



HOUSE OF LORDS

European Union Committee

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17th Report of Session 2017–19

# **UK-EU relations after Brexit**

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Ordered to be printed 5 June 2018 and published 8 June 2018

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Published by the Authority of the House of Lords

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Evidence is published online at <https://www.parliament.uk/post-brex-it-uk-eu-relations-lords-inquiry> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

## SUMMARY

There are two distinct elements to the Brexit negotiations. The first element, governed by Article 50 TEU, is about withdrawal, about bringing a 45-year relationship to an end. The second element is about constructing a new relationship between the UK and the EU that will deliver lasting benefits to both sides.

The two elements demand different mindsets, but so far a negative mindset has dominated. Both sides have focused on ‘red lines’, closing off rather than opening up the options for establishing a fruitful and lasting relationship.

It is now time for the two sides to start identifying beneficial outcomes and areas of mutual interest. But benefits will come at a cost, entailing economic and political trade-offs. Both sides may need to compromise on their ‘red lines’: there is no ‘free lunch’ either for the UK or the EU.

From the UK’s perspective, the greater the benefits sought from the new relationship, the greater the compromises that will be needed. Various models for future UK-EU relations have been proposed, which are helpful in clarifying the options open to the UK, though they should not be allowed to dictate the terms of the negotiations. We note the European Parliament’s advocacy of a UK-EU Association Agreement, and suggest that UK commitment to such a dynamic and evolutionary partnership could bring a positive change in the tone and language of the negotiations.

But time is short: in a matter of weeks the framework for future UK-EU relations will have to be finalised, if it is to be annexed to the October European Council conclusions in the form of a political declaration. We are concerned at the delay and uncertainty that has surrounded the Government’s development of detailed, workable proposals, and emphasise the critical importance of bringing such proposals forward in time to influence the drafting of the declaration.

Given the closeness of the referendum result, only an inclusive vision for future UK-EU relations, commanding broad support, will be acceptable or durable. The Government’s vision must also speak to the EU: this means using the language of partnership, and accepting that compromises will be necessary.

In summary, therefore, the Government’s forthcoming White Paper will be judged against the following key principles:

- It should focus on achieving benefits from the future UK-EU relationship, rather than on defending ‘red lines’;
- It should identify and build on areas of mutual UK and EU interest;
- It should acknowledge that the benefits to be realised by means of the new relationship will come at a cost, requiring compromises and trade-offs;
- It should express an inclusive vision of future UK-EU relations, commanding broad support;
- It should use the language of partnership between the UK and the EU, and should acknowledge the potential evolution of the EU post-Brexit.

The EU will then need to reciprocate, moving beyond the language of ‘cherry-picking’ to a genuine acknowledgement of the importance to the EU of a close and lasting partnership with the UK.



# UK-EU relations after Brexit

## CHAPTER 1: INTRODUCTION

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### Leaving the EU and forging a new partnership

1. On 23 June 2016 the people of the United Kingdom voted on the question, “Should the United Kingdom remain a member of the European Union or leave the European Union?”<sup>1</sup> When the results were announced, 51.9% of voters had opted to leave the EU, and 48.1% had opted to remain.
2. The referendum presented a binary choice, and the result, though clear, was close. But while the ‘remain’ option, the status quo of EU membership,<sup>2</sup> was a known quantity, the meaning of ‘leave’ was and remains open to interpretation.
3. In reality there are two distinct elements to the Brexit negotiations. The first relates to the simple fact of the UK leaving the EU, and is governed by Article 50 of the Treaty on European Union (TEU). The second relates to the negotiation of the terms of a new relationship, which will be completed by the UK as an independent, non-EU state, and by the EU under a different legal base.<sup>3</sup> The first element is about bringing a 45-year relationship, and the associated obligations, to an end. The second is about constructing a relationship that will deliver lasting benefits to both sides. The two elements demand different mind-sets, yet are inseparable: as Article 50 TEU states, the agreement on withdrawal must take account of the framework for the UK’s future relationship with the Union.
4. This report argues that the UK and the EU have approached the negotiations with too great an emphasis on the dismantling of existing relationships. They have focused on ‘red lines’ and guidelines, on what is unacceptable, increasing the risk that they will be left without agreement on the future relationship.
5. The United Kingdom and the rest of Europe are geographically, economically and culturally intertwined. The EU contains the UK’s closest allies, and is its most important economic partner; nor can the EU afford to overlook a key neighbour and ally, with a population of more than 60 million. Yet time is running out, and the two sides now urgently need to focus on the potential benefits of a close, lasting partnership. Achieving such benefits will require compromises—but these will be well worth it if they contribute to increased prosperity across Europe, to continuing cooperation in the fight against terrorism, and to the maintenance of political stability in Northern Ireland.
6. This report seeks to identify both the high-level benefits that could derive from the new relationship, and the associated compromises. It draws on the positions adopted thus far by the Government (chiefly in the form of the Prime Minister’s speeches), the European Council (in its March guidelines) and the European Parliament (in its March resolution). It is thus no more than

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1 The terms of the question are set out in the European Union Referendum Act 2015, [section 1](#).

2 The ‘remain’ option was predicated upon implementation of the ‘New settlement for the United Kingdom within the European Union’, adopted by the European Council in February 2016; this agreement lapsed following the referendum result, ([OJ C 69 1](#), 23 February 2016).

3 Treaty on European Union, [OJ C 326](#) (consolidated version of 26 October 2012)

a snapshot, and we are conscious that the publication by the Government of a White Paper on future relations with the EU may take the debate beyond some of our initial findings. But given the uncertainty over when this White Paper will appear, we have decided to take this opportunity to identify the key principles that we believe should underpin the Government's approach to the negotiations. Once the White Paper has been published, we shall test it against those principles.

### **The present inquiry**

7. This report is the outcome of a short inquiry undertaken by the European Union Select Committee.
8. Chapter 2 compares the objectives set out in public statements by the two sides, and their respective 'red lines'. Chapter 3 looks in more depth at the benefits sought by the two sides, while Chapter 4 considers the institutional and legal structures within which they could be delivered. Chapter 5 looks at the negotiations themselves, and the process by which the UK and the EU, in the limited time available, could achieve a successful outcome.
9. **We make this report to the House for debate.**



## CHAPTER 2: THE SCOPE OF THE FUTURE UK-EU RELATIONSHIP

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### Compare and contrast

10. Both sides have acknowledged the desirability of establishing a strong UK-EU relationship. The Prime Minister has stated her desire for a “positive and constructive”, or “deep and special” partnership with the EU.<sup>4</sup> The European Council has stated its determination “to have as close as possible a partnership with the UK in future”, while warning that the UK’s “repeatedly stated positions” may “limit the depth of such a future partnership”.<sup>5</sup>
11. The two sides have also identified benefits that they would like to achieve by means of this future partnership—though without so far agreeing to any great extent on the mechanisms for delivering these benefits. Table 1 compares the benefits that the UK Government (in particular as set out in the Prime Minister’s speech at the Munich security conference on 17 February 2018 and in her Mansion House speech on the future economic partnership with the EU of 2 March 2018), the European Council (in its guidelines adopted on 23 March 2018) and the European Parliament (in its resolution of 14 March 2018)<sup>6</sup> have identified. We will seek to produce updated versions of this table as more detail on the positions of the UK Government and the EU institutions emerges, notably once the Government’s White Paper on future UK-EU relations is published. Benefits are colour-coded as follows:
  - Green is used where there is broad agreement both on the desired outcome and the means of achieving it;
  - Yellow is used where there is agreement on the outcome but disagreement on the means;
  - Red is used where clear disagreements have emerged, either on outcomes or means;
  - White is used where there is insufficient evidence to assess the prospects for agreement.

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4 Rt Hon Theresa May MP, speech on ‘The Government’s negotiating objectives for exiting the EU,’ 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 24 May 2018]; Rt Hon Theresa May MP, speech on ‘new era of cooperation and partnership between the UK and EU’, 22 September 2017: <https://www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu> [accessed 24 May 2018]

5 European Council, ‘European Council (Art. 50) guidelines on the framework for the future EU-UK relationship’, 23 March 2018: <http://www.consilium.europa.eu/en/press/press-releases/2018/03/23/european-council-art-50-guidelines-on-the-framework-for-the-future-eu-uk-relationship-23-march-2018/> [accessed 24 May 2018]

6 European Parliament, ‘Guidelines on the framework of future EU-UK relations’, 14 March 2018: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0069+0+DOC+PDF+V0//EN> [accessed 6 June 2018]

**Table 1: Comparison of the UK Government, European Council and European Parliament's positions on future UK-EU relations (5 June 2018)**

Issue	UK Government position	European Council position	European Parliament position
<b>Cross-cutting issues</b>			
Dispute resolution/enforcement	The jurisdiction of the CJEU in the UK must end: instead an independent arbitration mechanism, resolving disagreements fairly and promptly. 'Respect the remit' of the CJEU in some, limited, spheres.	Governance to address management and supervision, dispute settlement and enforcement, including sanctions. Must respect the autonomy of the EU legal order, including the role of the CJEU.	A robust dispute settlement mechanism and governance structures. Must fully preserve the autonomy of the EU's decision-making and legal order, including the role of the CJEU.
Regulatory cooperation	Cooperation between regulators.	A framework for voluntary regulatory cooperation.	Regulatory cooperation should have a specific focus on SMEs, and be voluntary.
Data protection	Data protection arrangement with more depth than an adequacy arrangement, and with an appropriate ongoing role for UK Information Commissioner's Office.	Data protection should be governed by EU rules on adequacy, ensuring a level of protection equivalent to that of EU.	An adequacy decision is the preferred and most secure option. The UK must provide a level of data protection that is as robust as Union data protection rules.
Free movement	End to free movement, but maintenance of opportunities for UK and EU citizens to work and study in each other's territories.	Movement of natural persons, based on full reciprocity and non-discrimination.	Specific provisions on the movement of persons.
Social and employment rights	The UK will not engage in a race to the bottom in workers' rights; employment rights will keep pace with the changing labour market.	A level playing field in the provision of social protection.	A level playing field in provision of social and workers' rights.
EU agencies	UK to remain part of some EU agencies (including Medicines, Chemicals and Aviation Safety) through associate membership, abiding by their rules, respecting the remit of the CJEU where relevant, and making an appropriate financial contribution.	Autonomy of EU decision-making excludes participation of the UK in the decision-making of EU bodies, offices and agencies.	As a general rule the UK cannot as a third country participate in or have access to EU agencies, though this does not exclude cooperation in specific cases.
<b>Economic relations</b>			
Future economic relationship	Economic partnership, covering more sectors and co-operating more fully than any FTA.	A balanced, ambitious and wide-ranging FTA. This cannot offer the same benefits as EU Membership.	UK membership of the internal market and the customs union is the best option, but current UK position is only compatible with a trade agreement.

<b>Issue</b>	<b>UK Government position</b>	<b>European Council position</b>	<b>European Parliament position</b>
<b>Trade in goods</b>			
Trade in goods	Zero tariffs or quotas, and one set of regulatory approvals (through associate membership of some regulatory agencies).	FTA should cover all sectors and seek to maintain zero tariffs and no quotas, with appropriate rules of origin.	UK position is only compatible with a trade agreement.
Product standards	Reciprocal binding commitments (including to keep standards as high as EU) to ensure fair and open competition. Equivalence of regulatory outcomes, overseen by an independent mechanism. Comprehensive system of mutual recognition.	A combination of rules and mechanisms to ensure effective implementation domestically, enforcement and dispute settlement mechanisms, to preserve 'level playing field'.	A level playing field in relation to international standards and EU policies, together with a clear enforcement mechanism and governance structure, access to justice and a proper complaints mechanism for citizens and NGOs.
Customs	Customs agreement through either a UK-EU customs partnership, or a highly streamlined customs arrangement.	Appropriate customs cooperation, preserving the regulatory and jurisdictional autonomy of the parties and integrity of the EU customs union.	The UK's position will lead to customs checks and verification, even if tariff barriers can be avoided.
Agriculture	The UK will leave the CAP, but environmental standards will remain at least as high as the EU's. Maintenance of open markets for each other's produce.	Disciplines on sanitary and phytosanitary measures.	Access to the EU market in food and agricultural products is conditional on strict compliance with all EU law and standards.
Environment/ climate change	Environmental standards will remain at least as high as the EU's.	The future partnership should address climate change and sustainable development, as well as cross-border pollution.	The UK should remain fully aligned with current and future EU legislation; if not, there should be safeguards and mechanisms to ensure close cooperation and high standards.
Fisheries	The UK will leave the CFP, but will work with the EU to manage shared stocks and to agree reciprocal access, while ensuring a fairer allocation of fish to the UK fishing industry. Maintenance of open markets for each other's produce.	Existing reciprocal access to fishing waters and resources should be maintained.	A 'novel bilateral partnership' covering access to waters and resources and sustainable management of shared stocks. Access to the EU domestic market must be conditional on access for EU vessels to UK fishing grounds, and cooperation in management of shared stocks.

<b>Issue</b>	<b>UK Government position</b>	<b>European Council position</b>	<b>European Parliament position</b>
<b>Trade in services</b>			
Trade in services	New barriers should only be introduced where absolutely necessary.	FTA to cover trade in services, to the extent consistent with the UK becoming a third country.	Under a FTA market access for services is limited and subject to exclusions, reservations and exceptions.
Cross-border service provision	Enable UK firms to set up in the EU and vice versa, and agree an appropriate labour mobility framework.	Allow market access to provide services under host state rules, consistent with the UK becoming a third country.	Reciprocal market access in full compliance with WTO rules and with EU rules on equal treatment.
Qualifications	Mutual recognition of qualifications.	Mutual recognition of qualifications.	No specific reference.
Financial services	Include financial services in a FTA, based on maintenance of the same regulatory outcomes over time, alongside an enforcement mechanism.	Safeguard financial stability in the EU and respect its regulatory and supervisory regime and standards.	UK will lose passporting rights for financial services. Prudential carve-out and limitations in the cross-border provisions of financial services are normal in FTAs.
Corporate taxation	No specific reference.	No specific reference.	The UK (and its dependent territories) should adhere to EU laws on taxation and anti-money laundering.
Energy	Protect the single electricity market in Ireland/ Northern Ireland; explore UK participation in EU internal energy market (IEM); close association with Euratom.	No specific reference.	Possible third-country arrangement, respecting the integrity of the IEM and contributing to energy security. UK to comply with nuclear safety standards.
Transport	Continuity of maritime and rail services, and mutual access for road hauliers.	Agreements on transport, ensuring a level playing field.	Market access conditional on regulatory convergence and alignment. Possible cooperation on transport projects.
Aviation	Continuity of air services. Membership of the European Aviation Safety Agency.	Air transport agreement, with aviation safety and security arrangements.	Agreements on air transport and aviation safety.
Digital	The UK will not be part of the Digital Single Market but will seek domestic flexibility to respond to new developments.	No specific reference.	No specific reference.

<b>Issue</b>	<b>UK Government position</b>	<b>European Council position</b>	<b>European Parliament position</b>
Civil justice cooperation	A broader agreement going beyond the Lugano Convention, covering company law and intellectual property.	Options for judicial cooperation in matrimonial, parental responsibility and other related matters, and protection of intellectual property rights, including geographical indications	No specific reference.
Competition/ State aid	UK may remain in step with EU regulations on State aid and competition.	A level playing field, including in competition and State aid.	A level playing field, including in competition and State aid.
Public procurement	No discrimination between UK and EU service providers.	FTA to address access to public procurement markets.	Reciprocal market access based on full compliance with WTO rules on public procurement.
Science and innovation	UK to participate in EU programmes and make an ongoing financial contribution.	Participation of the UK in programmes subject to third country rules.	UK participation as a third country; no net transfers from the EU budget to the UK; no decision-making role for the UK.
Education and culture	UK to participate in EU programmes and make an ongoing financial contribution.	Participation of the UK in programmes, subject to third country rules.	Cooperation, including through programmes such as Erasmus or Creative Europe.
<b>Security</b>			
Internal security	A new security treaty that preserves operational capabilities, respects the sovereignty of the UK and EU legal orders, includes a dispute resolution mechanism and data protection arrangements. It should retain the benefits of the European Arrest Warrant, Europol, the Schengen Information System II and the processing of passenger data.	Law enforcement and judicial cooperation in criminal matters, taking into account that the UK will be a non-Schengen third country, covering information exchange, operational cooperation between law enforcement authorities, and judicial cooperation in criminal matters. Safeguards to protect fundamental rights and enforcement and dispute settlement mechanisms.	Continued security cooperation, avoiding disruption of information flows. Third-country arrangements on judicial cooperation on criminal matters, extradition and mutual legal assistance. Non-Schengen third-country arrangements on exchange of security-relevant data and operational cooperation with EU bodies and mechanisms such as Europol and Eurojust. Safeguards for fundamental rights, data protection standards, and effective enforcement and dispute settlement.

Issue	UK Government position	European Council position	European Parliament position
External security	Foreign and defence policy cooperation, including consultation and coordination, in particular on sanctions; continued coordination and operational delivery on the ground; possibility of UK contributions (including financially) to EU development programmes and instruments. In return, the UK to play an appropriate role in shaping collective actions.	Cooperation in foreign, security and defence policy, respecting the autonomy of the EU's decision-making, and that the UK will be a third country. Should include appropriate dialogue, consultation, coordination, exchange of information, and cooperation mechanisms. Security of Information Agreement to allow for the exchange of information.	As a third country UK will not be able to participate in the EU's decision-making. Consultation mechanisms to allow the UK to align with EU actions and positions. Support for sanctions coordination. UK could participate in EU missions etc (but with no lead role), the sharing of intelligence, training and exchange of military personnel, and collaboration on armaments policy. Security of Information Agreement to allow for the exchange of information.
Defence	A future relationship with the European Defence Fund and European Defence Agency.	No specific reference.	UK third country participation in defence and external security programmes, including the European Defence Fund.
Cybersecurity	UK to participate in European capability development in cyber.	No specific reference.	Third-country arrangements in electronic communications, cybersecurity and ICT.
Space	UK to participate in European capability development in space. Continued collaboration, including in the development of the Galileo programme.	No specific reference by the European Council, but Commission has said that third countries "cannot participate" in security-sensitive matters.	Third country participation in the EU space programmes, including Galileo, without any net transfers from the EU budget to the UK, or any decision-making role for the UK.
Development and aid	No specific reference.	No specific reference.	Cooperation in development and aid would be mutually beneficial.

Key: **Green**=broad agreement both on the desired outcome and the means of achieving it; **Yellow**=agreement on the outcome but disagreement on the means; **Red**=clear disagreements have emerged, either on outcomes or means; **White**=insufficient evidence to assess the prospects for agreement

Source: Rt Hon Theresa May MP, speech on 'The Government's negotiating objectives for exiting the EU,' 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 24 May 2018]; Rt Hon Theresa May MP, speech on 'new era of cooperation and partnership between the UK and EU', 22 September 2017: <https://www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu> [accessed 24 May 2018]; European Council, 'European Council (Art. 50) guidelines on the framework for the future EU-UK relationship, 23 March 2018: <http://www.consilium.europa.eu/en/press/press-releases/2018/03/23/european-council-art-50-guidelines-on-the-framework-for-the-future-eu-uk-relationship-23-march-2018/> [accessed 24 May 2018] and European Parliament, 'Guidelines on the framework of future EU-UK relations', 14 March 2018: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0069+0+DOC+PDF+V0//EN>

12. The amount of yellow shading in Table 1 illustrates both the common ground between the UK and the EU, and the distance. The two sides agree in desiring continued cooperation in trade, security and culture, but there is minimal agreement on how to deliver these cardinal outcomes. In a number of areas, moreover, clear disagreements have emerged, showing that even specific issues, such as UK participation in the Galileo space programme, may have the potential to derail more cross-cutting agreements. There is also a risk that key concepts may be interpreted differently by the two sides.

### The obstacles to agreement

13. The UK Government's 'red lines' were articulated first in the Prime Minister's speech to the Conservative Party conference in October 2016, just over three months after the referendum, and have been developed in subsequent speeches, notably her Lancaster House speech in January 2017. They derived from her fundamental premise, that the result of the referendum meant that the UK should become a "fully-independent, sovereign country".<sup>7</sup> In summary, the Government's 'red lines' were:

- "Taking control of our own affairs", by confirming the primacy of domestic law and bringing an end to the direct jurisdiction of the Court of Justice of the European Union (CJEU): "Leaving the European Union will mean that our laws will be made in Westminster, Edinburgh, Cardiff and Belfast. And those laws will be interpreted by judges not in Luxembourg but in courts across this country."<sup>8</sup>
- Taking control over immigration policy: "We will decide for ourselves how we control immigration."<sup>9</sup>
- A reduction in UK payments to the EU budget: "The days of Britain making vast contributions to the European Union ... will end."<sup>10</sup>
- Departure from the EU's customs union: "I do not want Britain to be part of the Common Commercial Policy and I do not want us to be bound by the Common External Tariff."<sup>11</sup>

14. In response to the UK's 'red lines', the EU soon issued its own 'red lines', or 'core principles'. As described in the European Council (Art. 50) guidelines of April 2017, these are:

- Ensuring a "level playing field"—in other words, preventing the UK from gaining unfair competitive advantage over its near neighbours,

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7 Rt Hon Theresa May MP, speech on 'Britain after Brexit: A vision of a Global Britain,' 2 October 2016: <http://press.conservatives.com/post/151239411635/prime-minister-britain-after-brex-it-a-vision-of> [accessed 24 May 2018]

8 Rt Hon Theresa May MP, speech on 'The Government's negotiating objectives for exiting the EU,' 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 24 May 2018]

9 Rt Hon Theresa May MP, speech on 'Britain after Brexit: A vision of a Global Britain,' 2 October 2016: <http://press.conservatives.com/post/151239411635/prime-minister-britain-after-brex-it-a-vision-of> [accessed 24 May 2018]

10 Rt Hon Theresa May MP, speech on 'The Government's negotiating objectives for exiting the EU,' 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 24 May 2018]

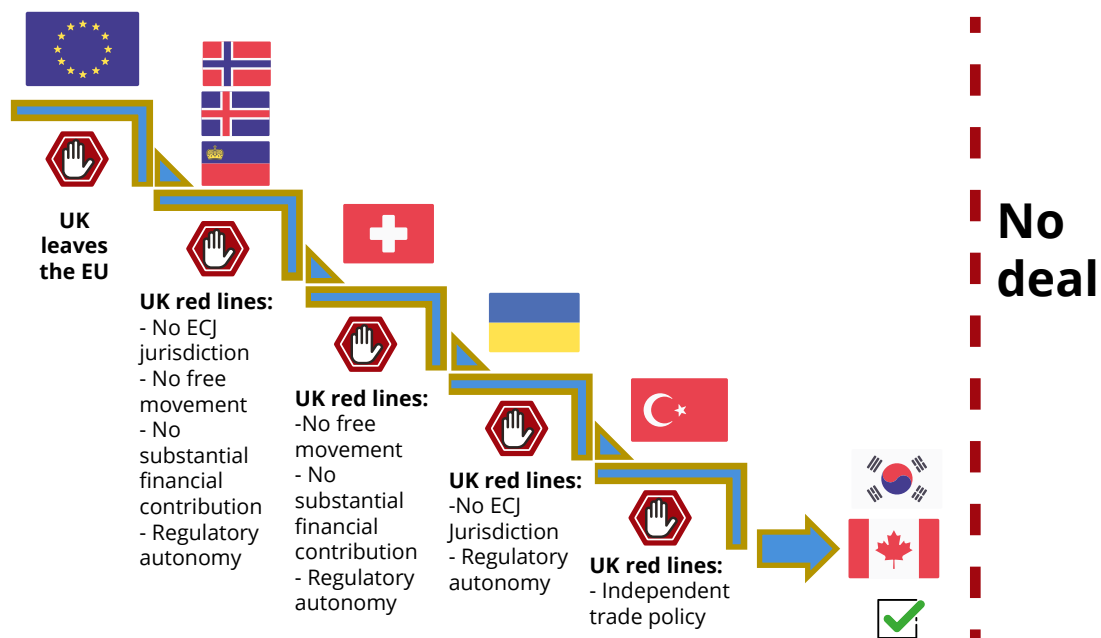
11 Rt Hon Theresa May MP, speech on 'The Government's negotiating objectives for exiting the EU,' 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 24 May 2018]



for instance by cutting taxes, reducing workers' rights, or lowering environmental standards.

- Maintaining the indivisibility of the EU's 'four freedoms' (that is, the free movement of goods, capital, services, and people).
  - Preserving the integrity of the EU Single Market by excluding participation on a sector-by-sector basis: "There can be no 'cherry-picking.'"
  - Preserving the EU's "autonomy as regards its decision-making as well as the role of the Court of Justice of the European Union".<sup>12</sup>
15. In the European Council's March 2018 guidelines, these 'red lines' were re-stated, but qualified by a statement that they reflect "the positions stated by the UK. If these positions were to evolve, the Union will be prepared to reconsider its offer." But as no such change has occurred, the two sides' current 'red lines' severely limit the options for establishing a deep and long-lasting partnership. For instance, the UK's wish to end the direct jurisdiction of the CJEU, combined with the EU's determination to protect its autonomous decision-making and the role of the CJEU as the sole arbiter of EU law, puts continuing UK engagement in many areas of shared interest—including police and security cooperation—at risk.
16. The logic of mutually exclusive 'red lines' is illustrated by the 'Stairway to Brexit'—the slide presented by the EU's chief negotiator, Michel Barnier, to the European Council in December 2017. The slide is reproduced as Figure 1.

**Figure 1: The 'Stairway to Brexit'**



Source: European Commission, 'Slide presented by Michel Barnier, European Commission Chief Negotiator, to the Heads of State and Government at the European Council (Article 50) on 15 December 2017': [https://ec.europa.eu/commission/publications/slide-presented-michel-barnier-european-commission-chief-negotiator-heads-state-and-government-european-council-article-50-15-december-2017\\_en](https://ec.europa.eu/commission/publications/slide-presented-michel-barnier-european-commission-chief-negotiator-heads-state-and-government-european-council-article-50-15-december-2017_en) [accessed 5 June 2018]

<sup>12</sup> European Council, 'European Council (Art. 50) guidelines following the United Kingdom's notification under Article 50', 29 April 2017: <http://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexite-guidelines/> [accessed 24 May 2018]



17. The Commission's slide is compelling and misleading in almost equal measure. It fails to acknowledge the existence of the EU's 'red lines', which mirror the UK's—for instance, it is only the EU's insistence on the indivisibility of the four freedoms<sup>13</sup> which, when juxtaposed with the UK's desire to end free movement of persons, precludes fuller participation in the Single Market. This failure is compounded by the Commission's insistence that the options for future relations be represented solely by means of pre-existing models, such as the 'Norway model', or the 'Turkey model'. In this way, the uniqueness of the UK-EU relationship (given that no other Member State has ever left the EU) is obscured.
18. Thus both sides began by adopting defensive postures, ruling options out rather than in. In the words of Jude Kirton-Darling MEP: "The two negotiating teams are in their trenches, with the UK side saying, 'We have these red lines in relation to the single market and the customs union', and the EU side saying, 'That discounts you from anything other than a Canada deal'."<sup>14</sup> Frances O'Grady, General Secretary of the Trades Union Congress, agreed: "It is fine having red lines, but you do not publish them. You give yourself some room for manoeuvre."<sup>15</sup> The Government, in her view, needed to "extend an olive branch", to "unlock" the negotiations.
19. In reality, however, the Government's red lines were from the outset less clear than they appeared. As early as January 2017, the Prime Minister qualified her insistence that "vast contributions" to the EU budget should end by conceding that the UK might want to participate in some "specific European programmes", and that it would be willing in return to make "an appropriate contribution". That process of qualification has continued, leading to what Dr Sylvia de Mars, of Newcastle University, called "blurring of the red lines".<sup>16</sup> Joe Owen, of the Institute for Government, agreed that the Government's red lines had become "less stark",<sup>17</sup> while Jude Kirton-Darling believed that the Government's red line on CJEU jurisdiction had been "completely blown out of the water".<sup>18</sup> Carolyn Fairbairn, Director General of the Confederation of British Industry (CBI), was more positive, describing the Prime Minister's Mansion House speech in particular as a "real step forward":
- "The challenge we had up to that point was the sense that you could have everything. The core central question, which is the trade-off between access and control, was somehow not there. Having your cake and eating it was the phrase of the moment."<sup>19</sup>
20. In her Mansion House speech, the Prime Minister described what she called "some hard facts":
- "We are leaving the Single Market. Life is going to be different. In certain ways, our access to each other's markets will be less than it is now

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13 Some commentators have challenged the EU's insistence that the four freedoms are indivisible. See for instance Wilhelm Kohler and Gernot Müller, 'Brexit, the four freedoms and the indivisibility dogma', 27 November 2017: <http://blogs.lse.ac.uk/brexit/2017/11/27/brexit-the-four-freedoms-and-the-indivisibility-dogma/> [accessed 4 June 2018]. The Committee has not taken evidence on this issue.

14 [Q 23](#)

15 [Q 11](#)

16 [Q 3](#)

17 [Q 3](#)

18 [Q 22](#)

19 [Q 11](#)

... The second hard fact is that even after we have left the jurisdiction of the ECJ, EU law and decisions of the ECJ will continue to affect us ... The next hard fact is this. If we want good access to each other's markets, it has to be on fair terms. As with any trade agreement, we must accept the need for binding commitments—for example, we may choose to commit some areas of our regulations like State aid and competition to remaining in step with the EU's ... Finally, we need to resolve the tensions between some of our key objectives. We want the freedom to negotiate trade agreements with other countries around the world. We want to take back control of our laws. We also want as frictionless a border as possible between us and the EU—so that we don't damage the integrated supply chains our industries depend on and don't have a hard border between Northern Ireland and Ireland.”<sup>20</sup>

21. The Prime Minister also challenged the EU to face up to “hard facts” about tensions in its own position. For instance, while the EU aspired to a balanced, ambitious, and wide-ranging deal, with common rules to ensure fair and open competition, she argued that this would not be delivered by a ‘Canada-style’ deal. She also criticised the EU’s insistence on ‘no cherry-picking’: “Every free Trade Agreement has varying market access depending on the respective interests of the countries involved. If this is cherry-picking, then every trade agreement is cherry-picking.”

### Conclusions

22. **The most constructive way to approach negotiations on the future UK-EU relationship would be for both sides to focus on their desired outcomes. Instead, both sides appear to have approached the negotiations by focusing on ‘red lines’, closing off rather than opening up the options for establishing a fruitful and lasting relationship.**
23. **The Prime Minister set the tone in her speech to the Conservative Party conference in October 2016, and the Commission’s ‘Brexit stairway’, published in December 2017, was negative and prescriptive in its representation of the options for future relations. Even the European Council’s March 2018 guidelines, while paying lip service to the EU’s desire for a close partnership with the UK, do not set out a compelling vision for that partnership, but are predicated on reacting to the UK’s ‘red lines’.**
24. **We welcome the Government’s increasing realism, which suggests that it is beginning to understand the costs and compromises that will be needed to achieve a successful outcome. Both sides now need to change their mindset if a genuinely close and mutually beneficial partnership is to be achieved.**

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<sup>20</sup> Rt Hon Theresa May MP, speech on ‘our future economic partnership with the European Union,’ 2 March 2018: <https://www.gov.uk/government/speeches/pm-speech-on-our-future-economic-partnership-with-the-european-union> [accessed 24 May 2018]

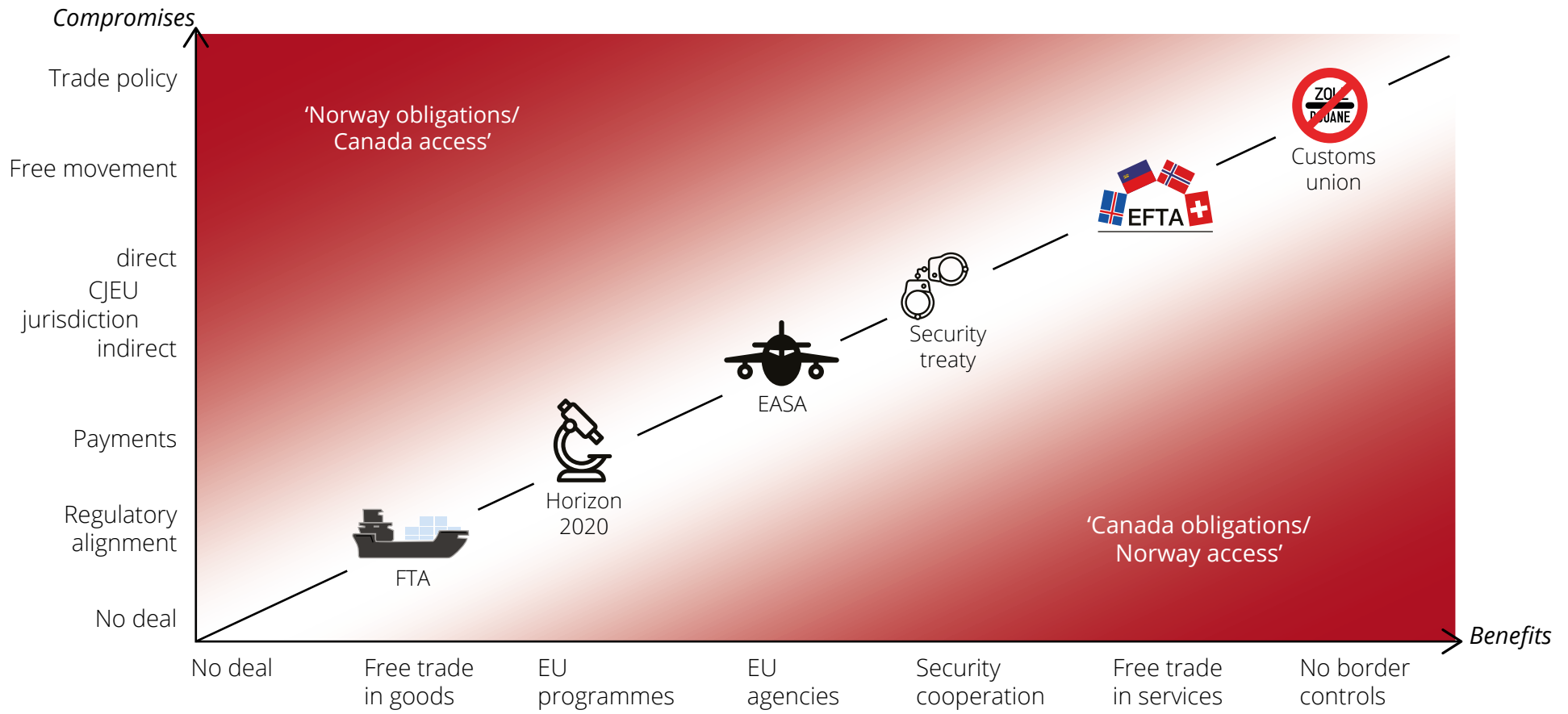
## CHAPTER 3: THE BENEFITS AND COSTS OF THE NEW RELATIONSHIP

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### No ‘free lunch’

25. Underlying the development of the Government’s position is a growing acknowledgement that, in the words of the economist Milton Friedman, “there ain’t no such thing as a free lunch”: the benefits that the UK seeks from its new relationship with the EU will come at a cost, whether financial or political.
26. So rather than focusing on red lines, a more fruitful approach to the negotiations might be for the Government to start by identifying the benefits that could accrue to the UK by virtue of a new relationship with the EU, and then to make a credible assessment of the costs and compromises that will be needed to achieve them. This could also be expressed in a graph, but one which, unlike the Commission’s ‘Stairway to Brexit’, has an upward trajectory (see Figure 2).
27. Figure 2 over-simplifies the UK’s position, and excludes the EU’s position altogether. Nevertheless, it illustrates a middle ground, where, if pragmatic compromises are made on both sides, agreement may be possible. That middle ground is a continuum, not a series of abrupt steps, so while it incorporates existing models for the EU’s relations with third countries, such as the EFTA/EEA ‘Norway model’, other models could in principle be proposed. The figure also demonstrates the opposite extremes of what Joe Owen, drawing on the Prime Minister’s Mansion House speech, characterised as “Norway-style access with Canada-style obligations” (the UK’s initial objective) and “Norway style obligations but with Canada-style access” (the EU’s riposte).<sup>21</sup> Both fall well outside the area where compromise is feasible.

**Figure 2: The future UK-EU relationship: benefits and compromises**



### Uncontested benefits

28. The most obvious and least contested benefits that both sides could achieve as part of the new relationship can be summarised under four broad headings.

#### *Free trade in goods*

29. As we noted in our report on *Brexit: trade in goods*, trade in goods still makes up the majority of UK trade, accounting for 56% of total trade in 2015. The EU is the largest single export market for UK goods, accounting for 47% of total goods exports, though this proportion has decreased somewhat in recent years. In return, the EU supplies some 54% of all goods imported into the UK—UK imports of goods from the EU exceeded UK exports to the EU by approximately £90 billion in 2015.<sup>22</sup>
30. An agreement to enable continuing free trade in goods is thus highly desirable for both sides. In the absence of a free trade agreement, World Trade Organization rules would require the imposition of ‘Most Favoured Nation’ tariffs upon goods, leading to higher prices for consumers and disrupting supply chains. UK exports to the EU would become less competitive, and inward investment could be undermined, damaging the whole economy.

#### *Free trade in services*

31. While goods still represent the bulk of UK trade, the services sector now makes up some 80% of the UK economy as a whole. The UK is a world leader in trade in services, second only to the United States. Services account for some 44% of total UK exports, of which 72% are non-financial services, and 28% financial services. The UK generates an annual global trade surplus of some £33 billion in non-financial services (though, once tourism is taken into account, it runs a small deficit in trade with the EU), and some £55 billion in financial services. The EU is the market for around 39% of UK non-financial services exports, and a similar proportion of financial services.<sup>23</sup>
32. There is general acceptance that the EU’s Single Market in services lags behind that in goods: barriers to free movement of services remain in many sectors. Nevertheless, the UK’s export of services, including financial services, to the EU, not only generates employment and revenue domestically, but, by facilitating access to capital, drives investment across the EU. A relationship that preserves the freest possible trade in services, financial and non-financial, would deliver substantial benefits to both sides.

#### *Internal security cooperation*

33. As we noted in our December 2017 report on *Brexit: future UK-EU security and police cooperation*:

“Protecting the lives of its citizens is the first duty of Government, and in fulfilling this duty the UK Government currently benefits greatly from close and interdependent police and security cooperation with EU institutions and member states. The common threats facing the UK and

22 European Union Committee, *Brexit: trade in goods* (16th Report, Session 2016–17, HL Paper 129)

23 European Union Committee, *Brexit: trade in non-financial services* (18th Report, Session 2016–17, HL Paper 135)

its neighbours require the closest possible police and security cooperation to be sustained into the future, after the UK leaves the EU.”<sup>24</sup>

34. That cooperation takes many forms: a range of criminal justice tools, including the European Arrest Warrant; the sharing of data and intelligence between police and security forces; and membership of key EU agencies such as Europol and Eurojust. Finding ways to continue such cooperation post-Brexit will be essential if the UK’s and the EU’s ability to combat cross-border crime and terrorism is not to be curtailed.

#### *External security cooperation*

35. The UK and the other 27 EU Member States share common strategic foreign policy and defence interests, and there is general agreement that joint or coordinated action enhances their collective global influence. Such cooperation takes place in a range of fora, from international organisations such as the United Nations and NATO, to bilateral structures such as those established under the Anglo-French Defence and Security Cooperation Treaty of 2010. But, as the Government’s future partnership paper on foreign policy, defence and development acknowledged: “The shared threats we face mean continued close cooperation is vital to both UK and EU interests.”<sup>25</sup>

#### **Contested benefits**

36. The benefits of free trade in goods and services, and of cooperation in both internal and external security, are generally acknowledged, though even these benefits come at a cost. Some other potential benefits for the UK are more contested.

#### *Trade policy*

37. For many who campaigned to leave the EU, the ability to pursue an independent trade policy was one of the great prizes of Brexit, and this was reflected in the Prime Minister’s fourth ‘red line’, departure from the EU’s customs union. In other words, this is a benefit that will be achieved not by establishing a new relationship with the EU, but by bringing the existing relationship to an end.
38. For Daniel Hannan MEP, the UK’s membership of the customs union “locks us into a trade policy that until now has ... been focused disproportionately on the agrarian and industrial interests of the continent rather than on a service economy like ours”. In contrast, citing the agreement between Australia and New Zealand as an example, he anticipated “immense gains” for the UK’s services-based economy from trade agreements that would start with “a presumption of reciprocity” or “mutual recognition”.<sup>26</sup>
39. Jude Kirton-Darling MEP, on the other hand, saw the balance of benefit in the UK remaining within the EU’s customs union, and argued that an offer to do so would “open up the negotiations regarding the key offensive

24 European Union Committee, *Brexit: future UK-EU security and police cooperation* (7th Report, Session 2016–17, HL Paper 77)

25 HM Government, *Foreign policy, defence and development—a future partnership paper* (12 September 2017), p 18: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/643924/Foreign\\_policy\\_defence\\_and\\_development\\_paper.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643924/Foreign_policy_defence_and_development_paper.pdf) [accessed 24 May 2018], quoted in the European Union Committee, *Brexit: Common Security and Defence Policy missions and operations* (16th Report, Session 2017–19, HL Paper 32).

26 [Q 28](#)



interest of the UK around services”.<sup>27</sup> Carolyn Fairbairn, of the CBI, also emphasised the importance of “retaining a customs union possibility on the table”. She warned in particular of the impact of leaving the customs union on SMEs: “There are 150,000 businesses in the UK that only export to the European Union. They have no ability to create systems to be able to deal with border controls.”<sup>28</sup>

40. Dr Meredith Crowley, Lecturer in Economics at Cambridge University, considered the UK’s prospects, once outside the EU customs union, for negotiating beneficial trade agreements with third countries. She believed that “productive negotiations with the United States” were “very unlikely” until at least the next US presidential election. More broadly, she argued that “approaching individual countries to negotiate a bilateral trade agreement ... [does] not yield much in the way of concrete benefits”—instead her preference was for the UK to “join large regional trading groups”, such as the North American Free Trade Agreement. She also questioned the likelihood of the UK securing free access to overseas markets for services, noting that “in many countries around the world, financial services are provided inefficiently, and the providers of those services get huge monopoly profits ... So the question is: why would that country want to open up to importing financial services from the UK?”<sup>29</sup>
41. We note also that the UK currently benefits from being party to some 57 trade agreements negotiated by the EU. While these agreements may, as Daniel Hannan argued, not be tailored to the UK economy, their loss would undoubtedly be disruptive. Continuing UK participation in these agreements post-Brexit is not guaranteed.<sup>30</sup>

*Regulatory divergence and the ‘level playing field’*

42. There have been complaints about EU-derived ‘red tape’ for as long as the UK has been a Member State, and some have seen the opportunity to reduce the regulatory burden on businesses as a key benefit of Brexit. Dr Crowley, however, noted that for many products, the scope for regulatory divergence was limited, “because many multinational manufacturers produce a product to the highest standard in the world”.<sup>31</sup> Economist Ruth Lea expressed similar views to us in late 2017, when she described product regulations as “increasingly internationalised”. However, she distinguished between product standards and “all sorts of other regulations, like labour market regulations. It is arguable ... that you ... might do something about the working time directive or the parental leave directive or whatever. Those are political decisions.”<sup>32</sup>
43. Attempts to deregulate the labour market—or to lower environmental standards or relax State aid rules—could well cut costs for UK businesses, but would fall foul of the EU’s ‘red line’ that the UK should accept a ‘level

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27 [Q 23](#)

28 [Q 10](#)

29 [Q 6](#)

30 See European Union Committee, *Brexit: deal or no deal* (7th Report, Session 2017–19, HL Paper 46), para 102.

31 [Q 4](#)

32 Oral evidence taken on 10 October 2017 (Session 2017–19), [Q 4](#) (Ruth Lea and John Longworth)

playing field'. This is spelled out in the European Parliament's March 2018 resolution, which called for:

“The United Kingdom’s continued adherence to the standards laid down by international obligations and the Union’s legislation and policies in the fields of fair and rules-based competition, including state aid, social and workers’ rights, and especially equivalent levels of social protection and safeguards against social dumping, the environment, climate change, consumer protection, public health, sanitary and phytosanitary measures, animal health and welfare, taxation, including the fight against tax evasion and avoidance, money laundering, and data protection and privacy, together with a clear enforcement mechanism to ensure compliance.”

44. UK Ministers have repeatedly denied any intention of undercutting EU Single Market rules. In her Mansion House speech, the Prime Minister stated:

“We share the same set of fundamental beliefs; a belief in free trade, rigorous and fair competition, strong consumer rights, and that trying to beat other countries’ industries by unfairly subsidising one’s own is a serious mistake. And in other areas like workers’ rights or the environment, the EU should be confident that we will not engage in a race to the bottom in the standards and protections we set. There is no serious political constituency in the UK which would support this—quite the opposite.”<sup>33</sup>

45. The Government has also made it clear that the purpose of the European Union (Withdrawal) Bill is to create a working statute book post-Brexit, and that it will not be used to lower standards. For instance, the Solicitor General, Robert Buckland MP, told the House of Commons on 15 November 2017 that “the Brexit process will in no way whatever be used to undermine or curtail the rights of workers”.<sup>34</sup> But notwithstanding such statements by Ministers, Frances O’Grady told us of her continuing concern “about livelihoods and what will happen to wages and prices”. The TUC sought “a level playing field on workers’ rights. That means not just protecting rights but keeping pace with that safety net for the future.”<sup>35</sup> We note that the Government’s slides on the ‘Framework for the UK-EU economic partnership’, published on 24 May 2018, refer only to “Legal protection for workers that keeps pace with the changing labour market”, wording that falls some way short of the TUC’s demand for a UK-EU ‘level playing field’.<sup>36</sup>

### *Agriculture and fisheries*

46. There is agreement across the political spectrum that following Brexit the UK will no longer be part of either the Common Agricultural Policy or the Common Fisheries Policy. This reflects a widely-held view that both policies have been costly and inefficient (notwithstanding some progress in recent

33 Rt Hon Theresa May MP, speech on ‘our future economic partnership with the European Union’ (2 March 2018): <https://www.gov.uk/government/speeches/pm-speech-on-our-future-economic-partnership-with-the-european-union> [accessed 24 May 2018]

34 HC Deb, 15 November 2017, [cols. 410–11](#)

35 [Q 10](#)

36 Department for Exiting the European Union, ‘Framework for the UK-EU economic partnership’, 24 May 2018: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/710817/ECONOMIC\\_PARTNERSHIP\\_-\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/710817/ECONOMIC_PARTNERSHIP_-_FINAL.pdf) [accessed 30 May 2018]



years), and that they were not designed with the UK's interests in mind. As the Environment Secretary, Rt Hon Michael Gove MP, said in a speech to farmers in February 2018: "For the first time in almost half a century, we are free to design policies from first principles that put British farmers, and consumers, first."<sup>37</sup>

47. This Committee has largely endorsed the prevailing consensus that Brexit creates new opportunities for the UK farming and fisheries sectors. In our report on *Brexit: agriculture* we concluded: "In the long term the UK has an opportunity to review and improve its agriculture, environment, and food policy, better meeting the needs of the agriculture sector, the environment and consumers."<sup>38</sup> In our report on *Brexit: fisheries* we concluded that leaving the Common Fisheries Policy would present an opportunity "for the UK to address concerns regarding the current fisheries management regime and to reflect the needs and interests of coastal communities, the wider marine environment and the industry".<sup>39</sup>
48. Certain benefits to UK farming, food and fisheries policies are thus inherent in leaving the EU, rather than having to be negotiated as part of the new UK-EU relationship. But the terms of the new relationship will nonetheless be crucial for both sectors.
49. In farming and food, the EU is the UK's main trading partner, the source of over 30% of the food consumed in the UK. Moreover, as we stated in our report on *Brexit: food prices and availability*, the Government's welcome commitment to maintain current animal welfare standards (a component of the European Parliament's 'level playing field', and a likely precondition for continuing free trade in food with the EU) will be "difficult to reconcile ... with a desire to become a global leader in free trade".<sup>40</sup>
50. In fisheries, the UK's geographical proximity to the EU, the mobility of fish stocks, and international law, all necessitate what in December 2016 we called "an effective and immediate co-operative relationship in fisheries management with the EU and other neighbouring states".<sup>41</sup> Moreover, UK consumers do not eat the fish that the UK produces: of some 666,000 tonnes of fish produced in the UK in 2014, 499,000 tonnes were exported, of which 66% were exported to the EU.<sup>42</sup>
51. Thus both farming and fisheries will feature in the future relationship, which, directly or indirectly, will help to determine the benefits that the UK can achieve in these sectors from Brexit.

### Weighing costs against benefits

52. All the benefits we have described, even those that are uncontested, will come at a cost. As Professor Derrick Wyatt QC told us in September 2016, negotiations on free trade agreements "used to be mainly about tariffs, but now they are relatively little about tariffs. They are about non-tariff barriers

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37 Michael Gove MP, speech on 'A Brighter Future for Farming' (20 February 2018): <https://www.gov.uk/government/speeches/a-brighter-future-for-farming> [accessed 24 May 2018]

38 European Union Committee, *Brexit: agriculture* (20th Report, Session 2016–17, HL Paper 169), para 21

39 European Union Committee, *Brexit: fisheries* (8th Report, Session 2016–17, HL Paper 78), para 67

40 European Union Committee, *Brexit: food prices and availability* (14th Report, Session 2017–19, HL Paper 129), para 118

41 European Union Committee, *Brexit: fisheries* (8th Report, Session 2016–17, HL Paper 78), para 96

42 European Union Committee, *Brexit: fisheries* (8th Report, Session 2016–17, HL Paper 78), para 146

and harmonisation of regulatory standards. They reach deep into the domestic policy-making sphere.”<sup>43</sup> So even the simplest model for future UK-EU economic relations, a Free Trade Agreement, will require acceptance of a degree of regulatory alignment.

53. More developed benefits may require more far-reaching compromises. Free trade in services is closely linked to free movement of persons, and in our report on *Brexit: trade in non-financial services* we concluded that the Government had “under-estimated the reliance of the services sector on the free movement of persons”. We continued: “Moreover, there is a risk that the EU will take the view that comprehensive access to the Single Market in services is dependent upon some degree of movement of persons.”<sup>44</sup> That risk has materialised in the EU’s insistence on ‘no cherry-picking’.
54. Continuing security and police cooperation will also come at a cost. In our report on *Brexit: future UK-EU security and police cooperation* we concluded: “It seems inevitable that there will in practice be limits to how closely the UK and EU-27 can work together if they are no longer accountable to, and subject to oversight and adjudication by, the same supranational EU institutions, notably the CJEU.”<sup>45</sup> The Prime Minister’s Munich speech of 17 February 2018 offered a new realism, when she acknowledged that “when participating in EU [law enforcement] agencies the UK will respect the remit of the European Court of Justice”.<sup>46</sup>

### Ireland and Northern Ireland

55. This Committee has explored at length the implications of Brexit for Ireland and Northern Ireland, and for the many benefits that have flowed from the 1998 Belfast/Good Friday Agreement.<sup>47</sup> Those benefits were achieved with the active support of the EU, and during a period when both the UK and Ireland were Member States of the EU. The UK and Ireland’s joint membership of the EU Single Market and customs union, alongside the ‘Common Travel Area’ (which pre-dates EU membership) have facilitated the creation of an open land border, with no visible infrastructure, which has in turn been a key element of the peace process, as well as supporting the development of an all-island economy, exemplified by the Single Electricity Market. A key challenge of Brexit is thus to preserve the achievements of the last 20 years, and in particular, given the UK’s stated aim of leaving the customs union, to preserve an open land border in Ireland, while avoiding the imposition of controls on traffic across the Irish Sea.

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43 Oral evidence taken on 6 September 2016 (Session 2016–17), [Q 5](#) (Jill Barrett, Lord Kerr of Kinlochard GCMG and Derrick Wyatt QC)

44 European Union Committee, *Brexit: trade in non-financial services* (18th Report, Session 2016–17, HL Paper 135), para 292

45 European Union Committee, *Brexit: future UK-EU security and police cooperation* (7th Report, Session 2016–17, HL Paper 77), para 38

46 Rt Hon Theresa May MP, speech at Munich Security Conference (17 February 2018): <https://www.gov.uk/government/speeches/pm-speech-at-munich-security-conference-17-february-2018> [accessed 24 May 2018]

47 See European Union Committee, *Brexit: UK-Irish relations* (6th Report, Session 2016–17, HL Paper 76); a further inquiry in early 2018 gave rise to a comprehensive follow-up letter to the Government, published on 27 February 2018: see letter from Lord Boswell of Aynho to Rt Hon Karen Bradley MP, Secretary of State for Northern Ireland, 27 February 2018: <https://www.parliament.uk/documents/lords-committees/eu-select/UK%20Irish%20relations/27-02-18-Lord-Boswell-letter-to-Secretary-of-State-for-Northern-Ireland.pdf> [accessed 5 June 2018].

56. The question of the Irish border brings into sharp focus the interdependency of the ‘red lines’ and benefits that we have described in this report. Maintaining a fully open border requires:
- Tariff-free trade in goods, avoiding the imposition of customs controls;
  - Regulatory alignment, so that everything from manufactured goods to fresh food can cross the border freely;
  - Free movement of services, so that citizens based on one side of border can freely provide or consume services (such as health services) on the other side;
  - Free movement of persons, without passport or identity checks at the border;
  - Continuing cooperation between the Police Service of Northern Ireland and An Garda Síochána, for instance in combating organised crime; this cooperation currently relies heavily on EU instruments such as the European Arrest Warrant.<sup>48</sup>
57. The critical importance of the issues affecting Ireland and Northern Ireland is acknowledged by both sides, and for this reason they were addressed as a ‘Phase 1’ issue, alongside withdrawal negotiations, rather than waiting for formal negotiations on the future UK-EU relationship. That decision also reflected an acknowledgement that the problems facing Ireland and Northern Ireland are inherent in the act of UK withdrawal—in the fact that the UK and Ireland, which joined the EU at the same time, will for the first time have different status regarding the EU’s Single Market and customs union. Yet logic also suggests that decisions on customs controls, trade, free movement of people and security cooperation, will be fundamental to the future UK-EU relationship. Thus the question of the Irish border, uniquely, straddles negotiations on withdrawal and on future relations, and for that reason it is the crux of current debate.
58. Paragraph 49 of the Joint Report, agreed by the UK and EU negotiators in December 2017, tries to ‘have its cake and eat it’. It acknowledges the UK’s desire to protect North-South cooperation and to avoid a hard border, and its intention to achieve these objectives “through the overall EU-UK relationship”, or, failing that, through “specific solutions” such as new technology. But failing these solutions, it recorded the UK’s commitment to “maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement”.
59. At the time of writing, the Government’s understanding of this commitment was still unclear. The Commission, in publishing a draft ‘backstop’ agreement alongside the draft Withdrawal Agreement in late February, took the view that “full alignment”—interpreted as, in effect, permanent continuing membership of the Single Market and customs union—extended only to

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48 See the comments of the Chief Constable of the PSNI, George Hamilton QPM, cited in a letter from Lord Boswell of Aynho to Rt Hon Karen Bradley MP, Secretary of State for Northern Ireland, 27 February 2018, paras 32–33: <https://www.parliament.uk/documents/lords-committees/eu-select/UK%20Irish%20relations/27-02-18-Lord-Boswell-letter-to-Secretary-of-State-for-Northern-Ireland.pdf> [accessed 5 June 2018].

Northern Ireland. This would be tantamount to creating a border in the Irish Sea, and was rejected both by the Government and the unionist parties in Northern Ireland. Yet despite repeated questions from the Committee, the Government has not offered a consistent or satisfactory explanation of its understanding of the geographical scope of the “full alignment” referred to in paragraph 49.<sup>49</sup> Press reports on 23 May suggested that the Government was proposing a time-limited alignment, covering the whole United Kingdom.<sup>50</sup> As this report was being agreed, there were reports that the Government’s interpretation of the ‘backstop’ agreement was about to be published. However, there have also been reports that this interpretation has already been rejected by the EU.

### Conclusions

60. **The benefits that the UK and the EU could derive from a deep and durable partnership will come at a cost, and may entail trade-offs between economic and political considerations. There is no ‘free lunch’ for either side.**
61. **Now that the Article 50 Withdrawal Agreement has been in large part agreed, the starting point for negotiations on the future relationship must be that failure to reach agreement will, by default, result in ‘no deal’—of which we said, in our Report on Brexit: deal or no deal, “It is difficult, if not impossible, to envisage a worse outcome”. The negotiations will be about achieving benefits from a new relationship, rather than preserving aspects of the UK’s EU membership.**
62. **The two sides therefore need to start by identifying beneficial outcomes, associated costs, and areas of mutual interest. If they do this, and are prepared to compromise on their respective ‘red lines’, there is every reason to believe that agreements can be reached, and benefits realised.**
63. **We agree with the Government that North-South cooperation, and the avoidance of a hard border between Ireland and Northern Ireland, will be best secured within the framework of the overall UK-EU relationship, but we also understand why both sides have agreed to address them as part of the ‘Phase 1’ negotiations. The phasing of the negotiations thus means that the UK Government urgently needs to take key decisions of principle, on trade, customs, regulatory alignment and the movement of people.**

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49 See for instance the letter from Rt Hon David Davis MP, Secretary of State for Exiting the EU, to Lord Boswell of Aynho, 16 May 2018: <https://www.parliament.uk/documents/lords-committees/eu-select/david-davis-evidence-session-follow-up.pdf> [accessed 25 May 2018].

50 See ‘How Britain’s departure from the EU stretches to mid-2020s’, *Financial Times* (23 May 2018): <https://www.ft.com/content/12b54086-5da2-11e8-9334-2218e7146b04> [accessed 25 May 2018].

## CHAPTER 4: MODELS FOR THE FUTURE RELATIONSHIP

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### Models for future UK-EU economic relations

64. Any new UK-EU relationship will need to be embedded in an institutional and legal structure. Hitherto much debate has focused on ‘off the shelf’ models, ranging from the ‘Norway model’ to a ‘Canada-style’ Free Trade Agreement. In this chapter we briefly review the available models, in light of the benefits outlined in the previous chapter.

#### *European Free Trade Association*

65. The European Free Trade Association (EFTA) is an intergovernmental organisation that promotes free trade and economic integration. It was founded in 1960 by seven states (including the United Kingdom), which were at that time either unable or unwilling to join the European Economic Community, the precursor to the EU. Five states, including the UK, have left EFTA at the same time as joining the EEC/EU, while two others have joined, so EFTA now comprises four members: Norway, Switzerland (both founder members), Iceland and Liechtenstein. Of these, all but Switzerland have subsequently joined the European Economic Area, so there are currently two variants of the EFTA model.

#### *The ‘Swiss model’*

66. Switzerland is the only EFTA state not to be party to the EEA Agreement. Its relationship with the EU is governed by over 100 bilateral agreements, many of which are linked, with the result that, in return for preferential market access for air transport, carriage of goods by rail and road, trade in agricultural products, mutual recognition, government procurement and scientific co-operation, Switzerland is also required to accept the principle of freedom of movement. Its attempts to restrict such free movement since a 2014 referendum have led the EU in return to limit Swiss access to Erasmus and Horizon funding. Switzerland does not enjoy general access to the Single Market in financial services, and its per capita contributions to the EU budget are considerably lower than those of an EU Member State.
67. Disputes between the EU and Switzerland are handled at a political level by a Joint Committee—there is no judicial oversight. Dr Markus Gehring, of Cambridge University, giving evidence to our inquiry into the options for trade in late 2016, argued that the absence of independent judicial oversight had in reality only increased the indirect authority of the CJEU: “It is basically impossible for the Swiss side to get any change negotiated in the joint committee, because the Commission officials feel legally bound by the definitive judgment of the Court of Justice.”<sup>51</sup>

#### *The European Economic Area*

68. The European Economic Area (EEA) Agreement dates from 1994. It brought together all the EU Member States and Norway, Iceland and Liechtenstein. EEA membership enables these three states to participate fully in the EU Single Market, including the Single Market in services. In return, they comply with the ‘four freedoms’, including free movement of persons. Norway makes substantial contributions to the EU budget, as part of the

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51 See European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72), para 144.



Multiannual Financial Framework; Liechtenstein's per capita contributions are lower, and Iceland is a net recipient of EU funds.<sup>52</sup>

69. The EEA states are required to implement into national law all EU Single Market legislation, which includes legislation on consumer protection, company law, environmental protection and social policy, and the EEA Agreement itself is constantly updated with the introduction of new EU legislation. Since 1994, more than 5,000 new legal acts have been incorporated into the Agreement either as Annexes or Protocols. Nevertheless, the principles of direct effect and primacy of EU over national law are not part of EEA law, and the EFTA Court, which oversees the Agreement, has refused to include them in the EEA legal order.<sup>53</sup>
70. Although the three non-EU EEA countries are a part of the Single Market in services, including financial services, they are not part of the EU's customs union, nor is EFTA itself a customs union. EFTA countries thus have the autonomy to negotiate Free Trade Agreements with third countries, either independently or through EFTA. This also means that there is a customs border, albeit one that is typically administered with a light touch, between EU and EEA states (notably between Sweden and Norway).<sup>54</sup>
71. The EEA Agreement excludes the common agriculture and fisheries policies; the Common Foreign and Security Policy; Justice and Home Affairs; and Economic and Monetary Union.

#### *Analysis*

72. This short summary demonstrates that EFTA/EEA membership would deliver some of the benefits sought by the UK Government, albeit at a cost. It would enable full participation in the Single Market for goods and services, though this would require a significant sacrifice of regulatory autonomy. Substantial financial contributions to the EU could be required, though the exact level would be dependent on the UK's participation in EU programmes. The UK would also be required to accept free movement of people, although Article 112 of the EEA Agreement allows EEA states to apply an 'emergency brake' in certain circumstances. EEA membership would not entail accepting the direct effect of EU law, or the direct jurisdiction of the CJEU, though in practice Single Market legislation would have to be implemented, and the UK would have to accept the jurisdiction of the EFTA Court.<sup>55</sup> In return, the UK would be able to nominate a judge (or perhaps judges) to sit on the EFTA Court. EEA/EFTA membership would not entail membership of the customs union, allowing the UK to pursue an independent trade policy, and independent policies on farming and fisheries. This would also entail the creation of a customs border, not least to ensure compliance with

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52 See Zsolt Darvas, 'Single market access from outside the EU: three key prerequisites', 19 July 2016: <http://bruegel.org/2016/07/single-market-access-from-outside-the-eu-three-key-prerequisites/> [accessed 24 May 2018].

53 A fuller discussion of the EFTA Court is contained in European Union Committee, *Dispute resolution and enforcement after Brexit* (15th Report, Session 2017–19, HL Paper 130).

54 The European Union Committee explored the mechanics of operating controls at the EU's external border with EEA/EFTA states in a meeting with Swiss and Norwegian border officials on 6 February 2018: see oral evidence taken on [6 February 2018](#) (Session 2017–19).

55 While it is not entirely clear whether the EFTA Court is bound by the post-1992 judgments of the CJEU, the system is designed to foster a homogenous legal order, and thus any divergence from CJEU jurisprudence is likely to be, at the most, at the margins. For more on this, see European Union Committee, *Dispute Resolution and Enforcement after Brexit* (15th Report, Session 2017–19, HL Paper 130), paras 34–49.

‘rules of origin’, which specify the levels of non-domestic content that may be incorporated into manufactured goods, so that the correct tariff can be levied. Trade in food and fish would have to be regulated by separate bilateral treaties.

73. Catherine McGuinness, Chair of the Policy and Resources Committee of the City of London Corporation, while indicating that the Corporation was “trying to operate within the red lines that have been put down” by the Government, said that Single Market membership via the EEA would “give us what we are looking for”, in particular access to talent and free trade in services.<sup>56</sup> Frances O’Grady, of the TUC, also supported Single Market membership, while Dr Sylvia de Mars noted that EEA/EFTA membership could go some way to meeting the Government’s objections in respect of the direct jurisdiction of the CJEU, in that “there could be a judicial tribunal independent from the Court of Justice that, generally speaking, made its own decisions, purely to do with EFTA, and might occasionally ask a question of the Court of Justice”.<sup>57</sup>
74. As for EFTA membership outside the EEA, Daniel Hannan MEP was “in favour of our rejoining EFTA”. He acknowledged the Government’s ‘red line’ of taking back control of the UK’s borders and immigration policy, but saw “absolutely no reason why you, as a sovereign Parliament, should not agree an immigration policy based on the principle that EU nationals ... have a presumption that they can take up jobs”.<sup>58</sup> He has developed a similar argument in published articles, including a paper published by the Bruges Group, in which he outlined the benefits enjoyed by both EFTA and EFTA/EEA states.<sup>59</sup>
75. In 2010, however, the Council of the European Union described the model of EU-Swiss relations as “complex”, “unwieldy to manage”, and as having “clearly reached its limits”.<sup>60</sup> In the absence of any appetite on the EU side to enter into such an arrangement, and given the tensions and difficulties already alluded to, the ‘Swiss model’, or a variant thereof, may not be feasible.

#### *A customs union*

76. The EU’s customs union has a Common External Tariff, which is imposed on all goods imported from third countries. It is enforced through the Customs Union Code, and almost 80% of the revenue generated by tariffs go directly to the EU’s budget. Once goods have been imported into the customs union, they may move freely, without further controls, across the EU.
77. There appears to be no prospect of a non-EU member state being part of the EU’s customs union, which, dating back to the Treaty of Rome, is entwined within the EU’s institutional and legal structures. A more feasible alternative would be to form a separate customs union with the EU customs union.

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56 [Q 10](#)

57 [Q 9](#)

58 [Q 23](#)

59 Daniel Hannan MEP The Bruges Group, *The case for EFTA*, (no date): <https://www.brugesgroup.com/media-centre/papers/8-papers/771-the-case-for-efta> [accessed 24 May 2018]

60 The Council of the European Union, ‘Council conclusions on EU relations with EFTA countries’, 14 December 2010, para 6: [https://eeas.europa.eu/sites/eeas/files/council\\_iceland.pdf](https://eeas.europa.eu/sites/eeas/files/council_iceland.pdf) [accessed 25 May 2018]

78. The only precedent for such an arrangement is the EU-Turkey customs union, which dates from 1995. This covers industrial goods, but excludes agriculture and services. It is generally acknowledged to be unsatisfactory and one-sided, in that Turkey is required to apply the EU's external tariff, but does not benefit from the EU's free trade agreements. This means that Turkey has to waive tariffs on goods imported from, say South Korea, but South Korea is not in return required to waive tariffs on Turkish goods. Nor does the EU-Turkey customs union deliver one of the essential benefits of a customs union, the avoidance of border controls—as Daniel Hannan pointed out, the EU-Turkey border remains “heavily policed and in some places militarised”.<sup>61</sup> In December 2016 the Commission called for modernisation of the EU-Turkey customs union, describing it as “less and less equipped to deal with the modern day challenges of trade integration”.<sup>62</sup>
79. The Turkey precedent does not preclude a more comprehensive, bespoke customs union. As we have noted, Carolyn Fairbairn told us of the CBI's support for a customs union (preferably alongside Single Market membership) to facilitate free trade in goods, not least for the “150,000 businesses in the UK that only export to the EU”.
80. Catherine McGuinness, on the other hand, noted that the Corporation, with its strong interest in the financial services sector, “do not take a position on the customs union, because, frankly, it is not directly applicable to us”.<sup>63</sup> Frances O'Grady also acknowledged that a customs union “does not deal with the 80% of the economy in the services sector”.<sup>64</sup>
81. What is clear, however, is that a customs union would prevent the UK from pursuing an independent trade policy—its trade policy would be tied to that of the EU. But there is no agreement on whether that would mean subservience to EU trade policy or something closer to a partnership of equals. For Daniel Hannan it meant “giving the EU 100% control of our trade policy, with zero input into what that trade policy should be”.<sup>65</sup> Jude Kirton-Darling, on the other hand, believed that an offer to enter into a customs union would unlock concessions from the EU side: “If the UK decided to be part of a full customs union with the EU, there would be an arrangement to ensure that the UK was part of the decision-making as well, because we are such a big economy.”<sup>66</sup>

### *A customs partnership*

82. The Prime Minister, in her Mansion House speech, proposed a ‘customs partnership’ with the EU as one of two potential options for the future UK-EU customs arrangement. Although the Government has yet to publish a detailed proposal, she indicated that this would see the UK “mirror the EU's requirements for imports from the rest of the world, applying the same tariffs and the same rules of origin as the EU for those goods arriving in the UK and intended for the EU”. At the same time, she said, “the UK would

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61 [Q 23](#)

62 European Commission, ‘Commission proposes to modernise the Customs Union with Turkey’, 21 December 2016: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1609> [accessed 24 May 2018]

63 [Q 10](#)

64 [Q 16](#)

65 [Q 22](#)

66 [Q 22](#)



also be able to apply its own tariffs and trade policy for goods intended for the UK market”.<sup>67</sup>

83. No clear precedent for such a customs partnership exists, and media reports suggested that the EU quickly dismissed the UK’s proposals—the Secretary of State, Rt Hon David Davis MP, giving evidence on 1 May 2018, confirmed that the Commission had “pushed back”.<sup>68</sup> There has also been protracted discussion within the Cabinet on how such a partnership would work. In the absence of detailed proposals, Joe Owen was unsure whether “we would ask every country with an external EU border also to run our tariff regimes”,<sup>69</sup> while Dr Meredith Crowley warned us that it “would impose very significant costs on smaller businesses”, and that the administrative costs might “exceed any benefits of having the flexibility to negotiate lower tariffs ... with third-country partners”. The complexity might also make it harder to negotiate free trade deals with third countries: “If Mexico knows that my free trade access to the UK is only through the sort of complex bureaucratic system ... it might make the UK less desirable”. Finally, she said, “the real concern about the customs partnership is long-term regulatory divergence”, which could reopen “the problem of whether you want to institute border checks”.<sup>70</sup>
84. The second option proposed by the Prime Minister was a streamlined customs arrangement known as ‘maximum facilitation’. Such an arrangement appears to be premised upon the existence of a customs border, alongside administrative and technological measures to make trade across that border as frictionless as possible. At this stage it is difficult to say with certainty what benefits or costs it would entail, though on 23 May 2018 the Chief Executive of HMRC, Mr Jon Thompson, giving evidence to the House of Commons Treasury Select Committee, estimated the cost to businesses as “between £17 billion and £20 billion annually”.<sup>71</sup> Mr Davis told us that the EU also “pushed back” on this proposal.<sup>72</sup>

### *A Free Trade Agreement*

85. A Free Trade Agreement (FTA) is the Government’s preferred model, and is also envisaged by the EU, in light of the UK Government’s ‘red lines’. The difference between the two sides is over the scope and depth of such a FTA, with the Prime Minister calling for “the broadest and deepest possible partnership—covering more sectors and co-operating more fully than any Free Trade Agreement anywhere in the world today”. While the detail of the UK’s proposals has yet to be published, the Prime Minister envisaged “reciprocal binding commitments to ensure fair and open competition”; a “completely independent” arbitration mechanism; ongoing dialogue and regulatory cooperation; an arrangement for data protection going beyond the EU’s existing system of adequacy decisions;<sup>73</sup> and an arrangement which, while bringing free movement to an end, would “facilitate” the “valuable

67 Rt Hon Theresa May MP, speech on ‘our future economic partnership with the European Union’, 2 March 2018: <https://www.gov.uk/government/speeches/pm-speech-on-our-future-economic-partnership-with-the-european-union> [accessed 24 May 2018]

68 Oral evidence taken on 1 May 2018 (Session 2017–19), Q 7 (Rt Hon David Davis MP)

69 Q 4

70 Q 4

71 House of Commons Treasury Select Committee, oral evidence taken on 23 May 2018 (Session 2017–19), Q 640 (Mr Jon Thompson)

72 Oral evidence taken on 1 May 2018 (Session 2017–19), Q 7 (Rt Hon David Davis MP)

73 For a description of the process for granting adequacy decisions, see European Union Committee, *Brexit: the EU data protection package* (3rd Report, Session 2017–19, HL Paper 7).

links” between UK and EU citizens, also allowing “businesses across the EU and the UK ... to attract and employ the people they need”.

86. There can be little doubt that a FTA of the kind proposed by the Prime Minister, were it to be feasible, would deliver substantial benefits to the UK, while in large part protecting the Government’s ‘red lines’. Underpinning it, and supported by ongoing regulatory dialogue, would be “a comprehensive system of mutual recognition”. As we have noted, Daniel Hannan pointed to the Australia-New Zealand FTA as a precedent for such a system, and Catherine McGuinness, of the City of London Corporation, supported the Government’s objective of securing “mutual market access on the basis of mutual recognition of regulatory outcomes”.<sup>74</sup>
87. But so far, as Joe Owen noted, the EU “has shown little interest in that kind of position”.<sup>75</sup> Sylvia de Mars developed this point, noting that mutual recognition as it exists in the EU’s agreements with third countries is “a very different animal” from mutual recognition within the Single Market: the former typically involves “the mutual recognition of conformity assessment, whereby [the EU] will say, ‘We trust that when you, a Canadian laboratory, evaluate the safety of this children’s toy, it meets the EU standards, so, fine, it’s welcome to come over’”. Mutual recognition within the EU Single Market, on the other hand, “is significantly more to do with having identical regulation that is identically enforced than it is with understanding the differences in each other’s regulations. There is so much more harmonised legislation than there is acknowledgement of concrete differences.”<sup>76</sup> Carolyn Fairbairn, of the CBI, also suggested that the “fear among the EU 27 that we may be tempted to tear up some of the regulation that has been developed during the past 10 years” could undermine hopes for a system of outcome-based mutual recognition.<sup>77</sup>
88. The EU’s proposal, in contrast, is more limited, drawing heavily on the EU’s existing FTAs with Canada and South Korea. The European Council in March proposed “a balanced, ambitious and wide-ranging free trade agreement (FTA) insofar as there are sufficient guarantees for a level playing field”. This would include tariff-free trade in goods, “appropriate customs cooperation”, and a framework for “voluntary regulatory cooperation”. There was no acknowledgement of the possibility of a wider agreement on mutual recognition, and the offer in respect of trade in services was limited to “allowing market access to provide services under host state rules, including as regards right of establishment for providers, to an extent consistent with the fact that the UK will become a third country and the Union and the UK will no longer share a common regulatory, supervisory, enforcement and judiciary framework”.

### **Ireland and Northern Ireland**

89. Just as the Irish land border brings into sharp focus the trade-offs between the various benefits sought by the Government and its ‘red lines’, so none of the existing models that we have described is sufficient in itself to meet the desire of both sides to avoid the creation of a ‘hard border’. A genuinely open border, without physical infrastructure, requires the free, uncontrolled

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74 [Q 10](#)

75 [Q 2](#)

76 [Q 4](#)

77 [Q 13](#)

movement of goods. That in turn requires the avoidance not only of tariffs, but of non-tariff barriers. Within the EU, the former is addressed by means of the customs union; the latter by means of the harmonised rules of the Single Market.

90. The March 2018 European Council guidelines stated: “Divergence in external tariffs and internal rules as well as absence of common institutions and a shared legal system, necessitates checks and controls to uphold the integrity of the EU Single Market as well as of the UK market.” This is borne out by the key sentence in paragraph 49 of the December 2017 Joint Report, which we have already quoted, according to which the United Kingdom undertook, in the absence of agreed solutions, to “maintain full alignment with those rules of the *Internal Market and the Customs Union* which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement” (our emphasis). In other words, neither customs union nor Single Market membership is sufficient in isolation to allow an open border.
91. As we noted above (see paragraphs 58–59), the geographical scope of the reference to ‘full alignment’ in paragraph 49 of the Joint Report remains contested. In Jude Kirton-Darling’s view, “The agreement is that if no alternative is put forward by the UK there will be no hard border on the island of Ireland and no hard border in the Irish Sea, and there will be regulatory alignment, which basically covers the single market in a significant number of areas, and the customs union.”<sup>78</sup>
92. Others offered different emphases. Daniel Hannan told us that “the customs union is a complete red herring here. As the EU itself has accepted in its internal memos, British membership of the customs union does not obviate the need for border checks in Ireland.”<sup>79</sup> Carolyn Fairbairn, on the other hand, supported customs union membership specifically to address the Irish border: “If there is a better solution to the Northern Ireland border, we would like to hear it.”<sup>80</sup>

### Several agreements

93. The models outlined in this chapter all relate to the future economic partnership. Separate agreements will be needed to achieve the wider benefits of the future UK-EU relationship. While we have not sought detailed evidence on these other agreements in this inquiry, their existence adds substantially to the scale and complexity of the forthcoming negotiations, and we briefly list them here:
  - An agreement on security, covering police and judicial cooperation, in particular with regard to anti-terrorism and cross-border crime. This would require shared access to intelligence and data, currently held on a range of EU databases. Effective extradition arrangements, replicating the effect of the European Arrest Warrant, would be another key benefit.
  - An agreement to facilitate cooperation on external affairs and defence, including but not limited to continuing UK participation in EU

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78 [Q 23](#)

79 [Q 23](#)

80 [Q 10](#)

sanctions regimes, and EU Common Security and Defence Policy missions and operations.

- Sectoral agreements, covering areas of common interest such as nuclear safety, aviation and data protection. The UK may, as part of this, seek continuing membership, or ‘associate membership’, of specific EU agencies, including those on aviation, medicines and chemicals.
- Agreements to ensure continuing UK participation in specific EU cross-border programmes that deliver tangible benefits to the UK. These may include Erasmus, Horizon 2020 and the EU Emissions Trading Scheme. The Prime Minister has indicated the Government’s readiness to make appropriate payments to the EU in return for access to such programmes.
- An agreement on reciprocal access to UK and EU fisheries. The European Council guidelines state the following objective: “In the overall context of the FTA, existing reciprocal access to fishing waters and resources should be maintained.” The prominence given to fisheries reflects the fact that the EU has a far greater interest in maintaining reciprocal access than the UK. Moreover, any agreement on access to fisheries would be separate from a FTA. Nevertheless, as we noted earlier, the EU is the main export market for UK produced fish, so some form of linkage may ultimately be in the interests of both parties.

### An Association Agreement?

94. The number of sectors in which agreements will be needed means that the final UK-EU relationship is likely to be composite: the economic relationship, however framed, will be just one of many elements. The EU’s chief negotiator, Michel Barnier, has proposed grouping the various agreements under four ‘pillars’: trade, socio-economic cooperation (including a range of sectoral agreements), internal security and law enforcement, and foreign and defence policy. The European Council has also identified “socio-economic cooperation”, “law enforcement and judicial cooperation in criminal matters”, and “cooperation in the fields of foreign, security and defence policy” as distinct priorities. The Government has divided its proposals for a “deep and special partnership” into three broad headings: economic partnership, security partnership, and cross-cutting cooperation.<sup>81</sup>
95. Only the European Parliament, however, has proposed a specific model that would bring the various elements of the UK-EU relationship together. The Parliament resolution in March 2018 states that an Association Agreement “provides a flexible framework allowing for varying degrees of cooperation across a wide variety of policy areas”.<sup>82</sup> The resolution continues:

“An association agreement negotiated and agreed between the EU and the UK following the latter’s withdrawal pursuant to Article 8 TEU and Article 217 TFEU could provide an appropriate framework for the future relationship, and secure a consistent governance framework,

81 See for instance HM Government, *Framework for the UK-EU partnership: economic partnership*, May 2018, p. 4: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/710817/ECONOMIC\\_PARTNERSHIP\\_-\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/710817/ECONOMIC_PARTNERSHIP_-_FINAL.pdf) [accessed 25 May 2018]

82 European Parliament, ‘Guidelines on the framework of future EU-UK relations’, 14 March 2018, Preamble, para J: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0069+0+DOC+PDF+V0//EN> [accessed 5 June 2018]

which should include a robust dispute resolution mechanism, thus avoiding a proliferation of bilateral agreements and the shortcomings which characterise the EU's relationship with Switzerland."<sup>83</sup>

96. The key features of Association Agreements are described in Box 1.

### Box 1: Association Agreements

#### *Legal basis*

Since the 1960s, the (now) EU has negotiated Association Agreements with non-Member States (third countries). There is no template, but these agreements are adopted under Article 217 (TFEU) (or earlier variants), which defines such agreements as “establishing an association involving reciprocal rights and obligations, common action and special procedure”.

These agreements are so-called ‘mixed agreements’, where the EU and the individual Member States share competence. This means that they must be ratified by the European Parliament, the Council of the EU, and all individual member states under their national procedures for the ratification of international agreements. In some Member States this process includes agreement by regional parliaments.

#### *Content*

The Institute for Government (IfG) says that the rights and obligations that arise from an individual Association Agreement with the EU depend on the “exact content of [the] individual agreement”. But it suggests that Article 217 (TFEU) imposes “three main criteria”:

- (1) the agreement must create privileged links between the EU and the third country that foster and encourage wide-ranging co-operation;
- (2) both the EU and the third country must have reciprocal rights and obligations in their partnership; and
- (3) the agreement must include institutions designed to implement and monitor the agreement, such as an Association Council (a Ministerial-level group) and an Association Committee (see below).

The IfG also says that Association Agreements are “typically characterised by four other features”:

- (1) a free trade agreement with the EU, the contents of which vary country by country;
- (2) access to the Single Market, though the third country is often required to implement part of the relevant EU regulatory framework;
- (3) opportunities for co-operation beyond trade in areas of mutual interest, including defence and security, the environment and energy, science and education; and
- (4) the inclusion of a clause dealing with respect for human rights and democratic principles.<sup>84</sup>

83 European Parliament, ‘Guidelines on the framework of future EU-UK relations’, 14 March 2018, para 5: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0069+0+DOC+PDF+V0//EN> [accessed 5 June 2018]

84 Institute for Government, ‘Association Agreements’, (March 22 2018): <https://www.instituteforgovernment.org.uk/explainers/association-agreements> [accessed 24 May 2018]



*Examples*

The EU has negotiated Association Agreements with a number of countries, including near neighbours such as Ukraine, Moldova, and Georgia; with North African and Middle Eastern countries such as Tunisia, Egypt, Lebanon and Israel; and countries further afield such as Chile. In the 1990s a suite of special Association Agreements called ‘Europe Agreements’ were used to prepare the thirteen states that joined the EU since 2004 for membership.

*Turkey (1963)*

In 1963 the (then) EEC agreed an association with Turkey (the Ankara Agreement). It addressed agricultural products and the free movement of persons, and included a provision to “examine the possibility” of Turkish accession. It covered eight pages and 33 Articles. To ensure the “implementation and the progressive development” of the relationship it created a “Council of Association”, with membership drawn from the Turkish Government, the Commission and the Council.

*Ukraine (2014)*

After more than ten years of negotiation the EU and Ukraine in 2014 signed an Association Agreement which sought to create a “Deep and Comprehensive Free Trade Area”; it came into force on 1 September 2017. The agreement took account of the “close historical relationship and progressively closer links” between the EU and Ukraine, and sought to “strengthen and widen relations in an ambitious and innovative way”. It acknowledged “the European aspirations” of the Ukraine and welcomed its “commitment to building a deep and sustainable democracy and market economy”.

Among many matters, the agreement covered: foreign and security policy; regional stability; conflict prevention; non-proliferation of nuclear weapons; anti-terrorism measures; cooperation on border management and asylum and migration; criminal measures including drug-trafficking and corruption; trade and customs arrangements; cross-border supply of services, including financial services; public procurement; intellectual property and trademarks; and, competition and state aid. The agreement without annexes and protocols is over 170 pages and includes 428 Articles.

Its institutional framework includes regular high-level summit meetings; regular ministerial meetings within an ‘Association Council’; regular senior civil servant meetings through the ‘Association Committee’; a ‘Parliamentary Association Committee’ within which members of the European Parliament and the Ukrainian Parliament meet; and a framework within which regular meetings between representatives of civil society are promoted.

97. Several witnesses supported the European Parliament in advocating an Association Agreement. Daniel Hannan MEP noted that the term was “fairly broad”, allowing flexibility to both sides, but saw it as “a viable option ... It seems to me that a narrow vote is not a mandate to walk away, even if that were desirable, which I do not think it is. So some kind of country membership and some kind of associate status is an option.”<sup>85</sup>
98. Jude Kirton-Darling agreed that the “very broad-brush” concept of an Association Agreement could benefit both sides: “I suspect that we will want pillars of ongoing co-operation post Brexit. Different pillars are under

discussion in the final agreement, whether they are security policy, co-operation on trade or cultural co-operation. An association agreement allows an evolutionary relationship, which is crucial.”<sup>86</sup> Sylvia de Mars argued that an Association Agreement “plays to the UK’s interests significantly, because if it is an association agreement, giving the UK a special deal on services becomes a possibility ... whereas if it is just a free trade agreement, any deal that the UK gets would have to be extended to all the EU’s other trading partners”.<sup>87</sup>

99. One of the key advantages of embracing the Association Agreement model could be a change in the tone of the negotiations. This was articulated by Carolyn Fairbairn:

“Can we get away from the language of ‘free trade agreement’ on to the area of ‘association agreement’, which is the European Parliament language? I know that there are challenges with that, but if, between now and October, we can start to talk about partnership, rather than a Canadian variant, that would be very helpful.”<sup>88</sup>

100. The most detailed account of a possible Association Agreement was provided by former MEP Andrew Duff. He argued that the EU’s Association Agreements with Ukraine (for which see Box 1), Georgia and Moldova disproved the Commission’s assertion that “there is nothing to choose between Canada and Norway”. In contrast, these Agreements, intended to lead progressively towards accession (though there is nothing to suggest that Association Agreements need be confined to potential accession countries), were “designed to be more dynamic than either the EEA or CETA”. Within a single “portmanteau treaty”, there could be agreements on trade, mutual recognition, mobility of workers, and security. The Association Agreement would be supported by “permanent joint institutions established at summit, ministerial, parliamentary and technical levels, a platform for civil society and a tripartite tribunal for the arbitration of disputes”.<sup>89</sup>
101. When the Secretary of State, Mr Davis, gave evidence on 1 May 2018, we asked him about the European Parliament’s proposal for an Association Agreement. While he warned that he would not want such an agreement to “bring in ECJ jurisdiction”, he did not rule it out: “As a concept, I have no intrinsic objection to it.”<sup>90</sup>

### Conclusions

102. **The various models proposed for the future UK-EU relationship all deliver benefits, but all do so at a cost. Compromises will be needed if the two sides’ respective ‘red lines’ are not to preclude the deep partnership to which both aspire.**
103. **From the UK’s perspective, the greater the benefits sought, for instance in respect of trade in services, the greater the compromises that will be needed.**

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86 [Q 25](#)

87 [Q 5](#)

88 [Q 18](#)

89 Written evidence from Andrew Duff ([UER0001](#))

90 Oral evidence taken on 1 May 2018 (Session 2017–19), [Q 12](#) (Rt Hon David Davis MP)

104. **The existing models, such as EEA/EFTA, or a Canada-style Free Trade Agreement, are helpful in clarifying the options, but they must not be allowed to dictate the terms of the negotiations. Existing models fail to capture the full possibilities of the UK-EU relationship—but a gesture of good will, from one or other side, may be needed to unlock these possibilities.**
105. **We note the European Parliament’s support for a UK-EU Association Agreement, and applaud the Parliament’s readiness to contemplate innovative approaches to the future UK-EU relationship. We also note that Association Agreements are by their nature dynamic and evolutionary, and that a UK commitment to such a partnership could bring about a positive change in the tone and language of the negotiations.**



## CHAPTER 5: REACHING THE FINISHING LINE

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### The ticking clock

106. As we noted in our December 2017 report *Brexit: deal or no deal*, “The key factor which will determine whether or not the Government can deliver a successful Brexit is time. The clock is ticking.”<sup>91</sup> Since that report was published, another six months have passed, and the ticking is ever louder.
107. The European Council in March set out its intention to review progress in negotiations on the future relationship at its meeting on 28–29 June.<sup>92</sup> After that, it is likely that progress will slow down during the August holiday—yet both sides agree that the Withdrawal Agreement, alongside a political declaration laying out the framework for future UK-EU relations, will have to be adopted at the October European Council, to allow time for consideration by both the European Parliament and the Westminster Parliament, ahead of ratification no later than March 2019. There are now just weeks, rather than months, for the two sides to reach agreement on the framework for future relations. At the time of writing the Government has yet to publish detailed proposals, though it has announced its intention to publish a White Paper on future UK-EU relations.
108. In their absence, negotiations appear to have stalled. Even in the area of internal security, where in early May the Government published a presentation outlining its proposals,<sup>93</sup> discussion has been negligible: Rob Jones, Director of Future European Policy at the Home Office, told our Home Affairs Sub-Committee on 16 May that the Government had “only just started” to talk to the Commission. This had involved “little more than an hour of discussion.”<sup>94</sup>
109. As we have noted, many witnesses welcomed the change of tone in the Prime Minister’s Mansion House speech, and her movement on key ‘red lines’. But Catherine McGuinness spoke for many in telling us that more was needed: “What we need to do now is to move on from speeches, which the EU 27 tell us they do not recognise as being proper negotiating asks, to more detail and clarity ... They now know in headline terms, but they are still asking us for greater clarity and greater detail, and that is something we all need.”<sup>95</sup>
110. The Secretary of State, on the other hand, was bullish when giving evidence on 1 May. Asked about the Commission’s concern over the lack of detail in the UK’s proposals, he replied: “Throughout this whole process, the Commission has laid down some lines of argument and has then said, ‘The UK has not told us what it wants’. This is part of the process that we go through. They try to use time pressure. These are all just negotiating mechanisms.” He was nonetheless confident that “we will get there soonish”.

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91 European Union Committee, *Brexit: deal or no deal* (7th Report, Session 2017–19, HL Paper 46), para 106

92 European Council, ‘European Council (Art. 50) guidelines on the framework for the future EU-UK relationship’, 23 March 2018: <http://www.consilium.europa.eu/en/press/press-releases/2018/03/23/european-council-art-50-guidelines-on-the-framework-for-the-future-eu-uk-relationship-23-march-2018/> [accessed 5 June 2018]

93 Department for Exiting the European Union, *Framework for the UK-EU Security Partnership* (9 May 2018): <https://www.gov.uk/government/publications/framework-for-the-uk-eu-security-partnership> [accessed 24 May 2018]

94 [Q 82](#)

95 [Q 11](#)

111. The Secretary of State also addressed the EU's 'red line' that there should be a 'level playing field', to prevent the UK undercutting the EU by lowering environmental or other standards: "Some in the European Union are terrified of the Wild West of Anglo-Saxon deregulation that we all live among here. Of course, plainly we do not, but we have to deal with that concern." Once there was agreement on a dispute resolution mechanism, he envisaged "a lot of progress on the goods front", but he was less clear about the timetable for addressing financial services: "We have a similar issue to deal with in relation to financial services and services, and that may be a little more complicated to say the least. However, we already have an in-house design for that which we will put out into the public domain at some point."<sup>96</sup>
112. Despite the Secretary of State's confidence, at the time this report was agreed on 5 June no firm timetable had been set for publication of the White Paper setting out the Government's detailed proposals for future UK-EU relations. Nor, while it was anticipated that the House of Commons would consider Lords amendments to the European Union (Withdrawal) Bill on 12 June, was the timetable for completing parliamentary consideration of other Brexit bills clear.

### Finalising the 'political declaration'

113. Both sides agree that the text of the Withdrawal Agreement should be finalised ahead of the European Council meeting on 18–19 October. They also agree that a 'backstop' solution to address the position of Ireland and Northern Ireland should be annexed to the text, but will only come into force if the UK's goal of addressing this issue within the context of the agreement on future relations is not realised. Finally, the two sides will agree a 'political declaration' outlining the framework for future relations; this will not be part of the Withdrawal Agreement, but there will be cross-references between the two documents.
114. Andrew Duff described the political declaration as "an integral part of the overall package deal". Although he sought clarification from the Government as to its "precise legal status", he was in no doubt as to its importance: "The declaration will bind the European Council post-Brexit and will form the basis for the drawing up of the directives that, following a separate decision, will eventually empower the Commission to negotiate the final deal."<sup>97</sup>
115. Jude Kirton-Darling, in contrast, noting the lack of time, was concerned that "we will end up with a political declaration that is not very detailed, going into what is effectively a blind transition where we have no vote at the table and no voice in the process".<sup>98</sup> Daniel Hannan agreed, "both on the timing and the danger".<sup>99</sup> Sylvia de Mars expected the primary focus to be on "making sure that the withdrawal agreement is as airtight as it can be, leaving the political declaration as a statement of intent".<sup>100</sup> Andrew Duff, on the other hand, envisaged "a comprehensive document covering all the potential aspects of the future partnership".

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96 Oral evidence taken on 1 May 2018 (Session 2017–19), [Q 9](#) (Rt Hon David Davis MP)

97 Written evidence from Andrew Duff ([UER0001](#))

98 [Q 30](#)

99 [Q 30](#)

100 [Q 7](#)

116. The Secretary of State, asked on 1 May about the risk that the political declaration could be a political compromise, meaning different things to different people, responded:

“I do not think that it is a material [risk]. I say that for the following reason. You are hearing the negotiating stance. Always remember when you are talking to all these people that they are not presenting you with scientific fact; they are presenting you with a negotiating stance. Their negotiating stance is that nothing is binding on them. Their favourite phrase is, ‘Nothing is agreed until everything is agreed’ ... Of course we will have to manage the transition from the political agreement to the legal agreement. Some of it will have hiccups, but I think that, broadly speaking, we will have a very, very good idea of where we are going to be at the end.”<sup>101</sup>

### A long-term vision

117. The Prime Minister’s call for a “deep and special” partnership with the EU has yet to elicit a positive response. In part this is because of the EU’s suspicion that the UK is ‘cherry-picking’—seeking the benefits of EU membership, particularly the economic benefits, without accepting the price. This is a regular theme of statements by the European Council: “A non-member of the Union, that does not live up to the same obligations as a member, cannot have the same rights and enjoy the same benefits as a member.”<sup>102</sup> It helps to explain why the EU’s analysis has repeatedly drawn on existing templates for EU relations with third countries, which represent safe ground, rather than devising bespoke solutions.
118. If the Government is to overcome this reluctance on the EU side, it will need to articulate a vision for future UK-EU relations that makes long-term sense not just for the UK, but for the EU, one that takes account of the aspirations of many in the EU to move towards greater integration. Daniel Hannan said that he would have tried “to create a precedent for every other country that either cannot or does not want to join the EU but wants the closest feasible alliance with it”. He cited a report by the Bruegel think-tank in August 2016,<sup>103</sup> which, in his words, proposed “a large nexus based on free trade within which a much smaller group of countries go for political union”.<sup>104</sup> Jude Kirton-Darling envisaged a similar outcome: “I suspect that we will end up with concentric circles of European co-operation.”<sup>105</sup>
119. Such a vision might be said to respond to the closeness of the referendum result, and the continuing divisions of opinion within the United Kingdom, and across its regions and nations. Daniel Hannan, who campaigned to leave the EU, argued that: “The only fair way to interpret such a narrow margin

101 Oral evidence taken on 1 May 2018 (Session2017–19), [Q 13](#) (Rt Hon David Davis MP)

102 European Council, ‘European Council (Art. 50) guidelines on the framework for the future EU-UK relationship’, 23 March 2018, para 7: <http://www.consilium.europa.eu/en/press/press-releases/2018/03/23/european-council-art-50-guidelines-on-the-framework-for-the-future-eu-uk-relationship-23-march-2018/> [accessed 24 May 2018]

103 Bruegel, *Europe after Brexit: A proposal for a continental partnership*, August 2016 <http://bruegel.org/2016/08/europe-after-brexit-a-proposal-for-a-continental-partnership/> [accessed 24 May 2018]. Bruegel envisaged “a Europe of two circles, with the supranational EU and the euro area at its core, and an outer circle of countries involved in a structured intergovernmental partnership”.

104 [Q 32](#)

105 [Q 32](#)

is as a mandate for a phased, gradual repatriation of power that would leave intact a number of our existing institutional links and obligations.”<sup>106</sup>

120. In March 2016, in the run-up to the referendum, we published our report on *The EU referendum and EU reform*. We saw an opportunity to develop “a more flexible, dynamic and multi-layered EU”, but warned that if the UK was to be part of this change, the then Prime Minister would need “to make an inclusive case for EU membership, one that speaks for all”.<sup>107</sup> Two years after the referendum, the need for a compelling and inclusive vision for UK-EU relations is greater than ever.

### Conclusions

121. **Time is short: in a matter of weeks the framework for future UK-EU relationship will be finalised, in the form of a political declaration annexed to the October European Council conclusions. We are concerned at the delay and uncertainty that has surrounded the Government’s development of detailed, workable proposals.**
122. **While the ‘political declaration’ may not be legally binding, we accept that at least at a political level it may bind future European Councils, and thus limit the options available to the UK in future negotiations. This makes it all the more important that the Government bring forward these proposals in timely fashion, so as to influence the drafting of the declaration.**
123. **Given the closeness of the referendum result, the Government must articulate an inclusive vision for future UK-EU relations, commanding broad support, in order to achieve an acceptable and durable outcome.**
124. **The Government will also need to articulate a long-term vision that speaks to the EU. That means using the language of partnership, accepting that costs and compromises will be necessary, and acknowledging that the EU may evolve, post-Brexit, towards greater political and economic integration.**
125. **In summary, the Government’s forthcoming White Paper will be judged against the following key principles:**
- **It should focus on achieving benefits from the future UK-EU relationship, rather than on defending ‘red lines’;**
  - **In particular, it should identify and build on areas of mutual UK and EU interest;**
  - **It should acknowledge that the benefits to be realised by means of the new relationship will come at a cost, requiring compromises and trade-offs;**
  - **It should express an inclusive vision of future UK-EU relations, commanding broad support;**

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<sup>106</sup> Q 22

<sup>107</sup> European Union Committee, *The EU referendum and EU reform* (9th Report, Session 2015–16, HL Paper 122), paras 254 and 257

- **It should use the language of partnership between the UK and the EU, and should acknowledge the potential evolution of the EU post-Brexit.**
126. **The EU will then need to reciprocate. So far it has adopted a reductive approach, without fully acknowledging the importance to the EU's long-term security and prosperity of a close and lasting partnership with the UK. That must change.**
  127. **Most negotiations start with 'cherry-picking', as each party focuses on its own interests. The success of the negotiation can then be measured by the willingness of all parties to compromise, as they discover mutual interests and deliver shared benefits.**

## **SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS**

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### **The scope of the future UK-EU relationship**

1. The most constructive way to approach negotiations on the future UK-EU relationship would be for both sides to focus on their desired outcomes. Instead, both sides appear to have approached the negotiations by focusing on ‘red lines’, closing off rather than opening up the options for establishing a fruitful and lasting relationship. (Paragraph 22)
2. The Prime Minister set the tone in her speech to the Conservative Party conference in October 2016, and the Commission’s ‘Brexit stairway’, published in December 2017, was negative and prescriptive in its representation of the options for future relations. Even the European Council’s March 2018 guidelines, while paying lip service to the EU’s desire for a close partnership with the UK, do not set out a compelling vision for that partnership, but are predicated on reacting to the UK’s ‘red lines’ (Paragraph 23)
3. We welcome the Government’s increasing realism, which suggests that it is beginning to understand the costs and compromises that will be needed to achieve a successful outcome. Both sides now need to change their mindset if a genuinely close and mutually beneficial partnership is to be achieved. (Paragraph 24)

### **The benefits and costs of the new relationship**

4. The benefits that the UK and the EU could derive from a deep and durable partnership will come at a cost, and may entail trade-offs between economic and political considerations. There is no ‘free lunch’ for either side. (Paragraph 60)
5. Now that the Article 50 Withdrawal Agreement has been in large part agreed, the starting point for negotiations on the future relationship must be that failure to reach agreement will, by default, result in ‘no deal’—of which we said, in our Report on Brexit: deal or no deal, “It is difficult, if not impossible, to envisage a worse outcome”. The negotiations will be about achieving benefits from a new relationship, rather than preserving aspects of the UK’s EU membership. (Paragraph 61)
6. The two sides therefore need to start by identifying beneficial outcomes, associated costs, and areas of mutual interest. If they do this, and are prepared to compromise on their respective ‘red lines’, there is every reason to believe that agreements can be reached, and benefits realised. (Paragraph 62)
7. We agree with the Government that North-South cooperation, and the avoidance of a hard border between Ireland and Northern Ireland, will be best secured within the framework of the overall UK-EU relationship, but we also understand why both sides have agreed to address them as part of the ‘Phase 1’ negotiations. The phasing of the negotiations thus means that the UK Government urgently needs to take key decisions of principle, on trade, customs, regulatory alignment and the movement of people. (Paragraph 63)

### **Models for the future relationship**

8. The various models proposed for the future UK-EU relationship all deliver benefits, but all do so at a cost. Compromises will be needed if the two sides’



respective ‘red lines’ are not to preclude the deep partnership to which both aspire. (Paragraph 102)

9. From the UK’s perspective, the greater the benefits sought, for instance in respect of trade in services, the greater the compromises that will be needed. (Paragraph 103)
10. The existing models, such as EEA/EFTA, or a Canada-style Free Trade Agreement, are helpful in clarifying the options, but they must not be allowed to dictate the terms of the negotiations. Existing models fail to capture the full possibilities of the UK-EU relationship—but a gesture of good will, from one or other side, may be needed to unlock these possibilities. (Paragraph 104)
11. We note the European Parliament’s support for a UK-EU Association Agreement, and applaud the Parliament’s readiness to contemplate innovative approaches to the future UK-EU relationship. We also note that Association Agreements are by their nature dynamic and evolutionary, and that a UK commitment to such a partnership could bring about a positive change in the tone and language of the negotiations. (Paragraph 105)

### Reaching the finishing line

12. Time is short: in a matter of weeks the framework for future UK-EU relationship will be finalised, in the form of a political declaration annexed to the October European Council conclusions. We are concerned at the delay and uncertainty that has surrounded the Government’s development of detailed, workable proposals. (Paragraph 121)
13. While the ‘political declaration’ may not be legally binding, we accept that at least at a political level it may bind future European Councils, and thus limit the options available to the UK in future negotiations. This makes it all the more important that the Government bring forward these proposals in timely fashion, so as to influence the drafting of the declaration. (Paragraph 122)
14. Given the closeness of the referendum result, the Government must articulate an inclusive vision for future UK-EU relations, commanding broad support, in order to achieve an acceptable and durable outcome. (Paragraph 123)
15. The Government will also need to articulate a long-term vision that speaks to the EU. That means using the language of partnership, accepting that costs and compromises will be necessary, and acknowledging that the EU may evolve, post-Brexit, towards greater political and economic integration. (Paragraph 124)
16. In summary, the Government’s forthcoming White Paper will be judged against the following key principles:
  - It should focus on achieving benefits from the future UK-EU relationship, rather than on defending ‘red lines’;
  - In particular, it should identify and build on areas of mutual UK and EU interest;



- It should acknowledge that the benefits to be realised by means of the new relationship will come at a cost, requiring compromises and trade-offs;
  - It should express an inclusive vision of future UK-EU relations, commanding broad support;
  - It should use the language of partnership between the UK and the EU, and should acknowledge the potential evolution of the EU post-Brexit. (Paragraph 125)
17. The EU will then need to reciprocate. So far it has adopted a reductive approach, without fully acknowledging the importance to the EU's long-term security and prosperity of a close and lasting partnership with the UK. That must change. (Paragraph 126)
18. Most negotiations start with 'cherry-picking', as each party focuses on its own interests. The success of the negotiation can then be measured by the willingness of all parties to compromise, as they discover mutual interests and deliver shared benefits. (Paragraph 127)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Baroness Armstrong of Hill Top  
 Lord Boswell of Aynho (Chairman)  
 Baroness Brown of Cambridge  
 Baroness Browning  
 Lord Crisp  
 Lord Cromwell  
 Baroness Falkner of Margravine  
 Lord Jay of Ewelme  
 Baroness Kennedy of The Shaws  
 The Earl of Kinnoull  
 Lord Liddle  
 Baroness Neville-Rolfe  
 Lord Selkirk of Douglas  
 Baroness Suttie  
 Lord Teverson  
 Baroness Verma  
 Lord Whitty  
 Baroness Wilcox  
 Lord Woolmer of Leeds (until 24 May 2018)

### Declaration of interests

Baroness Armstrong of Hill Top  
*No relevant interests declared*

Lord Boswell of Aynho (Chairman)  
*In receipt of salary as Principal Deputy Chairman of Committees, House of Lords*  
*Shareholdings as set out in the Register of Lords' Interests*  
*Income is received as Partner (with wife) from land and family farming business trading as EN & TE Boswell of Lower Aynho Grounds, Banbury with separate rentals from cottage and grazing*  
*Land at Great Leighs, Essex (one-eighth holding, with balance held by family interests), from which rental income is received (interest ceased 2 November 2017)*  
*House in Banbury owned jointly with wife, from which rental income is received*  
*Lower Aynho Grounds Farm, Northants/Oxon: this property is owned personally by the Member and not in Partnership*

Baroness Brown of Cambridge  
*No relevant interests declared*

Baroness Browning  
*Chair, Advisory Committee on Business Appointments*

Lord Crisp  
*No relevant interests declared*

Lord Cromwell  
*No relevant interests declared*

Baroness Falkner of Margravine  
*No relevant interests declared*

Lord Jay of Ewelme

*Member, Advisory Council, European Policy Forum*

*Member, Senior European Experts Group*

*Trustee (non-executive director), Thomson Reuters Foundation Share Company*

*Trustee, Magdalen College, Oxford Development Trust*

Baroness Kennedy of the Shaws

*No relevant interests declared*

The Earl of Kinnoull

*No relevant interests declared*

Lord Liddle

*No relevant interests declared*

Baroness Neville-Rolfe

*Former Commercial Secretary, HM Treasury*

*Former Minister of State for Energy and Intellectual Property*

Lord Selkirk of Douglas

*Chairman of Directors and Director, Douglas-Hamilton (D Share) Ltd (small family company: agricultural property; the Member's financial interest derives from his directorship, which is now paid an annual sum above the registration threshold)*

*Diversified investment portfolio in McInrow & Wood Income Fund, managed by a third party*

Baroness Suttie

*No relevant interests declared*

Lord Teverson

*In receipt of a pension from the European Parliament*

Baroness Verma

*No relevant interests declared*

Lord Whitty

*No relevant interests declared*

Baroness Wilcox

*No relevant interests declared*

Lord Woolmer of Leeds

*No relevant interests declared*

A full list of Members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/register-of-lords-interests/>

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at <https://www.parliament.uk/post-brex-it-uk-eu-relations-lords-inquiry> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and alphabetical order. Those witnesses marked with \*\* gave both oral and written evidence. Those marked with \* gave oral evidence and did not submit written evidence. All other witnesses submitted written evidence only

### Oral evidence in chronological order

- \* Dr Meredith Crowley, Lecturer in Economics, Faculty of Economics, University of Cambridge [QQ 1–9](#)
- \* Dr Sylvia de Mars, Lecturer in Law, Newcastle University
- \* Joe Owen, Senior Researcher, Institute for Government
- \* Catherine McGuinness, Deputy, City of London Corporation [QQ 10–21](#)
- \* Frances O’Grady, General Secretary, Trades Union Congress
- \* Carolyn Fairbairn
- \* Daniel Hannan MEP [QQ 22–33](#)
- \* Jude Kirton-Darling MEP

### Alphabetical list of all witnesses

- ABPI and BIA [UER0006](#)
- ADS [UER0007](#)
- Association of Medical Research Charities [UER0008](#)
- Bar Council [UER0009](#)
- British Chamber [UER0010](#)
- Cancer Research UK [UER0011](#)
- \* Dr Meredith Crowley
- \* Dr Sylvia de Mars
- Andrew Duff
- EEF [UER0012](#)
- Jean-Pierre Feyaerts [UER0003](#)
- \* Carolyn Fairbairn
- \* Daniel Hannan MEP
- \* Jude Kirton-Darling MEP
- Law Society of England and Wales [UER0020](#)
- Law Society of Scotland [UER0019](#)

*	Catherine McGuinness	
*	Frances O’Grady	
*	Joe Owen	
	Morten Petersen	<a href="#"><u>UER0013</u></a>
	Proprietary Association of Great Britain	<a href="#"><u>UER0014</u></a>
	PIMFA	<a href="#"><u>UER0021</u></a>
	REACH Cross Sector Group	<a href="#"><u>UER0015</u></a>
	TheCityUK	<a href="#"><u>UER0016</u></a>
	UK Finance	<a href="#"><u>UER0017</u></a>
	Wine and Spirit Trade Association	<a href="#"><u>UER0018</u></a>
	Andrew Wyatt	<a href="#"><u>UER0002</u></a>