

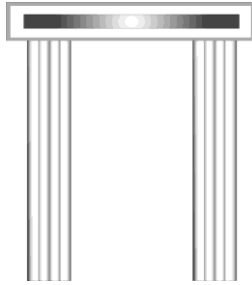


**William Cash
Bernard Jenkin
John Redwood**

**The UK and the EU:
What Must Change?**

POLITEIA

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The UK and the EU:
What Must Change?

William Cash
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'It is the last gasp of an outdated ideology, a philosophy that has no place in our new world of freedom, a world which demands that we fight this bureaucratic over-reach and lead Europe into the hope and potential of a new, post-bureaucratic age.' Rt Hon David Cameron MP, Prague, 24 Nov 2007

'It is national parliaments, which are, and will remain, the true source of real democratic legitimacy and accountability in the EU.' The Rt Hon David Cameron MP, Prime Minister, Bloomberg Speech, 23 Jan 2013

'My argument is actually Britain will maximise our influence if we achieve a reformed position in the European Union that properly recognises the fact that, for some European countries, they want the euro, they want to have an ever-closer union, they want no borders in Europe. We don't want those things. We want to be in Europe for trade and cooperation but we say no to the no borders scheme, we say no to the eurozone. We want our membership of this organisation to be about cooperation between nation states, not the building of a superstate.' The Rt Hon David Cameron MP, Prime Minister, Today Programme, 20 May 2014

'In the coming two years, we have the opportunity to reform the EU and fundamentally change Britain's relationship with it. We have the opportunity to build a European Union that is more competitive, more flexible and more accountable to the people, where powers flow back to member states, not just away from them, and where freedom of movement is no longer an unqualified right.' The Rt Hon David Cameron MP, Prime Minister, Hansard, Col 1122, 23 Mar 2015

Introduction

Restoring UK Democracy

The Conservatives have a clear mandate for our policy to renegotiate the UK's terms of EU membership and to let the people decide in a referendum. They also have a mandate for the overall objective of that renegotiation. That object has been defined by the Prime Minister's own words. Such a commitment can only be fulfilled by restoring our national democracy and the right of the British people to decide our own law in our own country. To achieve that, the Prime Minister is therefore right to insist that we need to 'fundamentally change' our relationship with the EU, so that what the people decide in elections, can be carried out by their representatives elected to the Westminster parliament at a general election.

If agreement on this principle cannot be achieved while remaining a member of the EU, then we must recommend to the British people that we vote to leave, in order to establish a new relationship with the EU from outside, like other sovereign states.

The question that lies at the heart of this great political debate is one of democracy. Whereas the individual EU member states are democracies, the EU is not a democracy; and when power has been transferred to the EU, power has been removed from accountable democratic national parliaments and governments to an unaccountable system of bureaucracy. Those who serve in the European Parliament represent the EU rather more than they represent the popular will of the national electorates which vote to elect them.

The forthcoming renegotiation is about who makes the ultimate decisions about our national interests and our constitutional framework. It is about who governs and how. If British voters want to control matters such as who is allowed into our country, or to enjoy our welfare benefits, about what regulations our businesses and the City of London must obey, and how much tax people pay, the UK must forge a new relationship with the EU which allows the UK Parliament to decide these things, and for which the Government of this country should be held accountable.

The absence of accountability to national voters has strengthened the growing unrest in many countries locked into the Euro. Voters in Greece, Italy and Spain seek change to national economic policy at the ballot box

only to find their new governments cannot make the changes they want. The UK wisely kept out of the Euro despite the clamour of many for entering, especially big business, many in the City and by the usual Europhile suspects in Parliament. The UK remained outside the Euro in order that we should remain self-governing. However, the present EU Treaties and their institutions take little account of the fact that the UK does not want to be part of monetary and political union. The offer of a 'two speed' or 'two tier' EU is no concession at all. It would continue the relegation of the UK to second class membership in an EU that as a whole is proceeding with continued political integration. The removal of the words 'ever closer union' from the Treaties will make no difference at all. So long as the EU remains a single constitutional, institutional and legal construct, where all member states are subject to one Commission, one European Parliament, one European Court of Justice and one EU body of law, all member states, even the UK will remain shackled to the process and reality of EU centralisation.

At present, the legal and constitutional relationship, and the attribution of powers, between the EU and the member states are governed by 'the doctrine of the occupied field.' By the Treaties (and, in our own case, the European Communities Act 1972¹), the member states have delegated powers to the institutions of the EU. 'Once delegated, the power cannot be withdrawn.'² By this doctrine, the European Court of Justice has been put at the summit of a new legal order, and in collision with the founding doctrine of our own constitutional settlement, the sovereignty of parliament. As the prime minister's Bloomberg speech made clear, this renegotiation must settle the question of who is sovereign, and this must be in favour of our democratically elected parliament.³

It will not be enough for some powers to 'flow back' to member states, if the nature and extent of the powers returned continues to be determined and adjudicated by the institutions of the EU. This does not break the doctrine of the occupied field, and the UK will continue to be drawn into what amounts to a federal state. 'Subsidiarity' is no substitute for sovereignty, for it is the

¹ Gov.uk. *European Communities Act 1972*.
<http://www.legislation.gov.uk/ukpga/1972/68/contents>

² Lasok, Dominic and Bridge, John. *Law and Institutions of the European Community: Sixth Edition*, Butterworth (Edinburgh), 1994, p 35

³ Gov.uk. *EU speech at Bloomberg*, 23 Jan 2013 <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>

EU which decides what powers are exercised at which level. ‘Subsidiarity is a reflection of federalism as indeed is the [Union] design.’⁴ This renegotiation must state expressly that our own sovereign parliament, according to our own law, determines the nature and extent of powers which are delegated to the EU, not the other way round.

It still comes as a shock to many voters to discover that their wishes on issues as fundamental as welfare, border controls, energy and justice and other matters may be found to be contrary EU law and therefore beyond the power of their democratically elected Parliament to remedy without fundamental change. Despite staying outside the Euro, the UK has been steadily losing the right to self-government.

We in Western Europe are fortunate in our national democratic traditions and proud of them. Together, we were a beacon of liberty for the new democracies of Eastern Europe during the dark days of Soviet domination. Every nation in Europe has fought to achieve freedom and democracy. It is a terrible irony how national democracy is being now sacrificed on the altar of EU integration: that integration is being imposed on the basis of a false bureaucratic consensus, which is failing our continent both economically and politically.

For the other member states, if that is their choice, then so be it. In the end, the process of European unification has proceeded so far, it is not for the UK to try tell to our fellow Europeans what the whole EU should be like: what powers the EU should have over them, and what they should decide in their national parliaments. If the other states wish the EU to become a United States of Europe with a wide range of centralised policies and controls, then the UK has no option but to leave. Some argue that for the UK to demand ‘special status’ with a national veto is tantamount to leaving the EU. It need not be so. This renegotiation must answer the ‘exam question’: if the UK or any other member state does not want to be in the Euro, or banking union, or fiscal union, or political union, what relationship should we have with those who do?

The ‘common market’ was a simple customs union, which used to work effectively on the basis of ‘trade and cooperation’ (to use the prime

⁴ Lasok, Bridge, p38

minister's words). The European Communities had limited competences and few if any law-making powers. Maintenance of 'the veto' was the principle assurance deployed by the 'yes' campaign in the 1975 referendum. It is essential to remember that the veto was explicitly promised to the British people to be retained in the 1971 White Paper on which the European Communities Act 1972 was based and enacted. It was at the heart of the 1975 referendum debate. It has been removed by successive treaties, court rulings and by administrative practice. If today we want 'trade and co-operation' with our EU partners, but not to be in what amounts to something more like a single European state, this negotiation needs to represent the kind of 'fundamental change' the prime minister says he seeks. We should be looking for ways of respecting member state sovereignty with mutual agreements. As the Eurozone states consider how to achieve growth and harmony within the currency zone, now is the time to agree a new form of EU membership, or to embrace the opportunities of exit from the EU.

Those who argue that leaving the EU will result in loss of access and influence over the EU Single Market, with no savings in cost or regulation, have no evidence for their claims. We would save at least our net contribution of £9.8 billion⁵, and more from the overall total of some £14 billion.⁶ We could release the 90 per cent of economic activity which does not involve trading goods directly with the EU from the burdens of EU regulation.⁷ We would regain our seat on the World Trading Organisation and all the other bodies on which the EU represents us. This would increase our direct influence in global affairs. We would also gain the right to make free-trade agreements with countries like the United States, China and India, which is fitting for the world's sixth largest economy. And our trade with the rest of the EU would not be at risk.

If we were to leave the Single Market, we would regain control of our own markets in the City, and elsewhere, and over our trade with the rest of the world. Even figures like former EU Commission president Jacques Delors indicated that the EU would have to conclude a new trade deal with the UK.⁸

⁵ Full tables are provided in Appendix II. Keep, Matthew, *EU Budget 2014-2020*. House of Commons Library, 22 May 2015

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Delors, Jacques, *Handelsblatt*, 28 Dec 2012.

No serious person can dismiss the prospect of such an agreement as the least bit impractical or unrealistic.

The EU already has 53 free trade agreements with non-EU Countries.⁹ *If we were to leave the EU altogether, Article 50 of the Treaty on European Union¹⁰ requires the Union to negotiate an agreement, and requires the EU to adhere to the principles of Article 3(5), which includes free trade.*¹¹

The other EU countries simply could not afford to engage in aggressive trade relations with the UK when they need us as markets for their own goods. The Eurozone and the other EU-27 would not wish to jeopardise their massive continuing structural surplus with the UK.¹² Our prosperity is as much in their interests as theirs is in ours. The only serious increase in tariffs relates to the common EU tariff on cars from outside the EU at 10 per cent.¹³

There is no way Germany would wish to face a 10 per cent tariff on her car exports to the UK, so there is no way they would wish to impose such a tariff on us. The UK would not leave the EU in order to take its trade deficit somewhere else. The Germans can be assured UK consumers will still want to buy BMWs and Mercedes on current terms.

There are huge opportunities for translating the Commonwealth into a new and growing axis of trade. The UK is the sixth largest trading nation in the world. The US would quickly recognise the reality of the value of the UK

⁹ Better Off Out. *10 Myths*, <http://www.betteroffout.net/the-case/10-eu-myths-about-withdrawl>

¹⁰ ‘the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.’ Lisbon.Org. The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, Article 50 <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-European-union-and-comments/title-6-final-provisions/137-article-50.html>

¹¹ ‘In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.’ Art 3(5) Treaty on European Union.

¹² Full tables are provided in Appendix I.

¹³ Open Europe, *What If? The consequences, challenges and opportunities*, May 2015. <http://openeurope.org.uk/intelligence/britain-and-the-eu/what-if-there-were-a-brexit/>

once again being free to promote free trade as an autonomous trading nation. The UK would naturally be aligned with the other non-EU states in Europe. Trading with them under WTO rules with no extra car tariffs would be a better answer than current membership. It is likely, however, that the UK will be able to do better deal than this, and a better deal than Norway or Switzerland, given the importance of the UK market to the rest of the EU.

This would not make the UK a bad European. On the contrary, we are good Europeans to be confronting the EU's failing political and economic model. We would be bad Europeans to go along with the present failing and centralising agenda. Our trade is not at risk, but our freedoms are if we stay inside the EU without change in our relationship with it.

William Cash MP
Bernard Jenkin MP
John Redwood MP

House of Commons
London
Thursday 18th June 2015

This paper is supported by:
Steve Baker MP, Chair of Conservatives for Britain

Summary

This short paper:

- Considers the significant public commitments which have been made about the proposed renegotiation of the UK's relationship with the EU;
- Indicates how the EU has encroached and is likely to continue to encroach on the UK's autonomy in key policy areas, unless there is fundamental change; and
- Explains how without fundamental change, the best interests of the UK, Europe, the wider world, and the cause of peaceful international cooperation, would be advanced by the UK leaving the EU and pursuing a different relationship with our EU partners.

The renegotiation must challenge the principle of present treaties, which deny the UK any constitutional autonomy based on our Common Law and on the ultimate supremacy of Parliament. This includes how the loss of self-government through EU Charter of Fundamental Rights demonstrates the legal and constitutional relationship with the EU. Any argument or commitment about the ECHR or the UK Human Rights Act will be seen as a related matter.

We also set out how QMV and the ECJ are an indication of 'creeping federalism' in the area of Common Foreign and Security Policy and Common Security and Defence Policy.¹⁴ We found legal counsel to the Council of Ministers claiming that the diplomatic immunity of foreign diplomats accredited to the Court of St James is incompatible with the Treaties.

On the question of the City of London, Financial Services and Trade, we list a range of EU actions and lost cases in the ECJ, and how this will undermine the primacy of the City as the world's premier financial centre and the UK economy's largest source of tax revenues.

¹⁴ The term 'creeping federalism' was accepted by Michael Heseltine in his book *The Challenge of Europe: Through 1992 and Beyond*, London, 1989. The term was coined by Bill Cash in an article in *The Times* on 23 June 1988.

At the time of the Treaty of Lisbon the Conservative party opposed the transfer of criminal justice powers and home affairs to the EU institutions. Despite this principled opposition, designed to keep control of our own security, there have subsequently been substantial transfers of powers to the EU over these sensitive matters. The growing authority of the EU in this area is being expanded by European Court judgements.

On immigration policy, we set out how the Free Movement of Citizens Directive is being used to challenge the most reasonable policies to try to limit EU immigration. There is a lack of democratic accountability which now poisons the political atmosphere, tempting some to make ever more extreme statements about migrants to make up for the fact that there is little if anything that can be done to stem the flow of EU migrants under the existing treaties.

Finally, the Single Market is constantly cited as the principle reason the UK must remain a full member of the EU, Lisbon et al. Indeed, tariff costs at full WTO tariffs would be less than our current contribution to the EU which we would save on exit. We ask the question: does the UK really need to be 'in' the EU Single Market? The answer is no. It is however the never ending pretext for political and legal centralisation. We point out that the significance of EU trade to the UK is declining, and how the shape of UK trade with the rest of the world is changing; that the EU share of UK exports is shrinking; and to the rest of the world are growing. This trend has been set now for decades. Even if we had to pay the EU import tariffs from outside the customs union, they would be far more limited than when we first joined.

Customs unions are not the future of world trade. We demonstrate how the EU Single Market increases the cost exporting to the EU, and of doing business in the UK, whether or not for export to the EU - a drag on the UK's performance in the global race. Nor does the EU create a 'level playing field'. So as the sixth largest economy in the world, the UK does not need to be in the EU Single Market. Even the CBI no longer uses the erroneous claim that '3m jobs' depend on our membership of the EU. In fact, lower business costs would increase jobs and opportunities in the UK.

Previous commitments The Conservative party promised in 2010 that a Conservative Government would negotiate **three ‘British guarantees’** to return powers to the UK. David Cameron described these as:

1. *‘the return of Britain’s opt-out from social and employment legislation in those areas which have proved most damaging to our economy and public services for example the aspects of the Working Time Directive which [causes]... real problems in the NHS and the Fire Service.’*
2. *‘a complete opt-out from the [EU] Charter of Fundamental Rights.’*
3. *‘negotiating an arrangement ... limiting the European Court of Justice’s jurisdiction over criminal law to its pre-Lisbon level, and ensuring that only British authorities can initiate criminal investigations in Britain.’* BBC News, David Cameron speech on EU, 4 Nov 2009

In the 2010 General Election we also promised:

- *‘We will improve Parliamentary scrutiny of European legislation by:
- strengthening the House of Commons European Scrutiny Committee;
- giving the Committee the power to force a debate and a vote on the government’s motions;
- putting on a statutory basis the convention that Ministers must gain Parliamentary approval before agreeing a decision in the Council of Ministers.’* ‘Campaign Guide 2010’¹⁵
- *‘Adjustments will be made to the Standing Orders of the House to ensure that a substantial minority of MPs (e.g.150 MPs)... force a vote on the floor of the House on any EU measure considered by the European Scrutiny Committee.’* ‘Campaign Guide 2010’, p.16

The Prime Minister’s stated aims for renegotiation. He has stated there should be:

- A significant reduction in the burdens placed on business by EU regulation, through amendments to EU legislation.
- A ‘leaner, less bureaucratic’ EU. Prime Minister’s Bloomberg speech, 23 Jan 2013
- Tackling the large number of peripheral EU bodies, streamlining the European Commission, reforming the EU budget to shut down programmes that haven’t worked. Bloomberg, 23 Jan.
- An increase in democracy in the EU particularly by strengthening the role of national parliaments and EU treaty change to say that the UK is not committed to ‘ever closer union’ in Europe.
- Provisions in the accession treaty that prevent ‘vast migrations’ if and when another country joins the EU ‘Free movement to take up work, not free benefits.’ Our police forces and justice systems should be able to protect British citizens, ‘unencumbered by unnecessary interference from the European institutions, including the ECHR.’ David Cameron, *The Daily Telegraph*, 15 Mar 2014
- The Prime Minister said one ‘key’ aim of renegotiation was ‘keeping our border controls.’ ‘Power must be able to flow back to Member States.’ Bloomberg Speech, 23 Jan 2013.

¹⁵ This presumably meant requiring an EU document to clear the House’s scrutiny before agreement was given (the scrutiny reserve). Conservative Research Department, *The Campaign Guide 2010*, pp.10-11.

I

Binding Commitments: Aims and Means

What our position needs to be. One of the problems about European legislation has been the way in which it has been changed to mean something different from what was intended.

Conservatives were united in opposition to the Maastricht ‘social chapter’ (*Maastricht Treaty signed 1992), and the treaties of Amsterdam (1997), Nice (2001) and Lisbon (2007). The UK Government, nonetheless has adopted almost all the policies which we had originally opposed. The implementation of everything up to and including the Lisbon Treaty over the past five years makes it now imperative to pursue the changes in our relationship with the EU which the Prime Minister has outlined.

This means setting out the legal and constitutional basis for the new relationship based on ‘trade and co-operation’. Rather than a limited opting out of certain things or repatriating certain powers, the UK must have the legal and constitutional means to limit EU legislation and the activities of the ECJ to areas defined by UK statute. Anything else (e.g. immigration issues, or welfare, or employment and trade union law, defence, foreign policy) should be explicitly confined to bilateral or multilateral agreements as between sovereign states (i.e. ‘co-operation’). This would actually give us more influence, than operating by majority vote or under the threat of QMV in so many areas. It would also restore democratic accountability. But this means opting out of all the rest of the Treaty architecture and the *acquis*.

It is essential to distinguish between questions of EU ‘reform’ and other matters which are intrinsic to the different, but central, question of ‘changing our fundamental relationship with the EU’; matters of law and constitutional change which the prime minister clearly understood in his European Council statement to the House of Commons on 23 March 2015, which made this distinction.

'Nothing should be off the table.' David Cameron, Bloomberg speech, 23 Jan 2013¹⁷

'Britain should not be in an ever closer union and I'm determined to make sure we get out of that.' The Prime Minister, Andrew Marr Show, 29 Sept 2013¹⁸

'More powers back to Britain.' Conservative Party European Election Manifesto 2014¹⁹

'...we don't want an ever closer union, we want to have trade and co-operation, not an ever closer union.' The Prime Minister, Andrew Marr Show, 5 Jan 2014²⁰

'...we want an end to our commitment to 'ever closer union' Conservative Party General Election Manifesto 2015²¹

'In the coming two years, we have the opportunity to reform the EU and fundamentally change Britain's relationship with it. We have the opportunity to build a European Union that is more competitive, more flexible and more accountable to the people, where powers flow back to member states, not just away from them, and where freedom of movement is no longer an unqualified right.' Rt Hon David Cameron, The Prime Minister, Hansard, Col 1122, 23 Mar 2015²²

¹⁷ Gov.uk *Speech: EU speech at Bloomberg*, 23 Jan 2013.

<https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>

¹⁸ David Cameron pledges to resist 'ever closer' ties with EU, *Financial Times*, 29 Sept 2013. ... reporting Marr Show 29 Sept <http://www.ft.com/cms/s/0/b206666e-291e-11e3-8d19-00144feab7de.html#axzz3borXw5GH>

¹⁹ Conservative Party, *Conservative European Election Manifesto 2014*.

https://www.conservatives.com/europe/~media/Files/Downloadablepercent20Files/MANIFESTOpercent202014/Largepercent20Printpercent20Europepercent20Manifesto_English.ashx

²⁰ BBC, *The Andrew Marr Show*, 5 Jan 2014.

<http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/05011401.pdf>

²¹ Conservative Party, *The Conservative Party Manifesto*, 14 Apr 2015.

<https://www.conservatives.com/Manifesto>

²² Rt Hon David Cameron, Prime Minister, Hansard, Col 1122, 23 March 2015.

II

EU Measures, Britain's Constitution and The Rule of Law

The danger of relying on 'opt-outs' is addressed in more detail under the chapter on 'Employment and Social Policy'. The problem is that 'opt-outs' tend to prove ephemeral, and are subject to re-interpretation by the EU. The focus in this section will be on the European Charter of Fundamental Rights, which goes into every nook and cranny of the law, has profound implications for the Government's migration and counterterrorism policies, and for national security procedures relating to immigration control.

The EU Charter of Fundamental Rights: a failed 'opt-out'

All became clear in the *ZZ v Home Secretary* on 4th June 2013.²³ The position is that the UK Supreme Court subsequently refused to allow the Government to appeal against this case because Section 3 of the European Communities Act²⁴ requires our UK Supreme Court to follow decisions of the European Court.

The problem was, or so it was thought, tackled by the former prime minister, Tony Blair, himself a lawyer by profession. He sought and believed he had won an opt-out from the charter. This, however proved not to be the case. When prime minister, he stated unequivocally, in June 2007, in the House of Commons: *'It is absolutely clear that we have an opt-out from ... the charter'*²⁵ in the Lisbon Treaty. A former Attorney-General, Lord Goldsmith, negotiated a protocol, but this has not been effective. The European Court ruled in the *Saeedi* case²⁶ that the charter does apply to the United Kingdom. In this ECJ case involving the Home Office in December 2011, the ECJ ruled:

²³ Court of Justice of the European Union. *Judgment in Case C-300/11 ZZ v Secretary of State for the Home Department*, 4 June 2013.

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2013-06/cp130070en.pdf>

²⁴ Gov.uk *European Communities Act 1972*, Accessed 11 June 2015.

<http://www.legislation.gov.uk/ukpga/1972/68/section/3>

²⁵ Hansard, *House of Commons Debates: European Council 25 Jun 2007:Column 37*, 25 June 2007.

²⁶ Doughty Street Chambers, *European Court of Justice holds that EU Charter of Fundamental Rights binding on UK*, 23 Dec 2011.

*‘Article 1(1) of ... [the] protocol explains article 51 of the Charter with regard to the scope thereof and does not intend to exempt the Republic of Poland or the United Kingdom from the obligations to comply with the provisions of the Charter or to prevent a court of one of those member states from ensuring compliance with those provisions’.*²⁷

It is clear, in the light of the Supreme Court ruling in the ZZ case, that further appeals to the Supreme Court will be fruitless.

David Cameron promised in 2009: *‘The second British guarantee we will negotiate is over the Charter of Fundamental Rights. We must be absolutely sure that this cannot be used by EU judges to re-interpret EU law affecting the UK. ... We will want a complete opt-out from the Charter of Fundamental Rights’.*²⁸

The European Scrutiny Committee recently recommended that the charter should be disapplied to the UK by amending the European Communities Act 1972. Therefore, the Government has a clear choice. It can either accept the charter, as would be clear from the rulings of the European Court and the obligations of the Supreme Court, both of which are contrary to the policies of the present Government, as well as the former Government, as understood by Parliament at that time; or, alternatively, amend the 1972 Act, which is really the only effective route of dealing with this problem.

The question now is: what is the Government going to do? The Government either has to accept the Charter or amend the 1972 Act. This leaves them with no choice but to amend the 1972 European Communities Act to reinforce Labour’s inadequate opt-out from the direct application of the European Convention on Human Rights into EU law. We cannot allow the ECJ’s unilateral overturning or our opt-out to stand. We can fix it by amendment of the 1972 Act, pointing out we are upholding something a Labour government also thought was necessary.

²⁷ *Ibid.*

²⁸ BBC News, *Full-Text: David Cameron speech on EU*, 4 Nov 2009.
<http://news.bbc.co.uk/1/hi/8343145.stm>

III

Defending Britain and the National Interest

Foreign, Defence and Security Policy – The Battle with EU ‘Legal Creep’

‘Decrease the amount of new EU legislation and roll back redundant regulation’, Conservative Party European Election Manifesto 2009²⁹

For Britain, foreign and defence policy have always been a matter of the highest national importance. British Governments have continued to exercise such responsibilities to promote and defend national interests. Now, however, as a result of the EU’s ‘legal creep’ into foreign, defence and security policy, the UK’s power to conduct policy in the national interest is being diminished. How can this be stopped?

Since the time of the Maastricht Treaty which fully introduced the idea of EU common foreign and defence policies and the associated parliamentary debates, the UK has made clear that defence and foreign policy were vital national matters. For this reason they were excluded from the legal architecture of the European Union’s central pillar of common action and qualified majority voting. These were to be conducted by intergovernmental agreement, where every country had a veto over whether it joined in with a decision or not. This worked, demonstrating that it is possible to benefit from European co-operation without forcing countries to join decisions with which they do not agree, and without the European Court being able to override national wishes.

Unfortunately this architecture of co-operation has now been subsumed into the same treaty architecture as for the Single Market. As a result the former arrangement for co-operative agreements on foreign, defence and security matters, have been replaced by a structure in which the EU is dominant, with its own ‘legal personality’, and power to sign international treaties, with the European Court of Justice deciding what constitutes foreign and defence policy. The current or proposed structures, which already do or in future would undermine the exercise of vital control over foreign, defence and security, include:

²⁹ Conservative Party, *The Conservative European Election Manifesto*, 2009.

Increased jurisdiction of the EU and the European Court of Justice

- The Lisbon Treaty replaced the previous pillar structure of the EU with a single new successor body called ‘the European Union’.³⁰ This means that the Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) are now subject to the supranational institutions of the old EC, including the ECJ³¹ except where it is explicitly excluded.
- The wording of this exclusion (Article 24(1)) leaves it to the ECJ to determine the legal definition of ‘common foreign and security policy’³² and provides no limits on its interpretations of other articles, such as Article 3 (‘The Union’s aim is to promote peace ...’) from which it is not excluded.
- The new single pillar EU has ‘legal personality’, so that the EU can sign international treaties, just like a nation state, including defence and military treaties.³³
- There are many areas of foreign and defence policy over which the ECJ has already established its jurisdiction, such as in defence procurement (where there are already two directives).

Proposals by the European Council on Security and Defence (Dec 2013).³⁴

These included proposals for developing a comprehensive approach to defence, civilian and military capabilities, for defence procurement, and for duplicating the activities of NATO and for obliging member states to support common defence aims. The Council’s proposals would have the effect of:

- Putting the Commission (which initiates EU legislation) in a lead role in such areas as the ‘EU Cyber Defence Policy Framework’ and the ‘EU Maritime

³⁰ Lisbon Treaty, Article 1, paragraph 2 b): ‘The Union shall replace and succeed the European Community.’

³¹ European Union Intergovernmental Conference, *House of Commons European Scrutiny Committee*, Thirty-fifth report of Session 2006-7, 9-Oct 2007.

³² Article 24(1) of the Treaty on European Union as amended by the Lisbon Treaty.

³³ Article 47 of the Treaty on European Union, inserted by the Lisbon Treaty.

³⁴ For the progress report on these proposals, see ‘High Representative - Head of the European Defence Agency: Implementing the December 2013 European Council Conclusions on security and defence’, http://eeas.europa.eu/top_stories/pdf/100914_implementing_the_dec_2013_european_council_conclusions_on_security_and_defence.pdf

Security Strategy'. They have ample scope to expand existing legislative competences where they are relevant to foreign, defence or security policy.³⁵

- Giving the Commission a leading role in developing 'proposals for a pooled acquisition mechanism'. Defence acquisition is inseparable from defence policy, and yet this is an area over which the defence procurement directives already give the ECJ supreme authority.³⁶
- Obliging Britain under international law to support EU action, despite our being explicitly excluded from Title V (CFSP and CSDP). We should not forget that these provisions would remain an obligation in international law. Title V includes the obligation–

'Article 24(3) The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of mutual solidarity and shall comply with the Union's action in this area.'

*'The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.'*³⁷

The UK is therefore obliged under international law to support EU actions regardless of our national interests.

Qualified Majority Voting – The loss of the National Veto. One of the more serious developments for Britain is the way in which, since the Lisbon Treaty, the safeguard of a national veto for member states on foreign affairs and security has been ended. Three developments illustrate the changed position.

³⁶ Jenkin, Bernard. The EU is taking over foreign policy by stealth, *The Daily Telegraph* 07 Dec 2013.
<http://www.telegraph.co.uk/news/worldnews/europe/eu/10502998/The-EU-is-taking-over-defence-policy-by-stealth.html>

³⁶ Jenkin, Bernard. The EU is taking over foreign policy by stealth, *The Daily Telegraph* 07 Dec 2013.
<http://www.telegraph.co.uk/news/worldnews/europe/eu/10502998/The-EU-is-taking-over-defence-policy-by-stealth.html>

³⁷ Article 24(3) of the Treaty on European Union as amended by the Lisbon Treaty.

- The position adopted by EU ‘High Representative ... for Foreign Affairs and Security’ is backed by qualified majority voting in the council of ministers on eleven areas of foreign policy.³⁸
- In the treaty amending the treaty of the EU the ‘passerelle’ clause, Article 48(7), establishes a mechanism for including new areas of foreign policy under qualified majority voting.³⁹ (This would require a referendum in the UK under the EU Act.), and another Article 42(7) replicates a NATO-type mutual defence pact – a direct duplication of NATO’s role.⁴⁰
- ‘Permanent structured cooperation’ under the Lisbon Treaty would mean an effective loss of veto. It would mean that a subset of member states can establish themselves as an autonomous defence pact within the EU⁴¹ and make decisions by qualified majority voting. This would leave the UK with an individual choice. Either we participate, and so are subject to QMV, or we opt out, but we would remain bound to support the decisions they make in our absence ‘actively and unreservedly’ (Article 24(3) of the Treaty on European Union). This constitutes the loss of the national veto on CFSP and CSDP.

³⁸ The UK Government lists the areas added by the Lisbon treaty as ‘EU humanitarian aid operations’; ‘Civil protection’; ‘Implementation of solidarity clause; Creation of a 'start-up fund' for urgent Common Foreign and Security Policy measures; Urgent EU aid to third countries; Membership of structured co-operation in defence; Appointment of High Representative of the Union for Foreign Affairs and Security Policy by the European Council; Role of the High Representative of the Union for Foreign Affairs and Security Policy in CFSP implementing measures; Measures to facilitate diplomatic and consular protection’:

A Guide to the Constitutional Treaty, *Open Europe*, August 2007, p. 20.

³⁹ Article 48(7) of the Treaty on European Union, inserted by the Lisbon Treaty.

⁴⁰ Article 42(7) of the Treaty on European Union, inserted by the Lisbon Treaty: ‘If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.’

⁴¹ Article 42(6) of the Treaty on European Union, inserted by the Lisbon Treaty.

The European Defence Agency. The EDA's statute also includes substantial qualified majority voting provisions as well as its own provisions for 'permanent structured cooperation'. Again, we lose the veto and are bound by Article 45 and 46 in the same way.⁴² Moreover the EDA duplicates NATO functions and assumes responsibilities which properly are for national ministries. In particular:

- The EDA duplicates NATO functions such as weapons standardisation, which has been staple fare for NATO since it was established. Why is there a need for two sets of weapons standards in the EU? Will such arrangements be used to protect French, Italian and German defence industries.
- The EDA's statute refers to the need to develop EU 'defence capabilities', it appears to be challenging the role of a national defence ministry which has such a responsibility for a nation state. It is difficult to escape the conclusion that the EDA is the start of an EU Defence ministry.

⁴² Article 45 of the Treaty on European Union, inserted by the Lisbon Treaty.

'... quite rightly, in our view... national supervision (of financial services) must be pre-eminent.' The Prime Minister, 23 June 2009⁴³

'If we cannot protect the collective interests of non-Eurozone member states then they will have to choose between joining the euro, which the UK will not do, or leaving the EU.' The Chancellor, 15 Jan 2014⁴⁴

'(We want to) see the Single Market safeguarded and not have us ordered around by the single currency countries.' Prime Minister's Questions, 19 Nov 2014⁴⁵

'..countries that are not in the euro are going to need some guarantees of their own...' The Prime Minister, 23 Feb 2015⁴⁶

'...we will not let the integration of the Eurozone jeopardise the integrity of the Single Market or in any way disadvantage the UK.' Conservative Party General Election Manifesto 2015⁴⁷

⁴³ House of Commons, *Statement on the European Council*, 23 Jun 2009.

⁴⁴ Gov.uk. *Extracts from the Chancellor's speech on Europe*, 15 Jan 2014.

<https://www.gov.uk/government/speeches/extracts-from-the-chancellors-speech-on-europe>

⁴⁵ House of Commons, *Prime Minister's Questions*, 19 Nov 2014.

⁴⁶ House of Commons, *Statement on the European Council*, 23 Feb 2015.

⁴⁶ Conservative Research Department. *Conservative Party Manifesto 2015*.

IV
UK Financial Services, the City of London, and UK Trade
National Supervision v European Controls

Recent challenges and legal conflicts: EU vs UK Govt: 5-nil.

The UK's financial and insurance services industry accounts for around 8 percent of GDP and with professional services, around 12 per cent. While London leads the world as a financial centre in other UK cities the industry employs considerable numbers, e.g. Manchester, Edinburgh or Birmingham.

The UK and London economies rest heavily on specialisms in banking and financial services. The main competitor centres are in New York, Hong Kong, Switzerland and other non-EU regulated areas. EU regulation and control has been unsympathetic to the industry and fails to recognise the competitive logic of world markets. However, in a number of important areas, EU regulatory and tax moves could undermine Britain's success as a global player.

In a number of recent cases Britain has been unsuccessful in her appeals against the exercise of damaging powers in the industry, distinct in the different specialism it brings to banking and financial services.

1. Power of the European Securities and Markets Authority (ESMA) to ban short selling:

The UK brought a challenge against the power granted to ESMA to ban short selling of various financial instruments in circumstances involving a threat to financial markets. This power was given to ESMA by the Short Selling Regulation, adopted in 2012 (Regulation 236/2012).⁴⁸ The UK argued that the Single Market treaty base of the Regulation does not empower the EU (or its agencies such as ESMA) to adopt case-by-case binding decisions directed at market participants, overriding national authorities' decisions; rather, it only allows EU laws of general application that national authorities apply. The UK also argued that the power to ban short selling could not be delegated to ESMA from the EU

⁴⁸ Europa.eu *Short Selling* http://ec.europa.eu/finance/securities/short_selling/index_en.htm

institutions, as it involved significant policy-making discretion. Formally, the UK said its challenge was to ensure legal certainty over ESMA's work (rather than trying to strip it of this power). The Court of Justice rejected the challenge in its entirety on 22 January 2014.⁴⁹

2. **Financial Transaction Tax being adopted within 'enhanced co-operation'**: The UK brought a challenge against the Council Decision, adopted in January 2013, authorising enhanced co-operation among 11 Eurozone Member States for the purposes of adopting an FTT. The challenge was mainly based on the extraterritorial effects of the FTT proposed by the European Commission within the enhanced co-operation (British-based financial institutions operating in London would be covered by the tax in some situations, for instance). The challenge was rejected by the Court of Justice on 30 April 2014⁵⁰, on the grounds that the FTT itself was still being negotiated and might not contain the elements objected to. The Court left the door open to a UK challenge after the FTT's adoption.
3. **Bankers' bonus cap**: The Capital Requirements Directive IV ('CRD IV') and Capital Requirements Regulation (CRR), adopted in 2013, include provisions limiting the amount of 'variable remuneration' that can be paid by banks and investment firms to staff whose activities 'have a material impact on the institution's risk profile'; this is set at a ratio of 1:1 with fixed pay, unless bonuses of up to twice fixed pay are approved by a certain proportion of shareholders. The CRR also requires the publication of fixed and variable pay for these staff. The UK filed a legal challenge against these provisions in September 2013⁵¹ on various grounds, including that the EU treaties do not allow such regulation of pay and the legislation infringes the principle of proportionality and/or subsidiarity.⁵²

⁴⁹ : Case C-270/12, *United Kingdom v European Parliament and Council*, 2014.

⁵⁰ : Case C-209/13, *United Kingdom v Council*, 2014.

⁵¹ : Case C-507/13, *United Kingdom v European Parliament and Council*.

⁵² : The full list of grounds can be seen in the official notice of the challenge: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62013CN0507&from=EN>

4. **European Central Bank policy on location of clearing houses:** In July 2011 the ECB published its ‘Eurosysteem Oversight Framework’⁵³ which included a policy that all clearing houses clearing above a certain amount of Euro-denominated credit derivatives must be based in the Eurozone. This would force clearing houses based in London to relocate. The UK launched a challenge against this in September 2011, mainly on the grounds that it contravenes Single Market principles and constitutes discrimination on the basis of nationality between EU Member States.⁵⁴ In November 2011 the ECB subsequently published a policy on use of clearing houses in Eurosysteem foreign reserve management, which the Government said could have the same discriminatory effect and which it added to the UK challenge in 2012.⁵⁵
5. **European Commission derogation for the UK on banking regulation:** A European Commission blueprint proposed by Michel Barnier, the Commissioner in charge of financial services, which proposed curbs on banks betting with their own funds and gave regulators the power to separate risky trading from other forms of banking.

Due to British concerns arising from the UK having its own Vickers reforms to banking, the Commission included a special ‘derogation’ to permit – subject to the Commission’s approval – other models for separation such as the UK Vickers reforms, which safeguard high-street banking and other ‘core’ banking operations.

In an opinion circulated on 17th January 2014, EU Council lawyers conclude that the commission derogation mechanism ‘is not compatible with the legal basis of the proposal, with the nature of the proposed instrument as defined in the [EU treaties] and with the general institutional principles established in the treaties’.⁵⁶

⁵³ ECB, *Eurosysteem Oversight Framework*, 2011.

<https://www.ecb.europa.eu/pub/pdf/other/eurosysteemoversightpolicyframework2011en.pdf>
⁵⁴ : HC Deb 15 Sep 2011 c52WS

⁵⁵ Barker, Alex. Grant, Jeremy. *ECB clearing house policy could stoke tensions*. Financial Times. 23 Nov 2011. <http://www.ft.com/cms/s/0/6602e2ca-15e2-11e1-a691-00144feabdc0.html#axzz3cjps0GTE>

⁵⁶ Barber, Alex. Vickers reforms fall foul of EU lawyers, *Financial Times*, 17 June 2014. <http://www.ft.com/cms/s/0/8e451f24-f590-11e3-be21-00144feabdc0.html>

The Council legal service's blunt rejection of the commission approach argues that the exemptions would mean the rules were not fully and uniformly applied across member states, as required by regulation. This leaves some banks in part of the internal market untouched by regulation for an indefinite period, which 'achieves a result that is exactly the opposite of the aim of causing the least possible disturbance to the internal market'.⁵⁷

It suggests the derogation should be deleted completely, or refashioned to comply with the strict conditions attached to exemptions from EU regulations. This could include inserting a limited time period for the exemption and better justifying its purpose, or changing the legal form so it is more flexible and able to accommodate existing national rules.

The Commission remains confident that its proposal is legal.

The UK's legal challenge on these has not been successful and the industry now faces a number of further regulatory and tax measures. These would subject UK institutions to EU tax policy or remuneration controls, or to measures intended for Eurozone countries. The effect would be to drive business away from the EU altogether, or leave the UK without the benefit of having its independent monetary policy or the ability to keep and reward high value specialist parts of the industry.

The main issues which the UK faces are:

1. **The Financial Transactions Tax.** The EU is seeking to impose this throughout the member states even though only 11 are signed up to it. The UK will find it difficult to resist extraterritorial claims being made by the EU who wish to impose this tax on firms transacting business in the EU outside the 11. The promise that member states remained sovereign in tax measures is once again being undermined. An FTT will direct business away from the EU altogether as third parties seek untaxed jurisdictions.

⁵⁷ *Ibid.*

2. **Banking regulation.** The EU is completing a banking union for the Eurozone, which makes sense. It is also using this as cover to extend its own banking controls and regulations over banks in London. If the UK is to get full benefit from an independent monetary policy its banks need to be outside the cash and capital controls regime of the EU, as well as of course remaining outside any mutual guarantees and support mechanisms.
3. **Regulation of remuneration.** The EU is seeking to control levels of remuneration in high achieving private sector financial service and banking businesses. This interference is directing more of the talented investment managers and specialist banking departments to locate outside the EU altogether to avoid these controls. London may be the worst loser from this process, given the large scale of high value activities in finance it enjoyed in recent years.
4. **Regulation of ways of doing business.** The EU in the name of creating common financial products across the whole Single Market area – which may be a good – is in danger of regulating against other ways of conducting the business and designing products which may impede innovation, domestic business development and export to non EU destinations.

The City of London's representations on EU matters affecting financial services and banking are repeatedly overturned by the European Court. They are generally based on arguments put forward by multinationals and vested interests.

The strategic issue is very simple. As mentioned above, the UK and London economies rest heavily on specialisms in banking and financial services, with main competitor centres being New York, Hong Kong, Switzerland and other non-EU regulated areas.

It is therefore unacceptable to allow the EU to regulate and control most of this activity, when they are far from sympathetic to it and have no intention of recognising the competitive logic of world markets. The skirmishes on tax and remuneration offer us a warning of the future, when further EU regulatory and tax moves might be hostile to this kind of

business. The UK would be better off reasserting control over its own tax and regulatory regime. Fiscal union in the Eurozone gives the UK the chance to argue that as a non-Euro member it needs differing arrangements which leave it in charge of its own banking and financial systems, as many UK voters think we still are. Trying to disentangle this from Single Market is legally impossible, so some kind of unilateral opt-out mechanism is essential.

V

Justice and Home Affairs

Returning the Rule of Law to Britain's Justice System

The Lisbon Treaty, which came into force in December 2009 and which the Conservative Party united to oppose, radically increased EU control over policing and criminal law. EU laws in this area are now typically decided by qualified majority voting rather than unanimity in the Council of the EU, and the European Parliament's agreement to proposals must now usually be obtained.

EU policing and criminal justice laws adopted since the Lisbon Treaty took effect also come under the full jurisdiction of the EU's Court of Justice (ECJ). This means that the ECJ can issue binding rulings in cases brought against a Member State by the European Commission, for what the Commission alleges to be that Member State's failure to abide by one of these laws. It also means the ECJ can rule on questions about the interpretation of these laws submitted to it by British courts.

The UK was allowed to opt out of the EU policing and criminal justice laws adopted *before* the Lisbon Treaty entered into force provided the UK gave notification before June 2014. Such an opt out would have been effective from 1st December 2014. This is the 'bloc opt out', and the UK could have been opted out of all of these laws en masse.

In October 2012 following the prime minister's announcement that the government would exercise the right under the Lisbon Treaty to opt out of the EU police and criminal justice measures adopted before the treaty came into force in December 2009, the home secretary confirmed that that was the government's thinking. She added that it also intended to negotiate with the Commission and others to opt back into individual measures 'that it is in our national interest to rejoin'. In July 2013 she explained that the UK would opt out of the measures en bloc and seek to reinstate only those that helped to combat cross border crime and keep the country safe. She identified 35 measures, out of 130 pre-Lisbon measures, which it would be in the national interest to reinstate.

The UK therefore chose to become bound by a number of all the significant EU policing and criminal justice laws now in force under the

Lisbon Treaty, the most controversial of which was the EU Arrest Warrant. The UK cannot opt out of the relevant law again.

A total of 35 measures including:

- Arrangements for co-operation between financial intelligence units of Member States
- Eurojust
- Joint investigation teams
- The European arrest warrant
- The European Police College (CEPOL)
- The European Criminal Records Information System (ECRIS)
- Laws on the establishment, operation and use of the second generation Schengen Information System (SIS II)

Although the European Scrutiny Committee conducted a detailed inquiry into the bloc opt out and raised various questions about why the Government wanted to opt back in to these laws,⁵⁸ the Coalition government went ahead with its decision to opt back into to a series of these measures, including the all-important European Arrest warrant.

The government sought, and obtained approval of the last Parliament to do so, after a short and muddled debate which attempted to consider all the measures in one single debate. Much of the debate time was taken up in discussing the method of considering these wide ranging issues rather than the substance of them. As a result the UK finds itself still in the position where a UK citizen can be arrested in the UK and taken to another EU country for trial for an alleged offence which is not a crime under UK law. The quality of legal processes in various countries of the EU is variable and can be well below our standards for a fair trial and for the protection of innocent people facing charges.

⁵⁸ European Scrutiny Committee, *Twenty-First Report, The UK's block opt-out of pre-Lisbon criminal law and policing measures*, 30 Oct 2013.
<http://www.publications.parliament.uk/pa/cm/cm201314/cmselect/cmeuleg/683/68302.htm>

The UK should also:

- Seek EU treaty change that allows the UK to opt out of those EU laws not under the bloc opt out that currently exist. This includes the European Investigation Order.
- Seek EU treaty change that limits or excludes ECJ jurisdiction over these laws in relation to the UK, while the UK is bound by them.
- Seek EU treaty change that makes reversible all past and future UK decisions to become bound by EU laws in this area.

We could alternatively consider refusing to apply EU policing and criminal justice laws that bind the UK under the EU treaties, where these are deemed unacceptable by amending the ECA (1972). This could be done in the UK legal order with an Act of Parliament.

'With the centralising agenda rejected in referendums, now is the time to press home the arguments for radical change: returning employment and social regulation to national control.' Daily Telegraph, 13 Sep 2005

'We need to bring back the powers over social policy and employment policy that are causing so much damage to British business.' Conservative leadership debate, 3 Nov 2005

'For Britain, the first priority must be the return of powers over employment and social regulation. This would be the strategic imperative of my European policy.' David Cameron, Centre for Policy Studies, 8 Nov 2005

'... I can tell you that we will get out of the European Social Chapter so we can make those rules in Britain rather than in Brussels.' David Cameron, Conservative Party Conference, 3 Oct 2007

'A major goal of the next Conservative Government will be the return of social and employment legislation to British national control.' Conservative European Election Manifesto 2009

'... the social and employment legislation, we think that's an area that ought to be determined nationally...' The Prime Minister speaking on The Andrew Marr Show, 4 Oct 2009

'A Conservative government will negotiate for three specific guarantees – on the Charter of Fundamental Rights, on criminal justice, and on social and employment legislation – with our European partners to return powers that we believe should reside with the UK, not the EU.' Conservative Party General Election Manifesto 2010

'Whole swaths of legislation covering social issues, working time and home affairs should, in my view, be scrapped.' David Cameron, Sunday Telegraph, 1 July 2012

VI

Employment and Social Policy

Clarity, Consistency and the Law – Beware of so-called ‘opt-outs’

In his speech to the CBI on 20th May 2015, Sir Mike Rake said:

‘the EU is far from perfect. Regulating on so-called “life-style issues” – for example – should clearly be left to Member States. And the impact of poorly thought-out legislation – especially on employment law – can be a real headache for business.’⁵⁹

He must therefore be perplexed that the prime minister seems to have abandoned any plan to return employment and social regulation to national control.

Take the telling example of the working time directive (WTD), which has not only had grave consequences for the professional training of hospital doctors, but reveals how the EU imposes measures on this country from which we had negotiated an ‘opt out’.

This directive has affected patient safety in the NHS. In their 2012 paper ‘The EU and the NHS’, Andrea Leadsom MP, Charlotte Leslie MP and Chris Howarth concluded that the WTD ‘has had a negative effect on junior doctor training, the continuity of patient care, waiting lists, NHS finances, acute specialties and the doctors themselves who report a negative impact on their working practices and fatigue.’⁶⁰ As well as reducing the flexibility with which doctors can take breaks, the 2000 *SiMap*⁶¹ and 2003 *Jaeger*⁶² rulings from the ECJ established the principle that doctors must count all the hours where they are technically on call as work hours, regardless of whether that time includes large stretches of sleep. Additionally, the EU’s directive on professional qualifications has resulted in doctors with insufficient language skills practicing in the UK, and this has been a contributory factor

⁵⁹ Rake, Mike. *Speech to CBI Annual Dinner 2015*. CBI. 20 May 2015. <http://news.cbi.org.uk/index.cfm?LinkServID=0C9D1717-2D12-4CA6-9EE215A73A32C3F7>

⁶⁰ Howarth, Chris. Leadsom, Andrea. Leslie, Charlotte. *The EU and the NHS: The impact of the Working Time Directive and language requirements on doctors in the NHS*, 2012

⁶¹ Case C-303/98 *Sindicato de Medicos de Asistencia Publica (SiMAP) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana*. [2000] ECR I-7963

⁶² Case C-151/02 *Landeshauptstadt Kiel v Norbert Jaeger*. Judgment of 9 Oct 2003.

in a few serious incidents.⁶³ When polled in 2009, two-thirds of surgical trainees said that there had been a ‘deterioration in the quality of their surgical training as a result of WTD’.⁶⁴ It is therefore imperative to recover control over rules on working time in order to be able to ensure patient safety.

The directive reveals another problem - with how such measures can be imposed.

It is often wrongly claimed that Labour’s cancellation of the Maastricht Treaty ‘opt-out’ from the so-called ‘social chapter’ in the Nice Treaty was much more significant than it actually was. The truth is that ‘opt-out’ subsequently (like the opt-out from the EU Charter of Fundamental Rights) proved to be completely ineffective. This is an important lesson about the ephemeral effect of ‘opt-outs’ for the present negotiations. It underlines why even quite significant Treaty change is unlikely to provide for the ‘fundamental change’ in our relationship with the EU that the prime minister says the UK needs. Such fundamental change cannot be achieved by adjustments of the existing treaty articles, or based on opt-outs. It has to rebalance the relationship in favour of our national parliament, as the prime minister indicated in the Bloomberg speech. We do not highlight social and employment issues because we wish the UK to have worse terms and conditions, but because we think these matters are best decided by the UK Parliament which can be sensitive to the needs of big services like the NHS, and to the views of managers and unions in such a service.

The European Social Charter promoted by Jacques Delors 25 years ago contained many contentious proposals which were opposed by the then Conservative Government, including measures such as the Working Time Directive⁶⁵ and the European Works Directive Council.⁶⁶ At Maastricht, the

⁶³ *Ibid.* Howart, Leadsom, Leslie.

⁶⁴ Association of Surgeons in Training (ASiT) survey, *Optimising working hours to provide quality in training and patient safety (January 2009)* and British Orthopaedic Trainees Association (BOTA) survey, *BOTA position statement on EQTD and training in trauma & orthopaedic surgery (January 2009)*;
<http://www.rcseng.ac.uk/policy/briefings/?searchterm=royal>

⁶⁵ Eur-Lex. *Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time* <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088> 4 Nov 2003.

then UK government insisted that the social chapter of the Maastricht Treaty should be relegated to a protocol at the end of the Treaty which the UK would not sign. It was said that this would exempt the UK from being forced to apply those contentious measures. However, long before the subsequent Labour government cancelled the 'opt-out', the working time directive and others were forced on to the UK by the EU.

Under the 1986 Single European Act (the Treaty which preceded Maastricht) social and employment policy was subject to unanimity so the UK vetoed measures like the working time directive. It was claimed that the Maastricht social chapter 'opt out' would protect the UK from such measures even though they were going to be applied by majority vote in the rest of the EU. However, the EU Commission needed to do no more than to present the directive as a health and safety measure, under a different treaty chapter, to which majority voting applies. John Major's government vainly tried to contest this in the European Court of Justice, but it ruled against the UK, so the working time directive was imposed on the UK, despite the 'opt-out'.

Some continue to believe that the UK only remained outside the EU Single Currency because of the 'opt out' negotiated by John Major. There is no doubt that this opt-out did provide the UK with the flexibility to choose whether or not to proceed to the 'the third stage of monetary union' at a time of our own choosing.⁶⁷ Maastricht did not however provide for the UK to 'opt-out' out of stages one and two. In fact, it was only in the Amsterdam treaty as it finally acknowledged that the UK would not rejoin the European Exchange Rate Mechanism, which had done so much damage to the European economies in the early 1990s.

Some countries are not in the Euro because they do not qualify against the convergence criteria. The case of Sweden is different. Sweden qualified for membership and would have joined at the outset, but for the fact it had a referendum which rejected the Euro. Sweden therefore remains outside the Euro, even though it had no 'opt-out' under the Maastricht Treaty unlike the UK or Denmark. Its 'opt-out' was technically illegal.

⁶⁶ Gov.uk. *European Works Council Directive*. 12 Dec 2012. <https://www.gov.uk/european-works-council-directive>

⁶⁷ Europa.eu. *Treaty of Maastricht on the European Union*. Entered into force, 1 Nov 1993. http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_maastricht_en.htm

The experience of these two opt-outs demonstrates three important factors about the way the EU operates that are relevant to this renegotiation. The ECJ ruling on the EU Charter of Fundamental Rights also underlines this.

Firstly, it shows that in the end, politics overrides law in the EU. Second it shows that the way EU law is imposed reflects the political consensus in the EU. This means that whatever specific protections are put into the Treaties in this renegotiation are likely to be overruled by the EU consensus and to prove ineffective, whatever such changes are said to mean at the time they are agreed. Third, we saw this third factor demonstrated again, when the EU arranged the first round of bail outs for suffering Eurozone states, in defiance of the no-bail out clause in the EU Treaties⁶⁸, and just as important, if a member state cannot or will not comply with the terms of the Treaties, the treaties themselves can be ignored, provided there is a consensus in the EU.

Three factors imply that the only way the UK can guarantee that the new relationship with our EU partners will be sustained is that it should be recognised at the outset that it is our national parliament which will decide what EU laws should apply in the UK, and our own Supreme Courts which should be the final arbiter of our national law, not the European Court of Justice. The Conservative manifesto recognised this, in respect of ECHR law, what it said: ‘This will break the formal link between British courts and the European Court of Human Rights, and make our own Supreme Court the ultimate arbiter of human rights matters in the UK.’⁶⁹ The prime minister has consistently made clear that the same principle should apply to social and employment legislation. If this is not explicit in any new agreement, there has been no fundamental change in the UK’s relationship with the EU.

⁶⁸ Lisbon-Treaty.org. *Article 25 – Lisbon Treaty* <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-3-union-policies-and-internal-actions/title-viii-economic-and-monetary-policy/chapter-1-economic-policy/393-article-125.html>

⁶⁹ Conservative Research Unit. *Conservative Party Manifesto 2015*, p 60.

VII Immigration

Free Movement - Incompatible with Controlled Immigration

The EU treaties state that all nationals of EU Member States are also ‘EU citizens’. The treaties further provide: ‘Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.’

The primary piece of EU legislation governing the right of Member State nationals to move to, and reside in, other Member States is the Free Movement of Citizens Directive.

The EU’s Free Movement Directive states that, as a general rule, all EU citizens residing in another Member State on the basis of the Directive enjoy equal treatment with nationals of the host Member State, in all matters within the scope of the EU treaties. This includes state welfare. The same right to equal treatment extends to non-EU family members of EU citizens, who have the right of residence under the Directive.

The European Commission is taking legal action against the UK under the EU treaties, because of the ‘right to reside’ test which the UK applies.

Net migration from the EU is now the more significant part of total net migration, at 178,000 in 2014.⁷⁰ The last Coalition government had some success in limiting non EU migration, but none in controlling EU migration. As a result the prime minister’s very popular target of cutting net migration to tens of thousands over the period 2010-15 was not achieved. Instead net migration rose to over 300,000 a year by the end of the period. The prime minister has reaffirmed his target for this Parliament, and accepts that it will require changes to our EU arrangements to curb EU migration to deliver it.

⁷⁰ Migration Watch UK. Latest Immigration Statistics – Released May 2015
<http://www.migrationwatchuk.org/latest-immigration-statistics>

The Government is struggling to reduce net migration as quickly as it wished because while it has reduced net migration from outside the EU, it has little control over net migration from inside the EU, which has gone up.

EU law on free movement and residence also has a significant impact on criminal justice in the UK, in terms of controlling the entry and stay of nationals of other EU countries who are convicted of serious crime. The Free Movement of Citizens Directive allows the right of EU citizens to enter or reside in another Member State to be restricted on grounds of 'public security', but it also says, 'Previous criminal convictions shall not in themselves constitute grounds for taking such measures. The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.'⁷¹ In short, automatic deportation or refusal of entry on the grounds of a criminal conviction is not allowed, and decisions to deport or refuse entry are subject to a rather vague test that is policed, ultimately, by the EU's Court of Justice.

We cannot exercise control over immigration and restore public confidence in our immigration system if we do not take back control over EU migration. We appreciate the principle behind of 'free movement', but it must be qualified by our own policies and priorities, which should be backed by UK statute law restoring control over immigration to this country, and uncompromised by EU or ECHR law. That way we can exercise controls on immigration that do not discriminate against non-EU countries, including Commonwealth countries with which we have strong links.

⁷¹ Europa.eu. *Directive 2004/38/EC of the European Union and of the Council*, 29 Apr 2014.

VIII

Best Options for Britain if Renegotiation Fails Trading with - or ‘ being in’ - the EU’s Single Market?

Very often the discussion about Britain's trading relationship both globally and with the EU, is overshadowed by an outdated concept of how trade today is organised under rules better suited to today's flexible global market. To clarify some of these points we are responding to questions often raised in the context of the debate of the UK’s relationship with the EU as a trading partner.

Should the renegotiation fail, can the UK leave the EU?

Do we need to be ‘in’ the EU Single Market?

No. Advocates of the EU Single Market present EU membership as indispensable to the UK economy. UK governments have argued that it wants to ‘deepen’ and ‘extend’ the Single Market. However, our trade in goods is now well below 50 per cent of our total trade (a claim some pro-EU advocates still falsely make).⁷² The benefits of the Single Market need to be weighed against the regulatory burden it imposes on the UK economy. The EU Single Market is the never ending pretext for the EU’s harmonisation of standards and laws across the EU. This is a constant process, which led to the centralisation of powers and decision-making in Brussels, taking powers away from member states such as the UK. These decisions rely for more on the Single Market provisions of the EU treaties, than on the words ‘ever closer union’ which are merely part of the preamble to the Treaty on European Union.

How important is the EU to the UK’s access to the Single Market?

Declining. The UK exported goods to the European Union comprising no more than 8per cent of our economic output (GDP) in 2014 (about the same as the export of goods to non-EU countries).⁷³ The official ONS figures are inflated by the ‘Rotterdam-Antwerp effect’ which includes goods travelling through these ports for destinations outside the EU

⁷² Milne, Ian. *The Single Market and British Withdrawal*, The Bruges Group 2011, p5.

⁷³ Tyler, Gloria. Webb, Dominic. *Current account data: EU & Non-EU*. House of Commons Library. 11 Jun 2015.

included in the count. (Many UK goods are exported via ports like Rotterdam and Antwerp to countries outside the EU; and many imported goods are immediately re-exported to the EU in the same way.)⁷⁴ Yet the burdens and costs of the Single Market bear down on 100 per cent of UK economic output. The trends show that the EU share of exports is declining, and the share to the rest of world (RoW) is growing.

From exports of services, the UK already earns substantially more than from exports to non-EU countries. Services exports to the EU were equivalent to only 4 per cent of GDP in 2014⁷⁵, but to the RoW were 8 per cent of GDP.⁷⁶

In both goods and services, the EU therefore accounts for less than half of the UK's trade in goods and services, and the graphs in the Appendix show the trend is in long-term decline, with non-EU trade decreasing in importance.

Would we face tariffs if we were outside the Single Market?

We would not face additional tariffs. Even if the UK left the EU, without any free trade agreement in place of the existing arrangements, 90 per cent of UK GDP would not face tariffs. For the other 10 per cent exported to the EU, average tariff levels are now generally low.⁷⁷ They would be charged only on trade in goods and not on services or income.

⁷⁴ According to the ONS Pink Book 2012 (<http://www.ons.gov.uk/ons/rel/bop/united-kingdom-balance-of-payments/2012/bod-the-pink-book-2012.pdf>), definitive figures on the Rotterdam-Antwerp Effect are not available. However, Global Britain estimated in 2011 that it accounted for 11.25 per cent of UK exports to the EU in 2009, so that when the Rotterdam-Antwerp effect is taken into account, the real percentage of UK exports which go to the EU is 42.6 per cent. This would reduce the ratio of UK goods exports to the EU to UK GDP from 10 per cent to 8.875 per cent. For this estimate, the real level of imports from the UK per capita of the receiving populations in the Netherlands, Belgium and Luxembourg is assumed to be the same as the official average level of UK exports received in Germany and France: £565 per capita. It is assumed that half of the excess exports go to other EU countries, half to countries outside the EU. More information can be found here:

<http://www.globalbritain.org/BNN/BN64RotterdamAntwerpNethDistortion.pdf>

⁷⁵ *Ibid.* Tyler, Webb.

⁷⁶ *Ibid.*

⁷⁷ *Open Europe*, Britain and the EU: what if there were a Brexit? 23 Mar 2015.

<http://openeurope.org.uk/intelligence/britain-and-the-eu/what-if-there-were-a-brexif/>

Joining the EEC in 1972 offered the UK a more relevant advantage at the time. Tariff barriers around the ‘common market’ then were very much higher. Today, most tariffs are negligible, or have been eliminated altogether. So today, customs unions are becoming less and less relevant. There are no substantial customs unions anywhere in the developed world except for the EU, which in global terms looks more and more anachronistic. It is interesting to note that neither ASEAN nor NAFTA are customs unions. Moreover, the fear that trade with the EU in certain sectors (e.g. motors) would be adversely affected were we to leave the existing treaties is not credible, since the EU (particularly German) sells so much more to the UK than UK exports to them. It would be perverse for the EU to want a ‘trade war’, which would, for example, damage car sales to the UK, and so there will not be one.

Does the EU Single Market reduce costs of exporting to the EU?

No. Tariffs on trade in goods are the only direct cost eliminated by virtue of the Single Market, but the other costs imposed by the EU exceed these. The other effects of the Single Market make the EU notion of ‘tariff free trade’ profoundly misleading. The EU is imposing covert costs on our domestic and exporting economy. UK business is subject to those additional costs, whether or not they are exporting to EU markets. Even ten years ago, former EU Trade Commissioner, Peter Mandelson, admitted to the CBI that EU red tape was costing about 4 per cent of the EU’s GDP.⁷⁸

A Treasury study under the last government is said to have concluded that the total costs of EU membership amounted to a significant 28 per cent of UK GDP.⁷⁹ That consists of 7 per cent of GDP on EU protectionism, 12 per cent of GDP on the competition gap with the US, 6 per cent of GDP on EU overregulation, and 3 per cent of GDP on transatlantic barriers to trade. So the EU Single Market increases the cost exporting to the EU. In fact, it increases the costs of doing business in the UK, whether or not for export to the EU. Today’s EU is increasingly a drag on the UK’s performance in the global race. In any case, the cost of EU tariffs would be more than the UK’s current net contribution to the EU finances of £9.8 billion.⁸⁰ (‘Net

⁷⁸ *Financial Times*, 9 Nov 2004.

⁷⁹ See the account of a study by HM Treasury provided in: Lee Rotherham. (2012). *The EU in a Nutshell*. Harriman House. p. 465 and John Redwood. ‘What does the UK pay for the EU?’ 28 July 2012: <http://johnredwoodsdiary.com/2012/07/28/what-does-the-uk-pay-for-the-eu>

⁸⁰ Keep, Matthew. *Briefing: EU Budget*. House of Commons Library, 22 May 2015.

contribution is after all the grants from subsidies after payments or rebates we get from the EU).

Does the EU Single Market create a level playing field for UK business with the rest of the EU?

No. The pretext of EU regulation may be the ‘level playing field’ but it results in one which tends to protect the advantage of established industries, at the cost of new and innovative industries. The EU legislative process is dominated by ‘comitology’, a process which is good at reconciling dominant vested interests at the expense of minority interests.⁸¹ The UK is therefore often forced to compromise or left with unsatisfactory rules forced through by qualified majority voting. This is why Sir James Dyson, the billionaire inventor and industrialist, has concluded that the UK should leave the EU, telling the BBC’s Today Programme ‘I think it’s a European Union dominated by Germany, and in our particular field we have these very large German companies who dominate standards setting and energy reduction committees, and so ... the old guard and old technology [are] supported and not new technology’.⁸²

Even opt-outs agreed at political level are often set aside by the EU legal system, citing the Single Market as the main pretext. We now see this in the decisions which are affecting the City of London, whose banking, investment and financial services dwarf the few EU equivalents. (See section on Financial Regulation in this paper.) Most EU countries have little or no equivalent industries to the City of London. So they can vote for new taxes and regulation on the City of London without paying any penalty themselves.

EU Single Market rules now extend well beyond what was by the Single European Act 1986, and far beyond what is necessary to enable borderless trading within the EU.

⁸¹ Europa.eu. *Glossary – Comitology*.

http://europa.eu/legislation_summaries/glossary/comitology_en.htm

⁸² Swinford, Steve. Dyson: Britain should leave Europe to avoid being ‘dominated by Germans’. *Daily Telegraph*. 21 Nov 2014.

<http://www.telegraph.co.uk/news/worldnews/europe/11245359/Dyson-Britain-should-leave-Europe-to-avoid-being-dominated-by-Germans.html>

For example, take the public procurement directives. There is much the UK government could do to improve public procurement, but the inflexibility of the EU public procurement regime adds time, cost and legal complexity to public procurement, as well as damaging UK industry by the loss of business to other EU countries, whose own governments have more lax compliance than in the UK. Cross-border public procurement remains minimal, and has not prevented national protectionist practices. Why is every French police car, and train made in France?

Does the UK really need the EU Single Market?

No. The UK is the sixth largest trading nation in the world. Even if were the UK to leave the EU Single Market, we would be joining the 170 other nations who trade freely in the global Single Market. We would regain control of our own markets and over our trade with the rest of the globe. The Single Market is an outdated idea from a different euro-centric era and ill-adapted to the global economy in which Asian and South American economies now play a leading part. It is being superseded by the emerging global Single Market governed by international bodies such as the WTO.

In addition, the Single Market has been repeatedly used to centralise power to the institutions of the EU and away from the member states. This goes against the Prime Minister's stated desire for the UK to have a relationship with the EU based on 'trade and cooperation.' The EU Single Market is not based on trade and cooperation but on harmonisation, standardisation, centralisation and increased regulation.

It is often implied that that leaving the EU Single Market would cost 3m British jobs. Not even the CBI will now use this figure. In fact, that figure distorted the findings in a study published by the National Institute for Economic and Social Research (NIESR) and was disowned by the economists to whose works it was falsely attributed. The opportunity to ease the massive regulatory burden on British businesses and to set our own regulations in line with our own specific priorities would create an environment in which business costs would be lower, creating more jobs and opportunities.

Our trade is not at risk. The German government has confirmed they would want a free trade agreement with the UK if we left the EU. There is no danger they will want to stop exporting their cars and other products to us,

so they will allow our exports. Our jobs are not at risk. On the contrary, out of the EU the UK can trade more successfully with the rest of the world, get on with concluding better trade deals with the rest of the world, and can make its own decisions on business costs and regulations.

IX Conclusion

At stake is much more than the issue of the market. At stake is whether we will live in a democratic country in future or not. We want the British people to be sovereign again.

Our 2015 manifesto was right to insist, ‘...we will not let the integration of the eurozone jeopardise the integrity of the Single Market or in any way disadvantage the UK’. How can this pledge be honoured without the ‘proper, full-on treaty change’ agreed unanimously by all 28 member states, which the prime minister has called for?

Moreover, this renegotiation should not be about changing minor or irrelevant matters, for example changes to benefit rules for EU migrants: these cannot possibly be regarded as fundamental change in our relationship with the EU. In any case, the recent UK government ‘Balance of Competences Review’ on the Single Market Free Movement of Persons (published last summer) observed that:

‘None of the evidence we received was able to point to specific research or analysis on the importance of access to social security benefits in the decision to migrate [...] (para 2.55).’

So the whole debate about benefits offers zero hope of achieving the objective of fulfilling our manifesto commitment to cut net migration to ‘tens of thousands’. These irrelevances are just distractions: throwing sand in our eyes.

Fundamental change means the end of the absolute supremacy of European law as a condition of EU membership; regaining our power to make our trade deals and to regulate our economy, like other countries around the world; being able to control how much taxpayers have to pay to fund the EU. The EU is the government’s protected spending programme which ministers don’t like to admit. The net contribution to the EU has grown from £3.4bn in 2008 to £9.8bn last year, and it will continue to grow. Why are we spending more on our wealthy neighbours, instead of spending more on the British peoples’ real priorities like the NHS, investment in

science, education? And why are we embarking on new cuts in defence, the police and social services to pay more to the EU?

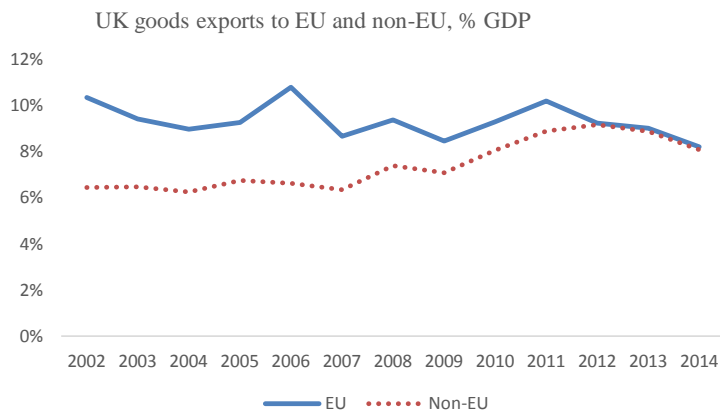
If the British people want to change policy, laws, taxes or spending, their will expressed in a general election or in polls and lobbying should prevail. At the moment under the current treaties the UK Parliament cannot manage our borders, our welfare, our defence, our foreign policy or even all our taxes in the way the UK electorate want. That is why we need to change our relationship and restore our rights of self government. Leaving the EU would also mean we will be roughly £10 billion a year better off, as we cancel the expensive subscription to the EU.

So in summary, we support the government's policy of renegotiation and a fair referendum, but that negotiation must be real and honest. Let's argue for the real reform and fundamental change set out by the prime minister. Let there be an end to phoney opt-outs and so-called flexibility which only favour centralisation, and let us explain that the alternatives to our present EU membership are far more attractive than the wholly unacceptable prospect of continuing to be subsumed into the existing EU.

APPENDIX I – Current Account EU & Non-EU

Section 1: Trade and current account: EU and non-EU

Goods



UK exports of goods, £m

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
EU	115,738	112,311	112,797	123,017	151,702	128,416	142,621	125,568	145,024	165,220	153,181	154,579	147,293
Non-EU	72,054	77,178	78,613	89,724	93,146	94,046	112,344	105,178	125,792	143,964	151,961	152,186	144,911
Total	187,792	189,489	191,410	212,741	244,848	222,462	254,965	230,746	270,816	309,184	305,142	306,765	292,204

UK exports of goods, % GDP

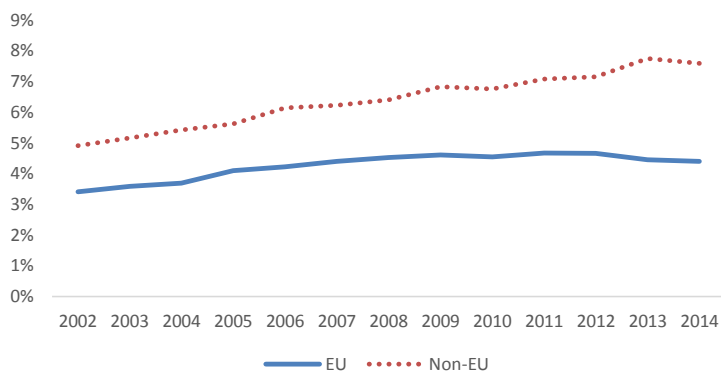
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
EU	10%	9%	9%	9%	11%	9%	9%	8%	9%	10%	9%	9%	8%
Non-EU	6%	6%	6%	7%	7%	6%	7%	7%	8%	9%	9%	9%	8%
Total	17%	16%	15%	16%	17%	15%	17%	16%	17%	19%	18%	18%	16%

Source: ONS Statistical Bulletin, Balance of Payments Q1, 2015, 31 March 2015, Table C and UK Trade April 2015 Table 2

House of Commons Library

Services

UK exports of services to EU and non-EU, % GDP



UK exports of services, £m

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
EU	38,042	42,756	46,326	54,356	59,353	65,150	68,732	68,292	70,866	75,644	77,220	76,319	78,761
Non-EU	54,850	61,515	68,032	74,593	86,193	92,156	97,203	101,222	105,375	114,624	118,373	132,808	136,095
Total	92,892	104,271	114,358	128,949	145,546	157,306	165,935	169,514	176,241	190,268	195,593	209,127	214,856

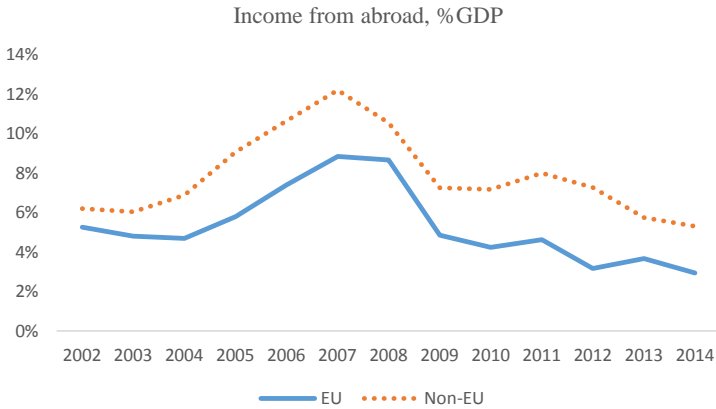
UK exports of services, % GDP

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
EU	3%	4%	4%	4%	4%	4%	5%	5%	5%	5%	5%	4%	4%
Non-EU	5%	5%	5%	6%	6%	6%	6%	7%	7%	7%	7%	8%	8%
Total	8%	9%	9%	10%	10%	11%	11%	11%	11%	12%	12%	12%	12%

Source: ONS Statistical Bulletin, Balance of Payments Q1, 2015, 31 March 2015, Table C

House of Commons Library

Income from abroad



UK income from abroad, £m

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
EU	58,787	57,130	58,801	76,902	103,848	130,998	131,543	71,788	65,841	74,693	52,251	62,755	52,523
Non-EU	69,250	71,925	86,327	120,332	149,435	180,627	160,130	107,361	111,802	129,502	120,209	98,472	95,010
Total	128,037	129,055	145,128	197,234	253,283	311,625	291,673	179,149	177,643	204,195	172,460	161,227	147,533

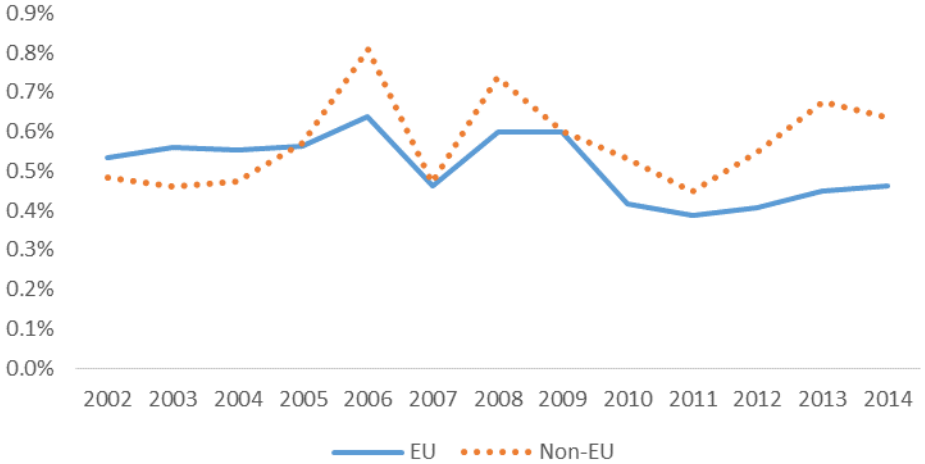
UK income from abroad, % GDP

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
EU	5%	5%	5%	6%	7%	9%	9%	5%	4%	5%	3%	4%	3%
Non-EU	6%	6%	7%	9%	11%	12%	11%	7%	7%	8%	7%	6%	5%
Total	11%	11%	12%	15%	18%	21%	19%	12%	11%	13%	10%	9%	8%

Source: ONS Statistical Bulletin, Balance of Payments Q1, 2015, 31 March 2015, Table C

Transfers from abroad

Transfers from Abroad, % GDP



Transfers from abroad, £m

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
EU	5,968	6,645	6,938	7,465	8,947	6,842	9,111	8,864	6,481	6,247	6,739	7,715	8,281
Non-EU	5,390	5,471	5,924	7,585	11,330	6,982	11,177	8,905	8,280	7,232	9,089	11,581	11,384
Total	11,358	12,116	12,862	15,050	20,277	13,824	20,288	17,769	14,761	13,479	15,828	19,296	19,665

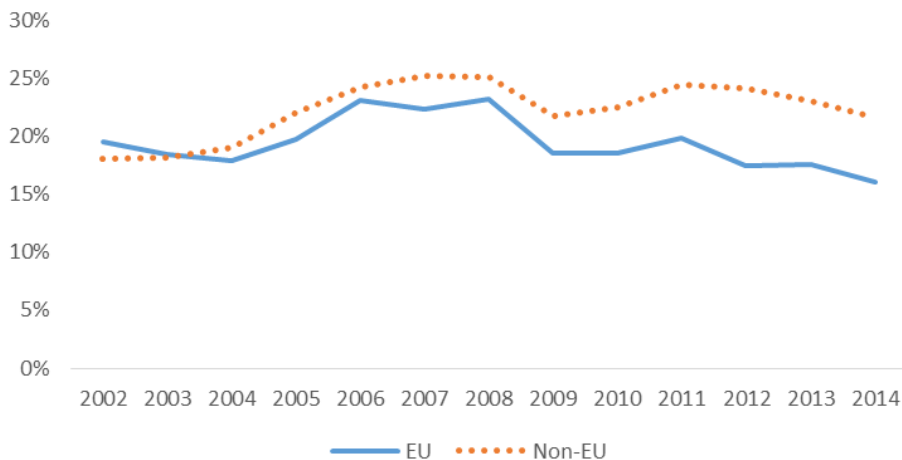
Transfers from abroad, % GDP

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
EU	0.5%	0.6%	0.6%	0.6%	0.6%	0.5%	0.6%	0.6%	0.4%	0.4%	0.4%	0.5%	0.5%
Non-EU	0.5%	0.5%	0.5%	0.6%	0.8%	0.5%	0.7%	0.6%	0.5%	0.4%	0.5%	0.7%	0.6%
Total	1.0%	1.0%	1.0%	1.1%	1.4%	0.9%	1.3%	1.2%	0.9%	0.8%	1.0%	1.1%	1.1%

Source: ONS Statistical Bulletin, Balance of Payments Q1, 2015, 31 March 2015, Table C

Total current account credits

Total current account credits, % GDP



Total, £m

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
EU	218,535	218,842	224,862	261,740	323,850	331,406	352,007	274,512	288,212	321,804	289,391	301,368	287,491
Non-EU	201,544	216,089	238,896	292,234	340,104	373,811	380,854	322,666	351,249	395,322	399,632	395,047	387,430
Total	420,079	434,931	463,758	553,974	663,954	705,217	732,861	597,178	639,461	717,126	689,023	696,415	674,921

Total, % GDP

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
EU	20%	18%	18%	20%	23%	22%	23%	19%	18%	20%	17%	18%	16%
Non-EU	18%	18%	19%	22%	24%	25%	25%	22%	23%	24%	24%	23%	22%
Total	38%	37%	37%	42%	47%	48%	48%	40%	41%	44%	42%	41%	38%

Source: ONS Statistical Bulletin, Balance of Payments Q1, 2014, 27 June 2014, Table C

Section 2: more detailed country groupings

This section gives data on UK trade and the current account for a wider variety of country groupings.

Goods

Goods exports	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
£ million											
EU	115,062	111,760	112,323	122,236	151,430	127,525	141,730	124,609	141,844	158,764	150,144
US and Americas	33,837	34,399	34,094	36,441	39,452	38,932	43,343	41,987	48,039	51,406	52,808
China	1,465	1,882	2,330	2,748	3,269	3,757	5,039	5,383	7,602	9,273	10,542
Rest of Asia	20,366	22,986	23,958	28,502	27,397	27,433	32,745	30,920	36,653	42,747	46,526
Rest of the World	15,127	16,527	17,394	20,777	21,351	22,334	28,708	24,828	31,105	36,231	39,437
Total non-EU	70,795	75,794	77,776	88,468	91,469	92,456	109,835	103,118	123,399	139,657	149,313
Total	185,857	187,554	190,099	210,704	242,899	219,981	251,565	227,727	265,243	298,421	299,457

Goods exports	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
% GDP											
EU	11%	10%	9%	10%	11%	9%	10%	9%	10%	10%	10%
US and Americas	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%
China	0%	0%	0%	0%	0%	0%	0%	0%	1%	1%	1%
Rest of Asia	2%	2%	2%	2%	2%	2%	2%	2%	2%	3%	3%
Rest of the World	1%	1%	1%	2%	2%	2%	2%	2%	2%	2%	3%
Total non-EU	7%	7%	6%	7%	7%	6%	8%	7%	8%	9%	10%
Total	17%	16%	16%	17%	18%	15%	17%	16%	18%	19%	19%

Sources: ONS Pink Book 2013 (Chapter 9 tables) and series YBHA
House of Commons Library

Services

Services exports £ million	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
EU	38,354	43,166	47,251	53,845	58,503	63,607	71,275	68,986	68,898	73,210	71,982
US and Americas	27,584	30,053	32,579	33,456	39,205	45,945	48,444	47,340	51,246	54,395	55,101
China	725	917	1,310	1,499	1,638	1,569	2,558	2,218	2,701	3,155	3,128
Rest of Asia	13,518	15,345	18,041	20,333	22,215	23,095	25,716	25,786	27,219	29,048	28,448
Rest of the World	13,957	16,046	16,541	20,006	23,125	26,319	30,200	30,114	31,962	34,655	34,694
Total non-EU	55,784	62,361	68,471	75,294	86,183	96,928	106,918	105,458	113,128	121,253	121,371
Total	94,138	105,527	115,722	129,139	144,686	160,535	178,193	174,444	182,026	194,463	193,353

Services exports % GDP	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
EU	4%	4%	4%	4%	4%	4%	5%	5%	5%	5%	5%
US and Americas	3%	3%	3%	3%	3%	3%	3%	3%	3%	4%	4%
China	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Rest of Asia	1%	1%	1%	2%	2%	2%	2%	2%	2%	2%	2%
Rest of the World	1%	1%	1%	2%	2%	2%	2%	2%	2%	2%	2%
Total non-EU	5%	5%	6%	6%	6%	7%	7%	7%	8%	8%	8%
Total	9%	9%	10%	10%	11%	11%	12%	12%	12%	13%	12%

Sources: ONS Pink Book 2013 (Chapter 9 tables) and series YBHA

Income from abroad

Income from abroad £ million	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
EU	57,084	54,286	56,557	71,732	92,152	117,186	119,018	77,513	56,459	76,084	46,819
US and Americas	35,703	38,330	43,598	62,865	84,143	95,151	76,767	46,409	49,484	57,476	52,923
China	404	437	619	869	859	1,151	790	913	1,282	1,373	1,357
Rest of Asia	12,388	12,754	15,451	21,446	26,763	30,184	26,770	18,962	23,032	28,044	30,808
Rest of the World	16,085	17,283	22,254	30,177	34,543	47,298	38,556	24,599	30,974	29,394	30,073
Total non-EU	64,580	68,804	81,922	115,357	146,308	173,784	142,883	90,883	104,772	116,287	115,161
Total	121,664	123,090	138,479	187,089	238,460	290,970	261,901	168,396	161,231	192,371	161,980

Income from abroad % GDP	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
EU	5%	5%	5%	6%	7%	8%	8%	5%	4%	5%	3%
US and Americas	3%	3%	4%	5%	6%	7%	5%	3%	3%	4%	3%
China	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Rest of Asia	1%	1%	1%	2%	2%	2%	2%	1%	2%	2%	2%
Rest of the World	1%	2%	2%	2%	3%	3%	3%	2%	2%	2%	2%
Total non-EU	6%	6%	7%	9%	11%	12%	10%	6%	7%	8%	7%
Total	11%	11%	11%	15%	18%	20%	18%	12%	11%	13%	10%

Sources: ONS Pink Book 2013 (Chapter 9 tables) and series YBHA
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Transfers from abroad

Transfers from abroad £ million	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
EU	9,054	9,894	10,607	10,713	12,412	9,981	12,242	12,514	9,555	9,353	8,828
US and Americas	2,729	2,429	2,860	5,304	6,707	4,451	7,406	5,568	4,526	4,288	4,918
China	16	14	18	13	55	19	46	37	45	53	77
Rest of Asia	1,685	2,051	1,810	1,523	2,812	1,438	2,008	1,785	1,630	1,661	1,808
Rest of the World	839	976	1,030	897	1,540	882	1,665	1,387	1,344	1,324	1,888
Total non-EU	5,269	5,470	5,718	7,737	11,114	6,790	11,125	8,777	7,545	7,326	8,691
Total	14,323	15,364	16,325	18,450	23,526	16,771	23,367	21,291	17,100	16,679	17,519

Transfers from abroad %GDP	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
EU	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
US and Americas	0%	0%	0%	0%	0%	0%	1%	0%	0%	0%	0%
China	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Rest of Asia	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Rest of the World	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Total non-EU	0%	0%	0%	1%	1%	0%	1%	1%	1%	0%	1%
Total	1%	1%	1%	1%	2%	1%	2%	2%	1%	1%	1%

Sources: ONS Pink Book 2013 (Chapter 9 tables) and series YBHA

Total

Total £ million	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
EU	219,554	219,106	226,738	258,526	314,497	318,299	344,265	283,622	276,756	317,411	277,773
US and Americas	99,853	105,211	113,131	138,066	169,507	184,479	175,960	141,304	153,295	167,565	165,750
China	2,610	3,250	4,277	5,129	5,821	6,496	8,433	8,551	11,630	13,854	15,104
Rest of Asia	47,957	53,136	59,260	71,804	79,187	82,150	87,239	77,453	88,534	101,500	107,590
Rest of the World	46,008	50,832	57,219	71,857	80,559	96,833	99,129	80,928	95,385	101,604	106,092
Total non-EU	196,428	212,429	233,887	286,856	335,074	369,958	370,761	308,236	348,844	384,523	394,536
Total	415,982	431,535	460,625	545,382	649,571	688,257	715,026	591,858	625,600	701,934	672,309

Total %GDP	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
EU	20%	19%	19%	20%	23%	22%	24%	20%	19%	21%	18%
US and Americas	9%	9%	9%	11%	13%	13%	12%	10%	10%	11%	11%
China	0%	0%	0%	0%	0%	0%	1%	1%	1%	1%	1%
Rest of Asia	4%	5%	5%	6%	6%	6%	6%	5%	6%	7%	7%
Rest of the World	4%	4%	5%	6%	6%	7%	7%	6%	6%	7%	7%
Total non-EU	18%	18%	19%	22%	25%	26%	25%	22%	23%	25%	25%
Total	38%	38%	38%	43%	48%	48%	49%	42%	42%	46%	43%

Sources: ONS Pink Book 2013 (Chapter 9 tables) and series YBHA

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APPENDIX II – Net Contributions to the EU

Table 2. UK Contributions to and public sector receipts from the EU Budget
£ million

	2008	2009	2010	2011	2012	2013	2014
Sugar Levies	349	200	8	8	10	9	9
Customs Duties	1,615	1,802	2,146	2,216	2,192	2,171	2,242
VAT Own Resources	2,254	1,733	2,172	2,174	2,279	2,344	2,383
Fourth Resource Payments (GNI)	8,624	10,670	10,689	10,922	11,362	13,497	12,918
VAT and Fourth Resource Adjustments	-189	-277	181	36	-98	114	1,682
Gross Contributions	12,653	14,128	15,196	15,356	15,745	18,135	19,234
UK Abatement	-4,862	-5,392	-3,047	-3,143	-3,110	-3,674	-4,888
Total Contributions	7,791	8,737	12,150	12,214	12,636	14,461	14,346
FEAGA (Agriculture)	2,465	2,910	2,910	2,667	2,753	2,747	3,121
EAFRD	416	215	439	419	291	619	703
ERDF (Structural Funds)	971	639	758	605	438	297	337
ESF	608	609	644	389	585	246	280
Other Receipts	37	28	18	52	102	86	98
Total Public Sector Receipts	4,497	4,401	4,768	4,132	4,169	3,996	4,539
Net Contribution	3,294	4,336	7,382	8,082	8,467	10,465	9,807

Note: 2014 figures are forecast

Source: HM Treasury, *European Union Finances*, latest edition published December 2014, Cm 8974

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Table 4. Net contribution to the EU budget, 2013/14 to 2019/20
£ billion

	Outturn		Forecast				
	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Net contribution	10.2	9.2	9.9	8.2	8.0	8.8	9.3

Source:

OBR. *Economic and Fiscal Outlook* - March 2015

Table 3. UK net contributions to the EU/EC Budget 1973 -2014*£ million*

	Gross contribution	Rebate	Total contribution (after rebate)	Public sector receipts	Net Contribution (Gross contribution - rebate - public sector receipts)
1973	181		181	79	102
1974	181		181	150	31
1975	342		342	398	-56
1976	463		463	296	167
1977	737		737	368	369
1978	1,348		1,348	526	822
1979	1,606		1,606	659	947
1980	1,767		1,669	963	706
1981	2,174		1,481	1,084	397
1982	2,863		1,844	1,238	606
1983	2,976		2,169	1,522	647
1984	3,204		2,676	2,020	656
1985	3,940	166	3,713	1,905	1,808
1986	4,493	1,701	2,792	2,220	572
1987	5,202	1,153	4,049	2,328	1,721
1988	5,138	1,594	3,544	2,182	1,362
1989	5,585	1,154	4,431	2,116	2,315
1990	6,355	1,697	4,658	2,183	2,475
1991	5,807	2,497	3,309	2,765	544
1992	6,738	1,881	4,857	2,827	2,030
1993	7,985	2,539	5,446	3,291	2,155
1994	7,189	1,726	5,463	3,253	2,211
1995	8,889	1,207	7,682	3,665	4,017
1996	9,133	2,412	6,721	4,373	2,348
1997	7,991	1,733	6,258	4,661	1,597
1998	10,090	1,378	8,712	4,115	4,597
1999	10,287	3,171	7,117	3,479	3,638
2000	10,517	2,085	8,433	4,241	4,192
2001	9,379	4,560	4,819	3,430	1,389
2002	9,439	3,099	6,340	3,201	3,139
2003	10,966	3,559	7,407	3,728	3,679
2004	10,895	3,593	7,302	4,294	3,008
2005	12,567	3,656	8,911	5,329	3,582
2006	12,426	3,569	8,857	4,948	3,909
2007	12,456	3,523	8,933	4,332	4,601
2008	12,653	4,862	7,791	4,497	3,294
2009	14,129	5,392	8,737	4,401	4,336
2010	15,197	3,047	12,150	4,768	7,382
2011	15,357	3,143	12,214	4,132	8,082
2012	15,746	3,110	12,636	4,169	8,467
2013	18,135	3,674	14,461	3,996	10,465
2014 ^f	19,234	4,888	14,346	4,539	9,807

Note:

^f2014 are forecasts, all other data based on outturn

Sources:

HM Treasury, *European Union Finances*, latest edition published December 2014, Cm 8974HM Treasury, *European Union Finances*, previous editions

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The Conservative Party was returned to government on a pledge to renegotiate Britain's relations with the European Union followed by a referendum on whether Britain should stay in or leave.

Some worry that the government might be content with superficial changes. But, as three senior Conservative MPs, Bernard Jenkin, John Redwood and Bill Cash, point out, the prime minister has said that he wants 'to reform the EU and to change our relationship with it fundamentally'. This must mean that the UK's parliament will be able to decide on the vital matters which affect national life and the UK courts will be the ultimate arbiter of matters such as UK human rights law. This is the only way to fulfil all the commitments which he has made on tax and business regulation, employment and social policy, borders and immigration, regulation of the City of London, defence and foreign policy and other matters.

If the negotiations do not achieve this fundamental change, the authors argue that Britain should be willing to leave the EU. By doing so, Britain would benefit as a free and trading nation in the global economy, would increase its influence, rather than continue to be absorbed into a process of EU integration as a second tier member of the emerging political union on anything like the present terms of EU membership.

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