

HOUSE OF LORDS

European Union Committee

---

9th Report of Session 2015–16

# **The EU referendum and EU reform**

---

Ordered to be printed 22 March 2016 and published 30 March 2016

---

Published by the Authority of the House of Lords

*London* : The Stationery Office Limited  
£price

### *The European Union Committee*

The European Union Committee is appointed each session “to scrutinise documents deposited in the House by a Minister, and other matters relating to the European Union”.

In practice this means that the Select Committee, along with its Sub-Committees, scrutinises the UK Government’s policies and actions in respect of the EU; considers and seeks to influence the development of policies and draft laws proposed by the EU institutions; and more generally represents the House of Lords in its dealings with the EU institutions and other Member States.

The six Sub-Committees are as follows:

Energy and Environment Sub-Committee  
External Affairs Sub-Committee  
Financial Affairs Sub-Committee  
Home Affairs Sub-Committee  
Internal Market Sub-Committee  
Justice Sub-Committee

### *Membership*

The Members of the European Union Select Committee, which conducted this inquiry, are:

<a href="#"><u>Baroness Armstrong of Hill Top</u></a>	<a href="#"><u>Lord Green of Hurstpierpoint</u></a>	<a href="#"><u>Baroness Suttie</u></a>
<a href="#"><u>Lord Blair of Boughton</u></a>	<a href="#"><u>Lord Jay of Ewelme</u></a>	<a href="#"><u>Lord Trees</u></a>
<a href="#"><u>Lord Borwick</u></a>	<a href="#"><u>Baroness Kennedy of The Shaws</u></a>	<a href="#"><u>Lord Tugendhat</u></a>
<a href="#"><u>Lord Boswell of Aynho</u></a> (Chairman)	<a href="#"><u>Lord Liddle</u></a>	<a href="#"><u>Lord Whitty</u></a>
<a href="#"><u>Earl of Caithness</u></a>	<a href="#"><u>Lord Mawson</u></a>	<a href="#"><u>Baroness Wilcox</u></a>
<a href="#"><u>Lord Davies of Stamford</u></a>	<a href="#"><u>Baroness Prashar</u></a>	
<a href="#"><u>Baroness Falkner of Magravine</u></a>	<a href="#"><u>Baroness Scott of Needham Market</u></a>	

### *Further information*

Publications, press notices, details of membership, forthcoming meetings and other information is available at <http://www.parliament.uk/hleu>.

General information about the House of Lords and its Committees is available at <http://www.parliament.uk/business/lords>.

### *Sub-Committee staff*

The current staff of the Sub-Committee are Christopher Johnson (Principal Clerk), Stuart Stoner (Clerk) and George Masters (Committee Assistant).

### *Contact details*

Contact details for individual Sub-Committees are given on the website. General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW. Telephone 020 7219 5791. Email [euclords@parliament.uk](mailto:euclords@parliament.uk).

### *Twitter*

You can follow the Committee on Twitter: [@LordsEUCom](https://twitter.com/LordsEUCom).

## CONTENTS

---

	<i>Page</i>
<b>Summary</b>	<b>3</b>
<b>Chapter 1: Setting the scene</b>	<b>5</b>
What this report is about	5
The present inquiry	6
<b>Chapter 2: The renegotiation and the referendum</b>	<b>8</b>
The referendum question	8
A referendum contingent upon a renegotiation	8
Other factors that could influence the referendum	10
Domestic priorities	10
EU priorities	11
Public understanding of the EU	12
Conclusions	13
<b>Chapter 3: Reflections on the process</b>	<b>14</b>
Engagement with Parliament	14
Engagement with the devolved institutions	14
Wales	15
Scotland	15
Northern Ireland	16
The devolved legislatures	17
Engagement with the Republic of Ireland	18
Engagement with other EU partners	19
Conclusions	20
<b>Chapter 4: The Government's negotiating objectives and the 'new settlement'</b>	<b>22</b>
The evolution of the Government's objectives	22
The Bloomberg speech	22
The Balance of Competences Review	22
The Conservative Party manifesto	23
The Prime Minister's November 2015 letter to Donald Tusk	24
Views of witnesses	25
Conclusions	26
The 'new settlement for the United Kingdom'	26
The legal status of the international law decision	27
The stated intention of the Heads of State and Government	27
The opinion of the Legal Counsel to the European Council	27
The Prime Minister's statement to the House of Commons	28
Conclusions	29
The Government's negotiating objectives: economic governance	29
Background	29
Views of witnesses	30
Analysis	31
Conclusions	33
The Government's negotiating objectives: competitiveness	33
Background	33
Views of witnesses	33
Analysis	35

Conclusions	37
The Government's negotiating objectives: sovereignty	37
'Ever closer union'	37
National parliaments	40
Subsidiarity	44
Justice and Home Affairs measures	46
National security	48
The Government's negotiating objectives: immigration	49
Background	49
Views of witnesses	50
Analysis	51
Conclusions	53
Conclusions on the 'new settlement for the United Kingdom'	54
<b>Chapter 5: The Government's vision for EU reform</b>	<b>55</b>
Why is a vision needed?	55
What is the Government's vision for EU reform?	56
How inclusive is the Government's vision?	58
Domestically	58
Across the EU	59
Where do values fit in?	61
Conclusions	62
<b>Summary of Conclusions and Recommendations</b>	<b>64</b>
<b>Appendix 1: List of Members and Declarations of Interest</b>	<b>71</b>
<b>Appendix 2: List of witnesses</b>	<b>74</b>
<b>Appendix 3: Call for Evidence</b>	<b>79</b>

Evidence is published online at [www.parliament.uk/visions-of-eu-reform](http://www.parliament.uk/visions-of-eu-reform) and available for inspection at the Parliamentary Archives (020 7129 3074).

Q in footnotes refers to a question in oral evidence.

## SUMMARY

On 23 June 2016 the people of the United Kingdom will decide whether the country should remain in or leave the European Union. This referendum will be, in the words of the Prime Minister, a “huge decision for our country, perhaps the biggest we will make in our lifetimes”.

The Government’s confirmation that an in/out referendum would be held in June followed intense negotiations with the other 27 Member States and the EU institutions. These culminated in the European Council’s agreement, on 19 February 2016, to a “new settlement for the United Kingdom within the European Union”.

The Government was clear throughout the negotiations that its support for continuing EU membership would depend upon reaching a successful outcome. Yet the referendum question makes no reference to either the negotiations or the ‘new settlement’. In this report we explore the linkage between the negotiations, the ‘new settlement’, and the more fundamental, once-in-a-generation decision that awaits the electorate on 23 June.

We trace the origins of the Government’s negotiating objectives, and consider the degree to which they reflect a consensus within and across the United Kingdom on the advantages and drawbacks of EU membership.

We consider the extent to which the devolved administrations were involved in the development of the negotiating objectives, and, more specifically, we reflect on the Government’s engagement with committees and members of the devolved legislatures.

We analyse the ‘new settlement’ itself, assessing its legal, political and symbolic significance. We conclude that, while not perfect, it is a significant achievement, which justifies the Government’s assertion that, for the UK, the high-water mark of EU integration has been passed.

In the final chapter we lift our horizons, and reflect on the forthcoming referendum campaign. It is not our role to express a view on the question of whether to remain in or leave the EU, but we do have a duty to hold the Government to account—and, since the Government has decided to recommend that the UK remain in the EU, it is incumbent upon us to examine the vision of the UK’s place in a reformed EU that the Government has put before the people.

We conclude that the Government should make a broad-based case for EU membership, drawing on support from across the political spectrum. The Government’s renewed emphasis on the UK’s geopolitical role within the EU is a welcome start, but more is needed.

We invite the Government to articulate an inclusive and positive vision of the UK’s role in a reformed and more flexible EU. It needs to be grounded in pragmatism, while addressing strategic priorities and expressing shared core values. Too much is at stake for the Government to settle for anything less.



# The EU referendum and EU reform

## CHAPTER 1: SETTING THE SCENE

---

### What this report is about

1. On 23 June 2016 the people of the United Kingdom will decide whether the country should remain in or leave the European Union.
2. The relationship between the UK and the EU has been the subject of almost constant domestic debate since 1 January 1973, the day when the UK first joined the European Economic Community. The referendum of 1975, the negotiation of the UK rebate in 1984, the securing of opt-outs from the euro and from the Schengen agreement in the 1990s, and from police and criminal justice legislation in 2009—all testify to the desire of successive governments to ensure that the UK’s particular national interests and sensitivities should be reflected within the framework of its EU membership.
3. The choice on the ballot paper on 23 June will be stark: to remain or to leave. Whatever the merits of the arguments that are being made on both sides in the campaign leading up to the referendum, the decision will have profound and lasting geo-political, economic and cultural implications for the UK. It is, arguably, the most important single decision that the people of the United Kingdom have been asked to take in a generation—in the Prime Minister’s words, a “huge decision for our country, perhaps the biggest we will make in our lifetimes”.<sup>1</sup>
4. The Government’s commitment to hold a referendum reflects the pledge in the Conservative Party manifesto for the 2015 general election to hold “an in-out referendum by the end of 2017”. That pledge, which was delivered by means of the European Union Referendum Act 2015, reflected a belief that “The EU needs to change.”<sup>2</sup> In this report we explore the vision for EU reform that has underpinned the Government’s renegotiation of the terms of UK membership.
5. This report follows on from our report of July 2015 on *The referendum on UK membership of the EU: assessing the reform process*,<sup>3</sup> in which we made recommendations on how the Government should handle its negotiations, including on engagement with the EU institutions and other Member States, and on parliamentary accountability and transparency. In the present report, as well as examining the Government’s underlying vision for EU reform, we review the process that has unfolded over the past nine months, and ask whether the concerns we expressed in July 2015 have been borne out by events.

---

1 Speech by the Prime Minister on the EU at Chatham House, 10 November 2015: <https://www.gov.uk/government/speeches/prime-ministers-speech-on-europe> [accessed 18 March 2016]

2 The Conservative Party, *Strong Leadership, a clear economic plan, a brighter, more secure future: The Conservative Party Manifesto 2015*, p 72: <https://www.conservatives.com/manifesto> [accessed 16 March 2016]

3 European Union Committee, *The referendum on UK membership of the EU: assessing the reform process* (3rd Report, Session 2015–16, HL Paper 30)

6. The primary function of this Committee is to scrutinise the Government's actions and policies in respect of the EU. It is not, in present circumstances, our role to express a view on whether or not the United Kingdom should remain a part of the EU—that decision will be taken not by Parliament, but by the people as a whole. Yet the Prime Minister has been clear throughout that, if he were to secure what he regards as a satisfactory outcome, he would make the case for remaining in the EU. As long ago as 2013 he stated that “Britain's national interest is best served in a flexible, adaptable and open European Union and ... such a European Union is best with Britain in it”.<sup>4</sup> Following the European Council agreement on 19 February 2016 he formally re-stated that belief on behalf of the Government: “My recommendation is clear: I believe every family, household, business, community and nation within our United Kingdom will be stronger, safer and better off by remaining inside this reformed European Union.”<sup>5</sup>
7. In scrutinising the Government, therefore, our focus has been upon its vision for the UK's future in a reformed EU, and on how it has sought to realise that vision. We have asked whether the Government's vision is clear, persuasive and durable, and whether it respects the broad spectrum of opinion both within the United Kingdom and beyond.
8. We have not examined the case made by the campaign groups on either side of the referendum debate; they do not represent the Government, and they are not accountable to this Committee. Nor have we addressed matters that were decided by Parliament in enacting the European Union Referendum Act 2015 (such as the entitlement to vote), that have been determined in secondary legislation under that Act (such as the rules for the conduct of the referendum), or that relate to internal party political management (such as the suspension of collective cabinet responsibility announced on 5 January 2016).
9. Finally, we have not, in this report, explored either the options for a future relationship between the UK and the EU, were the people to vote to leave, or the process whereby the UK would in such an event negotiate the terms of its departure. No Member State has ever left the EU,<sup>6</sup> so there are no direct precedents upon which to draw—indeed, the legal framework for such a process, set out in Article 50 of the Treaty on European Union, has existed only since the Lisbon Treaty of 2009. On 8 March 2016 we held a public meeting to discuss the process of withdrawal from the EU with experts in the field, and we shall in due course publish a short analysis both of the mechanics of the legal steps described in Article 50, and of the likely shape and duration of a wider process of withdrawal.

### The present inquiry

10. Our inquiry was launched on 15 October 2015, with the issuing of a public Call for Evidence. We received 14 pieces of written evidence, and held a total of 17 public meetings. Among those to give oral evidence, which we heard in

---

4 Speech by the Prime Minister on the EU at Bloomberg , 23 January 2013: <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg> [accessed 12 February 2016]

5 Foreword by the Prime Minister to HM Government, *The best of both worlds: the United Kingdom's special status in a reformed European Union* (February 2016), p6: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/502291/54284\\_EU\\_Series\\_No1\\_Web\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/502291/54284_EU_Series_No1_Web_Accessible.pdf)

6 Algeria ceased to be a member of the (then) European Economic Community in 1962, upon securing independence from France; Greenland, an autonomous territory within the Kingdom of Denmark, withdrew from the EEC in 1985.



Westminster, Cardiff, Edinburgh and Brussels, were the Foreign Secretary, Ambassadors and academics, members of the European Parliament, the Scottish Parliament, the National Assembly for Wales, the French Sénat and the German Bundestag, and representatives of the European Commission, Trades Union Congress, Confederation of British Industry and TheCityUK. Our Chairman held separate meetings with the First Minister of Scotland, and, in Belfast, with Northern Ireland Executive ministers, members of the Northern Ireland Assembly and Belfast-based academics, all of which we have drawn on in our work. We are hugely grateful to all who have given us insight into such a broad range of views on EU reform.

11. The members of the European Union Select Committee are listed in Appendix 1; their declared interests are also listed. The Call for Evidence is given in Appendix 3. A full list of witnesses is given in Appendix 2, and all evidence is published online.
12. **We make this report to the House for debate.**

## CHAPTER 2: THE RENEGOTIATION AND THE REFERENDUM

### The referendum question

13. Section 1 of the European Union Referendum Act 2015 provides that the question appearing on the ballot paper will be as follows: “Should the United Kingdom remain a member of the European Union or leave the European Union?” Voters will choose between two options: “Remain a member of the European Union”, or “Leave the European Union”.
14. Under section 2 of the European Union Act 2011, any treaty amending or replacing the Treaty on European Union or the Treaty on the Functioning of the European Union that extends an existing EU competence or confers a new competence upon the EU, may be ratified by the United Kingdom only if a referendum has been held and won.<sup>7</sup> Thus it would be possible to envisage a future referendum being held on a specific and limited change to the UK’s relationship with the EU.
15. But the question that will be put to the electorate in June makes no reference to any changes in the terms of the United Kingdom’s EU membership, or to any agreement reached by the European Council. It offers a self-contained, binary choice—what the Conservative Party manifesto in 2015 called “an in-out” decision.
16. Logic might therefore suggest that the process leading up to the referendum should be broken into two overlapping but essentially distinct phases: first, the negotiation on specific issues, leading to the agreement at the 18–19 February 2016 European Council; and, second, the campaign now underway, addressing the much broader and more fundamental question of UK membership of the EU.
17. The reality is more complicated.

### A referendum contingent upon a renegotiation

18. The Conservative Party manifesto stated:
 

“We will legislate in the first session of the next Parliament for an in-out referendum to be held on Britain’s membership of the EU before the end of 2017. We will negotiate a new settlement for Britain in the EU. And then we will ask the British people whether they want to stay in *on this basis*, or leave.”<sup>8</sup> [our emphasis]

The manifesto thus implied that the electorate’s decision on whether the UK should remain in or leave the EU would be subject to the terms of whatever ‘new settlement’ had been negotiated.
19. Ahead of the agreement in February 2016, Ministers repeatedly emphasised that the Government’s support for remaining in the EU would be conditional upon a successful outcome to the negotiation. Thus the Minister for Europe, giving evidence on 12 October 2015, stated that “the Prime Minister’s clear objective is to lead a successful renegotiation and then a successful campaign

<sup>7</sup> European Union Act 2011, sections 2 and 4

<sup>8</sup> The Conservative Party, *Strong Leadership, a clear economic plan, a brighter, more secure future: The Conservative Party Manifesto 2015*: <https://www.conservatives.com/manifesto> [accessed 15 March 2016]

for continued membership”.<sup>9</sup> In his letter to the President of the European Council, Donald Tusk, on 10 November 2015, the Prime Minister said: “I hope and believe that together we can reach agreement ... If we can, I am ready to campaign with all my heart and soul to keep Britain inside a reformed European Union.”<sup>10</sup> At the same time he has been clear that, in the event of failure to reach an agreement, “I rule nothing out”.<sup>11</sup>

20. Ministers justified making their support for the UK’s continuing EU membership contingent upon success in the renegotiation by claiming that the changes that they sought would deliver what the Prime Minister, in his 2013 Bloomberg speech, called “fundamental, far-reaching change”. This ambition was translated in the Conservative Party manifesto into a call for a “new settlement”—a phrase that reappeared in the final agreement in February 2016.<sup>12</sup> The Prime Minister’s letter to Donald Tusk of 10 November 2015 also called for a “fresh and lasting settlement”, while in his Chatham House speech on the same day he repeated that “the European Union needed to reform if it was to meet the challenges of the twenty-first century”, describing the Government’s four sets of negotiating objectives as “vital to the success of the European Union”.
21. In evidence to this inquiry, the Foreign Secretary, the Rt Hon Philip Hammond MP, echoed the Prime Minister, arguing that the Government would “bring about fundamental change through these negotiations” in specific areas, such as the role of national parliaments and the relationship between the UK and the Eurozone.<sup>13</sup> Ashley Fox MEP, of the European Conservatives and Reformists Group, advanced similar arguments: “there is a very clear and coherent vision for EU reform. The Prime Minister has made no secret that his preference is to stay in a reformed EU, but he will be able to win that referendum only if he addresses genuine concerns held by the British people.”<sup>14</sup>
22. In contrast, those campaigning for the UK to leave the EU have been quick to allege that the Government has overstated the significance of the renegotiation. Nigel Farage MEP, Leader of the United Kingdom Independence Party has repeatedly described the renegotiation on Twitter as a distraction from the fundamental question of EU membership: “‘Renegotiation’ a con job. EU fanatics hungrier than ever for more power. Either we are swept along or we Leave EU.”<sup>15</sup>
23. Even among those in favour of remaining in the EU, there are marked differences of view on the significance of the Government’s renegotiation. Glenis Willmott MEP, of the Socialists and Democrats Group, saw the entire process as “being about Tory division on Europe rather than about a vision

---

9 Oral evidence taken on 12 October 2015 (Session 2015–16), [Q 3](#) (Rt Hon David Lidington MP)

10 The Prime Minister, ‘Letter to Donald Tusk’, 10 November 2015, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/475679/Donald\\_Tusk\\_letter.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/475679/Donald_Tusk_letter.pdf) [accessed 14 March 2016]

11 Speech by the Prime Minister on the EU at Chatham House, 10 November 2015, 10 November 2015, <https://www.gov.uk/government/speeches/prime-ministers-speech-on-europe> [accessed 14 March 2016]

12 Annex 1 to the European Council Conclusions, 18–19 February 2016: ‘Decision ... concerning a new settlement for the United Kingdom within the European Union’ <http://www.consilium.europa.eu/en/press/press-releases/2016/02/19-euco-conclusions/> [accessed 14 March 2016]

13 [Q 163](#)

14 [Q 126](#)

15 @Nigel\_Farage, tweet dated 15 January 2016: [https://twitter.com/nigel\\_farage/status/688004606769643521](https://twitter.com/nigel_farage/status/688004606769643521) [accessed 15 February 2016]

of EU reform.”<sup>16</sup> Catherine Bearder MEP, of the Alliance of Liberals and Democrats for Europe Group, agreed that “It is not about reforming the EU *per se*, it is about coming back with some sort of deal that [the Prime Minister] can sell and say, ‘I have done something in the European Union.’”<sup>17</sup> Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs in the Scottish Government, told us: “the real issue is: do we want to be part of the EU or not? That is what is going to be on the ballot paper. The ballot paper will not say, ‘Do you think this is a good negotiation or not?’”<sup>18</sup> The First Minister of Scotland, the Rt Hon Nicola Sturgeon MSP, in discussion with our Chairman, argued that the renegotiation was a distraction from the fundamental question of EU membership.<sup>19</sup>

24. These comments underline that the debate over the relationship between the changes embodied in the ‘new settlement’ and the fundamental question of EU membership is driven primarily by domestic politics: it is not the role of this Committee to give a verdict for either side in this debate. We are concerned, however, to identify the other factors that might come into play if the Government, in making the case for EU membership, were to focus too narrowly on the terms of the ‘new settlement’. These fall under three broad headings: failure to address relevant domestic priorities; failure to address current EU priorities; and poor public understanding of the EU.

### Other factors that could influence the referendum

#### *Domestic priorities*

25. Several witnesses highlighted not just what was in the Government’s reform agenda, but what was missing. Glenis Willmott MEP told us: “There is a lot missing from it. I think that we should have talked about the environment, fighting crime, social protection and working rights.”<sup>20</sup>
26. The Rt Hon Carwyn Jones AM, First Minister of Wales, touched on the importance of EU funding to Wales:

“Brussels is a better friend to us in terms of funding at the moment ... we have benefited not just from the structural funds but from other sources of funding as well: access, for example, to funding from the European Investment Bank ... What I would not want to see is the CAP replaced with something run from London. That would be disastrous for Welsh farmers.”<sup>21</sup>
27. Frances O’Grady, General Secretary of the Trades Union Congress, took comfort from the fact that lobbying by the TUC and others had ensured that “there was nothing specifically written about workers’ rights” in the Government’s reform objectives. At the same time, she was concerned that: “there are huge missing aspects to what we believe the UK Government should be seeking in terms of a social Europe fit for the 21st century that delivers real gains, good jobs, decent rights and strong protection for ordinary

---

16 [Q 126](#)

17 [Q 127](#)

18 [Q 66](#)

19 Note of Chairman’s meeting with Rt Hon Nicola Sturgeon MSP, First Minister of Scotland, [16 December 2015](#)

20 [Q 126](#)

21 [Q 12](#)

working people as well as a voice, which social partnership is premised upon.”<sup>22</sup>

28. More broadly, it was clear from our discussions in Belfast, Cardiff and Edinburgh that there are distinctly different perspectives on the EU in the devolved nations; the same may be true of some of the regions of England, though we did not receive firm evidence to this effect. Professor Anand Menon, of King’s College London, summarised the geographical split within UK public opinion as follows:

“There are big regional differences. If I can simplify ... in the south of England, the narrative you hear is that the EU is some sort of socialist plot that tries to hamper the effectiveness of British business. If you go above Nottingham, the line that you will hear is that it is some sort of capitalist conspiracy that disempowers workers.”<sup>23</sup>

### *EU priorities*

29. While there was disagreement over the extent to which the Government’s reform objectives reflected the range of views within the UK, there was broad acceptance that the UK renegotiation has not been the sole or even the top priority for the other Member States of the EU.
30. Janis Emmanouilidis, Director of Studies at the European Policy Centre, told us that other Member States and the EU institutions were “much more interested in issues other than the ones mentioned in the catalogue coming from London”.<sup>24</sup> A similar point was developed by Manfred Weber MEP, Head of the European People’s Party Group in the European Parliament:

“If you ask me as group leader ... I would tell you that, for the moment, our biggest concern for the long-term of the European Union is how we can develop our common currency in the European Union, the euro. That is not the main concern for Britain, but it is the main concern for the European Union, for us in Brussels.”<sup>25</sup>
31. It is therefore unsurprising that the UK renegotiation has been afforded a relatively low priority in successive European Council meetings. In October 2015 the main subject of discussion was migration, and although leaders were “informed about the process ahead concerning the UK plans for an (in/out) referendum”,<sup>26</sup> there was no substantive discussion. Indeed, it was not until the Prime Minister wrote to Donald Tusk in November that the Government’s political objectives were formally spelled out. Then in December the UK’s plans for reform were numbered six out of the seven agenda items, the most important of which concerned migration, the fight against terrorism and economic and monetary union.
32. Giving evidence in January 2016, the Foreign Secretary conceded that the Government had found it difficult to persuade other Member States to focus on the UK renegotiation, rather than on the many other “real-time challenges” facing the EU:

---

22 Q 53

23 Q 34

24 Q 134

25 Q 140

26 European Council meeting (15 October 2015) Conclusions, 16 October 2015: <http://data.consilium.europa.eu/doc/document/ST-26-2015-INIT/en/pdf> [accessed 15 March 2016]

“Although the British renegotiation is number one on our European agenda, I am afraid that it is not number one on the European agenda of any of our partners, except perhaps for the Irish. The reality of the situation, which we have to recognise, is that there are a lot of other very important issues chewing up bandwidth and time at the Council.”<sup>27</sup>

33. Not only has the UK’s renegotiation been a lower priority for most Member States, but there is some evidence that it has been regarded as an exercise in ‘British exceptionalism’, an unwelcome distraction from more urgent priorities. In the words of Manfred Weber MEP:

“There are 27 partners at the table who are saying every day: ‘Sorry, but we are not talking about my problems. I probably have different problems with Europe than Britain’ ... for the moment we are only discussing the British thing. That is creating a little bit of anger among the others, because there are big problems on the table which are really intense all over Europe, not only in Britain.”<sup>28</sup>

34. There have been signs in recent months that the Government, perhaps aware of the risk that it may be alienating the other Member States, has been seeking both to reaffirm the UK’s commitment to strategic partnership with the EU, and to re-cast its reform objectives in terms more likely to engage their attention and support. This was first evident in the Prime Minister’s new emphasis, in his Chatham House speech in November, on security. The Prime Minister acknowledged that the threats touched on in his Bloomberg speech of 2013 had “grown enormously in the last few years, from the Russian invasion of Eastern Ukraine, to the emergence of ISIL, and the migration flows triggered by the war in Syria”. He therefore confirmed, in a section of the speech devoted to national security, that “our membership of the EU does matter for our national security and for the security of our allies”.<sup>29</sup> This change of emphasis seems to have been welcomed by other Member States.

### *Public understanding of the EU*

35. The third factor that may play a part in determining the electorate’s response to the ‘new settlement’ is UK citizens’ generally poor knowledge of the EU. Professor Simon Hix summarised the results of a recent Eurobarometer<sup>30</sup> survey in supplementary written evidence. Asked to give true/false/don’t know answers to three basic questions about the EU,<sup>31</sup> 84% of UK citizens got at least one answer correct, but only 29% were able to answer all three questions. The results indicated that “UK citizens are less knowledgeable about the EU than the citizens of any other member state”.<sup>32</sup>
36. It would be tempting to attribute the high level of euroscepticism in the UK to general ignorance of the EU, but Professor Hix warned against this

---

27 [Q 164](#)

28 [Q 141](#)

29 Speech by the Prime Minister on the EU at Chatham House, 10 November 2015: <https://www.gov.uk/government/speeches/prime-ministers-speech-on-europe> [accessed 12 February 2016]

30 Eurobarometer is the public opinion analysis tool used since 1973 by the European Commission. European Commission, ‘Public Opinion’: [http://ec.europa.eu/public\\_opinion/index\\_en.htm](http://ec.europa.eu/public_opinion/index_en.htm) [accessed 18 March 2016]

31 The three propositions were: 1) the EU currently consists of 28 Member States; 2) The members of the European Parliament are directly elected by the citizens of each Member State; and 3) Switzerland is a Member State of the EU.

32 Written evidence from Professor Simon Hix ([VEU0015](#))



conclusion. In his view, the data suggested that “learning more about the EU may be just as likely to lead people to have a negative view of the EU as a positive view”. In fact the evidence suggests that the quality of information available to the people of the UK is poor across the board. In the words of Professor Anand Menon: “the British people have been fed a load of bunkum about what the EU is and does for many years now, from both sides: the federalists are as prone to make things up as the people who would like us to leave”.<sup>33</sup>

37. Against this backdrop, Catherine Bearder MEP highlighted the importance of having a wide-ranging and fundamental debate in the run-up to the referendum:

“In the UK, we have years and years of misinformation ... so there is huge ignorance about what happens at the European Union ... We are where we are, so I hope that the debate will be fulsome, not rushed, and that we have a proper debate about our role in the European Union. If that happens that is a good thing, but it is much more about the UK’s relationship with the European Union, rather than reforming the European Union *per se*.”<sup>34</sup>

### Conclusions

38. **The forthcoming referendum is, arguably, the most important single decision that the people of the United Kingdom have been asked to take in a generation. It is, in the Prime Minister’s words, a “huge decision for our country, perhaps the biggest we will make in our lifetimes”.**
39. **The debate leading up to the referendum should be of a quality and breadth proportionate to the importance of the decision. It should be wide-ranging and inclusive, based on accurate information. Reliance by the Government, when making the case for remaining in the EU, upon the positive outcome of its renegotiation, while politically understandable, would be insufficient.**
40. **Domestic public opinion is diverse, with huge variations across and within the political parties, regions and nations of the United Kingdom. The Government will need to ensure that the case that it makes for the UK remaining in the EU is as comprehensive as possible.**
41. **Throughout the negotiations other EU Member States struggled, in the face of multiple challenges (including the refugee crisis, terrorism and the eurozone), to find time to focus on the UK renegotiation. The Government’s emphasis from November onwards on security was welcome, in broadening the terms of the UK’s engagement with other Member States beyond what risked becoming an exercise in ‘British exceptionalism’.**
42. **Surveys show that the people of the UK are less knowledgeable about the EU than those of any other Member State. Against this backdrop, the Government has a responsibility to ensure that full, accessible, accurate and impartial information is made available, to help the electorate make a well-informed decision.**

---

33 [Q 46](#)

34 [Q 127](#)

## CHAPTER 3: REFLECTIONS ON THE PROCESS

---

### Engagement with Parliament

43. Our July 2015 report on *The referendum on UK membership of the EU: assessing the reform process* acknowledged the sensitivities of any negotiation, yet concluded that presenting Parliament with a *fait accompli* could “give rise to legitimate concerns about the accountability and transparency of both the process itself, and its outcome.” We concluded:

“It could ... help the Government to be open with Parliament (and also the general public) about the progress of negotiations.

“The Minister has highlighted existing mechanisms for ensuring parliamentary accountability. Yet the unique circumstances of the reform and referendum process call for an innovative approach.”<sup>35</sup>
44. We acknowledge that the Government has sought to keep Parliament informed. The Foreign Secretary’s appearance before us in January 2016 not only provided a comprehensive account of the rationale behind the Government’s reform agenda, but was a positive indication of the Government’s willingness to engage with the Committee and the House.
45. The model of pre-European Council evidence sessions with the Minister for Europe that was introduced in 2014 has also been successful, and we are grateful for the Minister’s readiness, exceptionally, to meet the Committee after the 18–19 February European Council in order to discuss the outcome of the negotiations. The Minister also proactively deposited the various documents published by President Tusk on 2 February, as well as the final agreement, in Parliament for scrutiny. Finally, we acknowledge the continued support of the United Kingdom Representation in Brussels (UKREP), notably in the context of the Committee’s visits to Brussels.
46. In other respects, though, the Government’s approach was less satisfactory. For instance, the Government declined to offer an oral statement in the House of Lords after the key December 2015 European Council discussions, even after our Chairman tabled a private notice question on the issue.<sup>36</sup> We were also disappointed at the Government’s lack of consultation on its key reform objective of enhancing the role of national parliaments, and at its failure to respond to our report on the UK’s opt-in Protocol, while simultaneously pursuing related negotiating objectives. We cover both these issues in more detail in Chapter 4.

### Engagement with the devolved institutions

47. Our July 2015 report also concluded that it was “vital that the Government engage fully with the devolved institutions during the negotiations”. We urged that the devolved administrations be “closely involved in negotiations so as to ensure that the specific interests of the nations of the UK are taken into account.”<sup>37</sup>

---

35 European Union Committee, *The referendum on UK membership of the EU: assessing the reform process* (3rd Report, Session 2015–16, HL Paper 30), paras 44–45

36 HL Deb., 21 December 2015, [col. 2313](#)

37 European Union Committee, *The referendum on UK membership of the EU: assessing the reform process* (3rd Report, Session 2015–16, HL Paper 30), para 49



48. The Foreign Secretary reminded us that the UK's relationship with the EU is a reserved matter under the devolution settlements, but accepted that the devolved Administrations were "key stakeholders". He told us that EU matters were "routinely on the agenda at the [Joint Ministerial Committee]", and said that all the leaders of the devolved administrations had been told that "if there is an issue that they need to talk about, they should pick up the phone or come to see us". He continued:

"They will have a very specific input to make where anything touches devolved issues; they will have a more general input to make as democratically elected stakeholders in the United Kingdom. ... I recognise that it is almost inevitable that they will always have wished for a larger role in the process than they have had."<sup>38</sup>

### *Wales*

49. The First Minister for Wales, the Rt Hon Carwyn Jones AM, told us in October 2015 that at that stage the Welsh Government did not know what the UK Government's negotiating position was. While there had been some discussion in the Joint Ministerial Committee on Europe, this tended to take a broad-brush approach. He said that the Welsh Government had not been involved in the process of establishing the UK's negotiating position, but instead had learned about it through the media:

"The UK Government, I have no doubt, would argue this is a non-devolved matter. It is and it is not. It is right to say that relationships with the EU are *per se* non-devolved, but the reality is that much of what is devolved would be affected by what the UK's final position is prior to the referendum. ... We would prefer to be involved in the UK's negotiating position rather than be told about it afterwards or through the pages of the press. ... The UK cannot simply go ahead and agree to something and put something before the British people without understanding the effect it might have on devolved areas, on the powers of the devolved legislatures and government."<sup>39</sup>

Dr Hywel Ceri Jones, EU Funding Ambassador for Wales, also pointed to the lack of public visibility of the workings of the intergovernmental machinery.<sup>40</sup>

### *Scotland*

50. The First Minister of Scotland, the Rt Hon Nicola Sturgeon MSP, expressed frustration that the Scottish Government was informed of developments rather than being directly involved. She said that the Joint Ministerial Committee did not enable the devolved administrations to make a contribution to the UK position on any policy proposal. She also stressed the distinctive nature of the Scottish debate and vision on the question of EU membership.<sup>41</sup>
51. Fiona Hyslop MSP, the Cabinet Secretary for Culture, Europe and External Affairs, also told us that the Scottish Government's agenda for reform, which focused on "the big issues of the day, in terms of climate change,

---

38 [Q 173](#)

39 [QQ 10, 20](#)

40 [Q 7](#)

41 Note of Chairman's meeting with Rt Hon Nicola Sturgeon MSP, First Minister of Scotland, [16 December 2015](#)

youth employment, issues around energy security”,<sup>42</sup> had not been taken into account by the UK Government. The Joint Ministerial Committee had been unsatisfactory, meeting only once every three months. She complained that the Prime Minister’s November 2015 letter to President Tusk had only been passed on by the UK Government after it had been made available in the public domain. She said that the failure proactively to engage, much less consult, the Scottish Government, undermined respect between the two governments.<sup>43</sup>

52. We note in this context that the referendum could have profound implications for the place of Scotland within the UK. The First Minister told us that, if Scotland voted to remain in the EU and the UK as a whole voted to leave, there was a strong likelihood of a second referendum on Scottish independence.<sup>44</sup> Fiona Hyslop concurred: “we have said that the possibility of a future independence referendum would require material change. The scenario [of UK exit from the EU against a majority in Scotland voting to remain in] would be a material change in the relationship.”<sup>45</sup>

### *Northern Ireland*

53. Effective engagement with the devolved institutions in Northern Ireland proved particularly challenging. Mike Nesbitt MLA, the Chairperson of the Northern Ireland Assembly Committee for the Office of the First Minister and deputy First Minister, and Leader of the Ulster Unionist Party, stated in November that, while the UK Government had indicated that discussions had commenced with the devolved institutions in Northern Ireland, the Northern Ireland Executive had told him that no such liaison had yet begun.<sup>46</sup>
54. Professor David Phinnemore, Professor of European Politics, Queen’s University Belfast, agreed that there had been no engagement of the Northern Ireland Executive or the political parties in the process. Professor Phinnemore was also concerned about the effectiveness of the machinery for raising concerns specific to Northern Ireland. Issues such as the status of the land border between Northern Ireland and the Republic of Ireland did not resonate in the London debate.<sup>47</sup>
55. Dr Cathal McCall, Reader, Queen’s University Belfast, explained that the lack of engagement was in part because the recent focus had been on stabilising and reforming the Northern Ireland power-sharing institutions, culminating in the November 2015 Stormont Agreement. This meant that the debate on the implications of a UK exit had not really begun at the political level.<sup>48</sup> The Centre for Cross-Border Studies also noted “a lack of general engagement in Northern Ireland with the UK Government’s vision for reform and membership of the EU”.<sup>49</sup>

---

42 [Q 66](#)

43 [Q 71](#)

44 Note of Chairman’s meeting with Rt Hon Nicola Sturgeon MSP, First Minister of Scotland, [16 December 2015](#)

45 [Q 74](#)

46 Northern Ireland Assembly Committee for the Office of the First Minister and deputy First Minister, meeting on EU reform with Lord Boswell of Aynho, 16 November 2015: <http://data.niassembly.gov.uk/HansardXml/committee-16072.pdf> [accessed 18 March 2016]

47 Note of Chairman’s meeting with Queen’s University Belfast academics, [26 November 2015](#)

48 Note of Chairman’s meeting with Queen’s University Belfast academics, [26 November 2015](#)

49 Written evidence from The Centre for Cross Border Studies ([VEU0008](#))

56. The Foreign Secretary conceded in January that:

“Unfortunately, we have not had a similar level of discussions [as with the Scottish Government] with the Northern Ireland Ministers, because of the challenges that there have been over the past six months in Northern Ireland. I wrote yesterday to the Northern Ireland First Minister to see whether, even at this late stage, she and the Deputy First Minister would like to come over and have that discussion, to which they were invited late last summer.”<sup>50</sup>

57. This lack of dialogue is a particular concern given the specific implications for Northern Ireland of the decision on UK membership of the EU. Mike Nesbitt MLA noted that the existence of the land border gave rise to particular practical concerns, such as North-South cooperation between police forces, arrangements for the transfer of criminal suspects from one jurisdiction to the other, and whether the European Arrest Warrant would still apply.<sup>51</sup> Dr Katy Hayward, Research Fellow, Queen’s University Belfast, said that the EU debate brought back the border as a live political issue, creating a risk of the revival of divisions along traditional community lines. Professor Phinnemore noted that the Good Friday Agreement assumed both Irish and UK membership of the EU.<sup>52</sup>
58. Mike Nesbitt MLA summarised concerns in Northern Ireland as follows:

“Our political holy grail is stability. We may define that differently, possibly even significantly differently, but we all aspire to stability politically. It is disturbing to think that you could have a scenario where the UK as a whole is voting to come out but Scotland votes to stay in, sparking another independence debate, while we find ourselves out of Europe, with a land border with a eurozone country and our nearest neighbour across the water wanting to get back in, with England and Wales out. That would be very destabilising in terms of where we are going, who we are and what our relationships will be.”<sup>53</sup>

### *The devolved legislatures*

59. As a Select Committee, we have a particular interest in supporting the work of parliamentary committees in holding governments to account. In this inquiry we have therefore sought the views of colleagues from the devolved legislatures, to discover how far they have felt able to monitor the conduct of the negotiations and their potential impact upon areas of devolved responsibility and interest.
60. David Melding AM, Chair of the National Assembly for Wales Constitutional and Legislative Affairs Committee, told us that it was important that the National Assembly for Wales should be able to express its views on the outcome of the reform negotiations: “You cannot divorce this or regard it

---

50 Q 173

51 Northern Ireland Assembly Committee for the Office of the First Minister and deputy First Minister, meeting on EU reform with Lord Boswell of Aynho, 16 November 2015: <http://data.niassembly.gov.uk/HansardXml/committee-16072.pdf> [accessed 18 March 2016]

52 Note of Chairman’s meeting with Queen’s University Belfast academics, 26 November 2015

53 Northern Ireland Assembly Committee for the Office of the First Minister and deputy First Minister, meeting on EU reform with Lord Boswell of Aynho, 16 November 2015: <http://data.niassembly.gov.uk/HansardXml/committee-16072.pdf> [accessed 18 March 2016]

as somehow a competence based so much on Westminster that the whole referendum then will emanate from Westminster politics.”<sup>54</sup>

61. On 10 March 2016, the Constitutional and Legislative Affairs Committee wrote to the Minister for Europe expressing disappointment at the lack of consultation or engagement with the devolved legislatures during the negotiations on the reform agenda.<sup>55</sup> In forwarding a copy of this letter to our Chairman, David Melding noted that his committee had invited the Minister for Europe to give evidence, but that he had declined the invitation.
62. With regard to the Scottish Parliament, similar concern was expressed over the Minister for Europe’s refusal to appear before the Parliament’s European and External Relations Committee to discuss the referendum. In his reply to that Committee’s invitation, the Minister argued that there were:

“plenty of other opportunities for representatives of the Devolved Administrations to engage on this matter. These include private meetings which the Foreign Secretary has offered to First Ministers to discuss EU reform and renegotiation, and my commitment to put the issue on the agenda at the Joint Ministerial Committee’s Europe meetings. This issue is also under scrutiny by the UK Parliament, which of course includes MPs from Scotland, and indeed two SNP MPs are members of the European Scrutiny Committee.”<sup>56</sup>

The Minister justified his refusal to us on similar grounds.<sup>57</sup>

63. The Convenor of the Scottish Parliament European and External Relations Committee, Christina McKelvie MSP, told us that “when a UK Government Minister says, ‘No, I am not coming to your Committee’, that is an impediment immediately.” She stressed the need to “consult all constituent parts of the UK when it comes to making a decision that affects all constituent parts of the UK.”<sup>58</sup>

### Engagement with the Republic of Ireland

64. Of all the other EU Member States, the implications of the referendum are most profound for the Republic of Ireland. In June 2015 the Irish Oireachtas Joint Committee on European Affairs published its report on the *UK/EU Future Relationship: Implications for Ireland*. The Committee noted that Ireland had an economic, historical, political, social and cultural relationship with the UK unlike any other EU Member State. It noted the highly-interdependent nature of their economies, the unique status of Irish citizens under UK law, the Common Travel Area between the two jurisdictions, the shared land border, the sizeable Irish community in the UK, the close working and strategic relationship with the UK, a common spoken language and growing

---

54 [Q 23](#)

55 Letter from David Melding AM, Chair of the National Assembly for Wales Constitutional and Legislative Affairs Committee to the Minister for Europe, 10 March 2016: <http://senedd.assembly.wales/documents/s49821/Letter%20to%20Rt%20Hon%20David%20Lidington%20MP%2010%20March%202016.pdf> [accessed 15 March 2016]

56 Letter from the Minister for Europe to Christina McKelvie MSP, 17 August 2015: [http://www.scottish.parliament.uk/S4\\_EuropeanandExternalRelationsCommittee/2015\\_08\\_17\\_MinofStateEurope\\_reply.pdf](http://www.scottish.parliament.uk/S4_EuropeanandExternalRelationsCommittee/2015_08_17_MinofStateEurope_reply.pdf) [accessed 15 March 2016]

57 Oral evidence taken on 14 December 2015 (Session 2015–16), [Q 13](#) (Rt Hon David Lidington MP)

58 [Q 85](#)

political ties. Taking this into account, the Committee concluded that “an EU without the UK weakens Ireland and Europe.”<sup>59</sup>

65. The Irish Ambassador to Great Britain, HE Dan Mulhall, told us of Ireland’s unique national interest in continuing UK membership of the EU. He gave three reasons. First, he noted that “we have never had a better relationship with the UK than we have today, and this is, at least in part, down to our membership together of the European Union for 40 years.” This shared EU membership had “allowed us to see the areas where we have more in common than we might have realised before we joined the Union when we had this intensive and awkward bilateral relationship.” Second, he noted the positive impact of EU membership, including the EU peace programme, on the Northern Ireland peace process and on North-South cooperation, and expressed concern about the possible negative implications for Northern Ireland and for cross-border relations were the UK to leave the EU. Third, he pointed out that UK influence in EU discussions was helpful because “on a whole range of issues we tend to be on the same wavelength”.<sup>60</sup>
66. The Foreign Secretary acknowledged the huge impact that a UK exit from the EU would have on the Republic of Ireland. He continued: “We discuss this regularly with our Irish counterparts; I talk to [Irish Minister for Foreign Affairs and Trade] Charlie Flanagan routinely about these issues, and the Prime Minister talks to the Taoiseach.”<sup>61</sup>

### Engagement with other EU partners

67. In our July 2015 report, we acknowledged the Prime Minister’s efforts to engage with the Heads of State or Government of the 27 other Member States in the run-up to the June European Council. We stressed “the need for the Government to engage with all Member States, regardless of size or perceived influence.”<sup>62</sup>
68. During the early stages of the negotiation, there seems to have been a degree of frustration among the EU institutions and other Member States at the lack of detail on the UK’s reform priorities. Indeed, reports suggested that it was in large part the frustration of EU partners that prompted the Prime Minister to set out his priorities in his November 2015 letter to President Tusk.<sup>63</sup> The publication of the letter was a watershed in providing EU leaders with the information they needed to engage effectively in the renegotiation.
69. The December 2015 European Council then gave the Prime Minister an opportunity to explain the detail of the UK Government’s concerns. Senator Fabienne Keller, Vice-Chair of the French Sénat European Affairs Committee, stressed the importance of the Prime Minister’s presentation over dinner in helping other Heads of State and Government to understand

---

59 Joint Committee Report of the Joint Committee on European Union Affairs of the Houses of the Oireachtas, *UK/EU Future Relationship: Implications for Ireland*, June 2015: [http://www.oireachtas.ie/parliament/media/committees/euaffairs/Agreed-Report-UK-EU-Future-Relations\\_Updated.pdf](http://www.oireachtas.ie/parliament/media/committees/euaffairs/Agreed-Report-UK-EU-Future-Relations_Updated.pdf) [accessed 16 March 2016]

60 [QQ 28, 33](#)

61 [Q 172](#)

62 European Union Committee, *The referendum on UK membership of the EU: assessing the reform process* (3rd Report, Session 2015–16, HL Paper 30), para 40

63 See for example: Ian Traynor, ‘EU Referendum: Brussels tells evasive Cameron to spell out agenda for talks’, *The Guardian* (12 October 2015): <http://www.theguardian.com/politics/2015/oct/12/eu-referendum-brussels-tells-evasive-cameron-spell-out-agenda-talks> [accessed 18 March 2016]



the UK Government's perspective.<sup>64</sup> Manfred Weber MEP, said that his own conversations with EU leaders had confirmed that the Prime Minister's presentation had been "very well received", and that the atmosphere at the European Council had been very positive and constructive.<sup>65</sup>

70. The Minister for Europe testified to the positive effect of such engagement when he told us that "without exception every Government and the head of every institution have said they very much want us to stay as members. ... There has also been a universal wish to find ways to work with us on an answer to the problems that the Prime Minister has identified."<sup>66</sup> In the aftermath of the 18–19 February European Council, he told us that:

"While other countries all had their interests, which they were understandably concerned to defend, there was a common agreement amongst the other 27 that for the United Kingdom to leave the European Union would seriously weaken the EU and the western alliance more generally at a time of great economic and political risk and challenge from different quarters. The European institutions, led by President Tusk and President Juncker, were very concerned to use their best offices to try to bring about a settlement."<sup>67</sup>

### Conclusions

71. **In our July 2015 report we called on the Government to adopt an "innovative approach" in its engagement with Parliament. That innovative approach did not fully materialise, though we welcome some aspects of the Government's engagement with the Committee and the House. In particular, we welcome the Foreign Secretary's appearance before us in January 2016 and the Minister for Europe's continuing readiness to appear both before and after European Council meetings, as appropriate. We are, in contrast, disappointed by the Government's failure to provide an oral statement to the House of Lords on the outcome of the key December European Council meeting.**
72. **We acknowledge that, under the terms of the devolution settlements, the UK's relationship with the EU is a reserved matter. Nevertheless, we heard arguments in evidence that the UK Government could have done more to engage with the devolved administrations. We therefore call on the Government to review the operation of the Joint Ministerial Committee.**
73. **The UK's relationship with the EU has particular implications for Northern Ireland, in terms of cross-border relations with the Republic of Ireland and the potential impact on the peace process. We are concerned that, partly as a result of the problems within the power-sharing institutions in Northern Ireland, these have not yet received the attention they deserve.**
74. **We are disappointed at the UK Government's refusal to engage with our colleagues in the devolved legislatures, who have made a valuable contribution to this inquiry. We urge the Government to adopt a**

64 [QQ 151, 152](#)

65 [Q 141](#)

66 Oral evidence taken on 14 December 2015 (Session 2015–16), [Q 10](#) (Rt Hon David Lidington MP)

67 Oral evidence taken on 23 February 2016 (Session 2015–16), [Q 1](#) (Rt Hon David Lidington MP)

**more positive approach to engagement with elected members of the devolved legislatures.**

- 75. A UK exit from the EU would have far-reaching implications for the Republic of Ireland. We therefore welcome the close contact between the UK and Irish Governments in discussing issues relating to the referendum, and we urge the UK Government to ensure that effective lines of communication between the two governments remain open in the months ahead.**
- 76. In the early stages of the renegotiation there was frustration among EU partners at the lack of information about the UK's reform priorities. The Prime Minister's letter to President Tusk in November 2015, his presentation at the December European Council, and a series of bilateral meetings, helped EU partners to understand the UK's concerns and the nature of the domestic debate on the UK's membership of the EU. This in turn engendered a constructive atmosphere, in which EU partners took the UK's concerns seriously, paving the way for an agreement.**

## CHAPTER 4: THE GOVERNMENT'S NEGOTIATING OBJECTIVES AND THE 'NEW SETTLEMENT'

---

77. In this chapter we analyse the Government's specific negotiating objectives, and their realisation in the 'new settlement' that was agreed by the European Council on 19 February 2016. First we outline the evolution of the Government's objectives since early 2013; then we give an overview of the 'new settlement', including its legal status; finally we address each of the Government's negotiating objectives in turn, summarising where appropriate the views of witnesses, before briefly analysing the terms of agreement. Finally, we offer some conclusions on the 'new settlement' as a whole.

### The evolution of the Government's objectives

#### *The Bloomberg speech*

78. In his Bloomberg speech,<sup>68</sup> in January 2013, the Prime Minister identified three major challenges facing the EU: the problems in the Eurozone; competitiveness; and democratic accountability—"a gap between the EU and its citizens which has grown dramatically in recent years". He then described a "vision for a new European Union, fit for the 21st Century", built on five principles:
- Competitiveness, involving the creation of a "a leaner, less bureaucratic Union, relentlessly focused on helping its member countries to compete";
  - Flexibility, including the "heretical proposition" that the principle of "ever closer union" should be replaced by "a flexible union of free member states who share treaties and institutions and pursue together the ideal of co-operation";
  - That "power must be able to flow back to Member States, not just away from them";
  - Democratic accountability, with a "bigger and more significant role for national parliaments"; and
  - Fairness, with particular reference to Member States not belonging to the Eurozone.
79. Thus many of the ideas that subsequently became elements in the renegotiation were already emerging in early 2013. It was with a view to fleshing out these ideas that the Prime Minister noted that "In Britain we have already launched our balance of competences review—to give us an informed and objective analysis of where the EU helps and where it hampers."

#### *The Balance of Competences Review*

80. The Balance of Competences Review was announced by the then Foreign Secretary, the Rt Hon William Hague MP, on the floor of the House of Commons on 12 July 2012. He described it as "an audit of what the EU does and how it affects us in the United Kingdom. It will look at where competence lies, how the EU's competences, whether exclusive, shared or

---

<sup>68</sup> Speech by the Prime Minister on the EU at Bloomberg, 23 January 2013: <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg> [accessed 15 March 2016]



supporting, are used and what that means for our national interest”.<sup>69</sup> The Review concluded in December 2014.

81. We assessed the Balance of Competences Review in a short Report published at the end of the last Parliament,<sup>70</sup> and we do not propose to rehearse the points made in that Report here. Suffice to say that the Review was unprecedented in scale, described by one academic commentator as “the most comprehensive-ever assessment of the workings of the European Union”.<sup>71</sup>
82. As the same time, we were disappointed by the Government’s failure to fulfil its commitment to provide an over-arching assessment of the findings of the Review. We concluded that: “As a result, this major project, despite the good quality of its outputs, has yet to deliver an outcome, in the form of measurable benefits. It has so far made no impact on the public debate on the UK-EU relationship.”<sup>72</sup>

### *The Conservative Party manifesto*

83. The publication of the Conservative Party manifesto marked the next milestone in the evolution of the Government’s negotiating objectives. The manifesto promised “real change in our relationship with the European Union”. It undertook to legislate for “an in-out referendum to be held on Britain’s membership of the EU before the end of 2017”, and to negotiate a “new settlement for Britain in the EU”. The specific objectives in the manifesto were as follows:
  - Protection of the UK economy from the effects of “any further integration of the Eurozone”.
  - Reclaiming power from ‘Brussels’—a broad objective made up of two elements, a desire for “national parliaments to be able to work together to block unwanted European legislation”, and “an end to our commitment to an ‘ever closer union’”.
  - “Action in Europe to make you better off”, including preserving the integrity of the single market, cutting red tape and EU spending, and a focus on “promoting jobs and growth”.
  - In a section headed “Controlled immigration that benefits Britain”, the manifesto promised to “regain control of EU migration by reforming welfare rules”—what became the fourth ‘basket’. A number of specific suggestions were made, including the introduction of four-year residency requirements before EU nationals could claim tax credits or child benefit, or be considered for a council house, restricting child benefit in respect of children living abroad, and removing any entitlement to job-seeking benefits.

---

69 HC Deb, 12 July 2012, [col 468](#)

70 European Union Committee, *The Review of the Balance of Competences between the UK and the EU*, (12th Report, session 2014–15, HL Paper 140)

71 Michael Emerson, ed., *Britain’s Future in Europe: reform, renegotiation, repatriation or succession?*, (Brussels: Centre for European Policy Studies, 2015), executive summary

72 12th Report, session 2014–15, *op cit*, paragraph 64

*The Prime Minister's November 2015 letter to Donald Tusk*

84. This brief summary suggests that the Balance of Competences Review had a very limited impact upon the development of the Government's negotiating objectives; in contrast, those objectives were clearly, if informally, described in the Conservative Party manifesto. Following the Conservatives' victory in the General Election, the new Government moved quickly to begin discussions at EU level. As we noted in our July 2015 Report, the Prime Minister's statement following the June 2015 European Council outlined what are now clearly recognisable as the four 'baskets':

"First, on sovereignty, Britain will not support being part of an ever-closer union or being dragged into a state called Europe ... We want national Parliaments to be able to work together to have more power, not less.

"Secondly, on fairness, as the eurozone integrates further, the EU has to be flexible enough to make sure that the interests of those inside and outside the eurozone are fairly balanced. Put simply, the single currency is not for all, but the single market and the European Union as a whole must work for all.

"Thirdly, on immigration, we need to tackle the welfare incentives that attract so many people from across the EU to seek work in Britain.

"Finally, alongside all those, we need to make the EU a source of growth, jobs, innovation and success, rather than stagnation. That means signing trade deals and completing the single market".<sup>73</sup>

85. Over the summer, officials engaged in detailed technical discussions, leading up to the Prime Minister's letter to Donald Tusk, dated 10 November 2015, in which he formally notified the President of the European Council of the reforms being sought by the United Kingdom.<sup>74</sup> The over-arching themes were unchanged: economic governance, competitiveness, sovereignty and immigration. Within these themes, however, there were some significant changes.
86. Three new proposals were included under the 'sovereignty' heading. The Prime Minister called for the EU's commitments to subsidiarity to be "fully implemented", with "clear proposals to achieve that"; he sought "confirmation that the EU institutions will fully respect the purpose behind the [justice and home affairs] Protocols ... in particular to preserve the UK's ability to choose to participate"; and he also sought confirmation that "National Security is—and must remain—the sole responsibility of Member States, while recognising the benefits of working together on issues that affect us all".
87. On immigration, the Prime Minister repeated his commitment to "reducing the draw that our welfare system can exert", and recalled his proposal to introduce a four-year residency requirement and to end the practice of sending child benefit overseas. But he qualified these demands with a note of pragmatism: "I understand how difficult some of these issues are for other

<sup>73</sup> HC Deb, 29 June 2015, [col 1176](#)

<sup>74</sup> The Prime Minister, 'Letter to Donald Tusk', 10 November 2015, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/475679/Donald\\_Tusk\\_letter.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/475679/Donald_Tusk_letter.pdf) [accessed 14 March 2016]

Member States and I look forward to discussing these proposals further so we can find a solution that deals with the issue.”

### *Views of witnesses*

88. Witnesses highlighted three features in particular of the process whereby the Government’s negotiating objectives emerged. The first was the sidelining of the Balance of Competences Review. In the absence of an overarching assessment of the results of the Review, it was unclear how far, if at all, the Review influenced the development of the Government’s negotiating priorities. Professor Andrew Scott, of Edinburgh University, described it as “probably the most comprehensive, well-informed cost benefit exercise on European membership that has ever been undertaken by any member state”, lamenting that the material had “suddenly ceased to exist for the purposes of this debate”.<sup>75</sup> David Melding AM regretted that “the review of competences, which originally was, perhaps, thought likely to be the basis of more thoroughgoing and slightly more technical negotiation, does not seem to get referred to very often”.<sup>76</sup> Dr Davor Jancic agreed that an “opportunity was missed to feed the results [of the Balance of Competences Review] into the political process”,<sup>77</sup> and the Centre for Cross Border Studies, while paying tribute to “the most comprehensive assessment to date of the EU”, regretted that “Prime Minister Cameron’s speeches ... had already set the tone for Government policy on EU reform before the Review had published all of its reports”.<sup>78</sup>
89. Thus the weight of evidence submitted to this inquiry, taken in conjunction with the Government’s repeated refusal to publish any over-arching assessment of the Balance of Competences Review, bears out the concern expressed in our 2015 Report, that the Review, despite being the most detailed, transparent and authoritative review of EU and national competences in existence, would have no impact on the wider debate on EU membership.
90. The second feature, closely related to the first, was the lack of consultation in the Government’s development of its reform objectives. The Government told us that such consultation occurred within the framework of the Balance of Competences Review. In the words of the Minister for Europe, the Rt Hon David Lidington MP, just before the October European Council: “The balance of competences review that the coalition Government carried out was, and still is, a very useful survey of opinion from business, trade unions, civil society organisations and so on. We draw on that in our analysis of what people will want or not want to see in the renegotiation.”<sup>79</sup>
91. Dr Joanna Hunt, Reader in Law at the University of Cardiff, disagreed: “I saw evidence from the Minister for Europe recently that said that the balance of competences review was being used as a source for the renegotiation requests. That struck me as rather surprising. We do not know the process by which the reform agenda has emerged.”<sup>80</sup> In the absence of an over-arching summary of the conclusions drawn from the Balance of Competences Review, it is impossible to assess how far the views of consultees in that

---

75 [Q 94](#)

76 [Q 23](#)

77 Written evidence from Dr Davor Jancic ([VEU0012](#))

78 Written evidence from The Centre for Cross Border Studies ([VEU0008](#))

79 Oral evidence taken on 12 October 2015 (Session 2015–16), [Q 6 \(Rt Hon David Lidington MP\)](#)

80 [Q 7](#)

Review contributed to the development of the Government's negotiating objectives.

92. The third feature was the late emergence of key objectives. Even on 27 October 2015 the Polish Ambassador, HE Witold Sobków, told us that his government was “waiting for the letter that the Prime Minister has promised to send to President of the European Council Donald Tusk, and we hope we will have then more precise information as to what the UK would like to change in the European Union”.<sup>81</sup> As we have noted, when the Prime Minister's letter appeared two weeks later, it contained three new objectives under the “sovereignty” heading, none of which appears to have been subject to any consultation.

### *Conclusions*

93. **The process by which the Government's negotiating objectives emerged appears not to have been evidence-based, in that the Balance of Competences Review was side-lined, and there was little if any further consultation with stakeholders. Instead, most of the key objectives were first articulated in the Conservative Party manifesto.**
94. **The origins of the three new sovereignty proposals (on subsidiarity, the justice and home affairs protocols and national security), which emerged in the Prime Minister's letter to Donald Tusk in November 2015, are unclear: they featured neither in the Balance of Competences Review nor in the manifesto.**

### *The ‘new settlement for the United Kingdom’*

95. The agreement by which the other Member States and the EU institutions sought to meet the Prime Minister's demands for EU reform is embodied in a ‘new settlement for the United Kingdom within the European Union’, published as part of the Conclusions of the 18–19 February European Council.<sup>82</sup> The ‘new settlement’ comprises:
- An international law decision (annex 1 to the Conclusions).
  - Undertakings from Member States and the Commission in support of that decision (annexes 2–7 to the Conclusions).
96. Throughout this chapter we use the term ‘new settlement’ to refer to the agreement reached at the European Council in its entirety; references to the ‘international law decision’ are to annex 1 specifically. Within annex 1 there are five sections: section A concerns economic governance; section B concerns competitiveness; section C concerns sovereignty; section D concerns social benefits and free movement; section E concerns the application of the international law decision.
97. The international law decision enters into force on the day on which the Prime Minister notifies the Secretary-General of the Council that the UK has decided to remain in the EU. Should the UK decide to leave the EU, “it is understood that” the ‘new settlement’ “will cease to exist”.

81 [Q 28](#)

82 European Council meeting (18 and 19 February 2016) Conclusions, 16 February 2016: <http://data.consilium.europa.eu/doc/document/ST-1-2016-INIT/en/pdf> [accessed 16 March 2016]

98. Later in this chapter we analyse the specific negotiating objectives in more detail, highlight the views of witnesses where appropriate, and analyse the manner of their delivery in the ‘new settlement’ as a whole. First, though, we consider the legal status of the international law decision.

### **The legal status of the international law decision**

#### *The stated intention of the Heads of State and Government*

99. The European Council Conclusions declare that:

“(i) this Decision gives legal guarantee that the matters of concern to the United Kingdom as expressed in the letter of 10 November 2015 have been addressed;

“(ii) the content of the Decision is fully compatible with the Treaties;

“(iii) this Decision is legally binding, and may be amended or repealed only by common accord of the Heads of State or Government of the Member States of the European Union”.

No mention is made of the legal status of annexes 2 to 7; it can be presumed, by inference, that they are not in themselves legally binding.

100. In addition, the Member States intend the “substance” of section A of the Decision, concerning economic governance, to be “incorporated into the Treaties at the time of their next revision in accordance with the relevant provisions of the Treaties and the respective constitutional requirements of the Member States.” Section C recognises that “the United Kingdom, in the light of the specific situation it has under the Treaties, is not committed to further political integration into the European Union”. The “substance” of this, too, will be incorporated into the Treaties at the time of their next revision.

#### *The opinion of the Legal Counsel to the European Council*

101. The Legal Counsel of the European Council, Hubert Legal, was asked by the Member States to provide an opinion on the legal status of the international law decision. This was published, despite its *limité* classification, and a copy was sent to us by the Foreign Secretary.

102. Mr Legal concluded as follows:

- The international law decision is not a Decision of the European Council under the EU Treaties but an intergovernmental agreement of the Member States, made within the European Council, and legally binding under international law.
- It follows precedents used by the EU Member States in the 1992 ‘Edinburgh Decision’ for Denmark, and in 2007 for Ireland, following referendums in those countries rejecting, respectively, the Maastricht and Lisbon Treaties.
- By means of the international law decision, EU Member States have agreed “on a joint interpretation of certain provisions of the EU Treaties and on principles and arrangements for action in related circumstances.”

- It is a prerogative of States under international law<sup>83</sup> to agree subsequent interpretations of treaties to which they are signatories, in this case the EU Treaties.
- The reference to the “substance” of certain provisions in the international law decision to be incorporated into the EU Treaties, and not to their exact text, are neither “pre-negotiating their future drafting” nor “prejudging their precise future content” when they take the form of amendments to the Treaties. In addition, the two provisions in question will be incorporated using the EU treaty revision procedures set out in Article 48 TEU.
- Once adopted by common accord of all Heads of State or Government, the international law decision can be amended or repealed only by their common accord.
- In 2010, in the case of *Rottman*, the Court of Justice of the European Union (CJEU) confirmed that the international law agreement underpinning the 1992 Edinburgh Decision in relation to Denmark had “to be taken into consideration as being instruments for the interpretation of the EC Treaty”,<sup>84</sup> in deciding the nationality of an EU citizen.
- The international law decision does not amend the EU Treaties, nor does it contradict them. The recitals confirm the intention for the international law decision to be “in conformity” with the EU Treaties.
- The international law decision “has legal consequence ... with binding force” where it interprets Treaty provisions or foresees action requiring recourse to their procedures. Its interpretative provisions “draw on the case law” of the CJEU and have the status laid down by the CJEU in the *Rottman* case.
- Where amendments to secondary EU legislation are foreseen, “the international law decision limits itself to register the declared commitment by the Commission to submit appropriate proposals.”

*The Prime Minister’s statement to the House of Commons*

103. In his statement to the House of Commons following the European Council, the Prime Minister confirmed that the international law decision was legally binding under international law and that the EU Treaties would be amended in two respects:

“The reforms that we have secured will be legally binding in international law, and will be deposited as a treaty at the United Nations. They cannot be unpicked without the agreement of Britain and every other EU country. As I have said, all 28 member states were also clear that the treaties would be changed to incorporate the protections for the UK as an economy outside the eurozone, and our permanent exclusion from ever closer union.”<sup>85</sup>

83 In particular, Article 31 of the Vienna Convention on the Law of Treaties.

84 C-135/08 *Rottman v Freistaat Bayern*, para 40: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62008CJ0135&from=EN> [accessed 18 March 2016]

85 HC Deb, 22 February 2016, [cols 23-24](#)



104. The Minister for Europe, giving evidence on 23 February, acknowledged that any secondary legislation foreseen in the international law decision would, as Mr Legal had advised, go through the normal legislative procedure. But he was confident that the unity of purpose embodied in the international law decision would ensure that such legislation would be enacted swiftly and in accordance with the terms of the agreement: “We have a clear commitment from the Commission to take that action, with a legally binding obligation on all 28 Governments to make it happen and the good will of the leading members of the European Parliament to give effect to it.”<sup>86</sup>

### *Conclusions*

105. **We agree with the advice of Mr Legal that the international law decision is an intergovernmental agreement which is binding under international law.**
106. **We also agree that an international law decision agreed by all the EU’s Member States, such as this, can serve as an aid to the interpretation of the EU Treaties. This was confirmed by the CJEU in the case of Rottman.**
107. **An international law decision cannot amend or override the EU Treaties: the only way to do so is through the procedures provided for in the EU Treaties. Thus Mr Legal’s advice confirms that “The Decision does not amend the EU Treaties, nor does it contradict them. The recitals confirm the intention for the Decision to be ‘in conformity’ with the EU Treaties.”**
108. **In our view, therefore, the principal value of the international law decision lies in the extent to which it clarifies aspects of EU law for the benefit of the UK.**
109. **The international law decision contains a commitment to amend the EU Treaties to incorporate the protections for the UK as an economy outside the Eurozone, and to exclude the UK from ever closer union, “at the time of their next revision”. These commitments are contingent on when the Treaties will be opened for revision, a date for which is currently unknown.**
110. **The international law decision records the declared commitment by the Commission to submit proposals for secondary legislation. Although the ordinary legislative procedure means that there can be no guarantee that the proposals will be agreed in exactly the form proposed, the Minister for Europe was clear that the good faith of all the institutions in implementing the new settlement should not be doubted. We consider this to be a reasonable view.**

### **The Government’s negotiating objectives: economic governance**

#### *Background*

111. The Prime Minister’s letter of 10 November 2015 asked, under the heading of economic governance, for “legally binding principles that safeguard the operation of the Union for all 28 Member States”. In particular, he sought recognition that:

---

86 Oral evidence taken on 23 February 2016 (Session 2015–16), [Q 11](#) (Rt Hon David Lidington MP)

- The EU has more than one currency.
  - There should be no discrimination and no disadvantage for any business on the basis of the currency of their country.
  - The integrity of the Single Market must be protected.
  - Any changes the Eurozone decides to make should be voluntary for non-Euro countries.
  - Taxpayers in non-Euro countries should never be financially liable for operations to support the Euro.
  - Financial stability and supervision are a national competence for non-Euro members.
  - Any issues that affect all Member States must be discussed and decided by all Member States.
112. The obverse of the Prime Minister's demands is his recognition, as long ago as the 2013 Bloomberg speech, that "we all need the Eurozone to have the right governance and structures to secure a successful currency for the long term". In the letter to Donald Tusk, this translated into recognition that the UK would "not want to stand in the way of measures Eurozone countries decide to take to secure the long-term future of their currency." He was clear that the UK did not seek a "new opt-out". Instead he sought guarantees, backed up by a "safeguard mechanism", to ensure fairness for all.

#### *Views of witnesses*

113. There was support across the domestic political spectrum for the Prime Minister's fundamental demand for fairness between Euro and non-Euro states. TheCityUK wanted "To guarantee that decisions that affect all 28 Member States are never taken by the Eurogroup in isolation and ensure that the interests of non-Eurozone Member States are always taken into consideration."<sup>87</sup> The TUC agreed that "decisions made by Eurozone countries which would significantly affect those countries outside—such as the UK, but also, for example, Sweden—should involve all the countries affected".<sup>88</sup> Fiona Hyslop MSP also expressed qualified support for an arrangement "that does not compromise the interests of either the eurozone or the non-eurozone countries".<sup>89</sup>
114. From Poland (which has yet to adopt the Euro), Danuta Hübner MEP noted the extent to which the EU has already adapted to the reality of living with more than one currency:

"We have adopted special clauses on non-discrimination against non-euro countries, which are in the Regulation on the single resolution mechanism ... On the other hand, we are fully aware that the decisions made within the eurozone context have to lead towards deepening the eurozone and making it more effective and efficient, safer and more stable. That we heard also from Prime Minister Cameron for years—

---

87 Written evidence from TheCityUK ([VEU0016](#))

88 Written evidence from the Trades Union Congress ([VEU0014](#))

89 [Q 77](#)



that the eurozone should be fixed in such a way that the functions were better for the UK, too.”<sup>90</sup>

115. One issue within this basket that aroused significant concern was the Prime Minister’s demand for formal recognition that the EU was a ‘multicurrency union’. Such recognition might appear to be purely symbolic, but, like all symbolism, it arouses strong feelings. Manfred Weber MEP could not understand why the UK, as one of only two EU Member States not legally bound to work towards adopting the Euro, was “doing the job for others”. He was concerned at the prospect of fragmentation of decision-making, and posed a new version of what the late Enoch Powell, responding to a speech by Tam Dalyell in 1977, called the ‘West Lothian question’: “if Europe is defining itself as a multicurrency union, that would lead, for example, to a debate on why British MEPs are deciding here in the European Parliament on the euro when we are defining ourselves as a multicurrency union.”<sup>91</sup>

### *Analysis*

116. Perhaps the most striking feature of the ‘new settlement’ is the explicit and fulsome commitment of both Euro and non-Euro Member States to “mutual respect and sincere cooperation”. Section A of the international law decision confirms that:

“Member States not participating in the further deepening of the economic and monetary union will not create obstacles to but facilitate such further deepening while this process will, conversely, respect the rights and competences of the non-participating Member States.”

The ninth recital also emphasises the benefits of an economically prosperous Eurozone for all EU Member States: “Determined also to facilitate and support the proper functioning of the euro area and its long-term future, for the benefit of all Member States”.

117. Giving evidence on 23 February, the Minister for Europe acknowledged that there had been “genuine fear on the part of some Eurozone governments that the UK and others might try to hold hostage future measures of Eurozone integration”. The international law decision thus confirms, in return for the guarantees it contains in respect of non-Euro States, that all 28 Member States will support necessary integration within the Eurozone.
118. With regard to the Government’s request for recognition that the Eurozone has more than one currency, the fourth recital to the international law decision confirms that “not all Member States have the euro as their currency”. The Government, in its published account of the ‘new settlement’, sets considerable store by this statement: “Explicitly recognised here for the first time, this underpins our new settlement in an EU that treats Member States equally regardless of their currency”.<sup>92</sup>
119. It is notable, though, that the new settlement makes no reference to a ‘multicurrency union’, and acknowledges in terms that Member States that do not have formal opt-outs from the Euro are “committed under the Treaties

---

<sup>90</sup> Q 123

<sup>91</sup> Q 147

<sup>92</sup> HM Government, *The best of both worlds: the United Kingdom’s special status in a reformed European Union* (February 2016), para 2.11: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/502291/54284\\_EU\\_Series\\_No1\\_Web\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/502291/54284_EU_Series_No1_Web_Accessible.pdf) [accessed 18 March 2016]

to make progress towards fulfilling the conditions necessary for the adoption of the single currency". This appears to meet the concerns expressed to us by Manfred Weber MEP, among others, by maintaining the symbolism of a 'single currency' for the EU.

120. This Report is not the place for a minute examination of the complex provisions of the new settlement relating to eurozone governance: it has been deposited in Parliament by the Government, and this Committee will scrutinise its provisions in more depth in coming weeks. It is important to note, though, that none of the provisions on economic governance within the new settlement departs from principles already recognised in the EU Treaties or by the CJEU. Their principal value comes from the emphasis given to them in the context of a new settlement for the UK, which will in due course be incorporated into the Treaties, should the UK decide to remain in the EU.
121. We conclude this section, therefore, with a summary of the safeguard mechanism described in a draft Council Decision contained in Annex 2 to the 'new settlement'. The second recital of the draft Council Decision confirms that it is limited to draft legislative acts (such as Regulations and Directives, but not intergovernmental agreements) "relating to the banking union and further integration of the euro area, the adoption of which is subject to the vote of all members of the Council".
122. The following process is envisaged. A single Member State,<sup>93</sup> not in the banking union, may "indicate its reasoned opposition" to the Council adopting a legislative act, in which case the Council "shall discuss the issue". The reasoned opposition must indicate how the draft legislative act does not respect the principles laid down in Section A of the international law decision. The Council must "do all in its power" to reach "a satisfactory solution" for the Member State concerned, within a reasonable time. To this end the Council Presidency should "undertake any initiative necessary to facilitate a wider basis of agreement in the Council".
123. A request for a discussion in the European Council on the issue, before it returns to the Council for decision, may constitute such an initiative. Any such referral is without prejudice to the normal operation of the EU's legislative procedures and "cannot result in a situation which would amount to allowing a Member State a veto".
124. This mechanism is based on the 1994 'Ioannina Compromise'. The mechanism can best be characterised as giving a Member State a right to pause negotiations in the Council; it does not contain a right of veto. The Member State that triggers the mechanism can "request" escalation to the European Council: it is for the Council Presidency, assisted by the Commission, to decide whether to accede to such a request.
125. Article 2 of the draft Council Decision would require the Council to "do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by Union law, a satisfactory solution to address concerns raised by the member". At the same time, the Rules of Procedure of the Council allow it to call a vote on a proposal at any time with the agreement of a simple majority of Member States, and the references to

---

<sup>93</sup> The text in Article 1 states "at least one": the Minister for Europe confirmed in evidence to the EU Select Committee on Tuesday 23 February that a single Member State could invoke the mechanism.

the “Rules of Procedure of the Council” and “legislative procedure of the Union” in Article 3 of the draft Council Decision though not entirely clear, appear to suggest that the right of delay could be overridden in a case of urgency.

### *Conclusions*

126. **The Government’s aim to ensure that the UK, and other non-Eurozone States, are protected against discrimination, and to protect the integrity of the Single Market, enjoyed wide support, both domestically and across the EU.**
127. **The terms of the ‘new settlement’, while largely restating existing principles, provide welcome clarity on the future relations of Eurozone and non-Eurozone States, and ensure that the interests of both groups will be safeguarded. The Government’s commitment to “facilitate and support the proper functioning of the euro area and its long-term future” is a welcome and necessary recognition that the UK has a vital stake in the success of the Eurozone, and will work to achieve that success.**
128. **The international law decision confirms both that EU Member States have more than one currency, and that the Euro remains the ‘single currency’ of the EU. This respects the position of non-Euro states, while avoiding the risk of fragmentation.**
129. **The safeguard mechanism, based on the 1994 ‘Ioannina Compromise’, offers the UK a pragmatic and potentially effective tool to raise concerns over new legislative initiatives within the Council.**

### *The Government’s negotiating objectives: competitiveness*

#### *Background*

130. In his letter to President Tusk, the Prime Minister noted the progress that the Commission had made in supporting economic growth and scaling back unnecessary legislation. He argued, however, that “the EU can go much further. In particular ... the burden from existing regulation is still too high. So the United Kingdom would like to see a target to cut the total burden on business.” He added that:  
  

“We need to bring together all the different proposals, promises and agreements on the Single Market, on trade, and on cutting regulation into a clear long-term commitment to boost the competitiveness and productivity of the European Union and to drive growth and jobs for all.”
131. In the words of his Chatham House speech, the Prime Minister was seeking to write competitiveness “into the DNA of the whole European Union.”

#### *Views of witnesses*

132. Most witnesses supported the Government’s emphasis on competitiveness, though the term was interpreted in various ways. Chris Cummings, Chief Executive of TheCityUK, took competitiveness to mean “Europe’s ability to compete at a global level”. Given that the EU’s own analysis had shown that 90% of the global growth would occur outside the European Union

over the course of the next 10 to 15 years, he stressed that the EU needed better trading relationships and effective trade deals.<sup>94</sup> He noted that “proper completion of the single market”—including digital, energy and financial services—would add up to around £4,000 of benefit to every household in the UK.<sup>95</sup>

133. Andy Bagnall, Director of Campaigns, CBI, also advocated expanding the boundaries of the single market, particularly in services and digital, and accelerating the negotiation of trade deals.<sup>96</sup> His main focus, though, was on the regulatory burden: he welcomed the present Commission’s streamlined approach to regulation, which had reduced the number of new initiatives from 314 in 2010 to 23 in 2015, and called for a mechanism to make this “permanent and survive beyond the term of one Commission.”<sup>97</sup> On a similar theme, Ashley Fox MEP said that, in terms of competitiveness, it was difficult to identify “concrete deliverables beyond very specific burden reduction targets for business”.<sup>98</sup>
134. Witnesses from other Member States and the EU institutions were also broadly positive. HE Witold Sobków said that Poland supported the UK’s agenda, and wanted to boost competitiveness and complete the Single Market.<sup>99</sup> HE Dan Mulhall said that Ireland “could not be more supportive of this agenda of making the Union—the EU economy—more flexible, more effective and more competitive for the future, because we understand how vital that is to our interests.”<sup>100</sup>
135. Jonathan Faull confirmed that the Commission wanted to make the EU more competitive, and was working “flat out” to make progress on the single market in services and trade agreements. He thought that “the idea of bringing all those various commitments, programmes and policies into sharper focus in one clear commitment ‘written into the DNA’ is a perfectly sensible and, I think, achievable goal.” The Commission was looking at whether targets could be attached to this process, although this was more difficult across 28 different countries than within an individual country.<sup>101</sup>
136. We heard concerns, however, that the Government’s focus on competitiveness might undermine social protections. The TUC told us that “the term is often used as a smokescreen for measures such as attacks on collective bargaining, minimum wages and rights to job security which would exacerbate the increase in inequality and undermine the stimulation of demand which is necessary to deliver sustainable growth.”<sup>102</sup> Fiona Hyslop MSP, while indicating that the Scottish Government was “very supportive of competitiveness”, added that its focus was on “a Europe of social protection”.
137. The Foreign Secretary asserted that the competitiveness agenda promoted by the UK reflected “a strand of concern that runs across many, if not all, Member States”. He had “no doubt” that the economic recession had played a part in persuading Member States to focus on economic growth and

---

94 [Q 54](#)

95 [Q 59](#)

96 [Q 55](#)

97 [Q 59](#)

98 [Q 131](#)

99 [Q 31](#)

100 [Q 34](#)

101 [Q 117](#)

102 Written evidence from the Trades Union Congress ([VEU0014](#))

jobs, and welcomed the emphasis of the Juncker Commission on reducing regulatory burdens in order to encourage such growth. At the same time, he stressed that:

“It is not enough that one Commission comes along that has a certain agenda ... We need to institutionalise this agenda so that ensuring the European Union’s continued competitiveness in the global economy becomes a principal, if not the principal, driving force and work programme of future Commissions. We are looking here to institutionalise a process, and this runs as a theme across these negotiations.”<sup>103</sup>

### *Analysis*

138. The key features of the international law decision under the ‘Competitiveness’ heading are:

- Recognition of the need to enhance competitiveness in order to secure the “essential objective” of the establishment of an internal market in which the free movement of goods, persons, services and capital is ensured.
- A commitment by the EU institutions and the Member States to “make all efforts to fully implement and strengthen the internal market, as well as to adapt it to keep pace with the changing environment.”
- A commitment by the EU institutions and the Member States to “take concrete steps towards better regulation”, including “lowering administrative burdens and compliance costs on economic operators, especially small and medium enterprises, and repealing unnecessary legislation ... while continuing to ensure high standards of consumer, employee, health and environmental protection.”
- A commitment by the European Union to pursue “an active and ambitious trade policy”.
- Establishment of a process to monitor and review progress in all these areas.

139. The accompanying European Council Declaration on Competitiveness (annex 3) calls for a focus on:

- A strong commitment to regulatory simplification and burden reduction, including through withdrawal or repeal of legislation where appropriate, and a better use of impact assessment and ex-post evaluation throughout the legislative cycle, at the EU and national levels.
- Doing more to reduce the overall burden of EU regulation, especially on SMEs and micro-enterprises.
- Establishing where feasible burden reduction targets in key sectors, with commitments by EU institutions and Member States.

140. The Declaration also:

---

103 [Q 176](#)

- Welcomes the Commission's commitment (see below) to review annually the success of the Union's efforts to simplify legislation, avoid over-regulation and reduce burdens on business, and invites the Council to ensure these reviews were given appropriate follow-up.
  - Invites the Commission to propose the repeal of measures that are inconsistent with the principle of subsidiarity or that impose a disproportionate regulatory burden.
  - Stresses the importance of a strong, rules-based multilateral trading system and the need to conclude ambitious bilateral trade and investment agreements with third countries. It welcomes the recent agreement reached by the WTO in Nairobi, and called for work to be advanced in negotiations with the US, Japan and key partners in Latin America and in the Asia-Pacific region.
  - Makes a commitment to keep developments under review and asks the General Affairs Council and the Competitiveness Council to evaluate progress regularly.
141. Subsidiarity elements of the accompanying Declaration of the European Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism (annex 4) are dealt with under a separate heading. In respect of burden reduction, the Commission has undertaken to:
- Continue its efforts to make EU law simpler and to reduce the regulatory burden for EU business operators without compromising policy objectives by applying the 2015 Better Regulation Agenda, including in particular the Commission's Regulatory Fitness and Performance Programme (REFIT).
  - Work with Member States and stakeholders, within the REFIT platform, towards establishing specific targets at EU and national levels for reducing the burden on business, particularly in the most onerous areas for companies, in particular small and medium size enterprises. Once established, the Commission will monitor progress against these targets and report to the European Council each year in the form of an Annual Burden Survey.
142. Asked whether this agreement would have any material effect, the Minister for Europe argued that it was not just "a declaration of high intent", but placed a legally binding duty on all Member State governments to strive for greater competitiveness through completing the single market, giving priority to trade and smarter regulation and reducing regulatory burdens. He argued that the agreement institutionalised the process, in that the European Council was asking the General Affairs Council and the Competitiveness Council to monitor and report regularly on progress in meeting these objectives. He also pointed to the Commission's commitment "to establish a completely new mechanism to review not new legislation—any form of impact assessment—but the *acquis*, which is existing legislation. This is something completely unprecedented." Finally, he observed that there was for the first time a commitment to establish specific targets for reducing business burdens: "This is something for which British Ministers have been

arguing for years. There has always been great reluctance to accept it. It is now there in black and white. That is another good achievement.”<sup>104</sup>

### *Conclusions*

143. **We welcome the European Council’s commitment to enhance competitiveness and to complete the internal market. We also welcome the continued commitment, building on the progress already made by the Commission, to ensure better regulation and to reduce administrative burdens and compliance costs, especially for SMEs.**
144. **We also welcome the commitment to an active and ambitious trade policy, and to take forward negotiations with the US, Japan and key partners in Latin America and in the Asia-Pacific region.**
145. **Yet fine words must be matched by action. We therefore welcome the mechanisms for review set out in the new settlement, including the Commission’s commitment to carry out an annual review of the existing body of EU legislation. We also welcome its commitments to take into account the views of national parliaments as part of this process, to work with Member States and stakeholders to set targets at EU and national level for reducing burdens, and to publish an Annual Burden Survey. These commitments should entrench the progress that has already been made in burden reduction under President Juncker’s Commission.**
146. **Taken as a whole, therefore, the competitiveness element of the new settlement is a significant achievement, which could have far-reaching effects for the EU as a whole. At this stage, however, it is unclear what would happen if progress were not made or if targets were not met. Further work is therefore needed to translate the terms of the agreement into action.**

### **The Government’s negotiating objectives: sovereignty**

#### *‘Ever closer union’*

##### *Background*

147. In his letter to Donald Tusk, the Prime Minister said, “I want to end Britain’s obligation to work towards an ‘ever closer union’ as set out in the Treaty ... I want to do this in a formal, legally-binding and irreversible way.”
148. The phrase ‘ever closer union’ dates back to the Preamble to the 1957 Treaty of Rome, which described the six participating states as “Determined to lay the foundations of an ever closer union among the peoples of Europe.” The evolution of the phrase in successive treaties and declarations is outlined in a House of Commons Library briefing paper,<sup>105</sup> which also quotes the three following occurrences of the phrase in the present Treaties:
  - The Preamble to the Treaty on European Union: “RESOLVED to continue the process of creating an ever closer union among the

<sup>104</sup> Oral evidence taken on 23 February 2016 (Session 2015–16), [Q 12](#) (Rt Hon David Lidington MP)

<sup>105</sup> House of Commons ‘Library Briefing Paper ‘Ever Closer Union’ in the EU Treaties and Court of Justice case law, [Number 07230](#), 16 November 2015



peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity”.

- Article 1 of the Treaty on European Union: “This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.”
- The Preamble to the Treaty on the Functioning of the European Union: “DETERMINED to lay the foundations of an ever closer union among the peoples of Europe”.

*Views of witnesses*

149. Each time the phrase “ever closer union” occurs in the Treaties it refers to union “among the peoples of Europe”. The phrase is thus a statement of overarching intent, of aspiration towards what Dr Hywel Ceri Jones, EU Funding Ambassador for Wales, called “a sense of partnership between peoples”.<sup>106</sup> Michael Emerson, Associate Research Fellow at the Centre for European Policy Studies, recalled that “the accent is on the peoples of Europe, and their ever closer union may be seen as seeking to guarantee against reversion to the dreadful conflicts and enmities of the 20th and earlier centuries in European history”.<sup>107</sup> Professor Derrick Wyatt QC called the words in the Preamble to the Treaty of Rome “rhetorical flourish”.<sup>108</sup>
150. In fact, not a single witness to this inquiry suggested that the words ‘ever closer union’, as used in the Treaties, in themselves imposed a direct legal obligation upon Member States to work towards political union. Dr Davor Jancic expressed the general view of witnesses when he said that the phrase “is not an enforceable provision”. Instead, attention focused on two linked aspects: the jurisprudence of the CJEU, and symbolism.
151. The House of Commons Library briefing paper, already referred to, states that a word-search of EU case law conducted on 13 November 2015 revealed that the words ‘ever closer union’ were cited in a total of 57 cases, out of a total of 29,969 cases—0.19% of the total. Of these 57 cases, 34 concerned institutional transparency and access to official documents, and relied upon the words “as openly as possible”, also contained in Article 1 TEU. That leaves just 23 cases, or 0.07% of the total.
152. Despite the paucity of explicit references to ever closer union in EU case-law, we heard some evidence that the words had influenced the spirit of EU jurisprudence. As the Commons Library briefing paper observes, the CJEU adopts a purposive approach to the interpretation of Treaty provisions, and the ‘spirit’ of ever closer union may therefore help shape its interpretation of other, more narrowly drawn, provisions. Thus the UK in a Changing Europe Initiative told us that “While hard evidence of direct legal effects of this clause is largely lacking, this principle can play a role in the shaping the spirit within which the law is interpreted”.<sup>109</sup> Professor Wyatt argued that the formulation had “more influence on the case law of the Court of Justice than appears on the face of the Court’s judgments. The formulation has encouraged the Court in a direction which promotes centralising values in

<sup>106</sup> [Q 2](#)

<sup>107</sup> Written evidence from Michael Emerson ([VEU0001](#))

<sup>108</sup> Written evidence from Professor Derrick Wyatt QC ([VEU0004](#))

<sup>109</sup> Written evidence from The UK in a Changing Europe Initiative ([VEU0007](#))



the EU legal order, and under-plays de-centralising values ... It is ... easy to read into it a sign-post to a federal destiny.”<sup>110</sup>

153. Looking beyond the case-law of the CJEU, the phrase has become totemic for those who believe in a federal Europe—as the French Sénat European Affairs Committee told us, limiting the application of the words would upset “all those on the Continent who believe in the future creation of a federal supranational European State”.<sup>111</sup> The Foreign Secretary agreed that it was a “symbolic statement”, but argued that it had very different connotations for the people of the UK: “the phrase ... has come to symbolise what I think most people in this country think of as a ratchet effect: that it is a one-way mechanism, a treadmill on which you have to keep running.”<sup>112</sup>
154. Several witnesses noted that the European Council, at its meeting on 26–27 June 2014, agreed guidance confirming that “the concept of ever closer union allows for different paths of integration for different countries, allowing those that want to deepen integration to move ahead, while respecting the wish of those who do not want to deepen any further.”<sup>113</sup> Against this backdrop, some witnesses questioned whether another agreement to exempt the UK from the ‘ever closer union’ provision, while leaving it in the Treaties, would have any effect on the jurisprudence of the CJEU, which will necessarily continue to rely upon the Treaties as a whole. Professor Laura Cram, from the University of Edinburgh, for instance, said that: “Opting out, even in a protocol, will not change [the phrase] affecting the spirit of the laws”.<sup>114</sup> The UK in a Changing Europe Initiative went further: “Without a formal Treaty change to remove this aspiration for all member states, however, it is difficult to see how a unilateral EU opt-out from a commitment to ‘ever closer union’ would significantly alter the current *status quo*.”<sup>115</sup>
155. The power of symbolism, though, should not be under-estimated. It was clear from the Foreign Secretary’s evidence that the Government sees the formal acknowledgement that the UK is no longer bound by the ‘ever closer union’ provision as symbolic of a wider recognition that, for the UK at least, the process of integration—that is to say, the progressive transfer of powers and responsibilities from the nation state to the EU—has come to an end. He wanted:

“To be able to look the British people in the eye and tell them that we have reached the high-water mark and that the intrusive involvement in our national life, which frankly so irritates so many people in this country, is a thing of the past and that we will see gradually—it is not going to happen overnight—powers that no longer need to be exercised in Brussels being returned to the member states.”<sup>116</sup>

### *Analysis*

156. The international law decision builds on the June 2014 European Council Conclusion, to which we have referred, by recognising that the UK is not

---

110 Written evidence from Professor Derrick Wyatt QC (VEU0004)

111 Written evidence from the French Sénat European Affairs Committee (VEU0017)

112 Q 177

113 See European Council (26–27 June 2014) Conclusions, 27 June 2014: [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/ec/143478.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/143478.pdf) [accessed 21 March 2016]

114 Q 103

115 Written evidence from The UK in a Changing Europe Initiative (VEU0007)

116 Q 176

committed to further political integration; by giving a commitment that the Treaties will be amended at the next opportunity to “make it clear that the references to ever closer union do not apply to the United Kingdom”; by confirming that the expression ‘ever closer union’ does not offer a legal base for extending the scope of EU powers beyond the current Treaties; and by reiterating that the expression is compatible with different paths of integration, and so does not compel Member States to aim for a common destination.

157. The acknowledgement that Member States do not need to aim for a common destination is accompanied by a further acknowledgement that the Treaties “allow an evolution towards a deeper degree of integration among the Member States that share such a vision of their common future, without this applying to other Member States.”
158. The international law decision conclusively constrains the interpretation of ‘ever closer union’, to the extent that it cannot be considered by the EU institutions as a basis for extending EU competence. The CJEU will be bound to take this interpretation into account.

#### *Conclusions*

159. **The symbolism of the UK’s exclusion from further political integration, which is to be incorporated into the EU Treaties, is not to be underestimated. The same is true of the recognition that not all Member States are aiming for a common destination. Both may reflect reality, but their statement for the first time by the Heads of State or Government of the EU Member States is politically significant**
160. **We acknowledge the concerns of some witnesses that the CJEU cannot distinguish between the UK and other Member States in a judgment citing the expression ‘ever closer union’ as support. We doubt, however, that the CJEU would adopt such an approach in the light of the restriction in the international law decision from using the expression “either to support an extensive interpretation of the competences of the Union or the powers of its institutions”.**

#### *National parliaments*

##### *Background*

161. In his Bloomberg speech, the Prime Minister called for a “bigger and more significant role for national parliaments”, without specifying what that role might be; in the Conservative Party manifesto that became a power “to block unwanted European legislation”; by the time of the Prime Minister’s statement after the European Council in June 2015, the wording was once again open: “We want national Parliaments to be able to work together to have more power, not less”. Only in the Prime Minister’s letter to Donald Tusk in November 2015 was the Government’s position clearly defined:

“I want to enhance the role of national parliaments, by proposing a new arrangement where groups of national parliaments, acting together, can stop unwanted legislative proposals. The precise threshold of national parliaments required will be a matter for the negotiation.”

162. In 2014 we published a comprehensive report on *The Role of National Parliaments in the EU*.<sup>117</sup> Our recommendations covered enhancements to the role of national parliaments in five areas:

- More effective scrutiny of their own governments.
- Better ‘up-stream’ dialogue with the EU institutions, including by joining together to make constructive proposals for EU policy initiatives (the ‘green card’<sup>118</sup>).
- Improving the reasoned opinion procedure, under which national parliaments may challenge EU legislative proposals on grounds of subsidiarity.
- Enhanced inter-parliamentary cooperation, both with other national parliaments and with the European Parliament.
- A greater role for national parliaments in scrutinising the economic and financial governance arrangements introduced in the wake of the financial crisis.

The Government’s proposal for a collective blocking power, or ‘red card’, reflected none of our recommendations, although it had a tangential bearing on the reasoned opinion procedure.

163. We heard a range of views on the Government’s proposal. Professor Wyatt supported it, linking it to the Government’s demand for full implementation of the EU’s commitments to subsidiarity:

“An important reform objective is to achieve a ‘red card’ for groups of national parliaments to block unwanted EU legislation, and to see the EU’s commitment to subsidiarity ‘fully implemented.’ This objective is designed to make the EU respect and comply with its own core values.”<sup>119</sup>

164. The Convention of Scottish Local Authorities was also in favour of “more robust new provisions on subsidiarity, ones that would allow national parliaments to block EU proposals when a majority are clearly against them”. But it saw such proposals as part of a wider package of enhancements to the role of national and sub-national parliaments: “Equally there is a need for changes so that the parliamentary contribution is not always reactive and contrarian but proactive.”<sup>120</sup> UK Green Party MEPs agreed that “National and regional parliaments need greater oversight of their government’s actions in EU matters”, and advocated, alongside the introduction of a stronger ‘red card’, “the introduction of a ‘green card’ provision for parliaments to indicate support for, and possibly initiate, legislative proposals”.<sup>121</sup>

---

117 European Union Committee, *The Role of National Parliaments in the EU* (9th Report, Session 2013–14, HL Paper 151)

118 The ‘green card’ is an informal mechanism intended to enable the parliaments of EU Member States to join forces to make proposals to the Commission, and thereby influence the development of EU policy. The first ‘green card’, on food waste, was proposed by the House of Lords, and submitted to the Commission in July 2015. It was ultimately supported by 18 out of the 41 chambers of national parliaments of the EU.

119 Written evidence from Professor Derrick Wyatt QC ([VEU0004](#))

120 Written evidence from The Convention of Scottish Local Authorities ([VEU0006](#))

121 Written evidence from UK Green Party Members of the European Parliament ([VEU0009](#))

165. Writing to the Minister for Europe on 10 March 2016, the National Assembly for Wales Constitutional and Legislative Affairs Committee expressed disappointment that the role of devolved legislatures had not been considered in developing the ‘red card’ proposal. The Committee stated that this raised the possibility of “a UK Parliament, acting exclusively on English competences (for example in the fields of agriculture or environment) calling for a veto on European Commission proposals, without being required to take account of or reflect the interest or concerns of the UK’s Devolved Legislatures on such matters”.<sup>122</sup>
166. Others argued that the focus should be on national parliamentary scrutiny of the substance of EU proposals, and criticised the Government’s emphasis on blocking powers. Chris Cummings, Chief Executive of TheCityUK, told us: “What we would like to see are more resources, more time and more scrutiny being given to proposals that come from Brussels ... Having more engaged parliamentarians across Europe would help in the democratic issues that we have discussed. There are gatherings of parliaments. We would like to see those take place more often and be given more resources.”<sup>123</sup> Dr Jancic noted that the Government’s proposal “highlights the obstructive role of national parliaments as opposed to a more constructive role”. He warned that continuing to limit input from national parliaments to the technical issue of subsidiarity would “not allow national parliaments a say on the substance of EU legislation ... Only by focusing on substantive scrutiny can it be achieved that debates on EU political choices are genuinely repatriated and rekindled in domestic political and parliamentary arenas”.<sup>124</sup>

### *Analysis*

167. Section C of the international law decision states that:

“Where reasoned opinions on the non-compliance of a draft Union legislative act with the principle of subsidiarity, sent within 12 weeks from the transmission of that draft, represent more than 55% of the votes allocated to the national Parliaments, the Council Presidency will include the item on the agenda of the Council for a comprehensive discussion on these opinions and on the consequences to be drawn therefrom.”

Following such discussion the Council, while respecting the procedural requirements of the Treaties, will “discontinue the consideration of the draft legislative act in question unless the draft is amended to accommodate the concerns expressed in the reasoned opinions”.

168. The text of the international law decision draws heavily on the existing reasoned opinion procedure, set out in Protocol (No 2) on the application of the principles of subsidiarity and proportionality. Notably, it limits the grounds under which national parliaments may object to a proposal to the existing ground of subsidiarity. In our 2014 report we noted that “there is no clear, detailed and widely accepted definition of what constitutes a breach of the subsidiarity principle”, and recommended extending the scope of

---

122 Letter from David Melding AM, Chair of the National Assembly for Wales Constitutional and Legislative Affairs Committee to the Minister for Europe, 10 March 2016: <http://senedd.assembly.wales/documents/s49821/Letter%20to%20Rt%20Hon%20David%20Lidington%20MP%2010%20March%202016.pdf> [accessed 18 March 2016]

123 Q 63

124 Written evidence from Dr Davor Jancic (VEU0012)

the reasoned opinion procedure to include whether or not a proposal was proportionate, and to the choice of an appropriate legal base. Neither of these suggestions, which would allow national parliaments to engage more fully with the substance of legislative proposals, has been taken forward.

169. It is also unclear how the terms of the international law decision mesh with the existing legal requirements of Protocol (No 2). Under the Protocol, any national Parliament or chamber may, “within eight weeks from the date of transmission of a draft legislative act ... send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.” The new settlement envisages a new, 12-week deadline, the legal implications of which are unclear. Why would a national parliament that has missed the eight-week deadline set out in the Protocol, comply with the remaining requirements of the Protocol in producing a reasoned opinion that is legally invalid? Would such a reasoned opinion be required to be sent to the Presidents of the European Parliament and Commission, as well as the Council? What would the Commission, in this scenario, do with it? Would it count, retrospectively, towards meeting the existing thresholds for ‘yellow’ and ‘orange’ cards (one third and one half respectively)?<sup>125</sup>
170. Moreover, under the Protocol, if one half of national parliaments and chambers submit reasoned opinions within the eight-week deadline, the Commission must not only review the draft legislative act, but must publish its own reasoned opinion, explaining “why it considers that the proposal complies with the principle of subsidiarity”. This explanation will be submitted to the European Parliament and the Council, and if, after considering the Commission’s explanation, a majority of 55% of the members of the Council conclude that the proposal is not compatible with the principle of subsidiarity, the proposal will be dropped. In other words, the Council already has the authority, by a 55% majority, to veto a proposal to which 50% or more of national parliaments and chambers have objected.
171. Finally, there are questions of practicality. The IPEX website records 336 reasoned opinions issued since 2010. Within that total there are huge disparities: the Slovene National Assembly has issued just one reasoned opinion, and the German Bundestag three, while at the other extreme the Swedish Riksdag has issued 54. These differences of approach help explain why, since 2010, national parliaments have only twice managed to reach the threshold required for a ‘yellow card’—one third, or, in the case of justice and home affairs proposals, one quarter. Without a common understanding of subsidiarity, and a shared willingness to exercise their limited powers, it seems highly unlikely that national parliaments will ever reach the 55% threshold set out in the agreement.
172. The Foreign Secretary accepted that national parliaments had struggled to reach the existing yellow card threshold, but blamed the previous Commission’s failure to take proper notice of national parliaments: “People will put limited energy and effort into pursuing an avenue that is not going to achieve anything.” He believed that the new blocking power would change that: “If we have a clear mechanism that shows that national parliaments working together can determine the outcome of events, that would galvanise

---

<sup>125</sup> The thresholds for and effects of ‘yellow’ and ‘orange’ cards are set out in Protocol (No. 2) on the application of the principles of subsidiarity and proportionality, Article 7(2) and (3).

national parliaments to work together.” Finally, he acknowledged that the present lack of resources to support interparliamentary cooperation would have to be addressed:

“There may well be a need to establish more effective support machinery to co-ordinate the national parliaments in this work. I would certainly advocate that if we succeed in getting this power written into the changes that we are seeking, we would put in place some secretariat-type machinery to ensure that the national parliaments are properly co-ordinated and can exercise that power.”<sup>126</sup>

### *Conclusions*

173. **We reiterate the view expressed in our 2014 report on The Role of National Parliaments in the EU, that the best way to address the perceived democratic deficit in the EU is to respect and strengthen existing domestic scrutiny arrangements, while at the same time creating mechanisms to help national parliaments exercise real and constructive influence on the development of EU policies. It is disappointing that the Government, in bringing forward proposals to enhance the role of national parliaments, should have focused instead on a collective power of veto.**
174. **The new settlement is likely to have little practical effect, given that the Council is already required, under Protocol (No 2), to review any proposal in respect of which 50% or more of national parliaments and chambers have issued reasoned opinions, and would be highly likely, in such circumstances, to block it.**
175. **The new settlement does not address the lack of resources that is inhibiting effective joint working by national parliaments. We therefore welcome the Foreign Secretary’s acknowledgement of the need for more effective support machinery for national parliaments, and urge the Government to take the lead in discussing ways to deliver such machinery with the other Member State governments.**

### *Subsidiarity*

#### *Background*

176. As we have noted, the Prime Minister’s demand for the EU’s commitments to subsidiarity to be “fully implemented”, with “clear proposals to achieve that”, can be traced back no further than his letter to Donald Tusk in November 2015.
177. The commitments to which the Prime Minister referred are found in the Treaties. The Preamble to the Treaty on European Union states that the Member States are “RESOLVED to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity”. The substantive provision, Article 5(3) TEU, states:

“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the



Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.”

178. The Convention of Scottish Local Authorities (COSLA) highlighted what they regarded as an “internal contradiction” between these two provisions. The Preamble, they argued, “mentions the commonly understood notion of Subsidiarity that ‘decisions should be taken at the lowest possible level’”. The substantive provision, they said, “often is taken to mean that whenever the EU and national and/or subnational level share competencies (and this is often the case in the vast majority of issues) the action should be taken at the EU level”.<sup>127</sup>
179. COSLA therefore proposed that the provision be either reinterpreted or reworded to ensure that subsidiarity meant that “decisions should be taken at the lowest possible level”. This would embrace action at regional or local, as well as national, level: the Convention argued that the Scottish Parliament should be “treated like a national parliament” for the purpose of subsidiarity checks, and, furthermore, that the Scottish Parliament should work closely with Scottish local authorities in applying such checks. Such an approach would go far beyond the Government’s approach to subsidiarity, which was summed up by the Foreign Secretary, using a Dutch phrase, as “Europe where necessary, national where possible”.<sup>128</sup>

### *Analysis*

180. The international law decision offers the following guidance on the principle of subsidiarity:

“The purpose of the principle of subsidiarity is to ensure that decisions are taken as closely as possible to the citizen. The choice of the right level of action therefore depends, inter alia, on whether the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States and on whether action at Union level would produce clear benefits by reason of its scale or effects compared with actions at the level of Member States.”

The first sentence uses the wording from the Preamble to the Treaty on European Union; the second sentence echoes the wording of Article 5(3) TEU. Thus there seems to have been an attempt, by linking the two Treaty-based concepts, to reconcile the tension identified by COSLA. The main addition to these existing concepts is the inclusion of a reference to “transnational aspects” as one of the factors that might influence the choice of the right level of action—though the existence of other, unspecified factors is implied by the words ‘inter alia’. The effect of the passage as a whole is therefore unclear.

181. The Prime Minister’s request for “clear proposals” to implement the principle of subsidiarity is addressed in the accompanying Declaration of the European Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism (annex 4). In respect of subsidiarity, the Declaration would commit the Commission—

127 Written evidence from The Convention of Scottish Local Authorities (VEU0006)

128 Q 163. For the Dutch phrase, advanced by then Foreign Secretary, now First Vice President of the European Commission, Frans Timmermans, see <https://www.government.nl/latest/news/2013/06/21/european-where-necessary-national-where-possible> [accessed 2 March 2016].

- To establish a mechanism to review the body of existing EU legislation for its compliance with the principle of subsidiarity and proportionality.
- To draw up priorities for this review taking into account the views of the European Parliament, the Council and the national parliaments.
- To propose a programme of work by the end of 2016 and subsequently report on an annual basis to the European Parliament and the Council.

This Declaration is supplemented by the European Council's invitation to the Commission "to propose repealing measures that are inconsistent with the principle of subsidiarity or that impose a disproportionate regulatory burden".

182. The Minister for Europe, giving evidence after the European Council on 18–19 February, highlighted the Declaration's reference to "the requirement for the Commission to consult not just the Council but national parliaments about the priorities for those annual reviews, which I think offers national parliaments the chance to construct what amounts to the green card system, which this Committee and the Dutch Tweede Kamer have been seeking."<sup>129</sup>

#### *Conclusions*

183. **We welcome the Commission's commitment, as part of the new settlement, to undertake an annual review of the body of existing legislation, with a view to proposing the repeal of measures that are inconsistent with the principle of subsidiarity. We also welcome the Commission's undertaking to consult national parliaments in drawing up priorities for this review.**
184. **At the same time, the international law decision and the accompanying Commission Declaration confuse the concept of subsidiarity by tying it to burden reduction, whereas in reality it has far wider application. They also limit the Commission's consultation to national parliaments, failing to acknowledge the role of regional and local institutions with regard to subsidiarity.**
185. **In summary, the agreement on subsidiarity bears the hallmarks of a partially thought-out political compromise. The limited role proposed for national parliaments, while welcome, is no substitute for the 'green card' that this Committee has been developing, in partnership with other national parliaments, over the last two years.**

#### *Justice and Home Affairs measures*

##### *Background*

186. During the 2014–15 session of Parliament our Justice Sub-Committee conducted an inquiry examining the implications of the Government's interpretation, in respect of international agreements, of Protocol (No. 21) to the EU Treaties, under which neither the United Kingdom nor Ireland take part in the adoption of justice and home affairs (JHA) measures, brought forward under Title V of the Treaty on the Functioning of the European Union (TFEU), unless they notify the Council, within three months of the presentation of the proposal, of their intention to do so.

---

<sup>129</sup> Oral evidence taken on 23 February 2016 (Session 2015–16), [Q 1](#) (Rt Hon David Lidington MP)

187. The Government asserted that the presence or otherwise of JHA content in an EU measure determined whether or not the opt-in Protocol applied. In March 2015 we published our report, concluding that “All the evidence we received contradicted the Government’s approach to determining the legal base of a measure with JHA content. We accept the weight of that evidence.” We also concluded that the Protocol had to be viewed objectively, and that the Government’s approach, by asserting a Member State’s authority to override established legal norms, risked creating far-reaching legal uncertainty.<sup>130</sup>
188. The Government’s cooperation with the inquiry was poor, and our Report criticised the “excessive amount of time” taken to provide written evidence. This failure to cooperate continued after the report was published. On 26 June 2015 the Lord Chancellor and Home Secretary wrote to us, confirming that the Government needed “to consider the report, and the implications for our opt-in policy, carefully”. They told us that “we expect to complete our consideration soon, and to be able to provide ... a full response before the summer recess.” No response appeared.
189. Instead, in his Chatham House speech of November 2015 the Prime Minister said, after referencing subsidiarity:
- “In addition, the UK will need confirmation that the EU institutions will fully respect the purpose behind the justice and home affairs protocols in any future proposals dealing with justice and home affairs matters ... in particular to preserve the UK’s ability to choose to participate.”<sup>131</sup>
- This was the first mention of this negotiating objective, which did not feature either in the Prime Minister’s Bloomberg speech or in the 2015 Conservative Party manifesto.
190. It was only in February 2016 that we received more information in writing from the Government, in the form of a letter from Minister for Human Rights Dominic Raab MP and Minister for Immigration James Brokenshire MP, which quoted the Prime Minister’s letter, before continuing:

“In order to give the Committee the fullest response to the important points raised in its report, and one which takes into account the renegotiation of the UK’s terms of EU membership, the Government will respond after the outcome of the renegotiation package has been agreed, and before the referendum on the UK’s membership of the EU takes place.”<sup>132</sup>

At the time of writing, the Government response had still to be received.

### *Analysis*

191. Paragraph 4 of Section C of the international law decision, on sovereignty, confirms that “The rights and obligations of Member States provided for under the Protocols annexed to the Treaties must be fully recognised.” It

130 European Union Committee, [The UK’s opt-in Protocol: implications of the Government’s approach](#) (9th Report, Session 2014–15, HL Paper 136)

131 Speech by the Prime Minister on the EU at Chatham House, 10 November 2015: <https://www.gov.uk/government/speeches/prime-ministers-speech-on-europe> [accessed 14 March 2016]

132 Letter from Dominic Raab MP, Minister for Human Rights, and Rt Hon James Brokenshire MP Minister for Immigration, 5 February 2016: <http://www.parliament.uk/documents/lords-committees/eu-justice-subcommittee/RepealofHRAeffectonEULaw/DRandJB-Resp-to-HoLrpt-on-the-Opt-in050216.pdf> [accessed 21 March 2016]

then confirms that any measure adopted pursuant to Title V TFEU “does not bind the Member States covered by Protocols No 21 and No 22, unless the Member State concerned, where the relevant Protocol so allows, has notified its wish to be bound by the measure.”

192. The international law decision then states:

“The representatives of the Member States acting in their capacity as members of the Council will ensure that, where a Union measure, in the light of its aim and content, falls within the scope of Title V of Part Three of the TFEU, Protocols No 21 and No 22 will apply to it, including when this entails the splitting of the measure into two acts.”

### *Conclusions*

193. **The paragraphs on justice and home affairs measures restate well-established principles found either in the EU Treaties or in the case law of the CJEU. No legal consequence appears to arise from them. Nor do they reflect the legal arguments relied upon by the Government in the course of the inquiry by our Justice Sub-Committee in the 2014–15 session. We conclude, therefore, that their value is symbolic, in that their inclusion in the new settlement for the UK may indicate, albeit obliquely, a political willingness within the Council to split measures containing JHA content in order to accommodate the UK Government’s concerns.**
194. **The negotiation of these paragraphs has been cited by the Government as a reason for not replying to the Committee’s report on the UK’s opt-in protocol, published in March 2015. It is now time the Government did reply.**

### *National security*

#### *Background*

195. The Prime Minister’s letter to Donald Tusk in November 2015 asked for confirmation that “National Security is—and must remain—the sole responsibility of Member States, while recognising the benefits of working together on issues that affect us all”. As we have already noted, this was the first time the Government had identified this as a negotiating objective.

#### *Analysis*

196. Section C of the international law decision states that:

“Article 4(2) of the Treaty on European Union confirms that national security remains the sole responsibility of each Member State. This does not constitute a derogation from Union law and should therefore not be interpreted restrictively. In exercising their powers, the Union institutions will fully respect the national security responsibility of the Member States.

“The benefits of collective action on issues that affect the security of Member States are recognised.”

197. Thus in part the decision simply re-states the wording of Article 4(2) TEU, which commits the Union to respecting the “essential state functions” of the Member States, in particular national security. The significance of the

decision is in confirming that this provision, given that it is not a derogation from EU law, should not be interpreted restrictively, and in indicating that the “Union institutions” (including the CJEU) will “fully respect” this national responsibility—Article 4(2), in contrast, refers only to the Union as a whole. We are not aware of any evidence that the CJEU has in fact sought to place a restrictive interpretation upon Article 4(2).

### *Conclusion*

198. **The paragraphs on national security provide confirmation that the Union institutions will fully respect the national security responsibility of Member States. In large part this restates the principles already set out in Article 4(2) TEU, but the interpretation of Article 4(2) in the international law decision will have to be taken into account by the EU institutions, thus putting this national security responsibility beyond doubt.**

### **The Government’s negotiating objectives: immigration**

#### *Background*

199. In his Chatham House speech, on 10 November 2015, the Prime Minister identified immigration as one of the four key challenges facing the EU:
- “As we have seen so spectacularly across Europe with the questions posed by the migration crisis, countries need greater controls to manage the pressures of people coming in. And while in Britain we are not part of the Schengen open borders agreement and so we have been able to set our own approach by taking refugees direct from the camps, we do need some additional measures to address wider abuses of the right to free movement within Europe and to reduce the very high flow of people coming to Britain from all across Europe.”<sup>133</sup>
200. While this section of the Prime Minister’s speech was headed ‘immigration’, the issue he addressed was not immigration *per se*, but the free movement of EU nationals. Indeed, while the refugee or migration crisis presents a huge challenge for the EU as a whole, the UK, by virtue of its opt-out from the Schengen area, its maintenance of border controls, and its right not to opt into proposals relating to asylum, is immune from the worst effects of that crisis. As Jonathan Faull reminded us, “there is a wholly different approach to be taken in respect of immigration *stricto sensu* from outside Europe and free movement within the single market”.<sup>134</sup>
201. The use of the term ‘immigration’ thus seeks to link the specific and technical issues that make up this ‘basket’—particularly those that relate to in-work benefits—with what has for many years been a hugely divisive domestic political debate. It is notable that the use of the term ‘immigration’ to define this basket derives from the Conservative Party manifesto rather than the 2013 Bloomberg speech, made at a time when the Prime Minister led a coalition Government, and which made no reference to either free movement or immigration.

133 Speech by the Prime Minister on the EU at Chatham House, 10 November 2015: <https://www.gov.uk/government/speeches/prime-ministers-speech-on-europe> [accessed 14 March 2016]

134 [Q 114](#)



*Views of witnesses*

202. Witnesses representing both business and the unions cited the benefits of free movement to the UK economy. In the words of Andy Bagnall, of the CBI:

“Certainly from the point of view of the business community free movement is a net benefit. It obviously allows businesses—many CBI members—to fill skill shortages that they otherwise would not be able to fill from the domestic labour market. Some industries, particularly those reliant on seasonal workforces such as agriculture and hospitality, benefit enormously, but other sectors such as the health and social care sectors, again, are very reliant on labour from other EU member states.”<sup>135</sup>

Chris Cummings, of TheCityUK, agreed, describing free movement of people as “a boon to the industry and something that adds great value to our ability to serve the wider UK economy”.<sup>136</sup> Frances O’Grady, of the TUC, also argued that “migration at a macro level is a positive”.<sup>137</sup>

203. We have not sought to conduct an independent analysis of the costs and benefits of free movement, though we note that the views expressed by our witnesses are borne out by the findings of the November 2014 study by academics based at University College London, which found that European migrants have contributed significantly more to the UK economy in taxes than they have received in benefits.<sup>138</sup>
204. Beyond the UK, strong and divergent views are held on free movement. The Irish Ambassador, HE Dan Mulhall, affirmed his Government’s “very strong belief in the value and importance of free movement of labour”, noting that Polish was now the second most widely spoken language in Ireland.<sup>139</sup> Brian Hayes MEP was equally categorical that free movement remained “a fundamental principle of the European Union: the right of labour to travel to work.”<sup>140</sup> The Polish Ambassador, HE Witold Sobków, described freedom of movement as “one of the key drivers for the European economy”.<sup>141</sup> Detlef Seif MdB, a member of the German Bundestag European Affairs Committee, highlighted the other side of the coin, the impact of free movement upon countries of origin: “it is not only a question, on the one hand, of one country receiving too many people as migrants. On the other hand, you have a country that is probably losing its most important people from its own economy through a brain drain.”<sup>142</sup> Free movement affects all EU Member States profoundly, but in very different ways.
205. The Foreign Secretary provided a helpful summary of the rationale underlying the Government’s attempt to limit free movement. He emphasised that “The Government are not seeking to limit freedom of movement to work—we have been quite clear about that.” Instead, he told us, “We are seeking to distinguish between freedom of movement to work and freedom

---

135 [Q 61](#)

136 [Q 61](#)

137 [Q 63](#)

138 Christian Dustmann and Tommaso Frattini, ‘The fiscal effects of immigration to the UK’, published in *The Economic Journal* (2014). <http://www.cream-migration.org/files/FiscalEJ.pdf> [accessed 17 March 2016]

139 [Q 31](#)

140 [Q 144](#)

141 [Q 37](#)

142 [Q 186](#)



of movement to claim benefits in the country where it is most advantageous to do so.” He noted that the payment of in-work benefits to those on low wages was a unique feature of the UK’s benefits system, and said that this was creating “an artificial pull factor towards the UK. Now we have people coming to the UK to work in the labour market not just for the wages they can earn but because on top of the wages that they earn they can expect to receive generous in-work benefits.”

206. The Foreign Secretary was then asked about the impact upon the UK economy of restricting the entitlement to in-work benefits of EU nationals doing low-paid work. This, he said, was “precisely the point”:

“I do not think that anyone is contesting the need to attract highly-skilled people to do highly-skilled jobs, but we are talking about people, sometimes with higher qualifications, coming from low-wage European Union countries to do low-skilled, minimum wage-type jobs in the UK. Those are jobs that frankly we need to equip people in this country to do who are unemployed and unable to access the labour market.”<sup>143</sup>

### *Analysis*

207. Free movement and benefits are addressed in Section D of the international law decision and three Commission Declarations (Annexes 5, 6 and 7). The effect of these texts is either to clarify existing EU law or to propose EU secondary legislation. None of the clarifications will be incorporated into the EU Treaties but, in accordance with its decision in *Rottman*,<sup>144</sup> the CJEU will have to consider them when interpreting them. The three proposals for secondary legislation will be adopted by the ordinary legislative procedure. Once adopted, they will be subject to review by the CJEU for consistency with the EU Treaties.
208. The international law decision clarifies that, under Article 45 TFEU on the free movement of workers, conditions may be imposed in relation to certain benefits to ensure that there is a real and effective degree of connection between the person concerned and the labour market of the host Member State. Although Article 45 prohibits discrimination based on nationality, this right is subject to limitations on various grounds. Furthermore, if overriding reasons of public interest make it necessary, then free movement of workers may be restricted by measures proportionate to the legitimate aim pursued. The international law decision notes that “encouraging recruitment, reducing unemployment, protecting vulnerable workers and averting the risk of seriously undermining the sustainability of social security systems” are recognised in the case law of the CJEU as reasons of public interest.
209. The international law decision also clarifies that free movement of EU citizens under Article 21 TFEU is subject to the following limitations:
- The right of economically non-active persons to reside in the host Member State depends under EU law on such persons having sufficient resources for themselves and their family members not to become a burden on the host Member State.

---

<sup>143</sup> [Q 167](#)

<sup>144</sup> See above, paragraph 101

- Member States may refuse to grant social benefits to persons who exercise their right to freedom of movement solely in order to obtain Member States' social assistance.
- Member States may reject claims for social assistance by EU citizens from other Member States who do not enjoy a right of residence or are entitled to reside on their territory solely because they are searching for employment.
- Member States can take action to prevent abuse of free movement involving the use of forged documents and marriages of convenience.
- Member States may also take the necessary measures to protect themselves against individuals whose personal conduct is likely to represent a genuine and serious threat to public policy or security.

A Declaration by the Commission further supports these interpretations, and will be supplemented by a Communication in due course.

210. The Decision also outlines two changes to secondary legislation that the Commission undertakes to propose, presumably as part of its forthcoming Labour Mobility Package. The legislative process on these proposals will commence if, and as soon as, the Prime Minister notifies the European Council of the UK's decision to remain in the EU.
211. The first change is that the Commission will amend Regulation 883/2004 on the co-ordination of social security systems, to allow Member States to index exported child benefit to the "conditions" of the Member State where the child resides. This restriction would only apply to new claims until 1 January 2020, when it would become applicable to all claims. A Commission Declaration on the indexation of child benefit clarifies that the conditions include "the standard of living and the level of child benefits applicable" in the Member State where the child resides. From this it can be assumed that the Commission will be responsible for determining the conditions to which the child support payments will be indexed. The Declaration also clarifies that the Commission does not intend to propose that this system of indexation be extended to other types of exportable benefits, such as pensions.
212. Secondly, the Commission will amend Regulation 492/2011 on the free movement of workers to introduce an "alert and safeguard mechanism" (or emergency brake) to respond to "situations of inflow of workers from other Member States of an exceptional magnitude over an extended period of time". This would authorise a Member State to limit the access of "newly arriving EU workers to non-contributory in-work benefits for a total period of up to four years from the commencement of employment." The limitation would be graduated, starting with complete exclusion but then increasing access to benefits to take account of the growing connection of the worker with the labour market of the host Member State. The application of the emergency brake is limited to a period of seven years. The Decision also states that these measures should not result in EU workers enjoying less favourable treatment than third country nationals in a comparable situation.
213. Although the wording of the emergency brake can apply to any Member State, the reference in the criteria for activating the mechanism to past policies following previous EU enlargements clearly references the decision

of the UK (along with Ireland and Sweden) immediately to open its labour market to workers from the eight Eastern European accession States in 2004. In a separate Declaration the Commission states, even more explicitly, that:

“The European Commission considers that the kind of information provided to it by the United Kingdom, in particular as it has not made full use of the transitional periods on free movement of workers which were provided for in recent Accession Acts, shows the type of exceptional situation that the proposed safeguard mechanism is intended to cover exists in the United Kingdom today. Accordingly, the United Kingdom would be justified in triggering the mechanism in the full expectation of obtaining approval.”

The Council would authorise the application of the emergency brake.

214. In a separate Declaration on “the abuse of the right of free movement of persons”, the Commission states that it will adopt a further proposal to complement the Citizens Rights Directive (2004/38) in order to exclude from the scope of free movement rights “third country nationals who had no prior lawful residence in a Member State before marrying a Union citizen”, as well as “those who marry a Union citizen only after the Union citizen has established residence in the host Member State.” In such cases, the Commission states, “the host Member State’s immigration law will apply to the third country national.”
215. In an Explanatory Memorandum deposited in Parliament on the draft new settlement, the Government describes this as “a new law to reverse a judgment of the European Court of Justice (the *Metock* case)<sup>145</sup> which has allowed illegal migrants to marry EU nationals and acquire the right to stay”.

### *Conclusions*

216. **We note that most independent evidence appears to show that EU nationals make a net contribution to the UK economy. We also note the Foreign Secretary’s welcome for highly-skilled EU nationals, and his suggestion that “we need to equip” UK nationals to do the “low-skilled, minimum wage-type jobs” upon which large parts of the economy depend, many of which are currently done by EU and third-country nationals. Taking these factors into account, we are concerned that the Government has not fully addressed the economic and social implications of its policy on free movement.**
217. **The interpretations of EU law in the international law decision highlight important limitations to the free movement of EU workers and citizens, which largely reflect existing EU law. Their inclusion in the new settlement for the UK will provide helpful support for the Government’s preferred approach, in the event that the electorate votes to remain in the EU.**

---

145 Case C-127/08, *Metock v Minister for Justice, Equality and Law Reform*: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62008CJ0127&from=EN> [accessed 18 March 2016]. In 2003, in *Akrich* (C-109/01), the CJEU ruled that Member States could insist that non-EU family members had previously been lawfully resident in the Member State concerned (previously no such rule appeared to exist). But in 2008, in *Metock*, the CJEU overturned this ruling and said that a prior legal residence requirement was not allowed.

218. The proposals for secondary legislation, implementing the international law decision, are significant in that they propose new restrictions on current rules on free movement. They will have to be consistent with EU Treaty rules on the scope for derogating from non-discrimination and free movement principles, as interpreted by the CJEU.

**Conclusions on the ‘new settlement for the United Kingdom’**

219. The international law decision that forms the basis of the ‘new settlement for the United Kingdom’ is binding upon the parties under international law. It is persuasive in the interpretation of EU law, though it cannot in itself amend that law.
220. Moreover, the ‘new settlement’ has great political significance. The unanimous support of the 28 Member States, the Council, European Council, Commission and European Parliament, at a time when the EU faces acute challenges, testifies to the determination, across the EU, to accommodate the UK Government’s desire for greater flexibility.
221. It is striking that the title of the ‘new settlement’ defines it as being ‘for the United Kingdom’. This is a misnomer: as our analysis demonstrates, many aspects of the ‘new settlement’ reflect the views of most if not all Member States. If the ‘new settlement’ is in due course implemented, it will have far-reaching effects upon the EU as a whole.
222. If, on the other hand, the people of the United Kingdom were to vote to leave the EU in the forthcoming referendum, not only would the ‘new settlement’ itself lapse in its entirety, but the political good will evident in its negotiation and agreement could quickly dissipate.
223. The ‘new settlement’ also has far-reaching symbolic importance. The formal recognition that there are different paths of integration for different Member States, allowing those that wish to pursue deeper integration to do so, while acknowledging the right of others (including the UK) not to pursue that course, could have far-reaching implications not just for the UK, but for the EU as a whole. The commitments to reviewing the existing body of EU law, with a view to reducing regulatory burdens and safeguarding the principle of subsidiarity, could also mark a significant change in the culture of the EU.
224. Taken as a whole, therefore, and as the fruit of an intense political and diplomatic effort by the UK Government, the ‘new settlement’ is a significant achievement. It is not perfect, and our concerns over the relationship between the ‘new settlement’ and the Government’s decision to hold a referendum on EU membership are set out in full elsewhere in this report. But taken on its own terms, the ‘new settlement’ justifies the Government in asserting, to paraphrase the Foreign Secretary, that the UK has reached—and passed—the high-water mark of integration into the EU.

## CHAPTER 5: THE GOVERNMENT'S VISION FOR EU REFORM

---

### Why is a vision needed?

225. Thus far we have outlined the development of the Government's EU reform proposals, analysing them and exploring the process that led to the agreement at the European Council on 18–19 February 2016. We have also analysed that agreement. In this chapter we lift our horizons and ask what is the Government's vision for EU reform, and is it consistent with other visions of the EU, both domestically and across the Union?

226. The Prime Minister, in his Chatham House speech, down-played any visionary or emotional element in his proposals for EU reform:

“Like most British people, I come to this question with a frame of mind that is practical, not emotional. Head, not heart. I know some of our European partners may find that disappointing about Britain. But that is who we are. That is how we have always been as a nation. We are rigorously practical. We are obstinately down to earth. We are natural debunkers. We see the European Union as a means to an end, not an end in itself.”<sup>146</sup>

As in the Bloomberg speech in 2013, where he had focused on economic benefits, describing the “main, over-riding purpose of the European Union” as “not to win peace, but to secure prosperity”, so the Prime Minister's approach in the Chatham House speech was essentially transactional, focused on national self-interest: “Doing what is best for Britain drives everything I do as Prime Minister.”

227. The Prime Minister's approach, while it may have been primarily targeted at a domestic audience, carries obvious risks. In any negotiation, both sides have to be willing to compromise—an approach based on maximising benefits for one side, at the expense of the other, is unlikely to succeed. But more fundamentally, a deal based on mutual self-interest at a given moment is less likely to last than one that reflects a shared understanding of the current and future direction of travel. The Prime Minister needs to be able to persuade the electorate that the new settlement will provide a durable basis for the UK's relationship with the EU.

228. More broadly, defining a vision is a key component in setting a long-term strategy. Change in the EU is a constant: Glenis Willmott MEP told us that “reform ... happens all the time now”,<sup>147</sup> while Steven Blockmans noted that “the European Union has been in constant reform mode ever since the Treaty of Maastricht”.<sup>148</sup> Living with change, and charting a predictable, consistent and constructive path through that change, will be vital if the UK remains in the EU.

229. Defining a clear vision will also be critical to both sides in the referendum debate, if they are to motivate the electorate to vote. The 2014 referendum on Scottish independence saw the highest turnout, at 84.6%, in any election or referendum in the UK since the introduction of universal suffrage—testifying to the intensity of the debate leading up to the referendum, which

---

146 Speech by the Prime Minister on the EU at Chatham House, 10 November 2015: <https://www.gov.uk/government/speeches/prime-ministers-speech-on-europe> [accessed 14 March 2016]

147 [Q 126](#)

148 [Q 134](#)

in turn generated an extraordinary level of engagement among voters in Scotland. Moreover, the subsequent success of the Scottish National Party demonstrates that, even following its defeat in the referendum, the party's vision continues to shape the terms of debate in Scotland. Elmar Brok MEP referred approvingly to Helmut Kohl's remark that "Yesterday's visionary is today's realist".<sup>149</sup> If the Government and the 'remain' campaign are unable to communicate a clear, passionate and persuasive vision of the UK's future in the EU, thereby engaging and motivating the electorate, and delivering a high turnout, the risks are obvious.

230. To be persuasive, the Government's vision of the UK's place in a reformed EU needs to be multi-layered. It needs to be grounded in a credible analysis of the costs, risks and benefits of EU membership, considered not just economically, but geopolitically and strategically. It needs to reflect the fact that the EU is made up of 28 Member States, and that they have very different perspectives. In so doing, it needs to draw on shared core values that will resonate with the electorate. It needs to balance pragmatism with aspiration, and it needs to be expressed clearly and with conviction.

### **What is the Government's vision for EU reform?**

231. As we have already noted, in his Bloomberg speech in 2013, the Prime Minister described his "vision for a new European Union, fit for the 21st Century". His description was built around the five principles of competitiveness, flexibility, a reversal of the transfer of powers from Member States to the EU, democratic accountability and fairness. While helpful as an account of the emerging themes of the renegotiation, the Prime Minister's lengthy analysis could hardly be described as a vision. Indeed, as late as June 2015 the Minister for Europe, asked to encapsulate the Government's overarching objectives in a single soundbite, provided what was essentially an abbreviated summary of the same analysis:

"If I had to sum it up in a sentence or two, I would say that we are seeking a package of reforms that will make Europe more prosperous for all Europeans, that will enable people in every European country to feel that European decisions and European institutions are better connected and more accountable to ordinary people than now, that will make Europe more competitive, democratic and flexible than it is today and that, as part of that package of benefits to all European countries, will help the British people to feel more comfortable about their place in the European Union."<sup>150</sup>

232. More recently, the Government has sought to articulate its vision for the EU more succinctly and persuasively. This was clear in the Prime Minister's letter to Donald Tusk in November 2015 and in his Chatham House speech, delivered the same day. While the Prime Minister continued to emphasise the UK's pragmatic approach to its EU membership, he said that: "Our concerns really boil down to one word: flexibility. And it is in this spirit that I set out the four main areas where the United Kingdom is seeking reform." In winding up his speech, the Prime Minister developed a similar theme:

<sup>149</sup> See [Q 123](#). The original remark, reportedly made in a discussion with Helmut Schmidt, is "Die Visionäre von gestern sind die Realisten von heute".

<sup>150</sup> Oral evidence taken on 30 June 2015 (Session 2015–16), [Q 4](#) (Rt Hon David Lidington MP)



“A new kind of European Union ... A European Union, which could recognise the different visions of its members, and celebrate their diversity as a source of strength. A European Union in which those who wished to proceed towards a political union could continue to do so but where it would have been clearly accepted that Britain would not take part in such an endeavour.”

233. As we noted in Chapter 2, the Prime Minister also used his Chatham House speech to develop a new theme, that “our membership of the EU does matter for our national security and for the security of our allies”. In concluding his letter to President Tusk, he linked his specific reform objectives to the two themes of flexibility and security, while pledging a newly passionate commitment to keeping the UK in the EU:

“If we are able to reach an agreement, it will show the world that, amongst the many more difficult issues it faces, the European Union is flexible enough to accommodate the concerns of its members.

“I hope and believe that together we can reach agreement on each of these four areas. If we can, I am ready to campaign with all my heart and soul to keep Britain inside a reformed European Union that continues to enhance the prosperity and security of all its Member States.”

234. The two elements of prosperity and security quickly became embedded in the Government’s vision for EU reform. Asked whether he could express the Government’s underlying vision in a single sentence, the Foreign Secretary’s response was immediate: “Yes, I can—a European Union that is fit for the 21st century, that is focused on the things that matter to its citizens, which are economic growth, jobs and security.”<sup>151</sup>
235. More recently, the Government has sub-divided the security component of its case for EU membership. The Prime Minister’s foreword to the Government’s report recommending that the UK remain in the EU, published on 22 February, argued that the UK would be “stronger” in the EU, playing “a leading role in one of the world’s largest organisations from within”, and also “safer ... because we can work with our European partners to fight cross border crime and terrorism”.<sup>152</sup> Giving evidence on 23 February, the Minister for Europe also distinguished between internal security and diplomatic and political influence.<sup>153</sup>
236. These three limbs—prosperity, security and strength—all relate to the benefits to the UK of continuing EU membership. On the other hand, it is striking that the Government’s report, while its title refers to “a reformed European Union”, does not fully articulate what that phrase means. From earlier statements it is clear that the Government’s vision of a reformed EU is premised upon flexibility, the capacity of the Union to accommodate the differing concerns and objectives of its members. Implicit, therefore, within the Government’s demands for additional protections for the UK is a vision of a more differentiated EU—less a two-speed than a multi-directional Europe—in which individual sovereign Member States, or groups of Member

151 Q 163

152 HM Government, *The best of both worlds: the United Kingdom’s special status in a reformed European Union*, (February 2016), p 6: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/502291/54284\\_EU\\_Series\\_No1\\_Web\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/502291/54284_EU_Series_No1_Web_Accessible.pdf) [accessed 18 March 2016] [accessed 21 March 2016]

153 Oral evidence taken on 23 February 2016 (Session 2015–16), Q 3 (Rt Hon David Lidington MP)

States, are able to develop in ways that suit their own needs, while respecting the interests of all. The closest that the Government comes to making such a vision explicit in its report, *The best of both worlds*, is in the section on ‘ever closer union’:

“The clear statement that not all of [the EU’s] members are aiming for a common destination is a significant step towards a new, more flexible EU, based on willing cooperation that the UK would like to see.”

### How inclusive is the Government’s vision?

#### *Domestically*

237. We have already touched on the variety of domestic political and geographical perspectives on the EU. There is broad agreement in some areas: no political party is campaigning for the UK to join the Euro in the short term, and all agree that the UK’s position as a non-Eurozone Member State therefore needs to be safeguarded. On other issues there are significant differences, reflecting the political, national and regional differences within the United Kingdom.
238. With regard to competitiveness, and the Government’s vision of an EU focused on prosperity, the TUC qualified its support by suggesting that “a key issue is how equally that prosperity is shared”. It was concerned that some aspects of the Government’s vision could “actually undermine the very support for continued EU membership on which a vote to remain in the EU at the forthcoming referendum would be based.” It cited polling evidence that any attempts to undermine “the European social model” (in particular workers’ rights based in EU law) would alienate working people.<sup>154</sup> In oral evidence, Frances O’Grady developed the point: “for those who advocate the UK staying in the EU ... there has to be a positive offer to ordinary working people; there has to be a strong story that spells out what is in it for them. It is not good enough simply to talk about the trickle-down benefits that will eventually reach people, maybe.”<sup>155</sup>
239. The TUC’s evidence demonstrates that even a concept such as ‘prosperity’ needs to be communicated inclusively, to avoid alienating parts of public opinion. The Government therefore faces a huge challenge, given that so many of its reform proposals were developed in line with the thinking that shaped the Conservative Party manifesto. If the Prime Minister is to campaign successfully for his Government’s recommended option of remaining in the EU, he urgently needs to communicate a vision that speaks to the widest possible audience, irrespective of political affiliation. Fiona Hyslop MSP made the point bluntly:

“If the UK Government end up in a position that they are campaigning to remain in, as the Scottish Government have made it quite clear that we want to remain in and we are already actively promoting the benefits of this, I would have thought that we would be good allies to have. Working with us rather than just informing us would be to the benefit to the UK Government.”<sup>156</sup>

---

<sup>154</sup> Written evidence from the Trades Union Congress ([VEU0014](#))

<sup>155</sup> [Q 56](#)

<sup>156</sup> [Q 71](#)

*Across the EU*

240. Through our inquiry we were struck by the genuine desire of witnesses from across the Member States to keep the UK inside the EU. Axel Schäfer, a member of the Bundestag, told us that “out of the 630 Members of Parliament in Germany, there is not a single one who is in favour of the so-called Brexit. Every single Member of Parliament, no matter which political denomination, fully wants, in their hearts and with their heads, the UK to stay in the EU.”<sup>157</sup> Fabienne Keller, of the French Sénat, told us that a UK exit would be an historic defeat:

“If you drop out, it is the end of that dream—the end of that capacity to absorb, even though we have a lot of difficulties, to bring progress and hope for the future, and to maintain internal rules on freedom, respect for people, the importance of education and culture and the profound values of the European Convention on Human Rights. If the oldest democracy in Europe—that is what you are—drops out, what is the sign to the rest of the world?”<sup>158</sup>

241. The Prime Minister’s emphasis in his Chatham House speech on geopolitics, on shared security—an emphasis that Professor Anand Menon described as “wholly new”<sup>159</sup>—has been an important factor in winning support for his wider reform proposals. Steven Blockmans focused on the geopolitical damage that a UK exit would inflict upon the EU:

“It would result in huge reputational damage to the European Union if one of its biggest member states—with France, the only real military power of the European Union with the nuclear deterrent in its tool box—a member of the Security Council, the G7, the G20 et cetera, turned its back on the European Union, which is seeking to play a bigger role on the global stage, and a more comprehensive role as, aside from its trade persona, it has a diplomatic and even, in future, a military arm.”<sup>160</sup>

Janis Emmanouilidis agreed, noting that the other Member States “want a stronger role for the UK when it comes to foreign policy”.<sup>161</sup> Thus in emphasising geopolitics the Prime Minister has not only, as Professor Simon Hix put it, “made a political case for Europe in addition to an economic case”,<sup>162</sup> but he has identified an area in which the UK could show real leadership in coming years.

242. The support for continued UK membership was also evident in comments on the term ‘ever closer union among the peoples of Europe’—the phrase which, more than any other, enshrines the vision of the founders of the European Union. The French Sénat European Affairs Committee noted that for some, who believed in the creation of a “supranational European State”, it was “a matter of faith”. But underlying this “sentimental” attachment was a streak of pragmatism: “I think I can safely say that we would not like the UK to leave the EU so that we can go on sticking to our mantra.”<sup>163</sup>

---

157 [Q 181](#)

158 [Q 152](#)

159 [Q 41](#)

160 [Q 138](#)

161 [Q 138](#)

162 [Q 44](#)

163 Written evidence from the French Sénat European Affairs Committee ([VEU0017](#))

243. Henning vom Stein, of the Bertelsmann Stiftung, identified the Prime Minister's emphasis on flexibility and diversity as another area where the UK could, potentially, show leadership within the EU. He noted that the Prime Minister's distinction between Eurozone and non-Eurozone states demonstrated a willingness to say to the former, "Go further, go closer, but without us". Such a right to stand aside from further integration should not, he believed, be confined to the UK; instead it should initiate "the broader debate that we urgently need within the EU ... [the Prime Minister] should use this window of opportunity in 2016, just before the elections in Germany and France, to make himself the leader of getting rid of the old-style integration of the EU in favour of a multi-layered approach."<sup>164</sup>
244. Our sense is that there is growing, if not universal, acceptance across the EU Member States and institutions that a more flexible and multi-layered EU is unavoidable and, in some respects, desirable. This is not to underestimate the extent to which the EU has already shown flexibility and adaptability in responding to changing circumstances, including its own progressive enlargement—flexibility demonstrated by the multiple opt-outs from Treaty provisions already secured by the UK and, to a lesser extent, by other Member States. But the question raised by Mr vom Stein goes beyond these existing *ad hoc* adaptations, and beyond 'British exceptionalism', raising the possibility of a more structured diversity. In the words of Dr Sara Hagemann, of the London School of Economics:
- "The question ... is whether there should therefore be some sort of defined basis, which is of course what the treaties are supposed to be for us; that is, to have a set of obligations that set out exactly the remit of the EU core for all member states to participate in and then flexibility in a number of areas of co-operation, whether it is the eurozone, plus even defence and security issues".<sup>165</sup>
245. The difficulty in realising such a vision will be identifying the limits of, on the one hand, flexibility, and unity on the other, so as to avoid slipping into what Danuta Hübner called "Europe à la carte". She continued: "I would say that there is an understanding of the need for flexibility, but there are limits to it, because we cannot undermine unity".<sup>166</sup> We also heard evidence of specific challenges. Elmar Brok MEP defended the need to continue to regulate the single market in such a way as to protect the free movement of goods: "You can have higher standards on environmental questions if you just stick to your country, but when it comes to products there must be the same rules. The same rules must apply when you sell a car in Europe... we have to see where we can have flexibility and where we cannot in order not to destroy the internal market." Mr Brok's guiding principle was clear: "Keep legal unity so that you do not destroy the internal market through diversity."<sup>167</sup>
246. We end this section with another comment from Scotland, this time from Professor Cram: "The great trick of European integration has surely always been to not define where it is going and to make differentiated integration and variable geometry part of what has allowed it to continue and flow."

---

164 [Q 135](#)

165 [Q 42](#)

166 [Q 125](#)

167 [Q 125](#)

She also warned that “As soon as you squeeze it into something that is very tightly interpretable, that is when you can see the implosions taking place.”<sup>168</sup>

247. The logic of the UK Government’s renegotiation, and of our inquiry, suggests that the time may have come to define more clearly where the EU is going, by identifying the core elements that unify the EU, such as the rules governing the single market, while explicitly acknowledging the principle of ‘differentiated integration’ (or flexibility, to use the Prime Minister’s term) in non-essential aspects, so that it is available to all Member States and not just the United Kingdom. As Mr vom Stein suggested, this may be an area where the UK could, on the back of its renegotiation, show real leadership.

### Where do values fit in?

248. It seems difficult, given the tone of so much media coverage, to talk of shared European values. Yet the existence of those values was, as Jonathan Faull reminded us, evident in the wake of the Paris terrorist attacks, in the sight of English football fans singing ‘La Marseillaise’ at Wembley—what Mr Faull called “a reaction of neighbours sharing values in the face of a massive, tragic challenge to those values.”<sup>169</sup>
249. Values in this sense do not imply any commitment to political integration or even, necessarily, to membership of the EU. Rather, they reflect a deep-seated solidarity, to which shared history, mutual respect, and in this case the awareness of a terrorist threat that transcends borders, all contribute. Building on those values, the EU draws on a shared willingness among the Member States to work together, in peace, to improve the lives of all their citizens.
250. Values in this sense are part and parcel of the EU. It is notable that the draft European Council Decision published by Donald Tusk, even while meeting the Prime Minister’s request for confirmation that the term ‘ever closer union’ is not equivalent to political integration, sought to define the term by reference to shared values:

“References in the Treaties and their preambles to the process of creating an ever closer union among the peoples of Europe are primarily intended to signal that the Union’s aim is to promote trust and understanding among peoples living in open and democratic societies sharing a common heritage of universal values.”<sup>170</sup>

251. Asked why these words had been removed from the final text agreed by the European Council, Vijay Rangarajan, Europe Director at the Foreign and Commonwealth Office, told us that “they were trying to simplify the text, because the more there was, the greater was the scope to interpret it in ways that people found uncomfortable or just unclear”.<sup>171</sup> It is impossible to discern, from this answer, whether it was the UK or another Member State that requested the removal of the sentence.

---

168 [Q 103](#)

169 [Q 123](#), [Q 110](#)

170 European Council, ‘Letter by President Donald Tusk to the Members of the European Council on his proposal for a new settlement for the United Kingdom within the European Union’ (February 2016): <http://www.consilium.europa.eu/en/press/press-releases/2016/02/02-letter-tusk-proposal-new-settlement-uk/> [accessed 15 March 2016]

171 Oral evidence taken on 23 February 2016 (Session 2015–16), [Q 14](#) (Rt Hon David Lidington MP)



### Conclusions

252. Formally it is for the ‘remain’ campaign to set out a vision of the UK’s place in the EU, and to persuade the electorate to support that vision. Yet the ‘remain’ campaign has been held back from developing a clear message by months of uncertainty over the outcome of the renegotiation and the Government’s ‘offer’ to the people.
253. The Government secured significant changes, including clear recognition of the UK’s special status, at the European Council on 18–19 February 2016. Yet those changes, however important, are shrouded in complex terminology, and leave many aspects of the UK’s relationship with the EU untouched. It is incumbent upon the Government, and in particular upon the Prime Minister, who has promised to campaign “with all my heart and soul” for the UK to remain in the EU, to make a broad-based, intelligible and free-standing case for EU membership.
254. If the Prime Minister is to do this, he will need allies from across the domestic political spectrum. He will need to make an inclusive case for EU membership, one that speaks for all. When he speaks of ‘prosperity’, it must be clear that he means ‘prosperity for all’. A campaign based upon narrow national economic self-interest, alongside fear of the alternatives to membership, would be insufficient.
255. The Government’s case for EU membership therefore needs to be based on an inclusive and positive vision of the UK’s role in a reformed EU. Like any successful vision, it needs to be grounded in pragmatism, while addressing strategic priorities and expressing core values.
256. We welcome the Government’s renewed emphasis on internal security and the UK’s geopolitical role, which has also been welcomed across the EU. It should not be forgotten that an abiding impetus behind the establishment of the European Economic Community was to ensure that the damage wreaked on the continent of Europe by two world wars was never repeated. Any coherent case for EU membership needs to take account of the changing geopolitical environment, the new and growing threats to all EU Member States, and the benefits of working together to meet them.
257. Reform has become a constant within the EU. A vote to remain in the EU, on the back of the renegotiation, could thus allow the UK to take the lead in arguing for a more flexible, dynamic and multi-layered EU in which all Member States, not just the UK, will enjoy the benefits of greater differentiation. The forthcoming UK Presidency of the Council, scheduled for the second half of 2017, would then become a unique opportunity to promote this wider reform agenda.
258. Finally, the EU has always been driven by values as well as pragmatism. We urge the Government, in putting forward its vision for the UK’s place in a reformed EU, also to affirm the shared identity and heritage of the peoples of Europe.
259. The Prime Minister has described the decision facing the electorate as “perhaps the biggest we will make in our lifetimes”. A decision



**of such magnitude must be informed by a correspondingly inclusive and compelling vision of the UK's future in the EU. We invite the Prime Minister to rise to this challenge: it will then be for the people to decide.**

## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

---

### The renegotiation and the referendum

1. The forthcoming referendum is, arguably, the most important single decision that the people of the United Kingdom have been asked to take in a generation. It is, in the Prime Minister's words, a "huge decision for our country, perhaps the biggest we will make in our lifetimes" (Paragraph 38)
2. The debate leading up to the referendum should be of a quality and breadth proportionate to the importance of the decision. It should be wide-ranging and inclusive, based on accurate information. Reliance by the Government, when making the case for remaining in the EU, upon the positive outcome of its renegotiation, while politically understandable, would be insufficient. (Paragraph 39)
3. Domestic public opinion is diverse, with huge variations across and within the political parties, regions and nations of the United Kingdom. The Government will need to ensure that the case that it makes for the UK remaining in the EU is as comprehensive as possible. (Paragraph 40)
4. Throughout the negotiations other EU Member States struggled, in the face of multiple challenges (including the refugee crisis, terrorism and the eurozone), to find time to focus on the UK renegotiation. The Government's emphasis from November onwards on security was welcome, in broadening the terms of the UK's engagement with other Member States beyond what risked becoming an exercise in 'British exceptionalism'. (Paragraph 41)
5. Surveys show that the people of the UK are less knowledgeable about the EU than those of any other Member State. Against this backdrop, the Government has a responsibility to ensure that full, accessible, accurate and impartial information is made available, to help the electorate make a well-informed decision. (Paragraph 42)

### Reflections on the process

6. In our July 2015 report we called on the Government to adopt an "innovative approach" in its engagement with Parliament. That innovative approach did not fully materialise, though we welcome some aspects of the Government's engagement with the Committee and the House. In particular, we welcome the Foreign Secretary's appearance before us in January 2016 and the Minister for Europe's continuing readiness to appear both before and after European Council meetings, as appropriate. We are, in contrast, disappointed by the Government's failure to provide an oral statement to the House of Lords on the outcome of the key December European Council meeting. (Paragraph 71)
7. We acknowledge that, under the terms of the devolution settlements, the UK's relationship with the EU is a reserved matter. Nevertheless, we heard arguments in evidence that the UK Government could have done more to engage with the devolved administrations. We therefore call on the Government to review the operation of the Joint Ministerial Committee. (Paragraph 72)
8. The UK's relationship with the EU has particular implications for Northern Ireland, in terms of cross-border relations with the Republic of Ireland and the potential impact on the peace process. We are concerned that, partly as

a result of the problems within the power-sharing institutions in Northern Ireland, these have not yet received the attention they deserve. (Paragraph 73)

9. We are disappointed at the UK Government's refusal to engage with our colleagues in the devolved legislatures, who have made a valuable contribution to this inquiry. We urge the Government to adopt a more positive approach to engagement with elected members of the devolved legislatures. (Paragraph 74)
10. A UK exit from the EU would have far-reaching implications for the Republic of Ireland. We therefore welcome the close contact between the UK and Irish Governments in discussing issues relating to the referendum, and we urge the UK Government to ensure that effective lines of communication between the two governments remain open in the months ahead. (Paragraph 75)
11. In the early stages of the renegotiation there was frustration among EU partners at the lack of information about the UK's reform priorities. The Prime Minister's letter to President Tusk in November 2015, his presentation at the December European Council, and a series of bilateral meetings, helped EU partners to understand the UK's concerns and the nature of the domestic debate on the UK's membership of the EU. This in turn engendered a constructive atmosphere, in which EU partners took the UK's concerns seriously, paving the way for an agreement. (Paragraph 76)

### **The Government's negotiating objectives and the 'new settlement'**

#### *The evolution of the Government's objectives*

12. The process by which the Government's negotiating objectives emerged appears not to have been evidence-based, in that the Balance of Competences Review was side-lined, and there was little if any further consultation with stakeholders. Instead, most of the key objectives were first articulated in the Conservative Party manifesto. (Paragraph 93)
13. The origins of the three new sovereignty proposals (on subsidiarity, the justice and home affairs protocols and national security), which emerged in the Prime Minister's letter to Donald Tusk in November 2015, are unclear: they featured neither in the Balance of Competences Review nor in the manifesto. (Paragraph 94)

#### *The legal status of the international law decision'*

14. We agree with the advice of Mr Legal that the international law decision is an intergovernmental agreement which is binding under international law. (Paragraph 105)
15. We also agree that an international law decision agreed by all the EU's Member States, such as this, can serve as an aid to the interpretation of the EU Treaties. This was confirmed by the CJEU in the case of Rottman. (Paragraph 106)
16. An international law decision cannot amend or override the EU Treaties: the only way to do so is through the procedures provided for in the EU Treaties. Thus Mr Legal's advice confirms that "The Decision does not amend the EU Treaties, nor does it contradict them. The recitals confirm the intention for the Decision to be 'in conformity' with the EU Treaties." (Paragraph 107)

17. In our view, therefore, the principal value of the international law decision lies in the extent to which it clarifies aspects of EU law for the benefit of the UK. (Paragraph 108)
18. The international law decision contains a commitment to amend the EU Treaties to incorporate the protections for the UK as an economy outside the Eurozone, and to exclude the UK from ever closer union, “at the time of their next revision”. These commitments are contingent on when the Treaties will be opened for revision, a date for which is currently unknown. (Paragraph 109)
19. The international law decision records the declared commitment by the Commission to submit proposals for secondary legislation. Although the ordinary legislative procedure means that there can be no guarantee that the proposals will be agreed in exactly the form proposed, the Minister for Europe was clear that the good faith of all the institutions in implementing the new settlement should not be doubted. We consider this to be a reasonable view. (Paragraph 110)

*The Government’s negotiating objectives: economic governance*

20. The Government’s aim to ensure that the UK, and other non-Eurozone States, are protected against discrimination, and to protect the integrity of the Single Market, enjoyed wide support, both domestically and across the EU. (Paragraph 126)
21. The terms of the ‘new settlement’, while largely restating existing principles, provide welcome clarity on the future relations of Eurozone and non-Eurozone States, and ensure that the interests of both groups will be safeguarded. The Government’s commitment to “facilitate and support the proper functioning of the euro area and its long-term future” is a welcome and necessary recognition that the UK has a vital stake in the success of the Eurozone, and will work to achieve that success. (Paragraph 127)
22. The international law decision confirms both that EU Member States have more than one currency, and that the Euro remains the ‘single currency’ of the EU. This respects the position of non-Euro states, while avoiding the risk of fragmentation. (Paragraph 128)
23. The safeguard mechanism, based on the 1994 ‘Ioannina Compromise’, offers the UK a pragmatic and potentially effective tool to raise concerns over new legislative initiatives within the Council. (Paragraph 129)

*The Government’s negotiating objectives: competitiveness*

24. We welcome the European Council’s commitment to enhance competitiveness and to complete the internal market. We also welcome the continued commitment, building on the progress already made by the Commission, to ensure better regulation and to reduce administrative burdens and compliance costs, especially for SMEs. (Paragraph 143)
25. We also welcome the commitment to an active and ambitious trade policy, and to take forward negotiations with the US, Japan and key partners in Latin America and in the Asia-Pacific region. (Paragraph 144)
26. Yet fine words must be matched by action. We therefore welcome the mechanisms for review set out in the new settlement, including the

Commission's commitment to carry out an annual review of the existing body of EU legislation. We also welcome its commitments to take into account the views of national parliaments as part of this process, to work with Member States and stakeholders to set targets at EU and national level for reducing burdens, and to publish an Annual Burden Survey. These commitments should entrench the progress that has already been made in burden reduction under President Juncker's Commission. (Paragraph 145)

27. Taken as a whole, therefore, the competitiveness element of the new settlement is a significant achievement, which could have far-reaching effects for the EU as a whole. At this stage, however, it is unclear what would happen if progress were not made or if targets were not met. Further work is therefore needed to translate the terms of the agreement into action. (Paragraph 146)

*The Government's negotiating objectives: sovereignty*

28. The symbolism of the UK's exclusion from further political integration, which is to be incorporated into the EU Treaties, is not to be underestimated. The same is true of the recognition that not all Member States are aiming for a common destination. Both may reflect reality, but their statement for the first time by the Heads of State or Government of the EU Member States is politically significant (Paragraph 159)
29. We acknowledge the concerns of some witnesses that the CJEU cannot distinguish between the UK and other Member States in a judgment citing the expression 'ever closer union' as support. We doubt, however, that the CJEU would adopt such an approach in the light of the restriction in the international law decision from using the expression "either to support an extensive interpretation of the competences of the Union or the powers of its institutions". (Paragraph 160)
30. We reiterate the view expressed in our 2014 report on The Role of National Parliaments in the EU, that the best way to address the perceived democratic deficit in the EU is to respect and strengthen existing domestic scrutiny arrangements, while at the same time creating mechanisms to help national parliaments exercise real and constructive influence on the development of EU policies. It is disappointing that the Government, in bringing forward proposals to enhance the role of national parliaments, should have focused instead on a collective power of veto. (Paragraph 173)
31. The new settlement is likely to have little practical effect, given that the Council is already required, under Protocol (No 2), to review any proposal in respect of which 50% or more of national parliaments and chambers have issued reasoned opinions, and would be highly likely, in such circumstances, to block it. (Paragraph 174)
32. The new settlement does not address the lack of resources that is inhibiting effective joint working by national parliaments. We therefore welcome the Foreign Secretary's acknowledgement of the need for more effective support machinery for national parliaments, and urge the Government to take the lead in discussing ways to deliver such machinery with the other Member State governments. (Paragraph 175)
33. We welcome the Commission's commitment, as part of the new settlement, to undertake an annual review of the body of existing legislation, with a view to proposing the repeal of measures that are inconsistent with the principle

of subsidiarity. We also welcome the Commission's undertaking to consult national parliaments in drawing up priorities for this review. (Paragraph 183)

34. At the same time, the international law decision and the accompanying Commission Declaration confuse the concept of subsidiarity by tying it to burden reduction, whereas in reality it has far wider application. They also limit the Commission's consultation to national parliaments, failing to acknowledge the role of regional and local institutions with regard to subsidiarity. (Paragraph 184)
35. In summary, the agreement on subsidiarity bears the hallmarks of a partially thought-out political compromise. The limited role proposed for national parliaments, while welcome, is no substitute for the 'green card' that this Committee has been developing, in partnership with other national parliaments, over the last two years. (Paragraph 185)
36. The paragraphs on justice and home affairs measures restate well-established principles found either in the EU Treaties or in the case law of the CJEU. No legal consequence appears to arise from them. Nor do they reflect the legal arguments relied upon by the Government in the course of the inquiry by our Justice Sub-Committee in the 2014–15 session. We conclude, therefore, that their value is symbolic, in that their inclusion in the new settlement for the UK may indicate, albeit obliquely, a political willingness within the Council to split measures containing JHA content in order to accommodate the UK Government's concerns. (Paragraph 193)
37. The negotiation of these paragraphs has been cited by the Government as a reason for not replying to the Committee's report on the UK's opt-in protocol, published in March 2015. It is now time the Government did reply. (Paragraph 194)
38. The paragraphs on national security provide confirmation that the Union institutions will fully respect the national security responsibility of Member States. In large part this restates the principles already set out in Article 4(2) TEU, but the interpretation of Article 4(2) in the international law decision will have to be taken into account by the EU institutions, thus putting this national security responsibility beyond doubt. (Paragraph 198)

*The Government's negotiating objectives: immigration*

39. We note that most independent evidence appears to show that EU nationals make a net contribution to the UK economy. We also note the Foreign Secretary's welcome for highly-skilled EU nationals, and his suggestion that "we need to equip" UK nationals to do the "low-skilled, minimum wage-type jobs" upon which large parts of the economy depend, many of which are currently done by EU and third-country nationals. Taking these factors into account, we are concerned that the Government has not fully addressed the economic and social implications of its policy on free movement. (Paragraph 216)
40. The interpretations of EU law in the international law decision highlight important limitations to the free movement of EU workers and citizens, which largely reflect existing EU law. Their inclusion in the new settlement for the UK will provide helpful support for the Government's preferred approach, in the event that the electorate votes to remain in the EU. (Paragraph 217)



41. The proposals for secondary legislation, implementing the international law decision, are significant in that they propose new restrictions on current rules on free movement. They will have to be consistent with EU Treaty rules on the scope for derogating from non-discrimination and free movement principles, as interpreted by the CJEU. (Paragraph 218)
42. The international law decision that forms the basis of the ‘new settlement for the United Kingdom’ is binding upon the parties under international law. It is persuasive in the interpretation of EU law, though it cannot in itself amend that law. (Paragraph 219)

### *Conclusions on the ‘new settlement for the United Kingdom’*

43. Moreover, the ‘new settlement’ has great political significance. The unanimous support of the 28 Member States, the Council, European Council, Commission and European Parliament, at a time when the EU faces acute challenges, testifies to the determination, across the EU, to accommodate the UK Government’s desire for greater flexibility. (Paragraph 220)
44. It is striking that the title of the ‘new settlement’ defines it as being ‘for the United Kingdom’. This is a misnomer: as our analysis demonstrates, many aspects of the ‘new settlement’ reflect the views of most if not all Member States. If the ‘new settlement’ is in due course implemented, it will have far-reaching effects upon the EU as a whole. (Paragraph 221)
45. If, on the other hand, the people of the United Kingdom were to vote to leave the EU in the forthcoming referendum, not only would the ‘new settlement’ itself lapse in its entirety, but the political good will evident in its negotiation and agreement could quickly dissipate. (Paragraph 222)
46. The ‘new settlement’ also has far-reaching symbolic importance. The formal recognition that there are different paths of integration for different Member States, allowing those that wish to pursue deeper integration to do so, while acknowledging the right of others (including the UK) not to pursue that course, could have far-reaching implications not just for the UK, but for the EU as a whole. The commitments to reviewing the existing body of EU law, with a view to reducing regulatory burdens and safeguarding the principle of subsidiarity, could also mark a significant change in the culture of the EU. (Paragraph 223)
47. Taken as a whole, therefore, and as the fruit of an intense political and diplomatic effort by the UK Government, the ‘new settlement’ is a significant achievement. It is not perfect, and our concerns over the relationship between the ‘new settlement’ and the Government’s decision to hold a referendum on EU membership are set out in full elsewhere in this report. But taken on its own terms, the ‘new settlement’ justifies the Government in asserting, to paraphrase the Foreign Secretary, that the UK has reached—and passed—the high-water mark of integration into the EU. (Paragraph 224)

### **The Government’s vision for EU reform**

48. Formally it is for the ‘remain’ campaign to set out a vision of the UK’s place in the EU, and to persuade the electorate to support that vision. Yet the ‘remain’ campaign has been held back from developing a clear message by months of uncertainty over the outcome of the renegotiation and the Government’s ‘offer’ to the people. (Paragraph 252)

49. The Government secured significant changes, including clear recognition of the UK's special status, at the European Council on 18–19 February 2016. Yet those changes, however important, are shrouded in complex terminology, and leave many aspects of the UK's relationship with the EU untouched. It is incumbent upon the Government, and in particular upon the Prime Minister, who has promised to campaign “with all my heart and soul” for the UK to remain in the EU, to make a broad-based, intelligible and free-standing case for EU membership. (Paragraph 253)
50. If the Prime Minister is to do this, he will need allies from across the domestic political spectrum. He will need to make an inclusive case for EU membership, one that speaks for all. When he speaks of ‘prosperity’, it must be clear that he means ‘prosperity for all’. A campaign based upon narrow national economic self-interest, alongside fear of the alternatives to membership, would be insufficient. (Paragraph 254)
51. The Government's case for EU membership therefore needs to be based on an inclusive and positive vision of the UK's role in a reformed EU. Like any successful vision, it needs to be grounded in pragmatism, while addressing strategic priorities and expressing core values. (Paragraph 255)
52. We welcome the Government's renewed emphasis on internal security and the UK's geopolitical role, which has also been welcomed across the EU. It should not be forgotten that an abiding impetus behind the establishment of the European Economic Community was to ensure that the damage wreaked on the continent of Europe by two world wars was never repeated. Any coherent case for EU membership needs to take account of the changing geopolitical environment, the new and growing threats to all EU Member States, and the benefits of working together to meet them. (Paragraph 256)
53. Reform has become a constant within the EU. A vote to remain in the EU, on the back of the renegotiation, could thus allow the UK to take the lead in arguing for a more flexible, dynamic and multi-layered EU in which all Member States, not just the UK, will enjoy the benefits of greater differentiation. The forthcoming UK Presidency of the Council, scheduled for the second half of 2017, would then become a unique opportunity to promote this wider reform agenda. (Paragraph 257)
54. Finally, the EU has always been driven by values as well as pragmatism. We urge the Government, in putting forward its vision for the UK's place in a reformed EU, also to affirm the shared identity and heritage of the peoples of Europe. (Paragraph 258)
55. The Prime Minister has described the decision facing the electorate as “perhaps the biggest we will make in our lifetimes”. A decision of such magnitude must be informed by a correspondingly inclusive and compelling vision of the UK's future in the EU. We invite the Prime Minister to rise to this challenge: it will then be for the people to decide. (Paragraph 259)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

---

### Members

Rt Hon. the Baroness Armstrong of Hill Top  
 Lord Blair of Boughton Kt, QPM  
 Lord Boswell of Aynho (Chairman)  
 Lord Borwick  
 Rt Hon. the Earl of Caithness  
 Lord Davies of Stamford  
 Baroness Falkner of Margravine  
 Lord Green of Hustpierpoint  
 Lord Jay of Ewelme GCMG  
 Baroness Kennedy of The Shaws QC  
 Lord Liddle  
 Lord Mawson OBE  
 Rt Hon. the Baroness Prashar CBE  
 Baroness Scott of Needham Market  
 Baroness Suttie  
 Lord Trees  
 Lord Tugendhat  
 Rt Hon. the Lord Whitty  
 Baroness Wilcox

### Declarations of interest

Rt Hon. the Baroness Armstrong of Hill Top  
*Chair, Changing Lives (a charity based in Tyneside which may benefit from European Union funds)*  
*Member, Advisory Board, GovNet Communications (publisher and event organiser)*  
*Trustee, Africa Governing Initiative*  
*Trustee, Voluntary Service Overseas*  
 Lord Blair of Boughton Kt, QPM  
*Vice-Chair, The Woolf Institute for the study of Jews, Christians and Muslims (a charity which may benefit from European Union funds)*  
 Lord Borwick  
*Shareholdings as set out in the Register of Lords' interests*  
 Lord Boswell of Aynho (Chairman)  
*In receipt of salary as Principal Deputy Chairman of Committees, House of Lords*  
*Shareholdings as set out in the Register of Lords' Interests*  
*Income is received as a Partner (with wife) from land and family farming business trading as EN & TE Boswell at Lower Aynho Grounds, Banbury, with separate rentals from cottage and grazing*  
*Land at Great Leighs, Essex (one-eighth holding, with balance held by family interests), from which rental income is received*  
*In receipt of agricultural support provision under the Common Agricultural Policy*  
*House in Banbury owned jointly with wife, from which rental income is received*  
*Lower Aynho Grounds Farm, Northants/Oxon; this property is owned personally by the Member and not the Partnership*

**Rt Hon. the Earl of Caithness**

*Shareholdings as set out in the Register of Lords' interests*  
*Trustee of the Queen Elizabeth Castle of Mey Trust which owns agricultural land and benefits from CAP*

**Lord Davies of Stamford**

*Owns a flat in France (sometimes rented out)*  
*Land let for grazing in Lincolnshire*  
*In receipt of agricultural support provision under the Common Agricultural Policy in relation to land in Lincolnshire*

**Baroness Falkner of Margravine**

*Member, British Steering Committee: Koenigswinter, The British-German Conference*  
*Vice President, Liberal International: The International Network of Liberal Parties*  
*Member, Advisory Board, British Influence*  
*Ownership of a house in Italy, jointly owned with member's husband*  
*Member, House of Lords Foreign Policy Network*

**Lord Green of Hustpierpoint**

*Shareholdings as set out in the Register of Lords' Interests*  
*Chair, International Advisory Council, British Chambers of Commerce*  
*Chair, Advisory Council for the Centre for Anglo-German Cultural Relations, Queen Mary University, London*  
*Chair, Natural History Museum*  
*Member, Advisory Board, Centre for Progressive Capitalism*  
*Member, Steering Committee, Centre for Excellence in Finance, Sabanci University, Istanbul*  
*Ownership of a flat in France*

**Lord Jay of Ewelme GCMG**

*Trustee, Thomson Reuters Founders Share Company*  
*Chairman, British Library Advisory Council*  
*Vice-Chairman, Business for New Europe*  
*Member, Senior European Experts Group*  
*Chairman, Positive Planet UK (British branch of a French NGO)*

**Baroness Kennedy of The Shaws QC**

*Chair, Justice*

**Lord Liddle**

*Co-Chair, Policy Network and Communications Ltd (think-tank), which has received occasional sponsorship from the London office of the European Commission for events and works in partnership with the Brussels-based Federation for European Progressive Studies and other Continental think tanks*  
*Co-author of a report which the City of London Corporation commissioned Policy Network to write on developments in thinking on the regulation of financial services in the European Union*  
*Personal assistant at Policy Network carries out secretarial work which includes work in relation to the member's parliamentary duties*

**Lord Mawson OBE**

*Owns a house in France*

**Rt Hon. the Baroness Prashar CBE**

*Deputy Chair, British Council*

**Baroness Scott of Needham Market**

*No relevant interests*

**Baroness Suttie**

*Associate with Global Partners Governance Limited in respect of their Foreign and Commonwealth Office contract to provide mentoring and training for parliamentarians and their staff in Jordan*  
*Trustee, Institute for Public Policy Research (IPPR)*  
*Campaign Council Member, British Influence*

**Lord Trees**

*Chair, Moredum Research Institute, Edinburgh (independent animal health research institute) which applies for competitive research grants from the EU*

**Lord Tugendhat**

*Shareholdings as set out in the Register of Lords' Interests*  
*Chairman, Advisory Council, European Policy Forum*  
*Member of Advisory Council, Official Monetary and Financial Institutions Forum Limited*  
*Member of Advisory Council of the Institute of Policy Research, University of Bath*  
*Former Member and Vice President of the European Commission, in receipt of a pension from that Commission*

**Rt Hon. the Lord Whitty**

*Chair, Road Safety Foundation*  
*Chair, Chesshire Lehmann Fund*  
*Vice President, Environmental Protection UK*  
*Vice President, Local Government Association*  
*Vice President, Chartered Trading Standards Institute*  
*Board Member, Smith Institute*  
*Member, GMB*

**Baroness Wilcox**

*Shareholdings as set out in the Register of Lords' Interests*

A full list of Members' interests can be found in the Register of Lords Interests <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

## APPENDIX 2: LIST OF WITNESSES

---

Evidence is published online at <http://www.parliament.uk/visions-of-eu-reform/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with a \*\* gave both oral and written evidence. Those marked with a \* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

*	Dr Joanna Hunt, Reader in Law, Cardiff University and Dr Hywel Ceri Jones, EU Funding Ambassador for Wales	<a href="#">QQ 1–9</a>
*	Rt Hon. Carwyn Jones AM, First Minister for Wales and Dr Robert Parry, Head of European Affairs, Welsh Government	<a href="#">QQ 10–21</a>
*	Alun Davies AM, Suzy Davies AM, Rt Hon Lord Elis-Thomas AM, David Melding AM, and William Powell AM, Members of the National Assembly for Wales Constitutional and Legislative Affairs Committee	<a href="#">QQ 22–27</a>
**	HE Claus Grube, Ambassador of Denmark to the United Kingdom, HE Dan Mulhall, Ambassador of Ireland to Great Britain, and HE Witold Sobków, Ambassador of Poland to the United Kingdom	<a href="#">QQ 28–40</a>
**	Dr Sara Hagemann, London School of Economics, Professor Anand Menon, King's College London, and Professor Simon Hix, London School of Economics	<a href="#">QQ 41–52</a>
**	Andy Bagnall, Director of Campaigns, CBI, Chris Cummings, Chief Executive, TheCityUK, Frances O'Grady, General Secretary, TUC, and Owen Tudor, Head of European Union and International Relations, TUC	<a href="#">QQ 53–64</a>
*	Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs, Scottish Government, and Craig Egner, Head of European Relations (Edinburgh)	<a href="#">QQ 65–78</a>
*	Christina McKelvie MSP, Convenor, and Jamie McGrigor MSP and Anne McTaggart MSP, members, Scottish Parliament European and External Relations Committee	<a href="#">QQ 79–91</a>
*	Professor Andrew Scott, Professor of European Studies, University of Edinburgh, and Professor Laura Cram, Professor of European Politics, University of Edinburgh	<a href="#">QQ 92–104</a>
*	Mr Jonathan Faull, Head of the Task Force for Strategic Issues related to the UK Referendum	<a href="#">QQ 106–119</a>



- ★ Elmar Brok MEP and Danuta Hübner MEP, European Parliament [QQ 120–125](#)
- ★ Mr Ashley Fox MEP, European Conservatives and Reformists Group, European Parliament, Ms Glenis Willmott MEP, Socialists and Democrats Group, European Parliament, and Ms Catherine Bearder MEP, Group of the Alliance of Liberals and Democrats for Europe, European Parliament [QQ 126–133](#)
- ★ Mr Steven Blockmans, Senior Research Fellow and Head of EU Foreign Policy, Centre for European Policy Studies, Mr Henning vom Stein, Head of Brussels Office, Bertelsmann Stiftung, and Mr Janis Emmanouilidis, Director of Studies, European Policy Centre [QQ 134–139](#)
- ★ Mr Manfred Weber MEP, Head of the European People's Party, European Parliament, and Mr Brian Hayes MEP, European People's Party, European Parliament [QQ 140–150](#)
- ★★ Jean Bizet, Chairman of the French Sénat European Affairs Committee, and Fabienne Keller, Vice-Chair of the French Sénat European Affairs Committee and Rapporteur on the UK-EU Relationship [QQ 151–161](#)
- ★ Rt Hon Philip Hammond MP, Foreign Secretary, Foreign and Commonwealth Office, and Vijay Rangarajan, Europe Director, Foreign and Commonwealth Office [QQ 162–180](#)
- ★★ Axel Schäfer MdB, Deputy Chairman of the SPD Parliamentary Group (with responsibility for European Affairs) and Substitute Member of the Bundestag Committee on European Affairs, and Detlef Seif MdB, Deputy CDU/CSU Parliamentary Group Spokesperson on EU Affairs and Member of the German Bundestag Committee on European Affairs [QQ 181–190](#)

### Alphabetical list of all witnesses

★	Andy Bagnall, Director of Campaigns, CBI (QQ 53–64)	
★	Catherine Bearder MEP, Group of the Alliance of Liberals and Democrats for Europe (QQ 126–133)	
★★	Jean Bizet, Chairman of the French Sénat European Affairs Committee (QQ 151–161)	<a href="#">VEU0017</a>
★	Steven Blockmans, Senior Research Fellow and Head of EU Foreign Policy, Centre for European Policy Studies (QQ 134–139)	
★	Elmar Brok MEP, Group of the European People's Party (Christian Democrats) (QQ 120–125)	
	Centre for Cross Border Studies	<a href="#">VEU0008</a>

★★	Chris Cummings, Chief Executive, TheCityUK (QQ 53–64)	<a href="#">VEU0016</a>
	The Convention of Scottish Local Authorities (COSLA)	<a href="#">VEU0006</a>
★	Professor Laura Cram, Professor of European Politics, University of Edinburgh (QQ 92–105)	
★	Alun Davies AM, Member of the National Assembly for Wales Constitutional and Legislative Affairs Committee (QQ 22–27)	
★	Suzy Davies AM, Member of the National Assembly for Wales Constitutional and Legislative Affairs Committee (QQ 22–27)	
★	Rt Hon Lord Elis-Thomas AM, Member of the National Assembly for Wales Constitutional and Legislative Affairs Committee (QQ 22–27)	
	Michael Emerson, Associate Senior Research Fellow at the Centre for European Policy Studies	<a href="#">VEU0001</a>
★	Janis Emmanouilidis, Director of Studies, European Policy Centre (QQ 134–139)	
★	Jonathan Faull, Head of the Task Force for Strategic Issues related to the UK Referendum (QQ 106–119)	
★	Ashley Fox MEP, European Conservatives and Reformists Group, European Parliament (QQ 126–133)	
	Dr Maria Garcia	<a href="#">VEU0010</a>
	The General Medical Council	<a href="#">VEU0003</a>
★	HE Claus Grube, Ambassador of Denmark to the United Kingdom (QQ 28–40)	
★	Dr Sara Hagemann, London School of Economics (QQ 41–52)	
★	Rt Hon Philip Hammond MP, Foreign Secretary, Foreign and Commonwealth Office (QQ 162–180)	
★	Brian Hayes MEP, European People's Party, European Parliament (QQ 140–150)	
★★	Professor Simon Hix, London School of Economics (QQ 41–52)	<a href="#">VEU0015</a>
★	Danuta Hübner MEP, Group of the European People's Party (Christian Democrats), European Parliament (QQ 120–125)	
	Dr Kirsty Hughes, Associate Fellow, Friends of Europe	<a href="#">VEU0011</a>
★	Dr Joanna Hunt, Reader in Law, Cardiff University (QQ 1–9)	
★★	Fabienne Keller, Vice Chair of the French Sénat European Affairs Committee and Rapporteur on the UK-EU Relationship (QQ 151–161)	<a href="#">VEU0017</a>
	Dr Davor Jancic, T.M.C Asser Institute	<a href="#">VEU0012</a>

★	Rt Hon Carwyn Jones AM, First Minister for Wales (QQ 10–21)	
★	Dr Hywel Ceri Jones, EU Funding Ambassador for Wales (QQ 1–9)	
★	Jamie McGrigor MSP, Member, Scottish Parliament European and External Relations Committee (QQ 79–91)	
★	Christina McKelvie MSP, Convenor, Scottish Parliament European and External Relations Committee (QQ 79–91)	
★	Anne McTaggart MSP, Member, Scottish Parliament European and External Relations Committee (QQ 79–91)	
	David Melding AM, Member of the National Assembly for Wales Constitutional and Legislative Affairs Committee (QQ 22–27)	
★	Professor Anand Menon, King's College London (QQ 41–52)	
★	HE Dan Mulhall, Ambassador of Ireland to Great Britain (QQ 28–40)	
★	Frances O'Grady, General Secretary, TUC (QQ 53–64)	
	Dr Jane O'Mahony, School of Politics and International Relations and Associate, Global Europe Centre, University of Kent	<a href="#">VEU0005</a>
★	Dr Robert Parry, Head of European Affairs, Welsh Government (QQ 10–21)	
	Vivien Pertusot, Head of Brussels Office, French Institute of International Relations	<a href="#">VEU0013</a>
	William Powell AM, Member of the National Assembly for Wales Constitutional and Legislative Affairs Committee (QQ 22–27)	
★	Vijay Rangarajan, Europe Director, Foreign and Commonwealth Office (QQ 162–180)	
★	Axel Schäfer MdB, Deputy Chairman of the SPD Parliamentary Group (with responsibility for European Affairs) and Substitute Member of the Bundestag Committee on European Affairs (QQ 181–191)	
★	Professor Andrew Scott, Professor of European Studies, University of Edinburgh (QQ 92–105)	
★★	Detlef Seif MdB, Deputy CDU/CSU Parliamentary Group Spokesperson on EU Affairs and Member of the German Bundestag Committee on European Affairs (QQ 181–190)	<a href="#">VEU0018</a>
★★	HE Witold Sobków, Ambassador of Poland to the United Kingdom (QQ 28–40)	<a href="#">VEU0002</a>
	The UK in a Changing Europe Initiative	<a href="#">VEU0007</a>

	Trade Union Congress (TUC)	<a href="#">VEU0014</a>
★	Owen Tudor, Head of European Union and International Relations, TUC (QQ 53–64)	
	UK Green Party Members of the European Parliament	<a href="#">VEU0009</a>
★	Henning vom Stein, Head of Brussels Office, Bertlesmann Stiftung (QQ 134–139)	
	Manfred Weber MEP, Head of the European People's Party, European Parliament (QQ 140–150)	
★	Glenis Willmott MEP, Socialists and Democrats Group, European Parliament (QQ 126–133)	
	Professor Derrick Wyatt QC	<a href="#">VEU0004</a>

As part of the inquiry Lord Boswell of Aynho (Chairman of the Committee) visited Queen's University Belfast on 26 November 2015. Lord Boswell met the following academics:

- Dr Katy Hayward, Senior Lecturer, School of Sociology, Social Policy and Social Work
- Dr Cathal McCall, Reader
- Dr Lee McGowan, Senior Lecturer in European Studies
- Professor David Phinnemore, Professor of European Politics

A note on this meeting is provided at <http://www.parliament.uk/documents/lords-committees/eu-select/visions-of-eu-reform/Lord-Boswell-Queens-University-Belfast-academics-meeting-261115.pdf>

The Committee also visited Edinburgh as part of the inquiry on 16 December 2015. During the visit Lord Boswell met Rt Hon Nicola Sturgeon MSP, First Minister for Scotland.

A note on this meeting is provided at <http://www.parliament.uk/documents/lords-committees/eu-select/visions-of-eu-reform/Lord-boswell-meeting-First-Minister-Scotland-161215.pdf>

### APPENDIX 3: CALL FOR EVIDENCE

---

The House of Lords European Union Committee, chaired by Lord Boswell of Aynho, has decided to conduct an inquiry exploring the vision for the future of the EU that the UK Government is seeking to realise through its current reform proposals. The Committee will simultaneously continue to scrutinise the process of negotiation and reform leading up to the referendum in 2016 or 2017.

The Prime Minister, in his Bloomberg speech in January 2013, paid tribute to the origins of the European Union, in the struggle to achieve peace in Europe, before stating that this objective had been achieved, and that the over-riding priority of today's EU was "not to win peace, but to secure prosperity". He then set out the five principles underpinning his vision for the EU in the 21st century:

- Competitiveness
- Flexibility
- That power must be able to flow back to Member States
- Democratic accountability
- Fairness for Member States within and outside the Eurozone.

In this inquiry the Committee is seeking to look beyond the immediate process of negotiating and agreeing a package of reforms, and to ask how far there is consensus, both within the UK and across the EU, on the long-term direction of the EU—consensus which will determine the long-term sustainability of any agreement.

Written evidence is sought by 30 November 2015. The Committee seeks evidence on any or all of the following questions, which are grouped in three major themes:

#### The UK Government's vision for the EU

- Is the Prime Minister right that the over-riding priority for today's EU should be "to secure prosperity"?
- Does the UK Government's vision for the EU adequately take account of the changing geo-political context?
- What does the commitment of the Member States of the EU to create "an ever closer union among the peoples of Europe" mean? Is this aim any longer relevant or achievable?
- What are the main sources of democratic accountability and legitimacy within the EU?

#### Is there consensus on EU reform within the UK?

- Is the UK Government's vision for the EU achievable, and how has it been translated into specific reform objectives?
- To what extent is the UK Government's vision shared by the devolved administrations and other stakeholders within the UK?
- Has the UK Government taken the views of other key stakeholders within the UK, including the devolved administrations, sufficiently into account? Do they feel they have been properly involved in the process?

**Is the UK Government's vision shared by others in Europe?**

- To what extent is the UK Government's vision for the future of the EU shared by the EU institutions, and by other Member States? Where is there a possibility of consensus, and where are there major differences?
- Insofar as there is a lack of consensus on the long-term future of the EU, is a two-speed (or multi-speed) Europe feasible?
- What conclusions can be drawn from the areas of either agreement or disagreement for the UK's future place within the EU?

The Committee plans to hear evidence until early 2016, and is likely to undertake a series of short visits, including to Brussels and to the devolved institutions in the UK. The Committee aims to publish its report in the spring of 2016.



