

The Impact of the UK's Withdrawal on EU integration



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STUDY

ABSTRACT

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the AFCO Committee, examines the potential effects of the UK's withdrawal on European integration. It does so by examining the UK's role in pushing forward and/or blocking integration in five areas: the internal market; social policy; freedom, security and justice; the Eurozone; and foreign, security and defence.

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LIST OF ABBREVIATIONS

CCPs	Central Counterparties
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
CSDP	Common Security and Defence Policy
EBA	European Banking Authority
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
EDA	European Defence Agency
EFSF	European Financial Stability Facility
EMU	Economic and Monetary Union
ERM	Exchange Rate Mechanism
ESFS	European System of Financial Supervision
ESM	European Stability Mechanism
GDP	Gross Domestic Product
IMF	International Monetary Fund
JHA	Justice and Home Affairs
NATO	North Atlantic Treaty Organisation
OECD	Organisation for Economic Cooperation and Development
PESCO	Permanent Structured Cooperation in Defence

EXECUTIVE SUMMARY

The UK's withdrawal from the EU is an unprecedented development in European integration. Fears have been expressed that it could lead to the EU's disintegration, while others have seen an opportunity for the EU to integrate further. To examine the UK's effect on European integration, this report looks at the role the UK has played pushing or blocking integration in five areas: the internal market; social policy; the area of freedom, security and justice; foreign, security and defence cooperation; and the Eurozone. The report shows that in some areas the UK has delayed or blocked European integration, making it more of an awkward partner in European integration than most other Member States have been. The UK's opposition to European integration stems from the UK's domestic politics, where, in contrast with the situation in other Member States, British politicians have rarely if ever pursued anything more than a transactional approach to EU membership. The UK's departure could therefore be an opportunity for the remaining EU to integrate further. However, it should not be overlooked that, often, the UK's delaying and blocking tactics have been bypassed. The UK's withdrawal is also not a short-term process; as it continues there is a risk that the UK could become a non-EU alternative that appeals to Eurosceptics in the remaining EU Member States. Furthermore, other Member States have also been awkward partners. Their awkwardness is likely to play out in a process of differentiated integration, where some Member States integrate more quickly in some areas compared to others. While the EU is unlikely to disintegrate because of the UK's withdrawal, significant systemic challenges remain, not least within the Eurozone and in facing a range of international pressures. This means the effect of the UK's withdrawal on European integration will be determined by a balance between two effects. First, the UK's success or failure outside the EU and how this is perceived within the remaining Member States. Second, the EU's ability to overcome its systemic challenges, and so continue to demonstrate to EU citizens that, compared to other options, it can respond to their political demands and provide effective solutions to the problems they face.

Visit the European Parliament's homepage on [Brexit negotiations](#).

1. INTRODUCTION

The vote by the British people to leave the European Union (EU) has presented the EU with a unique challenge. This has happened at a time when European integration has been beset by crises in the Eurozone and Schengen Area, strained relations with Russia and the United States (USA), and a tide of illiberalism in European states and around the world.¹ Before the United Kingdom's (UK) referendum, views were expressed that a vote for Leave could bring about significant changes to European integration.² On the one hand stood the prospect of the EU unravelling, with the UK's vote triggering similar referendums elsewhere in the EU, perhaps even provoking the Union's disintegration. On the other hand, was the possibility that the UK's withdrawal could lead to the strengthening of the Union by facilitating further integration. The UK has long been described as 'an awkward partner' because it has often blocked integration and demanded special treatment or opt-outs.³ Its exit could remove this road block and provide a much needed boost to those seeking to push European integration forward.

As of the summer of 2018, fears that the UK's withdrawal would lead to the unravelling of the EU have proved unfounded. While the UK has struggled to cope with the myriad challenges of withdrawal, the EU itself has thus far been united and broadly in control of the exit negotiations. Proposals have been put forward for further integration in areas such as the Eurozone and in foreign, security and defence cooperation. Polling has registered an increase in public support for the EU in some Member States.⁴ Nevertheless, the effect of the UK's withdrawal on the future of European integration remains open to much debate and speculation. It is not yet clear if the EU has overcome the constraint of large numbers of its citizens showing either high levels of Euroscepticism or unease at the idea of transferring new powers to the EU. This has been a leading obstacle to proposals to push forward with further integration in recent years.⁵

How to understand and define European integration has provoked much debate in politics, amongst the public, and in academia.⁶ Various theoretical frameworks have presented integration as the result of 'spillover' whereby cooperation between states in one area leads to the need for cooperation in another.⁷ Other theories have instead focused on the convergence of interests of Member States, especially the larger states.⁸ For this study, we view European integration as a mixed process that combines both spillover and the convergence of the interests of Member States which leads to the politics, laws, societies, economies and security of the peoples of Europe being brought closer together in an 'ever closer union.' Integration is not and never has been entirely smooth. The EU has integrated more in some policy areas, for example in the Eurozone (albeit only for those Member States who joined), than in others, for example, in defence. This has led to talk of 'differentiated integration' where, because of differences in political willingness, wealth, identities, and domestic constitutional provisions, some Member States integrate more quickly in some areas compared to others.⁹ The UK's vote to withdraw and recent crises in the Eurozone have also led to discussion of European disintegration and how this might come about, for example were it to have triggered a crisis in Germany – the EU's predominant power and indispensable Member State – or by encouraging politicians and publics in other Member States to campaign against 'Brussels' and even seek to hold referendums of their own that could also produce votes in favour of withdrawal.¹⁰

¹ Dinan, D., Nugent, N. and Paterson, W.E., *The European Union in Crisis*, London: Palgrave, 2017.

² Oliver, T., *Europe without Britain: assessing the impact on the EU of a UK withdrawal*, Berlin: Stiftung Wissenschaft und Politik, 2013.

³ George, S., *An Awkward Partner: Britain in the European Community*, Oxford: OUP, 1998.

⁴ Oliver, T., *Europe's Brexit: EU Perspectives on Britain's Vote to Leave*, Bristol: Agenda, 2018.

⁵ Hooghe, L., and Marks, G., 'A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus', *British Journal of Political Science*, 30:1, 2009, pp. 1-23.

⁶ Rosamond, B., *Theories of European Integration*, Basingstoke: Palgrave, 2000.

⁷ Lindberg, L. N., *The political dynamics of European economic integration*, Stanford: Stanford University Press, 1963.

⁸ Moravcsik, A., *The choice for Europe: social purpose and state power from Messina to Maastricht*, Ithaca: Cornell University Press, 1998.

⁹ Schimmelfennig, F., 'The European Union as a system of differentiated integration: interdependence, politicization and differentiation', *Journal of European Public Policy*, 22: 6, 2015, pp. 764-782.

¹⁰ Webber, D., 'How likely is it that the European Union will disintegrate?' *European Journal of International Relations*, 20: 2, 2014, pp. 341-365.

In any case, the effects of the UK's withdrawal on the future of European integration will take time to crystallise. Though the formal legal process for the UK's withdrawal is limited to two years by Article 50 TEU, its effects will play out over many years to come. The effects will also reflect ongoing developments in the Eurozone, the EU's political economy, and Europe's security and international standing.

In analysing the possible consequences of the UK's withdrawal on European integration, this report examines the institutional and political role the UK has played as an EU Member State, considering, in particular, how the UK has fostered and hindered European integration during its membership. It does so by looking at the role the UK has played in five policy areas: the internal market; social policy; the area of freedom, security and justice; foreign, security and defence cooperation; and the Eurozone. These areas were chosen because they cover the EU's political economy (internal market and the Eurozone), society (social policy), and Europe's security and international standing (the area of freedom, security and justice, and foreign, security and defence cooperation). Each of these areas has seen varying degrees of integration both historically and more recently. The UK's involvement also varies in each area, due, for instance, to its non-membership of the Eurozone contrasting with its central role in the internal market and its ambivalent role in defence and security policy. Each section therefore begins with a brief overview of the area before addressing three questions: how the UK has pushed forward integration in that area; how the UK has blocked integration in that area; what effect might the UK's withdrawal therefore have on that area of integration.

2. INTERNAL MARKET

KEY FINDINGS

- The UK has been a prime mover behind the single market, especially in the field of services. It has successfully shaped EU activity in this area, especially in terms of deregulation and the opening up of the EU market.
- The UK has not blocked integration in this field when it relates to the freedom of movement of capital, services and goods, although it has been sceptical of free movement of people and some efforts to create EU level taxation.
- The UK's withdrawal will have an influence on the shape of the future direction of the single market through the EU losing one of its more fervent supporters for the completion of the single market and particular in services.

The creation of a *common* market lay at the heart of the European Economic Community (EEC), now EU, project. Article 2 EC (now repealed) said that the (then) Community had as its task the establishment of a 'common' market. Article 3(3) TEU provides that 'The Union shall establish an internal market' which is defined in Article 26 TFEU as 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties' – in other words the four freedoms. Despite the changes in terminology, the common, single and internal market have at their core the four freedoms.

The detail of these so-called four freedoms are found in specific Articles of the Treaty: Articles 34–35 TFEU on goods, Article 45 TFEU on workers, Article 49 TFEU on establishment, Articles 56–57 TFEU on services, and Article 63 TFEU on capital. These Articles are based on the principle of so-called 'negative' integration – removing barriers to trade. As the CJEU put it in *Gaston Schul*,¹¹ the aim of the provisions of the TFEU is to eliminate 'all obstacles to intra-[Union] trade in order to merge the national markets into a single market bringing about conditions as close as possible to those of a genuine [domestic]¹² market'.

Yet despite the aspirations of the Treaty's drafters, by the mid-1980s stasis, often called 'Euro-sclerosis,' had set in and the inadequacy of the common market model of integration was plain for all to see. Economic integration was still beset by physical, technical and fiscal barriers to trade. In 1985 Jacques Delors, the president of the European Commission, responded with his ambitious plan for the 'single,' or 'internal' market.¹³ A White Paper, *Completing the Internal Market*,¹⁴ was drawn up under the direction of the British commissioner, Lord Cockfield, and focused on removing barriers which continued to prevent the operation of the four freedoms.¹⁵ It identified three principal obstacles to the completion of the single market:

- physical barriers to trade – e.g., intra-EU border stoppages, customs controls, and associated paperwork;

¹¹ Case 15/81 *Gaston Schul Douane Expeditie BV v. Inspecteur der Invoerrechten en Accijnzen, Roosendaal* [1982] ECR 1409, para. 33, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61981CJ0015&from=EN>

¹² The original quotation reads 'internal'. Earlier case law (e.g., Case 270/80 *Polydor v. Harlequin* [1982] ECR 329, para. 16, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61980CJ0270&from=EN>) talks of 'domestic' market, and this term has been used for the sake of clarity.

¹³ Grant, C., *Delors: Inside the house that Jacques built*, London: Nicholas Brealey Publishing, 1994, p. 66.

¹⁴ European Commission, *Completing the Internal Market. White Paper from the Commission to the European Council*, Brussels: European Commission, COM(85)310, 1985, at: <http://aei.pitt.edu/1113/>

¹⁵ Lord Cockfield, *The European Union: Creating the single market*, Chichester: Wiley Chancery, 1994, p. 39.

- technical barriers to trade – e.g., meeting divergent national product standards adopted for health and safety reasons or for consumer and environmental protection, other technical regulations, conflicting business laws, entering nationally protected public procurement markets;¹⁶
- fiscal barriers to trade – especially differing rates of VAT and excise duties.

These barriers had significant economic costs. The Cecchini Report on the *Cost of Non-Europe*¹⁷ anticipated that the growth resulting from the single market would add between four and seven percentage points to the Union's domestic product and stimulate the creation of between two and five million new jobs.

The 1985 White Paper identified 300 measures (the final count was actually 282) necessary to complete the single market which was to be achieved by 31 December 1992. The Single European Act of 1986, the first significant Treaty amendment after the Treaty of Rome, gave the EU the necessary legal means to achieve these objectives. It introduced a new legal basis, Article 114 TFEU, which provided for qualified majority voting (QMV) when enacting measures for the approximation of Member States' laws which have as 'their object the establishment and functioning of the internal market'. This legal basis helped speed up the process of adopting legislation which in the past could only be achieved via unanimous voting.

Although the deadline for the 'completion' of the single market was originally set for 1992, the single market is not in fact yet complete. In fact it is unrealistic to expect it ever to be fully complete because circumstances and technology constantly change: as the UK government has noted, E-commerce, the sharing economy, 3D printing and ever more powerful software have radically altered production and consumption patterns and generated new business models.¹⁸ Thus the attainment of the single market is better seen as an ongoing process, requiring constant vigilance and updating. New areas are being addressed, such as the digital single market, which are of direct interest to the UK.¹⁹ The EU also puts much more effort now not just into rule-making but also into ensuring those rules are implemented in the Member States and actually applied, an issue close to the UK's heart, given its long record of compliance with EU rules. The UK itself benefitted greatly from the single market. The UK governments 2014 Balance of Competence Review found:²⁰

...integration has brought to the EU, and hence to the UK, in most if not all observers' opinions, appreciable economic benefits. It has also spread the UK's liberal model of policy-making more widely across the EU. But it has brought with it constraints on policy-making of varying kinds, and a regulatory framework which some find difficult to operate within or find burdensome, even if the obligations are not necessarily any greater than would have been imposed nationally. Is that trade-off, between cost and benefit, between economics and politics, of overall benefit to the UK? ... Most observers, and indeed most of the evidence received for this report, answer positively.

¹⁶ Cecchini, P., *The European Challenge 1992: The benefits of a single market*, Aldershot: Wildwood House, 1988, p. 4.

¹⁷ *Ibid.*, xvii–xviii.

¹⁸ Department for Business, Innovation and Skills, *UK non-paper: Deepening the single market in goods and services*, London, July, 2015, at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/448444/BIS-15-436-deepening-the-single-market-in-goods-and-services.pdf

¹⁹ HM Government, *Review of the Balance of Competences between the UK and the EU: The Single Market – Free movement of services*, London, Summer, 2014, at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf

²⁰ HM Government, *Review of the Balance of Competences between the UK and the EU: The Single Market*, London, July 2013, p. 35, at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/227069/2901084_SingleMarket_acc.pdf

2.1. How the UK has pushed forward integration in the internal market

As the UK's Balance of Competence review showed, not only did the UK benefit economically from membership of the single market but it was also able to use the single market as a vehicle to spread its liberal model of policy-making. Its officials, especially Lord Cockfield, were in post at the crucial moment when the completion of the single market was recognised as a necessity. Had the EU been solely about the single market, the UK's withdrawal vote may not have happened.

To give a flavour of just how influential the UK has been in the shaping of the single market in its image, consider these three examples:

- **The Services Directive.** The UK has long been keen to open up the services market and eliminate the significant regulatory burdens imposed on service providers in other Member States. The services sector accounts for 79 per cent of domestic economic activity in the UK, above the average for the EU, where the figure is 70 per cent.²¹ The UK was therefore very much in favour of the Services Directive 2006/123, as Gareth Thomas, minister for trade and consumer affairs, noted in the consultation paper on its implementation: 'The Government was strongly supportive of the Services Directive during its negotiation and is pleased with the resultant text.'²² He also recognised the quantitative benefits of the Directive to the UK, to the tune of £4--6 billion per annum, and the anticipated creation of up to 81,000 jobs. Once the Directive was adopted, the UK actively engaged in the process of screening existing UK legislation for compatibility with the Directive. It also worked closely with the Commission to shape the guidance accompanying the Directive and to discuss practical problems arising from its implementation.
- **Audiovisual Media Services Directive.** The UK has been a strong supporter of, and has benefitted from, the Audiovisual Media Services Directive 2010/13. The Directive's use of the 'country of origin principle' allows broadcasters to register in just one Member State, 'lowering the regulatory and administrative burdens on industry and thereby encouraging the availability of pan-European (broadcast and video on demand) content.' Relying on the Directive, the UK has been able to act as a 'gateway to Europe' for several broadcasters from outside the EU, and over half of all channels broadcasting in the EU were, in 2014, licensed in the UK, of which around half broadcast either partly or exclusively in other EU Member States.²³
- **Financial services.** Financial services matter to the UK economy: the UK is the largest net exporter of financial services and insurance in the world.²⁴ Financial services regulation in the EU is therefore important for the UK and the EU. In the run up to the referendum, the City of London Corporation produced a report entitled *Shaping legislation: UK engagement in EU financial services policy-making*.²⁵ It argued that the UK Government had played a 'significant

²¹ HM Government, *Review of the Balance of Competences between the UK and the EU: The Single Market – Free movement of services*, London, summer, 2014, p. 48, at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf

²² Department for Business Innovation and Skills, 'Consultation on implementing the EU services directive', 5 November 2007, at: <http://webarchive.nationalarchives.gov.uk/20100222160813/http://www.berr.gov.uk/consultations/page42211.html>

²³ HM Government, *Review of the Balance of Competences between the UK and the EU: The Single Market – Free movement of services*, London, summer 2014, at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf

²⁴ HM Government, *Review of the Balance of Competences between the UK and the EU: The Single Market – financial services and the free movement of capital*, London, summer 2014, at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/332874/2902400_BoC_FreedomOfCapital_acc.pdf

²⁵ City of London Corporation, *Shaping Legislation: UK engagement in financial services policy-making*, London: City of London Corporation, June 2016, at: <https://www.cityoflondon.gov.uk/business/economic-research-and-information/research-publications/Documents/research-2016/shaping-EU-legislation-2.pdf>

role at the EU level in formulating legislation relating to the financial services sector'. It demonstrated that key successful outcomes have included:

- Solvency II Directive – the UK shaped EU legislation to match the UK's and raise the standard of European insurance capital requirements.
- Alternative Investment Fund Managers Directive (AIFMD) – the UK maintained London's status as a global investment hub by preserving the National Private Placement Regime.²⁶
- The European Market Infrastructure Regulation (EMIR) – UK Government efforts ensured that clearing houses such as ICE Clear and LCH. Clearnet, Europe's largest derivatives clearing house, could continue to operate without restrictive rules that would discriminate against them for being outside of the Eurozone.
- The Capital Requirements Directive and Regulation (CRD IV/CRR) – the EU Directive allowed the UK to set high capital reserve standards for financial institutions in Europe while maintaining national discretion to set even higher rates in the UK itself.
- Markets in Financial Infrastructure Directive and Regulation (MiFID II/MiFIR) – the UK preserved the passporting regime set out in the original MiFID directive, which was key for UK-based financial institutions.

The City of London's conclusion that 'The UK has been able to play a significant role in shaping major pieces of financial services legislation, acting both independently and in coalition with like-minded Member States', implies that the financial services sector itself considers (and indeed welcomed) the UK's influence in the single market to have been significant and positive. The five case studies included in the report demonstrate that 'the UK has gained far more often than not through its involvement in the legislative process.'

2.2. How the UK has blocked integration in the internal market

As explained above, the UK has always been a strong supporter of the single market. It has not, in general, blocked integration. In fact, as the case of the Services Directive shows, it has pushed for greater integration, which may involve deregulation, as the Services Directive also shows. Of course, it has not always got what it wanted in the negotiations; for example, it lost the battle over group support provisions in Solvency II in the face of French opposition. The UK has also opposed EU legislation on direct taxation, for example over corporation tax. It has also resisted attempts to move away from unanimity when reaching decisions in this area. But this has been something other Member States, such as Ireland, have also blocked. The direction of travel, therefore, has largely been in the UK's favour.

This does not mean however that the UK has been happy to accept all proposals made in the name of further single market integration. Thus, the UK has used the principle of evidence-based decision-making to limit them: where the EU cannot justify action then it should not act. The UK Treasury's response to the issue of EU proposed action in the field of geo-blocking regulation is instructive in this respect. It says²⁷

We urge the Commission to make sure that any proposals brought forward are grounded in a strong evidence base and a detailed understanding of their potential impact on both consumers and businesses. This includes an accompanying impact assessment, in line with the Commission's own better regulation principles. The UK urges the Commission to

²⁶ The national private placement regime (NPPR) allows alternative investment fund managers (AIFMs) to market alternative investment funds (AIFs) that otherwise cannot be marketed under the AIFMD domestic marketing or passporting regimes: <https://www.fca.org.uk/firms/nppr>

²⁷ HM Government, *UK position on geo-blocking*, London, 2015, at: http://ec.europa.eu/information_society/newsroom/image/document/2016-5/uk_government_13504.pdf

evaluate the impact of previous investigations in this area (namely the car rental and Disneyland Paris examples) to add to the evidence base.

Nor does this mean the UK has been fully committed to the free movement of people as part of the Single Market. If the Single Market is only seen in trade terms – free movement of capital, services and goods – then the UK has been among its strongest backers. UK political debate, however, has often overlooked the importance elsewhere in the EU of the indivisibility of the four freedoms so as to ensure all EU citizens are treated equally. The UK's attempts to change this, such as David Cameron's Brussels renegotiations before the UK's referendum which, inter alia, limited the rights of EU citizens to move to the UK, have always been fiercely resisted by the rest of the EU. The UK's opt-out from Schengen, which the Irish Republic followed due to the UK-Irish Common Travel Area, has therefore been seen as an anomaly.

2.3. The effect of the UK's withdrawal on integration in the internal market

The EU will be losing a strong and self-confident supporter of the single market. Like-minded states will also be losing a key ally. For example, in answer to the question, 'Will Sweden's position in the EU weaken [after Brexit]', the website Business Sweden responded: 'Yes, most likely. This is because the UK is a close ally when it comes to power issues within the EU, such as free trade and member nations' right to decide for themselves.'²⁸

The enthusiasm for pursuing the liberalisation of services may well wane, particularly in the face of German reluctance. As *The Economist* noted recently, 'a tangle of red tape restricts service industries [in Germany]'.²⁹ A report commissioned by the UK's department of trade, BIS, now BEIS, also recognises 'A public German debate on the possibility and benefits of a continued services liberalisation is currently not existent.'³⁰ However, OECD data in its Services Trade Restrictiveness Index do show a reduction in barriers: on a scale which reaches from no regulation (zero) to maximum regulation (six), Germany improved from 4.28 in 1998 to 2.65 in 2013.³¹

The European Commission has also recognised the problem. The 2014 Country Specific Recommendations state:³²

There are still barriers to entering the market and exercising professional services. These include restrictions on the legal form and shareholding, and professional qualifications requirements. The diversity of regulatory arrangements for professional services across Länder suggests that there is scope for identifying the least burdensome regulatory approaches and extending them throughout the country. The value of contracts published by the German authorities under EU procurement legislation remains one of the lowest in the EU. The comprehensive transition to a transparent e-procurement market could increase competition. In the retail sector, planning regulations in certain Länder continue to restrict new entries in the market.

²⁸ Sellgren, L., 'Brexit – What happens now and what does it mean for Swedish companies and Sweden?' Business Sweden, Stockholm, at: <https://www.business-sweden.se/en/Trade/analysis-and-reports/analysis-and-macro-view/chefekonomen-kommenterar/brexit---what-happens-now-and-what-does-it-mean-for-swedish-companies-and-sweden/>

²⁹ 'Cool Germany: Germany is becoming more open and diverse.' *The Economist*, 14 April 2018, at: <https://www.economist.com/leaders/2018/04/14/germany-is-becoming-more-open-and-diverse>

³⁰ Arentz, O., Manner, H., Münstermann, V. L., Recker, E. C., and Roth, S., *Services Liberalisation in Germany. Overview and potential of Deregulation*, Final report, Institute for Economic Policy at the University of Cologne, 2015, at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/416148/bis-15-196-services-liberalisation-in-germany-overview-and-the-potential-of-deregulation.pdf

³¹ Ibid.

³² European Commission. 'Recommendation for a Council Recommendation on Germany's 2014 national reform programme and delivering a Council opinion on Germany's 2014 stability programme,' Brussels 2014, COM(2014) 406 final, at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0406>

Four years later things had not changed very much :³³

Regulation in Germany is still highly restrictive, especially as regards business services, regulated professions and administrative formalities for the cross-border provision of services. Key restrictions concern inter alia legal form and shareholding. Churn rates in key business services sectors such as legal, accounting, architectural and engineering activities are below the EU average, while gross operating rates in those sectors are above average, suggesting lower competitive pressures.

If the liberalisation agenda was having only a limited impact on Germany while the UK was still a member, it seems unlikely it will have much more of an impact once the UK has left.

In the field of financial services, the gains that the UK fought for may well be reversed (the UK is likely to lose passporting rights as a third country) and future legislation may well favour the Eurozone. The UK already witnessed some of this in the context of the ECB's Policy Framework on location of securities settlement systems and central counterparty clearing houses (central counterparties, 'CCPs'). The ECB was worried that malfunctioning of CCPs located outside the euro area could have adverse effects on payment systems located in the euro area and said that infrastructures that settle euro-denominated transactions should be legally incorporated in the euro area with full managerial and operational control and responsibility, over all core functions, exercised from within that area. The UK successfully challenged this policy document on the ground that the ECB lacks the competence necessary to regulate the activity of securities clearing systems as its competence is limited to payment systems alone by Article 127(2) TFEU.³⁴

More positively, the digital single market programme is moving apace and a volume of legislation has already been approved. However, in the longer term, future legislation is likely to be more regulatory, offering tighter control by the EU and commensurately less flexibility for the Member States: the greater use of Regulations (for example the Geo-blocking Regulation), as opposed to Directives and exhaustive harmonisation (for example, the proposed Digital Content Directive).³⁵

³³ European Commission, 'Recommendation for a Council Recommendation on the 2018 National Reform Programme of Germany and delivering a Council opinion on the 2018 Stability Programme of Germany,' Brussels, 2018, COM(2018) 405 final, at: https://ec.europa.eu/info/sites/info/files/file_import/2018-european-semester-country-specific-recommendation-commission-recommendation-germany-en.pdf.

³⁴ Case T-496/11 UK v ECB, EU:T:2015:133, at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=t-496/11>

³⁵ See also the evidence from the EU Commissioner for consumer affairs, in European Union Committee, *EU Consumer Rights Directive: getting it right*, London: House of Lords, July 2009, paragraph 47, at: <https://publications.parliament.uk/pa/ld200809/ldselect/lducom/126/12606.htm>.

3. SOCIAL POLICY

KEY FINDINGS

- Social policy, initially restricted to employment policy, has long been a controversial issue in EU politics, with tensions between different national welfare models, the extent to which European integration should seek to balance economic integration with social integration, and the distribution of competences between EU institutions and Member States.
- The UK has both pushed forward and blocked integration in this area. The UK has a good record for enforcing EU social policy. UK officials have played a central role in developing EU social policy, and UK governments have at times sought to upload their ideas to EU level. The UK has also slowed down progress, for example by opposing proposals for directives on part-time and fixed-term work in the 1980s and the extension of QMV to social security, which required unanimous voting in the EEC Treaty. However, the European Commission found ways of promoting policies when the UK was absent from the negotiation table and progressively extended its social policy remit, particular through soft law.
- While the UK's withdrawal is seen as an opportunity to relaunch EU efforts in social policy, the UK's exit is unlikely substantially to alter the contribution of social policy to European integration in the short or longer term due to continued tensions between Member States over how far integration in social policy should go.

UK governments have gained a reputation for blocking the development of European social policy. Whether this reputation is fully justified, and whether the UK has been alone in hindering European integration and preventing social union are debatable points. For the founding Member States of the European Economic Community (EEC), social policy, meaning essentially employment policy in the 1957 Treaty, was already a contentious area. The social dimension was relegated to a subordinate position in support of market imperatives and economic integration. As a condition of EEC membership when it joined in 1973, the UK government had to adopt the social provisions that it had had no hand in shaping. As a Member State, UK governments had the power to block European integration in social policy by exercising their veto powers. While they sometimes engaged actively in social policy development, at other times, even when they could not veto (or assemble a blocking minority in areas where QMV applied, they could and, under Conservative governments, did) opt out of social policy measures.

This mixed record explains why opinion remains divided in the UK and across Europe regarding the UK's contribution in fostering or blocking European integration and the possible impact of the UK's withdrawal on the future of European social union.

When the UK, with Denmark and Ireland, joined the European Communities in 1973, a legal framework for social policy was already in place.³⁶ As a condition of membership, the new Member States were required to transpose into national law the Treaty's social provisions that they had had no hand in deciding. From the outset, social policy proved to be a contentious area for the founding Member States, but it was necessary to support the functioning of the Common Market in its aim of furthering European economic integration. Under the continental welfare state model followed by most of the founding members, social rights were based on corporatist employment-related social insurance contributions. For a community seeking economic integration, social policy essentially meant

³⁶ 1957 Treaty of Rome, Title III – Social Policy, Chapter 1 – Social provisions, articles 117–122; Chapter 2 – The European Social Fund, articles 123–128; Title III – The Free Movement of Persons, Services and Capital, Chapter 1 – Workers, articles 48–58.

employment policy.³⁷ By contrast, the social welfare systems of Denmark, Ireland and the UK depended on the redistribution of market income via taxation and the provision of universal benefits and services rather than on employment-related rights. Since, the EEC founding Treaty affirmed the importance of preserving national competence and respecting national sovereignty in the social domain, its provisions did not conflict with the UK's approach to social policy.³⁸ As more countries joined the Community, each with their own variant of social policy, the original aim of harmonising social protection systems became increasingly unrealistic, and was consistently rejected by UK governments. By leaving Member States to define their own approaches to social policy, the Treaty provisions resulted in rivalry between EU and national institutions in assigning competence over social as distinct from Single Market goals, making social and employment policy one of the most controversial areas of European social policy for the UK.³⁹

3.1. How the UK has pushed forward integration in social policy

When the UK joined the EC, the then British and French governments were at one over the need to avoid treaty change and to preserve unanimity in the social area, thereby impeding the active pursuit of European integration through social legislation.⁴⁰ European-wide interest in the social dimension as a component of integration ebbed and flowed from the late 1970s, with the UK resolutely favouring widening of membership and light-touch social measures rather than deepening of European integration through 'social union', as advocated mainly by the French.⁴¹

In the first decade of the EEC, the approach to social policy remained cautious and low key. Although by no means insignificant for future developments, the only binding legislation that had been decided by 1973 in the social area concerned the application of social security schemes for mobile employed and self-employed persons and members of their families,⁴² in support of the freedom of movement of workers within the Community.⁴³ UK membership in 1973 coincided with the realisation that a more wide-ranging social policy was needed in a context where the process of European integration was under severe strain due to the impact of high unemployment and inflation across Member States.

From the time when it joined the EEC, UK nationals posted in Brussels played an influential role in shaping EU social policy. As Director-General for Social Affairs at the European Commission between 1973 and 1976, Michael Shanks recognised that it was essential for the EEC to develop a social dimension that would respond to the needs of the man and woman in the street.⁴⁴ Under his watch, the Commission brought forward a wide-ranging action plan setting out objectives for national social policies and providing a clear statement of the Council's conception of the measured role the Commission should play in developing social policy,⁴⁵ prefiguring the principle of subsidiarity, which was subsequently firmly embedded in EU treaties,⁴⁶ and corresponded closely to the UK government's approach to social affairs.

³⁷ Accordingly, social policy was broadly couched in terms of employment protection and collective agreements (see article 118), and the European Social Fund (see articles 123–128) was designed to support re-employment and geographical mobility.

³⁸ Both article 121 in the chapter on social policy and article 51 in the section of the Treaty concerning freedom of movement of workers referred to the need for social protection measures proposed by the Commission to be adopted by a unanimous vote.

³⁹ HM Government, *Review of the balance of competences between the United Kingdom and the European Union: social and employment policy*, 2014, London: HM Government, p. 5.

⁴⁰ Wall, S., *The Official History of Britain and the European Community*, Vol. II: *From Rejection to Referendum, 1963–1975*, 2014, London & New York: Routledge, p. 406.

⁴¹ Rinaldi, D., *A New Start for Social Europe*, Studies & Reports, 108, February, Paris/Berlin: Jacques Delors Institute, 2016, p. 77.

<http://www.institutdelors.eu/media/newstartsocialeurope-rinaldi-jdi-feb16.pdf?pdf=ok>

⁴² Regulations 3/58, 4/58, 1408/71, 574/72, OJ 561/58 16.12.1958.

⁴³ Regulation 1612/68, OJ L 257/2 19.10.1968; Directive 68/360/EEC, OJ L 257/13 19.10.1968.

⁴⁴ Shanks, M., *European social policy: today and tomorrow*, Oxford: Pergamon Press, 1977, p. viii.

⁴⁵ Council Resolution of 21 January 1974 concerning a social action programme, OJ C 13/1 12.02.1974, at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31974Y0212\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31974Y0212(01)), p. 2 stipulated that the Commission should act 'by means of Community measures or the definition by the Community of objectives for national social policies, without however seeking a standard solution to all social problems or attempting to transfer to Community level any responsibilities which are assumed more effectively at other levels.'

⁴⁶ Treaty of Lisbon, OJ 2007 C 306/01 17.12.2007, article 5 §3 Common Provisions.

Meanwhile, another UK national employed by the European Commission was driving significant action in an area of social policy that was not confined to the employment of mobile workers. During his twenty-five years at the Commission, in different directorates,⁴⁷ Hywel Ceri Jones succeeded in ensuring that education and training became an essential component in European social action.⁴⁸ Working with other prominent UK appointees, including Roy Jenkins, the only President of the Commission from the UK, and Ivor Richard, as Commissioner for Employment, Social Affairs, Education and Training, Jones also sought a substantial increase in the Social Fund budget, from which some of the UK's most deprived regions were to benefit in later years.

By 1981, pressure was mounting, particularly from the French, for a more substantial social policy on the same basis as economic, monetary and industrial policy to strengthen social cohesion. As Member States recovered from a period of economic recession, proposals for European social policy focused on employment, the social protection of workers and the dialogue between management and labour. In 1982, a Memorandum from the European Commission⁴⁹ prepared the ground for consultation with the social partners over greater flexibility in the use of manpower and the issuing of directives on part-time and temporary work, a shorter working life and flexible retirement. In an attempt to convince an audience of representatives of European industrial workers, Ivor Richard⁵⁰ offered a carefully argued case for the reduction and reorganisation of working time as an instrument of employment policy. The measures proposed were, however, subsequently left on the table due to opposition from the UK government.

After enlargement of the Community to the South (Greece in 1981, and Portugal and Spain in 1986) where welfare systems were less developed, Recommendation 92/442/EEC on the convergence of social protection objectives and policies, signed by Normal Lamont, then UK Chancellor of the Exchequer, clarified the formal position on social policy and defined the limits to European-level social policy competence, reflecting the UK's standpoint.⁵¹

Despite a staunchly pro-market government holding office in the UK, in taking forward its social action programme in the 1980s and in later years, the Commission relied heavily on independent British social policy experts to coordinate the monitoring of many of the European networks and observatories, notably in the areas of family policies, gender studies, parental leave, poverty and social ex/inclusion, ageing and older people. Independent British social scientists were also closely involved in reporting and advising the Commission on employment, demographic issues and social affairs, and the extension of the Open Method of Coordination in the social domain. They took the lead in promoting events such as good practice seminars, carrying out policy evaluations, and conducting policy-relevant research projects for policy and research directorates-general.

Many instances can be quoted of UK policies being 'uploaded' to EU level. For example, the UK is said to have pioneered race equality legislation, as British approaches were actively taken up by EC policymakers in the 1990s, and protection against discrimination was extended to non-employment

⁴⁷ Consecutively, for education and youth policies, research, science and education, and employment and social affairs.

⁴⁸ Corbett, A., *Universities and the Europe of Knowledge: ideas, institutions and policy entrepreneurship in EU higher education policy 1915–2005*, Basingstoke: Palgrave, 2005.

⁴⁹ Commission of the European Communities to the Council, 'Memorandum on the Reduction and Reorganisation of Working Time,' COM(82) 809 final of 10.12.1982, at: <http://aei.pitt.edu/6296/1/6296.pdf>

⁵⁰ Richard, I., 'Reduction and reorganisation of working time', Speech to the Executive Committee of the European Metalworkers' Federation, Brussels 17 March 1983, Archive of European Integration, at: <http://aei.pitt.edu/12186/>

⁵¹ Recommendation 92/442/EEC on the convergence of social protection objectives and policies, OJ L 245/49 26.08.1992, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31992H0442>, recognised 'that differences in social security cover might act as a serious brake on the free movement of workers and exacerbate regional imbalances, particularly between the north and the south of the Community... [affirming that] because of the diversity of the schemes and their roots in national cultures, it is for Member States to determine how their social protection schemes should be framed and the arrangements for financing and organizing them'.

areas.⁵² During their premierships, Tony Blair and Gordon Brown used the EU to legitimise their own social and employment policies by 'uploading' Labour's flexibility agenda and welfare-to-work programme to EU level. They considered the UK to be ahead of Europe and as an initiator of the Lisbon Strategy for Growth and Jobs.⁵³

3.2. How the UK has blocked integration in social policy

UK politicians have gained a reputation for delaying Council decisions, opposing the harmonisation of social protection systems and delaying social policy developments, despite evidence that the UK has not been the Member State most frequently referred to the Court of Justice of the European Union (CJEU) for infringing social policy rules or the most often in the minority for Council votes on employment and social affairs.⁵⁴ This reputation may be due in part to the UK's heavy scrutiny of policies at the proposal stage⁵⁵ and to the UK's public refusal to relinquish sovereignty in the social domain.⁵⁶

Over the years, commissioners, their staff and committee members from the UK often found themselves in conflict with their government when formulating proposals for actions and legislation in the social field, notably during the Thatcher era.⁵⁷ The most frequently cited instances of the UK exercising its delaying or blocking powers in the social field arose when the Thatcher appointee, Lord Cockfield was Senior UK Commissioner and Vice-President of the Commission from 1985–1988. Jacques Delors, President of the Commission, entrusted Cockfield with revising the Treaty of Rome in 1985. The aim was to add new momentum to European integration and complete the internal market, using the extension of QMV to social policy and social cohesion, which the UK government saw as a major threat to national competence.⁵⁸ The UK government's refusal, under John Major, to sign the Agreement on Social Policy resulted in it being relegated to a Protocol in the Maastricht Treaty.

The UK's opposition did not, however, prevent the Commission from taking forward social policy measures. Already in 1985, the UK, together with Denmark and Ireland had decided not to join the Schengen Agreement, but this opt-out did not stop the other Member States from removing internal border controls as obstacles to freedom of movement. The social partners – Delors had convinced the UK's Trade Union Congress to adopt a more European outlook in 1988 – took advantage of the absence of the UK government from the negotiating table between 1992 and 1997, and of their own new-found Treaty powers to bring forward framework agreements on health and social measures, which did not require unanimous voting. When the Blair Government opted back into the Social Chapter of the

⁵² Meer, N., 'What will happen to race equality policy on the Brexit Archipelago? Multi-level governance, "sunk costs" and the 'mischief faction', *Journal of Social Policy*, 46:4, 2017, pp. 657–674.

⁵³ Pond, R., 'Implementation and impact of the Lisbon Strategy 2000–2010 on employment and social policies in the United Kingdom', in European Parliament, *The Lisbon Strategy 2000–2010: an analysis and evaluation of the methods used and results achieved*, Final Report (pp. 255–63), 2010, IP/A/EMPL/ST/ 2008-07, Directorate General for Internal Policies, at: <http://www.europarl.europa.eu/document/activities/cont/201107/20110718ATT24270/20110718ATT24270EN.pdf>

⁵⁴ Hix, S., Hagemann, S. and Frantescu, D., *Would Brexit Matter? The UK's voting record in the Council and European Parliament*, VoteWatch Europe, 2016, at: <http://60811b39eee4e42e277a-72b421883bb5b133f34e068afdd7cb11.r29.cf3.rackcdn.com/2016/04/VoteWatch-Report-2016-digital.pdf>

⁵⁵ According to Armstrong, K. and Bulmer, S., 'United Kingdom', in Rometsch, D. and Wessel, W. (eds), *The European Union and Member States: towards institutional fusion?*, 1996 (pp. 253–290), Manchester/New York: Manchester University Press, p. 276, the UK is generally considered to be one of the four larger Member States – with France, Germany and Italy – most likely to comply with EU social regulations and directives once determined, on grounds that 'laws are made to be put into practice'. Fooks, G. and Mills, T., 'The tolerable cost of European Union regulation: leaving the EU and the Market for politically convenient facts', *Journal of Social Policy*, 2017, 46(4) 719–743, doi: 10.1017/S0047279417000526, p. 378, argue that in some areas, the UK went beyond the minimum requirements of EU directives, resulting in over-implementation.

⁵⁶ Prime Ministers Thatcher and Blair were, for example, united in their public pronouncements rejecting the notion of Europe as a 'superstate'. See Thatcher, M., 'The Bruges Speech to the College of Europe', 20 September 1988, at: <http://www.margaretthatcher.org/document/107332>; Blair, T., 'Labour Party 1997 Election Manifesto', 1997, at: <http://www.politicsresources.net/area/uk/man/lab97.htm>

⁵⁷ Jones was, for example, suspected of adopting a 'semi-clandestine' or 'devious approach', which brought the Commission into conflict with both the Danish and British governments (Corbett, 2005, op.cit).

⁵⁸ Cockfield designed and delivered the 1986 Single European Act opening the way for the 1992 Maastricht Treaty on European Union. See Cockfield, A. *The European Union: creating the Single Market*, London: John Wiley & Sons, 1994.

Maastricht Treaty the Agreement was incorporated into the 1997 Consolidated EU Treaty, thereby legally endorsing the commitment of all Member States, including the UK, to develop the social dimension as an important component in the process of European integration. Member states were, however, to retain the right to choose how to implement directives and other legislation at local level, for instance by determining levels of pay and benefits, and they could still opt out of measures in the social field with which they disagreed.

In preparation for enlargement to the East in 2004, the Commission drafted a Charter of Fundamental Rights⁵⁹ to be incorporated into the Constitutional Treaty. The Charter extended the boundaries of EU social policy beyond the workplace to the reconciliation of family and professional life, the protection and care of children and older people, social and housing assistance, preventive health care, and religious belief and practice, with the aim of consolidating the Union's commitment to the values of human dignity, freedom, equality and solidarity, while continuing to respect the diversity of national cultures and traditions. The UK opposed proposals to give the new Charter legal force on grounds that it might create additional economic and social rights in EU law. When the Charter was inserted in the 2007 Lisbon Treaty, with Poland the UK secured a 'clarifying' protocol, preventing their domestic courts from being bound by rulings of the CJEU.⁶⁰

3.3. The effect of the UK's withdrawal on integration in social policy

Opinions differ on the likely impact of the UK's withdrawal for European social policy. For EU institutions, the departure of the UK was seen as removing one of the more powerful and obdurate Member States, with its formidable negotiating and blocking powers. However, public contestation of European authority had become more widespread in the wake of the financial crises, resulting in open expressions of Euroscepticism and disaffection with the European project among some political parties and electorates across the EU.

Evidence gathered since the UK triggered article 50 suggests that the UK's withdrawal is unlikely to provoke a fundamental change of direction or the revival of a strong commitment to Delors's far-reaching vision of a regulatory harmonised European social union. Rather the UK's vote to leave may have provided the impetus needed to reactivate and consolidate the 1990s' European social model based on a set of shared values and goals, and on the conviction that economic and social progress must go hand in hand and be driven by close practical cooperation in response to common societal challenges.⁶¹ In March 2017, Jean-Claude Juncker, the President of the European Commission, signalled his intention to improve the lives of its citizens by advocating a more pro-active approach to future EU social policy.⁶² Recognising that not all Member States would want, or be in a position, to pursue his objectives at the same pace, he sought to engineer a compromise between champions of the social dimension and its critics by proposing a two-speed social Europe with the Eurozone countries in the core group.

Reactions to Juncker's proposal revealed the fault lines within and between the Member States regarding both the lack of consensus about the relationship between the economic and social dimensions, and the priority areas for action at EU level.⁶³ The extension of EU-level competence for

⁵⁹ Charter of Fundamental Rights of the European Union, OJ C 364/1 18.12.2000, at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁶⁰ Protocol on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom, Lisbon Treaty, 2007, OJ C 306, at: <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/protocols-annexed-to-the-treaties/676-protocol-on-the-application-of-the-charter-of-fundamental-rights-of.html>

⁶¹ As presented in the White Paper, *European social policy: A way forward for the Union*, COM(94) 333 final, 27.07.1994, at: <https://publications.europa.eu/en/publication-detail/-/publication/16dfe2c0-7fc9-4079-9481-e5de54a3805a/language-en>

⁶² European Commission, *The Rome from Rome: a social Europe*, Brussels, 25 March, 2017.

⁶³ European Commission, *White Paper on the Future of Europe: reflections and scenarios for the EU27 by 2025*, 2017, COM(2017)2025 of 1 March 2017, Brussels: European Commission. doi: 10.2775/32364; Cooper, H., 'Juncker seeks to cement social pillar in Rome: diplomats tussle over summit declaration', *Politico*, 23 March, 2017, at: <http://www.politico.eu/article/jean-claude-juncker-social-pillar-eu-identity-commission-welfare-policy/>

social affairs and the notion of a two-speed social Europe met with widespread disapproval, whereas the need to respect cultural differences and national specificities in the social domain, maintain compliance with the principle of subsidiarity and ensure greater involvement of civil society and the social partners was generally supported. These responses cast doubt on the likelihood of the UK's withdrawal substantially altering the nature of the contribution of social policy to European integration in the short or longer term, although they are unlikely to prevent the European Commission from seeking to legitimise further intervention in social affairs and to raise the public profile of its far-reaching social agenda.

4. FREEDOM, SECURITY AND JUSTICE

KEY FINDINGS

- The UK was a major supporter of the principle of mutual recognition and of the development of practical cooperation in this field. Otherwise it has played a limited role due to its opt-outs.
- Integration in this field has happened in spite of the UK's partial interest in participation, first of all outside and then inside the EU legal framework.
- The UK has not held up integration in this field due to its opt-outs. It is possible that the absence of the UK will tip the remaining EU toward more harmonisation rather than mutual recognition but this could have happened in any event due to the UK's opt-outs. The UK might now affect the external relations aspects of the field.

The EU has developed a policy on 'freedom, security and justice' (Justice and Home Affairs, JHA) since the Maastricht Treaty. This has included gradual steps towards applying the usual rules on EU decision-making and the full jurisdiction of the CJEU to this area, in conjunction with opt-outs for the UK, Ireland and Denmark. Substantively, the EU has incorporated the Schengen system, created a number of agencies (such as Frontex and Europol) and adopted laws on a Common European Asylum System, legal and irregular migration of non-EU citizens, cross-border cooperation in civil litigation, the exchange of police information, and mutual recognition and fair trial rights in criminal matters.

4.1. How the UK has pushed forward integration in freedom, security and justice

The UK had a key role in pushing for the principle of mutual recognition to apply to civil and criminal law, during the UK Council Presidency in 1998. This became enshrined in the "Tampere conclusions" on the future development of Justice and Home Affairs adopted in 1999,⁶⁴ and was the basis of the legislation adopted starting in 2001, on mutual recognition of freezing orders, European Arrest Warrants (EAWs), financial penalties, confiscation orders, transfer of sentenced persons, probation and parole, pre-trial orders, the European Protection Order and the European Investigation Order. This included a UK role as co-drafter of the Framework Decision on freezing orders, the first measure in this field.⁶⁵

In practice these measures have accounted for the bulk of CJEU case law in the field of policing and criminal law, and the principle of mutual trust/mutual recognition appears elsewhere too. For instance, in the area of asylum, the Dublin asylum system (which allocates responsibility for an asylum seeker to a single Member State), operates on the assumption that each Member State can be trusted to apply the United Nations (UN) Refugee Convention, the European Court of Human Rights (ECHR) and EU substantive asylum law. In the area of criminal law, the judicial interpretation of the Schengen double jeopardy rules (which only allow one final judgment for alleged criminal acts within the EU) leaves national criminal law and procedure unharmonised. Case law has been developing limited restrictions on the principle in the last few years, as regards human rights protection. For example, the Dublin rules on asylum seeker responsibility do not apply if there is a significant breakdown of the asylum system or particular human rights risks for individuals in the State which would be responsible, and EAWs do not have to be executed if there are uncertainties concerning adequate detention facilities in the issuing State or if the conditions of issuing the warrant do not meet specific rule of law standards. The

⁶⁴ European Council, 'Presidency Conclusions of the Tampere European Council', 15-16 October 1999, at:

http://www.europarl.europa.eu/summits/tam_en.htm

⁶⁵ Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, OJ L 196, 2.8.2003, at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:196:0045:0055:en:PDF>

CJEU will soon be ruling again on detention conditions and more general rule of law issues as regards the EAW.⁶⁶

The UK has also argued for practical cooperation as regards the development of Europol and Eurojust (where its nationals have held key management roles) and the exchange of information, with the UK making frequent use of the Schengen Information System (for law enforcement) and the European Criminal Records Information System in particular.

On the other hand, inevitably the UK has played a more limited role where it has opted out of JHA measures. This has in particular been the case as regards the Schengen visa and borders rules, but also as regards the law on legal migration of non-EU citizens, where the UK has opted out of every harmonisation measure. The UK opted in to some of the initial measures on irregular migration but has opted out of the main measure in this field – the Returns Directive – along with the Directive on penalising employers of irregular migrants. It opted in to all of the first phase measures on asylum law, but out of almost all the second and third phase proposals which came along later.

The UK has also played a limited role in the harmonisation of national criminal law in recent years, as it opted out of new measures in the field (as regards terrorism, fraud and money laundering) and furthermore used the opportunity in 2014 to opt out of pre-Lisbon harmonising measures in this field which it had signed up to initially. It has also played a limited role in fair trial standards, opting in to only two of the six laws in this field (on interpretation and information for criminal suspects; it opted out of the laws on access to a lawyer, child suspects' rights, legal aid and the presumption of innocence, with a view to limiting the effect of EU law on criminal procedure in the UK).

4.2. How the UK has blocked integration freedom, security and justice

The UK has always been opposed to the idea of abolishing internal border controls on persons, but this did not prevent other Member States from going ahead with this principle intergovernmentally outside the EU framework, in the form of the Schengen system which began in 1995. Subsequently, the UK agreed to integrate the Schengen system into the framework of the EU legal order, from the entry into force of the Treaty of Amsterdam in 1999. This was on the condition that the UK still retained an opt-out from participation in the Schengen system, but retained the possibility of requesting to opt in in part, subject to approval of the Schengen States. In practice it has opted in to the criminal law and policing aspects of the Schengen system.

As regards non-Schengen issues, the UK has been willing to move the legal framework from the original intergovernmental 'third pillar' created by the Maastricht Treaty to the usual 'Community method' of QMV in the Council and the full role of the European Parliament, Commission and CJEU. However, this was again with the *quid pro quo* that the UK had an opt-out, originally when immigration, asylum and civil law became part of the 'first pillar' (with the Treaty of Amsterdam) and then when criminal law and policing did (with the Treaty of Lisbon). It retained the power to opt in on an individual basis, which it has done as described above.

The UK also insisted upon an opt-out from the jurisdiction of the Court of Justice in this field, but accepted other Member States going ahead with it, initially in the form of third pillar "Conventions" between 1995 and 2003, and then in the form of the revised "third pillar" rules in the Treaty of Amsterdam. It insisted that the opt-out from the Court's jurisdiction extend, as far as criminal law and policing was concerned, until December 2014, and that at that time it would be able to opt out of all pre-Lisbon policing and criminal law measures if it wished to. In the event, it opted out of a number of such measures, but opted back in to a core of 35 acts.⁶⁷

⁶⁶ Cases C-218/18 PPU and C-220/18 PPU, pending.

⁶⁷ European Commission, 'A new era for EU Justice and Home Affairs policies', Commission press release, 1 December 2014, at: http://europa.eu/rapid/press-release_IP-14-2266_en.htm

In practice, no UK court has yet asked the CJEU about the interpretation of EU policing or criminal law measures, but the UK's willingness to let *other* Member States go ahead and use the Court has resulted in dozens of judgments which have facilitated integration by ensuring a more uniform interpretation of the legal rules.

As described above, the UK has not held up integration in this field significantly because the most important initial measures (Schengen) were first developed intergovernmentally, and then integrated into the EU legal order in return for a UK opt-out (and then a partial opt-in). Subsequently the development of civil, asylum and immigration law was not hindered by the UK, given that it had a choice to opt in or out, but not a veto. Equally the UK was willing to participate in EU criminal law and policing measures before the Treaty of Lisbon, since such measures followed the template established in the Tampere conclusions, as supported by the UK: priority was given to mutual recognition and practical cooperation.

On the ground, the UK frequently executes European Arrest Warrants, has participated in the management of EU agencies, and uses and supplies information to Europol, ECRIS and the Schengen Information System in particular. Therefore, in practice, it can be considered to be a significant contributor to EU integration in this field, where it has opted in to the main measures concerned.

4.3. The effect of the UK's withdrawal on integration in freedom, security and justice

The UK's opt-outs from the later EU laws on irregular migration and on asylum corresponded with a move towards further harmonisation of the law in this field by the remaining Member States. Harmonisation in the Schengen context has always taken place in the absence of a UK role (except as regards the policing and criminal law aspects). With a reduced UK involvement in EU criminal law since the entry into force of the Treaty of Lisbon, a gradual shift towards harmonisation, rather than mutual recognition, is visible, in the form of the fair trials legislation and newer laws on substantive criminal law.

It might therefore be expected that the full departure of the UK from this field will result in additional moves towards harmonisation rather than mutual recognition, although this development was already visible as a consequence of the UK's gradual reduction in participation in EU measures in this field over the years.

Could the UK's withdrawal have an impact on the EU's external relations in this area? At present, there is limited EU cooperation with non-EU countries. Schengen associates Norway and Iceland have signed further treaties on extradition, mutual assistance and access to databases, while the USA has signed treaties on mutual assistance and extradition and Japan has signed a mutual assistance treaty.⁶⁸ Several non-EU countries have signed treaties on the exchange of passenger name data.

The UK government has signalled its wish to stay closely aligned to the EU in this field, on the grounds that the UK-EU relationship is particularly close and unique, and that cooperation would assist securing the safety of citizens.⁶⁹ The indication is that EU institutions are less keen, looking instead to the limited precedents for past cooperation with non-EU countries.

⁶⁸ For instance, the EU/Norway and Iceland treaty on Schengen association (OJ 1999 L 176/36), at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A21999A0710%2802%29>

⁶⁹ See Department for Exiting the European Union, 'Security, law enforcement and criminal justice - a future partnership paper', London, September 2017, at: <https://www.gov.uk/government/publications/security-law-enforcement-and-criminal-justice-a-future-partnership-paper>

The question for the EU going forward is whether it is willing to rethink its traditional approach either to suit the particular context of the EU-UK relationship, or more broadly to cooperate more intensely with other non-EU countries in this field as well, in which case the relationship with the UK would simply be one example of a number of close external relationships in this field. The history of the EU's external relations practice shows a willingness to develop new forms of cooperation with non-EU countries as new challenges and issues arise; and in that context, the future relationship with the UK in this field could be seen not as an event triggering reliance on precedent without considering the broader picture, but rather an occasion to rethink the EU's existing practice to adapt to changing circumstances and to protect against any increase in security threats that might result from the UK's withdrawal.

5. EUROZONE

KEY FINDINGS

- There never was a consensus in the UK in favour of the single currency. From the beginning, London opted out of ever having to become a member of the Eurozone. It did not manage to block integration despite its misgivings in this field. Instead it played something of an ambivalent role at first, though it quickly came to see the euro's success as in the interest of the EU's single market and therefore the UK economy.
- The UK's supportive role declined after 2010, when a Conservative Prime Minister came to office, after which the UK took an increasingly assertive stance in defending its narrow financial interests and did everything to avoid having to contribute to Eurozone bailouts.
- The UK's withdrawal will have little immediate effect on the Eurozone and integration within it. While the UK will no longer be able to block any pan-EU efforts to assist the Eurozone, the main challenges to integration moving forward in this area remain with the members of the Eurozone and come down to fundamental policy preferences between North (which favours national 'risk reduction' first) and South (which prioritises further European-wide 'risk sharing').

Though the UK under Margaret Thatcher was one of the most important EU Member States to enthusiastically push for the signing of the Single European Act of 1987, which aimed to complete Europe's common market in goods, services, capital and labour, it did not sign onto the idea of 'one market, one money,' even though the UK had experimented with membership of the European Exchange Rate Mechanism (ERM) in the late 1980s and early 1990s in order to maintain price stability.⁷⁰

The UK was not a founding member of Economic and Monetary Union (EMU). Indeed, in December 1991 at Maastricht, and under the premiership of John Major, the UK successfully negotiated a formal opt-out from the single currency. This stance continued in successive administrations. After Tony Blair was elected in May 1997, UK policy towards future euro membership was delegated to the Chancellor of the Exchequer, Gordon Brown. Unlike Blair, who once called himself *un homme d'Europe* and wanted to see the UK at the heart of Europe, Brown was much more of a Eurosceptic. Brown devised five tests of economic credibility that the UK would have to pass in order to join,⁷¹ but they were devised such that the UK would never successfully pass them.

While the UK had a formal opt-out from the single currency, it did not raise any huge obstacles to setting it up. Though the UK government did not sign up to a future common monetary policy conducted by the European Central Bank (ECB), they could not avoid being affected by the creation of the euro in the realm of fiscal policy, as they were signatories of the 1997 Stability and Growth Pact, which stipulates the euro's main governing principles.⁷²

The UK's relationship with the single currency would grow more complex after the 2010 euro crisis, however. Since then, the UK has refused to be liable for any Eurozone bailouts and declined to sign onto the Fiscal Compact or the European Stability Mechanism (ESM). In effect, the UK became the unofficial spokesperson for the 'euro-outs' (including Sweden, Denmark, but also Central European Member States like the Czech Republic, Poland, and Hungary), highlighting the growing tensions

⁷⁰ European Commission, *European Economy: One Market, One Money*, Brussels: Directorate General for Economic and Financial Affairs, October 1990, at: http://ec.europa.eu/economy_finance/publications/pages/publication7454_en.pdf. The UK would withdraw from the ERM in September 1992, when it became clear that its business cycle diverged from Germany's. After reunification, the Bundesbank raised interest rates and financial markets did not believe the UK would follow suit in the face of a severe domestic recession.

⁷¹ Glover, J., 'The Five Tests,' *The Guardian*, 29 September 2000, at: <https://www.theguardian.com/business/2000/sep/29/emu.theeuro4>

⁷² Dyson, K., *European States and the Euro: Europeanization, Variation, and Convergence*, Oxford: Oxford University Press, 2002, p. 98

between the single market and the single currency.⁷³ That said, the current problems of Eurozone governance reform are internal to the Eurozone and were not created by British stubbornness. The immediate impact of the UK's withdrawal from the EU on Eurozone reform is therefore marginal at best, but over the medium term, the loss of the UK may make it harder for the euro-outs to have their voices heard and their concerns listened to. In that sense, EU members that are not currently members of the Eurozone, may at some point feel pressured to adopt the single currency or leave the EU altogether.

5.1. How the UK has pushed forward integration in the Eurozone

Though the UK formally opted out of the single currency in 1992, it has in general played a somewhat supportive role in pushing monetary integration forward. However, it has done so mostly by 'benign neglect': the UK did not stand in the way of the necessary decisions that needed to be made in the 1990s to make the euro a reality starting on 1 January 1999. For example, the UK was a signatory to the Stability and Growth Pact in 1997, which committed the country to deficits lower than 3 per cent of GDP and debt-to-GDP ratios of less than 60 per cent. Furthermore, London would serve as one of the major financial centres for euro financial transactions.⁷⁴ With the UK an integral part of the single market, both capital flows and financial services were fully liberalised across the broader European Union. As a result, the UK has not blocked any major effort at Eurozone reform, as it generally considered Eurozone success to be in its direct economic interest.

After the launch of the euro in 1999, the UK's policy of benign neglect towards the Eurozone continued. Just like the ECB, the Bank of England had been made independent in 1997. The UK introduced an official inflation target of 2 per cent, even though it devised its monetary policy as a band around that target (i.e. between 1.5 and 2.5 per cent) rather than the ECB's definition of price stability as 'close to but lower than 2 per cent.' During the early 2000s, with Gordon Brown as Chancellor of the Exchequer, the UK encouraged the Eurozone countries to follow the UK's lead in enacting structural reforms, including labour market liberalisation and measures to enhance competitiveness.⁷⁵

The beginning of the euro crisis and first Greek bailout in May 2010 coincided with a change of government in the UK from Gordon Brown's Labour Party to a *coalition* government between David Cameron's Conservative Party and Nick Clegg's Liberal Democrats. Newly installed Tory Chancellor George Osborne, who embarked on a policy of fiscal austerity in the UK, was very supportive of the Eurozone efforts to bring public debt under control through policies of tax hikes and spending cuts. Both Cameron and Osborne encouraged their Eurozone counterparts to build the necessary institutions to make the euro a success, and to take a so-called 'big bazooka' approach, including recapitalisation of Eurozone banks, more money for bailout funds, as well as the deepening of the single market and continued improvement of Eurozone governance.⁷⁶

The EU established the European Banking Authority (EBA) in 2011, with its headquarters in London. The EBA was created as a direct result of the global financial crisis and a key part of the European System of Financial Supervision (ESFS). The EBA is a regulatory agency of the EU that works to ensure effective and consistent prudential regulation and supervision across the European banking sector. Its activities include conducting stress tests on major European banks to increase transparency in the European financial system and identifying weaknesses in bank's capital structures.⁷⁷ The decision to locate the EBA in London (rather than Frankfurt) at the time reflected the importance of the UK financial sector in the single market in general and in euro clearing in particular. Even outside the Eurozone, the UK was

⁷³ Sapir, A. and Wolff, G. B., 'One market, two monies: The European Union and the United Kingdom,' Brugel policy brief, January 2016, at: http://bruegel.org/wp-content/uploads/2016/01/pb-2016_01.pdf

⁷⁴ 'London as a Financial Centre: Capital City,' *The Economist*, 19 October 2006, at: <https://www.economist.com/news/finance-and-economics/8058157-twenty-years-ago-london-embarked-remarkable-transformation-become-global>

⁷⁵ Keegan, W., *The Prudence of Mr Gordon Brown*, London: Wiley, 2004, chapter 12.

⁷⁶ Stacey, K., 'David Cameron's "big bazooka" plan,' *Financial Times*, 11 October 2011, at: <https://www.ft.com/content/d0cd3b23-c235-368e-81b8-38c5c278fe5e>

⁷⁷ See European Banking Authority website, <http://www.eba.europa.eu/about-us>

playing a key part as the de facto banker of much of the Eurozone. After the UK's withdrawal becomes a reality, the EBA headquarters will move permanently from London to Paris.

5.2. How the UK has blocked integration in the Eurozone

The UK has only really blocked initiatives for further Eurozone integration and reform when it saw them as directly going against its interests within the single market, the financial prowess of the City of London, or in a narrower defence of more traditional issues of national sovereignty.

The UK, as a full member of the EU, was technically a part of the newly founded European Financial Stabilisation Mechanism (EFSM), a 60 billion euro bailout fund backed by guarantees from the EU's budget set up in May 2010 to help finance the first Greek bailout. As a member of the International Monetary Fund (IMF), the UK was also responsible for a small percentage of that part of the Eurozone bailouts. However, this is where the UK's financial solidarity with the Eurozone ended, as it did not join the European Financial Stability Facility (EFSF), or its successor, the European Stability Mechanism (ESM).

In effect, the UK has not made any direct financial contributions to the multiple Eurozone bailouts for Greece, Portugal, Spain, or Cyprus. The exception is Ireland, where it considered its vital economic and national interests to be at stake, and the UK provided a direct bilateral loan to Ireland of 3.84 billion euros. Osborne announced that the *quid pro quo* for UK support was that the UK would not join the ESM.⁷⁸ Indeed, Cameron's Conservatives would boast about their lack of Eurozone solidarity in their 2015 general election manifesto: 'We took Britain out of eurozone bailouts, including for Greece – the first ever return of power from Brussels.'⁷⁹

When the third Greek bailout in the summer of 2015 was being constructed so as to use funds from the EFSM (guaranteed by the Commission), Cameron insisted on a revision of the EFSM that would shield non-euro area countries from financial risk, receiving legally binding provisions to guarantee that non-euro area members would be 'immediately and fully compensated for any liability they may incur as a result of a failure by the beneficiary to repay the financial assistance in accordance with its terms.'⁸⁰ In a lecture to Hertford College at Oxford in November 2017, Sir Ivan Rogers would pinpoint this episode as one of the main sources of European mistrust of Cameron and his transactional approach in dealing with the EU.⁸¹

In December 2011, Cameron blocked a key EU Treaty, the 'Fiscal Compact,' to save the Eurozone, with a veto during a fractious EU council summit. Failing to get guarantees from the rest of the EU that the UK's financial services sector would be exempt from certain EU financial regulations going forward, Cameron refused to sign onto the Fiscal Compact.⁸² He thereby also forfeited a seat at the table where future Eurozone governance issues would be decided, as 25 of 27 EU Member States at the time went ahead to create an intergovernmental treaty the next spring, bypassing the UK.⁸³

⁷⁸ 'Irish Republic 85bn euro bailout agreed,' *BBC News*, 28 November 2010, at: <https://www.bbc.com/news/world-europe-11855990>. This was done through an Act of Parliament, 'The Loans to Ireland Act 2010.'

⁷⁹ Conservative Party, *Strong Leadership, A Clear Economic Plan, A Brighter, More Secure Future, General Election Manifesto*, London: The Conservative Party, 2015, at: <https://www.conservatives.com/manifesto2015>

⁸⁰ European Council, 'EFSM revised to shield non-Euro area countries from risk,' Brussels: European Council, August 2015, at: <http://www.consilium.europa.eu/en/press/press-releases/2015/08/04/efsm-revised-shield-non-euro-area-countries-from-risk/>

⁸¹ Rogers, I., 'Ivan Rogers on Cameron's Brexit referendum,' politico, 24 November 2017, at: <https://www.politico.eu/article/ivan-rogers-david-cameron-speech-transcript-brexit-referendum/>. The key quote from Rogers' speech is as follows: '[Cameron] achieved a set of principles (and a mechanism to enforce them) which set out that those outside the Eurozone/Banking Union would not be discriminated against, would not participate in bailouts, would keep their own supervision and macro-prudential regulation, and would have specific provisions within the single rulebook for financial institutions for the single market, which opened the way to necessary differentiation between those in and outside the Banking Union on bank regulation.'

⁸² Traynor, I., Watt, N., Gow, D., and Wintour, P., 'David Cameron blocks EU treaty with veto, casting Britain drift in Europe.' *The Guardian*, 9 December 2011, at: <https://www.theguardian.com/world/2011/dec/09/david-cameron-blocks-eu-treaty>

⁸³ The Czech Republic also refused to sign the Fiscal Compact in December 2011, but a subsequent government approved it in 2014, and the Czech Parliament moved to ratify it in early 2018.

At the time of Cameron's veto, he argued that he had to protect the City of London by demanding that any transfer of power from national regulators to an EU regulator on financial services would be subject to a UK veto. He also wanted the UK to be free to place higher capital requirements on banks, asked for guarantees that the EBA would stay in London, and aimed to halt the ECB's attempts to force euro-denominated transactions to take place within the Eurozone. Furthermore, Cameron wanted non-EU financial institutions that operated in the City but not in the Eurozone, such as American banks, to be exempt from EU regulation. The UK would win a major victory in early 2015 in its efforts to protect the City: the ECJ ruled that the ECB had to scrap one of its policies requiring big clearing houses to move to the Eurozone, as it threatened the integrity of the single market in financial services.⁸⁴

5.3. The effect of the UK's withdrawal on integration in the Eurozone

In the short term, the UK's withdrawal may provide a political impetus for the rest of the EU to move forward in completing its banking union – especially the third leg of the stool, i.e. common deposit insurance. Also, Brexit could provide an impetus for other EU member countries to join the euro, including Denmark and Sweden, which have been thinking seriously about joining the banking union. Given that Eurozone reform is now at the top of the EU's agenda, and with the UK on the way out, it will prove harder for the euro-outs to see the benefits of EU membership while staying out of the single currency. It is clear that the Eurozone will gradually take over the EU itself in institutional importance, and the euro-outs could make the calculation that it is important to be a member at the time when major institutional matters of governance are decided upon.⁸⁵

With the Meseberg Declaration, we saw modest convergence between German and French proposals for Eurozone reform. Merkel and Macron were able to agree on a backstop for the Banking Union's single resolution fund in the form of an ESM credit line as well as the establishment of a Eurozone budget.⁸⁶ But the French line that calls for more solidarity and union-wide risk sharing and the German view that more national responsibility and individual Member State risk reduction is needed remain unchanged. It is also the case that the smaller Northern European countries, led by the Dutch, take a tougher line than Germany, while Southern Europe, especially Italy, do not think the French proposals go quite far enough. In effect, it is not clear that the UK's withdrawal will provide a huge impetus for further Eurozone integration, even as euro-outs are thinking about joining. Indeed, for many, the UK's withdrawal provides more of an annoying distraction from the bigger institutional challenges to the EU, such as putting the euro on a much more solid footing and coming up with an EU-wide immigration regime and refugee policy.

That is why, in the medium to long term, the UK's withdrawal will neither be positive nor negative for the Eurozone. The main fault lines over future governance are between the Northern and Southern Member States of the Eurozone.⁸⁷ The disagreements are between creditor and debtor nations over rules vs. discretion, risk reduction vs. risk sharing, structural reforms to enhance competitiveness vs. the need for demand stimulus to stimulate growth, and fiscal solidarity vs. national responsibility. The UK's withdrawal will do nothing to mitigate these differences, as it never was an important player or negotiating partner during the multiple efforts of Eurozone reform since the crisis of 2010.

While there may be some financial sector business activity that moves from London to Dublin, Paris, Amsterdam and Frankfurt (and the EBA will move to Paris), the long-term impact of the UK's withdrawal on the future of Eurozone governance will be marginal at best. While the UK has been a voice of

⁸⁴ Barker, A. and Stafford, P., 'Victory for UK over eurozone clearing houses,' *Financial Times*, 4 March 2015, at: <https://www.ft.com/content/425aeee0-c24f-11e4-bd9f-00144feab7de>

⁸⁵ Matthijs, M. and Blyth, M., *The Future of the Euro*, New York: Oxford University Press, 2015, p. 268.

⁸⁶ The Federal Chancellor, 'Meseberg Declaration: Renewing Europe's promises of security and prosperity,' Berlin: Press and Information Office of the Federal Government, 19 June 2018, at: <https://m.bundestkanzlerin.de/Content/EN/Pressemitteilungen/BPA/2018/2018-06-19-meseberg-declaration.html>

⁸⁷ Matthijs, M. and McNamara, K., 'The Euro Crisis' Theory Effect: Northern Saints, Southern Sinners, and the Demise of the Eurobond,' *Journal of European Integration*, 37:2, February 2015, pp. 229-245.

pragmatism in the past – especially during the years 2010–2012 when it encouraged authorities in Paris and Berlin to follow the Anglo-Saxon lead in fighting financial crises through generous bailout packages and monetary easing – it is not clear that the UK government ever had any direct impact on the Eurozone reform negotiations.

From a policy of benign neglect in the 1990s and early 2000s, the UK became more assertive in pursuing its national and financial interests since the outbreak of the euro crisis in 2010. They even frustrated the creation of the Fiscal Compact, which until today remains an inter-governmental treaty.⁸⁸ Once the UK leaves the EU, however, the Eurozone Member States will no longer be able to hide behind London's ambivalence to disguise their lack of progress towards a genuine economic and monetary union.

⁸⁸ European Commission, 'The Fiscal Compact – Taking Stock,' Brussels: European Commission, 22 February 2017, at: https://ec.europa.eu/info/publications/fiscal-compact-taking-stock_en

6. FOREIGN, SECURITY AND DEFENCE COOPERATION

KEY FINDINGS

- The UK has been a leading player but also a leading obstacle to integration on foreign, security and defence cooperation. As a leading international player, the UK has enhanced the EU's standing in the world but has repeatedly shown an unwillingness to push forward with integration.
- The UK has fought integration by preventing any diminution of the intergovernmental nature of this area, stopping proposals that might weaken links with NATO, and seeking bilateral cooperation to enhance capabilities rather than EU cooperation to develop European capabilities.
- The UK's vote to leave the EU has prompted much discussion and proposals for further cooperation and integration in this area. However, further integration will rest on the extent to which the remaining Member States can overcome a number of obstacles amongst themselves, what new relationship is developed with the UK, and the response of external powers such as the USA, Russia and China.

Cooperation on international affairs beyond pan-European matters was not a core part of the EU's founding, although efforts were made, such as the failed attempt in the early 1950s to create a European Defence Community.⁸⁹ Today, however, the EU's international relations range from trade negotiations through to defence, something shown in the wide range of areas set out in Part 5 TEU. This has come about because the EU has sought to use its collective economic might, especially since the 1970s, to pursue common goals in foreign, security and, more recently, defence matters. These efforts only became a constituent part of the EU in the 1990s, which saw the emergence of the Common Foreign and Security Policy (CFSP) and what today is referred to as the Common Security and Defence policy (CSDP). Integration in these areas has, however, been limited by them remaining intergovernmental in nature, with any Member State being able to veto collective efforts. The supranationalism of the Commission and the CJEU have been repeatedly excluded.

The achievements of CFSP and CSDP both remain quite modest.⁹⁰ While there have been successes such as the EU's role in negotiations with Iran over its nuclear capabilities, the EU has struggled to work together on the conflicts in Libya, Syria and Ukraine and may now face problems in dealing with the fallout of the USA's withdrawal from the Iran deal. Cooperation on defence has proved even less successful. While efforts have been made to focus on prevention and crisis management, and thus avoid the more traditional security responsibilities of the North Atlantic Treaty Organisation (NATO) and national defence policies, only a limited number of missions have been run. By contrast, trade policy remains the EU's main lever in international relations because the EU's collective weight makes it a trading superpower. It has therefore often been more successful at pursuing sanctions, setting international standards and pushing forward on matters such as environmental agreements.

As a leading player in foreign and defence matters, the UK has played a central role in this area. That role, however, has been as an enabler, a pioneer, and as an obstacle. The UK's withdrawal will therefore lead to a diminution in the EU's capabilities and outlook in foreign, security and defence matters, but also the opportunity to push forward with new initiatives that have been blocked by the UK. A determination to keep moving forward in this area lay behind the decision to publish the EU's new

⁸⁹ See Fursdon, E., *The European Defence Community: A History*, Basingstoke: Macmillan, 1980.

⁹⁰ See the yearly European Council on Foreign Relations 'European Foreign Policy Scorecards': <http://www.ecfr.eu/scorecard>

'Global Strategy' only days after the UK's referendum.⁹¹ The prospect of the UK's withdrawal has therefore led to hopes and proposals for increased cooperation and integration in this area. That said, the area remains a highly sensitive one. The extent to which the UK's exit will lead to further integration will depend on the remaining EU Member States finding ways to manage myriad national sensitivities, differing strategic outlooks, and heterogenous and often limited national capabilities.

6.1. How the UK has pushed forward integration in foreign, security and defence

The UK has pushed forward integration in four ways. First, the UK has been a leading enabler for EU cooperation. It has brought to the table: real military clout, with the UK making up about a quarter of EU defence spending; a willingness and ability to use this (for example, it is one of only five Member States with an operational headquarters able to command an operation); globally respected intelligence gathering capabilities; a global diplomatic network (including positions on the UN Security Council and in most international organisations); a leading player in international development; economic clout (including the global role of the City of London); leading defence industries and research; and a high level of soft power. The UK has at times used each of these capabilities through an EU framework, for example through committing personnel to the majority of the EU's civilian missions.

Second, the UK has pushed forward policy and institutional cooperation and integration in this area. The UK government has recognised the importance of CFSP to the UK's own role in the world, making clear in the 2014 Balance of Competences Review that it is 'generally strongly in the UK's interests to work through the EU in foreign policy.'⁹² UK membership began at the same time as European Political Cooperation, which was the first efforts at EU cooperation in this area, meaning the UK was able to shape this area of integration from the start. The UK government supported the extension of QMV to aid in the implementation of CFSP matters, but with the proviso that unanimity remain the general rule. The 1998 St Malo declaration, that pushed for enhanced European defence cooperation, was a British and French effort. Until then, EU efforts in the area had been directionless.⁹³ The UK has backed EU missions such as the 2004 CSDP mission Artemis in the DR Congo, led by the French.⁹⁴ It has facilitated, through its operational headquarters, EU missions such as Operation Atalanta. The UK played a leading part in efforts to create the first EU Security Strategy, published in 2003.⁹⁵ This was despite the strains the 2003 Iraq War had created in the UK's relations with a number of other EU Member States, notably France and Germany. More recently it has led on efforts to coordinate EU responses to Russia, Myanmar/Burma, and Zimbabwe.

Third, the UK has not only provided capabilities but also a strategic outlook that has shaped the EU's own outlook and approach to international matters. The UK's primary concern on CFSP and especially CSDP, has been to enhance transatlantic relations. On defence, especially, the UK has sought to use CSDP to increase European defence capabilities that enhance Europe's security through NATO rather than as a duplicate or challenger to it. As a result, it has sought to structure any European integration in this area within a wider transatlantic framework and not a purely European one. The UK has also pushed forward integration in this area through the provision of staff. The UK, like other Member States, has provided a third of the posts in the European External Action Service, and all posts in the EU Military

⁹¹ European Council, 'A Global Strategy for the European Union's Foreign and Security Policy', Brussels: European Council, June 2016, at: http://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf

⁹² HM Government, 'Review of the Balance of Competences between the United Kingdom and the European Union - Foreign Policy,' July 2013, at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/227437/2901086_Foreign_Policy_acc.pdf

⁹³ Whitman, R., 'The UK and EU Foreign, Security and Defence Policy After Brexit: Integrated, Associated or Detached?' *National Institute Economic Review*, No. 238, November 2016.

⁹⁴ Cardwell, P.J., 'The United Kingdom and the Common Foreign and Security Policy of the EU: from pre-Brexit 'awkward partner' to post-Brexit 'future partnership'?' *Croatian Yearbook of European Law and Policy*, 13, 2018.

⁹⁵ European Council, *European Security Strategy: A secure Europe in a better world*, Brussels: European Council, 2003, at: <https://europa.eu/globalstrategy/en/european-security-strategy-secure-europe-better-world>

Staff, through seconded national diplomats and military officers. The UK is considered to have provided some of the best and most competent officials.⁹⁶ This has, for example, allowed the UK to 'upload' its ideas to shape EU civilian missions, with them fitting the UK's own 'comprehensive approach' to international conflict management, which combines diplomacy, military and development capabilities in failed and failing states.⁹⁷

Finally, the UK has sought through bilateral defence relationships to enhance European defence and security. Such efforts have seen the UK work with France, Denmark, the Baltic states, the Netherlands, and Norway. This has been justified by UK governments as being a more realistic, pragmatic and capabilities-focused approach to enhancing Europe's place in the world. The most important effort has been that with France, with the Lancaster House Treaty of 2010 facilitating cooperation on nuclear matters, defence capabilities, and even some defence industrial issues. These efforts have been more about increasing interoperability than integration to create multinational or EU capabilities, as they have been purely intergovernmental and bilateral in nature.⁹⁸ However, an underlying aim of some of this cooperation has been to enhance wider European capabilities, ensure the security of Europe and therefore European integration, and encourage other European states (especially Germany) to enhance their defence capabilities.

6.2. How the UK has blocked integration in foreign, security and defence

The UK has more often been associated with being a block to progress in this area for four reasons. First, although the UK government admitted that CFSP and CSDP were beneficial to the UK, they have rarely done so, reflecting successive UK governments' attitudes towards CFSP and CSDP as serving the UK national interest as opposed to that of the EU collectively. It has been especially distrustful of the entire concept of CSDP, rarely if ever seeking to push forward integration in the area and instead focusing on capacity-building projects (especially civilian missions).⁹⁹

Second, the UK's commitment to working through CFSP, and CSDP especially, has been in decline in recent years. UK policy has increasingly aimed to 'de-centre' the EU from the UK's external relations.¹⁰⁰ The importance of the EU to the UK's foreign, security and defence was not a prominent topic during the 2016 referendum. Nor has the UK committed much by way of resources to the EU. While it has been prepared to commit to civilian missions and to host operational commands, its actual contributions to military operations have long been in decline. In 2011 one observer noted that UK contributions 'barely qualify as a gesture',¹⁰¹ and by 2014 the UK was contributing only 50 personnel to CSDP land missions, out of a total of 4,300 involved.¹⁰² As one commentator put it, on defence matters there has already been a 'Brexit by stealth'.¹⁰³ This has also been clear in Council votes, where on CFSP matters the UK has voted against the majority 35 per cent of the time, the highest of any Member State.¹⁰⁴

⁹⁶ Biscop, S., 'Brexit, Strategy and the EU: Britain Takes Leave.' Egmont Paper 100, Brussels: Egmont, February 2018, at: <http://www.egmontinstitute.be/content/uploads/2018/01/ep100.pdf?type=pdf>

⁹⁷ Wittkowsky, A. and Wittkamp, U., 'Pioneering the comprehensive approach: how Germany's partners do it', ZIF: Center for International Peace Operations Policy Briefing, January 2013.

⁹⁸ Biscop, S., 'Brexit, Strategy and the EU: Britain Takes Leave.' Egmont Paper 100, February 2018., at: <http://www.egmontinstitute.be/content/uploads/2018/01/ep100.pdf?type=pdf>

⁹⁹ Hadfield, A., 'Britain against the world? Foreign and Security Policy in the "age of Brexit,"' in Martill, B. and Staiger, U. (eds.) *Brexit and Beyond: Rethinking the Futures of Europe*, London: UCL Press, 2018.

¹⁰⁰ Whitman, R. 'The UK and EU Foreign, Security and Defence Policy After Brexit: Integrated, Associated or Detached?' *National Institute Economic Review*, No. 238 November 2016. R2.

¹⁰¹ O'Donnell, C., 'Britain's coalition government and EU defence cooperation: undermining British interests,' *International Affairs*, 87: 2, 2011, p. 423.

¹⁰² Smith, K., 'Would Brexit spell the end of European Defence?' LSE EUROPP blog, 2 July 2015, at: <http://blogs.lse.ac.uk/europpblog/2015/07/02/would-brexit-spell-the-end-of-european-defence/>

¹⁰³ van Ham, P., *Brexit: Strategic Consequences for Europe. A Scenario Study*, The Hague: Clingendael, February 2016.

¹⁰⁴ Hix, S. and Hagemann, S., 'Does the UK win or lose in the Council of Ministers?' London: UK in a Changing Europe, 2 November 2015, at: <http://ukandeu.ac.uk/explainers/does-the-uk-win-or-lose-in-the-council-of-ministers/>

Third, this recent wariness at cooperation with the EU reflects a longer history of blocking progress in CFSP and CSDP. The UK has often taken a leading role in maintaining an intergovernmental approach to these areas. The UK has not been alone in this, with Member States such as France, Denmark, Greece and Portugal at various times resisting a more communitarian approach that brings in the Commission and the CJEU.¹⁰⁵ The UK's willingness to block progress has therefore at times served the interests of other Member States. The UK has, however, been the leading blocker, most often out of a fear of jeopardising NATO and frustrating links with the USA. The UK's willingness to block progress means the EU has had to draw on capabilities, such as operational headquarters, from the Member States or NATO. This has limited the EU's ability to independently develop strategic outlooks and capabilities. For example, for several years the UK blocked proposals to increase the EDA's budget.

Finally, the extent to which the UK has blocked progress on defence can be seen in the speed at which the remaining EU Member States have since the UK's vote to leave been willing to push forward discussions over new initiatives and integration in this area. Proposals have been put forward by France and Germany,¹⁰⁶ the European Commission¹⁰⁷, and Italy,¹⁰⁸ with the September 2016 Bratislava Summit and 2016 European Council meeting in particular calling for greater efforts in this area. These responses have tried, in part, to build on momentum created by the EU's 2016 Global Strategy. Tellingly, the UK threatened to veto these efforts while it still had the power to do so as a Member State. These proposals have, in concrete terms, been about creating an EU Military Headquarters, a European Defence Fund, a Coordinated Annual Review of Defence (CARD), coordinating medical assistance (such as through a European Medical Command), a logistics centre for sharing 'strategic' assets such as air-lift capacities, and sharing satellite reconnaissance data. It is in the area of Permanent Structured Cooperation (PESCO) that the EU hopes progress will now be made. Under PESCO, Member States (with the exception of Denmark and Malta who have opted out) have agreed to allow Member States who wish to do so to cooperate and invest in shared defence capabilities and projects and to coordinate joint missions more closely.

6.3. The effect of the UK's withdrawal on integration in foreign, security and defence

Four factors need to be taken into account when trying to assess what effect the UK's withdrawal will have on CFSP and CSDP. First, the UK plays a leading role in foreign, security and defence matters, but successive UK governments have shown unease, apathy and opposition to some aspects of CFSP and especially to CSDP. This means it is difficult to reach a consensus over what effect the UK's withdrawal will have on this area. In terms of capabilities and size, the EU will be a diminished power in the world because of the UK's exit.¹⁰⁹ But the UK's withdrawal has clearly opened the way, at least in the short-term, for discussion and possible implementation of proposals that can lead to further integration.

Second, the effect of the UK's withdrawal is not simply about capabilities or the UK, but also about how the remaining EU Member States move forward in developing the EU's remaining capabilities and potential. The UK has not been the only Member State wary of integration in this area. The decision following the UK's vote to push forward in this area is a bold but risky move given Euroscepticism

¹⁰⁵ Cardwell, P.J., 'The United Kingdom and the Common Foreign and Security Policy of the EU: from pre-Brexit 'awkward partner' to post-Brexit 'future partnership'?' *Croatian Yearbook of European Law and Policy*, 2018, 13.

¹⁰⁶ Hanke, J., 'Merkel endorses Macron's EU military plan,' *politico*, 3 June 2018, at: <https://www.politico.eu/article/emmanuel-macron-angela-merkel-endorses-eu-military-plan/amp/>

¹⁰⁷ European Commission, 'Reflection paper on the future of European defence,' Brussels: European Commission, June 2017, at: https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-defence_en.pdf See also European Council, 'A Global Strategy for the European Union's Foreign and Security Policy', Brussels: European Council, June 2016, at: http://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf

¹⁰⁸ Rettman, A., 'Italy lays out "vision" for EU army,' *euobserver*, 26 September 2016, at: <https://euobserver.com/foreign/135235>

¹⁰⁹ Major, C. and von Voss, A., 'European Defence in View of Brexit', SWP Comments, Berlin: Stiftung Wissenschaft und Politik, April 2017.

remains a potent force in European politics.¹¹⁰ Heightened expectations risk repeating the EU's experiences in the 1990s when it developed a capabilities expectations gap, shown most vividly in the EU's overly optimistic hopes followed by humiliating inability to deal with the conflicts in the former Yugoslavia. Any efforts at a European Defence Union run the risk of repeating the mistakes of the Eurozone: a lack of centralised institutions able to direct and deploy resources and capabilities in strategic ways that are recognised as legitimate across the EU. Concern about repeating this means cooperation on defence especially could remain limited. As a number of authors have noted, several developments will be important here:¹¹¹

1. The extent to which France and Germany can agree to move forward will be crucial. This will require a French willingness to sacrifice autonomy in exchange for a German willingness to spend more on defence and adopt a more strategic outlook on international matters that goes beyond its traditional civilian power outlook;
2. The ability of the EU and Member States to find a balance with NATO, which remains the most trusted actor on defence matters;
3. The ability and willingness of EU Member States' governments to encourage national defence firms to cooperate at a European level, as opposed to seeking national protection or transatlantic and global links;
4. The willingness of Member States to overcome national sensitivities such as commitments to neutrality.

Third, what role the UK might play will have some influence on integration in this area. The UK's limited commitments in this area, and its intergovernmental nature, means negotiating an exit will be relatively straightforward. However, reaching agreement on a new relationship will be far from straightforward. The UK government has spoken of its desire to see a close relationship on foreign, security and defence.¹¹² This faces a wealth of regulatory and legal problems, to say nothing of political unease amongst the remaining Member States at what UK involvement might entail. Non-EU partners can cooperate with the EU in foreign, security and defence matters and initiatives, but this can be limited.¹¹³ Should the UK and EU agree to an ambitious arrangement, then the UK could play a leading role in cooperation and shaping integration in the area. This not only carries the risk that the UK would use this to try and thwart integration. It would also come with questions of whether the UK itself will be willing to live up to any commitments given the uncertainty that now overhangs UK strategic outlooks following the 2016 EU referendum.¹¹⁴

Finally, integration in this area will be shaped by how the rest of the world views the EU's standing. While there has been much discussion about the UK's withdrawal leading to a reduction in the UK's standing, the EU's image could also be tarnished and its standing reduced. It is not clear whether the UK's vote to withdraw has changed the views of political elites in Russia, China or the USA that the EU's efforts in CFSP and CSDP remain weak and aspirational at best. The EU may instead find that it can cooperate better on international matters where it has an existing track record, such as on trade, sanctions and international development. If so, then the EU could find itself turning more towards being a civilian power than a military or political one.

¹¹⁰ Whitman, R., 'The UK and EU Foreign, Security and Defence Policy After Brexit: Integrated, Associated or Detached?' *National Institute Economic Review*, No. 238, November 2016, R4.

¹¹¹ Major, C. and von Voss, A., 'European Defence in View of Brexit', SWP Comments, Berlin: Stiftung Wissenschaft und Politik, April 2017.

¹¹² See Foreign Policy, Defence and Development: A Future Partnership Paper. September 2017.

¹¹³ Whitman, R., 'The UK and EU Foreign, Security and Defence Policy After Brexit: Integrated, Associated or Detached?' *National Institute Economic Review*, No. 238, November 2016.

¹¹⁴ Kitchen, N. and Oliver, T., 'Written evidence submitted by Dr Tim Oliver and Dr Nicholas Kitchen,' *House of Commons Defence Select Committee Inquiry into UK-US relations*, 7 March 2017.

7. CONCLUSIONS

KEY FINDINGS

- The UK has been *an* awkward partner in European integration, but not *the* awkward partner. As the five policy chapters show, the UK has in some areas been more awkward than most other Member States. UK awkwardness has also been bypassed. This should not hide the fact that other Member States have also on occasion been awkward, prevented integration and posed challenges to the direction of the EU.
- In large part, this awkwardness reflects the UK's political elite's and public's difficulties in coming to terms with the political ramifications of European integration. For many in the UK, the EU has been seen as a free trade area or common market instead of a common political project. The UK's overall approach to European integration has therefore been to back change, cooperation and integration where it is convinced of a clear and direct benefit to the UK.
- UK governments have rarely backed progress out of some deep-seated commitment to European integration as an end in itself. The governments of all Member States have pursued their national interests, but these have included varying levels of commitment to European integration. For many UK politicians, by contrast, the end has been whatever serves the UK's national interest. This has led to opt-outs and delays in adoption of policies.
- The UK's withdrawal is an opportunity and a risk to the remaining members of the EU. The awkwardness of other EU Member States will now play out in a process of differentiated integration. The EU is unlikely to disintegrate in the near future, but significant systemic challenges remain, especially within the Eurozone and in the EU's ability to act as a unified actor internationally.
- In GDP terms, the UK's departure is the equivalent to the EU losing the 19 smallest Member States. Therefore, it is likely to cause some shift in the EU's balance of power and the direction of European integration.
- The relationship between the UK and the EU has the potential to influence European integration. The UK's withdrawal is not a short-term process, but one which will have some influence on the EU for at least a decade or more. The UK will remain a partner in many fields of EU activity. It could also become a non-EU alternative that appeals to Eurosceptics in the remaining EU Member States.

The UK's membership of the EU has rarely been smooth or without controversy either in the UK or elsewhere in Europe. As shown in the preceding chapters, the UK has pursued an often-mixed approach to European integration. In some areas such as the internal market, the UK has been at the forefront of pushing forward the removal of legal, economic, and political barriers to the free movement of goods, services and capital (and until 2007 also of people). By contrast, in others, such as defence, social policy and direct taxation, the UK has often blocked progress that might lead to 'ever closer union among the peoples and Member States'. This concluding chapter explains this mismatch, assesses its overall effect on European integration, and considers how the UK's withdrawal will change European integration.

Despite its reputation for obstruction, the UK has also supported European integration to varying degrees. Most clearly this has been the case with the internal market where the UK has done little to block integration. In those areas where it has obstructed progress, for example over proposals to introduce direct taxation at the EU level, it has not been the only Member State to do so. UK governments have also been somewhat uneasy with the freedom of movement of people as part of

the Single Market. Despite this, it continues to push for further progress in the other three freedoms, especially for free movement of services. Even in areas where the UK has not been a direct participant, the UK has a history of supporting efforts by other Member States to move forward with integration, for example in the Eurozone where, during the early phases of the Eurozone crisis, the UK government called on the EU to build the necessary institutions to make the euro a success.¹¹⁵ In other areas such as social policy, freedom, security and justice, the UK's involvement has been more mixed. It has on occasion provided some of the leading staff and expertise in these areas. Its opposition and desire to diverge from integration have been managed through opt-outs (when blocking was not possible) and by the rest of the EU undertaking intergovernmental initiatives that by-pass the UK. The UK's approach can be explained by the more transactional view of European integration held in the UK political arena, which is in part a product of the UK's majoritarian system of governance compared to the more consensual systems that operate in many other EU Member States. Moreover, ideological commitment to European integration is weak in the UK. Rarely have UK governments backed progress out of some deep-seated commitment to European integration as an end in itself. For many politicians in the UK, the end is whatever serves the UK's national interest.

This has created difficulties for both the UK and the EU. Integration in one area can and often does lead to the need for integration in another (spillover). In some instances, the UK's interests have aligned with those of other Member States, allowing for integration to move forward, albeit only later to run into problems when the UK's commitment wanes or changes course. In large part, this reflects the UK's political elite and public's difficulties in coming to terms with the political ramifications of European integration. For many in the UK, the EU has been seen as a free trade area or common market. It was no surprise then that the Remain campaign in the 2016 referendum focused largely on the economic benefits of the UK's membership.

These difficulties help explain why the UK has been described as 'an awkward partner' in European integration.¹¹⁶ Too often, however, the UK is described as 'the awkward partner'. The difference is more than semantic. As seen above, the UK's awkwardness is without question. But it is important not to lose sight of how other Member States have pursued their national interests and posed difficult challenges to the EU. While the UK has kept its distance from the Eurozone, the biggest obstacles in the Eurozone crisis lay within it due to different outlooks between certain Member States. The key difference, however, is that unlike in the UK, the political elites in other Member States have not questioned or widely debated the need for the EU's success or their political commitment to it.

Arguably, the UK's overall contribution to European integration therefore lies in its support for change, cooperation and integration where it is convinced of a clear and direct benefit to the UK. With the single, but significant exception of the creation of the internal market, it has been sceptical, in contrast, of benefits to the UK that might accrue indirectly through the integration process. Despite fears that the UK's withdrawal might provoke a domino effect, the UK's withdrawal alone is unlikely to bring about any form of systemic crisis for European integration. Indeed, as noted in several chapters, the UK can be seen to have been withdrawing for some time. 'Brexit by stealth' was how one commentator described the UK's exit from EU defence cooperation.¹¹⁷ In other areas, the UK's opt-outs, for example in the area of freedom, security and justice, mean little will change. Assuming a successful exit agreement and transition arrangement can be agreed — and it is a significant proviso — the UK's formal exit could therefore be more a soft landing rather than an abrupt change.

A soft landing would, over time, lead to changes in each of the areas covered. The UK's size – in GDP terms, the UK's departure is the equivalent to the EU losing the 19 smallest Member States – means it

¹¹⁵ Stacey, K., 'David Cameron's "big bazooka" plan,' *Financial Times*, 11 October 2011, at: <https://www.ft.com/content/d0cd3b23-c235-368e-81b8-38c5c278fe5e>

¹¹⁶ George, S., *An Awkward Partner: Britain in the European Community*, Oxford: OUP, 1998.

¹¹⁷ van Ham, P., *Brexit: Strategic Consequences for Europe. A Scenario Study*, The Hague: Clingendael, February 2016.

will likely cause some shift in the EU's balance of power and the direction of European integration. In the internal market, on-going efforts to reduce barriers, not least in services, may decline. However, the need to stimulate economic growth may necessitate further efforts to lower barriers to trade. In social policy, the EU may find it somewhat easier to reach a balance between EU and national social and economic policy initiatives, with the UK no longer opposing fiscal and social policy reform, but the long-standing problem of managing diverse national social welfare systems will remain. In the field of freedom, security and justice, the EU could move towards more harmonisation rather than the UK's preferred approach of mutual recognition. This shift could, however, have happened with the UK as a member. In the case of the Eurozone, the exit of the largest non-euro member could see the euro area more clearly become the heart of the EU, drawing in the final remaining non-euro Member States. Whether public appetite exists for such a change remains an open question. In foreign, security and defence, efforts are now being made to inject more substance into the EU's aspirations in these areas. However, it remains unclear whether Member States will be willing to face the strategic, security and political trade-offs entailed.

Overall, this analysis points to varying levels of integration in each area, possibly indicating a clearer process of differentiated integration due to varying levels of political commitment, wealth, identity politics, and domestic constitutional provisions across the EU. Political elites in several Member States might have openly questioned some aspects of European integration, reflecting in no small part the rise of Euroscepticism over the past decade and more. While Euroscepticism has shown signs of receding in some Member States,¹¹⁸ the willingness of EU citizens to countenance largescale reforms continues to weigh on the minds of EU and national decision makers. In no small part this is because of the possibility such reforms will trigger referendums. No Member State, however, has yet moved to follow the UK. That not only reflects the longer-standing commitment to European integration found in the political elites and political cultures of other Member States, especially the older and larger ones. It also more than likely reflects the poor performance of the UK in the Article 50 negotiations. The UK government's struggle to define what it wants has left the UK looking a weak, divided, dysfunctional country that is incapable of offering much by way of leadership that others would wish to follow.

A soft landing in March 2019 would not mean, however, that the UK's withdrawal will not have a bigger effect over the longer term. Here two issues come to the fore. First, the effect of the UK's withdrawal on European integration will depend on how that withdrawal is defined in the withdrawal agreement and in the deal over a new relationship. As the EU has made clear from the start, the UK cannot expect to secure a new relationship that is on a par with or better than current membership. Whatever new relationship is agreed will see the UK move from a decision maker to a decision taker, in a range of areas. In some areas, the UK might continue to have more direct input than in others. For example, in foreign, security and defence matters, the UK and EU may build a close working relationship and seek from the outside to be the leading non-EU decision shaper. Second, the UK may emerge as a model looked to by Eurosceptics in the remaining Member States. This could happen if in 10-20 years' time the UK look like it had succeeded in leaving the EU while continuing to grow economically. Such a situation may hide continued regulatory convergence and alignment and therefore the extent to which the UK is still shaped by the EU. However, withdrawal may appeal to Eurosceptics and publics in the remaining Member States if the EU faces another series of crises, for example in the Eurozone.

The effect of the UK's withdrawal on European integration will be determined by a balance between two effects. First, the UK's success or failure outside the EU and how this is perceived within the remaining Member States. Second, the EU's ability to overcome its systemic challenges, and so continue to demonstrate to EU citizens that, compared to other options, it can respond to their political demands and provide effective solutions to the problems they face.

¹¹⁸ European Commission, *Standard Eurobarometer 89: First Results*, Brussels: European Commission, Spring 2018, at: <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2180>

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This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the AFCO Committee, examines the potential effects of the UK's withdrawal on European integration. It does so by examining the UK's role in pushing forward and/or blocking integration in five areas: the internal market; social policy; freedom, security and justice; the Eurozone; and foreign, security and defence.

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