LEGATUM INSTITUTE

CSJ The Centre for Social Justice

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Road to Brexit

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ABOUT THE LEGATUM INSTITUTE

The Legatum Institute is an international think-tank and educational charity focused on understanding, measuring, and explaining the journey from poverty to prosperity for individuals, communities and nations. We believe true prosperity is as much about wellbeing as it is wealth, if all people are to flourish.

To support and promote this vision, our research programmes—the Economics of Prosperity, Transitions Forum, the Culture of Prosperity, and the Centre for Character and Values—seek to understand what drives and restrains national success and individual flourishing.

The Legatum Prosperity Index™, our signature publication, ranks 142 countries in terms of wealth and wellbeing.

The Institute, together with Foreign Policy magazine, co-publishes Democracy Lab, whose on-the-ground journalists report on political transitions around the world.

The Legatum Institute is based in London and is an independent charity within the Legatum Group, a private investment group with a 30-year heritage of global investment in businesses and programmes that promote sustainable human development.

ABOUT THE CENTRE FOR SOCIAL JUSTICE

Established in 2004, the Centre for Social Justice is an independent think-tank that studies the root causes of Britain's social problems and addresses them through recommending practical, workable policy interventions. The CSJ's vision is to give people in the UK who are experiencing the worst multiple disadvantage and injustice, every possible opportunity to reach their full potential.

Since its inception, the CSJ has changed the landscape of our political discourse by putting social justice at the heart of British politics. This has led to a transformation in government thinking and policy. The CSJ delivers empirical, practical, fully-funded policy solutions to address the scale of the social justice problems facing the UK. Our research is informed by expert working groups comprising prominent academics, practitioners, and policy-makers. Further, the CSJ Alliance is a unique group of charities, social enterprises, and other grass-roots organisations that have a proven track-record of reversing social breakdown across the UK.

The 11 years since the CSJ was founded has brought with it much success. But the social justice challenges facing Britain remain serious. Our response, therefore, must be equally serious. In 2016 and beyond, we will continue to advance the cause of social justice in this nation.

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FOREWORD

The Rt Hon Iain Duncan Smith MP
Founder and Chairman of the Centre for Social Justice

On the 23 June 2016, the citizens of the United Kingdom voted to leave the European Union. It is simply impossible to overstate the scale of this decision and the consequent nature of the changes which will ensue. This decision will, in due course, effect the livelihoods of families up and down the country and across all income groups. It is therefore right for the CSJ to be involved in the debate, even if for no other reason than to ensure that the purpose of improving the lives of the lowest income groups in society remains at the heart of all planning as we leave.

There are three areas which the CSJ and the Legatum Institute will seek to address over the next few weeks and months. The first is how we ensure that the concerns and worries of those who voted to leave are understood and addressed as a priority by the government (the subject of the publication *48:52 Healing a Divided Britain*). The second is how we undertake the process of our departure (the subject of this paper). The third paper will focus on the actions government and industry should take to ensure that the British economy is best placed to take full advantage of the opportunities that may flow as we leave. Within this context, we will set out how those in the bottom five deciles can benefit from Brexit (the subject of a third publication).

This publication is a record of a seminar held at All Souls College, Oxford University, in September 2016. The day was led by John Redwood MP and consisted of presentations on different aspects of process and detailing priorities for the UK government to ensure a positive outcome at the end of the process. Whilst these papers represent the views of the individuals concerned and not the collective view of the CSJ or Legatum Institute, nonetheless we believe it is important that there should be a greater level of informed debate and this publication's purpose is to do just that.

It is to be expected that in the aftermath of such a momentous decision, people should worry about what other countries will want. However, the theme of this paper is that the UK needs now to be clear about what we want and how we will deliver it. Clarity and simplicity of purpose are key.

EXECUTIVE SUMMARY

On Friday 9th September, Ministers, senior officials from the Brexit departments, Number 10 and Cabinet Office representation came together with leading experts, academics and former Cabinet Ministers to discuss how to progress the UK's exit from the EU, the restoration of governing powers, and a good outcome for access to the rest of the EU's markets. The authors are very grateful to All Souls College for hosting the seminar. The College itself was neutral and does not have any views on these subjects.

MAIN CONCLUSIONS

The Conference concluded that the Government should now make due haste with sending an Article 50 letter and introducing a Repeal Bill for the 1972 European Communities Act. The country and business wish to reduce the uncertainty. The Conference was swayed by a survey of larger businesses and by the business debate into seeing the need for speed, and the opportunities that flow from exit.

The Conference was persuaded that leaving the EU is primarily a UK Parliamentary process, repealing the 1972 Act and renewing EU law as UK law to ensure continuity. There was general agreement that this is best done by means of a short general Principles and Powers Bill, mirroring exactly the short legislation of the 1972 Act to impose the EU legal authority in the first place.

There were mixed opinions on the timing of the Article 50 letter given present court cases, but general agreement that, subject to the legal position, an early letter is the best approach. There was a general view that the Government will win the court case anyway, and that the Government could also win a vote in Parliament, given the stance of the Leader of the Opposition to put the matter beyond doubt and pre-empt the court proceedings. The best course could be to pass a Commons motion in support of a letter and to send it as soon as possible, whatever the state of the legal proceedings.

The Conference was sympathetic to the view that the trade negotiations can be short and simple. The UK can offer either to carry forward current tariff free trade with service sector passports, or to fall back on the World Trade Organisation standard tariff trade. The UK would recommend the former, but could live with the latter. Rather than negotiate, it is just a question of which the rest of the EU will choose. Whilst the EU Commission is likely to threaten the imposition of WTO rules, the member states are likely to opt for the status quo of tariff free trade given business lobbies in their own countries. The balance of trade and tariff rates under WTO rules is more damaging to the rest of the EU than to the UK, given the UK's bias to services which are all tariff free, and given the devaluation of the pound which has already made rest of the EU products less price competitive without extra tariffs.

The UK Government has ruled out belonging to the EEA or copying Norway or Switzerland. The UK Government should not negotiate over taking back control of borders, laws and taxes. The UK should not be willing to negotiate its future sovereignty with the rest of the EU.

The referendum said Leave. The Government and both campaigns clearly stated this outcome would be implemented. The ballot paper did not suggest a renegotiation or a partial membership as options, so the Government has rightly ruled these out.

The Conference saw various opportunities for improvement out of the EU. It thought the UK could become the world leader for free trade once it has the right to negotiate its own trade deals. Being an open economy with a high proportion of service business is ideal to pioneer free trade. University representatives thought the UK could do better in various scientific and technological areas like medicine and agriculture when we can set our own regulatory framework, as the EU is often cramping for new ideas. The University also sought reassurance and more work on EU funding schemes and collaborative research.

OVERVIEW OF THE NEGOTIATIONS

John Redwood led the discussion on the overall picture. He reminded the Conference that Vote Leave had campaigned throughout "to take back control". It had mainly illustrated this by urging taking back control of money, but had also talked about taking back control of laws, taxes and borders. It had recommended abolishing of VAT on domestic fuel and green products, spending more on the NHS, introducing a work permit based system of controlling migrant numbers from the EU, and negotiating free trade deals with the many countries in the world that the EU does not have special arrangements with. These were clearly not government policy, but are important background to why so many people voted to leave.

He proposed an early launch of a Repeal Bill for the 1972 Act, and a parallel Article 50 letter. He supplied a draft letter, and reminded Conference that Article 50 confers a right on a member state to withdraw from the Treaty using its own constitutional arrangements. In the case of the UK this will be an Act of Parliament.

He argued that the rest of the EU is likely to agree to tariff free trade and to reject the Commission's wish to punish the UK, given the large commercial interests on the Continent in keeping their big export trade with us. He stressed that as leave means taking back control of our own laws and decisions, this cannot be negotiated or brokered with the rest of the EU. There may need to be negotiations over trade and other arrangements where the EU has a right to a view as do we, but not over the resumption of our control over our own laws, taxes, borders and budgets.

He pointed out that the Article 50 two-year period is a maximum period for negotiations – unless all 28 states want to take longer – but there is no reason why it need take that long. It is in the interests of both sides to reach an earlier agreement to reduce business uncertainty. If there is a break down or no likelihood of agreement, then the UK should withdraw and after the two-year period the UK will be formally out. Trade will revert to WTO rules.

Some expressed concern about the court case over whether the Government has power to send an Article 50 letter without Parliamentary approval. John Redwood pointed out that the Commons

probably supports sending the letter by a large majority, as any such vote would be supported by a Conservative three-line whip and also has the support of the Leader of the Opposition and his followers.

There will be implied consent if the Commons does not demand a vote on the letter – which it could always do – or the Government could table a suitable motion. The courts are likely to see the absurdity of their seeking to dictate to Parliament what it debates and votes on, given Parliament's ability to debate and vote on anything it wishes.

TRADE

Peter Lilley led the debate on how to conduct trade negotiations with the EU and in due course the rest of the world. He explained that it is much easier than many have argued. There are just two serious options on offer. Either the UK and the rest of the EU continue with tariff free trade as at present, or they revert to WTO most favoured nation status trade with low tariffs as permitted by WTO rules.

He argued that the member states influenced by strong business lobbies are likely to opt for a continuation of tariff free trade. German cars, for example, are already 12% less competitive than last year thanks to the devaluation of the pound. They would not want to be another 10% dearer thanks to a 10% tariff. UK cars in contrast are currently 12% more competitive, and would still be 2% more competitive even with a 10% tariff. France and Spain would be very worried about the possible high tariffs that can be imposed on their substantial agricultural exports, whereas the UK's service exports and aerospace products will continue to be tariff free under WTO rules. He argued that we should reach a decision on trade before the French and German elections to maximise business pressure on their governments.

Peter Lilley argued that once out of the EU the UK could be a leader for free trade worldwide. The main gains will come by offering better access to our markets to developing countries agricultural and manufacturing businesses in return for better access to our services and sophisticated products. China and India are unlikely to reach any agreement with the EU but could with the UK.

During a productive discussion world trade experts confirmed there were substantial gains to be had from pursuing a freer trade agenda with developing countries, with the UK as a natural free trade leader. It was also confirmed that the UK remains a member of the WTO, and establishing the same or a new tariff schedule with the WTO for trade with the EU would be easy, given we would be taking either our current tariff free approach or the standard EU rest of the world tariff schedule. What takes time in international trade is negotiating a new deal between two countries with substantial barriers, which is the opposite of the case of the UK/EU where all tariff barriers have been removed.

MIGRATION AND BENEFITS

Iain Duncan Smith introduced the topic of migration and benefits. He proposed that the UK should say in future that no EU migrant (or non EU) to the UK should be eligible for in work or out of work benefits for the first five years of their stay. This is a development of the Cameron Government's

wish to have a four-year period when the migrant pays National Insurance and taxes before being able to claim. Mr Cameron had not been able to negotiate this right with the EU. Most EU migrants do come here to work, and most benefit considerably from in work benefits and allied social provision.

He also proposed that the Government introduce a work permit and cap system to control the numbers of EU migrants coming to the UK in future, just as we have controls on non EU numbers today. He argued that students, people with their own money, people coming to work for multinationals that already employ them, and people with high qualifications or on higher incomes should be free to come.

Other people seeking lower paid and lesser qualified work would not get permits, unless there was a skills or labour shortage where the Government judged appropriate migration was the best short term answer. There might need to be seasonal worker schemes for areas like crop picking.

He also urged the Government to reassure all EU citizens already legally here under current rules that they can stay. He was strongly supported in this request by Peter Lilley and John Redwood. He proposed a cut-off date, probably the date of the Article 50 letter, saying that anyone coming after that date will be subject to new rules.

In the discussion some businesses sought reassurances that skills and labour needs they had will be met under a new system. The University also supported freedom of movement for students and faculty members, under the suggested exemptions from the general controls. The issue of the border with Ireland was also raised, with reassurance proposed that a work permit and cap system does not require new border controls on the Irish border for enforcement.

THE UK CONSTITUTION AND THE 1972 ACT

Sir William Cash set out how he has drafted a short Repeal Bill. This Bill will repeal the 1972 Act, cancel the powers of the European Court of Justice and Commission in the UK, and will carry over into UK law the full body of EU law and decisions that are not already in UK Statute. It will also provide UK appeal and competence where matters are currently subject to the jurisdiction of EU organisations and the Commission.

He explained the official Conservative Party's opposition to the Nice, Amsterdam and Lisbon Treaties as a whole, on the grounds that they transferred too much power to the EU. And his own similar disagreement with the Single European Act and the Maastricht Treaty, which split the Conservative Party in office.

He advised that the Repeal Bill should be short, based on main principles and introduced early into Parliament. It should mirror in style the 1972 Act itself, which was also short and general.

In the discussion it was pointed out the Bill would need to tidy up jurisdictional issues where UK matters are currently referred to EU institutions for decisions.

HIGHER EDUCATION

Professor Ian Walmsley spoke of the importance of universities in the UK, their collaborative work with similar institutions on the Continent, and their use of EU money for research. He wanted reassurances that there would continue to be similar levels of funding as today, that they would still be able to attract and recruit continental talent and students, and would not be cold shouldered out of European projects. He reported that there are already some research grant applications and joint projects where the UK is not wanted for fear of it harming access to funds.

In the discussion several stressed the desirability of the UK Government guaranteeing to pay all the money that would otherwise come from EU sources out of the saved contributions we make to the EU. The Government has gone some way in making such a promise up to 2020. The Government explained that 2020 was the date, both because the EU itself had to make new budget decisions for post 2020 in due course, and because 2020 would see a General Election where parties and electors would make new decisions on spending levels and priorities.

Some of the collaborative projects and funding sources that are pan European are not EU specific. Israel also joins in some EU schemes. There was a general welcome for the idea that the UK should be willing to participate in many research projects and funding schemes without being an EU member. The chairman asked the University to produce a schedule of the main sources of European funds, and a commentary on which we might wish to stay in and which the Government should fund instead. All agreed that the HE sector is most important and a UK success story which needs to be properly supported and assisted.

IDENTITY AND ACCOUNTABILITY

The Conference had a break from the detail of Brexit, and heard a very thoughtful talk by Sheila Lawlor on why UK voters voted for leave and how their decision was in keeping with UK traditions of democracy.

She reminded the audience that the UK came early to giving rights and freedoms to every individual. By the early twentieth century these rights had been spread to all women and included the mass franchise.

For a hundred years UK voters have taken pride in their domestic democracy. It was not disrupted by the evil ideologies of Nazism and communism which took over large parts of the Continent. The UK eschewed revolution and illegal seizure of office. Electors have cut their Governments some slack, but dismissed them if they failed or got too far out of line with the popular mood. A realistic people do not expect their governments or politicians to always get things right or to behave perfectly, but the people can use their power to fire them when they judge it necessary.

The decision to take back control was a decision that reflected the romantic view of the relative success of UK democratic discourse and supervision of public policy. It should be contrasted with the lack of accountability of the Euro scheme to national electorates, which is now destroying the older larger parties on the continent. It is undermining political stability in many countries from Greece to Spain and now spreading into France and Germany with the rise of the AFD and the Front National.

BUSINESS OPPORTUNITIES POST BREXIT

Shanker Singham of the Legatum Institute talked about the details of WTO procedures and the opportunities for more free trade deals once the UK is able to make its own deals.

He addressed the impact of the Brexit vote and what can be done as a result of the vote to maximize the UK's trade and investment prospects around the world. While most commentators have focused their attention on the UK's negotiation with the European Union, he discussed that this is only one part of a multi-tiered, multi-track approach that could position the UK to be a great trading nation once more.

BUSINESS FORUM

Mark Gallagher of Pagefield introduced the topic by reporting details of a survey of 400 larger companies conducted recently after the summer break. 80% of the companies had been officially neutral, 15% declared for Remain and 5% for leave. In practice the big majority wanted a Remain outcome.

He told us that business has largely got over the initial shock of the vote, where they had not wanted the result. Now a majority wish to get on with implementation. There is a strong feeling that the uncertainties can best be reduced by a faster pace of change to get the UK into a new relationship more quickly. More also now see advantages in exit, eyeing the scope to reduce and improve the substantial regulatory burden the EU has imposed on business.

They also want the UK to do more to improve education and infrastructure. They anticipate gains from more free trade deals with the rest of the world. Some are still nervous about market access within the EU and about their future ability to recruit migrant labour.

During the course of a wide ranging debate and discussion, it was argued that EU controls over clinical trials, stem cell research, Genomics and data analytics was holding back UK universities and deterring worldwide investors and researchers addressing these areas within any EU country. The UK could assist its scientific development if it had a more permissive regime, as the USA and others do.

This was echoed by Owen Paterson who pointed out UK farming was held back by EU controls over the use of technology in agriculture. He also reminded us that the UK had lost its vote and voice on many important global regulatory and standards bodies. Once out of the EU the UK will have more influence by being around the table over issues like environmental and food safety standards. Instead of having to try to influence the EU negotiating position, and then accepting the way the EU implements the world decisions, the UK will be able to directly influence world standards and undertake its own implementation. He saw great potential for a much improved UK fishing industry, without the crude EU discards policies. The UK will need to negotiate new limits, quotas and arrangements with Iceland, Norway and various EU countries, but it should be able to end up with a much better working fishery policy, like Norway's.

The issue of passports was explored again. It was pointed out that financial passports are two way – the rest of the EU needs them to get special access to the big London markets, just as London based

businesses can use them for access to the continent. Is it likely the rest of the EU will want to lose this benefit?

Others thought the importance of passports was greatly exaggerated. There are few examples of large scale successful passported products. Where there is, as with UCITs (undertakings for the collective investment in transferable securities directive), they are almost wholly established in Luxembourg or Dublin for tax reasons, so London is not the place of registration. London does contract work for the funds, which would continue with them as EU entities once we have left. Soon MIFID II will grant passports to companies in jurisdictions with equivalent regulation, which must apply to the UK as we have identical regulation at the moment.

When asked which regulations could most profitably and easily be got rid of once out, the two favourites mentioned were various VAT impositions which the UK could scrap, and the fishing regulations which have done so much damage to a whole industry. John Redwood stressed that the Leave campaign had recommended no dilution of any employment rights offered by EU legislation, and he expected the government to confirm that approach. It was also confirmed that big business is not lobbying to dilute workers' rights.

SUMMARY

The Conference considered detailed plans for a smooth and speedy Brexit. There was general buy in to the idea that both an Article 50 letter and short Repeal Bill are needed quickly to get the process underway. It was also thought that more work is needed on the changes and opportunities that can follow a speedy exit.

PART 1: WHAT DOES LEAVE MEAN?

The Rt Hon John Redwood MP

The referendum on Britain's membership of the European Union was definitive. The government and the official Vote Leave and Remain campaigns all agreed that a vote to leave would not lead to another attempted renegotiation of our membership; there would be no second referendum; and the government would implement whichever option the public voted for.

The referendum left little doubt that the government has a mandate to take back control of our borders, take back control over our laws and take back control over our money.

THE HIGH LEVEL OFFER

Take back control of our borders

- Legislate to remove entitlement to welfare from people coming to the UK to work for their first five years;
- Introduce a work permit system for the EU as well as for non-EU nationals;
- Allow permits for high level jobs, defined by qualifications and income levels;
- Allow permits for seasonal labour and for defined areas of skills shortage as needed;
- Allow present style of free movement for tourists, people coming with money to support themselves, investors etc.

Take back control of our laws

- Repeal 1972 European Communities Act;
- Allow Parliament to repeal or amend any law that applies in the UK;
- Remove appeal to European Court of Justice.

Take back control of our money

- Cancel the gross contributions of £350 million a week, net £200 million a week;
- Spend the money currently returned to UK farmers, universities etc. by the EU on those groups;
- Spend the net savings on our priorities;
- Vote Leave campaigned hard to increase NHS spending;
- Vote Leave campaigned to remove VAT on domestic fuel, green products and on tampons.

THE BREXIT BUDGET

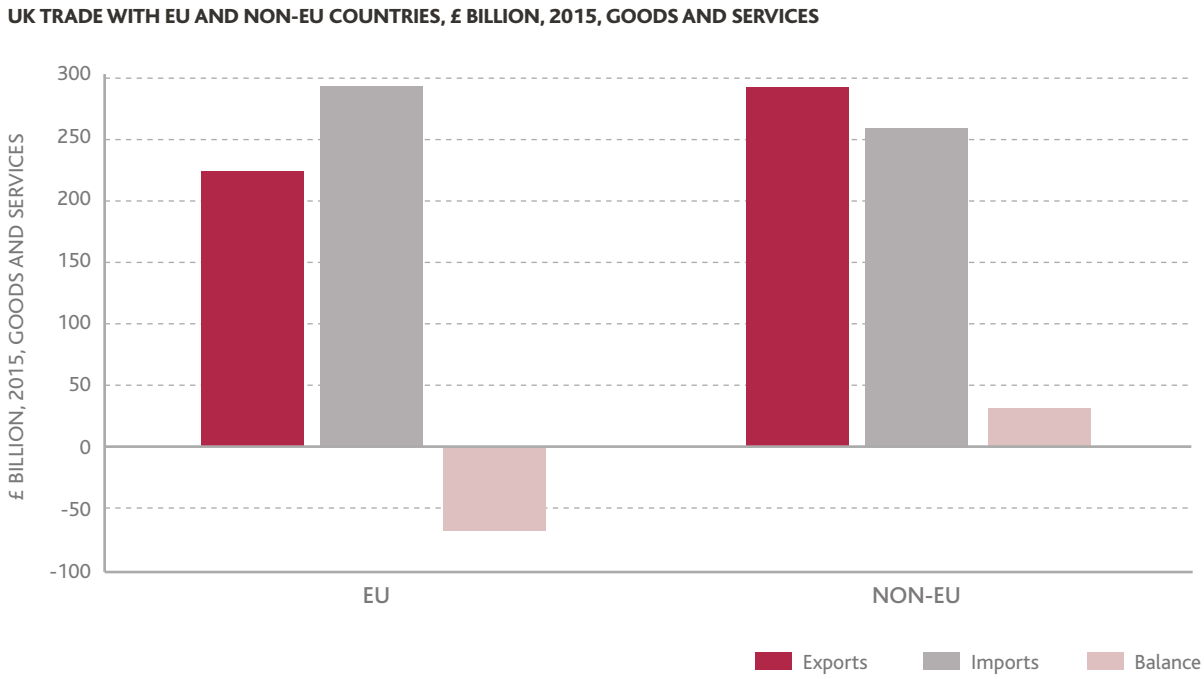
The government has the opportunity to present a Brexit budget, setting out both tax and spending plans in light of Britain's new position outside of Europe. This would be an opportunity to fulfil some campaign pledges and redirect EU contributions to more meaningful UK causes.

Some spending suggestions for the first post-Brexit budget raised during the campaign:

- £1.1 billion for disability benefits to avoid controversial cuts;
- £800 million a year to train an extra 60,000 nurses to deal with shortages and excess agency staff;
- £250 million a year to provide an additional 10,000 doctors to deal with doctor shortages and to staff the seven day NHS well;
- £750m million a year on social care to offer better support for people in their own homes, and for more care home and respite care places;
- £200 million to cancel hospital car parking charges;
- £400 million for dearer medical treatments not currently licensed by NICE, for example treatments such as Proton Beam therapy and Meningitis vaccines;
- £1.9 billion to abolish VAT on domestic energy, energy saving materials, on converting existing dwellings, carry cots, children's car seats and safety seats;
- £1.5 billion to keep Council Tax down by offering councils the money to pay for a discount on the bills they issue;
- £900 million to remove Stamp Duty on the £125,000 to £250,000 band of home purchase.

LEAVING THE SINGLE MARKET

Vote Leave made clear leaving the EU also means leaving the Single Market. The Single Market includes freedom of movement, financial contributions and much else according to many European governments. A common myth is that the Single Market has predefined rules that are immutable; there is no such thing as a clearly defined Single Market distinct from the EU at large. There have been many arguments between the UK and the rest of the EU over where things are part of the Single Market which we wanted to belong to, and where things are to do with the Euro or Schengen where we did not wish to belong. The UK wishes to be free to alter its laws, rules and trading arrangements with non-EU countries, whilst accepting that the EU as a customer can insist on certain things for goods and services we supply to them.



Above: UK Trade With EU and Non-EU Countries

Source: ONS

UK BALANCE OF PAYMENTS

The UK runs a large trade deficit with the EU and a surplus with the rest of the world. Last year the deficit was £70bn. The deficit with the EU is particularly large in relation to food and cars. A continuation of tariff free trade would clearly be in the interests of the rest of the EU. However, the UK could impose tariffs on EU exports to the UK which would only serve to harm the EU.

THE POTENTIAL IMPACT OF WTO RULES

The main items that could attract tariffs under WTO rules:

- Cars – The UK runs a trade deficit with the EU in relation to cars of £13.9bn, of which Germany accounts for £10.85bn;
- Chemicals – the UK runs a trade deficit with the EU of £7.82bn;
- Machinery – the UK runs a trade deficit with the EU of £5.47bn;
- Food, Beverages and Tobacco – the UK runs a trade deficit with the EU of £16.56bn.

Initial Impact of Brexit

	SECTOR	% EXPORTED TO EU	TRADE DEFICIT/ SURPLUS WITH EU (£BN)	POTENTIAL BARRIERS TO EU MARKETS	RISK OF DISRUPTION	CHANCES OF SIMILAR EU ACCESS	POSSIBLE CONDITIONS ATTACHED
GOODS	Cars	35.0	-13.95	10% tarrif	High	High	Basic standards
	Chemicals	56.6	-7.82	4.6% tarrif	High	Medium to high	Adhering to EU's regulatory standards
	Aerospace	44.6	2.56	Zero tarrif	High	High	Basic standards
	Machinery	30.7	-5.47	1.7% to 4.5% tarrifs	Medium	High	Basic standards
	Food, beverages and tobacco	60.5	-16.56	Average tarrifs over 20% and higher	High	Medium to high	Keep external tarrif with rules on foreign content
SERVICES	Financial services	41.4	16.06	Various EU market access regulations	High	Low	Equivalent regulation; possibly still with patchy access
	Insurance	18.4	3.85	Various EU market access regulations	Medium	Medium	Equivalent regulation; possibly still with patchy access
	Professional services	29.8	-1.92	Primarily national market access regulations	Medium	Medium	Mutual recognition, free movement of professionals

Source: Open Europe

THE AUTOMOTIVE SECTOR

An example of where WTO rules could have a significant impact is the automotive sector. The UK is the biggest single export market in Europe for German automakers, who export around 810,000 passenger cars a year to Britain. Around 57% of the 1.6 million cars built in Britain in 2015 were exported to EU countries. The German auto industry has 100 production sites in Britain including suppliers, 30% more than in 2010 according to the German Association of the Automotive Industry (VDA). The freedom to negotiate free trade agreements with high-growth markets could benefit the industry in non-EU countries. For example, the EU has no deal with China, where a Range Rover Evoque currently attracts a 25% import tarrif, 17% sales tax, and 9% consumption tax.

DOES PARLIAMENT NEED TO APPROVE AN ARTICLE 50 LETTER?

There has been much debate among commentators on the necessity of parliamentary approval to invoke Article 50 as a legal measure. Parliament does NOT need to approve – it is a prerogative matter. In political practice, if Parliament wants a vote on it, there will be a vote. The more essential step is the complete repeal of the European Communities Act (ECA) 1972. We cannot complete our exit without repeal or amendment of the ECA Act 1972.

QUICK AND EASY BREXIT

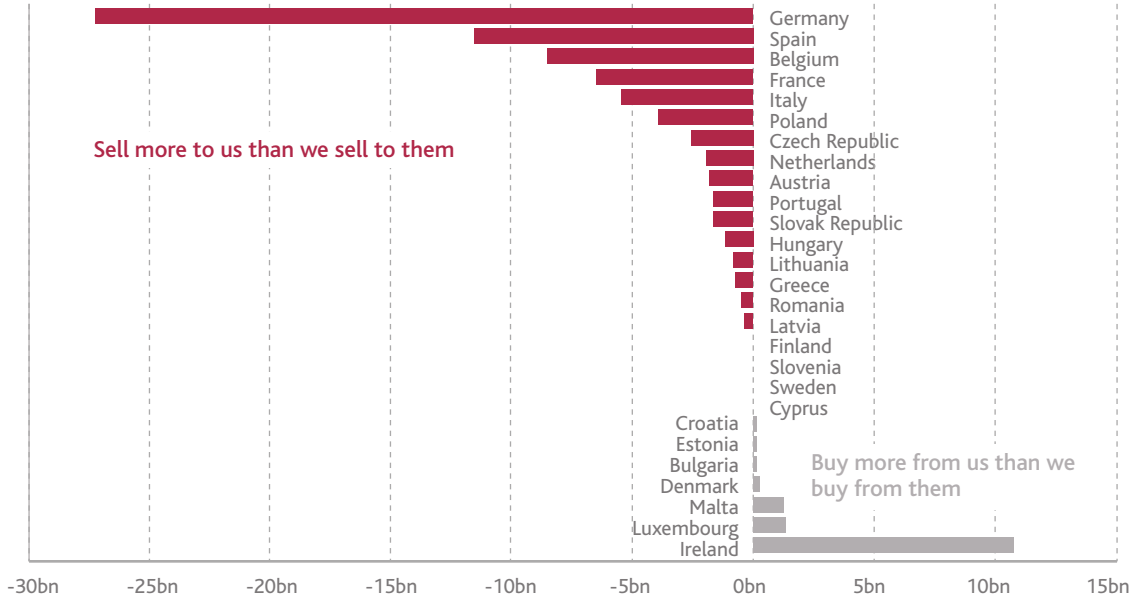
Below we have outlined both a political strategy and negotiating strategy for a quick and easy Brexit:

1. Repeal 1972 Act.
2. Issue Article 50 letter explaining we are leaving using our constitutional arrangements which are an act of Parliament.
3. Attend talks if the others do want to impose any new barriers on trade.
4. Be ready to impose retaliatory tariffs, and compensate UK businesses in ways permitted out of the tariff revenue collected from all the imports into the UK.

ACTION PLAN FOR BREXIT

1. Offer talks on trade and tariffs if they wish to change anything, saying we are happy to offer them no change to current arrangements.
2. In other words, we stay in the Single Market as now, without freedom of movement and the contributions.
3. The advantage we have on trading is that we are happy with the status quo, so they are the ones with a problem if they wish to change it.
4. This reverses the presumption of many commentators that the UK needs to negotiate with the rest of the EU and is the supplicant.
5. Cancel EU contributions and incorporate the money into UK budgets, providing a 0.6% GDP boost through the extra spending and tax cuts, amounting to the £10bn net a year we currently send to the EU and do not get back.
6. Announce that as from a specified date, any EU citizen coming to the UK to work is welcome to do so until we have left the EU, but will need to apply for a work permit on our departure under the rules then applying worldwide on a non-discriminatory basis.
7. Develop and take work permit system for EU migrants to Parliament for approval. The scheme would be based on allowing high level migration (qualifications and or pay rates) but controlling worldwide numbers of lower paid employees.

TRADE WITH OTHER EU COUNTRIES, balance of trade in goods and services with other EU countries, 2014



Above: Trade With Other EU Countries

Source: ONS, The Pink Book 2015, Table 9.3

8. It would allow for seasonal labour and labour where there was a shortage or skills gap the UK could not easily plug in the short term. The Irish border would operate as today, but any continental EU migrant using that border would need a work permit to get a job.
9. Work out new fishing arrangements and discuss with other North Sea neighbours both within and outside the EU.
10. Launch Repeal Bill for 1972 Act with confirmation of EU laws as UK laws.
11. The aim should be a short and straightforward Bill that takes back control of our laws in the first clause, and guarantees all current EU law in the second clause as good UK law, pending any subsequent decisions to repeal or amend items not required to meet our trade obligations with the rest of the EU.

PART 2: UK AND EU TRADE RELATIONS

The Rt Hon Peter Lilley MP

My main focus is trade but I want to put it in the context of expediting Brexit.

Project Fear did not become a self-fulfilling process but Remain made the legitimate point that a prolonged period of uncertainty could damage the economy. So, while taking sufficient time to prepare properly, we should aim to complete Brexit as rapidly as possible.

Unfortunately, the impression has taken hold that Brexit is an interminable process. The haunting last couplet of the Eagle's hit 'Hotel California' has been likened to leaving the EU: "You can check out any time you like, but you can never leave!" Lord Gus O'Donnell suggested that negotiations could go on for a lifetime; Sir John Major predicted it will take over a decade.

But there is another line in Hotel California which describes their mental predicament: "We are all just prisoners here, of our own device".

As long as we don't devise our own obstacles to leaving, there is no reason Brexit should be interminable.

In fact, it need not take even the two years arbitrarily specified in Article 50.

Joining the EC was far more complex than leaving: we had to introduce Value Added Tax, transform our farm support, implement all existing EU laws, replace Commonwealth Preference by EU tariffs and much else. That took barely 2 years.

I asked President Klaus whether splitting Czechoslovakia in two was long and difficult. He replied: "Simpler than you think – dividing our monetary union took a weekend; separating our countries, a bit longer".

To shorten the process, we need to be very clear about what it involves.

- **We must distinguish between issues which are matters for decision by the UK and those which are matters for negotiation with the EU.** There has been a widespread, but erroneous, presumption that everything is a matter for negotiation and, consequently, that before we can begin doing anything, we must laboriously assess what can be traded off against what in a multi-dimensional game of diplomacy. Once we have identified the issues which are matters for our own decision, ministers can start taking those decisions immediately. That immediately reduces uncertainty. It also narrows the focus for negotiations which will render them simpler.
- **The first decision we should take is to convert all EU legislation and regulations into UK law.** It might seem paradoxical that Eurosceptics should propose this. But it has several benefits.
  - It provides business with certainty: they will be able to run their businesses in the same way the day after Brexit as the day before;
  - It means Parliament can amend, repeal or improve any law subsequently – as it can any of our existing laws;
  - It will also ease the parliamentary passage of leaving legislation by depriving die-hard Remainers of excuses to oppose the Brexit legislation.

The idea promoted by Gus O'Donnell et al that we need to go through the entire Acquis Communitaire item by item and reject, amend or incorporate it before we can exit – is absurd. But it is widespread and the source of much of the concern about Brexit, not just in business but among environmentalists and the general public.

The Secretary of State for Exiting the EU has said that this is not straightforward. Maybe it will require more than a single clause – but by definition it must be possible. It is after all more or less what countries like India, Canada, Australia (and even the North American colonies!) did when they became independent; they simply adopted British laws as their own.

- **Another issue we should resolve by our own decision, rather than as part of a negotiation, is to reassure EU residents already here that they will be allowed to remain.** That will end uncertainty for them and their employers. Using them as bargaining counters in case EU member states threaten to expel UK residents – which none has, and they would face international obloquy if they did – is abhorrent and unprecedented. When Uganda expelled British passport holders we did not even contemplate expelling Ugandan citizens.
- **On the other hand, to prevent a 'closing down sale' influx from the EU, we need to announce that EU citizens arriving henceforth will face the same limits on work as those that apply to citizens of other friendly countries.** (Incidentally, should such action be ruled out by the ECJ while we are still members of the EU we could, under the Vienna Convention, resile from the EU Treaties without going through the Article 50 process.)

The first rule of negotiation is to narrow your focus; or as Lynton Crosby said in another context: "Scrape the barnacles off the boat." The more such decisions we take, the clearer it will be to our partners what remains to be negotiated. The main item for negotiation will then be the terms on which the EU and UK will trade with each other.

- **By ruling out free movement of labour, we have closed off the unattractive option of joining the EEA.** The EEA was devised for countries whose governments wanted to join the EU but whose people were reluctant. It is an ante-room, not a departure lounge. The EU has free trade agreements covering over 50 countries – only four (the EEA and Switzerland) involve free movement and a budgetary contribution to the EU.
- **So there are only two realistic outcomes for the future trading relationship between the UK and the EU.** Either the UK and the EU27 agree to continue to trade freely with each other without tariffs. Or the UK and the EU27 apply to import from each other the WTO tariffs which we currently apply to the EUs biggest trading partners – USA, Russia, China. (In either scenario the UK post Brexit could reduce its tariffs below the present level either unilaterally across the board as some advocate or as a result of free trade agreements with new partners. If we did so while retaining tariff free trade with the EU, they would naturally want to introduce Rules of Origin.)
- **Both options are pretty simple. Unlike negotiations to remove complex tariffs between countries, retaining zero tariffs is simplicity itself.** Likewise, the EU has a common external tariff which we will inherit. That is the highest tariff we could apply to each other. Applying that to each other is less desirable, but equally simple and requires no negotiation at all.

- **Moreover, both are acceptable to the UK and preferable to the present situation.** The greatest mistake of all is the belief in some quarters that a 'favourable' trade agreement with the EU is essential. Anyone with experience of negotiating – which excludes most of those who comment on the issue – knows that a successful outcome to any negotiation is only possible if you are prepared to walk away with no deal. Moreover, those you are negotiating with must know that is the case.

Fortunately for the UK, no deal – i.e. trading on WTO tariffs – is perfectly acceptable. The tariffs our exporters to the EU would face average about 4% – small beer compared with the 12% improvement in their competitiveness from the post Brexit exchange rate change. Even car exporters, facing a 10% tariff would be better off. By contrast, EU exporters would face a similar tariff burden on top of the 12% loss of currency competitiveness.

Moreover, we would be able to negotiate free trade deals to reduce the far higher barriers our exporters face in the fast growing markets of Asia, Africa and Latin America.

And because we have a large trade deficit, the Treasury would reap estimated tariff revenues of £12billion – hopefully used to cut tax burdens on UK firms – whereas EU governments would collect only £6.5 billion.

Some argue that we should go straight to trading on WTO terms.

- They believe there is no prospect of a trade agreement with the EU;
- Announcing a swift move to WTO tariffs will avoid prolonged uncertainty and enable business to plan for the future;
- If the EU then offer something better, this will be seen as a UK success; whereas if we ask for continued free trade and don't get it, it will be seen as a defeat.

On the other hand, it is argued:

- The prospect of a deal to continue free trade cannot be ruled out, given that it is as much in their interests as ours;
- The power of the status quo should not be underestimated;
- It is politically important that the onus should be on the EU27 to continue zero tariffs and the blame will fall on them if tariffs are imposed.

- **In the event that continental governments prevaricate on reaching a trade deal we should simply announce that for the time being we will maintain our zero tariffs on imports from the EU – unless they choose to impose WTO tariffs on us, in which case we will reciprocate.** (We need not worry whether retaining the status quo without a formal agreement after we have left the EU is compatible with WTO rules. Objectors would have to prove not merely that the rules have been infringed – which is debatable – but also that they have been harmed. And that would take a long time.) It is important to let continental governments face the wrath of German car makers, French wine growers, Dutch cut flower growers etc. for initiating an unnecessary tariff battle in which they lose more than we do.
- **Tariff free trade with the EU, though desirable, is relatively unimportant because the maximum tariffs the EU could impose are mostly so low. The free trade deals that are really worthwhile are the fast growing but still highly protected markets of Asia, Africa and Latin America.** Remain campaigners claimed that no-one would want to do deals with us.

Now countries are queuing up. So the sooner Brexit is complete, the sooner we can complete such deals. That will increase pressure on the EU to agree tariff free trade with the UK. For example, at present, wine from Australia bears a tariff whereas French wine enters duty free. French wine producers would hate to see that advantage reversed.

- **The claim that we need to retain "access" to the single market is misleading.** It implies that our exporters risk being excluded from it. In fact, every member of the WTO – including over 160 countries which are not part of the EU – has guaranteed access to the single market and most are doing good business with it, a lot of them rather better than we are. (This is because the main feature of the Single Market Programme was to standardise product requirements so that manufacturers need only produce a single range for all 28 countries – which benefits American and Japanese companies exporting to the EU as much as German or British companies exporting within the EU.)It would be more accurate to refer to tariff-free access for goods (there are no tariffs on services) and passporting rights for some financial service companies – mainly in the retail sector, enabling them to sell their financial services/products either directly or via a branch regulated by the UK regulator. Without passports companies must operate through a local subsidiary authorised and regulated by the national regulator.
- **The value of passporting rights, though worth keeping, should not be exaggerated.** I say that as the minister who negotiated the first passporting directive and later implemented the Single Market programme.

UK based financial services firms have passporting rights as members of the EU.

- But so too under the MIFID2 Directive will financial services companies from countries like the US, Hong Kong and Singapore whose financial regulatory systems are deemed to have 'regulatory equivalence' as would the UK's;
- Most British UCITS funds choose to operate via companies set up in Luxembourg and Dublin rather than using their passport from London. (This has not caused an exodus of jobs from London.) Moreover, they clearly find the value of low tax in these countries more than offsets the extra cost of setting up companies. This puts fairly modest value on passporting;
- The growth in UK financial services exports to the EU does not show any marked change since passports were introduced;
- British financial companies seem to export very successfully without passports to countries like the USA and Switzerland – our two largest markets;
- Most British financial services business is wholesale whereas passports are largely designed to facilitate retail business.

NEW TRADE AGREEMENTS WITH REST OF WORLD

We should initiate discussions immediately with China, India, USA, Canada, Australia, New Zealand, Switzerland and The European Free Trade Association. There have been indications from several of these countries of interest in trade ties with the UK.

Where relevant, we should seek some quick fixes – e.g. simple deals covering the top priorities on each side, leaving the less important issues to be completed in a second phase. This could boost economic confidence and have internal political benefits.

For example, a deal with India reducing their punitive duties on whisky would be important for Scotland. What is more it would be impossible for Scotland to do if (whether in or out of the UK) it remained in the EU because India has broken off trade discussions with the EU.

In the case of the USA we should not try to replicate the full TTIP negotiations, which in any case may well founder. The primary UK interests are a) to remove the remaining tariffs between the UK and USA; b) to minimise regulatory barriers (if any) to trade in financial and related services; and c) to prevent discrimination between suppliers by nationality in procurement. Given that the USA is the largest investor in the UK, and that America is the largest destination for UK foreign investment there is no need to establish ISDS tribunals which are intended to give assurance to investors in countries where there are doubts about governance and legal protections.

As far as Canada is concerned, although there may be no need to replicate the full CET agreement, given that this is already complete, it may be worth taking the argument as the pro forma basis of negotiations to speed them up. CET also includes the unnecessary ISDS tribunals but they are of less significance given that, unlike some US multinationals, few Canadian companies would be likely to use them in the UK.

EXISTING EU TRADE AGREEMENTS WITH REST OF WORLD

Normally when a federation which is party to a trade treaty splits up, the successor states can and do inherit the treaty (for instance – as was the case in the USSR).

The EU has a series of Preferential Trade Agreements (PTAs) – mostly with former colonies and nearby states. We should ask these countries to 'novate' the treaty terms to us so that we can continue trading with them on the same basis. It is hard to think of any reason why they should be unwilling to do so.

The most significant EU PTAs are with South Korea and Mexico. Britain is a signatory of the former PTA since it also covers investment which, unlike trade, is not an exclusive EU competence.

A third of these EU treaties do not include services. In due course, for those countries where there are significant potential markets in services, we should explore the possibility of extending the agreement to cover services.

TRADE POLICY TOWARDS DEVELOPING COUNTRIES

The EU gives tariff-free, quota-free access to goods from the 42 Least Developed Countries under the Everything But Arms (EBA) agreement. However, the EU's complex and unnecessarily strict rules of origin mean this has failed to boost imports from these countries as much as the US Africa Growth and Opportunities Agreement (AGOA), which has far less onerous rules. Canadian policy to boost trade with poor countries has been even more effective.

The EU also offers preferential access to a number of other developing countries. But it's highest tariffs still tend to be on labour intensive manufactures (like clothing) and agricultural products – precisely the goods countries in the earliest stages of development tend to export.

The UK should set an example to the rest of the EU and OECD countries by adopting a pro-development trade policy, incorporating the best features of EBA, AGOA and Canadian policies and reducing or eliminating tariffs on goods typically imported from developing countries.

This could begin immediately if the EU opted to trade with us on WTO terms. If we continue current tariff free arrangements on an ad hoc basis while the UK retains the Common External Tariff it will not be possible to reduce tariffs vis a vis developing countries until a formal UK/EU trade agreement is concluded.

UK EXTERNAL TARIFF

Initially the UK should offer to retain the Common External Tariff until a formal UK/EU trade agreement is reached. However, if the EU opts to trade with us on a WTO basis we will be free to alter our external tariffs – not just by negotiating new trade agreements with third countries but also by making unilateral reductions.

One option is the 'Economists for Brexit' proposal to abolish all our tariffs and move to unilateral free trade across with all countries. This has many attractions but is unlikely to be politically possible because it means:

- foregoing several £billion of tariff revenue;
- loss of bargaining power to leverage reductions in tariffs on UK exports; and
- resistance from domestic sectors protected by tariffs.

The UK should nonetheless reduce or remove, in particular, the highest tariffs on food and other sectors where the UK produces little. This would reduce the cost of living, and mean British consumers were no longer subsidising inefficient industries elsewhere in the EU. This was an invisible but nonetheless onerous cost of EU membership particularly for low income households.

PART 3: IMMIGRATION

The Rt Hon Iain Duncan Smith MP

SUMMARY

The central objective should be to ensure control over the movement of people. Using a combination of work permits and a cap we would look to control access to work and rights to settlement. Free movement for EU citizens for other purposes should be preserved.

NB: This paper, sets out proposals to revise the immigration system, however, also in the annexe it makes the point that more information is required to fully understand the nature of where the costs fall and benefits exist. The information on much, if not all, of this is held by the government.

INTRODUCTION

The recent referendum vote gave HMG a clear mandate to leave the EU. What was also clear from the vote was that HMG will, once we have left, need to put in place controls on immigration for EU citizens as well as non EU citizens. This paper explores a way to reduce migration pressures on jobs and wages whilst at the same time reducing the pace of population growth to sustainable levels. It sets out key objectives and indicates some possible variations.

KEY OBJECTIVES

The following should be the key objectives.

1. The rights of those EU citizens who were in the UK on referendum day should be preserved from the outset of the negotiations. They should not form a part of any larger negotiations. (This we believe should be reciprocated in respect of British citizens in the EU.)
2. EU nationals wishing to come to the UK for work should be brought within the present UK work permit system. The level of the cap on work permits should be a matter for a new government to decide, while Intra Company Transfers (ICTs) would be unrestricted unless they became open to abuse. For presentational reasons, a re-launch and re-naming of the system might be necessary.
3. Free movement for EU tourists, students and the self-sufficient (e.g.: many pensioners) should continue in both directions as they are not competing for work, and have little impact on the permanent population. There should be no restrictions on genuine marriage, (although robust checks should be in place).
4. The large number of EU citizens who have previously lived or worked in the UK at some time but have since left must be subject to these new requirements if they wish to return to the UK to work.

5. People should be expected to have secure employment to go to before entering the country.
6. People allowed into the UK for work should have no access to income or housing benefits for five years, as it is not appropriate to subsidise labour from abroad while there are unemployed or under-utilised people among the existing population, (an alternative could be to require a 4 year record of NI contributions).

SUPPORTING MECHANISMS

The new system will need to be flexible and should allow HMG from time to time to exempt some occupations from any restrictions whilst tightening up on other occupations to cater for changing circumstances and the economic cycle. The Migration Advisory Committee's Shortage Occupation List could be used for this purpose. For example, scientists might be exempted but a range of lower skilled work would be restricted by both the cap and the permit system.

Where the issue of a permit is being considered the DWP regional Job Centres should be involved to check whether there is actually a shortage of UK labour in that category and location before issuing permits to business. It should be possible to leverage information gathered from the implementation of Universal Job Match and the new (UC) Work Coach programme and in-work conditionality to provide new and much better data-driven insights into the potential supply of labour already available.

Some enhancement of the National Insurance number system could be required to distinguish between those granted to immigrants for work and for other purposes, and possibly to allow a time limit to be set on their validity so that they would lapse on expiry of the work permit and guard against 'disappearance'.

POSSIBLE VARIATIONS

It would also be possible to introduce a Seasonal Agricultural Workers Scheme (SAWS) for EU citizens provided that it was for truly seasonal work in defined sectors and was limited to six months. (Such a scheme was run successfully for many years. It was brought to an end when the UK borders were opened to unskilled workers from Eastern Europe).

There should be no legal or treaty objections to arrangements of the kind outlined above as the UK would no longer be subject to the Lisbon treaty.

OTHER EU NATIONS

As regards negotiability, it is worth noting that the larger member states Germany, France and Italy and the rich Benelux and Scandinavian countries do not particularly benefit from mass access to the UK labour market. To the extent that it is in their interests for their own highly skilled nationals to work in Britain, they would be accommodated under the expanded work permit scheme.

These key governments should therefore have no reason, in terms of national interest, to object to a solution of the kind outlined above. While there have been large movements of people from Eastern Europe it is not at all clear that it is in the interests of the member states in question that this should continue, bearing in mind EUROSTAT forecasts of declining population and worsening demographics, combined with pressure on their own borders from further east (Ukraine, Albania et al). Their primary interest might be in securing the rights of those already in the UK. This is why an early statement concerning the right of EU nationals already residing here is important.

It should be understood that while controls of the kind listed above can make a real difference to levels of migration, the 'price to be paid' if others sought to impose a countervailing restriction on access to the single market should not actually be a high one in purely economic terms. By way of illustration, if entry to the UK of one of their nationals was 'worth' £1,000 to the other member states then measures that cut their numbers by 100,000 a year would represent a 'cost' to other member states of £100m a year. In the context of the single market even a multiple of this amount is not a very large sum.

It would also be very helpful – indeed necessary – for officials to make a proper calculation of the actual fiscal contribution of EU migrants in the UK and the potential impact of restrictions on free movement, something that they seem to have been completely averse to doing either to inform Ministers for the renegotiation or during the referendum campaign.

Migration Watch have estimated that this set of proposals would reduce migration by at least 100k per year. Their recent assessment of net benefits/disbenefits from new figures shows that the influx of cheap labour did not benefit the UK as has been supposed. (This is explained in Annex A).

ANNEX A (BASED ON LATEST HMRC DATA AND MIGRATION WATCH ASSESSMENTS)

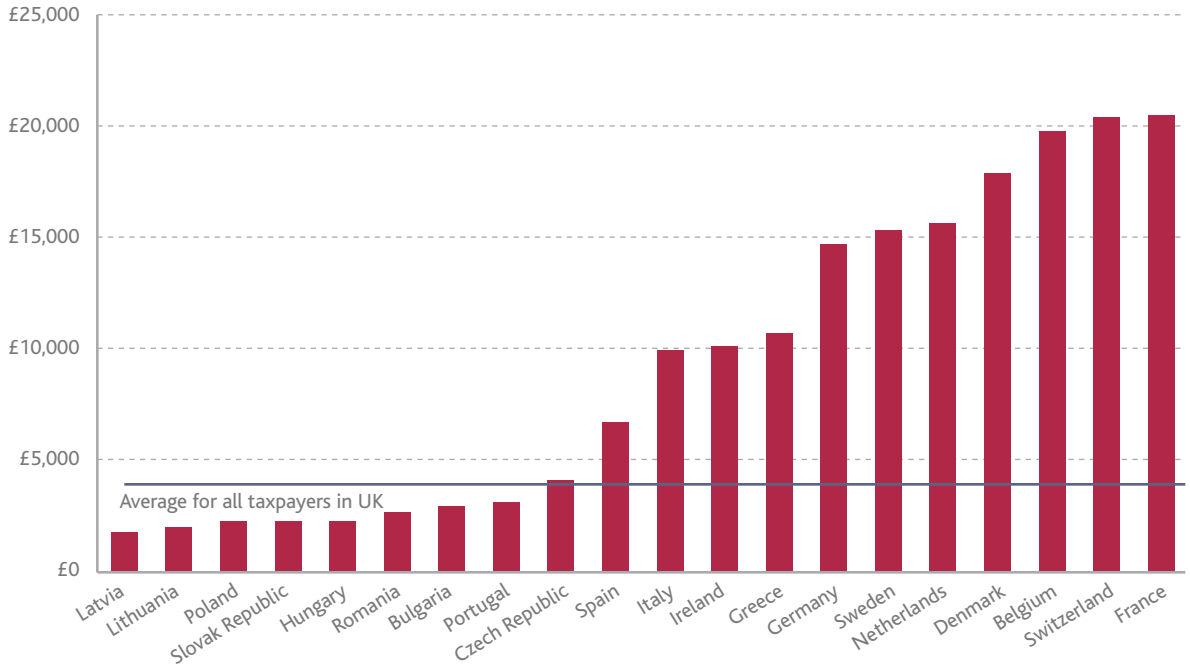
Background

HMRC and the Treasury have in general, been reluctant to provide any information of either the costs or contributions of migrants to the UK fiscal balance. As Secretary of State, I often found the rather weak reason given was that the information was held in different departments and this made it too costly and complicated to compile. However, HMRC finally released in August 2016 a new publication with statistics on receipts of income tax and NICs and payments of tax credits and child benefit to EEA nationals in the tax year 2013/14.

Tax receipts from EEA nationals

Interestingly, as Migration Watch show, that while taxpayers from Western Europe pay on average twice the amount of income tax as the average for the whole UK taxpayer population, taxpayers from Eastern Europe pay only half the average for the whole UK taxpayer. I believe this information helps show that whilst the arrival of cheap labour from Eastern Europe may have helped some companies in the UK, its overall effect was far from beneficial to the UK as a whole. This makes the argument for Work Permit controls all the more important.

MEAN INCOME TAX PAID PER 'EEA NATIONAL TAXPAYER' 2013/14



Above: Mean Income Tax Paid Per 'EEA National Taxpayer' 2013/14

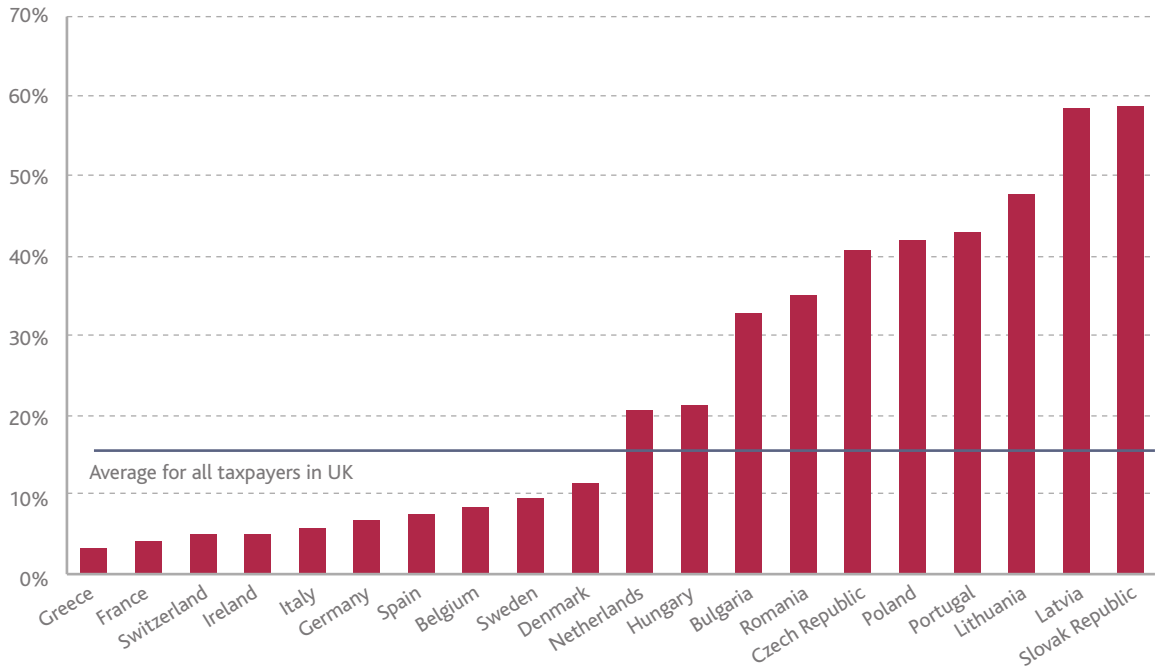
Source: Migration Watch

WORKING-AGE BENEFIT PAYMENTS TO EEA NATIONALS

The new information from HMRC can be put together with data from the DWP to give for the first time a fairly complete picture of working-age benefit expenditure on EEA nationals. This amounted to over £4bn in 2013/14.

	DESCRIPTION	AMOUNT (£M)	DEPARTMENT
In work	Tax credits	1,549	HMRC
	Housing benefit	724	DWP
Out of work	Tax credits	315	HMRC
	HB, JSA, ESA etc.	842	DWP
N/A	Child Benefit	714	HMRC
Total working age benefits		**4,144**	

TAX CREDITS AND CHILD BENEFIT PAID OUT AS A PERCENTAGE OF INCOME TAX AND NICS PAID IN



Above: Tax Credits and Child Benefit Paid Out as a Percentage of Income Tax and NICS Paid In

Source: Migration Watch

OVERALL EFFECT

The DWP data is not broken down by country, but comparing just HMRC benefits with payments made to HMRC the stark divergence between migrants from Western and Eastern Europe can be seen, with nearly half the personal taxes paid by Eastern Europeans going straight back in tax credits and child benefit. If the DWP benefits follow a similar distribution, then almost all of these taxes go straight back in working-age benefits.

WHAT MORE SHOULD BE DONE

In terms of a properly informed negotiation, it should be obvious that such information and analysis is invaluable in understanding:

- where the relative costs and benefits lie;
- how these vary by country of origin;

- the likely impact of varying salary levels for work permits and;
- consequently, how this might affect different Member States differently.

Clearly HMRC and DWP have extensive administrative data that can enable a comprehensive picture to be drawn. This would go beyond the information published so far, firstly to use more recent information that should now be available and secondly to look at matters such as income distribution, regional variations, and nature of employment.

Finally, the HMRC data has again raised questions about just how many EEA nationals are in the UK. This is a matter which the Office for National Statistics has begun to address and again this is important work which should be seen as a priority.

PART 4: UK AGRICULTURE AND ENVIRONMENT POLICY

The Rt Hon Owen Paterson MP

UK agricultural policy must seek to grow the rural economy, improve the environment, and protect the country from animal and plant diseases. Consulting with farmers and countryside organisations, our key priorities must be to:

- Convert all existing EU legislation into national law as an interim measure, to ensure that there is no disruption to current arrangements, and to provide adequate time for negotiations;
- Increase food production to increase UK self-sufficiency, encouraging import substitution and the export of quality food and drink products;
- Direct public procurement, worth £2.4 billion, by hospitals, schools, defence, and prisons towards UK producers in a manner that is WTO compliant. We must ensure that the authorities responsible for public procurement adopt a "balanced scorecard" in their deliberations, weighing straightforward criteria such as cost against more complex themes of resource efficiency and waste management, according to the Bonfield Plan. This scorecard would include, but not be limited to, the Government Buying Standard, to ensure a baseline of nutritious, healthy, and sustainable produce;
- Maintain the trading agreements which the UK presently enjoys with over 50 countries around the world, and be pro-active in exploring and fostering new relationships. Allied to this, we must demand that imported goods meet the same high standards of British produce, and implement rigorous checks to halt the spread of pests and disease;
- See that farmers have sufficient access to both seasonal and non-seasonal labour, developing an analogue of the Seasonal Agricultural Workers' scheme attracting skilled labourers from across the world;
- Maintain current levels of Treasury support for farming subsidies, but target them to the UK's agricultural industry, landscape, and environment. Given that UK contributions to the CAP have been more than three times what it has received, the Government should be well placed, where appropriate, to increase rural payments;
- Develop mechanisms to reward farmers for their environmental and conservation role, particularly in those areas in which food production generates insufficient income for viability. Such areas include mountainous regions and National Parks. The Government payments should reward farmers and landowners for the work they do in preserving and improving these most precious environments;
- Ensure that this new regulatory regime is designed for simplicity of administration and implementation, instigating a "gold standard" for the best performing, most highly trusted farmers. Such farmers would be excused regular inspection, but would still be subject to random inspection;
- Integrate flood and water management into rural policy, prioritising food and houses; key decisions to be taken locally and with expert local advice;

- Redress the balance between the Precautionary Principle and the Innovation Principle, demanding that any policy or regulatory decisions under consideration demonstrate a clear preference for innovation;
- Enhance and expand the Agri-Tech Strategy to stimulate the cutting-edge development of new techniques and technologies, and ensure that policy is developed and implemented in an evidence-led fashion, making the UK a world centre for agricultural research;
- Appoint a dedicated Minister of State for Agriculture to oversee the agricultural element of Brexit negotiations.

UK FISHERIES POLICY POST-BREXIT

The essential principle of fishing policy – drawn up with the full consent of fishermen and guided by sound scientific advice and up-to-date local knowledge – must be to restore national and local control to UK waters. Thus, UK policy needs to be based on the desire to:

- Convert all existing EU legislation into national law as an interim measure, to ensure that there is no disruption to current arrangements, and to provide adequate time for negotiations;
- Delineate convenient Fisheries Management Areas based on ecological divisions of specific habitats and distinct populations of fish species and sensitive to the boundaries of devolved administrations. As far as possible, management of FMAs should be delegated to specific authorities, within an overall framework of national law;
- Participate fully on global regulatory bodies, including the Codex Alimentarius, gaining not only a right to vote on such bodies, but also the right to initiate new standards and propose amendments to existing ones;
- Respect historic rights but conduct a detailed study into the Norwegian and Greenlandic arrangements over foreign vessels ensuring full national ownership of the resource and control over its exploitation;
- Manage the sea fisheries in UK waters in such a manner as to safeguard the natural environment. The priority must be to rebuild and preserve our fish stocks and marine wildlife, maximise the economic value of exploitable stocks, both in the short and the long term and create a stable, fair framework within which the fishing industry could operate. Such a framework would include recreational fishing and tourism;
- Convert the fixed-quota system to effort control based on "days at sea" in order to conserve fish stocks and relieve government bodies, scientists, and fisherman of the burdensome need to administer the quota scheme. Days at sea should be transferable between vessels of a similar grouping within a single fishery, on which basis they will no doubt attract a significant monetary value;
- Join as an independent member the North East Atlantic Fisheries Commission, ensuring co-operation with the Russian Federation, Norway, Iceland, Denmark (representing the Faroe Islands and Greenland), and the EU;

- Enforce a registration of fishing vessels, captains and senior crew members before any permission is granted to exploit UK waters. The system would limit acceptance on to the register to those vessels which conform to high UK standards for seaworthiness, command, crewing, and other standards as appropriate. Registration should be subject to payment of a fee, sufficient to cover the costs of the registration authority;
- Maintain the ban on industrial fishing and order a ban on production subsidies, promoting profitability over volume;
- Develop measures to prevent discarding, and ban the discarding of commercial species entirely. With the careful and agreed use of fishing technology, good net and catching designs, the problem of choke species can be dramatically reduced;
- Impose mandatory reporting of all landings, to ensure the most accurate and up-to-date collection of data;
- Make provision for rapid temporary closures of fisheries in response to risks of excessive commercial catches, informed by accurate, real-time information;
- Allow the designation of permanent closed areas for conservation, defined as absolute "no take" zones;
- Impose a rigorous definition of minimum commercial sizes;
- Appoint a dedicated Minister of State for Fisheries to oversee the maritime element of Brexit negotiations.

UK ENVIRONMENTAL POLICY POST-BREXIT

A successful environmental policy is best achieved when a global vision is implemented locally. To that end, our priorities are to:

- Convert all existing EU legislation into national law as an interim measure, to ensure that there is no disruption to current arrangements, and to provide adequate time for negotiations;
- Reaffirm our commitment to international treaties and conventions, with an undiminished sense of our duties to the natural world. We remain signatories of the Berne and Ramsar Conventions, but our obligations to those conventions must be directed to the wildlife and landscapes actually at risk in the UK;
- Participate fully on global regulatory bodies, including the WTO, the World Organisation for Animal Health (OIE), the International Plant Protection Council, and the Codex Alimentarius, gaining not only a right to vote on such bodies, but also the right to initiate new standards and propose amendments to existing ones;
- Develop and maintain co-operative relationships in these bodies with allies in Europe, as well as from across the Commonwealth and Anglosphere;
- Reinterpret global regulation at a local level, replacing the European one-size-fits-all mentality which has led to unsuitable policy in areas from conservation to landfill with regulation tailored to local needs;

- Empower and encourage local volunteers and activists to care for their local environment in its best interests;
- Continue the work of the Natural Capital Committee to develop a long-term evaluation of the UK's natural capital;
- Develop mechanisms to reward farmers for their environmental and conservation role, particularly in those areas in which food production generates insufficient income for viability. Such areas include mountainous regions and National Parks, and Government payments should reward farmers and landowners for the work they do in preserving and improving these most precious environments;
- Allow for the permanent closure to commercial fishing of designated areas at sea. These would tend to be spawning and nursery areas which are so biologically sensitive that any damage done by commercial fishing would be unacceptable. We should follow existing practice of designating areas of special importance to wildlife conservation;
- Prioritise the threat posed by invasive species, and develop a vigorous action plan for those species most at risk;
- Capitalise on the natural advantage of the British Isles being islands to strengthen our biosecurity measures, working in co-operation with the Republic of Ireland to implement a system of border checks with the kind of rigour found in Australia and New Zealand to combat the import of pests;
- Enforce controls such as quarantine restrictions to reduce the risks of plant disease, ensuring the safety of native plants and trees, and establishing the British Isles as a reservoir of healthy plants and plant products for profitable export;
- Implement border controls aimed at halting the illegal import of meat products, such as bush meat linked to increased risks of Ebola and bubonic plague, into the country;
- Continue to play a leading international role in combating the illegal wildlife trade, and continue to help organise co-operative, international conferences along the lines of the 2014 London Conference aimed at reducing poaching and improving the sustainable utilisation of wildlife;
- Embrace and support the latest technological developments, preferring the Innovation Principle over the Precautionary Principle, to ensure that the UK remains a global leader in environmental research and development;
- Ensure that the relevant Minister of State oversees the environmental element of Brexit negotiations.

PART 5: IDENTITY AND ACCOUNTABILITY

Sheila Lawlor, Director of Think Tank Politeia

For a fuller discussion of this piece see longer analysis of the themes in 'Ruling the Ruler: Parliament, the People and Britain's Political Identity'.

Although Director of the think tank Politeia, I am also a historian of British politics in the 20th century, a century when, up to and during World War 2, parliament was not only the focus for the arrangements to accommodate mass democracy. It was also the forum for decisions by voters and their politicians to guide the country through the first half of the new century. These were pivotal in shaping Britain's particular political identity, one perceived to have developed over a thousand years. This identity helps us to understand the tradition in which the decision to leave the EU was taken by voters in June of this year. Here I'll consider Britain's particular political identity as it evolved in the 20th century and go on to suggest why Britain's decision and its aftermath should be helpful to EU leaders wrestling with Euroscepticism at home.

BRITAIN'S POLITICAL IDENTITY, WHICH EMERGED OVER CENTURIES, WAS FORGED IN THE SHAPE WE KNOW TODAY IN THE EARLY 20TH CENTURY

- In the opening years of the 20th century the Labour movement became a parliamentary party, binding its different groups to take the movement to parliament and seek a popular mandate for power.
- In the 1920s Labour replaced the Liberal Party as the main opposition to the Conservatives forming its first Government in 1924, a development which embraced and was accommodated by the Conservative leaders for a variety of reasons.
- In the 1930s political parties and voters together supported a national Government in 1931 to:
  - deal with the financial crisis and its aftermath; and
  - curb the aggressive territorial ambitions of Germany through rearmament, diplomacy and, finally war.

Throughout this half century or so, parliamentary support for the government of the day reflected popular backing. It was also reinforced by general elections.

Churchill, who came to power in 1940 when his predecessor, Neville Chamberlain, failed to command the confidence of parliament, recognised that his authority as a war leader would depend on parliamentary and popular support. Parliament, as he reminded MPs at the height of the war, was the custodian of freedom, those 'hard won liberties'. The parliamentary institutions which had served the country so well, had been shaped by the 'wisdom and civic virtues' of their predecessors. And now (i.e. in time of war) they were 'the proudest assertion of British freedom and the expression of an unconquerable national will'.

For his predecessor Baldwin, parliamentary government was both a symbol and reality of the long resistance to executive power and the protection of ancient freedoms. Britain, said Baldwin, was a country 'where parliamentary government had grown up, the only country in which it is tradition, and hereditary. It was a country of 'independent' people shaped by their links to place and community, 'accustomed to taking part in the Government of their locality or the country' or combining for service as free men'. Baldwin evoked an image of freedom handed down to the generations of people in this island from their forbears, reinforcing the perception of Britain's political identity.

The assumption was that stretching back to Anglo Saxon times, the power of the king, the Government or the executive was limited and that people could shape the laws under which they were governed. People were perceived to enjoy a freedom which long predated the full franchise and mass democracy, expressed through parliament and protected by law. Freedom, said Baldwin, was their 'birth right'. The British love of freedom was mirrored in a parliament characterised by 'fair judgment … fair play'; it was a constitutional freedom 'fought for from the beginning of our history …. the result of centuries of resistance to the power of the executive'.

This view of Britain's political identity rested on the system of parliamentary government, on the rule of law, and on the right of its people to hold their rulers to account and determine the laws which governed them. It brought stability, liberty and prosperity, characteristics which were seen to mark the country out from its troubled continental neighbours in the turbulent interwar decades – suffering as some did from political upheavals, revolutionary movements or from dictatorships of the right or left.

Whether the perceived view was or was not the case is another question, but in the 19th and the 20th century as Britain came to mass politics, the degree of popular involvement in, and knowledge or scepticism about political leaders and their causes remains striking. It is evident from their participation in mass movements, the by-election and hustings reports, the proliferation of political cartoons, ballads, pamphlets, posters, subscriptions, meetings and even from the expressions of national grief – as on the death of Sir Robert Peel after falling from his horse. The response to that (which began when crowds first gathered outside his house in Whitehall gardens to hear the medical bulletins and continued after his death with memorial eulogies, literary tributes, and funerary memorials) reflected people's involvement with the politics and causes of the time – in this instance the movement over decades to repeal the corn laws, the tax on imported corn.

Politics, policies and 'causes' have continued to be debated and discussed by people, often turning up at the hustings with lively exchanges and detailed reports in the weekly press of what each candidate stood for. To succeed, politicians and governments had to be perceived as being at one with their voters. That could lead to their exaggerating, to deception or manipulation. Nonetheless people took account of the various ploys of politics as part of the 'game' or contest in which they were participant and ultimately judge. The indications are that in Britain people have traditionally been knowledgeable about politics, about the detail and the broad sweep. And though tolerant of the arts of politics (sometimes black arts), they have not tended to be taken in, have not be easily manipulated or deceived.

People have exercised their power at elections, and been seen to be fair, patient and willing to give those to whom they entrust power (irrespective of political party) a chance, often open to being persuaded. They have used their power carefully and, from time to time, dramatically, to change the country's direction. They did so, for example, when they voted for Attlee's collectivism in the

1945–51 government; they did so again for Thatcher's alternative to the overweening and failed economic state in 1979; and they did so in June 2016 when they voted to leave the EU.

In the leave vote the same strands of this tradition re-emerged. People want to regain the freedom to decide how they are governed, to elect those who make the laws on their behalf and remove them when they fail. They want to regain national sovereignty, as six such voters told BBC Newsnight on Monday (5th September): each volunteered that he or she had voted to leave the EU primarily to regain national sovereignty. Yes, they saw there was much yet to be done to put that in action. But they were patient and fair, explaining things would take time to organise as no preparations had been made before the referendum.

Britain's decision to leave the EU was therefore not a flash in the pan. It reflected a long involvement by people in shaping and deciding how they are governed and by whom and a perception that for Britain, centuries of freedom and the accountability of parliamentary government matter in themselves as well as for the benefits they bring.

BRITAIN'S DECISION AND THE EU

The decision may have been unexpected by the gGovernment at home just as it was unexpected by the powers of the EU. There is no doubt that it is a blow to the 'European' project in which the two great founder countries, France and Germany are heavily invested. Both emphasise that the EU will continue on its path without Britain, while their leaders along with Matteo Renzi from Italy, the other big founder country, symbolically met on an Italian battleship in August to reiterate the point. That pathway is for ever closer political union. Yet further integration bodes ill for the cohesion of the EU, as well as the political stability of its member states.

Many of these nation states have their own serious Eurosceptic 'problem', one which has grown stronger in its major founder countries. By early June this year hostility in France to the EU was running at over 60% – 61% viewed the EU 'unfavourably', in Germany the figure was 48%, in Italy 39%.

For the French and German leaders such figures if reflected in next year's elections, could lead to big problems for the mainstream parties and instability for the countries. Looking ahead to the French presidential election next year, polling (also in June) of those surveyed gave the Socialist President Hollande just 14%, the Front National's Marine Le Pen 28%, and the Republicans' former president, Nicolas Sarkozy 21%. (Since then M Sarkozy has announced his candidature but it is unclear whether the other Republican front runner for the nomination, Alain Juppé, will win the Republicans' nomination in the primaries.)

Germany is less Eurosceptic than France, but anti EU sentiment runs at just under 50% while antagonism to the Chancellor, Angela Merkel is summed up in the slogan 'Merkel muss weg' ('Merkel must go'). Her CDU party came third in this week's (5 Sept) elections in the north-eastern German state Mecklenburg-West Pomerania with only 19% of the vote. The Eurosceptic Alternative für Deutschland (AfD) party took almost 21% of the vote behind the centre-left SPD's 30%. This augurs ill for the German Chancellor and the CDU in next year's parliamentary elections and suggests further segmentation of German party politics.

Linked to such Eurosceptism is the deep mistrust of EU institutions, one recorded faithfully in the EU's own 'Eurobarometer' which in the last two years hovered between 60–70% mistrust of the Commission, the ECB and the European Parliament.

There are many reasons for mistrust, but I'll touch here on one, the failed economic policy of those who rule the EU and Eurozone and who cannot be held to account. EU economies suffer from low growth and from the anti-competitive rules which protect producers in the Single Market, driving prices up for consumers and making exports of goods uncompetitive in world markets. Moreover, in the Eurozone, the weaker economies of southern Europe – Greece, Italy and Spain – are damaged also by being locked into the fixed exchange rate. Unemployment is high, and the figures for young unemployed are scandalous, varying from 52% in Greece to c 42% in Italy and 53% in Spain.

Yet national electorates are powerless to change course. No national government would survive such an economic scenario for long. In the EU and Eurozone, however, voters are unable to change the course of economic policy or change the direction of policy by unaccountable rulers.

France and Germany may have special reasons for their investment in the EU project: for France, the need for security against Germany, for Germany, the need, to bury, conquer or prevent a repeat of its attempt for military dominance of Europe. Nonetheless for these countries sovereignty, political accountability and trust matter and the disaffection of half the population or more is serious, and not just for current leaders and their political futures. It also matters because unless the political momentum to further EU integration is arrested, the stability of their countries may be undermined.

For Britain, the priorities are different – informed by a different tradition, of freedom by people to shape the laws under which they are governed. Britain's political identity is thus different to that of France and Germany. But for both of these countries the EU structures pose similarly big questions, of cultural identity, security and stability – exacerbated by the absence of accountability by those who shape EU law to the citizens of each.

PART 6: BUSINESS AND OPPORTUNITIES

Shanker Singham is Director of Economic Policy and Prosperity Studies of the Legatum Institute

This paper addresses the impact of the Brexit vote and what can be done as a result of the vote to maximize the UK's trade and investment prospects around the world. While most commentators have focused their attention on the UK's negotiation with the European Union, we believe that this is only one part of a multi-tiered, multi-track approach that could position the UK to be a great trading nation once more.

NEGOTIATIONS WITH NON-EU COUNTRIES – TOWARDS A PROSPERITY ZONE

We advocate the UK adopting the following approach with non-EU markets, including developing the idea of a Prosperity Zone based on certain core principles. The guiding principle of the Prosperity Zone negotiation should reflect the shared values of its members. These shared values are based on the principle that private parties coming together in voluntary exchange best serve human needs, and that where the government interferes with these relationships, this leads to bad outcomes for people in Britain and around the world. These like-minded countries share a commitment to open trade, competition on the merits and property rights protection. There are some countries in the world who share these core values, but we must be realistic about who these nations are. In order to discover them, we propose the following series of actions, but note that the Zone is open to new members who share its core values.

1. Agree with the US, Australia, Canada, NZ, Singapore and Switzerland a comprehensive, deep integration agreement that aims to lower border barriers to zero, and also to lower Anti-Competitive Market Distortions (ACMDs). This Agreement would also increase the level of protection for investments that would include actions tantamount to expropriation as well as regulatory takings. Already many of these countries have offered Free Trade Agreements for the UK. In terms of sequencing, we recommend starting with the non-agricultural subsidizers, such as Australia, NZ, Singapore, and then acceding the US, Canada, and possibly Switzerland.
2. The Prosperity Zone negotiations will therefore be focused on:
   - Elimination of border barriers between nations;
   - Elimination of Anti-Competitive Market Distortions;
   - Regulatory promulgation mechanisms that are designed to minimize laws and regulations that damage market competition without a clearly expressed regulatory goal;
   - Rules allowing member countries to tariffficate distortions in other markets so that the pressure to reduce ACMDs is increased;
   - Higher level property rights protection than exists in any existing free trade agreement through rules to limit regulatory takings and comprehensive investor-state dispute resolution.

3. Evaluation of the potential application of UK for TPP membership. This will depend on the final content of the TPP. If TPP is truly a Free Trade Agreement, without labour and environmental provisions that are distortive, then it is an agreement that the UK should consider joining. UK negotiators will have to watch carefully how the TPP is changed in order to accommodate the US election process, and the resistance of both leading candidates to free trade in general and the TPP in particular.
4. Initiate a discussion with the Commonwealth countries for a revitalisation of the Commonwealth. This announcement should be made now, and concrete progress should be made in advance of the Commonwealth Heads of Government Meeting in London, Spring 2018 which will fit quite well with the timing of any negotiations with the EU. The initial steps could be an Economic Partnership Agreement (EPA) negotiation with the ACP countries where the UK's leaving of the CAP and CFP will enable a much more attractive trading partner for these countries (including elimination of tariff escalation by the UK).
5. The UK will no longer be bound by the Common Agricultural Policy or Common Fisheries Policy subsidy program, and should not replace the EU programs with domestic subsidy programs. This will make it much easier for the UK to negotiate the Commonwealth Trade Agreement as well as with other countries, as this will greatly reduce the UK's defensive interests in a trade agreement. It is the management of a nation's defensive interests that increases the degree of difficulty of negotiating agreements.
6. Any FTA with developing or emerging markets that are not part of the Prosperity Zone would have to prioritise the UK's service industry, something the EU is not able to do. By aggressively opening up markets for its core industries, and by minimising its defensive interests, the UK can move quickly to negotiate and conclude FTAs.
7. Re-negotiation of Britain's WTO commitments and status. While Britain is a member of the WTO, some of its agricultural schedules would have to be recalculated. Britain could lower barriers in the WTO context to the rest of the world, and would not be hampered by agricultural subsidisation, or by the EU's common external tariff. The UK's services schedule would also be much more pro-competitive and open than the EU's current services schedule.

NEGOTIATIONS WITH THE EU

Britain's negotiation with the EU will be built on the shared interests of key EU member states, such as France, Germany, Netherlands, Sweden and others to negotiate a solid FTA with market access and contestability for firms from both the UK and the EU to each other's markets. As the German business group. BDI noted on the day after the BREXIT vote, "it would be foolish not to give the UK an FTA". It would also be immensely damaging to French and German business interests not to move forward with a comprehensive FTA with the UK and get it concluded as soon as possible. Supply chains will demand no less. The UK should therefore initiate the following actions:

1. Evaluation of the most appropriate time to invoke Article 50 of the Lisbon Treaty.
2. Upon initiation of Article 50 of the Lisbon Treaty, the UK would need to take a number of steps with its EU counterparts. While a full list is yet to be developed, and should not be publicly revealed when it is, some of these include:
   - Any EEA membership limits the ability of the UK to negotiate other agreements with other non-EU countries. It will be vital to UK interests to ensure service agreements that prevent regulatory protection and anti-competitive distortions. If UK interests can be protected through a non-EEA arrangement that is the preferred choice;
   - Offer Freedom of Movement of Labour in the form of expedited immigration processes for those in member states who get jobs in the UK, but this would not apply for someone looking for a job. There are EEA members such as Liechtenstein which have strong national immigration rules, and retain control over their borders, but are nevertheless EEA members. The EU should recognise the notion that only a full political union can underpin complete freedom of movement of people, and that of necessity an economic agreement will require a different approach;
   - Maximise market access and contestability for Britain's very strong services industry. Negotiate reductions to ACMDs that adversely affect Britain's services industries, especially where the single market is incomplete;
   - Agree a common approach to the EU's agreements already negotiated with third countries (e.g. Mexico, S. Korea etc.). One approach would simply be to grandfather those agreements into UK FTAs, as these countries bargained for UK access when they initially signed the agreements. It should be clear that the UK will have to negotiate its own agreements with other parties, including those with whom the EU is currently negotiating. In many cases, these agreements should be easier to negotiate than the EU agreements because the UK has fewer defensive interests than the EU;
   - Negotiate at least a Free Trade Agreement with the EU and EFTA which will enable the UK to have maximum potential for its key offensive interests in services.

ENHANCING UK COMPETITIVENESS

There are a range of things the UK can do once it is outside the EEA and not bound by the Acquis Communautaire to implement a better internal regulatory system that will deliver competition on the merits as an organising economic principle. If the UK leaves the EU's acquis, then there is a host of economic regulation, which the UK will have to adopt. It has a choice of simply transposing EU law onto its statute books or of using the wealth of research on how to promote pro-competitive rules in these areas to craft ground-breaking legislation and regulation that promotes trade, but also protects UK interests from the impact of distortions in foreign markets. The UK also has the ability to agree a regulatory promulgation process that makes economic sense. This would include a rigid cost benefit analysis that compares the damage to the market and the ordinary process of competition with the benefit achieved as a result of fulfilling the regulatory goal. The aim of the regulatory promulgation process is to ensure that regulation is the least market distortive consistent with the regulatory goal. We advocate the adoption of a Productivity and Consumer Welfare Act which would develop more pro-competitive UK regulation in the areas of;

1. Trade remedies.
2. Competition policy and law implementation.
3. Technical barriers, SPS measures.
4. Eliminating the precautionary principle as a regulatory promulgation principle and replacing it with a principle of cost-benefit analysis based on market impact, and a requirement to regulate in ways that are least distortive of trade and competition, consistent with regulatory goal.

In other areas, UK law would start to diverge from the transposed system, just as American law diverged from English common law after independence.

PART 7: NEGOTIATING STRATEGY FOR TRADE WITH THE EU

James Arnell, Partner at Charterhouse Capital

My proposal is that we simply apply WTO rules (both to exports and imports) after 24 months from the exercise of Article 50, unless we agree otherwise in particular areas over the next two years.

This would achieve the following objectives:

1. Provides business with certainty, and allow any shock to be mitigated by other measures (corporation tax reduction, establishment of an adjustment fund, incentives to invest to remove reliance on imports, etc.).
2. Encourages business to raise specific sector concerns early, and allow negotiators to focus efforts only on those sectors which would suffer serious adverse consequences, and on securing concessions in return for an easing of tariffs on the most sensitive sectors in the EU countries.
3. Provides a strong opening negotiating position, given that WTO tariffs would hurt the EU more than the UK, and that certain countries would be likely to want to negotiate, allowing the UK to seek meaningful concessions.
4. A position which we know we can deliver. Any other position requires the assent of our EU counterparts and would therefore present great uncertainty.
5. A strong incentive to other non-EU countries to begin discussions. They, and we, would put pressure on the EU by initiating bilateral deals between the UK and, for example, the US, Australia, Canada, India, etc. We could also replicate the arrangements with developing countries adopted by others (e.g. US and Canada) which have been far more successful than the EU.
6. Allows the presentation of new trade discussions and any concessions from the EU to be presented as victories. Any other opening position risks the eventual outcome of discussions being seen as a defeat for the UK.
7. Allows the impact of tariffs on Scotland to be identified and compensated, if required to cement Scotland's relationship within the UK.
8. Allows negotiations with the EU to focus on issues of mutual benefit (security, research, air traffic, product standards harmonisation, mutual rights for ex-pats, etc.), giving a positive tone to discussions.

As for services, the core strategy should be to make London as attractive as possible to the financial services community and to rely primarily on their ingenuity to find ways to manage their access to the EU:

1. Defer the removal of non-domicile status, while the dust settles.
2. Soften banker bonus caps (set by the EU).
3. Reduce corporate tax rates.
4. Reduce the compliance burden, while preserving the integrity of risk reduction measures taken since the crash.

CONTEXT WITH REGARD TO GOODS

The EU exported £219.8 billion of goods to the UK in 2015. The UK exported £134 billion of goods to the EU. The average tariff rate on imports into the UK would be c. 4.1%, raising roughly £8.9bn p.a. The average tariff rate on exports from the UK would be approximately 3.5%, costing around £4.6bn per annum. The UK is the EU's single largest export market (17% of EU exports), bigger than US (16%) and China (8%). UK exporters have benefited from the reduction in the value of sterling and are therefore far more competitive, even with tariffs. The only significant sectors where we are a net exporter to the EU are:

- Fish
- Mineral fuels, bitumen
- Aircraft, spacecraft and parts thereof

These particular sectors could be the focus of government incentives to relieve the pain of tariffs even beyond the currency tailwinds. UK importers would suffer a substantial additional cost. This cost is focused on a few industries:

- Vehicles: £2.5 billion per annum
- Electrical machinery: £552 million per annum
- Plastics: £488 million per annum
- Nuclear reactors, boilers, etc.: £456 million per annum
- Meat/fish preparations: £318 million per annum

Together, these form 48.4% of the total, with the remainder very diffuse and with trade in both directions. There are also a few mainly relatively small sectors where the UK relies heavily on EU imports which would attract high tariffs: flowers, vegetables, citrus fruit/nuts, preparations of meat/fish, preparations of vegetables/fruit, and fertilisers.

Other, even smaller subsectors, will also be affected. The data are easily available to identify these subsectors for specific attention. In these areas, the UK could:

- Unilaterally reduce tariffs on imports (for smaller sectors, where leverage over any one-member state is low).
- Use the tariff imbalance to negotiate other access rights (e.g. trade tariff free access for cars for passporting for financial services). For example, the Netherlands relies on the UK for its cut flower industry. It might apply pressure on other EU countries to give concessions in return for tariff free access.

- Subsidise its importers to compensate for tariffs (via an adjustment fund, which should be compliant with WTO rules).

NB. Any change in tariffs with the EU would need to extend to all other trading partners under WTO rules, so a further step of analysis would be required to ensure no inadvertent economic damage or loss of economic leverage in other trade deals.

CONTEXT WITH REGARDS TO SERVICES

The main issue in Services appears to be the City. The passporting regime is relevant, but is the problem overstated? The EU extends the passport for Markets in financial instruments directive to non-EU states which have equivalent regulatory regimes. The UK would qualify. Funds are generally already based in Dublin or Luxembourg. It seems unlikely that there would be any impact here.

The Alternative investment fund managers directive may require adjustment, but it seems likely that businesses would simply set up EU subsidiaries to raise money within the EU, and have them act as sidecars to the main UK funds.

In any event, my contention would be that the best defence against an impact on the City is to trust the ingenuity of bankers, lawyers and other advisers and to focus mainly on maintaining the attractions of London to the individual banker, fund manager, etc. Few of them will relish the prospect of leaving London to go to Paris or Frankfurt, but to encourage them to work hard to maintain their bases in London, I believe that the government should consider:

1. Deferring the removal of non-domicile status while the dust settles.
2. Softening the banker bonus limits set by the EU.
3. Reducing corporate tax rates.
4. Reducing the compliance burden, while preserving the integrity of risk reduction measures taken since the crash.

This combination would, I believe, have more power than anything negotiated in Brussels.

Passporting, in more detail:

- Capital Requirements Directive (2013/36/EU) – Basel III essentially, so an international standard.
- Solvency II Directive (2009/138/EC) – should be straightforward to implement the same solvency requirements and thus preserve confidence in our insurance markets and providers.
- Insurance Mediation Directive (2002/92/EC) – UK already well beyond these standards, can remain harmonised, passporting impact likely to be minimal?
- Markets in Financial Instruments Directive (2004/39/EC) – provided equivalent regulatory regime in place, should be able to passport from outside EU.
- Undertaking Collective Investment Scheme Directive (85/611/EEC) – almost all Dublin or Luxembourg based already.
- Payment Services Directive (2007/64/EC) – a potential issue, but addressable by looking at the approaches taken by US payment services providers?

- Second Electronic Money Directive (2009/110/EC) – same.
- Alternative Investment Fund Managers Directive (2011/61/EU) – likely to be of low impact, due to ease of setting up sidecar funds within the EU, which adhere to EU requirements, and the marketing restrictions for non-EU managed funds are not that substantial.

SUGGESTED APPROACH TO PREPARATION FOR NEGOTIATIONS

Were I tasked with preparing these negotiations from this opening negotiating position, I would do the following:

Exports

1. Identify all export sectors which would be affected, using:
   - ONS data;
   - Surveys of UK companies (trade stats may underestimate trade due to distortion from "platform companies"); and
   - Web filing option for companies to register concerns (advertise heavily).
2. Where an export cannot be sourced from anywhere other than the UK (e.g. Scotch whisky), note this as an easy give for the EU to allow zero tariff.
3. Identify those sectors which will be particularly impacted:
   - High £ value of exports to EU;
   - High tariff; and
   - Low opportunity to gain share in the UK (short cut here is to look at imports in the same subcategory – if they are high, there is probably an opportunity to displace imports).
4. Identify any sectors which are indispensable to EU supply chains, where they will suffer from having to import through tariff barriers.
5. Prioritise highly impacted sectors for bespoke discussions with the EU, alongside the "easy gives" – where they cannot source from elsewhere and where they need our exports.
6. Commission work on redesigning the export guarantee scheme and export credit schemes to boost exports and amortise the cost of tariffs.
7. Commission work on an Export Development Growth Fund.
8. Develop a programme of announcements on the initiation of export and trade initiatives with non EU countries:
   - Trade deal discussions (e.g. whisky to India);
   - Joint development programmes (e.g. thorium nuclear programme with India); and
   - Infrastructure investment into airports (and ports).

Imports

1. Identify all import sectors which would be affected, using:
   - ONS data;
   - Surveys of UK companies (trade statistics may underestimate trade due to distortion from "platform companies");
   - Web filing option for companies to register concerns (advertise heavily).
2. Where an import cannot be sourced from anywhere other than the EU (e.g. parmesan cheese), note this as an easy give for the us to allow zero tariff.
3. Identify those sectors which will have a high relative impact on the EU:
   - High £ value of exports from EU;
   - High tariff;
   - High net trade flow into UK;
   - High impact on an individual member state.
4. Identify any sectors which are indispensable to UK supply chains, where our companies will suffer from having to import through tariff barriers.
5. Use those sectors identified in 3. (above) to negotiate tariff reductions/access rights for our key export sectors in return for reduced/no tariffs.
6. Offer tariff reductions for those sections identified in 3. (above), against reciprocal reductions in other sectors.
7. Commission work on a "source internally"/"build domestic capacity"/"source elsewhere" strategy for the UK:
   - Create a fund for the development of in-house production to reduce import dependence and labour dependency (e.g. in agriculture);
   - Create an entity which offers companies assistance in identifying other UK sources of supply;
   - Sponsor a series of trade fairs for each sector, bringing non-EU suppliers into affected sectors to the UK to meet importers.

Trade policy to ROW

1. Identify all quick wins and focus on them:
   - Things we can copy – EBA/AGOA/Canadian trade deal;
   - Things which are already drafted – CET, TTIP, EU PTAs;
   - Specific quick win agreements as "sweeteners".
2. Use the initiation of discussions to shift the debate and build confidence. NOT little England.
3. Rapid implementation of new immigration arrangements:
   - Reintroduce season labour permits.
   - Set out path for reduction of immigration, aiming for well-signalled gradual reduction, to allow business time to adjust through greater investment, productivity improvement and better utilization of the domestic labour force (through benefits reform and improved training).

ABSORBING THE ECONOMIC SHOCK OF BREXIT

The national debt has been, in effect, reduced in real terms by the devaluation of sterling. The cost of government borrowing (reflected in long term gilt rates) is down. Therefore:

1. Invest in infrastructure and housing to prime the economy through the Brexit period and to take advantage of low borrowing rates.
2. Invest in the upfront cost of benefits transition while it is cheap to do so, as less freedom of movement will mean we need to engage our dormant domestic workforce.
3. Reinvigorate regional development funds to focus economic aid into those regions which voted for Brexit.

Set a small number of Key Performance Indicators for the management of the UK economy, in tandem with the Bank of England, for example:

1. GDP growth/unemployment/inflation: together, the Fed mandate.
2. Deficit (maintain longer term guidance on deficit reduction to maintain confidence).
3. Trade deficit (the UK should seek to remove reliance on foreign funding of its deficits).
4. Levels of investment as a proportion of GDP (substitute public investment when private investment is down, increase private investment incentives).

PART 8: NEXT STEPS FOR LEAVING THE EU

Bernard Jenkin MP

N.B The following essay was not discussed at the summit on 9 September.

The choice is not so much between so-called "hard" and "soft" Brexit, as it is between "shorter-simpler" or "longer-complicated" Brexit. Much of the opposition to leaving the EU was based on the concern that leaving would provoke "years of uncertainty". Such a protracted period of uncertainty would risk souring relations with our EU partners. It would also reduce expectations of what the UK can achieve outside the EU among potential trading partners. It would suggest a lack of political direction and resolve, which would be politically unsettling. Further, it would harm business confidence and damage economic growth. Even many of those in business who were for Remain are now expressing how important it is for the government to act quickly and decisively. Only those who still oppose leaving the EU have an interest in extending the process unnecessarily, hoping that somehow Brexit can be delayed indefinitely. Therefore, the quicker and simpler the exit, the better for all concerned.

LEGAL MECHANISMS FOR LEAVING THE EU

There are two principle legal and constitutional components for leaving the EU:

- Article 50, which is the procedure laid down by the Lisbon Treaty for countries wishing to leave the European Union;[1] and
- The Act of Parliament that is required to repeal the European Communities Act (1972), which gives effect to our membership of the EU Treaties in UK domestic law.[2]

The Lisbon Treaty intends that Article 50 should be the mechanism by which a state should leave the EU. There are many complicated issues to deal with (the government have identified some 38 headings for such issues), but in principle, leaving the EU is simple. Scores of countries have been granted independence from their former rulers over the past 100 years. Gaining national independence is not a new idea or process.

In our case, it means the government will introduce a European Communities Act (1972) Repeal Bill. The key clauses of this bill will:

1. Repeal the European Communities Act (1972) (ECA), which gives effect to EU law in our domestic law;
2. Carry over all EU law which currently applies directly in the UK into UK statute law (it may be convenient to list all the relevant EU legal instruments and court judgements, although it is not necessary if the principles are clearly set out); and
3. Make provision for amending and repealing the EU imported law "by affirmative order" (i.e. by means of a statutory instrument to be approved by resolution of both Houses of Parliament).

It is ECA, which carries the obligations of EU membership into UK law, by giving "direct applicability and direct effect" to EU directives, regulations and judgements of the European Court of Justice (ECJ). Some have argued that a repeal bill is not necessary and that if we follow the Article 50 process, the EU Treaties will simply cease to apply, with EU law thereby ceasing to apply in the UK also. This is not correct because the courts might well assume that Parliament intends the ECA 1972 to continue to incorporate the EU treaty obligations into UK law until such time as the act is amended or repealed. It would mean that the UK courts would still be subject to rulings of the European Court of Justice, and to any new EU legislation carried into effect after we have left. If the ECA were simply nullified, it would cause chaos if Parliament did not first clarify what will apply in the absence of EU law as it currently applies in the UK.

The repeal bill should be kept as simple as possible. At the time of joining the EU, many were predicting that the required legislation to give effect to EU law would be over 1,000 clauses. They were astonished that the European Communities Bill was such a short and neat formulation of principles. We should aim to repeat this.

DEALING WITH COMPLEXITY

In a paper for the Constitution Society, Richard Gordon QC and Rowena Moffatt term the way of uncoupling EU and UK domestic law outlined above "the generalised model".[3] They find this approach "problematic" on the basis that it does not address directly applicable and directly effective EU law, and they are right. The example they give is in competition law, which currently rests upon substantial case law as well as the statutes themselves. And others have raised the problem that arises from the UK's present dependency on EU regulatory bodies, such as the EU Medicines Agency. Simple repeal would leave a lacuna in our regulatory landscape. But this can and should all be addressed in general declarations of principle in the repeal bill and need not be set out in detail. The courts will infer exactly what is required, based on clear declarations of principle in the repeal act, just as they have done in respect of ECA 1972. The repeal bill could also establish the principle that the rulings EU regulatory bodies should continue to apply, until such time as they are replicated at within the UK. A similar set of declarations can be used to clarify how the rights of EU citizens in the UK are to be defined.

There is an important distinction to be drawn when thinking about these complicated issues. Leaving the EU is intended to restore Parliament's direct control over the UK law and policy. That is a separate matter from the issues which the UK as a sovereign state may freely choose to agree with our EU partners after the UK has regained sovereign control over our law and policy.

THE PROBLEM WITH ARTICLE 50: THE COMMISSION'S TACTICS

Once Article 50 is invoked, we are in a process laid down by the Lisbon Treaty which was not devised to make it easier to leave the EU. It puts the Commission in charge of the negotiations, by invoking the procedure for negotiating with third countries under Article 218(3) of TFEU. The Commission is adopting a tough line to discourage other EU states from considering exit. They have appointed EU federalist hard-liner, Guy Verhofstadt, former prime minister of Belgium, to lead the negotiations.

Once invoked, the Commission can keep the Article 50 period going for two years, whether the UK likes it or not. During this period, we are not accorded full rights of EU membership, being excluded from some Council decisions. At the end of the process, there is no guarantee that a withdrawal agreement will be concluded. There might be insufficient support on the Council or the European Parliament might vote to withhold consent. At such a point, it might be preferable for the UK to leave without an agreement.

The Commission is doing its best to exploit and to build upon the advantages that Article 50 provides. They are seeking to prevent any substantive negotiations with the EU prior to invocation, including threats of legal action. They are also pressing for the UK to invoke Article 50 as soon as possible. This was amplified by Donald Tusk, President of the Council, earlier this month. We should be under no illusions; pressure from the EU to invoke Article 50 is not designed to assist the UK's position.

The Commission is also pressing for there to be "at least a certain knowledge of the essentials of the future relationship between the UK and the EU in the withdrawal agreement".[4] If the withdrawal agreement constitutes more than "setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union", the agreement risks requiring unanimity in the Council (rather than a qualified majority). This is because anything more than a pure trade agreement is likely to be a "mixed agreement" (ie. they cover subject matters in respect of which both the EU and the Member States have competence) and this invokes a different decision process than for Article 50.[5]

So the Commission is planning that the withdrawal agreement should include "a bridge to the future relationship". They envisage linking the withdrawal agreement with any new long-term UK-EU agreement, by setting the same commencement dates for both agreements. Any "future relationship" would require agreement and possibly even ratification by all the member states. The Commission's plans are a device which employs the Qualified Majority Voting procedure in Article 50 to approve a withdrawal agreement which would extend the Article 50 period until such time as the "future relationship" agreement has also been concluded. The UK must be clear that this would be completely unacceptable, as it would create an interminable process.

The Commission would also like to bring in the Treaty changes consequential on the UK's leaving the EU before the UK leaves. This is also a matter which cannot be allowed to delay UK departure.

The Article 50 arrangement "contains an essential asymmetry" and creates "a potentially serious disadvantage" for the UK.[6] What it does is to create an EU treaty procedure for leaving the EU, conferring responsibility for the negotiations on the Commission, centralising decision-making on the Council and the European Parliament, and removing responsibility from the individual member states. A number of states, the "Visegrad Four" (Poland, Czech Republic, Slovakia and Hungary) are already grouping to protect their interests. (As net beneficiaries of EU funds, they are concerned about the cancellation of the UK's £10 billion net contribution. Germany, as the EU's biggest net contributor, is not discouraging their protest, as Germany does not want to be under pressure to help make up the shortfall.)

The key objective of the UK is to keep any issue requiring unanimity out of the Article 50 process. Such matters will have to be decided after we have left. This is the only way to maintain significant UK influence over the negotiations and timing.

Much of this challenge would exist without Article 50, but Article 50 threatens to make leaving the EU much more problematic.

We must make clear at the outset that the UK will not be bound by its terms if it becomes apparent that we will not achieve an acceptable agreement within an acceptable time, and this is reflected in the terms of the Redwood draft letter of notification. It is in the interests of Europe as a whole that an agreement is reached as quickly as possible. And unless we are to be beholden to the EU's negotiating demands, we have to be prepared to leave the EU without any formal agreement as a departing state.

The government should invoke Article 50 as soon as it is ready to do so, and aim to keep the period in which the UK is in the Article 50 process as short as possible: shorter than the period of "up to two years". It seems likely that the government will continue to delay invoking Article 50, until the Mishcon de Reya legal challenge has been resolved. This gives time for the government to establish how we expect the negotiations to be conducted, and what the UK expects will emerge at the end process, how long it will take, and what the UK will do if it begins to look impossible that any acceptable agreement will be achieved in an acceptable timeframe.

The UK would be best advised to regard invoking Article 50 as the exchange of contracts prior to completion. There will of course be "talks about talks" before the invocation of Article 50, and the UK should take maximum advantage of this, which the EU cannot possibly prevent.

The UK should also make clear, *in extremis*, the UK could leave the EU simply declaring that the UK shall no longer be bound by the EU treaties, and by bringing into force the proposed repeal bill to give that declaration domestic legal effect. Most countries written constitutions makes things much more difficult for them, but the UK is in a peculiarly advantageous position. The UK can leave the EU in a simple fashion because we have no other constitutional procedures which have to be observed, other than exercise of the prerogative for abrogating the EU Treaties and the implementation of the repeal act.

It is neither necessary in UK law for the other member states to agree to such a repeal or amendment of our own law, nor necessary in UK law to be bound by Article 50 in order for us to leave the EU. It is argued that this would be a breach of international law, and the UK has already accepted in principle that Article 50 will apply. It is also true that the referendum rejected the EU treaties of which Article 50 is a part. However, if the EU refuses to accept our terms for invoking Article 50 or the process begins to threaten our national interest, the Government would also be right to jettison it.

For all these reasons, the government should not wait for the withdrawal agreement before introducing the repeal bill. The referendum result does not make leaving the EU conditional upon any agreement. Parliament has an unconditional mandate from the British people to enact such legislation, and indeed is under an obligation to do so. This legislation should be prepared, and introduced to Parliament as soon as possible, subject to decision by affirmative order when the various provisions are brought into force. It should be enacted in advance of completing the Article 50 process. Publication of this Bill as soon as possible would itself be a clear statement of political intent on the part of the government, and of the principles which will underpin the negotiations.

THE NEGOTIATING FRAMEWORK

This paper proposes a negotiating framework which starts by dividing the objectives of the process of leaving the EU into three categories.

1. Constitutional or fundamental matters

The government has already defined the issues of principle which are essential to deliver the referendum mandate and are therefore non-negotiable. David Davis, Secretary of State for Exiting the EU, has made clear that Brexit means "leaving the European Union, so we will decide on our borders, our laws and the taxpayers' money", and it must also "put the sovereignty and supremacy of this Parliament beyond doubt."[7] There may be other matters which fall into this category.

Consequential matters

Some matters are automatically resolved as a consequence of the above and are also non-negotiable. Taking sovereign control over our borders, laws and taxpayers' money precludes the UK being a member of the European Economic Area (EEA), which would require the UK to compromise control over these matters. This means leaving the EU "internal market". Those who argue that EEA membership (or "membership of the single market") remains an option ignore the fact that the EEA was created in 1994 as a means of transition to full EU membership. Norway and Iceland joined for that reason, but then the Norwegian government was stopped in its tracks when Norway voted 'No' in their referendum to join the EU. Iceland later dropped its application to join the EU. Were the UK to enter into anything like such compromises and not "take back control" in accordance with the referendum mandate, there would immediately be demands for another referendum, which the government has already ruled out.[8] EEA membership, or anything like that, or even the "Swiss option" also immediately draws in issues which could only be concluded by unanimity (of all 30 states in the case of the EEA) and ratification by all the member state parliaments. This would take far too long.

2. Technical and practical matters which have to be settled before leaving the EU

To minimise uncertainty, matters to be negotiated and settled under Article 50 must be kept to an absolute minimum. As far as possible, and without triggering unanimity provisions, the Article 50 withdrawal agreement should make only provisional arrangements to be negotiated more permanently after we have left.

It is assumed by many that a new UK-EU free trade agreement will be the central part of the withdrawal agreement. Those such as Lords Lawson and Owen have made clear that the attempt to include such a massive negotiating undertaking as this would be a "massive strategic error".[9] There are plenty of other matters which need to be resolved, such as how the new EU-UK relationship will handle issues like data and data protection, patent law, security cooperation, civil aviation, mobile telephony, separation from the Common Agriculture Policy and from the Common Fisheries Policy, and the immediate and vexed question of the reciprocal rights for UK and EU citizens in each others' countries. The EU will also want to negotiate how the UK will end its contributions to the EU budget.

Given the impossibility of deciding a comprehensive free trade deal within an acceptable Article 50 timescale, the UK should offer a temporary settlement *pro tem*: zero tariffs on goods and passporting for financial services, if the EU will agree the same.[10] Should this be refused, then the UK would have to default to "most-favoured-nation status" according to the rules of the World Trade Organisation.[11] Many argue this is not damaging for the UK, and could even be advantageous. It would certainly be a negotiating advantage to force the EU to be first-movers on any protectionist measures, especially as Germany, the EU's biggest exporter to the UK, is wholly opposed to tariffs.

The UK should resist any obligation to contribute any further to the EU budget from the day we leave the EU. Once the repeal act is in force, the UK ceases to be under any direct obligation to make contributions to the EU budget. This will leave the EU with a very considerable financial problem. There are three areas of concern for the EU, which could give the UK considerable leverage.

The rest of the EU would have to find some £10 billion per annum net in order to sustain all its programmes. Without this, given that agricultural entitlements have prior call on resources, the other programmes, particularly the structural funds, will suffer the main hit.

The second issue arises from the massive incompetence which afflicts the management of the EU budget. The gap between commitments and payments is ever wider. The UK share of this gap is estimated to be some €20 billion. The UK will no longer be under any direct obligation to continue to meet these commitments.

Third, there is the question of the tail on the EU's extravagant unfunded pensions system. The EU Commission argues that under international law, the UK is obliged to fund a share of the run-off of EU pension liabilities acquired. The FT has reported that "Brussels estimates its total pension liability to be about €60bn for all retired and current EU officials, with annual payments running at about €1.4bn."[12] The notional UK share of this has not officially been calculated. The principle would however require the UK not just to pay the EU pensions of UK nationals, but a share of the whole liability.

There are some programmes in which we might continue to participate for a limited period, until such time as we have made our own arrangements. These might include the EU's foreign aid programme and Horizon2020.

3. Matters to be resolved after leaving the EU

As many issues as possible should be put into this category. This includes the question of a long-term trade deal, and any matter which would trigger unanimous voting provisions while the UK remains subject to Article 50.

Indicative outline of the order of events

1. Draft and introduce the Repeal Bill. This will be an important signal of intent, and it needs to be on the statute book in time for the UK to terminate the Article 50 process if it becomes too protracted.
2. Continue "talks about talks" with EU partners as extensively as possible, so that by the time Article 50 is invoked, the Government has achieved the key objective of "minimising any uncertainty".

3. Continue "talks about talks" on trade with third countries.
4. There is a need to analyse and quantify many issues, particularly in respect of leaving the EU without any agreement on the following issues –
   - Trade: the effect on the economy of reverting to WTO most-favoured-nation status in respect of our trading with the EU;
   - Financial Services: the true value of financial passporting to the UK economy and the potential costs, if any of its being ended;[13]
   - Foreign policy, defence and security cooperation: how *de facto* cooperation would be maintained;
   - Civil aviation: the risk to UK based airlines of losing EU 'cabotage' (ie. the right to carry passengers and freight point-to-point within the EU); and
   - EU contributions: the potential savings and liabilities of the various options on closing off the UK contributions to the EU budget.
5. Once we have minimised the uncertainty in the Article 50 process, and the threat of legal action has been addressed, give written notice to the Council of intention to withdraw. This should state the terms upon which we expect Article 50 to operate, as indicated in the Redwood draft letter, while making clear that we reserve a right to end the process unilaterally without agreement at any time.
6. Aim to enact the repeal bill as soon as possible after the Article 50 process has been invoked, so that it is ready to bring into force any time thereafter.
7. Aim to conclude the Article 50 process and withdrawal agreement as quickly as possible.
8. Move to real trade negotiations with third countries.
9. Continue discussions about the UK's long-term relationship with the EU.

CONCLUSION

In considering how to approach leaving the EU, three key considerations have become apparent –

1. Keep the Article 50 period as short as possible or the UK will be subject to a potentially invidious process.
2. Keep things simple or attempts to make the withdrawal agreement too ambitious will extend the Article 50 period. In particular, exclude any matter which might result in an agreement which requires unanimity in the Council.
3. Recognise there may be no agreement and strengthen the UK's position by making clear that we can envisage leaving the EU without any formal Article 50 agreement.

PART 9: BREXIT MEANS REPEAL OF THE EUROPEAN COMMUNITIES ACT 1972

Sir William Cash MP

Brexit does not just mean Brexit. Brexit means repeal of the European Communities Act 1972. This is as axiomatic as it is fundamental. The vote to leave the European Union followed from the enactment of the European Union Referendum Act 2015 whereby Parliament deliberately and expressly gave the British people the right to decide the question as to whether to remain in or to leave the European Union. This decision is not only binding in a political sense but also, by virtue of the application and outcome of that enactment, is binding in a constitutional and legal sense. I say this because the voluntary enactment of the European Communities Act 1972, as clearly expressed by Lord Bridge in the *Factortame* case of 1991, which took us into the then European Community, now the European Union, was specifically put on the line by the question laid down in the Referendum Act of 2015. This question was crystal clear – 'Should the United Kingdom remain a member of the European Union or leave the European Union?' The British people decided to leave and the only way in which that vote to leave can be implemented is to repeal that 1972 Act. What Parliament did voluntarily in 1972, we can reverse by repeal of that 1972 Act. We can and we must. The brevity and simplicity of that Act is a good template for its future repeal.

There can be no negotiation over sovereignty nor can any other country or institution be allowed a veto over our decision to leave the European Union, nor can any conditions be imposed on that decision. Sovereignty lies at the heart of leaving the European Union. In his authoritative and seminal book, *The Rule of Law*, the late Lord Bingham in Chapter 12 entitled 'The Rule of Law and the Sovereignty of Parliament' makes it absolutely clear that if the UK Parliament tells the courts to act in an express way, exercising its legislative authority, the courts would obey that Act of Parliament. This is our democratic system of parliamentary government, that the courts obey our Acts of Parliament because they are based on the votes of the Members of Parliament who are acting as their representatives and by their consent in General Elections. This has been our constitutional system of government for centuries. We are the only member state of the European Union without a written constitution. Lord Bingham was at pains, most remarkably and unusually in such a public way – which makes its own point – to publicly disagree with the observations of his colleagues Lord Hope of Craighead and Baroness Hale of Richmond in the case of the Hunting Act 2004. They had suggested a greater pre-eminence for judicial rulings in their own right, claiming authority from the common law as against Acts of Parliament. As Lord Bingham stated, it has been "convincingly shown that the principle of parliamentary sovereignty has been recognised as fundamental in this country, not because the judges invented it but because it has for centuries been accepted as such by judges and others officially concerned in the operation of our constitutional system. Judges did not by themselves establish the principle and they cannot, by themselves change it." He added that "the British people have not repelled the extraneous power of the Papacy in spiritual matters and the pretensions of Royal Power in Temporal in order to subject themselves to the unchallengeable rulings of unelected judges."

Indeed, Lord Bingham would have had in mind the Act of Supremacy of 1534 which unilaterally repudiated the foreign jurisdiction of the Papacy over our Canon law.

Lord Denning, only three years after the 1972 Act, in *Macarthy's Ltd. vs Smith* stated that "If the time should come when our Parliament deliberately passes an Act with the intention of repudiating the Treaty or any provision in it or intentionally of acting inconsistently with it and says so in express terms then I should have thought that it would be the duty of our courts to follow the statute of our Parliament." Some weeks before the Referendum result on 23rd June, I optimistically drafted a short six-clause framework Bill to provide for the repeal of the European Communities Act. This was to indicate the principles which I believe we need to address and which of course, being a Government Bill, would have to be drafted by parliamentary Counsel. It provides in Clauses 1 and 2 for our withdrawal from the European Union and the repeal of the 1972 Act and then provides for all EU law to be transposed into UK law, within exclusively Westminster jurisdiction. It then deals with rulings of the European Court of Justice which would cease to apply, and of course repeal of sections 2 and 3 of the 1972 Act. It denounces the European Treaties and provides for a staggered series of commencement provisions because the process of repeal by Statutory Instruments would take time, as negotiations proceed. It may be necessary to incorporate a Henry VIII clause, similar to section 2(2) of the 1972 Act and extending this procedure within the Bill, in order to precipitate and accelerate the process. Henry VIII clauses were used to implement EU law imposed on the United Kingdom so I do not really understand why anyone should object to the same procedure in principle generally being applied to reversing that imposition.

Since 1972, we have inherited a corpus of European Community and European Union law by virtue of a succession of Treaties which we have implemented in our Parliament. The Single European Act (on which I put down an amendment to preserve our sovereignty and which I was not, at that time, even allowed to have selected for debate), was then followed by Maastricht (on which I and others rebelled), likewise with Nice, Amsterdam, and then Lisbon. Incidentally, the Conservative Party was for the first time completely united in opposing Lisbon. In the meantime, I put forward, as subsequently did others, a whole series of amendments and Bills to provide for referendums on the European Union, including the Maastricht Referendum Campaign in 1993. To transfer by Act of Parliament the consent of the British people was the only way of transcending the collusion between the front benches of the main political parties.

We have therefore been deeply entangled in the project of European integration by a series of Acts of Parliament. This has been achieved by the imposition by such enactments at Westminster of a vast array of Regulations, Directives and other instruments, all of which are binding upon us by our own voluntary decision in 1972, enforceable by the European Court of Justice by virtue of section 3 of the 1972 Act. All this must now be repealed. Following this, apart from necessary preliminary discussions which are already taking place and must continue despite Mr. Juncker (rather than formal negotiations), we will then sit down together with the other member states and the EU institutions and work out mutual cooperation on all policy areas which will benefit all the electorates of Europe, most of whom are deeply disillusioned with the EU at a grassroots level. These will include of course reforms on trade, security, defence and NATO and other matters such as fishing, energy, financial services, enterprise and small businesses, and so on.

As I suggested to the Secretary of State for Exiting the European Union in his statement on Monday this week, I trust that this will be done as soon as reasonably possible. I would hope that the Government through Parliamentary Counsel comes forward with a Bill to achieve this in the near future in order to demonstrate to the European Union and to the British electorate and the Supreme Court that Parliament intends to get on with this business. It may be that threats

of obstruction in the House of Commons, particularly from the SNP and in the House of Lords may give rise to difficulties. However, the House of Lords needs to be mindful of the Parliament Act 1911 and recalcitrant members of the House of Commons will need to be aware of the views of their constituents and Associations, particularly in the melee of the scramble for seats of the Boundary Review. We should also recall that the House of Commons as a whole, except for the SNP, passed the Third Reading of the European Union Referendum Act 2015. Because of the timetable in the Act of 1911, we need to get on with the presentation of the Bill. Of course the House of Commons on Third Reading passed the European Referendum Act, except for the SNP who voted against. Time will tell but time is also of the essence. For example, it is legally impossible for the UK to both remain in the Single Market and to repeal the 1972 Act or for the UK to formally enter into bilateral international trade agreements whilst we remain members of the European Union which will only cease when the 1972 Act is repealed. We will continue to trade into the Single Market but not be in the Single Market. Other major economic powers such as the United States, China, Japan, Australia and others already do so. It is imperative to understand that repeal means repeal and that all UK law inheriting some former EU laws which are politically acceptable to us will then become part of Westminster jurisdiction and will be adjudicated by our own Supreme Court and not the European Court of Justice. There will be provisions of the current *acquis communautaire* which we are content to continue to apply to the UK within Westminster United Kingdom jurisdiction. These will include EU directives transposed into UK law by subordinate legislation under section 2(2) of the 1972 Act. One can think of examples such as roaming charges and other EU legislation which we will want to retain. I expect there will be a reversion by our courts to the pre-1972 means of judicial interpretation of statutes. This will be a judicial exercise in relation to pre-repeal precedents which will give rise to judicial consultation.

In principle, legislative provision continuing previous EU legislation but within the framework of Westminster jurisdiction is achievable and more than likely necessary. This is because the entire corpus of EU law currently in our statute book may well be unachievable before the repeal of the ECA 1972. However, we must not delay. The Competence Review has already required the legal advisors in all Government departments to assess the impact of EU laws on policy. Therefore, much of the work has already been done. Indeed, I recall from my reading of Jolowicz in his historical introduction to Roman Law that Justinian around 530 AD, with a dedicated bevy of lawyers, reduced 3 million lines of legislation to 150,000, which shows that with political will it can be done. Incidentally, on another historical note, not only did India in the 1940s transpose all its pre-existing Empire law into Indian law but even, so I understand, the US Congress in 1789 did the same regarding English law. There is nothing new under the sun.

This Repeal Act is not only a constitutional act but has profound consequences for our future prosperity, for free trade, for reducing the burden of overregulation and for avoiding the prescriptive nature of laws and jurisdiction which we have found burdensome including the unintended application of the Charter of Fundamental Rights.

As my mutual exchange with the Prime Minister on the G20 summit statement on Wednesday indicated, if we want free trade and with the rest of world based on our own bilateral trade policies and trade negotiations, we need to repeal the 1972 Act in order to regain for ourselves the current EU and European Commission legislative control over our trade policies. This, as Liam Fox made very clear in the House, will provide the means to build on his informal trade discussions/negotiations but under our Westminster legislative jurisdiction after repeal. Meanwhile, the Transatlantic Trade

and Investment Partnership (TTIP) and the Comprehensive Trade and Economic Agreement (CETA) are facing likely failure and probably will not be ratified because, for a variety of reasons, partly political in the run up to the French and German elections and partly because they are mixed competence agreements requiring unanimous ratification which seems improbable. It seems to me that it is better for us to accelerate the whole process ahead of French and German elections because their own electorates will be putting pressure on their Governments for fear of losing jobs in their export markets to the UK which would be severely damaged by an attempt by such country's governments to impose tariffs or trade restrictions on the UK, which are so vital to their own job markets. We need to make this clear to those countries by whatever means, including social media. What is at stake for their own voters?

The message therefore is the sooner we get on with the repeal process the better, not only because of sovereignty and giving effect to the people's vote to leave but also because of practical economic and commercial imperatives. We must address the issue of timing and the chicken and egg. Repeal must be the catalyst in conjunction with Article 50. Article 50 cannot sensibly be invoked until the Supreme Court has made its ruling on the Mishcon de Reya case, which I expect to be in favour of the Government's legal advice that Article 50 is a matter of prerogative and not for a vote in Parliament and despite the House of Lords EU Constitution Committee's dismal report on this subject. I expect the Supreme Court to fast track an appeal from the Divisional Court.

The Foreign Minister of Slovakia who is currently the Foreign minister of the Presidency of the European Union stated to a European national parliamentary conference of Chairmen of the 27 EU affairs committees which I attended on 10th July that "the negotiations will be complex but not necessarily difficult". But we can make no progress with any negotiations if the European Commission in the shape of Mr Juncker gets its way. He is insisting that we have no right whilst we are members of the EU until repeal to engage in even informal trade discussions. His utterances are political nonsense and must be ignored, not only by us but also by all others worldwide, including EU member states. He has already contaminated the debate in the United States and Australia. Everyone stands to gain by commencing informal negotiations in advance of the repeal. They want and need to trade with us and vice versa and nothing should stand in the way.

Some general issues which will need to be considered:

- Until Brexit day EU laws will apply to the UK including free movement of persons. It would not be possible to prevent entry into the UK.
- In order to deport an EU citizen or their dependents prior to Brexit day, the conditions laid out in EU law must be complied with, otherwise the deportation would be contrary to EU law and risk court proceedings – either from the individual concerned, or infringement proceedings from the Commission and/or another Member State.
- Citizens of other EU Member States and their dependents may have acquired rights under UK law as at Brexit day which would enable them to stay in the UK.
- (i) The extent of those acquired rights, (ii) the date from which they have been acquired (the "cut-off date"), and (iii) any proof that would be required to vindicate such rights, will depend on any UK legislation governing the terms of UK withdrawal from the EU, which will reflect the terms of any agreement reached with the continuing Member States.

- However, to the extent that UK Brexit legislation does not cover these points, they will be determined by the UK Courts applying existing domestic legislation (such as the Human Rights Act) and/or applying common law.
- EU citizens and their dependents who find themselves in the UK but who do not benefit from having acquired rights would be subject to deportation in accordance with the current UK immigration law.

These general issues also include current EU legislation which gives the EU institutions a specific role for example in adopting EU subordinate legislation and gives the Commission a coordinating, reviewing or supervisory role. In many of these instances, we could deal with these provisions by general disapplication. There is also some current EU legislation which involves EU agencies such as the European Medicines Agency or Europol. In such cases, we could continue EU legislation but within UK domestic law, if it was our policy to do so on the basis of parallel Westminster policy and jurisdiction. The founding documents of some agencies already provide for participation by third countries.

There is also the question of current EU legislation which involves coordination and reciprocal arrangements with other Member States which may need to be continued after repeal. These could even be achieved within arrangements under Article 50 or even by some separate agreement or convention. These are all matters which parliamentary Counsel will need to consider in relation to the Repeal Bill.

There are also the EU Directives which have already been transposed into UK law which would continue within Westminster jurisdiction under a clause in the Repeal Bill which I believe must deem all EU law to be Westminster law and then gradually repealed under Statutory Instruments where it is policy to do so. Subordinate legislation will lapse once section 2(2) of the European Communities Act 1972 is repealed, so it will be necessary to continue that legislation for the time being under the Repeal Bill but provide for its amendment or repeal in due course.

Judgements of the European Court of Justice will no longer apply to the United Kingdom after repeal but some of the pre-Repeal judgements as a matter of policy, for example, in relation to employment law, social law and related matters, may require Westminster legislation to bring them within our Westminster and Supreme Court jurisdiction.

Turning to Article 50, I would offer to the following observations about the Mishcon de Reya proceedings now in the Administrative Court for a declaration that an Act of Parliament is a constitutional precondition of invoking Article 50. They argue that Article 50 needs to be endorsed by an Act of Parliament. The argument being presented by The Lord Pannick QC, that most distinguished Fellow of All Souls, is that it would be illegal for the Government to trigger Article 50 solely on the principle of Prerogative.

In my view and that of many senior lawyers, giving notice under Article 50 is an act of prerogative. The leading case is the Fire Brigades Union case of 1995 in which Lord Browne-Wilkinson stated "It would be most surprising if prerogative powers could be validly exercised by the executive so as to frustrate the will of Parliament as expressed in a statute." The argument being raised by Lord Pannick QC through the solicitors Mishcon de Reya is based on an interpretation of the European Communities Act 1972 which claims that the Act prevents withdrawal from the EU. This is not what the 1972 Act prescribes. The long title of that Act states "An Act to make provision in connection

with the enlargement of the European Communities to include the UK". The words "in connection with" are vital. The Act does not provide for the UK's accession to the EU. This arises by virtue of the prerogative and international law. The Act provides the means through which the law of the European Union is implemented into our law. It does not prohibit withdrawal from the EU expressly or by implication. As respects the Treaties, to which we have acceded, these will need to be denounced by and under the Repeal Bill.

Furthermore, to suggest that a further Act of Parliament is needed to trigger Article 50 would frustrate the purposes of the European Union Referendum Act 2015 which I demonstrated was a sovereign Act as understood and debated in Parliament, conferring on the UK voters rather than their MPs as elected representatives the decision as to whether to remain in or to leave the EU. If, as claimed, Parliament were to be required to approve the result of the Referendum because of the 1972 Act, this would change the basis on which the public thought they were casting their votes. This would amount to an unlawful frustration of the will of Parliament as set out in the European Union Referendum Act 2015. The Administrative Court and thereafter on a fast track the Supreme Court will need to tread very carefully because it cannot tell Parliament what to do, as was so clearly stated by Lord Bingham in his book, *The Rule of Law*. If the Administrative Court or the Supreme Court sought to do this, it would be trespassing into the "exclusive cognizance" of Parliament, which is constitutionally out of order under the Bill of Rights 1689.

Parliament, not the courts, determines its own procedures and there is no convention or case law to the contrary. I have serious concerns about Article 50 in its own right however because of the extent to which it gives the European Parliament an overriding power of consent to the negotiations and also the degree to which, by qualified majority vote, other member states could and probably will seek to impose conditions on our withdrawal which would be unacceptable. Article 50 is triggered by our giving notice in accordance with our own constitutional requirements which as I have indicated, is an exercise of our prerogative. There is no set time or notice to be given. Notice by the Government triggers a two-year guillotine within which the negotiations of the arrangements for withdrawal i.e. the Article 50 agreement must be completed. The withdrawing member state is automatically regarded to have left the European Union, unless the period of 2 years is extended by our own agreement and that of the European Council which must act unanimously. The Council must agree the Article 50 agreement by a majority of 20 of the 27 Member States, representing 65% of their population, although it does not need ratification by the individual remaining Member States. It must also be agreed by the European Parliament. It is of course possible that the members of the European Parliament will be expected to follow the directions of their party political leaders but this is an uncertain risk.

As part of the Article 50 agreement, the issue of acquired rights of citizens of other Member states residing in the UK and UK citizens residing in other member states is a matter which could easily become part of the Article 50 discussions. The Government wants to be generous to EU citizens and the Secretary of State is confident that this can be delivered on a reciprocal basis as a top priority. It would be important to settle this question before Brexit, because otherwise the UK courts could be left having to interpret the laws that make up the current UK doctrine of acquired or vested rights under the Vienna Convention, the Interpretation Act and so on.

I notice that there has been some recent commentary by the former Legal Advisor to the Council of Ministers, Jean-Claude Piris and by others in evidence to the House of Lords that revocation of

Article 50 is a possibility and the United Kingdom could change its mind and halt the withdrawal process. Such an argument is politically and legally unacceptable for it repudiates both the sovereignty of Parliament and the will of the people. Article 50 is in danger of taking us deep into the enigmas of *Through the Looking Glass* and *Alice in Wonderland*. From *Alice in Wonderland*, we recall –

> Alice laughed: "There's no use trying," she said; "one can't believe impossible things."
> "I daresay you haven't had much practice," said the Queen. "When I was younger,
> I always did it for half an hour a day. Why, sometimes I've believed as many as six
> impossible things before breakfast."

In *Through the Looking Glass*, we have an even better example –

> "When I use a word," Humpty Dumpty said, in a rather scornful tone, "it means
> just what I choose it to mean – neither more nor less."
> "The question is," said Alice, "whether you can make words mean so many
> different things."
> "The question is," said Humpty Dumpty, "which is to be master – that's all."

What is clear is that the will of the British people as authorised by a sovereign Act of Parliament is not to be trifled with, nor is our centuries-old tradition of parliamentary self-government.

For these reasons alone, we should get on with the Repeal Bill as soon as reasonably possible.

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