

# WHAT IF? THE IMPLICATIONS OF A BREXIT- SCENARIO ON DIFFERENT EU POLICIES

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Claire Dupont & Florian Trauner (Eds.)

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## Introducing the IES Brexit-Project

Issue 2016/4 · April 2016

by Claire Dupont & Florian Trauner

What would happen if the United Kingdom (UK) leaves the European Union (EU)? The outcome of the referendum on EU membership in the UK on 23 June 2016 will not only determine the future of the UK in the EU but also have a considerable impact on the rest of Europe. Only rarely have academic and political observers zoomed into the details of day-to-day EU policy-making to have a look at what is the UK actually doing at a policy-level.

By bundling the manifold policy expertise of the researchers of the Institute for European Studies (IES) at the Vrije Universiteit Brussel (VUB), this Policy brief series takes such a comparative look and investigates the role of the UK in different EU policies. All papers in the series ask the following three questions:

1. What is the state of the EU policy in focus?
2. What is the UK's role/interest in this policy field?
3. What are the potential implications of a 'Brexit' scenario at the policy-level?

In the first paper, Richard Lewis sets the historical and cultural context and explains how the UK and the EU have come to such a low-point in their relations. Next, five policy fields are analysed: justice and home affairs; free movement policies; EU external relations and representation; the (digital) single market; and environmental policy.

The comparative view reveals some interesting insights. First, the UK is a highly active player even in policy fields where it seemingly refrained from participating, such as justice and home affairs. It has consistently ensured that a certain 'liberal' spirit and rationale has been pursued in different EU policies, most notably in market-related ones.

Second, the different papers also describe a high degree of uncertainty about what a Brexit scenario implies for the UK, but the consensus seems to show more potential costs than benefits of withdrawal. For example, it may result in insecurity regarding the residence status of the 1.4 million UK citizens living in other EU member states, or involve high administrative, legal and political costs in renegotiating all the international agreements and treaties thus far signed by the EU.

Third, the contributions also point out the potential costs to the EU of Brexit. This may become evident in the adjusted international weight and influence of the EU

By bundling the manifold policy expertise of the researchers of the Institute for European Studies (IES), this paper forms part of a series of analyses investigating the potential implications of a 'Brexit' scenario for different EU policies. All papers ask the same three questions: 1) What is the state of the EU policy in focus? 2) What is the UK's role/interest in this policy field? 3) What are the potential implications of a 'Brexit' scenario at the policy-level?

After Claire Dupont and Florian Trauner introduce the project, Richard Lewis sets [the historical and cultural context](#) and explains how the UK and the EU have come to such a low-point in their relations. Next, five policy fields are analysed: [justice and home affairs](#); [free movement policies](#); [EU external representation](#); [the \(digital\) single market](#); and [environmental policy](#).

in international relations, but also in internal policy developments. Where the UK has been a driver of advancing pragmatic and ambitious policies, in environmental policy or in the (digital) single market for example, its absence may lead to new internal coalitions among member states and a weakening of standards in such policy fields.

Describing the future is full of unknowns. Nevertheless, all the contributions here outline more disadvantages than advantages of a Brexit – both for the UK and the EU. We hope the work of our researchers provides food for thought in the weeks leading up to the UK referendum.

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## Looking Back to Look Forward: the UK's relationship with the European Union

Issue 2016/5 · April 2016

by Richard Lewis

### Introduction

The United Kingdom's fraught relationship with the European Union is about to enter a new and crucial phase. Prime Minister David Cameron's commitment to hold an 'in-out' referendum if he won the election in 2015 based on re-negotiated terms of Britain's membership will become a reality on 23 June 2016.

How have the UK and its partners arrived at this point and, more particularly, what might be the consequences of a withdrawal? Even if the referendum results in a victory for the pro-membership campaign, there will be consequences that are difficult to predict. This paper examines some of the policy issues that will arise in either case and attempts to draw a picture of some of the consequences for the EU.

### The UK's Political Ambivalence

Britain's ambivalent attitude to European integration has a long history, which can be traced back to nineteenth century politics and, perhaps more fancifully, to the Middle Ages or the Spanish Armada. Britain has always tried to maintain a policy of balance of power in Europe such that no one continental country should dominate. In the twentieth century, two world wars convinced the British that, as Margaret Thatcher put it, their problems arise from continental Europe and that only British tenacity and democratic values could resolve the conflicts. Why then become involved in complex treaty arrangements requiring the pooling of sovereignty?

Throughout the post-war period leading up to the Treaty of Rome, and since, British political parties have vacillated back and forth in their attitudes to the EU. As Denis McShane (2015), formerly Tony Blair's Minister for Europe, put it:

'Both Conservative and Labour leaderships and their ministers when in government have consistently supported NATO, rebutted criticisms of Atlanticism and supported nuclear weapons. In contrast, Europe has never engaged much support. The question of Europe divides British politics as no other issue. And with governing parties and ministers so uncertain, so willing to find fault with Europe, why should voters be any different?' (McShane 2015).

For the left in British politics, Brussels is too business-friendly, and for the right, it is hostile to capitalism. Margaret Thatcher was openly antagonistic towards the EU in her speech at the College of Europe in Bruges in 1988 and yet it was she who signed the Single European Act bringing in qualified majority voting (Young 1998). As Andrew Geddes (2013) writes:

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'The Conservatives went from being a pro-European integration party, albeit based on a pragmatic acceptance of the EC as good for business, to hostility towards European integration that was strongly based on the Thatcherite legacy.'

The British do not consider themselves 'Europeans'. They talk and write about 'Europe' as if it were on another continent. Winston Churchill said as long ago as 1930 that 'we are with Europe, but not of it' (Saturday Evening Post 1930, as quoted in Coudenhove-Kalergi 1953). In his seminal speech in Zurich in 1946, he spoke of the United States of Europe, yet he did not mean that the UK should be considered part of that enterprise. For the British, or more specifically the English, Europe is about interest not identity (McShane 2015:166). This can be illustrated in the attitude of Mr Cameron defending the financial interests of the City of London.

There is no vision of Europe amongst British politicians or the public as there is on the continent. These attitudes have been fostered by a vehemently hostile press and popular media led by the Australian-American Rupert Murdoch, over the 40 years since the UK acceded in 1973. As Reuters correspondent Paul Taylor wrote: 'The aim of the Eurosceptic press is not to present reasoned arguments, but rather to demolish it through funny, unlikely stories ... they don't want facts to get in the way of a good story' (McShane 2015:166).

There are three other factors that need to be elucidated in order to explain the current situation. The first is the almost sacred doctrine of sovereignty of Parliament as set out by Walter Bagehot (1867) in the nineteenth century. It matters little that the British have signed numerous bilateral and multi-lateral treaties that limit the margin of manoeuvre of Parliament (NATO being a prime example). In addition, devolution of powers to Scotland and Wales has made inroads into this doctrine. However, they see the EU as being uniquely antagonistic to parliamentary sovereignty as illustrated by the comments about 'unelected officials in Brussels', ignoring, for example, that the entire cabinet of the United States is appointed and not elected.

The second is the lingering attachment to the English-speaking world. This is not an attachment that is comparable to the Francophone world, which is mainly based on language and culture. It is the sentiment that the 'old' Commonwealth, Australia, New Zealand and Canada in particular, plus the United States, constitute a unique bastion of Anglo-Saxon values whilst assuring that Britain will be able to trade with and influence a geographically wider hegemony than exists in Europe. There is some validity in this argument, but these countries have moved on since their original criticisms of UK membership and none of them would now like to see Britain leave the EU (see BBC Interview with US-President Obama 2015).

The third is that whereas the UK was economically behind the other major economies of Europe in the 1970s and 1980s, since the end of the recession that began in 2008, the reverse is the case. Whether this can be ascribed to the problems of the euro or the rigidity of continental European economies can be endlessly debated. In any event, it is a fact that militates against the arguments for remaining in the EU on the basis that Britain does not need the EU to prosper.

It is not the function of this paper to analyse the economic case for Britain to remain in the EU. However, the effects of staying on or leaving the EU are significant, if not crucial. The consensus appears to be that Britain's overwhelming economic interest is to remain a member. The Eurosceptics are convinced that leaving the EU would allow the UK the freedom to negotiate its own trading arrangements with the rest of the world that would be more advantageous and lead to wider trading horizons. However, nothing in the treaties prevents the UK from developing trade and cooperation with any other country. Indeed, other EU countries are doing just that and sometimes more effectively than the UK.

The forthcoming referendum has to be seen against this background. To be sure, there are many convinced Europeans in the UK but they will have to combat a fierce wall of not only Euroscepticism but also hard-core euro-phobia that refuses to acknowledge the achievements of European integration and only highlights the setbacks. David Cameron has, therefore, adopted a high-risk strategy of staking everything on this one vote. Given the inroads that UKIP has made on right-wing voters and the eurosceptic right wing in his own Conservative party, he probably had little choice. However, his strategy of re-

negotiation – a term, it should be recalled, that was used by the Labour Wilson government in 1975 – could easily work to his disadvantage. The 1975 re-negotiation was derided by its opponents as window-dressing and this second exercise is already suffering the same fate. Even if he succeeds in convincing the British public of its merits, the margin of victory risks being thin. The likelihood is, therefore, that the Eurosceptics will be calling for another vote at a future date and such is the strength of their numbers that they may eventually succeed. The EU issue is unlikely to be solved by the referendum, even for a generation.

## The Campaign In or Out

David Cameron has repeatedly argued that he will campaign for Britain to remain in the EU if he obtains from his negotiating partners 'a fair deal for Britain'. He has declared the re-negotiation a satisfactory outcome for the UK. It is difficult to understand what he meant by a 'fair deal'. The principle of a 'variable geometry' EU is not in question. The UK already has opt-outs for a number of key policy areas – the euro, the Schengen agreement, justice and home affairs. Thus, the issue of protecting what might be considered key sovereign areas and essential British interests is hardly an issue. UKIP and the Conservative right are calling for complete withdrawal and an amicable negotiation under article 50 of the Lisbon Treaty. Nothing less will satisfy them or was ever likely to do so whatever the results of the re-negotiation.

However article 50, which for the first time in the EU treaties spells out that a member state may decide to withdraw from the Union, is untested. There is no precedent, so the withdrawal negotiation scenario is uncertain, although it is likely to be an accession process in reverse. What article 50 does spell out, however, is that the withdrawing state will notify the European Council of its intentions and thereafter there will be the conclusion of an agreement by the Council, acting on a qualified majority, with the withdrawing state. The treaties will cease to apply to the withdrawing state after conclusion of the agreement or, failing that, two years after the first notification unless the Council unanimously agrees to extend that period. Given the complexity of such negotiations, it is not impossible that the UK could be either left in a legal limbo or subject to the uncertainties of a unanimous vote in the Council.

David Cameron staked the re-negotiation on a number of key issues

- An exemption for the UK from the principle of an 'ever closer union'
- An explicit statement that the euro is not the official currency but that the EU is a multi-currency union
- A 'red card' system giving groups of national parliaments the power to stop unwanted legislation and to scrap redundant legislation in force, in other words a reduction of red tape
- An emphasis for EU policies to be oriented towards growth, investment and jobs
- A mechanism to prevent domination by the Eurozone countries over those member states that do not use the euro in protecting and developing the single market
- Restrictions for four years of benefits paid to EU immigrants

On 2 February 2016, after intense negotiations at political and officials levels, Donald Tusk, President of the Council, published a draft decision for consideration by the European Council held on 18-19 February that addresses all of these issues. The draft decision underlines that the UK is already entitled not to adopt the euro or to participate in the passport-free Schengen area and

to choose whether or not to participate in measures regarding justice, freedom and security. This emphasises the fact that until now, the UK has had relative freedom to go its own way, even on key issues defining the Union.

The conclusions of the European Council published on 19 February (EUCO 1/16) are striking in their reiteration of the flexibility of treaty provisions that allow member states a high degree of leeway in interpreting the principles of the Union (mainly free movement of goods, capital and persons and non-discrimination) where exceptional circumstances exist. It is true that, in particular, for the UK's claims for safeguards against abuse of social security systems, secondary legislation is required that could apply to all member states, not just the UK. But the conclusions are largely framed to clarify existing Union practice. This illustrates the misleading gloss that British politicians often give to Union legal provisions underlining alleged negative aspects. In reality, there are existing ways to meet individual member states' concerns without any of the changes agreed on 19 February.

With regard to the euro, the conclusions indicate that, whilst maintaining that the euro is central to the achievement of economic and monetary union, no member state is obliged to adopt the single currency. Non-participants will not create obstacles to the process; in reciprocity, the rights and competences of non-participants will be respected. At the same time, the informal meetings of ministers of member states that use the euro will not usurp the functions of the Council and its legislative powers. This allays UK fears that decisions that affect the financial interests of non-participants will be respected even if they do not vote. Given Mr Cameron's Conservative Party's close links with the City of London, this is an important clarification to have achieved.

Regarding the regulatory burden, it is not commonly recognized that the European Commission launched a Better Regulation plan as early as 2002. The latest iteration of this programme is known as the Regulatory Fitness and Performance Programme (REFIT). This process is ongoing. The text of the Council conclusions reinforces the European Commission's commitment to competitiveness pledging to strengthen the internal market and take concrete steps towards better regulation and lowering the administrative burden. The British, however, would have to understand that a single market is not simply a customs union; common regulations and standards are required to make it work, enforced by the European Court of Justice, and these replace existing national regulations. These basic mechanisms of the EU are often poorly understood both by the political elite and the public in the UK.

Concerning the right of oversight of national Parliaments on EU proposals, Mr Cameron has won a minimalist concession that if 55% of the votes allocated to national Parliaments, through a reasoned opinion, object to a draft EU act, then it will be discussed and, if not amended in accordance with the reasoned opinion, withdrawn. The Prime Minister's critics have already stated that this safeguard is far from sufficient. Indeed, the reality is that this provision would be difficult to invoke. In any case, the likelihood is that a legislative proposal from the Commission that met stiff opposition from member states in Council working groups or the Committee of Permanent Representatives would never reach the full Council and be withdrawn.

Mr Cameron has won substantial changes in the interpretation and application of social security legislation. This always was and remains a national competence. The Council conclusions reiterate that member states 'have the right to define

the fundamental principles of their social security systems and enjoy a broad margin of discretion to define and implement their social and employment policy, including setting the conditions for access to welfare benefits'. The new provisions concern, in particular, the right to index child benefits according to the standard of living of the country where the child is living rather than the country of residence of the beneficiary worker, the possibility to phase in the rights to non-contributory benefits over a period of four years and anti-fraud measures such as sanctioning marriages of convenience. There are, furthermore, safeguards relating to 'overriding reasons of public interest'. Although this was less than the Prime Minister had requested, it is nevertheless a change of substance albeit with a time limit of seven years. It should be understood that the enabling legislation will apply to all member states that opt into it, not just the UK. It follows that it is possible that British workers in other EU states will also receive less in benefits.

The Council conclusions regarding sovereignty and the interpretation of 'ever closer union' are very clear. 'Ever closer union' does not confer the right or a legal basis to extend provisions of the treaties or of secondary legislation. Nor does it preclude the reduction of EU competences and the return of powers to the member states.

However, it is already evident from remarks of British politicians who have declared that they will campaign for exit from the EU that this is far from adequate. In a sense they are correct. It is fundamental to the functioning of the EU that EU law takes precedence over national law unless challenged in a judicial process as laid down in the treaties. This is a direct contradiction of the notion of parliamentary sovereignty as interpreted by Walter Bagehot.

## Outcomes post Referendum

If the outcome of the negotiations and the referendum is in favour of Britain remaining in the EU, the euphoria will be short lived. The anti-EU camp will not disappear and the UK will remain the recalcitrant European. The EU as a whole will breathe a sigh of relief because the withdrawal of a major partner with a pragmatic view of world affairs and the technicalities of trade would be a major and possibly fatal blow to the European project in terms of what can be achieved by European integration.

In addition, there is the fear that other member states whose political elite might harbour similar concerns about EU policy areas might be tempted to take the same path as the UK. No other member state has taken such a semi-detached attitude to the EU as Britain but there have certainly been criticisms along the same lines, to say nothing of the rise of nationalist elements in the political life of certain member states, even in the staunchest supporters of the Union.

However the issues that trouble the UK will not be solved at a stroke, whatever the result. In the first instance, the treaty changes required for some aspects of the European Council conclusions are lengthy and drawn out even if the process is launched soon after the referendum. Mr Cameron needs to demonstrate results to the electorate immediately and this can only be achieved by political declarations that will be denounced as not being sufficiently watertight by the eurosceptic camp. He has the advantage that the conclusions of the Council explicitly say that they are legally binding on the member states but this is not easily explained to voters. They have subsequently been deposited at the United

Nations as an international treaty. This notion has already been criticised by some British politicians. They say that the conclusions can always be challenged in a court. This is true of any legal instrument. However, it is very unlikely that a court would fail to follow the dicta of the European Council.

If the referendum goes against the UK remaining in the EU, the immediate aftermath will be great uncertainty. This will first manifest itself in the probable demands of Scotland for a further referendum on independence because it is already clear that Scotland would likely vote overwhelmingly to remain in the EU. The position of Ireland with its common land border and remaining residence and voting privileges vis-à-vis the UK will be in question. Questions will then be raised about UK citizens living and working in other EU countries. Aside from that, undoing or keeping the links, whether trade-related or in the various cooperative programmes, is likely to take several years to sort out during which time investment prospects in the UK economy will hardly be improved. The arguments for and against a European Economic Area solution for the UK have been well rehearsed but would not put Britain in a favourable negotiating position either immediately or in the future. Indeed the only possible result from that solution would be that, in order to remain in the single market, the UK would be bound by EU rules without having a voice in the legislative process, whilst still paying into the budget.

There is, of course, no precedent for a member state to withdraw from the EU, nor was there any mechanism to do so before the Lisbon Treaty. The immediate effect of a negative vote in June 2016 would be to trigger the two year negotiation process with the remaining 27 members. The UK can expect few favours from this engagement. There have been some hints that it could be used as a further negotiation and then a second referendum. This is an unlikely scenario. The Prime Minister has already stated that this is a single and not a multiple opportunity process. The anti-EU protagonists would denounce it as contrary to the terms of a first referendum. Lastly, the European Council conclusions indicate that the changes set out in those conclusions would only be implemented when the British government has indicated that the UK wishes to remain a member state. Thus the whole negotiating process would virtually start from zero.

That said, a decision to leave the EU, whilst sad and likely to be overall negative for the UK, will not be the disaster that some pessimists have posited. The UK economy is resilient enough and the country's links, historical and practical, strong enough, that in the longer-term, pragmatic solutions will be found. The nation is at a crossroads as it was in 1973. The European vocation is not acceptable to a large proportion of the population. That is an issue that will not vanish and needs to be resolved.

This is not to deny that there will be consequences that will affect Britain's partners and allies. There will be serious weakening of the EU's capacity to

influence world events with the loss of a permanent member of the UN Security Council and one of its two military powers. Europe's links with the United States, including the pending free trade agreement (TTIP) will be diluted and the US might be tempted to deal more with Germany, as Europe's strongest economy on trade and investment issues.

Paul de Grauwe of the London School of Economics is already on record as saying that the withdrawal of the UK might actually be a boost to European integration (Le Soir 2016: 21). That is indeed possible. However, the danger of British withdrawal is that the major achievements of the EU will start to unravel. There are already signs of this relating to the Schengen area in the wake of the migration crisis.

This whole process is essentially about British exceptionalism. The United Kingdom is at all levels convinced of its profound differences in relation to the European continent and that its legal and parliamentary systems are in basic contradiction to other European countries. The only way that this can be resolved is, according to many in the UK, complete withdrawal and a new relationship with the remaining member states. Mr Cameron has now to convince the British public that his re-negotiation is sufficient to allay the fears of the doubters.

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## The UK in Justice and Home Affairs: the engaged outsider

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*by Ilke Adam, Jana Berg, Florian Trauner, Marie Tuley, & Laura Westerveen*

### What is the state of EU policy?

Justice and Home Affairs (JHA) has been a fast-growing field of the European integration process. JHA is an umbrella term for a range of distinct policies ranging from migration, asylum, border control to civil justice and the fight against terrorism. The importance of cooperating in Europe on these issues has rarely been higher than at the present day. A series of terrorist attacks, most recently in Paris and Brussels, and an unprecedented rise in the number of migrants and refugees seeking to enter the territory of the EU have moved JHA issues high up on the agenda of policymakers throughout Europe.

Given the sovereignty-sensitive nature of most JHA issues, EU member states have long been reluctant to transfer competences to the EU level. The cooperation has developed since the mid-1970s in a range of intergovernmental groups. The Maastricht Treaty first added an intergovernmental 'Justice and Home Affairs' pillar to the EU's treaty architecture, yet preserved the strict unanimity requirement and kept the supranational EU institutions at arm's length. This changed with the Treaty of Amsterdam (1999) that incorporated the Schengen border-free project into the EU's legal framework and transferred the policy fields of asylum, immigration, external border controls and civil law matters to the Community first pillar under Title IV. The Treaty of Lisbon ended this institutional development by introducing the Community method in the remaining third pillar areas (judicial cooperation in criminal matters and police cooperation). These treaty changes have significantly altered the modes of decision-making in JHA and enhanced the opportunities for parliamentary oversight and judicial scrutiny at EU level.

The EU is not striving to replace, say, a national police-corps with a European one. The Lisbon Treaty emphasised that the different legal systems of EU member states shall not be merged at EU level: 'The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States' (Art. 67, Par. 1 TFEU). A key difference is how legalised certain policies are at EU level. The EU does not have the same legal

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competences for all JHA policies. For issues such as asylum or visa, the EU has embarked on developing 'common policies', for instance a 'Common European Asylum System' that harmonises the rules of member states on how to receive an asylum seeker and process her or his application.

In other areas, the EU has less legalised approaches and acts primarily on the basis of operational cooperation and the exchange of best practices. A case in point has been the integration of migrants into European societies. For a long time, member states resisted EU interference in their immigrant integration policies. Consequently, an explicit legal basis for developing or coordinating immigrant integration policy on the EU level has long been absent (van Puymbroeck, Adam &



Goeman 2010: 210). This changed when the Treaty of Amsterdam (1999) opened up the possibility for legal action to fight racial discrimination (Art. 13, TFEU). A decade later, EU institutions were granted the possibility to develop measures to support member states in their efforts towards immigrant integration, excluding, however, harmonisation of legislation on this issue (Art. 79.4, TFEU).

The challenges that the EU is currently facing in the JHA field are considerable. They include a need for closing security gaps exploited by jihadist fighters. A difficult issue has also been the fair distribution of asylum seekers within Europe. In 2015 and early 2016, the overwhelming majority of new migrants and refugees went to only a few countries such as Germany, Sweden and Greece. The EU's proposed solutions to deal with this situation, including a mandatory relocation scheme for asylum seekers in Europe, have remained contested, notably in Central and Eastern Europe.

## What is the UK's role/interest in Justice and Home Affairs?

At first glance, the UK seems to have little interest in the EU's cooperation on JHA. When the Amsterdam Treaty integrated the Schengen acquis into the framework of the EU, the UK – together with Ireland and Denmark – obtained an opt-out and refrained from participating in the Schengen passport-free project. A special provision, however, allows these states to participate in certain Schengen provisions. In the Lisbon Treaty, the UK government, together with Ireland, extended the opt-out arrangements to measures relating to police cooperation and criminal justice, the newly communitarised policy fields. A new provision gives the two states the possibility to withdraw an 'opt-in' decision to a measure based on the Schengen acquis within three months. In practice, the UK has voted in most civil law measures, anti-discrimination directives, many measures on curbing irregular migrants, and several early-phase EU asylum laws. It has only accepted a few measures on visas, border controls and legal migration (Peers 2011: 75).

Has the UK therefore surrendered influence in the EU in order to protect its national autonomy in a highly politically sensitive field? In investigating this question, Adler-Nissen (2009: 63) comes to the conclusion that this has not been the case. In many instances, the UK has actively influenced decision-making processes and EU policy outcomes in the JHA field, even when it would not be bound by the EU policies. The UK's efforts have been facilitated by an informal norm of consensus-seeking in the Justice and Home Affairs Council. EU ministers of interior are usually keen to 'bring everyone on board' (Adler-Nissen 2009: 67, referring to Lewis 2005), irrespective of the formal voting rules and procedures.

Different UK governments have considered that the EU level can provide added value for fighting organised crime and terrorism. For instance, the UK has actively sought to 'europeanise' its national model of intelligence-led policing. By pushing Europol to base its Organised Crime Threat Assessments (OCTA) on the British model, the UK was able to shape Europol's work and to influence the Council's strategic priorities in the area of fighting organised crime (Carrapico & Trauner 2013). This may be interpreted as a notable achievement as intelligence-led policing 'was, and probably still is, slightly counter-cultural' for many EU member states (Peter Storr, quoted in House of Lords 2008: Q10). In criminal justice and civil law, the UK has been pushing hard for more mutual recognition arrangements although the country remained sceptical regarding harmonisation (Adler-Nissen 2009: 69).

Migration is another field in which the UK has often sought to influence EU policies and/or to provide domestic ideas with more legitimacy through EU engagement. In 2003, for instance, the UK tabled a proposal on 'extraterritorial processing' of asylum claims (Blair 2003). According to the UK idea, the processing of asylum claims could take place in both 'regions of origin' and in 'transit processing centres' in nearby third countries. The EU would fund such facilities. Successful applicants would then be resettled in the UK or another EU country, while rejected cases would be returned to their countries of origin (The Observer 2003). The UK proposal became an item of different EU summits but it finally did not receive the support of enough member states. However, it continues to be discussed up to the present day, notably in the context of the current refugee crisis (Leonard & Kaunert 2016). Furthermore, in responding to the UK proposal, the Commission developed new policies seeking to enhance protection capacities in regions with strong refugee populations such as regional protection areas (Trauner 2014).

A similar uploading of the British 'national model' to the EU took place in the field of immigrant integration (Geddes & Guiraudon 2004). For a long time the UK's integration policy was referred to as a 'race relations' model, based around its anti-discrimination legislation. This 'British model' was highly influential for the 2000 EU Anti-Discrimination Directive. This allowed Britain to play the European game with minimal need to adapt domestically. Yet, in the meantime, Britain's frontrunner role in anti-discrimination policies has waned, as well as its investment in special measures for migrants and refugees. There have been 55% budget cuts to the Equality and Human Rights Commission (EHRC) and the termination of mandatory equality impact assessments (Huddleston et al. 2015). Over time, funds available for integration activities have reduced 'to the point where now only European Union funds are available' (Phillimore 2012: 531). Evidently, if the UK were to leave the EU, there would be no more EU funds

available through the European Asylum Migration and Integration Fund (Saggar & Somerville 2012:17).

Certainly, at times, the UK's opt-out arrangement has prevented them from achieving what they sought to achieve. A prominent case has been the UK government's effort to fully participate in setting-up and running the EU's border management agency Frontex. The UK's 'opt-in' was not allowed by the other member states based on the argument that the country was not a full Schengen member – a decision that even a British appeal before the European Court of Justice could not change (Kaunert et al. 2014: 356).

### What are the potential implications of a 'Brexit' scenario?

*'We secured the absolute right to opt in to any of the asylum and immigration provisions that we wanted to in Europe. Unless we opt in, we are not affected by it. And what this actually gives us is the best of both worlds. We are not obliged to have any of the European rules here but where we decide in a particular area... it allows us to opt in and take part in these measures' (Tony Blair quoted in Geddes 2005: 81, emphasis added).*

The opt-out/opt-in arrangements for the JHA field have provided the UK with flexibility. In a sense, the JHA field may be seen as an ideal-type arrangement for the UK government in terms of how to set-up its relation with the EU at large – participating in joint initiatives, if deemed useful; if not, staying out. According to Adler-Nissen (2009: 68-69), 'legal scholars have wondered just how the UK managed to gain such a favourable protocol'.

The dynamics of cooperation, however, have already changed. The year 2014 was a crucial one in terms of EU-UK relations in the JHA field. According to the Lisbon Treaty, the UK was by then obliged to accept the authority of the Court of Justice of the EU over 130 existing agreements in the area of police and judicial cooperation in criminal matters (as do the other participating member states) – or to make use of a 'block opt-out' of all of these measures. UK Prime Minister David Cameron decided to exercise this right of a comprehensive opt-out. Policy-related considerations seemed to have been only of secondary importance for the decision – under pressure from Eurosceptic members of the ruling conservative party, the clause provided the UK government with an opportunity to underline that it was keen to repatriate powers and sovereignty back from Brussels (Brady 2013). The UK government, however, wished to join 35 measures after the block opt-out. These measures included the European arrest warrant, participation in Europol and Eurojust and the Schengen Information System (Council of the EU 2014). In December 2014, the other member states and the European Commission accepted these British demands. Yet, the UK's

cherry-picking in combination with the then announced plan to hold a UK referendum on EU membership – 'have pushed some other Member States' patience to the breaking point' (Peers 2014).

It is not certain that the UK will be able to rely on a similar goodwill of the

UK opt-ins under Article 10(5) of Protocol 36 to the EU Treaties in December 2014 <sup>1</sup>	
Schengen	6 opt-ins, including: <ul style="list-style-type: none"> <li>• Police cooperation</li> <li>• Schengen Information System</li> <li>• Border control</li> </ul>
Non-Schengen	29 opt-ins, including: <ul style="list-style-type: none"> <li>• Europol</li> <li>• Eurojust</li> <li>• European arrest warrant</li> <li>• Exchange of information between law enforcement authorities</li> <li>• European Image Archiving System (FADO)</li> <li>• The fight against organised crime</li> </ul>

other member states if it decides to renegotiate a new relation with the EU after a possible no-vote in the referendum on EU membership. As Hugo Brady underlines, the political context has already quite changed for the UK, with British officials finding it already harder to influence new JHA legislation. 'The 2014 opt-out is likely to be remembered as an act of diplomatic self-harm by the UK. Britain's fellow member states are united in disbelief that a large and important member state would choose to leave a policy field where it has long been an important player' (Brady 2013: 3).

Overall, it is therefore likely that the UK will not find possibilities to cherry-pick its JHA cooperation outside the EU framework in a similarly beneficial way it has been able to do so from within the EU.

### Footnotes

1. For the full list see <http://data.consilium.europa.eu/doc/document/ST-15398-2014-INIT/en/pdf>

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## The Brexit and EU freedom of movement: legal uncertainty on both sides of the 'border'

Issue 2016/7 · April 2016

by Christof Roos

### What is the state of the EU policy?

Freedom of movement for persons and workers is a founding EU principle safeguarded by EU primary and secondary law (Art. 21, 45 TFEU; Directive 2004/38/EC). Next to the freedoms defined for capital, goods, and services, person mobility is considered to be a core driver for EU integration (Haas 1958: 12). Over six decades, since the 1950s, the rights of mobile Europeans have been constantly expanding. With the establishment of EU citizenship in the Maastricht Treaty (1992), any European, economically active or not, was given the right to reside in any other EU Member State. The legitimacy of EU freedom of movement rests on the assumption that mobility is beneficial for both the single market (Favell and Hansen 2002) and for the support of EU citizens for European integration (Favell and Recchi 2009). Most importantly, though, is the fact that the actual mobility of EU citizens signifies changes to state sovereignty; the EU policy limits the state's control over the people that are residing on the territory.

Claims for changes to EU person and worker mobility question core Treaty provisions, such as the right to freedom and residence in the EU (Art. 21 TFEU) and the fundamental principle of non-discrimination (Art. 45 TFEU). As these freedoms and rights are linked to EU integration, any revisions need to be based on unanimity among member states. Therefore, serious restrictions to EU migration are unlikely to find consensus among member states. Changes to secondary EU law, such as the citizenship directive or social security coordination call for a qualified majority, and are more likely to be achieved among member states. I discuss here how British demands for re-assessing social rights of EU citizens could actually be met by changes to secondary EU law. However, a crucial change to the principle of freedom of movement, by re-imposing control on EU citizens entry and residence in other member states, would be hard to achieve, even outside EU Treaty obligations.

### What is the UK's role/interest in Freedom of Movement?

At first glance, the UK's call for restrictions on freedom of movement is puzzling. The British labour government of the 2000s embraced one of the most liberal positions

By bundling the manifold policy expertise of the researchers of the Institute for European Studies (IES), this paper forms part of a series of analyses investigating the potential implications of a 'Brexit' scenario for different EU policies. All papers ask the same three questions: 1) What is the state of the EU policy in focus? 2) What is the UK's role/interest in this policy field? 3) What are the potential implications of a 'Brexit' scenario at the policy-level?

After Claire Dupont and Florian Trauner [introduce the project](#), Richard Lewis sets [the historical and cultural context](#) and explains how the UK and the EU have come to such a low-point in their relations. Next, five policy fields are analysed: [justice and home affairs](#); free movement policies; [EU external representation](#); [the \(digital\) single market](#); and [environmental policy](#).

towards the mobility rights of citizens from the new Eastern European member states. Together with Sweden and Ireland, the British government decided to open its labour market for worker and person mobility from these countries. In contrast, ten years later, the conservative UK Prime Minister David Cameron considers the liberal policy towards accession countries a mistake (Gostynska-Jakubowska 2015: 12). The other ten EU-15 member states made use of transitional arrangements allowing for restrictions of worker mobility for up to seven years (Kraleva 2013). As a consequence of openness, net-migration from the EU to the UK quadrupled in 2004 (15,000 to 87,000). Between 2004 and 2010, more than 600,000 EU citizens had moved to the UK (ONS 2014). In addition to the liberal policy towards EU accession countries the financial crisis that severely hit many

southern European member states incentivised migration to the UK. During the crisis years (2008-2012), EU migration to the UK slowed down but was still significantly positive, with 362,000 net arrivals (ONS 2014).

However, with 2.2 million EU migrants, the UK is not the EU Member State in which most EU migrants reside. Germany (3.7 million), Spain (2.3 million), and France (2.4 million) have a larger share in EU mobility. At the same time, Britain also sends 1.4 million of its citizens to other EU countries. Spain, Ireland, France and Germany are popular destinations for British citizens in Europe (Vargas-Silva 2012: 4-5). The data show that the UK not only previously held liberal positions towards immigration from Eastern Europe but it is also a major sending and receiving country of intra-EU mobility. Against this backdrop we must question why EU freedom of movement is one major justification for the UK to leave the EU.

The policy debate on an 'migration control crisis' began parallel to the financial crisis and the change in government from Labour to Tory in 2010. Since then, free movement of EU citizens to the UK has become one of the most politicised issues in the UK. The actors critical of EU freedom of movement include populist and conservative parties such as the Tories and the UK Independence Party and the media (Bruzelius et al. 2014). The issue that raised most concern in the British public and political debate was the assumption of 'welfare tourism' – i.e. EU citizens moving to the UK because of easy access to non-contributory benefits. The claim was hardly supported by empirical evidence. In fact, EU migrants contributed positively to public finances and their employment rate was higher than that of British nationals (Dustmann & Frattini 2013). Despite a lack of evidence, the connection between EU migrants and 'welfare tourism' epitomised a widely shared unease about immigration in the UK. Actual problems could be observed with regard to rising prices in the housing market and immigration to semi-urban and rural areas that were not used to or equipped for accommodating larger numbers of newcomers (Vargas-Silva 2014: 126). Most important to the debate in the UK was the fact that EU migration, although for decades smaller in size than immigration from third countries, could not be restricted. The inability to restrict EU admission resulted in a debate discussing a 'migration control crisis' in relation to the country's EU membership (Paul 2016).

In the run-up to the British referendum on a possible Brexit, UK Prime Minister David Cameron proposed a list of reforms to the European Council. A settlement on these demands was a pre-requisite that he would campaign to keep the UK in the EU. Among other issues of British concern with the EU, immigration featured prominently on the list of demands for re-negotiation. Calls for restrictions focus on issues of abuse of EU rights and welfare state access of EU citizens in the UK. Cameron assumes that high levels of immigration in the UK are connected to the

'draw that [the British] welfare system can exert across Europe' (UK Government 2015). In order to discourage 'migration for welfare', he claimed a four-year qualification period before EU migrants can claim in-work benefits such as income top-ups and housing benefits. In addition, out of work benefits such as child allowance should not be paid to children living abroad.

After months of British diplomacy with EU member states and EU institutions in 2015, the Commission and Council signalled room for policy change (European Council 2016a). In a two-day marathon meeting on 18 and 19 February 2016, the European Council agreed that child benefits could be indexed to the conditions of the Member State where the child resides (European Council 2016b: 22, see also Policy brief 2016/5). The proposed changes to social security coordination rules (Regulation 883/2004) became possible because Denmark, Germany, Belgium, and the Netherlands were also critical of having to pay child benefit allowances to children living abroad. However, withholding in-work benefits from EU workers in Britain directly infringes EU non-discrimination principles. Thus, the Council suggested a 'safeguard mechanism to respond to exceptional situations of inflow of workers from other Member States' (European Council 2016a). That way, the general commitment towards freedom of movement and non-discrimination remained untouched and restrictions were justified on the basis of emergency. The Council Presidency and the Commission acknowledged an exceptionally high inflow of workers into the UK in recent years. The so-called 'emergency brake' allows for denial of benefits to newly arrived workers for four years within a seven year time period. The safeguard mechanism functions as an amendment to Regulation 492/2011 and only denies benefits to newly arriving EU workers (European Council 2016b: 34). Apparently, some Eastern European member states had given up their principled opposition to a qualification period for full access to the welfare state (Taylor et al. 2016). Immediately after the European Council agreed on the 'new settlement for the United Kingdom within the European Union', Cameron kept his promise and announced to campaign for Britain to remain in the EU.

However, this EU-UK settlement will be difficult to defend factually and politically. Concerning the facts, a waiting period for in-work benefits will probably not decrease the numbers of EU migrants in the UK. Cameron's emphasis on benefits in the re-negotiation is somehow puzzling since his government already adopted some restrictions targeting the access of EU migrants to benefits. The UK's open and growing economy attracts EU migrants rather than its in-work welfare benefits or child allowance. The networks established between Europeans in the UK and those still in the home countries are strong and perpetuate movements. Push factors for moving to the UK remain as long as economic and labour market conditions in southern and eastern Europe are grim (Galgósci et al. 2012: 10-12). Therefore, it is fair to assume

that a decrease in the numbers of EU migrants can only be achieved outside of EU freedom of movement policy. Politically, the suggested settlement was hardly considered as a 'better deal' by Eurosceptics in Cameron's own party. Influential conservative politicians such as Chris Grayling, Leader of the House of Commons, and Ian Duncan Smith, work and pensions secretary, and others were quick in denying the success of Cameron's re-negotiation efforts (Watt & Traynor 2016). Eurosceptics among Tories or elsewhere will not be convinced by any re-negotiation that does not lead to a Brexit. Decisive for the success of the 'Britain stronger in Europe campaign' ('Bremain') is the media and its influence on the general public's attitude. Major newspapers, including The Guardian, The Times, the Daily Mail and Daily Telegraph, received the 'settlement' with mixed reviews. A critical public, unconvinced by the settlement, can well shift the balance towards Britain leaving the UK.

### What are potential implications of a 'Brexit' scenario?

The likelihood of a Brexit motivates hypotheses on what might happen to free movement and movers in the UK and the rest of the EU. Answers to the following questions were sought:

1. What are the alternatives to free movement allowing the UK control over EU migration?
2. What happens to the status of EU citizens in the UK?
3. What happens to the status of UK citizens in the EU?
4. What could be the unintended consequences of re-introducing immigration control for EU citizens in the UK?

A possible alternative to full UK membership in the EU is becoming part of the European Free Trade Association (EFTA), joined by Iceland, Liechtenstein, Norway and Switzerland. The caveat is that EU-EFTA relations defined in the agreement on the European Economic Area (EEA) include an obligation for the free movement of workers (Art. 28 EEA). Switzerland, an EFTA country, is not a signatory to the EEA but has signed a separate bilateral agreement on freedom of movement with the EU (OJ L114/6). The Swiss government's attempt to introduce quota regulations for EU citizens moving to the country proved to be a great challenge in changing the agreement. As a consequence of a nationalist backlash and referendum in 2014, Switzerland aims at decreasing immigration, including labour migration from European neighbours.

In early 2016, negotiations with the EU Commission were deadlocked. Swiss politicians indicated that no settlement on the issue of free movement would make the suspension of all bilateral agreements with the EU a likely option (Euractiv 2015). The struggle over terminating free worker mobility between the

EU and Switzerland once again shows how indivisible freedom of movement is from the internal market and other economic freedoms. The Swiss case exemplifies that withdrawing from free movement questions further agreements on free trade. Therefore, after a Brexit, the re-introduction of national quotas or other control measures establishing a 'free movement light' does not seem to be an acceptable option for the EU. Since the UK highly values access to the internal market, it might be possible that it prioritises economic freedom over immigration control. The UK could join EFTA, and freedom of movement could be referred to as an issue that remains 'unresolved'. This seems to be a likely scenario in the light of the consequences that EU as well as British nationals face: they would become third-country nationals for the purpose of entry and residence.

The re-introduction of immigration control would have serious consequences for the status of 2.2 million EU citizens as well as 1.4 million UK citizens exercising their free movement rights. If immigration controls were enforced retroactively and not only on new arrivals, insecurity with regard to residency in a member state would probably lead to an increase in citizenship requests. Scholars observed this development during the economic crisis. Compared to pre-crisis data, it was more likely that EU migrants from crisis-struck southern European countries would acquire citizenship of their northern European country of residence (Graeber 2016). EU migrants in precarious employment situations, unsure about the availability of employment visas, would likely opt for this alternative.

For the 400,000 British pensioners that reside in the south of Europe, in France, Spain or other member states, Brexit would put serious constraints on their free or state-subsidised access to health care (The Economist 2014). Within the equal treatment provisions of the treaty and the citizenship directive (2004/38/EU), British retirees enjoy the same rights as other national pensioners. Withdrawing these rights would probably jeopardise the budgets of many retirees living abroad. Return migration to Britain could be an effect, putting additional pressure on an already tense housing market. In the current economic situation, a low-level resale in Spain would leave many of the British retirees dependent on social housing in UK.

UK workers in the EU would have the option to acquire a residence status within EU immigration legislation. Long-term resident status would be a viable option for those already living in a EU country for more than five years. British citizens, however, may have to pass integration and language tests to qualify for the status (see also Policy brief 2015/6). British workers looking for first admission may use the EU Blue Card system, aimed at attracting highly-skilled third country nationals. The respective earnings threshold that can be applied



by member states could make it difficult to attain the status. Next to national schemes for labour migration, EU legislation on seasonal employment as well as intra-corporate transferees offers short-term access to the EU labour market. Ordinary workers already working in a EU country can rely on the rights defined in the single permit safeguarding access to social rights (Roos 2015). Additional options for entry are the students' and researcher directive. However, EU and national law regulating immigration of third country nationals are less generous in terms of rights and entry requirements than provisions regulating EU freedom of movement (Peers 2014).

The reciprocal re-introduction of immigration control could lead to unintended consequences. Visa overstaying or irregular immigration of EU citizens to the UK and vice versa might well be the result of quotas and visas. As a consequence, deportation of EU or UK citizens would become more likely. Aside from the burden created for the EU or UK migrants, the administrative and legal costs would be extraordinary. New documents would have to be issued, procedures changed and public authority would have to deal with the legal appeals of tens if not hundreds of thousands of people.

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## The UK in EU External Representation: a principled, yet pragmatic intergovernmentalist

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by Jamal Shahin

### What is the state of EU policy in external representation?

Discussions about British influence in the world form a substantial backdrop to the Brexit debate, and will doubtless emerge as one of the central points of contention in the ongoing referendum campaign in the UK. Optimists on either side will enthusiastically promote the power that Britain wields in the international context. Leaving the EU will finally give the UK unfettered freedom to pursue its interests on an international scene, and allow it to forge agreements with any country it likes. Alternatively, remaining a member of the 28-nation bloc will ensure that Britain's interests are protected by a group of like-minded countries. Pessimists on both sides of the debate will either portray a Britain doomed to isolation, or to the shackles of a political union that is fraught with economic, social and political problems. Both sides will logically declare that British interests are best served in or out of the EU. Whatever the result will be on 23 June, the debate itself will have ramifications for the role of the UK in the EU, particularly in the way the rest of the world views the EU's capacity to work on the international scene.

What is the scope of EU external representation and how is this executed in today's EU? This paper limits discussion to the EU as a diplomatic actor, only one element of the EU's foreign policy.<sup>1</sup> Diplomacy, once considered the playground of heads of states alone, is in transition. Representation on the global landscape is characterised not only by statehood; the EU's external representation has evolved to recognise this. Multilateralism, multipolarity, and the growth of transnational non-state actors are changing the patchwork of international politics. It is also changing the way actors represent themselves. In this 'post-Westphalian' diplomatic environment, the EU seems well suited to participating in these developments, acting alongside the EU's member states. It is itself a product of these post-national times (Cooper 2004; Rosenau and Czempel 1992; Edwards 2014).

Different European actors represent the EU at different times. The relatively young post of the European Union High Representative of the Union for Foreign Affairs and Security Policy (HR/VP) is the most prominent of these actors. In terms of external representation, the HR/VP should 'conduct political dialogue with third parties

By bundling the manifold policy expertise of the researchers of the Institute for European Studies (IES), this paper forms part of a series of analyses investigating the potential implications of a 'Brexit' scenario for different EU policies. All papers ask the same three questions: 1) What is the state of the EU policy in focus? 2) What is the UK's role/interest in this policy field? 3) What are the potential implications of a 'Brexit' scenario at the policy-level?

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on the Union's behalf and shall express the Union's position in international organisations and at international conferences' (Art 27.2 TEU). The current High Representative is supported by the European External Action Service (EEAS). The High Representative's role was originally established as part of the Council after the Treaty of Amsterdam, and evolved into its current shape in the Lisbon Treaty. The EEAS formally started work in January 2011 (Missiroli 2010; Piris 2009), bringing together officials from the Council and the Commission alongside national diplomats seconded from their ministries.<sup>2</sup>

It is fair to say that the EEAS is an organisation defined by compromise (Blockmans 2012; Vanhoonacker and Reslow 2010). Ambitions and expectations for the EEAS

have been driven by conflicting forces: functionalist aspirations for efficiency, coherence and coordination across EU policy fields led to a strong desire for an institution that could globally represent the EU. The EU's external representation was widely criticised due to its rather complex mechanisms (with the European Commission, rotating Presidency and member states all taking up the role of external representation at one point or another). More intergovernmental aspirations drove the founders of the EEAS to develop an organisation that simply streamlined the coordination of the EU institutions and supported member states, and additionally to reduce the burden on national diplomatic services in this period of austerity. In other words: everyone involved could see a problem (coherence, duplication, inefficiency,...), and everyone involved had their own solution (e.g. the European Parliament: see Fiott (2015b) and Brok and Gualtieri (2013)).

The extensive networks of coordination that exist between national governments, national diplomatic services and EU institutions also extend beyond the EEAS. In areas where the EU has mixed or exclusive competence, the European Commission also participates in EU external representation (environment and trade are two examples). In all instances where an EU body represents the EU, coordination between national- and EU-level actors is enacted. The EU is often bound to negotiating mandates from the member states, either through the Council of the EU or the European Council (Furness 2013). The EU thus cannot represent its member states without their support, even if this autonomy is contested.<sup>3</sup>

EU external representation also serves to coordinate positions internally as well as to the world. This 'side-effect' of the EU's diplomatic role in the world means that 28 states can already negotiate on policy issues prior to participating in wider international negotiations. The obvious advantage of a combined EU external representation is therefore complemented by the benefits of already having a large bloc of countries in agreement on international policy. Highly appropriately, and in the cases where EU member states do agree on a policy direction, *l'union fait la force*.

### What is the UK's role and interest in EU external representation?

The British have consistently maintained that the birth of a European 'foreign ministry' should not imply further 'competence creep' in the EU's external role. The Treaty of Lisbon helped to create a patchwork that does not overcome the legacy of past endeavours, or indeed succeed in building up a 'single' supranational EU representation in the world. It tries to accommodate smaller state wishes for a combined presence in diplomatic space, along with the insistence of larger states (notably the UK) that it maintain a low-key role. The EEAS, according to

the Treaty on European Union (Art 27.3 TEU), is to work 'in cooperation with the diplomatic services of the Member States' and not instead of them. It ensures, that 'unnecessary duplication of tasks, functions and resources with other structures should be avoided' (Council of the European Union 2010). The British Government must have been pleased to see the Council Decision; they wished to ensure that their ambitions as a global power would not be undermined by an EU acting as an autonomous actor. Yet there are differing interpretations and implementations of the EU's external role across policy areas: the patchwork is still being quilted, yet the seamstresses are member states and EU institutions alike (Missiroli 2010).

Despite the UK's apparent unwillingness to 'undermine' their own role in international affairs, they have been pushing for a heavy British presence in the EEAS. In recognition of the importance of the UK's support for the EU's external 'face', a British person was given the task of sewing the patchwork together to create the first operational EEAS. Baroness Catherine Ashton was the incumbent British representative in the European Commission and became the first person to fill the combined post of HR/VP.

Pragmatism has dominated the EU's foray into external relations, and member states have maintained an important role in external representation – as 'lead negotiators' in environmental policies, for example (Delreux & Van den Brande 2012). EU external representation has remained as the sum of its parts. Effectively, each member state has the right to represent itself in international negotiations whilst also participating in coordination with other EU member states. The British Government famously blocked over 70 EU statements to UN Committees in 2011, citing that the statements should have been made 'on behalf of the EU and its Member States' and not just 'on behalf of the EU'. Current arrangements concerning external representation (based upon UK insistence) rarely allow the EU to speak when member states do not agree, and certainly do not allow the HR/VP to represent member states if no accord has been made (Kaddous 2015; Piris 2009).<sup>4</sup>

One of the standard criticisms of EU external representation is that it has been multitudinous and incoherent. The House of Lords European Union Committee stated in 2013 that coherence improved with the establishment of the HR/VP post (European Union Committee 2013: 54). Whilst a substantial number of observers have lamented the lack of a single European voice in international affairs, the focus appears to have shifted to an appreciation of a coherent, consistent, and not necessarily single, voice. Such a process has indeed suited the British diplomatic temperament. The UK is a key supporter of maintaining the capacity to act independently on the international stage, and yet has equally clearly been a beneficiary of ensuring that the EU as a whole acts towards

supporting their viewpoints (see Fiott 2015a). British interests can often be far more effectively promoted should there already be 27 other countries supporting them. The backing of the EU in discussions at a global level can be of immense support. The informal and formal coordination mechanisms that the EU provides are valuable assets in the British diplomatic armoury; this has been recognised by the present and previous UK Governments.

Since the establishment of the EEAS, the UK Government (dominated by the Conservative Party) has been driven by an antagonistic approach to Europe, and this has been reflected in its attitude towards the EU's role in external representation. As a member of the ancien régime, a founding member of many international organisations, and a current member of many of the different international fora in its own right (UNSC, G8, etc.), the UK has long pushed for an EU machinery that supports its member states in representing European and national interests internationally. This is clearly a prerogative that the British Government would like to maintain. In essence, discussions over external representation revolve around the presentation of representation, and not necessarily the practice of representation.

### What are the potential implications of a 'Brexit' scenario?

As described in the introduction, both optimistic and pessimistic opinions can be found on either side of the debate on a Brexit.

Optimists in the leave campaign may envisage that the UK relationship with the EU itself will witness little change with respect to external representation. The UK will always be free to align itself to an 'EU approach' in any case. In a positive light, one could argue that the years of working together both domestically and internationally would create a mutual understanding that does not need formal institutional ties to ensure continuity. One could assume that the years of institutional interactions, officials would have been 'socialised' into speaking the same language, even if they would not share the same discourse (Juncos & Pomorska 2014).

The rosy pictures drawn by Brexit enthusiasts, of a UK that would be finally free to represent itself in an international context, grossly underestimates the EU's role in representing European and national interests in international fora. It also ignores the global leverage that comes from having 28 like-minded states working together in international fora. It neglects to consider the impact of isolation from the multiple layers of coordination and interaction that take place in Brussels, Geneva, and New York. Leaving the EU would block the UK's ability to participate in formulating common positions for all EU members, thereby reducing its 'domestic' and 'external' capacity.

The potential implications of a Brexit should be relatively clear. They are three-fold: 1) the removal of the possibility for the UK to pool resources with other European colleagues in international fora, 2) an inability to help shape the position of other EU members and 3) a weakened international presence (and consequent inability to 'punch above its weight').

If the best an optimist can hope for is an argument based on 'not much will change', a pessimist is able to present far more dramatic potentials. As a key trading partner to the EU, the UK will still need to align itself with EU on issues where trade is involved (goods, services, environmental standards, etc.). Yet it will have no influence on the coordination of EU positions in these international negotiations. The UK might be unfettered by coordination responsibilities, but it would also lose the ability to influence the EU's position. It will need to negotiate with EU representatives in plenaries and in corridors, and not inside the EU's official coordination meetings.

Arguments for Brexit that focus on inefficiency in external representation do not take effectiveness into account: when Europeans agree, they are stronger together. The current structure of EU external representation might be inefficient (see Blockmans et al. 2013), but the 'cumbersome internal coordination process between Member States and EU institutions' (Wouters, Chané & Odermatt 2015: 179) often facilitates effective outcomes for the EU's member states when their interests are aligned. The British presence on the international scene would undoubtedly be weakened if it did not have the ability to pool resources with their neighbours.

The UK would undoubtedly (gradually) lose its influential role in the world were it to leave the EU. It may have a Permanent Seat at the UN's Security Council, and it may have a Commonwealth that it can work with, but both of these will require heavy investments from the UK's Foreign and Commonwealth Office at a time when budgets are under pressure (see Carta and Whitman 2013 for more on the EEAS/FCO relationship). This short paper has not even dared to address the legal and political costs that will be brought to bear as the UK extricates itself from international treaties and agreements signed by the EU, and then negotiates to re-enter these same arrangements. The United States Government has already publicly expressed its desire for the UK to remain part of the EU; they do not consider conducting independent and parallel diplomatic activities with the UK and its European partners as ideal. The UK may be able to draw on its ties with the Commonwealth to reinforce its position on the world stage, but this cannot replace the intertwined relationship that has been developing over the past sixty years with other European countries.

An EU of 27 European states would still be an important and powerful diplomatic actor in the world. Despite the UK not being the only such power in the EU (France is also a jealous guardian of its historical role in international relations), it is conceivable that the remaining member states may desire to further the EU's coherence, efficiency and effectiveness in years to come. If the EU did make such a move towards closer political representation beyond its borders, it would be difficult to see how the UK could continue to position itself as an independent global power, playing in the same league as the other G20 countries. Such a situation may lead to an 'independent' UK losing its ability to 'punch above its weight' in the world.

EU external representation is still in its infancy, and a UK departure at this moment may give thrall to those wishing to reshape the EU's diplomatic role into something counter to British interests (a stronger EU may emerge, one that overwhelmingly counts for 'more' than the UK in terms of international presence). The current UK Government has consistently argued that the EEAS and the HR/VP should play a supporting role for member states. The present setup works very much in the UK Government's favour. It does allow for everyone to have the best of both worlds.

## Endnotes

1. This paper also will not cover the topic of delegations, which has been covered in more detail in Whitman (2010), Driessens and Schaik (2010).
2. As of 2012, 19% of staff come from member states' diplomatic services and approximately 200 British officials work in the EEAS (see House of Commons European Scrutiny Report, January 2012. Available from: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-xlix/42803.htm>).
3. For a pre-Lisbon example of how this coordination works at the United Nations, see Degrand-Guillaud (2009). Post-Lisbon analysis is provided by Blavoukos et al. (2016). In environmental policies, see Delreux and Van den Brande (2012), and for trade (pre-Lisbon) see Meunier and Nicolaidis (1999).
4. See also correspondence between the UK's Foreign and Commonwealth Office, the Council of the European Union, and the UK Parliament's European Scrutiny Committee, which noted: "[t]he EU can only make a statement in those cases where it is competent and there is a position which has been agreed in accordance with the relevant Treaty provisions"; "[e]xternal representation and internal coordination does not affect the distribution of competences under the Treaties nor can it be invoked to claim new forms of competences". See <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-xlix/42821.htm>, and <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015901%202011%20INIT>, both last accessed 24 March 2016.

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## The United Kingdom and the (Digital) Single Market

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by Harri Kalimo, Trisha Meyer, Jamal Shahin, Fausta Todhe

### Introduction

The European Single Market has been the main thrust of the United Kingdom's involvement in the European Union. The European Free Trade Area (EFTA) was created in 1960, driven by a British desire to offer European countries the economic benefits of a larger internal market in a situation where the full accession of EFTA countries to the European Economic Community was, for various reasons, not possible (Milward 2005: 3). For the UK, membership in the (now) EU in 1973 thus represented a deliberate choice to participate in the European integration project beyond its economic core.

Key events in EU-UK relations with a focus on the Single Market (based on Dinan 2014; Hartley 2014)	
1960	Austria, Denmark, Finland (1961), Norway, Portugal, Sweden, Switzerland and the United Kingdom establish the European Free Trade Association (EFTA).
1961	The UK's application to the European Economic Community (EEC) is denied.
1973	The UK joins the EEC along with Ireland and Denmark.
1975	In a UK referendum, 67.2% of British citizens agree to stay in the EEC.
1993	After many internal conflicts the UK ratifies the Maastricht Treaty (TEU). Nevertheless the UK does not agree to the common currency and the 'Social Chapter'.
1995	The UK refuses to sign the Schengen Agreement.
1997	The UK Labour Party wins the elections and decides to opt in to the 'Social Chapter'.
2002-2012	Most EU member states adopt the Euro, but the UK keeps its own currency.

In 2016, both the EU's internal market and all the other forms of European integration have, however, evolved far from the state of play in 1973. The crucial question, therefore, is whether the EU's Single Market has developed in a fashion that, in the aggregate, remains beneficial to the UK, and if it has, whether such benefits outweigh the potential net costs that the membership may entail in view of the (partly considerable) changes in other respects. In this paper we focus on the

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After Claire Dupont and Florian Trauner [introduce the project](#), Richard Lewis sets [the historical and cultural context](#) and explains how the UK and the EU have come to such a low-point in their relations. Next, five policy fields are analysed: [justice and home affairs](#); [free movement policies](#); [EU external representation](#); the (digital) single market; and [environmental policy](#).

former question: the implications of the British participation in the EU Single Market for the UK and for the EU. Building on this reflection, we also briefly discuss possible consequences of a 'Brexit' scenario. Considering the diverse and vast nature of Single Market policies, the paper primarily draws on examples from the Digital Single Market. We conclude that from a (Digital) Single Market perspective, a 'Brexit' would entail losses for both the UK and the EU, primarily in terms of liberal regulatory influence and continued access to goods and services.

## What is the state of the EU policy?

*'The European Single Market [...] has transformed the way Europeans live, work, travel, do business and study. It has opened up opportunities for businesses to expand successfully on the global market' (European Commission 2012).*

Pioneered by the Delors Commission in the 1980s and launched on 1 January 1993, the European Single Market, also known as the EU's Internal Market, is an open market where barriers have been abolished to guarantee the 'four freedoms' among member states: free movement of goods, capital, services and people. The Single Market aims at promoting specialisation, economies of scale and efficient allocation of resources so as to raise the aggregate welfare in the European economy. Increased competition will lead to better quality European products and services at lower prices, which will also increase EU's global competitiveness. The Single Market is one of the EU's greatest achievements, also for global trade and investment.

Key macroeconomic achievements attributed to the Single Market (European Commission 2012)
<ul style="list-style-type: none"> <li>• Increase of 2.13% or €233 billion in EU27 GDP in 2008, or an average of €500 extra in income per person in the EU27 in 2008.</li> </ul>
<ul style="list-style-type: none"> <li>• Creation of 2.77 million new jobs, or a 1.3% in total EU employment, over the period 1992-2012.</li> </ul>
<ul style="list-style-type: none"> <li>• Increase in intra-EU trade in goods from €800 billion in 1992 to €2,800 billion in 2011, or from 12% of EU GDP in 1992 to 22% in 2011.</li> </ul>
<ul style="list-style-type: none"> <li>• Increase in flow of foreign direct investment (FDI) between EU countries from €64 billion in 1992 to €260 billion in 2010 (before the economic downturn, €730 billion).</li> </ul>

The Juncker Commission is spearheading internal market developments in the contemporary global information era with its Digital Single Market (DSM) initiative (European Commission 2015). This is the follow up to the European Commission's eEurope (1999) and i2010 (2005) strategies, which have all focused on slimming down regulation in the fast-paced field of technology development and adoption. The Digital Single Market seeks to reduce the burdens of economic operators by shifting towards a digitally driven economy, where regulatory differences between EU member states are harmonised and cross-border trading simplified. The DSM is the European response to the global challenges of ensuring economic growth in an age when digital technologies are eroding state and market boundaries. The European Commission (2016) estimates that the completion of the DSM could 'contribute €415 billion per year to our economy and create hundreds of thousands of new jobs'.

The European Commission's DSM strategy identifies three main pillars: access to digital goods and services, regulation of networks, and industrial growth.

Concretely, the DSM has already delivered some achievements for European citizens in terms of access to services: the success most touted by the European Commission is the reduction of mobile roaming costs for European travellers. Industrial growth has been supported by research and development funds, currently disbursed through (among others) the Horizon 2020 programme.<sup>1</sup> In the near future, EU regulations will also help provide a (more) secure online environment for all Europeans (notably regarding data protection).

## What is the UK's role/interest in the (Digital) Single Market?

*'Our participation in the Single Market, and our ability to help set its rules is the principal reason for our membership of the EU' (David Cameron 2013).*

The European Single Market has evolved in a continual tussle between market-based and state-centric approaches to harmonisation. Those advocating a market-based approach to the Single Market merely seek to create a level-playing field in which market players can compete on fair terms. The key term is liberalisation rather than regulation. Others adopt a more interventionist approach, viewing state involvement as necessary and desirable to strengthen the European economy and its players. Generally speaking, the UK prefers to leave the developments to the markets to the extent possible, and use as light a policy approach as possible where that is not sufficient (Geddes 2013; Oliver 2015). In the Council of Ministers, a coalition of liberal Northern states often builds around the British position, facing not only the Mediterranean member states, but on issues such as mutual recognition of degrees and certificates also increasingly Germany.

The UK's vision of encouraging a market-led approach to harmonisation is also illustrated in its position on the DSM. The UK strongly supports the removal of internal barriers and believes that, with 500 million European consumers across 28 member states, the DSM provides the key to place the EU on the top in the global (knowledge and innovation) economy, making it more productive, better for small businesses, and fit for the digital age (UK Government 2015). The debate focuses on the means of achieving the objectives. It is again not only the Southern EU countries, but the ordo-liberal German approach that distrusts the markets that the British approach tries to harness. British interest is thus in ensuring that market principles are applied equally in the online and offline worlds. Recent examples include policy debates on network neutrality, data protection, modernisation of copyright and development of standards in the Internet of Things (European Commission 2016).

A related, yet distinct area of high interest to the UK is the European support for innovation and modernisation of research infrastructures. British involvement in the EU's ICT-related research programmes is intense and very fruitful. Year on year,



the UK is one of the largest recipients of EU research grants in absolute terms, and has supported technological development in both research and commercial fields (Simmonds et al. 2010). Approximately €3.3 billion will be made available in 2016 and 2017 for ICT-related research in the Horizon 2020 programme.

### What are the potential implications of a 'Brexit' scenario?

*'If the British cannot support the trend towards more integration in Europe, we can nevertheless remain friends, but on a different basis. I could imagine a form such as a European economic area or a free-trade agreement' (Delors 2012).*

The discussion surrounding the UK's departure is loaded with opinions, assumptions and misunderstandings. Proponents of a 'Brexit' believe that the benefits to the UK economy of the European Single Market are vastly overstated and the UK's dependence on the Single Market is simply a myth. Those led by UK Prime Minister David Cameron emphasise the importance and benefits of being in the EU, while pushing for reforms on how the EU develops as a trading partner. Both camps wish to see economic cooperation with the EU continue in some form. One possible shape this could take is a Norway-style agreement (despite political insistence from Cameron that this will not happen), where the UK retains access to the Single Market. However, joining the European Economic Area would mean that the UK would have no ability to directly influence EU policies, and in effect would be subject to 'regulation without representation'. Norway is also a net contributor to the EU, but has traditionally chosen this model due to its ability to avoid being part of the Common Fisheries Policy.<sup>2</sup>

Importantly, a separation from the EU would mean that in the institutional politics of the EU, the European Commission as a proponent of a liberal agenda on the Digital Single Market would lose its greatest ally, while the UK could only influence the debate from the side lines.<sup>3</sup> It is not unlikely that EU-wide liberalisation efforts in the DSM would stall, shifting the regulatory balance towards a more interventionist approach to harmonisation.<sup>4</sup> We illustrate the potential implications of a 'Brexit' with three Digital Single Market policies.

First, the UK has a strong interest in the copyright reform and enforcement debate in the EU. As the discussions at a European level have been at a standstill for quite some time, the UK has taken policy action at a domestic level. For instance, the UK's co-regulatory 'follow-the-money' approach to online copyright infringement through the involvement of financial and advertising intermediaries is regarded as best practice in the EU. Consequences of a 'Brexit' would therefore not necessarily be felt immediately.<sup>5</sup> However, the UK would lose its say in determining the future direction of a policy field that is high on the European Commission's agenda and crucial to online commerce.

Second, concerning access to goods and services, the UK (along with the European Commission) has been a strong promoter of removing mobile roaming charges, but might see its previous efforts turn to vain if it leaves the EU. Indeed, the UK could continue to benefit from the recently approved roaming regulation only if it adopts Norwegian-style cooperation or forms some other sort of treaty arrangement with the EU, none of which is certain, should the 'withdrawal Article' 50 TEU be invoked. Otherwise the fate of British customers in Europe would depend on individual agreements between operators, far less clear-cut than the present model.

Third, the most practical example is that the UK would need to continue to contribute to the EU's research and innovation programmes to ensure access to EU bids for UK research institutions and companies. It is clear that the EU is not afraid of using research funding as leverage. When Swiss voters decided to limit the number of workers coming from the EU due to rising immigration concerns, the EU responded by blocking Swiss universities from EU research projects and the Erasmus exchange programme. Israel, another country that participates in EU R&D programmes, was forced to exclude research organisations based in the Occupied Palestinian Territories from participation in Horizon 2020, in a last-minute concession that had threatened to see Israel removed from the programme altogether (Abbott 2013).

In sum then, there is agreement that, in terms of the Digital Single Market, mutual benefits occur for the UK and the EU when the UK is part of the EU. For the most part the European Commission also shares the market-based approach pushed by the UK in shaping regulation tailored to the digital environment. Although much is undetermined at this time, we argue that a 'Brexit' will entail several losses for both parties, even after a period of uncertainty. For the UK, (further) barriers to UK businesses' and consumers' access to transactions of goods and services would emerge across the EU, while for the EU itself, the loss of the UK's input on the Digital Single Market would doubtless lead to more debate on how market-driven the Digital Single Market policies should be.

### Endnotes

1. This paper will not delve into contestations around the effectiveness of EU-level research funding, commonly referred to as the 'European paradox': 'a strong EU public sector science base coupled to a relatively weak R&D performance of EU firms' (Tijssen and van Wijk 1999).

2. For a detailed overview of seven alternative models of economic cooperation with the EU, please consult Piris, J.-C. (2016). *If the UK Votes to Leave. Seven Alternatives to EU Membership*. London: Centre for European Reform. Retrieved on March 2nd, 2016 from [https://www.cer.org.uk/sites/default/files/pb\\_piris\\_brexit\\_12jan16.pdf](https://www.cer.org.uk/sites/default/files/pb_piris_brexit_12jan16.pdf).



3. In this context, see for instance the statement of a British civil servant within the then Department of Trade and Industry (DTI) that 'in areas that are core to the DTI, trade policy and Single Market policy, we are closer to the Commission probably than any other member state' (quoted in Buller and Smith 1998: 174).

4. Tim Oliver (2015: 421-422) concurs that '[i]n the longer term a Brexit could make the EU less inclined towards liberal, free market economics'. At the same time he argues that the UK's liberal regulatory influence is already limited by its exclusion from the Eurozone and questions the extent to which the European Commission, Germany or even France would permit a more protectionist agenda.

5. Although regulatory issues between national and European licensing and enforcement agencies may arise.

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## The UK in EU Environmental Policy: common responses to common problems

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by Claire Dupont, Lisanne Groen, Sebastian Oberthür and Carlos Soria Rodríguez

### What is the state of EU environmental policy?

Environmental policy is an area of shared competence in the EU. Over time, with the growth in EU environmental legislation, more competence in internal policy measures has been moved to the EU level, while external representation in international environmental organisations and negotiations remains shared between the EU and member states. As many environmental problems are 'collective' or 'commons' problems, policy responses necessarily need the buy-in from a multitude of actors, often across borders in a regional or global context, to be effective (Hardin 1968).

EU environmental policy has become ever more ambitious since its beginnings in the 1970s, at least until the mid-2000s (Haigh 2015). It moved member states towards adopting a precautionary approach to environmental protection, and promoted principles such as environmental policy integration across policy sectors for the pursuit of sustainable development (Treaty on the Functioning of the EU, Art. 11). The EU has also tried to upload these principles to the international level by means of its participation in many multilateral environmental agreements. Results of more than forty years of EU environmental policy have shown marked improvements in the quality of the environment and reductions in pollution (EEA 2016). Key early environmental policy measures that still form a strong base in EU policy include the Birds and Habitats Directives (adopted in 1979 and 1992 respectively). In the UK, the implementation of these Directives led to the establishment of 620 'Special Protected Areas', 31 'Sites of Community Importance' and 270 'Special Areas of Conservation', including both land and marine protected sites.<sup>1</sup> EU environmental policy only expanded and grew over the years, with measures on water quality and management, chemicals management, noise pollution, environmental assessment, air pollution, waste management, marine protection, biodiversity protection and climate change being added to the portfolio. Overall, policy measures increased in number and, usually also, in ambition.

The continued high ambition of EU environmental policy was stalled somewhat in the wake of the 2008 economic and financial crises. Member states with pressing unemployment, debt, and competitiveness concerns became less interested and less

By bundling the manifold policy expertise of the researchers of the Institute for European Studies (IES), this paper forms part of a series of analyses investigating the potential implications of a 'Brexit' scenario for different EU policies. All papers ask the same three questions: 1) What is the state of the EU policy in focus? 2) What is the UK's role/interest in this policy field? 3) What are the potential implications of a 'Brexit' scenario at the policy-level?

After Claire Dupont and Florian Trauner [introduce the project](#), Richard Lewis sets [the historical and cultural context](#) and explains how the UK and the EU have come to such a low-point in their relations. Next, five policy fields are analysed: [justice and home affairs](#); [free movement policies](#); [EU external representation](#); [the \(digital\) single market](#); and [environmental policy](#).

pressured to move forward on innovative and far-reaching environmental policy measures (Dupont & Oberthür 2016). Nevertheless, the EU as a whole remains a leading actor in many environmental policy areas, and has been striving to be an international leader on climate change, in particular, since the early 1990s (Groen 2015). This international stance has helped keep climate change on the agenda. It resulted in active EU diplomacy in the run up to the Paris climate change negotiations in December 2015. These negotiations culminated in the Paris Agreement, which can be considered a success. The Agreement includes calls for higher ambition to keep global temperature increase well below 2°C, or even 1.5°C, compared to pre-industrial levels. The success of the Paris negotiations is partly thanks to the EU's diplomatic efforts, and can also be considered a win for

the EU's leadership role on climate change (Oberthür and Groen forthcoming). Despite these improvements, much remains to be done across the environmental field (notably in air, water and soil quality, in transitioning away from fossil fuels in a timely enough fashion, and in the protection of ecosystems) to protect and improve the quality of the environment (EEA 2016). The underlying philosophy of EU environmental policy has changed over time, with narratives justifying action based on balances between 'costs' and 'benefits' gradually displacing the lauded precautionary approach (Gollier & Treich 2003). This has led to a situation where environmental policymakers need to demonstrate multiple (economic) benefits to justify taking action.

Finally, the growth of the EU's environmental policy has often been a centre-point for the development of policy in other sectors (such as energy), leading to ever more environmental policy measures. It is a prime example of how policy sectors are intertwined. Environmental policy objectives also need to be taken into account in the development of policies in other sectors (for example through green budgeting, which uses environmental criteria to allocate a budget in a certain policy area) (Jordan & Lenschow 2010). As such, EU environmental policy has sometimes provided a hook for spillover developments in closely interconnected policy fields (Haigh 2015). EU climate policy, for example, has become 'climate and energy' policy (Oberthür & Pallemarts 2010; Jordan et al. 2010). Considering the challenges of climate change and energy supply, such interconnections make sense, but also result in increased perceptions of 'Brussels' driving policy in member states, although EU policy is anyway negotiated among member states themselves.

### What is the UK's role in EU environmental policy?

When the UK entered the EU in the early 1970s, environmental policy was largely untouched at EU level, and national governments were in charge of the field. The UK was developing policies in response to its own environmental problems (like air pollution issues as demonstrated by the 'Great Smog' of 1952). However, environmental issues are complex interconnections of human activity across borders. Transboundary cooperation – at the EU and international levels – grew in the following decades, with international agreements on acid rain (the 1979 Convention on Long-Range Transboundary Pollution), ozone layer protection (the 1985 Vienna Convention for the Protection of the Ozone Layer and its 1987 Montreal Protocol) and on climate change (the 1992 UN Framework Convention on Climate Change and its 1997 Kyoto Protocol), for example, to which the UK (and the EU) are parties (Burns et al. 2016).

EU policy developments often responded to the international agenda on environmental policy governance by implementing specific measures to tackle

an issue. Increasingly (since the 1990s), however, the EU has helped to set the agenda at international level and has also developed original policy frameworks that set unofficial standards or that have been taken up in other jurisdictions (such as the REACH legislation on chemicals) (Biedenkopf 2012). Thus, the EU has increasingly aimed to 'lead by example' in international environmental policy, by both agreeing to stringent commitments internationally and developing ambitious policy measures internally to meet or surpass these commitments (Oberthür & Roche Kelly 2008).

From being ambivalent towards environmental action in the 1970s and 1980s, when the UK was dubbed the 'dirty man of Europe', the UK moved to becoming an environmental actor within the EU. It adapted its own environmental governance structures in response to EU developments and also increasingly shaped the form and stringency of EU environmental policy (Burns et al. 2016). It pushed for environmental policies that were aligned with the UK's vision of a free market economy. The UK became a leader within the EU on climate change and was instrumental in driving the development of greenhouse gas (GHG) emissions trading within the EU in response to climate change (leading to the adoption of the EU Emissions Trading Scheme). The UK today is part of the pro-climate action 'Green Growth Group' of member states and is generally a leading member state on environmental action. The UK pushed for agreement on a target to reduce GHG emissions in the EU by 20 per cent by 2020 in 2007 and for agreement on a target to reduce emissions by 40 per cent by 2030 (Jordan et al. 2010; Dupont & Oberthür 2015). It has also done well out of a number of EU policies on the environment, for example on marine issues. As a state with a large coastline and significant marine resources, the UK benefits from the EU's marine strategy framework Directive, the maritime spatial planning Directive and other instruments that outline a common legal framework for the sustainable development of maritime industries, such as offshore wind energy and the fishing and aquaculture industries.

More recently, the UK has also been a driving force behind the EU's turn towards better regulation (REFIT – regulatory fitness), which, from the perspective of environmental policy, often means 'less policy'. The understanding of 'better regulation' stemmed from the review of the Lisbon Strategy to 2020 (in 2005) and focused on regulatory impacts on jobs and growth, while ignoring the importance of sustainable development for achieving such goals. Much of the EU's environmental policy has come under question under this push, with established policy measures under threat of being reopened for negotiation and watered down, and proposed measures being weakened or withdrawn (Wilkinson et al. 2005; Radaelli 2007; Taylor et al. 2012). At international level, the UK has acquired a prominent role in shaping EU external environmental and climate policy and diplomacy. Building on its strong diplomatic network across the

world and its wealth of diplomatic experience and expertise, it has been able to shape European environmental diplomacy in the EU's 'Green Diplomacy Network' and beyond, while also benefitting from the capacities of other member states (e.g. special external relations of France, Spain and others). In doing so, it has contributed to, and benefitted from, enhanced EU influence through the pooling of resources by EU member states, including in climate geopolitics (Oberthür 2016). A major source of the EU's international influence has been ambitious internal policy and thus 'leadership by example' based on the EU's 'market' and 'regulatory power' (Damro 2015). Overall, coordination of international environmental policy and diplomacy within the EU has been a win-win for the UK and the EU.

### What are the potential implications of a 'Brexit' scenario?

In the case of a Brexit scenario, we can hypothesise that there would be implications on 1) the UK's environmental policy standards, 2) the EU's environmental policies and 3) the strength and influence of both the UK and the EU in developing international environmental standards.

First, the UK's own environmental standards may be affected. Many environmental NGOs and experts suggest that if the UK were to leave the EU, its own environmental policies and standards would be compromised, especially over the longer term.<sup>2</sup> Today the general contours of national environmental policy are agreed first in concert at the EU level. We could thus assume that with Brexit, as the UK will no longer be bound by these policy developments, it may choose to water down or abandon a number of measures that are perceived as too costly. However, there are alternatives to such a scenario. We could also envision that national policymaking procedures may allow the UK to have more freedom to adopt environmental policies that are ambitious, and that can be adopted and implemented more swiftly than at the EU level. Nevertheless, it is likely that where environmental protection measures are costly upfront, acting alone would be more difficult than acting collectively. At present, member states within the EU are anyway permitted to adopt more stringent measures in several areas of environmental policy.<sup>3</sup> We could also envision that future UK national environmental policies will be more linked to the specific national and local environmental problems, with adaptation to negative impacts becoming ever more important. A last possibility is that the UK would anyway (need to) take on the environmental policies and standards of the EU, especially related to product standards or process impacts, given that trade in products with the EU will remain a key part of the UK's economy whether it is in or out of the EU. Furthermore, effective environmental policies often require a multitude of (cross-border) implementing actors. The UK will also be a party to various international

environmental agreements that will to some extent limit its room for manoeuvre if it decides to roll back its environmental policy ambition – environmental agreements that anyway inspired or required some EU environmental policies.

Second, for the EU, the exit of the UK may lead to a readjustment of the coalitions within the Council. At present, the UK is a member of the Green Growth Group, which regularly supports action to protect the environment, and, in particular, to combat climate change. Without this influential member, the strength of the group is likely to decline in face of mounting influence of less enthusiastic member states. This thus could lead to a situation where EU environmental policy itself becomes less ambitious, with more discretion given to member states to implement overarching environmental 'objectives' as they see fit. Competing priorities may pull attention away from environmental issues. An example of how new internal (less ambitious) coalitions may impact the strength and success of EU environmental policy can be seen in the proposed framework for climate and energy policies to 2030 (European Council 2014). In this case, member states have agreed to one EU-level binding target for reducing GHG emissions by 40 per cent by 2030 compared to 1990 levels, combined with an EU-wide renewable energy share target of at least 27 per cent (no longer including binding targets for each member state as was the case in 2009), and a non-binding commitment of at least 27 per cent improvement in energy efficiency by 2030. Given that the EU has already achieved about 24 per cent GHG emission reductions in 2014 (EEA 2015), and is also set to achieve more than 20 per cent share of renewable energy by 2020, the suggested targets do not demonstrate the level of ambition that one could expect from an international leader on climate change. Without the UK pushing for ambitious measures, the EU may struggle even to achieve the targets already agreed in 2014.

Third, the UK and the EU would both likely see a decline in their influence in global environmental governance. This decline could stem from their relative reduced weight, but the risk of weaker policies in both the EU and UK would also hamper leadership, which often emanates from the ability to demonstrate successful domestic policy measures. Overall, the EU and UK may also lose out on the opportunities presented by the transition to a low-carbon economy, including technological development, the opening of new markets and heightened research expertise in a growing economic sector. The EU allows for ease of research cooperation across borders and the single market boosts opportunities for trade in innovative products. These hypotheses are not the only options that can be envisaged under a Brexit scenario. Environmental policy ambition may increase as environmental and climate crises become more acute, but it is more likely that the increase in

ambition both within the EU and the UK would be lower and slower than if the UK remains an active EU member, where it can push for and be pushed by sufficient collective action.

## Endnotes

1. <http://jncc.defra.gov.uk/page-23> and <http://jncc.defra.gov.uk/page-1399>, accessed 29 February 2016.
2. [http://www.green-alliance.org.uk/page\\_2040.php](http://www.green-alliance.org.uk/page_2040.php), accessed 26 February 2016.
3. Article 193 of the Treaty on the Functioning of the EU: 'The protective measures adopted pursuant to Article 192 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties. They shall be notified to the Commission.'

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