



HM Government

# Rights and obligations of European Union membership

April 2016



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Presented to Parliament pursuant to section 7 of the  
European Union Referendum Act 2015.



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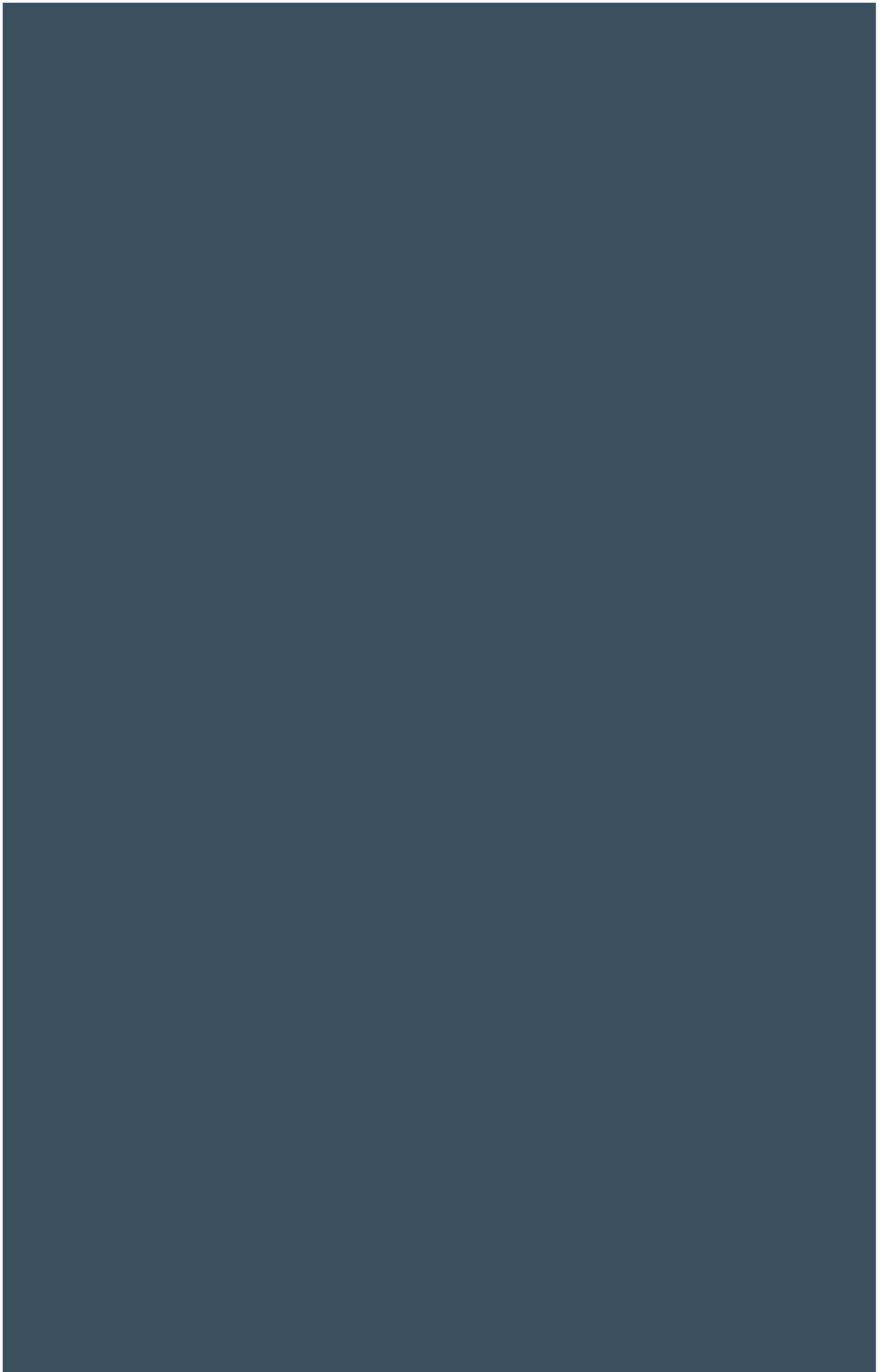
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# Chapter 1 – introduction

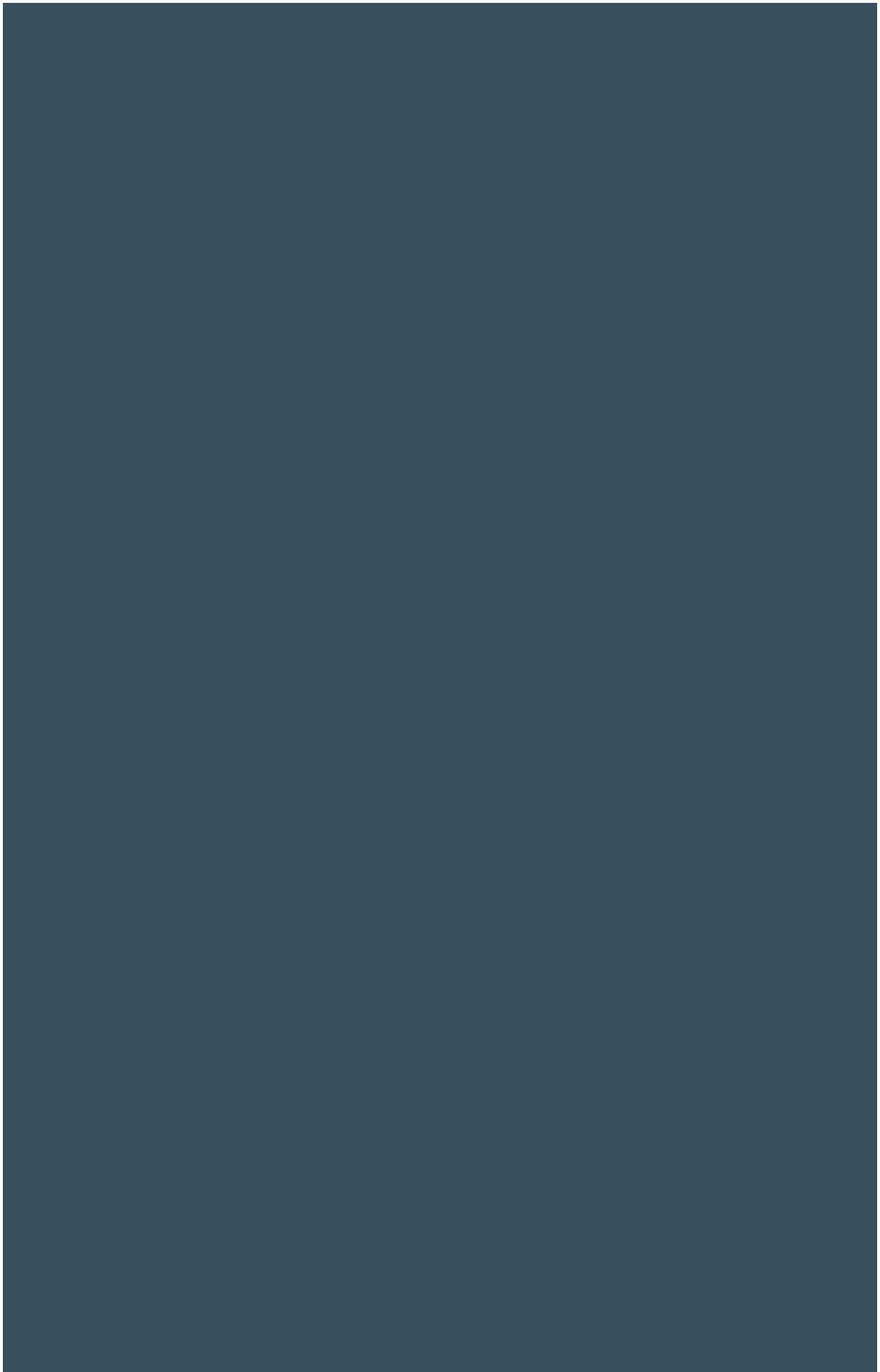
1.1 UK membership of the European Union (EU) creates rights and obligations: for the UK as a state, for individual citizens, and for businesses and other organisations. There are cross-cutting rights and obligations, such as the UK's right to a say in the making of EU laws, and its obligation to comply with them once agreed. There are also rights and obligations arising in specific policy areas, from Single Market rules to justice and home affairs.

1.2 This paper is the second and final part of the report that the Government is publishing to meet the requirement of section 7(1) of the European Union Referendum Act 2015. The first part, 'Alternatives to membership: possible models for the United Kingdom outside the European Union', was made available on 2 March 2016.<sup>1</sup>

1.3 This paper aims to set out the main rights and obligations arising from the UK's membership of the EU. It is not exhaustive and does not seek to cover every right and obligation arising under EU law. Instead, it aims to provide a balanced overview of the most important rights and obligations.

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<sup>1</sup> 'Alternatives to membership: possible models for the United Kingdom outside the European Union', 2 March 2016. Available on GOV.UK.





## Chapter 2 – how the EU works

2.1 The EU is an international organisation formed of 28 European countries, sometimes referred to as Member States, with a combined population of 508 million people. The UK is a member and joined in 1973 alongside Ireland and Denmark.

2.2 The EU only has the powers that its members decide to give it.<sup>2</sup> The UK and other Member States have granted the EU powers to make various kinds of laws that affect them and their citizens, but under certain conditions. The UK has a vote over these laws, and an influence over the end result. There are also a number of rules and principles that set out when and how the EU can act, the objectives it must follow and how agreement on laws and decisions is reached.

2.3 The following sections explain how the EU works and set out the cross-cutting rights and obligations that arise for the UK as a result of our membership.

### The EU's institutions

The EU has a number of institutions involved in taking decisions and making EU laws that apply to the UK. The UK is represented in, or able to nominate members to, all of them. The EU can only make laws within the rules set out in the EU Treaties. These provide different mechanisms for agreeing different types of laws. The UK has a say and promotes the UK's national interest. Some core principles govern how EU law applies in the UK and in other Member States. But the UK has also negotiated a number of exceptions that give it a special position within the EU.

2.4 The UK is represented in, or able to nominate members to, all of the institutions involved in taking decisions and making EU laws that affect the UK.<sup>3</sup>

2.5 The European Council brings together the heads of state or government from the 28 EU Member States, including the UK Prime Minister. It takes strategic decisions on the EU's overall direction and on top priorities, such as the response to crises. The European Council agrees most issues by consensus, which means the UK and each Member State has a veto over what is agreed. It is chaired by the President of the European Council, who serves for a term of two and a half years, which can be renewed once. The current President of the European Council is Donald Tusk, the former Prime Minister of Poland. The UK and other EU

<sup>2</sup> Articles 5 and 13 Treaty on European Union (TEU).

<sup>3</sup> Articles 13 to 19 TEU set out the role of the EU institutions and how they take decisions.

Member States in the European Council elect the President of the European Council by the system of Qualified Majority Voting.<sup>4</sup>

2.6 The Council of Ministers of the Council of the European Union is made up of government ministers from the UK and other Member States. Its main role is to consider and vote on EU laws and other measures. It also has a role in deciding the EU budget – making and coordinating policy. It takes most decisions by Qualified Majority Voting. Hereinafter it is referred to as the ‘Council’. Member States assume the Presidency of the Council on a rotating basis.

2.7 UK Government Ministers attend different Council meetings according to subject matter to represent the UK’s national position and ensure UK interests are taken into account. For example, the Foreign Secretary represents the UK in the Foreign Affairs Council while the Chancellor of the Exchequer takes the UK seat in the Economic and Financial Affairs Council. Civil servants from EU Member States prepare these ministerial meetings in working groups and through formal committees.

2.8 In most cases the European Parliament shares responsibility with the Council for making EU laws and for agreeing the EU’s budget, although the Council enjoys broader decision-making powers. The Parliament is made up of 751 members (MEPs), directly elected across the 28 Member States to serve a five-year term. The UK has 73 MEPs. UK citizens and citizens of other EU countries have the right to vote for an MEP in the Member State in which they live. So UK citizens resident in another Member State can vote there instead (and other EU nationals resident in the UK can vote in the UK).<sup>5</sup>

2.9 MEPs meet regularly to take decisions. They sit and vote in party groups that reflect their political views, although most MEPs are also members of informal national groupings. UK constituents can contact their MEP directly to express their views about EU issues and how their MEP should vote.

2.10 The European Commission (which must act in accordance with EU law):

- proposes draft EU laws for the Council and Parliament to consider – the Commission has an almost exclusive right to do so (‘the right of initiative’);
- proposes and implements the EU’s budget;
- ensures the application of EU law (alongside the Court of Justice of the European Union);
- conducts, under direction from Member States, some of the EU’s relations with non-EU countries, for instance, negotiations on international trade agreements with other trading partners, which then need to be approved by Member States and the European Parliament; and
- takes action to implement agreed EU policies.

2.11 The European Commission has a President who leads a group of 27 other Commissioners, each leading on a distinct policy area. Each Member State nominates a Commissioner. In 2014 the UK Government nominated Lord Jonathan Hill as the UK’s

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<sup>4</sup> Qualified Majority Voting allocates votes to the different Member States according to an agreed formula, based partly on population size. A decision or law is passed by qualified majority when 55 per cent of Member States vote in favour (in practice this means 16 out of 28) and the Member States supporting represent at least 65 per cent of the total EU population.

<sup>5</sup> Articles 20 and 22 Treaty on the Functioning of the European Union (TFEU).

Commissioner. Lord Hill has responsibility for EU policy on financial services within the Commission.

**2.12** The European Council proposes a candidate for Commission President, decided by Qualified Majority Voting. The candidate is then elected by the European Parliament (by simple majority). Once all 28 Member States have nominated a Commissioner, and their portfolios have been allocated, the European Parliament also approves the choice of the 27 other Commissioners. Together they serve a five-year term. However the European Parliament can vote to force all 28 Commissioners out of office if they lose confidence in the Commission. Citizens from across the Member States, including the UK, make up the officials working for the European Commission. Any EU citizen who meets the eligibility criteria can apply through open competition to work for the Commission.

**2.13** The Court of Justice of the European Union interprets and applies EU law and ensures that Member States and EU institutions comply with it. It contains the EU's two main courts. The first is the European Court of Justice, which consists of one judge from each Member State. This is supported by the General Court, which will include two judges from each Member State by the end of 2019. Each Member State nominates its own judges, and can veto the appointment of those from other Member States. The Court's role is described further below.

### **The role of national parliaments**

**2.14** National parliaments of EU Member States, including the UK Parliament in Westminster, play a role in EU decision-making.

**2.15** The Westminster Parliament has a significant role in holding the UK Government to account on the decisions it makes about the EU. Committees in the House of Commons and the House of Lords can examine EU documents before UK Ministers vote on them in Brussels. The European Union Act 2011 also means that in some cases the Government is required to get the consent of Parliament before UK Ministers can agree to certain decisions in Brussels.<sup>6</sup>

**2.16** There is an existing system of 'yellow' and 'orange' cards, through which national parliaments can express their views on whether a new piece of EU legislation is something that would be better addressed at national level. However, their opinions do not bind the Commission.<sup>7</sup> The new settlement negotiated by the UK in February 2016 creates a 'red' card system, which enables national parliaments to work together to block unwanted new legislation where they consider action is better taken at national level.<sup>8</sup>

### **Principles of EU law**

**2.17** The EU can only act within the limits of the powers that the Member States have given it. It cannot act beyond these powers. This principle is referred to as the 'principle of conferral'.<sup>9</sup> These limits on the EU's powers are set out in the EU Treaties, which are the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

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<sup>6</sup> See section 2-10 of the European Union Act 2011.

<sup>7</sup> Protocol (No. 2) to the EU Treaties.

<sup>8</sup> 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 2016.

<sup>9</sup> Articles 5 and 13 TEU.

## Types of EU laws

**2.18** There are different types of EU laws, described in the box below. These laws are agreed and implemented in different ways.

### EU laws

The EU Treaties form the highest level of EU law. They define where the EU is permitted to act, to what extent and how. They also contain a mixture of procedural rules for how the EU operates and substantive rules, such as the requirement that Member States ensure a right to equal pay for men and women. The Treaties set out subject areas in which the EU can make more specific laws, known as the EU's 'competences'.

Below this, the EU adopts directives, regulations and decisions using the powers set out in the EU Treaties.

Directives set out a legal framework that the Member States have to follow, but leave it up to the Member State to choose exactly how to make it part of their law. So once an EU Directive has been agreed, all Member States have an obligation to make national laws that give it effect, but they have a choice as to precisely how to do so.

Regulations contain detailed legal rules. Once made, regulations have the force of law in the UK and throughout the EU. Regulations only rarely require the Member States to create their own legal rules in order to ensure the regulation has the desired legal effect.

The EU can adopt binding decisions. For example, the Commission has powers to issue decisions that are binding in order to enforce competition rules.

Below this, the EU also adopts legislation in order to supplement and amend, or to implement, the rules set out in directives or regulations. Such pieces of legislation are referred to respectively as 'delegated' and 'implementing' acts.

**2.19** The EU can also sign up to international treaties in certain areas where Member States in the Council (and in most cases the European Parliament) agree.<sup>10</sup> For example, the EU's relationship with Norway, Iceland and Liechtenstein is set out in the Agreement on the European Economic Area ('the EEA Agreement'). Where the EU signs up to an international treaty this will often mean that EU nationals and businesses can benefit from rights in countries outside the EU, and that nationals and businesses from those countries can enjoy the same rights in the EU.

**2.20** The EU's power to act internationally is set out in the Treaties. As a general rule, the EU has the right to act internationally under the direction of Member States, in those areas where it can act at an EU level.

## How the EU can act

**2.21** Where the EU is able to adopt laws, the Treaties explain how the EU and the Member States work together:

- in some areas both the EU and Member States can act, but not at the same time. This is called 'shared' competence;
- in some areas both the EU and Member States can both act, and can do so at the same time. This is called 'supporting' or 'parallel' competence; and

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<sup>10</sup> The key powers in this respect can be found in Title V of Part Five of the TFEU.

- in some areas the EU alone can act. This is called ‘exclusive’ EU competence.<sup>11</sup>

**2.22** Where the EU can make laws, several principles regulate how it must act when it does so.

**2.23** The principle of subsidiarity governs when the EU can use the powers it has been given.<sup>12</sup> It aims to ensure that decisions are taken at the level of government which is closest to the citizen – so action is taken at EU level only when necessary. It means that the EU can only act where the aims and objectives cannot be sufficiently achieved by action by Member States (either at national, regional or local level) but would be better achieved by action at EU level.

**2.24** The principle of proportionality places limits on how the EU can use its powers.<sup>13</sup> Under this rule the action the EU takes must go no further than is necessary in order to achieve its aims and objectives.

### How EU law applies

**2.25** The obligations that arise as a result of the UK’s membership of the EU only have force in UK law because of laws made in the UK Parliament, in particular the European Communities Act 1972. This reflects the ultimate supremacy of the UK Parliament on matters of UK law, and is reflected in section 18 of the European Union Act 2011.

**2.26** Member States have to make sure that any actions they take are consistent with the rules in EU law, and must adopt any legislation necessary to give effect to EU law in their national law.

**2.27** Some EU law has ‘direct effect’.<sup>14</sup> This means that people can rely on EU law rights and enforce compliance with EU law obligations without Member States having written those specific rules into their domestic law.

**2.28** The EU’s courts play an important role in interpreting and enforcing EU law across the EU. The European Court of Justice provides guidance to national courts on the exact meaning of EU law.<sup>15</sup> Courts across the EU interpret and apply the law in line with the European Court of Justice’s judgment. If the European Court of Justice interprets EU legislation in an unexpected or unintended way, the legislation can be amended to reverse the European Court of Justice’s judgment using the normal legislative procedures.

**2.29** If the Commission or a Member State thinks that the Commission, or other EU institutions or another Member State is not complying with EU law, it can take a case to the European Court of Justice.<sup>16</sup> Where the European Court of Justice judges that the law is being broken, the Member State must ensure that it complies with the law. If it does not, the European Court of Justice can impose a fine.<sup>17</sup>

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<sup>11</sup> Articles 2-6 TFEU.

<sup>12</sup> Article 5(3) TEU and Protocol (No. 2) to the TFEU.

<sup>13</sup> Article 5(4) TEU and Protocol (No. 2) to the TFEU.

<sup>14</sup> The direct effect of EU regulations is set out in Article 288 TFEU. The direct effect of EU law in the UK legal system is provided for by section 2(1) of the European Communities Act 1972.

<sup>15</sup> Article 267 TFEU.

<sup>16</sup> Articles 258, 259, 263 and 265 TFEU.

<sup>17</sup> Article 260 TFEU.

**2.30** The National Courts share responsibility for enforcing EU law with the European Court of Justice. Any person or company has a right to take the UK Government (or in some cases another person or company) to a UK court for failure to comply with EU law. Where a domestic court finds that someone has breached EU law, it will take the necessary steps to ensure EU law is given effect, which may include disapplying national legislation that conflicts with it. In some cases, it can also award damages to the person or company who has lost out.

## **The EU's legislative process and the UK**

**2.31** The EU Treaties set out how and when the EU can agree new laws. They create different means by which the UK and other Member States have a role in deciding on legislation, so as to ensure their national interests are taken into account. As a result of the European Union Act 2011, no new areas of powers can be transferred to the EU without the consent of UK citizens in a referendum. This applies to proposals to change the EU Treaties and other key decisions that can be made without changing the Treaties – for example, joining the euro.

### **Legislation**

**2.32** Most EU Regulations and Directives are decided through the Ordinary Legislative Procedure.<sup>18</sup> Under this procedure, the European Commission proposes a draft law. Member States in the Council and the European Parliament then negotiate on the basis of the Commission's proposal, which they can amend and then agree or reject. If the two bodies can reach agreement it becomes EU law.

**2.33** Under the Ordinary Legislative Procedure, decisions of the European Parliament are taken by a simple majority of its MEPs. The number of MEPs is linked to population size, meaning the UK has a relatively large number of MEPs representing the UK in the European Parliament.<sup>19</sup>

**2.34** Under the Ordinary Legislative Procedure, decisions between Member States in the Council are taken by Qualified Majority Voting.<sup>20</sup> This is a voting system based partly on population size, which gives the UK and the other largest Member States significant voting weight. Where Qualified Majority Voting applies, this means that decisions can only be adopted if they are approved by a majority of governments representing a majority of EU nationals.

**2.35** The Government can use the system of Qualified Majority Voting to work with other Member States to try to agree or block decisions and laws.

**2.36** In certain areas, the EU can only adopt new laws with the unanimous support of the Council.<sup>21</sup> This means that the new law cannot be adopted if any Member State votes against, so each Member State, including the UK, has a veto.

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<sup>18</sup> Article 294 TFEU.

<sup>19</sup> The UK has 73 MEPs. By way of comparison, Germany has 96, France has 74, Greece has 21 and Cyprus has 6.

<sup>20</sup> Article 16(3) TEU and article 238(2)-(4) TFEU.

<sup>21</sup> For instance, Articles 19, 113, 115, 153(1)(c), (d), (f) and (g), and 352 TFEU.

## Amending the Treaties and the protection in the European Union Act 2011

2.37 As the EU's power to make new laws is set out in the Treaties, the EU can only be given law-making powers in new areas by amending the Treaties. Each Member State (including the UK) has the power to veto any amendment to the EU Treaties.<sup>22</sup>

2.38 The UK Parliament passed the European Union Act 2011. Under its provisions, the UK can only agree to a proposal to transfer further areas of power in the future from the UK to the EU if it has been approved by an Act of Parliament and by the UK people in a referendum. This applies to proposals to change the EU Treaties and other key decisions that can be made without changing the Treaties – for example, joining the euro, or giving up our national border controls.<sup>23</sup> This means no Government can transfer new areas of powers to the EU in the future without a referendum.

## The Devolved Administrations

2.39 The rights and obligations flowing from EU law apply equally to England, Scotland, Wales and Northern Ireland. The Devolved Administrations are responsible for implementing EU law where the subject area is a devolved matter. But the UK Government and the UK Parliament are responsible for the UK's relations with the EU.

2.40 Nonetheless, the Devolved Administrations in Northern Ireland, Scotland and Wales are closely involved in discussing the UK position on EU issues in which they have an interest. This is often in areas of EU policy devolved to them within the UK. Coordination among Belfast, Cardiff, Edinburgh and London happens at multiple levels and is overseen by the Joint Ministerial Committee (Europe). Ministers from the Devolved Administrations regularly form part of the UK delegation in the Council, ensuring that their interests are represented within the context of the UK's overall position.

## Gibraltar

2.41 Gibraltar is an Overseas Territory of the UK. The EU Treaties generally apply to Gibraltar, though there are some important exceptions.<sup>24</sup>

2.42 Gibraltar is outside the EU customs union and free movement of goods rules do not apply. This means that Gibraltar is free to levy duties on goods imported into the territory from the EU. Gibraltar is also exempted from EU rules on VAT. In addition, Gibraltar is not part of the EU's common agricultural or fisheries policy. Where the UK has the right to choose whether to participate in an EU measure, that choice applies to Gibraltar. So Gibraltar has no obligation to implement the euro, is not part of the Schengen border-free area and justice and home affairs rules only apply in Gibraltar where the UK chooses to opt in to the measure. Where EU law applies, Gibraltar must ensure it is given effect in the law of Gibraltar.

2.43 The UK represents Gibraltar's interests in the EU. The Governments of the UK and Gibraltar maintain constant dialogue, including in Brussels, in order to ensure that Gibraltar's perspective is understood across the broad spectrum of EU policy. The citizens of Gibraltar participate in elections to the European Parliament to help to elect six MEPs through the Combined Region of South West England and Gibraltar.

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<sup>22</sup> Article 48 TEU.

<sup>23</sup> See sections 2-6 of the European Union Act 2011.

<sup>24</sup> Article 52 TEU, article 355(3) TFEU and Treaty of Accession of Denmark, Ireland and the United Kingdom (1972).

## Opt-outs and wider protections for the UK

2.44 EU laws usually apply to all Member States in the same way. However, over the years the UK has negotiated a special status for itself within the EU – a set of exceptions, often called “opt-outs”, as well as wider protections. These include those secured as part of the new settlement for the UK, which the Government negotiated in February 2016.<sup>25</sup>

2.45 These exceptions make up the UK’s special position. Where the UK has negotiated such exceptions, the UK is not bound by EU rules in these areas, or has other special arrangements.

2.46 The special rules applying to the UK in each subject area are described in detail in the chapters below. They include:

- opt-out from the Economic and Monetary Union:<sup>26</sup> the UK has special status within the Economic and Monetary Union and retains control over its own economic and monetary policy:
  - the UK is under no obligation to join the euro and will not join the euro;
  - the UK does not participate in the Banking Union, and therefore retains responsibility for the supervision of UK banks;
  - the UK cannot be penalised under EU rules, unlike other Member States who are part of the Economic and Monetary Union;
- EU budget rebate: the UK benefits from a reduction in the amount it pays into the EU budget;
- Schengen border-free area: the UK has remained outside the Schengen border-free area, which means that it has kept control over its own borders.<sup>27</sup> The UK will not join the Schengen border-free area; and
- justice and home affairs: the UK can choose whether or not to participate in new EU measures in the justice and home affairs field. This means that the UK does not automatically take part in measures but can opt in to those that it considers to be in the national interest.<sup>28</sup>

2.47 The agreement reached at the February 2016 European Council builds on these opt-outs with further protections for the UK’s position in the future:

- the UK is not committed to further European political integration and the UK will be excluded from the Treaty provisions on ‘ever closer union’;
- the UK Parliament and parliaments in other Member States will have the power to work together to block EU legislation on the grounds of subsidiarity;
- transparent and stable arrangements will be put in place to secure the UK’s rights inside the Single Market but outside the euro area, and it has been recognised that

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<sup>25</sup> For more information on the settlement secured and the Government’s position on it see: ‘The best of both worlds: the United Kingdom’s special status in a reformed European Union’, HM Government, 22 February 2016. Available on GOV.UK.

<sup>26</sup> Protocol (No.15) to the EU Treaties.

<sup>27</sup> Protocol (No.19) to the EU Treaties.

<sup>28</sup> Protocol (No. 21) and Article 10(4) and (5) of Protocol (No. 36) to the EU Treaties.



further measures to deepen the Economic and Monetary Union should be voluntary for the UK;

- the UK has secured a commitment to changes to the rules on the free movement of persons and on welfare rules. These will help protect the UK and other Member States from the threat of crime being committed by individuals moving around the EU, tackle the abuse of the freedom of movement, and limit access to the UK welfare system for newly arrived EU nationals for up to four years; and
- the UK has secured a commitment from the European Commission 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 will be 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.

## The EU budget system

The current EU budget system has a cycle of seven years. The total amount of money available over this period has to be agreed unanimously by all 28 Member States, so the UK, like other Member States, has a veto. The UK has a permanent rebate on its annual contribution (in the form of an upfront reduction to our gross contribution) to the EU budget, unlike any other EU Member State.

### The EU budget in brief

2.48 The long-term budget ceiling, which is the maximum the EU can spend in any spending period, must be established in the Multiannual Financial Framework (MFF).<sup>29</sup> The spending limits apply for at least five years (the current framework covers a seven-year period). Within the MFF ceilings, the Council and European Parliament must agree proposed expenditure each year in annual budgets.

2.49 The budget is made up of the following components:

- **agricultural policy:** this component of the EU budget has been falling since the mid-1980s to around 40 per cent of spending today;<sup>30</sup>
- **regional growth and employment-oriented spending:** EU spending on infrastructure development; economic aid to poorer regions of the EU and training grants has risen since the 1990s to around 35 per cent of the budget; and
- **other:** the remaining quarter of the budget is spent on: research and development, international development assistance to poorer countries and to countries wishing to join or integrate more deeply with the EU; homeland security and protecting borders; and administration.<sup>31</sup>

### The EU budget system: own resources

2.50 All Member States finance the EU's spending under EU rules. The "Own Resources Decision" (ORD) sets out the legal framework by which Member States make contributions,

<sup>29</sup> Articles 310-316 TFEU set out arrangements for agreeing and financing the budget.

<sup>30</sup> From 73 per cent in 1985 to 39 per cent in 2013. CAP post-2013, Graph 1, March 2015, report available on the European Commission website.

<sup>31</sup> See EU Budget 2014 financial report available on the Commission website.

as well as limiting the maximum amount of Member State funds the EU can draw on.<sup>32</sup> It is decided by the Council by unanimity, after consulting the European Parliament. Member States must then approve this decision, in accordance with their respective constitutional requirements. In the UK's case, approval requires an Act of Parliament (most recently, the European Union (Finance) Act 2015).

2.51 The ORD also contains correction mechanisms for a number of Member States, which apply during the budgetary period 2014-2020. These are aimed at adjusting for the relatively low receipts of some countries and compensating for 'excessive' budgetary burdens in relation to their relative prosperity.

2.52 Uniquely, the UK receives a permanent rebate on its contributions. The UK rebate is a permanent feature of the own resources system originally agreed at the Fontainebleau European Council in 1984 and does not lapse at the end of the 2014-2020 period.<sup>33</sup>

2.53 The Own Resources Decision provides for three sources of EU revenue:

- a 75 per cent share of import duties on goods entering the EU from outside its customs union. Last year around 14 per cent of the budget was funded from customs duties;
- a VAT-based resource, which funds around 14 per cent of the budget; and
- a Gross National Income-based resource. Today around 72 per cent of the EU budget is drawn from this source.<sup>34</sup>

## Joining and leaving the EU

European countries can apply to join the EU but the process is complex and lengthy. Each existing EU Member State has a veto over any new country joining, as well as a veto over the pace of negotiations and the terms on which it joins.

Any Member State can leave the EU. This is described in a separate paper.

### Joining the EU: the accession process

2.54 Any European country can apply to join the EU if it respects and is committed to promoting the EU's values, namely freedom, equality, democracy, respect for human rights, human dignity and the rule of law.<sup>35</sup> In the past the UK has been supportive of other countries joining, as a way to expand the Single Market and create new opportunities for UK businesses, to cement wider peace and security and to help support the development of those countries wanting to join.

2.55 Each Member State has a veto, both over the ability of another country to join the EU, and over the terms on which they do so. There are three major decision points:

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<sup>32</sup> Council Decision 2014/335/EU, Euratom.

<sup>33</sup> See the Fontainebleau European Council conclusions, BULL. EC 6-84 §1.1.3.

<sup>34</sup> More information available in UK Government report: 'European Union Finances 2015: statement on the 2015 EU Budget and measures to counter fraud and financial mismanagement' under p.12, chart 3a.

<sup>35</sup> The process for a country to become an EU member is set out in article 49 TEU. The EU's founding values are set out in Article 2 TEU.

- the European Council first has to agree the conditions of eligibility by unanimity. This guides subsequent negotiations between the Commission and acceding state;
- the Council takes the final decision to allow a state to join the EU by unanimity (the Council must first have consulted the Commission and a simple majority of the European Parliament must vote in favour of the country joining). In practice, the EU has adopted a process where there are up to 35 “chapters” which a country must individually successfully negotiate, and both the Council and Member States have a role in voting by unanimity to open and provisionally close each ‘chapter’ of the negotiation prior to the final decision; and
- finally, each Member State must approve the agreement admitting the country to the EU, in accordance with its national requirements.

**2.56** In practice the process is complex and usually takes years to complete. For instance, it took Croatia almost eight years from opening accession negotiations to joining the EU.<sup>36</sup> There are multiple points at which the Council or the European Council can review progress. So, as well as deciding on the final outcome, Member States are able to influence the pace of a country’s negotiations through a veto at each stage of the negotiating process. Member States can also impose conditions on accession, such as by using a veto to refuse to allow the new country to join the EU unless controls on free movement are kept in place.

**2.57** When new countries are admitted to the EU in future, the Government will insist that 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.<sup>37</sup> 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 on enlargement of the EU.

**2.58** Subject to any transitional controls that are agreed, once a country becomes a Member State of the EU its citizens have the same rights under EU law as other EU nationals. Other adjustments are also made to reflect the accession of a new Member State, such as to the voting weights of each Member State in Council.<sup>38</sup>

### **Leaving the EU: the Article 50 TEU process**

**2.59** Any Member State can choose to leave the EU. The Government paper “The process for withdrawing from the European Union” sets out the process for leaving.<sup>39</sup>

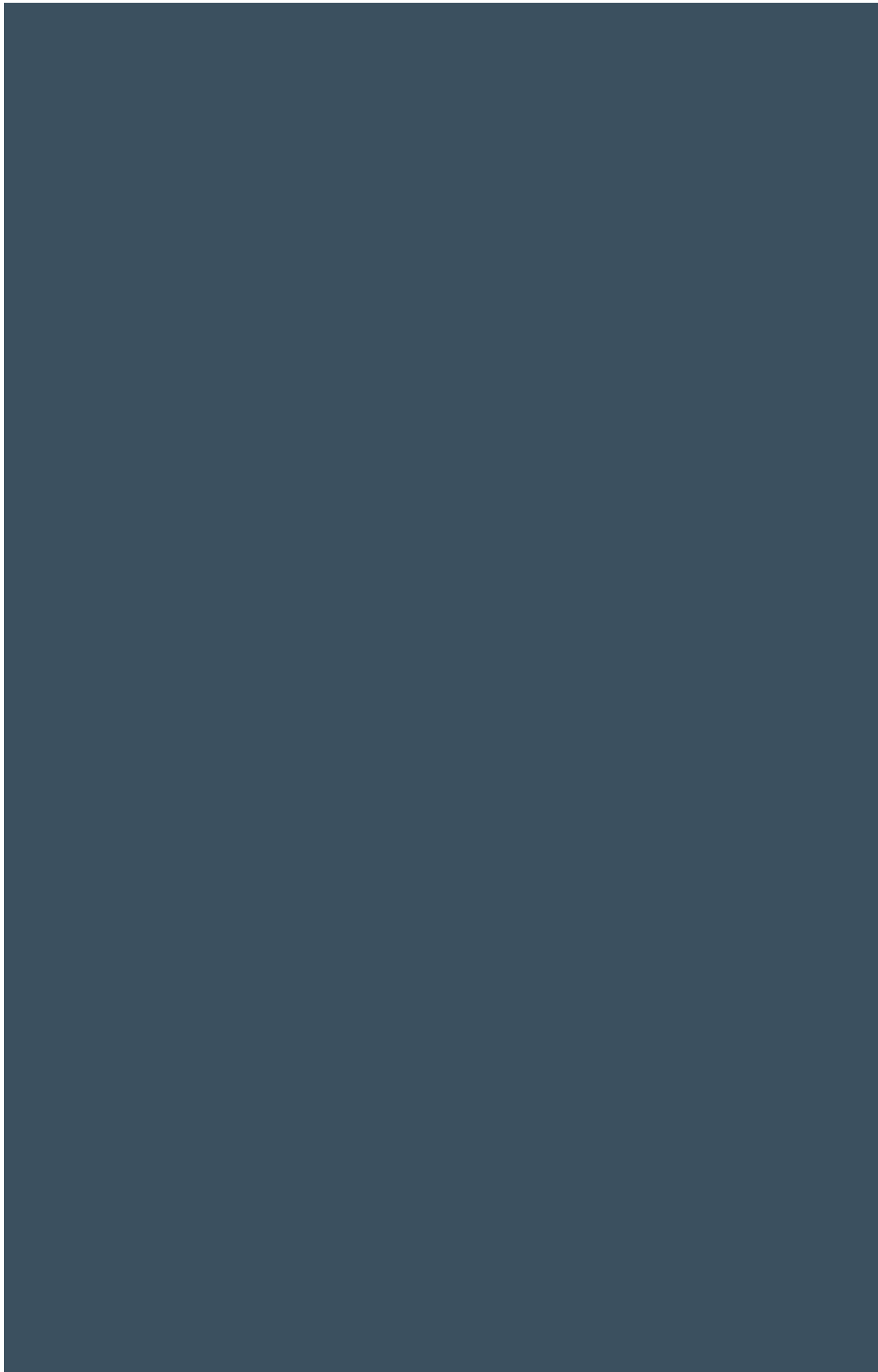
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<sup>36</sup> Croatia presented its application for Membership of the European Union on 21 February 2003, negotiated its accession between 2005 and 2011 and became a member on 1 July 2013.

<sup>37</sup> See paragraph 3.4, “The best of both worlds: the United Kingdom’s special status in a reformed European Union”, HM Government, 22 February 2016. Available on GOV.UK.

<sup>38</sup> In some cases these are made in the accession treaty for the country joining; others would happen automatically, such as Qualified Majority Voting weights.

<sup>39</sup> ‘The process for withdrawing from the European Union’, HM Government, February 2016. Available on GOV.UK.



# Chapter 3 – the Single Market – the four freedoms

## What is the Single Market?

The Single Market was created in the 1980s. Its purpose is to ensure the free movement of goods, services, capital and persons (“the four freedoms”), subject to the conditions set out in more detailed EU rules.

This means Member States cannot impose unjustified restrictions on companies and individuals exercising their rights of free movement, such as customs controls or licensing requirements. In many areas, there is detailed EU legislation setting out what sorts of restrictions are permitted.

The EU has also adopted legislation to remove other barriers to free trade, such as adopting common standards to ensure trade is not impeded by differing national regulations or technical specifications and has developed a legal framework for dealing with anti-competitive practices.

The following sections explain in more detail the specific rules governing the free movement of goods, services, capital and people.

## The Single Market – free movement of goods

EU law enables goods to move freely across the EU by establishing a customs union and a free trade area. This means that no customs duties (taxes) or other, unjustified restrictions are applied to the movement of goods within the EU, and that there is consistent application of customs rules and tariffs by all Member States for goods imported from outside the EU.

### Free movement of goods within the EU

**3.1** The free movement of goods is an essential part of the Single Market. It enables products to be moved and traded within the EU without restriction, unless such controls are necessary for public interest reasons, such as public health. It also reduces the administrative burdens associated with the transport of goods between different Member States. This provides rights both to businesses and to private individuals who want to import or export goods.

**3.2** The rules on the free movement of goods (which are set out in the EU Treaties) mean that goods from one EU Member State can be freely exported to, and imported from, another.<sup>40</sup> This has been achieved by establishing a customs union within the EU and by preventing Member States imposing customs duties on goods imported from other Member States.

**3.3** In addition, these EU rules prevent Member States imposing restrictions on the quantity of imports and exports of a particular item: for example, quotas or an import or export ban.

**3.4** EU law also prevents other measures that may restrict imports and exports in less direct ways, for example, by applying product standards and regulations that make it harder in practice for goods coming from one Member State to be sold within another. These are known as non-tariff barriers.

**3.5** This means, for example, that a Member State could not impose a requirement that a person importing goods from the UK has to do so in a certain way, such as by obtaining a particular license, or certificate.

**3.6** EU law also ensures that when goods have been lawfully manufactured and marketed in one Member State, another Member State cannot then require it to comply with additional national rules (this is known as the 'mutual recognition' principle).

**3.7** EU law also requires that goods imported from other Member States must be treated in the same way as goods produced nationally. These rights are also supported by rules that prevent a Member State from imposing internal taxes in a manner that discriminates against imported goods. This means, for example, that a Member State could not introduce tax rules that favoured the purchase of their pharmaceuticals over those produced and exported by a pharmaceuticals company in another Member State.

**3.8** Member States can, however, restrict the free movement of goods in particular, limited circumstances. Member States may refuse or restrict the import or export of goods on grounds including public policy or public security, the protection of human health, and the protection of industrial and commercial property. Also, national product standards and regulations that indirectly restrict imports may be justified if they fulfil a public interest and go no further than is necessary to meet that objective.

**3.9** In practice the majority of goods are not subject to import or export restrictions and, where restrictions are imposed, it will generally be for a specific purpose. For example, goods that may be subject to such restrictions include objects of cultural interest, controlled drugs and firearms.

**3.10** The EEA states that are not part of the EU (Iceland, Norway and Liechtenstein) are subject to most of the EU rules on the free movement of goods. They are not, however, a part of the customs union and continue to apply their own customs rules and procedures, as well as their own customs tariffs in respect of goods from outside the EEA. Switzerland is not a member of the EEA, but has entered into a similar arrangement with the EU in relation to the free movement of goods.

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<sup>40</sup> Articles 28-37 and 110 TFEU.

## Customs cooperation

**3.11** The EU Treaties also provide the power for the EU to facilitate the free movement of goods by adopting rules on customs cooperation, both between Member States and with the European Commission. EU laws made under this Article have provided, in particular, for the adoption of common administrative customs procedures by Member States, such as the form and manner in which customs declarations are to be made.

## Common tariffs on goods imported into the EU

**3.12** In addition to those rules concerning trade in goods within the EU, the EU Treaties also establish a Common Customs Tariff, which means all Member States are required to apply the same tariff rates to goods imported from non-EU states.

## How the EU makes new laws in this area

**3.13** With the exception of the Common Customs Tariff, which is set by the Council, EU laws relating to the free movement of goods are agreed jointly between the European Parliament and Member States in the Council. Member States take decisions in Council by Qualified Majority Voting.

**3.14** The customs union is an area of exclusive EU competence.<sup>41</sup> Most of the EU legislation is contained in EU Regulations. Member States cannot introduce their own customs laws or customs procedures, except for legislation that is needed at national level in order to implement EU customs law.

## Intellectual property

**3.15** The free movement of goods is also facilitated by EU rules on copyright, trademarks and designs, and intellectual property enforcement. These rules harmonise the most important aspects of national law in these areas to ensure that businesses and creators receive uniform protection for their intellectual property in each Member State.

**3.16** The EU has its own parallel systems in relation to designs and trademarks which enable EU-wide rights to be created in addition to those at national level. EU designs and trademarks registrations are administered by the European Union Intellectual Property Office. As an alternative to national patents, an EU patent will also be available when the Unitary Patent Regulation comes into force.<sup>42</sup>

## Technical standards

**3.17** In addition to the rules contained in the EU Treaties, the Technical Standards Directive is one of the EU's tools for preventing the adoption of national measures that create new barriers to trade.<sup>43</sup> It requires Member States to notify the Commission of certain proposed measures relating to products or electronic services before those measures are adopted. A Member State usually has to leave at least three months between notification and the adoption of the measure it notifies to the Commission, which provides the Commission and other Member States with the opportunity to scrutinise the measure and to raise objections before the new national measure can be adopted.

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<sup>41</sup> Article 3 TFEU.

<sup>42</sup> Regulation EU No 1257/2012.

<sup>43</sup> Directive 2015/1535/EU.

## The Single Market – free movement of services and freedom of establishment

EU rules safeguard the right to provide and receive services across the EU. This makes it easier for businesses and citizens to permanently establish themselves in another Member State, by setting up a company or a subsidiary. It also means businesses and citizens can provide services in another Member State on a temporary basis. The free movement of financial services protects the right to provide and receive financial services across the Single Market. The EU's primary role in regulating telecoms and audio-visual services is to promote competition. The settlement negotiated by the UK at the February 2016 European Council secured a commitment to further extend the Single Market in services.

**3.18** EU rules make it easier for a person or company to permanently set up a business in another Member State – this is referred to as the ‘freedom of establishment’. They also make it easier to provide services in another Member State on a temporary basis – this is referred to as the ‘freedom to provide services’.

**3.19** The freedom of establishment rule (which is set out in the EU Treaties<sup>44</sup>) means that companies and self-employed people have the right to conduct business in another Member State on a permanent basis.

**3.20** These rights apply in the following situations:

- self-employment in another Member State;
- the establishment and management of new companies in another Member State; and
- the right for a company to set up an agency, a further company or a subsidiary in another Member State.

**3.21** The freedom to provide services is also set out in the EU Treaties<sup>45</sup> and covers situations where a service (the precise meaning of which is defined in EU law) is provided for remuneration (so it does not cover services provided voluntarily), and is on a temporary basis (as set out above providing services on a permanent basis is covered by the rules on the freedom of establishment). The rules on the freedom to provide services do not apply in cases which fall within the scope of the EU rules on the free movement of goods, people or capital (which are explained elsewhere in this paper).

**3.22** These rights apply in the following situations:

- where someone travels to another Member State to provide services;
- where someone travels to another Member State to receive services; and
- where the service is provided between two Member States without the person providing or receiving the services travelling anywhere (for example an online service).

**3.23** This means that, for example, the rules on the freedom to provide services would apply where an accountant provides services in another Member State and then returns to their own Member State when the work is complete.

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<sup>44</sup> Articles 45-55 TFEU.

<sup>45</sup> Articles 56-62 TFEU.



**3.24** The freedom to provide services and the freedom of establishment can be restricted in certain limited situations. In particular, a Member State may restrict the freedom to provide services or the freedom of establishment for public policy, public security or public health reasons.

**3.25** However, Member States can only adopt such restrictions if they are proportionate. This means that the national measure must go no further than is necessary to achieve its aim. In addition, national measures which are directly discriminatory are prohibited unless they can be justified on grounds of public policy, public security or public health. Non-discriminatory measures which restrict free movement are also prohibited unless justified on public interest grounds.

**3.26** The Treaty provisions in these areas are supplemented by other pieces of law that have been adopted by the EU. Some of these rules apply across sectors, whereas others are sector-specific.

**3.27** The most important set of these rules is the Services Directive,<sup>46</sup> which further opens up the free market in services. It aims to do four key things:

- it reinforces freedom of establishment and the freedom to provide services within the EU;
- it requires Member States to simplify the procedures concerning the creation of a service activity;
- it strengthens the rights of recipients of services; and
- it provides rules governing the quality of services.

**3.28** Also important to the free movement of services is the Recognition of Professional Qualifications Directive.<sup>47</sup> This requires Member States to recognise the professional qualifications of nationals from other Member States, which makes it easier for professionals to move to another Member State and practise their profession there on a temporary or established basis. It provides for a system of automatic recognition of qualifications on the basis of agreed minimum training standards in a number of specific professions. Automatic recognition is also extended to certain industrial, craft and commercial professions on the basis of professional experience. A “general system” of recognition applies to professionals not covered by automatic recognition and allows for compensatory measures to be taken to address where there may be differences between national requirements for professional training. Under the Directive, Member States may impose language controls to ensure medical professionals and those in other professions with patient safety implications have the necessary language knowledge to practise the profession in the Member State in which they travel.

**3.29** EU laws on services are decided jointly between the Council and the European Parliament, and Member States take decisions in Council by Qualified Majority Voting.

**3.30** EU rules on the free movement of services generally extend to the EEA countries that are not part of the EU (Iceland, Norway and Liechtenstein), and apply to Switzerland in a more limited way.

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<sup>46</sup> Directive 2006/123/EC.

<sup>47</sup> Directive 2005/36/EC, as last amended by Directive 2013/55/EU.

## Financial Services

**3.31** The EU's financial services 'passport' means that financial services firms authorised in a Member State, such as the UK, can provide services across the EU without the need for further authorisations. The passport is a shorthand term. It covers a collection of measures in EU secondary law, which minimise regulatory, operational and legal barriers that would otherwise apply.

**3.32** These rights have been extended to firms based in the European Economic Area (EEA) countries that are not part of the EU (Iceland, Norway and Liechtenstein). International firms from all other countries therefore need to establish a subsidiary in at least one EEA country in order to benefit from the passport.

**3.33** This means, for example, that a bank based in one Member State (such as the UK) can much more easily open a branch elsewhere in the EEA than any bank based in a non-EEA country. This makes it easier and less expensive for these firms to operate across the EEA.

**3.34** The financial services passport is able to operate because all EEA countries adhere to equivalent EU regulatory standards. This gives regulators in Member States the confidence that EEA firms providing services in their country through passporting are adhering to the same standards as firms based in their own countries. The effect of this is to create a level playing field for service providers, which opens up the Single Market to financial services firms.

**3.35** The majority of EU rules on financial services are agreed jointly between MEPs in the European Parliament and Member States in the Council. Each Member State has a say by voting in Council, which takes decisions by Qualified Majority Voting.<sup>48</sup> However, there are protections for certain national interests, such as in relation to fiscal provisions, and all Member States have an effective veto over such rules. EU rules in this area apply in a uniform manner across all Member States, though EU law provides that in some instances Member States, including the UK, can exceed the EU standards, for example to protect financial stability.

**3.36** EU law provides the detailed requirements for specific financial services and, in many cases, for consumer protections in each sector. In relation to the following sectors, they provide for the coordination and harmonisation of rules for:

- banking: the requirements for the authorisation of banks and for the amount of capital that they must hold in relation to their business. They also provide for the recovery and resolution of banks in crisis and the guarantees for deposits held by banks which fail up to a specified limit;
- mortgages: the requirements lenders and brokers must meet when providing or advising on mortgages;
- insurance: the requirements for the authorisation of insurers and for the amount of capital that they must hold in relation to their business. The rules also cover consumer protection in the purchase of insurance products and the governance of occupational retirement schemes;

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<sup>48</sup> Articles 53 and 114 TFEU.

- investment firms and financial markets infrastructure: the requirements for the authorisation of investment firms and financial markets infrastructure, such as central counterparties (which stand between trades in financial instruments to ensure that risks are mitigated). The rules also provide for the transparency of trading to enable investors to participate in financial markets and for mechanisms to protect consumers (though Member States, including the UK, may exceed these standards);
- asset management: the requirements for the authorisation of investment funds and managers, and for making high quality and safe funds available to consumers;
- market abuse: rules concerning the integrity of financial markets and enabling abuse and manipulation to be detected and consistently addressed; and
- payment services: the facilitation of cross-border payments, encouragement of competition, increased consumer protection and the reduction in fees for businesses and consumers.

**3.37** The European Central Bank supervises large banks established within Member States that use the euro and other Member States that have opted in to the Banking Union. Because the UK does not use the euro, the UK can and has opted out of Banking Union. The supervision of UK banks and subsidiaries of EU and other banks in the UK remains with UK national authorities.

## **Telecommunications and media**

**3.38** EU laws on telecommunications and media are usually decided jointly between the Council and European Parliament.<sup>49</sup>

**3.39** EU law on telecommunications covers electronic communications services such as telecoms and the internet, and the networks and facilities that they rely on (both fixed (wired) and mobile (wireless)). EU law covers the means by which broadcasting is transmitted but not generally its content. Its aim is to encourage competition, improve the functioning of the market and guarantee basic user rights.

**3.40** EU legislation in this area is subject to a harmonised regulatory regime that governs national regulatory authorities, access to networks, the right to use radio frequencies, rules on minimal levels of service, security, confidentiality, billing and directories. EU rules also regulate mobile roaming charges and the EU provides safeguards to open internet access.

**3.41** The EU plays a limited role in media regulation. It guarantees freedom of reception and re-transmission, and seeks to facilitate a Single Market for audio-visual services, so as to increase competition and choice and protect consumers. Any media service provider regulated in an EEA country is entitled to broadcast in any EU Member State.

**3.42** EU rules on the media generally set out minimum standards and obligations. Examples include prohibitions on broadcasting that incites hatred based on race, sex, religion or nationality; minimum quotas for independent production companies; and ensuring sporting events of major national importance are available to watch for free on terrestrial television.

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<sup>49</sup> Articles 114(1) and 289(1) TFEU.

## Supplying goods, works and services to public bodies ('public procurement')

3.43 EU law also aims to make it easier for people and businesses to bid for the right to supply goods, works and services to public bodies, such as local and central government, across the EU.<sup>50</sup> This bidding process is called 'public procurement'. The EU has adopted different sets of rules to remove barriers to trade in this area, and to enable suppliers to compete for business across borders.

3.44 These EU rules require public bodies to follow transparent processes when awarding contracts. This ensures that suppliers who follow the relevant rules are treated fairly when bidding to supply goods, works and services.

3.45 They also enable suppliers of goods, works and services to bring legal proceedings throughout the EU if public procurement rules have been broken. Where this is the case, a supplier can ask a court to award damages or to set aside a contract that has been awarded unlawfully.

3.46 These detailed EU rules only apply to contracts above a certain value. However, the principles in the EU Treaties mean that even smaller contracts may need to be awarded in a way that is transparent and which treats suppliers from other Member States in the same way as national suppliers, and allows equal access for UK companies alongside suppliers from the Member State concerned.<sup>51</sup>

3.47 EU laws on procurement are agreed jointly between the European Parliament and Member States in the Council and decisions in Council are taken by Qualified Majority Voting.<sup>52</sup>

## The Single Market – free movement of capital

EU rules facilitate the free movement of capital around the EU. While many rules in this area require Member States to adopt equivalent approaches across the EU, EU law provides that Member States can in some cases exceed EU standards, for example to protect financial stability.

### Free movement of capital

3.48 The free movement of capital is guaranteed under the EU Treaties.<sup>53</sup> It refers to all movements of capital – from payments, portfolio investments and direct investment in a country, to loans for the purchase of property, bank notes and financial guarantees. This guarantee also applies to EEA countries that are not part of the EU (Iceland, Norway and Liechtenstein).<sup>54</sup>

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<sup>50</sup> Articles 34, 49 and 56 TFEU prohibit discrimination by public bodies against suppliers, products and services from other EU Member States. This aims to ensure that public procurement is open to EU-wide competition.

<sup>51</sup> Article 18 TFEU.

<sup>52</sup> The key provisions are set out in Articles 53(1), Article 62 and Article 114 TFEU.

<sup>53</sup> Article 63 TFEU.

<sup>54</sup> Articles 40 and 41 of the EEA Agreement.

**3.49** EU rules in this area mean that businesses and individuals in the UK can invest in property, raise capital and make payments anywhere across the EU. Harmonisation legislation in this area<sup>55</sup> also applies to the EEA.<sup>56</sup>

**3.50** The free movement of capital is unique among the EU's four freedoms in that it applies both to the movement of capital between Member States and also between the EU and third countries (non-EU countries). This means that businesses and firms, as well as individuals, enjoy relatively free access to capital-related services both inside and outside of the EU. EU laws relating to the free movement of capital between Member States and third countries are agreed jointly between MEPs in the European Parliament and Member States in the Council. Member States take decisions in Council by Qualified Majority Voting.<sup>57</sup>

**3.51** There are some permitted exceptions to the application of the free movement of capital. Member States may, where justified in law and proportionate, restrict the movement of capital on the basis of specified public policy interests; notably, macro-prudential regulations and capital controls, certain forms of tax treatment, public policy (including financial stability), national security and defence and financial penalties.<sup>58</sup>

**3.52** EU developments in relation to the free movement of capital have played a part in the deepening of the Single Market, particularly in relation to financial services. This is because EU rules on the free movement of capital have enabled businesses to make investments and payments more easily across borders. However the freedom to provide financial services, such as retail banking is guaranteed by the free movement of services, not of capital, and so is not enjoyed by third countries.

## The Single Market – free movement of persons

EU law gives UK and all other EU nationals rights to enter, live and work in another EU Member State, as well as to their family members and their dependants. These rights are not unqualified as citizens can be refused entry to, deported or excluded from their host State on a number of grounds.

**3.53** Free movement rights and entitlements, including protection against discrimination on the grounds of nationality, are set out partly in the EU Treaties<sup>59</sup> and partly in rules adopted under the EU Treaties. Key measures include the Free Movement Directive,<sup>60</sup> which is the basis for the UK's Immigration (European Economic Area) Regulations. The Free Movement Directive was agreed jointly between the European Parliament and the Council.

**3.54** These rights have been extended to nationals of the European Economic Area (EEA) outside the EU (Iceland, Norway and Liechtenstein) and to Switzerland, and to UK nationals living in those countries.<sup>61</sup>

<sup>55</sup> Adopted under Article 114 TFEU.

<sup>56</sup> Annex XII EEA Agreement.

<sup>57</sup> Article 64(2) TFEU.

<sup>58</sup> Article 65 TFEU.

<sup>59</sup> In particular articles 21 and 45 TFEU.

<sup>60</sup> See Directive 2004/38/EC.

<sup>61</sup> Subsequent references to 'EEA' in this section should be read as including Switzerland.

## Free movement rights

**3.55** Free movement rights apply both to UK citizens moving to another EEA country to live, work or study, and to EEA nationals coming to the UK. The UK and all other EEA countries determine for themselves how a person is eligible to become a citizen.

**3.56** An EEA national can enter and reside in another EEA country for an initial three month period on an unconditional basis. They cannot stay lawfully beyond that period unless they are employed, self-employed, self-sufficient or a student (there are also more limited rights to reside given to jobseekers).<sup>62</sup> They can, under EU law, continue to reside in another EEA country for as long as they remain in one of these categories.

**3.57** After five years of continuous and lawful residence in another EEA country, an EEA national automatically acquires the right of permanent residence in that EEA country, at which point they are no longer required to be a worker, self-employed, a jobseeker, self-sufficient or a student in order to live in that country.<sup>63</sup> If an EEA citizen is absent from the host Member State for over two consecutive years, they will lose their right of permanent residence. These rights apply to UK citizens moving to another EEA country in the same way as they do to an EEA citizen moving to the UK.

**3.58** In the UK, EEA citizens who are workers or self-employed can access some benefits because of equal treatment provisions; however, there are limitations on that access to benefits, as set out below. UK citizens living in another EEA country also benefit from these rights.

**3.59** Free movement rights also extend to the family members of EEA nationals. They also have a right to live and work in all EU Member States for as long as they remain the family member of a legally resident EEA national.<sup>64</sup> They can acquire the right of permanent residence after five years of continuous and lawful residence. Again, if they are absent from the host Member State for over two consecutive years, they will lose their right of permanent residence.

## Limitations and restrictions of free movement rights

**3.60** Free movement rights are not unqualified rights, and are subject to a number of restrictions and limitations set out in the Free Movement Directive.

**3.61** In particular, the free movement rights of an EEA national do not extend to an automatic right to any and all benefits in a host Member State. For example, where an EEA national is in another Member State as a self-sufficient person, student or jobseeker they are prohibited from being a burden on the social assistance system of the host state.

**3.62** More broadly, EEA citizens who benefit from the right to free movement must adhere to the responsibilities free movement brings with it and abide by the national laws of the Member State in which they are living. This means that EEA nationals and their family members who wish to move to the UK have to abide by the UK's laws.

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<sup>62</sup> EEA migrants with a right to reside in the UK as a student or a self-sufficient person must have sufficient resources not to become an unreasonable burden on the State.

<sup>63</sup> In certain very limited circumstances, it is possible to acquire the right of permanent residence sooner. See Article 17 of Directive 2004/38/EC.

<sup>64</sup> There are some exceptions to this, for example following divorce where the family member has custody of a child.

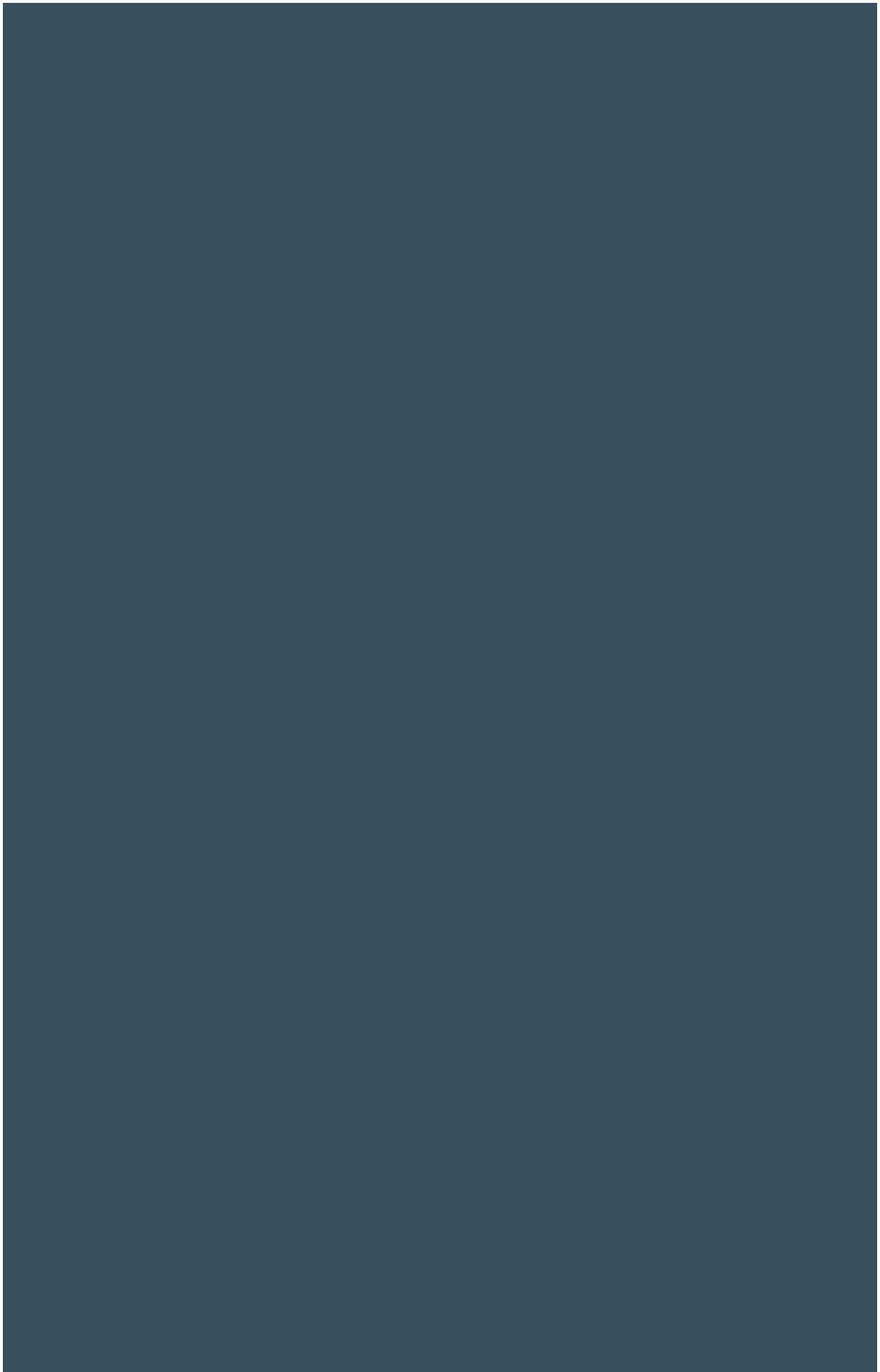
**3.63** Under the Free Movement Directive, EEA nationals or their family members may be deported or excluded from the UK and other EEA countries on the grounds of public security, policy or health. The Directive and associated case law enable action to be taken on public security or public policy grounds where someone represents ‘a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society’. EEA countries have the same ability to deport or exclude UK citizens. Member States have a degree of discretion to determine what amounts to grounds of public policy or public security in their territories.

**3.64** An EEA citizen may be removed from the UK or another EEA country if they are not a worker, self-employed, self-sufficient or a student after three months, or if they are a jobseeker and cannot provide compelling evidence that they have a genuine prospect of work after a total of six months residence following arrival.

**3.65** Those who engage in fraud or abuse of free movement rights, for instance by engaging in marriages of convenience, can also be removed.

**3.66** At the February 2016 European Council the UK secured an agreement that clarifies the actions the UK and other Member States can take to tackle abuse of free movement rights. This agreement will help ensure that individuals are unable to circumvent domestic immigration controls and help to prevent persons who pose a threat from coming to a Member State, as well as making it easier to deport them if they have already been living there.

**3.67** The agreement commits to new legislation to prevent illegal migrants from using marriage to an EU national to avoid national immigration rules; and will mean that non-EU nationals who marry EU nationals will also need to meet national immigration rules.





# Chapter 4 – competition and consumer policy

EU competition and consumer laws seek to create a level playing field across the Single Market, so as to underpin the rights for goods and services to move freely within the EU. The purpose is to ensure that markets are undistorted by anti-competitive practices and work fairly for consumers and society as a whole. EU competition rules apply to businesses in the UK and other Member States, and at times to the public sector. They apply where trade between Member States is affected or to mergers with an EU dimension. EU law also provides important rights and protections for consumers.

4.1 EU competition rules, including on state aid and mergers, are a fundamental part of the proper functioning of the Single Market.<sup>65</sup> They help ensure a level playing field undistorted by anti-competitive practices.

4.2 EU action on consumer rights aims to ensure that consumers have a choice of goods and services whilst maintaining the Single Market's level playing field. EU consumer protection policy aims to give consumers similar rights across the whole EU.

4.3 The Commission has powers to investigate and enforce compliance with competition law rules and makes decisions in individual cases concerning mergers and state aid.

## Competition and state aid

4.4 Competition rules aim to prevent harm to consumers and businesses from anti-competitive practices. In particular, the EU Treaties prohibit businesses from entering into agreements that restrict competition (for example, cartels fixing prices) or using a dominant position to make it more difficult for competing businesses to enter the market. The Commission plays an important role in enforcing compliance with these rules.

4.5 The Treaties also set out the basic rules for providing state aid. The starting point is that Member States cannot grant state aid (such as grants or subsidies, loan guarantees, advantageous interest rates, and tax relief arrangements) that give certain businesses a market-distorting advantage. For a measure to constitute state aid, it needs to distort competition and affect trade between Member States. However, the Commission can approve state aid in specified circumstances. Most state aid must be notified to the Commission for approval before it can be granted.

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<sup>65</sup> The core EU antitrust rules are found in Articles 101 to 106 TFEU, the core state aid rules in Articles 107 to 109 TFEU and the merger rules in Regulation 139/2004.

4.6 The Commission can also have a say on certain proposed mergers and joint ventures between large companies operating in the EU, with a view to ensuring competition. The EU Merger Regulation creates a one-stop shop principle so that, once a transaction is caught by its provisions, companies need only obtain clearance from the Commission and need not make notifications to any national authorities within the EEA.

4.7 Only the EU has the power to make competition rules necessary for the functioning of the Single Market.<sup>66</sup> However:

- EU competition law only applies to potentially anti-competitive agreements and conduct of businesses if they affect trade between Member States. It also applies to mergers that have an EU dimension (i.e. broadly speaking where the parties are large businesses operating in more than one EU Member State); the UK and other Member States can therefore make their own laws regulating domestic cases. In practice the UK's antitrust enforcement regime is aligned with the EU's in order to provide an approach that is uniform and minimises the burden on businesses;
- enforcement of the antitrust prohibitions has been de-centralised so that cases can be investigated not only by the Commission but also by national authorities where they are best placed to take on a case. In the UK, this role is primarily performed by the Competition and Markets Authority;
- there are some limited arrangements for mergers to be transferred between the Commission and Member States where one or the other would be better placed to investigate. Member States can intervene in mergers with an EU dimension if they need to protect legitimate public interests, such as national security; and
- for a measure to constitute state aid, it needs to distort competition and affect trade between Member States.

4.8 Legislation on mergers can only be adopted by a unanimous vote, which gives the UK and other Member States a veto. Arrangements for cooperation between the Commission and national authorities regarding antitrust enforcement are adopted by Qualified Majority Voting in the Council, following consultation with the European Parliament.

4.9 In the state aid field the Council may make regulations for the application of the state aid Treaty rules. In particular, the Commission can make proposals to determine when aid needs to be notified to the Commission for individual approval, which are adopted by Qualified Majority Voting.

## Consumer Protection

4.10 EU consumer policy aims to empower consumers by giving them rights which, for example, oblige traders to honour the terms of their contracts, and the right to information, so that consumers are more confident and able to make better-informed choices.

4.11 Although Member States can continue to make their own laws on consumer matters, once EU legislation has been passed they may not legislate in a manner contrary to it. Within the Treaties there are provisions specifying that EU policies must ensure a high level of

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<sup>66</sup> Article 3(1)(b) TFEU.

consumer protection.<sup>67</sup> The Treaties require consumer protection to be taken into account when any EU policy or activity is defined or implemented.<sup>68</sup>

4.12 The legislation adopted in this area has sought to facilitate the development of the Single Market by enabling consumers and traders to expect similar rights and obligations across the EU. Much of it focuses on contractual rights which cover areas like unfair contract terms; information requirements and cancellation rights; and remedies for non-conformity with contract terms.

4.13 The EU has also sought to protect consumers by legislating to ensure that products are safe, and have appropriate labelling, and that national enforcement authorities cooperate in removing unsafe products from the market across the EU. In the UK, a person who supplies an unsafe product may face criminal penalties.

4.14 Consumer protection measures can be adopted via one of two main routes:

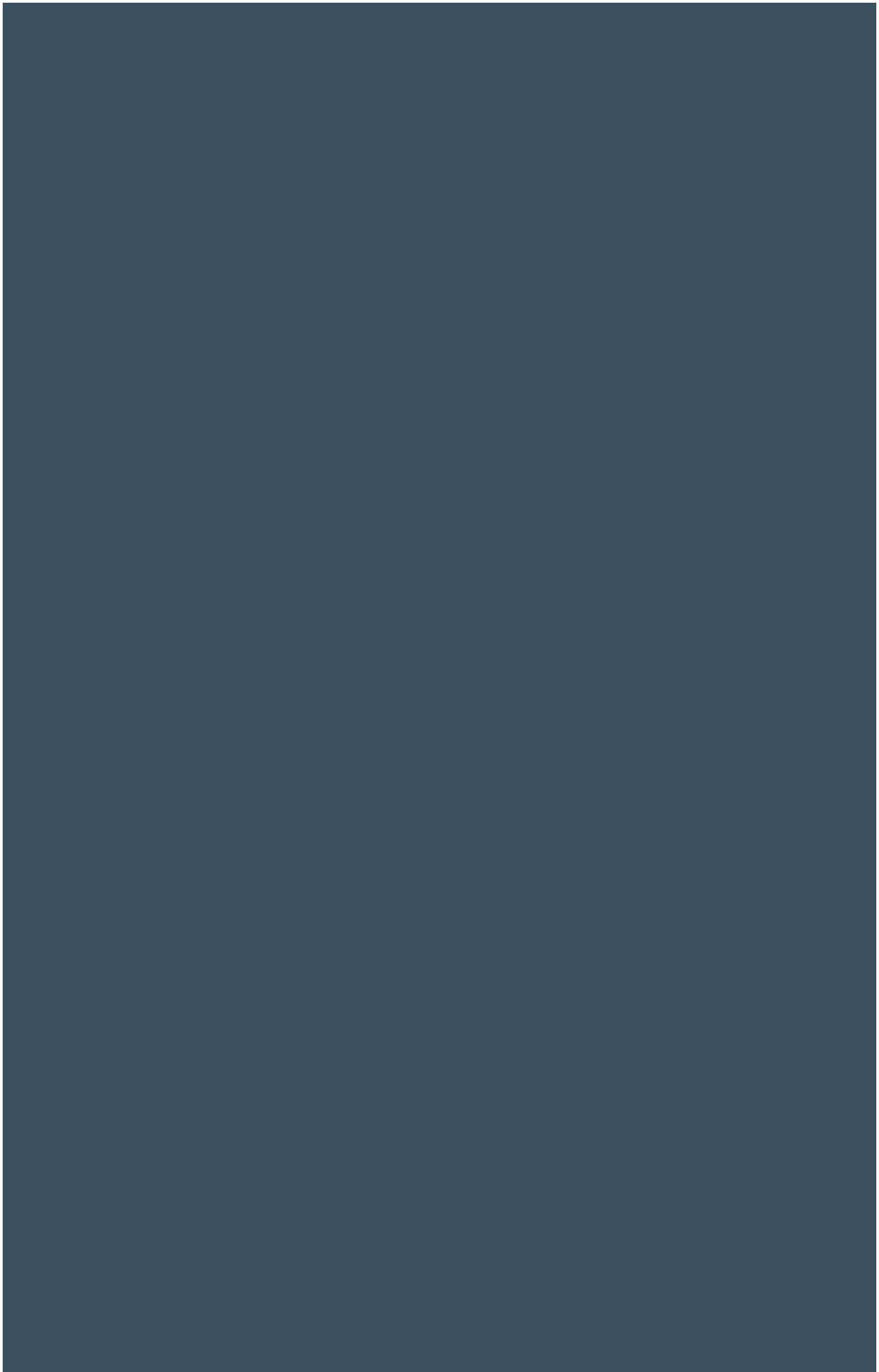
- the first allows the EU to legislate specifically to promote the interests of consumers and to ensure a high level of consumer protection. These consumer measures are passed by Qualified Majority Voting; and
- the second route is under the EU's power to adopt rules to make the Single Market work. The measures are also agreed jointly between the European Parliament and Member States in the Council and adopted by the Council through Qualified Majority Voting.<sup>69</sup>

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<sup>67</sup> Articles 169 TFEU, supplementing Article 114 TFEU.

<sup>68</sup> Article 12 TFEU.

<sup>69</sup> The first route is under Article 169 TFEU, and the second under Article 114 TFEU.



# Chapter 5 – research and development

The EU aims to boost competitiveness and productivity by supporting scientific research and technological development. The UK and other Member States retain the right to operate their own national research and technological development programmes. EU programmes complement this national activity.

5.1 The main areas of EU activity in relation to science and innovation are the funding of research and innovation, the coordination of priorities, and developing the skills of European researchers.<sup>70</sup> The EU's main research and innovation programme is called Horizon 2020.<sup>71</sup>

5.2 In recent years the UK has on average put in around 12 per cent of all EU funding for Horizon 2020 and has received around 15 per cent of research funding from Horizon 2020 and its predecessor programme.<sup>72</sup> For example, the top four higher education recipients in Europe are UK universities. More generally, Horizon 2020 encourages and facilitates collaboration across borders, allowing researchers and innovators to access complementary expertise and pool resources.

5.3 Under the EU's rules on freedom of movement, researchers and students are able to study or work in universities across the EU. This makes it easier for universities to attract researchers and for students to study elsewhere in the EU. This is facilitated by the Erasmus+ exchange programme.<sup>73</sup>

5.4 The regulations setting up Horizon 2020 were agreed jointly between the European Parliament and Member States in the Council. Member States take decisions in Council by Qualified Majority Voting.

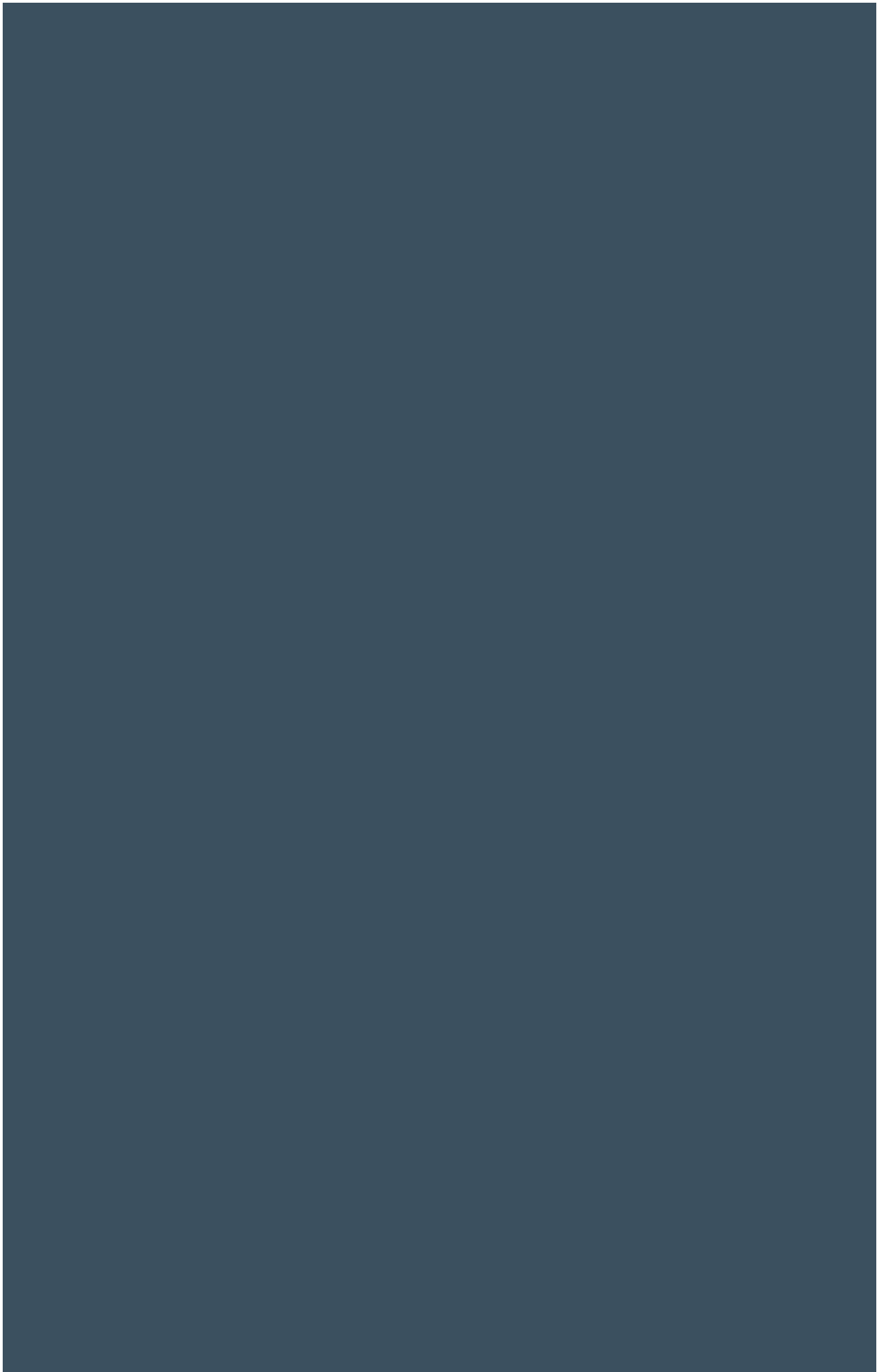
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<sup>70</sup> The EU's role on research and technological development is set out in Articles 4(3) and 179-190 TFEU.

<sup>71</sup> Horizon 2020 is the eighth EU Framework Programme for Research and Innovation covering the period from 2014 to 2020.

<sup>72</sup> For the UK's financing share, see the European Commission's Financial Report 2014 – available on the European Commission website. For receipts see the Seventh Monitoring Report on Framework Programme 7 (predecessor to Horizon 2020) also available on the Commission website.

<sup>73</sup> Erasmus+ provides opportunities for UK participants to study, work, volunteer, teach and train in Europe. It is open to organisations across school education, further and higher education, adult education and the youth sector. For more information see the Erasmus+ website.



# Chapter 6 – agriculture and fisheries

The Common Agricultural Policy (CAP) framework is designed to provide a level playing field across the European Union, and to ensure that there is a sustainable and affordable supply of food that meets EU standards. Membership of the EU also provides full access to the Single Market for trade in agricultural products. The Common Fisheries Policy (CFP) is designed to make fishing and the supply of fish sustainable. The UK's agricultural and fisheries industries receive EU funding.

6.1 EU rules setting standards for agriculture and fisheries are usually decided jointly between the Council and the European Parliament.<sup>74</sup> The Council alone decides on measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities. Member States take decisions in Council by Qualified Majority Voting.

## Agriculture

6.2 The CAP includes rules on the Single Common Market for production and trade in agricultural products. It also provides funding for farmers and rural communities across the EU through subsidies and rural development programmes.

6.3 The CAP is designed to:

- increase agricultural productivity;
- establish a fair standard of living for the agricultural community;
- stabilise the agricultural market; and
- ensure availability of supply for consumers.

6.4 Whilst the CAP's objectives have been fixed for a number of years, the way of achieving them has changed. Since 2005, the EU has gradually reduced and removed production-based subsidies that disconnected farmers from the global market. Today, farmers are primarily supported by way of direct payments, linked to the amount of land that they manage, which they have to do under a common EU standards framework. These include provisions related to the environment, keeping land in good agricultural condition and public, animal and plant health and animal welfare (cross-compliance). EU Member States follow the rules for the marketing and trade of agricultural products.

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<sup>74</sup> Article 38 TFEU provides for a common agriculture and fisheries policy and an internal market for agriculture, fisheries and trade in agricultural products. Their objectives are set out in article 39.

**6.5** These arrangements mean farmers have access to the EU's Single Market for agricultural products, can receive direct payments and can apply for funds from the rural development fund.

**6.6** EU rules, designed to mitigate the risk of the introduction or spread of plant diseases, govern the import of plants and plant products into the EU and the internal movement within the EU of certain plants and plant products. These include the rule that relevant products can only be imported into the EU if they are accompanied by a phytosanitary certificate, and are subject to import checks at designated border inspection posts. The EU's rules also aim to ensure that organic farming, production, processing and labelling practices meet clear standards across the EU.

**6.7** The EU has also entered into a number of bilateral and multilateral international trade and cooperation agreements with third countries (non-EU countries) and many of these agreements include provisions concerning trade in agricultural and fish products and cooperation in the field of agriculture and rural development. (See the section on Trade and Investment for more detailed information on trade agreements.)

## **Fisheries**

**6.8** The EU's CFP extends the agricultural Single Market to fisheries and trade in fisheries products. It has also agreed rules on aquaculture and freshwater fisheries, which aim to promote aquaculture and set minimum standards for the prevention and control of disease in fish.

**6.9** The CFP regulates all fishing in waters of EU Member States, and EU Member States' boats that fish outside those waters. It also serves a sustainable fisheries purpose, with measures aimed at conserving marine biological resources including fish, crustaceans and molluscs, while maximising economic potential.

**6.10** The CFP includes measures on:

- fisheries management, including access to waters, days spent fishing at sea, what nets boats can use and how much fish they can catch;
- sustainable fishing around the world (through international agreements between the EU and other countries) and rules banning imports from countries which carry out illegal fishing;
- markets, trade and improved competitiveness in fish and fishery products; and
- funding for the fishing, fish processing and aquaculture industries. This is delivered mainly under the European Maritime and Fisheries Fund.

**6.11** The CFP allows Member States to introduce additional fisheries rules in their 12 nautical miles (nm) area, provided they are consistent with the CFP.

**6.12** Member States can stop the boats of other Member States from fishing in the area of sea out to 12 nm from their coastlines, except for those boats with historic fishing rights in the 6-12 nm area. Otherwise, fishermen from EU Member States have equal access to waters of



EU Member States (classed as up to 200 nm off Member State coasts) and to the waters of countries with which the EU has entered into international fisheries agreements.<sup>75</sup>

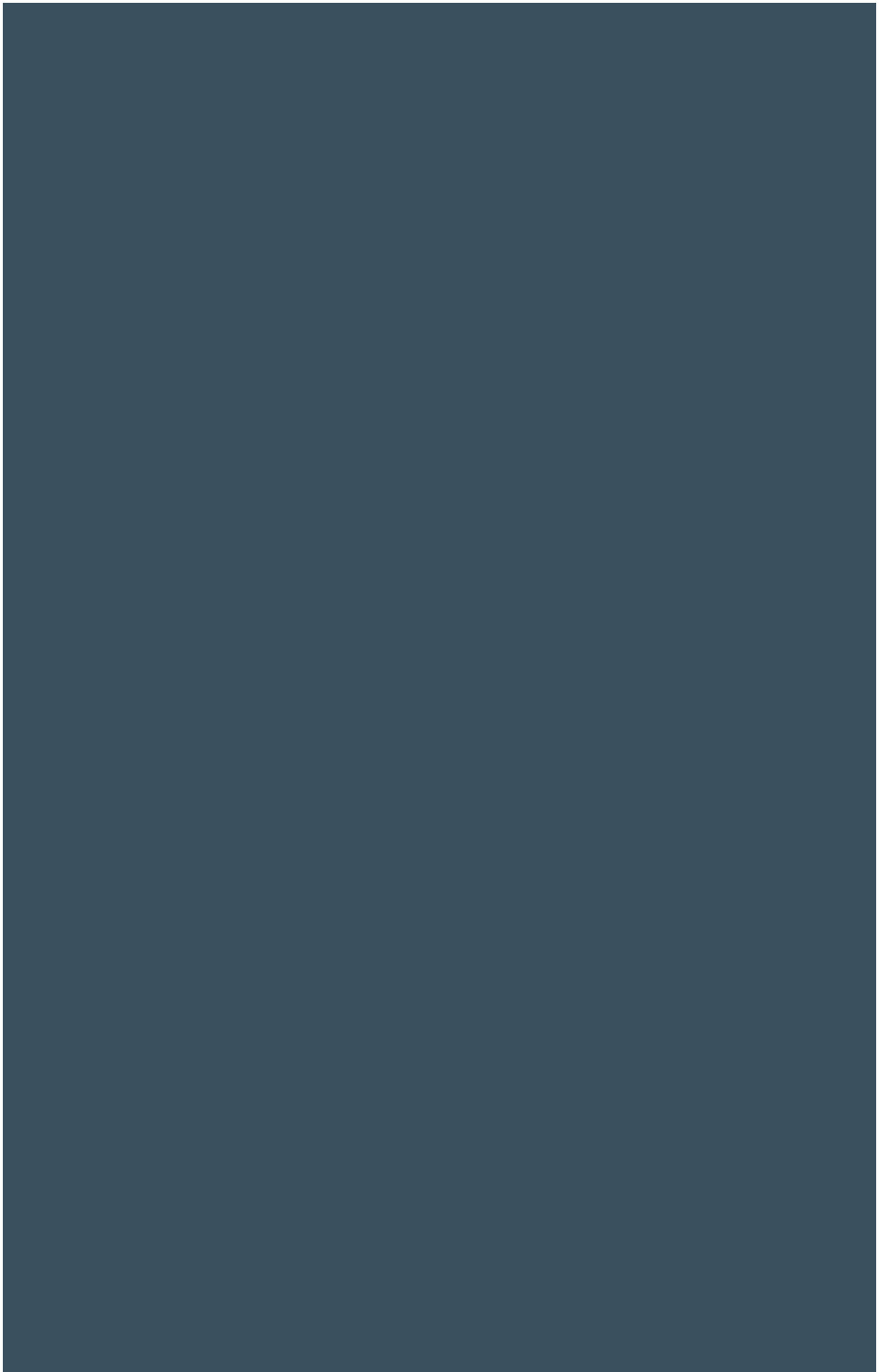
**6.13** Reforms of the CFP in 2013 resulted in a ban on throwing away edible fish, a legal obligation to fish sustainably and a new system of regionalisation, which allows Member States in a particular region to present joint recommendations to the European Commission that can then become part of EU law. For example, groups of Member States have now developed regional discard plans for the detailed implementation of the ban (or landing obligation) in their particular areas (for the UK this is the North Sea and North West Waters).

**6.14** Most EU fisheries management measures are set out in EU laws that apply directly to fishermen and are enforced under UK legislation. This includes a common framework for fisheries enforcement and control.

**6.15** There is also an EU-wide data collection framework which requires Member States to collect data in the fisheries sector and report to the Commission. This is to provide support for scientific advice regarding the CFP, for example on the annual assessments of fish stocks.

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<sup>75</sup> Under Fisheries Partnership Agreements with non-EU states, EU vessels can fish for surplus stocks in those countries' waters under the terms of the Agreements.



# Chapter 7 – animal health and welfare and food policy

The EU's rules on animal health, public health and food safety are designed to ensure protection for consumers. These rules seek to facilitate trade in animals and animal products and a level playing field across the Single Market. The EU provides support to Member States, including the UK, when they are faced with animal disease outbreaks.

## Animal Health and Welfare

7.1 The EU has agreed rules that aim to protect animal health and ensures the well-being and humane treatment of animals. As some animal diseases can be spread to humans (including through food) there are also implications for public health.

7.2 EU laws on animal health and welfare are usually agreed jointly between the European Parliament and Member States in the Council. Member States take decisions in Council by Qualified Majority Voting.<sup>76</sup>

7.3 EU rules in this area often reflect international standards set by international organisations such as the World Organisation for Animal Health. UK Government vets are actively involved in the World Organisation for Animal Health's Committee work relating to setting standards for control and eradication of disease. The EU rules cover the following major areas:

- disease prevention, control and eradication: animal health rules on prevention, control and eradication of animal diseases such as foot and mouth disease, avian influenza and bovine tuberculosis (TB);
- imports and intra-EU trade in animals and animal products: animal health rules governing trade, traceability, harmonisation of Member State checks and animal by-products;
- welfare of farmed and other animals: minimum standards for the keeping, transporting and killing of farmed animals, and standards of welfare for animals kept in zoos and for scientific purposes; and
- veterinary medicines, medicated feeding-stuffs and veterinary medicine residues in livestock.

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<sup>76</sup> Animal health and welfare legislation is adopted under Article 43, 114 or 168 TFEU or a combination of these.

7.4 The EU provides funding, typically up to 50 per cent of the national government cost, for the eradication, control and surveillance of animal diseases. This funding can also be used to facilitate rapid action by Member States in response to emergency animal disease outbreaks.

### **Food safety**

7.5 EU rules on food safety cover areas such as the use of additives and other food enhancers, and limit the levels of contaminants in foods. These rules are designed to ensure a high level of protection for human health and to provide a level playing field for food production across the EU. Member States have discretion to introduce national rules in certain circumstances where this does not adversely affect the Single Market, or where there is a need for emergency measures to protect the national population against a specific threat.

7.6 The main EU rules in these areas are made jointly by the Council and the European Parliament.<sup>77</sup>

7.7 There are three main categories of rules in this area:

- food safety: laws defining when food is “unsafe”, in order to ensure that it is not supplied anywhere across the EU;
- food hygiene: laws setting out how food should be produced, processed, handled and distributed. These rules are particularly detailed for products of animal origin because the health risk is greater; and
- safety standards: standards for particular foods, food ingredients or substances such as food additives, flavourings, genetically modified or irradiated foods, novel foods, or contaminants.

7.8 There are also food safety laws for the materials that food will come into contact with, for example, wrapping or containers. The rules for these are designed to ensure the components of these materials do not transfer into food in quantities that would contaminate the food.

7.9 The safety of animal feed is closely connected to food safety, animal welfare and the environment. The EU laws on animal feed cover feed safety, feed hygiene and safety standards for feeds and their ingredients.

### **Food labelling and food composition**

7.10 The main EU laws on food labelling and composition are decided jointly between the Council and European Parliament. Member States take decisions in Council by Qualified Majority Voting.<sup>78</sup>

7.11 EU rules in this area sometimes reflect international food standards set by the Codex Alimentarius Commission.<sup>79</sup> The EU and the UK are both members.

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<sup>77</sup> Food safety legislation is adopted under Article 43, 114, 207 or 168 TFEU or a combination of these. The ordinary legislative procedure provided for in Article 289 of the Treaty applies. Qualified Majority Voting in relation to that procedure is provided for in Article 294 TFEU.

<sup>78</sup> Food labelling legislation is adopted under Article 114 TFEU; food composition legislation under Article 43 and protected food names legislation under Articles 43 and 118.

<sup>79</sup> Date marking provisions (for instance “use by” dates) are an example of this.

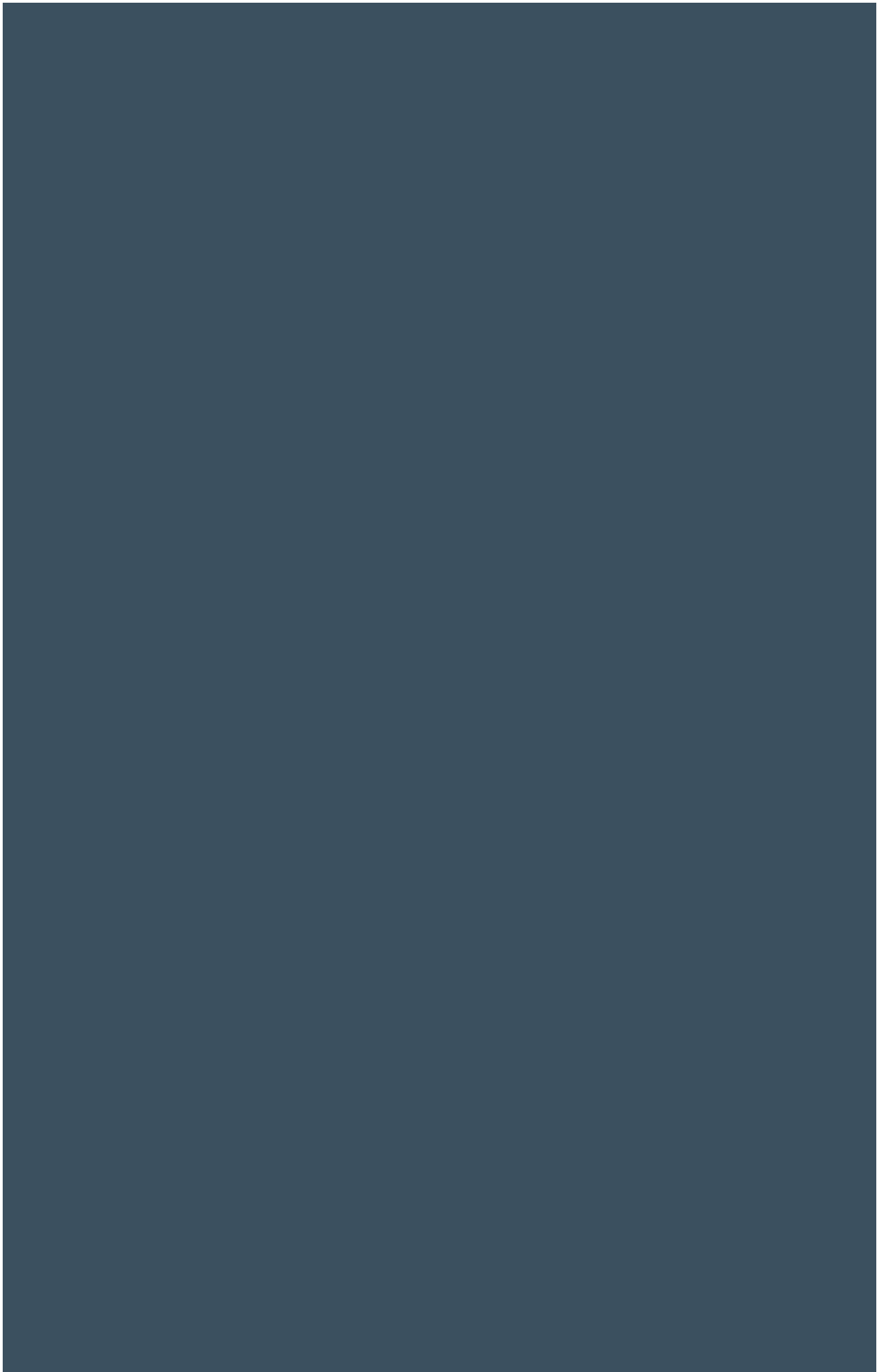
7.12 EU rules cover the following major areas:

- facilitation of free movement of food;
- harmonisation of food laws;
- protection of consumer health; and
- consumer protection in general, for example ensuring that consumers are not misled as to the content or quality of food.

7.13 Food labelling rules relate to the labelling, presentation and advertising of food and include rules on naming products, allergen labelling, nutrition labelling, ingredients listing, country of origin labelling and “use by” and “best before” dates. Food composition rules apply to the composition and labelling of products.

7.14 The EU has a scheme to protect food names of regional and traditional foods whose authenticity and origin can be guaranteed. Food or drink products which are designated under the scheme are given legal protection against imitation throughout the EU.

7.15 There is some scope for Member States to develop additional labelling requirements for domestic products. The UK has done this in relation to food sold loose over the counter. This means that UK consumers have additional information available to them that is not required by EU rules.



# Chapter 8 – transport

The EU has sought to create a Single Market for transport services within the EU so as to introduce greater competition. It has also agreed common rules and standards to protect consumer rights, ensure safety and protect the environment.

**8.1** The UK and other Member States share responsibility for regulating transport services with the EU.<sup>80</sup> The EU has agreed a set of laws to create a Single Market in transport services across all modes of travel.<sup>81</sup> These rules aim to make international transport within the EU easier and to open up national markets to transport service providers from other Member States, to the benefit of businesses and consumers.

**8.2** The EU has also agreed a set of rules and common standards that aim to protect consumer rights, ensure safety, protect the environment and workers' rights.

**8.3** As a result, EU law creates rights and obligations that apply to Member States, transport regulators, transport service providers, passengers and workers. They are described below by mode of transport. Some of these EU rules enforce or enhance other international standards.

**8.4** Rules on transport policy are usually agreed jointly between the European Parliament and Member States in the Council. Member States take decisions in Council by Qualified Majority Voting.

## Aviation

**8.5** The single aviation market allows EU airlines the freedom to fly wherever they want in the EU, so long as they meet common safety and security standards. This has opened up markets traditionally dominated by national flag carriers, introducing greater choice for passengers and lowering prices.

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<sup>80</sup> Article 4 TFEU.

<sup>81</sup> Title VI TFEU, Article 90, provides that the EU's objectives in transport matters shall be pursued within the framework of a common transport policy. Article 91 sets out the legal basis for the exercise of competence applying to all areas of land transportation. While the provisions of Title VI TFEU only apply to transport by rail, road and inland waterways (Article 100(1)), the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may decide to lay down appropriate provisions for sea and air transport (Article 100(2)).

**8.6** The laws agreed by the EU cover Single Market rules to enable fair and open competition between airlines and for levying airport charges. There are also common rules in relation to safety, security, air traffic management and airports, the environment, and passenger rights, including compensation for cancellations or delay.

### **Maritime**

**8.7** EU activity in this area covers common rules to establish a Single Market for the shipping services of goods and passengers between Member State ports. They also cover safety, security of EU ports and ships, environmental rules and passenger and worker rights and rules aimed at protecting the health, safety and working conditions of seafarers.

### **Rail**

**8.8** The EU has agreed common rules, opening international rail passenger and national and international rail freight markets to competition. It has also agreed common safety management rules and standards and safety certification processes, a system for common technical and operating standards and authorisation processes for rail infrastructure and rolling stock and minimum rights for passengers in “core” areas relating to the availability of tickets, the liability of train companies and their insurance obligations for passengers and their luggage, accessibility and information for disabled persons and the personal security of passengers. The UK has opted out of additional “non-core” rights for passengers. There are also rules on working time in relation to international rail services, which supplement general working time rules.

### **Road transport**

**8.9** The EU has agreed a number of rules covering road transport to ensure that the Single Market can function properly, ensure passenger and road user safety and protect the environment.

**8.10** The rules agreed include the liberalisation of international and European road freight and passenger services to create a Single Market in this area, enabling road hauliers and coach companies registered in one Member State to compete in other EU markets. There are also common requirements to meet specified safety, technical and environmental standards, protect road user security and ensure passenger rights.



# Chapter 9 – Economic and Monetary Union

The UK is not a member of the euro and has an opt-out from joining the euro. The UK retains control over its own economic and monetary policy. The Economic and Monetary Union comprises the coordination of EU Member States' economic and fiscal policies and, for those countries whose currency is the euro, a common monetary policy.

9.1 During negotiation of the 1992 Maastricht Treaty, the UK secured an opt-out from the commitment to join the euro. This opt-out to the EU Treaties states that “the UK shall not be obliged or committed to adopt the euro without a separate decision to do so by its government and parliament”.<sup>82</sup> In practice this means that:

- the UK has different obligations to other Member States with regard to the European Semester and EU rules on fiscal policy;
- the UK retains competence for its own monetary policy; and
- the UK has not participated in a number of areas linked to the deepening of the Economic and Monetary Union and the financial stability of the euro, including the Banking Union.

## The European Semester

9.2 The EU's economic and fiscal coordination is delivered through an annual cycle of reporting on, and assessment of, the performance of Member States' economies, known as the European Semester. This peer review process aims to promote EU economic growth, to prevent the build-up of macroeconomic imbalances and to ensure sustainable fiscal policies in all Member States.

9.3 Unlike other Member States, the UK cannot be compelled to comply with EU recommendations (i.e. through sanctions or financial penalties). The UK is not required to participate in plans for the future development of the Economic and Monetary Union, such as further deepening of the coordination of economic and fiscal policies.<sup>83</sup>

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<sup>82</sup> Protocol (No. 15) to the EU Treaties.

<sup>83</sup> European Council Conclusions, February 2016, Annex 1.

## Monetary policy

9.4 The European Central Bank is responsible for setting the monetary policy of Member States whose currency is the euro.<sup>84</sup> This does not apply to the UK. As a result of its opt-out and decision not to adopt the euro, the UK retains competence for its own monetary policy.

## Financial assistance

9.5 The EU has developed mechanisms to provide financial assistance to Member States and third countries (non-EU countries) facing exceptional financial difficulties. The EU budget is used to guarantee financial assistance loans to Member States whose currency is not the euro. The UK has no obligation to participate in, or hold liabilities for, future loans provided for the stability of the euro area.<sup>85</sup>

## Protections for the UK

9.6 The Economic and Monetary Union comprises the coordination of EU Member States' economic and fiscal policies and for those countries whose currency is the euro (the euro area), a common monetary policy.

9.7 The UK's settlement with regards to Economic and Monetary Union means that:

- the UK has kept the pound and will not join the euro;
- the UK does not participate in the Banking Union, and therefore retains responsibility for the supervision of UK banks; and
- the UK is under a looser obligation in relation to economic and fiscal policy coordination and, unlike other Member States, cannot be penalised under EU rules.

9.8 The settlement negotiated by the UK at the February 2016 European Council secured further protections for the UK in the EU's economic governance. This means that:

- participation in any further measures to deepen the Economic and Monetary Union will be voluntary for the UK;
- such measures must respect the UK's rights, and the integrity of the Single Market;
- 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 future euro area bailouts; 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 euro area.

9.9 The settlement also includes a new safeguard mechanism, providing the UK or any other non-Banking Union Member States with the ability to take any concerns relating to these protections to heads of state or government at the European Council.

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<sup>84</sup> Article 127 TFEU.

<sup>85</sup> The UK does not participate in the euro area, only the European Stability Mechanism (ESM), and has secured agreement that all non-euro area members will be fully and immediately compensated for any costs incurred through loans from the European Financial Stabilisation Mechanism (EFSM). More information can be found in Joint Declaration 10994/15, July 2015.

# Chapter 10 – customs union and taxation

The UK and other Member States set their own tax policy, and raise their own taxes, though these tax rules must comply with certain principles of EU law. The EU does not decide rules relating to direct taxation, such as income or corporation tax, but it can pass rules where this would make the Single Market work more effectively. Rules on some indirect taxes, such as VAT and certain excise duties, are partially harmonised at EU level.

## Taxation

**10.1** Standardised tax rules apply across the EU in relation to indirect taxation, including VAT and excise duties (in particular, tobacco, alcohol and energy).<sup>86</sup> Subject to unanimous agreement among Member States in the Council, these can be amended to ensure the establishment and functioning of the Single Market and to avoid distortion of competition. The EU's indirect tax legislative frameworks provide some flexibility for Member States over the setting of VAT and excise rates, within certain parameters. They also provide freedom on some of the mechanics, such as how to collect VAT.

**10.2** In addition, other domestic indirect taxes, for instance environmental and related taxes, must be consistent with EU law. This means that they cannot, for example, provide state aid that would create unfair distortion in the market and undermine fair competition.

**10.3** In the field of direct taxation, Member States participate in the exchange of information, under EU rules, relating to the administration and enforcement of taxes with other Member States. This helps prevent tax abuse. Member States must ensure that systems of direct taxation take account of EU rules on free movement, non-discrimination and state aid.

**10.4** The EU is able, where there is agreement from every Member State, to pass rules on taxation aimed at harmonisation in areas that directly affect the establishment or functioning of the Single Market. This gives each Member State a veto, but to date these rules have been aimed at removing obstacles, primarily for businesses, within the Single Market. For instance, rules that: abolish withholding taxes on payments of dividends between associated companies of different Member States; provide for a common system of taxation applicable to cross-border reorganisations of companies in the EU; and abolish withholding taxes on interest and royalty payments arising in a Member State.

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<sup>86</sup> Article 113 TFEU sets out the Council's ability to adopt provisions on harmonising indirect taxation.

## **The customs union**

**10.5** The EU established a customs union between the Member States as part of the Single Market, which is explained in more detail at the beginning of Chapter 3.<sup>87</sup>

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<sup>87</sup> Article 28 TFEU.

# Chapter 11 – employment rights, non-discrimination and data protection

EU law gives EU workers certain rights and protects the health and safety of EU nationals at work. The EU has set minimum standards to prevent discrimination at work and promote equality. But Member States can exceed these if they wish. EU law also gives certain rights to EU citizens, whose personal data is being collected, stored and used or otherwise processed by others. To help protect these rights, EU law imposes obligations on those collecting personal data and making decisions about its processing.

**11.1** The EU has agreed rules that cover social and employment policy, health and safety, non-discrimination and equality.<sup>88</sup> These rules are agreed jointly between the European Parliament and Member States in the Council. The UK and other Member States have a say by voting in Council, which in most cases takes decisions by Qualified Majority Voting. In certain particularly sensitive areas such as protection of workers in the event of redundancy and harmonised rules concerning discrimination on grounds of race, unanimity voting rules are used, which means each Member State has a veto.

## Employment and labour rules

**11.2** EU employment laws guarantee rights for workers, with the aim of promoting employment and improving living and working conditions. The UK has the right to maintain or introduce more stringent measures if it wishes, provided these are compatible with the Treaties, as it has done on maternity leave for instance. One of the areas in which the EU has agreed rules is on employees' working hours, including a maximum 48-hour working week, although Member States may allow workers to opt-out of this rule if they wish.

**11.3** The EU cannot legislate in relation to levels of pay, the right of association, the right to strike and the right to impose lock-outs.

**11.4** The UK and other Member States have a veto over proposed EU legislation in certain areas: social security benefits and social protection of workers, the protection of workers who lose their jobs, the representation and collective defence of interests of workers and employers and employment conditions for non-EU nationals working in the EU.

**11.5** The EU has agreed rules that protect workers in the following areas:

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<sup>88</sup> See Article 19 and Title X TFEU for the key Treaty provisions in these areas.

- maternity pay and leave, unpaid paternal leave and protection of young workers: EU law requires all Member States to give women the right to maternity leave of at least 14 weeks and payment for that leave at a rate at least equivalent to sick pay. EU law also gives women and men the right to at least four months unpaid parental leave on the birth or adoption of a child. EU law also prohibits child labour, and sets minimum requirements for the protection of workers under 18 years old;
- employee information and consultation: EU law requires employers to inform employees of the conditions which apply to their employment (for instance, their salary and working hours); and to inform and consult them before making collective redundancies and on some other matters. EU law also gives employees rights in the event of a business changing ownership;
- working time: the Working Time Directive sets out rules on working hours that aim to protect workers' health and safety.<sup>89</sup> This includes rights to minimum daily and weekly rest periods, paid annual leave of at least four weeks per year and protections for night workers and workers in particular sectors (for example seafarers, civil aviation and mobile workers in cross-border railway services). Member States may allow workers to individually opt-out of the maximum 48-hour week (as the UK has done); and
- fair treatment for different groups of workers, including posted workers: EU rules protect the terms and conditions of employment applying to employees who carry out a service in another Member State on a temporary basis and avoid the undercutting of local service providers. Agency workers are protected by ensuring that they have the same basic employment and working rights as someone employed directly. Part-time workers receive comparable treatment to full-time staff on open ended contracts and workers on fixed-term contracts receive comparable treatment to full time staff on open ended contracts.

## Health and safety at work

### Occupational health and safety

11.6 The EU has agreed rules designed to improve the working environment and the protection of workers' health and safety. This establishes minimum requirements, taking account of the conditions and technical rules in the Member States. But EU rules must avoid imposing constraints which would hold back small and medium-sized undertakings and they may not prevent the UK or other Member States from adopting more stringent protective measures.

### Main EU rights and obligations on occupational health and safety

11.7 EU occupational health and safety legislation includes a law that establishes a general framework applicable in the workplace – it creates, for example, a duty on employers to take measures to protect the health and safety of persons at work.

11.8 EU law also includes certain risk-specific rules including on personal protective equipment for use at work and its provision; the control and use of dangerous substances, including chemical and biological agents, carcinogens, mutagens and asbestos; and the reduction of risks posed by explosive atmospheres.

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<sup>89</sup> Directive 2003/88/EC.

**11.9** EU occupational health and safety laws also include some sector-specific rules. These deal with the control of temporary or mobile construction sites, the safety of mineral-extraction through drilling, and the safety of surface and underground mineral-extraction.

**11.10** EU occupational health and safety legislation includes individual-specific rules. These deal with avoiding risks to pregnant or breastfeeding women in the workplace, as well as rules to control and limit the employment of under-18 year olds and to temporary and fixed-term workers, ensuring that such workers benefit from the same level of health and safety protection as other workers.

### **Non-discrimination and equality**

**11.11** EU anti-discrimination rules cover the following areas:

- race: EU law prohibits discrimination on the grounds of race in employment, training, social protection (which includes social security and healthcare), education, access to and supply of goods and services which are available to the public;
- employment: EU law prohibits discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation;
- gender (goods and services): EU law prohibits discrimination on the grounds of sex in the access to and supply of goods and services; and
- gender (employment): EU law prohibits discrimination on the grounds of sex in relation to employment, training and working conditions, including pay and occupational social security schemes.

### **Data protection**

**11.12** EU law gives certain rights to individuals in the EU whose personal data is being collected, stored and used or otherwise processed by others.<sup>90</sup> Personal data generally means any information that can identify a living individual (for example, a person's name, address, date of birth, health history or online purchase history).

**11.13** These include rights (subject to certain exceptions):

- to access the personal data held about them, via a “subject access request”;
- to object to the personal data being held or used;
- not to be subject to Automated Processing Decisions. These are decisions about a person taken by wholly automated means, such as a computer, based on their personal data;
- to the correction or deletion of personal data; and
- to compensation for damage due to processing which breaches data protection law.

**11.14** EU law also imposes obligations on those collecting personal data and making decisions about its processing, known as the “data controllers”. In addition to guaranteeing

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<sup>90</sup> Article 16 TFEU places an obligation on the EU to lay down rules in relation to the rights of individuals whose data protection is processed within the EU to protection of their personal data. Specific rights and obligations are contained in Directive 95/46/EC.

the rights of individuals whose personal data they are processing, data controllers are subject to certain specific obligations to help protect individual rights.

**11.15** EU law also requires each Member State to set up an independent supervisory body to monitor the compliance of organisations and public authorities with data protection law.

**11.16** Many of these rights and obligations can be qualified or exempted by national law, and the Data Protection Act 1998 contains a number of exemptions.<sup>91</sup>

**11.17** The EU cannot regulate activities that fall outside the scope of EU law (for example, national security).<sup>92</sup> In the field of police and criminal justice, EU data protection rules only apply to the UK in relation to justice and home affairs measures the UK participates in.<sup>93</sup>

**11.18** EU law is also designed to protect the personal data of individuals when it is transferred to third countries. In order for data to be transferred, an adequate level of protection must be provided by the third country or a derogation must be met.

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<sup>91</sup> See for example Article 9 of the Data Protection Directive as implemented by s.32 (journalism, literature, art) of the Data Protection Act 1998.

<sup>92</sup> Article 16 TFEU.

<sup>93</sup> Article 6a of Protocol (No. 21) to the EU Treaties.



## Chapter 12 – welfare and social security

The UK and other Member States remain responsible for the design, organisation and funding of their welfare systems. The EU has a role in coordinating Member States' social security rules to ensure they are in accordance with EU law. Member States can restrict the access of certain EEA nationals to some welfare benefits in order to prevent them from becoming an unreasonable burden. The UK's new agreement will also enable the UK to limit EU workers' access to in-work benefits for up to four years and to export Child Benefit at a rate that reflects the conditions of the Member State where the child lives.

**12.1** Member States retain full control of the design of their national welfare systems. But an important principle of the EU rules on social security coordination is the equal treatment of EEA migrants who move to another Member State. These EU rules on social security provisions are agreed jointly between the European Parliament and Member States in the Council.<sup>94</sup> Member States take decisions in Council by Qualified Majority Voting.

**12.2** These EU social security coordination rules are also designed to ensure that EEA migrants do not lose entitlement to social security benefits they have already built up when they move between Member States to work, study or retire.

**12.3** Member States are responsible for designing, organising and funding their social security systems. That means they are free to decide who is entitled to be covered under their legislation, which benefits are granted and how benefits are calculated. In designing their legislation, the UK and other Member States must not discriminate against nationals from other Member States who are exercising their right to free movement, although there are exceptions to that rule.

**12.4** Different EU rules apply depending on which benefits a person claims. For example, the UK's contributory benefits such as state retirement pension and contribution-based unemployment benefits are only paid to those who have made the necessary contributions. However, contributions towards equivalent schemes paid in other Member States can also be taken into account.

**12.5** The rules are also different for those making a claim to most non-contributory benefits.<sup>95</sup> Here EEA migrants need to have a 'right to reside' under EU free movement rules

<sup>94</sup> Article 48 TFEU.

<sup>95</sup> In particular, income-related benefits such as Income Support, income-related Employment and Support Allowance, State Pension Credit, income-based Jobseeker's Allowance, Universal Credit and Housing Benefit.

to have any entitlement to benefit, for example, as a worker or a self-employed person. EU rules prohibit discrimination against EEA migrants who are working,<sup>96</sup> including the self-employed and so require all benefits payable in work such as Universal Credit and Working Tax Credit to be paid to workers on the same terms as UK nationals.

**12.6** However, once the necessary legislative changes are made, the UK's new settlement will allow the UK to limit EEA workers' access to benefits payable in work under certain circumstances. The UK will be able to apply an emergency welfare brake, which will prevent newly arrived workers from other Member States gaining full access to the UK's in-work benefit system for up to four years. Other Member States can also apply to use this brake.

**12.7** EEA migrants who are in the UK as jobseekers have more limited rights under EU law. They are only able to claim income-based Jobseeker's Allowance (JSA) and, if they have children, Child Benefit and Child Tax Credit. Income-based JSA is payable to EEA migrants who are actively seeking work and have a genuine chance of being engaged, but only after the first three months of residence in the UK. It is payable for only a three month period, after which migrants will be tested to assess whether they can provide compelling evidence that they have a genuine prospect of finding work in the UK in the near term. However, income-based JSA is being phased out. Universal Credit is being introduced across the UK and EEA jobseekers will not be entitled to this benefit.

**12.8** EEA migrants with a right to reside in the UK as a student or a self-sufficient person must have sufficient resources not to become an unreasonable burden on the Member State.

**12.9** While some benefits like Child Benefit, Disability Living Allowance (care component), Personal Independence Payment (daily living), Attendance Allowance and Carer's Allowance are exportable to other Member States, Universal Credit, income-related JSA, income-based ESA, Income Support and State Pension Credit are not exportable in this way. The UK's new settlement will also mean that, once the legislative changes are made, Member States will be able to pay child benefit to EEA nationals whose children live abroad at a rate that reflects the conditions – including the standard of living and the child benefit paid - of the country where their child lives.

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<sup>96</sup> Articles 45 and 49 TFEU and Article 7(2) of Regulation 492/2011.

# Chapter 13 – environment, climate change and energy

EU action seeks to protect and improve the environment, tackle climate change and promote energy security and energy networks and markets. EU rules aim to protect EU nationals, for instance by making rules on cleaner air, access to cleaner water and sanitation and aim to prevent cross-border environmental damage. EU rules also provide a right for EU nationals to obtain environmental information.

**13.1** EU law aims to protect the environment, tackle climate change and promote energy security and energy networks and markets.<sup>97</sup> The EU can also use product standards to achieve environmental aims. In addition, environmental protection must be integrated into all the EU's policies and activities.

**13.2** EU laws on energy and the environment are usually decided jointly between the European Parliament and Member States in the Council (although in some limited cases the Council may act alone after consulting the Parliament). Member States take decisions in Council by Qualified Majority Voting. The exception is where the Council is acting alone, when the voting rule is unanimity (for example where the legislation contains provisions which are primarily of a fiscal nature).

**13.3** Some of the rights and obligations described below are derived from international agreements between the EU and the Member States with other countries not in the EU.

## The environment

**13.4** Environmental legislation adopted by the EU can only set minimum standards or procedural requirements. Member States have the right to maintain or introduce more stringent protective measures if they wish, provided these are compatible with EU law.

**13.5** The EU can make rules that apply to Member States, potential polluters and individuals with a view to protecting and improving the environment. The EU has made laws in a number of areas, including:

- limiting air pollution, reducing greenhouse gas emissions and preventing the emission of ozone-depleting substances;
- promoting energy efficiency and increasing renewable energy;

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<sup>97</sup> The specific environmental and energy legal bases can be found in Articles 191 to 194 TFEU.

- improving and protecting the quality and cleanliness of drinking water and clean bathing waters;
- promoting waste reduction, re-use and recycling;
- controlling the marketing and use of chemicals, pesticides, and genetically modified organisms; and
- protecting wildlife and vulnerable European habitats and species.

**13.6** Across many of these areas, Member States are required to put in place criminal penalties for activities which cause serious environmental damage. The UK and other Member States are also required to collect and report statistics on the state of the environment to the European Environment Agency.

**13.7** EU law also creates procedural rights and obligations. This means EU nationals can help to enforce environmental rules and prevent environmental damage and aims to ensure that information on the environmental impacts are considered before certain decisions are taken. These include:

- the right of access to environmental information;
- the right of public participation in environmental decision-making; and
- the obligation on public authorities across the EU to undertake environmental impact assessments before permitting projects, plans or programmes which are likely to have significant effects on the environment.

## **Climate change**

**13.8** The EU has put in place a strategy for tackling climate change. This includes a package of EU legislation which contains binding targets up to 2020 that all Member States must meet so as to achieve, across the EU:

- a 20 per cent cut in greenhouse gas emissions (from 1990 levels);
- 20 per cent of EU energy from renewables; and
- 20 per cent improvements in energy efficiency.

## **Energy**

**13.9** The EU Treaties set out that the EU must ensure the functioning of the energy market and the security of energy supply in the EU. In addition they set out that the EU must promote energy efficiency and energy saving and the development of new and renewable forms of energy and the interconnection of energy networks. There are specific EU laws governing cross-border transmission of electricity, access to electricity transmission networks and gas pipelines, national regulators, ownership of energy producers and suppliers and competition and consumer protection within the energy sector.

**13.10** However, when the EU makes legislation in the area of energy, the EU Treaties specifically say that these laws shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply. If EU laws are contemplated which would infringe this, they may be adopted in the Council but only by unanimity.

13.11 EU legislation also sets rules for all Member States to:

- have available minimum stocks of oil for release to the market in the event of a shortage of supply, so as to prevent an energy crisis;
- ensure that gas supply to protected customers (which in the UK includes all households and essential social services) will continue even in the event of a major supply disruption;
- ensure that petroleum licences are granted following an open procedure and without discrimination;
- enforce minimum environmental and safety standards in offshore oil and gas;
- set minimum levels of taxation for energy products; and
- ensure that the geological storage of carbon dioxide waste is environmentally safe.

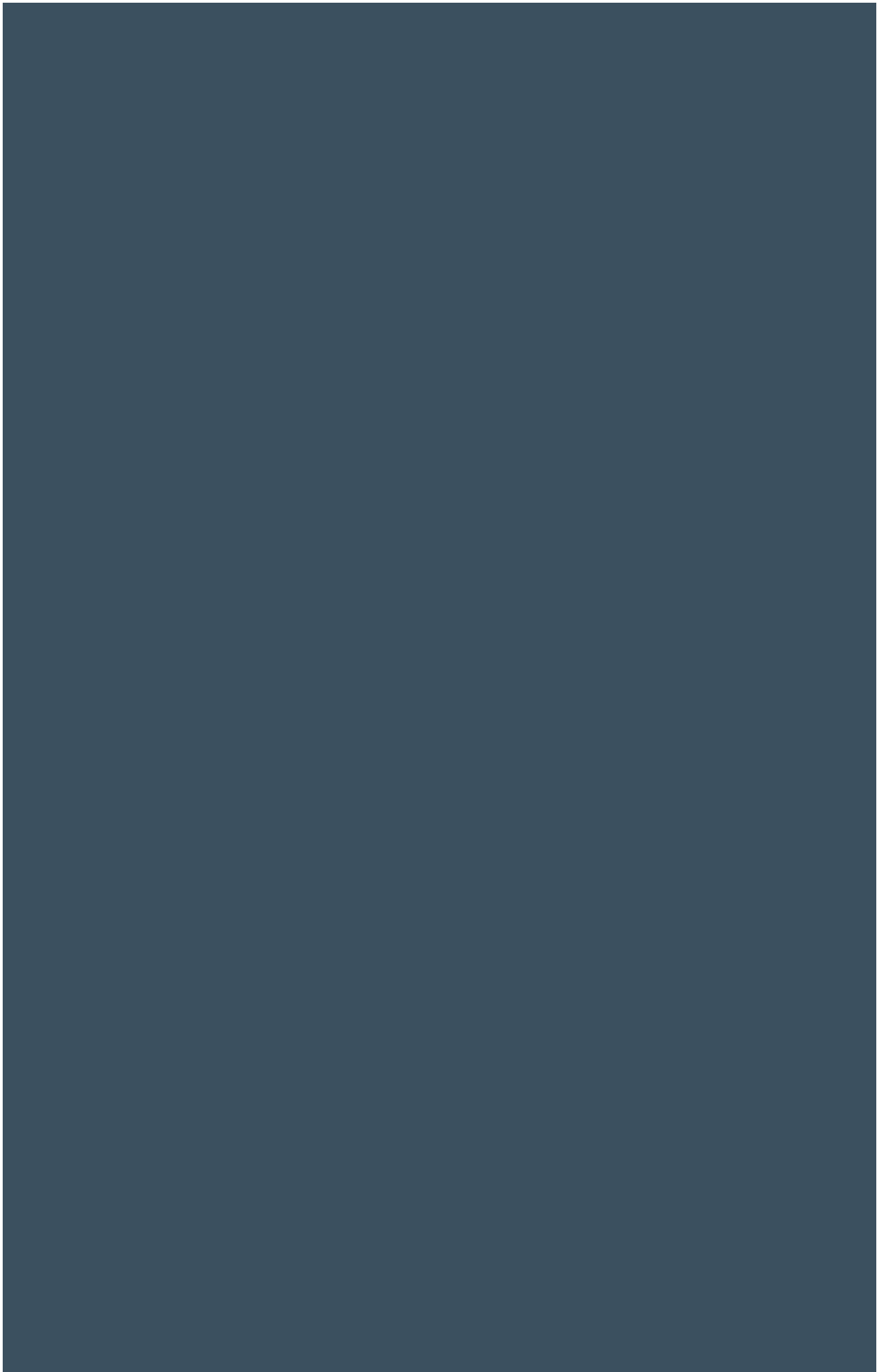
## Nuclear

13.12 A separate Treaty, Euratom,<sup>98</sup> deals with civil nuclear energy, security of the supply of nuclear fuel and protection of the environment and people from radiation more generally, including through medical treatments. Under Euratom the EU has agreed a number of rules concerning nuclear safety, safety of nuclear waste and the supply, use, transport and disposal of radioactive material and waste. The Commission has the right to verify that materials in civil nuclear establishments are not being used other than for peaceful purposes.

13.13 Legislation under Euratom is adopted by the European Council either acting unanimously or by Qualified Majority Voting on a proposal of the Commission and after consulting the European Parliament in the majority of cases. In some cases the Council may adopt legislation without first consulting the European Parliament.

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<sup>98</sup> Treaty Establishing the European Atomic Energy Community (2012/C 327/01).



# Chapter 14 – cohesion policy and structural funds

Cohesion policy aims to reduce disparities between regions and support economic development. The policy is mainly delivered through structural and cohesion funds by funding infrastructure, training and similar development projects all over Europe from the EU budget. The UK receives a national allocation.

14.1 Cohesion policy aims to address disparities in the development of regions across the EU, supporting the poorest parts of the EU to fulfil their economic potential and underpinning the development of the Single Market.<sup>99</sup>

14.2 The EU agrees how much should be spent on cohesion policy as part of the overall budget process. The EU also sets rules about what the funds can be spent on, and how. These rules are agreed jointly between the European Parliament and Member States in the Council. Member States take decisions in Council by Qualified Majority Voting. Many of the rules around which expenditure is eligible can be set at national level.

## Structural and cohesion funds

14.3 The EU finances programmes for implementing cohesion policy through the structural and cohesion funds. There are three funds, each with a distinctive role under the EU Treaties:

- The European Regional Development Fund (ERDF)<sup>100</sup> aims to reduce regional disparities through investment in economic development such as innovation, support for small and medium sized enterprises and the low carbon economy. The UK is eligible for funding from the ERDF;
- The European Social Fund (ESF)<sup>101</sup> is focused on improving employment opportunities in the Single Market and aims to make the employment of workers easier, increasing their geographical and occupational mobility, and facilitating their adaption to industrial change. It supports skills, training and employment measures. The UK is eligible for funding from the ESF; and
- The Cohesion Fund<sup>102</sup> supports investment in environmental and transport infrastructure. It is available only to the poorer Member States – those whose gross

<sup>99</sup> See Articles 162-164 & 174-177 TFEU for the key Treaty provisions in these areas.

<sup>100</sup> Article 176 TFEU. The current ERDF regulation is Regulation 1301/2013.

<sup>101</sup> Article 162 TFEU. The current ESF regulation is Regulation 1304/2013.

<sup>102</sup> Article 177 TFEU. The current Cohesion Fund regulation is Regulation 1300/2013.

national income per person is less than 90 per cent of the EU average. Fifteen Member States, including Poland, Romania, Bulgaria and Croatia, currently receive this. The UK is not eligible.

14.4 Two other EU funds also have the potential to contribute to regional development. These are the European Agricultural Fund for Rural Development (EAFRD)<sup>103</sup> and the European Maritime and Fisheries Fund (EMFF).<sup>104</sup>

14.5 Structural and cohesion funds are currently allocated from the EU budget for seven-year funding periods. The current funding period of 2014-2020 provides for an overall budget for structural and cohesion funds of €351.8 billion. Of this, the UK receives an allocation of €11.6 billion.<sup>105</sup>

### The structural funds and the UK regions

14.6 All UK regions are currently eligible for ERDF and ESF. EU rules break down the different regions into three categories:

- 'Less developed' regions where GDP per capita is less than 75 per cent of the EU average. This category receives the highest intensity of funding. Cornwall and the Isles of Scilly and West Wales and the Valleys are currently the only two such regions in the UK;
- 'Transition' regions where GDP per capita is between 75 per cent and 90 per cent of the EU average. There are currently eleven such regions in the UK, including Northern Ireland and the Highlands and Islands of Scotland; and
- 'More developed' regions where GDP per capita is over 90 per cent of the EU average. This includes all other regions of the UK.

14.7 The EU only funds part of the total cost of projects; the remainder has to be met from national sources, either public or private. The national share depends on the wealth of the region, with the poorest regions having to find the least.

14.8 Part of the ERDF is used to support programmes involving regions from more than one Member State. These have a total budget of €10.1 billion (or 2.75 per cent of the budget for structural and cohesion funds). Each Member State receives an allocation based on the share of its national population that lives in border regions. It can decide how much of the allocation it wants to contribute to each of the specific cross-border and transnational programmes it takes part in. The PEACE programme between Northern Ireland and the border counties of Ireland is an example of a cross-border programme.

### How the funds are managed

14.9 Management of the funds is shared between the Member States and the European Commission. Operational Programmes are drawn up by Member States, often at regional level, and agreed with the Commission. These set out priorities and form the basis for the delivery of projects, either through calls for proposals, public procurement or direct

<sup>103</sup> Regulation 1305/2013.

<sup>104</sup> Regulation 508/2014.

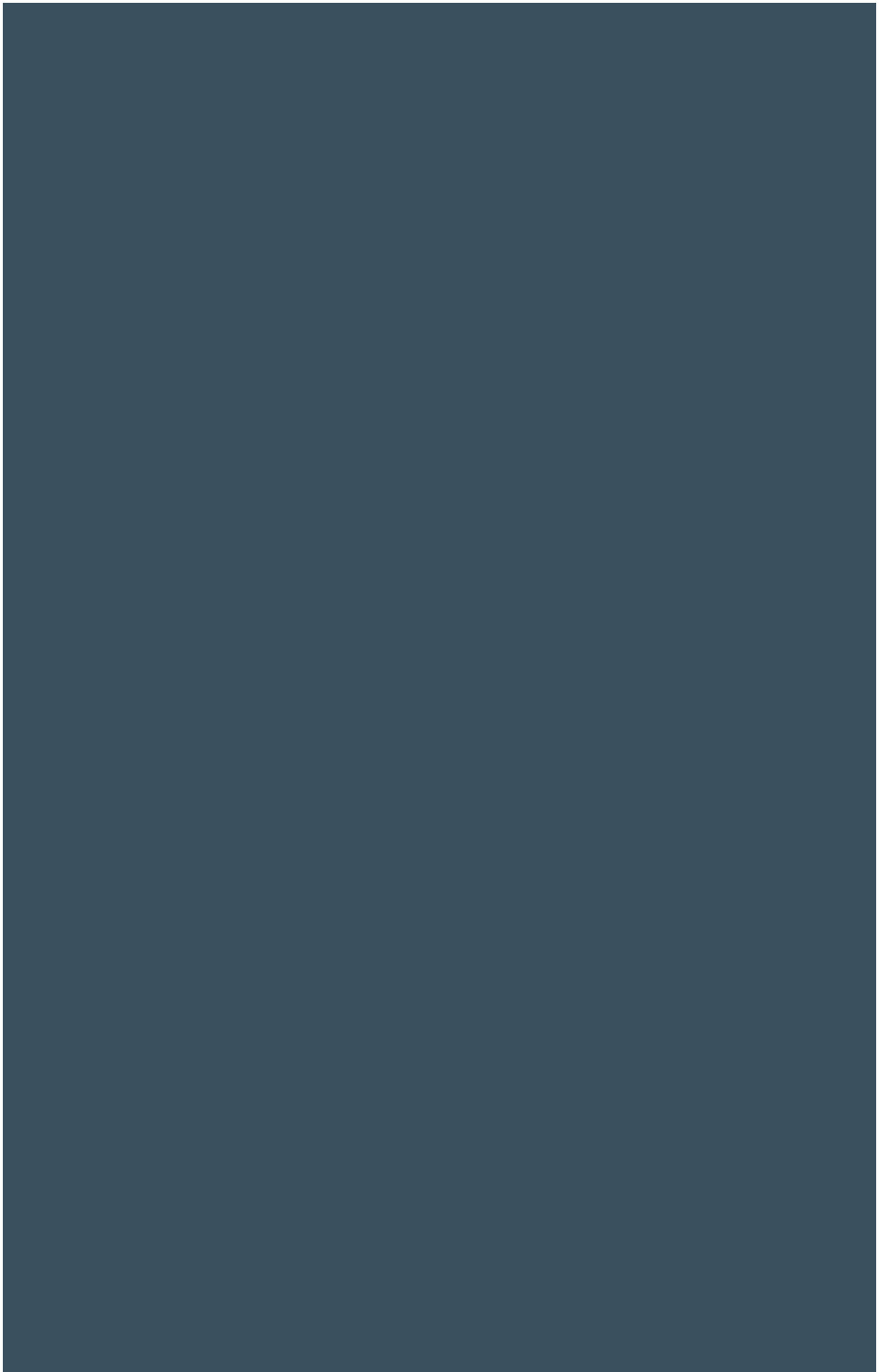
<sup>105</sup> 'United Kingdom Partnership Agreement, Part 1', HM Government, October 2014. Page 96, paragraph 1 sets out the UK allocation. The EU's 'Cohesion Policy – Frequently Asked Questions' webpage sets out the overall budget and provides more detail.



commissioning by government. The Member States appoint Managing Authorities for each programme, who are required to exercise principles of sound financial management and who decide which projects to fund. Managing Authorities are required to publish details of projects paid for by the structural and cohesion funds.

**14.10** To ensure effective financial controls are in place, expenditure from the structural and cohesion funds is audited at various levels: by national audit authorities, the European Commission and the European Court of Auditors. Funding must be repaid if there are irregularities.

**14.11** The UK can also access the European Fund for Strategic Investments (EFSI), which has recently been set up, drawing on funding from the EU budget and European Investment Bank. The EFSI aims to mobilise private investment in key areas such as infrastructure, education, research and innovation, as well as risk finance for small businesses.



# Chapter 15 – citizenship

EU law confers certain rights on EU nationals. They include a right to vote in elections to the EU Parliament and in local elections wherever they live in the EU, and to consular support outside the EU. UK nationals benefit from these rights, as do nationals of other EU states.

**15.1** Every national of a Member State is, under the EU Treaties, entitled also to be regarded as a citizen of the EU. The EU Treaties set out a number of rights relating to EU citizenship.<sup>106</sup> They include the rights of free movement and residence across the EU, which are covered in the section on free movement of persons; the other rights are political and consular in nature and are described below.

**15.2** The UK and all other Member States are free to determine how a person is eligible to become a citizen in their territory. This in turn determines who becomes an EU citizen.

## Civic

**15.3** EU law gives EU citizens rights to participate in some elections where they are resident, even if they are not nationals of the EU Member State in question:

- EU citizens who are resident in another Member State have the right to vote in that state in elections to the European Parliament and in municipal (local) elections;
- they also have the right to stand as a candidate in both of these types of elections; and
- national rules on standing and voting must be applied equally to these EU citizens.

**15.4** This means that UK nationals resident in another EU Member State can vote in European Parliamentary and municipal (local) elections, just as nationals of other Member States who are resident in the UK can. Any restrictions imposed by a Member State on voting at European Parliament elections must be proportionate and necessary.

**15.5** Decisions about who can vote in other elections and referendums, and the conditions on who can stand for election, are largely for each Member State to decide. For instance, the UK has decided that EU citizens are not entitled to vote in elections to the UK Parliament (unless they are also UK, Republic of Ireland or qualifying Commonwealth citizens).

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<sup>106</sup> See Articles 20-24 TFEU for the key Treaty provisions in these areas.

**15.6** EU citizens (as well as EU companies) also have the right to:

- petition the European Parliament on matters which affect them directly and which relate to EU activities;
- complain to the European Ombudsman (an independent and impartial body that holds the EU administration to account); and
- write to the EU institutions in any of the Treaty languages and receive a reply in the same language.

**15.7** EU citizens can also take part in the European citizens' initiative. This process, akin to a petition, enables citizens to call on the European Commission to propose legislation, where the EU has competence to make laws. If citizens can gather sufficient statements of support, the Commission must examine the initiative, it must be heard publicly in the European Parliament and the Commission must give a formal response detailing what action it will take and why.

## **Consular**

**15.8** EU citizens can call on the diplomatic and consular assistance of other Member States and are entitled to protection by other Member States if they are present in non-EU countries in which their country of nationality does not have consular representation. The EU can make further legislation about how Member States should coordinate and cooperate in order to help with this protection. Member States take decisions in Council on this subject by Qualified Majority Voting.

# Chapter 16 – fundamental rights

EU fundamental rights are part of EU law. The EU can make laws to protect specific fundamental rights, such as combating discrimination based on sex, racial or ethnic origin, religion or belief, disability or age. However, the EU does not have a general power to adopt laws or to take action in relation to fundamental rights. EU institutions have to comply with EU fundamental rights at all times. EU fundamental rights do not apply to every aspect of a Member State's activities, and only apply when Member States are acting within the scope of EU law.

## Fundamental rights

**16.1** 'EU fundamental rights' is the term used to describe human rights as they are recognised in EU law.

**16.2** While international human rights are usually established expressly and directly by Treaties or other international arrangements, EU fundamental rights, by contrast, are general principles of EU law. They derive from the constitutional traditions common to Member States and widely accepted international instruments, such as the European Convention on Human Rights (ECHR).<sup>107</sup> They have been recognised over time through the case law of the European Court of Justice.

**16.3** EU fundamental rights are part of a larger framework of human rights protections in the UK.

## When fundamental rights apply

**16.4** The institutions and bodies of the EU are bound by EU fundamental rights at all times. If they act in a way that breaches EU fundamental rights, the act or measure (including legislation) can be set aside by the European Court of Justice.<sup>108</sup>

**16.5** EU fundamental rights are also binding on Member States when they act within the scope of EU law, for example where a Member State implements EU law or derogates from EU law.<sup>109</sup> EU fundamental rights do not apply to Member States when they are not acting within the scope of EU law.

<sup>107</sup> The European Convention on Human Rights is an agreement between the members of the Council of Europe rather than an EU Treaty. While all EU Member States are parties to the ECHR, the EU itself is not currently a party.

<sup>108</sup> Article 51(1) of the Charter, and (for example) *Test-Achats ASBL*, Case C-236/09.

<sup>109</sup> Article 51(1) of the Charter, and (for example) *Åkerberg Fransson*, Case C-617/10.

## The Charter of Fundamental Rights – rights and principles

**16.6** The Charter of fundamental rights ('the Charter') became legally binding with the entry into force of the Lisbon Treaty in December 2009. The Charter does not create new rights or principles. The Charter does not extend either the circumstances in which rights and principles apply to Member States or the substance of those rights and principles. The Protocol that the UK secured when the EU Treaties were being negotiated makes this position clear, and ensures that the Charter cannot create any new rights in the UK.<sup>110</sup>

**16.7** The Charter sets out 50 rights and principles. Some of these replicate the guarantees in the ECHR. For example, like the ECHR, the Charter sets out the right to life, prohibition of torture, prohibition of slavery, respect for private and family law, and freedom of thought, conscience and religion.

**16.8** Some rights in the Charter may have wider scope than corresponding ECHR rights.<sup>111</sup> For example, Article 6 of the Charter, which provides for the right to liberty and security of the person, has the same meaning and scope as Article 5 of the ECHR. In contrast, while Article 47(2) of the Charter, which guarantees the right to a fair hearing, has the same meaning as Article 6(1) of the ECHR, it has a wider scope: it is not limited to cases which determine civil rights and obligations or criminal charges.

**16.9** Some of the provisions in the Charter contain principles rather than rights, and others contain both. Unlike rights, principles cannot, on their own, be used to require the EU institutions or Member States to take action or refrain from action.<sup>112</sup>

### Legal effect of fundamental rights

**16.10** The provisions of the Charter can be used by the European Court of Justice and domestic courts to interpret EU law and domestic law (in so far as it is within the scope of EU law) consistently with the rights and principles it contains.

**16.11** The rights reflected in certain provisions of the Charter (for example the prohibition on discrimination on grounds of age) can be directly enforced. The European Court of Justice will declare invalid an EU measure which is contrary to a directly enforceable EU fundamental right. At a domestic level, where it is not possible to interpret domestic primary legislation consistently with an enforceable right, domestic courts or tribunals can disapply the offending provision in the domestic primary legislation.

**16.12** Several provisions of the Charter do not have direct effect; they must be given more specific effect in EU or domestic law to confer an enforceable right on an individual.

**16.13** Where fundamental rights have direct effect they may, in some circumstances, apply between private parties as well as between a private party and a public authority.

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<sup>110</sup> Protocol (No. 30) to the EU Treaties. Although the Protocol only refers to the UK and to Poland, its purpose is to clarify how the Charter applies to the EU institutions and across all Member States.

<sup>111</sup> See Article 52(3) of the Charter and the Explanations Relating to the Charter of Fundamental Rights, O.J. 2007 C 303/02.

<sup>112</sup> Articles 51(1) and 52(5) of the Charter, and see the explanations to Articles 51(1) and 52(5) in the Explanations Relating to the Charter of Fundamental Rights, O.J. 2007 C 303/02.

# Chapter 17 – other areas (health; education; culture, tourism and sport)

The EU has a limited role in health and education, where the UK and other Member States remain responsible for setting their health and education policies. The EU's role in culture, tourism and sport is also very limited.

17.1 The EU Treaties make clear that Member States have responsibility for their own health and education systems, and limit what the EU can do.<sup>113</sup>

## Health

17.2 The EU's role in public health is mostly limited to facilitating cooperation on cross-border health issues like infectious diseases and supporting Member States in promoting public health objectives.<sup>114</sup> The EU can agree rules in certain areas which promote public health. These include:

- medicines and medical devices: EU legislation sets quality and safety standards that Member States and manufacturers must meet, and facilitates the free movement of these products;
- organs, blood, tissue and cells: EU rules create minimum quality and safety standards for the treatment of human tissue and cells, organs for transplantation and human blood across the EU. But the UK is able to set stricter standards,<sup>115</sup> and make its own rules on the donation and medical use of organs and blood; and
- tobacco, smoking and alcohol: The EU has agreed rules on tobacco, smoking and alcohol which regulate advertising, labelling and product standards.

17.3 The EU's free movement rules coordinate state healthcare entitlements for people moving within the EU. The rules identify the Member State responsible in different situations and arrange for reimbursements between countries. This includes:

- the European Health Insurance Card which gives UK citizens, and those from other Member States, the right to access state-funded, medically necessary healthcare during temporary stays in other Member States;

<sup>113</sup> For education see Articles 165(1) and (4) TFEU. For health see Articles 168 and particularly 168(7) TFEU.

<sup>114</sup> Articles 4(2)(k), 6(a) and 168 TFEU.

<sup>115</sup> Article 168(4)(a) TFEU.

- the rules that give state pensioners retiring to other Member States the right to have their state healthcare costs covered by the country paying their pension; and
- equal treatment rights for people moving to work in other Member States, meaning they can access state-funded health services on the same basis – and paid for in the same way – as for citizens of that country. This is dependent on the individual system of the country in which the person is working.

## Education

17.4 The UK and other Member States make their own policies on education and training. This includes decisions on the curriculum and examinations for school, vocational or higher education, and the funding or organisation of education institutions and systems. The EU does not have a role in these areas and there is very little EU legislation in relation to other aspects of education. The Treaty also specifically prohibits the EU from any harmonisation in the area of education and vocational training.<sup>116</sup>

17.5 Instead, the EU supports best practice exchange and may make non-binding policy recommendations which are normally adopted by consensus.

## Culture, tourism and sport

17.6 The EU generally only plays a supporting role in relation to culture, tourism and sport. However, the EU provides funding for sports and cultural projects, and the EU's free movement and transport rules facilitate tourism within the EU.

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<sup>116</sup> Article 165 (4) and 166(4) TFEU.



# Chapter 18 – justice and home affairs

## The UK opt-in in justice and home affairs<sup>117</sup>

The UK, unlike most other Member States, does not automatically take part in EU justice and home affairs measures, or those relating to Schengen. Justice and home affairs covers border controls, asylum, immigration, civil and criminal judicial cooperation, police cooperation, and criminal law. Schengen is the term given to the legal framework which relates to the border-free travel area in parts of continental Europe, and also to some cross-border police and judicial cooperation measures. There are mechanisms allowing the UK to decide, on a case-by-case basis, whether to participate in justice and home affairs measures. On the Schengen border-free area, the UK has chosen not to participate in the border-free area, and through its opt in, the UK has a choice about whether it participates in measures building on the police and judicial cooperation aspects of the 1990 Schengen Convention. There is a set process that enables it to do so.

### The UK's right to choose

**18.1** New EU laws in this area do not apply to the UK unless we decide to participate, in accordance with the Treaties (Protocols (No. 19) and (No. 21)). Under the terms of Protocol (No. 21) we are automatically excluded from new EU justice and home affairs measures unless we expressly state our desire to opt in.<sup>118</sup> Under Protocol (No. 19) to the Treaties the UK also has the right to choose to opt out of any new police and judicial cooperation rules which build on existing Schengen legislation that the UK has already opted into.<sup>119</sup> The UK has chosen not to participate in the Schengen border-free area.<sup>120</sup>

**18.2** The Government takes opt in and opt out decisions on a case-by-case basis, and makes its decisions in the national interest.<sup>121</sup> Where the UK decides not to participate in a justice and home affairs measure, we will not be bound by the relevant measure, or provisions of the relevant international agreement or decisions of the European Court of Justice in

<sup>117</sup> Justice and home affairs is the way people commonly refer to the area of freedom, security and justice.

<sup>118</sup> Ireland also benefits from the rights in Protocol (No. 21). Denmark does not participate in EU justice and home affairs measures- see Protocol (No. 22).

<sup>119</sup> Council Decision 2000/365.

<sup>120</sup> The UK's ability to maintain national border controls is underlined by Protocol (No. 20) to the EU Treaties.

<sup>121</sup> A list of UK decisions on participation can be found in 'Background information: JHA opt-in protocol and Schengen opt-out protocol', April 2016. Available on GOV.UK.

relation to them.<sup>122</sup> The same principle applies to Schengen building measures in which the UK does not participate.<sup>123</sup>

**18.3** All decisions concerning the application of the opt in and the opt out are subject to enhanced UK Parliamentary scrutiny procedures, including a report made to Parliament each year.

## The process for opting in or out of EU laws

### Justice and home affairs measures

**18.4** Where the UK decides to opt into a proposed justice and home affairs measure, it must inform the President of the Council, in writing, within three months of publication of the proposal. In these circumstances, the UK will then have a vote on the adoption of the measure by the Council, and if adopted the measure will then bind the UK.

**18.5** The process for opting in is through Protocol (No. 21) to the Treaties. This Protocol also applies to provisions in international agreements between the EU and third countries (non-EU countries) which relate to justice and home affairs obligations.

**18.6** The UK can also request to opt into a justice and home affairs measure after it has been adopted by the EU, subject to confirmation by the European Commission.<sup>124</sup>

**18.7** If the UK decides not to opt into a proposal we do not have a vote on the proposed measure, but we may still contribute in negotiations.

**18.8** The UK settlement negotiated at the February 2016 European Council makes clear that wherever the EU agrees legislation concerning justice and home affairs, the UK's opt-in must apply – including where this requires the measure to be split into two, so the justice and home affairs matters are clearly separate from the rest of the measure.

**18.9** This means that whenever the EU agrees new legislation which contains justice and home affairs provisions, the UK will continue to be able to choose whether it wishes to take part or not in those justice and home affairs matters, and EU Member States and the EU institutions will have to respect that decision.

### The Schengen border-free area

**18.10** The 1990 Schengen Convention established a border-free area across parts of Europe.<sup>125</sup> The UK has chosen not to participate in this border-free area. Where a new measure builds upon or develops a part of the body of law which derives from the 1990 Schengen Convention, a different protocol applies – Protocol (No. 19). Such measures are known as 'Schengen building measures'.

**18.11** The UK only participates in a small part of that body of law (the part relating to police and judicial cooperation). Where a measure develops or builds upon the police and judicial cooperation rules, the UK is deemed to participate unless it decides to opt out within a three

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<sup>122</sup> Article 2 of Protocol (No. 21) to the EU Treaties.

<sup>123</sup> See Articles 1 and 2 of Protocol (No. 19) to the EU Treaties. The arrangements the UK has under Protocol (No. 19) also apply to Ireland.

<sup>124</sup> Article 4 of Protocol (No. 21) to the EU Treaties and Article 331 TFEU.

<sup>125</sup> Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, 19 June 1990.

month period after publication of the proposal. The UK does not participate in the rules relating to the removal of internal border controls and the regulation of external border controls in the Schengen border-free area, or in measures that build on that legislation.

### Pre-Lisbon Treaty EU police and criminal justice

**18.12** In July 2013, the UK exercised its right under the Lisbon Treaty to opt out of EU measures in the area of police and criminal justice cooperation that had been adopted before the Lisbon Treaty came into force on 1 December 2009.<sup>126</sup> When the opt out took effect in 2014, the UK then exercised its right to opt back into 35 of those measures which it considered in the UK national interest,<sup>127</sup> including the European Arrest Warrant and Prisoner Transfer Framework Decision.

### Asylum and non-EU migration

The UK has a special status in relation to the EU's asylum and migration programme. The UK chooses to participate in some EU asylum and immigration measures and not others. The Directives in this area, in which the UK has chosen to participate, set minimum standards on issues including the process by which asylum applications are determined and the provision of accommodation and support for asylum applicants. The UK also participates in the Dublin Regulation, which sets out the rules on Member States' responsibility for examining an asylum claim. The present EU migration crisis has led the Commission to propose a number of additional measures for EU action. The UK has made it clear that it is prepared to play a major role in practical cooperation with other Member States to tackle all aspects of the crisis. Where changes to EU law are proposed, the UK will decide whether it is in the national interest to opt in, on a case-by-case basis. Where the legal instrument brought forward concerns the Schengen border-free area, the UK does not participate.

**18.13** Asylum is granted to people fleeing persecution or serious harm in their own country who are in need of international protection. The right to asylum is recognised in the 1951 Geneva Convention relating to the status of refugees.<sup>128</sup> The EU can make laws to develop a harmonised approach on asylum and the protection of refugees, in accordance with the 1951 Geneva Convention.

**18.14** The EU has agreed a number of rules relating to asylum and immigration into the EU of nationals from third countries. The UK can choose to participate in these rules if it wishes, but does not have to (for more detail, see the section on justice and home affairs measures).

**18.15** EU laws on asylum and migration are usually agreed jointly by the European Parliament and Member States in the Council subject to Qualified Majority Voting.<sup>129</sup>

<sup>126</sup> Article 10 of Protocol (No. 36) to the EU Treaties.

<sup>127</sup> See Council Decision 2014/857/EU and Commission Decision 2014/858/EU. For full details see Command Paper 8671 on the Decision pursuant to Article 10, Protocol (No. 36) to TFEU, July 2013.

<sup>128</sup> 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

<sup>129</sup> Articles 77, 78 and 79 TFEU.

## Non-EU migration

**18.16** In general the UK has chosen not to participate in measures relating to third country migration, although it does participate, for example, in some EU agreements with third countries on the re-admission of their own nationals illegally present in each other's respective territories. As the UK remains outside the Schengen border-free area, EU law obligations in this field, such as regulations on the right of stay and entry of people from outside the EU, do not apply to the UK.

## Asylum

**18.17** The body of EU laws on asylum are collectively known as the Common European Asylum System (CEAS). Between 1999 and 2005 the asylum legislation adopted by the EU could only set minimum standards. The UK opted into all asylum measures in the first 'minimum standard' phase of the CEAS but did not opt into revised versions of the Qualification, Reception or Procedures Directives.

**18.18** Since the entry into force of the EU Treaties, asylum legislation can now set common or shared standards to be followed by Member States. Laws on asylum adopted under this later framework form the 'second phase' of the CEAS.

**18.19** The UK has opted into the measures listed below. Once it has chosen to opt into a measure, the UK has to comply with its terms:

- determining which Member State is responsible for examining an asylum claim lodged in one of the Member States. This allows the UK to send asylum applicants to other Member States which have primary responsibility for the applicant (which may be the Member State where the applicant first claimed asylum), as well as obliging the UK to accept applicants from other Member States when it has primary responsibility (the Dublin Regulation);
- fingerprinting and the establishment of a database of asylum applicants and migrants entering the EU illegally (the Eurodac Regulation);
- practical cooperation through the creation of a European Asylum Support Office and support for Member States facing particular pressure (the EASO Regulation);
- guarantees for asylum applicants on their access to accommodation, education and healthcare whilst their claims are under consideration (the Reception Directive);
- criteria for determining refugee status or subsidiary (humanitarian) protection and the rights attached to each status if an asylum applicant is recognised to be in need of protection (the Qualification Directive);
- procedures to ensure applicants, including children and persons with special needs, can access an asylum process and provide information to the national asylum authorities about their claims (the Asylum Procedures Directive);
- mechanisms to give temporary protection in the event of a mass influx of displaced persons (the Temporary Protection Directive); and
- funding set up to promote the efficient management of migration flows, as well as the implementation, strengthening, and development of a common EU approach to asylum and migration. The UK is required to contribute financially to this fund, but has the right to receive funding for migration-related activities, including those

it carries out independently of the EU (for example, funding towards the cost of resettling refugees).

## Police and criminal justice

The UK has a choice about whether to participate in all new police and criminal justice measures. Most of the rules in this area exist to facilitate cooperation between law enforcement agencies, investigators, prosecutors and judges when handling cross-border crimes in the EU. There are also some minimum standards measures for criminal law and procedure.

**18.20** European police and criminal justice (PCJ) measures<sup>130</sup> enable EU cooperation on the detection, investigation, prosecution and punishment of crime. The UK chooses whether we want to participate in EU PCJ measures on a case by case basis (for more detail, see the section on the justice and home affairs opt-in).

**18.21** EU measures in these areas, in which the UK has chosen to participate through its opt in, support:

- police cooperation, which allows law enforcement agencies to access and share information appropriately and work together with other Member States to combat crime;
- judicial cooperation, covering all phases of a criminal investigation, where assistance between Member States include measures to support extradition and practical support to judicial authorities; and
- the establishment of minimum standards, which include rules on the definition of certain criminal offences, on penalties, and in relation to defendants' and victims' rights.

**18.22** PCJ measures operate alongside measures adopted under other parts of EU law. For example, the Anti-Money Laundering Directive creates the regulatory standards that the UK and other Member States require of businesses. It implements global standards and ensures a level playing field across the EU whilst enhancing cooperation between regulatory authorities.

**18.23** PCJ measures are usually decided jointly by the Council and European Parliament.<sup>131</sup> But there are specific procedural safeguards available to all Member States that apply to PCJ activity in the EU, including an emergency brake to protect fundamental aspects of the criminal justice system.<sup>132</sup> These safeguards reflect the particular sensitivity of EU competence in this field and how this impacts on national sovereignty.

<sup>130</sup> See Chapters 4 and 5 of Title V to Part Three of the TFEU.

<sup>131</sup> See Articles 82(1) and (2), 83, 84, 85, 87 and 88 TFEU.

<sup>132</sup> See Articles 82(3) and 83(3) TFEU. But there are other procedural safeguards too (Article 72 TFEU on law and order etc; Article 76 TFEU Member State right of initiative; Articles 82, 83 and 86 passerelles requiring unanimity; Article 86 EPPO unanimity and enhanced cooperation arrangements; Articles 87(3) and 89 special legislative procedure; Article 346 on national security information.

**18.24** The Treaties set out that the EU must respect Member State functions, including maintaining law and order and safeguarding national security.<sup>133</sup> The European Court of Justice does not have jurisdiction to review the validity or proportionality of operations carried out by the police or other law enforcement services of a Member State, nor can it review Member State responsibilities for the maintenance of law and order and safeguarding internal security.<sup>134</sup>

### Police cooperation

**18.25** The UK has chosen to participate in some EU police cooperation measures, such as Europol, which support law enforcement agencies in Member States to access and share information which is needed to work together to combat crime. There are also measures to support and coordinate practical cooperation between law enforcement in different Member States.

**18.26** Those EU police cooperation measures support Member States' law enforcement bodies, through:

- sharing police alerts, so that people and objects of interest to the police (usually for the purposes of detecting, investigating and prosecuting crime) can be notified to law enforcement agencies across Europe;<sup>135</sup>
- sharing other information to help track criminals across borders, or solve crimes with a cross-border angle, including measures focusing on money laundering and crime related to international football matches; and
- working together on analysing information gathered by law enforcement agencies around Europe.

### Judicial cooperation in criminal matters

**18.27** Judicial cooperation measures in criminal matters relate to criminal investigations, prosecution and the enforcement of criminal penalties. Certain measures require other Member States to recognise some of the decisions made by the UK's courts and prosecuting authorities, providing certain criteria are met. UK authorities also have to recognise some of the decisions made in other Member States, provided the same criteria are met. Judicial cooperation can happen at any time from prior to the trial until after a judgment or sentence has been given.

**18.28** Measures relating to judicial cooperation in criminal matters in which the UK has chosen to participate include some which support:

- extradition of individuals wanted for prosecution or to serve a sentence by judicial authorities in another Member State through the European Arrest Warrant;
- practical coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime;
- measures to support cross-border cooperation in gathering evidence needed to pursue cases;

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<sup>133</sup> See Article 4(2) TEU and Article 72 TFEU.

<sup>134</sup> See Article 276 TFEU.

<sup>135</sup> See, for example, Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II).

- mutual recognition of criminal penalties including prison sentences, which enable prisoners to be transferred to the Member State of which they are a national to serve their sentences;
- asset freezing and confiscation orders made by a court in one Member State, which can be promptly and efficiently recognised by courts in another Member State; and
- sharing criminal records, to enable investigators and the courts to take account of people's criminal records from across the EU in the course of investigations and when making sentencing decisions.

### EU minimum standards in criminal law and procedure

**18.29** The UK has chosen to participate in a small number of minimum standards measures. These aim to ensure that Member States have in place basic procedural rights for defendants and victims of crime, and that the definitions of certain serious criminal offences and levels of criminal sanctions support enhanced cross-border law enforcement. They also seek to ensure that mutual recognition of judicial decisions of other Member States is founded upon the fulfilment of agreed basic procedural safeguards.

### International agreements and PCJ

**18.30** In addition to the above, through the EU's external competence in PCJ matters, the EU has reached agreements with third countries on certain matters to help in the fight against crime. These include agreements with the United States of America, Canada and Australia to allow for the exchange of Passenger Name Records, which provide information to help police and security agencies identify possible terrorists.

## Civil judicial cooperation

The EU has agreed a set of rules aimed at resolving cross-border issues that may arise in civil, commercial and family law disputes. These enable national courts, parties and their legal representatives to know which court is responsible for deciding on a case and which country's law applies. They also create effective mechanisms for enabling the decisions of national courts to be applied and enforced in other Member States, and for courts to cooperate effectively. The rules apply, for example, to cross-border disputes concerning claims relating to consumer contracts or matters relating to divorce or custody of children. These rules bind the UK courts and affect UK businesses and individuals, but are subject to the UK's right to choose whether to participate or not.

**18.31** The EU makes rules concerning how national courts should deal with cross-border legal disputes in the civil, commercial and family law fields, aimed at ensuring the smoother functioning of the Single Market.<sup>136</sup> The UK has a choice of whether to participate in these laws through the justice and home affairs opt-in.<sup>137</sup>

**18.32** In the civil and commercial field, these rules are decided jointly between the European Parliament and Member States in the Council. The UK has a say by voting in Council, which takes decisions by Qualified Majority Voting. In the family law area, the rules are adopted by the Council voting unanimously, after consulting the European Parliament. The Council may

<sup>136</sup> See in particular Article 81 TFEU.

<sup>137</sup> Protocol (No. 21) to the EU Treaties.

decide (unanimously) that certain aspects of family law may be agreed by Qualified Majority Voting rather than unanimity, but this change of voting procedure must be approved by all national Parliaments, and to date no such decision to change the voting procedures has been taken.

**18.33** The subject areas in which the EU may legislate in relation to civil justice include:

- rules for determining which Member State's courts have power to decide a case which has a cross-border element;
- rules for deciding which country's law applies to a cross-border dispute before a national court;
- rules to allow judgments from one Member State to be binding and enforceable in another Member State;
- rules enabling courts to cooperate in cross-border cases, for example on the service of court documents or taking evidence in another Member State; and
- rules to ensure effective access to justice, development of alternative methods of dispute settlement, such as mediation, and support for judicial training.

**18.34** The rules are based on the principle of mutual recognition of judicial decisions. They also reflect the principle that parties should be able to choose which courts should decide on disputes and which law will apply, subject to certain safeguards. Where the UK has chosen to participate in the EU rules, they are binding on UK courts and affect how they deal with issues arising in cross-border disputes. They will therefore have implications for UK businesses, consumers and other individuals who are involved in cross-border trade or family disputes with a cross-border element. The rules are designed to provide individuals and businesses with increased certainty by setting out a clear, uniform framework across the EU on how disputes involving cross-border issues concerning different EU Member States will be resolved.

### **Civil and commercial judicial cooperation**

**18.35** EU legislation in the civil and commercial field is aimed particularly at improving the functioning of the Single Market. The key pieces of legislation which the UK has opted into in the civil and commercial field include:

- rules which set out when a court has power to decide on a civil or commercial case concerning cross-border issues involving another Member State;
- rules which require courts to apply and enforce judgments from other EU Member States (subject to specified exceptions), and which require UK judgments to be applied and enforced in other EU Member States;
- rules on applicable law, which set out how a court decides which country's law will apply to a dispute which has a cross-border element; and
- rules creating common EU-wide procedures for uncontested claims and small claims (of €2,000 or less).



## Family law judicial cooperation

**18.36** The EU has adopted various rules concerning cross-border family related disputes, and the UK has opted into a number of these rules, including:

- rules to determine which court has power to make decisions in matrimonial proceedings such as divorce, in disputes concerning children (including child abduction cases) and in disputes concerning child and spousal maintenance, where there is a cross-border element, for example, if the parents are based in different Member States; and
- rules requiring courts across the EU to apply and enforce each other's judgments in those cross-border disputes. There are also rules requiring courts to apply and enforce civil protection measures, including orders protecting victims of domestic violence, where the parties involved may be in different Member States.

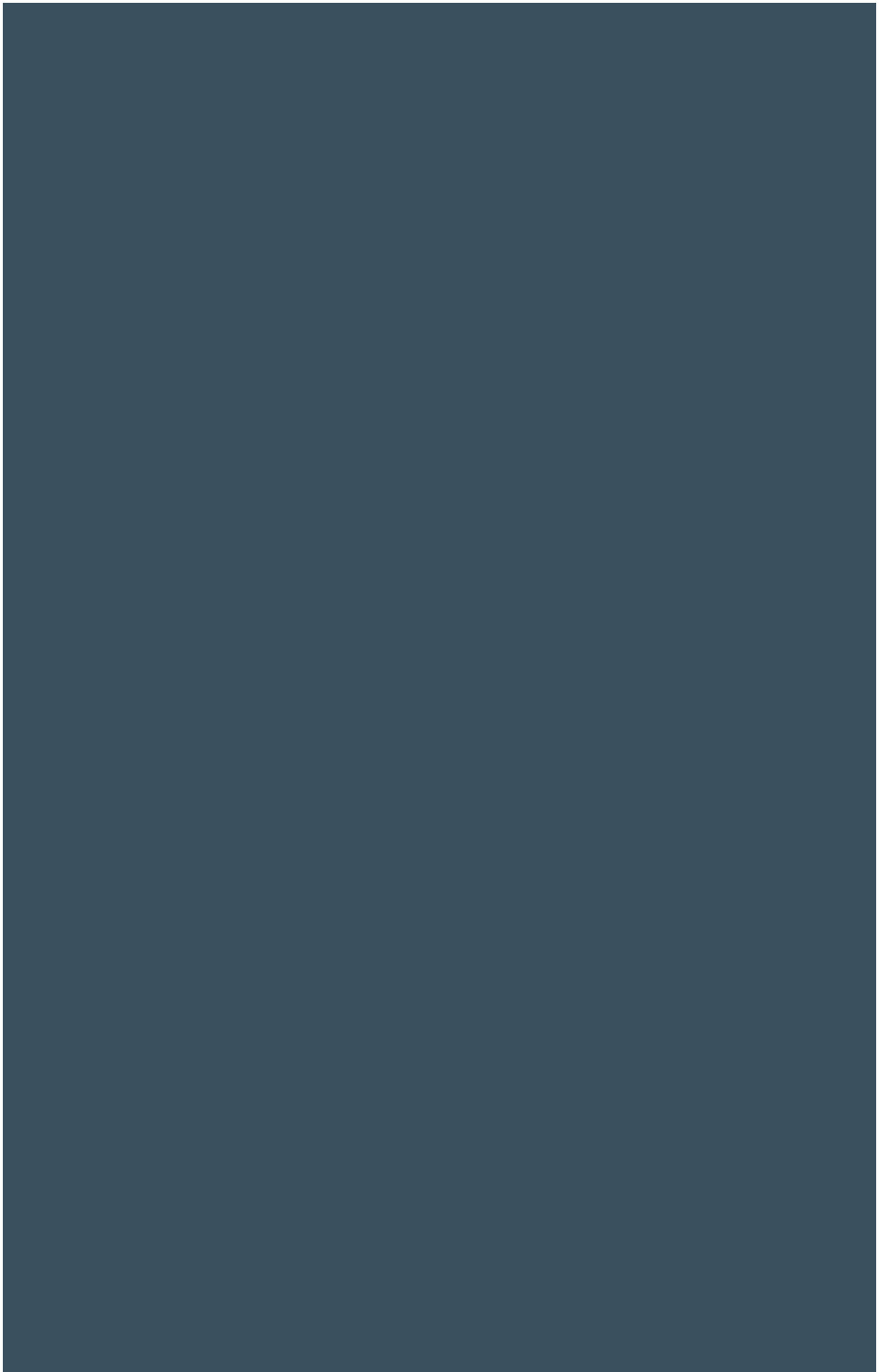
**18.37** The EU has also adopted rules for dealing with cross-border disputes relating to succession to property on death and on the law applicable to divorce proceedings, but the UK has not opted in to these rules and they are not binding on the UK courts.

## Other civil judicial cooperation rules

**18.38** The UK participates in EU legislation concerning the service of court documents and taking of evidence, which again are aimed at facilitating court proceedings in cross-border civil and family cases. There are also EU rules establishing minimum standards on access to legal aid in cross-border disputes and rules facilitating and promoting access to mediation as an alternative to going to court to resolve cross-border disputes, both of which apply to the UK. There is a European Judicial Network that supports cross-border cooperation, assists in resolving problems that arise in particular cases and provides information to the public.

## International agreements and civil judicial cooperation

**18.39** In addition to the above, the EU participates alongside the Member States, in international organisations such as the Hague Conference on Private International Law where matters are discussed which affect EU rules. The EU may also enter into international agreements with third countries in relation to civil and family cooperation. For example, the EU has entered into agreements with Norway, Switzerland and Iceland on jurisdiction, recognition and enforcement of judgments in civil and commercial matters. It has also entered into the 2007 Hague Convention on Child Support and Other Forms of Family Maintenance.



## Chapter 19 – foreign and defence policy

The EU can agree common positions on foreign and security issues. Member States continue to operate an independent foreign policy but must respect common EU positions once they are agreed. The EU can run peacekeeping or other missions to prevent conflict or defend international security. No mission can be launched without the UK or any other Member State's agreement. No UK troops or other personnel can be deployed unless the UK offers them voluntarily. The UK and other Member States remain responsible for their own defence and national security.

**19.1** The EU's role in this field is set out in the Common Foreign and Security Policy (CFSP).<sup>138</sup> Examples of EU decisions in this area include those relating to international sanctions imposed against other states, or coordinated EU support to countries outside the EU through civilian and military training or other capacity-building missions.

**19.2** The UK operates an independent foreign policy and is responsible for its own defence and national security. The UK, like other Member States, can decide for itself what relations to have with countries outside the EU or with international organisations. However, the CFSP provides a mechanism to pursue joint policies and positions when all the 28 EU Member States agree. Once Member States agree a common position under the CFSP they must then respect it in their relations with countries outside the EU or with international organisations<sup>139</sup> and work with other Member States and with EU institutions to deliver them.<sup>140</sup> Like other Member States, the UK can use the CFSP to amplify its foreign policy through the EU and defend its interests around the world.

**19.3** The European Council and Council of Ministers drive CFSP decision-making. Decisions are agreed by unanimity (with very few exceptions).<sup>141</sup> So the UK and other Member States have an effective right of veto over most decisions on foreign and security issues, and can block EU actions in this area if they do not consider them in the national interest. The role of the EU's other institutions in CFSP is limited. The European Commission plays a minor

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<sup>138</sup> Chapter 2 of Title V of the TEU.

<sup>139</sup> Article 24(3) TEU.

<sup>140</sup> See Articles 24(3), 28(3), 32 and 34 TEU.

<sup>141</sup> Article 24 TEU sets out the general rule of unanimity on CFSP matters. Article 31 sets out a limited number of exceptions, where a vote can be taken by Qualified Majority. However, there are some safeguards if a Member State opposes Qualified Majority Voting.

part,<sup>142</sup> the European Parliament has a limited consultative role and cannot make any binding decisions.<sup>143</sup> There is also a carve-out which means that the European Court of Justice has very limited jurisdiction in CFSP matters.<sup>144</sup>

**19.4** The EU Treaties also create the office of ‘High Representative of the Union for Foreign Affairs and Security Policy’ to represent the Union on foreign and security issues, where there is a common EU position.<sup>145</sup> The High Representative is assisted by the European External Action Service (EEAS), which is headquartered in Brussels and operates a number of delegations around the world, to represent the EU’s policies to third countries. This is staffed by officials from the EU institutions but also by officials from Member States’ diplomatic services, including the UK’s. The EEAS must cooperate with Member State diplomatic services in carrying out the decisions taken under the CFSP.<sup>146</sup>

**19.5** Even where the EU adopts a position and acts in the area of the CFSP, Member States may continue to act in their own right so long as their actions are consistent with, and do not undermine, the agreed EU position.

## Sanctions

**19.6** The EU has an important role in implementing sanctions imposed by the United Nations (UN) Security Council. It can also adopt its own measures against third countries or individuals or entities. EU level measures follow a two-stage process. First, the EU adopts a CFSP decision by unanimity, giving the UK and other Member States a right of veto.<sup>147</sup> This sets down the framework for the sanctions. Second, the Council adopts measures to implement it by Qualified Majority Voting, following a joint proposal from the Commission and the High Representative.<sup>148</sup> The UK and other Member States are bound by such measures once adopted,<sup>149</sup> although with a seat at the table, they can propose and shape sanctions measures. For instance, the UK successfully pushed for EU sanctions against Russia following its violation of Ukrainian sovereignty and territorial integrity in 2014.

## Common Security and Defence Policy

**19.7** The EU’s Common Security and Defence Policy (CSDP) allows the EU to draw on and combine Member States’ civilian and military assets for peacekeeping, conflict prevention and strengthening international security. This includes joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, and tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. The EU has operated a number of such missions in recent years, including Operation Atalanta to tackle piracy at sea off the Horn of Africa, and EUFOR Althea, which aims to support security and stability in Bosnia and Herzegovina.

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<sup>142</sup> The Commission has no right to propose legislation (Articles 17(2) and 24(1) TEU), and does not ensure the Union’s external representation in respect of the CFSP (Article 17(1) TEU).

<sup>143</sup> Article 36 TEU.

<sup>144</sup> The European Court of Justice can review only the legality of sanctions measures against individuals or entities, and regulate the relationship between CFSP and other areas of EU external action that are dealt with under the TFEU. See Article 24(1) TEU (final sentence) and Article 275 TFEU.

<sup>145</sup> Articles 18 and 27 TEU.

<sup>146</sup> See Article 27(3) TEU and Council Decision 2010/427/EU.

<sup>147</sup> Article 29 TEU.

<sup>148</sup> Article 215 TFEU.

<sup>149</sup> Article 288 TFEU.

**19.8** Almost all CSDP decisions are made by unanimity, meaning that every Member State, including the UK, has a right of veto.<sup>150</sup> No EU mission can be launched without the UK's agreement, and no UK troops or other personnel can be deployed unless the UK offers them voluntarily.

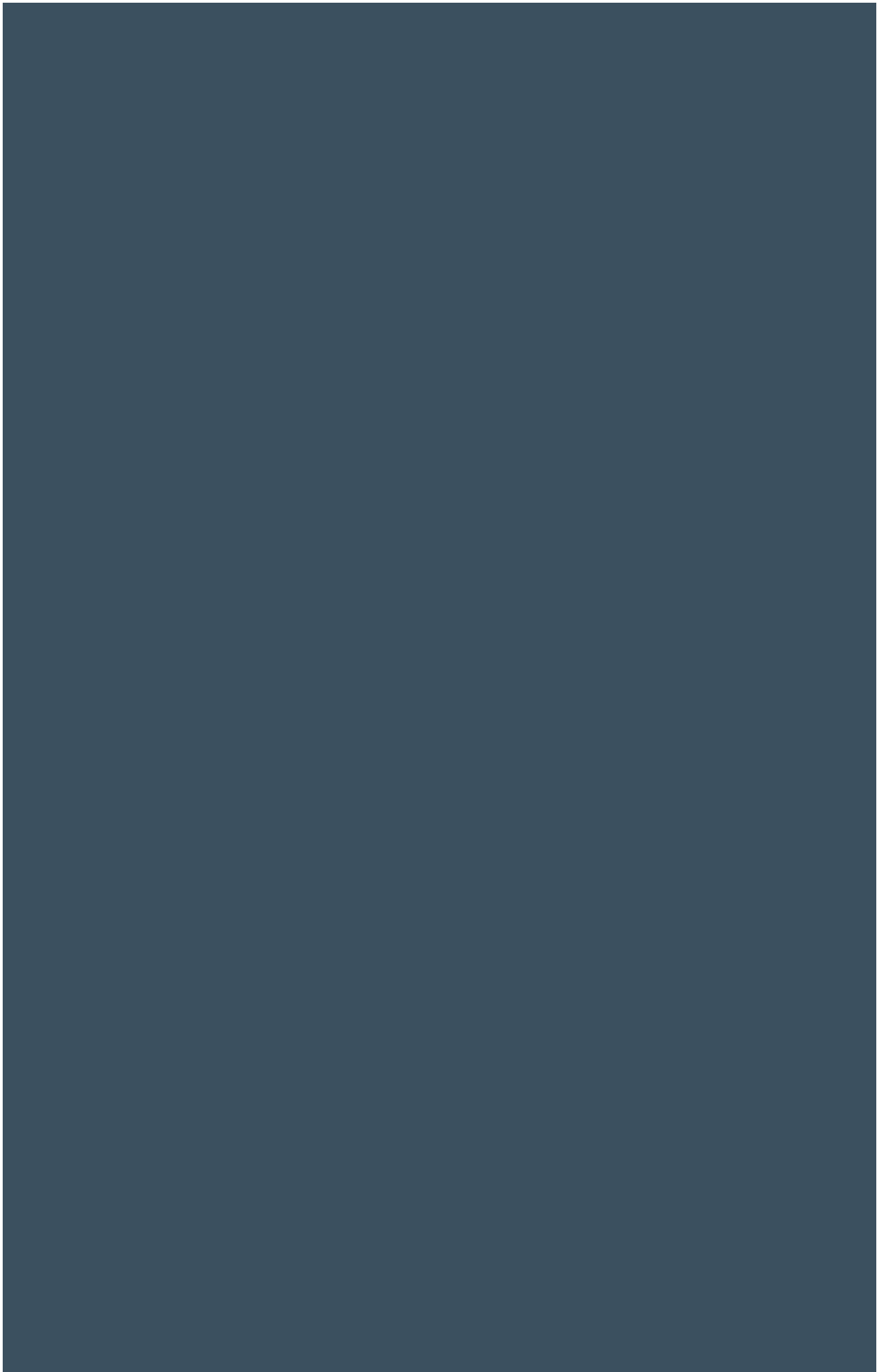
**19.9** Member States contribute to CSDP costs related to the institutions and for missions.<sup>151</sup> Mission costs fall into two categories: those for “common” elements supporting the mission as a whole, such as headquarters equipment, which is funded from the Union budget; and those to provide the troops, heavy military equipment, police officers and other resources, to which Member States contribute voluntarily and which are funded by them directly. The UK's contribution to common funding is currently 17.6 per cent, based on Gross National Income.<sup>152</sup> Any expenditure under common funding must be agreed by unanimity.

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<sup>150</sup> Article 42(4) TEU. Article 46 sets out an exception around permanent structured cooperation.

<sup>151</sup> Article 41 TEU.

<sup>152</sup> Article 41(2) TEU.



## Chapter 20 – trade and investment

The EU agrees the common tariffs and rules that apply to imports at the EU's external borders with non-EU countries. Once inside the Single Market, all goods move tariff-free. These common tariffs and rules are necessary to ensure that the Single Market and customs union works properly. The EU therefore negotiates trade deals with non-EU markets collectively, through a process laid out by the EU Treaties. The European Commission represents the EU and Member States in these negotiations with non-EU countries and at the World Trade Organisation (WTO) in order to reach agreements on these issues. But the UK and other Member States have a significant say in the nature, extent and final shape of those agreements.

**20.1** Free trade and investment agreements (FTAs) are agreements between countries that aim to tackle tariffs and barriers to trade and investment. Under EU law, the EU is responsible for negotiating FTAs with non-EU countries,<sup>153</sup> which then apply across the whole EU because it is a customs union.<sup>154</sup> The EU negotiates and agrees FTAs with countries outside the EU on a collective basis, to ensure a common external tariff on imports into any EU Member State.

**20.2** However, the UK and other Member States have a significant say in decisions: about negotiating partners; on the scope of negotiations; throughout the process of negotiation thanks to regular consultations; and in the deal that is ultimately agreed. When an FTA has been negotiated, the Council and the European Parliament both decide whether to accept it. The UK and other Member States have a vote in the Council.

**20.3** The UK is responsible for promoting its own businesses overseas and is free to compete with other EU Member States.

### Trade in goods

**20.4** The EU operates as a customs union with a common external tariff applied to goods entering into the EU's Single Market, after which they can circulate freely without tariffs or quotas being applied.<sup>155</sup> This provides collective strength for the 28 Member States but means that individual Member States no longer have the right to individually agree different tariffs with non-EU countries.<sup>156</sup> Member State customs authorities cooperate with each other

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<sup>153</sup> The EU's powers to adopt trade agreements are set out in Articles 207 and 218 TFEU.

<sup>154</sup> Article 3 TFEU makes the common commercial policy an exclusive competence of the EU.

<sup>155</sup> Articles 28(2) and 30 TFEU.

<sup>156</sup> Article 28(1) TFEU.

to facilitate the proper application of customs regulations and to investigate infringements of those regulations.

**20.5** Both the EU and the Member States are members of the WTO. In practice, however, both the negotiation of trade commitments and the conduct of trade disputes within the WTO are conducted by the Commission on behalf of the EU and the Member States. Under the General Agreement on Tariffs and Trade, which is the main WTO Agreement covering trade in goods, all WTO members must accord most favoured nation (MFN) treatment to other WTO members in respect of the tariff duties and other trade restrictions they impose on goods from other countries. However, a WTO member may, subject to satisfying certain conditions, offer more preferential trade terms beyond MFN treatment to another WTO Member by entering into a FTA or customs union. The EU has entered into 36 FTAs covering over 50 countries which have allowed the UK and other Member States to benefit from more preferential market access in these third country markets.

### **Trade in services**

**20.6** Under the WTO General Agreement on Trade in Services (GATS), WTO Members agreed to accord MFN treatment to service suppliers from other WTO Members, committed to allow service suppliers from other WTO Members to offer services in particular sectors of their market, and committed not to discriminate against those service suppliers. However, these commitments are limited, as they only apply to particular sectors and they are subject to significant reservations.

**20.7** The FTAs negotiated by the EU contain provisions designed to go further than GATS in opening trade in services and ensuring a level playing field for EU service providers seeking to do business in non-EU countries. Therefore, the FTAs will typically include commitments from the third country to allow EU service providers to offer services in sectors of their market not covered by GATS, or with fewer conditions. They will also include commitments from the third country to refrain from discriminating against EU service providers. The FTAs set out the specific services sectors to which these commitments apply, as well as any exceptions and reservations.

**20.8** For example, under the EU-Republic of Korea FTA, South Korea agreed not to block EU providers of computer-related services from: (a) offering cross-border services to the South Korean market; (b) setting up a branch in South Korea; or (c) sending professionals to South Korea on a temporary basis to provide services. South Korea also agreed not to apply certain related regulatory requirements, which treated EU businesses in specific sectors less favourably than South Korean ones. In return, the EU and the UK made equivalent commitments. These commitments are subject to reservations, which limit the extent to which Member States' markets must be open to international competition. This ensures the UK and other Member States retain the right to regulate, where necessary, in the public interest.

### **Trade disputes**

**20.9** All parties to the WTO and FTAs, including the UK as part of the EU, must comply with the provisions of the agreements that they sign up to, particularly those relating to goods and services. This gives the UK and other Member States rights to pursue disputes and redress from non-EU countries. Likewise, if a third country alleges that the UK or another Member State has failed to meet those obligations, a dispute panel can be convened to consider the complaint and decide how to remedy the matter.



**20.10** In the event of dumping, WTO rules allow countries to increase tariffs above the rates at which they are bound at the WTO. Given the UK is in the customs union, anti-dumping and anti-subsidy duties are set for the whole of the EU. Decisions on trade defence are taken by Qualified Majority Voting.

**20.11** A failure to comply with obligations may lead to a third country raising its tariffs which can have serious implications for businesses exporting goods and services as these could become less competitive.

## Investment

**20.12** The purpose of investment protection is to encourage investment by setting minimum standards of treatment that investors can rely upon when investing overseas, such as a commitment to act fairly towards investors and their investments. This creates rights for EU investors, whether businesses or individuals, and corresponding obligations on the UK and other Member States to respect the rights of overseas investors investing here.

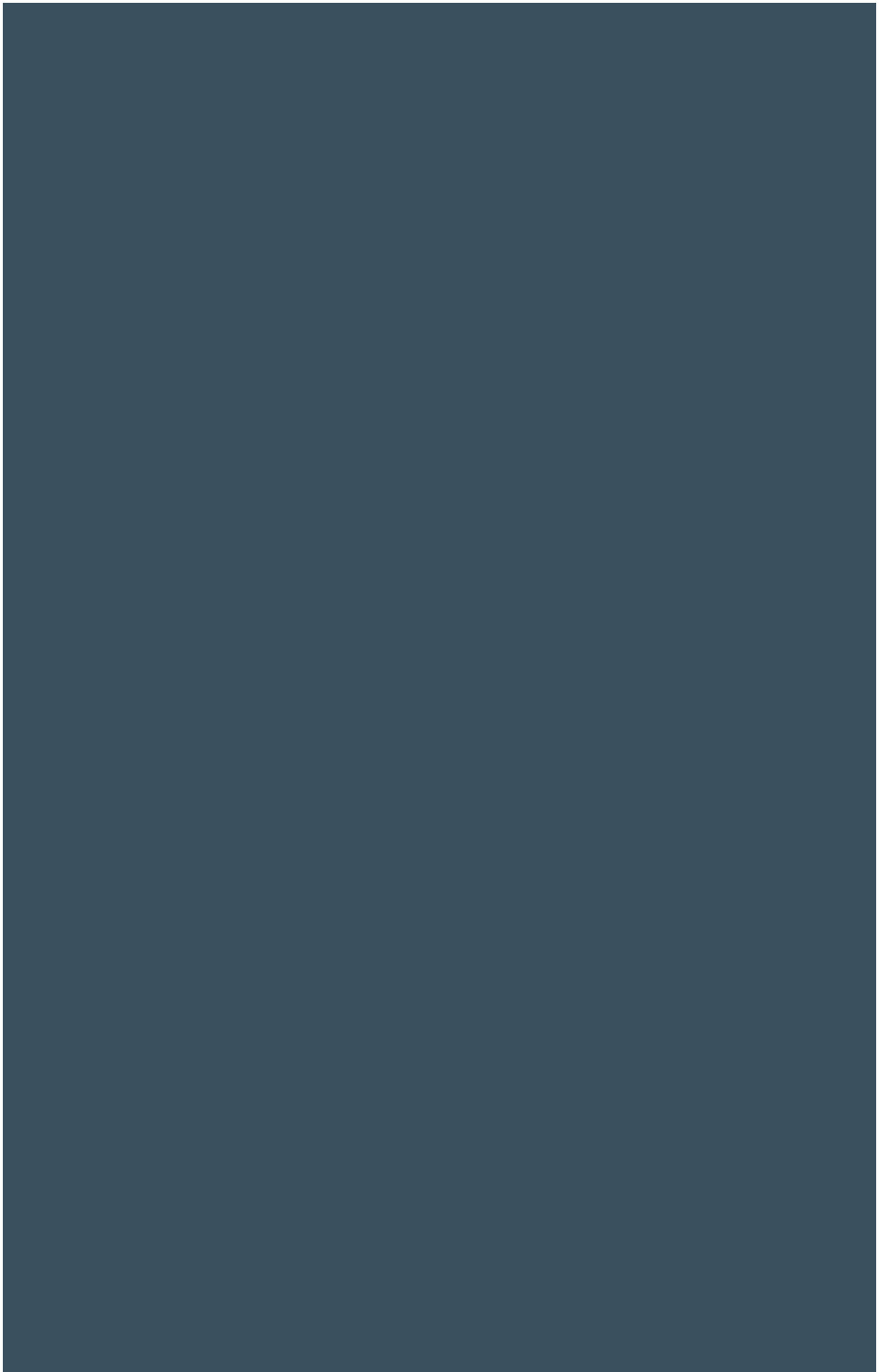
**20.13** These provisions are contained in Treaties that the UK negotiated with third countries before the EU had the competence to do so. Since competence for foreign direct investment was conferred on the EU,<sup>157</sup> it has started negotiating comprehensive FTAs that include investment protection provisions. The EU has also adopted measures that permit the UK and other Member States to maintain its existing bilateral investment Treaties with third countries in the interim.

**20.14** The UK and the EU negotiate a mechanism for enforcing investment protection into agreements.<sup>158</sup> Investors are given the right to claim compensation from a third country which has failed to meet its obligations. The UK and EU have a corresponding obligation to defend and meet compensation claims from third country investors.

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<sup>157</sup> The Treaty of Lisbon conferred competence for foreign direct investment onto the EU by amending what is now Articles 206 and 207 TFEU.

<sup>158</sup> For example, Chapter III of the UK-Mexico Bilateral Investment Treaties provides an Investor State Dispute Settlement clause. The EU has also negotiated investor-dispute settlement provisions into FTAs which contain investment protection, such as the recently negotiated EU-Canada FTA, Section F. None of the EU's FTAs negotiated since the Lisbon Treaty which include investment protection are yet in force.



# Chapter 21 – development and humanitarian aid

The UK is the world's second largest country donor of international aid. The UK spends the bulk of this itself. The remainder is spent through other organisations, including the EU. The UK works with the EU on development assistance to pool its resources with the other 27 Member States. The EU operates within agreed policies.

**21.1** Development cooperation and humanitarian aid are both forms of what is commonly referred to as overseas aid, foreign aid or international development. Development cooperation (or development aid) is longer-term assistance aimed at reducing poverty and promoting economic, environmental, social or political development in developing countries. Humanitarian aid is short-term assistance in response to crises such as conflicts or natural disasters.

**21.2** All the EU's 28 Member States are committed to helping developing countries reduce poverty and to promoting good governance and human rights using international development assistance. The UK and the EU share common objectives in international development, including a joint commitment to the Sustainable Development Goals. The EU can carry out activities and conduct common policy in development cooperation and humanitarian aid. However, that does not prevent the UK from undertaking its own development and humanitarian activities.

**21.3** The UK is the second largest single country donor of international development assistance in the world, after the United States.<sup>159</sup> It has a legal obligation – under its own legislation – to spend 0.7 per cent of its Gross National Income on foreign aid every year, and in 2014 provided £11.7 billion of Official Development Assistance (ODA).<sup>160</sup> Some of this it provides directly to beneficiary countries. But the UK also works with other Member States through the EU to deliver development aid. This allows the UK to pool its efforts and funding with the other 27 Member States.

<sup>159</sup> OECD statistics. UK ODA spend in 2014 was \$19.39 billion, second only to the US with \$32.73 billion.

<sup>160</sup> UK statistics on International Development. More information is published in 'Provisional UK Official Development Assistance as a proportion of Gross National Income 2014', April 2015.

21.4 In 2014, the EU and its Member States together spent a total of £47 billion of ODA, around half of the global total. EU institutions spend made up £9.8 billion of this.<sup>161</sup> In 2014, approximately £1.1 billion of UK ODA was made up of core contributions to the EU.<sup>162</sup>

21.5 Most EU funding is channelled through the main EU budget, to which the UK and other Member States contribute. Decision-making is agreed jointly between the European Parliament and Member States in the Council. The UK and other Member States have a say by voting in Council, which takes decisions by Qualified Majority Voting.

21.6 The EU operates in the field of development cooperation and humanitarian aid in three ways:

- through spending as part of the EU budget in accordance with laws agreed by the Member States and the European Parliament;
- EU participation in international agreements, both with non-EU members and with international organisations. A substantial part of the EU's development policy is conducted through such agreements, most notably the Agreement between the EU and the members of the African, Caribbean and Pacific (ACP) Group (the Cotonou Agreement); and
- by influencing international organisations, such as the UN and its agencies (which notably include the World Bank and the United Nations Children's Emergency Fund (UNICEF)), the Council of Europe and the Organisation for Economic Cooperation and Development (OECD). The EU's ability to engage with international organisations means that it can exert an influence over the global development agenda.

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<sup>161</sup> EU ODA and EU institutions figures taken from the 2014 ODA release from the European Commission. Converted using the official OECD ODA exchange rate.

<sup>162</sup> '2015 DFID Statistics on International Development', p.48 table 9.

# Glossary

Term	Definition
Codex Alimentarius	The Codex Alimentarius or “Food Code” was established by UN’s Food and Agricultural Organisation and the World Health Organisation in 1963 to develop harmonised international food standards, which protect consumer health and promote fair practices in food trade.
Common Foreign and Security Policy (CFSP)	The EU’s Common Foreign and Security Policy was established in 1993 under the Maastricht Treaty. It has been reinforced by subsequent Treaties, particularly the Lisbon Treaty. Its overall goals are to preserve peace, reinforce international security and promote international cooperation, democracy, the rule of law, respect for human rights and fundamental freedoms. CFSP also includes a Common Security & Defence Policy (CSDP), which covers the defence, military and civilian crisis management aspects of EU policy.
Common Agricultural Policy (CAP)	The CAP is the agricultural policy of the European Union. It implements a system of agricultural support through direct income payments to farmers and guaranteed prices.
Common Fisheries Policy (CFP)	The CFP is a set of EU rules for managing European fishing fleets and for conserving fish stocks.
Council of the European Union (also known as Council of Ministers or just the Council)	The Council of the EU brings together the representatives of EU Member States’ Governments. It is the EU’s main decision-making body and agrees EU laws, usually together with the European Parliament.
Customs union	An area consisting of two or more individual economies or customs territories which remove all tariffs and sometimes broader trade impediments between them. The members making up the area then apply a common external tariff to goods coming from third countries.
Euratom	The peaceful use of nuclear energy within the EU is governed by the 1957 Euratom Treaty which established the European Atomic Energy Community (Euratom). While Euratom is a separate legal entity from the EU, it is governed by the EU’s institutions.

<b>Term</b>	<b>Definition</b>
European Arrest Warrant (EAW)	A legal framework that facilitates the extradition of individuals between EU Member States to face prosecution or to serve a prison sentence for an existing conviction.
European Central Bank (ECB)	The European Central Bank (ECB) is the central bank of the 19 European Union countries that have adopted the euro. Its main function is to safeguard the value of the euro and maintain price stability.
European Commission (the Commission)	The European Commission is responsible for proposing draft legislation, implementing decisions, upholding the EU Treaties and managing the day-to-day business of the EU.
European Council	The European Council is the body in which the Heads of State or Government of the EU's 28 Member States, together with an appointed President and the President of the European Commission, take strategic decisions about the direction of the EU.
European Court of Justice (ECJ)	The European Court of Justice (ECJ) is a supranational court based in Luxembourg and made up of one judge from each of the EU Member States. The Court deals with cases concerning the interpretation and application of the EU Treaties.
European Criminal Records Information System (ECRIS)	A system for criminal records held by Member States to be exchanged with the authorities of other Member States.
European Economic Area (EEA)	The EEA, established on 1 January 1994, comprises the 28 Member States of the EU and Norway, Iceland and Liechtenstein in a Single Market. The agreement establishing the EEA covers the free movement of persons, goods, services and capital (although agriculture and fisheries are covered in a more limited way) as well as other EU policies including inter alia social policy, consumer protection and environment. Generally Members of the EEA must adopt the <i>acquis communautaire</i> in the areas covered by the EEA agreement.
EEA Joint Committee	An institution of the EEA, in which decisions are taken by consensus to incorporate EU legislation into the EEA Agreement.
European Economic Community (EEC) and European Community (EC)	The EEC was a regional cooperation organisation and precursor to the EU, as one of the European Communities. It was founded in 1957 to promote economic integration between its Member States. When the Maastricht Treaty created the EU in 1993, the EEC was incorporated and renamed the EC. In 2009 the Lisbon Treaty provided for the EC to be fully incorporated into the European Union.
European External Action Service (EEAS)	The EEAS is the EU's diplomatic service, which acts under the authority of the EU's High Representative for Foreign Affairs and Security Policy and assists her in fulfilling her mandate.

Term	Definition
European Free Trade Association (EFTA)	The EFTA has four members: the three non-EU EEA Member States, Norway, Iceland and Liechtenstein - plus Switzerland. It has the right to conclude Free Trade Agreements with the rest of the world on behalf of its four members.
European Parliament	The European Parliament was established in 1979 in order to represent the views of citizens directly in EU decision-making. It shares responsibility with the Council for passing EU laws and for agreeing the EU's budget, although the Council enjoys broader decision-making powers. The Parliament is made up of 751 members (MEPs) who are directly elected across the 28 Member States and serve a five-year term. The UK has 73 MEPs.
European Union (EU)	The EU is an international organisation made up of 28 European countries, including the UK. The EU has its origins in the European Coal and Steel Community, founded by six European states after the Second World War. However, its remit has evolved and is much broader today. The EU facilitates cooperation between its Member States on a wide range of objectives, from facilitating trade to protecting the environment, and security and development overseas. The EU has created a Single Market, enabling the free movement of goods, services, people and capital.
European Union Treaties	The European Union is based on the rule of law. This means that every action taken by the EU is founded on Treaties that have been approved voluntarily and democratically by all EU Member States. If a policy area is not cited in a Treaty, the Commission cannot propose a law in that area. There are eight main Treaties.
Europol	Europol is an EU agency that assists Member States' law enforcement agencies in tackling cross-border crime. It assists in the carrying out of over 18,000 cross-border investigations a year to tackle security threats such as terrorism, international drug trafficking and money laundering, organised fraud, counterfeiting and people smuggling.
Free Trade Agreement (FTA)	An FTA is an agreement between two or more countries under which they give each other preferential market access usually called free trade and agree to eliminate tariff and most non-tariff measures affecting trade among themselves. In practice free trade agreements tend to allow for all sorts of exceptions, many of them temporary to cover sensitive products. Increasingly, FTAs cover trade in services and investment as well as trade in goods.

Term	Definition
General Agreement on Trade in Services (GATS)	The GATS is one of the multilateral trade agreements under the umbrella of the World Trade Organisation (WTO) which entered into force in January 1995. It covers all trade in services except bilateral aviation rights and public procurement. Rights and obligations occur at two levels. First there are general obligations applying to all services trade and disciplines such as MFN treatment, transparency and general and security exceptions. Second the GATS also contains specific obligations relating only to commitments made by WTO members under the agreement. These include guaranteed market access and national treatment.
General Agreement on Tariffs and Trade (GATT)	GATT is one of the multilateral trade agreements under the umbrella of the World Trade Organisation (WTO) which entered into force in January 1995. It establishes multilateral obligations for trade in goods including, inter alia, MFN treatment and national treatment, transparency, freedom of transit and rules on free trade agreements and customs unions.
1951 Geneva Convention	The 1951 Convention relating to the Status of Refugees is the key legal document in defining who is a refugee, their rights and the legal obligations of states. The 1967 Protocol removed geographical and temporal restrictions from the Convention.
Hague Convention	The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance together with the Protocol on the Law Applicable to Maintenance Obligations were concluded on 23 November 2007 under the Hague Conference on Private International Law. The Convention ensures the effective international recovery of child support and other forms of family maintenance while the Protocol is designed to offer greater legal certainty and predictability to maintenance creditors and debtors.
Joint Ministerial Committee (Europe)	The Joint Ministerial Committee (Europe) meets on a quarterly basis to discuss forthcoming meetings of the European Council and European issues affecting the UK and the Devolved Administrations (Scotland, Wales and Northern Ireland). It also acts as the forum for the exchange of information and the discussion of strategic or cross-cutting issues where there is a devolved administration interest. The Joint Ministerial Committee (Europe) is normally chaired by the Foreign Secretary or the Minister for Europe.
Justice and home affairs	Justice and home affairs refers to EU cooperation on asylum and immigration, judicial and police matters, including the fight against serious and organised crime and terrorism, as well as the Schengen border-free area. The UK has secured a set of exemptions that mean it is not required to participate in justice and home affairs matters, but can choose to do so if it wishes.
Lugano Convention	The Lugano Convention facilitates the recognition and enforcement of judgments in civil law cases in the EU and EFTA countries.



Term	Definition
Most Favoured Nation (MFN)	MFN is the rule, usually established through a trade agreement, that a country gives each of its trading partners with which it has concluded relevant agreements the best treatment it gives to any of them in a given product or service. The fundamental point of MFN therefore is equality of treatment of other countries.
Non-tariff barriers	Non-tariff barriers are government measures other than tariffs that restrict trade flows. Examples include quantitative restrictions, import licensing, voluntary restraint arrangements and variable levies.
Passporting	Passporting entitles a financial services firm authorised in a European Economic Area (EEA) state to carry on permitted activities in any other EEA country by either exercising the right of establishment (i.e. setting up a branch and/or agents), or providing cross-border services. These rights are subject to the fulfillment of conditions under the relevant Single Market directive.
Preferential market access	Preferential market access is any market access condition afforded to a trading partner that is more favourable than the non-discriminatory most-favoured-nation treatment.
Qualified Majority Voting	Qualified Majority Voting is the principal method of reaching decisions in the Council of Ministers. It allocates votes to the different Member States according to an agreed formula, based partly on population size. A decision or law is passed by Qualified Majority Voting when 55 per cent of Member States vote in favour (in practice this means 16 out of 28) and the Member States supporting represent at least 65 per cent of the total EU population.
Schengen border-free area	The Schengen border-free area comprises the 26 European countries (22 EU Member States and four others) that have abolished passport and any other type of controls at their common borders. It also has a common visa policy.
Simple majority	Simple majority refers to one of the voting methods used by the EU (the others being absolute majority, Qualified Majority Voting and 2/3 majority). In the Council, where all 28 Member States vote, a simple majority amounts to 15 of the 28 Member States; in the European Parliament a simple majority is a majority of those present and voting (an absolute majority would be a majority of all MEPs – from July 2014 this would be 376 out of 751 MEPs).
Single Market	The Single Market is a common trade area that extends beyond the deepest and most comprehensive FTAs. It works to remove all regulatory obstacles to the free movement of capital, people, goods and services. It stimulates competition and trade, improves economic efficiency and helps to lower prices.
State aid	State aid refers to any advantage or subsidy granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the EU. The definition of state aid is very broad because ‘an advantage’ can take many forms.

Term	Definition
Tariffs	A tariff is the customs duty normally imposed on imported goods.
United Nations (UN)	The UN is an international organisation formed in 1945 to increase international cooperation and uphold peace and security. It has 193 members.
World Organisation for Animal Health	The World Organisation for Animal Health (OIE) is the intergovernmental organisation responsible for improving animal health worldwide. It is recognised as a reference organisation by the World Trade Organisation (WTO) and in 2016 has a total of 180 Member Countries.
World Trade Organisation (WTO)	The WTO was established on 1 January 1995 as the successor to the GATT. The WTO is an organisation for the discussion, negotiation and resolution of trade issues covering goods, services and intellectual property. Its essential functions are administering and implementing the multilateral (GATT, GATS and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)) and plurilateral trade agreements that constitute it, acting as a forum for multilateral trade negotiations, seeking to resolve trade disputes and cooperating with other international institutions involved in global economic policy-making. The WTO currently has 162 members including the EU and all its Member States.
Yellow/Orange cards	<p>The Lisbon Treaty (2009) introduced the Subsidiarity Control Mechanism, which allows national Parliaments in the EU to object (through a ‘reasoned opinion’) to EU draft legislation. The Subsidiarity Control Mechanism applies in areas where the EU has shared competence with Member States. The process for objections depends on how many national Parliaments object to a given proposal, named “yellow card” and “orange card” procedure. Each national Parliament has two votes, meaning there are 56 votes in total.</p> <p>“Yellow card” procedure</p> <p>If the reasoned opinions submitted correspond to at least one third of the votes assigned to the national Parliaments – or one quarter if the draft legislative act is submitted within the area of freedom, security and justice – the yellow card procedure is triggered. This means that the Commission shall review its proposal. On the basis of the review, the Commission may decide to maintain, amend or withdraw the proposal. The Commission must give reasons for its decision.</p> <p>“Orange card” procedure</p> <p>If the reasoned opinions submitted constitute a majority of the votes assigned to national Parliaments, and the draft is submitted under the ordinary legislative procedure, the orange card procedure is triggered. This means that the Commission must review the proposal. On the basis of the review, the Commission may decide to maintain, amend or withdraw the proposal.</p>





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