, improve European energy security and reaffirm transatlantic ties. The creation of a transatlantic trade bloc would strengthen the Western economic model against the growing influence of undemocratic states. A new, seamless market based on a transatlantic tariff-free zone with a large degree of regulatory convergence would be a major attraction for others. This would expand Western influence. The US sees TTIP as a new centre of gravity for global trade. Once an agreement has been reached, countries that already have far-reaching agreements with either the US or the EU could be offered access to TTIP. Canada recently signed an EU trade agreement as a precursor to joining the transatlantic area as represented by TTIP. Norway is a member of the European Economic Area and will have to accept TTIP's standards. It remains to be seen whether a post-Brexit policy of wooing Commonwealth

nations to sign separate trade deals with the UK would chime with the American and European desire for a bigger bloc over a web of interlocking agreements.

So if there is a possibility that Brexit could produce a UK policy that disrupts US policy on TTIP, there is bound to be deterioration in UK-US relations. Britain's departure from the EU would require a diplomatic rethink and reset immediately on this issue. There is little likelihood that the UK could negotiate a separate trade agreement with the US. As the US Trade Representative, Michael Froman, has already made clear: the US does not want to negotiate a separate free trade deal with a UK outside the EU.¹⁸⁴

The result could be that the UK's position might be comparable to that of Turkey. Turkey's customs union with the EU does not include areas that are covered by TTIP, such as agriculture and public procurement: in these areas, US firms would have an advantage over Turkish firms in Europe. Britain's diplomatic and trading position would also be compromised.

A deal on TTIP would help to keep the US committed to Europe. NATO remains the bedrock of the transatlantic security partnership but America's strategic gaze is increasingly drawn towards the Far East. This makes US politicians more and more reluctant to invest in the NATO alliance. TTIP could be a 'second anchor' for US commitment to Europe.¹⁸⁵ A deal would not be a substitute for NATO but TTIP could offer Americans a persuasive economic rationale for continuing to support a strong transatlantic bond.

If TTIP broke down and the Trans-Pacific Partnership (TPP, the potential US trade agreement with Japan and several other large Far Eastern economies, including those of Australia, Malaysia and New Zealand) succeeded, it would cement America's pivot to Asia and raise further doubts about Europe's importance to the US.¹⁸⁶ Moscow would see a collapse of the TTIP talks as a new opportunity to exploit, energising its anti-Western rhetoric. Beijing would still have concerns about TPP, but it would be relieved that Brussels and Washington could not impose their trade standards in unison. The UK leaving the EU would therefore setback US, EU and Commonwealth foreign policy objectives.

THE IMPACT OF BREXIT ON THE COMMONWEALTH

Many supporters of the UK leaving the EU want the Commonwealth to create a global free trade network with its 53 members at its heart. In 1961, when Britain first applied to join, and again during the 1975 referendum, the most emotive question was the choice Britain would have to make between Europe and the Commonwealth. Europe is now portrayed by Brexit campaigners as a deadweight. They point out that the Commonwealth contains at least seven of the fastest-growing global countries, with

¹⁸⁴ 'Major blow for Brexit campaign as US rules out UK-only trade deal', Matthew Holehouse, *Daily Telegraph*, 29 October 2015: <http://www.telegraph.co.uk/news/worldnews/europe/eu/11962277/Major-blow-for-Brexit-campaign-as-US-rules-out-UK-only-trade-deal.html>

¹⁸⁵ Rem Korteweg, 'It's the geopolitics stupid: Why TTIP matters', Centre for European Reform, 2 April 2015: <http://www.cer.org.uk/insights/it%E2%80%99s-geopolitics-stupid-why-ttip-matters>

¹⁸⁶ Office of the United States Trade Representative, 'The Trans-Pacific Partnership', 21 November 2015: <https://ustr.gov/tpp/>

ballooning new markets collectively exporting more than £1.5 trillion of goods and services each year.¹⁸⁷

UK exports of both goods and services increased to Commonwealth countries by 33.5 per cent to India, 31.2 per cent to South Africa, 30 per cent to Australia and 18.3 per cent to Canada (2010-12).¹⁸⁸ Britain exports £54 billion to the Commonwealth – less than a quarter of its European trade but growing at over 10 per cent a year.¹⁸⁹

Nevertheless, can the Commonwealth form the dynamic, like-minded, free-trading core of a new British global network for prosperity if the UK left membership of the world's biggest Single Market? While the economies of Commonwealth nations are growing, almost 90 per cent have developing or least developed nation status.¹⁹⁰ Thirty-one of the Commonwealth countries are small, many of them island states.

The reality is that the UK has far more in common economically with the advanced economies of the EU Member States than the Commonwealth. Increased trade with Commonwealth countries is perfectly possible for Britain. It does not have to shed itself of EU membership for that to happen.

Only six Commonwealth countries – Australia, Canada, India, Malaysia, Singapore and the UK – accounted for 84 per cent of Commonwealth trade.¹⁹¹ Those countries all have or are negotiating free trade agreements with the EU. Also, the Commonwealth is increasingly dominated economically by rising powers such as India and South Africa who are routinely on the opposing side of the free trade and transparency argument when it comes to most big issues of commercial or foreign policy. India is also more interested in pursuing its own ambitions on the world stage than in playing a role within the Commonwealth. For example, the Indian Prime Minister has not attended the last three Commonwealth Heads of Government Meetings.

Ultimately, a Commonwealth free trade agreement is unviable: UK trade with the Commonwealth has declined by over a third over the last 60 years and there is no political appetite amongst the developed Commonwealth nations to pursue such a project.

THE IMPACT OF BREXIT ON DEVELOPMENT

Leaving the EU would repatriate the £1.2 billion of UK aid managed through the European Commission. Most EU funding is channelled through the EU budget, via a number of

¹⁸⁷ 'The EU or the Commonwealth? Britain can have both', Anthony Bailey, *Daily Telegraph*, 26 November 2015: <http://www.telegraph.co.uk/news/newstoppers/eureferendum/12019366/The-EU-or-the-Commonwealth-Britain-can-have-both.html>

¹⁸⁸ Cited in 'Britain, the EU and the Commonwealth', David Howell, *The Independent*, 17 July 2013: <http://www.independent.co.uk/voices/comment/britain-the-eu-and-the-commonwealth-8713646.html>

¹⁸⁹ 'The empire strikes back' *The Economist*, 24 December 2012: <http://www.economist.com/news/britain/21567071-some-british-euroscptics-see-commonwealth-alternative-europe-it-isnt-empire>

¹⁹⁰ Peter Wilding, 'The case against Brexit, more not less', *British Influence*, 29 July 2015: http://www.britisheinfluence.org/the_case_against_brexit_more_power_not_less

¹⁹¹ 'The EU or the Commonwealth? A dilemma for the UK – or a false choice?' Steve Peers, *EU Law Analysis*, 29 November 2015: <http://eulawanalysis.blogspot.ie/2015/11/the-eu-or-commonwealth-dilemma-for-uk.html>

financial instruments introduced at the beginning of each seven-year budgetary spending cycle known as the Multiannual Financial Framework. The remaining funding is channelled through the European Development Fund, which sits outside the EU budget and largely supports the Cotonou Agreement, an international agreement between the EU and the members of the African, Caribbean and Pacific Group of States.¹⁹² In light of current development thinking with regard to the “bottom billion” of the world’s poor, many donors, including the EU’s EuropeAid and UK’s Department for International Development, announced that, under the new financial perspective’s (2014-2020) planned development programme, in future they would be concentrating funding on the poorest countries. Although the UK Government believe that 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 UK’s “Agenda for Change” programme will refocus EU development aid on the larger question – should aid, particularly aid targeted at the very poorest as is now the stated intention, be used as a bargaining pawn in geopolitics?

The British view – that development funding should be used for diplomatic purposes, the “hearts and minds” view that links soft power of development to the big stick of attempted diplomatic coercion – is the British contribution to reforming the system and leveraging its power. Humanitarian aid and most of development aid is targeted at the very poor or distressed to improve their economic, social and political outcomes and, through theirs, those of their countries. In the long term, such aid also bolsters donors’ own prosperity and security through the stable trade and peace thus assured.

Brexit would deprive the UK of those leveraging benefits of economies of scale and shared objectives. The EU’s global reach is greater than that of any of the Member States acting individually. Used effectively, the EU’s programmes can therefore address the full range of countries where poverty reduction remains a priority. 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.

CONCLUSION

Faced with the decision to leave the EU, the UK Government’s main priority would be to secure an effective trading relationship with the EU. But it would quickly have to give attention to the reduction in Britain’s status in the world outside the EU. The soft power advantages the UK is often said to have – the English language, its stable and successful democracy, the rule of law, a strong research base and high quality universities – would not be sufficient to compensate for the loss of leverage in foreign and defence policy that would result from exiting the EU. In addition to being poorer outside the EU, the UK

¹⁹² For further information, see European Commission, ‘European Development Fund (EDF)’, 30 November 2015: https://ec.europa.eu/europeaid/funding/funding-instruments-programming/funding-instruments/european-development-fund_en

would be less powerful too, at a time when the threats to its security have not been higher since the height of the Cold War.



AFTERWORD

TEN QUESTIONS THAT BREXIT SUPPORTERS NEED TO BE ABLE TO ANSWER

In this report we have looked at the possible consequences raised for this country by a vote to leave the European Union. This examination of the major policies affected has demonstrated that a wide range of economic, constitutional and political issues would need to be addressed, and in a relatively short period of time. To avoid a disorderly exit the UK would have to decide its domestic policies on a range of important areas. It could only do this, however, in parallel with its negotiations with the EU because domestic policy choices would impact on the success or otherwise of the UK's negotiation with the EU. For

example, employment issues, such as whether the UK retained the Working Time Directive or planned to continue subsidising farmers, would affect the EU's attitude to the UK in those negotiations.

Presuming that everything has gone as well as could possibly be imagined, the UK would be fully out of the EU after the two-year, Article 50 stipulated period. Parliament and Government would have spent much of that time considering and approving the alternative arrangements, most importantly our future trading relationship with the EU.

But despite the detailed examination of the various options for that relationship, it is still not clear what this arrangement with the EU would actually look like. This is the main issue that those arguing for the UK to leave the European Union need to answer. But it is so complex that it needs to be broken down into a set of ten questions. All of these require answering so that the electorate can consider the alternatives to EU membership before deciding how to vote in the forthcoming referendum.

We identify the top 10 questions that supporters of Brexit need to answer as being:

1. What would the Eurosceptic ideal arrangement between the UK and the EU look like and how realistic is it possible to achieve?
2. Every successful arrangement with the EU to allow countries outside of it access to the Single Market has included freedom of movement – how would we arrange access to the Single Market without agreeing to freedom of movement?
3. Article 50 stipulates a two-year timeline for exiting the EU. However, the Swiss deal with the EU took almost ten years to agree. How would we avoid any post-Brexit arrangement taking as long as the Swiss deal did?
4. Won't the commercial interests of the remaining EU countries take precedence for them over giving Britain "a good deal" post-Brexit?
5. Won't the two-year (at minimum) period post-Brexit period see Parliament completely tied up in renegotiation with the EU to the detriment of all other legislation?
6. Without the weight of the Single Market behind us, how will Britain avoid being in a poor bargaining position with countries like China, should they wish to come to the bargaining table in the first place?
7. How could voters be persuaded that the more radical alternatives to EU membership would not bring radical economic and political change with it that would disadvantage them?

8. Are those who wish Britain to leave the EU proposing open borders – or even significantly relaxed visa restrictions – with all Commonwealth countries, including some developing countries with massive populations, and in some cases large scale internal political problems, such as India, Pakistan and Nigeria?
9. During the two-year negotiation period that starts with the triggering of Article 50 post-referendum, would there not be a large incentive for an unprecedented amount of EU citizens to emigrate to the UK while it was still legally possible?
10. Are proponents of Brexit willing to remove a crucial aspect of the Northern Ireland peace process, and to risk Scotland leaving the UK, in order to leave the EU?

As this report has demonstrated, leaving the EU would be a momentous decision for the country to take, one that would pose a wide range of challenging questions. Those who argue for exit need to put forward a credible alternative, one that offers the UK the same advantages for trade, jobs, economic growth, our environment and our security as EU membership. We challenge them to do so.



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