



## BRIEFING PAPER

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# UK's EU reform negotiations: the Tusk package

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3 UK's EU reform negotiations: the Tusk package

## Summary

On 10 November 2015 the Prime Minister set out his demands in a letter to European Council President, Donald Tusk, [A new settlement for the United Kingdom in a reformed European Union](#). It concerned the four broad areas of UK reform: economic governance, competitiveness, sovereignty and free movement.

In January 2016 there appeared to be growing optimism among EU and UK negotiators that a deal of benefit to both the UK and the EU could be achieved and agreed as a legally binding Decision of the Heads of State or Government within the existing EU legal framework. Any Treaty changes that were necessary could be made later on.

The most problematic of the Prime Minister's demands has been the proposed restriction on in-work benefits over a period of four years, which other Member States, especially those in Central and Eastern Europe, are likely to find discriminatory and unpalatable.

On 3 February 2016 Donald Tusk published a [letter and six draft texts](#) intended to address UK concerns, which he described as "a good basis for a compromise".

- **Economic governance**

Further integration is needed to achieve full Economic and Monetary Union (EMU) for those States whose currency is the euro, but any further measures aimed at deepening EMU will be voluntary for non-eurozone States.

Non-eurozone States must not create obstacles to further eurozone integration, but there will be respect for the rights and competencies of non-participating Member States. This mutual respect will include:

- No discrimination based on the official currency of the Member State;
- The European Central Bank (or Single Resolution Board or similar EU bodies) will have authority only over credit institutions in eurozone States, or over those Member States that have voluntarily adopted the EU's prudential supervision;
- Emergency measures to safeguard the financial stability of the eurozone will not result in budgetary responsibilities for non-eurozone States.

- **Competitiveness**

- The internal market and the free movement of goods, persons, services and capital are essential objectives of the Union, and the EU must increase efforts to enhance its competitiveness to achieve this objective;
- The EU institutions and Member States will take steps towards better regulation, reducing administrative burdens and compliance costs on economic operators (especially SMEs), and repealing unnecessary legislation (building on the Regulatory Fitness Programme);
- European Commission will carry out an annual review of the EU's efforts to simplify legislation and avoid over-regulation. The Commission will propose repealing measures that are inconsistent with the principle of subsidiarity, or would involve a disproportionate regulatory burden.

- **Sovereignty**

- In view of the UK's special position under the EU Treaties, the UK is not committed to further political integration. References in the EU treaties to the process of creating an "ever closer union among the peoples of Europe" should not be considered as referring to an aim of political integration;
  - Reasoned Opinions issued by national parliaments under the Treaty protocols on subsidiarity and proportionality must be respected by all EU institutions in the decision-making process. Member States will discontinue the consideration of a draft legislative act where a number of national parliaments (55%) object to it on subsidiarity grounds ('red card');
  - National security remains the sole responsibility of Member States and the EU institutions will fully respect this.
- **Social benefits and free movements**
    - Freedom of movement and non-discrimination will be respected, but recognising that the social security systems of certain Member States may be more attractive for workers than others;
    - It is legitimate to provide EU and national measures to avoid or limit flows of workers from other Member States of such a scale that they have negative effects for the States of origin and the States of destination.

After the adoption of final texts, the European Commission will submit proposals for amending existing EU secondary legislation to:

- give Member States the option to index the export of child benefits to a Member State other than where the worker resides to the standard of living in the State where the child resides;
- take account of a pull factor as a result of a Member State's in-work benefits system by amending free movement legislation to provide for an alert and safeguard mechanism to respond to situations where the inflow of workers from other Member States is of an "exceptional magnitude" over a long period of time.

This will involve the receiving Member State obtaining prior approval from the Commission and the European Council to restrict access to in-work benefits to the extent necessary.

A Member State will be allowed to limit the access of new EU workers to in-work benefits for a period of up to four years from the start of employment. The restriction will be graduated as the worker becomes more integrated into the labour market.

Reaction to the Tusk drafts has been mixed, and the Prime Minister has yet to convince some other Member States, particularly in Central and Eastern Europe, and the European Parliament that they are beneficial to the whole EU rather than just UK 'cherry-picking', and not discriminatory. The negotiations are continuing at EU and bilateral levels.

The date of the referendum is not yet known, and will to a large extent depend on whether there is agreement at the European Council meeting on 18-19 February.

The campaigns to leave and remain have already begun but are expected to intensify in the coming weeks. David Cameron has said members of his government are free to vote on either side in the campaign after the negotiations have concluded.

If the final agreement is satisfactory the Prime Minister intends to campaign to stay in the EU.

Recent opinion polls put the Leave campaign narrowly in the lead.

# 1. Progress in negotiations

## The Prime Minister's wish list

The Prime Minister set out his demands in a letter to Donald Tusk, [A new settlement for the United Kingdom in a reformed European Union](#), on 10 November 2015. It concerned the four broad areas of UK reform: economic governance, competitiveness, sovereignty and immigration. These are considered in Briefing Paper 7311, 5 January 2016, [EU reform negotiations: what's going on?](#)

David Cameron was confident of “an agreement here that works for everyone”, and has said that if he achieves the reforms he wants, he will campaign to stay in the EU. If not, the Conservatives might campaign to leave. He clarified his position in a statement to the Commons on 3 February following the publication of the draft texts:

First, I am not arguing, and I will never argue, that Britain could not survive outside the European Union. We are the fifth largest economy in the world and the biggest defence player in Europe, with one of the most of extensive and influential diplomatic networks on the planet. The question is not could Britain succeed outside the European Union; it is how will we be most successful? How will Britain be most prosperous? How will we create the most jobs? How will we have the most influence on the rules that shape the global economy and affect us? How we will be most secure? I have always said that the best answers to those questions can be found within a reformed European Union. But let me say again that if we cannot secure these changes, I rule nothing out.<sup>1</sup>

“...an agreement here that works for everyone”.

David Cameron, 3 February 2016.

## Optimism in the EU institutions

In recent weeks, amid rumour and conjecture about progress in the UK-EU negotiations, the EU Presidency and the European Commission have been optimistic that agreement will be reached at the European Council in February, allowing an early referendum on EU membership to be held in the UK.

The Dutch Prime Minister Mark Rutte, whose country holds the rotating EU presidency, said on 7 January: “I think we could get [a deal] in February. I'm relatively optimistic. But still a lot of work needs to be done”.<sup>2</sup>

On 15 January European Commission President Jean-Claude Juncker seemed confident that a deal would be agreed in February, but conceded that the UK demands were difficult issues:

The issues put on the table by the British prime minister are all difficult issues [...] Don't think there is one issue which would be particularly difficult - although it is and that's the welfare issue -- and that the other points mentioned by the British will be less important, and easy. They are not. [...]

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<sup>1</sup> [HC Deb 3 February 2016 c 927](#).

<sup>2</sup> [Open Europe, 8 January 2016](#).

Even ever-closer union, the role of national parliaments, the relations between the ins and the outs in the euro system, all these are very, very difficult issues and we have to work hard in these days to come to agreements.<sup>3</sup>

Work continued between the EU negotiators and the Council Secretariat – the body described in 2004 as “the unseen hand in treaty reform negotiations – highly influential but also overlooked”.<sup>4</sup>

## Deals taking shape

On 14 January the head of the EU taskforce dealing with the UK negotiations, Jonathan Faull, [told the EP Constitutional Affairs Committee](#) (AFCO) that a deal was taking shape that could be struck within weeks. He outlined the negotiation process: “intensive discussions” both formal and informal, work with the Council Secretariat and the other 27 Member State governments.

Based on the premise that fundamental freedoms are not unconditional, he thought a compromise could be agreed, that “the political will to settle the issue is pretty strong” on all sides but that there were still “difficult issues” to be resolved. The EU negotiators were looking at the current legal framework, to decide whether it is sufficiently flexible “to deal with the issues raised while obviously maintaining the fundamental principles ... which have to remain intact”.

The EU’s four fundamental freedoms “are not unconditional”.

Jonathan Faull, 14 January 2016

With regard to the form and status of the agreement, a “range of possibilities” remained open depending on its content, from “a simple declaratory statement to references to legislative activity”, or Treaty change. But Mr Faull thought many issues could be settled “without violating current treaties and without requiring any amendment to treaties”.

But what did he mean by fundamental freedoms not being unconditional? Jonathan Faull agreed that the four fundamental freedoms are inviolable, but reminded AFCO that they are not unconditional in so far as the Treaty and secondary legislation have laid down rules “which frame the circumstances” in which persons, workers, goods, capital and services “are the subject of the fundamental freedoms across the European Union”.

Mr Faull thought there could be many responses to the UK’s wishes within the existing legal framework; that a decision of the Heads of State or Government was already an “agreement with effects” and that further implementation would depend on the content of the final deal. He reminded MEPs that the international law agreement technique had been used before and was available as a legally binding form of agreement, usually pending future Treaty change.

<sup>3</sup> [EurActiv, 15 January 2016](#).

<sup>4</sup> *Journal of European Public Policy*, Volume 11, Issue 3, 2004, Derek Beach, The unseen hand in treaty reform negotiations: the role and influence of the Council Secretariat.

## A UK or an EU agenda?

MEPs raised the possible risk of a domino effect, with other Member States seeing the UK getting its own way and wanting their own exemptions. Jonathan Faull pointed out that the statements and commitments in David Cameron's letter to the European Council were available to others, but also that there was nothing to stop other Member States expressing their concerns or demands.

The Foreign Secretary insisted, in [evidence](#) to the Lords European Union Committee in January 2016, that "clear strands of our agenda" affect concerns across the EU, such as competitiveness and accountability (he pointed to declining voter participation in EP elections), but that other elements were a "more distinctively British agenda". Access to benefits was not exclusively a UK concern, but was "expressed most clearly by voters in the UK".<sup>5</sup>

Philip Hammond sought to explain the difference in attitudes towards the EU in the UK and in Continental Europe as a matter of emotional attachment:

Britain has never been emotional about the European Union, which has always been a pragmatic construct for us. We were not one of the founding member states seeing it as a bulwark against recidivism to war in Europe. We were not one of the southern countries that joined the European Union as a way of cementing their new democracies after a period of military dictatorship. We were not one of the eastern European countries that saw membership of the European Union as part of the liberation from the yoke of Soviet communism. We have always been in this for firmly pragmatic reasons. We have always been focused primarily on an EU that would act as a turbocharger for the British economy and that would improve and protect the standards of living of British people. Many of our fellow member states see that as a very important, if not critical, role of the European Union and very much appreciate the focus that we put on it.

In [written evidence](#) to the Lords EU Inquiry on Visions of EU Reform, 18 January 2016, the French Sénat European Affairs Committee voiced a similar view about Britain in Europe:

What was the EU for the British? Something too continental, I may say. The United Kingdom has enjoyed democracy for so long and always avoided the trauma of dictatorship and occupation. Therefore you see no reason why the EU should be a means to foster peace and fence off political dangers in order to protect Europe from History - so to speak - and no reason to part with most of your national sovereignty in order to be protected by a supranational power. Building the United States of Europe is not a palatable project for the British. Europe should not be a grand romantic affair, as we French feel about it. Europe should remain a single market and everything should be done to turn it into a level playing field for all economic agents.

The Committee also thought there were "good reasons for this unbridgeable Channel between our views".

"What if everyone else wants special status?"

MEP Fabio Castaldo, of the Five Star Movement (Italy), 14 January 2016

"Nothing can stop them. The Commission will respectfully listen to member states when they express concerns, if they do".

Jonathan Faull, Task Force on strategic issues related to the UK referendum

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<sup>5</sup> Lords European Union Committee, [Visions of EU Reform Inquiry](#), uncorrected evidence, 26 January 2016.

## Talks intensify

Behind the scenes negotiations progressed in January and early February, but in line with the Government's policy of not giving a running commentary on the talks, relatively little of substance was revealed to Parliament or the public.

### Redefining 'worker'?

According to some reports EU lawyers were looking in particular at the definition of a "worker" with regard to the UK wish to restrict in-work benefits to EU citizens (who are not migrants, as many have pointed out) for four years.

It was also suggested that child benefit might be reduced for EU citizens "by indexing it to levels in home countries where workers' families remain — often in poorer Eastern Europe".

### Emergency brake?

EU officials were reported to have floated the idea of an 'emergency brake' allowing a Member State to "freeze immigration if a welfare system faced a major crisis". But the *Telegraph* [reported, 7 January](#), that this did not appeal to Mr Cameron, because "any mechanism would leave control of the brake in the hands of the Commission". The report added that "senior EU sources have indicated [...] that ways could be found to give the UK or independent institutions more control".

*The Times* speculated, 8 January, that a shorter waiting time than the four years proposed by David Cameron could be the basis of a compromise.

### In-work benefits?

Speaking on *BBC Newsnight* in Berlin on 14 January, Chancellor George Osborne said the "essential pieces" of the renegotiation were falling into place, with many Member States understanding that the UK's case for change was "perfectly reasonable" and could benefit the whole EU: the UK's proposal to limit EU migrants' access to in-work benefits, for example, would "remove the unnatural draw of welfare system" and help to reduce net EU migration.

The *Financial Times* [reported](#) on 17 January that other EU Member States including Austria, Denmark, France, Germany and the Netherlands were considering introducing a variant of the UK's proposed reform of limiting access to in-work benefits for EU citizens. For some, this was to counter their populist parties, but the development was seen as an encouraging sign that the UK and the EU will find agreement on this issue.

*The Times* reported on 26 January that the German Government was looking at toughening the EU-wide definition of a "worker", and had suggested that only employees earning less than £7,000 (roughly 20 hours a week at minimum wage) should be barred from claiming tax credits. This would be a "breakthrough because it would allow Britain to block low-paid migrants from Europe claiming tax credits on top of

earnings". But the UK Government was reported to have found this "too low to be useful" and to be pushing for a threshold of £13,000 (roughly full-time minimum wage work).

The Foreign Secretary said on 18 January that the UK's main goal was not the number of years of curbing access to UK benefits but to reduce inward 'migration' and demonstrate that "we have crossed the high water mark of EU intervention in our national life". Access to benefits was not an end in itself but a means to an end.<sup>6</sup>

David Cameron abandoned plans to meet Swedish and Danish leaders for talks with Jean-Claude Juncker on 29 January and Donald Tusk on 31 January, prompting speculation "that the tricky negotiations have hit trouble"<sup>7</sup> and that the Prime Minister was trying to "rescue renegotiations on Britain's EU membership after talks on migrants' benefits became deadlocked".<sup>8</sup> He also met European Parliament president Schulz on 29 January - he will need EP support for approval of secondary legislation to implement reforms.

There were reports in late January that David Cameron was showing "flexibility" over plans to restrict in-work benefits, in the face of strong opposition from other Member States; that he was no longer seeking a four-year ban on in-work benefits, and that negotiators were looking instead at how to tighten access rules within the limits of the existing EU Treaties. Jean-Claude Juncker was still "pretty sure that we will have a deal, not a compromise, a solution; a permanent solution in February".<sup>9</sup>

Although it was not clear which of the many reported discussions would materialise as a draft decision or declaration, on 27 January Jonathan Faull [told UKIP MEPs](#) that his team was finalising a set of papers to be sent to Heads of State and Government in preparation for the European Council meeting on the 18 and 19 February.

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<sup>6</sup> [Telegraph, 19 January 2016.](#)

<sup>7</sup> [EurActiv, 28 January 2016.](#)

<sup>8</sup> [Politics Home, 28 January 2016.](#)

<sup>9</sup> [Financial Times, 15 January 2016.](#)

## 2. The Tusk package

### 2.1 Draft decisions and declarations

On 3 February the European Council President Donald Tusk published six draft documents intended to address UK concerns:

- [Draft decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union](#)
- [Draft statement on section A of the decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union](#)
- [Draft European Council declaration on competitiveness](#)
- [Draft declaration of the European Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism](#)
- [Draft declaration of the European Commission on the Safeguard Mechanism referred to in paragraph 2\(b\) of Section D of the decision](#)
- [Draft declaration of the European Commission on issues related to the abuse of the right of free movement of persons](#)

Donald Tusk said the package was “a good basis for a compromise”, but also warned that there were “still challenging negotiations ahead - nothing is agreed until everything is agreed [...] The clear objective is to have an agreement of all 28 at the February European Council. To succeed we will all need to compromise. To fail would be compromising our common future”.<sup>10</sup>

The drafts will be considered by Member State governments with a view to adopting them at the European Council on 18-19 February. Any gaps in the texts, further details and amendments can be agreed by the European Council.

The final texts will have to be adopted unanimously, so their future is uncertain. The countries most likely to object, particularly to the in-work benefit proposals, are those in Eastern and Central Europe,<sup>11</sup> although there are indications that the Visegrad States (Poland, Hungary, Czech

#### [Donald Tusk, 2 Feb 2016](#)

“Keeping the unity of the European Union is the biggest challenge for all of us and so it is the key objective of my mandate. It is in this spirit that I put forward a proposal for a new settlement of the United Kingdom within the EU. To my mind it goes really far in addressing all the concerns raised by Prime Minister Cameron. The line I did not cross, however, were the principles on which the European project is founded.

I deeply believe that our community of interests is much stronger than what divides us. To be, or not to be together, that is the question which must be answered not only by the British people in a referendum, but also by the other 27 members of the EU in the next two weeks”.

<sup>10</sup> [Letter](#) from Donald Tusk to the Members of the European Council on his proposal for a new settlement for the United Kingdom within the European Union, 2 February 2016.

<sup>11</sup> See, for example, *EurActiv*, 7 January 2016, [Cameron Brexit proposals get mixed reception in Berlin and Budapest](#) and [Hungary resists British plans to curb benefits for immigrant workers](#).

Republic and Slovakia) are not all totally opposed to the package.<sup>12</sup> David Cameron [told](#) the Commons on 3 February:

I believe we are making real progress in all four areas—but the process is far from over. There are details that are still to be pinned down and intense negotiations to try and agree the deal with 27 other countries.

## 2.2 UK Government demands and Donald Tusk offers

The four broad areas of the Government's reform agenda and the Tusk texts are compared below.

### Economic governance

The Prime Minister wants recognition that:

- The EU has more than one currency.
- There should be no discrimination and no disadvantage for any business on the basis of the currency of their country.
- The integrity of the Single Market must be protected.
- Any changes the Eurozone decides to make, such as the creation of a banking union, must be voluntary for non-Euro countries, never compulsory.
- Taxpayers in non-Euro countries should never be financially liable for operations to support the Eurozone as a currency.
- Just as financial stability and supervision has become a key area of competence for Eurozone institutions like the ECB, so financial stability and supervision is a key area of competence for national institutions like the Bank of England for non-Euro members.
- Any issues that affect all Member States must be discussed and decided by all Member States.

On 15 January 2016 the *Telegraph* reported that, to prevent Eurozone 'caucusing' in non-Eurozone matters, work had begun in France and Germany "on drafting new arrangements that would guarantee protections for the City of London". Jonathan Faull had suggested to AFCO that the banking union discussions could be the platform for resolving the eurozone issues.

The Foreign Secretary emphasised the importance of eurozone stability and success for the UK:

We do not want to be in the position of having to act as a drag anchor on the eurozone trying to get its act together to support the euro and make it a successful currency, because our equities are not protected. So we are seeking a win-win for the non-euro countries and the euro countries. By getting this relationship properly codified and creating the mechanisms to regulate it, we

Donald Tusk, 2 February 2016

"This has been a difficult process and there are still challenging negotiations ahead. Nothing is agreed until everything is agreed. I am convinced that the proposal is a good basis for a compromise. It could not have been drafted without the close and good cooperation of the European Commission. In order to facilitate this process the Commission also made political declarations that are included in this package".

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<sup>12</sup> The *Telegraph* reported on 3 February 2016 that although Poland was opposed to the benefit restrictions, "the Czech Republic has publicly supported the draft deal as "fair" while Hungary and Slovakia are understood to have indicated privately they can accept the compromise, although they too will have their "price" ... .

will be allowed to be relaxed when the eurozone countries decide that the time is right for them to take further steps towards integration, so long as those steps of integration do not drag us along with them and so long as they do not disadvantage us, for example by undermining the single market or by imposing additional burdens on the UK.<sup>13</sup>

The Draft Decision of the Heads of State or Government sets out principles to ensure mutual respect between the Member States taking part in further deepening of the Economic and Monetary Union and those which do not. This would “pave the way for the further integration within the euro area while safeguarding the rights and competences of non-participating Member States”.<sup>14</sup>

The respect for these principles is supported by a draft Decision establishing a mechanism which reassures on the concerns of non-euro area Member States, but which “cannot constitute a veto nor delay urgent decisions”. The exact conditions for triggering this mechanism will be further discussed.

The [Draft decision](#) acknowledges that “not all Member States have the euro as their currency”. Recalling the various opt-outs and exemptions from the euro, defence, justice and home affairs etc, the draft confirms that “such processes make possible different paths of integration for different Member States, allowing those that want to deepen integration to move ahead, whilst respecting the rights of those which do not want to take such a course”. It specifies that:

The Union institutions, together with the Member States, will facilitate the coexistence between different perspectives within the single institutional framework ensuring both the effective operability of Union mechanisms and the equality of Member States before the Treaties.

In the spirit of mutual respect, non-euro Member States “shall not impede the implementation of legal acts directly linked to the functioning of the euro area and shall refrain from measures which could jeopardise the attainment of the objectives of the economic and monetary union”.

Non-euro States and those not in the banking union will not have to contribute to emergency and crisis measures addressed to safeguarding the financial stability of the euro area.

The Decision is accompanied by a Statement on the [Draft Decision](#) of the Council on specific provisions relating to the effective management of the banking union and of the consequences of further integration of the euro area.

Provisions in this area will require Treaty change, which will be incorporated into the Treaties at the time of their next revision in accordance with the relevant Treaty provisions and the constitutional requirements of the Member States.

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<sup>13</sup> [Evidence](#) to Lords European Union Committee, 26 January 2016, Q 174.

<sup>14</sup> [Tusk letter](#), 2 February 2016.

The BBC's chief correspondent Gavin Hewitt and Europe correspondent Chris Morris commented on the euro provisions:

**Gavin Hewitt:** The UK government wanted safeguards that as the eurozone integrated further, it did not take decisions that threatened the essential interests of those outside the eurozone, such as Britain. Key British interests are the single market and the City.

Crucially, much of the detail here has not been worked out. It is not clear what rights non-eurozone countries have beyond being consulted and not having to pay for the financial stability of the euro. This could well be a source of friction at the forthcoming summit.

**Chris Morris:** It's just a hunch, but this could still be the issue that has EU leaders haggling into the early hours when they convene for a summit later this month. It threatened to delay the release of Mr Tusk's draft proposals today, as French President Francois Hollande sought assurances that Britain would not hold any kind of veto over eurozone business.

Another emergency brake would be deployed here, but it is not entirely clear what would happen if consensus between euro ins and outs proved impossible. This is such an important long-term issue that there may be those who say that further clarity is essential before they can sign up to a final deal.<sup>15</sup>

### Competitiveness

The Prime Minister said the EU needs:

- A target to cut total burden on business
- To fulfil commitment to free flow of capital, goods and services
- A clear long-term commitment to boost the competitiveness and productivity of the EU and to drive growth and jobs for all.

The Draft Decision of the Heads of State or Government, a more detailed European Council Declaration and a draft Commission Declaration set out a commitment "to increase efforts to enhance competitiveness" and to "regularly assess progress in simplifying legislation and reducing burden on business so that red tape is cut".<sup>16</sup>

The Single Market will be strengthened and modernised, and bureaucracy reduced:

... the relevant EU institutions and Member States will take concrete steps towards better regulation, which is a key driver to deliver the above-mentioned objectives. This means lowering administrative burdens and compliance costs on economic operators, especially small and medium enterprises, and repealing unnecessary legislation as foreseen in the Declaration of the Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism, while continuing to

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<sup>15</sup> [BBC News, 2 February 2016.](#)

<sup>16</sup> Tusk letter, 2 February 2016.

ensure high regulatory standards. And the European Union will pursue an active and ambitious policy of trade.

The Draft Decision is accompanied by a Draft European Council [Declaration on Competitiveness](#) and a [Draft declaration](#) of the European Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism.

## Sovereignty

The Prime Minister wants:

- End Britain's obligation to work towards ever closer union "in a formal, legally-binding and irreversible way".
- Enhance the role of national parliaments in the EU, with a new arrangement where groups of national parliaments, acting together, can stop unwanted legislative proposals.
- Full implementation of EU's commitments to subsidiarity.
- Confirmation that EU will fully respect purpose of Justice and Home Affairs Protocols in future proposals dealing with JHA matters, "in particular to preserve the UK's ability to choose to participate" (UK opt-in arrangement).
- National Security must be sole responsibility of Member States.

The Foreign Secretary [told](#) the Lords EU Committee on 26 January that the "clear intention" behind the negotiated deal was:

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

"We would like to see ourselves as being past the high-water mark of EU interference in our national life".

Philip Hammond, [evidence](#) to Lords EU Committee, 26 January 2016

"... it is clear that the principle of closer political union is seen as part of the spirit of the treaties. That might be right for some; it is not right for Britain, and we need to be able to make explicitly clear that Britain is not going down that route of closer political union and cannot be dragged into closer political union".

Philip Hammond, [evidence](#) to Lords EU Committee, 26 January 2016

### **"Ever closer union"<sup>17</sup>**

The EU has largely accepted that Member States will seek to integrate at different speeds, and reference is often made to the [European Council Conclusions](#) in June 2014 which stated:

... the European Council noted that the concept of ever closer union allows for different paths of integration for different countries, allowing those that want to deepen integration to move ahead, while respecting the wish of those who do not want to deepen any further.

The Foreign Secretary thought this was "language heading in the right direction, but it is not robust enough".<sup>18</sup>

The [Draft Decision](#) recognises that in light of the UK's "special situation under the Treaties, it is not committed to further political integration".

The Draft Decision clarifies the meaning of "ever closer union" in the EU Treaties as follows:

References in the Treaties and their preambles to the process of creating an ever closer union among the peoples of Europe are primarily intended to signal that the Union's aim is to promote trust and understanding among peoples living in open and democratic societies sharing a common heritage of universal values. They are not an equivalent to the objective of political integration.

The phrase does not extend EU powers:

... the references to an ever closer union among the peoples of Europe do not offer a basis for extending the scope of any provision of the Treaties or of EU secondary legislation. They should not be used either to support an extensive interpretation of the competences of the Union or of the powers of its institutions as set out in the Treaties.

It does not rule out the repatriation of powers to the Member States (already provided by the Treaties as amended by Lisbon).

It provides for differentiated integration:

The references to an ever closer union among the peoples are therefore compatible with different paths of integration being available for different Member States and do not compel all Member States to aim for a common destination.

With specific reference to the UK, "It is recognized that the United Kingdom, in the light of the specific situation it has under the Treaties, is not committed to further political integration into the European Union". This will require Treaty change at the next available opportunity.

The UK's opt-in arrangement in the Area of Freedom, Security and Justice is confirmed.

"... retaining 'ever closer union' in the Treaties could in fact be relied upon to seek a higher degree of the participation of citizens, and their elected representatives, in the creation of EU policies. Instead of challenging this declaratory statement, the UK Government and Parliament could use it to their advantage to request more effective safeguards in terms of democratic legitimacy and accountability. In this way, the UK's approach would be seen elsewhere in Europe as constructive and forward-looking more than as obstructive and Eurosceptic".

Dr Davor Jancic, Senior Researcher in EU Law, T.M.C. Asser Institute, [written evidence](#) to Lords EU Committee, 30 November 2015.

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<sup>17</sup> The occurrence of "Ever closer union" in the EU Treaties and Court of Justice rulings is considered in Library briefing paper 6297, 7230, "[Ever Closer Union" in the EU Treaties and Court of Justice case law](#), 16 November 2016.

<sup>18</sup> Philip Hammond, [evidence](#) to Lords EU Committee, 26 January 2016, Q176.

## Role of national parliaments

The Draft Decision reinforces respect for subsidiarity generally and proposes that the Member States “discontinue the consideration of a draft legislative act where a number of national parliaments object to it on the grounds of subsidiarity, unless the concerns raised can be accommodated. The importance of respecting the opt-out regime of Protocols 21 and 22, as well as national security responsibilities is also underlined”.<sup>19</sup>

The new arrangement for a kind of ‘red card’ procedure allowing a group of national parliaments to block a proposal would strengthen the present arrangements for Reasoned Opinions, whose results to date have been underwhelming:<sup>20</sup>

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

Following such discussion, and while respecting the procedural requirements of the Treaties, the representatives of the Member States acting in their capacity as members of the Council will discontinue the consideration of the draft legislative act in question unless the draft is amended to accommodate the concerns expressed in the reasoned opinions.

Would the new ‘red card’ be used any more successfully than the current ‘yellow card’?

But, as Gavin Hewitt (*BBC News*) asked, in practice, would the ‘red card’ system be used?

The question is how likely is this red card system to be used. A much weaker “yellow card” was only used twice. The red-card mechanism depends crucially on building alliances, and the UK has not always been successful at that.<sup>21</sup>

Chris Morris thought:

The idea of a red card for national parliaments makes a nice headline, but it may not make much difference in practice. It would still be easier to block legislation in the Council of Ministers (threshold 35%) than under the new proposal in which 55% of EU parliaments would have to club together to make an objection.<sup>22</sup>

In a Backbench Business [debate on Parliamentary sovereignty and EU renegotiations](#) on 4 February, John Baron was highly critical of the proposed new arrangement:

We appear to have a system that has more holes in it than a Swiss cheese—so much so that it is more like a lottery ticket that has been through the wash. The question is: is it valid? The idea is that we club together and form a majority with other national Parliaments to stop unwanted EU taxes and laws, but that would

<sup>19</sup> Tusk letter, 2 February 2016.

<sup>20</sup> The operation of reasoned opinions and the achievement of ‘yellow cards’ was considered in Library briefing paper 6297, [National Parliaments and EU law-making: how is the ‘yellow card’ system working?](#) 12 April 2012.

<sup>21</sup> [BBC News, 2 February 2016](#).

<sup>22</sup> [BBC News, 2 February 2016](#).

not enable our Parliament, by itself, to reject anything that it did not want. This would be an extension of the ineffectual “yellow card” system currently in operation, but with an even higher threshold.

## Free movement and social benefits

The Prime Minister's view:

- When new countries are admitted to the EU in the future, free movement will not apply to them until their economies have converged much more closely with existing Member States.
- Crack down on abuse of free movement, e.g. tougher and longer re-entry bans for fraudsters and those involved in sham marriages, stronger powers to deport criminals and stop them coming back.
- EU citizens coming to Britain must live here and contribute for four years before qualifying for in-work benefits or social housing.
- End the practice of sending child benefit overseas.

In his [evidence](#) to the Lords EU Committee at the end of January, Foreign Secretary Philip Hammond clarified that the Government did not oppose the free movement of people in the EU, just the exploitation of generous in-work benefits, which were “an artificial pull factor” to the UK and a distortion of the free market:

Now we have people coming to the UK to work in the labour market not just for the wages they can earn but because on top of the wages that they earn they can expect to receive generous in-work benefits. That is a distortion in the market, which is pulling people into the UK in a way that is not sustainable.

Donald Tusk underlined the need to “fully respect the current Treaties, in particular the principles of freedom of movement and non-discrimination”. The proposed solution to the UK concerns “builds on the clarification of the interpretation of current rules, including a draft Commission Declaration on a number of issues relating to better fighting abuse of free movement”. The Draft addresses a number of situations, but as Steve Peers notes in an analysis of the draft:

... there is no proposed text in the deal on two of the issues which Cameron had raised: removal of job-seekers if they do not find a job within six months, and a requirement to have a job offer before entry. Both these changes would have required a Treaty amendment, in light of the [Antonissen](#) judgment of the CJEU.<sup>23</sup>

The [Draft Decision](#) acknowledges that:

... the social security systems of the Member States, which Union law coordinates but does not harmonise, are diversely structured and this may lead members of the workforce to be attracted to certain territories without this being a natural consequence of a

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<sup>23</sup> *EU Law Analysis*, 2 February 2016, [The draft renegotiation deal: EU immigration issues](#).

well-functioning market. It is legitimate to take this situation into account and to provide, both at Union and at national level, and without creating unjustified direct or indirect discrimination, for measures avoiding or limiting flows of workers of such a scale that they have negative effects both for the Member States of origin and for the Member States of destination.

The initial 'Interpretation of current EU rules' clarifies the circumstances in which an EU citizen may be refused welfare benefits in another EU Member State. It also sets out proposed changes to three EU laws, which will have to be adopted by the Ordinary Legislative Procedure requiring qualified majority voting in the Council and EP agreement. This presents the possibility that the proposed amendments might not in fact be adopted.

The Draft text notes, in particular, the Commission's intention to propose changes to Regulation 883/2004 on the export of child benefits and "an option to index such benefits to the standard of living in the Member State where the child resides".

It also proposes amending Regulation (EC) No 492/2011 on freedom of movement for workers and the creation of a "safeguard mechanism" to respond to an inflow of workers from other Member States "of an exceptional magnitude over an extended period of time".

The decision to apply the safeguard mechanism would be for the EU to make:

A Member State wishing to avail itself of the mechanism would notify the Commission and the Council that such an exceptional situation exists on a scale that affects essential aspects of its social security system, including the primary purpose of its in-work benefits system, or which leads to difficulties which are serious and liable to persist in its employment market or are putting an excessive pressure on the proper functioning of its public services. On a proposal from the Commission having examined the notification, the Council could, by means of an implementing act, authorise the Member State concerned to restrict access to in-work welfare benefits to the extent necessary.

The implementing act would authorise the Member State to limit the access of Union workers newly entering its labour market to in-work benefits for a total period of up to four years from the commencement of employment. The limitation should be graduated, from an initial complete exclusion but gradually increasing access to such benefits to take account of the growing connection of the worker with the labour market of the host Member State.

The Draft Decision is accompanied by a Commission [Draft declaration](#) on the safeguard mechanism and a Commission [Draft declaration](#) on issues related to the abuse of the right of free movement of persons.

It is not clear how long the UK would be allowed to apply the emergency brake for. The Council implementing act would have a limited duration and apply to EU workers newly entering the labour market during a period yet to be defined and extendable for two successive periods (also to be further discussed at EU level).

Presenting the drafts to the Commons on 3 February David Cameron was confident that restrictions could be applied quickly: "The European Commission has said very clearly that Britain qualifies already to use this mechanism, so, with the necessary legislation, we would be able to implement it shortly after the referendum".<sup>24</sup>

The Commission believes the UK already qualifies to use the proposed emergency brake.

But objections were raised by eurosceptics in the debate on the Prime Minister's statement on 3 February. Dr Liam Fox was highly critical of the 'emergency brake' because it would not be a UK decision to apply it (c 936):

Whether or not an emergency brake kicks in is ultimately the decision of the European Union, not the UK. The level of immigration at which it kicks in is ultimately a decision for the EU, not the UK. Even the level of benefits sent abroad is ultimately a decision for the EU, not the UK.

David Cameron reminded him that the Commission Draft "considers that the kind of information provided to it by the United Kingdom shows the type of exceptional situation that the proposed safeguard mechanism is intended to cover exists in the United Kingdom today".

In the [sovereignty debate](#) on 4 February John Baron also pointed to the lack of clarity in the emergency brake provisions, but was saddened that the debate had fed into "a negative narrative about immigrants". He continued (c 1122):

It ignores the fact that almost all—the vast majority—immigrants from the EU come to Britain to work hard. They are not looking for benefits. It ignores the fact that large-scale EU immigration cannot be stopped, in all truthfulness, while we adhere to the EU's founding principle of freedom of movement, particularly as the rise in the national living wage picks up speed.

At the end of the debate, and in the light of suggestions that the Government would be tabling a bill to preserve parliamentary sovereignty, John Baron concluded that the UK deal with Europe was "unravelling as we speak" (c1157).

Steve Peers points out that "there is no mention of possible future Treaty amendments to give effect to any part of the text dealing with free movement (immigration) issues".<sup>25</sup>

## 2.3 Legally binding and irreversible?

The Prime Minister insisted that any deal should be legally binding and irreversible. Giving [evidence](#) to the European Scrutiny Committee on 16 September 2015, David Lidington envisaged that "the eventual package, if we are successful, would include various instruments and processes". These included "treaty changes, protocols, declarations at European Council or other level, legislation at EU level, possibly involving some legislation at national level as well". This is exactly what is now on the table. But how robust are the various instruments?

Donald Tusk said in his [letter](#) to the Members of the European Council:

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<sup>24</sup> [HC Deb 3 February 2016 c 927](#)

<sup>25</sup> Peers, *Ibid.*

Most of the substance of this proposal takes the form of a legally binding Decision of the Heads of State or Governments. We should also be prepared to discuss the possible incorporation of the substance of a few elements covered by the Decision into the Treaties at the time of their next revision.

The Prime Minister has insisted that the Decision will be binding in international law and deposited with the United Nations. The Foreign Secretary [told](#) the Lords EU Committee on 26 January that he believed some of the changes the Government was seeking would need Treaty change following their initial adoption as a legally binding Decision of the EU Member States in the European Council. The Decision itself would include a commitment to enshrine the agreement in the EU Treaties at the first opportunity for Treaty change (e.g. an accession). He emphasised that the interim decision would have to be “legally watertight”:

... so that if we have to rest on the interim position, perhaps for a substantial period of time, we are in no way disadvantaged. We cannot accept an interim solution that is not enduring; it has to be capable of enduring for a very long time if necessary.

The former Attorney General Dominic Grieve was confident of the “legally binding nature of the document that he will bring back if it is accepted by the European Council” and referred to its “remarkable specificity”.<sup>26</sup>

## Earlier Decisions on Danish and Irish concerns

There are precedents for legally binding agreements among Member States which have survived the test of time. The UK-brokered Edinburgh Agreement of December 1992, which resolved the Maastricht Treaty impasse and allowed Denmark to proceed with ratification of the Treaty, contained agreed texts concerning the issues raised by Denmark in a memorandum of 30 October 1992 entitled “Denmark in Europe”.

The [Edinburgh European Council Conclusions](#) included a “Decision of the Heads of State and Government, Meeting within the European Council, concerning certain problems raised by Denmark on the Treaty on European Union”.<sup>27</sup> This was effectively a treaty binding in international law. The Decision itself indicated that it would take effect on the entry into force of the EU Treaty. Under the subsequent Amsterdam Treaty Denmark was given a formal opt-out by Protocol 22 to defence and those elements of Justice and Home Affairs which had been “communitarised” i.e. visas, asylum and immigration, and judicial co-operation in civil matters.

In December 2008, to take account of Irish objections to the Lisbon Treaty, the European Council agreed to use an existing secondary law power to maintain one Commissioner per Member State and agreed to address Ireland's other concerns (legal guarantees on taxation,

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<sup>26</sup> [HC Deb 3 February 2016 c 935](#).

<sup>27</sup> Registered by the UK (authentic language English) at the UN 18 Feb 1994. [UN Treaty Series](#) Vol. 1765, I-30685

neutrality, right to life, affirmation of the importance of workers' rights etc.), provided Ireland committed to a new referendum.<sup>28</sup>

This European Council took a "[Decision of the Heads of State or Government](#) meeting within the European Council on the concerns of the Irish people on the Treaty of Lisbon", which was also effectively a treaty binding in international law.<sup>29</sup>

It also made a Solemn Declaration on worker's rights, social policy and other issues, and separately declared (among other things) that (a) the Decision gave a legal guarantee that certain matters of concern to the Irish people would be unaffected by the entry into force of the Lisbon Treaty; (b) it would come into force with Lisbon, and (c) it would be converted into a protocol to the TEU and TFEU at the time of the next accession. The [Protocol](#) was agreed under the Article 48 TEU (Ordinary Revision Procedure), with a Council Decision (taken under Article 48(3)) to forgo a convention. The Protocol was signed on 13 June 2012 and ratified alongside (but formally separate to) the Croatian Accession Treaty. In the UK the Protocol was given effect by the *European Union (Croatian Accession and Irish Protocol) Act 2013*.

The Protocol is framed in terms of interpretation of the Treaty, rather than making substantive changes to the Treaty. It does not include the Solemn Declaration.

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<sup>28</sup> There was still no guarantee of a positive result.

<sup>29</sup> It was also registered with the United Nations by Ireland on 1 October 2010, [UN Treaty Series](#) Vol 2703, I-47939. The registered text includes the Solemn Declaration, but not the separate declaration.

### 3. Action by the UK Government and Parliament

#### 3.1 Is the Cabinet in or out?

One of the first Cabinet members to declare his opposition to staying in the EU as it is was the Leader of the House, Chris Grayling, who wrote in the [Telegraph on 13 January](#) that he is “someone who believes that simply staying in the EU with our current terms of membership unchanged would be disastrous for Britain”.

Other Eurosceptics in David Cameron’s Cabinet include Theresa Villiers, Northern Ireland secretary, and Iain Duncan Smith, work and pensions secretary.

The *Telegraph* (13 January) suggested how ministers might vote:

EU REFERENDUM: HOW THE CABINET WOULD VOTE					
<b>OUT</b>	<b>Chris Grayling</b> Leader of the House of Commons	<b>OUT</b>	<b>Iain Duncan Smith</b> Work and Pensions Secretary	<b>OUT</b>	<b>Theresa Villiers</b> Northern Ireland Secretary
<b>OUT</b>	<b>John Whittingdale</b> Culture Secretary	ON THE FENCE	<b>Sajid Javid</b> Business Secretary	ON THE FENCE	<b>Michael Gove</b> Justice Secretary
ON THE FENCE	<b>Theresa May</b> Home Secretary	ON THE FENCE	<b>Boris Johnson</b> Mayor of London / Political Cabinet	ON THE FENCE	<b>Liz Truss</b> Environment Secretary
ON THE FENCE	<b>Michael Fallon</b> Defence Secretary	ON THE FENCE	<b>Priti Patel</b> Employment Minister	ON THE FENCE	<b>Justine Greening</b> International Development Secretary
<b>IN</b>	<b>David Cameron</b> Prime Minister	<b>IN</b>	<b>George Osborne</b> Chancellor	<b>IN</b>	<b>Philip Hammond</b> Foreign Secretary
<b>IN</b>	<b>Stephen Crabb</b> Welsh Secretary	<b>IN</b>	<b>Amber Rudd</b> Energy Secretary	<b>IN</b>	<b>Greg Clark</b> Communities Secretary
<b>IN</b>	<b>Mark Harper</b> Chief Whip	<b>IN</b>	<b>Anna Soubry</b> Minister for Small Business	<b>IN</b>	<b>Nicky Morgan</b> Education Secretary
<b>IN</b>	<b>Patrick McLoughlin</b> Transport Secretary	<b>IN</b>	<b>Jeremy Hunt</b> Health Secretary	<b>IN</b>	<b>Oliver Letwin</b> Cabinet Office minister
<b>IN</b>	<b>Matthew Hancock</b> Cabinet Office minister				

“So if we stay, Britain will be in there keeping a lid on the budget, protecting our rebate, stripping away unnecessary regulation and seeing through the commitments we have secured in this renegotiation, ensuring that Britain truly can have the best of both worlds: in the parts of Europe that work for us, and out of those that do not; in the single market; free to travel around Europe; and part of an organisation where co-operation on security and trade can make Britain and its partners safer and more prosperous, but with guarantees that we will never be part of the euro, never be part of Schengen, never be part of a European army, never be forced to bail out the eurozone with our taxpayers’ money, and never be part of a European superstate”.

David Cameron, [3 February 2016](#)

Since the publication of the Tusk drafts, Theresa May has said more needed to be done, but that “This is a basis for a deal”.<sup>30</sup>

Mayor of London Boris Johnson has said the Prime Minister was making “the best of a bad job”.

#### 3.2 Free vote

On 5 January David Cameron [announced](#) that ministers would be allowed to campaign for either side in the referendum, but only after the outcome of the reform negotiations. “[T]here will be a clear Government position, but it will be open to individual Ministers to take a different personal position while remaining part of the Government”. He expanded on this exceptional departure from the principle of

<sup>30</sup> [Politics Home, 2 February 2016](#).

collective responsibility in a [personal minute to ministerial colleagues](#) on 11 January 2016:

First, this arrangement will come into effect following a Cabinet discussion, after the negotiations have concluded with our EU partners. Until that point – when it will become clear whether a deal can be negotiated that delivers the objectives I have set out – all Ministers should continue to support the position set out in our Manifesto and say or do nothing that will undermine the Government's negotiating position.[...]

Second, this wholly exceptional arrangement will apply only to the question of whether we should remain in the EU or leave. All other EU or EU-related business, including negotiations in or with all EU institutions and other Member States, and debates and votes in Parliament here on EU business will continue to be subject to the normal rules of collective responsibility and party discipline. This also of course applies to policy discussions within government. The existing machinery of government for making policy on EU business will continue to function in the normal way. In Parliament, the rules state that Ministers speak from the Front Bench, and when they do so they support government policy.

While this will remain the case, we will need to be flexible and apply common sense. For example, if, as I hope, the negotiation is successful and the Government is able to recommend that we should remain in a reformed EU, and this special arrangement comes into place, Ministers who choose to depart from the Government from the Government's recommendation because of long-standing and sincerely held views will not be expected directly to contradict such a position while otherwise defending government policy in Parliament.

Third, since there will be a clear government position on the outcome of the negotiation and hence on whether the UK should remain in or leave the EU, it will be the duty of the Civil Service to support that position in the normal way. This is, of course, subject to the rules set out in Section 125 of the Political Parties, Elections and Referendums Act 2000 that come into effect for the final 28 days of the referendum campaign. It will not be appropriate or permissible for the Civil Service or individual civil servants to support Ministers who oppose the Government's official position by providing briefings or speech material on this matter. The Cabinet Secretary will be providing separate guidance to civil servants on this issue.

Until the last 28 days of the campaign, and consistent with the Special Advisers' Code, Ministers who oppose the Government's official position will be able to draw on personal help and advice from their Special Advisers, provided this does not draw on official or departmental resources. It should also be done in line with Special Advisers' wishes and in their own time. Ministers who depart from the Government's position will also of course be able to work with external campaign teams. Any Special Adviser who wishes to provide advice as set out above should notify my Principal Private Secretary in advance. Separate guidance will be provided in due course on the purdah rules to be applied to Special Advisers in the final 28 days of the campaign.

Finally, it will be very important during this period for Ministers on both sides of the debate to treat each other with appropriate respect and courtesy. We all recognise that the UK's membership of the EU is an issue on which some colleagues have long-standing deeply-held positions of conviction – hence my decision

to set aside, on a highly exceptional basis, the normal rules of collective responsibility. But throughout this period, and in its aftermath, we will continue to have responsibility for governing the country and serving the public who elected us. This can only be done effectively if we remain, despite differences on this one issue, a united, harmonious, mutually respectful team.

I am confident that these arrangements provide the eight framework for a fair and balanced debate during the forthcoming referendum campaign.

### 3.3 Parliamentary scrutiny

#### Lack of transparency?

Jeremy Corbyn spoke on 2 February of a “lack of respect” for the “sovereignty” of Parliament when David Cameron did not give a statement on the Tusk proposals when they were made available, and for engagement with the media rather than with the Commons.<sup>31</sup> Explaining that the Prime Minister intended to make a statement to the House on 3 February, the Minister for Europe David Lidington outlined how the Government had achieved transparency in communicating progress in the negotiations:

The timing of the release of the documents was in the hands of the President of the European Council. The draft text of those documents has been changing over the weekend, and as recently as yesterday. Clearly, until President Tusk published, we could not come to the House to answer questions on them.

I have been at debates and in evidence sessions before Select Committees when I have listened to complaints from Members from all parts the House that they were being given insufficient time to look at the detail before they had the opportunity to question Ministers about it, so the Prime Minister’s approach has been deliberately to give that opportunity to right hon. and hon. Members and then make himself available to answer questions.<sup>32</sup>

#### Select Committee reports

A number of parliamentary committees in Westminster have held or are holding Inquiries into the EU reform negotiations.

##### European Scrutiny Committee

In December 2015 the Commons European Scrutiny Committee (ESC) published a [report](#) on the UK Government’s renegotiation of EU membership: Parliamentary Sovereignty and Scrutiny, in which, among other things, it criticised the Government for not involving the UK Parliament and the devolved assemblies more in the negotiating process.<sup>33</sup> The opinions expressed in this report are discussed in more detail in Commons Briefing Paper 7311, 5 January 2016, [EU reform negotiations: what's going on?](#)

The ESC will be taking evidence on 10 February for another report, [UK Government's renegotiation of EU membership: parliamentary](#)

<sup>31</sup> [HC Deb 2 February 2016, c 780.](#)

<sup>32</sup> [Ibid, c 781.](#)

<sup>33</sup> See [Report Conclusions.](#)

[sovereignty and scrutiny: follow-up inquiry](#). The Committee will examine the proposals contained in President Tusk's letter of 2 February 2016 to see how far they meet the Prime Minister's aims in the four 'baskets'.

### **Lords EU Committee Inquiry**

The Lords EU Committee has been conducting an inquiry into the Government's EU reform proposals, looking in particular at the long-term vision underlying them.

Peers on the EU Committee visited the Commission and EP on 12-13 January. They took formal evidence from Jonathan Faull, who leads the Commission Task Force for Strategic Issues related to the UK Referendum. Informally they met MEPs and in private the Commission First Vice-President Frans Timmermans. Peers were warned that Britain would be "made an example of by the European Union, if it votes to quit the bloc", and that "furious EU nations will force a draconian Brexit deal on the UK in a bid to deter other countries from leaving".<sup>34</sup> On other occasions EU retaliation for a UK vote to leave the EU has been rejected as neither intended nor wanted.<sup>35</sup>

The Committee [took evidence](#) from the Foreign Secretary Philip Hammond on 26 January, which is referred to in this paper, as well as from the French Senate, the Asser Institute and other European policy think tanks.<sup>36</sup>

### **Devolved Administrations**

In the Devolved Administrations, the Scottish Government published in November 2015 a report called [The Benefits of Scotland's EU Membership](#) (in August 2014 the Government had published [Scotland's Agenda for EU Reform](#)).

In the Welsh Assembly the Constitutional and Legislative Affairs Committee held an Inquiry on the UK Government's EU Reform agenda and in March 2014 the Committee published a report on [Wales' role in the EU decision making process](#).

## **Full day debate to come**

David Cameron [told](#) the Commons on 3 February that it was "right that this House should debate these issues in detail". In addition to this statement and a statement following the February European Council, the Government would "also make time for a full day's debate on the Floor of the House".

## **3.4 Timing of the referendum**

David Cameron [told the Commons](#) on 5 January that he could neither give a date for the referendum, nor guarantee that he would achieve a deal in February (c 36):

I cannot guarantee that we will reach agreement in February. The Council agreed that we would try to reach agreement on all four

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<sup>34</sup> [EurActiv](#), 13 January 2016.

<sup>35</sup> E.g. at Open Europe's EU Wargames event, 25 January 2016.

<sup>36</sup> See Lords EU Committee, [Visions of EU reform inquiry](#).

issues in February; so that is the aim. If that is possible, I am keen to get on and hold a referendum. We should not do it precipitately. I have looked at precedents. I note that when Labour held a referendum in 1975, there was only a month between the completion of the legislation and the referendum, which was not enough time. When we had the referendum on the alternative vote in the previous Government that I led, the period was less than three months, which was also not enough. We should be looking for a period longer than that, but, believe me, by the time we get to the end of the referendum campaign, everyone will have had enough of the subject.

In his opinion, if a satisfactory result was achieved in February, there should be no delay in holding the referendum, with “a proper number of months for people to consider all the arguments”(c 44). In the debate following the statement on 3 February, David Cameron could not be specific in answering questions on the timing of the referendum, but insisted he was in no hurry.

23 June is being touted as a likely date for the referendum if agreement is reached in February.

On 5 February national negotiators and EU ambassadors again discussed the Tusk proposals and how to accommodate UK demands. They “ironed out” and “clarified” technical details and wording, and the meeting was reported to have been “constructive”, though no Member State was “fully satisfied” and there were “difficult negotiations ahead”.<sup>37</sup> The negotiators meet again on 11 February.

If the February European Council does not agree on “mutually satisfactory solutions”, the four so-called “baskets” will probably be considered again by the European Council on 17-18 March. However, a delay beyond March could push the referendum back until after the summer holidays.

External events might also affect the timing of the referendum. On 26 January Philip Hammond [told](#) the House of Lords EU Committee that, while he hoped an agreement could be reached, it would be “inappropriate” and “unwise” for the UK to insist on sealing it at a summit which would be held amid the continuing migration crisis.

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

He hoped the negotiation would be resolved well before the French and German elections in 2017.

The timing of the referendum is of particular concern to the devolved administrations, as Angus Robertson pointed out in the debate on the statement on 3 February. The three First Ministers and the Deputy First Minister of Northern Ireland had written to the Prime Minister about problems with a June 2016 referendum:

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<sup>37</sup> [EUObserver, 5 February 2016.](#)

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We believe that holding a referendum as early as June will mean that a significant part of the referendum campaign will necessarily run in parallel with those elections and risks confusing issues at a moment when clarity is required... We believe that the European Referendum is of vital importance to the future of the whole United Kingdom and the debate leading up to it should, therefore, be free of other campaigning distraction.

But David Cameron thought "people are perfectly capable, six or more weeks after one set of elections, to consider another election" (c 932).

The Chancellor George Osborne has said there will be no second vote on the UK's EU membership, that this was "the once in a life time decision".<sup>38</sup>

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<sup>38</sup> [Politics Home, 15 January 2016.](#)

## 4. Reaction to Presidency drafts

### 4.1 UK

While the Prime Minister has said he would vote in favour of staying in the EU on the basis of the Tusk package, that the proposals were “something worth fighting for”, that the UK could have the “best of both worlds” and that he had delivered his manifesto commitments, Brexit supporters are not impressed. UKIP leader Nigel Farage described the package of measures as “pathetic [...] a few cobbled together words that mean frankly nothing”.<sup>39</sup> Richard Tice, co-founder of Leave.EU, said there was no substantial change as promised, just “a restatement of the existing status quo”. The Vote Leave campaign said key Conservative manifesto pledge on a four year ban on in-work benefits had been broken, since the ban was now conditional. The former defence secretary Liam Fox said the proposals did not “come close” to the changes voters had been promised.<sup>40</sup>

Philip Hammond said the draft was “good”, but “one needs to put some flesh on the bones...Defining the details will be the real job in the coming weeks...I’m interested in a good deal, it’s better than a quick deal”.<sup>41</sup>

The Leader of the Opposition, Jeremy Corbyn, thought “the Prime Minister has been negotiating the wrong goals in the wrong way for the wrong reasons”.<sup>42</sup> He offered a mixed response to other aspects of the draft deal:

We welcome the proposals for a majority of national Parliaments to have a veto over Commission legislation, even if it is heavily qualified. It seems the Prime Minister has finally moved towards the Labour party’s view on this issue, and we welcome that.

Protecting non-eurozone states is necessary, but we cannot let the proposals hamper efforts to regulate the financial sector, including bankers’ bonuses. The crucial detail of the emergency brake on workers’ benefits for EU migrants is entirely absent.

The Liberal Democrat leader Tim Farron thought it was “bizarre that the Prime Minister claims that this massive decision is down to such narrow and arbitrary demands”.<sup>43</sup>

The former Chancellor and Justice Secretary, Kenneth Clarke, thought the Prime Minister had “achieved more on the big issues in this negotiation” than he ever expected.

The Chair of the European Scrutiny Committee, Sir William Cash, was not satisfied that the Prime Minister had fulfilled his earlier promises (c 932):

Why has my right hon. Friend, in order to stay in, bypassed so many promises and principles? Our national Parliament is the root

“This package will not convince the hard-line sceptics, some of whom had nominally kept an open mind on the renegotiation process but are not really persuadable”.

Thomas Raines, [Tusk’s Artful Compromise Could Save Cameron in EU Referendum](#), Chatham House, 4 February 2016

<sup>39</sup> [BBC News, 2 February 2016](#).

<sup>40</sup> [BBC News, 2 February 2016](#).

<sup>41</sup> [La Stampa, 3 February 2016](#).

<sup>42</sup> [HC Deb 3 February 2016 c 928](#).

<sup>43</sup> [HC Deb 2 February 2016 c 784](#).

of our democracy, as he said at Bloomberg, not a majority of red cards in other Parliaments. He said that we would have full-on treaty change, not the arrangements that have been announced to us today. We were promised a fundamental change in our relationship with the EU. We were promised that we would deal with the excessive immigrant numbers, but that has been whittled down to an issue about in-work benefits controlled by the European Court of Justice. Above all, we were told and promised that this entire package would be both legally binding and irreversible, but now it will be stitched up by a political decision by the European Council, not by a guaranteed treaty change at the right time. I have to say to the Prime Minister that this is a wholly inappropriate way of dealing with this matter.

Lord Rose, leader of Britain Stronger in Europe, thought common sense would prevail in the referendum, and denied that his group represented 'project fear'.<sup>44</sup> He described the package as a good deal but "probably not" perfect.

Leading figures in the City gave the proposals a cautious welcome, but indicated that big questions remain over the 'emergency brake' intended to protect the UK from financial regulation from the eurozone.<sup>45</sup>

Steve Baker, leader of Conservatives For Britain, called the Tusk drafts an "in-at-all-costs" deal about "staying in a substantially unreformed EU" which "looks funny, smells funny". It didn't "end the supremacy of EU law or allow us to control the benefits system as we see fit or determine migration policy for ourselves."<sup>46</sup>

## Press comment

The tabloids were largely critical of the deal. The headline in the [Daily Mail, 3 February](#), was "the great delusion" and it continued: "hardly anything in this deal will do one iota to stop mass immigration from inside or outside the EU."

The broadsheets were cautiously positive. The [Financial Times, 2 February](#), called the Tusk drafts a "reasonable deal to keep Britain in Europe", noting that the exemption from 'ever closer union' "may seem like symbolism but it provides reassurance that the UK is not on a train it didn't want to join". The [Times](#) leader thought "the document promises little of substance" and argued that David Cameron "should listen to Boris Johnson and extract more concessions on migration and sovereignty". The [Daily Telegraph leader, 3 February](#), thought the "details of this settlement are unlikely to decide the outcome of the referendum".

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<sup>44</sup> [BBC News, 5 January 2016](#).

<sup>45</sup> [Financial Times, 2 February 2016, EU referendum: City gives Donald Tusk's proposals cautious welcome](#)

<sup>46</sup> [Financial Times, 3 February 2016, Cameron's EU deal: what the UK has — and has not — secured](#)

## 4.2 European Institutions

### European Commission

[Addressing](#) the European Parliament on 3 February the Commission President Jean-Claude Juncker said:

The settlement proposed by President Tusk recognises that not all Member States participate in all areas of EU policy. The United Kingdom benefits from more Protocols and opt-outs than any other Member State. This is why, as a matter of law and as a matter of fact, the concept of ever closer union has already assumed a different meaning in its case. The settlement recognises this. It recognises that if the United Kingdom considered that it is now at the limits of its level of integration, then that is fine. At the same time, it makes clear that other Member States can move towards a deeper degree of integration, as they see fit. In this way we have addressed the Prime Minister's concerns, while respecting the Treaties. I advocated from the start of my election campaign that National Parliaments should play a greater role in our democratic system. I included this pledge in the Political Guidelines on the basis of which you elected this Commission. The settlement presented yesterday provides for this.

### European Parliament

The EP President Martin Schulz has warned that a British deal on EU reform which caters "to narrow self-interests" will meet with resistance from the EP and implied that MEPs were indifferent to the UK leaving the EU.<sup>47</sup>

Martin Schulz warned that MEPs might adopt amendments to the UK welfare proposals, questioning their fairness. He thought the final deal would be subject to months of debate.<sup>48</sup> Uncertainty surrounding EP agreement on secondary legislation to implement the UK demands could give rise to a lack of confidence in the overall package.

"Cameron has to persuade three extremely diverse groups that this deal will benefit both the UK and the EU. And there are serious questions about whether it will be possible to please all the other 27 heads of state, Cameron's own MPs and the British public with any solution. Each group has deeply contrasting demands".

## 4.3 Other EU Member States

The package of measures must be agreed unanimously by all 28 EU Member States to come into force. But what do they think about the UK's demands and the Tusk drafts?<sup>49</sup>

A report by the Centre for European Reform in December 2015 looked at potential UK allies and objectors to the Government's demands:

### **Which member-states will help Cameron and which will make his life difficult?**

- Cameron hopes he can count on his 'all-weather friends' in the EU like Sweden, the Netherlands and Denmark. These countries are most likely to vote with Britain in the Council of Ministers. But voting patterns in the Council of Ministers do not necessarily reflect the positions leaders will take on the British renegotiation. There is more at stake in negotiations on the British question than in ordinary Council votes on EU draft legislation.

Sofia Vasilopoulou, "[A deal half sealed: EU plan waters down some of Britain's demands](#)", *The UK in a Changing Europe*, 2 February 2016,

<sup>47</sup> [ITV News, 5 February 2016.](#)

<sup>48</sup> [EUObserver, 5 February 2016.](#)

<sup>49</sup> [The Telegraph, 4 February 2016,](#) published a brief description of each of the other Member State's views on the UK demands.

- Cameron will also find allies among member-states that enjoy strong historical and cultural bonds with the UK, such as Ireland, Malta and Cyprus.
- Hungary and Poland will be Cameron's closest allies in Central Europe. But like many other member-states, they will strongly oppose measures that would discriminate between their own citizens and the British.
- There are also several hardliners in other areas of negotiations. Austria, Belgium and Estonia do not share Cameron's ideas for safeguarding the interest of euro-outs in the wider EU. And Spain is opposed to giving a greater role to national parliaments. But opposition from one or a few countries to a particular reform is unlikely to torpedo the entire reform package.
- The majority of member-states is prepared to meet Cameron halfway on most of his demands. Germany, France and Italy will be pivotal. If Cameron strikes a conciliatory tone and keeps his demands modest, they will help him and encourage hardliners to follow suit. But if Cameron bangs the table and questions fundamental principles of the European project, they will take a harder line, complicating his efforts to forge an agreement.<sup>50</sup>

Now that Donald Tusk has proposed some solutions, how do the other Member States line up? Below are the views of some of them.

## Western Europe

### Germany

On 7 January 2016, in an article in [Bild magazine](#), David Cameron appealed to Germany to support his proposed changes to the EU, arguing they would help to persuade the UK electorate to vote to stay in the EU. They would also benefit the EU, he said, "and Germany can help deliver them [...] The problems in the EU that what we are trying to fix are problems for Germany and other European partners too".

Cameron argued in *Bild* that the UK was not questioning the principle of the freedom of movement, but wanted to "stop people taking out from a welfare system without contributing to it first". EU citizens should not be able to claim all benefits from day one, and not until after the first four years.<sup>51</sup>

Chancellor Angela Merkel, keen for the UK to stay in the EU, said on 6 January that over the coming weeks it was "especially important that we make decisions in our own interest in order to achieve a reasonable package that will allow Great Britain to remain a part of the European Union".<sup>52</sup>

The [Süddeutsche Zeitung](#), reported on 8 January that new data from the Federal Employment Agency showed that the number of Romanian and Bulgarian migrants claiming 'Hartz IV'<sup>53</sup> unemployment benefits in

<sup>50</sup> CER, [Cameron's EU reforms: will Europe buy them?](#) Policy brief Agata Gostyńska-Jakubowska, 14 December 2015

<sup>51</sup> [EUObserver, 7 January 2016](#)

<sup>52</sup> [EurActiv, 7 January 2016](#).

<sup>53</sup> The 'Hartz IV' reforms were part of a package of labour market and welfare reforms which came into force in the early 2000s. Hartz IV (2005) brought together the former unemployment benefit for long-term unemployed ('Arbeitslosenhilfe') and welfare benefit ('Sozialhilfe').

Germany had risen from 14.1% to 17.2% from September 2014-2015. Angela Merkel seemed to concur with David Cameron when she said, “That is not the intention of free movement. When it comes to claiming social benefits that are not based on employment, I am also of the opinion that it is reasonable for [an EU migrant] to go back to his homeland”.

Cameron’s EU reform agenda, including his proposal to cap in-work benefits for EU migrants for four years, was also reported to have been welcomed at a meeting of the CDU’s sister party, the CSU, in Bavaria on 7 January. The CSU called for a similar ban in Germany, although for one year rather than four. The CSU also agreed a European position paper calling for flexible cooperation and integration at the EU level.<sup>54</sup>

Gunther Krichbaum, a conservative ally of German Chancellor Angela Merkel, was reported to have warned against Europe becoming “more fragmented” by individual national demands.<sup>55</sup>

## France

In [written evidence](#) to the Lords EU Committee on 18 January 2016, the French Senate summarised the French parliamentary and public response to the UK demands as follows:

Many are still convinced that leaving the EU would damage the UK more than the Union itself. Many think that Britain is different and to put it in General de Gaulle’s famous quote: “England is an island”.

So the EU reform prepared by your Government is quite a new issue for my fellow citizens and a non-issue for most. We may regret but that is how it stands at the moment. At least no one is asking you to leave which I take as a good omen.

At the moment in France, you can feel that some pundits and mandarins have started to fret over the issue as they understood that the promised referendum was a risky business as always with referendums. So do most of our national MPs. We are mostly in favor of keeping the UK inside the Union. Only extremist parties (far left and far right) and a few political towering figures who always fought for national sovereignty – advocate an exit that would teach the EU a good lesson and show the way out to several unruly Member States. Some wiser people think the British move is an excellent goad to much delayed reform of the EU.

We also think that reform is needed especially in the energy supply market, the digital market, the fight against global warming, the organization of migrations, the fight against terrorism and the accountability of European officials before the national parliaments.

Though we don’t see eye to eye with the British on European matters, I must confess that your Government’s proposals help us outline issues that will have to be addressed sooner or later.

Specifically on the ‘immigration’ question, the evidence stressed that France was attached to the principles of free movement of people and equal treatment for all workers. There was agreement on the need to

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<sup>54</sup> [Open Europe, 8 January 2016.](#)

<sup>55</sup> [Reuters, 3 February 2016.](#)

fight abuse of welfare systems and on temporary measures to deal with exceptional circumstances constituting a real threat to the normal working of the State and public services.

But the French President François Hollande has said the reform package offered to David Cameron is “non-negotiable and Britain will be offered no further concessions”.<sup>56</sup> He is reported to have said there would be “no new adjustments or new negotiations” to the Tusk draft package. This raises questions about the ability of the February European Council to agree a mutually satisfactory deal.

## Ireland

Ireland has a huge vested interest in the UK staying in the EU and the threat of Brexit has caused considerable concern. An Irish Parliamentary Committee looking at the implications for Ireland of Brexit published a [report](#) in June 2015. The Committee’s view was that an EU without the UK would weaken Ireland and Europe.

The Irish Government is afraid that Brexit would mean border controls being brought back between Northern Ireland and the Republic of Ireland.

In a speech in Amsterdam in January Taoiseach Enda Kenny urged UK voters to vote to stay in the EU because it would be “very weakened” if they decided to leave.

Europe is all about compromise at the end of the day. [...] If you change the argument the other way and say if we make changes at European level in the way we do business, red tape, bureaucracy, the single market and all these things, [then] everybody benefits. [...] It’s not a case of having one victor here. The arguments are sufficiently strong in the interests of Europe. All the countries can benefit.<sup>57</sup>

Enda Kenny has ruled out an Irish referendum on EU membership, even if the UK decides to leave.<sup>58</sup>

On 25 January David Cameron met Mr Kenny in Downing Street. He still thought a deal in February was possible, saying “If there is a good deal on the table, I’ll take that deal to the British people... If it is not there, we’ve got plenty of time. I would rather get it right than do it in a rush”.<sup>59</sup> Enda Kenny wants the UK to remain “a central member of the European Union” and believes that the “four baskets that were put on the table [in] December are all issues that can be concluded successfully and strongly in the interests of everybody throughout the Union”.

The *Irish Times* [reported](#) on 2 February that the Irish Government had “issued a cautious welcome to the draft deal”.

## Denmark

The Danish Prime Minister Lars Løkke Rasmussen has welcomed the reform deal and said he will help the UK Government win the

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<sup>56</sup> [Independent](#), 4 February 2016.

<sup>57</sup> [Irish Times](#), 7 January 2016.

<sup>58</sup> [Irish Independent](#), 8 January 2016.

<sup>59</sup> [PM press conference with Enda Kenny](#), 25 January 2016

referendum.<sup>60</sup> He told *ITV News* that the Tusk proposals were “understandable and acceptable”, and that the UK reform demands would benefit Denmark and other Members States. Mr Rasmussen [tweeted](#) on 2 February: “Letter from Tusk on U.K. in EU good basis for negotiations”.

Government spokeswoman Ulla Tørnæs thought the proposed “emergency brake” on benefits was a victory for Denmark too: “If the emergency brake is activated, there will be an accrual system [for benefits] as we know it today in Denmark. That is a very balanced approach to things in which we ensure the continued free movement of labour, which is essential for Danish business, while also being able to stop [the benefit payments] if the intake becomes too large”.<sup>61</sup>

## Eastern and Central Europe

The *Times* [reported](#) on 19 January that paradoxically, support for UK benefit curbs from Austria, Germany, France, the Netherlands, Denmark and Finland could push Poland and other Central and Eastern European countries into stronger opposition. A senior EU diplomat was quoted as saying that “Cameron should beware of his own success... If the February [European Council] summit becomes an east-west battle over free movement, then an agreement is unlikely”.

## Poland

Witold Waszczykowski, the Polish Foreign Minister, believes the Tusk draft will “require careful analysis”,<sup>62</sup> but was reassured that the proposed benefit restrictions would not apply to Poles already living in the UK. Some reports suggest the Polish Government would support the restrictions if it meant fewer highly qualified Poles leaving Poland for Western Europe. There were also suggestions of quid pro quos which might help Poland to support the Tusk draft. The former Justice Secretary Kenneth Clarke thought the Government might secure their support by offering military assurance to counter any Russian threat:

If the Prime Minister has to offer something in exchange for that, could he perhaps consider underlining our NATO commitment to those countries, as their biggest concern is future military adventures by Putin’s Russia? To underline our role as one of the leading military contributors, if not the leading military contributor, through NATO to the European alliance would be a very good offer to make—by deploying more troops, perhaps—in order to get what is a difficult concession for our partners in those countries to make.<sup>63</sup>

Following David Cameron’s visit to Poland after the publication of the Tusk drafts, there were reports that he “appeared to win Polish approval for his new EU deal in return for extra Nato security”.<sup>64</sup> Jaroslaw Kaczynski, the head of Poland’s ruling Law and Justice (PiS) party, said “We have really achieved a lot. We are satisfied”.

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<sup>60</sup> [ITV News, 5 February 2016.](#)

<sup>61</sup> Interview for *Jyllands-Posten*, reported in [The Local \(Denmark\), 3 February 2016.](#)

<sup>62</sup> [Telegraph, 4 February 2016.](#)

<sup>63</sup> [HC Deb 3 February 2016 c 930.](#)

<sup>64</sup> [EU Observer, 5 February 2016.](#)

## Hungary

David Cameron held talks with Hungarian Prime Minister Viktor Orban on 7 January 2016 in Budapest. Mr Orban supported giving a bigger role to national parliaments, more competitiveness in the EU and ensuring decisions made by the 19-member eurozone States are not detrimental to those outside EMU, like the UK and Hungary.<sup>65</sup>

On the issue of cutting in-work benefits for EU migrants in the UK, Hungary could accept the UK's proposed changes, if the curbing of in-work welfare benefits did not discriminate against Hungarians working and paying taxes in the UK.<sup>66</sup> Orban wanted any deal to be done in coordination with the Visegrad group of countries (Hungary, Czech Republic, Poland and Slovakia). He reminded David Cameron that Hungarian workers should not be labelled 'migrants' since they are "European citizens who can take jobs anywhere freely within the EU". He continued:

We are not going there to sponge off benefits, or take something away from them. We do not want to be parasites. We want to work there, and I think that Hungarians are working well. They should get respect and they should not suffer discrimination.<sup>67</sup>

Hungary could support a compromise that stopped abuse of the UK's health care system.

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<sup>65</sup> See [Financial Times, 7 January 2016](#).

<sup>66</sup> [EUObserver, 7 January 2016](#).

<sup>67</sup> Ibid.

## 5. Referendum campaigns and opinion polls

### 5.1 Comparing arguments

There are already several campaign groups on both sides of the debate. The designation of the official campaigns will take place once the referendum date is announced. Vote Leave and Leave.EU are competing to be designated as the official Leave campaign.<sup>68</sup>

Below are five campaigns on each side:

#### Stay in

- [Britain Stronger in Europe](#) (BSE)
- [Conservatives for Reform in Europe](#)
- [Say Yes 2 Europe](#)
- [Labour In for Britain](#)
- [Pro-Europa](#)

#### Leave

- [Leave.EU](#)
- [Vote Leave](#)
- [Grassroots out](#) (GO – includes UKIP)
- [Labour leave](#)
- [Better off out](#)

For information on the campaign regulations, see Commons Briefing Paper 7486, [The EU referendum campaign](#), 27 January 2016.

The following table compares campaign arguments. It is by no means comprehensive coverage but a selection of some of the main themes in the referendum debate.

Stay in	Leave
<p><b>Cost &amp; the economy</b></p> <p><a href="#">Britain Stronger in Europe</a>: “Almost half of everything we sell to the rest of the world we sell to Europe - and we get an average of £24 billion of investment into Britain per year from Europe”.</p> <p>“The average person in Britain saves around £450 every year because trading with Europe drives down the price of goods and services”.</p> <p><a href="#">Britain Stronger in Europe</a>: “There is no country that has full access to the single market without paying in</p>	<p><b>Cost &amp; the economy</b></p> <p><a href="#">Vote Leave</a>: “Using HM Treasury forecasts for the UK’s future contributions to the EU budget, it is estimated that:</p> <ul style="list-style-type: none"> <li>• By the end of this year, the UK’s total contributions to the EU budget will have surpassed half a trillion pounds.</li> <li>• Over the next five years, the UK is set to pay a further £96 billion to the EU, with total</li> </ul>

<sup>68</sup> See [BBC News, 5 February 2016](#).

to the EU budget and there is no country that has full access to the single market without accepting free movement of people. Given that Leave campaigners have committed to ending free movement completely and to ending all budget contributions, they would therefore be unable to retain access to the single market and must come clean about the negative economic implications that would arise from this”.

“In written evidence to the House of Lords, the Department for Business Innovation and Skills note benefits to the UK of 6% higher income per capita from the Single Market as a result of increased trade”. See In brief: UK-EU economic relations, 19 January 2016.

[Pro-Europa \(euomyths\)](#): “The EU spends too much money. The EU budget is 2% of public spending – 98% of taxpayers’ money is spent by national or local government. Spending has to be approved by national Ministers and by elected Members of the European Parliament.

The EU budget has to be in balance – there is no deficit or debt.

The pattern of spending has changed over time: over two-thirds used to be spent on the Common Agricultural Policy, now reduced to about 30%.

The EU budget has anyway been declining as a proportion of national wealth because spending has risen more slowly than economic growth, and far less than has national government spending”.

[Labour In for Britain](#): “British workers benefit from EU agreements on workers’ rights, including the right to holiday pay, paid maternity and paternity leave,

contributions hitting £600 billion in 2020.

ONS figures show the significant amount of money the UK has been forced to give to the EU over the last 40 years:

- Between joining the then EEC in 1973 and 2014, the UK paid £484 billion into the EU budget (nominal payment as adjusted by the official Government deflator).
- In 2014 alone, Britain’s gross contribution to the EU budget was £19.1 billion, half of England’s Dedicated Schools Grant, four times the UK’s science budget and over 56 times more than the budget for the NHS Cancer Drugs Fund”.

[Leave.EU](#): “Imagine having £1,000 more to spend each year. By leaving the EU, each household could be better off by this amount - through cheaper food bills, no membership fees, with the cost of regulations lifted, too”.

[Better off out \(myths\)](#): “British industries such as fishing, farming, postal services and manufacturing have already been devastated by Britain’s membership of the EU.

EU membership costs UK billions of pounds and large numbers of lost jobs thanks to unnecessary and excessive red tape, substantial membership and aid contributions, inflated consumer prices and other associated costs”.

anti-discrimination laws, equal pay and protection for agency workers”.

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### Trade & investment

**BSE:** “The Centre for European Reform shows that our goods trade with EU countries is 55% higher because of EU membership. This is the “EU effect” on UK-EU goods trade. Analysis using publicly available ONS data shows that UK goods trade with the EU was £374bn in 2014. The “EU effect” in 2014 therefore amounted to £133bn. This £133bn is the equivalent to over £670k in extra trade on average for each business which exports or imports goods with the EU”.

#### Pro-Europa

“The EU negotiates trade agreements with the rest of the world. Outside the EU Britain would have to renegotiate trade deals alone. While the EU is the world’s largest market, a UK outside the EU would not be a high priority for other countries to negotiate a trade deal”.

Say yes 2 Europe re TTIP: “the European Commission has consistently stated that public health services would not have to be opened to competition from or outsourced to private providers, and safeguards have been written into the EU’s TTIP negotiating position.

Moreover, as the Commission pointed out, under the EU’s proposals the UK would be free to bring outsourced services back into the public sector so long as they respected property rights – which are already protected under UK law”.

### Trade & investment

“BSE wrongly assume that we won’t get a free trade deal with the EU. Such a deal is massively in the interests of EU member states, which sell us £61.7 billion more in goods and services than we sell them. Even the pro-EU CBI has admitted that it is ‘highly likely’ that we will secure a free trade agreement”.

“Many countries – such as Canada and South Korea – have struck free trade deals with the EU without having to accept unlimited EU migration, as have much smaller economies like Peru. *Does BSE really believe that we will get a worse deal than Peru?*”

#### Vote Leave:

“We negotiate a new UK-EU deal based on free trade and friendly cooperation. We end the supremacy of EU law. We regain control. We stop sending £350 million every week to Brussels and instead spend it on our priorities, like the NHS and science research.

We regain our seats on international institutions like the World Trade Organisation so we are a more influential force for free trade and international cooperation”.

Labour Leave: TTIP: “The EU/USA Transatlantic Trade & Investment Partnership can block a Labour government taking back control of privatised NHS and Rail facilities. TTIP toughens the EU’s ability to fine Governments that remove hospital services, railways and other contracts from private companies”.

Leave.EU: “Imagine having greater influence over our global trade, so that we can do our own deals with

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fast-growing Commonwealth countries and North America (without 27 other EU countries all arguing for their own special interests!).”

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**Sovereignty**

[Pro-Europa \(euomyths\)](#): “The EU is always telling us what to do: It doesn’t – unless it’s something we agreed to do in the first place! The EU is simply a way to meet with our neighbouring countries to thrash out common solutions to common problems.

Nothing the EU ‘tells us to do’ is anything other than that which has been agreed by a Council of Ministers where the British government is a key player, and by the European Parliament which has a strong British contingent of elected MEPs”.

[Labour In for Britain](#): “£26.5 billion is invested in Britain by EU countries every year”.

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**Sovereignty**

[Vote Leave](#): “A vote to 'remain' means the permanent supremacy of EU law with all this involves for our prosperity and democratic government”.

“Since 1996, Britain has strongly opposed over seventy measures in the Council of Ministers. Britain has been outvoted on every occasion and every one of those measures became UK law”.

[Vote Leave](#): “Europe could work on the basis of mutual recognition of national standards combined with global standards where appropriate”.

[Vote Leave](#): “Every Treaty since the 1950s has given Brussels more power. The new Treaty is planned to take more power from EU members including power over taxes. We have repeatedly given away control in the hope of ‘influence’. The loss of control was real. The hoped for influence was a mirage”.

“The nineteen Eurozone countries now constitute a majority in the EU that routinely outvote Britain”.

[Leave.EU](#): “Imagine not having our laws dictated to us by Brussels. Instead, MPs would become accountable to the public and we would once again be able to make and decide on our own laws”.

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**Security**

[Britain Stronger in Europe](#): “In today’s world, many of the threats to Britain's security are global in nature - like the aggression of Russia, terrorism and cross-border crime.

Being in Europe, working with our closest neighbours and partners to

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**Security**

tackle these threats, makes Britain safer.

Whether it's implementing sanctions against Russia, sharing intelligence about terrorists or arresting criminals using the European Arrest Warrant, there is strength in numbers".

[Pro-Europa](#): "The European Arrest Warrant replaced long extradition procedures and enables the UK to extradite criminals wanted in other EU countries, and bring to justice criminals wanted in the UK who are hiding in other EU countries.

Eurojust helps UK authorities work with other EU countries' to tackle international organised crime such as drug smuggling, people trafficking and money laundering".

[Labour In for Britain](#): "Thousands of criminals, including terrorists, have been arrested under the European Arrest Warrant".

**Regulation**

[Pro-Europa](#): "Common rules for the common market make it unnecessary to have 28 sets of national regulations".

[Pro-Europa \(euomyths\)](#): "The EU is drowning us in red tape: Customs-free trade in the EU makes business easier. Common rules for the common market cuts red tape – replacing 28 sets national regulations with one European-wide approach".

**Over regulation and bureaucracy**

[Better off out \(myths\)](#): "In 2006 it was estimated that EU over-regulation costs 600bn Euros across the EU each year.

-In 2010, Open Europe estimated EU regulation had cost Britain £124 billion since 1998".

-Whilst red tape savings are not direct cash savings, deregulation would result in a true 'bonfire of regulations' that could fund either sizeable tax cuts or additional public spending.

**Science, technology, innovation, modernisation**

Vote Leave: "We need much more international cooperation than we now enjoy and often at the global, not regional, level. The European Union is too slow to cope and is damaging Europe".

**Common Agricultural Policy & fisheries**

Pro-Europa: “The pattern of spending has changed over time: over two-thirds used to be spent on the Common Agricultural Policy, now reduced to about 30%”.

**Common Agricultural Policy & fisheries**

Labour Leave: “EU Agriculture is just 1.6% of the EU economy, employs fewer than 5.5% of the population, but Brussels gives the CAP 40% of the entire EU budget. Import controls and red tape add £7 a week to our food bills”.

“60% of fish consumed in the EU have to be imported from outside the EU. Gross mismanagement of EU fishing policy has all-but-destroyed our once-thriving fishing industry. We need to take back control”.

Leave.EU: “the UK would no longer be forced to subsidise farmers in other EU countries (UK consumers currently get a very bad deal out of the Common Agricultural Policy, or CAP, which effectively adds around £400 to each family’s living costs each year). UK policy-makers would also have much greater control over our VAT rates (and we would no longer have to send VAT revenue to the EU)”.

**Immigration**

Lord Rose, head of BSE: “Migration is one of the great things that is happening in the world today. It’s an event or it is a phenomenon worldwide which is not just a UK issue, it’s a worldwide issue. [...] Politicians are going to have to grapple with that. Immigration isn’t going to go away if we were outside the EU. This is something we have got to deal with”. (BBC Radio 4 Today programme, [Independent, 25 January 2016](#)).

**Immigration**

UKIP: “It is clear that only by voting to Leave the European Union in the forthcoming referendum can we have a system of controlled immigration at sensible levels”.

**Peace and Democracy**

Pro-Europa: “The EU has helped secure peace among previously warring western European nations. It helped to consolidate democracy in Spain, Portugal, Greece and

**Peace and Democracy**

Better off out (myths): “Whilst peaceful international cooperation is welcomed at all levels, to say the EU is the sole guarantor of peace is an

former Soviet bloc countries and helped preserve peace in the Balkans since the end of the Balkans War. With the UN it now plays a leading role in conflict prevention, peacekeeping and democracy building”.

extreme exaggeration that is dishonest in its application.

-It is NATO, founded in 1949 and dominated by the USA, and not the EU, that has actually kept the peace in Europe, together with parliamentary democracy. Both of which are being undermined by the EU”.

**Consumers:** “British families enjoy lower mobile phone roaming charges, lower credit card fees, cheaper flights and proper compensation when flights are delayed or cancelled. These sorts of benefits could not be achieved by Britain alone”.

[Leave.EU:](#) “Product shelf price: Lack of official audit: savings highly speculative but likely to be much higher”.

[Leave.EU:](#) “UK consumers too valuable not to retain a deal with the EU”.

**World influence**

[Britain Stronger in Europe:](#) “In today’s complex world, the UK has more control over its destiny by staying inside organisations like the EU.

We would never dream of leaving the UN or NATO. Why would we leave the EU?

Being part of Europe means we have stronger leadership on the world stage, enabling us to shape the future – influence through participation.

Britain is not Britain unless we are outward-looking, engaged in our continent and leading in Europe.

To leave Europe would mean less influence on the world stage, and less say in the future”.

[Pro-Europa:](#) “As 28 democracies, and as the world’s biggest market, we are strong when we work together.

Britain is represented in many international organisations in joint EU delegations – giving Britain more influence than it would have alone. The EU has played a major

**World influence**

[Better off out \(myths\):](#) “Britain has a substantial ‘portfolio of power’ in its own right, which includes membership of the G20 and G8 Nations, a permanent seat on the UN Security Council (one of only 5 members) and seats on the International Monetary Fund Board of Governors and World Trade Organisation”.

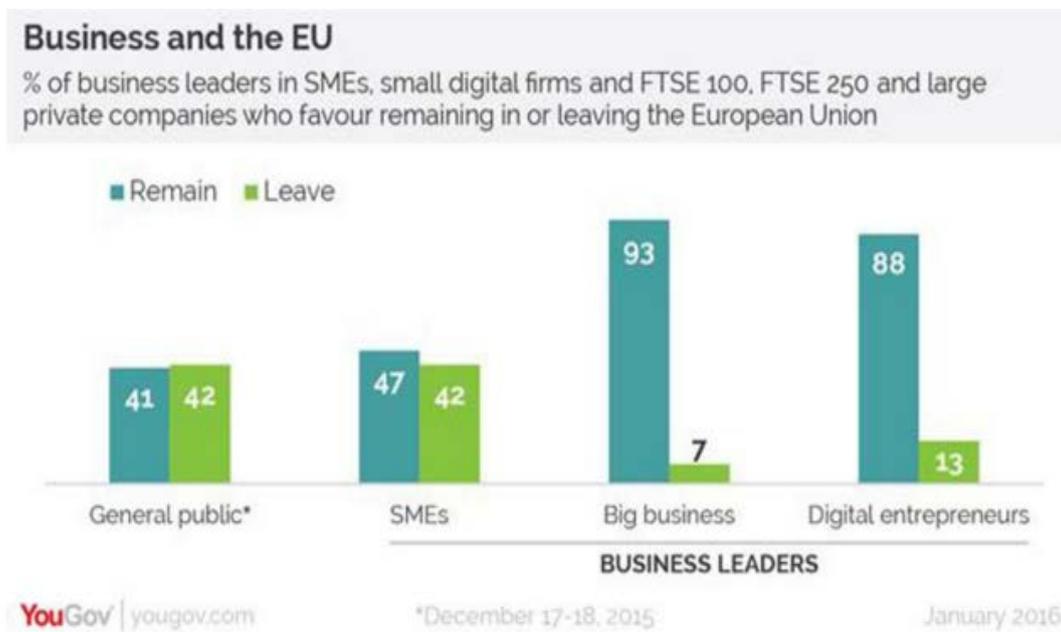
role in climate, world trade and development”.

[Labour In for Britain](#): “Being in the EU enhances Britain’s global influence and allows us to take our place at the top table”.

## 5.2 Recent opinion polls

A COMRES poll for Open Europe

A YouGov poll published in [City.A.M. 27 January 2016](#) compared the opinions of the general public with those of 15 leaders of FTSE 100 and FTSE 250 companies, 42 digital entrepreneurs (in partnership with Founders Forum), and 500 small businesses:



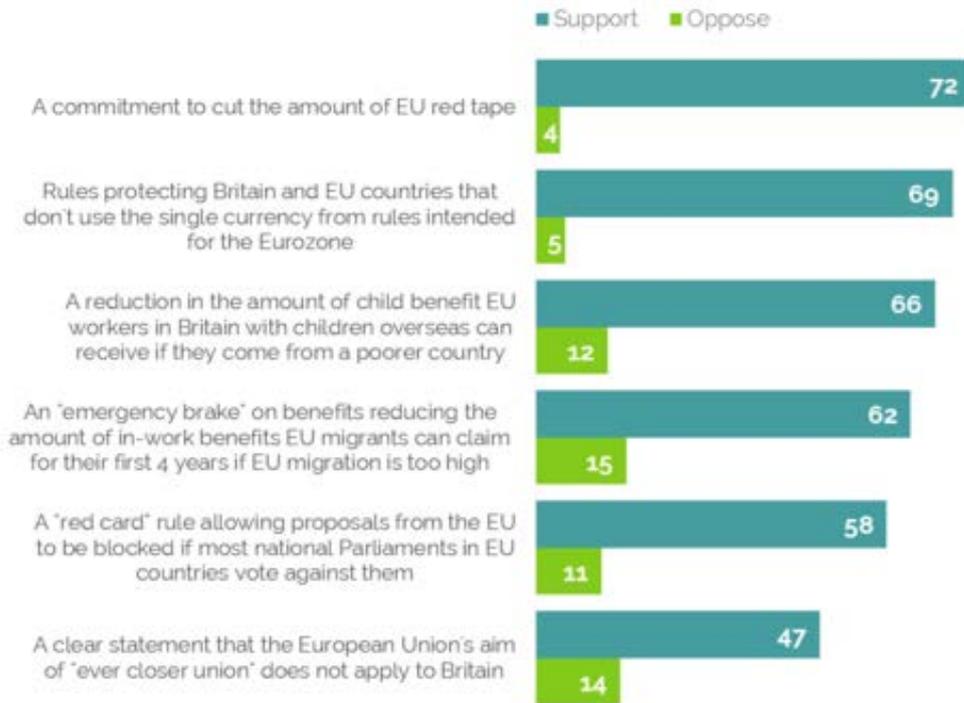
A YouGov/Times poll conducted in early February immediately after negative headlines about the Tusk drafts had the Leave vote leading with 45% while Remain fell to 36%.<sup>69</sup> But after listing the contents of the draft deal and asking how people would vote if the changes are agreed later in February, Leave's lead narrows, with 41% for Leave and 38% for Remain:<sup>70</sup>

<sup>69</sup> See YouGov's EU referendum poll tracker at [http://d25d2506sfb94s.cloudfront.net/cumulus\\_uploads/document/y0omer21fg/YG-Trackers-Europe-Referendum-050216.pdf](http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/y0omer21fg/YG-Trackers-Europe-Referendum-050216.pdf).

<sup>70</sup> [YouGov, 3-4 February 2016](#). For detailed result of YouGov research for *The Times*, see [https://d25d2506sfb94s.cloudfront.net/cumulus\\_uploads/document/4mzy46afe7/TimesResults\\_160204\\_EUReferendumDay1.pdf](https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/4mzy46afe7/TimesResults_160204_EUReferendumDay1.pdf).

### Support for contents of Cameron's EU deal

Below are some of the changes proposed in the draft deal between Britain and the EU. In each case do you support or oppose the proposed change? %



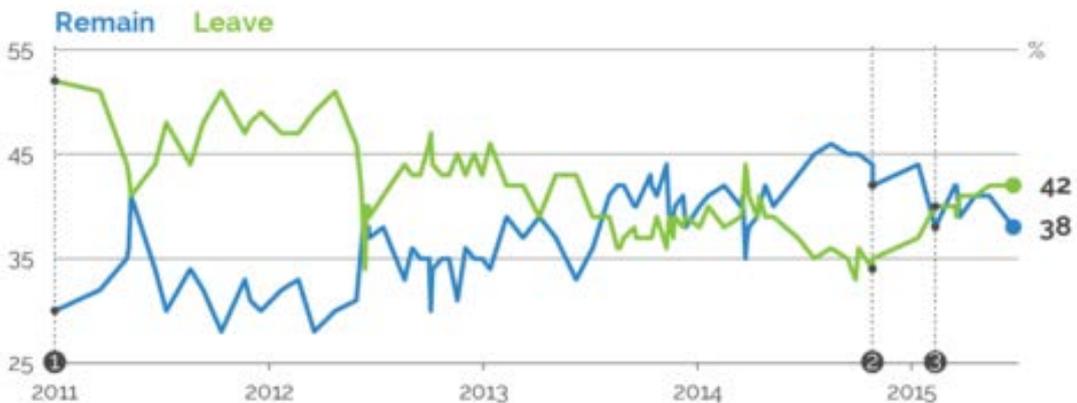
YouGov | yougov.com

February 3-4, 2016

[YouGov polls](#) since August 2015 track the rise for the Leave camp:

### EU referendum: the rise of 'Leave' since August

Since a May-June 2015 average of 35% support for leaving the European Union has risen to 42%



**Wording:**

- ① In a referendum on Britain's membership of the EU how would you vote? (Remain/Leave)
- ② Should the United Kingdom remain a member of the European Union? (Yes/No)
- ③ Should the United Kingdom remain a member of the EU or leave the EU? (Remain/Leave)

YouGov | yougov.com

Latest update: Jan. 27-28, 2016

Two polls for the *Daily Express* showed overwhelming support for Britain to leave the EU. In a telephone poll 99% of respondents said they wanted Britain to leave the EU, while a web poll with over 23,000 responses for *Express.co.uk* recorded 94% voting to leave.<sup>71</sup>

If the polls are to be believed, the Prime Minister still has some way to go towards convincing the UK electorate of the benefits of staying in the EU.

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<sup>71</sup> [Daily Express, 3 February 2016.](#)

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