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# PROTECTING RIGHTS AND INVESTMENT FOR OUR COMMUNITIES

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Interim analysis document  
September 2016

## Foreword

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For decades, the European Union has been a crucial, and often unseen, force for good in the lives of communities up and down the country, from introducing the regulations that cleaned up our beaches to protecting workers against discriminatory treatment by their employers.

EU funding has also played a vital role in the regeneration and development of many of the most deprived areas in Britain, as well as supporting a wide range of other programmes, from advanced medical research to the peace process in Northern Ireland.

On 23 June, we were given our instructions by the British people to leave the European Union, and we must act on them. But we must also prepare – in a way the Tory government have singularly failed to do – for the risks that will come from Brexit.

Most importantly, that means seeking to find the right balance for the future of freedom of trade and freedom of movement, accepting that the impacts of EU migration need to be addressed and that their sensible management can be part of the solution.

But also high on the list of risks is that following Brexit, a Tory government will scale back the rights that are currently guaranteed by EU membership, and fail to make up the potential shortfall that leaving the EU will create in support for our deprived regions, our farming communities, and our health, education, culture and transport sectors.

We have a major fight on our hands to protect the rights and investment on which our communities rely, but the Labour party is ready to lead that fight, and this document – which analyses the risks and sets out our priorities – is just the start.

Leaving the EU must not mean losing all the benefits that our membership has brought, especially when it is our most vulnerable citizens and deprived communities that will pay the highest price. We must all join together to demand their protection.



**Emily Thornberry**

**Shadow Secretary of State for Foreign and Commonwealth Affairs**

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## Contents

Foreword – Emily Thornberry MP

1. Introduction	1
2. Workers’ rights	3
3. Regional funding	9
4. Farming and fishing	16
6. Environment and climate change	21
5. Consumer protection	26
7. Financial services	30
8. Justice and Home Affairs	34
9. Human Rights	40
10. Foreign Relations and Defence Policy	44
11. Northern Ireland	48
12. Education	51
14. Health	55
15. Disability	59
16. Culture	63
17. Transport	68
18. Conclusions	72

## 1. Introduction

1.1 Over recent decades, Britain's membership of the European Union has provided undeniable benefits to people and communities across the country in terms of:

- rights, protections and standards that have been guaranteed under laws agreed on an EU-wide basis, and which cannot therefore be arbitrarily withdrawn by national governments; and
- investment that is provided from European Union funds, and which might not otherwise be made available by national governments.

1.2 It is a statement of fact that the outcome of the EU referendum means that neither the rights nor the investment that our people and communities currently enjoy as a result of EU membership can be guaranteed in a post-Brexit Britain.

1.3 But, of even greater concern, it must be anticipated that a Tory government wishing to deter the threat of recession and push through even deeper cuts in public spending will actively seek to remove many of those rights, and allow that investment to lapse.

1.4 If faced with declining business investment in the UK economy, a Tory government with limited options on tax incentives may instead look to cut regulation in areas ranging from maternal leave and holiday rights to controls on pollution and working conditions.

1.5 Similarly, if faced with a rising national deficit and competing pressures in terms of maintaining *existing* government spending, it is highly unlikely that a Tory government will make it a priority to backfill investment currently provided by the EU, ranging from funding for deprived regions in the UK to grants for advanced medical research.

1.6 While much of Westminster's attention – including our own – is rightly focused on what future relationship Britain will have with Europe in a post-Brexit world, particularly in relation to the free movement of goods, services and people, we must also act to protect the rights and investment which could in future be left at the whim of a Tory government.

1.7 It is therefore incumbent on the Labour party to lead the campaign to save the rights and investment that are currently guaranteed through our membership of the EU, and to demand that these are maintained in a post-Brexit Britain.

1.8 We will do so alongside stakeholders in local government, NGOs, the unions, and throughout the public at large, every one of whom has a role to play in ensuring that the rights and investment our communities depend on are protected.

1.9 As a first step in that campaign, this interim paper sets out a large number of areas where rights and investment are at risk, analyses the implications of losing them, and makes the indisputable case for their retention.

1.10 This paper will be circulated to the Parliamentary Labour party, Labour's MEPs, the other stakeholders mentioned above, and placed on the 'Your Britain' website so that our party membership can contribute their views to this process.

1.11 If you have comments or additions to make to this analysis, if you believe there are other areas that also require attention, or simply if you want to support this campaign, please send your feedback to: [EUconsultation@labour.org.uk](mailto:EUconsultation@labour.org.uk).

## 2. Workers' Rights

2.1 Vast swathes of current UK employment law derive from original EU legislation, ranging from protections against discrimination, unsafe work environments and the arbitrary decisions of employers on working terms and conditions.

2.2 As the TUC have said, *"the European Union has played a central role in protecting working people from exploitation, combating discrimination and promoting good employment practices."*<sup>1</sup>

2.3 In a post-Brexit environment, with economic growth and business investment under pressure, there will be inevitable calls from some business associations for what they will call a bonfire of employers' red tape, but which would actually represent the wholesale destruction of UK workers' rights. The Labour party will not allow that to happen.

### Benefits of EU membership

2.4 The EU has originated most of the UK's legislation on areas such as annual leave; the rights of agency workers, part-time workers and fixed-term workers; rules against discrimination; consultation on collective redundancy; rights to paternity, maternity and parental leave; protection of employment upon the transfer of a business; and job specific legislation in the aviation, maritime and driving industries.<sup>2</sup>

2.5 In some other cases, it was the UK's own legislation that has been successfully adopted by the EU as a whole, e.g. laws in relation to the insolvency of an employer and payments for workers. But in the majority of areas, it has been the EU which has initiated legislation, and the UK which has subsequently transposed it into domestic law.

2.6 In addition, there are some areas where employment rights have been established EU-wide as a result of rulings by the European Court of Justice, for example the right of part-time workers to join occupational pension schemes, after the ECJ ruled that excluding them constituted indirect sex discrimination.

2.7 Taking all the above, below is a summary of the key employment rights currently guaranteed by Britain's membership of the European Union:

- **Working Time Directive:** Adopted by the UK in 1998, the Directive instituted a maximum 48-hour working week and set out minimum standards on rest breaks during the working day and week. Employees may opt out of these terms if they wish, but the Directive has reduced excessive working hours significantly: 700,000 fewer people work for over 48 hours a week compared to 1998 figures.

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<sup>1</sup> The TUC, ['Working people must not pay the price for the vote to Leave'](#), p. 6.

<sup>2</sup> EUROPA website [here](#).

- **Paid Annual Leave:** The Working Time Directive also made paid annual leave a statutory right – the first time this entitlement had been granted in the UK. Its impact has been considerable: 6 million workers won improved entitlements to paid leave in the immediate aftermath of its implementation. Two million of these had previously had no right to paid leave, and a significant number were female, part-time workers. The European Court of Justice (ECJ) has buttressed the implementation of the Working Time Directive by often ruling generously in favour of workers, including ruling that time spent ‘on-call’ is part of the 48-hour limit, and that annual leave taken where a worker falls sick may be rescheduled.
- **Maternity Rights:** Great strides were made in the field of maternity rights when the EU Pregnant Workers Directive was implemented in 1992. Health and safety protections for expectant and new mothers were introduced in the workplace, and women were newly entitled to paid leave to attend antenatal appointments. It also placed an obligation on employers to adapt working conditions to make them more accommodating to pregnant women and new mothers, for instance transferring them to a different position within an organisation if more suited to their needs.
- **Maternity Leave:** This Directive also introduced an EU minimum of 14 weeks’ maternity leave. It is worth noting that although the UK minimum was already in excess of this figure at the time of implementation (and continues to be so), rulings from the ECJ have helped address imbalances and discrimination that many women still face in the workplace when they have children. For instance, it ruled that discriminatory behaviour towards expectant or new mothers was, unequivocally, sex discrimination. This, in turn, has had a knock-on effect on UK law: the Equality Act 2010 decreed that discrimination in the workplace on the grounds of pregnancy or taking up maternity leave was unlawful, a landmark victory that was achieved following a case taken against the government by the Equal Opportunities Commission, who cited UK law in their case.
- **Parental leave:** The Parental Leave Directive gives both working parents the right to take unpaid leave from their job to look after their children. Adopted by the UK in 2013, it gives parents the right to take up to 18 weeks’ unpaid leave per child. The Directive also gives workers the option to take last-minute time off work to attend to urgent family matters, for instance taking unwell children to see a doctor. Nearly a fifth of working parents and carers in the UK exercise this right every year. The European Commission is currently considering options for further improving EU-wide maternity and parental rights, and is in particular seeking to improve families’ work-life balance. Proposed measures include incentives for fathers to take parental leave, and new proposals on breastfeeding in the workplace.
- **Equal pay:** Equal pay for equal work carried out by men and women is enshrined in Article 157 of the Treaty of the European Union, directly effective in UK courts. As

with other workplace rights, the ECJ has been a crucial actor in upholding equal pay legislation, with women working part-time particular beneficiaries of its rulings on wage discrimination.

- **Anti-discrimination rights:** The EU has been a crucial actor in instituting more expansive anti-discrimination laws in the UK. Although the UK already had sex and race discrimination laws in place when it joined the bloc, and implemented disability discrimination laws ahead of the EU, the EU Framework Equal Treatment Directive 2000 introduced measures to combat discrimination on the grounds of age, religion and sexual orientation. The manner in which we define and recognise workplace discrimination has also been improved by EU law: the Burden of Proof Directive recognises the difficulties employees face in proving that they have experienced discrimination in the workplace, thereby making it incumbent on the employer to prove they have *not* discriminated, rather than vice versa. Furthermore, by stipulating there be no upper limit to compensation in such cases, EU law recognises the scale of psychological harm caused by workplace discrimination. The Coalition government sought to place a cap on compensation for workplace discrimination, but found it could not, primarily because of EU legislation in this area.
- **Rights for atypical workers:** The rights of those on part-time, fixed-term and agency contracts have been bolstered significantly by EU legislation, meaning that workers whose circumstances may be more precarious than those on traditional, full-time contracts can enjoy a more secure professional life. The Fixed Term Employee Regulations put safeguards in place to improve pay, conditions and general job security for workers on fixed-term contracts and temporary employees, and was of particular benefit to the education sector. Similarly, the Agency Workers Regulations 2011 gave some agency workers pay rises and better holiday allowances.
- **TUPE protections:** Protections for outsourced employees and staff affected by business takeovers are enshrined in the Transfers of Undertakings (Protection of Employment) Regulations 2006. They include measures ensuring continuation of contractual entitlements if a company changes hands and laws to combat employment practices that often lead to poor wellbeing, such as outsourcing.
- **Posted workers:** The Posted Workers Directive 1996, contains measures to guarantee workers posted on a short term basis to other EU countries the same minimum rights as citizens of their host country, notionally preventing employers from undercutting pay and conditions by employing migrant workers. The Directive was implemented in the UK in 1999.
- **Rights to information and consultation:** The Acquired Rights Directive and the Collective Redundancies Directive help facilitate information sharing and consultation between workers and their employers, ensuring that restructuring is



effected in a fairer and more ethical manner. They are heavily relied on by unions when negotiating redundancy and outsourcing packages.

- **Health and safety:** UK health and safety legislation has been strengthened by EU law, primarily through the Health and Safety Framework Directive. These regulations are mainly implemented in the UK through the Health and Safety at Work Act, and include mechanisms for assessing and reducing risks in the workplace.
- **Safeguards for upholding workers' rights:** The ECJ is a vital channel for ensuring workers' rights are upheld in EU member states, and has protected numerous workers in cases where the UK has failed to implement EU law correctly.

2.8 It is widely recognised that EU employment law, specifically the harmonisation of rules across member states, has helped prevent a race to the bottom in terms of workers' rights. In a globalised economy, without these minimum standards guaranteed, workers in the UK would be at risk of exploitation, low wages and unsafe standards at work.

2.9 The UK has also obviously benefited from workers being able to travel into the UK from the EU to take up jobs that we would struggle to fill using only the domestic workforce. This includes the significant number of EEA nationals working in the NHS. This issue will be separately addressed by Labour as part of our work on the future of Britain's access to the Single Market.

### **Risks and Implications**

2.10 While it is easy to dismiss the idea that employment rights are threatened by Brexit because the vast majority of those rights are currently enshrined in UK law, and in some cases pre-date Britain's membership of the EU, the fundamental point is that EU legislation currently acts as a safety net which prevents successive governments from reducing or removing those rights, and when that safety net is removed, the rights will be *de facto* at risk.

2.11 This is even more the case because of the financial and economic climate that the UK may be facing in a post-Brexit environment. If investment in Britain becomes less attractive, and the government's scope to offer tax incentives to business is limited by the state of the public finances, the deregulation of the labour market is one of the only levers a Tory government will have to make the UK a more 'attractive' place to invest.

2.12 During the Referendum campaign, the opportunities arising from such deregulation were actively promoted by the Leave campaign, for example with Boris Johnson (now the Foreign Secretary) saying: "*We've got too much regulation, too much stuff coming from Brussels,*

*too many laws that are promulgated by Brussels that make it hard for business. So I think we need to weigh in on all that stuff, all that social chapter stuff.”*<sup>3</sup>

2.13 Priti Patel, now Secretary of State for International Development, also referred to social and employment law as a “burden” that could only be removed by leaving the EU<sup>4</sup>, while the Vote Leave website said: *“Lots of health and safety regulation is sensible but sometimes the EU goes far too far... The European Court has ruled that it is illegal to exempt small businesses, even those with fewer than ten employees, from this onerous requirement.”*<sup>5</sup>

2.14 David Davis, now Secretary of State for Exiting the European Union, wrote in mid-July that: *“the great British industrial working classes voted overwhelmingly for Brexit. I am not at all attracted by the idea of rewarding them by cutting their rights.”*<sup>6</sup> However, when pressed on this commitment by the Foreign Affairs Select Committee, he would only say that this was a “personal view”, not government policy.<sup>7</sup>

2.15 It is also inevitable that groups representing big business within the UK (the CBI, Institute of Directors, etc.) will target the repeal of certain specific rights once their protection under EU law is removed (e.g. the recent ECJ ruling stating that the calculation of holiday pay should take into account regular overtime, bonus and commission payments), and once that precedent has been set, challenges to more fundamental, long-standing rights, such as the regulations enacting the Working Time Directive, may follow.

## **Next Steps**

2.16 As the TUC have said: *“UK workers should also not pay the price of voting to leave the EU in terms of reduced rights at work...Watering down or dismantling this legislation would amount to a direct attack on the basic rights, security and standards of living working people and a denial of campaign promises.”*<sup>8</sup>

2.17 There is no doubt that a right-wing Tory government with limited options to promote growth and investment will have employment regulations in their sights, and what may initially be presented as the harmless cutting of unnecessary red tape could quickly escalate in an all-out assault on those rights that – within the EU – British workers have rightly been able to take for granted.

2.18 Working with the unions, and with responsible business groups, the Labour party must and will lead the fight against **any** attempt to scale back employment rights currently

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<sup>3</sup> Daily Telegraph news story [here](#), 1 September 2015.

<sup>4</sup> Belfast Telegraph news story [here](#), 18 May 2016.

<sup>5</sup> Vote Leave website briefing [here](#).

<sup>6</sup> Conservative Home article [here](#), 14 July 2016.

<sup>7</sup> Hearing of the Foreign Affairs Select Committee, 6 September 2016.

<sup>8</sup> TUC, ‘Working people must not pay the price for the vote to Leave’, p. 6.

guaranteed under EU law or established via ECJ rulings. That will be one of the central priorities of the campaign that we will take forward in relation to protecting all the rights and investment set out in this document.

### 3. Regional Funding

3.1 Over recent decades, EU regional funding (also known as ‘structural’ or ‘cohesion’ funding) has invested billions into some of the most deprived areas of the UK, aiming to reduce inequality and foster more prosperous communities with strong civic and cultural identities, through investment in infrastructure, businesses and heritage. Recent academic research found that there is *“no constitutional law or precedent on what would happen to this current funding if the UK were to leave the EU.”*<sup>1</sup>

3.2 If the likely gap in this funding created by Brexit is not filled both completely and permanently by the Tory government, some of the UK’s - and indeed the EU’s - poorest communities will suffer economically and socially for decades to come. It is incumbent on the Labour party, whose MPs and local councillors represent many of these communities, to demand that – no matter what the fiscal circumstances in a post-Brexit environment – regional funding is fully protected, and to guarantee that this will be the case under a future Labour government.

#### Benefits of EU membership

3.3 EU regional funding is designed to redress socio-economic imbalances across the EU’s diverse range of countries and communities. All EU regions are technically eligible for the funding, but the intensity of investment depends on the level of need. The two major instruments for stimulating regional development are the European Regional Development Fund (ERDF), which supports research, innovation and infrastructure, and the European Social Fund (ESF), promoting social inclusion and employment opportunities.

3.4 Under current rules, EU funding must also be matched by funding sourced by the member states themselves, incentivising central and regional government or private investors to finance projects in the regions concerned, and doubling the benefits for those areas qualifying for support.

3.5 Allocation of structural funding runs for a seven-year period – allowing long term projects to flourish, and for the impact of grants to be properly assessed before they are renewed – with the current tranche running from the start of 2014 to the end of 2020, and worth €10.8bn to the UK over that period.

3.6 This time scale is crucial in the context of the UK government’s future spending plans, which have only been set out until the end of the current Parliament. While any gap in regional funding caused by Brexit before 2020 would of course need to be filled, there is also a clear expectation in key regions that this funding (and the accompanying match funding) will continue in the following period – 2021 to 2027 – and beyond.

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<sup>1</sup> University of Sheffield article, [‘EU structural funds and the potential impact of Brexit on the North’](#)

3.7 The EU is due to agree the allocation of funds for that 2021-2027 tranche in 2018 to allow sufficient time for long-term planning in recipient regions; they will therefore need security over that future funding on that same timetable or earlier.

3.8 In the UK, the areas that benefit most from EU funding are Wales, the South West, the North East, Northern Ireland and the Highlands & Islands. Hundreds of projects – from the Eden Project in Cornwall to improved road links in South Wales – may not have gone ahead without the structural funds that helped finance them.

3.9 Wales – a net beneficiary of EU funding – is a particular special case, receiving significantly more in EU structural funds than anywhere else in the UK<sup>2</sup> given that GDP per in West Wales and the Valleys stands at just 70% of the EU average.<sup>3</sup> The loss of EU funding would have left a shortfall of £1.8bn for Wales alone between 2014-20, not counting the extra investment derived from match funding.<sup>4</sup>

*Table 1: Combined European Regional Development Fund (ERDF) and European Social Fund (ESF) allocations for 2014-2020*

East of England	€387m
East Midlands	€598m
London	€762m
North East	€739m
North West	€1,132m
South East	€286m
South West	€1,495m
West Midlands	€909m
Yorkshire and Humber	€794m
Scotland	€895m
Northern Ireland	€613m
Wales	€2,413m
Total UK:	€10,858m

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<sup>2</sup> *Ibid.*, p.7.

<sup>3</sup> Welsh Assembly report based on Eurostat figures from 2013 [here](#), p.1.

<sup>4</sup> Welsh Government: [Structural Funds, 2014-20](#), July 2016.

## The current UK position

3.10 A Coalition report published just before the last general election concluded: *“the greater certainty associated with the seven year periods for EU programmes and the principles of partnership and multi-level governance”*<sup>5</sup> were a distinct benefit of EU structural funding. Those practical advantages must clearly be maintained in any post-Brexit arrangements, but we can have no current confidence that they will be.

3.11 The domestic equivalents of ERDF (in England) are Local Growth Deals, managed by Local Enterprise Partnerships (LEPs), who also oversee the administration of EU structural funds.<sup>6</sup> However, LEPs are drastically underfunded and understaffed: a damning National Audit Office report found that only 5% of LEPs agreed that the resources available to them were enough to meet the expectations placed on them by the government.<sup>7</sup>

3.12 Furthermore, unlike EU structural funds, LEPs are not currently well suited to supporting long-term projects in areas such as infrastructure or transport, due to DCLG pressure to spend their annual government funding allocations in-year.<sup>8</sup> This is something that would need to be rectified if they were to take on the role of delivering the long-term economic development programmes that EU structural funding currently provides.

3.13 The NAO report also revealed that, although the government has confirmed its intention to allocate £12bn to a Local Growth Fund until 2021, the future of LEPs – essential to the very administration of these funds – is uncertain.<sup>9</sup>

3.14 If EU structural funding is to be replaced, the current arrangements for LEPs do not inspire confidence that the government is capable of fully maintaining and efficiently delivering a large-scale, long-term local investment programme for poorer regions on the scale of EU structural funding.

3.15 Just as worrying, the Tory government has thus far shown no particular commitment to funding struggling regions on a domestic basis. The Regional Growth Fund, which funded projects in areas in England which rely heavily on the public sector, was cancelled after the 2015 Spending Review,<sup>10</sup> even though the government’s own progress report stated that the funds were *“performing well on job creation and allowing both supported businesses and the businesses in their supply chains to grow”*.<sup>11</sup>

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<sup>5</sup> Coalition Balance of Competences report, p.6.

<sup>6</sup> HM Treasury report, *Investing in Britain’s Future*, ‘[Local Growth and the Devolved Administrations](#)’, p.57

<sup>7</sup> National Audit Office report on [Local Enterprise Partnerships](#), March 2016, p.4.

<sup>8</sup> *Ibid*, p.7.

<sup>9</sup> *Ibid*, p.36.

<sup>10</sup> Regional Growth Fund guidance [here](#), p.6.

<sup>11</sup> Regional Growth Fund [Annual Monitoring Report](#) 2014-15, p.8.

3.16 Similarly, the Grants for Business Investment (GBI) scheme – designed to help businesses create and protect jobs in England’s poorest areas and worth £430m to 1,800 projects across the country – was also scrapped by the Coalition in 2010.<sup>12</sup>

### **Risks and Implications**

3.17 Deprived regions of the UK – in particular areas that have struggled to adapt to a decline in heavy industry, such as the Valleys and the North East – will be disproportionately affected if the UK government does not compensate them for the loss of EU structural funding by replacing it with a programme of investment that is its equal in breadth and time scale, but instead leaves them to lag even further behind more prosperous regions in the UK.

3.18 Current domestic mechanisms for promoting regional growth are clearly inadequate. CIOF, the LEP which administers EU funds for Cornwall and the Isles of Scilly, has described EU funding as *“the real bedrock of our investment programme”*, and has demanded: *“The UK government must guarantee that we receive our full allocation of EU investment, even if that money is no longer provided by the EU post-exit.”*<sup>13</sup>

3.19 In the short term, EU-funded projects currently in the pipeline are already at risk, even though the UK has not yet left the EU. £3bn worth of ERDF payments were suspended by the government just weeks after the referendum.<sup>14</sup>

3.20 As uncertainty over the timetable for exiting the EU drags on, there continues to be a question mark over the status of unspent funding already allocated for the 2014-2020 tranche, let alone what will happen to regions expecting funding beyond this Parliament.

3.21 In the long term, the economic shock from any loss of funding could undoubtedly be devastating for affected regions. A recent report conducted by the University of Sheffield concluded that: *“the loss of EU structural funds could have a significant impact on job creation and business activity.”*<sup>15</sup>

3.22 Just looking at the impact of past tranches of funding bears this out. In the 2007-13 tranche, 36,970 jobs and 11,925 businesses were created in Wales,<sup>16</sup> and 44,311 jobs and 17,474 businesses created in Scotland. The corresponding figures for the North of England are at a similar level.<sup>17</sup> Targeted funding for deprived regions has proven its worth, and removing those funds will not only damage job and business creation, but will lead to a spiral of accelerated regional decline and an upsurge in poverty.

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<sup>12</sup> *Financial Times*, [‘Ending of scheme to aid poor areas attacked’](#), 31 Jan 2011.

<sup>13</sup> Link to article: [‘Why English regions should not be short-changed by Brexit’](#)

<sup>14</sup> *The Independent*, link to article [here](#), 25 July 2016.

<sup>15</sup> University of Sheffield report, [‘UK regions and European structural and investment funds’](#), p.7.

<sup>16</sup> Wales European Funding Office (WEFO) figures [here](#), p.1.

<sup>17</sup> University of Sheffield report, p.7.

3.23 Furthermore, the obligation for ERDF and ESF investment to be ‘match-funded’ by the private sector or central government could mean that investors “*choose not to invest in projects without the security of knowing that 50% of the funding was being provided through EU structural funds*”.<sup>18</sup>

3.24 Leave campaigners have claimed that EU funding could be replaced by central government. That is indeed true, but it is highly risky to assume that a Tory government, faced with a weakening economy and deteriorating public finances, will be willing to maintain current levels of public spending on key public services, let alone replace the significant shortfall in regional funding which will be created as a result of Brexit.

3.24 Nevertheless, before the referendum, thirteen government ministers from the Leave campaign – including Boris Johnson – committed in writing to maintaining EU investment (including regional funding) in the event of a vote for Leave both until 2020 and post-Brexit: “*There is more than enough money to ensure that those who now get funding from the EU will continue to do so while also ensuring that we save money that can be spent on our priorities.*”<sup>19</sup>

3.25 This was followed by a statement by the new Chancellor, Philip Hammond, on 13 August 2016<sup>20</sup>, presented as a guarantee that levels of EU funding would be maintained, but in reality setting a moratorium whereby structural fund projects agreed before the Autumn Statement later this year would be honoured by the UK government after Brexit, but any subsequently-agreed projects would only be considered on a case-by-case basis.

3.26 In other words, there is no commitment whatsoever from the Tory government to ensure the long-term maintenance of regional funding beyond 2020, and many individual projects reliant on funding in the interim may risk cancellation. The so-called guarantee is a truly tokenistic gesture that offers the barest minimum of assurances, with plenty of wiggle room for the government to back away even from those.

3.27 The strong Leave vote in many areas benefiting from structural funds is even being used by the Tories to justify their position. Speaking in Parliament on 14 July 2016, Welsh secretary Alun Cairns said: “*The EU referendum sent out a number of messages, and those areas that receive most EU funds were the areas, sadly, that voted most strongly to leave the EU. We need to look at models of regional aid in a different way.*” When pressed by Labour’s Paul Flynn on whether Wales would lose any of the funding it currently receives from the EU, he would say only: “*I can guarantee that Wales will get its fair share.*”<sup>21</sup>

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<sup>18</sup> *Ibid.*, p.7.

<sup>19</sup> Vote Leave website: ‘[Leave Ministers commit to maintain EU funding](#)’.

<sup>20</sup> Link to HM Treasury announcement [here](#).

<sup>21</sup> Article in the *Independent* [here](#), 14 July 2016.



## Next Steps

3.28 It could not be clearer that – of all the rights and investment protected by Britain’s membership of the EU – one of the most significant, regional funding, is also one of the most directly and imminently under threat from the Tory government.

3.29 This is not acceptable. Any loss in funding - however small or large - could cause severe hardship in the most deprived communities of our country, and reverse all progress they have made to secure greater future prosperity.

3.30 In light of this and the lack of clear government reassurances to date over this investment, it is vital that Labour leads the charge to protect current recipients of EU structural funds and ensure that the strong Leave vote in some deprived regions is not taken as a green light to pull the plug on that funding.

3.31 Labour’s shadow cabinet will therefore continue to engage with local authorities across the country, local MPs and councillors, the LEPs, WEFO, and other leaders and co-sponsors of individual funding projects, to develop a comprehensive analysis of:

- all funding in the pipeline before 2020 which is now under threat;
- funding expectations for the 2021-27 tranche; and
- the specific impact on each project and in each area of losing that funding.

3.32 Our short-term priorities will then be to press the government:

(i) for action in response to the NAO report on the adequacy of the LEP network as a means to deliver long-term funding on the breadth and scale of EU structural funds;

(ii) for an extension of the August guarantee to cover all projects agreed up to the point at which Britain exits the European Union; and

(iii) for binding commitments before 2018 on what will happen to the levels of funding key regions are expecting to receive in the 2021-27 period;

3.33 However, given the importance of this issue and the scale of the Tory threat, we are determined to go further. The Labour party therefore commits that – as a central plank of our future manifesto and budget plans – we will establish a properly managed domestic fund for less prosperous regions currently in receipt of EU structural funds, and we will ensure that level of funding is protected in full, into the 2020s and beyond.

3.34 The cost of this commitment will be greatly dependent on what deal is negotiated on Britain’s future relationship with the EU. For example, under the Norway-style model

advocated by many Leave campaigners, where the UK continues to contribute to EU funds and participate in EU-funded programmes such as structural funding, it may well be that the shortfall for Britain's deprived regions is not as great as feared.

3.35 However, in a scenario where the UK ceases to make any contribution to EU funds and therefore receives no benefit from EU-funded programmes, then our commitment will need to be funded in full from central government revenues. In that scenario, funding this commitment will be our top priority for allocating the estimated net savings deriving from Britain's withdrawal from the EU. Those communities who stand to lose out most from Brexit must be looked after first.

## 4. Farming and Fishing

4.1 Like any other business sector, the negotiation over Britain's future relationship with the EU holds major implications for the farming and fishing industries in terms of their continued access to the Single Market, and whether tariffs will be imposed on their exports to the EU, and vice versa on imports of produce into the UK. The farming sector will also be affected by any curbs on temporary workers coming to the UK to pick fruit and vegetables.

4.2 These issues will be addressed separately as part of the Labour party's work on the future of free access and free movement, but for the purposes of this paper, we need to consider the implications for the UK farming and fishing sectors primarily in terms of the potential loss of EU subsidies, and any changes in their regulatory environment.

4.3 The Common Agricultural Policy (CAP) represents nearly 40% of EU spending, and the subsidies it provides represent somewhere between half and two-thirds of the income of UK-based farmers. Departure from the CAP will necessitate a wholesale rethink of agricultural policy in the UK and put a major question-mark over the future of farming subsidies beyond 2020, the year until which funding is currently guaranteed.

4.4 Measures that incentivise sustainable, environmentally friendly farming practices are also under particular threat from a post-Brexit Tory government, and likewise, the sustainable practices that have characterised the reformed Common Fisheries Policy (CFP) could also be under threat if the UK chooses not to devise a similar framework of its own.

### **The Benefits of EU membership:**

4.5 Designed to help its 22 million farmers feed its 500 million citizens sustainably and affordably, the EU regulates and subsidises agricultural activity through the CAP, which constitutes almost 40% of the EU budget.

4.6 Direct payments under the Basic Payment Scheme, also referred to as Pillar 1 of the CAP, help stabilise farmers' incomes in what can be a volatile market. Their allocation is contingent on the size of a farm and on recipients' compliance with safety, environmental and animal welfare standards, thereby not only protecting farming incomes, but also ensuring quality and safety for consumers.

4.7 Since 2013, when the CAP was reformed, 30% of subsidy payments have been linked to environmentally friendly agricultural practices, thereby providing a wider benefit to society and the rural environment beyond the immediate financial impact.<sup>1</sup>

4.8 However, there remains a serious problem within the current CAP regime in that – because payments are tied to the size of farms – wealthy landowners who do not require

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<sup>1</sup> EC website, ['CAP at a glance'](#).

subsidies receive the biggest payments, whereas farmers on the lowest incomes receive no additional support, despite the financial challenges they face and their greater exposure to income-volatility. Farms less than five hectares in size receive no support at all.

4.9 Direct payments are complemented by Rural Development funding, also known as the ‘second pillar’ of the CAP, which, operating on similar principles to structural funding (see Section 3), aims to tackle economic, environmental and social problems in the wider rural economy. In the UK, funding priorities include boosting tourism, improving access to high-speed broadband in rural areas, and supporting SMEs.<sup>2</sup> The UK is legally required to have such a rural development programme under EU law.<sup>3</sup>

4.10 Targeted funding for young farmers is available under both pillars of the CAP, aiming to redress the demographic imbalances that threaten the longevity of the sector by improving young producers’ access to land and capital.<sup>4</sup>

4.11 The CFP operates on the principle that fish are a common resource, hence the need for a supranational agreement. In its reformed state, post-2013, it aims to improve the sustainability of European fishing stocks environmentally and economically by maintaining fish stocks and ensuring the continued viability of the industry<sup>5</sup>. Prior to that, the CFP was criticised for allowing extreme overfishing and the widespread practice of fishing certain species before they could breed.

4.12 The reformed CFP includes a ban on discarding edible fish, legal obligations to fish at sustainable levels, and more power to member states to make their own arrangements to best suit their fisheries. Catch limits have also been set between 2015 and 2020 in order to improve the sustainability of species.<sup>6</sup>

4.13 The European Maritime and Fisheries Fund (EMFF) complements the CFP by helping fishermen transition to sustainable practices and supporting jobs and growth in coastal communities. The UK has been allocated €244.1m between 2014-2020, and although the Commission initially approves each member state’s proposed funding programme, it is ultimately up to the government which projects are funded.<sup>7</sup>

### **Risks and Implications:**

4.14 Largely due to lower commodity prices and the poor euro/sterling exchange rate, the UK’s total farming income fell by 29% in 2015.<sup>8</sup> This not only affects individual farmers’

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<sup>2</sup> House of Commons briefing, [EU referendum: impact of an EU exit in key UK policy areas](#), p.54.

<sup>3</sup> Defra [final impact assessment](#) on the 2014-20 Rural Development Programme, p.17.

<sup>4</sup> European Parliament briefing note, [‘Supporting Young Farmers in the EU’](#), p.1.

<sup>5</sup> EC publication, [Facts and figures on the Common Fisheries Policy](#), p.1.

<sup>6</sup> EC website, [Fisheries](#).

<sup>7</sup> EC website, [EMFF](#).

<sup>8</sup> Defra report, [Agriculture in the United Kingdom 2015](#), p.1.

incomes, but also has wider implications, given the industry currently contributes around £4.8bn to the economy.<sup>9</sup> With farm incomes already under such pressure, the potential loss of EU subsidies – if not adequately replaced – would be potentially devastating for the UK farming industry.

4.15 The CAP also funds Rural Development Programmes to help stimulate the wider rural economy. Over the current round of funding (2014-2020) England is receiving £4.5bn from these programmes, creating another potentially significant funding gap if the government does not make up the shortfall.

4.16 There are also question marks over two particular aspects of CAP payments and whatever system of subsidies replaces them:

- whether subsidies will remain tied to the obligation on farmers to promote environmental sustainability, animal welfare standards and other qualifying criteria, or indeed whether the opportunity would be taken to strengthen these criteria further, as the RSPCA<sup>10</sup> and others have called for; and
- whether specific incentives will be retained for young farmers. With a median age of 59, the agricultural economy could go into decline if measures are not taken to encourage a younger generation to continue the work of an ageing workforce, a particular weakness in the UK sector.<sup>11</sup>

4.17 During the referendum debate, the Leave campaign was unequivocal in its support for continued funding for farmers post-Brexit: *“British farmers would continue to be supported after we vote Leave [...] Britain would have sufficient funds to continue supporting our farmers – and could even increase funds.”*<sup>12</sup> The campaign also implied that Brexit would allow the UK to relax rules on pesticides and GM foods.

4.18 Since then, the Chancellor Philip Hammond has given assurances that Pillar 1 CAP funding will be guaranteed until 2020, allowing for a transition to new *“domestic arrangements”*, but with no proposals as yet for what these arrangements will be.<sup>13</sup> Pillar 2 and EMFF funding has only guaranteed for projects signed before the upcoming Autumn Statement, with later projects to be approved on a case-by-case basis by the Treasury.

4.19 The new Secretary of State for Environment, Food and Rural Affairs, Andrea Leadsom, described the Chancellor’s statement as *“excellent news”*, although she has previously called for agricultural subsidies to be abolished<sup>14</sup>, and the previous coalition

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<sup>9</sup> Defra report, [‘Total income from farming in the United Kingdom’](#), April 2016, p.13.

<sup>10</sup> RSPCA briefing note, ‘Opportunities for animal welfare in the UK post-Brexit’, August 2016.

<sup>11</sup> Defra: [Report on Rural Development](#), July 2016, p.60.

<sup>12</sup> Vote Leave website: [Briefing note on farming](#).

<sup>13</sup> HMG press release on [funding commitments](#), 13 Aug 2016.

<sup>14</sup> Andrea Leadsom website: [‘Does Britain need its own farming industry?’](#), 2007.

government was clear that – while subsidies would be retained in a post-Brexit Britain – they would be at a lower level than the CAP.<sup>15</sup>

4.20 In relation to fishing, the Marine Conservation Society has called the reformed CFP as “*a policy to be proud of*”,<sup>16</sup> and has urged the government to embed the EU’s approach to fisheries wholly into UK law in the initial post-Brexit period. While the reformed CFP is still in its infancy, in some areas it has already proven its worth: cod - once notoriously overfished - is due to be declared sustainable by 2017.<sup>17</sup>

4.21 Moreover, it is unlikely that the UK would be able to change regulations significantly in the event of Brexit, as it is obliged to fish in line with guidelines of the International Council for the Exploitation of the Sea (ICES), and is also a signatory of the UN Law of the Sea Convention, which has much in common with the CFP.

4.22 Outside the CFP, it is possible that the UK could gain greater access to surrounding waters with high quality fishing stock – but given the shared nature of fisheries and the potentially reduced negotiating position,<sup>18</sup> this may prove difficult.

4.23 As part of that negotiation, we will also need to determine whether the UK will allow foreign vessels to fish within our Exclusive Economic Zone (EEZ). If not, this could have implications for UK vessels fishing outside the EEZ, but if we do agree to share our EEZ, then we will need to continue to work with the EU to police this and are likely to be required to conform to most CFP directives, without having any say over their future direction.

#### **Next Steps:**

4.24 As with other sectors and regions, there is severe uncertainty over what will happen to farming incomes once they are no longer able to rely on EU subsidies, and the government’s time-bound guarantees and vague commitments to new domestic arrangements have done nothing to ease that uncertainty.

4.25 Moreover, it is entirely unclear whether important facets of the CAP arrangements, including extra support for young farmers, rural development funding, and the ‘public good’ criteria on which subsidies are currently contingent, will be maintained or indeed strengthened under any replacement system.

4.26 Working with farming groups, as well as NGOs with interests in conservation, the rural environment and animal welfare, the Labour party will continue to pressure the government for greater clarity on all these points.

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<sup>15</sup> Coalition government: Balance of Competences - [Audit of Agriculture](#), p.8.

<sup>16</sup> Marine Conservation Society briefing note on Brexit and fisheries.

<sup>17</sup> [Telegraph, ‘North Sea cod could be sustainable by next year’](#), 10 Feb 2016.

<sup>18</sup> Coalition government: Balance of Competences - [Audit of Fisheries](#), p.7.

4.27 But in addition, we will demand that any replacement system of direct payments is made more progressive by reducing or abolishing the subsidisation of wealthy landowners, and instead focusing subsidies on struggling farmers whose livelihoods will be most at risk when we leave the EU, and who are most at risk from market volatility.

4.28 We will also argue that any new domestic arrangements should strengthen – rather than weaken – the criteria by which payments are tied to environmental sustainability, rural protection and animal welfare, and that broader Pillar 2-style investment in rural development (e.g. the extension of broadband) is maintained.

4.29 Once we have seen the detail of those new arrangements and lobbied for their improvement along the lines set out above, Labour will come forward with firm commitments about the level at which these will be funded when we are in government, but as in other areas, our principle is that those who will be hardest hit by any loss of EU funding should receive continued, matching support into the 2020s and beyond.

4.30 On fishing, we expect that regulations introduced under the CFP will remain in force and be enshrined in law in a post-Brexit Britain, and if there is any question over this, we will maintain that they should. It is vital that any domestic replacement should have the sustainable management of stocks at its core.

## 5. Climate change and environment policy

5.1 Formerly dubbed the ‘Dirty Man of Europe’, the UK’s once polluted beaches and poor conservation standards have been transformed by EU membership, allowing Britons to benefit from cleaner waters, protected habitats, and reduced exposure to harmful chemicals. Post-Brexit, we must defend our efforts to combat climate change, as well as protect public health and conserve the natural environment, from a Tory government that sees environmental regulation simply as red tape to be cut.

### **The current benefits of EU membership:**

5.2 As a body able to tackle transboundary environmental problems, the EU has occupied a central role in environmental protection and the safeguarding of public health, and the UK’s performance in this area since adopting EU environmental law has represented a marked improvement.

5.3 The EU employs a wide array of mechanisms to support environmental policy at national level, including: the EU Emissions Trading System (EU ETS), which reduces the emissions of power stations and other heavy industries through a ‘cap and trade’ approach; the Renewable Energy Directive, setting individual targets for member states on their use of renewable energy sources; and supporting the development of carbon capture storage (CCS) to promote the environmentally-sound disposal of carbon.<sup>1</sup>

5.4 Landmark EU achievements to date include helping to broker international agreements on climate policy, such as the Kyoto Protocol and subsequent amendments, the recent Paris Agreement in 2015, implementing EU-wide targets on greenhouse gas emissions, imposing standards on maximum CO<sub>2</sub> emissions for new passenger cars, and the eventual phasing out of noxious F-gases.<sup>2</sup>

5.5 Specific regulations governing the improvement of habitats, water and the environment include the Air Quality Framework Directive, the Habitats Directive (conserving natural habitats and wild flora and fauna), the Wild Birds Directive, and the Water Framework Directive, as well as the revised Bathing Water Directive, which is widely credited with having transformed the cleanliness of Britain’s beaches.

5.6 These regulations are complemented by initiatives such as Natura 2000, an EU-wide network of protected breeding and resting sites for endangered or rare species, covering over 18% of the EU’s land and 6% of its marine territory, as well as by the extensive criteria for environmental sustainability that are built into most EU funding programmes.<sup>3</sup>

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<sup>1</sup> Climate Change Committee website [here](#).

<sup>2</sup> European Commission: [Fact sheet on EU environmental law](#).

<sup>3</sup> More information on Natura 2000 on the EC website, [here](#).



5.7 The coalition government's audit of the relationship between the UK and the EU concluded: "A large number of organisations representing all sectors considered that it is in the UK's national interest for the EU to have a degree of competence in the broad areas of environment and climate change".<sup>4</sup> A recent select committee audit on EU-UK environmental policies came to the same conclusion and also expressed concern that the UK's environmental standards could be set "at a less stringent level" outside the EU.<sup>5</sup>

### **Risks and Implications:**

5.8 Environmental law in the UK is heavily derived from EU legislation and exiting the bloc will necessitate a large-scale transfer of powers. Whether this will mean EU standards would be reversed post-Brexit is unknown, but it will certainly give the current Tory government more freedom to relax its targets and minimum environmental standards.

5.9 The main driver for domestic environmental policy is the Climate Change Act – implemented by the last Labour government in 2008 – which obliges the UK to work towards an 80% reduction in CO<sub>2</sub> emissions by 2050 (relative to 1990 levels). Moreover, a series of 'carbon budgets' require the government to set targets on greenhouse gas emissions across a sequence of five-year period, so that progress can be tracked on a medium-term basis.

5.10 As the required levels of reduction are enshrined in UK law, a complete reversal of environmental policy is unlikely, but a less rigorous approach would be made easier without the stringent compliance protocols set by the Commission.

5.11 Given that the UK has continually sought to block EU environmental legislation, and was a key player in watering down targets on efficiency and renewables for 2030,<sup>6</sup> this is far from an unlikely scenario. For example, Jesse Norman, the new Parliamentary Under-Secretary of State for Industry and Energy, recently confirmed that leaving the EU ETS system may mean having "increased flexibility to set our climate change targets as we saw fit", and refusing to rule out that these targets could be "less testing".<sup>7</sup>

5.12 Neither do recent spending cuts bode well. Last year the Tory government last year scrapped a £1bn scheme to cut carbon emissions,<sup>8</sup> as well as solar power subsidies,<sup>9</sup> and just days after the vote for Brexit renewable energy subsidies were slashed, putting projects worth £140m at risk.<sup>10</sup> It is also of concern that one of Theresa May's first acts as prime minister was to abolish the Department for Energy and Climate Change.

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<sup>4</sup> Coalition document, Review of the Balance of Competences: [Environment and Climate Change](#), p.6.

<sup>5</sup> Environmental Audit Committee report: [Impact of EU Membership](#), April 2016.

<sup>6</sup> *EurActiv*: '[EU leaders adopt flexible targets for 2030](#)', October 2014.

<sup>7</sup> HoC Hansard, [Draft Carbon Budget Order](#), 18 July 2016.

<sup>8</sup> Article in [DesmogUK](#), November 2015.

<sup>9</sup> Article in [DesmogUK](#), October 2015.

<sup>10</sup> *Independent* article [here](#), August 2016.

5.13 A Friends of the Earth report surmised that the current government’s commitment to environmental advancement was “close to zero”<sup>11</sup>, but the fear has to be that Brexit will usher in an era where environmental retrenchment is more likely. As the same FoE report concluded: “the huge progress made in improving the UK environment could be lost in the absence of external pressure and auditing from EU actors”.<sup>12</sup>

5.14 Several directives crucial to environmental protection, namely on clean bathing water, protection of rare birds, protection of habitats threatened by major infrastructure projects and the cleanliness of rivers and lakes, are exempt from EEA membership, meaning that – if that is the route the government goes down – the UK will be free to set its own standards in each area. Complete withdrawal from Europe could prove even more harmful, allowing the government to disregard all EU standards entirely.

5.15 The EU ETS trading system “plays a key part in ensuring the UK complies with its legally binding carbon budgets”.<sup>13</sup> Leaving the ETS could hamper the UK’s ability to meet its legally binding emission targets as set out in the carbon budgets. Although carbon trading advisors Redshaw have deemed the UK leaving the ETS “hard to foresee”<sup>14</sup> - not least because Britain is a long standing supporter of the scheme - nothing is certain until the government’s negotiating position is known.

5.16 The UK phased out its own carbon trading scheme upon joining the EU ETS and would need to re-establish it if it left the European scheme. ETS aside, the price of carbon has already been affected by the referendum result, impeding one of the system’s fundamental objectives, which is to “provide a future price signal for the price of carbon”.<sup>15</sup>

5.17 The UK also benefits from EU membership by being able to negotiate climate change regulations and deals as part of a bloc. UN targets are set EU-wide, so withdrawal will necessitate a revision of the UK’s role in reduction targets.

5.18 In addition, Brexit could slow down the ratification of the Paris Agreement. The EU must ratify the deal as a bloc, with each member state required to ratify at national level first. With the UK’s timetable for departure as yet uncertain, ratification may have to be postponed until the UK’s position is clearer. In a worst-case scenario, a delay in ratification combined with a Donald Trump presidency could be disastrous for the Paris Agreement, as he has promised to cancel the deal if he wins the US elections in November.<sup>16</sup>

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<sup>11</sup> Friends of the Earth report, [‘The EU referendum and the environment’](#), Dr Charlotte Burns, p.9.

<sup>12</sup> *Ibid.*, p.1.

<sup>13</sup> HMG greenhouse gases policy paper: [summary](#), 2015.

<sup>14</sup> Redshaw Advisors article, [‘Brexit: the impact on carbon price, the EU ETS and beyond’](#).

<sup>15</sup> Carbon Pulse article: [The impact of Brexit on EU ETS](#).

<sup>16</sup> *Guardian*, [‘EU out vote puts commitment to Paris climate agreement in doubt’](#), 25 June 2016. More detailed information on Brexit and the Paris Agreement can be found [here](#).

5.19 Air quality is another area where an EU exit could have far-reaching implications. The EU currently sets limits on a range of air pollutants and asks member states to implement their own plans to meet these, with the threat of fines for non-compliance.

5.20 With targets for NO<sub>2</sub> (nitrogen dioxide) emissions in major conurbations in the UK – including Leeds and Manchester - currently running ten years behind the schedule set by the EU, poor air quality has become a serious public health issue in the UK. In London, the situation is yet graver, with targets not set to be reached until 2025.

5.21 The failure to meet these benchmarks resulted in a Supreme Court ruling that the government must submit updated plans to improve air quality to the European Commission, which it has now done. Without the mechanisms that ensure such targets are met and penalise poor practice, the government could renege on its promises, placing the health of millions of urban-dwelling Brits at risk.

5.22 Nature conservation is another area under threat from Brexit. Both the Habitats and the Wild Birds Directives – which protect designated areas and species from infrastructure projects that may harm them, such as HS2 - would not be covered by EEA membership. These directives have been transposed into national law, but there is nothing stopping the government from repealing them post-Brexit.

5.23 Brexit may also harm Britain’s renewable energy ambitions and its energy supply more generally. The UK is heavily reliant on energy from abroad, and has been a net importer of energy supplies since for over ten years.<sup>17</sup> Access to natural gas and electricity could be limited if we leave the single market, and could even lead to increased energy costs if tariffs are imposed on EU imports. As an advisor from law firm Hogan Lovells put it: “*Brexit could make keeping the lights on more challenging*”.<sup>18</sup> If EU supplies dwindle, the UK could be forced to delay the closure of its last coal plant in order to plug the gap, which in turn could lead to missed carbon emissions targets.

### **Next Steps:**

5.24 Faced with a Tory government utterly lacking in commitment to the environment, as epitomised by the abolition of the department responsible for climate change, the Labour party must take the lead in mobilising NGO and public support to defend the environmental protections that we are currently guaranteed thanks to our membership of the EU, and to demand that the UK maintains its commitments on climate change.

5.25 In particular, over the coming months, we will:

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<sup>17</sup> Bloomberg, [‘Brexit worsens UK energy supply risk as coal closures loom’](#), 22 Aug 2016.

<sup>18</sup> *Ibid.*

- demand that all regulations and standards currently provided for in EU law are fully-transposed into UK legislation prior to Brexit;
- hold the government to its promise to bring forward the further legislation it said would be required by the end of this year to meet its carbon budget targets;
- resist any attempt by the government to use the cutting of EU red tape as a smokescreen to dilute current environmental policies;
- demand guarantees that the UK will remain part of the EU ETS, and treat this as a priority during the Brexit negotiations;
- press for the speedy UK ratification of the Paris agreement;
- demand answers on what will happen to the UK's 652 Special Areas of Conservation and Special Protection Areas when we leave the EU and how these will be legally-protected in the future; and
- insist that the government's plans to address failing air quality standards in Manchester, Leeds and London are implemented, regardless of the threat of European Commission fines being removed.

## 6. Consumer Protection

6.1 It has been a fundamental principle of the Single Market that an EU citizen purchasing products and services should enjoy the same levels of consumer protection whichever member state they are purchasing them in, from the standards of quality and safety they can expect to their rights if something goes wrong with their purchase. For businesses across the EU, this also provides a level playing field, ensuring that – in theory – they should not be undercut by unscrupulous competitors providing sub-standard products or service.

6.2 The future of those consumer rights from which UK citizens currently benefit will depend greatly on what future relationship Britain will have with the Single Market, and the extent to which we will remain bound by its rules on issues like consumer protection. However, as long as that future relationship remains deeply uncertain, it is clear that those consumer rights remain at risk, and their retention must therefore remain an important part of Labour's campaigning in the areas covered by this document.

### Current benefits of EU Membership

6.3 Protection of consumer rights is a core value of the EU, enshrined in Article 12 of the EU Treaty, with the avowed aim of ensuring the internal market is open, fair and transparent, so that customers can exercise real choice and receive fair treatment.

6.4 There are a vast array of protections and rights that UK consumers enjoy as a result of EU-wide rules, including the following specific examples:

- *Pricing:* not being charged a higher price when buying consumer products or services owing to their nationality or country of residence. Traders must provide shoppers with clear, correct and understandable information about the product and make the total price, including taxes and charges clear to the consumer.<sup>1</sup>
- *Data Roaming:* In October 2015, the European Parliament approved plans to ensure that from 15 June 2017, users within the EU will be charged at the same price as they would in their home country when using mobile phones abroad.<sup>2</sup>
- *Timeshare Directive:* An archetypal example of trading activity where consumers often shop across borders; the Directive sets out common rules on sales, practices, information provisions and contractual obligations and rights, wherever in the EU the consumer happens to be.<sup>3</sup>

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<sup>1</sup> BBC News: [UK and the EU – Consumer Affairs](#), May 2016.

<sup>2</sup> BBC News: [Data Roaming charges will be abolished](#), October 2015.

<sup>3</sup> For example, a UK consumer visiting Spain or Malta, is entitled to reconsider for up to 14 days, his or her decision to spend money, without having to provide even a deposit. Discussed in Review of the Balance of Competences between the UK and the EU: [Competition and Consumer Policy](#), summer 2014, p.49.

- *Food Law*: regulations on food and designed to protect consumers from damage to their health, from sub-standard products and from being misled about the content of food. Harmonisation of standards ensures that consumers can have confidence that the food they purchase is of the same high standard, regardless of the country of origin.<sup>4</sup>
- *Airlines*: deregulation of the airline sector has allowed growth in routes to UK regions, significantly increasing choice for consumers, whilst the harmonisation of safety standards has ensured that EU registered aircraft are operated and maintained to the same set of rules, enhancing protection for UK consumers and airline operators.

6.5 The EU also has three schemes that protect geographical indications and traditional specialties: Protected Designation of Origin (PDO), Protected Geographical Indication (PGI), and Traditional Specialty Guaranteed (TSG). 77 UK product names are currently registered under these schemes, including Cornish Pasties (PGI) and Traditional Welsh Cider (PDO).<sup>5</sup> These schemes help consumers by guaranteeing the specific character of the products they are purchasing, as well as protecting the business producing them.

6.6 As well as these kind of specific protections, EU rules also empower consumers by giving them rights, including for example, making consumers aware of cancellation rights and remedies, so they are confident in their engagement with the market and are able to make well-informed choices.<sup>6</sup>

6.7 While EU-wide consumer protections are also positive for businesses operating by the rules, and trading across Europe, it should be acknowledged that many UK businesses find elements of EU Consumer Regulations burdensome, e.g. smaller businesses being required to monitor legislation affecting them, even when they do not export to the EU.<sup>7</sup>

## **Risks and Implications**

6.8 Over recent decades, consumer legislation in the UK has developed in patchwork fashion, with a series of laws enacted in the UK in areas where – at the time – there were no common EU rules (e.g. the Consumer Credit Act 1974, the Unfair Contract Terms Act 1977, the Sale of Goods Act 1979, the Food Safety Act 1990), combined with laws directly derived from EU regulations (e.g. the Consumer Contracts Regulations 2014).

6.9 The Consumer Rights Act (2015) was designed to consolidate and simplify most of the different pieces of legislation in this area into a single act, as well as updating the

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<sup>4</sup> *Ibid.*, p.57.

<sup>5</sup> Europa: [Agriculture and Rural Development Database of Origins and Registration](#).

<sup>6</sup> Review of the Balance of Competences, p.13/p.30.

<sup>7</sup> *Ibid.*, p.55.

regulations for the digital age.

6.10 It is generally assumed that – in order to retain access to the Single Market – the UK would be required to retain all EU consumer protection provisions, and indeed adopt any that are subsequently agreed within the EU, as is the case in Norway.

6.11 However, if the UK chooses to leave the Single Market (as many senior figures within the Leave Campaign argued), or in the very unlikely event that the UK was allowed to retain access to the Single Market but without being subject to EU consumer protection laws, this would naturally raise the risk that those protections in UK law specifically required by EU directives could be rolled back, with adverse consequences for consumers.

6.12 In addition, in that scenario, it would be possible that UK consumers could find themselves disadvantaged (e.g. on price, or rights of redress for faulty products) when purchasing goods and services from elsewhere in the EU, including via the Internet<sup>8</sup>, because they would lose the consumer protections that all EU citizens enjoy.<sup>9</sup>

6.13 Even outside the Single Market, there would still be a high possibility that British businesses would still have to abide by EU laws on consumer protection and related areas, such as competition law, in order to keep trading to the EU. Given that 45% of UK exports go to the EU<sup>10</sup>, that would represent a continuing burden for many businesses.

6.14 Unlike the issue of employment rights, where the attractions are obvious for a right-wing government in scaling back the rights of workers or the obligations of businesses, it is not so clear cut in the field of consumer protection: (i) where they might choose to wield the axe, once ‘liberated’ to do so by Brexit; (ii) whether they would be able to do so, depending on what deal is done on post-Brexit access to the Single Market; and (iii) what advantages that would hold for UK business, especially for those wishing to continue trading with the EU.

6.15 Nevertheless, for as long as the shape of UK’s post-Brexit relationship with the Single Market remains highly uncertain, it would be complacent to take for granted that existing consumer protections will be maintained.

## Next Steps

6.16 Working with *Which?* and other UK consumer rights organisations, it will be important in this area to analyse further which aspects of UK consumer protections may be most vulnerable in different post-Brexit scenarios, and build demands for the retention of these protections into our wider campaign.

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<sup>8</sup> BBC News: [UK and the EU: Consumer affairs](#), May 2016.

<sup>9</sup> ITV News: EU Referendum: How would a Brexit affect consumer and citizen rights? June 2016, Authored by the UK in a Changing Europe.

<sup>10</sup> Office of National Statistics – source [here](#).

6.17 It will also be important to maintain pressure on the Tory government to clarify how the protection of UK consumers will be guaranteed under different post-Brexit scenarios they will be considering and negotiating on, including ensuring that those consumers are not disadvantaged when buying goods and services within the EU in future.



## 7. Financial Services

7.1 An extensive amount of regulation in Britain's financial services sector is derived directly from EU legislation. This is particularly prevalent in measures introduced after the 2008 banking crisis to better monitor banking practices, guarantee deposits and protect consumers and governments from the future failure of banks.

7.2 While the UK has to date played a leading role in driving the direction of much of this legislation and in activity taken at an EU level to tackle tax evasion and aggressive tax avoidance, a Tory government trying to protect growth and persuade multinational banks to remain headquartered in the UK may take a more relaxed attitude on both issues.

7.3 There is also a major risk unique to the financial services sector: the potential loss of the 'passporting rights' that currently allow UK-based banks to operate freely anywhere else in the EU, which many European players argue should be lost post-Brexit.

### **The Benefits of EU membership:**

7.4 The UK is currently part of the Economic and Monetary Union (EMU), though with an opt-out from the 'third stage' of that union, the adoption of the single currency. This framework allows for a coordinated response within Europe to financial strain or pressure, greater job promotion within financial services and access to substantially larger markets for financial goods and services.

7.5 One of the main benefits of that membership to financial institutions here in the UK are so called 'passporting rights', which enable those institutions to operate throughout the EEA without having to receive authorisation from the regulator in each member state.

7.6 This includes setting up branches in other EEA countries as well as the sale of cross-border services. Recent figures published by the Financial Conduct Authority show that almost 5,500 UK firms rely on their passporting rights to do business elsewhere in Europe, while more than 8,000 EU-based firms rely on them to be business here.<sup>1</sup>

7.7 In the wake of the 2008 crisis, the EU played a crucial role in rescuing and reforming the financial sector. The importance of cooperation in these areas cannot be overstated. EU legislation has been adopted to tackle excessive volatility in financial markets, limit bankers' bonuses, help protect deposits through the Deposit Protection Scheme and reform the relationship between governments and banks.

7.8 Specific legislation includes the EU's Bank Recovery and Resolution Directive (BRRD), Directive on Criminal Sanctions for Market Abuse (MAD/R), Capital Requirements Directive (CRD) IV and Capital Requirements Regulation (CRR).

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<sup>1</sup> See the *Guardian* – [‘Significant risk to passporting rights’](#), 20 September 2016.

7.9 Important action also continues to be taken at an EU level to tackle tax evasion and avoidance across all member states. As recently as July 2016, a new directive was adopted by the EU Council, setting out agreed rules for dealing with five specific tax avoidance issues, ranging from the exploitation of mismatches between national tax systems to artificial debt-shifting between jurisdictions to reduce interest charges.

7.10 Since 2009, the EU Commission has proposed more than 40 legislative and non-legislative measures to help build new rules for the global financial market, promote growth and investment in European banks and protect the financial sector from future problems.

7.11 The initiative for many of those changes have been by the UK through our own domestic legislation, including the Financial Services Act (2012) and the more recent Bank of England and Financial Services Act (2016). That legislation was then checked retrospectively to ensure full alignment with EU Directives and Regulation.

7.12 The Financial Conduct Authority (FCA) has announced that its work will largely remain unaffected by Brexit, despite many of the FCA's rules being derived from EU legislation. Its CEO Andrew Bailey confirmed that it was "*business as usual*" for the FCA and that they would continue to enforce existing rules, and work to implement new ones on which agreement had already been reached.<sup>2</sup>

7.13 Those include the Markets in Financial Instruments Directive II (MiFID II), which is currently being transposed into UK law along with its accompanying regulations, all due to come into force in January 2018. The legislation updates existing rules governing financial institutions operating with the EEA, including steps to better regulate 'over-the-counter' trading, increase transparency, protect investors and give more power to regulators.

7.14 The UK is committed to implementing this legislation, and it has been argued by some commentators and credit agencies that compliance with MiFID II may ameliorate the potential loss of passporting rights for the UK financial services sector, although this is strongly disputed by other experts and by many financial institutions themselves.<sup>3</sup>

### **Risks and Implications:**

7.15 The indecision and uncertainty over Britain's future relationship with the European Union, our potential membership of the EEA, and our compliance with Single Market rules is compounding the concern that already exists for many multinational financial institutions about the UK's economic prospects, and the risks of remaining headquartered here.

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<sup>2</sup> Timothy Edwards, *Brexit and Financial Services*, House of Commons Library Briefing Paper No. 7629, 1 August 2016, p.6.

<sup>3</sup> The *Telegraph*, 19 September 2016, article [here](#).

7.16 That uncertainty is crystallised in the issue of passporting rights, and the fear shared by many institutions that – despite the implementation of MiFID II – they will find it more difficult to operate across the EU efficiently in a post-Brexit environment.

7.17 Foreign Secretary Boris Johnson has expressed confidence that UK banks will retain their passporting rights,<sup>4</sup> and it has also been argued that Britain’s European partners may be inclined to agree given the thousands of EU-based firms who would be reliant on passporting rights to continue operating freely in the UK.

7.18 However, Jens Weidmann, president of the German Bundesbank, has recently argued that this will only be possible if the UK is at least part of the EEA, and that if it is not, London risks losing ground to Frankfurt as Europe’s leading financial hub for multinational banks.<sup>5</sup> That is also consistent with the preparations many major firms are said to be making in terms of shifting jobs and office space from London onto the continent.<sup>6</sup>

7.19 An even bigger, long-term source of uncertainty lies in the EU’s ‘roadmap’ for the completion of Economic and Monetary Union, in the wake of the Eurozone crisis.<sup>7</sup> According to this roadmap, the post-crisis consolidation phase is near completion, before the enactment of a number of measures to bring about that ‘completion’ phase by 2025.

7.20 If the UK is bound to conform with all future EU legislation in this area in order to retain free access to the market for financial services, it is a matter of serious concern that the UK government will have no influence over that legislation, and that will only increase the sense of uncertainty for many UK-based financial institutions.

7.21 Another serious risk concerns the UK’s future approach to tax avoidance. Many advocates of Brexit, including Secretary of State for International Trade Liam Fox, have argued that Britain can best maintain its prosperity by adopting a Singapore or Switzerland style model with a low tax, low regulation environment for major corporations.

7.22 As tax expert, Jolyon Maugham QC, has argued: *“If you look at the Brexit vision for the UK, it is to become like Switzerland and Singapore. You become a magnet for the kinds of financial activity that are attracted by low regulatory standards.”*<sup>8</sup>

## Next Steps

7.23 To give certainty to the UK financial sector, and especially to multinational companies headquartered here, it is vital that the government can provide assurances that their ability to do business freely across the EU will be unaffected by Brexit.

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<sup>4</sup> *Telegraph* article quoting Boris Johnson [here](#), 23 July 2016.

<sup>5</sup> *Guardian* article quoting Jens Weidmann [here](#), 19 September 2016.

<sup>6</sup> *Independent* article [here](#), 16 August 2016.

<sup>7</sup> European Commission, article [here](#).

<sup>8</sup> *Independent*, 9 June 2016, article [here](#), 9 June 2016.

7.24 To that end, Shadow Chancellor John McDonnell has said that the retention of passporting rights will be one of the Labour party's 'red lines' when judging the acceptability of any proposed deal on Britain's future relationship with the EU, and working with the UK financial sector, we will continue to pressure the Tory government and our own counterparts elsewhere in Europe for reassurance on that issue.

7.25 Equally, we will strongly oppose any attempts by the Tory government to weaken post-2008 legislation to manage financial risk in the banking sector or to tackle corporate tax avoidance. The Singapore model is not one for Britain to follow.

7.26 Instead, a future Labour government will match any further EU progress in those two areas with our own legislation, not just for the sake of financial stability and fairness in the tax system, but also to ensure that the regulatory environment for banks in the UK continues to mirror that in the rest of the EU as closely as possible. That will help to maintain the simplicity for financial companies of operating freely in both environments.

## 8. Justice and Home Affairs

8.1 Given the EU's limited competence in the Justice and Home Affairs (JHA) field, and the UK's own negotiated opt-outs from many of the agreements that do exist, the benefits of our membership in this area flow largely from our ability to cooperate effectively with other member states in dealing with shared challenges. That cooperation is severely jeopardised by Brexit, and demanding its retention must be a priority for the Labour party as the government develops its negotiating plan.

### The current benefits of EU membership:

8.2 Current EU JHA agreements touch on five main issues: substantive criminal law; mutual recognition in criminal matters; harmonisation of criminal procedure; exchange of police information; and the operation of EU agencies.<sup>1</sup>

8.3 The UK's negotiated opt-outs and opt-ins within the Lisbon Treaty allow it to be extremely selective in how and when it applies EU agreements in JHA matters,<sup>2</sup> for example:

- Under Protocol 21, the UK may choose, within three months of a proposal being presented to the Council, whether it wishes to participate in the adoption and application of any such proposed measure, and even if it does not, the UK can still participate in negotiations and can opt in at any stage, although this must be approved by the Commission and can be subject to conditions from the Commission and the Council<sup>3</sup>
- Under Protocol 19, the UK may request to take part in some or all provisions of the Schengen *acquis*. The UK participates in the police and judicial cooperation elements of Schengen, but not the border control elements.<sup>4</sup>

8.4 In July 2013, the then Prime Minister exercised an opt out on all pre-Lisbon Policing and Criminal Justice measures, with the view to re-join a smaller number.<sup>5</sup> As of December 2014, the UK was permitted to re-join 35 vital police and criminal justice measures in the national interest.<sup>6</sup> The government has undertaken that all subsequent JHA proposals would be assessed on a case-by-case basis.

8.5 In terms of UK participation in areas of JHA cooperation provided by EU membership, the following are the most important:

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<sup>1</sup> Professor Steve Peers, '[How would Brexit impact the UK's involvement in EU policing and criminal law?](#)', 21 June 2016.

<sup>2</sup> Home Office and Ministry of Justice: [JHA opt-in and Schengen opt-out protocols](#), October 2015.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Balance of Competences review on [Police and Criminal Justice](#), p.14.

<sup>6</sup> Full list of final JHA opt-in and Schengen opt-outs available [here](#).

- **Europol:** Established by the Europol Convention of 1995 (and later the Act Council Decision 2009/371/JHA),<sup>7</sup> Europol has competence in situations where two or more member states are in need of a common approach to tackle organised crime, terrorism and other forms of serious crime.<sup>8</sup> Europol supports UK law enforcement agencies by supporting their investigations, through its analytical capabilities and by facilitating cooperation between member states<sup>9</sup>. The UK uses Europol more than almost any other country.<sup>10</sup>
- **European/Europol Information System:** This allows Europol to process and pool information and intelligence, including personal data from across the EU,<sup>11</sup> using the Secure Information Exchange Network Application (SIENA), the main conduit for all operational information passing to and through Europol.<sup>12</sup>
- **Eurojust:** The EU's Judicial Cooperation Unit, supporting judicial coordination and cooperation between national authorities.<sup>13</sup>
- **European Arrest Warrant (EAW):** Designed as a fast-track system to allow the UK both to extradite criminals to other member states, and effect extraditions back to the UK.<sup>14</sup> Since 2004, the EAW has enabled the UK to extradite over 7,000 individuals to other member states, and effect the extradition of over 1,000 individuals to the UK.<sup>15</sup>
- **Mutual Legal Assistance (MLA):** Cooperation between different countries for the purpose of gathering and exchanging information, and requesting and providing assistance in obtaining evidence from country to country.<sup>16</sup>
- **Passenger Name Records (PNR):** Provides access to information collated by carriers as part of the travel booking process; vital for tracking criminal and terrorist movements, executing intelligence-led operations, and conducting post-incident investigations and criminal proceedings.<sup>17</sup>
- **Prüm:** Allows for the searching of DNA profiles on a hit/no hit basis against other member states' DNA databases and vehicle databases and helps law enforcement agencies connect crimes committed in different countries.<sup>18</sup> The

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<sup>7</sup> Eur-Lex – European Legislation – [Europol](#).

<sup>8</sup> *Ibid.*

<sup>9</sup> Cabinet Office: [UK Cooperation with the EU on Justice and Home Affairs Issues](#), May 2016, p.3.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.* p.4.

<sup>12</sup> *Ibid.* p.3.

<sup>13</sup> Europa: [Eurojust](#).

<sup>14</sup> *Ibid.*

<sup>15</sup> Cabinet Office: 'UK Cooperation', May 2016, p.3.

<sup>16</sup> European Commission – [MLA](#).

<sup>17</sup> Cabinet Office: 'UK Cooperation', May 2016, p.5.

<sup>18</sup> *Ibid.* p.6

UK government voted to re-join Prüm in December 2015, and – prior to Brexit – expected to be connected from 2017 onwards.<sup>19</sup>

- **European Criminal Records Information System (ECRIS):** Provides a secure electronic system for the exchange of information on criminal convictions between authorities.
- **Schengen Information System (SIS):** A highly efficient large-scale system that supports external border control and law enforcement cooperation, allowing authorities to enter and consult alerts about wanted or missing persons and objects.<sup>20</sup> Its vast database contains 64 million pieces of information, and is used by British policy every day to check for leads about criminal suspects.<sup>21</sup> A Second Generation Schengen Information System (SIS II), has now been established that will provide enhanced functionalities to the existing system.<sup>22</sup>
- **Securing Victims' Rights:** A general EU directive on victims' rights along with other related measures including compensation for victims of crime and provision for victims of specified offences. Of particular importance, the Directive establishes a mechanism for victims of a violent crime in a member state other than their own to claim compensation.
- **Civil Justice Cooperation:** The UK has also opted in to a number of other procedural measures that help to determine which member state's jurisdiction is responsible for determining disputes and whose law applies. It also includes the mutual recognition of judgments between member states and judicial cooperation between courts on matters such as the service of documents.

8.6 In two other key areas, new legislation has been agreed by member states, including the UK, but not yet transposed into national laws:

- **Cyber Security:** Part of the EU cyber security strategy for preventing and responding to disruptions and attacks affecting Europe's telecommunications systems, the proposed Network and Information Security (NIS) would impose a minimum level of security for digital technologies, networks and services across all member states. It also proposes to make it compulsory for certain businesses and organisations to report significant cyber incidents.<sup>23</sup> It was due to be transposed into member states' national laws by May 2018.<sup>24</sup>
- **Data Protection:** In December 2015, the EU reached agreement a modern and

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<sup>19</sup> *Ibid.*

<sup>20</sup> European Commission: [Schengen Information System](#).

<sup>21</sup> *Guardian*: [Europol chief says Brexit would harm UK crime-fighting](#), June 2016.

<sup>22</sup> Eur-Lex: [SIS II](#).

<sup>23</sup> Europa: [EU Cyber Security Strategy](#).

<sup>24</sup> Warwick Ashford: [UK business unlikely to dodge cyber security rules post-Brexit](#), July 2016.

harmonised data protection framework for all member states,<sup>25</sup> enabling citizens to better control their personal data, and ensuring that the police and criminal justice sector protects the data of victims, witnesses and suspects of crimes.<sup>26</sup> The Regulation and Directive were formally adopted by the European Parliament and Council in April 2016 and is due to come into effect in May 2018.

### Risks and Implications:

8.7 With the obvious exceptions of immigration and human rights, the implications of Brexit for UK legislation are likely to be minimal, but the potential damage to the UK's ability to cooperate effectively with our European partners is considerable, in particular:

- **Europol:** Director of Europol, Robin Wainwright, has been clear that leaving the EU would make the UK a *"second-tier member of our club."*<sup>27</sup> Norway and Iceland have access to Europol, but as 'third country' operational cooperation partners, they are not allowed direct access to databases or to lead investigation teams.<sup>28</sup> They cannot search the EIS, and must negotiate an additional bilateral agreement to be connected to Europol's SIENA.<sup>29</sup> Furthermore, it has taken a number of years to reach even those agreements with 'third countries'.<sup>30</sup>
- **Eurojust:** Again, 'Third State' agreements have been reached with Norway and Iceland among others, around e.g. the exchange of personal data, and the UK may be able to follow suit,<sup>31</sup> but it is likely to become a 'second-tier member'.
- **European Arrest Warrant:** It would be expected that the UK would reach an extradition agreement with the EU similar to the EAW, but – in other such cases – both parties may refuse to extradite their own nationals,<sup>32</sup> which they cannot do under the EAW. Moreover, whereas Norway and Iceland began negotiating an extradition agreement with the EU in 2001, it took well over a decade to secure and even that was eventually conditional on joining the Schengen area. The EU's extradition treaty with the United States was agreed in 2003 but did not come into force until 2010;

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<sup>25</sup> Europa: [Reform of EU data protection](#)

<sup>26</sup> European Commission: [Agreement on the Commission's EU Data Protection Reform](#), 15 December 2015.

<sup>27</sup> Guardian: [Europol chief says Brexit would harm UK crime-fighting](#), June 2016.

<sup>28</sup> Professor Steve Peers, ['How would Brexit impact the UK's involvement in EU policing and criminal law?'](#), 21 June 2016

<sup>29</sup> HM government's brief on [UK Cooperation with EU on JHA](#), May 2016, p.4.

<sup>30</sup> *Ibid.*

<sup>31</sup> Eurojust: [Third States and Organisations](#).

<sup>32</sup> HM government's Brief on UK Cooperation with EU on JHA, May 2016, p.3



- **Mutual Legal Assistance:** The EU-Japan agreement on MLA represents the first ‘self-standing’ MLA agreement between the EU and a third country.<sup>33</sup> It is possible the UK would be able to strike a similar agreement following Brexit.
- **Passenger Name Records:** As with other EU areas of cooperation, countries outside the EU will normally require either a direct agreement with the EU or bilateral agreements with individual member states in order to acquire PNR;<sup>34</sup>
- **Prüm:** Norway and Iceland have concluded agreements with the EU to access Prüm, but both are part of the Schengen area; and as with the EAW, it may be much more difficult for the UK to secure a similar agreement.<sup>35</sup>
- **European Criminal Records Information Service:** No non-EU country currently has access to ECRIS (including those in Schengen) – instead they must use the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters, or informal Interpol channels for the purpose of obtaining information, which are far more time consuming, complex and expensive than the ECRIS procedure.<sup>36</sup> However, the Paris attacks have caused a re-think in this area, and it may be that the UK is better able to negotiate a deal as a result.
- **Schengen Information System (SIS):** There is no precedent for a country that is outside the EU and Schengen to have access to the SIS system, so the UK would be trying to negotiate a historic first for itself.
- **Securing Victim’s Rights:** With regards to the compensation scheme for victims of intentional violent crimes committed in other member states, such a reciprocal arrangement would clearly cease upon leaving the EU, and would need to be negotiated afresh.
- **Civil Justice Cooperation:** Many civil justice cooperation measures also apply to EEA and EFTA states as a result of the Lugano Convention, so it is possible that the UK could remain part of the existing arrangements, but if we stay out of EEA/ EFTA, we would need newly-negotiated arrangements.
- **Cyber Security:** Although it is likely the UK will still be a member of the EU in 2018, it is not yet clear whether the UK government will decide to transpose the NIS directive into UK law.<sup>37</sup> However, even if the UK elects not to do so, UK-

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<sup>33</sup> HM government’s Brief on UK Cooperation with EU on JHA, May 2016, p.3.

<sup>34</sup> *Ibid.* p.5.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> Warwick Ashford: UK business unlikely to dodge cyber security rules post-Brexit, July 2016.

based operators of digital service providers that offer their services in Europe will still have to comply with the directive.<sup>38</sup>

- **Data Protection:** Following the referendum result, the UK Information Commissioner's Office issued a statement, which said no changes were expected with regard to data protection,<sup>39</sup> and that *"if the UK wants to trade with the Single Market on equal terms we would have to prove 'adequacy' - in other words UK data protection standards would have to be equivalent to the EU's General Data Protection Regulation framework starting in 2018."*<sup>40</sup>

### Next Steps:

8.8 The sheer scale of uncertainty spelt out above on the UK's continued ability to access essential cooperation and systems, and on how long it might take to negotiate that access, is extremely troubling, even more so because the government has thus far been unable to provide any answers, while the Leave campaign simplistically argue that 'controlling our borders' is the solution to all problems on policing and security.

8.9 The Labour party is clear that all the elements of cooperation spelt out above, including the new measures relating to cyber-security and data protection, must be maintained post-Brexit, and we will work alongside police organisations to make the case for the prioritisation of these measures during the Brexit negotiations.

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<sup>38</sup> *Ibid.*

<sup>39</sup> ICO, [Referendum result response](#), 1 July 2016.

<sup>40</sup> *Ibid.*

## 9. Human Rights

9.1 By leaving the European Union, Britain loses the human rights protections given by the EU's Charter of Fundamental Rights, as well as the right of UK courts to apply to the ECJ for rulings on human rights cases. Without the minimum standards in human rights provided by EU membership, and faced with a Tory government who have promised to scrap the Human Rights Act in the UK, British citizens could be facing a substantial rolling back in the protection of our fundamental rights, something the Labour party is determined to oppose.<sup>1</sup>

### The current benefits of EU membership

9.2 The UK's current domestic human rights legislation stems from a number of sources, and dates back centuries to the Magna Carta, the Petition of Right, and the Bill of Rights (1689), right up to their modern day equivalent, the Human Rights Act (1998).

9.3 The HRA incorporated the rights set out in the European Convention on Human Rights (ECHR), a Council of Europe document which first applied in the UK in 1953. UK lawyers were instrumental in drawing up the ECHR and Britain was one of the first signatories to the Convention. It is important to note that the ECHR is not EU legislation, but all member states are signatories and the EU itself is currently negotiating its membership of the Convention. Signing the Convention is obligatory for any state applying for EU membership. The rights in the Convention are upheld by the European Court of Human Rights (ECtHR).

9.4 The UK is also a signatory to the United Nations' Universal Declaration on Human Rights as well as other Conventions such as the Convention on the Rights of the Child and the Convention against Torture. Not all these conventions have been transposed into UK law. The UN periodically reviews member states to ensure that they are conforming to their human rights obligations under the treaty.

9.5 In addition to this, the Lisbon Treaty (2009) consolidated human rights protections at an EU level in the Charter of Fundamental Rights of the European Union. This is incorporated into UK law under amendments to the European Communities Act (1972), and includes:

- a) All the rights set out in the ECHR;
- b) All rights deriving from the case law of the ECJ; and

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<sup>1</sup> The Tories set out plans to fundamentally re-evaluate Britain's human rights laws prior to the 2015 General Election. Their manifesto commitment can be read [here](#), p.60.

- c) Other rights and principles resulting from the common constitutional traditions of the EU countries and other international instruments<sup>2</sup>

9.6 The key difference between the Charter and the ECHR is that, under the Charter, any legislation found to be in contravention of fundamental rights is to be disapplied by domestic courts, whereas under the Convention, the ECtHR can order a member state to pay damages to the applicant if a violation is deemed to have taken place but it does not have the power to override domestic legislation.

9.7 The Charter also has a much wider scope than the ECHR. For example, it covers areas like the freedom to work and seek employment in any member state; the right of collective bargaining and action (Article 28); protection in the case of an unfair dismissal; the right not to be tried or punished twice for the same criminal offence; and Article 37, which requires member states to ensure a high level of environmental protection.<sup>3</sup>

9.8 The UK and Poland negotiated Protocol 30 as part of the Lisbon Treaty which states that the EU Charter does not create any justiciable rights in the UK that have not been provided for in domestic legislation. The purpose of the protocol was to ensure that the Charter does not increase the power of the ECJ over UK legislation.

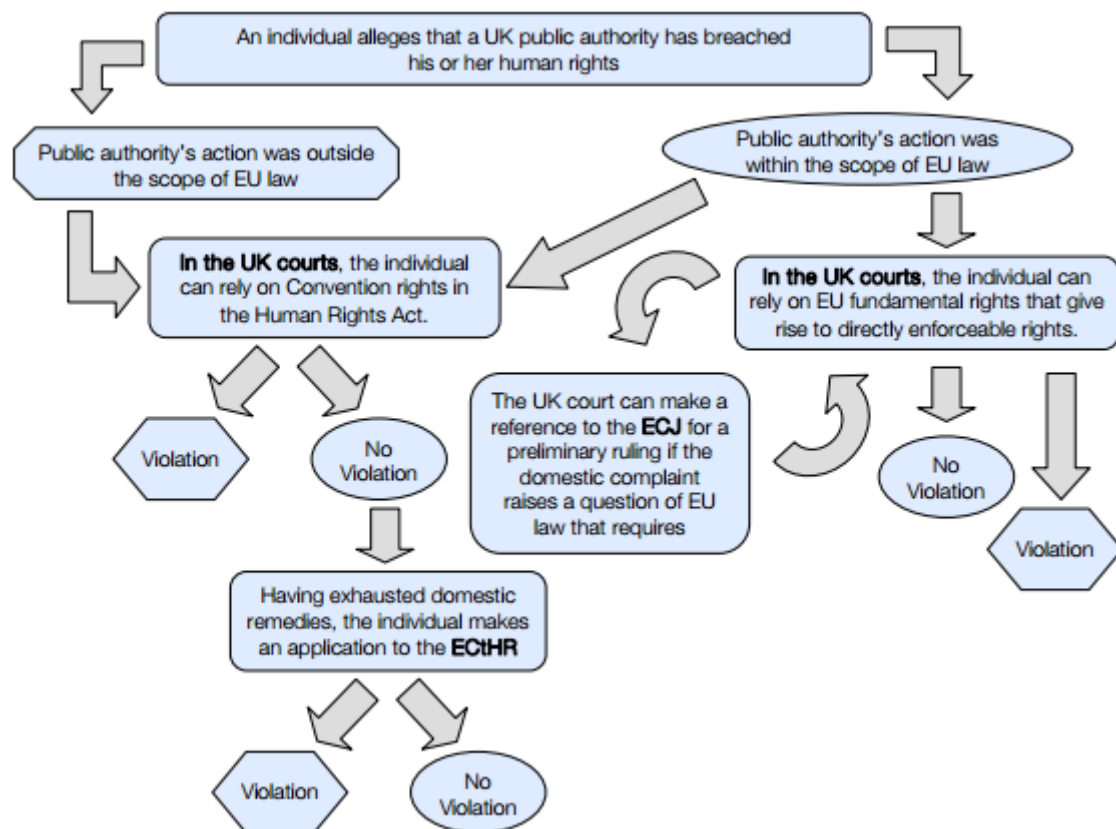
9.9 The chart below presents the government's official interpretation of how individuals may or may not seek redress for alleged violations of their human rights.<sup>4</sup>

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<sup>2</sup> See details [here](#).

<sup>3</sup> Full details of Charter rights can be seen [here](#), and ECHR rights [here](#).

<sup>4</sup> This chart is obtained from this [HMG publication](#), p. 53.



## Risks and Implications

9.10 As the coalition government stated in its review of competences, “EU law contains a wider array of rights than those protected under the Human Rights Act or the ECHR.”<sup>5</sup> By leaving the EU, Britain risks losing a number of the fundamental rights as defined in the Charter. These include a number of human rights relating to work, particularly those such as the right to strike and the right to redress following an unfair dismissal.

9.11 In theory, leaving the EU only withdraws the UK from the Charter, and leaves in place the protections of the ECHR as laid out in the Human Rights Act. However, the current Tory government intends to repeal the HRA, and will have no constraints on it from doing so in a post-Brexit Britain. As the prime minister has herself said: “Regardless of the EU referendum, my view is this: if we want to reform human rights laws in this country, it isn’t the EU we should leave but the ECHR and the jurisdiction of its court.”<sup>6</sup>

9.12 Even if we Britain were to keep the HRA, this would not allow domestic courts to strike down UK legislation if it found it to be incompatible with to EU law, as the Charter of Fundamental Rights allows. The risk therefore is that our current human rights protections and right to redress when these have been violated will be substantially weakened simply by leaving the Charter, and will be at the mercy of a Tory government to weaken further.

<sup>5</sup> HMG: ‘Fundamental Rights’, *Review of the balance of Competencies between the UK and the EU*, p. 50.

<sup>6</sup> The *Guardian*: ‘UK must leave ECHR, says May’, 25 April 2016.

## **Next Steps**

9.13 If it remains valid, the commitment of the Tory government to replace all current UK human rights legislation, rather than allow the EU-derived Human Rights Act to stay in force, represents both a threat and an opportunity. The threat is obvious, and the Labour party is determined to oppose the inevitable Tory attempt to water down the legal rights of UK citizens as part of this process.

9.14 However, we will also seize any opportunity afforded by the presentation of new human rights legislation to Parliament to campaign and vote not just for the retention of those rights protected under the HRA, but also for their extension, in order to provide protection for the same workers' rights set out in the Fundamental Charter of Human Rights, and for redress when they are violated.

## 10. Foreign Affairs and Defence Policy

10.1 The UK has historically been one of the key players in driving the direction of the EU's Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) largely due to our position as one of the largest and most advanced military powers within the EU, and ability to take command of a mission. This has given us substantial bargaining power to control the direction of EU thinking in the areas of foreign and defence policy.

10.2 In the run-up to the referendum, the Leave campaign argued that the UK could exert exactly the same international influence regardless of its membership of the EU given its permanent place on the UN Security Council and its role within NATO.<sup>1</sup> However, that does not square with the serious concerns expressed by Britain's NATO allies about the impact of Brexit, the effect it would have on British influence and leadership, and the knock-on effect that would have on NATO's political cohesion and operational effectiveness.

10.3 In the context of this paper, the issues in this area cover 'rights and investment' in their broadest form: the right of the British people to have their lives and interests defended effectively at home and abroad; and the investment in our overseas influence and security that the EU currently provides, and which Brexit will put at risk.

### **The current benefits of EU membership**

10.4 While foreign and security policy remain the competence of individual member states, significant steps have been taken within the EU to help facilitate coordination between member states in these areas and – through the Copenhagen Criteria – the EU has made it an objective to export its values and principles to other countries.

10.5 That shared exercise of 'soft power' is the biggest benefit the UK derives from EU membership in the sphere of foreign and security policy. enabling us to exert influence in areas of the world where, independently, we may not hold much sway. Collective action through the EU gives member states more bargaining power over countries with whom we want to do deals, and more muscle over countries whom we want to deter from aggression.

10.6 The most effective foreign actions by EU member states to date have been those initiated through the formation of ad hoc groups in the face of a crisis, i.e. a group of member states taking the lead on developing policy which is then applied EU-wide through the involvement of the EU High Representative. Examples include the E3+3 negotiations on the Iranian nuclear programme, led by Britain's Cathy Ashton; the Anglo-German initiative in

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<sup>1</sup> Vote Leave briefing [here](#).

Bosnia-Herzegovina; and the Normandy Format which delivered the Minsk Agreement in February 2015, leading to the ceasefire in Ukraine.<sup>2</sup>

10.7 The EU also works alongside NATO on building civilian capabilities. For example, the military training programme carried out by NATO in Afghanistan is being supported by a police force training operation run by the EU, a type of cooperation also seen in Bosnia.

10.8 In the field of defence, CSDP gives the UK flexibility to work with EU partners on issues of common interest, for example the highly successful Operation Atalanta mission to tackle piracy in Somalia, which involved not just coordinated military action but also activities such as helping coastal countries to enhance their judicial and prison capacity to deal with those cases, something that NATO could never have replicated.

10.9 Britain is also currently a member of the European Defence Agency, which helps facilitate collaboration in the defence industry and carry out research to promote the EU's defence capabilities. We would have to leave the EDA on exiting the EU, but it should be noted that both Norway and Switzerland have signed deals with the EDA enabling them to participate in its research and technology projects.

10.10 Finally, the EU's international development assistance, like its diplomacy, helps to magnify the UK's presence around the world, giving the UK a say in how that aid is spent and allowing us to exert influence on countries which would – on current rules – not qualify for allocations from the UK's domestic overseas aid budget, e.g. Morocco and Turkey.

## **Risks and Implications**

10.11 On defence, while there are precedents for third party states to collaborate on CFSP operations – such as Norway contributing assets both to Operation Atalanta and to Operation Althea in Bosnia – it is hard to see the UK retaining the leadership role it has often provided in such operations (including Atalanta) once we are outside the EU.

10.12 The UK will also be affected by the loss of 'soft power' provided by the EU, the way that it allows us to magnify our influence across the world, and the broader range of foreign policy options it offers us. For example, following the recent attempted coup in Turkey the EU were able to use the prospect of membership of the EU to dissuade President Erdogan from re-introducing the death penalty.<sup>3</sup>

10.13 Most significantly, the UK will be giving up a position of substantial influence over the direction of EU CFSP and CSDP. To date, the UK has played a lead role in influencing the direction of defence policy and without our seat at the table, measures that the UK has long

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<sup>2</sup> House of Lords EU Committee, [Europe in the World: towards a more effective EU foreign and security strategy](#), House of Lords Paper 97, pp. 39-41.

<sup>3</sup> Jack Schickler, ['Boris wrong to claim Brexit won't affect our European Leadership'](#), *In Facts*, 19 July 2016.



opposed, such as the strengthening of the European Defence Agency and the establishment of an EU army, are much more likely to resurface.

10.14 The risk is then that Britain either has to accept that further integration and stronger role for the EDA, without any influence on those decisions, or give up access to this important peacekeeping and research venue.<sup>4</sup>

10.15 Of equal concern is that – should the EU starts to develop its own distinct foreign and security policies, without Britain’s restraining hand – this could put their objectives at odds with those of NATO, the UK and the USA, thereby destabilising NATO and impeding its ability to perform its defence role, with particular concern over policy towards Russia.

10.16 It goes without saying that most of the foreign policy risks faced by the UK will continue to require international action, for example, international terrorism, Russian aggression, climate change and cross-border cybercrime. Britain is therefore going to need the EU if we want to tackle any of these threats effectively, but we may increasingly find ourselves at odds with them both over the policy and mechanisms for tackling such threats.

10.17 As Malcolm Rifkind has stated: *“There is no geostrategic threat to France or Germany or continental Europe that would not also be a threat to Britain, as we found both in 1914 and in 1939. So we would be in the extraordinary situation of having given up the power to either control or influence policy, but seeking as outsiders nevertheless to influence it anyway, because the outcome would be very important to us.”*<sup>5</sup>

## **Next Steps**

10.18 How Brexit will impact on Britain’s foreign policy, defence and international standing will depend largely on events outside the control of either the UK or the EU – including presidential elections in the USA, Russian expansionism, and ongoing volatility in the Middle East. However, that is all the more reason why the UK needs to retain good working relations with the EU in the field of CFSP and CSDP to face these and other future challenges.

10.19 In the short term, we will pressure the government on what agreement will be reached between the UK and the EU on Britain’s future role in existing CFSP operations, and longer-term, we will demand explanations from them on how they will ensure that their negotiating plan for Brexit will protect our foreign policy and security relationships with the EU, and enhance them with the rest of the world.

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<sup>4</sup> Nick Witney, [‘The ‘European Army’ marches again’](#), *In Facts*, 21 July 2016.

<sup>5</sup> Malcolm Rifkind MP, oral evidence, [The Costs and Benefits of UK membership of the EU](#), House of Commons Select Committee on Foreign Affairs.

10.20 There are no easy answers to those questions, but that is precisely why a Tory party which has recklessly taken the country into Brexit needs to be confronted with them, and made to prioritise them as negotiations proceed.

## 11. Northern Ireland

11.1 The post-Brexit position of Northern Ireland needs special consideration not just because of the high level of EU structural funding that currently benefits its socio-economic development, and because of the unique issue of its land border with the Irish Republic, but also because of the extent to which the EU finances vital peace and community integration programmes in the region, and the impact that Brexit could therefore have on the hard-won peace achieved in recent years.

### The current benefits of EU membership:

11.2 Northern Ireland was historically one of the most deprived areas in the EU and, until 1999, was in receipt of Objective 1 funding, which was reserved for regions which face the biggest social and economic challenges. It remains a major recipient of EU structural funding (as addressed in Section 3). EU funding has, however, also been a crucial driver in nurturing peace and stability within Northern Ireland.

11.3 One of the most significant schemes funded through the EU is the longstanding EU PEACE Programme, which since 1995 has supported projects to encourage better cross-community relations and socio-economic progress in the border regions of Northern Ireland and the Irish Republic.

11.4 The fourth wave of this programme (PEACE IV) is currently scheduled to run from 2014-2020, with a total value of €270m (€229 from ERDF and the remaining €41m from funding at a national level). Projects financed include schemes to support victims of violence, small business grants, infrastructure and urban regeneration developments, and funding for shared civic spaces in order to alleviate segregation in communities.<sup>1</sup>

11.5 The Northern Ireland Task Force was established in 2007, the first of its kind for a single region in the EU, with a remit to help Northern Ireland take a more active role in the EU policy process and improve its economic competitiveness and generate sustainable employment, in light of the region's historic problems. Current EC President Jean-Claude Juncker confirmed the continuation of the task force in January 2016, with an assessment on its progress due in 2018. It is as yet unclear what its future will be post-referendum.

11.6 Historically, EU membership for both the UK and the Republic and Ireland has also facilitated a space where often strained dialogue can be conducted on neutral ground in Brussels and Strasbourg. A recent report in the *Journal of Contemporary European Research* concluded that the British-Irish relationship had undergone a “*transformation*” since accession to the European Union.<sup>2</sup>

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<sup>1</sup> More information on the EC website [here](#) and on the Special EU Programmes Body (SEUPB) summary [here](#).

<sup>2</sup> *Journal of Contemporary European Research*: ‘[Northern Ireland: 40 Years of EU Membership](#)’, (vol. 8, issue 4, 2012), p.570.

11.7 While the future of the Common Travel Area between the UK and the Irish Republic remains a subject of negotiation, and will be addressed separately as part of the Labour party's work on the future of the Single Market, the immediate concern for this paper is the future of investment helping to secure peace in the region.

11.8 Funding for peace programmes and for victims and survivors – such as the Victims and Survivors Service (VSS) - is available from the Northern Ireland Executive, but it is heavily supplemented by EU PEACE funding.

11.9 These form part of the Executive's ten-year Strategy for Victims and Survivors, implemented in 2009. Supporting the interests of victims of past conflict is enshrined in Northern Ireland law (in Article 5 of the Victims and Survivors Order 2006), but EU funding is a crucial actor in its delivery.<sup>3</sup>

### **Risks and Implications**

11.10 The preservation of peace and prosperity in Northern Ireland is clearly a concern in a post-Brexit environment, especially given the ongoing uncertainty over the border issue, and that makes it all the more vital that the funding of peace and reconciliation programmes are maintained in full, not just until Britain's departure from the EU, but for the long term.

11.11 Indeed, Northern Ireland's First Minister Arlene Foster, who campaigned for a Leave vote and said that the peace process *"is not based on the European Union in any way"*,<sup>4</sup> has since written to Theresa May – alongside Deputy First Minister Martin McGuinness – spelling out the manifold downsides for Northern Ireland post-Brexit, including the potential loss of resources from structural and peace-related funding, and saying *"EU funds have been hugely important to our economy and the peace process"*.<sup>5</sup>

11.12 As in other areas, the Chancellor Philip Hammond has guaranteed to meet funding commitments signed before the upcoming Autumn Statement, even if those projects are due to finish after the UK leaves the EU, and has said any future proposals will be approved on a case-by-case basis by the Treasury.

11.13 However, specific guarantees for Northern Ireland were absent from the announcement, as was any statement on any sources of EU funding that would have been expected beyond 2020.

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<sup>3</sup> Commission for Victims and Survivors website [here](#).

<sup>4</sup> The Irish News: '[Arlene Foster's Brexit comments blasted by opponents](#)', 16 May 2016.

<sup>5</sup> Executive office of the Northern Ireland government: [Letter to Theresa May](#), 10 August 2016.

## **Next Steps**

11.14 Brexit has initiated a period of great uncertainty in Northern Ireland, and the Labour party will press the government for concrete plans on how they intend to resolve this, not just in relation to the issues around the border, but in terms of the security of both structural and peace-related funding to maintain the progress that this funding has helped to drive over recent years.

11.15 Indeed, just like structural funds, peace programmes are a long-term endeavour that demand the stability of long-term investment and planning, and must be assured if peace is to be secured in Northern Ireland for generations to come. Alongside our guarantee on structural funds for Northern Ireland, the Labour party will therefore commit that – when we are in government – we will make good any Brexit-related shortfall in funding for programmes focused on peace and reconciliation into the 2020s and beyond.

## 12. Education

12.1 The EU has limited competence in the area of education, but Brexit nevertheless carries major implications for the sector. Most notably, any curbs on the free movement of workers would carry significant implications from early years care and schools<sup>1</sup> through to higher education,<sup>2</sup> all issues that will be addressed as part of Labour's ongoing work on future options in relation to free movement of goods, services and people.

12.2 However, for the purposes of this paper, focusing on rights and investment, we will look largely at the potential loss of access to EU-funded programmes, with particular emphasis on the higher education sector.

### The current benefits of EU membership:

12.3 At school level, there are currently over 1,000 language assistants from the EU teaching in British schools through the EU-funded *Erasmus* programme, playing a vital role in the quality of education pupils receive in languages.

12.4 The *Comenius* Programme (part of *Erasmus+*) also promotes links, partnerships and exchanges between teachers and schools across the EU. According to a survey by the British Council, 79% of participants said their involvement in Comenius had had a "significant" or "very significant" impact on their own professional development.<sup>3</sup>

12.5 The European Investment Bank (EIB) is also a significant source of funds to assist with school infrastructure projects. In 2015 alone, the EIB loaned £250 million to the government to help fund the Priority Schools Building Programme, designed to rebuild 261 of the schools in the worst condition around the country.<sup>4</sup>

12.6 At higher education level, Erasmus+ (previously the Life Long Partnership) acts an umbrella for all programmes facilitating the promotion of mobility, the learning of languages and intercultural understanding between higher education students. Almost €1bn has been

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<sup>1</sup> For example, the ONS estimates that 6 per cent of the UK's 300,000 childcare workers are EU migrants, and migrants also constitute large numbers of school-teachers and assistants, and of both students and staff in the higher education sector. On the other side of the argument, free movement creates undoubted pressure on school places, with 700,000 school-aged children in 2015 with at least one parent who is a citizen of a European country other than the UK. The issues in this area will be considered more broadly as part of Labour's work.

<sup>2</sup> Member States are obliged to guarantee equal access to higher education for other EU nationals, including paying the same fees as 'home' students, with access to loans from the Students Loans Company (SLC) to cover their tuition fees. EU nationals who have been resident in the UK for three years can also apply for living cost support equivalent to 'home' students. Universities UK highlight that free movement currently allows 125,000 EU students to study at British Universities, generating £2.2bn for the economy and creating 19,000 jobs. Further, 14% of academic staff currently come from other EU nations.

<sup>3</sup> Review of the Balance of Competences between the United Kingdom and the European Union: [Education, Vocational Training and Youth](#), December 2014, p.42.

<sup>4</sup> HM Treasury announcement: [Record EIB investment in UK in 2015](#), 14 January 2016.

allocated to the UK since 2007 under these programmes, and it is estimated that 250,000 people have undertaken activities abroad as a result.<sup>5</sup>

12.7 Other key elements of EU funding in the higher education sector include:

- Research grants: from 2007-13, the UK higher education sector received 25% of all EU research funds available to universities across Europe.
- Horizon 2020: The European Research Area (ERA) was launched in 2000 by the European Commission with a remit to allocate €80bn for research and innovation from 2014-20, with UK universities at the top of the list of recipients.<sup>6</sup>
- Universities UK, the umbrella body for the sector, estimates that more than 60% of the UK's international research partners are based in other EU countries.<sup>7</sup> Members of the Russell Group universities alone attract 18% of funding from the European Research Council, well above the share of universities in Germany, France, Spain or Italy.<sup>8</sup> Wendy Piatt, director-general of the Russell Group, warned that £500m worth of education and research grants won by British establishments from the European Union would be at risk post-Brexit.<sup>9</sup>
- EU-funded research programmes also provide opportunities for collaborative working through ready-made forums for sharing data and ideas, economies of scale, access to facilities and long-term career opportunities.

12.8 Another key aspect of EU membership within the higher education sector is around academic mobility and comparability. This is not just a question of freedom of movement, but of the mutual recognition and quality assurance of qualifications derived from different education and training systems within the EU and beyond, for example through the creation of the European Qualifications Framework (2008) and the European Higher Education Area (2010), the latter an evolution of the Bologna Process (1999).<sup>10</sup>

## Risks and Implications

12.9 As in many other areas, the UK's continued access to education-related investment from the EU depends greatly on what deal is struck over whether the UK will continue to make contributions to EU programmes post-Brexit, but there is no question that in the event Britain loses all long-term access to programmes such as Erasmus, Erasmus+ and Horizon 2020, the impact will be significant across the entire education sector, from EIB

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<sup>5</sup> Erasmus+: ['Key Facts and Figures'](#).

<sup>6</sup> University News: ['UK and Ireland gain in Horizon 2020 Top 50 recipients'](#), October 2015.

<sup>7</sup> BBC News: ['Universities take a knock post-Brexit'](#), July 2016.

<sup>8</sup> Sky News: ['How Brexit May Affect the UK Education Sector'](#), June 2016.

<sup>9</sup> *Ibid.*

<sup>10</sup> EHEA website [here](#).

loans to build primary schools to the funding of high-level research at Britain's top universities.

12.10 This must be borne in mind by the government when making decisions on issues such as the future of freedom of movement. For example, while Switzerland was able to access Erasmus funding while outside the EU, after its 2014 referendum to restrict immigration, their access to Erasmus was revoked. Xavier Aubry at Zaz Ventures, a consultancy that works with consortiums to win Horizon 2020 funding says that, following that referendum result, Switzerland was consistently discriminated against at the evaluation stage.<sup>11</sup>

12.11 This raises the question of how any shortfall in education and research funding arising from Brexit would be made up. For example, it would require a substantial increase in UK government funding of research to backfill the current EU contribution, which in some cases is 30% above the level provided by the UK government.<sup>12</sup>

12.12 Equally worrying is the impact that concern over the future of EU research funding in the UK is already having on the ability of British scientists and academics to work collaboratively with other European colleagues. A Guardian Survey of the Russell Group found cases of British academics being asked to leave EU-funded projects or to step down from leadership roles because they are considered a financial liability. At least two social science collaborations with Dutch universities were told UK partners are unwelcome.<sup>13</sup>

12.13 Chris Husbands, the vice-chancellor at Sheffield Hallam University, said: "*Since the referendum result, of the 12 projects that we have people working on for submission for an end-of-August deadline, on four of those projects researchers in other European countries have said that they no longer feel that the UK should be a partner because they don't have confidence in what the future is going to hold.*"<sup>14</sup>

12.14 Leave campaigners listed universities and scientists among the groups whose funding would be protected until 2020 in the event of a Brexit vote on the grounds that "*there would be more than enough money*"<sup>15</sup> to compensate these groups once the UK was no longer a net contributor to EU funds. However, they gave no guarantees beyond 2020, and neither have the government's public statements since the referendum done so.

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<sup>11</sup> BBC News: ['Universities take a knock post-Brexit'](#), July 2016.

<sup>12</sup> *Ibid.*

<sup>13</sup> The Guardian: ['UK scientists dropped from EU projects because of post-Brexit funding fears'](#), July 2016.

<sup>14</sup> BBC News: ['Universities take a knock post-Brexit'](#), July 2016.

<sup>15</sup> Vote Leave statement: [Leave Ministers commit to Maintaining EU Funding.](#)



12.15 Other Leave campaigners have dismissed the idea that the UK would no longer benefit from Horizon 2020 funding or other programmes, given how high UK universities currently rank among the recipients, and the results that they produce.<sup>16</sup>

12.16 However, Lucía Caudet, a spokesperson for the EU science office, would only say that it was “*far too early*” to speculate on the future of EU research funding for the UK. “*That will be addressed in due course, once negotiations with the UK begin on its withdrawal agreement [and] its future relationship with the EU. For the time being, nothing changes.*”<sup>17</sup>

## Next Steps

12.17 Of all the areas where levels of investment beyond 2020 are potentially contingent on Brexit, the education sector may be the most uncertain, given that some non-EU countries do enjoy (conditional) access to EU-funded programmes, and that there are strong arguments why other member states would want to retain their jointly-funded collaborations with top UK universities. However, this uncertainty is already affecting such collaborations, and is making it difficult for the higher education sector to plan ahead.

12.18 The Labour party will continue to put pressure on the government to make the education sector a priority in the Brexit negotiations, and to go into them with the objective in mind to secure Britain’s continued access to the Erasmus, Erasmus+ and Horizon 2020 programmes. We will also urge the government to consider the position of students and academic professionals as a special case when developing proposals on the UK’s future approach to freedom of movement.

12.19 As the President of Universities UK, Julia Goodfellow, has said: “*Our first priority will be to convince the UK government to take steps to ensure staff and students from EU countries can continue to work and study at British universities and to promote the UK as a welcoming destination for the brightest and best minds.*”<sup>18</sup> Such a gesture could prove crucial in persuading other member states to look positively at proposals for the UK’s continued access to EU-funded education and research programmes.

12.20 However, in the event that the UK loses all access to those programmes, then a Labour government will look closely at the impact of the resulting shortfall in our future budgets, and consider this in the context of our overall approach to education funding.

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<sup>16</sup> James Martin, Brexit Campaigner and former government Education Advisor, wrote in [Prospect magazine](#) in May 2016: “*Horizon 2020 is open to non-EU countries as well, Britain has the only EU universities in the world’s top 20 and the most Nobel prizes of any member-state—the idea that it would be kicked out of Horizon 2020 as an act of political sabotage is as unserious as it is impracticable.*”

<sup>17</sup> The Guardian: [‘UK scientists dropped from EU projects because of post-Brexit funding fears’](#), July 2016.

<sup>18</sup> The Independent, [‘The Impact of Brexit on Higher Education’](#), July 2016.

## 13. Health

13.1 As with the previous section on the education sector, the biggest impact of Brexit on healthcare is likely to arise from the heavy reliance of the NHS on EU-national staff, and the extent to which this is affected by any changes to freedom of movement.<sup>1</sup>

13.2 However, for the purposes of this paper, there are other rights, rules and investment derived from membership of the European Union whose removal could have significant implications for the UK healthcare system, ranging from the regulation of medicines to the funding of medical research.

### The current benefits of EU membership:

13.3 We can break this analysis of the benefits in the healthcare sector into three sections: (i) rights; (ii) coordination; (iii) regulation; and (iv) funding.

#### *(i) Rights*

13.4 At present, like all EU citizens, residents of EEA countries and of Switzerland are entitled to hold a European Health Insurance Card (EHIC), which gives access to medically necessary, state-provided healthcare during a temporary stay in another EEA country. The costs of these treatments can be reclaimed from the visitor's country of residence.

13.5 This presents problems for the NHS, largely due to what it calls "*inefficiencies and complexities in the current system*" for recovering the cost of treatments provided to visitors on temporary stays.<sup>2</sup> However, the same conditions also apply for UK residents travelling in the EU, as well as the 2.2 million UK citizens living in other EU member states, many of them retired people, and enjoying free access to healthcare in their host country.<sup>3</sup>

#### *(ii) Coordination*

13.6 The EU currently plays an important role in coordinating joint action across member states in areas such as public health. Its *Together for Health* strategy (2007) aimed to develop common approaches to improving the health of the EU's elderly population, improving surveillance between member states to combat pandemics and bioterrorism, and establishing support for new technologies for health care and disease prevention.<sup>4</sup>

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<sup>1</sup> In line with the European Directive on the Recognition of Qualifications, health and social care professionals qualified in one country within the EEA automatically have their qualifications recognised by the relevant regulatory body in any other EEA country. This allows the NHS to easily recruit health care professionals from the EEA, 130,000 of which currently work in our health and social care system.

<sup>2</sup> 'Visitor and Migrants NHS cost recovery programme': [DoH impact assessment](#), July 2014.

<sup>3</sup> The UK in a Changing Europe: '[Healthier after Brexit?](#)' Professor Tamara Harvey, March 2016.

<sup>4</sup> Commission White Paper: '[Together for Health](#)', COM (2007), 630 final, October 2007.

13.7 This built on initiatives such as the establishment of the European Centre for Disease Prevention and Control, which provides an early warning and response system for the prevention and control of communicable diseases across the EU.<sup>5</sup>

#### *(iii) Regulation*

13.8 As the largest employer in Europe,<sup>6</sup> EU labour laws have particular implications for the NHS, most notably with regards to the European Working Time Directive (EWTD), which places a limit of 48 hours on the working week and a requirement of 11 hours of rest between working periods. Junior doctors were initially exempt from these requirements given concerns over the effect on their training, but were gradually brought within the provisions of the EWTD in the period up to 2009, albeit with an opt-out clause.

13.9 Flowing from its competence for harmonised standards of consumer safety, the EU has been able to regulate a number of products with health implications, for example:

- The Revised EU Tobacco Products Directive (2014) strengthens rules on tobacco sold in the European Union, whereby 65% of the packet must be covered in picture and text health warnings and packets must contain a minimum of 20 cigarettes. Furthermore, it bans flavourings of tobacco, and imposes new regulation on electronic cigarettes.<sup>7</sup>; and
- The European Medicines Agency (EMA) was established in 2004 and is currently based in London, with responsibility for the scientific evaluation of human and veterinary medicine developed by pharmaceutical companies for use in the EU and is currently based in London. Pharmaceutical companies can apply to the EMA for a centralised authorisation of the medicine they are producing so long as it meets certain conditions.<sup>8</sup>

13.10 Standards for quality and safety of medicinal products, medical devices, blood, tissues, cells and organs are also set throughout the European Union. The NHS Blood and Transplant programs implement EU rules on procurement, storage, use and monitoring of all human tissue and blood in the UK.<sup>9</sup> These standards have improved patient safety, facilitated the movement of these products across borders, and helped NHS patients to receive suitable organs, while ensuring their safety and traceability.<sup>10</sup>

#### *(iv) Funding*

13.11 The EU's Horizon 2020 scheme is due to invest £7.5bn in research into health and

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<sup>5</sup> ECDC website [here](#).

<sup>6</sup> NHS Confederation: '[Brexit: what now for the NHS?](#)', 29 June 2016.

<sup>7</sup> Directive 2014/40/EU: [The Revised Tobacco Products Directive](#), May 2014.

<sup>8</sup> EMA website [here](#).

<sup>9</sup> Directive 2002/98/EC: [Human Blood and Blood Components](#), January 2003.

<sup>10</sup> NHS Confederation: '[Brexit: what now for the NHS?](#)', 29 June 2016.

well-being initiatives over the next five years, and the UK was by far the largest recipient of these funds across the EU in 2014/15, receiving around £232m<sup>11</sup> to support organisations such as Great Ormond Street children’s hospital and the London School of Hygiene and Tropical Medicine.<sup>12</sup>

13.12 The EU also provides funding from programmes such as the Innovative Medicines Initiative, the Active and Assisted Living programme for older people, and the European Co-operation in Science and Technology (COST) programme, which makes money available to NHS organisations for developing new health-related technologies.

### **Risks and implications:**

13.13 One major factor for the negotiations over Britain’s future relationship with the EU will be whether access to reciprocal healthcare is maintained. If the UK remains in the EEA, it might be able to continue to participate in the EHIC scheme, or, subject to negotiation with EU States, participate on a similar basis to Switzerland. In the event of a ‘harder’ Brexit, EU nationals might no longer be granted access to free healthcare on the NHS, but this will also mean that UK nationals will no longer be allowed access to healthcare across the EU, and may therefore incur rising health and travel insurance costs.

13.14 Following Brexit, the UK will likely still be involved in some capacity with the EU’s coordinated public health strategies, but with less influence on day-to-day decision-making than at present, and with the obvious loss of the leadership role that the UK often plays in developing pan-European public health strategies.

13.15 EU directives on public health, such as the Tobacco Products Directive, have already been transposed into UK law, so are therefore unlikely to be impacted by Brexit, and Britain has already gone further in many areas covered by the directive, for example becoming the first EU country to introduce standardised packaging for tobacco products. However, many organisations campaigning in favour of ‘vaping’ see Brexit as removing a source of regulatory curbs or higher taxes against e-cigarettes.

13.16 With regards to medicine regulation, the inclusion of non-EU countries such as Switzerland and Lichtenstein in the centralised marketing authorisation procedure may mean that the UK could continue to participate in the EMA post-Brexit. However, this is likely to be subject to negotiations and concerns have obviously been raised over the whether the EMA will remain based in London.

13.17 While the European Commission has formally confirmed that UK organisations can still participate and receive funding from Horizon 2020 in the short-term, the UK’s longer term access to health-related EU funding will depend largely on whether Britain remains

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<sup>11</sup> NHS Confederation: [‘Brexit: what now for the NHS?’](#), 29 June 2016.

<sup>12</sup> TUC on the NHS: [‘How Brexit could affect our health service’](#), p.2.

part of the Single Market, and continues to make contributions towards EU funds, in the same way as Norway.<sup>13</sup> However, uncertainty over this is already causing difficulties within the research communities, where UK participants are reporting being asked to cease their involvement with certain projects over concerns for their future.<sup>14</sup>

13.18 The NHS's participation in EU collaborative research could also be jeopardised by uncertainty on whether the UK will, in the future, adhere to (or not) the EU regulatory framework on the authorisation and conduct of clinical trials.<sup>15</sup>

13.19 In terms of what will happen to the enforcement of the Working Time Directive within the NHS, this will be a broader issue across the UK workforce in general, addressed in Section 2 of this paper, albeit one where the NHS will be a critical testing ground for any suggestions from the government to ease compliance with the WTD.

### **Next steps:**

13.20 The Department of Health and the Cabinet Office have established an NHS Europe Transition Team, which aims to ensure that the needs of the NHS and the interests of patients are properly considered in the Brexit negotiations.

13.21 In consultation with the health unions, patients' groups, research establishments, and other stakeholders, the Labour party will continue to make the case that our NHS and social care systems require the continued ability to recruit from overseas, including from the EU, and that – as a minimum – there should be guaranteed rights of residency and work for all EU nationals currently working in either sector.

13.22 However, in addition, we will continue to press for greater certainty in the areas highlighted in this section, particularly in relation to:

- The long-term future of funding currently derived from Britain's membership of the EU;
- The future ability of UK citizens visiting or living in other European countries to access free healthcare in those countries; and
- The UK's future ability to take part in pan-European public health or collaborative research initiatives.

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<sup>13</sup> NHS Confederation: ['Brexit: what now for the NHS?'](#), 29 June 2016.

<sup>14</sup> NHS Confederation: ['Uncertainties after the Brexit vote: what implications for NHS research?'](#), Elisabetta Zanon, 7 July 2016.

<sup>15</sup> *Ibid.*

## 14. Disability

14.1 Whilst the UK has often been considered a global leader in securing disability rights, the EU has extended existing UK legislation and the European Court of Justice (ECJ) has upheld the rights of many British disabled people. Furthermore, beyond legislation, the EU has provided funding that has helped disabled people back to work, as well as provided a forum for cooperation on disability rights and actions.

14.2 In a pre-referendum letter to *The Times* signed by more than 50 peers, MPs, activists and academics, it was argued that leaving the EU would see disabled people “*banished to the margins of British life once more.*”<sup>1</sup> That shows the scale of concern over the impact of Brexit in this area, and why protection of rights and investment will matter so much.

### The current benefits of EU membership

14.3 We can break down the numerous ways that disabled people in the UK currently benefit from membership in the EU into four main categories: (i) legislation and case law; (ii) funding; and (iii) strategic direction and cooperation.

#### *(i) Legislation and case law*

14.4 There are over 300 pieces of EU legislation aimed at improving disabled people’s lives across the EU.<sup>2</sup> These include the following key measures:

- The EU Charter of Fundamental Rights (2000) brings together in a single text all the rights that people enjoy within the EU, including those with a disability. Article 21 of the Charter prohibits discrimination on various grounds, including disability and Article 26 recognises the right of people with disabilities to benefit from measures designed to insure their independence, social and occupational integration and participation in the life of the community.
- The Employment Equality Directive (2000) set out blanket protections for all individuals in employment against direct and indirect discrimination on account of race, sexual orientation, religion and disability. Because of this act, the original exemption for employers with fewer than 20 employees in the UK’s Disability Discrimination Act (1995) was removed.<sup>3</sup> According to the TUC, that small business exemption - if still in place today - would mean around 15%<sup>4</sup> of the workforce were not be covered by the act’s protection.

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<sup>1</sup> The Times, [letters page](#), 6 June 2016.

<sup>2</sup> Papworth Trust Report, p.21.

<sup>3</sup> UK Disabled People and their Families – [Stronger and Safer inside the EU](#), Professor Anna Lawson, Director of the Disability Centre.

<sup>4</sup> TUC, [Disability rights Risk of Brexit](#), May 2016.

- In the area of transport, a series of EU directives introduced over the last ten years<sup>5</sup> ensure that disabled people are entitled to assistance by trained staff when travelling across the EU: the EU Air Passengers Regulation (2006); the EU Rail Passengers Regulation (2007); the EU Sea and Inland Waterways Regulation (2010); and the EU Bus and Coach Regulation (2011). Thanks to the EU Parking Badge scheme, there is also mutual recognition of preferential terms for the use of certain parking facilities by disabled people in all EU countries.
- In the area of consumer protection, there is also a raft of regulation, e.g. the EU Medicinal Products for Human Use Directive 2004,<sup>6</sup> requiring that in all member states, the packaging of medicinal products must include Braille labelling so as to be accessible to visually-impaired individuals.

14.5 The European Convention on Human Rights (ECHR) and The European Court of Justice have often been used by disabled people to challenge unfair, inhumane or discriminatory treatment by employers or the authorities, for example:

- *In Coleman vs. Attridge (2008)*, Sharon Coleman said she had been harassed into resigning from her job because of the need to care for her disabled son and had suffered “*discrimination by association*”. The ECJ who ruled in her favour, citing the EU Employment Equality Directive, which they said “*must be interpreted as meaning that the prohibition of direct discrimination laid down therein is not limited only to people who are disabled.*”<sup>7</sup> As a result of this judgment, discrimination against employees due to their carer status or relationship to a disabled person became unlawful in England, Scotland and Wales.
- The ECHR has also frequently been cited by disabled families claiming that they have been discriminated against as a result of the Tory bedroom tax, with some success in individual cases.

#### (ii) Funding

14.6 It is enshrined in EU law that disability accessibility must be taken into account throughout all programmes supported by EU structural funding, given the remit of structural funds to reduce economic and social inequalities between different regions and social groups across the EU and within member states.<sup>8</sup>

14.7 There are also specific provisions within the European Social Fund to support disabled people to take steps to move back towards paid work, while EU Structural and

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<sup>5</sup> Professor Anna Lawson, ‘UK Disabled People and their Families’.

<sup>6</sup> *Ibid.*

<sup>7</sup> BBC News, [Reality Check: What has the EU meant for disability rights?](#) June 2016.

<sup>8</sup> Papworth Trust Report, p.20.

Investment Funds help member states to move disabled people out of institutions and to develop appropriate community-based alternatives.

*(iii) Strategic direction and cooperation*

14.8 A further key benefit of EU Membership for disabled people in the UK has been the co-operation that it enables between disability movements in other member states, in order to “*share innovative ideas about disability policy and practice*”, and to put collective pressure on national governments to agree common strategies for further improvement.<sup>9</sup>

14.9 The European Union Disability Strategy 2010-2020<sup>10</sup> set out its strategic objective of a “*barrier free Europe*”<sup>11</sup> to be achieved by taking action in eight priority areas:

- Accessibility: making goods and services accessible to people with disabilities;
- Participation: removing barriers to equal participation in public life and leisure activities throughout the EU;
- Equality: tackling discrimination and promoting equal opportunities;
- Employment: raising the share of people with disabilities working in the open labour market;
- Education and Training: promoting inclusive education and lifelong learning for students and pupils with disabilities;
- Social protection: promoting decent living conditions, and combating poverty and social exclusion;
- Health: promoting equal access to health services and related facilities; and
- External action: promoting the rights of people with disabilities in the EU enlargement and international development programmes.

**Risks and Implications:**

14.10 Many disability rights activists and academics have warned about the “*hard won rights of the disabled*” being discarded post-Brexit, which will in turn make it easier for “*public bodies and employers to side line and bypass the rights of disabled people*”.<sup>12</sup>

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<sup>9</sup> UK Disabled People and their Families - Professor Anna Lawson.

<sup>10</sup> Papworth Trust Report, p.25.

<sup>11</sup> Communication from the Commission: [European Disability Strategy \(2010-2020\), COM\(2010\) 636 final.](#)

<sup>12</sup> STV (Scottish Television) News – [‘What has the EU ever done for disabled people? Quite a lot actually.’](#)



14.11 Head of the Centre for Disability Studies, Professor Anna Lawson has said that, in the event of Brexit, *“EU law would no longer prevent UK governments from rolling back positive changes in UK laws for disabled people - nor from rolling back other disability rights measures currently set out in both UK and EU law”*.<sup>13</sup> Furthermore, it will remove the ability of UK citizens to appeal to the European Court of Justice to ensure equality rights are not interpreted too narrowly, or – as in the Coleman case – to ensure they are expanded.

14.12 There are also questions about whether pending legislation will be enacted post-Brexit, and on what timescale. In December 2015, the EU proposed the European Accessibility Act, which aims to set requirements for manufacturers of certain key products and services across the EU, to ensure they are complying with agreed accessibility standards.<sup>14</sup> These include computers, phones, ATM and ticketing machines, e-books and television equipment. Given these provisions do not currently exist in UK law, it remains to be seen whether the government will commit to their enactment.<sup>15/16</sup>

14.13 As in other areas, there has been no reassurance from the government on the future protection of funding currently derived from the EU and its funding programmes, and no certainty about whether the same stringent criteria (including on disabled accessibility) would apply to any domestically-managed successor regime on structural funding.<sup>17</sup>

14.14 It is more difficult to assess the impact of losing the strategic direction and cooperation between member states in a post-Brexit Britain, but the danger remains that – having been a global leader in disabled rights, opportunities and accessibility – the UK may lose momentum in this field without the strong impetus that comes from joint European action, particularly on a new post-2020 EU Disability Strategy.

### **Next Steps:**

14.15 The Labour party will continue to work closely with disability pressure groups, activists and other experts to develop our analysis of the challenges in this area, and the demands that must be made of the government, but at a minimum, these will include:

- The full and prompt enactment of the European Accessibility Act into UK law;
- The guaranteed maintenance of all legal protections against discrimination, derived from current EU legislation or case law; and
- Guarantees to meet any shortfall in funding caused by Brexit, and to match the stringent criteria for EU structural funds in any domestic successor regime.

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<sup>13</sup> BBC EU Referendum, Reality Check: What has the EU meant for disability rights?

<sup>14</sup> Papworth Trust Report, p.26.

<sup>15</sup> UK Disabled People and their Families - Professor Anna Lawson.

<sup>16</sup> Papworth Trust Report, p.26.

<sup>17</sup> UK Disabled People and their Families - Professor Anna Lawson.

## 15. Culture

15.1 On top of the challenges that any loss of freedom of movement would create for UK artists wishing to export their talent overseas,<sup>1</sup> the EU also currently provides a number of significant funding streams for arts and media bodies throughout member states, allowing developing talent to thrive across the continent and enabling arts organisations to participate in valuable cross-cultural dialogue. It will be important to defend these often-neglected sectors against the impact of Brexit.

### **The current benefits of EU membership:**

15.2 The Creative Europe programme supports the cultural, creative and audio-visual sectors by offering funding opportunities as well as more practical tools such as workshops and professional guidance. The remit of its culture sub-programme is to foster the “*mobility and visibility of creators and artists*”, in particular those lacking international exposure.

15.3 Projects supported include help for publishers in translating European fiction into English and other ventures that promote cross-cultural collaboration. Its media sub-programme funded the distribution of 84 British films in Europe in 2014-15,<sup>2</sup> and invested a total of £78m in the UK’s audio-visual industry between 2007 and 2013.

15.4 It has also co-funded high-quality TV dramas, such as the Welsh drama *Hinterland*, which has been sold to over 30 countries.<sup>3</sup> The current funding cycle runs from 2014-2020, and the UK’s success rate in obtaining EU arts funding is almost double the EU average, in spite of the fact that we submit fewer applications per capita.<sup>4</sup>

15.5 The European Capital of Culture (ECOC) scheme – directed by Creative Europe – has helped drive regeneration and prosperity in two major UK cities over recent decades, leaving a long-term legacy of investment and increased tourism. Glasgow’s upsurge in urban regeneration coincided with its preparation to become the ECOC in 1990, with several major buildings renovated, alongside new theatres and concert halls.<sup>5</sup> Social and economic regeneration were also at the forefront of Liverpool’s year in 2008.<sup>6</sup>

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<sup>1</sup> As well as placing potential restrictions on touring opportunities in the EU, moving essential touring equipment – including sound equipment and laptops – between non-EU and EU countries requires a 12-month ‘carnet’ detailing each item, costing up to £2000. The administrative and financial burden of this system could discourage promoters and record labels from financing tours by developing artists. See: Pitchfork, [‘The UK Leaving the EU Would Change the European Music Industry’](#), 13 June 2013.

<sup>2</sup> Creative Europe Desk UK [Biennial Report 2014-15](#), p.5.

<sup>3</sup> Creative Europe Desk UK [Case Study](#).

<sup>4</sup> Balance of Competences report: [Culture, Tourism and Sport](#), p.27.

<sup>5</sup> *International Journal of Humanities and Social Science*: [‘The European Capital of Culture: The Challenge for Urban Regeneration and its Impact on the Cities’](#), Vol.2, no. 17, Sept 2012, p.271.

<sup>6</sup> *Impacts08*: [‘Liverpool’s Experience as European Capital of Culture’](#), p.59.

15.6 The European Regional Development Fund (ERDF) has helped establish a number of important cultural venues, including the new Museum of Liverpool, one of the most visited outside of London, providing a major boost to the local economy and nearby businesses.<sup>7</sup> Cohesion funding for arts infrastructure also helps less prosperous areas by raising their economic and cultural profile, ensuring they do not become defined by the socio-economic struggles of their past.

15.7 The UK was also due to benefit from the ratification of the Digital Single Market strategy, the objectives of which include establishing common EU data protection rules, modernising and simplifying copyright rules to reflect new technologies, harmonising access to online content and services across all member states, so that subscribers are able to access the same content wherever they travel in the EU, and cracking down on piracy. Although the wholesale harmonisation of copyright law in the EU is not currently on the table, this was also the ultimate aim in the long term.

### **Risks and Implications:**

15.8 Culture is a “*competence to support, coordinate or supplement actions of the member states*”,<sup>8</sup> meaning that EU initiatives are complementary to national arts strategies, and – outside the wider issue of freedom of movement – the only significant issue arising for the UK from Brexit in the culture sector is one of investment, not of legislation.

15.9 However, the importance of that investment should not be under-estimated. Nearly 2 million people in the UK work in the creative industries, and this figure is increasing rapidly,<sup>9</sup> with jobs in the sector rising three times faster than the national average, generating nearly £10m an hour for the economy.<sup>10</sup>

15.10 However, these figures conceal a growing crisis in the arts spawned by Tory cuts over the last six years. The DCMS budget was cut by 36% in real terms after 2010, with nearly 200 arts organisations losing government funding during that period, and National Lottery funding controversially used to plug the gap in some cases. The decision in the 2015 Spending Review to increase Arts Council England’s (ACE) funding by between 1-2% per year over the next five years can hardly begin to make up for that damage.<sup>11</sup>

15.11 Institutions outside of London have fared especially badly: a fifth of regional museums closed or part-closed in 2015.<sup>12</sup> Arts funding is not distributed consistently throughout the UK, with many areas outside London suffering disproportionately. Some

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<sup>7</sup> DCLG document on ERDF case studies, [Supporting Local Growth](#), p.9.

<sup>8</sup> EC table: [EU competences](#).

<sup>9</sup> DCMS report, [Creative Industries: Focus on Employment](#), June 2015.

<sup>10</sup> [The Guardian](#), ‘[After Brexit will the loss of EU funds pose a threat to UK arts?](#)’, July 2016.

<sup>11</sup> Goldsmiths University research, based on Culture Select Committee findings, [here](#).

<sup>12</sup> [Guardian](#), ‘[One in five regional museums at least part-closed in 2015, says report](#)’, 13 Jan 2016.

local authorities have even had to cut their arts and heritage budgets by 100%.<sup>13</sup> Regional imbalances in funding were found to be *“excessive and unjustified”* in a report on the geographic spread of funding, preventing the arts from *“fulfilling their role in promoting individual and community wellbeing”*.<sup>14</sup>

15.12 Although the recent Culture White Paper, published in March 2016, affirms the government’s commitment to public funding of the arts, no new public funding initiatives were proposed beyond the promises made on DCMS funding in the most recent Spending Review. Instead, an increased focus on private financing and philanthropy is planned.<sup>15</sup>

15.13 Like Creative Europe, the British Council exists to facilitate better cultural relations between the UK and the rest of the world. Part-financed by the Foreign Office, this portion of the British Council’s funding has been cut from 30% to 16% over the past six years, resulting in office closures and staff cuts and a change in strategy to focus on more commercial ventures.<sup>16</sup> Conversely, the EU has increased the budget for Creative Europe by 9% in the current tranche.

15.14 The arts risk being hit hard by any loss of EU funding. All of those who submitted evidence to the Coalition’s review of the EU’s impact on UK culture agreed that EU funding programmes offer an *“alternative source of public funding during a period of sustained fiscal constraint”*.<sup>17</sup>

15.15 Although the injection of cash from the EU into cultural projects is often comparatively small when measured against other sectors, the arts are a field where a little money can go a long way, particularly for small scale arts projects and individuals in need of exposure to boost their profile. As funding avenues for emerging artists and small institutions dwindle, so too will the UK’s talent pool.

15.16 At a time when national funding for culture is largely being concentrated in London, EU grants are also a vital means of shaping a cultural infrastructure, developing new talent and preserving cultural heritage in more deprived areas. A recent Fabian Society report stated the case for a region-driven cultural policy, given that culture at a local level is under serious threat.<sup>18</sup>

15.17 Creative Europe has assuaged fears in the short term, saying that those in the UK applying for funding in 2016 and 2017 will not be affected by the referendum result.<sup>19</sup>

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<sup>13</sup> Goldsmiths University research.

<sup>14</sup> Executive summary of [‘Hard Facts to Swallow’](#), GPS report on regional and metropolitan arts funding, p.1.

<sup>15</sup> DCMS, [The Culture White Paper](#), March 2016, p.50-51.

<sup>16</sup> Foreign Affairs Committee [report](#), Para 87 onwards.

<sup>17</sup> Balance of Competences report: [Culture](#), p.27.

<sup>18</sup> Fabian Society pamphlet, [Civic Socialism: A new agenda for arts and culture](#), August 2016, p.4.

<sup>19</sup> [The Stage](#), [‘Creative Europe addresses concerns over access to funding post-Brexit’](#), 6 July 2016.

However, the future of its funding activity in the UK after 2017 is as yet unclear, and the government has made no commitment to fill any shortfall in the medium to long term.

15.18 A UK city was also due to be named the European City of Culture in 2023. Dundee, Leeds and Milton Keynes have vowed to proceed with their applications, even though the future of the UK's participation in the initiative is far from clear.

15.19 The title has been given to cities outside the EU in the past – Bergen and Istanbul – but participation in the programme for non-EU countries is reserved for EEA members, pre-accession or potential candidate countries, or those with a bilateral agreement with the EU to take part in the programme, such as Switzerland.<sup>20</sup> It is unclear whether the UK will have any such status, and as such, one of those areas will lose out on the potential socio-economic value and international prestige that comes with the title.

15.20 The government is also yet to confirm whether access to the Digital Single Market will be sought as part of any post-Brexit deal. As the proposed legislation stipulates that 20% of programmes available on on-demand streaming services must be made within an EU member state, and post-Brexit UK productions will no longer count towards this, there is a possibility this may lead to more films and TV programmes which would otherwise be made in Britain being made in other member states so that investors can benefit from wider access streaming. Creative businesses could also be deterred from establishing or maintaining a presence in the UK if they are not able to access the Digital Single Market.

15.21 New Secretary of State for Culture Karen Bradley made no mention of Brexit or EU cultural funding in her maiden speech in her new role, despite launching her agenda in Liverpool, one of the greatest UK beneficiaries of EU cultural policy.<sup>21</sup>

### **Next Steps:**

15.22 The legacy of the last Labour government was one of great investment in the arts and a strong conviction in the transformative power of culture in spearheading economic change and social inclusion, as has been amply shown by the experiences of Glasgow and Liverpool as European Capitals of Culture.

15.23 We will not allow a Tory government that views culture spending as no more than a fringe concern let it fall by the wayside, or ignore the impact on UK organisations of losing access to EU funding. The proposed domestic shift from public to private investment outlined in the 2016 Culture White Paper adds to the concern that the culture sector will face a double-blow to their sources of funding in the near future.

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<sup>20</sup> Further criteria can be found under [Article 8 of Regulation no. 1295/2013](#).

<sup>21</sup> DCMS website, [‘Culture Secretary maiden speech on importance of the arts’](#), 9 August 2016.

15.24 We will therefore put pressure on the government to include continued membership of Creative Europe in its negotiating plan for Brexit, so that the sector can continue to benefit from capital funding, international networking, and access to initiatives such as the European Capital of Culture, in particular fighting to ensure a UK city retains the right to be awarded the title in 2023.

15.25 We will work across the culture sector, and with colleagues in regional government across the country, to press this case. And if it proves unsuccessful, then a Labour government will guarantee that addressing the resulting shortfall in funding for cultural programmes will be a major priority in our future manifesto and budgets.

## 16. Transport

16.1 The transport sector is a key benefactor of EU legislation, from transnational intervention in the aviation industry to improve safety standards and passengers' rights, to the harmonisation of vehicle standards and trade regulations for sectors such as the car manufacturing and maritime industries. While the benefits of this cooperation go unnoticed by much of the public, they may be placed at risk when Britain leaves the EU, and need to be protected in any post-Brexit settlement.

### The benefits of EU membership:

16.2 Articles 90-100 of the Treaty on the Functioning of the European Union (TFEU) govern the EU's flagship transport policies, encompassing a suite of regulations that support a single market in transport services, enforce minimum standards on safety and the protection of passengers and workers' rights, minimise the environmental impact of transport systems and enable an EU-wide transport network.

16.3 The Single European Sky project (SES) aims to improve the safety, capacity and efficiency of European aviation networks by harmonising and simplifying the governance of airspace and air traffic. Its primary aims are increasing capacity, shortening flight times (to the benefit of consumers and the environment) by minimising the barriers caused by national boundaries, improving safety standards and reducing the costs of air traffic management. The UK and Ireland are planning to meet the requirements of the SES through the Future Airspace Strategy.<sup>1</sup>

16.4 EU Legislation also protects the rights of air passengers by ruling that fares may not be varied according to nationality or from where the customer is buying their ticket. Moreover, if there are problems with the flights themselves – including delays, cancellations and overbooking – EU rules entitle passengers to alternative transportation to their final destination and, where applicable, overnight accommodation, or a refund and free return transport to their departure point. If a flight is more than three hours late, passengers are, in some circumstances, entitled to financial compensation of between €250 and €600. They may also claim compensation for lost or damaged luggage.<sup>2</sup>

16.5 The EU's priorities for rail are to keep the rail market open to competition, improve the interoperability and safety standards of domestic networks, and instigate rail infrastructure projects.<sup>3</sup> These measures are enshrined in three 'rail packages', the fourth of which is yet to be passed, and which threatens the ability of member states to nationalise their railway systems, contrary to Labour party policy. The European Union Agency for Railways (ERA) also works to develop common technical and safety standards and targets.<sup>4</sup>

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<sup>1</sup> Civil Aviation Authority website, '[Future airspace strategy](#)'.

<sup>2</sup> European Commission website, '[Air passenger rights](#)'.

<sup>3</sup> European Commission website, '[Rail: what do we want to achieve?](#)'

<sup>4</sup> EU website, '[Agencies and other EU bodies](#)'.

16.6 Driver licensing law in the UK is also derived from the EU, with the European Driving Licence Directives stipulating that member states implement a common licence format and enforce common criteria on driving competence. An EU minimum standard for driving tests has existed since 1991. Requirements for HGV and bus licences were also made more rigorous by EU law, in legislation passed in 2009.

16.7 Common vehicle standards across the EU have also proved to be beneficial in reducing costs and enabling road vehicles to travel or be sold between owners in different member states without being subject to further inspections.

16.8 The European Investment Bank (EIB), of which the UK is currently one of the largest shareholders (holding a 16% share), invested £5.6bn in the UK in 2015, providing financing to projects – particularly major infrastructure works – with favourable, long-term repayment options. Between 2011 and 2015, a quarter of all EIB lending to the UK was for transport projects.<sup>5</sup> Transport for London borrowed £1bn from the EIB to part-finance Crossrail.<sup>6</sup>

16.9 In addition, the European Commission provides direct funding for transport infrastructure projects, both through structural funding and its Connecting Europe programme. For example, Connecting Europe funding provided half the cost of the ground investigation works for phase 1 of the HS2 route between London and the West Midlands,<sup>7</sup> and while that element of the project's total cost is comparatively minor, the potential EU funding available formed part of the government's case for giving HS2 the green light.<sup>8</sup>

### **Risks and Implications:**

16.10 Obviously, since the majority of EU action in this field has been aimed at improving the interoperability of EU transport systems, and harmonising standards across member states, withdrawal from the EU has limited impact on current UK laws, but it would open up areas – such as common rights for airline passengers – where the UK might need to adopt and legislate for its own system of rights in the absence of EU regulations.

16.11 If the UK joined the EEA, that would probably mean no significant change in the transport sector, as the agreement covers all modes of transport, extending the same legislation that covers the EU internal market to those who belong to the EEA.

16.12 Outside the EEA, Switzerland has separate bilateral agreements with the EU, governing aviation and road and rail, while both Norway and Switzerland have also joined the SES, indicating that it is possible to retain the benefits of coordinated regulation and standards in the transport section while outside the EU.<sup>9</sup>

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<sup>5</sup> BBC News, [‘Brexit threatens UK project funding’](#).

<sup>6</sup> Crossrail website, [‘TfL agrees £1bn loan for Crossrail from European Investment Bank’](#).

<sup>7</sup> *Global Rail News*, [‘HS2 secures EU funding’](#), 15 July 2015.

<sup>8</sup> DfT document, [‘HS2: Outline business case – Section 4: Financial Case’](#), p.19-21.

<sup>9</sup> *Air Traffic Management* magazine, [‘Brexit fallout for Single Sky remains unclear’](#).



16.13 It is in Britain's interest to remain part of the EU's liberalised aviation market, the advent of which in the 1990s heralded the explosion in cheap pan-European flights.<sup>10</sup> Access to the single aviation market also helps keep fares down – with the converse risk of higher fares for passengers if that access is not secured. That may require the UK to negotiate membership of the European Common Aviation Area (ECAA), which extends the EU aviation market to non-member states, such as Norway and Iceland.

16.14 A House of Commons Library briefing paper previously concluded that the UK “*will almost certainly develop its own system of passenger rights*”<sup>11</sup> to replace those rights currently guaranteed by EU legislation. However, it is notable that major travel companies criticised the perceived bias in favour of passengers in the EU's approach in their evidence to the former coalition government's Balance of Competences report on transport,<sup>12</sup> raising the prospect of a strong lobby to water down those passenger rights.

16.15 Contrary to the commonly-held misconception that leaving the EU would mean less ‘red tape’ for certain industries, the administrative burden on the maritime sector may increase significantly if it loses the benefit of the harmonised rules for customs and trade that come with membership of the Single Market,<sup>13</sup> especially taking into account that 90% of UK trade is handled by ports, and that the EU is our largest trading partner.<sup>14</sup>

16.16 The other major risk for the transport sector arising from Brexit is to investment in the rail network, both in terms of pressure on the government's finances, and the potential loss of direct EU funding or loans from the European Investment Bank, which – as discussed earlier – have helped to fund key projects such as Crossrail and HS2.

16.17 Any potential loss of investment would also raise the prospect that the government would review caps on fare rises on passengers to make up the shortfall, or to retain income levels for the rail franchises.<sup>15</sup>

16.18 One potentially positive implication of Britain's exclusion from EU transport regulation would be that the proposed Fourth Railway Package – which aims to further liberalise EU rail networks by pushing national governments to privatise their railways<sup>16</sup> – would not affect the UK, and would allow a future Labour government to pursue our plans for the renationalisation of the railways.

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<sup>10</sup> CAPA report, [‘Brexit up in the air: implications for aviation as the UK votes to leave the European Union’](#).

<sup>11</sup> House of Commons Library briefing no. CBP7633, [‘Brexit: how will it affect transport?’](#) p.7.

<sup>12</sup> Balance of Competences: [report on transport](#), p.43.

<sup>13</sup> British International Freight Association (BIFA) briefing, [‘What Brexit means for UK shipping’](#).

<sup>14</sup> House of Commons briefing paper no. CBP7633, p.23.

<sup>15</sup> *European Railway Review*, [‘What would Brexit mean for railways?’](#), 8 June 2016.

<sup>16</sup> European Parliamentary Labour party press release, [‘EU must learn from UK's experience of rail liberalisation’](#).

## **Next Steps:**

16.19 The government has said very little about its plans for the transport sector post-Brexit, especially given that the current Secretary of State for Transport, Chris Grayling, was one of the Leave campaign's leading voices.

16.20 The Labour party will continue to pressure his department for greater clarity in this area, and working with the unions, industry bodies, and consumer rights groups, we will particularly press for answers on the following priority questions:

(i) How does the government propose to protect the continued ability of the UK rail, aviation and maritime industries to operate freely within the rest of the EU?

(ii) Will the government guarantee that existing cross-EU rights for air passengers will be transposed into UK law, with no watering down?

(iii) How does the government plan to make up for any shortfall in investment in the rail network arising from the loss of direct EU funding or loans from the EIB?

## 17. Conclusions

17.1 Even in summary form, the analysis in this document shows the full scale and diversity of rights and funding programmes that are derived from Britain's current membership of the European Union, and which are at risk when we leave the EU.

17.2 It also rightly shows that there is no area where those rights and funding programmes could be allowed to lapse without causing serious damage, in many areas to the most vulnerable people and deprived communities in our country. Instead, it is clear that in each area, we will need to fight for their protection:

- On **workers' rights**, we will resist any attempts by the Tories to scale back any aspect of the rights currently protected under EU membership, especially under the guise of cutting red tape to encourage business investment;
- On **regional funding**, as well as arguing for much-needed reform of the domestic arrangements for distributing funds, we have guaranteed that a future Labour government will make up for any shortfall in funding for deprived regions and communities caused by Brexit, into the 2020s and beyond;
- On **farming**, we will press for the introduction of a more progressive domestic system of direct agricultural subsidies, and for the retention of tough criteria on sustainability and animal welfare, and we will make future commitments on spending in the context of that reformed system;
- On **fishing**, we will demand that regulations introduced under the Common Fisheries Policy remain in force and are enshrined in law in a post-Brexit Britain. It is vital that any new domestic regulations replacing the CFP should have the
- On the **environment and climate change**, we will mobilise public support to defend the environmental protections currently guaranteed thanks to our membership of the EU, including on air quality, and to demand that the UK's commitments on climate change are maintained.
- On **consumer protection**, we will work with UK consumer rights organisations to analyse further which aspects of UK consumer protections may be most vulnerable in different post-Brexit scenarios, and build demands for the retention of these protections into our wider campaign.
- On **financial services**, our priorities will be demanding that any proposed deal on Britain's future relationship with the EU protects the passporting rights of UK-based banks, and opposing any attempts to weaken post-2008 legislation to manage financial risk in the banking sector and tackle corporate tax avoidance.

- On **justice and home affairs**, we will demand that all current and upcoming agreements of cooperation on law enforcement and security must be maintained post-Brexit, and we will work alongside police organisations to make the case for the prioritisation of these measures during the Brexit negotiations.
- On **human rights**, if the Tories follow through on their plans to replace the Human Rights Act, we will not just vote for the retention of the rights protected under the HRA, but also for their extension, in order to provide protection for the same workers' rights set out in the Fundamental Charter of Human Rights.
- On **foreign relations and defence policy**, we will pressure the government on what agreement will be reached between the UK and the EU on Britain's future role in existing CFSP operations, and how they will ensure that their negotiating plan for Brexit protect our foreign policy and security relationships with the EU.
- On **Northern Ireland**, as well as resisting the re-introduction of any land border, we will guarantee that a future Labour government will make good any Brexit-related shortfall in funding for programmes focused on peace and reconciliation into the 2020s and beyond.
- On **education**, we will urge the government to maintain Britain's access to the Erasmus, Erasmus+ and Horizon 2020 programmes, and to consider the position of students and academic professionals as a special case when developing proposals on the UK's future approach to freedom of movement.
- On **health**, our priority will be demanding assurances on the continued ability of EEA nationals currently working in the NHS to continue doing so, as well as on the ability of UK to access free healthcare in other EU countries; and on the UK's future participation in cross-EU public health and research initiatives.
- On **disability**, we will demand the full and prompt enactment of the European Accessibility Act into UK law; the guaranteed maintenance of all current legal protections against discrimination; and commitments to meet any shortfall in disability-related funding caused by Brexit.
- On **culture**, we will press the government to include continued membership of Creative Europe in its negotiating plan for Brexit, so that the sector can continue to benefit from capital funding, international networking, and access to initiatives such as the European Capital of Culture.
- On **transport**, we will continue to press the government for greater clarity on the implications of Brexit, in particular on the continued ability of the UK rail, aviation and maritime industries to operate freely within the rest of the EU, and the maintenance of existing cross-EU rights for air passengers.

17.3 In all of these areas, we will need to mobilise a broad coalition of unions, NGOs, regional government representatives, and other key stakeholders both to deepen our analysis and to join the fight in each area.

17.4 As we have done in this paper, we will seek to persuade this coalition to look at all rights and investment derived from the EU in the round, and campaign on the basis that the erosion of rights or loss of investment in any one area represents a threat to every other area, thereby ensuring that the Tories will face a mass movement of protest wherever they seek to wield the axe, with the Labour party in the vanguard of that movement.

