



London's Independent University

Brexit: Options for Britain

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Professor John Drew

Chancellor, Regent's University London
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A former UK diplomat in Paris, Kuwait and Bucharest, John held the positions of Director of International Corporate Affairs at Rank Xerox and Director of European Affairs at Touche Ross International. He was the Representative of the European Commission in the UK and is the Director of the Institute of Contemporary European Studies at Regent's University London.

Foreword

Good evening ladies and gentlemen, students and staff. As Chancellor of Regent's University London and Director of Regent's Institute for Contemporary European Studies it is my very pleasant duty to welcome you this evening to our joint seminar with the Senior European Experts. The seminar is based on the background paper prepared by the Senior Experts. I think it is one of the best papers that they have written over the many years I have been reading their work.

The Senior European Experts are an independent group chaired by Lord Hannay, consisting of former senior diplomats and civil servants, including several former UK ambassadors to the EU and former officials of the institutions of the European Union. It prepares briefing papers on current EU topics for opinion-formers, which are very widely respected in government, business and academia.

We at Regent's, of course, like every university, are very concerned about the issue of Brexit for our staff and our students. Our students come from over 140 different countries across the world. We pride ourselves in being a university which through its values, its inclusion, its outreach and its diversity aims to create an integrated learning community fit for a global society. Whatever the short-term concerns are at the moment about nationalism and protectionism, surely the way ahead must be universities who know no boundaries in the 21st century?

Of course we have concerns about Brexit, with 30 per cent of our students coming from the EU27 countries, and you will hear more about this shortly from our Vice Chancellor and CEO, Professor Aldwyn Cooper. You will also hear from Sir Malcolm Rifkind. Both speakers will speak after Graham Avery has spoken to the Senior Experts background paper, which he helped draft.

Our speakers will talk for about 10-15 minutes, after which there will be time for comments and questions. We are sorry not to have this evening a spokesperson putting forward the Government view on Brexit. This was not for lack of trying. Considerable efforts were made to obtain such a speaker but with so many declining we will probably have to wait until the questions to broach the subject.

To begin at the beginning. Graham Avery is our first contributor. Graham has worked in European affairs in London and Brussels for more than 40 years. He was a member of the Whitehall team that negotiated Britain's accession to the European Communities and he was in the Cabinet of Christopher Soames and Roy Jenkins.

Graham Avery CMG

Senior Member of St. Antony's College and Mansfield College, Oxford University

Graham Avery is Senior Adviser at the European Policy Centre in Brussels, Senior Member of St Antony's and Mansfield Colleges, Oxford University, and Honorary Director General of the European Commission. During his career in Brussels (1973-2006) he worked in agricultural policy, foreign affairs, enlargement policy, and the cabinets of the President and other Commissioners. He is a member of the Senior European Experts Group.

Graham Avery CMG

Thank you very much, John, for the introduction. My task here tonight is very simple, I am here to introduce the background paper 'Brexit – Options for the UK' and I urge you all to read it. It's 10 pages long, and it's full of rich analysis and strong argument.

As John explained, it has been prepared by our group of Senior Experts, chaired by Lord Hannay. We are people with long experience of European affairs, and we are not affiliated to any political party. We publish regular briefings on EU policies, aimed at the public and policy-makers who want to understand the facts and arguments about the EU. Our briefings are always well-informed, and often critical, and I want to pay tribute here to our secretary Nick Kent, who is the skilful penman behind tonight's discussion paper.

Speaking for myself, I wish to declare that in the referendum on 23 June I voted Remain. I think that I was in rather good company, with a large majority of the House of Commons, including the Speaker and, I venture to believe, Prime Minister May, not to mention most of the House of Lords. But we are not here tonight to replay the referendum, or to dispute the rights and wrongs of Brexit. We are here to debate the options for the future.

Basically our paper presents five options for Britain's future trading relationship with the European Union:

1. Joining the European Economic Area (let's call that the Norwegian option)
2. Remaining in a customs union with the EU (the Turkish option)
3. Negotiating a series of bilateral agreements with the EU (that's the Swiss model)
4. A free-trade agreement on the general lines agreed between the EU and Canada or Ukraine
5. A bilateral trade arrangement on the basis of the rules of the World Trade Organisation.

I'm not going to try to expound those five options in detail: for that you need to read our paper, which summarises well the pros and cons of each option. I'm going to limit myself to saying that Mrs May in her speech at Lancaster House in January told us that the government would prefer the fourth option: that is, a specially designed free-trade agreement with the EU.

Well, some of you will say, if that's how it's going to be, why waste time tonight discussing the other options? Why not just discuss what Mrs May said, which was later worked up into a White Paper?

There are two reasons why we think that approach is too limited. First, knowledge of

all the options is necessary in order to understand the government's approach, even if it prefers to rule some of them out. Further down the line, the public and Parliament will need to evaluate the results of the Article 50 negotiation, to see if they do in fact represent the best deal in Britain's interest. With that in mind, I am going to comment very briefly on each of the options.

First, the Norwegian option – that is, the European Economic Area. I know something about this, because for some years in Brussels I managed the EEA. It's the closest relationship the EU has ever made with a non-member country, and it gives the best possible access to the Single Market: that's what it was designed for. On the other hand, it includes free movement of workers and a budgetary contribution to the European Union.

Next is the Turkish option – that is, staying in the customs union. I don't think this is very realistic, for a number of reasons. First, it was agreed with Turkey when it was a poor developing country. Second, it would have to cover most goods, and that would prevent Britain negotiating trade agreements with other countries. Finally, it doesn't cover services, which are so important to our economy and exports.

Third, the Swiss option – that is, a series of bilateral agreements with the EU. I don't think this option is very realistic either, because the Swiss model has proved so unsatisfactory for the European Union that it told Switzerland in 2013, with the support of the United Kingdom, that it would make no more such agreements unless the Swiss model is adapted to be more like the EEA.

The fourth option, favoured by the British government – a comprehensive free trade agreement, without free movement of workers but including a deal on services. Well, it sounds good, but will the other EU members accept it, and on what conditions? In presenting this option, Mrs May declared that 'no deal would be better than a bad deal'.

That brings me to the last option in series – trade with the EU without an agreement, on the basis of WTO rules. That is in fact the default result if we cannot reach agreement with the European Union. You only have to look at the description of it in our paper, and in a recent report of the House of Lords, to see that it would be horrendous. A threat by us to walk away from the negotiating table would be seen by others as a threat to shoot ourselves in the foot.

That brings me to the second reason why I think we need to consider all the options. This is, after all, a negotiation with 27 members of the EU, and they may see matters differently. They may have their own preferred options, and they may not wish to base the negotiations on terms proposed by the United Kingdom. Moreover, the outcome of the negotiation will require the approval of not only the European Parliament but probably 27 national parliaments, as well as Westminster.

Let me explain something else about our paper. It discusses not only the future trading relationship with the EU, but also the terms of our exit from the EU – that’s the question covered by Article 50, properly speaking. Here the main issues are likely to be first of all, Britain’s payments to the EU budget – let’s call it the ‘legacy cost’ of leaving – and secondly, the rights of British citizens resident in other Member States and EU citizens in the UK.

Although these questions, these two sets of negotiations - the terms of leaving, and the long-term relationship – are linked, the other 27 members may take a hard line. They may insist that what Article 50 says is that we have to ‘take account of the framework for the future relationship’ but it doesn’t say that we have to define the future relationship under Article 50. Our partners might say that ‘first, we have agreed on Article 50 and then we can talk about the future framework’, and they may argue - with some justice - that the future relationship can only be negotiated after Brexit, and will take some time to negotiate in detail.

Here we come to the question of a ‘transitional period’ or as the government prefers to call it ‘a phased process of implementation’. Or, to describe it more colourfully, ‘a means of avoiding falling over the edge of the cliff’. I think we can expect there to be some kind of agreement with the EU on this, but the big question is: for how long, and on what terms?

I confess here that our discussion paper doesn’t analyse the government’s White Paper on Brexit. That’s because our paper was completed before the White Paper was published, and anyhow it didn’t add much to Mrs May’s Lancaster House speech, except rather a lot of platitudes. But, to be fair to the White Paper, it did include a timely wake-up call on the question of dispute settlement procedures. That’s something which a future trade agreement will need to include – if you have trade agreements, you have to have a dispute settlement procedure – and it will not be a simple matter. If the UK doesn’t want to accept the jurisdiction of the European Court of Justice, it will have to accept the judgment of some other kind of court of arbitration, in which not all the judges will be British.

I’m sorry that I don’t have time to discuss many other important things in our background paper: Northern Ireland and the border with the South; Gibraltar; immigration, visas and travel rights; police and security co-operation; research and higher education; and, last but not least, foreign and security policy. These are all vital matters, which I encourage you to look at in the paper. Personally I think it’s tragic that our relations with the EU have so often, over many years but particularly in the referendum, been reduced to a question of trade. That is less important, surely, than people and values and our influence in the world.

Let me close by saying that in our paper we give some warnings. We warn that the EU may not be able to give priority to the Brexit negotiations if it is dealing at the same time with the problems of the eurozone and the policies of President Trump. We also

warn that, although other EU members respect the result of our referendum, they are alarmed by the aggressive posture of some British politicians and commentators, and this atmosphere won't make it easy to get a good deal.

For many years the eurosceptics in this country painted the EU as an adversary, as an enemy of British interests. To diabolise others – to treat the Europeans as the 'other' – is a well-known psychological ploy. It's an easy, dirty game. In the referendum it was coupled with xenophobia, and blame of immigrants and the EU for a whole lot of things for which they were certainly not responsible. Look where that has got us now.

That brings me back to the government's White Paper. Its title refers not just to Brexit but also to the UK's 'new partnership with the EU', and it declares that Britain will be 'the best friend and neighbour to our European partners'. That's an intelligent approach. But let's be frank: it's an approach that requires British negotiators and British politicians, and even the British press, to act and speak as if we consider the 27 EU Member States as our friends, rather than our enemies.

Professor Aldwyn Cooper

Vice Chancellor and Chief Executive, Regent's University London

Aldwyn Cooper is a cognitive psychologist by background, having studied and worked at many universities around the world. He is Chair of the Independent Universities Group and sits on many higher education sector committees. He is Honorary President of the Ad Hoc Council of Europe and is fully engaged in the debate concerning UK membership of the EU.

Professor Aldwyn Cooper

Thank you John and welcome everybody to Regent's.

We are a very internationally focused university, particularly strongly linked in to Europe and I have been asked this evening to say a few words about what Brexit may well do to the UK higher education sector.

One of the first things I should do, as previous speakers did, is to declare my interest. I, like they and 80 percent of British academics, voted Remain. As I go through what I am to going to say, you may not be at all surprised why academics voted Remain. Secondly, I just wanted to make sure that I am not going to be accused of post-truth for the provision of 'alternative facts' so I have tried very carefully to use usually reliable sources, including Universities UK, the Higher Education Policy Institute, the Higher Education Statistics Agency and the UK Committee on International Students. It is interesting, unfortunately, that there are not always consistent figures between each one of these agencies but I can say that they all point in the same general direction.

British universities and our systems of regulation have always been considered as the global gold-standard for quality. Traditionally, the United Kingdom had a very open system, welcoming students from all over the world. However, international students from Europe and wider are feeling less accepted in this country at the moment and in Europe – quite clearly, our decision on Brexit has damaged our reputation with young people across the continent.

The perceived value of UK higher education is threatened at the moment not just by Brexit but by a number of serious issues. There is reduced government funding. There is a reduction in the 18-year-old demographic and indeed, in the demand for university places from younger people. We have an unsure immigration policy in to this country which causes us problems around the world. We have at the moment the Higher Education Research Bill (HERBE) going through Parliament. And there is Brexit.

Any of these issues could have a substantial negative impact on the higher education sector. Together they form what Madeleine Atkins, the Chief Executive of the Higher Education Funding Council for England, has called 'the perfect storm'. She suggests that it could result in the collapse of sustainability of many institutions without serious, major change.

I could talk about for hours on any of these issues, however this evening I am just going to focus on Brexit. I will start at the epicentre – the impact that Brexit will have on universities themselves. I don't want to be inward-looking, I feel that the universities were very inward-looking about the referendum, I want to talk not just about the impact on universities but the rolling out impact as it goes from the centre and the

impact it will have on society, and the economics of this country and its influence around the world.

Universities are big business; I am not sure that people often recognise that. At the moment we have got about two-and-a-quarter million students in universities in this country and the revenue that goes into universities is a little bit over £32 billion a year. In addition, the usually accepted fact is that universities have an impact on their local economies of two or three times the revenue of the university. It depends on whose figures you take, but we have an impact in the university sector from £75 billion through to around about £100 billion on the UK economy, which is not without importance. We have a substantial number of students, but we also have a substantial number of staff – about 400,000 staff are directly employed by universities and about another 10,000 in university spin-off companies.

The issues around Brexit which will have an impact on universities and wider are, perhaps, in terms of importance: student recruitment; free movement of staff and students and the impact on student experience; access to research funding, third-stream revenues and the ability to gain investment in this country; and also the soft power that we have always enjoyed through our university system.

Around 25 per cent of the students in British universities are not UK citizens. About 20 per cent come from the rest of the world and about five per cent come from continental Europe. Continental European students contribute at the moment about £2.5 billion a year into the system, so that's the impact on society of about £10 billion, if they were not to come here eventually.

At the moment EU students, and non-UK EU students, can draw down money from the Student Loan Company and that is one of the reasons why they come here. They draw down the money from the Student Loan Company, their fees are paid and very few of them pay it back. One might think it would be nice not to have them but actually they bring a lot more than they actually take away.

Universities are going to be affected differentially, by geographical location and by the type of institution that they are. London-based institutions have a disproportionate number of non-UK, EU students and they will be most affected. The highly ranked institutions – the Russell Group kind of institutions, the LSEs and so on – they will probably still be able to recruit students even if the loans are not available, because having one of them on their CV is well the worth the money they might have to borrow elsewhere at higher rates.

However, low-tariff, post-1992 universities, particularly those in London, are going to have an increasing problem. They have a reliance at present on non-UK, EU students and now that the loans might be removed they could be facing severe financial problems. Declining revenues? Well, I talked figures to one university in London, a post-1992 university. It gets about £200 million a year in terms of its revenues in total,

of which about £25 million comes from continental Europe, so a fairly substantial amount. Like many universities in Britain, they are already in financial trouble. They made a net loss, taking into account their pension funds, this year of £6 million on a £200 million turnover. If they lost even a high proportion of monies coming in from European students they would be unsustainable financially into future. And that would have an impact not just on the university and jobs in the university, but also in the whole area around that university.

The student experience, though, is probably the most important. It is not just that the universities will get less money. People tend to neglect the extraordinary richness of the experience that we get from having international students in this country, particularly from Europe. The way in which people can share perspectives - that is certainly very important to us here. It develops mutual understanding. It facilitates peace in an increasingly difficult world. It also helps to build long-term partnerships and commercial relationships all over the world which perhaps in the future we would find more difficult.

We also must not forget the contribution of international staff in this country, who from Europe may be even less welcome in the future than they are now. And 30 per cent of our staff are continental Europeans at this university. The free movement of staff and students is vital to maintain a sustainable, quality HE system.

Another possible casualty of Brexit of importance to the students and the student experience may be the denial of access to what's called Erasmus-plus funding. We get about £130 million a year in this country to help students to study in Europe in anyone of the European countries for free. It also helps staff to go and get experience of the European community. For many of the students study abroad would not be possible without Erasmus funding.

One of the things that worries a lot academics and increasingly a lot of people in business is the issue of access to research funding. The Office for National Statistics says that in the period from 2007 to 2013 there was a net inflow from Europe of research funding of about £3.4 billion. It is not that we are pouring money into Europe, Europe has actually been pouring money into us. The Government has said that until 2019 it will guarantee that that kind of level of funding is maintained. Well of course it will, because we are still in Europe until 2019, but it makes no guarantees after that. This is already having a tangible effect. Institutions around the world are now starting to withdraw from the prospect of future research contracts that have to involve the UK. They don't want to see contracts being drawn up that will not be sustainable. That's having an impact on staff, who are turning down jobs in the UK and deciding to go to EU, Australian and American universities, where their future careers will be better served.

There must also be concern our participation in large-scale capital schemes such as the CERN project in Switzerland. I am sure that they are not going to allow us in there

for free, they would want a very high payment for us to continue.

There are those who say that the shortfall in research funding will be made up by lots more investment from private companies. They hold up as an example that Oxford is going to get about £130 million from the pharmaceutical company Novo Nordisk for a diabetes centre. That's great, that's fantastic, but on the other hand that's only one example. But they don't look at what other people, small-scale investors like Bill Gates have been saying, that they have put £1 billion into this country in research in the last few years and now they won't in future because the UK will become less viable. Lack of research investment will lead to reduced business investment, jobs and depression of the UK GDP.

Also very important, I think, is that Britain has had a tradition of being the selected country for study of people who have gone on to be world leaders or individuals of influence. The Higher Education Policy Institute has undertaken research which reveals that 55 world leaders at present had their higher education in this country. Nick Hillman, the Director of HEPI, said: 'We punch well above our weight internationally, partly because of the soft power that derives from educating the world's leaders. It is staggering that 55 of the world's leaders should have studied in a country the size of the UK'. We benefit enormously from the fact that they did.

The declining number of students coming to the UK from places like India makes it clear that we have no longer got the confidence of our traditional markets. And indeed with India, one of the ones that we expect to have a major trading relationship with after Brexit. It is very important. There is a patriotic as well as an internationalist case for teaching people from around the world; we forget it at our peril.

International students are starting to feel less welcome and are turning to other providers. Research shows that students who do come to the UK believe often that they only valued for the money they bring in their fees. They are much less loyal to Britain than before; for business and political alliances long-term, this is a very sad loss.

David Davis and Boris Johnson constantly chide the Remain camp for moaning and urge us to identify the great new opportunities that will be presented. Sadly, like Ken Clarke who spoke here a few weeks ago, I don't see them. I feel pessimistic about it. I can't identify a single opportunity for higher education here that will then roll out into benefits to society and I don't see it in any other sector either. I am a bit of a pessimist on this at the moment. But nonetheless, we must look to see what we can do and I know that as the various Bills go through the Houses of Parliament, as we have discussions with Jo Johnson, the Minister for Universities, we need to try to see how we can keep the door open to international students and international staff and for our students and staff in this country to continue to collaborate globally, and particularly in Europe, over the next decade.

Sir Malcolm Rifkind KCMG QC

Visiting Professor, Department of War Studies, King's College London

Sir Malcolm Rifkind KCMG QC is a British politician who served in various roles as a Cabinet minister under Prime Ministers Margaret Thatcher and John Major, including Secretary of State for Scotland, Defence Secretary and Foreign Secretary. He was appointed Visiting Professor at King's College in 2015.

Sir Malcolm Rifkind KCMG QC

I must begin by thanking the Chancellor for his extremely kind introduction. President Lyndon Johnson was once introduced and said, 'thank you, that was the sort of introduction that my father would have liked and my mother would have believed'. So I am grateful to you.

It is correct that I have a professorial role at King's College. But I am actually a visiting professor. I was curious at first as to the distinction between a professor and a visiting professor. The difference is that they get paid and I don't! That concentrates the mind wonderfully.

You will want to know where I am starting from before I make my remarks about the European Union and about Brexit. You are entitled to know, this is confession time. Like our previous speaker I voted Remain in the actual referendum itself. But I wouldn't claim that I am desolate about the outcome. I am disappointed about the outcome. I think the United Kingdom will lose more than it will gain. But I am not desolate about it.

When I was Foreign Secretary I was described in *Le Monde*, the French paper, as a '*Eurosceptic modéré*', and of course it was the '*modéré*' that I was immediately attached to. Because while I have never been impressed by the idea of a European single currency, believing that it cannot be achieved without a single state. While I did not believe that Schengen could work because the external borders were unlikely to be reliable and the enlargement of the EU meant that there were huge differences in the standard of living the various peoples who lived within the EU. Nevertheless I believe that the EU as an historic achievement was something that was to be welcomed and remains a very positive force. So I voted Remain, not essentially for economic reasons, not because of the internal market (although I am disappointed we will not be part of it) but I voted Remain essentially because I believe that in terms of Europe's role in the world, the creation of a European Union in that part of the world that was responsible for two World Wars and which has led to the extraordinary reconciliation in particular of France and Germany, but also of pretty well all the countries of Western Europe, that is a great historic achievement, as relevant to Britain as to those other countries. And as we were able to opt out of all the bits we didn't like, it seemed to me on balance that we should have remained in. But that is now history. That is not where we now are at the moment.

In considering how we deal with the Brexit challenges, it is worth nevertheless remembering two things. Brexit was an accident waiting to happen. Because the truth is that from the very moment the EU was created, and indeed the United Kingdom then subsequently joined it, we were at best a semi-detached member. We were not interested in joining when the Treaty of Rome was first agreed, way back in the 1950s and 1960s. But even when we applied to join under Harold Macmillan, General de

Gaulle very presciently vetoed us, saying not that we were anti-European but that we were not European enough, because of our Atlantic ties with the United States and with the Commonwealth and other parts of the world.

From the moment we joined, we actually spent most of our time deciding what we were going to opt out of. With the exception of the internal market, which was actually Margaret Thatcher's great achievement, although even she occasionally preferred not for it to be mentioned in more recent times. So we were semi-detached as members. We remained semi-detached as members.

But I am afraid it also worth pointing out that in the referendum campaign itself it is arguable that the vast majority of those who were active, but also who voted on both sides of that referendum, were Eurosceptic in one form or another. In political terms it has for years been almost impossible, apart from Ken Clarke and Michael Heseltine, to find anyone in my own party that wanted us to join the single currency. The British public have been overwhelmingly against it for so many years that even Tony Blair did not dare have a referendum on that subject when he was Prime Minister, although he wanted Britain to join. And most people who actually voted Remain, not all by any means, very, very significant but relatively modest minority of people who believed in an integrated Europe, in a supranational identity of a dynamic Europe, becoming if not a European state, nevertheless something more than an international treaty organisation. So it is against that background that we have to judge where we go from here.

A lot of the debate is about whether we go for a 'hard' Brexit or a 'soft' Brexit. I have always thought that is a pretty stupid question in the first place. I start from an assumption that 95 per cent of the British people, regardless of how they voted, recognise the economic importance of continuing to trade with our largest trading partner and want the Prime Minister and the Government to get the best possible trading relationship with Europe that is compatible with the decision taken by the British electorate in the referendum on June 23rd.

And what was that decision taken by the British electorate? Well, of course people will debate it. I would suggest there are three, as it were, irreducible minimums that you have to acknowledge, which are not negotiable. First of all, that we do end up ceasing to be a member of the European Union. Secondly, that, as a consequence, the European Court of Justice no longer has jurisdiction, the last word over many of our laws, and thirdly in an undefined way, there has to be some change, as regards the United Kingdom, of free movement of people, of migration control. Some changes have to be made, though unspecified as to what they should be. Everything else is negotiable.

And if we look at the question of will the other countries of the EU negotiate – because it takes two to tango – we cannot assume that we will just say what we want – a bespoke agreement or this, that or the other – and they will agree. Then the

question is well, that in any serious negotiation, serious negotiations work when both sides have something to negotiate for. The initial reaction of our European partners, and it still remains true to some degree, is huge not just political disappointment and resentment of the decision taken by the UK but a fear that it will be followed elsewhere in the EU. I think that the only serious threat of that in the short to medium-term would be a Le Pen victory in France. I don't think it is going to happen but if it did happen, Brexit would be a sideshow. Our negotiations would be relatively marginal compared to the real, fundamental crisis the EU would then face with a French President determined to have a referendum not just on leaving the euro but possibly on leaving the EU itself.

But let's assume that doesn't happen, we are going to know the answer to that pretty soon, the new French President will be known in April or May of this year, the negotiations we are involved in will hardly have begun by then. If that problem is removed, either by Mr Macron or Mr Juppe or some new president who is not, then the EU will embark on what it does best, which is reaching agreements, reaching compromises, as it did with Greece when we had the Greek crisis. Some other solution will be found, because the EU is about finding solutions.

We know that, just as Europe is hugely important market for Britain (well not to the same degree, but in a significant degree) [so] London and Britain is an important market for continental Europe. We talk about the financial sector and the City of London – it is worth remembering that, yes, there are 5,000 British companies that use what is called 'passporting' to be able sell their financial products in continental Europe. But do you realise that there are over 8,000 continental European companies to get exactly the same rights to get access to the City of London? Although in theory they come from 27 countries, in practice most of them come from Germany, France, the Netherlands and the heart of Europe. Commerzbank, Deutsche Bank, Munich Re – a whole series of banking, financial and other institutions. They will be saying to their governments what our financial sector is saying to the British Government: 'so far as the politics allow it, please remember our interests'. We need the City of London, just as the City of London needs us. And that is true in other areas as well.

In the remaining time available to me for these opening comments, I wanted to depart from trade and internal markets and financial matters, because, like everybody else, you can get rather bored by them eventually. It is going to take another two years at least before they are resolved. There is another very important issue that we should simultaneously be discussing in regard to these negotiations and that is the future of European security and foreign policy in an increasingly globalised world.

We know that whatever decisions are taken in regard to Brexit over the years to come – it is already happening, but it will get more significant – there will be certain powers which will become the dominant powers in influencing the future of our planet. The United States has had it to itself for a long time. It will continue to be the main power for a good few years to come. America is not just a superpower but a super-

duper power, it is the only one there is. But, increasingly, China is going to be – as it deserves to be – given its size, its history, its geo-political significance, one of the other major global players. Russia is in many respects a declining power, but because it is a nuclear weapons superpower and because of the landmass it controls in a vast swathe of the northern hemisphere, Russia will always remain a global player. And India will become one. There may be others. But what about Europe?

One of the inspirations behind the European Union was, regardless of whether we have a European superstate or not, and on the assumption that we probably wouldn't, there were still powerful arguments for the countries of Europe, and in particular France, Germany and the United Kingdom – the three major players – to try and develop, not a single foreign policy, because that is unrealistic in the foreseeable future, but areas of common foreign policy where European interests were at stake. Whether we are in the EU or outside it, the United Kingdom has a lot to offer. It is a necessary part of that European equation if Europe is not going to be irrelevant in the wider world. We are a permanent member of the Security Council and our defence budget is the highest in Europe. The soft-power strength we have through the rule of law, through the Commonwealth, through the English language, through the BBC and so forth is an important component. The question is: how do we deal with it? Not just Britain. How does continental Europe deal with it, given that we are not going to be a member of the EU after 2019? There is a model that already exists which I think points in the right direction.

When the international community had to reach an agreement on Iran's nuclear programme, the final negotiations were conducted by the P5 – that's the five permanent members of the Security Council. But they decided that in order to have maximum authority and the chance to succeed, they could not exclude Germany from that process; Germany was too important. So they created successively the P5+1, which went on to do the successful negotiations that led to the deal on Iran's nuclear programme.

If you look at the areas where Europe has in the last two or three years made an impact that was one of them. The other is sanctions against Russia. To a degree that no one expected, Europe was able to speak with a single voice. Crucial to that was the United Kingdom, because London along with New York are the two global financial centres of the world. If you are going to impose financial or banking sanctions on Russia because of Ukraine, because of Russian aggression in Crimea and elsewhere, then without London it would be unworkable and not worth doing.

So what I am suggesting- it is not just me, David Hannay has suggested and others have done so – is that what we need to discuss with our European colleagues is that, OK, accepted that Britain is not going to be a member of the Foreign Affairs Council, we are not going to be able to veto all the other European countries if they want to adopt some aspect of foreign policy we don't agree with. But instead of just waiting for that to happen, we should institutionalise our relationships in regard to foreign and

security policy. Not just in relation to Russia or Iran but in relation to the Middle East, to Syria, to China and various other aspects of huge importance to Europe, so that when foreign policy is being discussed, then Britain automatically is round the table with France and Germany and the other European countries. If we can reach agreement, then Europe will speak with that much more authority. If we can't reach agreement, then of course the EU countries will go their own way. But most of the time I think we would reach agreement.

My conclusion is simply this. It is worth remembering that despite all the angst of the United Kingdom, all the concerns we have had about our relationship with the European Union where that has been least significant has been in foreign and security policy. And that is not surprising because for the last 300 years one can say that United Kingdom has always shared the view that any geo-political threat to continental Europe, to its stability, to its cohesion, would also be a threat to these islands. That is why the Duke of Marlborough was sent to take part in what became the battle of Blenheim and the other conflicts at that time in the 18th century. It is why Wellington and Nelson were sent to help defeat Napoleon, because these were seen as much threats to Britain as to other European countries. It is why in 1914, when there was no threat of invasion of Britain, we went to war on the very first day when Germany invaded Belgium. And in 1939 when Hitler invaded Poland.

You don't need to be part of the European Union to share that geo-political identity of interest and to be willing to take either the diplomatic, or the economic or the military actions that are required to ensure that peace or stability can be either be maintained or restored to continental Europe. I cannot think in the modern world, at this moment in time, of any geo-political threat to either France, or Germany, or Italy or Spain that would not also be a threat to the United Kingdom. And I cannot think of any such threat to the United Kingdom that would because of our geographical proximity and other common interests would not also be a threat to these countries. So these issues must as high on the agenda of the British Government and of the European Commission and of the negotiators when they deal with consequences of Brexit as the question of the internal market, of financial services and the other very important matters that will be taking up a lot of their time.

Thank you very much.

Discussion

Brexit too difficult?

During the discussion the panel was asked what should be done if it was found during the negotiations that Brexit was too difficult to deliver. Graham Avery noted that people in Brussels were quite gloomy about prospects for negotiations. They saw the big problem as the potential financial settlement; the EU would be expecting the UK Government to recognise that it had previously committed to EU spending up to 2020. Mr Avery thought that what he called a lack of action by Mrs May to control the extremists in her party was also a problem. He also highlighted the need for some form of dispute resolution, noting that even the European Free Trade Association has its own court.

Sir Malcolm Rifkind's view was different. He pointed out that we already had some experience of what Brexit involves. Contrary to some forecasts, he said, the short-term economic impact had been better than expected and the UK economy was now forecast to grow over the next two years. 'We must get away from the assumption it [Brexit] is either paradise or the end of the world', he declared. There would be some hard negotiations and the UK would not get all that it wanted, but it would get some of it. Responding to a question about the Irish/Northern Irish border issue, Sir Malcolm said that there was goodwill throughout the EU to find a solution to the Irish border question.

Impact on international students

One questioner asked whether the UK's recent attempts to build post-Brexit trading relationships with Turkey and the USA could potentially boost student numbers. Professor Cooper was sceptical, pointing to threats to the US student loan system, where he thought the biggest danger was to the funding of students studying outside the USA. He was also sceptical about more students from Turkey, because of the inconsistency of government policy on student visas. The junior Minister Lord Younger had claimed that the UK was open to international students, but the Prime Minister had talked about halving the number of students, he said. While he knew that the question of student visas was being fought very hard, it was difficult to see large number of students coming from Turkey.

Parliament and Brexit

The panel was asked if, given that Parliament will have a vote on the UK-EU deal, would it not be possible for Parliament to be able to widen the options at that point? Graham Avery thought that the referendum was about parliamentary sovereignty and that Parliament should be sovereign in deciding what happens when Brexit negotiations have been completed.

Sir Malcolm thought Graham Avery right about sovereignty of parliament. He went further and said that it had been 'foolish' of the Government not to seek the approval of Parliament for triggering Article 50 until they were forced to do so. But although Parliament could reject the proposals it couldn't force new negotiations because the EU might not agree. It would be possible, he said, for Parliament to reject Brexit but it would create 'a massive political crisis'. Sir Malcolm argued that it 'wasn't a consultative referendum' – all MPs had been clear about that at the time the legislation was approved. That meant that, at the very least, there would have to be a second referendum to stop Brexit. He saw no chance that that would happen, because he could see no evidence that the public has changed its mind.

Dispute resolution

The Chair of the Senior European Experts group, Lord Hannay, noted that Sir Malcolm had said that the UK wanted dispute resolution to be settled by a British court. But he pointed out that the UK accepted international arbitration in many other circumstances, including in the World Trade Organisation, which could be binding on our courts and which Parliament could not overturn. Why was this impossible in case of a new partnership with EU?

Sir Malcolm thought most of Lord Hannay's examples would involve companies settling disputes and not be like the European Court of Justice in overruling national law. He argued that the role of the ECJ with its supra-national authority was much more comprehensive than any other agreement we had reached.

Free movement of people

One questioner said that as regards EU migration, the argument seemed to be about free movement of labour versus free movement of people. Could we accept free movement of labour in future if it was based on a person having a job to go to?

Professor Cooper thought that free movement needed to be more than just for workers; it was an issue for whole families now. Graham Avery agreed with the questioner that free movement in the context of the Single Market meant free movement of workers. It was the counterpart to the principle of non-discrimination in the movement of goods and services. Mr Avery thought that the UK could accept free movement of workers with some safeguards. The solution adopted by Switzerland along those lines was not perfect for the UK, but it might be a help.

Sir Malcolm observed that the Schengen passport-free area was initiated before the major enlargements of the EU in 2004 and 2007. Before then, the countries in the Schengen area mostly had similar standards of living but the new Member States have a lower standard of living. We also then had the surge in migration from the Middle East and North Africa. Sir Malcolm thought that the rules on free movement would be changed because of these issues, but probably after the UK had left.

Final comments

The role of the media and the claims of intimidation directed at those who voted Remain came up in the final minutes of the discussion. Professor Cooper believed that the problem of fear was very real and he noted that Ken Clarke was the only Tory MP to have voted against the triggering of Article 50. He described threats that the House of Lords would be abolished if it voted against Brexit as 'bizarre and unacceptable'.

Sir Malcolm said that we should treat with contempt those who say people can't be against Brexit. He did point out that Ken Clarke had voted against having a referendum in the first place, but that most MPs had supported the idea, which was why they had voted to trigger Article 50. He did not think that MPs could ignore people just because many Parliamentarians disagreed with how they had voted.

Brexit: Options for Britain

Background Paper by the Senior European Experts

Introduction

The British Government has said that it intends to trigger Article 50 of the Treaty on European Union by the end of March 2017, thus beginning the process for the United Kingdom to leave the EU; and the House of Commons has now, by a large majority, agreed that timetable.

The Prime Minister's Lancaster House speech on 17 January 2017 set out the Government's objectives for the negotiations in some detail. This paper examines various policy options, particularly for trade, including some that have been rejected by the Prime Minister (such as the UK remaining in the European Economic Area) but still form part of the background to the debate about the UK's future relationship with the EU¹. Knowledge of all of the options is necessary to understand the Government's preferred approach.

The UK has to do more than just negotiate the terms of its exit from the EU, it also has to negotiate the future external relationship it wants with its former partners in the long-term. It will need to negotiate about this at the same time as negotiating the withdrawal agreement under Article 50.

The two sets of negotiations that the UK and the EU will embark on – against a timetable for the exit agreement that sets a maximum of two years, unless by unanimous agreement it is extended – will be the most difficult in our diplomatic history. The range of topics is vast – over 500 – and the risks to large sectors of our economy considerable. The political and economic consequences of the talks going awry are even more damaging.

The Senior European Experts and Regent's University London have jointly organised a seminar in February 2017 to debate what is at stake. This background paper considers the issues that will need to be addressed if the negotiations are to be successful for the United Kingdom without endorsing any particular solutions. We publish it as a contribution to debate.

¹ The text of the Prime Minister's speech at Lancaster House can be found at: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

The Article 50 Negotiations: Procedure

The negotiations under Article 50 (text in the Annex at the end of the paper) are to enable a Member State of the European Union to leave with the minimum of disruption to it and to the remaining Members.² This negotiation is not concerned with the future external relationship that the departing Member State will have with the EU once it has left. That will need to be the subject of a separate but, if at all possible, parallel negotiation, under a different Article in the EU Treaties (Art. 217). Article 50 says that the exit agreement should be negotiated, 'taking account of the framework for its future relationship with the Union'.³ The precise meaning of this phrase is unclear but it appears to mean that the broad outlines of the external relationship that the departing state is to have with the EU should be clear by the time of conclusion of the negotiations under Article 50.

As discussed below, the UK Government has already set out in the Prime Minister's Lancaster House speech its main objectives as regards a future external relationship with the EU but in procedural terms it will need to decide how much detail it reveals at the time it triggers the Article 50 negotiations. The two sets of negotiations will inevitably interact with one another.

The most important procedural question will be whether the EU will agree to negotiate the future external relationship agreement under Article 217 in parallel to negotiating the exit agreement. Such an approach would reduce the uncertainty to business and for society in general. Some Member States (and also EU institutions) have indicated that they would not want to concede parallel negotiations.⁴ They think that the UK should either negotiate a transitional arrangement, in which it would remain within the EU's legal system for a period after leaving, so that a long-term relationship could be negotiated, or only negotiate its future relationship with the EU once it has left. The Prime Minister, in her Lancaster House speech, objected to this latter approach.

The UK Government will need to do its best to avoid the risk of falling off the 'edge of a cliff', defined as reaching the end of the two-year period in Article 50 without any agreement on the future trading relationship.⁵ Given that some 44 per cent of the UK's exports of goods and services go to the EU, and 54 per cent of our imports come from the rest of the EU (including a quarter of our food), the UK would be at risk of severe economic damage and dislocation if it left the EU without either an agreement on its future external relationship with the EU and/ or some transitional or interim provisions having been agreed to bridge the period until the details of the future external relationship are finalised. The rules of the World Trade Organisation (WTO) would

2 The text of Article 50 of the Treaty on European Union is also available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2016:202:TOC>

3 Article 217 of the Treaty on the Functioning of the European Union, 2016 edition, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2016:202:TOC>

4 For example, Cecilia Malmström, the EU Trade Commissioner, speaking at the World Economic Forum, Davos, 19.01.17: <http://www.telegraph.co.uk/business/2017/01/19/uk-will-bottom-brussels-trade-queue-warns-eu-trade-chief/>

5 'Theresa May seeking transitional Brexit deal to avoid "cliff edge"', Daily Telegraph, 21.11.16: <http://www.telegraph.co.uk/news/2016/11/21/theresa-may-cbi-corporation-tax-brexit-live/>

allow the UK to trade in goods in the EU's Single Market, albeit with duties to be paid on both imports and exports, most below 10 per cent but some 30 per cent or more, quotas and regulatory requirements, including customs controls. These WTO rules do not provide preferential access for services to the EU, which could be very damaging given that the service sector is 80 per cent of the UK economy. There would also be a continuing obligation to accept EU product rules in order to export goods there.⁶ In addition, there would also be major damage from the sudden termination of justice and security measures and the lapsing of scientific co-operation, as well as leaving EU citizens in the UK and British citizens in the EU in an uncertain position.

A possible alternative approach would be for the timetable which allows for the two-year period specified in Article 50 to be extended on the basis that the EU would also be at risk from economic disruption from the UK leaving without an agreement on its future external relationship with the EU. In this case the UK would remain a member of the EU beyond 2019. A variant on extending the timetable would be for there to be delayed entry into force for all or part of the exit agreement.

The drafting of Article 50 has led to many questions about how it would operate in practice, not least because it has never been used before. There are doubts, for example, about the meaning of Clause 4 of the Article, which says that the withdrawing state cannot participate in European Council or Council of Ministers meetings where its withdrawal is discussed. It is assumed that it means that the withdrawing state cannot participate in European Council/Council discussions about the EU's negotiating terms.⁷ (The withdrawing state also does not have a vote on the final agreement in Council). The difficulties of interpretation of Article 50 and the uncertainties that creates will mean that it is important for the UK to generate goodwill amongst the other EU Member States in advance of the negotiations. It also means that the guidelines for the negotiations to be laid down by the European Council will be of considerable importance.⁸

The rules of procedure adopted in December 2016 by the EU27 set out how the negotiations will be conducted from the EU side. The decision on these rules settled the question of which EU institution would lead the negotiations with the UK. As expected the European Commission will be in the lead but under a mandate from the Member States and with representatives of the President of the European Council participating.⁹ The former French Minister and European Commissioner Michel Barnier will lead the EU team and Didier Seeuws of the Council Secretariat has been appointed by the President of the European Council to work with Michel Barnier.

6 For more details on what trading would be like under the WTO, see: The Great British Trade-off: The impact of leaving the EU on the UK's trade and investment, John Springford & Simon Tilford, Centre for European Reform, 2014: <http://www.cer.org.uk/publications/archive/policy-brief/2014/great-british-trade-impact-leaving-eu-uks-trade-and-investment> And, Life after BREXIT: What are the UK's options outside the European Union? Swati Dhingra & Thomas Sampson, Centre for Economic Performance, LSE, 2016: cep.lse.ac.uk/pubs/download/brexit01.pdf

7 Discussed in, Brexit: how does the Article 50 process work? Vaughne Miller & Arabella Lang, House of Commons Library Briefing Paper 7551, 30 June 2016, pp18-19: researchbriefings.files.parliament.uk/documents/CBP-7551/CBP-7551.pdf

8 Article 50 (2); the UK will not participate in the European Council's discussion of the guidelines.

9 Statement by the EU 27/15.12.16: http://www.consilium.europa.eu/en/meetings/european-council/2016/12/20161215-statement-informal-meeting-27_pdf/

The European Parliament will have to approve any final agreement under Article 50 (and British MEPs will be able to participate in the vote). It too will seek to be actively involved in the negotiations, indeed it has appointed its own lead representative, Guy Verhofstadt, a former Belgian Prime Minister and a member of the Liberal Group in the Parliament.

In summary, key questions of procedure are:

- Will the EU agree to concurrent rather than consecutive negotiations on the exit and future external relationship agreements?
- Whether or not negotiations for a new external relationship should be progressed in parallel with withdrawal negotiations; or, whether or not there is agreement on concurrent negotiations, can agreement be reached on the need for transitional or interim arrangements or an extension of the two year period?
- What will the European Council guidelines say about the process and will those guidelines make the talks easier or more difficult?

The Article 50 Negotiations: the Issues

The Article 50 negotiations are likely to be more procedurally straightforward than those for the agreement on the future relationship but they are not without risk. Two issues are likely to dominate on both sides:

- The question of the UK's contribution to the EU Budget and when it would cease to contribute, given that the EU has already determined its overall spending plans up to and including 2020 and the UK has indicated a wish to leave the EU in 2019
- The rights of British citizens residing in other Member States and the rights of EU citizens residing in the UK.

The budget contribution

The UK is, because of its relative prosperity, usually the third largest net contributor (5.8 per cent of the EU budget in 2013) but the ninth largest contributor per head of population (after deducting the rebate).¹⁰ So the UK's withdrawal will create a funding shortfall for the EU.¹¹

As the UK's envisaged date of departure, in March 2019, is near the end of the current seven year budget cycle (2014-2020) it is likely that the other Member States will want the UK to continue to pay its share of both payments and commitments to which it has already agreed for this cycle. This will be difficult for the British Government because of the claims the Vote Leave campaign made about the UK's budget contribution and

¹⁰ This is based on deducting the UK's rebate but not receipts from the EU budget; see table in the Senior European Expert's paper, The UK's contribution to the EU budget: a brief guide, April 2016: <http://senioreuropeanexperts.org/paper/the-uk-contribution-to-the-eu-budget-a-brief-guide/>

¹¹ BREXIT: The impact on the UK and the EU, Global Counsel, June 2015, p.27: https://www.global-counsel.co.uk/sites/.../Global%20Counsel_Impact_of_Brexit.pdf

their promise that the UK would cease to pay into the budget once it left¹². On the other hand, for the remaining 27 Member States this is an important issue as, if the UK ceases to pay its share, current spending plans would need to be cut back or all other contributions would have to rise. A Commission estimate in November 2016 of the UK's financial liabilities to the EU after leaving was that it could be between €40 and €60 billion, although over what time period is unclear. This sum would cover payments towards already agreed for EU common policies and also pension payments, as well as contributions towards future commitments already entered into.¹³ There will be other financial liabilities, including the question of outstanding fines on the UK levied by the Commission, for example for the failure of the UK's CAP payments system.¹⁴

In the UK domestic context, the key Budget issue will be the future of regional funding from the EU (referred to as cohesion funding) and payments to farmers. The cohesion grants are substantial and they have particularly benefited Northern Ireland, Scotland, Wales and the West Country; the Government has committed to funding them only until 2020.¹⁵ The withdrawal of these grants will be controversial in the UK, not least because EU funding is calculated on a different formula than that used to calculate UK public spending and payments have been made over a number of years. The EU's approach works to the advantage of the devolved administrations.

Acquired rights of British and EU citizens

Under EU law EU citizens who live for five or more years in a Member State acquire a permanent right of residence (provided they meet certain tests¹⁶) and must be treated as if they were citizens of the host Member State. This law will protect the rights of a large proportion of British citizens living in other EU countries and of many EU citizens in the UK. Nonetheless, there will still need to be agreement on several issues about:

- Whether or not to end free movement of persons to and from the UK and also the timetable for that – i.e. a cut-off date (or dates) after which EU free movement rights no longer apply
- The rights of those migrants having resided in the UK or another EU country for less than five years

12 It is likely to be necessary to get Parliamentary approval for any changes to the UK's contributions to the EU, which could be problematic for a Government with a majority of 13.

13 'UK faces Brexit bill of up to €60 billion as Brussels toughens stance,' Financial Times, 15.11.16: <https://www.ft.com/content/480b4ae0-aa9e-11e6-9cb3-bb8207902122>

14 National Audit Office report on the Department of Environment, Food & Rural Affairs accounts, 2015/16, 15.07.16; £65.8M was paid by the UK in fines in 2015/16, part of £600M paid so far because of the failure of the CAP payments scheme: <https://www.nao.org.uk/report/department-for-environment-food-and-rural-affairs-and-rural-payments-agency-accounts-2015-16/>

15 Statement by HM Treasury, 13.08.16: <https://www.gov.uk/government/news/chancellor-philip-hammond-guarantees-eu-funding-beyond-date-uk-leaves-the-eu>

16 These include, for example, in the case of those who are not employed or self-employed, that they have sufficient resources not to become a burden on the social security system and that they have "comprehensive sickness insurance cover".

- The rights of those who have lived in the UK for five or more years and have not met the tests for a right to permanent residence¹⁷
- Future entitlement to social security and healthcare, including pensions, for those who are living in another Member State once the UK leaves;
- The position of students who will be part way through their courses at the point the UK leaves
- The position of British citizens working in EU institutions.

Acquired rights is a complex area of law in which UK responsibilities are governed not just by the EU Treaties but also by other international conventions and case law.¹⁸ In this particular area there will need to be careful negotiations to minimise the risks of inadvertent consequences and of legal challenges but it is in the interests of both sides that this part of the agreement is secured as quickly as possible to remove the uncertainty for the four million people affected.¹⁹

Other issues

There are a number of other issues that will need to be settled in the course of the Article 50 negotiations. The most significant of these include:

- The validity of contracts signed before the UK leaves
- The legal effect in the UK of rulings by the European Court of Justice on UK cases before the Court at the time the UK leaves
- The sharing out of EU tariff quotas in the UK's schedule at the WTO;²⁰
- The future of EU agencies and staff based in the UK (notably the European Medicines Agency, the European Banking Authority and also the Joint European Taurus) and the funding of their relocation costs
- The role of EU agencies and the application of their rules in the UK
- Access to the EU's security databases (especially the Schengen Information System II)
- Arrangements for the regulatory frameworks applicable in a number of sectors such as telecommunications, pharmaceuticals, energy, aviation (traffic rights, safety and air traffic control) to continue or be maintained for a transitional period so there is no disruption at the time of the UK leaving the EU²¹
- Sanctions and other measures agreed under the EU's foreign and security policy

17 The House of Lords EU Committee has pointed out that some EU citizens in the UK residing here for more than five years have not met the conditions in the Treaties; see, Brexit: acquired rights, HL82, 14.12.16: <http://www.publications.parliament.uk/pa/ld201617/ldselect/lddeucom/82/8202.htm>

18 See *ibid* pp.25-35 for a discussion of acquired rights under the Vienna Convention, customary international law and the European Convention on Human Rights.

19 For a discussion of acquired rights and the EU see *ibid* and the essay by Erik Cummins in, Brexit: What would happen if the UK voted to leave? British Influence, December 2015:

20 See box on page 15 of HMG's report, The process for withdrawing from the European Union, Cm 9216, February 2016: <https://www.gov.uk/government/publications/the-process-for-withdrawing-from-the-european-union>

21 For civil aviation see: The impact of 'BREXIT' on UK air transport, International Air Transport Association, June 2016: https://www.iata.org/whatwedo/Documents/economics/impact_of_brexit.pdf

- The commitments entered into by the EU and the UK in the Paris Climate Change Agreement of December 2015 (which has now been ratified and incorporated into EU law).²²

In summary, the key questions concerning Article 50 are:

- Should the UK accept likely EU demands to cover outstanding financial liabilities? And, if so, for how long?
- What date should be the cut-off for entitlement to EU payments in the UK and how should this be determined?
- Should existing EU citizens in the UK and UK citizens in other Member States have their current rights protected and if so, how?
- What provisions should be made for movement of people?
- What share of liabilities for EU pensions should the UK agree to?

The UK's future external relationship with the EU

The British Government has made it clear in general terms that it wants the UK to have a close long-term relationship with the EU after leaving. From comments the Prime Minister's Lancaster House speech and other Ministerial statements it clear that the Government's include:

- Favourable trading terms between the UK and the EU, for services as well as goods
- Ensuring that the major part of EU police and civil justice co-operation measures currently relied on by the UK continue to function and that there are arrangements for co-operating on future measure
- Continuing participation in EU research and innovation programmes
- Co-operation in the fields of foreign policy and security
- Measures to ensure that travel remains easy between the EU and the UK.²³

And they will seek to secure these objectives on the basis that the UK will no longer be subject to the jurisdiction of the European Court of Justice and that the UK will have 'control over decisions relating to immigration to the UK'.²⁴ The EU has made it clear that it regards the four freedoms of the Single Market as indivisible.

²² Ministers approve EU ratification of Paris Agreement, Council of Ministers, 30.09.16: http://ec.europa.eu/clima/news/articles/news_2016093001_en

²³ See, for example, Rt Hon David Davis MP, Secretary of State for Exiting the European Union, speaking in the House of Commons on 12.10.16, cols.327-8: <https://hansard.parliament.uk/commons/2016-10-12/debates/F327EC64-3777-4D40-A98D-BEC2E11763A2/ParliamentaryScrutinyOfLeavingTheEU>

²⁴ Ibid, col. 327.

The biggest question: the future trading relationship

Although there are many important areas where the UK would wish to have a close and constructive relationship with the EU after leaving, the future trading relationship is by far the most important. This is because the UK economy has evolved over the last 40 years, and in particular over the 23 years since the Single Market was established in its current form on 1 January 1993, making it closely interdependent with the economies of our nearest neighbours, all of whom are in the EU and will remain so after the UK leaves.

The EU was our largest single export market at 44 per cent (goods and services) in 2015 and 54 per cent of our imports which came from other Member States would face additional costs. The UK economy, almost 80 per cent of which consists of services, is unusually dependent on its exports of services. In 2015 around 40% of the UK's exports to the EU were in services and showed a surplus of over £20bn, in contrast to goods which had a deficit of £89bn.²⁵ But while the size of the UK's deficit in goods trade with the EU is large in cash terms, as a share of the exports of EU Member States both collectively and individually, it is small. As the Office for National Statistics has pointed out, the UK is a 'relatively small export destination for EU goods, accounting for 6-7 per cent of total exports of other EU countries over the past eight years'.²⁶ These trade statistics highlight the UK's dependence on trade with the EU and demonstrate that the economic consequences of not securing an open trading arrangement with the EU could be extremely serious.

There are five broad trading options for the UK to pursue in the negotiations:

- Joining the European Economic Area
- Remaining in a customs union with the EU (the Turkish option)
- Negotiating a series of bilateral agreements with the EU (the Swiss option)
- A bespoke free-trade agreement, perhaps along the lines that the EU has recently agreed with Canada or Ukraine
- Trading solely on the basis of the rules of the WTO.

The government has indicated that it would prefer the fourth of these options.

25 In brief: UK-EU economic relations, House of Commons Library briefing paper, 13.06.16, pp4-5: researchbriefings.files.parliament.uk/documents/SN06091/SN06091.pdf

For the importance of services, see the discussion of the specific characteristics of the UK economy in, *Alternatives to membership: possible models for the United Kingdom outside the European Union*, HM Government, March 2016, p.22: <https://www.gov.uk/government/publications/alternatives-to-membership-possible-models-for-the-united-kingdom-outside-the-european-union>

26 *UK Perspectives 2016: Trade with the EU and beyond*, Office for National Statistics, 25.05.16: <http://visual.ons.gov.uk/uk-perspectives-2016-trade-with-the-eu-and-beyond/>

These five options have been extensively discussed in other studies, notably that published by the Government in March 2016.²⁷ Rather than repeat all the arguments considered in detail in that report and others, this section summarises the pros and cons of each 'option'. It is important to recognise that they may be considered options in the UK but the EU27 may see matters differently. This is a negotiation with two parties whose outcome will require approval in the European Parliament and (almost certainly) the national parliaments of the 27 remaining EU Member States.²⁸ They could refuse outright to discuss one or more of these options and the UK would not be able to insist on its own proposal.

1. The European Economic Area

The arguments for the UK agreeing to stay in the European Economic Area – the trading agreement which covers the EU plus Norway, Iceland and Liechtenstein - can be summarised as:

- Preferential access to the Single Market for goods and services (except agriculture and fisheries)
- Not part of the EU customs union so can negotiate trade treaties with third countries
- Continuity for UK business as we are already members of the EEA by virtue of being in the EU
- No need to adopt large numbers of new business regulations as existing laws reflect EU/EEA requirements.

The arguments against EEA membership are:

- The UK would have no say over the rules of the Single Market which we had agreed to accept; this is important because some sectors, such as financial services, would be obliged to follow EU rules when those rules might change after we leave in a way damaging to the UK
- Being outside the customs union means expensive and time-consuming bureaucracy for business (such as rules of origin) and would interrupt the supply chain for UK manufacturers (especially aerospace and automotive)²⁹
- Agriculture and fisheries are excluded³⁰
- Being obliged to accept free movement of people as part of the Single Market obligations
- Not being part of the EU's justice and home affairs arrangements (Norway has negotiated separate bilateral agreements)

²⁷ Alternatives to membership: possible models for the United Kingdom outside the European Union, *ibid*.

²⁸ In some countries regional parliaments might also have to be consulted.

²⁹ On average 23 per cent of the value of the UK's goods exports is derived from foreign components; Alternatives to membership: possible models for the United Kingdom outside the European Union, *op cit*, p.20.

³⁰ See, Brexit: the implications for the fishing industry, Senior European Experts, October 2016; and Brexit: fisheries, House of Lords EU Select Committee, HL78, 1712.16, for the implications of Brexit for fisheries: <http://www.publications.parliament.uk/pa/ld201617/ldselect/ldsecom/78/7802.htm>

- Being required to pay a contribution to the EU (Norway is the EU's 10th largest contributor per capita).

The Prime Minister has said that the Government does not wish to stay in the Single Market because that would mean continuing to accept the free movement of people and the jurisdiction of the European Court of Justice; on that basis staying in the EEA would not be possible. On the other hand, the Scottish Government has suggested that the UK would benefit from remaining in the Single Market and that the Scottish Government would wish Scotland to do so in any case.³¹

2. A UK-EU customs union

The EU is in a customs union with Turkey, an arrangement that some have suggested the UK could adopt. The main arguments for this idea are:

- Business continuity as we are already in the EU's customs union
- No need to introduce the bureaucracy of customs checks, avoiding disruption to established supply chains and keeping costs down;
- Retention of UK access to the 53 countries with which the EU has a free trade agreement, including Mexico, South Africa and South Korea and most countries in Africa and the Caribbean
- But no jurisdiction of the European Court of Justice or free movement of people
- Little or no contribution to the EU budget.

The arguments often cited against the UK remaining in a customs union with the EU are:

- Under WTO rules it would have to cover 'substantially all' goods and not the more limited range covered by the EU-Turkey customs union (because Turkey was a developing country when that agreement came into force)³²
- No ability to negotiate separate free trade agreements with third countries which are incompatible with the EU's trade policies³³
- No preferential access for UK services to the Single Market (43 per cent of total UK exports are in services and we have a surplus in trade in services with the EU)³⁴
- The likelihood that the EU will require the UK to adopt other EU policies, such as on competition, the environment and its product rules³⁵
- Other agreements would be needed to cover policies such as justice and home affairs, science and innovation and to deal with mutual areas of concern such as fishing rights.

31 Scotland's Place in Europe, Scottish Government, 20.12.16: <http://www.gov.scot/Publications/2016/12/9234>

32 Free trade and customs union agreements must cover "substantially all" goods according to Article XXIV 8(b) of the General Agreement on Tariffs & Trade: https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_09_e.htm

33 Article 12 of the EU-Turkey Customs Union Agreement, 1995: http://www.avrupa.info.tr/fileadmin/Content/Downloads/PDF/Custom_Union_des_ENG.pdf

34 Alternatives to membership, op cit., see box on p.22.

35 Turkey has to adhere to all three of these areas of EU policy, see Alternatives to membership, p.29.

3. Bilateral agreements

Switzerland has made over 100 bilateral agreements with the EU on trade and other matters since it voted in 1992 against joining the EEA.³⁶ There have been tensions in the EU-Swiss relationship, most notably over free movement of people since a referendum in 2014 voted for the imposition of quotas for all migrants, including EU migrants. This would have breached the EU-Swiss agreement on free movement of workers, and if that fell all the other agreements would fall. So instead of introducing quotas, the Swiss Parliament passed a law on 16 December 2016, requiring employers in sectors or regions with above-average unemployment to advertise vacancies at job centres and give locally registered job-seekers priority before recruiting from abroad. This solution was accepted on 22 December by the EU-Switzerland Joint Committee, on which all 28 EU Member States are represented, and welcomed by the Commission.³⁷

More generally, the 'Swiss model' of bilateral agreements has proved so frustrating for the EU that in 2013 it resolved (with British support) to make no more agreements with Switzerland unless it accepts a new approach that would make the Swiss system more like the EEA.³⁸ All this has led commentators to suggest that the EU would not want this model of relationship with the UK.

Nonetheless, for ease of comparison, here are the main arguments for a bilateral series of agreements:

- Meets the particular needs of the UK as the world's fifth largest economy
- Leaves the UK able to negotiate its own free trade agreements with third countries
- Would be likely to achieve at least some access for UK services to the Single Market
- Would cost less in payments to the EU than EU membership.

And the arguments against, in addition to the point already made about the EU's dislike of this model:

- Complex, time-consuming to negotiate and one-sided (the Swiss agreements took an initial 10 years to negotiate and they keep needing to be revised)
- Switzerland has only limited access to the Single Market and must pay tariffs on some goods
- Switzerland has only limited access for services, with no 'passport' to provide financial services in the EU, requiring its banks to set up subsidiaries in the EU or the EEA³⁹

³⁶ The details are in a Swiss Government paper, Switzerland and the European Union, Federal Department of Foreign Affairs, 2016, available at: https://www.eda.admin.ch/dam/eda/en/documents/.../Schweiz-und-EU_en.pdf

³⁷ 'Switzerland makes U-turn over EU worker quotas to keep single market access,' The Guardian, 16.12.16: <https://www.theguardian.com/world/2016/dec/16/switzerland-u-turn-quotas-on-eu-workers-immigration>. European Commission press release 22.12.2017 http://europa.eu/rapid/press-release_IP-16-4501_en.htm

³⁸ See para 31, Council Conclusions on EU relations with EFTA countries, 5101/13, 08.01.13: http://www.parlament.gv.at/PAKT/EU/XXIV/EU/10/30/EU_103044/imfname_10389263.pdf

³⁹ See box on 41, Brexit: the options for trade, House of Lords European Union Committee, HL72, 13.12.16: <http://www.publications.parliament.uk/pa/ld201617/ldselect/ldecom/72/7202.htm>

- Despite not being in the EU or the EEA Switzerland has ended up adopting almost all major EU rules, including those on competition, state aid and the environment, while having no say over their drafting and adoption
- Would require free movement of people.

4. A bespoke UK-EU agreement

The content of such an agreement is hard to predict as it would depend on the ambitions of the UK and the willingness of the EU27 to agree to them being realised. Arguments in favour of this approach include:

- It reflects the size and importance of the UK economy in Europe and the world
- It recognises that none of the existing models are right for the UK – and possibly not right for the EU either
- The UK needs agreement on more than just trade issues and creating a single agreement would be quicker and easier for both sides
- The UK Government does not wish to agree to free movement of people which is a requirement of the EEA
- It reflects the desire of many Leave campaigners that the UK should be able to negotiate its own trade agreements.

There are plenty of arguments against, however:

- The EU27 are of the view that leaving the EU should not be too easy and will therefore negotiate toughly; this means that some form of free movement of people will be demanded along with a sizeable payment into the EU budget
- The UK needs easy access for both its goods and its services to the Single Market and the best way to achieve that technically is to stay in the Single Market
- The UK will have to accept that much of its business regulation will be determined by the EU without our having any real say in the rules
- There will be a considerable period of uncertainty while an agreement is negotiated which is likely to depress investment in the UK
- Should the agreement be substantially less good than the advance speculation has led people to believe, it could cause significant harm to the economy.

5. Trading under WTO rules

The final option would be to abandon trying to reach agreement with the EU27 and instead to trade using the rules of the WTO, of which the UK is already a member. The advantages of this option would be:

- No need for a lengthy negotiation with the EU27
- No need to pay into the EU budget once outstanding liabilities have been dealt with⁴⁰
- No need for free movement of people
- The ability to start negotiating trade agreements with non-EU countries straightaway
- No need to comply with EU product rules when exporting to non-EU countries.

However, as a report by the House of Lords has shown, there are significant arguments against this approach:

- The UK would have no preferential access to the EU Single Market for either goods or services
- The UK's financial services sector would lose its passporting rights to access the EU market (roughly 5,500 firms have passports) and the UK would have to demonstrate 'regulatory equivalence' with the EU to obtain market access for financial services⁴¹
- The UK would need to recruit and train more customs officers and business would need to comply with rules of origin (the latter have been estimated to cost 1-1.2 per cent of GDP)⁴²
- UK exporters would still have to comply with EU regulations for their exports to the EU (the largest share of the total) but with no UK influence over them
- The UK would have to reach agreement with the other 163 members of the WTO on our schedule of tariffs, quotas and agricultural subsidies, which could be complex and contentious
- EU tariffs and quotas would be applied to UK exports; while these are low on average, some are very high (tariffs of 45 per cent for beverages and confectionery for example, and over 200 per cent for poultry)
- The UK would have to apply its external tariff to imports from the EU which would increase prices for consumers and businesses
- Sectors likely to be particularly adversely affected by high EU tariffs (and potentially restrictive quotas) include agriculture, fish products, beverages and food manufacturing and the automotive sector; in the latter case there are high tariffs on components as well as entire vehicles
- WTO rules assist with tariffs but they do not remove all the non-tariff barriers to trade which are more comprehensively tackled by the Single Market.⁴³

⁴⁰ The EU would be likely to take the UK to the International Court if it refused to meet its outstanding liabilities.

⁴¹ See, Brexit: financial services, House of Lords EU Select Committee, HL81, 15.12.16, p.9, para 15: <http://www.publications.parliament.uk/pa/ld201617/ldselect/ldEUcom/81/8102.htm>

⁴² Mr Raoul Ruparel, then Co-Director of Open Europe, now Special Adviser to the Secretary of State for Exiting the EU, in evidence to the House of Lords EU Committee, Brexit: the options for trade, op cit, p.31.

⁴³ Brexit: the options for trade, op cit, pp.51-62.

6. Concluding remarks on trade

The Government has chosen the fourth of the options discussed here. The reasons why it has done so were set out in the Prime Minister's speech and predominantly revolve around the desire to end the free movement of people, to end the jurisdiction of the European Court of Justice and to reduce the payments the UK makes to the EU budget. But Ministers will also have considered other factors, including:

- The need to safeguard the UK's largest economic sectors – e.g. financial services, automotive, food and drink, pharmaceuticals etc.
- The need to secure continuing access for UK goods to the EU with little or no tariff or non-tariff barriers
- The need also to retain access for UK services exports to the EU because of the overwhelmingly importance of services to the UK economy (almost 80 percent)
- The need to protect foreign direct investment into the UK and the UK's investments in the EU
- The desire to prevent the EU developing new barriers to UK exports of goods and services in future
- The desire to avoid too many compliance costs with EU regulations in future.

In addition, the UK has still to decide whether or not it wants agriculture and fisheries to be part of the UK's trading agreement with the EU or be largely excluded (as is the case with Iceland and Norway).⁴⁴ It should be noted that, under all of the options mentioned, the UK will have to embark on a negotiation in the WTO in order to define its right to pay domestic subsidies to British farmers.

The EU countries will also have their own priorities. These will vary amongst the 27 Member States but they are likely to include:

- Not making leaving the EU an attractive option
- Avoiding 'social dumping', i.e. the UK undercutting its EU competitors by offering dramatically reduced social protection of workers in the UK or far lower rates of corporate tax
- Ensuring the UK contributes financially to the EU and pays all its outstanding contributions.

⁴⁴ For more information on agriculture and fisheries see: 'Brexit: the Implications for Agriculture & Food', Senior European Experts group, November 2016: <https://view.publitas.com/british-influence/brexit-the-implications-for-agriculture-and-food> and 'Brexit: the Implications for the Fishing Industry', Senior European Experts group, October 2016, <https://view.publitas.com/british-influence/brexit-the-implications-for-the-fishing-industry>

Transitional or interim arrangements?

The scale and complexity of the negotiations to achieve a long-term EU-UK agreement has led to suggestions that there should be a transitional or interim agreement for a period of time so that there is no 'cliff edge' for either party. A transitional agreement implies one that provides a temporary bridge between the UK's current membership of the EU and some other status outside it, whereas an interim agreement would suggest the UK remaining a member of the EU until an alternative external relationship came into being. The advantages of a transitional/interim agreement are:

- Likelihood of continuity of rules and regulations for business
- No sudden introduction of tariffs on UK exports or imports from/to the EU
- No sudden introduction of customs controls, including complex rules of origin
- Reduced legal uncertainty
- No sudden moment of change for business, organisations and citizens in the UK and the rest of the EU
- More time to negotiate the future external relationship .

But while there are arguments in favour of a transitional/interim agreement, there are ones against:

- The UK would not be able to negotiate free trade agreements with third countries if it stayed in the customs union and the Single Market during the transition
- It could mean the UK still being subject to the jurisdiction of the EU Court of Justice after leaving (in opposition to one of the Prime Minister's stated priorities for the negotiations)
- It could mean free movement of people continuing for a period after leaving
- As little would change in the relationship with the EU during a transitional or interim period this could create political problems, including the UK having to comply with new EU policies to which it has not been a party or to which it objected
- As the Prime Minister has noted, prolonging the UK national debate about Brexit, with politics preoccupied by the issue for years to come.

In summary, the key questions on trade are:

- Which option for future trade with the EU offers the best potential for the UK economy?
- How much is the UK prepared to concede to get preferential access to the Single Market?
- What provision for movement of people does the UK propose?
- Is leaving the customs union in order to be able to negotiate new free trade agreements with third countries worth the price in disruption and additional costs to UK business?

- Any alternative to EU membership is going to leave the UK as a rule taker rather than a rule maker; in the long-term will this be acceptable to a country of the size and with the global influence of the UK?

Immigration, visas and travel rights

We have recently published a paper on immigration, free movement of people and Brexit highlighting the issues involved in this aspect of the negotiations.⁴⁵ This will be one of the most contentious areas, given the prominence of immigration in the referendum campaign, the Prime Minister's commitment to end free movement of people on leaving the EU and the desire on the part of the EU27 to adhere to the four freedoms of the Single Market, including free movement of people.

The challenge for the Government will be to achieve an agreement consistent with its own commitments, the pressures from business in the UK for access to labour and the position of the EU27. The issues at stake for the UK in this part of the negotiations are:

- Retaining easy access to the UK labour market for those with essential skills – e.g. in health and social care – without conceding current free movement rules
- Allowing access for at least some unskilled workers, for example for agriculture and horticulture
- Allowing access for students (and academic staff) from the EU27 (and vice versa)
- Avoiding the introduction of visas on UK travellers to the EU in order to minimise the burden on business and ensure flexibility in sectors such as research and education
- Protecting the special positions of Gibraltar and Northern Ireland (see below)
- Retaining if possible the right of UK citizens to use the European Health Card on the basis that citizens of Switzerland and Norway are able to do so.

The Government's negotiating position will be at least partially determined by what it thinks is politically acceptable in the UK on immigration but also by what sort of trading relationship is possible with the EU. Ministers will also be mindful that the non-EU agreements with Belgium and France, which mean that UK border controls operate on their territory and vice versa, are highly beneficial to the UK and it would like to retain them.

Northern Ireland

Northern Ireland is unique in the UK in having a land border with another EU Member State. That poses challenges of its own even without the political significance of that border in both parts of Ireland. The UK and Ireland have been parties to the Common Travel Agreement (along with the Channel Islands and the Isle of Man) since the 1920s which has hitherto enabled passport-free travel throughout the British Isles and during

⁴⁵ Brexit & Free Movement of People: The Issues, Senior European Experts Group, November 2016: <https://view.publitas.com/british-influence/brexit-free-movement-of-people-the-issues/page/1>

which both parts of the island of Ireland have been both either inside or outside the EU. But the issues at stake here are more complex than just the issue of passport controls:

- There is extensive cross-border traffic in goods, particularly in agricultural products and partially processed agricultural goods; customs controls would disrupt this established supply chain pattern
- Restoration of customs controls at the border, including the searching of vehicles, would raise political as well as economic issues given the Good Friday Agreement
- The rights of Irish citizens to remain indefinitely in the UK and of UK citizens to remain in the Republic of Ireland need to be assured ⁴⁶
- If the UK is focused in future on greater border security, as seems likely, securing the largely unmarked 500 kilometre UK-Irish border against illegal migration has both practical implications and political consequences
- This latter issue would suggest that one solution would be to have the UK border enforced on the arrival in the Irish Republic and at the UK ports and airports with services to and from Northern Ireland.

There is goodwill inside the EU to resolve these questions as amicably as possible, as Michel Barnier has made clear.⁴⁷ The Irish Government will undoubtedly put pressure on the EU27 to help in this process but it will still be difficult, even though technical solutions (such as electronic tags on vehicles that cross the border frequently) could play a useful role. For the British Government the prospect of having controls on movements between Great Britain and Northern Ireland would be politically sensitive and operationally challenging.

Gibraltar

The question of borders also arises for Gibraltar but again there are wider issues for that UK overseas territory, which has now been part of the EU for 40 years. For Gibraltar the main issues are:

- Its relationship with Spain, and in particular their shared border, which has often been the subject of dispute and which the EU has helped to keep open
- Access to EU financial services markets, where Gibraltar has adopted EU financial services rules in order to improve its reputation in this sector, on which its economy partly depends.

There are other microstates in Europe and several have association agreements with the EU, notably Andorra, Monaco and San Marino. But they are different from Gibraltar as they are all surrounded by EU Member States in Schengen and do not operate their

⁴⁶ Confusion about the rights of Irish citizens is widespread, see, Brexit: UK-Irish relations, House of Lords EU Select Committee, HL76, 12.12.16, pp.32-33: <http://www.publications.parliament.uk/pa/ld201617/ldselect/lddeucom/76/7602.htm>

⁴⁷ Speaking in Brussels on 06.12.16: BBC report: <http://www.bbc.co.uk/news/uk-politics-38221140>

own border controls. Nor do they have airports, although Andorra and Monaco have heliports. Gibraltar polices its own borders and is not part of the EU for free movement purposes, or indeed, of Schengen. It also has an international airport, as well as a seaport.

Police and security co-operation

When she was Home Secretary, Mrs May was responsible for successfully resolving the difficult question about the future application in the United Kingdom of Justice & Home Affairs (JHA) measures that pre-dated the 2009 Lisbon Treaty. As a result of the negotiations that she led, the UK decided to opt back into 35 of these measures to ensure that it could continue to participate in the European Arrest Warrant, the European Police Office (Europol), the EU's security information database and other EU security and justice policies.

The decision by the May Government for the UK to opt into the new legal framework for Europol since the referendum demonstrates that ministers still value these aspects of EU work. It is true that Norway, Iceland and Switzerland all participate in at least some aspects of the EU's JHA policies but they do so through bilateral agreements and after paying into the EU budget. In addition, it is in the interest of the other countries in Schengen that Iceland, Norway and Switzerland share the same mechanisms for maintaining the security of the area.⁴⁸

The key issues to be resolved in negotiations with the EU over JHA measures will be how:

- To continue seamless operation of the European Arrest Warrant system so that existing cases do not lapse and the instrument can still be used in future
- The UK can remain linked to Europol and Eurojust, the two key EU agencies in the security field with which the UK is extensively involved at present
- To remain able to use other relevant measures, including having access to the Schengen Information System database, which the British police consider a vital tool in tackling cross-border crime, including terrorism;
- To ensure that UK could still opt-in to future EU instruments in the JHA field
- To gain acceptance at home, if the UK wishes to continue to use EU databases, of the requirement to accept EU data protection standards;⁴⁹
- To resolve the likelihood that Parliament will have to accept (as Iceland, Norway and Switzerland have had to do) the jurisdiction of the European Court of Justice in respect of those JHA measures the UK continues to apply.

⁴⁸ The House of Lords EU Select Committee has published a detail report on the JHA issues arising in connection with Brexit: Brexit: future UK-EU security & police co-operation, HL77, 16.12.16, <http://www.publications.parliament.uk/pa/ld201617/ldselect/ld201617/77/7702.htm>

⁴⁹ See, 'Plugging Britain into EU security is not that simple,' Camino Mortera-Martinez, CER Bulletin, December 2016: <http://www.cer.org.uk/publications/bulletin-issue/111>

There will also need to be negotiations around the cost of UK participation, assuming that the EU27 are in principle willing for the UK to participate.

Research, innovation and higher education

UK universities and research establishments have a strong desire to continue their involvement in the EU's research and innovation programmes. Much of the value of these programmes derives from their cross-border nature. There are the Swiss and Israeli precedents of non-EU countries taking part in these programmes but the EU has taken the view since the referendum on migration quotas in Switzerland that participation is linked to that country's acceptance of free movement of people.

Issues to be resolved in this area will include:

- Is the UK willing to accept some elements of free movement in return for participation?
- How much is the UK willing to pay to participate in research and innovation programmes?
- Will the UK continue to participate in the Erasmus programme?
- How far are the EU27 prepared to go?

Foreign and security policy

The UK has increasingly sought to use the EU as a lever to maximise its world-wide influence over the last 30 years. It has done this through EU foreign policy and security co-operation and also through participation in the EU's development policies. It is through the EU that the UK was able to get agreement on sanctions against Russia over its invasion of Crimea by all 28 Member States. Similarly, with France and Germany the UK was able to drive the EU's involvement in the negotiations with Iran about its nuclear programmes.

Outside the EU the UK will remain a permanent member of the UN Security Council and an active member of NATO but it will still wish to influence the EU's policies on foreign policy and defence. In this area UK continuing involvement is likely to be welcomed but as in other areas there may well be a price in financial terms and a difficult negotiation as to whether and, if so how, the UK can play a part in policy discussions whilst not a member.

Other issues

There will be other issues that will need to form part of the negotiations. These include animal and plant health, because of the on-going risks to animals and plants in the UK from the spread of diseases and alien species from overseas. Aviation will also be important as the UK has several airlines which have benefited from the EU's Single Market in aviation and from its Open Skies agreement with the USA and will wish to

continue to do so. Finally, environmental issues will be important as many of the UK's international commitments in this area have been negotiated through the EU (for example, in relation to climate change) and they remain an important national interest.

Domestic policies

Before embarking on negotiations with the EU the British Government will need to identify what UK policies will be in certain areas, for example in relation to agriculture and fisheries, because our choices will impact on the negotiation with the rest of the EU. In the medium-term this need will also apply to a wider group of policies, partly because they currently depend on funds from the EU (cohesion funding, fisheries support, transport projects, loans from the European Investment Bank) or because they will need to adapt to our economy outside the EU (the impact of tariffs on UK exports, our corporate and other tax rates, our level of employment rights, rules on the natural environment that business sees as a cost and so on)

In summary, the key questions on the future relationship are:

- The Prime Minister has pledged to end to free movement and the jurisdiction of the ECJ. Can those commitments be sustained without damaging British interests?
- Although other EU Member States and the EU institutions respect the UK referendum result, they are disappointed that Britain's departure poses serious problems for them, and are alarmed by the aggressive posture of some British politicians and commentators. In this atmosphere will it be possible to agree a good deal for the UK?
- Trade with the EU27 will be crucial to the UK economy for the foreseeable future. How far is the UK willing to go in making concessions to the EU27 to retain a strong, open trading relationship with them?
- The EU matters to the UK in ways other than trade, such as internal security, foreign policy and research. Again, how far is the UK prepared to concede to continue to participate in the EU's policies in these areas?
- How feasible will it be to get the EU27 to give the necessary priority to negotiations with the UK when they are preoccupied with other issues such as the problems of the eurozone, migration and the policies of the new Trump administration in the US?

January 2017

Annex:

Article 50

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it. A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

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