EXECUTIVE SUMMARY

“OPTIONS FOR CHANGE”
GREEN PAPER:
Renegotiating the UK’s relationship with the EU
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Forewords

Foreword from the Rt Hon William Hague MP, Secretary of State for Foreign and Commonwealth Affairs

The eurozone crisis is setting in train what may well be profound changes in the structure of the European Union. These will pose very important choices for every country in the European Union, inside the eurozone or out.

The British people are also becoming increasingly dissatisfied with the status quo of Britain’s place in the EU, a dissatisfaction that has been significantly increased by the previous Government's failure to consult the British people in any way at any stage of the Lisbon Treaty’s ratification. Public disillusionment with our membership of the European Union has never been so deep.

Now, then, is the right time for serious thought to be given to how Britain’s place in the EU can be improved and I congratulate the Fresh Start Project and all its contributors on the publication of this Green Paper, which does just that. It is a considerable piece of work with many interesting ideas that deserves and will receive proper consideration.

The Options for Change are a stimulating contribution to the policy debate which should be studied by everyone in politics who cares about this vital issue.

[Signature]

Foreword from the Founders of the Fresh Start Project

The current crisis in the eurozone has underlined the limits of EU integration and should force a reappraisal of the future direction of the EU. The dogma of “ever closer union” has taken the EU to the brink and Britain should now be articulating an alternative vision for the future and mapping out a fresh start in its own relationship with the EU.

Whether eurozone countries decide to fully integrate politically and fiscally, or whether some eventually decide to leave the euro, change is on the cards. We believe that a new relationship should protect and develop Britain’s membership of the Single Market but lead to the return of powers in many other areas where policy would be better set by our own parliament.

At times of crisis, the future belongs to those with a plan and the Fresh Start project aims to develop the detailed policy thinking to provide the basis for a future renegotiation of Britain’s relationship with the EU. We would like to thank all those who have contributed ideas so far and would welcome further suggestions in the months ahead.

[Signatures]

Andrea Leadsom MP  Chris Heaton Harris MP  George Eustice MP
Introduction

The Fresh Start Project was set up to research and propose a new relationship for the UK within the EU that would better meet the interests and aspirations of the British people. Our approach has been to carry out a detailed analysis of each key area of EU policy as it stands today, and to set out proposals on how Britain’s interests could be better served.

Stand up for Britain’s interests

At this crucial time for the eurozone, it is imperative that we give up our traditional British inclination to be modest about our own needs—we must stand up strongly for British interests. It is a time of existential crisis in the eurozone, and Britain must not stand in the way of those countries seeking solutions, including fiscal or banking union. But, it is also a crucial period for Britain’s economy, and we must seize the chance to get the best deal we can for our country and our people.

Assert a clear vision

The EU now has a fundamental influence on the UK’s social, economic and political landscape, and yet, since the UK joined the European Economic Community in 1973, it has never shared the strategic vision of the organisation’s founder members. Despite that, and the fact that the UK already has a number of opt-outs from the process of EU integration, Britain has failed to assert an alternative vision of its place in Europe. The UK has now reached a point where a reassessment of its position in Europe is essential. Not all Member States are on the same route to “ever closer union”, as set out in the EU treaties.

Irrespective of what happens to the eurozone project, the UK must stake out an alternative and sustainable future relationship with its EU partners. It is no longer possible to paper over Europe’s differences with one-size-fits-all legislation or institutions. Eurozone members must give serious consideration to the likelihood that non-euro members will need a different relationship with the EU.

The Prime Minister’s comments to the Lord Mayor of London’s banquet in November 2011 in which he called for a looser EU ‘with the flexibility of a network, not the rigidity of a bloc’ point to the Government’s thinking. The EU is already multi-layered - not all EU members are part of the border-free Schengen area, the euro, defence cooperation, or cooperation in justice and home affairs, while some non-EU states opt in to various EU policy areas. This presents the UK with a framework for further development.

Britain has the size and clout to make a strong case for a new relationship with its European neighbours – it is one of the EU's ‘Big Three’, with one of the largest economies, and is one of the biggest net contributors to the EU budget.

A fundamental renegotiation across a range of policy areas

The Fresh Start Project is not about leaving the EU; it is about a fundamental renegotiation of the UK’s relationship with it. We must resist any temptation among civil service negotiators to limit our focus to just one or two points in a negotiation. We need a substantial renegotiation and a shopping list of improvements and reforms to the status quo. What are important to us are matters of principle, not matters of negotiating expediency.

The Project has looked at the impacts on UK across a wide range of interests. Each chapter of the Green Paper examines an individual policy area, outlining the costs and benefits of the current situation and the options for reform that the UK could pursue to promote its interests. The areas covered are: Trade; Regional Development Policy; Common Agricultural Policy;
Common Fisheries Policy; the EU Budget and Institutions; Social and Employment Law; Financial Services; the Environment; Policing and Criminal Justice; Immigration; and Defence.

The options for reform are colour-coded into Green, Amber, and Red. Green are those measures that can be achieved by the UK on its own or within the current EU legal framework; Amber are those measures that require negotiated EU treaty change; Red are those steps that the UK could take unilaterally that would involve breaking its treaty obligations, and facing potential sanctions from other EU countries.

Some options for change cut across all policy areas, for example improving scrutiny of EU legislation in the House of Commons, or tackling the issue of ‘gold-plating’, while others are very specific to a policy area. The UK should seek to implement many or all of the Green options and should select a range of the Amber and Red options to pursue in a substantive negotiation. While we should be ambitious, any negotiation is unlikely to achieve all of the UK’s demands, and we therefore need to prioritise.

The following pages of this Executive Summary reproduce the summary of each chapter of the Green Paper. They highlight the main aspects of the current position, and summarise the potential options for change. We encourage Conservative MPs, Peers and MEPs to read them, refer to the detail in the Green Paper, and make up their own mind on the key priorities for reform.

**We would like your help**

The Fresh Start Project would like to hear from you! Please post your comments on www.eufreshstart.org or contact the office of Andrea Leadsom MP. During the months of September to December 2012, the Fresh Start Project will be collating the views of Conservative MPs, Peers and MEPs and by the end of 2012 will have prepared a White Paper / draft manifesto for reform of the UK’s relationship with the EU.

Proposals for deeper fiscal integration or banking union within the eurozone are likely to require changes to the EU treaties, presenting opportunities for the UK to negotiate additional treaty changes that are in the best interests of the UK. This is an historic opportunity, both to articulate a vision for the UK in the EU, and to negotiate the treaty changes needed to make it reality.

**The need for a referendum**

Once the plan for reform is complete, then begins a significant renegotiation and this **must** be followed by a Referendum. The British people must be given their say on whether to remain in the EU with a reformed relationship that gives powers back to the UK, or whether to withdraw from the EU to make our own way in the world.

That then is the Fresh Start Project three stage process:

1. Set out a clear agenda for reform,
2. Negotiate these changes through a fundamental renegotiation,
3. Hold a referendum to give the UK population the choice of whether they approve of the new relationship.
Chapter 1: Trade

The summary

- Successive UK Governments have had to weigh up the costs and benefits to the UK of membership of the EU. Costs are typically seen as contribution to the EU budget (largely to fund the Common Agricultural Policy and Structural Funds), the cost to business of regulation, and the loss of sovereignty over a range of policy areas. The benefits are typically described as free access to the EU market for trade, free movement of people, and increased geopolitical influence. Successive governments have failed to explain whether the benefits outweigh the costs.

- The EU remains the world’s largest customs union and the most important market for UK business. Roughly half of the UK’s total exports of goods and services go to the EU, and just over half of total stock of Foreign Direct Investment in the UK is from EU businesses. However, estimates put the ‘Rotterdam-Antwerp effect’—where UK goods bound for non-EU markets are transhipped through Rotterdam or Antwerp, and hence recorded as exports to the EU—as high as 10% of UK goods exports.

- Current trends indicate that growth in the EU is slowing, exacerbated by the continuing eurozone crisis. Long-standing structural weaknesses in European economies are being brutally exposed by the financial crisis. Many new business opportunities will no longer be within the EU, but rather will be found in the major emerging economies which are increasingly driving global economic growth. There is a risk that UK businesses are hampered in competing in these markets by overregulation at the EU level.

- Significant opportunities for growth in trade with the EU remain, particularly in the services sector. Services account for 71% of EU GDP, but only 3.2% of this is from intra-EU trade. The UK government continues to push for the completion of the Single Market, especially in services; however, substantial obstacles remain.

- Financial Services is a critical industry for the UK. It accounted for an estimated 11.2% share of tax receipts in 2009-10, and provided a trade surplus of £31.5 billion in 2010. Pre-financial crisis, EU regulation had a largely liberalising effect across Europe, but post-crisis, the trend had been in the other direction. The EU is considering or developing 49 new regulatory proposals that could affect the industry a great many of which are aimed at constricting rather than enabling the industry. That is why the Prime Minister used the veto in December.

- The EU continues to push for further liberalisation with trading partners around the world. External trade policy is an exclusive competence of the EU under the umbrella of its Common Commercial Policy (CCP). As such all external trade negotiations are undertaken on behalf of the UK and all other Member States by the European Commission.

- Currently, the EU is pursuing a number of bilateral FTAs with countries and regions across the world, including, among others, Canada, Singapore, India, and Mercosur and has recently concluded deals with South Korea, Columbia and Peru as well as the Central American Region.

- The UK must balance the potential benefits of increased ‘clout’ in negotiating as part of the EU against the cost of having deals that are not specifically tailored to UK interests.

- At some time, a tipping point may be reached when the UK judges that the costs of EU membership outweigh the benefits. If this were the case, the UK could withdraw from the EU by invoking Article 50 of the Treaty on European Union. The UK would then negotiate a withdrawal agreement and framework agreement for the UK’s future relationship with the EU. If this were not concluded within two years, or an extension agreed, the EU treaties would cease to apply, and the UK would trade with the EU on most favoured nation (MFN) terms of the World Trade Organisation (WTO).

- Analysis indicates that under MFN terms, around half of manufactured exports to the EU would face an average tariff of over 5%, with some sectors particularly hard hit. UK car exports to the EU would face tariffs of 10%. This would have a significant effect on UK business, and make the UK a less
attractive location for FDI. The UK would also lose its influence on framing EU regulation, and it is unlikely to be an option that any UK government would seek.

- A number of alternative models have been considered:
  - The EEA or "Norwegian Option"—The UK would be outside the customs union, and hence subject to complex and costly rules of origin. The UK would still be subject to most EU regulation, but with little ability to shape them. Access to the single market for goods and services would be maintained, and the UK would not be subject to CAP, CFP, or regional policy, and is likely to have a significantly reduced budget contribution.
  - A Free Trade Agreement or "Swiss Option"—Outside the customs union and subject to rules of origin, but not formally subject to EU social or product regulation. In practice, all product regulation is likely to be replicated in order to export to the EU. Not subject to CAP, CFP, or regional policy, and likely to have a significantly reduced budget contribution. Free trade subject to negotiated agreement.
  - Part of the Customs Union or "Turkish Option"—Member of the customs union, so with free access to trade for goods—services and agricultural products are not covered. Required to negotiate free trade agreements with any country that the EU opens trade negotiations with. Outside the EU Treaties and Institutions, so not subject to CAP, CFP, or regional policy, and not likely to make a significant budget contribution. Not subject to social regulation, but subject to all product regulation.

- All of these options appear to come with major drawbacks, and they are not likely to be acceptable, either to the UK or to the rest of the EU.

The options for change

- Work within the current system to minimise the costs of membership and maximise the benefits. Ideas on how to improve the CAP, CFP, Regional Policy and Social Policy have been covered in other chapters of this Green Paper.
- Continue to press the EU to negotiate free-trade agreements between the EU and the rest of the world.
- Continue to develop bilateral relationships to help UK businesses prosper in non-EU markets.
- Negotiate the completion of the single market, particularly in services to increase opportunities for trade for UK businesses.
- The UK government could seek a unilateral brake on EU financial services regulation through a legally binding protocol attached to the Treaties. This would assert the special circumstances that are the UK’s stake in financial services, requiring the Commission to reconsider proposals that impact disproportionately on the UK, and would give the UK a right of appeal for any proposal before it had been agreed by the Council and European Parliament. This would give the UK a veto, because unanimity applies at the European Council level.
- The UK could negotiate changes to the treaties to allow member-states to pursue their own bilateral deals on investment.
- If the EU bureaucracy and regulation prevents the UK from developing global reach and makes the intra-EU trade no longer attractive, each of the alternative models described above would constitute withdrawing from our existing EU treaty obligations.
Chapter 2: Regional Development Policy

The summary

- For many years the EU has run its own regional policy across all Member States. All EU regions in every Member State are given money under this policy, from the EU budget.

- This regional policy is implemented primarily through the ‘Structural Funds’ – the European Regional Development Fund (ERDF) and the European Social Fund (ESF).

- Over the period 2007-2013, provision for EU spending on the Structural Funds amounts to around €280 billion – almost 30% of the total EU budget.

- It is estimated that the UK will be making a net contribution to the Structural Funds (and to a much smaller EU ‘Cohesion Fund’ that only gives money to the poorer Member States) of around £21 billion over 2007-2013. This is the UK’s contribution after the money it receives from the Structural Funds is taken into account.

- The Structural Funds have serious flaws. These include:
  - Allocation of special support is based on EU regions that are too large – missing pockets of relative poverty and high unemployment.
  - Planning of spending is often based on EU regions that do not fit local economic and political realities.
  - They have a top-down structure; all spending plans require the approval of the European Commission and should comply with EU guidelines. This can frustrate local innovation.
  - The EU will only provide some of the money for Structural Fund projects, with the remainder having to be found in the Member State in question. This can divert money from better-tailored national and local projects so as to unlock cash from the EU.
  - There are no rigorous performance criteria linking disbursement of funds to clear results. Indeed, think-tank Open Europe found no conclusive evidence that the Structural Funds have had a positive overall impact on growth, jobs and regional convergence in the EU.
  - There are excessively bureaucratic rules on how the Funds must be administered.
  - For wealthier Member States especially, the Funds irrationally recycle large amounts of money, via Brussels, not only within the same country, but also within the same regions.

- Negotiations among Member States and the EU institutions are now taking place over the shape and size of the Structural Funds for the period 2014-2020. New EU legislation on the Funds will be required:
  - The European Commission’s proposals would retain most of the current shortcomings of the Structural Funds, and in some cases would exacerbate them. In particular, the Funds would continue to spend money in all Member States. This would continue the large-scale recycling of money from richer Member States to Brussels and back again.
The options for change

➔ Negotiate significant reform of the Structural Funds, while accepting their continued coverage of richer Member States.

Reforms could include: limiting the size of the Funds and concentrating more of their resources on the poorer Member States; reducing top-down control of spending plans; and linking disbursement of money to the achievement of rigorous performance targets.

It should be possible to find broad support for this at EU level, though much would depend on the detail. It would mean that EU regional spending, based on EU regions and overseen by the European Commission, would continue to exist in the UK.

➔ Negotiate the repatriation of regional spending in richer Member States, focusing the Structural Funds solely on the poorer EU countries, which would reduce the total EU budget by around 15% (based on figures for the 2007-2013 period).

As richer Member States are capable of funding their own regional policy, this should be determined at national rather than EU level in these countries, bringing decision-making closer to the people it affects and stopping needless recycling of money.

Open Europe estimates that if this approach had been followed over 2007-2013, all but 5 Member States would have seen a net saving ie. a saving after taking into account any removal of Structural Fund receipts. The UK would have made a net saving of up to £4.2 billion over the period. France and Germany would also have derived significant net savings. Spain, Italy and Greece would have seen significant net losses.

The most likely way of achieving – and cementing – such reform under the EU treaties may be to win round those Member States that would lose out, by offering them a strictly time-limited transitional fund.

➔ Negotiate to abolish the Structural (and Cohesion) Funds, taking development aid to poorer EU countries out of the EU’s hands.

This would require amendment of the EU treaties, which would need the approval of all Member States. Some poorer EU countries would probably be fiercely opposed, though the UK could offer bilateral development aid to them instead of trying to support them through the EU budget.

➔ Refuse to pay the relevant contributions to the EU budget until adequate reform of the Structural Funds is achieved, should initial attempts at change fail.

This would be a breach of the UK’s EU treaty obligations, in international law. Other Member States might take countermeasures under international law. However, this action might help force a meaningful negotiation if other Member States had previously refused to take the UK seriously.
Chapter 3: Common Agricultural Policy

The summary

• The Common Agricultural Policy (CAP) accounts for around 40% of the EU budget and costs around £45 billion per year. Despite recent reforms which have begun to move the CAP towards a more market facing policy, it remains a hugely bureaucratic and costly policy, and one to which the UK makes a net contribution of around £1 billion per year.

• The CAP is split into two parts. Pillar 1 which includes the Single Farm Payment (SFP) and all other market management tools and Pillar 2 which focuses on rural development and is co-financed by member states. Pillar 1 accounts for around 80% of the total CAP budget. In addition further protection is provided to EU farmers through a range of tariffs applied to the import of agricultural goods.

• Apart from the budgetary costs to the UK treasury, UK farming is also penalised by the CAP as the policy is not commonly implemented across the EU. UK farmers receive less money in both Pillar 1 and Pillar 2 than their counterparts in most other EU countries. The cost of administering the CAP is also burdensome on administrations and farmers. Market management support systems also tend to increase the price of food for consumers.

• The European Commission has proposed a reformed CAP after 2013. This includes 30% "greening" of direct payments and new schemes for young and small farmers. It also proposes to cap payments to large farms and for more equal distribution of payments to member states in Pillar 1. However, it does not propose a reduction in the overall CAP budget.

• The CAP is constantly evolving, however current proposals do not address the key challenge for the future of farming which is how to feed a growing and more affluent global population. Estimates suggest that the world will need to produce 70% more food in the next forty years to meet global population growth.

• The CAP is a "common" European policy, meaning that there is no chance to withdraw from certain elements of it without being in breach of the Treaty. However, the CAP is revisited substantially approximately every seven years and this presents an opportunity for reform.

The options for change:

⇒ Work within the current architecture of the CAP to reject the greening proposals, to reduce the agricultural budget and to work with like minded EU countries to complete the 2003 reforms. This would include a full decoupling of all Pillar 1 subsidies, a greater transfer of funds to Pillar 2 and a focus on tailoring all agricultural subsidies towards preparing the industry towards one which in the longer term did not need subsidising.

⇒ The UK could use budget negotiations, and the need for a smaller EU budget as a tool to force a reduction in agricultural spending.

⇒ The UK could be more active behind the scenes and in Council negotiations and could propose a new focus on environmentally focused agricultural subsidies within the existing architecture. This could have some success in time, but would be a long term project.

⇒ The UK could propose that the EU unilaterally carried out the import tariff reductions proposed by the EU, but never implemented at the WTO Doha Round negotiations.

This is a long term approach, and unlikely to succeed without expending political capital due to the importance placed on agriculture by other EU member states. The UK could therefore
propose a radical reform which would fundamentally change the architecture of the policy and significantly reduce CAP expenditure.

- Obtain the removal of Pillar 1 subsidies after an appropriate phase out period, with accompanying reform of Pillar 2 to focus on the delivery of "public goods".

Pillar 1 subsidies would be phased out, initially through a national co-financing requirement, and with a focus on short term payments designed specifically to gear farmers towards the market.

Accompanying measures would include country of origin labelling, a focus on the marketing of quality products which meet high standards and steps to improve the bargaining position of farmers in the food chain.

Pillar 2 would focus primarily on agri-environment schemes with the possibility of tradeable environmental payments, which farmers could pass onto other farmers if they did not wish to carry out the environmental measures.

This would be a radical change to the CAP, and would need the UK to expend significant political capital in order to be obtained. The UK would have to prioritise CAP reform above other issues and would probably have to be prepared to give up the rebate to achieve the benefits of reform.

- Unilaterally withdraw from the CAP and its budgetary implications in an attempt to force change.

This would be a clear breach of the UK's EU treaty obligations and any agreement on the EU's multiannual financial framework in force at the time. In addition, as the UK contributions to the CAP can not easily be differentiated from its contributions to other parts of the EU budget, such a move is unlikely to be possible without withdrawing from all elements of the EU budget.

Farmers, who would face losing all their payments in the short term, could also be temporarily excluded from the internal market in agricultural products.

In short, this unilateral action would not provide a sustainable long-term solution. It could, though, be used as a negotiating tactic during negotiations over the multiannual financial framework.
Chapter 4: Common Fisheries Policy

The summary

- The EU’s Common Fisheries Policy (CFP) is a highly centralised way of managing fisheries resources in Europe. In fact, all the key decisions are taken by national fisheries ministers in Brussels, based on proposals from the European Commission.

- CFP reform takes place every ten years. The European Commission put forward its latest proposals in July 2011, and aims to have the reformed CFP in place in 2013. The on-going negotiations therefore present the UK with a unique window of opportunity to push for comprehensive reform.

- The CFP has so far failed to ensure the sustainability of fisheries in Europe. On the contrary, the existing system of fixed fishing quotas, which is based on the quantity of fish that is landed, not on how much fish is actually caught, has encouraged the practice of ‘discards’ – unwanted fish being caught and then thrown overboard, dead or alive.

- According to the European Commission, it is estimated that in European fisheries 1.7 million tonnes of fish are discarded every year – i.e. 23% of total catches. In 2010, UK vessels discarded an estimated 51,697 tonnes of fish.

- EU fishing rules also force the UK to grant foreign vessels access to part of its territorial waters, putting small fishermen – and therefore smaller coastal communities – at a particular disadvantage.

- The Commission’s plans for CFP reform are a step in the right direction. However, there are several areas in which the UK can either push for greater clarity in the Commission’s proposal and others where more fundamental reform could be pursued that go well beyond the current proposal.

- Crucially, the Commission’s proposal for ‘regionalisation’ of the CFP only deals with devolution of powers to individual member states, but fails to lay down a formal mechanism for regional groupings of member states to work together. As it stands, the proposal creates legal uncertainty and could ultimately lead to the Commission gaining more powers.

- The Commission’s plans for CFP reform are subject to negotiations between EU member states and MEPs, and will be adopted under QMV – meaning that the UK will have no veto over the outcome.

The options for change

➔ The UK needs to remain ambitious on the sensitive issue of discards, or else face the risk of the current negotiations ending up with nothing meaningful being achieved.

The UK could push for a shift from the current system of ‘landing quotas’ to a new system of ‘catch quotas’ – under which fishermen would be obliged to count all the fish that they catch against their quotas, not just the fish they land. Evidence from pilots in the UK and in other member states, such as Denmark, suggests that ‘catch quotas’ can be an effective way to reduce discards.

➔ In the absence of more comprehensive regionalisation of the CFP, the UK could push the Commission to set down in more detail how member states are expected to work together under its proposal.
The UK could seek to negotiate repatriation of its territorial waters (the six to twelve nautical mile limit), allowing the UK to reserve greater access to these waters for the small-scale fleet. In order to achieve this while respecting the UK’s EU commitments, the UK could seek an EU agreement to denounce the 1964 European Fisheries Convention.

The UK could support measures to promote less popular fish or increase the public's awareness of the benefits of eating fish.

The UK could call for EU funding to be better targeted towards scientific advice and data collection on fish stocks.

It is vital that the UK speaks with a single voice in Brussels. Greater coordination between central government and the devolved administrations could certainly increase the UK’s negotiating strength on CFP reform.

The UK could push for genuine regionalisation of the CFP. Under this scenario, the Commission would still set out a number of ‘framework’ objectives, while day-to-day management would be handled by regional groupings of member states surrounding a specific sea basin. Contrary to what the House of Commons’ EFRA Committee recently argued, the European Commission has stated this would require a Treaty change.

Fishing quotas would also be managed at a ‘sea basin level’. In theory, the Commission could propose long-term targets for fish mortality over a period of ten years. Regional groupings of member states would then fix and adjust annual quotas by unanimity. The Commission could be given the power to intervene if a group of EU member states fails to strike a deal.

Should the UK be unable to achieve satisfactory reform of the CFP through negotiations, it could ultimately opt for unilateral repatriation of fisheries management by withdrawing from the CFP altogether.

As the UK would no longer take part in the CFP, the Government could potentially negotiate an additional rebate from the EU budget, equivalent to the UK’s annual contribution to the CFP. However, this option would be both very difficult to achieve politically and hard to put into practice. The UK could only withdraw from the CFP by violating the EU Treaties.
Chapter 5: Budget and Institutions

The summary

- The EU Budget is negotiated both in a “multi-annual financial framework” (MFF), which covers a seven year period, and annually within that framework.

- In April 2012, the Commission tabled its proposal for the 2013 annual budget, asking for a 6.8% increase in “payments”. The UK Government, with France, Germany and others proposed a freeze at 2012 levels.

- Negotiations have started over the next MFF, which will cover the annual budgets from 2014 to 2020. The European Commission’s total proposed budget for this period is around €1 trillion (€1,025bn in “commitments” (funds promised) and €972bn in “payments” (funds actually paid out)). The Commission is asking for approximately a 5% increase based on the current MFF, or 3.2% in real terms.

- This money comes from Member States in three main ways:
  - A direct payment from national governments based on each country’s Gross National Income.
  - A levy on national governments taking a slice of each country’s VAT income.
  - Customs duties on various imports from outside the EU, and levies on sugar production.

- This accounts for about 99% of the budgeted income, with the remainder coming from contributions from non-EU countries to certain programmes, as well as fines (normally on companies that break EU law).

- The UK’s gross contribution to the EU Budget in 2010 was €14.66bn and it received €6.75bn, equating to a net contribution of €7.91bn. It is the second-largest net contributor after Germany (€11.95bn), and ahead of France (€6.48bn) and Italy (€5.84bn). The largest net recipients were Poland (€8.17bn), Greece (€3.44bn) and Spain (€3.10bn).

- Member state payments to the budget are described as “own resources”, but the European Commission has long sought direct EU-wide taxes to provide budget revenue. In the past it has floated an EU Income Tax and has now proposed that the budget be funded from a European-wide “financial transaction tax” and a new system of EU-wide VAT. This is being resisted by the UK Government and others.

- There can be additional costs to the UK in converting its contributions from sterling to euro and then back to sterling. Converting the contributions from euro to sterling is complicated and exchange rate fluctuations can work for or against the UK.

- The Commission’s budget expenditure is divided into five “headings”. Sustainable Growth (mainly the EU’s Structural Funds) and Preservation and Management of Natural Resources (agriculture and the environment) are the biggest items and will account for 87% of EU spending in 2012. Citizenship, Freedom, Security and Justice (social policy, crime and policing) and the EU as a Global Player (foreign policy) are the smaller items. The Administration heading finances the staff of the European Commission and other institutional expenditure such as that of the European Parliament, the Committee of the Regions, the Economic and Social Committee and various EU agencies and quangos.

- Each year the European Court of Auditors checks on the legality of EU spending and for the last 17 years has refused to give EU spending a “positive statement of assurance” – or sign it off.
• We do have the power to veto the MFF, but doing this comes with risks attached. Indeed, in the absence of new ceilings being set under a new MFF, this could result in the 2013 budget being used as a basis for future budgets with each year’s budget from 2014 being decided by QMV.

• The European Parliament also has a veto over a new MFF and has consistently argued for more spending at the EU level. Given the Commission’s agenda-setting powers and the Parliament’s veto powers, the EU institutions themselves are an obstacle to reforming the budget.

• Other obstacles to reform come in the form of Member States who are net recipients of EU monies. Whilst more Member States are actually net contributors following the 2004 accession of ten extra countries to the EU, this “net recipients bloc” includes Greece, Portugal and the new Central and Eastern EU Member States.

• Other “blocs” also exist that are reluctant to accept reform. For example the vast majority of Member States form a bloc that protects the Common Agricultural Policy from any major changes. With all these vested interests, reform of the EU budget is much easier said than done.

**The options for change**

👉 The UK could use its rebate to negotiate a reduction in the budget overall.

👉 Currently the UK Government’s position is a non-combative one, building consensus around a budget freeze (although allowing for inflation). The UK could be more ambitious and push for more radical reforms.

There are a number of important factors that should give the UK cards to play in these negotiations: We are one of the largest net contributors to the EU budget, even after the rebate is taken into account; the EU accounts have not been signed off for 17 years; and we could veto any proposals for the 2014-2020 multi-annual financial framework.

👉 Other Fresh Start Paper Green Chapters have suggested ways in which individual sectors of the EU budget can be reformed. If suggested Fresh Start reforms were bought in for just the Common Agricultural Policy and Structural Funds segments of the budget, the UK could roughly reduce by half the fiscal cost of our membership of the EU. The UK could negotiate changes to rid the budget of funds for NGOs, pressure groups and taxpayer funded lobbying.

👉 The UK could negotiate to stop using the Strasbourg seat of the European Parliament or to remove a number of quangos, such as the Committee of the Regions and the Economic and Social Committee.

👉 The UK could repatriate EU international development monies to DFID.

👉 The UK could refuse to pay any contributions until significant progress towards reform is achieved.
Chapter 6: Social and Employment Law

The summary

- Some legislation on social and employment matters is needed. However, over-burdensome regulation in this field reduces wealth and job creation without delivering proportionate benefits. Further measures to boost growth and jobs in the UK are needed fast, which means stripping away unnecessary regulation.

- It is estimated that if the burden of EU social and employment legislation was halved, it could deliver a £4.3 billion direct boost to the UK’s GDP, as well as 60,000 new jobs.

- Based on Government figures, around two-thirds of the cost of this category of EU legislation comes from two Directives: the Working Time Directive and the Temporary Agency Workers Directive.

- Although the UK appears to have included some ‘gold-plating’ of the Working Time Directive, the great majority of the regulatory burden of this measure derives from the Directive itself.

- The picture regarding gold-plating of the Temporary Agency Workers Directive is not as clear. The UK’s implementation of the Directive, which includes a 12 week qualifying period before agency workers get the same treatment as employees in certain employment conditions, is linked to an agreement brokered between designated ‘social partners’, the Confederation of British Industry and the Trades Union Congress. Consequently, the Government may be ‘forced’ to include additional requirements by the TUC.

The options for change:

To boost the British economy and jobs market, there should be a significant reduction in the constraints imposed by the Working Time Directive and the Temporary Agency Workers Directive.

- The UK could remove as much gold-plating as possible.

- The UK could deregulate through the EU, by bolstering its efforts at influencing the EU legislative process. History suggests this would be very difficult.

Alternatively, the UK could take back control of its social and employment law. There are two ways the UK could do this as a member of the EU:

- Firstly, the UK could obtain a new EU treaty provision creating a ‘triple lock’ arrangement.

  The first ‘lock’ would be for the UK to opt out completely from the ‘Social Policy’ section of the EU treaties – the principal part of the treaties used to produce social and employment legislation.

  The second lock would give the UK the ability to opt out of any EU legislative proposal it believed would impact intolerably on its social and employment law.

  The third lock would allow the UK to determine that a piece of EU law unacceptably affected social and employment policy or law in the UK; and, in making this determination, the UK would be entitled to disapply the relevant law from itself.
This would be a radical change to the EU treaties, and would need to be agreed by all EU Member States. However, the UK has some negotiating leverage. For instance, Germany would still like to incorporate into the EU treaties the 2012 agreement on fiscal integration between various EU countries, something that would require UK approval.

Secondly, the UK could unilaterally disapply EU social and employment law in the UK, through an Act of Parliament.

This would be a clear breach of the UK’s EU treaty obligations in international law. Under general international law, the other Member States might be able to suspend obligations they owe to the UK internationally, including but not limited to EU treaty obligations.

In short, this unilateral action would not provide a sustainable long-term solution. It could, though, create the conditions to force a meaningful negotiation if other Member States had previously refused to take the UK seriously.
Chapter 7: Financial Services

The summary

- Financial and professional services provide 2,029,900 jobs in the UK, more than half of them based outside London. Financial services alone account for 10% of GDP.

- The UK represents 36% of the European Union’s financial wholesale market and 61% of the EU’s net exports in financial services, but under qualified majority voting (QMV) it has only 8% of the vote in the Council of Ministers.

- Financial Services accounted for an estimated 11.2% share of tax receipts in 2009-10 equating to £53.4 billion. Finance provided a £31.5 billion trade surplus in 2010. The overall UK deficit for trade in goods and services was £39.7 billion, meaning that without financial services, the UK would have been faced with an overall deficit of £70 billion.

- Pre-crisis, EU regulation had a largely liberalising effect across Europe, but post-crisis, the trend had been in the other direction. The EU is considering or developing 49 new regulatory proposals that could affect the industry, a great many of which are aimed at constricting rather than enabling the industry.

- Former French President Nicolas Sarkozy welcomed the appointment of his countryman Michel Barnier as EU Commissioner for the Internal Market and Financial Services as a ‘defeat for Anglo Saxon capitalism’.

- The European Central Bank has demanded that clearing houses which deal in ‘sizeable amounts’ of euro-denominated business should be located inside the eurozone. The UK government has taken this to the European Court of Justice.

- The European Commission recognises that its proposal for a Financial Transactions Tax could lead to the loss of half a million jobs across Europe.

- Moves towards a banking union will continue to raise questions over whether a more integrated eurozone is compatible with the EU’s single market in financial services for all 27 Member States and that, without safeguards, the UK could be forced to accept new rules designed for and written by the eurozone countries.

- In some cases, the UK may wish to introduce more stringent regulation than the EU currently proposes, for example regarding capital requirements for banks. This reflects the significant exposure of the UK economy to the banking sector – banking assets are 500% of GDP.

- UK financial services firms do not want to be tied into restrictive EU legislation when growth opportunities are outside the EU. Whilst in 2005 the UK, Germany, France, Spain and Italy accounted for 27% of global banking assets, PriceWaterhouseCoopers projects that in 2050 that will have decreased to 12.5%. PWC also projects that Brazil, Russia, China and India will see their share of global banking assets leap to 32.9% in 2050 from the 2005 figure of 7.9%.

The options for change:

➤ The European Parliament’s Economic and Monetary Affairs Committee resisted a ban on short-selling. It will now be restricted to a ban on naked short-selling of sovereign debt.

➤ Parliamentary scrutiny of financial services could be enhanced through reform of the processes and committees in Westminster.
UK placement to senior roles in Brussels could be prioritised and graduate programmes introduced.

UK financial services are at a structural disadvantage in the European Union. Most of the EU regulation that pertains to the sector is based on single market articles from the EU treaties, where QMV and co-decision with the European Parliament apply, meaning that British politicians can be outvoted. The little-used ‘Luxembourg Compromise’ could be invoked. It states that where very important national interests are at stake, the Council will endeavour to accommodate a country’s concerns. However, the Compromise is not enforceable under the EU treaties, and some dispute its continued applicability.

69% of UK financial services professionals support the UK having a veto on future EU financial services regulation even if at the risk of less access to the single market and reduced business opportunities.

The UK could employ a mechanism introduced by the Lisbon Treaty, a ‘yellow card’ which forces the European Commission to reconsider a proposal if one-third of all national parliaments object to it within eight weeks of it being tabled.

A ‘single market protocol’ could be sought that would codify better regulation objectives, establish a one-in-one-out system for regulation, and restate the need for pro-growth measures.

It would be possible to seek changes to qualified majority voting rules.

The Prime Minister’s use of the veto demonstrated his commitment to defending financial services. He could continue to negotiate for the protections he sought that led to the veto.

The UK government could seek a unilateral break on EU financial services regulation. Open Europe outlines a possible UK emergency break or ‘double lock’ approach, embodied in a legally binding protocol attached to the Treaties. Lock One would assert the special circumstances that are the UK’s stake in financial services, requiring the Commission to reconsider proposals that impact disproportionately on the UK. Lock Two would give the UK a right of appeal for any proposal at any stage during the decision-making process before the proposal has been agreed by the Council and European Parliament. This would give the UK a veto, because unanimity applies at the European Council level.

In a more drastic move, Parliament could refuse to accept, via a sovereignty vote, jurisdiction of the European Union over financial services measures that are against our national interest.
Chapter 8: Environment

The summary

- Environmental policy has become one of the most significant and wide-ranging policy areas of EU legislation. An estimated 80% of UK legislation on environmental affairs emanates from Brussels, touching on almost all areas of industry and the public sector.

- Supporters argue that threats to the environment naturally cut across nation-state borders and should be tackled on an international scale. Many Europeans and members of the international community argue that the EU’s commitment to environmental protection shows leadership and encourages other countries to adopt similar measures.

- Critics of EU environmental policy question the efficiency of some measures, arguing that the cost of complying with these regulations leaves European business uncompetitive, especially in the face of increased economic competition from countries such as China and India, where environmental standards and legislation fall far behind European requirements. Other critics point to the EU’s involvement in environmental issues that are not trans-national, and could be dealt with by Member States, for example waste management.

- The EU Regulation on chemicals and their safe use (REACH) is another such example. Whilst the social and environmental benefits of regulating dangerous substances are self-evident, REACH has acted as a blunt and disproportionate device which has unleashed a stream of costs, both intended and increasingly unintended:
  - The ‘command and control’ approach to substitution of substances has, in some instances, been judged to be dangerous where suitable replacements have not been found
  - The obligation to publish toxicity data has forced some companies to reveal confidential information on R&D methods which has given non-EU companies a competitive advantage
  - Compliance costs have filtered to downstream users, not just in the chemicals but across virtually all manufacturing industries, especially SMEs.

- The Emissions Trading Scheme (ETS) is a third example. This aims to encourage companies to invest in low-polluting technologies by requiring EU companies to buy licences for their emissions above a certain quota. Non-EU polluters have no such schemes which can put their companies at a competitive advantage.
  - The EU’s plan to unilaterally extend the ETS to the aviation industry has lined the EU up against the US, Canada and the BRIC countries. And while projected costs will vary from operator to operator, EU airlines are expected to foot the largest bill, and these costs will inevitably be passed on to the consumer.

- On carbon reduction and renewables, the EU has three agreements, which contain the conflicting priorities of emissions reduction on the one hand and prescriptive, technology specific targets for the energy mix of Member States on the other.

- At the March 2007 European Council summit, EU leaders committed to a set of legally-binding targets to reduce the EU’s greenhouse-gas emissions by 20% by 2020 compared to 1990 levels. This also included provision for an EU Renewable Energy Directive, which requires 20% of the EU’s total energy consumption to come from renewable sources by 2020. Furthermore, Member States agreed to introduce a binding target that renewable fuels—the majority of which, in practice, will be biofuels—should constitute at least 10% of their transport fuel needs by 2020.
  - In the UK, the Renewable Energy Directive requires 15% of energy consumption to be from renewable sources by 2020. The UK was starting from a rather low base, with renewables constituting only 1.5% of its energy mix in 2005. To achieve this ambitious target, the last Government developed a national renewable action plan, which placed investment in energy sourced from onshore wind at the forefront of the UK’s strategy.
o These targets are due to expire in 2020, and the UK Government has stated that it now “envisages multiple low-carbon technologies: renewables, nuclear and carbon capture and storage, all competing freely against each other in the years to come…For this reason, we cannot support a 2030 renewables target.”

o Such a shift in position could be a game-changer in the move towards low-carbon economies across the EU. The failure to demonstrate adequate returns on vast public investments have led to governments in Italy and Germany slashing subsidies for solar companies, while in Spain, one of the first acts of the new centre-right government was to axe subsidies for wind and solar power.

o As part of a broader energy mix, gas in general, and shale gas in particular, could also play a major role as a transitional low-carbon fuel, consistent with Britain’s emission reduction objectives. The UK Government is supportive of shale gas production, but is cautious regarding concerns over its extraction process, and is eager to establish a strong national regulatory framework.

The options for change:

- In order to reduce the bureaucratic burden of environmental legislation, and help curb carbon leakage, the UK could take a more holistic, coordinated approach towards developing a less prescriptive, more business-friendly, regulatory framework that provides consumers and taxpayers with value for money. The UK could develop a much more active negotiating position within the Commission and other EU institutions; particularly in the context of our next EU Presidency term in 2017.

- The UK could renegotiate our compliance with the European Chemicals Agency (ECHA) regime ahead of this year's review of the REACH framework.

- The UK could work within current structures to present alternative proposals for the scope and ambition of the EU ETS fourth trading period (set to begin in 2020).

- The EU's renewables targets will expire in 2020, and this offers a window of opportunity for the UK Government. Negotiations on future targets are due to begin, and the UK could announce that whilst continuing to respect its current commitments, it would refuse to abide by any future renewables targets post-2020. This would then permit the UK to concentrate on developing its own approach to building a low-carbon economy, concentrating further resources on nuclear, gas and carbon capture and storage.

- The UK could negotiate fundamental reform of the REACH regime, or an opt-out for the UK, as part of wider renegotiation of its relationship with the EU.

- On EU ETS, the UK could negotiate through appropriate international bodies, such as through the International Civil Aviation Organization (ICAO) in the case of aviation, in order to obtain a global agreement, and ensure a level playing field.

- The UK could unilaterally refuse future compliance with existing provisions on REACH, 2020 renewables targets, and/or the EU ETS.
The summary

- The Lisbon Treaty, which entered force in December 2009, radically increased EU control over policing and criminal law.

- EU laws in this area are now typically decided by qualified majority voting rather than unanimity in the Council of the EU, and the European Parliament’s agreement to proposals must now usually be obtained.

- EU policing and criminal justice laws adopted since the Lisbon Treaty took effect also come under the full jurisdiction of the EU’s Court of Justice (ECJ). This means that the ECJ can issue binding rulings in cases brought against a Member State by the European Commission, for what the Commission alleges to be that Member State’s failure to abide by one of these laws. It also means the ECJ can rule on questions about the interpretation of these laws submitted to it by British courts – rulings that will be applied by UK judges.

- The UK can choose whether or not it becomes bound by individual EU policing and criminal justice laws proposed now the Lisbon Treaty is in force. If it chooses to participate, the UK cannot opt out of the relevant law again. Up to the end of May 2012, the UK has chosen to become bound by 20 post-Lisbon EU laws in this area.

- The EU treaties allow the UK to opt out of EU policing and criminal justice laws adopted before the Lisbon Treaty entered force, if the UK gives notification before June 2014 of its wish to do this. This opt out would be effective from December 2014. This is sometimes called the ‘block opt out’, as the UK would be opting out of all of these laws en masse.

- Around 130 EU laws currently fall under the block opt out. The Government has promised to give Parliament a vote on whether the UK should exercise this opt out, before a final decision is taken by ministers. The Government is currently considering whether, in its opinion, invoking the block opt out would serve the national interest.

- If the UK does not invoke the block opt out, under the EU treaties it will become bound irreversibly by these pre-Lisbon EU laws, which will come under the full jurisdiction of the ECJ from December 2014.

- If the UK does invoke the block opt out, it will be entitled to apply to re-join individual EU laws affected. The EU institutions would decide on the UK’s application, and may set conditions before the UK is allowed to re-join. If the UK became bound by EU laws again through this process, it would not be able to opt out of them again and they would come under the full jurisdiction of the ECJ.

- Many provisions of EU laws under the block opt out regulate the internal criminal law of Member States, rather than establishing cross-border co-operation between EU countries. Other legislation under this opt out does create cross-border co-operation between EU states, such as the European Arrest Warrant (EAW). Use of the EAW to extradite people for trivial offences, and its requirement in many cases that people be extradited for acts that are not criminal offences in their home country, has caused major concern. The laws setting up Europol and Eurojust, the EU’s policing and criminal justice bodies, are also currently covered by the block opt out.

- If a law covered by the block opt out is amended now the Lisbon Treaty is in force, and the UK chooses to participate in the new amending law, the pre-Lisbon law no longer falls under the block opt out. Up to the end of May 2012, the UK has decided to participate in seven post-Lisbon laws that take pre-Lisbon laws out of the block opt out.
**The options for change**

- Do not invoke the block opt out, and lead reform of EU laws it covers. The UK would become bound irreversibly by a large number of EU laws, which would from that point on be controlled and developed much more readily by the European Commission and the ECJ. However, the UK would continue to enjoy the benefits of these laws without having to negotiate replacement cross-border arrangements or its re-entry to desirable EU legislation. The UK could lead a quarter of Member States to propose changes to laws such as the EAW, though how much reform is likely to be agreed through the EU legislative process is not clear.

- Invoke the block opt out. The UK would regain control over a large amount of law. However, there are arguments for international co-operation in policing and criminal justice matters. This could be done bilaterally, multilaterally or on a pan-EU basis:
  
  The UK could seek to opt back in to one or a group of EU laws covered by the block opt out. This opt in would be irreversible and entail the ECJ’s full jurisdiction over the laws concerned.

  The UK could pursue non-EU international agreements with other Member States that established any co-operation needed. This would give the British people much greater control over this area compared to control by the EU institutions. It would take time and determination.

  The UK could seek provisions in certain pieces of EU legislation that allowed it to co-operate without being bound by these EU laws. There is precedent for this in the EU.

  To extract itself from EU policing and criminal justice laws it is bound by but which do not fall under the block opt out, the UK would need EU treaty change as an EU member. Such treaty change would require the agreement of every other EU Member State. The UK will have negotiating leverage when EU treaty change is sought as a result of the Eurozone crisis.

- Seek EU treaty change that allows the UK to opt out of those EU laws not under the block opt out that currently exist. This includes the proposed European Investigation Order.

- Seek EU treaty change that limits or excludes ECJ jurisdiction over these laws in relation to the UK, while the UK is bound by them.

- Seek EU treaty change that makes reversible all past and future UK decisions to become bound by EU laws in this area.

- Refuse to apply EU policing and criminal justice laws that bind the UK under the EU treaties, where these are deemed unacceptable. This could be done in the UK legal order with an Act of Parliament. However, this action would breach the UK’s EU treaty obligations in international law, which may prompt countermeasures by other Member States.
Chapter 10: Immigration

The summary

- The immigration to the UK of the last 15 years has been of far greater scale than in previous decades. Net immigration (which is immigration after taking account of emigration) is estimated to have been 252,000 people in 2010 alone.

- Immigration can be hugely beneficial for a country. However, large-scale immigration may cause problems. Immigration can affect overall prosperity, the job prospects of citizens and the public finances. Net immigration fuels population growth, which may have economic and quality of life downsides in a country with high population density. Large-scale immigration over a short period might also negatively affect social cohesion.

- A rough estimate shows that net immigration from the EU accounted for almost a third of total net immigration to the UK in 2010.

- Under EU law, the UK has very limited control over the immigration of nationals of other EU Member States and certain of their family members.

- Under the EU’s so-called Free Movement Directive, an EU immigrant’s right to reside in another Member State is only loosely tied to them being in work or self-sufficient. For instance, an EU immigrant can stay in another Member State for as long as they are looking for work and can show that they have a “genuine chance” of finding employment. When resident in another Member State under the Directive, an EU immigrant is entitled to equal treatment with citizens of the host Member State, in most matters. This includes access to state welfare in most circumstances.

- The previous Government decided not to apply temporary restrictions on access to the UK job market for nationals of the eight Central and Eastern European countries that joined the EU in 2004. This contributed to a major increase in net immigration from the EU. Romania and Bulgaria became EU members in 2007; this time, the UK did apply transitional labour market restrictions on people from these new Member States. The current Government is extending these restrictions until 2014, the maximum period permitted under the Romanian and Bulgarian EU accession treaty.

- It seems likely that major immigration from the EU will continue for some time, and may increase as the eurozone crisis continues and Bulgarians and Romanians gain full EU free movement rights.

- Evidence and theory suggest that EU immigration has a negligible effect on overall UK wealth per capita.

- There is little hard evidence that EU immigration affects the employment / unemployment rate of British citizens. However, more research needs to be done on the effect of EU immigration on the employment prospects of both low-skilled and young British people, since the recession of 2008. This is because a large proportion of immigrants from the newer Member States work in lower-skilled jobs.

- Lack of evidence of a link between EU immigration and British unemployment may be due, in part, to those British people seeking work not accepting the sort of jobs being filled by many EU immigrants. However, the current Government is pursuing major welfare reform aimed at getting the long-term unemployed back into work. As these reforms take effect, competition for jobs between Britons and EU immigrants may intensify.
Little research has been done on the overall impact on the public finances of EU immigration. One study estimated that immigrants from the Central and Eastern European countries that joined the EU in 2004 made a net contribution to the UK public purse between 2005 and 2009. However, this contribution was a tiny proportion of total public expenditure. It is also difficult accurately to project the long-term fiscal effect of immigration.

Net EU immigration is increasing the UK population, despite the UK already having the highest population density of any comparably sized EU country. This could have economic costs, such as through increased transport congestion, and creates environmental pressures.

The EU also has powers over immigration to Member States from non-EU countries, including asylum seekers. The UK has the right to choose whether it is bound by EU laws in this area, but once it has ‘opted in’ to such a law it cannot opt out again. The UK has opted in to some EU laws on asylum, but not on economic immigration from outside the EU.

**The options for change**

- Undertake domestic reforms but seek no change to EU law. The UK could choose this option on the basis of a lack of hard evidence of negative economic effects of EU immigration. The UK could focus, as the current Government is doing, on reducing immigration from outside the EU and pursuing welfare and education reform, to encourage and enable more British people to find work. This would not address the fact that EU immigration seems set to continue adding to the UK population, and might increase in future. In addition, the lack of evidence to date on negative economic effects of EU immigration could be down to gaps in research.

- Seek better safeguards in EU law while retaining general EU free movement. The UK could seek changes to the Free Movement Directive and other EU legislation to try and ensure that EU immigration does not impact adversely on the UK. Changes could include more closely tying the right to reside in another Member State to being in work or self-sufficient, as well as tightening up access to another Member State’s welfare system. However, whether such changes could be made through the EU legislative process is dubious, given likely resistance from the European Commission and European Parliament. Separately, the UK could wield its veto to ensure that if and when further countries join the EU, existing Member States are able to apply controls on immigration from those countries until economic convergence is achieved.

- Seek EU treaty change to allow Member States to impose a skill / income threshold on immigrants from other EU countries. Such a threshold would be likely to reduce significantly the number of EU immigrants coming to the UK, and help ensure that they increased UK prosperity and did not become a fiscal burden. It would also protect against the risk of EU immigrants depriving British citizens of jobs in the low-skilled end of the labour market. This treaty change could also allow the UK to reverse decisions to opt in to EU laws on non-EU immigration. EU treaty change would require the agreement of all Member States, though not the Commission or European Parliament. This would be a radical change in the EU and many Member States are likely to be opposed, at least at first. However, the UK will have negotiating leverage if, as seems likely, EU treaty change is sought as a result of the eurozone crisis.

- Limit EU immigration despite EU free movement rules. If the UK believed EU immigration was having an adverse impact upon it, and it was not able to get agreement to its desired reforms to EU free movement rules, it could unilaterally cease applying those rules to one extent or another. The UK could, for instance, stop at least some immigrants from other EU countries entering at the border, or refuse to pay out benefits to them. Such actions would be possible in the UK legal order through an Act of Parliament, but would breach the UK’s EU treaty obligations in international law. Such action would provoke a major row with other EU countries, which would be likely to impose similar restrictions on British immigrants. However, it could bring other Member States back to the negotiating table over EU rules.
Chapter 11: Defence

The summary

• The UK is one of the two major military powers in Europe. In terms of international military operations and its wider security interests, it attaches foremost importance to its membership of the Nato alliance which binds the US to the security of Europe, includes most European countries in its membership and provides a unique platform for crisis response.

• In 1998, the EU began in earnest to develop an autonomous military capability, following a UK-French initiative at St Malo.

• By 2012, following the earlier entry into force of the Lisbon Treaty, the EU had created a fully-fledged defence structure under the rubric of its Common Security and Defence Policy (CSDP). The EU High Representative, effectively the EU's Foreign & Defence Minister, is now supported, inter alia, by a Political & Security Committee, a Military Committee, an Assessment Staff (SitCen), a Military Staff, a European Defence Agency (EDA) as well as various permutations of operational planning HQs. It has launched some 27 "CSDP missions".

• The EU neither has, nor creates, any additional military forces. For its operations it draws on the same pool of diminishing military resources that nations have available for their own national operations, for Nato, the UN and other commitments.

• The UK is actively engaged across a spectrum of CSDP policies and missions.

• For the UK, CSDP is about generating more military capability from reluctant European allies. For example, MoD officials point out that, for a modest financial commitment, the EDA has developed extra capability through training helicopter pilots.

• For the EU institutions and the governments of many Member States it is about projecting the EU as a global actor and intensifying the process of political integration. The ambition for a "European Defence Policy", with a "European Army" was confirmed on 15 June 2012 by 10 Foreign Ministers from EU Member States, led by Germany.

• Some argue that CSDP is designed to strengthen Nato, while others argue that CSDP is a duplicative and increasingly costly replica of Nato, that none of its military operations stand up to scrutiny, and that it has a debilitating effect on the Alliance.

• In terms of defence equipment procurement, there may be budgetary and industrial merit in collaborative equipment schemes, although this is open to challenge. Whether these require the involvement of the institutions of the EU is open to challenge. There is possibly scope, however, for greater “pooling and sharing” of resources among Nato’s European allies, provided this produces additional capability.

• The key difference between Nato and the EU is that the former is an inter-governmental alliance which does not impact to any degree on the sovereign defence capabilities of its member nations. The EU is essentially a supra-national body designed to replace national decision-making.

• CSDP is moving towards greater integration of policy, organisation and deployment. As the years pass, the UK's independent freedom of action is likely to be increasingly constrained.

• If the UK wished to consider a change in its relationship to CSDP without jeopardising its overall membership of the EU, there are examples for this in the defence policy positions that have been taken by France and Denmark.

The options for change:

Traditionally, the UK position on EU foreign policy and defence cooperation is to ensure that European cooperation bolsters the Nato and trans-Atlantic alliance rather than duplicates or weakens it. With the United States less willing to shoulder the burden of guaranteeing
European security, due to changing strategic priorities, European countries must make efforts to boost their military capacity in order to ensure the durability of the Alliance. The UK could insist that EU activity in this area is complimentary to Nato, or at least not in competition with it.

- The UK could be more assertive in vetoing EU proposals that compete with, or duplicate, Nato. In parallel, the UK could encourage EU CSDP to focus on areas of civil instruments and capability building, in order to complement Nato.

- Without any change to the treaties, the UK could reduce direct involvement in EU defence matters and insist that all defence matters be dealt with "in another institution" (i.e. Nato). As regards committee and institutional engagement, the UK could adopt an "empty chair" approach, or informally designate itself as a non-participatory observer.

- The UK could prioritise interoperability of equipment with Nato allies, especially the US, over the EU.

- CSDP initiatives which require assent of the Council through the unanimity voting procedure could be vetoed. The UK could also make a non-binding political declaration, publicising its intention to take a non-participatory role in CSDP and to apply its energies to revitalising Nato.

- A treaty amendment may be sought, delivering an opt-out from CSDP, on the lines of that applying to the Kingdom of Denmark, but, as a full EU Member State, the UK could retain the right to attend all meetings, in the same way as France previously acted in relation to the integrated military structure of Nato. Any attempts at further integration and strengthening the CDSP by treaty amendment could be vetoed and the UK could seek a complete opt-out from any such provisions while insisting that no steps be taken under CSDP which jeopardise or inhibit the UK's full access and engagement in the single market.

- The UK could invoke Article 50 (TEU) and negotiate a relationship with the EU which does not include any defence element. And such negotiation could include opt-outs from defence procurement regulations and directives, but may include opt-ins where this is in the national interest.