

Britain and Europe - Sense about Sovereignty

The 2016 European Union Referendum

Arguments and Facts

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1. The UK's 2016 European Union Referendum

Sovereignty and the Context of the EU Referendum Debate

The United Kingdom (the "UK") 2016 Referendum on whether it should continue to be part of the European Union (the "EU") is first and foremost about national sovereignty. It is about whether the UK has lost the ability to determine its own destiny as a self-governing democracy. Its public debate and argument are fundamentally about the UK's secession of national sovereignty to the EU and whether membership of the EU is in the UK's national interests and those of its people, including the extent to which the economic and political consequences of its EU membership are positive or negative in this context.

At the heart of the EU's economic and political objectives and development since its formation in the 1950's has been the progressive integration of Europe to create a Single Market and an ever closer union of its countries and peoples, as the basis for their prosperity and peace. Its accomplishment, now as a Single Market of over 500 million people and representing around one quarter of the world's total GDP, has entailed the facilitation of trade, although still incomplete, through the development of common and transparent conditions for trade and on a competitive basis. These relate not only to removal of customs duties between the EU's Member States but also to the elimination of other forms of protectionism, including subsidies. However the development of a

European Single Market and the gradual, progressive integration of Europe's economies has inevitably been a long-term project, is still in progress and has yet to be completed.

The economic and political issues central to the UK's 2016 Referendum on its continuing EU membership are highly complex. Indeed, the UK electorate faces a daunting responsibility in understanding these and in taking a historic decision which may have irreversible consequences for both Britain's and Europe's futures. It is therefore of vital importance that the UK electorate is properly informed as to the arguments and facts central to deciding whether or not the UK continues to be part of the EU and determining its future destiny.

Key Conclusions

The key conclusions of this contribution to the UK's EU Referendum debate from the review of its central issues below are as follows:

- *Concern about loss of sovereignty is a legitimate issue. However the UK has not seceded sovereignty but has conferred and shared it for specified EU purposes*
 - The functioning of the EU and as a Single Market necessarily entails some conferral and sharing of legal sovereignty but it enhances the UK's sovereignty in practical terms through its access to the Single Market and leading role in influencing the Single Market's development.
 - The UK's membership of the EU also enhances its political influence internationally and hence its sovereignty in practical terms because of the EU's standing as a leading global political entity.
 - The benefits of the UK's participation in the EU's Single Market are evaluated as more than offsetting the financial costs to the UK of its EU membership, including of its bureaucratic burden on business.

- *The core and key areas of the UK 's national sovereignty are satisfactorily safeguarded*
 - The EU's constitutional arrangements limit its law making role to those matters agreed by treaty as appropriate to be determined at an EU level as of an EU nature. The principles of "subsidiarity" and "proportionality" on which they are based are fundamental to this.
 - Contrary to possible public perception, the EU's constitutional arrangements are highly consultative and consensual as well as transparent, with all EU legislation requiring approval by the directly democratically elected European Parliament. Moreover, all proposed EU legislation is subject to scrutiny and approval by its Member State national parliaments in the first instance as being appropriate for legislation at EU level and in its scope.
 - The core and key areas of legal sovereignty remain under national control, in particular public expenditure and taxation, defence, domestic and foreign policy matters.

- The UK's special status outside the Eurozone is secure, but within the EU and without having to participate in any further political integration by other of its Member States, which the sustainability of the Eurozone may require.
- *It is in the UK's national interest to remain in the EU, but it remains free to withdraw from it any stage*
 - The balance of advantage, as assessed, shows EU membership as being to the UK's benefit in economic and political terms, including from a practical sovereignty perspective and taking into account the extent to which it has conferred and shared legal sovereignty.
 - Should the UK leave the EU, it will nevertheless continue to have to comply with EU regulations in order to be able to export to it, but without being able to influence their development. Should it subsequently continue to participate in its Single Market, the UK will also continue to be required to make a financial contribution to the EU, and not necessarily significantly less than as a member of it. If the UK has continuing access to the EU's Single Market as a non member, it may further well be required to allow continuing EU labour migration into the UK and without restriction.
 - The EU faces major challenges, in particular in relation to the sustainability of the Eurozone and its political cohesion. It may well need to reform radically, including for reasons of global competitiveness, in order to survive and succeed.
 - However it is in the UK's national interest to participate actively from within the EU in order to achieve such reform. For the UK to leave the EU at this stage is unnecessary and would be both premature and reckless. Nevertheless, should EU membership be judged not to be in the UK's national interest in due course, it can always resolve to leave the EU at some future stage. Sovereignty, the sovereignty of the people, is always inalienable.

The EU - Myths and Realities

The context for the UK's EU Referendum debate has been a negative view of the EU itself. This can be regarded as reflecting a deepening sense of public alienation from the EU's decision-making institutions, a trend not confined to the UK alone, but increasing and prevalent also elsewhere in Europe. Its critics characterise the EU as bureaucratic and dysfunctional, and its institutions as unaccountable, undemocratic and non-transparent. Its institutions are viewed as imposing legislation and regulations on the UK and its other Member States, weakening competitiveness and causing high unemployment as well as undermining their national sovereignty and self-government. In seeking to act collectively in an international context, the EU is also viewed as having been ineffective, and this vividly exemplified by its disarray from 2015 in responding to the tragic human migration crisis from the strife torn Middle East and Islamic world.

The EU certainly faces major challenges. Its economic growth has been weak since the global financial crisis of 2008 and unemployment has been high in many of its Member States, with corrosive political and social consequences. There are continuing significant doubts about the durability of the Euro, and indeed about the EU itself as an over-enlarged and unworkable political

entity of currently 28 Member States, encompassing countries that are arguably too diverse in their levels of economic development and wealth.

Yet to what extent is such a negative view of the EU myth or reality?

There would appear to be a lack of public understanding about the EU itself in terms of both how it functions and about its impact on the UK as a Member State. The purpose of this contribution to the UK's 2016 Referendum debate on its continuing EU membership is to assist public understanding of these. Its focus, in particular, is on these salient issues and questions:

- *How does the EU operate constitutionally and in practice? To what extent has it been effective or otherwise as a political entity?*
- *To what extent has the EU impacted negatively or positively on the UK as a Member State? Does it have any significant achievements to its credit and what challenges and problems it has faced and currently faces?*
- *What sovereign powers has the UK conferred to and shared with the EU or could do looking forward? To what extent does membership of the EU impinge upon the UK's national sovereignty?*
- *Is the delegation of sovereign powers to the EU of benefit to the UK and its national interest or not?*

Under their Coalition Agreement in May 2010, the Conservative and Liberal Democrat parties in the UK committed in government to "ensure that there is no further transfer of sovereignty or powers [to the EU] over the course of the next Parliament". As part of this commitment, the UK Government conducted a comprehensive review between 2012 and 2014 of the relationship between the EU and the UK. Termed the "*Review of the Balance of Competences between the United Kingdom and the European Union*" ("*The EU Competences Review*"), this related to the "competences" over legislation and authority over areas of action allocated between the EU and its Member States, as established by Treaty between them.

As UK Foreign Secretary, William Hague emphasised the fundamental nature of *The EU Competences Review*:

It "will be an audit of what the EU does and how it affects us in the United Kingdom. It will look at where competence lies, how the EU's competences, whether exclusive, shared or supporting, are used and what that means for our national interest. These are issues that affect all EU member states and could have a bearing on the future shape of the EU as a whole."

The EU Competences Review is regarded as "the most comprehensive-ever assessment of the workings of the European Union", "very transparent, inclusive and far-reaching" and unprecedented in its scale and scope. Comprising 32 reports covering all significant areas where EU membership affects the UK, *The EU Competences Review* is comprehensive in its scope and supplemented by supporting written evidence from numerous sources, authoritative in their credentials to comment on EU related matters. *The EU Competences Review* adopted "a broader definition of competence",

encompassing “all the areas where the Treaties give the EU competence to act, including the provisions in the Treaties giving the EU institutions the power to legislate, to adopt non-legislative acts, or to take any other sort of action.”

The EU Competences Review is of crucial value to understanding the relationship between the EU and the UK as a Member State. However it has never been properly publicised nor its conclusions adequately evaluated. This contribution to the public debate on the UK’s 2016 EU Referendum, accordingly, draws upon *The EU Competences Review* as well as other evidence and sources.

This contribution also seeks to focus on the EU’s current and future effectiveness, beyond the actual outcome of the UK’s 2016 EU Referendum, with a view to a constructive, Europe wide debate about issues and problems fundamental to the future of the EU itself. These are of an institutional and structural character, in terms of how the EU functions constitutionally and practically, and are also of a medium and long term nature. In particular, these relate to the impact of EU legislation upon competitiveness and employment, on the requirement for further economic and political integration of those Member States having the Euro as their common currency and how this may affect the effectiveness of the EU as a single market and the political cohesion of the EU itself.

The EU’s Constitution and its Functioning

An informed public debate and a resulting decision on whether the UK should continue as a member of the EU need to be founded, above all, on a proper understanding of how the EU functions constitutionally and in practice.

The EU is a unique political entity internationally. Its creation and development are arguably unprecedented in human history, as an act of voluntary conferral or delegation of law making powers by sovereign states.

The EU is a complex and curious construct as a political entity. It is emphatically not a federal state but it is more than an inter-governmental organisation and has a legal personality. By agreement of and treaty between all its Member States, they have conferred or delegated to the EU authority and “competence” over certain specified areas, on both an exclusive and shared basis, where they have resolved that their common interests are best served by collective decision making at EU rather than national level.

The reality of the EU’s constitutional organisation and of its functioning, however, is that the EU’s Member States retain democratically accountable control over key and numerous areas of legislative and political decision making.

Beyond those agreed defined areas where the EU’s Member States have agreed and decided that policy matters should be determined at EU level, the EU enshrines in its treaty provisions, and in its spirit, the principles of “proportionality” and “subsidiarity”.

The principles of subsidiarity and proportionality are fundamental to the functioning of EU and to its decision-making. The principle of subsidiarity stipulates that where the EU does not have exclusive competence, it can only act if it is better placed than the Member States to do so because of the

scale or effects of the proposed action. It determines when the EU is competent to legislate, and contributes to decisions being taken as closely as possible to the citizen. Its objective is to determine the level of intervention that is most relevant in the areas of competences shared between the EU and its Member States. The principle of proportionality requires that the content and form of EU action must be limited to what is necessary to achieve the objectives of the Treaties. In this way, the EU's constitutional organisation and functioning recognise the authority of its Member States to determine how policy decisions appropriate to take and taken at EU level are actually implemented at national level, allowing for appropriate flexibility in this critical respect.

Constitutional and Practical Sovereignty

Notwithstanding the constitutional organisation and functioning of the EU both by treaty and in practice, concerns about the UK and EU Member States' national sovereignty, their control over law making and the EU's lack of democratic accountability are legitimate and need to be properly addressed. It should be acknowledged that membership of the EU entails a conferral of national sovereignty to EU institutions and of political authority to them in certain areas. In addressing such real concerns, consideration also needs to be given to the extent to which conferral of national sovereignty is significant and either negative or positive in relation to the UK's assessed national interests.

As highlighted below, the illuminating and important conclusions of *The EU Competences Review* are that there are relatively few areas in which the constitutional and practical limitations on the national sovereignty of the UK as an EU Member State could be considered as of concern or detrimental to the UK's assessed national interests.

Geopolitics and Globalisation

It is not possible to understand the EU in its creation and development without understanding its context in Europe's history.

The history of Europe up to 1945, throughout the centuries that preceded it and even from the collapse of the Roman Empire, can be characterised as one of continuous conflict, of rivalry for dominance by its major powers, both within Europe itself and globally, and with its composition as a multiplicity of smaller states and ethnic communities. The creation of Germany and Italy as nation states in the 19th Century and the new spirit of nationalism challenging the European empires in Eastern Europe, in particular Austro-Hungary, can be viewed as having culminated in the cataclysm of the two world wars in the 20th Century.

Out of the ruins of Europe in 1945, in the aftermath of the Second World War, there grew rapidly an intense and widespread conviction that Europe would recover and its future founded not on national rivalry and destructive nationalism but on collaboration and cooperation between democratic law-based nation states. A progressive integration of its economies would be the foundation for permanent peace within Europe, and the evolving unity of its peoples and societies.

This was the moral, political and spiritual inspiration for the eventual creation of the EU in the 1950's, in its original form as the European Steel and Coal Community.

At its deepest level, the creation of the EU was also a revelatory recognition and reflection of the underlying cultural and social unity of Europe, of its shared cultural, religious and humanist heritage, both Christian and Jewish as well as Moslem, and in terms of Europe's self-identity as the inheritors of Graeco-Roman civilization. From these are perceived to have developed, and been expressed politically, universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law.

In this crucial sense, the EU was not a creation of the Cold War and of a Europe divided by it. Its vision was not confined by and limited to this, but embraced potentially Europe in its totality.

Thus, with the end of the Cold War, the expansion of the EU and the progressive accession to it after 1990 of the countries of Eastern Europe has served an important geopolitical purpose. This has made a major contribution to strengthening the foundations of permanent peace in Europe. This has been achieved by ratification and recognition by treaty of the existing frontiers and the territorial integrity of Eastern European countries as sovereign states, and as a pre-condition for their accession to the EU.

Accelerating globalisation over the last 25 years since the end of the Cold War can be seen as further strengthening the long term geopolitical relevance of the EU. In particular, this relates to the facilitation of international trade agreements, including with China and India as emerging major world economies. Now comprising 28 Member States, with a combined population of over 500 million, the EU accounts for around one quarter of the world's Gross Domestic Product.

Globalisation can also be viewed as having led to the growing power of international capital, facilitated by the end of fixed exchange rates from the 1970's and the liberalisation of capital markets. These, in combination with the increasing importance of cross-border business activity, have increased global wealth dramatically, but have also resulted in growing inequality. They have arguably further resulted in a weakening of the influence and relative power of both state and civil institutions in relation to business and capital. In this context, globalisation may add a new dimension and relevance to the EU as a major cross-border political entity of global importance. This may give it the capability to meet the challenges in an effective manner of appropriate and necessary regulation, including in a cross-border context, and of good global governance, including in addressing problems of increasing inequality in incomes and wealth.

Conclusions in Detail

The conclusions arising out of this review of the UK's EU membership can be highlighted as follows:

- Membership of the EU entails a defined conferral and sharing of sovereignty on EU related matters, in particular in relation to its functioning as a Single Market.

- The UK's national sovereignty, however, is otherwise satisfactorily protected in its core and key areas, in particular on public expenditure and taxation as well as in defence, domestic and foreign policy areas.
- The EU's constitutional arrangements, in their principles of "subsidiarity" and "proportionality" additionally require that legislation is only made at EU level to the extent required for achieving the EU's objectives. These provide strong further protection for the UK's national sovereignty as an EU Member State.
- The EU's decision making and legislative process is highly consultative and consensual, with the UK's and other national parliaments having powers of scrutiny and decision as to whether EU draft legislation is consistent with its governing constitutional principles of subsidiarity and proportionality. Member State unanimous agreement is required on a range of key areas central to national sovereignty, including on defence and foreign policy actions at EU level. All EU level legislation is also required to be approved by the European Parliament, which has democratic legitimacy through direct election.
- While the EU's direction of development is towards closer political integration, and may be further necessitated by the problems of the Euro as a common currency, there is no inevitability or need for the UK either to join the Euro at any future date or participate in "an ever closer union" of EU Member States. This is compatible with the UK's continuing participation in the EU, and the UK already has a special status in the EU, in particular by being outside the Eurozone. Moreover, this has been reinforced, both for the long term and symbolically, by the EU's agreement in 2016 for the UK, as part of the EU, not to participate in any future further political integration by other of its Member States.
- Membership of the EU and its Single Market are of significant economic benefit to the UK. This is regarded as more than offsetting the cost of the UK Government's current annual net £8.5 billion financial contribution and regulatory costs to the UK, in particular to business, of EU membership.
- Should the UK leave the EU, it will nevertheless continue to have to comply with EU regulations in order to be able to export to it, but without being able to influence their development. Should it subsequently continue to participate in its Single Market, the UK will also continue to be required to make a financial contribution to the EU, and not necessarily significantly less than as a member of it. If the UK has continuing access to the EU's Single Market as a non member, it may further well be required to allow continuing EU labour migration into the UK and without restriction.
- The UK's practical sovereignty is enhanced by its participation in the EU, as it is for all its Member States. This relates to both the access it gives to the EU's Single Market and in terms of enhanced international influence through participation in the EU a leading global political entity.

- This is notwithstanding significant challenges which the EU faces. In particular, these relate to debt problems of the Eurozone, associated weak economic growth and high unemployment, exacerbated by restrictive employment legislation and high social security employment costs. Cohesion in international relations has also been lacking, as evident from the EU's disarray in response to the tragic human migration crisis from the strife torn Middle East and Islamic world. This has reinforced the EU's perceived ineffectiveness and popular anxiety about immigration into the EU. The political and social consequences of the EU's economic and financial difficulties have manifested themselves in popular disenchantment with and alienation from both EU and national institutions, with these and their political and connected business elites viewed as ineffective.
- While the EU may require reform, it has demonstrated a capacity to do so and to develop its institutions. Its Member States have acted to make them more accountable, democratic, effective and transparent. They have also committed to address and remedy problems arising from excessive bureaucratic burdens on business resulting from EU regulation.
- The balance of assessed advantage is that it is in the UK's national and best interests to remain within the EU. For the UK to leave the EU at this stage is unnecessary and would be both premature and reckless. It should continue as a member of the EU, contributing as an active participant both to its development and as a constructive critic. However, should membership of the EU prove not to be in the UK's national interest in due course, it can always resolve to leave the EU at some future stage. Sovereignty, the sovereignty of the people, is always inalienable.

2. The EU's Constitution and its Functioning

An understanding of the EU's constitution and how it actually functions is of fundamental importance to the debate about the UK's 2016 EU Referendum. It is central to an informed decision about whether the UK should continue as part of the EU and, in this context, also about the UK's position as a self-governing democracy and its national sovereignty.

For the purposes of the UK's EU Referendum debate, it is of value to show how the EU has developed over time and its legislative process, including the functions and powers of its institutions.

Development of the EU

The EU's development and growth since its foundation in the 1950's:

1950	France's Foreign Minister Robert Schuman proposal for the integration of Western Europe's coal and steel industries, leading to the Treaty of Paris in 1951 and the creation of the European Coal and Steel Community in 1952, as the precursor of and first stage in the ultimate creation of the EU
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1957	The Treaties of Rome, leading to the establishment of the European Economic Community (“EEC”) in 1958 by Belgium, France, Germany, Italy, Luxembourg and the Netherlands as its six founding Member States as well as the creation of the European Atomic Energy Community (“Euratom”)
1973	First Stage in the enlargement of the EEC from 6 to 9 Member States, with the accession of Denmark, Ireland and the UK
1986	The Single European Act, amending the EEC founding treaty, following its further growth from 9 to 12 Member States, with the accession of Greece in 1981 and Portugal and Spain in 1986, renaming it as the European Community in 1987 and providing for the completion of a Single Market
1992	The Treaty on European Union (the Maastricht Treaty), establishing the EU in 1993, increasing the role of the directly elected European Parliament in the EU’s decision-making and adding new areas of policy cooperation between its Member States at EU level
1995	Accession of Austria, Finland and Sweden, increasing the EU’s Member States from 12 to 15
1997	The Treaty of Amsterdam, with effect from 1999 and with principal areas of focus on strengthening the democratic legitimacy of the EU’s institutions by increasing the powers of the European Parliament, including through making the EU Commission more politically accountable to it, and through Justice and Security reforms, and in creating a common foreign and security policy role for the EU, and in the reform of the EU’s institutions to prepare them for the EU’s further envisaged enlargement
1999	Establishment of the Euro as a common currency for the EU, and now applying in 19 Member States
2001	The Treaty of Nice, with effect from 2003 modifying the functioning of the EU and its institutions in order to strengthen their effectiveness
2004	Accession of Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, increasing the EU’s Member States from 15 to 25
2007	The Treaty of Lisbon, with effect from 2009 modifying the EU’s decision making and voting rules, and developing the EU’s collective and international role, including through the creation of a President of the European Council; Accession of Bulgaria and Romania, increasing the EU’s Member States from 25 to 27
2013	Accession of Croatia, increasing the EU’s Member States from 27 to 28

The EU’s Constitutional Division of Competences

The EU 2007 Treaty of Lisbon, in its implementation embodied in the Treaty on the Functioning of the European Union, subsequent to this, and in conjunction with the Treaty on European Union (together the “Treaties”), govern how the EU functions constitutionally and in practice.

The Treaties are central to understanding the EU's constitutional functioning and to any assessment of the extent to which its Member States have voluntarily conferred and delegated sovereign powers to the EU. They specify the areas and the extent to which the EU's institutions have no competence and otherwise have authority or competence conferred on and delegated to them on the following basis:

- Exclusive;
- Shared with its Member States; and
- Supporting, with the ability to act granted to EU institutions in certain areas and under conditions laid down in the Treaties, and to support, coordinate or supplement the actions of EU Member States, without thereby superseding their competence in these areas.

No Competence

The Treaties state that areas not covered by them, and not relating to the EU's agreed areas of action and authority remain the exclusive competence of its Member States. These include key areas that are core to the continuing control over them by its Member States and their national sovereignty over them, including crucially:

- Government finances, including public expenditure, borrowing and taxation; and
- Defence, foreign policy and national security.

Exclusive Competence

The Treaties give the EU's institutions exclusive competence in the following areas:

- Customs union matters;
- Competition rules necessary for the functioning of the EU's internal market;
- Monetary policy for the Member States whose currency is the Euro;
- Conservation of marine biological resources under the common fisheries policy; and
- Common commercial policy.

In addition, the EU also has exclusive competence for international agreements where its Treaty arrangements give it authority to conclude agreements at EU level and on behalf of it (eg in relation to trade) or is necessary to enable the EU to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.

Shared Competence

The areas in which the EU and its Member States share competence are extensive and cover:

- The EU's internal market;
- Social policy, in particular areas specified by the Treaties;
- Economic, social and territorial cohesion;
- Agriculture and fisheries, excluding the conservation of marine biological resources;
- Environmental matters;
- Consumer protection;
- Transport and trans-European networks;
- Energy;
- Freedom, security and justice;
- Common safety concerns in public health matters, in particular areas specified by the Treaties.

The Treaties further provide for the EU's Member States to coordinate their economic and employment policies within arrangements as determined by them, and which the EU has competence to provide.

The Treaties allow for the EU to take a lead role in areas of shared competence, and for its Member States to exercise their competence to the extent that the EU has not exercised its competence. However, as emphasised, the Treaties also contain overriding provisions requiring the EU to act only in accordance with the principles of subsidiarity and proportionality as well as the EU's Charter of Fundamental Rights (such as freedom of expression and non-discrimination).

As explained, the principle of subsidiarity requires that where the EU and its Member States share competence, the EU can only act if it is better placed than the Member States to do so because of the scale or effects of the proposed action. Under the principle of proportionality, the content and form of EU action must not exceed what is necessary to achieve the objectives of the Treaties. In practice, these provisions constitute important limitations on the scope of EU action in practice in the areas of shared competence and important protections for Member States' control over them.

Supporting Competence

The Treaties also give the EU competence to take actions to support, coordinate or supplement those of its Member States in a number of areas, but without superseding their competence in them:

- Protection and improvement of human health;
- Industry, including the space sector;
- Culture and tourism;
- Education, vocational training, youth and sport;
- Civil protection; and
- Administrative cooperation.

The Treaties also empower the EU to undertake activities in parallel to those of its Member States in the areas such as development and humanitarian aid as well as scientific research.

The Treaties have additionally encharged the EU with a responsibility and role to define and implement a common foreign and security policy, including the progressive framing of a common defence policy. However this is supplemental to the continuing competence and sovereignty of the EU's Member States over defence, foreign and security policy. The institutional framework for the EU's role in these areas, as described below, furthermore requires unanimous Member State support for proposed action in these areas at a EU level.

The EU's Institutions and Legislative Process

The decision-making process by which the EU develops and determines legislative proposals and acts engages all its key institutions and its Member States is highly consultative and consensual:

The European Council

Comprising the Heads of State or Government of the EU Member States, the European Council defines the general political direction and priorities of the EU but it does not exercise legislative functions.

The European Commission

The European Commission (the "Commission") provides the administrative resources for the functioning of the EU, and is headed by Commissioners appointed by each Member State, and accountable to the European Parliament.

The Commission has the primary responsibility for developing legislative proposals. It has an obligation to prepare draft proposals in "Green Paper" form and to carry out wide-ranging consultations first in order to collect opinions from national and local institutions and from civil society organisations on the desirability of legislative proposals.

The Commission is obligated to accompany draft legislative proposals with a statement demonstrating compliance with the principles of subsidiarity and proportionality. It is required to provide draft legislation eight weeks in advance of decision-making consideration at EU level to the national parliaments of the EU's Member States in order to allow them to determine whether draft legislation complies with the EU's principles of and requirement for legislative subsidiarity and proportionality.

The EU's legislative process then requires "co-decision" approval of all EU legislation by both the Council of the European Union and by the European Parliament, termed as "the ordinary legislative procedure". The Commission and the Member States then implement them.

In addition, the Treaty of Lisbon also introduced new provisions to strengthen the powers and role of EU Member States' national parliaments to monitor the principle of subsidiarity, giving them the right to:

- Object to draft legislation and dismiss legislative proposals before the Commission if they consider that the principle of subsidiarity has not been observed;
- Contest a legislative act before the Court of Justice of the EU if they consider that the principle of subsidiarity has not been observed.

In establishing the Committee of the Regions, the Treaty of Lisbon also associates it with the monitoring of the principle of subsidiarity, similarly giving it the right to contest, before the Court of Justice of the EU, a legislative act that does not comply with the principle of subsidiarity.

The Council of the European Union

The Council of the European Union (the "Council"), known also as the Council of Ministers, comprises government representatives of each Member State. It provides political direction operationally for the EU, meeting as required on EU matters and to consider all EU related decisions and legislative proposals.

The Council's role encompasses:

- Negotiation and approval of EU legislation;
- Co-ordination of Member States policies;
- Development of the EU's common foreign and security policy;
- Conclusion of international agreements; and
- Approval of the EU's budget.

The Council's Role in the EU's Legislative Process

The Council's role in the negotiation and adoption of EU legislation is summarised below and its role in other areas is also described in the attached Appendix I.

- The Council is a central institution in the EU's legislative process. On the basis of proposals submitted by the Commission, it negotiates and adopts legislative acts, in most cases together with the European Parliament through the "ordinary legislative procedure", also previously known as 'co-decision'. This applies to policy areas where the EU has exclusive or shared competence with its Member States.
- Council decisions are required to be either unanimous, in certain cases, or by qualified majority, in most cases, or by simple majority:

Unanimous Approval

The EU's legislative process recognises a significant number of areas as of key importance to its Member States and requires unanimous approval by the Council in relation to these. In particular these include:

- Common foreign and security policy;
- Citizenship (the granting of new rights to EU citizens);
- Accession of new Member State to the EU;
- Harmonisation of national legislation on indirect taxation;
- EU finances (own resources, the multiannual financial framework);
- Justice and home affairs (certain provisions, including the European prosecutor, family law and operational police cooperation); and
- Harmonisation of national legislation in social security and social protection.

The EU's decision-making and legislative process also requires Council unanimity where it proposes amendments to draft legislation with which the Commission does not agree.

These decision-making and legislative provisions constitute important protections for the EU's Member States.

Qualified Majority Approval

In addition, EU legislation otherwise mostly relates to qualified majority approval by the Council. These require a 'double majority' with at least:

- 55% of member states vote in favour (in practice currently 16 out of 28); and
- such approval by Member States representing at least 65% of the EU's total population.

When the Council votes on a proposal not originating from the Commission or the EU's High Representative, adoption of a decision requires that:

- at least 72% of Council members vote in favour; and
- they represent at least 65% of the EU population.

Simple Majority Approval

Simple majority approval is required for and confined to Council decisions on:

- the Council's own governance, such as the adoption of its own rules of procedure and the organisation of its General Secretariat; and
- requests by the Council to the Commission to undertake studies or submit proposals.

Blocking Minority Provisions

The EU's legislative process also includes blocking minority provisions whereby at least four Council members representing more than 35% of the EU population can block proposed EU legislation.

The European Parliament

The role of the European Parliament has developed significantly and it is of key importance in the EU's governance and legislative process. With 751 Members, it is directly elected. The UK, together with other Member States, has taken a leading role in securing treaty changes in to strengthen its democratic role.

All EU legislation now requires to be approved by both the European Parliament, together as the Council, as already highlighted, on a "co-decision" basis under the "ordinary legislative procedure", based on legislative proposals made by the Commission. This greatly strengthens the democratic foundation and legitimacy of EU legislation. In this context, it can also be emphasised that the European Parliament has a wide range of additional legislative, supervisory and budgetary responsibilities and roles, as highlighted in the attached Appendix.

Legislation at EU level takes the form of either "rulings", required to be implemented uniformly across the EU, or "directives", which provide a basis for its Member States to determine how they should be implemented. This gives the EU's considerable flexibility in their implementation and most legislation at EU level is framed in "Directive" form.

The Court of Justice of the European Union

Ensuring EU law is interpreted and applied the same in every EU country; ensuring countries and EU institutions abide by EU law.

The role of the Court of Justice of the European Union (the "EU Court of Justice") relates purely to EU law in its interpretation and application. Its responsibility is to interpret EU law so that it is applied in a consistent manner in all EU countries. The EU Court of Justice also settles legal disputes between national governments of Member States and EU institutions. It can also, in certain circumstances, be used by individuals, companies or organisations to take action against an EU institution, if they consider that it has infringed their rights.

External Relations, Defence and Security

The Treaties have created the position of a High Representative of the Union for Foreign Affairs and Security Policy (the "High Representative"), who is appointed by the European Council and also holds the position of Vice-President of the Commission. The High Representative has responsibility at a EU level for relations with countries outside the EU. At the level of Heads of State or Government, the EU is represented by the President of the European Council.

The Treaties have additionally created The European External Action Service ("EEAS") to serve as a foreign ministry and diplomatic service for the EU under the authority of the High Representative.

The Council develops and takes decisions in the field of the EU's foreign and security policy on the basis of guidelines set by the European Council. The Commission, on the other hand, is responsible for trade policy and funding programmes for non-EU countries, such as development or

humanitarian aid. The Commission also represents the EU internationally in all areas of its competence outside foreign and security policy.

3. Constitutional and Practical Sovereignty

Constitutional Sovereignty

As evident from the foregoing exposition, the EU’s constitutional arrangements are complex. This is arguably inevitable, given the context of a Europe of numerous nation states with long histories of self-government and of deep and diverse cultures and languages. The development of the EU as an effectively functioning Single Market necessarily entails the creation of a European law based entity and, consequently, some measure of conferral or delegation of sovereignty by its Member States to EU institutions for the purposes of achieving its Member States’ collective objectives.

Given this context, it is hard to conceive of the EU’s constitutional arrangements and governance being shaped other than on a consultative, consensual and democratic basis. Indeed, and contrary to some public perception, the EU’s constitutional functioning can be seen as based on the principles of democratic accountability and transparency. Thus, as highlighted, all EU legislation requires consensual approval by the Commission, the Council and the European Parliament as its key institutions, including the latter as a directly elected political institution. The EU’s constitutional arrangements may be subject to criticism that they are bureaucratic, cumbersome and slow. At the same time, this can be viewed as not undesirable. These very characteristics are an important reflection of a democratic process and spirit underlying them and an important protection for the interests and sovereignty of the EU’s Member States.

As they govern the EU’s constitutional functioning, the Treaties contain significant legal and practical limitations on the transfer of sovereignty from national Member State to EU institutions in the nature of the EU’s law making powers and role:

Matters Central to Sovereignty	Member State Sovereignty Implications
<i>Areas of EU Competence</i>	
<i>None :</i> - eg government finances, defence and foreign policy	Core areas of national sovereignty satisfactorily protected
<i>Exclusive:</i> - eg customs union matters, competition and trade agreements	Fundamental to the EU as an effective Single Market and a necessary delegation of national sovereignty
<i>Shared:</i>	Relate to areas also central to the EU’s effectiveness as a Single Market, but subject to overriding

- eg, the EU's internal market, agriculture and fisheries, environmental matters, consumer protection, energy and transport	principles of subsidiarity and proportionality, which satisfactorily protect national sovereignty, and supplemented by national control and discretion in the actual implementation of EU "directive" legislation
<i>Supporting :</i> – eg education, health, industry, tourism and now also defence and foreign policy	Other areas of action by the EU advantageous and supporting, complementary to and not in conflict with national sovereignty; development of EU capability and role in defence and foreign policy desirable and imposes no limitations on national sovereignty in these areas, with this satisfactorily protected through actions requiring unanimous approval
<i>The Commission</i>	
Accountability, in particular, to both National Parliaments	National Parliament scrutiny and of approval of draft legislation for consistency with the principles of subsidiarity and proportionality constitute an important constraint on EU legislative action and a key protection to national sovereignty
<i>The Council</i>	
<i>Unanimous decisions :</i> - eg: EU finances, foreign and security policy, accession of new Member State to the EU, justice and home affairs, harmonisation of national legislation on indirect taxation, social security and social protection	Core areas of national sovereignty satisfactorily protected through requirement for unanimity in decisions and approval of legislation at the level of the Council (Council of Minister representatives of Member State Governments)
<i>Qualified Majority decisions and blocking minority provisions</i>	While all decisions taken by the Council were historically required to be unanimous, this has become unworkable with the enlargement of the EU to currently 28 Member States; the prevailing Qualified Majority requirements, in conjunction with those for approval also by the European Parliament of all EU legislation as well as the Council's blocking minority provisions constitute a measured basis for decisions-making and legislation at EU level
<i>The European Parliament</i>	
Approval of all legislation, EU budgets and EU scrutiny	The requirement for "co-decision" approval of all EU legislation, including EU budgetary matters, under the "ordinary legislative procedure" by both the Council and the directly elected European Parliament, and its

	scrutiny of EU matters, has greatly strengthened EU's democratic accountability and legitimacy; enhanced democratic approval of all EU legislation is in principle neutral in its impact on national sovereignty; however enhanced accountability and transparency, including in the EU's legislative process through National Parliament approval of draft legislation for subsidiarity and proportionality, can be considered as giving greater protection to national sovereignty
<i>The EU Court of Justice</i>	
Interpretation and implementation of EU legislation	Responsibility and role confined to these areas, which should be viewed as essential to the EU's effective functioning as a law based entity and not in conflict with national sovereignty other than over EU law

Practical Sovereignty

Practical sovereignty can be viewed as the extent to which influence and power are and can be extended through a conferral or voluntary limitation otherwise of legal sovereignty. In the areas where the UK and the EU's other Member States have voluntarily agreed to confer authority to its institutions, to what extent has this been advantageous or disadvantageous, or resulted in a cost or benefit to them? These crucial considerations require thorough evaluation for an informed national decision about whether it should remain in the EU in the context of its 2016 Referendum.

In this context and for these purposes, *The EU Competences Review* provides an authoritative view and on a comprehensive basis about the conferral of competence to the EU's institutions and the extent to which this has been advantageous and disadvantageous to the UK. Appendix II shows important observations arising out of *The EU Competences Review*, key conclusions of which can be highlighted as follows:

The Single Market

- The development of a single European market lies at the heart of the EU. Most studies indicate that the GDP of both the EU and the UK are significantly greater than they otherwise would be because of the economic integration already achieved from the EU's Single Market.
- The creation of a truly integrated single market is inevitably a long-term project, and liberalisation over the past twenty years has created a deeply integrated, but not perfect, Single Market. Much further liberalisation remains possible, and the UK should be particularly well placed to take advantage of this in services. Barriers to trade, both formal and informal, still remain, and standards of implementation and enforcement of legislation

vary greatly across the EU, continuing to constitute a significant barrier to the UK's ability to take advantage of the Single Market.

- Despite this and a burden of regulation brought by EU membership, there is a broad consensus that the Single Market has had an overall positive impact for the UK, based on economic benefits already achieved and on those potentially available to it in the future.

Taxation

- The EU's constitutional arrangements and practice clearly show that taxation is primarily a matter for its Member States to determine. The requirement for unanimity on EU decisions about taxation matters ensures continuing control for the UK over this key area of national sovereignty.
- EU-level action is appropriate where there is an internal market justification and the principles of subsidiarity and proportionality have satisfactorily been shown to be met. The EU's competence in taxation policy relates primarily to removal of obstacles to cross-border business. The harmonisation of the Value Added Tax regimes in the EU's Member States, for example, has ensured consistency in the internal market and facilitating cross border-trade.

Foreign, Defence and Security Policy

- Control over foreign, defence and security policy is fully at national level, with all significant EU decisions made by unanimity. Member States can also act unilaterally, or through other international organisations, not least NATO.
- While the EU's performance in the external sphere has been mixed and its organisational capability needs to be enhanced to improve its status as a global political entity, the world's largest aid donor, perceived political neutrality and capability to leverage its external action through a range of financial assistance programmes, brings enhanced influence to it and its Member States.
- Access to the EU's resources has been to the UK's advantage in working with and alongside the EU in acting externally and independently of it.

Energy

- The EU shares competence in energy with its Member States, primarily on Single Market related matters. EU action has been particularly concerned with:

- development of a competitive, liberalised cross-border and transparent energy supply market, with cross-border market access and greater integration of national markets;
 - protection of the environment and promotion renewable energy to address climate change and the fundamental relationship between energy use and generation, energy efficiency and greenhouse gas emissions; and
 - energy security, focusing on the development of the EU's energy infrastructure, in particular distribution interconnection between its Member States.
- The EU's role is viewed as having been effective and largely beneficial, including from a UK perspective.

Education

- From the early days of EU cooperation, education and youth policies were seen very much as national issues, and central to a country's culture and identity. From this starting point, the Treaties make clear that the organisation and delivery of education and training is a matter for Member States and that the EU has a limited, supporting role.
- From the UK's perspective, EU supporting action to encourage cross-border higher education has been to the benefit of its strong university institutions, attracting EU students to the UK and facilitating young people to study outside the UK.

Health

- Definition of health policy, management of health services and medical care and the allocation of resources are all Member State competences, and the EU has an extremely limited role in social care.
- Areas of shared competence relate to the single market and public health, where the EU's contribution has been positive (eg common licensing system in life sciences across, free trade in healthcare products, facilitated by common standards for product quality and safety and health related environmental standards).
- While there are areas of concern (eg in relation to the EU's Clinical Trials Directive and the application of its Working Time Directive on the NHS), these are considered amenable to satisfactory resolution from a UK perspective.
- Stakeholder conclusions are that the current balance of competence is considered broadly right and that health policy and the organisation and delivery of healthcare services should remain a Member State competence.

Civil Judicial Cooperation

- The Treaties have required the EU to develop judicial cooperation in civil and commercial matters (including family law) with cross-border implications, 'particularly when necessary for the proper functioning of the internal market'. The UK has an opt-in right, which it has exercised where advantageous and which protects the integrity of the UK's legal systems. This allows it to stand aside from any related EU proposed instrument, which it does not consider to benefit the UK or be compatible with its legal systems.
- From a UK perspective, the EU's provisions for civil law cooperation are viewed as having helped UK businesses and citizens by bringing certainty in setting out rules about which court will have jurisdiction in a dispute, which country's law will apply and for the mutual recognition and enforcement of judgments.
- From both UK and EU Single Market perspectives, EU wide civil judicial cooperation is viewed as having made a positive contribution in encouraging and supporting both cross-border trade and the free movement of persons.

4. Sense about Sovereignty

In reaching conclusions about the UK's 2016 Referendum debate on whether continuing membership of the EU is advantageous or disadvantageous for the UK, this contribution aims to clarify the extent to which the UK has conferred competence and seceded sovereignty to the EU as well as the resulting benefits and costs of EU membership to it. Its key conclusions are as follows:

Sharing of Sovereignty

The view that secession of sovereignty is undesirable is certainly legitimate. At the same time, it needs to be recognised that there are an increasing number of areas where self-governing states voluntarily limit their sovereignty in practical terms. Examples range from obligations imposed on sovereign states by membership of the United Nations and other international organisations to international agreements relating to the protection of the environment and human rights. Globalisation and increasing international interdependence can also be seen as leading to the further development of international law.

Secession of sovereignty in a EU context it can be viewed as follows:

- Membership of the EU clearly entails some secession of sovereignty. The conferral of competence to the EU can be regarded as overwhelmingly relating to the effective functioning of the EU as a Single Market.
- In numerous other areas of law making, however, where legislation at an EU level is not appropriate, national control is either mostly or totally unaffected. This applies to large

areas of domestic and social policy, in particular criminal and civil law, education health, social security and welfare policies.

- In all areas of EU and Member State law making, the principles of subsidiarity and proportionality, on which the EU's constitutional arrangements are founded, constitute an essential protection for the national sovereignty of its Member States.
- Additionally, by legally enforceable Treaty agreement, decisions on a range of key EU related matters (including the EU's finances and its enlargement) require unanimous agreement of its Member States, including the UK. Moreover, matters fundamental to national sovereignty, in particular public expenditure and taxation as well as defence and foreign policy, are stipulated as matters determined by the EU's Member States. While the development of defence and foreign policy roles at EU level may be regarded as having been ineffective to a significant extent to date, this does not negate its potential value and nor is it incompatible with national sovereignty over these key areas. This is further satisfactorily protected by requirement for unanimous agreement of Member States on defence and foreign policy matters at EU level.
- Most important of all, the UK's special status within the EU as non-Euro Member State has been reinforced, both for the long term and symbolically, by EU agreement in 2016. This protects the UK from participation in the Euro and in any proposed future further political integration of the EU towards ever closer union, while securing the UK's continuing position and rights within the EU.

The EU's Performance and Prospects

The creation of the Single Market can be regarded as the EU's biggest and most historic achievement. It is central to the fulfilment of the EU's mission, starting with the EEC's foundation in the 1950's, and its objectives of a free movement of goods, services, capital and people, in an initial customs union and towards an ever closer union of Europe's countries and peoples.

At the same time, the EU undoubtedly faces major challenges:

- There remain significant continuing barriers to trade for businesses between the EU's Member States. With a heritage of protectionism in Europe, the creation of the Single Market is inevitably a long-term project, and still in progress. In particular, cross-border barriers to market entry for many service businesses remain and require to be removed, although there has been significant progress in this area, much still needs to be accomplished in order to enable service businesses to trade throughout the EU.
- The EU's economic performance since 2008 has been adversely affected by fundamental flaws in the Euro, in its conception and in its financial sector and monetary policy regulation and supervision. There remain real risks about the Euro's durability, associated with the indebtedness of a number of the Eurozone Member States. Although the EU has taken

action to address these problems, and with resulting improvement in the Eurozone's growth and stability, it is recognised that the future sustainability of the Euro as an EU common currency may mean and necessitate further significant political integration and central supervision of the EU's banking and financial sector. In addition, the closer integration of some of its Member States, with the non-participation of theirs may create problems for the effective functioning of the EU's Single Market.

- The Euro linked economic and financial problems that the EU has experienced since 2008 have also arguably been compounded by prevailing employment and social security legislation and policy at both EU and Member State level, While aimed at protecting employee rights, these are perceived as in fact contributing to continuing high unemployment, particularly for young people in many EU Member States, because of high associated state social taxes and employment law rigidity.
- Despite the significant progress that has occurred in making the EU more accountable, democratic and transparent, the political and social consequences of the EU's economic and financial difficulties have arguably manifested themselves in popular disenchantment with and alienation from both EU and national institutions, with these and their political and connected business elites viewed as ineffective. The failure of the EU to act cohesively from 2015 in response to the tragic human migration crisis from the strife torn Middle East and Islamic world has both reinforced its perceived ineffectiveness and popular anxiety about immigration into the EU.

The Balance of Advantage

Taking into account the challenges confronting the EU, the balance of advantage for the UK of its membership of the EU can be assessed as follows:

- A significant majority of business and other informed commentators are of the clear view that the EU's Single Market is of appreciable advantage to the UK and all its Member States in economic terms. The long term, progressive development of market conditions of competitive transparency and integration of Europe's economies at a business level creates the context for continuing long term, sustainable economic growth within the EU Single Market. With its highly developed and strong services sector, the UK should be further expected to be a leading beneficiary from the continuing development of the Single Market and projected liberalisation of business and trade in services across the EU. Overall, such commentators regard the economic benefits of the UK's EU membership as more than offsetting disadvantages from secession of sovereignty and the financial costs of EU membership.
- These costs relate directly to the UK Government's financial contribution to the EU. This is estimated at equivalent to 0.6% of the UK's annual public expenditure and amounting to a current annual net £8.5 billion contribution to the EU, after significant payments back to the

UK under the EU's agriculture, science and technology research as well as regional and social programmes as well as from the UK's negotiated EU Budget rebate.

- In addition, EU Single Market related legislation has also resulted in increased bureaucratic burdens and costs for business. However, as already highlighted these have also arisen to a significant extent because of stringent ways in which the UK has chosen to implement EU Directive legislation. Nevertheless, the costs of bureaucratic burdens on business are capable of being addressed at both EU and national levels. Indeed, both the EU and the UK Government have committed to doing so.
- It is recognised that in the event of a withdrawal from the EU, the UK will nevertheless continue to have to comply with EU regulations in order to be able to export to it, but without being able to influence their development. Should the UK continue to participate in the EU's Single Market, it will continue to be required to make a financial contribution to the EU, and not significantly less than as a member of it. It may also well be required to allow continuing migration into the UK of EU labour.
- The creation of the EU's Single Market can be regarded as an important area in which the practical sovereignty of the UK, and indeed of all EU Member States, has been enhanced. The UK has played a key role in leading its development over 30 years since the Single European Act in 1986. The very fact the UK has influenced significantly the development of the Single Market and the resulting enhanced ability that it has to trade within the EU represents a practical enlargement of its sovereignty.
- In an international relations context, membership of the EU can in fact be regarded as having increased the UK's influence and hence its sovereignty in practical terms. Reflecting globalisation, the EU's developing role in international areas is of increasing relevance, its role in both trade relations and in defence and foreign policy context. The EU's role in role in engaging on country sanctions in relation to both Iran and Russia, for example, is seen to have been effective. The UK can be regarded as being able to extend its influence and practical sovereignty by acting through the EU. Its position as a leading member of the EU can also be considered as enhancing the UK's international influence and standing in acting independently on its own account.
- At the same time, the EU faces major challenges, and there is no guarantee that it will necessarily either succeed or survive. In addition to uncertainties about the sustainability of the Euro, the cost base of the EU's economies and state sectors may need to be reduced and the EU's Member States' social models reformed if their economies are to be competitive and successful in a global context. However, the EU has shown a capacity to reform its institutions, including in addressing excess production problems associated with its Common Agricultural Policy. It has developed considerable institutional strength since its foundation and its economies have good underlying resilience. While the EU may face a number of fundamental problems, it has continuing potential for successful future development.

- In the UK's 2016 Referendum on whether not to continue as a member of the EU, it can be considered premature and reckless for the UK to withdraw from a union with an assessed good balance of advantage for it the UK.
- For the UK to leave the EU at this stage is unnecessary and would be both premature and reckless. On the basis of this assessed balance of advantage, it can be considered to be in the UK's best interests to remain as part the EU, contributing as an active participant to its development and as a constructive critic where required. However, should membership of the EU prove not to be in the UK's national interest in due course, it can always resolve to leave the EU at some future stage. For, sovereignty, the sovereignty of the people, is always inalienable.

Robert Jenkins – 14 June 2016

Appendix I

European Union Institutions – Responsibilities and Roles

Council of the European Union

Coordination of Member States' policies in specific fields, including:

Economic and fiscal policies

- Strengthening economic governance in the EU, monitoring budgetary policies and strengthening the EU's fiscal framework as well as dealing with the legal and practical aspects of the Euro, financial markets and capital movements;

Education, culture, youth and sport

- Adoption of EU policy frameworks and work plans, setting out the priorities for cooperation between Member States and the Commission;

Employment policy

- Drawing up of annual guidelines and recommendations for Member States, based on European Council conclusions on the EU employment situation;

Development of the EU's common foreign and security policy

- Formulation and implementation of EU foreign and security policy on the basis of guidelines set by the European Council, including the EU's development and humanitarian aid, defence and trade policies;
- Together with the EU's High Representative for Foreign Affairs and Security Policy, ensuring the unity, consistency and effectiveness of the EU's external action;

Conclusion of international agreements

- Covering broad areas, such as trade, cooperation and development and specific areas such as textiles, fisheries, customs, transport, science and technology
- Providing the mandate to the Commission to negotiate on behalf of the EU agreements between the EU and non-EU countries and international organisations and deciding on the conclusion of agreements, together with the European Parliament, subject to ratification by all EU Member States

Approval of the EU budget

- Annually, on a calendar year basis, together with the European Parliament.

The European Parliament

Legislative

- Deciding on international agreements;
- Deciding on and enlargement of the EU;
- Reviewing the Commission's work programme and asking it to propose legislation;

Supervisory

- Democratic scrutiny of all EU institutions;
- Electing the Commission President and approving the Commission as a body, with the power to vote motions of censure, including to oblige the Commission to resign;
- Approving EU budgets expenditure;
- Examining citizens' petitions and setting up inquiries;
- Reviewing monetary policy with the European Central Bank;
- Questioning the Commission and the Council;
- Conducting observations of elections;

Budgetary

- Establishing the EU budget, together with the Council;
- Approving the EU's long-term budget, the "Multiannual Financial Framework".

Appendix II

Review of the Balance of Competences

The UK Government's comprehensive review of how membership of the EU affects the UK, and with the participation of numerous external authoritative stakeholders, the *Review of the balance of Competences*, comprised 32 reports. This included assessment of how this affected the UK's national sovereignty across all areas of government as well as of business and civil society.

The following sets out some key observations arising from a number of these reports:

The Single Market

- The development of a single European market, based on the free movement of goods, services, people and capital (the Four Fundamental Freedoms), lies at the heart of the EU. It has driven its growth and prosperity and it should continue to do so.
- Most studies indicate that the GDP of both the EU and the UK are significantly greater than they otherwise would be because of the economic integration already achieved from the EU's Single Market.
- The creation of a truly integrated single market is inevitably a long term project. Subsequent liberalisation over the past twenty years has created a deeply integrated, but not perfect, Single Market. Much further liberalisation remains possible, and the UK should be particularly well placed to take advantage of this in services. However many barriers to trade, both formal and informal, still remain. Standards of implementation and enforcement of legislation vary greatly across the EU, and still continue to constitute a significant barrier to the UK's ability to take advantage of the Single Market. Despite this and a burden of regulation brought by EU membership, there is a broad consensus that that the Single Market has had an overall positive impact for the UK, based on economic benefits already achieved and on those potentially available to it in the future.

Taxation

- The EU's constitutional arrangements and practice clearly show that taxation is primarily a matter for its Member States to determine. EU-level action is appropriate where there is a internal market justification and the principles of subsidiarity and proportionality have satisfactorily been shown to be met. The EU's competence in taxation policy relates primarily to removal of obstacles to cross- border business.
- Key examples of particular benefits from this have been the harmonisation of the Value Added Tax regimes in the EU's Member States, ensuring consistency in the internal market and facilitating cross border-trade. The development of a common system of taxation applicable to cross-border reorganisations of companies situated in two or more Member

States has also been beneficial in creating a level playing field in the taxation of such transactions.

- At the same time, the requirement for unanimity on EU decisions about taxation matters ensures continuing control for the UK over this key area of national sovereignty.

Foreign, Defence and Security Policy

- Control over foreign, defence and security policy is fully at national level, with all significant EU decisions made by unanimity. Member States can also act unilaterally, or through other international organisations, not least NATO.
- In developing a role and capability at EU level for external action in these areas, the EU's effectiveness has been mixed, and there is also scope for tension between EU policy, albeit unanimously agreed, and Member States. This reflects also the complex institutional and legal framework that has been created in developing the EU's capability and role in the foreign, defence and security policy sphere. The EU's organisational capability and coordination are evaluated as needing to be enhanced in order for the EU to be effective in an intentional role.
- Nevertheless, where, effective, external action at EU level can bring enhanced influence internationally, both at EU level and for Member States. This reflects the EU's status as leading global political entity as well as its perceived neutrality, giving it assessed comparative advantage in areas international trade agreements.
- An intrinsic part of the EU's value added in foreign policy is the integration of multiple policy instruments. It has the capability to combine with its diplomatic and security tools a wide range of policy instruments: political, economic, development, and humanitarian. The EU leverages its external financial assistance in these areas, and as the largest aid donor in the world, in order to achieve other objectives (eg in trade agreements and on human rights). Good examples where the EU's external action is considered to have been effective include its engagement with the Balkan states of the former Yugoslavia and Myanmar (Burma).
- The UK has been able to extend its influence in international relations by working through the EU, and the benefit to its engagement with both the US and China are considered notable examples of this. Its membership of the EU gives the UK the opportunity to leverage its own diplomatic resources through access to the EU's significantly greater financial and other resources that it can deploy in pursuit of foreign policy related objectives.

Energy

- Competence is shared between the EU and its Member States and the EU. However, the EU's competence is restricted as the adoption of measures which: 'affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply' is prohibited.

- The EU's competence and role in energy relates primarily to the EU's development as a Single Market, focusing on the key contribution that reliable and affordable energy has to make to driving and underpinning the EU's competitiveness and economic growth, with an increased focus on energy prices and the role of competitive markets, greater inter-connection and action to improve energy efficiency to help lower costs and reduce energy demand, in particular:
 - the development of a competitive, cross-border and transparent energy supply market, including its liberalization, with cross-border market access and greater integration of national markets;
 - protection of the environment and the promotion of measures to tackle climate change addressing the fundamental relationship between energy use and generation, energy efficiency and greenhouse gas emissions; and
 - energy security, in the context of international supply disruption risks, focusing on the development of the EU's energy infrastructure, in particular distribution interconnection between its Member States.
- The EU is viewed as having been effective in leading the development of a liberalised, transparent, cross-border Single Market in energy and of investment to enhance the EU's energy distribution infrastructure as well as in the development of renewable energy area. It has acted to address air pollution impacts of energy generation, to promote deployment of renewable energy technologies and improvements in energy efficiency in order to reduce greenhouse gas emissions to meet the EU's climate change objectives.
- The EU internal energy market legislation is viewed as a fundamental element of EU energy policy and one that has delivered significant benefits for the UK. It had provided: a common framework in which businesses can operate; increased competition to the benefit of the consumer, facilitated cross-border trading, enhanced interconnection and improved security of supply.
- From a UK perspective, the EU's exercise of shared competence has had significant benefits, including: a level-playing field for competition within the Single Market, greater ambition on renewables and energy efficiency than would otherwise have been the case, removal of planning and regulatory barriers for investment in energy infrastructure; support for innovation and research, greater influence in international negotiations and through establishing long term policy frameworks that aided investment decisions.

Education

- From the early days of EU cooperation, education and youth policies were seen very much as national issues, and central to a country's culture and identity. From this starting point, the Treaties make clear that the organisation and delivery of education and training is a matter for Member States and that the EU has a limited, supporting role.
- From the UK's perspective, EU supporting action to encourage cross-border higher education, for example under its Erasmus programme, has been to the benefit of its strong

university institutions, attracting EU students to the UK and facilitating young people to study outside the UK.

- Vocational training is an area of education where the EU's role may develop in future, as this relates to the mobility of labour as an essential foundation of the EU's Single Market.

Health

- Definition of health policy, management of health services and medical care and the allocation of resources are all Member State competences, and the EU has an extremely limited role in social care.
- Areas of shared competence relate to the single market and public health, where the EU's contribution has been positive (eg common licensing system in life sciences, free trade in healthcare products, facilitated by common standards for product quality and safety, tobacco control policy and health related environmental standards).
- Areas of concern relate to the EU's Clinical Trials Directive need to ensure that non-health EU legislation does not have an adverse effect on the NHS, in particular its Working Time Directive, and EU Court of Justice decisions relating to freedom to obtain services and free movement of people and their impact on the NHS. However these should be amenable satisfactory resolution from a UK perspective.
- Stakeholder conclusions are that the current balance of competence is considered broadly right and that health policy and the organisation and delivery of healthcare services should remain a Member State competence.

Civil Judicial Cooperation

- The Treaties have required the EU to develop judicial cooperation in civil and commercial matters (including family law) with cross-border implications, 'particularly when necessary for the proper functioning of the internal market'. The UK, along with Ireland, has an opt-in right, and has chosen to exercise this where it has considered it appropriate. Crucially, the UK's opt-in in civil legal matters is viewed as having protected the integrity of the UK's legal systems, since it allows it to stand aside from any related EU proposed instrument, which it does not consider to benefit the UK or be compatible with its legal systems.
- The EU's provisions for civil law cooperation have brought certainty over how commercial and family law disputes are resolved, From a UK perspective, this is viewed as having helped UK businesses and citizens by setting out rules about which court will have jurisdiction in a dispute, which country's law will apply and for the mutual recognition and enforcement of judgments. From both UK and EU Single Market perspectives, EU wide civil judicial cooperation is viewed as having made a positive contribution in encouraging and supporting both cross-border trade and the free movement of persons.