Reforming the EU: UK plans, proposals and prospects

The UK Government has stated that membership of the European Union is in the national interest, but the Prime Minister David Cameron would like to reform the EU and renegotiate the UK’s relationship with it, before holding an in/out referendum in 2017 if a Conservative government is elected in May 2015. The UK’s new relationship with the EU would be put to the electorate, who would decide whether the UK should remain in the EU under new terms or be the first Member State to leave the EU.

David Cameron identified areas for reform in his ‘Bloomberg speech’ on 23 January 2013. His five principles for a European Union “fit for the 21st Century” were: competitiveness, flexibility, repatriating powers to Member States, democratic accountability and fairness. In March 2014 he set out proposals for reform:

- Powers flowing away from Brussels, not always to it;
- National parliaments able to work together to block unwanted EU legislation;
- Businesses liberated from red tape;
- UK police forces and justice systems able to protect British citizens, without interference from the European institutions;
- Free movement to take up work, not free benefits;
- Removing the concept of “ever closer union”.

This Note looks at what the Government is doing to tackle some of the perceived weaknesses of EU policy and procedures and looks at prospects for future reform.

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1 Introduction
The UK Government has stated that membership of the European Union is in the national interest³, but the Prime Minister aims to reform the EU and renegotiate the UK’s relationship with it, before holding an in/out referendum in 2017 if a Conservative government is elected in May 2015. The UK’s new relationship with the EU would be put to the electorate who would decide whether the UK should remain in the EU under new terms or be the first Member State to leave the Union under Article 50 of the Treaty on European Union (TEU). This scenario has become known as ‘Brexit’.

David Cameron believes reform will be more effective from within the EU, “not shouting from the sidelines”. He has also emphasised the importance of strong relationships with key allies in order to ensure successful reform.

1.1 Prime Minister’s Bloomberg speech

The EU issues the Government has identified for reform were outlined in the Prime Minister’s Bloomberg Speech on 23 January 2013. David Cameron thought that as an island nation, Britain has a distinctive character and view of Europe, but is not “un-European”. The five principles for his “vision for a new European Union, fit for the 21st Century” were:

- **Competitiveness**: “creating a leaner, less bureaucratic Union, relentlessly focused on helping its member countries to compete”;

- **Flexibility**: “We need a structure that can accommodate the diversity of its members—North, South, East, West, large, small, old and new. Some of whom are contemplating much closer economic and political integration. And many others, including Britain, who would never embrace that goal”;

- **Power back to Members**: “power must be able to flow back to Member States, not just away from them”;

- **Democratic accountability**: “we need to have a bigger and more significant role for national parliaments. There is not, in my view, a single European demos. It is national parliaments, which are, and will remain, the true source of real democratic legitimacy and accountability in the EU”;

- **Fairness**: “whatever new arrangements are enacted for the Eurozone, they must work fairly for those inside it and out”.

1.2 Key changes spelt out

Building on the Bloomberg speech, in March 2014 David Cameron set out his vision of a reformed EU:

- Powers flowing away from Brussels, not always to it.

- National parliaments able to work together to block unwanted European legislation.

- Businesses liberated from red tape and benefiting from the strength of the EU’s own market – the biggest and wealthiest on the planet – to open up greater free trade with North America and Asia.

- Our police forces and justice systems able to protect British citizens, unencumbered by unnecessary interference from the European institutions, including the ECHR.

- Free movement to take up work, not free benefits. Support for the continued enlargement of the EU to new members but with new mechanisms in place to prevent vast migrations across the Continent.

- And dealing properly with the concept of “ever closer union”, enshrined in the treaty, to which every EU country now has to sign up. It may appeal to some countries. But it is not right for Britain, and we must ensure we are no longer subject to it.

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2 “David Cameron: the EU is not working and we will change it”, *The Telegraph*, 15 March 2014.
So, yes to the single market. Yes to turbo-charging free trade. Yes to working together where we are stronger together than alone, as we are doing right now on Ukraine. Yes to a family of nations, all part of a European Union – but whose interests are guaranteed, inside the euro or out.

No to ever-closer union. No to a constant flow of power to Brussels. No to unnecessary interference. And no, it goes without saying, to the euro, to participation in eurozone bailouts or notions such as a European Army.³

1.3 Views of the other main parties

While David Cameron has promised to renegotiate Britain’s relationship with the EU and to hold an in/out referendum, his coalition partners the Liberal Democrats are less clear. Their priorities lie in reforming trade with the EU and reforming the EU budget⁴. They have supported an in/out referendum accompanied by EU reform:

Liberal Democrats believe that there should be a referendum on whether or not Britain remains a member of the EU. We have this referendum next time (and every time) there is a large new treaty being proposed. In fact, we’ve even made this law.

When the referendum comes, we will campaign for us to remain IN. But we also believe we need to reform the EU to make it more competitive, efficient and accountable. That is what our Europe MPs are working to achieve right now.⁵

However, the party leader, Nick Clegg, defeated an attempt by senior party members to guarantee a referendum in the party’s general election manifesto.⁶

The Labour Party EP election manifesto stated that a future Labour government would legislate “for a lock that guarantees that there cannot be any transfer of powers from Britain to the European Union without an in/out referendum”.⁷ On EU reform, Labour is against “isolation and cutting ourselves off from our European allies”, and their EU manifesto stated that Labour would “work with our European partners to deliver real and effective reform from within the EU”. Their areas of reform include: “restraint in EU annual and long-term budgets; scrapping the Strasbourg Parliament; more transparency in meetings of EU Ministers and for national parliaments to play a stronger role in the making of new EU rules; changes to the European Parliament to make sure votes are more transparent and the expenses system for MEPs is reformed”.⁸ Labour would also appoint an EU Growth Commissioner, review the EU budget and EU agencies to help secure savings and efficiencies.

1.4 What sort of negotiations?

Questions have been raised as to how far-reaching the Government’s aims are. Is the aim to renegotiate the UK’s relationship with the EU; is it to reform the EU for all Member States, or both? Regarding immigration and free movement (see below), in a speech in November

³ Telegraph, 15 March 2014
⁴ Liberal Democrats, Referendum and Reform (accessed 7 January 2015).
⁵ Ibid.
⁶ Liberal Democrat Voice, 2 July 2014.
⁷ This would go further than the current ‘referendum lock’ introduced by the European Union Act 2011, which guarantees a referendum before the government can agree to any transfer of power from the UK to the EU. The current provisions do not provide for an in/out referendum, but a referendum on a specific transfer of power.
2014 the Prime Minister was clear he wanted to negotiate changes for the whole EU, as he believes “they would benefit the whole EU”. The Government believes migration issues are causing concern across the EU, which was reflected in the EU-wide rise in ‘Euroscepticism’ at the EP elections in May 2014. However, David Cameron stated in his November speech that “if negotiating for the whole EU should not prove possible, I would want to see them [his proposed changes] included in a UK-only settlement”.

On 12 March 2015 David Cameron told the Financial Times that if the Conservatives win the general election, the Chancellor George Osborne would lead the EU renegotiation. In an op-ed in The Telegraph on 15 March 2014, the Prime Minister said he did not want to “lay all Britain’s cards on the table”, but it is uncertainty about the renegotiation that some observers believe might damage business confidence in the UK and cause concern among potential allies in the EU.

David Cameron is currently faced with the problem of satisfying those Conservative Eurosceptics for whom no amount of Treaty renegotiation will suffice, and pro-EU Liberal Democrat coalition partners. Rem Korteweg of the Centre for European Reform commented:

No proposal for EU reform acceptable to his European colleagues will be enough to appease the eurosceptics in his own party. Besides, his government cannot reach a common position because his coalition partners, the Liberal Democrats, disagree strongly with his ‘renegotiation and referendum’ strategy. Instead, he wants to wait until after the 2015 general election before discussing reform in earnest. But his caution is making potential European allies impatient.

On 19 February 2015 the Leader of the Opposition, Ed Miliband, wrote to David Cameron asking him to “set out in detail a reform agenda for the EU and a strategy for building the alliances needed to deliver it”.

Apart from various speeches and press contributions, the Prime Minister has not formally set out his reform agenda at the EU table; this must wait until after the general election, when it will be clear whether Mr Cameron has a mandate to take it forward. David Frost, a former senior government trade diplomat, thought the timetable for the renegotiation in the event of a Conservative election win would most likely be as follows:

The Conservatives set out their aims for the renegotiation at the June 2015 European Council. A negotiation of some kind will follow with the results likely set out in a political declaration, perhaps European Council conclusions, at some point between then and mid-2017, with the promised referendum following. Those political commitments can then be implemented in secondary legislation, where necessary, in the usual way. It is suggested by some that, if Treaty change is needed to implement or make any commitments legally secure, it would follow after the referendum, given the impossibility of agreeing and ratifying Treaty amendments in that timescale.

The general direction of the Government’s proposed renegotiations, as well as recent changes to UK law to tackle perceived EU weaknesses, are outlined in the following

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9 JCB Staffordshire: Prime Minister’s speech, 28 November 2014.
10 Ibid.
11 Rem Korteweg, Centre for European Reform, “Why Cameron’s timing on EU reform is off”, 26 March 2014.
12 See Spectator, 19 February 2015.
13 David Frost, Gearing up for delivery: How to manage the renegotiation, published by Open Europe, February 2015.
sections, categorised in three broad areas: free movement, increasing EU competences and the EU’s democratic deficit.

2 Free movement

Intra-EU immigration has become more salient in past months and will probably continue to be so up to the May 2015 general election and beyond. This matter has contributed significantly to the Government’s rhetoric on EU reform and a renegotiated relationship with the EU. The Government has proposed reforming the principle of free movement throughout the EU, to ensure “free movement to take up work, not free benefits”.  

The Government acknowledges that free movement is a central principle of the EU and supports the continued enlargement of the EU to new members, but with new mechanisms to prevent vast migrations across the continent and to inhibit welfare tourism.

The unprecedented success of the UK Independence Party (UKIP) in the EP elections in May 2014 on a largely anti-immigrant and anti-EU membership platform has, in the view of many observers, forced the Conservative leadership to try and ‘out-UKIP’ UKIP on the subject of immigration in general and EU immigration in particular.

Others believe the focus on immigration risks steering the debate on EU membership down a narrow and misleading path towards a possible referendum in 2017. Martin Wolf, writing in the Financial Times on 27 November 2014, thought David Cameron was increasingly “boxing himself into a corner in his discussions with other members of the EU. This is largely a result of his party’s hysteria over the electoral success of the UK Independence party”. He blamed the “blend of fear and hostility” for driving David Cameron “towards demanding derogations from the founding treaties’ principle of freedom of movement that he has no chance of securing”. Wolf concluded: “the decision on whether to stay in the EU will shape the UK’s future for the indefinite future. It would be folly to let a paroxysm of anxiety over immigration drive this debate. Unfortunately, that degree of stupidity seems frighteningly near”.

2.1 Welfare tourism

Irrespective of any future Treaty amendment, the Government aims to address alleged abuses of free movement in the EU and push for an end to the system whereby, under the EU’s free movement laws, immigrants can claim welfare payments for their relatives abroad. Under the current system, child benefit awarded for children living in another EU Member State is reported to be twice as much in the UK as in Germany and three times the amount received in France.

EU law does not require that Member States give all migrants from other EU States full, unrestricted access to social security benefits. However, when determining conditions of entitlement to benefits, they must not impose requirements which discriminate against people exercising their rights of free movement or create obstacles to free movement by breaching the principle of free movement of workers. “Workers” – those moving to another Member

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14 JCB Staffordshire speech, 28 November 2014
15 Ibid.
16 The following sub-sections draw on work by Steven Kennedy, Social Policy Section, House of Commons Library.
18 Under EC Regulation 883/2004 of 29 April 2004 on the coordination of social security systems
19 JCB Staffordshire speech, 28 November 2014. For details on how much the UK has paid in benefits to EU migrants, see Library Standard Note 6955, Statistics on migrants and benefits, last updated: 27 November 2014.
State to take up work – have strong protection under EU law. Those moving to another State to look for work (“EU jobseekers”) also have rights under EU law but these may be more circumscribed. Those not in work or looking for work – “economically inactive” persons – have far fewer rights and may have no entitlement to benefits in the host Member State.20

The Government has taken action to make the UK welfare system less open to abuse, within the parameters of current EU freedom of movement rules, but it intends to try and change the free movement rules within the EU as well.

On 7 July 2014 Christopher Chope introduced a Private Member’s Bill, the Benefit Entitlement (Restriction) Bill 2014-151.21 The Bill made provision “to restrict the entitlement of non-UK Citizens from the European Union and the European Economic Area to taxpayer-funded benefits”. It provided that the restrictions on entitlement are “notwithstanding the provisions of the European Communities Act 1972”. In other words, it sought to put aside the provisions of the ECA in favour of the more recent Act. The Bill is scheduled for Second Reading in the Commons on 20 March 2015. Passing the Bill would leave the UK in breach of its EU obligations to implement EU law.

2.2 Government changes to welfare provisions

In an article in the Financial Times on 26 November 2013 the Prime Minister said he shared concerns about the impact of lifting transitional restrictions on the rights of Romanian and Bulgarian nationals to work in the UK from 1 January 2014.22 The Government subsequently introduced a raft of measures “to tighten up our EEA migration rules to ensure our welfare system is not taken advantage of”. They included:

- From December 2013, a “stronger, more robust” Habitual Residence Test for those claiming means-tested benefits.

- From 1 January 2014, people coming to the UK must have been living in the UK for three months before they can claim income-based Jobseeker’s Allowance (JSA).

- EEA jobseekers or former workers would have to show that they had a “genuine prospect of finding work” to continue to get JSA after six months (and if applicable, Housing Benefit, Child Benefit and Child Tax Credit). From 10 November 2014, for those with a right to reside as a jobseeker the test will be applied after three months on JSA.

- From 1 March 2014, a new minimum earnings threshold to help determine whether an EEA national is or was in “genuine and effective” work, and so has a “right to reside” as a worker or self-employed person (and with it, entitlement to benefits).

20 See House of Commons Library blog, EU migrants and benefits: frequently (and some less frequently) asked questions, 2 December 2014. On 11 November 2014 the EU Court of Justice (CJEU) found in Dano v Jobcenter Leipzig, that the Jobcenter had not breached EU law when refusing to grant certain welfare benefits to a Romanian national, Elisabeta Dano, and her son Florin. The Court stated: “A Member State must therefore have the possibility …of refusing to grant social benefits to economically inactive Union citizens who exercise their right to freedom of movement solely in order to obtain another Member State’s social assistance although they do not have sufficient resources to claim a right of residence”.

21 Christopher Chope introduced a similar Bill in the 2013-14 Session which was supported by the same group of MPs, which was defeated by 30 votes to 5 at Second Reading.

22 See Standard 6606, Ending of transitional restrictions for Bulgarian and Romanian workers, 29 November 2013
• From 1 April 2014 new EEA jobseekers have been prevented from accessing Housing Benefits even if they are in receipt of JSA.

• From 1 July 2014, new jobseekers arriving in the UK would need to have lived here for three months in order to claim Child Benefit and Child Tax Credit.\(^\text{23}\)

But even with these changes, the pressure for further change has increased, and in his speech on 28 November 2014, David Cameron proposed measures to combat so-called ‘welfare tourism’:

• Tax credits and child benefit will only be granted to those who have lived in the UK and contribute to our country for a minimum of four years.

• Child benefits and child tax credits will be received only if the child is living in the UK.

• A new residency requirement to ensure that an immigrant will only be considered for council housing if they have lived in the UK for four years or more.

• EU jobseekers must have a job offer before they come to the UK.

• A law to prevent EU jobseekers from being able to claim Universal Credit – the system replacing Jobseekers’ allowance.

• Restricting the time that jobseekers can legally stay in the country: they will be required to leave if they have not found work within 6 months.

Other proposals included:

• Reforms to the application of the freedom of movement principle to new Member States. The Government wants tighter restrictions on migration from new Member States by amending the accession procedure so that freedom of movement will only apply after their economies have better converged with existing EU Members.

• Stronger powers to deport criminals and stop them coming back.

• Tougher and longer re-entry bans for those who abuse free movement “including beggars, rough sleepers, fraudsters and people who collude in sham marriages”.

2.3 Further reading

• Standard Note 6889, Measures to limit migrants’ access to benefits, 21 November 2014

• SN 7037, Benefit Entitlement (Restriction) Bill 2014-15, 27 November 2014

• House of Commons Library blog, 2 December 2014, EU migrants and benefits: frequently (and some less frequently) asked questions

• Standard Note 6955, Statistics on migrants and benefits, last updated 27 November 2014

• SN 6847, People from abroad: what benefits can they claim? 7 November 2014

\(^{23}\) See Library Standard Note 6889, Measures to limit migrants’ access to benefits, 21 November 2014.
• SN 6561, Child Benefit and Child Tax Credit for children resident in other EEA countries, 18 July 2014.

• SN 5972, EEA nationals: the ‘right to reside’ requirement for benefits, 5 December 2011

• Centre for European Reform, Cameron’s migration speech and EU law: Can he change the status quo? Camino Mortera-Martinez, 4 December 2014

• Open Europe, What are the legal implications of David Cameron’s demands for EU migration reform? Professor Damian Chalmers, 9 December 2014

• Overview of the provisions in EU law on social security for people moving between Member States is provided in the Legal Annex to the UK Government’s July 2014 Balance of Competences Review of Free Movement of Persons.

3 Competences

As the process of European integration has progressed, more powers or competences have been redirected from the national to the supranational (EU) sphere. The UK government has emphasised the need for “powers flowing away from Brussels, not always to it”24. This area is less developed than the immigration reforms proposed above, leaving scope for later compromise.25

In his Daily Telegraph article in March 2014 the Prime Minister called for the removal of the reference to the goal of “ever closer union” in the preamble of the EU treaty: “It may appeal to some countries. But it is not right for Britain, and we must ensure we are no longer subject to it”.26 Although the reference is largely symbolic, its removal would require a Treaty change.

Better utilisation of the proportionality and subsidiarity principles, alongside the referendums guaranteed under the European Union Act 2011 before further Treaty change mean that any movement of significant policy areas from UK to EU competence will occur only if it has the support of the Government and/or Parliament and/or the electorate. But reforms in this area are less clear because the Government has not formally proposed the repatriation of any EU competences, other than to make clear that they do not want “unnecessary interference”, or participation in Eurozone bailouts.27

3.1 More EU competence: better scrutiny

The Commons European Scrutiny Committee (ESC) called for changes to the parliamentary scrutiny of EU business to take account of the increase in EU competence:

187. Given the profound increase in the transfer of competences to the EU and the pressure for greater integration it is now time to give all Members of the House a regular opportunity to question Ministers specifically on European Union matters. We conclude that a session of oral questions (including a session of topical questions) to the Minister for Europe on EU matters, including other Ministers in a cross-cutting form, should be introduced, and that this should take place on the floor of the House, timed to coincide with the run-up to a European Council meeting.

24 ‘David Cameron: the EU is not working and we will change it’, The Telegraph, 15 March 2014.
26 Ibid
27 Ibid.
In its response to the ESC published in July 2014, the Government was reluctant to grant this request on the grounds that MPs can already ask questions on EU business at departmental oral questions, and that a new oral questions slot for EU matters in the rota “would run counter to efforts to make European scrutiny in the work of the House a mainstream part of departmental scrutiny and risk this activity being left to a minority of enthusiasts for EU issues per se”. There was already “flexibility in the existing Standing Orders for oral questions to be taken in Westminster Hall”, but the Government suggested the Committee “may wish to explore with the Procedure Committee and the Backbench Business Committee whether there is demand to use this forum for additional opportunities to scrutinise EU matters”.

3.2 Review of the Balance of Competences

The Government believes that the EU should do less and the Member States should do more. To investigate the extent to which the EU is involved in policy- and law-making across a broad range of areas, in July 2012 the Government launched a Review of the Balance of Competences. Contributors to the Review drew conclusions about the balance between the two – should there be more EU action, less EU action, or was the balance about right? The Review’s aim was to deepen understanding of the UK’s EU membership and provide a constructive contribution to the wider European debate about modernising, reforming and improving the EU. The Review will help inform the Government in its EU Treaty renegotiation, but the reports to date indicate that there are perhaps not as many problems as the Government had assumed.


The Single Market report found it was “not possible to give a simple, unambiguous, and universally accepted response” to the competence question, but that most observers and most of the evidence was positive about the current cost-benefit trade-off.

The Taxation report concluded that respondents “were content with the current balance of competence on taxation, taking account of the protections offered by unanimity voting”.

The Animal Health and Welfare and Food Safety report commented that many respondents “expressed support for the current balance” but there were also “several areas for improvement”.

The Health report concluded that the current balance was “broadly appropriate and that these competences are properly applied but that competence should not be extended further”.

The Development Cooperation and Humanitarian Aid Report concluded EU competence in this area had had “a global reach that no Member State can match individually”, and had enabled the EU “to address a wide range of challenges of direct interest to the UK. Our development leadership role and working relationships have resulted in the EU being an effective multiplier for UK priorities”.

The Foreign Policy report stated that the majority judged Member States to be “firmly in charge of the Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP)”, with the ability to “act unilaterally when they judged it”.

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The **Single Market: free movement of goods report** concluded that the majority of respondents, including most respondents from business, “supported the current balance of competence on the free movement of goods and felt that, on balance, EU action was beneficial to the UK’s national interest”. Most respondents thought the advantages of European action, such as “a level playing field for UK businesses and a single transparent set of rules with scope for legal redress – outweighed the costs arising from administrative burdens, regulatory costs or policy trade-offs”. There was support for the current state of EU competence, together with “support for retaining the voluntary approach in certain areas”, rather than harmonisation.

The **Transport report** concluded: “In summary, the evidence received from transport stakeholders generally reflects a broad consensus that the single market in transport services is at the core of the EU’s transport policy, that it has driven growth and prosperity in the UK and in other Member States, and that it should continue to do so”. But further liberalisation was possible “through more effective implementation and enforcement of existing legislation rather than through continually seeking new legislation”.

The **Research and Development report** pointed to EU organisational and communication weaknesses in this area, and respondents expressed concerns about how far a European Research Area might “encroach on national initiatives and cause unnecessary reporting burdens”. However, the findings were broadly positive:

> The majority of respondents felt that a combination of local, national, EU, bilateral and international policies and collaborations was the most effective way of managing the complex needs of differing research fields. To this end, current arrangements, while not perfect, were broadly considered to provide a good foundation.

The **Culture, Tourism and Sport report** was optimistic that this new EU competence might produce a more coherent application of EU policy on sport. There were some concerns about a tourism competence imposing greater regulation, but none of the contributors “identified substantial challenges to the future UK national interest in the current balance of competence between the UK and EU”.

The **Civil Judicial Cooperation report** concerned cross-border legal issues in the areas of civil, commercial and family law. The UK has an opt-in option in these areas, so, again, the balance of competences can be decided by the UK Government on a case-by-case basis. The report therefore looked at the measures the UK had opted into. There were mixed views both about the EU’s competence to act in these areas and the Government’s timing of its opt-ins. In general there was support for the UK maintaining its opt-in.

The **Trade and Investment report** concluded that the evidence generally suggested “that the balance of competences in this area allows the UK to achieve results that are in the national interest”. It noted some criticism of the current balance and the specific ways in which competence was exercised.

The **Environment and Climate Change report** found that most thought it was “in the UK’s national interest for the EU to have a degree of competence in the broad areas of environment and climate change because of the advantages that this brings for the Single Market and environmental protection”. There were concerns about extending this competence and whether the EU always complied with subsidiarity and proportionality.
The report on **Asylum and non-EU Migration** notes the UK’s opt-out from the area of migration, but also that the asylum area is more complex. There was support for practical cooperation on asylum issues between Member States as an alternative to further EU legislation.

The **Single Market: Free Movement of Persons** report acknowledged a broad consensus that highly skilled migrants from the EU have benefitted the UK, but there was less agreement on low skilled migration: gains for employers were offset by negative impacts on the lowest paid workers. The report thought the scope of free movement rights had expanded beyond its original intention; also that ECJ judgments have interpreted free movement broadly, with the consequence of expanding rights of entry and residence, thereby restricting Member States’ competence in this area”. The report also noted concerns about criminals’ exploitation of EU rules, the localised impact on public services, and falling public confidence in the concept of free movement.

The **Single Market: Free Movement of Services** report noted “general support from respondents for the current balance of competence”, but also “some calls for greater integration in the single market for services. Consumers and the public sector had gained from increased competition and choice, although the current level of EU competence could be “less burdensome”. The report concluded that there is scope for further on services liberalisation, extending the application of the country of origin principle, either at EU-level or within a smaller group of Member States. Further liberalisation could also be achieved through a sectoral approach, focusing on sectors of greatest economic importance.

The **Single Market: Financial Services and the Free Movement of Capital** report found the balance of competences was “broadly appropriate”, but “often undermined by poor policy-making”. The EU should reform “the existing EU policymaking framework and processes, take a more proportionate approach to legislation in all subsectors, and give greater consideration to the principle of subsidiarity in retail market sectors”.

The **EU Budget** report looked at how the budget system is set up, how budget money is spent and how it is managed, and considered how the budget impacts on the UK national interest. Responses suggested that “while the balance of competences in the area of the EU Budget is largely appropriate, the application of competences could be improved by reform of budget structures, through improving the financial management of the EU Budget in Member States and EU Institutions alike and particularly through reform of budget expenditure, focussing on areas of genuine added value”.

The **Cohesion Policy** report “generally welcomed the objectives of cohesion policy in supporting the poorest parts of the EU to fulfil their economic potential and to underpin the development of the Single Market”, but many also thought the UK might be “better off financially if it did not contribute to cohesion policy in rich Member States or regions”. There were also concerns about the “complexity of rules and the perceived burdens of applying for, reporting on and auditing projects”.

The **Social and Employment Policy** report provided a fragmented view of the balance of competences in this area:

For many it was not just a binary trade-off between economic and social policies, and the arguments were far more complex and nuanced. For example, many of the respondents who argued that there should be no or very limited EU competence over social and employment matters did so on the basis that
these were important policies and needed to reflect domestic culture and traditions rather than because they thought that economic goals had primacy over social ones in and of themselves.

The Agriculture report noted strong support for EU competence in relation to the Single Market for agricultural goods and to the EU’s role in negotiating global trade deals for agricultural goods. But the CAP came in for some criticism:

... the CAP’s objectives remained unclear and that the criteria for allocation of funding were irrational and disconnected from what the policy should be aiming to achieve. The majority of respondents argued that the CAP remains misdirected, cumbersome, costly and bureaucratic.

Environmental organisations maintained that “market intervention and direct payments had led to negative impacts on biodiversity and the farmed environment”, but “agri-environment schemes had been beneficial across Europe and provided a regime for conservation”.

Many respondents to the Fisheries report thought the Common Fisheries Policy (CFP) “had failed in the past to achieve key objectives, namely to successfully maintain fish stocks or provide an economically sustainable basis for the industry”, although recent reforms had started to address these problems. There was majority support for some supranational or EU management of fisheries “due to the transboundary nature of fish stocks”. Some preferred regional management.

The Competition and Consumer Policy report suggested “having EU competence on competition and State aid does further the UK’s national interest”, that “having an effective regime at supranational level is the best way of ensuring that there is a level playing field for competition”. There were concerns that “the level at which State aid control is triggered is too low”. The balance of opinion on consumer policy was that “EU-driven consumer policy is a benefit, primarily because it is a factor in making the Single Market work effectively”. However, “harmonising measures can sometimes fail to take full account of local social, cultural and economic conditions”.

The Energy report noted the general view that EU competence was valuable and beneficial, but there was frustration about “how that competence had been exercised in some individual areas of policy and legislation”.

Evidence in the Fundamental Rights report showed “a divergence of views on where the balance of competence should lie between the EU and the UK on the protection of human rights”.

There is little consensus on what constitutes the national interest in this context beyond the principle that the EU and Member States should act consistently with human rights. Views vary on whether the EU’s competence on fundamental rights is being exercised consistently with interests in the UK, depending on perspectives on the role of supranational human rights mechanisms, national sovereignty and how fundamental rights are balanced against other interests in society, such as trade.

Evidence in the Economic and Monetary Policy report suggested “the balance of competences in the EU, taking account of the UK’s opt-outs, is mainly consistent with the UK’s national interest”. The UK opt-out from EMU preserved the UK’s ability “to respond to developments affecting the UK’s economic outlook”. But the need for improvements included
ensuring “that policies work for all Member States, whether in the euro area or out, that caucusing is avoided, and that the integrity of the Single Market is protected”.

The Police and Criminal Justice report took into account the UK’s opt-in arrangement in this area, which most saw as positive, although there were concerns that a decision against opting in “had the potential to negatively impact the United Kingdom’s ability to influence negotiations”. There was support for improving procedural standards across the EU, but no consensus on a role for the EU in this, or whether EU legislation, intergovernmental agreements or non-legislative means were the best way of delivering minimum standards. There was “no appetite for standardising criminal law”; mutual recognition was sufficient. Emerging challenges included international crime such as terrorism, organised gangs and cybercrime, for which practical cooperation among EU partners and third countries was needed.

The Information rights report identified the need to be aware of interaction between principles of data protection and access to information; to make sure legislation is future proofed; to find a balance between greater common standards and sufficient flexibility for different sectors, and the different circumstances in Member States; for greater understanding and engagement with stakeholders in this complex, rapidly-changing field.

The Education, Vocational Training and Youth report EU cooperation had helped young people to study and work abroad “and that this is beneficial”, but also that many more students came to the UK than elsewhere. It supported the Government’s view that international mobility and partnership funding was sensible and legitimate, but found that EU work on education, training and youth policy had had little impact on the UK and may push the boundaries of EU competence.

In the enlargement report there was general agreement that enlargement has been successful for the EU and the new Member States, that the EU’s institutional arrangements have coped well with enlargement and that it has brought stability to the region, but that the UK has had to work harder to defend its interests. The budgetary costs have been reasonable and UK organisations and businesses have benefitted from EU spending in new and aspirant Member States. The EU’s new external border with Russia has brought “strategic challenges” and the larger EU has “increased the risk of dissenting voices preventing agreement”. Also, enlargement may have increased the risk of international crime reaching the UK, but has been successful in extending environmental protection and greater respect for human rights.

Overall, there was “very little support among contributors for a change in the balance of competences in the field of enlargement given the strong leading role of Member States in the process”.

The Voting, Consular and Statistics report found the current balance of competences does not need changing. There were reservations about the Information Exchange mechanism and some problems were identified with the operation of the European Citizens’ Initiative and citizens’ awareness of the EU.

The Subsidiarity and Proportionality report, predictably, identified some areas where respondents thought action should have been at national rather than EU level, and others where it was appropriate. There was support for national parliaments ensuring respect for subsidiarity and proportionality. Existing mechanisms for national parliaments to give reasoned opinions were welcomed, and the majority thought these could be strengthened to
improve decision-making and increase the EU’s democratic legitimacy. Others thought this could complicate action, emphasising the role national parliaments already play through parliamentary scrutiny of Member States’ EU policies.

4 Democratic deficit

The EU and the Member States agree that legitimacy issues need to be tackled, but they diverge over where the source of EU democratic legitimacy should lie. The UK Government and some other national governments maintain that only national governments and parliaments can make the EU more accountable and legitimate. They argue that the EU adopts decisions in which national parliaments have had only limited input and influence, that ‘subsidiarity’ has been an ambiguous and elusive concept. Not until the Lisbon Treaty has there been a mechanism for involving national parliaments in alerting the Commission to subsidiarity issues through an ‘Early Warning Mechanism’ (‘yellow card’), but this mechanism has been criticised for not compelling the Commission to rethink a proposal to which national parliaments object on subsidiarity grounds.

The new European Commission that took office on 1 November 2014 included a new First Vice-President role with responsibility among other things for monitoring respect for subsidiarity and proportionality before any new legislative proposals are tabled. Former Dutch Foreign Minister Frans Timmermans holds the new office. It is too early to say what impact the new responsibility will have, but on 7 March 2015 the Commission decided to withdraw 73 pending legislative proposals, with the adoption of the Commission’s Work Programme for 2015. According to the Commission press release, this confirmed its “commitment to a better regulation approach which cuts red tape and removes regulatory burdens, contributing to an environment conducive to investment”.

The UK Government would like Member States to loosen the EU framework in more policy areas and thereby preserve national sovereignty. National parliaments have democratic legitimacy at the national level, which needs to be transferred onto the EU stage so that they can become actors there. The Commons European Scrutiny Committee and Conservative MPs writing to David Cameron in January 2014 proposed a national veto of unwanted EU proposals (see also below).

4.1 The role of National Parliaments

The Prime Minister believes there is widespread support for the principles of subsidiarity and proportionality (power “flowing back” as David Cameron puts it). The subsidiarity and proportionality principles have been gaining momentum since the 2004 Commission initiative (the ‘Barroso Initiative’), under which it transmitted all new proposals and consultation papers directly to national parliaments, and invited them to respond to them “so as to improve the process of policy formulation”. This established a dialogue between national parliamentary

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28 In his Bloomberg Speech, David Cameron said: “It is national parliaments, which are, and will remain, the true source of real democratic legitimacy and accountability in the EU”.
29 The subsidiarity principle sets out in Article 5(2) of the Treaty on European Union that: “... the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to obtain the objectives set out therein. Competences not conferred upon the Union in the Treaties shall remain with the Member States”.
30 Under the early warning mechanism set out in the subsidiarity protocol, national parliaments have the right to challenge a Commission proposal on subsidiarity grounds, forcing the Commission to rethink but not necessarily revise or withdraw the proposal.
31 See Foreign Affairs Committee Written evidence from Frank Vibert, LSE, June 2013.
scrutiny committees and the European Commission, whereby national parliaments would highlight any legislation where:

- The involvement of the institutions must be limited to what is necessary to achieve the objectives of the Treaties; the content and form of the action must be in keeping with the aim pursued (Proportionality),34 or,

- The EU should not take action (except in the areas that fall within its exclusive competence), unless it is more effective than action taken at national, regional or local level (Subsidiarity).35

The dialogue on the subsidiarity principle was institutionalised under the Lisbon Treaty protocols on the role of national parliaments and subsidiarity and proportionality. These were welcomed by the UK Government, but they did not go far enough to satisfy David Cameron’s conviction that national parliaments are the “true source of real democratic legitimacy and accountability” in the EU.36

‘Red Card’ proposals to block draft legislation

UK views include both strengthening the current subsidiarity early warning (‘yellow card’) system, introducing a ‘red card’ veto, and from eurosceptics introducing something different by which the UK could simply do whatever it wanted. The current subsidiarity mechanism is not a means of blocking unwanted EU legislation, but since 2009 calls for a national veto power have increased – and not just from the UK Government. Two systems have gained currency across the EU:37

- The Green Card – the power for a certain number of national parliaments to come together to propose possible legislation to the Commission, which will then initiate the proposal via the EU’s normal policy-making system.

- The Red Card – an extension of the scrutiny powers enshrined in the Lisbon Treaty’s Early Warning Mechanism38 to give a certain proportion of national parliaments the power to veto acts.

The then Foreign Secretary William Hague told the Königswinter Conference in Germany on 31 May 2013 that the current ‘yellow card’ might be strengthened or extended:

... we should do more to help our parliaments exercise their right to work together to raise a yellow card to object to legislation where action should be taken at a national rather than a European level, in line with the principle of subsidiarity. We should explore whether the yellow card provision could be strengthened or extended to give our parliaments the right to ask the Commission to start again where legislation is too intrusive, and fails the proportionality test. And we should think about going further still and consider a red card to give national parliaments the right to block legislation that need not be agreed at the European level.

36 See Bloomberg Speech, and HC Deb 12 December 2012 c 291 and HC Deb 17 December 2012 c 569.
37 E.g. in the Dutch Tweede Kamer, the Danish Folketinget, and more widely in COSAC – the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union.
38 Article 7, Treaty on European Union.
In evidence to the ESC on 4 July 2013, David Lidington outlined Government thinking on how to improve the EU’s democratic legitimacy, starting with a repudiation of the view that giving the EP more powers would improve the situation, and going on to discuss a possible ‘red card’ system. The ESC report on Reforming the European Scrutiny System in the House of Commons supported a red card:

170. We conclude that there should be a mechanism whereby the House of Commons can decide that a particular EU legislative proposal should not apply to the United Kingdom. The House’s view could only be expressed prior to the adoption of the measure at EU level: but if such a motion was passed the UK Government would be expected to express opposition to the proposal in the strongest possible terms, including voting against it.39

In September 2013 David Lidington outlined two ways in which to tackle the EU’s democracy challenge: by increasing the role of national democracies through the Council and European Council, and by allowing “national parliaments to play a greater and more effective role in the EU’s functioning”.40 He said the Government was discussing the following remedial proposals with EU partners:

**Increased coordination between national parliaments**, possibly by strengthening existing cooperation channels, particularly COSAC, and establishing new channels (joint committee meetings, or regular evidence sessions from Commissioners or MEPs).

**Earlier and more direct engagement by national parliaments with EU institutions.** The Government would encourage Parliament to consider increasing its level of representation in Brussels (other States’ chambers have 10-20 staff; the UK has three).

**Changes to the processes in Brussels: more effective use of yellow and orange cards;** identify earlier Commission proposals which raise subsidiarity concerns, including through better analysis of subsidiarity implications in Commission legislative proposals. Making it easier for national parliaments to challenge EU legislation: e.g. strengthening existing yellow card process (giving parliaments more time, lowering the threshold of the number of parliaments required to trigger a yellow card, extending scope of the card e.g. to cover proportionality); perhaps allowing national parliaments working together the power to force the Commission to withdraw a proposal (‘red card’ procedure).

We should **explore whether such cards might be issued at any point during the legislative process** and indeed whether they could be exercised in relation to existing legislation. The Government would also support a number of COSAC’s recommendations, including that the Commission should make a political commitment that it will respond to opinions or requests issued by more than a third of chambers.41

In November 2013 the Conservative-led Fresh Start Project outlined proposals for a red card procedure to be introduced via Treaty change, which would allow national parliaments to “combine to permanently block Commission proposals” and, more controversially, to seek to

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40 Written evidence to the Lords EU Committee inquiry into the Role of National Parliaments in the EU, 2013
41 Ibid.
apply the red card to existing EU legislation. The group also suggested strengthening the existing yellow card system “by lowering the threshold for issuance and giving Parliaments more time to scrutinise proposals”. In their view, the trigger for a subsidiarity notification to the Commission should be three national parliaments submitting reasoned opinions, rather than the current one third of national parliament votes, and “a significantly extended period for scrutiny” rather than the present eight weeks.\(^\text{42}\)

David Lidington has also proposed that the red card might take the form of a “political commitment”, (reminiscent of the earlier Luxembourg and Ioannina Compromises).\(^\text{43}\) The advantage of this is that it could be agreed without Treaty change, but it is unlikely to be considered robust enough to defend the national interest.

In Britain’s precarious EU future, Foreign Policy Centre, February 2014, Adam Hug suggested:

> Developing a red card for new EU legislation would be challenging, though not beyond the realms of possibility. In effect, it would develop the upcoming ‘double lock’ of member state views exercised through qualified majority voting (QMV) procedures in the Council of the European Union (Council), into a ‘triple lock’ directly involving national parliaments.

In its response in July 2014 to the ESC report on EU scrutiny, the Government set out its aims for improving parliamentary scrutiny of the EU as a way of involving Parliament more in the EU decision-making process:

> We want to make more effective use of the existing yellow and orange cards and identify Commission proposals which raise subsidiarity concerns earlier. In addition, we want to make it easier for national parliaments to challenge EU legislation. For example, we should consider strengthening the existing yellow card process (giving parliaments more time, lowering the threshold of the number of parliaments required to trigger a yellow card, and extending the scope of the card for example to cover proportionality), and consider proposals to give national parliaments working together the power to force the Commission to withdraw a proposal (a “red card” procedure). We should explore whether such cards might be issued at any point during the legislative process and indeed whether they could be exercised in relation to existing legislation. The Government would also support a number of COSAC’s recommendations, including that the Commission should make a political commitment that it will respond to opinions or requests issued by more than a third of chambers (a “green card”).

Eurosceptic MPs John Redwood and Jacob Rees-Mogg do not think a red card would make much difference. In a debate on the Commission’s 2015 Work Programme on 10 March 2015, John Redwood argued: “Even having a red card, where national Parliaments collectively can block a new proposal, does nothing to tackle the problem that we have this vast panoply of law already agreed, sometimes many years ago, which may prevent a national Parliament from reflecting the will of its people” (c.238). The shadow Europe Minister, Pat McFadden, was also sceptical about different coloured cards making any difference, saying: “If a system is established whereby national Parliaments are given a voice

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\(^{42}\) Fresh Start Project, Mandate for Reform “Securing the Right Deal for the UK: Equipping the EU for a Globalised World”, November 2013

\(^{43}\) European Committee B, Relations between the European Commission and National Parliaments, 30 January 2014.
and can come together to lodge reasoned opinions or objections, it is important that those objections are taken seriously and not simply ignored” (c. 234).

**Disapplying EU law**

The ESC report in November 2013 suggested that, as well as the red card, there should be a provision to ‘disapply’ existing EU law:

171. We further conclude that parallel provision should be made to enable a decision of the House of Commons to disapply parts of the existing acquis. This, we acknowledge, would require an Act of Parliament to disapply the European Communities Act 1972 in relation to specific EU legislation. There have been several Private Members’ Bills over recent years endorsing the principle of disapplication which have sought to achieve this, and amendments to the same effect were proposed in both Houses to the Legislative and Regulatory Reform Bill in 2006, which were whipped by the then official opposition. Such a development would be much more legally complex and controversial, but we were taken by the logic of the arguments of Professor Chalmers questioning the supremacy of EU law, and we look forward to the Government’s detailed response to this proposal.

In its response the Government set out why it did not support this recommendation:

It is in the UK’s national interest to have a strong and coherent single market. […] Any such market relies on common rules (though those rules should of course be as few and as light touch as possible). If national parliaments around the EU were regularly and unilaterally able to choose which parts of EU law they would apply and which parts they would not, the European single market would not work. Indeed, any set of arrangements based on common rules, in or out of the EU, would be unworkable under such a system. In enacting the European Communities Act 1972, Parliament decided that the United Kingdom should accept the rights and obligations associated with EU membership. These obligations include the requirement to ensure the respect of EU law in the United Kingdom.

**4.2 Support for a ‘red card’ in Europe**

According to Open Europe’s ComRes poll, 22-24 May 2013, one of the top four priorities for a renegotiation of the UK’s EU membership was “giving the UK parliament more powers to block unwanted EU laws”. Business for Britain also supports a red card.

It is hard to assess the level of support among other EU governments for a red card procedure. In 2007, when the Lisbon Treaty was being negotiated, Poland, the Czech Republic and the Netherlands supported such a procedure. According to an Open Europe report in September 2011, ‘European localism’ would be supported by Scandinavia, the Netherlands, most of Eastern Europe and the German Länder.

A House of Lords report on the role of national parliaments in the EU noted similar views to those of the UK from the Finnish and Cypriot parliaments. The Dutch Government appears to be a firm supporter of strengthened subsidiarity. In a review of subsidiarity and proportionality.

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44 A letter in January 2014 from around a hundred Conservative MPs (about 17% of the Commons) also called on David Cameron to introduce a national veto of existing unwanted EU legislation. See Telegraph, 11 January 2014


46 Anthony Browne and Mats Persson, The case for European localism, September 2011.
in June 2013, it called for “a more sober but more effective EU, starting from the principle: ‘at European level only when necessary, at national level whenever possible’”. The Dutch Government argued that power and responsibility should be at local, national, European, or global level, depending on the issue. It stated that the “time of an ever-closer union in every possible policy area is behind us”, preferring the principle of “Europe where necessary, national where possible”. In a speech on 30 October 2013 the Dutch Prime Minister, Mark Rutte, echoed much of what the Fresh Start Group and the Government have been saying about looking at which tasks are better performed by Member States, and which by Europe. The then Dutch Foreign Minister, Frans Timmermans, wrote in a Financial Times article, Monnet’s Europe needs reform to fit the 21st century, on 14 November 2013:

... we would encourage national parliaments to bring Europe back home where it belongs and strengthen their co-operation with each other and the European parliament. They should have the right to summon commissioners to capitals. And if one-third of national parliaments raise subsidiarity objections to a legislative proposal (the yellow card procedure), the commission should not just reconsider, it should use its discretion to take the disputed proposal off the table, turning the yellow card into a red.

According to a report by Rem Korteweg of the Centre for European Reform, the Dutch subsidiarity review has received support from Germany, Sweden, Finland and Austria, and even the EP President, Martin Schulz. However, the author did not think the Dutch Government would support David Cameron in his quest for “radical changes to the EU”, and the 2013 Tweede Kamer report on national parliaments in the EU did not call for a red card system.

Germany would be a highly desirable ally in this matter, but is proving ambivalent. Before the 2013 German election Chancellor Merkel was reported as wanting more direct agreements between EU Member States - an intergovernmental rather than an EU approach - and during her election campaign, she was widely reported as saying she saw “no need to give more authority to Brussels”. Open Europe reported on 31 May 2013 on a guest piece in the Frankfurter Allgemeine Zeitung, 31 May 2013, by Professor Dr. Hans Hugo Klein, a former CDU MP and judge at the German Constitutional Court. He argued that “the principle of subsidiarity needs to be defined in more detail” followed by a “thorough check of existing EU law”, and that, in order not to alienate the people in Europe, “a repatriation of EU competences and a thinning-out of European rules and regulations is required”.

4.3 Further reading

Standard Note 6871, Democratic Legitimacy and the EU: reading list, 29 April 2014

5 Prospects for the UK reforms
5.1 Will reform require Treaty change?
It is too early to say for certain whether the UK’s proposed reforms will require EU Treaty change, but experts have looked at possibilities for reform with and without Treaty amendment. David Cameron told the Financial Times on 12 March 2015 that although his
legal advice was that Treaty change would be needed, “‘legal advice in the European Union is a strange beast’ and was often surprisingly flexible”.

Camino Mortera-Martinez of the Centre for European Reform looked at the likelihood of the Government achieving its aims before the proposed 2017 referendum. She points out that EU Treaty change under Article 48 TEU can be a lengthy process and would probably need the unanimous agreement of all 28 EU Member States, but is a little more optimistic about prospects for limited reform:

The UK could [...] try to achieve limited reforms to the rules on access to benefits which would be both treaty-compliant and politically attractive to some other governments; for example, limiting the time that job-seekers can stay in the UK when they have failed to prove that they have a real chance of finding employment or that they are actively looking for a job. The UK could certainly impose restrictions on the right of free movement of workers from future accession countries. Britain can exercise more stringent controls on EU criminals entering the country through the effective implementation of the 35 JHA measures the government has just opted back into. The UK does not need to change EU law in order to expel criminals from its territory, since the ‘citizens directive’ already allows for it.49

Mortera-Martinez suggests a political agreement enshrined in a protocol – along similar lines to the protocol which took account of Ireland’s concerns about the Lisbon Treaty - might be more realistic than full Treaty change. But would this be enough to convince the UK electorate to vote to stay in the EU?

Open Europe Research Director Stephen Booth considered the proposed changes to welfare benefits50 and explained which of David Cameron’s suggested reforms could be achieved without EU treaty change.51

Steve Peers, Professor of EU and Human Rights Law, University of Essex, has also set out in an EU Law blog on 28 November 2014 how the Prime Minister’s proposals might be achieved and where Treaty change would probably be needed.

Amendment of the EU free movement directive (2004/38/EC) and regulation (492/2011) would require a qualified majority: the support of at least 55% of the Member States (i.e. at least 16 States) representing at least 65% of the EU population (i.e. in 2014 around 328.6 million).52

Jean-Claude Piris, former Director General of the EU Council Legal Service, did not think all David Cameron’s proposed reforms would require Treaty change. As he outlined in the Financial Times 5 May 2014, some could be achieved with political will, a mood for compromise and “deft legal drafting”.

The following table summarises how the Prime Minister’s proposed reforms might be tackled:

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49 Centre for European Reform, Cameron’s migration speech and EU law: Can he change the status quo? 4 December 2014.
50 “Cameron raises stakes in standoff over EU migrants’ access to benefits”.
51 “Free movement: Why reforming rules on in-work benefits doesn’t require treaty change”.
52 EU Council factsheet, New method of calculating a qualified majority in the Council.
<table>
<thead>
<tr>
<th>Proposed reform</th>
<th>Treaty amendment?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Powers flowing away from the EU, not always to it.</td>
<td>Current Treaty provisions are limited. Requirement for Treaty change depends on subject areas and EU powers in those areas. Repatriating EU competence over social and employment law would require Treaty change, but reforming energy policy, modernising the CAP or reforming fisheries policy could be negotiated within the existing Treaties.</td>
</tr>
<tr>
<td>National parliaments able to work together to block unwanted EU legislation;</td>
<td>Currently several national parliaments together can ask the Commission to rethink a proposal, but there is no obligation to amend/withdraw ('yellow card' procedure). The proposed red and green card procedures would require Treaty/Protocol amendment.</td>
</tr>
<tr>
<td>“green card” procedure allowing parliaments to encourage Commission to introduce legislation, repeal or revise existing measures;</td>
<td>The new European Commission that took office on 1 November 2014 included a new First Vice-President role with particular responsibility for considering respect for subsidiarity and proportionality before any new legislative proposals are tabled.</td>
</tr>
<tr>
<td>“red card” by which national parliaments working together could block Commission proposals.</td>
<td></td>
</tr>
<tr>
<td>Businesses liberated from red tape and benefiting from strength of EU internal market to open up greater free trade with North America and Asia.</td>
<td>Political will needed to amend EU legislation rather than Treaty change. Free trade agreements with other countries could be negotiated under current Treaty provisions.</td>
</tr>
<tr>
<td>UK police forces and justice systems able to protect British citizens without “unnecessary interference” from EU</td>
<td>UK has extensive opt-outs from police and justice measures. A complete opt-out from all such provisions would require Treaty change.</td>
</tr>
<tr>
<td>Free movement to take up work, but not free benefits: Freedom of movement not an “unqualified right” for residence purposes only.</td>
<td>Free movement is a fundamental EU principle guaranteed in several Treaty Articles. These would need to be amended, as would 2004 Free Movement Directive and 2011 Regulation.</td>
</tr>
<tr>
<td>Support for continued EU enlargement but with mechanisms to prevent vast migrations across Europe.</td>
<td>Accession treaties for new Member States could apply longer transitional rules on free movement of workers.</td>
</tr>
<tr>
<td>Dealing with concept of “ever closer union”, which “is not right for Britain”.</td>
<td>Treaty change needed to remove concept from Preamble. A new political declaration could recall that Treaties oblige EU to respect Member States’ history, national identities, political and constitutional structures. Treaty change to amend EU competences and amend/add to protocols setting out UK opt-outs.</td>
</tr>
<tr>
<td>Protection for non-Euro States from possible domination by Eurozone States and caucusing. See David Lidington’s speech, 25 June 2014.</td>
<td>Likely to require Treaty change.</td>
</tr>
</tbody>
</table>
5.2 Support for / opposition to the UK’s proposed reforms

The European Commission President, Jean-Claude Juncker, has indicated that he will listen to UK reform proposals but has ruled out Treaty change to end the free movement of workers: “We can fight against abuses but the EU won’t change the treaties to satisfy the whim of certain politicians”.53

The appointment of the Polish Prime Minister, Donald Tusk, as the new President of the European Council looked as if it could be a valuable source of support for the UK. Tusk was the UK Prime Minister’s preferred candidate, and if Treaty change is needed, having the European Council President as an ally could make it easier for a Conservative government to influence the reform agenda. There were reports in August 2014 that Mr Tusk had promised to support Mr Cameron’s reform agenda, while others pointed to the unlikelihood of Poland supporting key elements of Cameron’s reform agenda, such as limiting migration and benefits.54 In a press interview on 15 March 2015, Donald Tusk said he was “sceptical when it comes to changing the treaty”.55

There is agreement among some Member States that the free movement principle needs to be reformed with regard to welfare benefits.56 In April 2013 four EU governments (UK, Austria, Germany and the Netherlands) wrote to the Irish Presidency, calling on it to change the rules on free movement to make it harder for EU citizens to claim benefits when moving to another Member State.

But opposition has come from the Czech Republic57, Poland58, Finland59, Sweden60 and most pertinently, Germany. The UK Government remains optimistic that it will secure support for reform. On 2 December 2014 the Foreign Secretary Philip Hammond said he had visited ten Member States over the previous few months to discuss EU reform, and “More and more leaders across Europe agree that the EU needs to change. We have already made progress: the June European Council agreed that EU reform was necessary and that the UK’s concerns should be addressed”.

Open Europe Director Mats Persson believes that “If the UK attempts to re-write the rules around EU migrants’ access to welfare (including in-work benefits), then Cameron will likely find EU partners, including Berlin, willing to support him”.61 When looking into the UK Government’s main allies in Europe it is important to note that alliances are not set in stone; Member States will agree and disagree from one event to another depending on differing domestic interests.62

53 Telegraph, 18 January 2015.
54 See, for example, Telegraph, 30 August 2014.
56 Cameron, D., ‘David Cameron: the EU is not working and we will change it’, The Telegraph, 15 March 2014.
58 Ibid.
59 ‘Cameron loses support from European allies’, Financial Times, 06 November 2014.
60 Ibid.
61 “Cameron likely to find EU allies on benefits reform”.
62 The main events or ideas that have caused shifts in alliances and relationships with the EU seem to be freedom of movement and welfare tourism, reform of the role of national parliaments, the possibility of an EU exit, and the appointment of Jean-Claude Juncker as Commission President.
Who is with the UK?

The Netherlands

The Netherlands Prime Minister Mark Rutte and David Cameron share many political traits - both are moderates, leading coalitions and implementing austerity at home; both are facing challenges from Eurosceptic populists: Nigel Farage in Britain, and Geert Wilders in the Netherlands\(^6\)3.

There is a similarity between the reforms proposed by the UK government and by the Netherlands. Rutte’s proposals are as follows:

- *Put Brussels “back in its box”, giving national parliaments the power to veto EU directives they don’t like. If more than a third of Member States dislike an EU idea, it should bite the dust;*

- *A new manifesto for the EU: it should stop spewing out directives, and act only when national parliaments cannot*

- *Less interference, less spending, fewer diktats, more democracy\(^6\)4*

The Netherlands and the UK agree that the EU needs reform; that it needs to become more democratic through greater national parliamentary involvement in decision-making. However, “the [Dutch] government does not want opt-out clauses and neither seeks a redefinition of the relationship with the European Union”.\(^6\)5 Frans Timmermans made clear that the Netherlands would not be considering an EU exit – “you only reform the EU from within, not by running away from it”.\(^6\)6

Denmark

The Danish and UK Governments have both spearheaded the debate on reforming the position of national parliaments in the EU. The UK House of Lords, the UK Government and the Danish *Folketinget* have all published reports on the role of national parliaments in the EU. The Danish *Folketinget* proposed 23 recommendations to strengthen the role of national parliaments\(^6\)7 and the UK has promoted more specifically the introduction of a green card\(^6\)8 (power for a group of national parliaments to propose legislation) or red card\(^6\)9 (power for a group of national parliaments to veto proposed legislation). The Danish and UK Governments agree that the only way for the EU’s so-called ‘democratic deficit’ to be mitigated is to reinforce the role of national parliaments. Like the Netherlands, however, Denmark has “no intentions of following Cameron in that direction [to a referendum]”\(^7\)0. Nicolai Wammen, the Danish minister for European Affairs, has made it clear that “It’s in Denmark’s interests to have as close ties as possible to the centre of Europe”\(^7\)1.

Germany

\(^6\)3 *Why David Cameron’s ‘Northern Alliance’ may reshape Europe*, *The Spectator*, 1 March 2014.

\(^6\)4 Ibid

\(^6\)5 ‘UK allies turn cold shoulder on Cameron’, *Euractiv*, 24 January 2013.

\(^6\)6 Ibid.

\(^6\)7 ‘Twenty-Three Recommendations – to strengthen the role of national parliaments in a changing European governance’ (accessed 8 January 2015).


\(^7\)0 ‘UK allies turn cold shoulder on Cameron’, *Euractiv*, 24 January 2013.

\(^7\)1 Ibid.
So far Chancellor Merkel has been keen to sound a conciliatory note, issuing a joint statement with David Cameron emphasising that Germany agrees with reforms to make the EU more competitive and more focused on growth. Moreover, Merkel has agreed that Member States need to be more protected from welfare abuses. Germany, like the UK, has taken steps to tighten up rules on benefits for EU migrants. On 31 August 2014 German Finance Minister Wolfgang Schäuble and CDU politician Karl Lamers wrote in the Financial Times:

We must uphold the freedom of establishment – the right of people and companies to carry out business wherever they want. But even here, it is essential to set the right incentives in order to prevent “benefit tourism” and a wave of poverty-driven immigration. Levels of economic wellbeing still diverge greatly throughout Europe; for this reason, when it comes to legislation on access to social security systems, we have to find EU-level solutions that take these differences

On 27 August 2014, after the publication of a final report drawn up by a government-appointed commission investigating the effects of immigration on Germany, the German government tabled proposals to tackle alleged abuses of the benefits system by EU migrants: they would no longer receive social welfare benefits after six months with no work, EU citizens convicted of benefits fraud could be deported with a five-year travel ban imposed; and EU migrants to Germany may have child benefit capped at levels paid in their home countries.

Proposals were adopted in the Gesetz über die allgemeine Freizügigkeit von Unionsbürgern (Freizügigkeitsgesetz/EU - FreizügG/EU), 2 December 2014. The Interior Minister, Thomas de Maizière, also announced a plan to transfer an additional €25 million in 2014 to municipalities with higher numbers of Romanian and Bulgarian social welfare claimants.

Who is against the UK?

Germany
In spite of her support for ending benefit abuse, Angela Merkel has maintained that restricting freedom of movement in the EU is a red line that cannot be crossed, and she has warned David Cameron that she would rather see the UK leave the EU than change freedom of movement rules. Following her visit to London on 7 January 2015, Chancellor Merkel reinforced the assertion that the principle of freedom of movement must be upheld to the highest degree and the abuses of welfare systems could be better dealt with by domestic governments.

France

72 ‘Cameron Euro allies back anti-Muslim marches’, Left Foot Forward, 7 January 2015.
73 ‘Merkel Said to Offer Cameron Common Ground on Immigration’, Bloomberg, 7 January 2015.
74 Abschlussbericht des Staatssekretärsausschusses zu „Rechtsfragen und Herausforderungen bei der Inanspruchnahme der sozialen Sicherungssysteme durch Angehörige der EU-Mitgliedstaaten ("Legal issues and challenges in the field of social security claims by nationals of the EU Member States")
75 Financial Times, 27 August 2014, “Germany considers capping child benefit for migrants”. An Overview of measures to fight abuse from the interim report of the Committee of State Secretaries on legal issues and challenges in the field of social security claims by nationals of the EU Member States is available in English on the German Government website. See also Federal Ministry of the Interior, Committee of State Secretaries: Cabinet adopts final report, 29 August 2014.
76 Frankfurter Allgemeine, 12 August 2014.
77 ‘Cameron Euro allies back anti-Muslim marches’, Left Foot Forward, 07 January 2015.
78 Guardian, 2 November 2014
79 ‘Germany gives no ground to UK on the EU migration’, EU Observer, 08 January 2015.
In December 2014 President François Hollande made it clear that he will block any attempts by David Cameron to request Treaty change. He is opposed to amending the EU Treaty on the grounds that change is not needed and might trigger a referendum in France. A senior French Government source is reported to have stated: “the price to keep Britain in Europe keeps getting higher and higher...We will not pay an extra price to keep the UK in the EU”. As Treaty change requires unanimity, French opposition could halt any major reforms proposed by the UK Government.

**Czech Republic**

The Czech Republic’s Europe Minister, Tomas Prouza, responded to David Cameron’s November 2014 speech by posting a picture of Czech pilots serving in the RAF during the Second World War, and criticised Cameron’s suggestion that EU immigrants should only be allowed to claim welfare after they had been in the UK for four years. He posted the following tweet: “These Czechs 'worked' in the UK for less than four years. No benefits for them?” This followed an earlier Tweet in which Prouza said: “Cameron’s speech on migration: taxing people according to their nationality? What other criteria will come next?”

**Poland**

The Polish Prime Minister, Ewa Kopacz, stated that Poland would “not agree to changes undermining the principles of the EU's single market, specifically the free movement of people”.

**Sweden**

In 2013 Stefan Löfven, Sweden’s centre-left prime minister, criticised David Cameron’s call for limits to free movement, stating “it’s not much of an internal market if we develop a market together and then one or two countries say we want to change this. We might have other things we want to change”. Carl Bildt, then foreign minister, echoed this sentiment stating, “flexibility sounds fine, but if you open up to a 28-speed Europe, at the end of the day there is no Europe at all. Just a mess”.

**Finland**

Finland’s Prime Minister, Alexander Stubb, said he wanted to help Mr Cameron, “but there were lines that even his closest allies would not cross in an EU renegotiation”. Stubb said in November 2014 that “We need to understand what the UK wants and the UK needs to learn where the limits of other member states are”, going on to say: “whether some kind of arrangement can be found, I don’t know, but to start putting restrictions on free movement in one way or another I would find quite difficult”.

5.3 Further reading

- *Open Europe, How EU renegotiation will happen and how to pursue it*, David Frost, 16 February 2015

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80 ‘France to block David Cameron’s treaty change plan’, *The Telegraph*, 18 December 2014.
81 Ibid.
83 Ibid.
84 ‘European leaders hit out at Cameron’, *Financial Times*, 23 January 2013.
85 Ibid.
86 ‘Cameron losing support around Europe’, *Professional Investment Consultants-Middle East Ltd (PIC)*, 6 November 2014.
87 ‘Cameron losing support around Europe’, *PIC*, 6 November 2014.
- Discretion or perplexity? How do Britain's fellow EU members view British EU reform proposals? Richard Corbett

- Britain and The Netherlands: Similar concerns but different approaches in reforming the EU, Jan Marinus Wiersma and Adriaan Schout