



HM Government

The best of both worlds:  
the United Kingdom's  
special status in a reformed  
European Union

# The best of both worlds: the United Kingdom's special status in a reformed European Union

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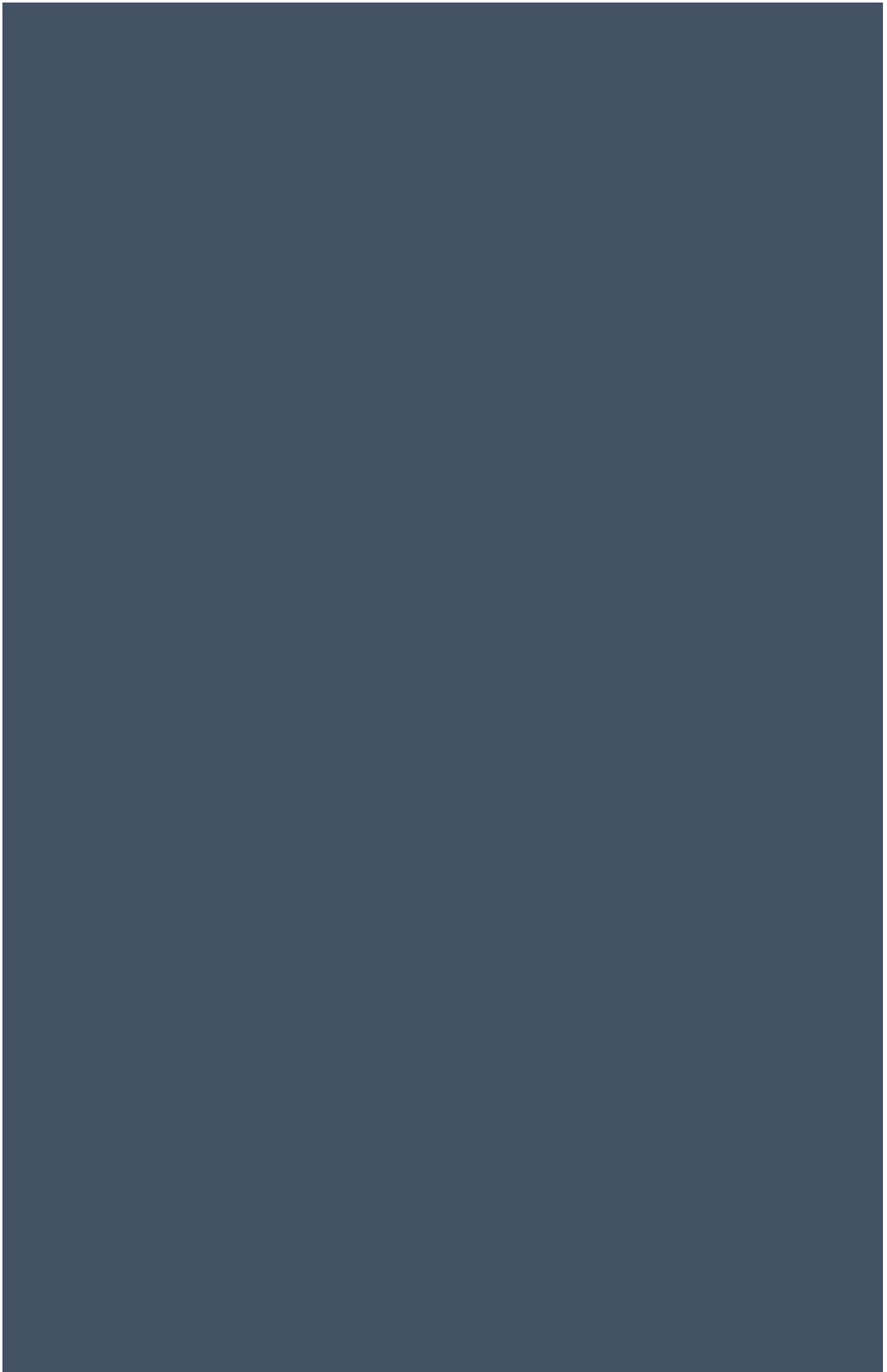
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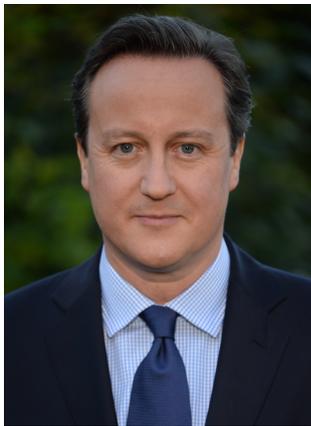
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# Foreword by the Prime Minister



We have secured a new settlement to give the United Kingdom special status in the European Union. As this White Paper sets out, we will be permanently out of ever closer union, ensuring we can never be part of a European super-state. There will be tough new restrictions on access to our welfare system for EU migrants, so that people who come to our country can no longer take out before putting something in. And we have also secured vital protections for our economy, with a full say over the rules of the free trade single market, while remaining outside the Eurozone.

Our special status gives us the best of both worlds. We will be in the parts of Europe that work for us – influencing the decisions that affect us, in the driving seat of the world’s biggest market and with the ability to take action to keep our people safe. But we will be out of the parts of Europe that do not work for us. So as well as being out of ever closer union, we will never join the euro and never be part of Eurozone bailouts or the passport-free no borders area.

The reforms we have secured in this negotiation have been agreed by all 28 EU leaders. They are legally binding and cannot be unpicked without our agreement and that of every other EU country. All 28 Member States were also clear that the Treaties would be changed to incorporate the protections for the UK as an economy outside the Eurozone; and our permanent exclusion from ever closer union.

Of course, there is still more to do. I am the first to say that there are still many ways in which Europe needs to improve. The task of reforming the European Union does not end with this agreement, and I will continue to pursue the further reform that Europe needs and which the British people still want to see. But with the special status that this settlement gives us, I do believe the time has come for me to fulfil the commitment I made when I stood for a second term as Prime Minister. So I am proposing to Parliament that the British people decide our future in Europe through an in-out referendum on Thursday 23rd June.

This will be a once-in-a-generation moment to shape the future of our country. Whatever the British people decide, I will make it work to the best of my abilities. But let me set out what I believe.

When it comes to Europe, mine is a hard-headed assessment of what is in our best interests, not driven by some emotional attachment. I have certainly had my doubts about the European Union as an organisation and I still do. But the question for me as Prime Minister is what is best for our country. How do we make our country stronger, safer and better off?

Now we have this new agreement, I believe the answers lie inside a reformed European Union. I believe we will be stronger remaining in a reformed Europe than we would be out on our own because we can play a leading role in one of the world's largest organisations from within, helping to make the big decisions on trade and security that determine our future. I believe we will be safer remaining in a reformed Europe because we can work with our European partners to fight cross border crime and terrorism, giving us strength in numbers in an increasingly dangerous world. And I believe we will be better off remaining in a reformed Europe because British businesses will have full access to the free trade single market of 500 million people, bringing jobs, investment and lower prices.

Leaving Europe would threaten our economic and our national security. Those who want us to leave cannot say if British businesses would be able to access Europe's free trade single market, or if working people's jobs are safe or how much prices would rise. All they are offering is risk at a time of uncertainty – a leap in the dark. I do not believe that would be right for Britain.

My recommendation is clear: I believe every family, household, business, community and nation within our United Kingdom will be stronger, safer and better off by remaining inside this reformed European Union.

A handwritten signature in black ink, reading "David Cameron". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

# Chapter 1 – executive summary

1.1 Since the May 2015 General Election the Government has pursued an agenda of reform and renegotiation to deliver change in our relationship with the European Union, which can then be put to the British people in the first referendum on the UK's membership of the EU since 1975.

1.2 Following months of negotiations, at the 18-19 February European Council the Government secured a new settlement for the UK in a reformed EU, which is irreversible without our consent.

1.3 This settlement secures all the UK's objectives, set out by the Prime Minister, and gives the UK a special status within the European Union, as well as setting the EU as a whole on a path of long-term reform. This settlement makes the EU work much better for the UK but there are still many ways in which it needs to improve. The task of reforming the EU does not end with today's agreement.

1.4 The agreement covers four key areas: economic governance; competitiveness; sovereignty; and welfare and free movement.

## **Economic governance**

1.5 We have protected the UK's rights as a country within the Single Market, but outside the Eurozone, to keep our economy and financial system secure and protect UK businesses from unfair discrimination. We have secured agreement to a set of legally-binding principles that will make sure the UK is not penalised, excluded or discriminated against by EU rules because we have chosen to keep the pound.

1.6 All the EU's members formally recognise that the UK should not be forced to participate in measures that are for the Eurozone. Our new settlement secures important protections for the UK in the EU's economic governance and means that:

- UK businesses trading in the Single Market cannot be discriminated against because the UK is outside the Eurozone;
- the responsibility for supervising the financial stability of the UK remains in the hands of the Bank of England and other UK authorities;
- UK taxpayers will never be required to pay for Eurozone bail outs; and

- all discussions on matters that affect all EU Member States will involve all EU Member States, including the UK, not just members of the Eurozone.

1.7 All EU Member States have signed up to these principles in a decision under international law, giving us far greater certainty than we have ever had in the past that the UK's rights as a country that does not use the euro will be respected. These principles will be incorporated into the Treaties when they are next revised.

1.8 This is backed up by a safeguard mechanism, which will allow the UK to take our concerns to the Heads of State or Government at the European Council, if we believe that the principles are not being respected.

## Competitiveness

1.9 As a result of years of UK pressure, working closely with allies, the EU now has an ambitious agenda of economic reform. We have secured a firm commitment to drive that agenda harder over the coming years to help unleash the full potential of the Single Market and create growth and jobs.

1.10 The Single Market – a market of 500 million people and a quarter of the world's GDP<sup>1</sup> – is the EU's single biggest economic achievement, but it is not yet complete. The UK has also long argued for reduced bureaucracy and more help for our smallest businesses. Working with allies in the EU, we have helped steer the EU decisively towards an agenda focused on job creation, growth and better regulation.

1.11 Our new settlement confirms that:

- the regulatory burden on businesses, particularly small businesses, will be reduced with specific targets established in key sectors in line with the approach adopted in the UK;
- there will be a new focus on further extending the Single Market to help bring down the remaining barriers to trade within the EU, particularly in key areas like services, energy and digital; and
- the EU will pursue, with renewed commitment, free trade agreements with the world's most dynamic economies, so that the tariff and regulatory barriers faced by UK companies in large and growing non-EU markets are reduced or eliminated.

## Sovereignty

1.12 We have secured agreement that the Treaties will be changed in the future so that the UK is carved out of 'ever closer union' and established a mechanism for decision-making to return from Brussels to the UK and other nation states, where this is most appropriate. This is all consistent with the UK's longstanding approach to our relationship with the EU: that it should be based on the practical pursuit of our national interest.

1.13 Our new settlement means that:

- it has been formally recognised for the first time that the UK is not committed to further political integration into the EU and we have secured specific confirmation that

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<sup>1</sup> Population data sourced from Eurostat. GDP share calculated based upon IMF World Economic Outlook Database (October 2015).

the concept of ‘ever closer union’ will not apply to the UK in the future. This builds on the statutory requirement in the European Union Act 2011 of the UK Parliament, which makes it impossible for any UK Government to transfer power to the EU in the future without a referendum. The agreement confirms that EU Member States do not have to aim for a common destination;

- national parliaments can combine to block unwanted EU legislative proposals, where the power should not be exercised at the EU level, giving a stronger voice to the UK Parliament;
- a new mechanism will be created to review existing EU laws to ensure that decisions are taken at the national level where possible and only at the EU level where necessary (subsidiarity) and that only the minimum action necessary is taken to achieve regulatory objectives (proportionality);
- national security will remain the sole responsibility of the UK Government. We, not the EU, decide, issue by issue, when we think cooperation with our European neighbours would enhance our own security; and
- on issues such as policing, immigration and asylum policy, it is underlined that the judgement on whether we take part in European-level action rests clearly with the UK Government and Parliament.

## Welfare and free movement

1.14 We have secured new powers to tackle the abuse of free movement and reduce the unnatural draw of our benefits system, to meet our aim of reducing immigration, by creating fairer rules, while protecting our open economy.

1.15 Our new settlement:

- will enable the UK to have a new emergency brake to limit full access to in-work benefits by newly arrived EU workers for up to 4 years when they enter our labour market. This will be in force for 7 years;
- confirms that in future the UK will not have to pay means-tested unemployment benefits to EU nationals who come to the UK as job seekers;
- will mean that Child Benefit paid to EU nationals living here, but whose children live outside the UK will no longer be paid at UK rates but be paid at a rate that reflects conditions – including the standard of living and Child Benefit paid – of the country where the children live;
- commits to new legislation to prevent illegal migrants from using marriage to an EU national living in the UK to avoid our tough domestic immigration rules; and will mean that non-EU nationals who marry EU nationals living in the UK will also need to meet our immigration rules; and
- ensures greater freedom for the UK to act against the threat of crimes being committed by EU nationals moving around the EU by preventing those who pose a threat from coming into the country and making it easier to deport them if they have been living in the UK.

1.16 The European Commission has committed to bring forward new legislation where it is needed to implement the UK’s new settlement. These European Commission proposals will

be agreed jointly by the Council and the European Parliament. Representatives of the major political groups in the European Parliament have been consulted on the UK's new settlement. The UK will also pass domestic legislation to underpin this settlement. The Government recognises that in some cases the implementation of this agreement will involve the Devolved Administrations and is committed to working closely with them on this in the coming weeks and months.

## **Legally-binding**

1.17 The central element of the agreement is an International Law Decision agreed by the Heads of State or Government of the Member States of the EU. This is a binding international treaty.

1.18 This Decision is binding in international law on all EU countries and will take effect immediately if the British people vote to remain in the EU. It will be registered at the United Nations, as the Danish Decision was in 1992.

1.19 It is also irreversible without the UK's consent: the decision was agreed by all of the Member States and cannot be amended or revoked unless all Member States, including the UK, agree.

1.20 It is a tried and tested approach giving the legal certainty that the UK needs. There is precedent for an agreement of this nature: it was successfully used to address Danish and Irish concerns in 1992 and 2009 respectively.

1.21 The European Council agreed that, should the result of the referendum be a vote that the UK should leave the EU, the new settlement for the UK will cease to exist.

## **Wider protections and opt-outs**

1.22 This new settlement builds on a number of existing protections and opt-outs applying to the UK's membership of the EU. This means that the UK now has a special status within the EU – inside those areas of activity where it is in the UK's interest, but outside those where it is not:

- the UK is not under the standard obligation for Member States to join the euro. We will always keep the pound;
- the UK has remained outside the Schengen border-free area, which means that we maintain control over our own borders. The UK will not join the Schengen border-free area; and
- the UK has opted out of many measures in the Justice and Home Affairs (JHA) field, while opting in to those which are essential to protect the security of our people.

1.23 In addition, the UK Parliament's European Union Act 2011 ensures that no further areas of power or competence can be transferred to the EU without the express approval of our Parliament and the consent of the British people in a referendum – an important democratic lock on any further European integration.

1.24 Together, our new settlement and our existing arrangements give the UK a special status in the EU. We retain our rights as a member of the EU, including our seat in the European Council and our full voting rights and vetoes; but we are outside the euro, outside

the Schengen border-free area, outside Justice and Home Affairs measures unless we choose otherwise, while retaining our full say over the laws of the Single Market. The UK is involved, and influential, in the EU in pursuit of our interests, but we have safeguards and opt-outs which protect UK interests too.

The UK set out to fix four key problems with the EU and we delivered:

- permanent protection for the pound and our right to keep it, guarantees that UK taxpayers will never be required to bailout the Eurozone and that UK businesses cannot be discriminated against because we are outside the Eurozone;
- commitments from the EU to cut red tape, complete the Single Market and sign new trade deals to create opportunities for our businesses and jobs for our people;
- formal agreement that the Treaties will be changed in the future so that the UK is carved out of ‘ever closer union’ and we will have new powers to block or remove unwanted European laws; and
- new powers to tackle the abuse of free movement and reduce the unnatural draw of our benefits system, to meet our aim of reducing immigration, by making sure that new arrivals from the EU cannot claim full benefits for up to 4 years.

This settlement is legally binding, irreversible and delivers for the United Kingdom.

## The best of both worlds

1.25 Our new settlement resets the balance in our relationship with the EU. It reinforces the clear economic and security benefits of EU membership, while making clear that we cannot be required to take part in any further political integration and creates a mechanism for reviewing existing EU laws and ensuring that decisions are taken at the national level, whenever possible. The UK is stronger, safer and better off in a reformed EU.

1.26 The UK is better off in the EU because we have access to the Single Market and play a leading role in determining the rules that govern it. 44 per cent of UK exports go to the EU,<sup>2</sup> and thanks to the Single Market none of these face tariffs or customs controls. We have a seat at the table and a major influence in determining the rules as they evolve over time. This allows the UK to keep costs down for UK-based businesses and consumers, for example, by cutting the cost of mobile roaming charges and passenger air fares throughout Europe. Almost half of all foreign investment into the UK comes from the EU.<sup>3</sup> EU membership allows us to continue to attract international investment into the UK. It also helps us drive forward strong and comprehensive free trade agreements: giving UK companies better access to non-EU markets right across the world, supporting our long-term economic plan and securing our future prosperity. For the British people this means more jobs being created, greater financial security and lower prices.

1.27 The UK is safer in the EU because our membership enhances our ability to co-operate in combating crime and terrorism, while respecting the fact that the sole responsibility for our

<sup>2</sup> ONS Pink Book (2015, Table 9).

<sup>3</sup> The ONS inward Foreign Direct Investment (FDI) figures show that, in 2014, 48 per cent of the stock of inward FDI in the UK comes from the EU (ONS, Foreign Direct Investment 2014, 3 December 2015).

country's national security rests with the UK Government. We are more secure when Western countries are united. For that reason our leading allies worldwide want us to stay in the EU.

1.28 And the UK is stronger in the EU because our membership gives us more influence on the world stage. We played a leading role in securing strong EU-wide sanctions when we needed them against Russia and Iran. We have been at the forefront of the EU's efforts to tackle the spread of Ebola in Africa. The UK also played a key role, using our influence in the EU, to secure a global climate deal in Paris.

1.29 The task of reforming the EU does not end with today's agreement. But our new settlement gives us the best of both worlds because of the UK's special status. The UK has opt-outs from the aspects of EU membership that aren't in our interests, while keeping those that strengthen the UK. We keep full access to the EU's free-trade Single Market, which makes us better off, and the Europe-wide co-operation on crime and terrorism, which makes us more secure. But we will be out of the parts of EU membership that don't work for us: the UK will not join the euro and we will never be part of Eurozone bail outs or the Schengen border-free area. So this is a good deal for our country.

1.30 That is why the Government's view is that the UK's national interest – the interests of every family, household, business, community, region and nation within our United Kingdom – is best served by our country remaining in a reformed EU.

# Chapter 2 – our special status in a reformed EU

2.1 At the February European Council the Government negotiated a new settlement, giving the United Kingdom a special status in a reformed EU. We have secured change in four areas:

- **economic governance**, where we have protected the UK's rights as a country outside the Eurozone, to keep the pound and to keep our economy secure;
- **competitiveness**, where the EU now has an ambitious agenda for reforming its economy, and we have secured a firm commitment to drive that agenda harder over the coming years to unleash the full potential of the free trade Single Market and create growth and jobs;
- **sovereignty**, where we have guaranteed that the UK will not take part in any further European political integration, and have secured specific confirmation that the concept of 'ever closer union' will not apply to the UK in future and have strengthened the power of national parliaments; and
- **welfare and free movement**, where we have secured new measures to tackle the abuse of our welfare and immigration system, creating fairer rules while maintaining our open economy.

2.2 The Government has secured these changes in a package agreed by the Heads of State or Government of all 28 EU Member States.

2.3 The form of the package matters. It comprises:

- **an International Law Decision**;<sup>4</sup> this is a legally-binding agreement between the Member States. It spans all four areas and includes a firm commitment to amend the EU Treaties in key areas. It cannot be changed without the consent of the UK;
- **a Statement of all 28 Member States**<sup>5</sup> committing them all to agree a legally-binding mechanism to protect the interests of Member States like the UK, which are outside the Eurozone;

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<sup>4</sup> *A Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union.* All the documents in the package can be found: <http://www.consilium.europa.eu/en/press/press-releases/2016/02/19-euco-conclusions/>

<sup>5</sup> Statement on section A of the decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union.

- **a Declaration of the European Council;**<sup>6</sup> this sets out a new commitment from the European Council to improve the competitiveness of the EU;
- **four declarations by the European Commission;**<sup>7</sup> these are linked to specific parts of the International Law Decision. They make clear how the European Commission will deliver on areas that fall within its responsibilities, including through the introduction of new EU laws; and
- **European Council Conclusions on the United Kingdom and the European Union.**

2.4 The European Commission has committed to bring forward new legislation where it is needed to implement the UK's new settlement. These European Commission proposals will be agreed jointly by the Council and the European Parliament. Representatives of the major political groups in the European Parliament have been consulted on the UK's new settlement. The UK will also pass domestic legislation to underpin this settlement. The Government recognises that in some cases the implementation of this agreement will involve the Devolved Administrations and is committed to working closely with them on this in the coming weeks and months.

2.5 The new arrangements set out in this package will cease to exist should the result of the referendum be a vote that the UK should leave the EU.

2.6 This document sets out the detail of this new settlement for the UK in a reformed EU.

## A. Economic governance

**2.7 Our new settlement safeguards the interests of countries like the UK, which are inside the free trade Single Market but outside the euro. Alongside recognition that the UK should not be forced to participate in measures that are for the Eurozone, this agreement secures the UK's special status with regard to economic issues with important protections for the UK in the EU's governance. This means that we keep the pound:**

- UK businesses trading in the Single Market cannot be discriminated against because the UK is outside the Eurozone;
- the responsibility for supervising the financial stability of the UK remains in the hands of the Bank of England and other UK authorities;
- UK taxpayers will never be required to pay for Eurozone bail outs; and
- all discussions on matters that affect all EU Member States will involve all EU Member States, including the UK, not just members of the Eurozone.

2.8 These principles have been agreed by all 28 Member States in the legally-binding Decision and will be incorporated into the Treaties when they are next revised. If the UK has

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<sup>6</sup> European Council Declaration on competitiveness.

<sup>7</sup> Declaration of the European Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism; Declaration of the European Commission on the Safeguard Mechanism referred to in paragraph 2(b) of Section D of the decision; Declaration of the European Commission on issues related to the abuse of the right of free movement of persons – Annex F; Declaration of the European Commission on the indexation of child benefits exported to a Member State other than that where the worker resides.

any concerns that they are not being respected we also have a safeguard mechanism that will allow us to take our concerns to the European Council.

2.9 This deal protects the UK's position at the heart of the Single Market but outside the Eurozone. It lays the basis for a lasting and fair relationship between the Eurozone and Member States that do not use the euro. These principles are set out in Section A of the International Law Decision.

## **Recognition that the UK should not be forced to participate in measures that are for the Eurozone**

2.10 During negotiations on the Maastricht Treaty, agreed in 1992, the UK secured a permanent opt-out from joining the euro. This opt-out has been maintained. The Government has no intention of adopting the euro as the currency of the UK, and the European Union Act 2011 requires an Act of Parliament and a referendum to take place before the UK could do so. To put it simply: we will not join the euro.

2.11 However, the development of the euro as a major project of the EU has called into question whether countries like the UK that do not use the euro will be treated fairly. The new settlement addresses this. An important element of this is recognition in the International Law Decision that “not all Member States have the euro as their currency”. Explicitly recognised here for the first time, this underpins our new settlement in an EU that treats Member States equally regardless of their currency.

2.12 The Eurozone is a key trading partner for the UK.<sup>8</sup> A stable, successful Eurozone economy is of vital importance to the UK's own economic security. This is why the UK Government supports the reform and integration of the Eurozone and will continue to do so. This is reflected in the new settlement.

2.13 Following the financial crisis, the Eurozone made significant and necessary reforms to ensure long-term financial stability. These included stronger governance and deeper integration. The Five Presidents' Report of June 2015 on Completing Europe's Economic and Monetary Union<sup>9</sup> proposed a number of measures that would move the Eurozone towards a closer Economic Union, Financial Union and Fiscal Union. These could be the next steps along what the Chancellor has referred to as the “inexorable logic” of Eurozone integration.<sup>10</sup>

2.14 The UK supports the Eurozone's efforts to reform. However, as the Eurozone takes the steps it needs to succeed, it is equally important that the UK is not forced to participate and does not have its interests undermined. In the past, this has not always been clear. For example, when the Eurozone agreed to establish a Banking Union, the UK had to negotiate to ensure that it would not include the UK.

2.15 This agreement builds on the UK's existing opt-outs and acknowledges that “measures, the purpose of which is to further deepen economic and monetary union, will be voluntary for Member States whose currency is not the euro and will be open to their participation wherever feasible”. So if the Eurozone agrees new arrangements to improve the functioning of the euro, the UK should not be obliged to be part of them. Any future Treaty change at the EU level would still require agreement from all Member States, including the UK.

<sup>8</sup> 39% of the UK's exports go to Eurozone countries – Source: ONS Pink Book (Chapter 9.3).

<sup>9</sup> [https://ec.europa.eu/priorities/publications/five-presidents-report-completing-europes-economic-and-monetary-union\\_en](https://ec.europa.eu/priorities/publications/five-presidents-report-completing-europes-economic-and-monetary-union_en)

<sup>10</sup> <https://www.gov.uk/government/speeches/extracts-from-the-chancellors-speech-on-europe>

## **The integrity of the Single Market will be maintained, and UK businesses trading in the Single Market cannot face discrimination because the UK is outside the Eurozone**

2.16 As we keep the pound, individuals and companies based in the UK must continue to enjoy the full economic benefits of the Single Market, with 500 million consumers and an economy of almost £11 trillion.<sup>11</sup> This was one of the priorities identified by the Prime Minister in his speech at Bloomberg in 2013, when he made clear that “our participation in the Single Market, and our ability to help set its rules is the principal reason for our membership of the EU”.<sup>12</sup>

2.17 The agreement explicitly states that the integrity of the Single Market will be protected. In particular, it confirms that “legal acts, including intergovernmental agreements between Member States, directly linked to the functioning of the euro area shall respect the internal market”. Maintaining an open, integrated and globally-trading market between 28 Member States has always been core to the UK’s membership of the EU and is vital to maximising Europe’s potential for growth. By adhering to this principle we will ensure that the EU and the future development of the Single Market work in the interests of all its members, not just those in the Eurozone.

2.18 The agreement also makes clear that “discrimination between natural or legal persons based on the official currency of the Member State, or, as the case may be, the currency that has legal tender in the Member State, where they are established is prohibited”.

2.19 This principle of non-discrimination against businesses in countries not using the euro is a vital protection for the UK. It is designed to respond to cases where the UK’s economic position in the Single Market could have been undermined by decisions that the Eurozone wanted to take. For example, the European Central Bank’s policy that clearing houses dealing in significant volumes of euros should be located in the Eurozone would have effectively created a two-tier Single Market, and could have forced a global firm based in the UK, responsible for clearing around £200 trillion of interest rate derivatives,<sup>13</sup> to relocate to the Eurozone. This was struck down by the EU’s General Court following a legal challenge by the UK.

2.20 Maintaining the integrity of the Single Market and ensuring non-discrimination is particularly important for the UK’s financial services sector. The sector employs over one million people across the UK, constitutes over 7 per cent of UK economic output,<sup>14</sup> accounts for 13 per cent of UK exports<sup>15</sup> and generates a trade surplus of almost £60 billion.<sup>16</sup> Its continued access to the EU-wide single financial market on fair terms is vital for the UK economy and for London’s position as the world’s leading financial centre. This agreement confirms that the financial services sector will be able to thrive even as the Eurozone continues to deepen its integration.

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<sup>11</sup> Source: Eurostat; source originally calculated in euros.

<sup>12</sup> Bloomberg – 23 January 2013. Link to speech transcript: <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>

<sup>13</sup> [www.lchclearnet.com/asset-classes/otc-interest-rate-derivatives/volumes](http://www.lchclearnet.com/asset-classes/otc-interest-rate-derivatives/volumes)

<sup>14</sup> ONS ‘Regional Gross Value Added (Income Approach), 1997 to 2014’, Dec 2015; ONS Blue Book, 2015

<sup>15</sup> ONS Pink Book (October 2015).

<sup>16</sup> Financial and insurance services generated a trade surplus of £58 billion in 2014. (based on Pink Book 2015, includes insurance and pension services, as well as financial).

## **Responsibility for supervising the financial stability of the UK remains in the hands of the Bank of England and other UK authorities**

2.21 Just as maintaining a strong financial services sector drives economic growth by channelling funding to where it is needed most, so it is also essential to maintain financial stability to protect our economic security. As has been shown in recent years, the ability of governments and other authorities to respond to a crisis and restore stability to financial markets is essential to protecting jobs and businesses across the UK.

2.22 As set out above, the UK financial services sector benefits substantially from operating within a single EU-wide financial market safeguarded by EU-wide rules on financial stability which implement international standards. The UK has played a key role in drawing these up. For example, the EU's rules on managing failing banks drew heavily on the UK's own legislation, in particular the Banking Act 2009. The new settlement will ensure EU financial services rules work for all Member States, whether members of the Eurozone or not.

2.23 However, as well as these common rules, the Eurozone may require common institutions and financing arrangements in order to preserve financial stability, given the closer linkages between its financial systems. Many of these Eurozone arrangements are not needed to operate a Single Market.

2.24 So as well as reinforcing the integrity of the Single Market, our new settlement therefore also recognises the differing requirements for countries inside and outside the euro.

2.25 First, through flexibility within the rules. The agreement recognises that in some instances the Eurozone may need more uniform rules on financial stability for the single currency and for firms that operate within the Eurozone, beyond what is appropriate for the Single Market. In these cases it is important that this necessary uniformity for the Eurozone is not extended to the UK, where it could reduce the ability of our authorities to address the particular risks we face. To address this, the Government has secured recognition that more uniform rules may be needed for the Eurozone than any corresponding rules applied in the UK. This is important for the protection of UK national economic interests and for protecting UK sovereignty.

2.26 Second, through policing the rules. The agreement recognises that responsibility for monitoring and enforcing those rules and supervising the financial stability of the UK and our financial institutions and markets remains a matter for the Bank of England and other UK authorities that are accountable to our Parliament. In addition, the UK Government retains complete responsibility for decisions over the use of UK taxpayers' money to protect financial stability. This builds on the reforms of recent years in response to the financial crisis and provides an important new safeguard of the UK authorities' powers. This is vital if the UK is to preserve its economic and financial stability and ensure proper accountability to Parliament for UK taxpayers' money, while continuing to benefit from participation in the Single Market and a more stable Eurozone.

## **UK taxpayers will never be required to pay for Eurozone bail outs**

2.27 This principle recognises that in the event of a crisis the UK taxpayer will never be liable for supporting the financial stability of the Eurozone and its members, for example, through bail outs. This builds on the Government's agreement with other Member States in summer 2015 that the UK should not be liable for any share of the EU's loans to Greece.

2.28 Incorporating this principle into the International Law Decision will ensure this approach applies to all future EU emergency financial assistance. The UK and other Member States that do not use the euro will also be fully reimbursed if the EU budget is ever used to support the Eurozone's financial stability in crisis situations.

### **All discussions on matters that affect all EU Member States will involve all EU Member States, including the UK**

2.29 A fundamental principle of the EU's operation is that issues that affect all Member States should be discussed by all Member States. It is right that countries in the Eurozone should be able to discuss matters that solely relate to their own interests. However, to ensure transparency and trust within the EU, it is vital that where these matters are discussed they do not encroach on the interests of non-Eurozone Member States.

2.30 The principle agreed in the International Law Decision confirms that the UK will continue to have an equal voice in the EU. And while the Eurozone will continue to discuss issues specific to the euro, when there is a question that affects the UK, then the UK will be part of the discussion. It means that informal meetings of Eurozone ministers must respect the role of the Council of Ministers, which includes representatives from all 28 Member States. It also reaffirms that all Member States can participate in discussions in the Council, even where not all members have the right to vote (if, for example, the discussion is about measures that are only for countries in the Eurozone).

### **Safeguard mechanism**

2.31 The new settlement also includes a new safeguard mechanism. If the UK believes that the principles are not being respected, we can unilaterally take the UK's concerns to the Heads of State or Government in the European Council.

2.32 In addition, the principles described above are binding and irreversible. The European Court of Justice would have to take them into account when interpreting the Treaties and could be asked to enforce the duty of Member States to comply with them. We have also secured a binding commitment that they will be incorporated into the EU Treaties at the next opportunity.<sup>17</sup>

2.33 This agreement provides a clear way forward for the UK in its relations with the Eurozone. It is a substantial set of reforms that makes the EU more flexible, more open and more transparent. It will facilitate positive reform of the Eurozone while safeguarding the UK's use of the pound and the UK's role in deciding the rules of the Single Market. And it will help provide clarity and stability to UK businesses and investors in the UK, supporting the Government's economic plan.

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<sup>17</sup> This is covered in more detail in part E.

## B. Competitiveness

### 2.34 Our new settlement confirms that:

- the regulatory burden on businesses, particularly small businesses, will be reduced with specific targets established in key sectors in line with the approach adopted in the UK;
- there will be a new focus on further extending the Single Market to help bring down the remaining barriers to trade within the EU, particularly in key areas like services, energy and digital; and
- the EU will pursue with renewed commitment free trade agreements with the world's most dynamic economies, so that the tariff and regulatory barriers faced by UK companies in large and growing non-EU markets are reduced or eliminated.

2.35 Since the EU's Single Market was launched it has delivered real benefits for Europe and for the UK. It has added more than £200 billion a year<sup>18</sup> to the EU economy in today's prices and has opened up new opportunities for British people, from making travel easier by pushing down the cost of airfares to supporting a renaissance in the UK car industry.

2.36 In the agreement we have secured, the European Commission and all Member States have committed to reforms in line with the vision shared by the UK and others for a more globally-competitive Europe. As the European Council Declaration states, the EU recognises the need to act to 'promote a climate of entrepreneurship and job creation, invest and equip our economies for the future, facilitate international trade, and make the Union a more attractive partner.'

2.37 The renewed focus on better regulation, the Single Market and trade means there has never been such close alignment between the UK's own agenda for economic reform in Europe and that of the European Commission and other Member States. This is in marked contrast to the early 1980s, when the UK faced the challenge of persuading other Member States to move beyond the removal of customs barriers to taking down the national regulatory barriers that were the real restrictions on trade within Europe. This is a very significant shift, which puts the EU on the right, long-term path to economic reform, in line with the UK's own long-term economic plan.

2.38 The EU Member States' commitments are set out in Section B of the International Law Decision and are supported by a European Council Declaration on Competitiveness and a European Commission Declaration on a Subsidiarity implementation mechanism and a burden reduction implementation mechanism.

### Reducing the burden on businesses

2.39 Under our new settlement the European Commission has agreed for the first time to set specific targets to reduce the overall burden on businesses in key sectors. The European Commission will, in particular, focus on cutting costs for small businesses across the board. This will drive down the burden of red tape on UK businesses.

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<sup>18</sup> BIS analysis based on original source in euros; European Commission. 2012. 'Twenty Years of the European Single Market: Together for New Growth: Main Achievements'. Available at [http://ec.europa.eu/internal\\_market/publications/docs/20years/achievements-web\\_en.pdf](http://ec.europa.eu/internal_market/publications/docs/20years/achievements-web_en.pdf)

2.40 The Commission and the EU Member States have now agreed that they need to go further in reducing regulatory costs for businesses. The European Council Declaration on Competitiveness commits to 'doing more to reduce the overall burden of EU regulation, especially on SMEs and micro enterprises'. The European Commission will set the EU specific targets for doing so in the 'most onerous areas' for businesses.

2.41 To implement this, the European Commission has agreed to introduce a new burden review mechanism. It will conduct an annual survey of the burdens imposed on businesses at the EU level. This process will identify legislation that should be revised or repealed to bring costs down, and will mean that limiting the cost of regulation will be a priority when proposals are developed, negotiated and agreed.

2.42 Ministers from the governments of every Member State will hold the EU institutions to account, overseeing the agreement and implementation of burden reduction targets. This represents a major shift in the EU's approach and is the culmination of a reform process that has been driven by the UK.

2.43 The UK has long argued for a pro-growth, pro-small-business culture in the EU. As the Prime Minister said in his Europe speech at Bloomberg three years ago, we have aimed for a 'leaner, less bureaucratic Union'. Working over many years, and in particular since the Prime Minister's Business Taskforce launched in October 2013, the UK has made real progress, resulting in a clear focus from the EU on reducing costs on business and only regulating where necessary.<sup>19</sup>

2.44 In line with this, since 2014 the new European Commission has reformed its approach to regulation, reducing the number of new initiatives proposed in its annual work programmes by over 80 per cent.<sup>20</sup> Across a wide range of policy areas, from waste disposal to chemical production and accounting, EU legislation has recently been revised to remove unnecessary requirements. Our new settlement builds on these steps, from which UK businesses, including the smallest, are already benefiting.

2.45 This change of approach is also being put on to a firmer institutional footing. In response to calls from the UK, a new Regulatory Scrutiny Board was established in July 2015. The Board will make sure that the European Commission's assessment of the real-world impact of new legislative proposals is based on robust evidence, in order to ensure the minimum necessary cost to business. Half of the Board's members will be recruited from outside the European Commission – the first time that independent expertise will have been used to scrutinise the evidence base for new EU regulations.

2.46 European Commission reforms made last year mean that proposals for new legislation now have to be put out to consultation with businesses and the public before they can be tabled for negotiation, and the Commission has developed new tests to make sure that legislation promotes a competitive Europe. These include:

- testing that new laws meet the needs of small businesses and start-ups. Wherever possible, small businesses will be placed under lighter regimes, and microenterprises

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<sup>19</sup> The revision of the Waste Framework Directive entered into force on 1 January 2015; the revision of the REACH (Registration, Evaluation, Authorisation and restriction of Chemicals) Regulation entered into force on 22 March 2013; and the revision of the Accounting Directive entered into force on 6 April 2015.

<sup>20</sup> The Prime Minister's Business Taskforce Report from October 2013 is available here: [www.gov.uk/publications/cut-eu-red-tape-report-from-the-business-taskforce](http://www.gov.uk/publications/cut-eu-red-tape-report-from-the-business-taskforce)  
European Commission work programmes are available here: [ec.europa.eu/atwork/key-documents](http://ec.europa.eu/atwork/key-documents)

- accounting for 95 per cent of all UK firms<sup>21</sup> – will be exempted from requirements altogether;
- ensuring that new regulation supports a globally competitive EU. The European Commission will assess whether new regulation advantages or disadvantages European businesses against the global competition, looking at factors including the costs of doing business, productivity, international trade, and flows of investment; and
- challenging whether new regulation supports innovation. Regulations must be flexible enough to meet the demands of the modern economy and new technology.

2.47 This offers the UK's small businesses the prospect of being freed from the burden of unnecessary regulation, helping to release their potential for entrepreneurship and growth, while being able to take advantage of the export opportunities offered by the Single Market.

## Strengthening the Single Market

2.48 Our new settlement has delivered a clear commitment 'to fully implement and strengthen' the Single Market, which is an 'essential objective' of the EU. There will be a particular focus on fully exploiting the potential of the Single Market, and boosting Europe's international competitiveness in key areas important to the UK economy, like energy and digital.

2.49 The UK spearheaded the launch of the Single Market 30 years ago. As Margaret Thatcher said in 1988:

*Just think for a moment what a prospect that is. A Single Market without barriers—visible or invisible—giving you direct and unhindered access to the purchasing power of over 300 million [now 500 million] of the world's wealthiest and most prosperous people. Bigger than Japan. Bigger than the United States. ... [And] Britain has given the lead.<sup>22</sup>*

2.50 For many years, the Single Market has been the EU's engine of growth. Trade across Europe creates a more competitive, innovative and adaptable economy. The results are higher efficiency, lower prices and greater choice for consumers and businesses. Membership of the Single Market has become more important as manufacturing processes increasingly take place in more than one country. Companies manufacturing in the UK like Rolls-Royce plc, and BMW source parts from across Europe when putting together an end product.

2.51 While exports to the world's largest emerging economies, such as India and China are increasing, the Single Market remains vital to the health of the UK economy: 44 per cent of the UK's goods and services exports still go to the EU compared to 5 per cent to India and China.<sup>23</sup> UK exporters rely more heavily on inputs from within the EU than from anywhere else: 9 per cent of the value added of UK exports comes from inputs from within the EU, compared to 2.7 per cent from the US and only 1.3 per cent from China.<sup>24</sup>

2.52 But with the changing shape of the global economy there is no room for complacency. The agreement makes clear that all EU Member States are committed to reform, with

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<sup>21</sup> BIS Business Population Estimates 2015.

<sup>22</sup> Thatcher, Margaret, April 1988. Speech opening the "Europe Open for Business" campaign. Lancaster House: London.

<sup>23</sup> ONS Pink Book (October 2015).

<sup>24</sup> OECD Trade in Value Added Database.

the Declaration of the European Council stating that 'Europe must boost its international competitiveness across the board in services and products and in key areas such as energy and the digital single market.'

2.53 Today the UK continues to drive the Single Market project towards completion. Strongly influenced by the UK and our allies, the European Commission has embarked on a series of economic reforms that are designed to increase the productivity of European economies, preparing European businesses for a world that is more fiercely competitive than it was in 1973 when the UK joined the European Economic Community.

2.54 In May 2015, the European Commission launched its new economic reform programme with its strategy for completing the Digital Single Market. In September it set out a package of measures to create a real Capital Markets Union, pioneered by the UK's European Commissioner, Lord Hill, to make it easier for businesses, especially SMEs, to get access to finance for investment. In October 2015, it published its far-reaching Trade Strategy, looking forward to free trade agreements with Australia, New Zealand, the United States, and Asia-Pacific and Latin American countries, and separately its vision for deepening the Single Market, particularly in services. Most recently, in November 2015 the European Commission's first State of the Energy Union report on energy market reforms was launched.

2.55 These initiatives answer long-standing calls from the UK and others for greater liberalisation of the EU's market in services. The European Commission's 2015 Single Market strategy focuses on liberalisation in areas where the UK economy is particularly competitive, like professional business services such as engineering and accounting. The UK already performs strongly on trade in services with the rest of the EU, recording a trade surplus of £17 billion in 2014.<sup>25</sup> If all the EU's national services markets were as open as the top 5 performing European markets (in terms of their compliance with the Services Directive), this would add 1.8 per cent to EU GDP, including 2 per cent growth for the UK.<sup>26</sup>

2.56 As one of Europe's leading providers and users of e-commerce, the UK would particularly benefit from a Single Market in digital services. Last year's agreement to end mobile roaming charges was a UK-led victory which could save UK consumers an estimated £350 million a year, with savings worth £1.4 billion expected if tourists begin using their phone when travelling within the Single Market as much as they do at home.<sup>27</sup> Other proposals designed for consumers will follow, for example allowing people to take their online subscription services for music, film and TV across EU borders without them being blocked. From simpler VAT payment rules to more predictable consumer protection regimes, the EU is also making it easier for businesses to exploit opportunities to trade online across borders in Europe. The overall impact of a fully-functioning Digital Single Market could be worth up to £330 billion a year to the EU economy.<sup>28</sup>

2.57 Following the financial crisis the UK called for urgent measures to return cross-border capital flows to pre-crisis levels. This is essential to help businesses access the investment they need to grow without having to rely solely on bank finance. In response, the EU has

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<sup>25</sup> ONS Pink Book (October 2015).

<sup>26</sup> European Commission, 2012. 'The Economic Impact of the Services Directive: A first assessment following implementation'. This figure measures the potential for growth from better implementation of the 2006 Services Directive, the existing legislation governing the single market in services. Future legislative interventions to open markets would be expected to deliver additional benefits.

<sup>27</sup> Internal Government analysis, 2016 based on industry figures.

<sup>28</sup> (European Added Value Unit, 2015. 'Mapping the Cost of Non-Europe, 2014-2019', Third edition. Report for the European Parliament). The source's benefit was originally calculated in euros.

committed to establishing a Capital Markets Union to generate more capital investment and to allow financing to flow freely between Member States. The first proposal launched by the European Commission, on a standardised approach to bundling and trading debt, has the potential to unlock up to £110 billion in extra lending to businesses.<sup>29</sup>

**2.58** The UK is also leading the completion of the EU Single Market in energy. By 2017, we will have agreed a package of measures that will allow energy to flow freely between one national energy network and another. Construction of the major infrastructure needed to connect the continent fully will also be underway. The UK has successfully argued that instability in Eastern Europe and the Middle East means we need to strengthen Europe's energy security and minimise price shocks. A fully-fledged 'energy union' in gas and electricity markets could save £50 billion a year across the EU by 2030 and should lead to cheaper energy prices for consumers.<sup>30</sup>

## **An ambitious trade policy**

**2.59** Our new settlement has secured a clear commitment that the EU will pursue an 'active and ambitious' trade policy with the world's most dynamic economies, prioritising the US, Japan, and other important partners in the Asia-Pacific region and Latin America.

**2.60** The UK is one of the EU's strongest proponents of free trade and has been a leading trading nation for hundreds of years. The UK has helped to secure recent EU trade deals, which have served us well: for example, after the EU-South Korea deal came into force in 2011, UK exports to South Korea doubled in 3 years.<sup>31</sup>

**2.61** The EU is already the largest trading partner of 59 countries, representing more than half of the world economy, around twice that of the US, which is the largest trading partner of 24 countries, representing less than a quarter of the world economy.<sup>32</sup>

**2.62** The agreement we have secured means that the EU Member States will fully support the European Commission's recent trade strategy. Central to this strategy are ambitious and comprehensive trade deals that will substantially boost the UK's growth and economic security. They will also help to build an open global economy that respects, as stated in the Council Declaration on Competitiveness, 'high standards of consumer, employee, health and environmental protection'. Concluding these deals, using the leverage of the EU's Single Market with 500 million consumers, will help the UK to tap into the markets of fast-growing economies in particular. Currently, the UK exports more to Ireland than we do to China. We export almost twice as much to Belgium as we do to India. We export nearly three times as much to Sweden as we do to Brazil.<sup>33</sup>

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<sup>29</sup> European Commission, September 2015. 'Impact Assessment: laying down common rules on securitisation and creating a European framework for simple and transparent securitisation'. Commission Staff Working Document. Brussels. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015SC0185>. The source's benefit was originally calculated in euros.

<sup>30</sup> Booz and Company, 2013. 'Benefits of an Integrated European Energy Market'. Report for the Directorate-General for Energy in the European Commission. Available at: [https://ec.europa.eu/energy/sites/ener/files/documents/20130902\\_energy\\_integration\\_benefits.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/20130902_energy_integration_benefits.pdf). The source's benefit was originally calculated in euros.

<sup>31</sup> ONS Pink Book (October 2015).

<sup>32</sup> BIS analysis of UNCTAD data.

<sup>33</sup> ONS Pink Book (October 2015).

2.63 Concluding all the trade deals already underway could ultimately be worth in total more than £20 billion a year to UK GDP.<sup>34</sup> These include the UK's top trade priority: an agreement between the EU and the US (the Transatlantic Trade and Investment Partnership), which alone could add £10 billion to UK GDP. It will offer real benefits to UK consumers through increased choice, lower prices, more job opportunities and increased wages.<sup>35</sup> The European Commission estimates that the average household will benefit by nearly £400 per year.<sup>36</sup>

2.64 Other negotiations underway would also boost UK growth substantially. An ambitious deal with Japan would ultimately be worth more than £5 billion a year to the UK economy.<sup>37</sup> The EU is also negotiating a bilateral investment deal with China, which could pave the way for a free trade agreement. Negotiations with ASEAN (Association of Southeast Asian Nations) countries continue, with the ultimate goal of an EU-ASEAN deal. Negotiations should also be revived with MERCOSUR countries (Argentina, Brazil, Paraguay, and Uruguay) which could be worth £2.5 billion to the UK each year.<sup>38</sup>

2.65 The European Commission's Trade Strategy also prioritises negotiations with key Commonwealth partners. This includes a commitment to put a final deal with Canada to the Council and European Parliament as early as possible this year. This deal could ultimately be worth £1.3 billion to the UK each year.<sup>39</sup> The European Commission is ready to re-launch negotiations with India and has also committed to start the process for trade deals with Australia and New Zealand.

## C. Sovereignty

### 2.66 Our new settlement means that:

- it has been formally recognised for the first time that the UK is not committed to further political integration into the EU and we have secured specific confirmation that the concept of 'ever closer union' will not apply to the UK in future. This builds on the commitment in the European Union Act 2011, which makes it impossible for any UK Government to transfer power to the EU in the future without a referendum. The agreement confirms that EU Member States do not have to aim for a common destination;

<sup>34</sup> BIS estimate, based on studies estimating the impact of individual deals, including the CEPR study on TTIP. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/198115/bis-13-869-economic-impact-on-uk-of-transatlantic-trade-and-investment-partnership-between-eu-and-us.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198115/bis-13-869-economic-impact-on-uk-of-transatlantic-trade-and-investment-partnership-between-eu-and-us.pdf)

<sup>35</sup> Department for Business, Innovation and Skills analysis, based on Centre for Economic Policy Research for BIS – Estimating the Economic Impact on the UK of a Transatlantic Trade and Investment Partnership (TTIP) Agreement between the European Union and the United States, March 2013 Report for the UK Department of Business, Innovation and Skills. London. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/198115/bis-13-869-economic-impact-on-uk-of-transatlantic-trade-and-investment-partnership-between-eu-and-us.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198115/bis-13-869-economic-impact-on-uk-of-transatlantic-trade-and-investment-partnership-between-eu-and-us.pdf)

<sup>36</sup> Centre for Economic Policy Research 2013 'Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment'. Report for the European Commission. The source's benefit was originally calculated in euros.

<sup>37</sup> BIS estimates based on European Commission Impact Assessment, July 2012. [http://trade.ec.europa.eu/doclib/docs/2012/july/tradoc\\_149809.pdf](http://trade.ec.europa.eu/doclib/docs/2012/july/tradoc_149809.pdf)

<sup>38</sup> BIS estimates based on European Commission Impact Assessment, December 2011. [http://ftp.jrc.es/EURdoc/Vol%201\\_MAIN%20RESULTS\\_JRC67394.pdf](http://ftp.jrc.es/EURdoc/Vol%201_MAIN%20RESULTS_JRC67394.pdf)

<sup>39</sup> BIS estimates based on based on the consolidated text, September 2014. [http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc\\_152806.pdf](http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf)

- national parliaments can combine to block unwanted EU legislative proposals, where the power should not be exercised at the EU level, giving a stronger voice to the UK Parliament;
- a new mechanism will be created to review existing EU laws to ensure that decisions are taken at the national level where possible and only at the EU level where necessary (subsidiarity) and that only the minimum action necessary is taken to achieve regulatory objectives (proportionality);
- we have legal confirmation that our national security is the sole responsibility of the UK Government; and
- on issues such as policing, immigration or asylum policy, it is underlined that the judgement on whether we take part in European-level action rests clearly with the UK Government and Parliament.

2.67 The need to preserve national sovereignty is a common concern of many Member States, but it is particularly strongly felt in the UK. This settlement formally recognises for the first time that the UK is not committed to further political integration, strengthens the role of national parliaments, and protects our right to choose whether we act on a European level on important issues such as policing, criminal and civil justice, immigration and asylum. These reforms are covered in Section C of the International Law Decision, in parts of the European Council Declaration on Competitiveness, and in the European Commission’s Declaration on a subsidiarity implementation mechanism.

## Political integration and ‘ever closer union’

2.68 Our new settlement has secured confirmation that the UK is not committed to further political integration into the EU and confirmation that the concept of ‘ever closer union’ will not apply to the UK in future.

2.69 The Prime Minister made clear in his speech on Europe in November 2015 that ‘ever closer union is not a commitment that should apply any longer to the UK. We do not believe in it. We do not subscribe to it. We have a different vision for Europe.’<sup>40</sup> The International Law Decision puts into practice our different vision for Europe. It makes clear that the Treaty references to an ‘ever closer union’ are “compatible with different paths of integration and do not compel all Member States to aim for a common destination”. It also makes clear that the EU has expressly accepted the UK is not following a path to political integration in Europe. It establishes in law a recognition that the UK can have a different vision of its European future.

2.70 Crucially, the International Law Decision also sets out that ‘ever closer union’ cannot be used to extend the scope of EU law or to support an “extensive interpretation” of the EU’s existing powers. It makes clear that “the competences conferred by the Member States on the Union can be modified (...) only through a revision of the Treaties with the agreement of all Member States” confirming that the Treaty provisions on ‘ever closer union’ do not confer additional powers on the EU. This makes it absolutely clear that more powers cannot be transferred from the UK to the EU without the UK agreeing – and were this ever to be proposed, the 2011 European Union Act ensures that the British people would get to vote on it in a referendum.

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<sup>40</sup> 10 November 2015. Link to transcript here.  
<https://www.chathamhouse.org/event/future-britains-relationship-european-union#>

2.71 Finally and importantly, the EU acknowledges explicitly that the UK “is not committed to any further political integration into the European Union” and agrees that the Treaties will be amended in the future “so as to make it clear that the references to ever closer union do not apply to the United Kingdom”.

2.72 This is an important step forward. It is clear legal recognition of the UK's status as an independent sovereign country in charge of its own destiny. The clear statement that not all of its members are aiming for a common destination is a significant step towards a new, more flexible EU, based on willing cooperation that the UK would like to see. As the Prime Minister said in his speech at Bloomberg: “We must not be weighed down by an insistence on a one size fits all approach which implies that all countries want the same level of integration. The fact is that they don't and we shouldn't assert that they do.”<sup>41</sup> This principle is now enshrined in the International Law Decision.

## **National parliaments**

2.73 Our new settlement includes a ‘red card’ so that national parliaments can combine to block unwanted EU legislative proposals where power should not be exercised at an EU level.

2.74 National parliaments are the fundamental source of democratic legitimacy. They have a vital role to play in ensuring that decisions are taken as closely as possible to the citizen.

2.75 Under the current system of ‘yellow’ and ‘orange’ cards, the views of national parliaments are taken into account when a new piece of EU legislation is proposed. However, their opinions are not decisive and can be overruled. And with only 8 weeks to give a view on a proposal, given national parliaments' differing timing of sessions, meeting this deadline and working with other national parliaments has been difficult. Currently, even if every national parliamentary chamber objects to a proposed piece of legislation, the proposal could still be continued without it being altered to take account of their objections.

2.76 The agreement that the UK has secured allows national parliaments to work together to block proposed EU legislation on grounds of subsidiarity. Parliamentary chambers from a minimum number of 16 Member States will be able to block a proposal (where those chambers represent more than 55 per cent of the votes allocated to national parliaments), unless it is ‘amended to accommodate the concerns expressed’. And national parliaments will be given 12 weeks to trigger a red card instead of the 8 weeks in the existing system. This will give more time for national parliaments to work together.

2.77 This new red card strengthens the role of the UK Parliament in a very practical way. It is a step forward in addressing a longstanding democratic deficit in the EU and it will be up to Parliament itself to determine how best to make full use of this new opportunity.

## **Making laws at the national level wherever possible**

2.78 Our new settlement has secured a mechanism for the European Commission to review EU legislation every year to see what can be done better at the national level, and what can be dropped altogether.

2.79 The existing EU Treaties state that the principle of subsidiarity is ‘to ensure that decisions are taken as closely as possible to the citizen’. Yet the EU has often intervened in

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<sup>41</sup> 23 January 2013. Link to speech transcript here:  
<https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>

areas where, whatever the merits of the legislation, many would argue that there is no need for EU-wide action. For example, the Environmental Noise Directive (2002), which requires Member States to produce noise pollution maps and management plans; and a whole suite of health and safety rules.

2.80 Up until now, the mechanisms to stop the EU from passing laws that should be left to individual countries have not been strong enough. There has been no practical mechanism for introducing a “downward ratchet” to EU law-making, as the Foreign Secretary and many in this country have long argued for. This leads to unnecessary regulation and interference – one of the most serious grievances British citizens and businesses have with the EU.

2.81 Under the new settlement we have secured, the European Commission has committed to ‘establish a mechanism to review the body of existing EU legislation for its compliance with the principle of subsidiarity and proportionality’. This means that there is a mechanism in place to review existing EU laws, so that the principle that the EU only acts when it really needs to can be enforced.

2.82 This will require the European Commission to draw up a specific report to be discussed by the Council of Ministers every year. Where the Council agrees that legislation would be better enacted at national level, or that the EU has gone further than necessary, the Council will ask the European Commission to withdraw or amend the legislation in question.

2.83 The European Commission has agreed that in setting the priorities for this review it will be duty-bound to consult the Council, representing national governments, and national parliaments. This requirement will give our Parliament a new mechanism by which to seek changes to existing EU laws.

2.84 This is an important shift in how the EU operates: it will enable decision-making to be returned to the UK, when this is more appropriate, so that power is only exercised at European level where this is absolutely necessary, a long-standing demand from many UK parliamentarians.

## **National security**

2.85 Our new settlement includes a legal confirmation that the UK’s national security is the sole responsibility of the UK Government.

2.86 The EU Treaties make clear that national security is the sole responsibility of Member States. The Government strongly believes that this must be fully respected, because ultimately national governments are responsible for the security of their citizens.

2.87 However, recent European Court of Justice judgments have called this into question. The UK co-operates closely with many other EU Member States to protect our national security. Where collaboration is necessary and appropriate, the UK has led the way in supporting action at EU level, such as on the new agreement reached on processing airline Passenger Name Records data that allows potential terrorists to be identified and tracked. The UK also acknowledges the European Court of Justice’s role in defending the rights of all EU nationals, but its judgments must respect the UK Government’s right to defend the UK’s national security.

2.88 The International Law Decision confirms unequivocally that ‘national security remains the sole responsibility of each Member State’, that this responsibility will be respected by EU

institutions, which would include the European Court of Justice, and that this responsibility should not be 'interpreted restrictively'. This settlement helps ensure that we can exercise our sovereign responsibility for national security without interference from the EU, while retaining the freedom to co-operate closely with our EU counterparts, where it is right to take action collectively to tackle the threats we face.

## Control over Justice and Home Affairs

2.89 On issues such as policing, immigration or asylum policy, it is underlined that the judgment on whether we take part in European-level action rests clearly with the UK Government and Parliament.

2.90 In 1997 the EU agreed that the UK and Ireland have the right to choose whether we want to take part in any new EU legislation concerning immigration, asylum and civil law (the UK's 'opt-in'). This was extended in 2007 to cover policing and criminal justice. The UK negotiated this safeguard to prevent the UK being bound by EU law in these areas, but giving us the right to opt in to measures where this would genuinely be in our national interest.

2.91 This arrangement has allowed the UK to decide for ourselves how to control our borders and to protect our unique justice systems. The UK has chosen to opt into EU measures on more than 90 occasions since 2009<sup>42</sup> where it is in our interest to do so, making us and other European countries safer, including measures to help tackle cybercrime,<sup>43</sup> combat child sexual exploitation,<sup>44</sup> and track the movements of terrorists and serious criminals flying into and out of the UK.<sup>45</sup> We have chosen not to opt in on more than 40 occasions in the same time period, as well as opting out of around 100 measures on 1 December 2014 under the block opt-out under Protocol 36 to the Treaties.

2.92 Over time, however, this position has come under pressure. Specifically, we have seen a number of attempts to introduce new EU legislation that do not properly recognise the UK's opt-in.

2.93 For instance, a proposal designed to prevent fraud against the EU budget would have required Member States to introduce new criminal sanctions.<sup>46</sup> Another proposal designed to improve financial stability across the Single Market included a requirement for law enforcement bodies to exchange information on criminal investigations.<sup>47</sup> Both of these proposals clearly covered Justice and Home Affairs (JHA) matters, but neither acknowledged the application of the UK's opt-in nor cited a JHA legal base. This left open a risk that the UK's opt-in would not be properly recognised and respected by others.

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<sup>42</sup> <https://www.gov.uk/government/publications/jha-opt-in-and-schengen-opt-out-protocols--3>

<sup>43</sup> Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA.

<sup>44</sup> Directive 2011/92/EU of the European Parliament and of the European Parliament and of the Council of 13 December 2011 on combatting the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

<sup>45</sup> Proposal for a Directive of the European Parliament and the Council on the use of Passenger Name Record (PNR) data for the prevention, detection and prosecution of terrorist offences and serious crime.

<sup>46</sup> Proposal for a Directive of the European Parliament and the Council on the fight against fraud to the Union's financial interests by means of criminal law.

<sup>47</sup> Proposal for a Regulation of the European Parliament and the Council on structural measures improving the resilience of EU credit institutions.

2.94 The International Law Decision makes clear that wherever the EU agrees legislation concerning JHA, the UK's opt-in must apply – including where this requires the measure to be split into two, so the JHA matters are clearly separate from the rest of the measure.

2.95 This means that whenever the EU agrees new legislation which contains JHA provisions, the UK will continue to be able to choose whether we wish to take part or not in those JHA matters, and EU Member States and the EU institutions will have to respect that decision.

## D. Welfare and free movement

### 2.96 Our new settlement:

- will enable the UK to have a new emergency brake to limit full access to in-work benefits by newly arrived EU workers for up to 4 years when they enter our labour market. This will be in force for 7 years;
- confirms that in future the UK will not have to pay any means-tested unemployment benefits to EU nationals who come to the UK as job seekers;
- will mean that Child Benefit paid to EU nationals living here, but whose children live outside the UK, will no longer be paid at UK rates but be paid at a rate that reflects the conditions – including the standard of living and Child Benefit paid – of the country where the children live;
- commits to new legislation to prevent illegal migrants from using marriage to an EU national living in the UK to avoid our tough domestic immigration rules; and will mean that non-EU nationals who marry EU nationals living in the UK will also need to meet our immigration rules; and
- ensures greater freedom for the UK to act against the threat of crimes being committed by EU nationals moving around the EU by preventing those who pose a threat from coming into the country, and making it easier to deport them if they have been living in the UK.

2.97 Immigration can bring benefits to the UK. But the scale and speed of it must be reduced and controlled. When immigration is too high, it puts pressure on our public services and benefits, infrastructure and community cohesion. This is why we tightened the rules on non-EU workers, students and family members, cracked down on illegal working and sham marriages, and made it harder for illegal immigrants to remain in the UK. This has helped to reduce immigration from outside the EU, and we will continue to take action to strengthen our borders and enforce our tough immigration laws. We also tightened the rules for those from the EU, and have removed more EU nationals than ever before. Now, we have tackled EU-level problems by renegotiating EU law in a number of areas.

2.98 The Prime Minister and the Home Secretary have said we need to be able to exert greater control over migration from the EU by taking account of the “pull factor” arising from the UK's benefits system. Because of the distinctive features of the UK welfare system and the current EU rules, an EU national who has not previously contributed in the UK can take a low-paid job here and immediately claim generous benefits at the same rate as a UK national. They are also currently entitled to claim Child Benefit at a UK rate for children living in a different country.

2.99 Our new settlement will change this: the International Law Decision contains two proposals to change EU law to limit workers' access to benefits, one related to the exportability of Child Benefit and one which will prevent newly arrived workers from other EU countries gaining full access to our welfare system for up to 4 years (the welfare 'emergency brake'). A European Commission Declaration confirms that the European Commission considers that the UK can make use of this 'emergency brake' immediately, once the necessary changes to EU and UK law are made. All Member States have agreed to ensure this is done rapidly and as a matter of priority.

2.100 The Prime Minister has also been clear that we must crack down on abuse of free movement rules and criminality by individuals moving around the EU. The agreement that we have secured clarifies the actions we can take to tackle abuse and will help ensure that individuals are unable to circumvent our domestic immigration controls. It will also give the UK a stronger legal basis to help us prevent dangerous EU nationals from coming to the UK and make it easier to deport them if they have been living in the UK.

## In-work benefits

**2.101 Our new settlement includes an 'emergency brake' to allow the UK to restrict newly arrived EU nationals full access to in-work benefits for up to four years. The European Commission has confirmed explicitly that the exceptional inflow of workers that the UK has seen over the last years already entitles us to pull this brake once the necessary legislative changes have been made.**

2.102 Heads of State or Government have agreed in the International Law Decision that Member States' welfare systems "are diversely structured and this may in itself attract workers to certain Member States". The Decision also states that "it is legitimate to take this situation into account and to provide... for measures limiting flows of workers of such a scale that they have negative effects both for the Member States of origin and for the Member States of destination".

2.103 EU nationals are taking up welfare provision in the UK. Government figures show that around 40 per cent of recent EEA migrants are in households supported by the benefit system.<sup>48</sup> On average, families with a recent EEA migrant claim almost £6,000 per year in tax credits, and of these, around 8,000 families receive more than £10,000.<sup>49</sup> Of the £25 billion the UK spent in 2013-2014 on in-work benefits for workers on low incomes, around £2.5 billion went to EEA migrants.<sup>50</sup> This represents 10 per cent of spending, even though people from the EEA make up only around 6 per cent of the UK work force.<sup>51</sup>

2.104 In the agreement that we have secured, the EU has recognised that different social security systems across Member States can attract EU workers. The EU has agreed that it is legitimate to take measures where an exceptional inflow of workers from elsewhere in the EU is causing serious problems to a Member State's welfare system, labour market or public services.

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<sup>48</sup> Benefit Claims by EEA Nationals', DWP Statistical Release (November 2015).

<sup>49</sup> *Tax Credit Statistics on EEA Nationals*, HMRC statistical release (February 2016).

<sup>50</sup> *Tax Credit Statistics on EEA Nationals*, HMRC statistical release (February 2016) and *DWP benefit expenditure on EEA national-led claims 2013/14*, DWP statistical release (February 2016)—represents the sum of in-work Housing Benefit expenditure in Great Britain and tax credits expenditure for families in the United Kingdom who are eligible for Working Tax Credits.

<sup>51</sup> *Population by Country of Birth and Nationality Report*, ONS (August 2015).

2.105 The European Commission’s Declaration makes clear that it will propose legislation establishing the emergency brake “with the understanding that it can and will be used and therefore will act as a solution to the United Kingdom’s concerns about the exceptional inflow of workers from elsewhere in the EU”. Our settlement commits the Member States in the Council to work towards the “rapid adoption” of this proposal.

2.106 Once the emergency brake is pulled, EU nationals newly arriving in the UK will not have full access to our in-work benefits until they have lived here and contributed to our country for up to four years. The brake will last for 7 years.

2.107 Domestically, we will deliver changes to the allocation of social housing. Our statutory guidance already makes clear local authorities in England should require a person to live in a local area for at least two years before they are considered for social housing. This is aimed at ensuring sufficient affordable housing is available for those amongst the local population who are on low incomes or otherwise disadvantaged and who would find it particularly difficult to find a home on the open market.<sup>52</sup> We will extend this period to 4 years.

## Unemployment benefit

2.108 Our new settlement confirms that in future the UK will not have to pay means-tested unemployment benefits to EU nationals who come here as jobseekers.

2.109 At its peak in 2013-2014, we estimate that we were paying nearly £700 million a year to out-of-work EEA nationals on Jobseekers Allowance and Housing Benefit alone.<sup>53</sup>

2.110 Since early 2014 the UK has been clamping down on the benefits EU jobseekers can claim when they come here. We completely ended access for EU jobseekers to UK Housing Benefit, and introduced a three-month residence requirement before they can claim other benefits including Jobseeker’s Allowance, Child Benefit, and Child Tax Credit. After that point EU jobseekers can only claim those benefits for a further 3 months, unless they find a job or can prove they have a genuine prospect of doing so in the immediate future.

2.111 Jobseeker’s Allowance and Child Tax Credit are being phased out, and the new Universal Credit is being introduced across the UK. The agreement that we have secured confirms that the UK will not have to pay Universal Credit to EU nationals who are in the UK looking for work. This builds on the fact that under EU law any EU jobseeker who has not found a job after six months, and has no genuine prospect of finding one, can be required to leave.

## Child Benefit

2.112 Our new settlement means that EU nationals whose children live abroad will ultimately receive Child Benefit at a rate that reflects the conditions – including the standard of living and child benefit paid – of the country where their child lives.

2.113 EU nationals working in the UK can currently claim Child Benefit at UK rates even if their children live outside the UK. Child Benefit was designed to help with the costs of raising a child in the UK. Sending the money back to children in countries where the cost of raising a

<sup>52</sup> Statutory guidance on social housing allocations for local authorities in England, DCLG (December 2013).

<sup>53</sup> *DWP benefit expenditure on EEA national-led claims 2013/14*, DWP statistical release (February 2016).

child is much lower clearly distorts the aim of this benefit. As of March 2015 we paid around 20,000 Child Benefit claims for 32,000 children living overseas.<sup>54</sup>

2.114 The agreement we have secured means a change to EU law “to give Member States, with regard to the exportation of child benefits to a Member State other than where the worker resides, an option to index such benefits to the conditions of the Member State where the child resides”. This change will apply to new claims made by EU workers once the necessary legislative changes have been made. From 1 January 2020 Child Benefit indexation will be extended to existing claims.

2.115 This will restore fairness to the system, by changing the amount we pay in Child Benefit to reflect the costs of raising a child in the country where the child is living. Meanwhile, Child Tax Credit is being phased out, and we do not have to pay the new Universal Credit for children living in other countries. That means as Universal Credit is fully rolled out, the only benefit we will pay for children living in other Member States will be the indexed rate of Child Benefit.

## **Abuse of free movement**

2.116 Our new settlement has secured a commitment to new legislation to help prevent non-EU nationals using EU law to evade UK immigration controls. The Government has also secured agreement on the additional action we can take to prevent fraud and abuse of free movement.

2.117 This represents the strongest package we have ever had to tackle the abuse of free movement and close down the back-door routes to the UK.

2.118 The UK accepts the free movement of workers across the EU. The UK economy benefits from it and it allows UK nationals to live and work in the EU. But when this principle is abused or creates more favourable treatment for nationals of other EU countries than for UK citizens, this is clearly unfair and erodes public confidence in our ability to control immigration into the UK.

2.119 The agreement we have secured contains a commitment to new legislation, making important changes, which will help ensure that non-EU nationals will no longer be able to take advantage of EU law to get around our immigration controls. The European Commission Declaration makes clear that it will propose new secondary legislation “in order to exclude, from the scope of free movement rights, third country nationals who had no prior lawful residence in a Member State before marrying a Union citizen or who marry a Union citizen only after the Union citizen has established residence in the host Member State”. This means that non-EU nationals who have been living in the UK illegally will no longer be able to evade our immigration controls by marrying an EU national. In addition, non-EU nationals who are married to or who marry EU nationals already living in a host Member State will need to meet the domestic immigration rules of the first EU country they reside in. In the UK that includes an income test and English language requirement.

2.120 These changes will remove the incentive for sham marriage and mean that all non-EU nationals will have to meet the immigration controls of the first Member State that they enter, addressing the unfairness of the current situation, in which it is easier for an EU national to bring a non-EU spouse to the UK than it is for a UK national.

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<sup>54</sup> Hansard; Written Questions, Commons, 10 June 2015, UIN 2064.

2.121 The International Law Decision makes clear the actions that we can take to deal with non-EU nationals who attempt to evade our domestic immigration controls by fraudulently maintaining a marriage or by residing with a UK spouse in another Member State for a short period before moving to the UK (relying on the ‘Surinder Singh’ route) in order to take advantage of free movement rules. It confirms that “Member States are able to take action to prevent abuse of rights or fraud (...) and address cases of contracting or maintaining marriages of convenience with third country nationals for the purpose of making use of free movement as a route for regularising unlawful stay in a Member State or address cases of making use of free movement as a route for bypassing national immigration rules”.

2.122 The UK will also take further domestic steps to create stronger and longer re-entry bans for those who abuse free movement rights, increasing them from 12 months to three years.

2.123 The package also commits Member States to better data sharing and co-operation between national authorities in order to tackle abuse of free movement that will help underpin the successful delivery of this new package of measures.

## Preventing crime

2.124 Our new settlement strengthens the measures we can take to protect the public from those who pose a threat moving around the EU.

2.125 We must be able to protect British people against those from other EU countries who pose a threat and who abuse their right to free movement. At the moment the balance is skewed too far in favour of protecting the free movement rights of other EU nationals.

2.126 The International Law Decision makes clear that the UK Government can take into account past offending and also act ‘on preventative grounds’ when considering whether an individual poses a present threat. The threat does not need to be imminent. It will allow us to refuse entry to the UK and deport individuals more easily where we believe they pose a threat to the UK’s safety and security. The International Law Decision states that “Member States may also take the necessary restrictive measures to protect themselves against individuals whose personal conduct is likely to represent a genuine and serious threat to public policy or security”. The European Commission also committed to clarify the grounds that can be used to deport individuals, who have been living in the UK for five or more years.

2.127 Finally the European Commission has set out that Member States will work together to improve the sharing of data on EU criminals. This will be a vital supporting step in ensuring the effective delivery of our new settlement, building on existing arrangements which ensure we can share criminal records data for individuals connected to terrorism and serious and organised crime, for example through the European Criminal Records Information System.

## E. A legally-binding agreement

**2.128 The central element of the deal that the Government has secured is an International Law Decision agreed by all the Heads of State or Government of the Member States of the EU.**

2.129 This Decision is legally-binding under international law and will take effect if the British people vote to remain in the EU. The Decision would be registered as a treaty with the United

Nations.<sup>55</sup> Its legally-binding status has been confirmed by the Council Legal Service<sup>56</sup> and is expressly recognised by all the Member States and the European Commission in the European Council Conclusions that were adopted at the same time as the International Law Decision on 19 February 2016.

2.130 It is also irreversible: the decision was agreed by all of the Member States,<sup>57</sup> and cannot be amended or revoked unless all Member States, including the UK, agree.<sup>58</sup> This position has again been expressly recognised by all of the Member States and the European Commission in the European Council Conclusions adopted at the same time as the International Law Decision, and has been confirmed by the Council Legal Service.<sup>59</sup> The Government is clear that the UK will not agree to a request to amend or withdraw this decision. This gives us a complete lock on it, ensuring it remains in place as part of the foundation of our membership of the reformed EU.

## Precedent

2.131 Using a binding International Law Decision in this way is a tried and tested approach.

2.132 In 1992, EU Member States agreed a binding International Law Decision to address concerns raised by Denmark regarding provisions of the Maastricht Treaty.<sup>60</sup> The Danish Government insisted that this decision had to be legally-binding, and the Council Legal Service confirmed this was the case.<sup>61</sup> A Protocol addressing the Danish concerns was subsequently added to the EU Treaties when they were amended by the Treaty of Amsterdam.

2.133 In 2009, EU Member States again agreed a binding International Law Decision to address Irish concerns regarding certain provisions of the Lisbon Treaty. A clear commitment was also given that the Member States would amend the Treaties to add a Protocol incorporating the terms of the International Law Decision.<sup>62</sup> This Protocol was adopted at the same time as, and in parallel with, the conclusion of the Croatian Accession Treaty.<sup>63</sup> This approach successfully resolved Ireland's concerns and remains in force today.

## Aspects of the International Law Decision

2.134 The International Law Decision that we have secured does the following:

- it agrees how the EU Treaties should be interpreted in the future, for example to make clear that the Treaty references to ever closer union cannot be used to expand the scope of the EU's powers;
- it creates commitments as to how Member States will act in the Council, for example, to give effect to our new "red card" procedure for national parliaments; and

<sup>55</sup> In accordance with Article 102 of the UN Charter.

<sup>56</sup> Opinion of the Legal Service, 8 February 2016, EUCO 15/16 Limite JUR 64.

<sup>57</sup> In accordance with Articles 11 and 14(2) of the Vienna Convention on the Law of Treaties.

<sup>58</sup> See Articles 54 and 39 of the Vienna Convention on the Law of Treaties.

<sup>59</sup> Opinion of the Legal Service, 8 February 2016, EUCO 15/16 Limite JUR 64.

<sup>60</sup> Which was one part of the package of measures that are often referred to as the 'Edinburgh Agreement'.

<sup>61</sup> An assurance to this effect was given to the House of Commons by John Major (HC Deb, 14 December 1992, c.29).

<sup>62</sup> This commitment was made in a declaration by the Heads of State or Government, which was recorded in the conclusions of the European Council in June 2009.

<sup>63</sup> Protocol on the concerns of the Irish people on the Treaty of Lisbon, OJ L 60, 2.3.2013, p. 131–139.

- it agrees that the Member States will, following the procedures in the Treaties and their respective constitutional requirements, amend the EU Treaties in the future to address key UK concerns.

2.135 In all three of these areas, the position is clear: the International Law Decision is legally-binding and irreversible.

## Interpretation of the EU Treaties

2.136 Under the Vienna Convention on the Law of Treaties an international treaty must be interpreted in light of any agreements between the parties about its meaning. This is the case even when the relevant agreement is reached after the treaty has been concluded.<sup>64</sup>

2.137 The International Law Decision contains provisions that reflect an agreement between Member States about the meaning of the EU Treaties, for example, on national security remaining the sole responsibility of Member States. As the European Court of Justice has confirmed in the case of *Rottmann*,<sup>65</sup> it is required to take these provisions into account when interpreting the Treaties in the future, giving our decision force before the courts. This position has been confirmed by the Council Legal Service,<sup>66</sup> and by Professor Sir Alan Dashwood QC.<sup>67</sup>

## Actions in the Council

2.138 Our decision creates a legally-binding and irreversible obligation on EU Member States as to how they will act in the Council of the European Union in certain situations. For example, to give effect to our new “red card” procedure for national parliaments.

2.139 There is a precedent for this. Article 7 of the Treaty on Stability, Coordination and Governance (often referred to as the ‘Fiscal Compact’), which 25 of the Member States entered into, commits those Member States that signed it to voting in favour of certain proposals, unless a qualified majority are opposed to doing so.

## Future amendments to the Treaties

2.140 Our decision also includes a binding and irreversible commitment that the Member States will at the next opportunity, and subject to compliance with their respective constitutional requirements and the procedures in the EU Treaties, amend the EU Treaties to address key UK concerns.

2.141 There are important precedents for such commitments to future Treaty change.

2.142 For example, a similar commitment to future Treaty change was made to address Irish concerns about the Lisbon Treaty. In that case, the commitment to future Treaty change was made in conclusions of the European Council, which are politically rather than legally-binding.

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<sup>64</sup> Article 31(3)(a) of the Vienna Convention on the Law of Treaties.

<sup>65</sup> *Rottmann*, C-135/08, EU:C:2010:104, paragraph 40.

<sup>66</sup> Opinion of the Legal Service, 8 February 2016, EUCO 15/16 Limite JUR 64.

<sup>67</sup> ‘A “Legally Binding and Irreversible” Agreement on the Reform of the EU’, Professor Sir Alan Dashwood QC. <http://www.hendersonchambers.co.uk/wp-content/uploads/2016/02/Note-by-Sir-Alan-Dashwood-QC-19-February-2016.pdf>.

That commitment was met. The Treaties were amended at the same time as, and in parallel to, the treaty providing for Croatian accession to the EU.<sup>68</sup>

2.143 This illustrates both that EU Member States can make commitments that they will, acting in accordance with the relevant procedures of the Treaties and their respective constitutional requirements, amend the Treaties in the future, and that such commitments have been honoured.

2.144 In our case, this commitment to change the Treaties in future is legally-binding, putting our agreement on an even stronger basis than that which Ireland secured.

## **Conclusion**

2.145 Our new settlement gives us both the substantive change and legal certainty that we need. It ensures substantial, legally-binding, irreversible change in our membership of the EU across the 4 areas raised by the Prime Minister at the outset of this negotiation.

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<sup>68</sup> It is also of note that the European Council committed at the same time to ensuring that each Member State retained a commissioner. The commitment given provided that, when the Lisbon Treaty entered into force, a decision would be taken in accordance with the necessary legal procedures to allow the retention of one Commissioner per Member State. This was a distinct commitment from the promise to enshrine various matters in an Irish Protocol, and was handled separately, but again it was complied with and the Treaties were amended.

# Chapter 3 – wider protections and opt-outs

**3.1 The agreement reached at the February European Council creates a new settlement for the UK in the EU. It builds on a number of wider protections and opt-outs that the UK had already secured and which are established in the EU Treaties and in domestic legislation. This gives the UK a special status in the EU unmatched by any other EU Member State or third country arrangement.**

## Safeguards in Europe

- **The euro:** the UK is under no obligation to join the euro.
- **Schengen:** the UK has the right to maintain its own border controls, and to stay outside the Schengen border-free area, without preventing the British people from moving freely within the EU.
- **Justice and Home Affairs:** the UK can choose whether or not we participate in new EU Justice and Home Affairs measures. This means we can participate in vital aspects of co-operation against cross-border crime without putting our unique justice systems at risk.

**3.2 Our new settlement builds on these opt-outs with even stronger protections for the UK's position in the future:**

- the UK's sovereignty will be permanently protected from the threat of becoming part of an ever closer union;
- the UK Parliament will have the power to work together with its counterparts in Europe to block EU legislation;
- transparent and stable arrangements will be in place to secure the UK's economic position outside the Eurozone; and
- we have secured a commitment to important changes which will help protect the UK from the threat of crime being committed by individuals moving around the EU, tackle the abuse of freedom of movement, and limit access to our welfare system for nationals from other EU countries.

**3.3 Being at the table in the EU has also allowed us to secure safeguards in legislation to help protect the interests of the UK. For example, in negotiations concerning Working Time, the UK was able to ensure that there is an opt-out for individual workers from the maximum 48 hour working week.**

3.4 When new countries are admitted to the EU in future, the UK will insist that our controls on free movement cannot be lifted until their economies have converged much more closely with existing Member States', using indicators such as their GDP per capita, employment rate and distribution of wealth. And we would seek to reimpose these controls if there is either a serious disturbance in our labour market or adverse social or public policy impacts in the UK as a result of migration from this new Member State. Any enlargement requires unanimity of the existing Members and, in the UK, an Act of Parliament, so the UK can ensure that these requirements are respected in any discussion of enlargement of the EU.

## **Safeguards at home**

3.5 At home, we have built into UK law some strong protections against sovereignty moving to the EU. The European Union Referendum Act 2015 requires a referendum on our membership of the EU; the Government will propose that this should be held on 23 June 2016. And the European Union Act 2011 ensures that no further area of power or competence can be transferred to the EU or national veto given up without the express approval of our Parliament and the consent of the British people in a fresh referendum.

3.6 In particular, a further referendum would be needed to approve:

- amending the EU Treaties to transfer power from the UK to the EU;
- replacing the EU Treaties;
- removing any existing UK powers to veto EU action;
- a UK decision to take part in a European Public Prosecutor's Office; and
- a UK decision to join the euro.

3.7 In short, the European Union Act 2011 puts power in the hands of the UK Parliament and the British people. Unanimity is required at the EU level to change the Treaties, the UK Parliament must agree to the change, and the British people would need to approve it in a referendum – a triple democratic lock over any future steps towards integration with the EU.

# Chapter 4 – the best of both worlds: why the UK should remain a member of a reformed EU

**4.1 Some EU countries have chosen the path of deeper political integration. That is their free choice, but it is not the UK’s path. Our new settlement will give the UK a special status within the EU that no arrangement outside the EU could match. We can use our place at Europe’s top table to deliver for our national interest, while staying out of areas where we have negotiated national opt-outs. We are stronger, safer and better off in a reformed EU.**

4.2 This document has set out the gains secured in our new settlement within a reformed EU. In 2013, the Prime Minister said that “Britain’s national interest is best served in a flexible, adaptable and open EU”.<sup>69</sup> The changes we have secured will make the EU more flexible, more adaptable and more open. There is still more work to be done. We will continue to press hard for further reform of the EU; cutting red tape and bureaucracy and building on the first ever cut in EU spending to make sure the EU budget is better value for taxpayers’ money. But this settlement puts the UK’s membership on a stronger basis.

4.3 Our EU membership must always serve a purpose: that purpose is to deliver for our national interest. Our place at the heart of EU decision-making, working closely with our partners, gives us significant influence and leverage over major economic, security, and foreign policy decisions affecting the entire European continent. That influence benefits this country and the lives of every one of our citizens. But we retain the freedom to choose not to take part in other activities, which are not in the UK’s interest.

## **Better off in the EU**

**4.4 The Government’s long-term economic plan is delivering economic security for families and businesses, underpinned by sound public finances, by investing in the UK’s future, addressing the productivity challenge and rebalancing the economy towards trade and investment. With turbulence in the global economy, membership of the EU supports this plan by giving British businesses access to the free trade Single Market and dozens of trade deals across the world. This deal keeps the EU moving firmly in the right direction, by hard-wiring competitiveness into the decision-making of the EU and committing the EU to pursue more trade deals with non-EU countries.**

4.5 The Single Market now gives UK businesses and consumers tariff-free access to the world’s largest trading bloc with 500 million people and 26 million companies generating

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<sup>69</sup> 23 January 2013. Link to speech transcript here:  
<https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>

almost £11 trillion in economic activity,<sup>70</sup> and £229 billion of UK exports go to the EU.<sup>71</sup> Crucially it also removes other EU countries' regulatory barriers to our businesses. The UK's membership is delivering economic security in both allowing us to reap the benefits of the Single Market, but also to be instrumental in fashioning it. The Single Market was in large part a British vision and a British creation.

4.6 As a trading country, the UK does not face an artificial choice between Europe and the rest of the world: our ambition is to maximise trade with both. Despite the rapid growth of developing economies, it is the EU that remains our single most important trading partner. Since 1992, the UK's bilateral goods trade with other EU Member States has roughly trebled in nominal terms<sup>72</sup> and the EU still accounts for 44 per cent of the UK's exports.<sup>73</sup> Exporting to the EU is particularly important for smaller firms. Over 60 per cent of exports from small businesses (under 50 employees) go to the EU and for microenterprises (under 10 employees) that figure rises to 70 per cent.<sup>74</sup>

4.7 At the same time, the UK benefits from the EU's greater economic leverage, which has allowed it to negotiate advantageous FTAs with more than 50 other countries.<sup>75</sup> This allows us to take advantage of growth opportunities around the world. Concluding all the trade deals already underway could ultimately be worth in total more than £20 billion a year to UK GDP.<sup>76</sup> Once these deals are completed around three-quarters of UK exports to non-EU countries would be covered by an EU-negotiated Free Trade Agreements.<sup>77</sup> The Transatlantic Trade and Investment Partnership (TTIP) alone could add £10 billion to UK GDP.<sup>78</sup> The EU is already the largest trading partner of 59 countries representing more than half of the world economy, around twice that of the US, which is the largest trading partner of 24 countries.<sup>79</sup>

## Safer in the EU

**4.8 Our new settlement reiterates that responsibility for national security rests solely with national governments and that the EU institutions will fully respect the national security responsibilities of Member States. At the same time, membership of the EU enhances our ability to co-operate with other Member States to combat crime and terrorism and keep our country safe. In the EU, the UK is united with our neighbours in stopping acts of aggression by our enemies and working to find solutions to new conflicts.**

4.9 We have protected our ability to choose when to co-operate on Justice and Home Affairs issues, retaining sovereignty over hundreds of powers for the UK. However,

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<sup>70</sup> Source: Eurostat; source originally calculated in euros

<sup>71</sup> ONS, Pink Book (October 2015)

<sup>72</sup> COMTRADE, Bank of England

<sup>73</sup> ONS, Pink Book 2015 (October 2015)

<sup>74</sup> HMRC 'UK trade in goods by business characteristics 2014'. These statistics are experimental. Total 2014 UK enterprises (of 2,361,000) from ONS, *UK Business: Activity, Size and Location, 2015* (October 2015).

<sup>75</sup> <http://trade.ec.europa.eu/doclib/html/118238.htm>

<sup>76</sup> BIS estimate, based on studies estimating the impact of individual deals, including the CEPR study on TTIP. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/198115/bis-13-869-economic-impact-on-uk-of-transatlantic-trade-and-investment-partnership-between-eu-and-us.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198115/bis-13-869-economic-impact-on-uk-of-transatlantic-trade-and-investment-partnership-between-eu-and-us.pdf)

<sup>77</sup> BIS analysis based on ONS Pink Book 2015

<sup>78</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/198115/bis-13-869-economic-impact-on-uk-of-transatlantic-trade-and-investment-partnership-between-eu-and-us.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198115/bis-13-869-economic-impact-on-uk-of-transatlantic-trade-and-investment-partnership-between-eu-and-us.pdf)

<sup>79</sup> BIS analysis of UNCTAD data

cooperation between law enforcement authorities across Europe is sometimes vital given the cross-border nature of security threats such as serious and organised crime, terrorism and extremism. A strong EU framework for this provides for practical joint working and effective, real-time data sharing, helping us to protect our citizens. We choose to participate in these essential areas, with the UK Parliament having a say over whether we do so.

4.10 The European Arrest Warrant (EAW) makes it easier to extradite foreign suspects back to where they are wanted for crimes – and bring suspects back to the UK to face justice for crimes committed here. Since 2004 the EAW has allowed 7,000 people to be extradited from the UK to face trial or serve a sentence and has resulted in just over 1,000 people being returned to the UK to face justice.<sup>80</sup>

4.11 Europol, the EU's law enforcement co-operation body, currently led by a British figure, facilitates information exchange, acts as an intelligence hub and provides threat assessments and operational and technical support. It has been successfully used to tackle cybercrime, child pornography, drug and people trafficking across the EU.

4.12 The EU's watch list system allows UK law enforcement agencies access to alerts on around 300,000 wanted or missing people, such as suspected terrorists, murderers and paedophiles. These alerts include 35,000 EAWs as well as over 8,000 separate alerts for national and public security threats, such as suspected foreign fighters.<sup>81</sup> Because we have retained control of our border we can use this information to track criminals and suspected terrorists, and stop them when they seek to enter the UK.

4.13 The EU has agreed to the collection of airlines' passenger name records (PNR) information for both internal and external flights for processing by law enforcement agencies in Member States. This will help our police and intelligence agencies to counter terrorist threats.

4.14 As well as benefiting from having access to these measures, as members of the EU, the UK has a seat at the table when such measures are developed – which it would not have outside the EU. But the settlement also ensures respect for the UK's special status – for example, we have the full right to choose whether we want to take part in any new Justice and Home Affairs legislation.

## Stronger in the EU

**4.15 Membership of the EU, like our membership of NATO and the UN, amplifies the UK's power and influence on the world stage. At a time when we are faced with an increasing range of serious threats, cooperation at an international level is more important than ever. The EU has a wide range of tools at its disposal, including security, diplomatic, economic and humanitarian. Our influence in the EU therefore benefits both the EU and the UK. At the same time, we can never be forced to participate in EU measures in this area that we do not agree with or that are not in our national interest.**

4.16 NATO remains the cornerstone of UK defence and we will never give control to the EU over such decisions. However, the EU complements NATO's higher intensity military activities with important longer-term stabilisation and development work.

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<sup>80</sup> Source: Historical European Arrest Warrant Statistics, NCA, <http://www.nationalcrimeagency.gov.uk/publications/european-arrest-warrant-statistics/historical-eaw-statistics>

<sup>81</sup> eu-LISA statistics (February 2016)

4.17 The EU helps deal with crises overseas. Using the combined clout of its Member States the EU cultivates partnerships with key countries to promote greater stability and avoid future crises.

4.18 The UK has significant influence on international affairs discussions at the European Council table. Working with allies, the UK has driven EU activity in key areas, leveraging the power of 28 countries and amplifying the impact that we would have had on our own, for example:

- **nuclear agreement with Iran.** The UK was instrumental in getting the EU both to impose tough sanctions on Iran, and to lead the negotiations that led to an agreement. And coordinated action across the EU to impose sanctions, rather than the UK acting alone, has had a stronger impact;
- **Russian aggression in Ukraine.** The UK and its allies ensured the EU imposed strong collective sanctions on Russia, which are having a significant economic impact on Russia;
- **sanctions on Syria.** The UK worked closely with other Member States to agree sanctions on the regime, and aid to those displaced in Syria and the region, which now totals more than £3.5 billion from the EU;<sup>82</sup>
- **fighting Ebola.** The UK played a major role in driving EU action on Ebola, alongside our deployment of over 150 NHS staff and the Royal Navy's medical ship, RFA Argus. European leaders responded with around £1.5 billion in development assistance, aid and research;<sup>83</sup> and
- **action on climate change and energy security.** At the Paris climate conference in December 2015, the UK helped to ensure that the EU was at the heart of a coalition of countries that secured the first-ever universal, legally-binding global climate deal, signed by 195 countries. The EU and its Member States are already taking steps to reduce emissions by at least 40 per cent by 2030.

4.19 The UK's closest allies outside Europe – from Australia to New Zealand, the US to Canada – all want us to stay in the EU, because we are more secure when we are united.

## Conclusion: the best of both worlds

4.20 **The UK's special status in the EU offers us the chance to protect our people and deliver prosperity, as a sovereign nation acting in partnership with other Member States. We have full voting rights, a full voice at the table and a full say over the rules of the Single Market, but remain outside EU activities where they do not suit us. This gives us:**

- a leading role inside Europe, coupled with permanent protections for our sovereignty, a specific carve-out from 'ever closer union' and greater power for the UK Parliament;
- a fairer and more transparent relationship between the pound and the euro, ensuring financial security for our businesses for the future;

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<sup>82</sup> European Commission Humanitarian Aid and Civil Protection (February 2016). Original source in euros.

<sup>83</sup> [http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/wa\\_ebola\\_en.pdf](http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/wa_ebola_en.pdf) Original source in euros.

- access to the biggest Single Market in the world, with a leading voice in shaping that market, meaning less regulation and more competition going forward, creating jobs and making UK families more financially secure;
- co-operation on issues of international security and foreign policy, helping tackle crime and terrorism across borders to keep our country safe, while keeping our right not to take part in EU measures that are not in our national interest; and
- the ability of UK citizens to move freely across the EU, but to take action where there is abuse of our welfare system or our immigration rules, and an emergency brake to ensure that new arrivals from the EU have to live here and contribute before they can get full access to the UK benefits system.

4.21 Taken together, the unique nature of our membership of the EU gives the UK a special status within the organisation: a status that no arrangement outside the EU could match. This is the best of both worlds – offering us key benefits for jobs and growth that we could not have outside the EU, but the freedom to choose not to take part in other activities, which are not in the UK’s interest.

4.22 This is a new settlement of our membership of the EU that respects the UK’s past; is good for the UK’s national interests; and is right for the UK’s future.

4.23 The European Council agreed that, should the result of the referendum be a vote that the UK should leave the EU, the set of arrangements, which make up the new settlement, will cease to exist.

**4.24 The Government has therefore reached a clear view. The UK’s national interest – the interests of every family, household, business, community and nation within our United Kingdom – will be best served by our country remaining part of a reformed EU.**

4.25 Membership of the reformed EU offers opportunity and security: for jobs, investment, doing business, as well as for tackling crime and dealing with global issues such as climate change and terrorism. It offers us certainty. We are stronger, safer and better off in the EU, compared to years of disruption and the uncertainty of leaving for an unknown destination outside.

4.26 This Government’s fundamental aim is to offer security for working people at every stage of their lives. It is through doing so that we can best ensure that the potential of every one of our citizens can be fulfilled. And it is by remaining a member of the EU that we can best ensure this aim is reached. The question at the upcoming referendum is not whether the UK could manage outside the EU, but what is best for our country’s future.

**4.27 In the referendum, the Government’s clear recommendation is that the United Kingdom should remain a member of a reformed EU.**



HM Government

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