



Submission to the House of Lords European Union Select Committee Call for Evidence: Visions of EU reform

This document has been prepared by the Centre for Cross Border Studies as a contribution to the House of Lords European Union Select Committee's call for evidence on the UK Government's vision for the future of the EU.

About The Centre for Cross Border Studies

The Centre for Cross Border Studies (CCBS), based in Armagh, Northern Ireland, has a strong reputation as an authoritative advocate for cross-border cooperation and as a valued source of research, information and support for collaboration across borders on the island of Ireland, Europe and beyond.

The Centre empowers citizens and builds capacity and capability for cooperation across sectors and jurisdictional boundaries on the island of Ireland and further afield. This mission is achieved through research, expertise, partnership and experience in a wide range of cross-border practices and concerns.¹

The response that follows, therefore, is closely informed by the Centre's particular concerns, organisational aims and experience. It is also informed by its position as a founding member of the Transfrontier Euro-Institut Network (TEIN), which brings together 14 partners from eight border regions in Europe dedicated to the practical business of cross-border cooperation.²

¹ For further information, please visit www.crossborder.ie

² For more details, please visit <http://www.transfrontier.eu/>

Executive Summary

The UK Government's vision for the EU

1. The Centre for Cross Border Studies (CCBS) disagrees with the proposition that the EU's overriding priority is "not to win peace, but to secure prosperity." Peace has not yet been definitively secured – whether within the EU's internal borders or at its external ones.
2. CCBS does not believe that the UK Government's vision for the EU adequately takes account of the changing geo-political context. The UK's vision for the EU must go beyond a myopic focus on competitiveness and economic growth and affirm its shared commitment to the principles of economic *and* social cohesion.
3. CCBS considers that the commitment to ever closer union is still relevant and achievable if it is interpreted as resulting from the goal of promoting economic, social and territorial cohesion, and solidarity.
4. CCBS is of the opinion that the priority for addressing the issue of democratic accountability lies in the relationship between national governments, their parliaments and citizens

Is there consensus on EU reform within the UK?

5. CCBS considers that the Government's renegotiation of the UK's vision for the EU raises doubts as to the probability of its desired reforms. In particular the achievement of the Government's proposal on immigration is highly unlikely.
6. CCBS believes that the UK Government has set out on a path of renegotiation and referendum without the explicit support of all the devolved administrations. CCBS also notes its serious concerns regarding the ability of the Northern Ireland Executive to formally express an agreed position on the UK Government's vision for the EU.
7. It is CCBS's view that the Government has failed to sufficiently consider the views of the devolved administrations. CCBS is extremely concerned that the UK Government has not actively sought the involvement in the process of renegotiation of actors with significant and longstanding experience of cross-border cooperation with Ireland.

Is the UK Government's vision shared by others in Europe?

8. CCBS regards that in the UK Government's proposed areas for reform of economic governance and competitiveness, the view will be that progress is already being made in these by the EU. In relation to the issues of sovereignty and immigration, however, CCBS considers that there is little prospect of support for the Government's position.
9. CCBS believes that the question of consensus on the long-term future of the EU must not be judged in terms of the degree to which the 27 other Member States move towards the UK's vision, but rather on how all 28 Member States can continue to work towards a Europe with increased economic, social and territorial cohesion.
10. CCBS considers that the future of the UK's place within the European Union cannot be guaranteed if it is dependent on all other Member States accepting proposals that are considered detrimental to the founding principles of the EU and dictated by a UK referendum timetable that is not compatible with the priorities of other Member States.

The UK Government's vision for the EU

1. CCBS fundamentally disagrees with the proposition set out by the UK Prime Minister in his Bloomberg speech that the EU's overriding priority is "not to win peace, but to secure prosperity."

The two are interdependent and cannot risk being divorced from each other. Such a proposition also fails to give proper weight to the recognition in the same speech of the enduring nature of efforts to secure peace or what peace entails.

1.1 The UK Government's vision for the future of the European Union seeks to recast it in a past that denies its evolution since the creation of the European Coal and Steel Community. "Prosperity", within this vision, is guaranteed almost exclusively by an EU limited to being a single market and driving economic competitiveness. By declaring in his Bloomberg speech that "At the core of the European Union must be [...] the single market", and claiming that in the UK "many ask 'why can't we just have what we voted to join - a common market?'" , the Prime Minister simultaneously seeks to constrain the purpose of the EU and set its future direction as a return to the past.

1.2 **CCBS believes that peace has not yet been definitively secured – whether within the EU's internal borders or at its external ones.** Moreover, the Prime Minister himself noted in his Bloomberg speech how peace "happened because of determined work over generations", although with the underlying presumption that such work is no longer required. Whilst we have not witnessed armed conflict between member-states, such conflict has been seen at the EU's external borders (as in the crisis in Ukraine), and is not a distant memory for some current member-states (such as Croatia and Cyprus). The absence of open warfare between states is also not a determinant of peace, and the current threat posed by extremist groups and terrorism within the EU's borders should stand as a stark reminder that the European Union cannot afford to prioritise "prosperity" over securing peace.

1.3 Given CCBS's primary function of promoting and supporting cross-border cooperation on the island of Ireland, we are constantly reminded of the fact that the European Union has been a central driver and funder of efforts to secure peace and reconciliation within a region of the United Kingdom. The EU also provided a space for the United Kingdom and Ireland to normalise relations to an extent that enabled them to work towards the 1998 Belfast/Good Friday Agreement, whilst the 2014-2020 PEACE IV programme represents an invaluable and continuing commitment to supporting reconciliation within Northern Ireland, and between Northern Ireland and Ireland.

1.4 **CCBS considers that peace cannot be understood exclusively as the absence of violence or armed conflict, but rather as the existence of harmonious cohesion between the EU's member**

states and its citizens. Similarly, prosperity must not be solely interpreted as a function of economic development, which appears to be the position adopted by the Prime Minister and the UK Government as it urges the EU to limit itself to acting as a Single Market. Accordingly, CCBS recognises the strategic value of the EU's regional and cohesion policies which, "in order to strengthen its economic, social and territorial cohesion, [...] aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands".³ As CCBS highlighted in its response to the UK Government's Cohesion Policy Review as part of its wider review of the balance of competences between the UK and EU, Northern Ireland has been a particular beneficiary of the funds associated with the EU's regional and cohesion policies.⁴ Crucially, these policies do not see prosperity as exclusively dependent on economic development, but also as a result of social and territorial development.⁵

1.5 In light of the above, **CCBS is opposed to a vision of the future of the EU that would assume peace is secured and would focus on an interpretation of prosperity based solely on the Single Market.** To do so would directly contribute to the undermining of peace by reversing the actions taken to reduce economic *and* social disparities between and within EU member states.

2. **CCBS does not believe that the UK Government's vision for the EU adequately takes account of the changing geo-political context.** As noted above, the Prime Minister's statement that "the main, over-riding purpose of the European Union" is no longer to win peace, but "to secure prosperity" seems dangerously complacent. It is disturbing and difficult to understand – in light of the urgent geo-political issues that are posing existential threats to the Union and its Member States – how the Prime Minister's vision for the EU can be so narrowly focused on the internal economic and institutional relationships within the EU. The prosperity of the EU and its Member States is inextricably linked to securing peace and political stability; not only within the borders of the Union and on its external borders but beyond.

2.1 The Prime Minister's vision appears to "take for granted" the permanency of peaceful relations between Member States. However, the potential fragility of those relationships has been demonstrated by Member States' responses to the social and economic pressures resulting from the

³ Regulation (EU) No 1303/2013 of the European Parliament and of the Council; <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1303&from=EN> (emphasis added).

⁴ The full response can be accessed at <http://crossborder.ie/the-centre-for-cross-border-studies-informs-the-review-of-the-balance-of-competences-between-the-united-kingdom-and-the-european-union-on-cohesion-policy/>

⁵ This is similar to the approach taken by CCBS to its capacity-building measures for integrated cross-border cooperation, which sees it as resulting in social, environmental and cooperation benefits, as well as economic ones. For more, see the *Impact Assessment Toolkit for Cross-Border Cooperation*, available at <http://crossborder.ie/research-policy/research/toolkits/impact-assessment-toolkit/>

unprecedented migration crisis. This crisis will not be resolved by tighter controls at internal and external borders so long as the ‘push’ factors such as impacts of climate change and regional conflicts remain unresolved. Likewise, the security crisis now disrupting social and economic life in European cities and countries will not be resolved simply by intensifying military actions or tighter border controls. It requires a multi-faceted social and political response by the EU, both at international level and within the EU Member States.

2.2 CCBS considers that the UK’s vision for the EU must go beyond a myopic focus on competitiveness and economic growth and affirm its shared commitment to the principles of economic *and* social cohesion. It should acknowledge our responsibility to extend these principles beyond the EU’s borders and by doing so to copper-fasten peace *and* prosperity within the Union.

3. The Treaty on European Union states that its signatories “Resolved to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity”.⁶ **CCBS considers that such a commitment is still relevant and achievable if it is interpreted as resulting from the goal of promoting “economic, social and territorial cohesion, and solidarity among Member States”.**⁷ **CCBS views the Prime Minister’s desire “to end Britain’s obligation to work towards an ‘ever closer union’ as set out in the Treaty” as retrograde.**⁸

3.1 In his Bloomberg speech the UK Prime Minister stated that the commitment to ever closer union “has been consistently interpreted as applying not to the peoples but rather to the states and institutions compounded by a European Court of Justice that has consistently supported greater centralisation”. If this were indeed the case it would be in contravention of the principle of subsidiarity and of taking decisions as closely as possible to EU citizens (most notably, but not exclusively, in national parliaments), as set out in Article 1 of the Treaty on European Union. Moreover, **CCBS stresses the need for clarity between centralisation and harmonisation in relation to the role of the European Court of Justice and other EU institutions** in working towards greater economic, social and territorial cohesion; harmonisation is not necessarily synonymous with centralisation.

⁶ Article 1, Consolidated Version of the Treaty on European Union, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012M/TXT>

⁷ Article 3.3, Consolidated Version of the Treaty on European Union.

⁸ Letter to Donald Tusk, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/475679/Donald_Tusk_letter.pdf

3.2 To guarantee that “ever closer union” translates as greater economic, social and territorial cohesion through cooperation (including cross-border cooperation) between member states and their peoples, and that it does not result in a process exclusively reserved for states and EU institutions, CCBS recommends that the operation of the Partnership Principle is reviewed and expanded. Related to the use of European Structural and Investment Funds, the Partnership Principle “implies close cooperation between public authorities, economic and social partners and bodies representing civil society at national, regional and local levels”,⁹ and “must be seen in close connection with a multi-level governance approach and the subsidiarity and proportionality principles”.¹⁰ **Embedding the Partnership Principle into all aspects of the relations between EU, national, regional and local institutions, and economic and social partners and civil society would contribute to ensuring an ever closer union that is relevant and achievable, and which is not fossilized within institutions increasingly removed from the citizens they serve.**

3.3 Notwithstanding the above, and principally in relation to the Eurozone, the need for relevant policy coordination will require a proportionate degree of oversight by central EU institutions. Indeed, in his speech on Europe at Chatham House, the Prime Minister recognised that “it is in all our interests for the Eurozone to have the right governance and structures to secure a successful currency for the long-term”.¹¹ However, CCBS agrees with the Prime Minister’s concern that such structures respect “the legitimate interests of non-Euro members”,¹² although perhaps based on different principles. For CCBS, the underlying concern stems from the need to avoid derailing the objective of a closer union based on economic, social and territorial cohesion, whereas it would appear that the UK Government’s concern is focused on the integrity of the Single Market. In any case, developments within the Eurozone must not sacrifice the goal of overarching cohesion within the European Union in its entirety.

4. Over the last decade, democracies and parliaments around the world have experienced paradoxical developments. On the one hand the value of parliamentarianism has risen significantly, on the other, parliaments have come to symbolise the emergence of a ‘global recession of democracy’.¹³ Declining levels of interest in, and knowledge of, political structures, low levels of trust in elected representatives, and a growing cynicism of democratic institutions, has largely been

⁹ Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds, p.1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0240&from=EN>

¹⁰ Commission Delegated Regulation on the European code of conduct on partnership in the framework of the European Structural and Investment Funds – Explanatory Memorandum, p.2.

¹¹ <https://www.gov.uk/government/speeches/prime-ministers-speech-on-europe>

¹² Letter to Donald Tusk.

¹³ Pippa Norris, *Democratic Deficit: Critical Citizens Revisited* (Cambridge: CUP, 2011), p.4.

reflected in the steady decline of EU turnout at European Parliamentary elections from 61.9 per cent in 1979 to 42.6 in 2014 (EuroParl). For these reasons and more, the European Union as a democratic institution has been called into question. Likewise, with the increasing pooling of sovereignty – albeit consented to by Member States in successive EU Treaties – which has removed the national veto and increased use of qualified majority voting, many have become sceptical about the EU’s democratic accountability and legitimacy.

4.1 However, **CCBS considers that the Treaties of the EU aspire to establish a democratic foundation for the Union.** Indeed, Article 10 TEU requires that “the functioning of the Union shall be founded on representative democracy.” Moreover, that “citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.” Likewise, it aspires that “every citizen shall have the right to participate in the democratic life of the Union” and that “decisions shall be taken as openly and as closely as possible to the citizen”. Finally it aspires that “political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.”

4.2 Indeed, successive Treaty amendments have greatly enhanced the influence of one of the primary sources of the European Union’s democratic accountability and legitimacy, that being the European Parliament, and provided further opportunities for citizen engagement, through consultations on significant policy developments. From 1986 onwards Member States have agreed, through Treaty changes, to afford more legislative power to the European Parliament. The European Parliament is composed of MEPs who are directly elected by EU citizens every five years since 1979. Given that citizens are able to directly elect their MEPs, this concurrently means that they are accountable to their electors, who can choose not to re-elect them if they are dissatisfied with their performance. National parliaments also possess the power to consider and challenge any EU legislation, which they feel should be made at a national rather than an EU level. This thereby enforces the principle of ‘subsidiarity’, which is fundamental to the functioning of the European Union’s decision-making process.

4.3 While the European Commission and the European Council have faced criticism for their lack of democratic accountability and legitimacy, reforms to these institutions over the past two decades have resulted in greater openness and transparency to the public. Today Council documents and sessions are more transparent and accessible and the Commission’s Presidential elections are now linked to the European Parliament elections in accordance with the Lisbon Treaty. Furthermore, the

interests of citizens are advanced within the European Council and the Council of the European Union, given that both institutions are populated from the national governments of Member States. As national governments are elected by their citizens, they are indirectly representing their citizens at the EU level. Accordingly, when a citizen of a Member State votes to change their national government they are concurrently voting to change how their views are represented in the EU, thus these institutions are also indirectly accountable to European citizens. Moreover, through the 'Citizens' Initiative' there are now more opportunities for citizens to participate directly by influencing the EU through a petition process. The Lisbon Treaty contained within it a section improving democracy in the EU, which led to the introduction of the 'Citizens' Initiative', whereby EU citizens can invite the Commission to initiate legislation. **However, CCBS would welcome an evaluation of the relative success of the Citizens' Initiative**, and the extent to which it has influenced the development of policy within the EU institutions.

4.4 Crucially, **CCBS considers that the priority for addressing the issue of democratic accountability lies in the relationship between national governments, their parliaments and citizens**. Whereas national parliaments have a role in scrutinising EU regulations and their implementation into national law, **the levels of parliamentary oversight of their governments' negotiating positions in EU institutions is a source for concern**. CCBS therefore agrees with the President of the European Parliament, who stated that he is "in favour of giving national parliaments a greater role, but vis à vis national governments, because national governments are co-legislators with the European Parliament".¹⁴

4.5 The issue of democratic accountability in terms of the relationship between national governments and their parliaments can be seen in the very process of renegotiation of the UK's relationship with the EU. In this respect **CCBS shares the concerns expressed by the House Lords European Union Committee over the ability of parliament and the devolved institutions to scrutinise and inform the UK Government's negotiations with the EU and its member states**. CCBS agrees that "presenting Parliament with a *fait accompli* is [...] undesirable, and could give rise to legitimate concerns about the accountability and transparency of both the process itself, and its outcome".¹⁵ CCBS also shares the opinion that the "Government must ensure that the devolved administrations are not presented with a *fait accompli* at the end of the process, but rather are

¹⁴ Euractiv, "Schulz on collision course with Cameron over national parliaments' role", <http://www.euractiv.com/sections/uk-europe/schulz-collision-course-cameron-over-national-parliaments-role-319674>

¹⁵ House of Lords European Union Select Committee, "The referendum on UK membership of the EU: assessing the reform process", pp.13-14, <http://www.publications.parliament.uk/pa/ld201516/ldselect/ldeucom/30/30.pdf>

closely involved in negotiations so as to ensure that the specific interests of the nations of the UK are taken into account”.¹⁶

4.6 In order to address deficits in democratic accountability arising from problems in the relationship between national governments and their parliaments in terms of the EU, **CCBS recommends that member states, including the UK, adopt the negotiating mandate model employed by some Nordic countries such as Denmark.** This model places a duty on national governments to obtain a negotiating mandate from an appropriate parliamentary committee *before* the government enters into important negotiations or deliberations in the European Council or other important EU arenas.

Is there consensus on EU reform within the UK?

5. Since its accession to the EEC in 1973, the UK has gradually become a force for reform across numerous European policy areas, in particular those that are a strategic priority for the UK, including the single market, transport, energy, food safety, and climate change. Likewise, in areas such as agriculture, fisheries and budget contributions, where, as a consequence of its delayed accession to the EEC in 1973, reform previously appeared doubtful, the UK has demonstrated the ability to gradually secure more favourable reform. Indeed, the criticism that is often made against the EU, that it is “unreformable”, has largely been proven to be overly simplistic and misleading.

5.1 **CCBS considers that the Government’s renegotiation of the UK’s membership of the European Union and its vision for the EU raises doubts as to the probability of its desired reforms.** While some of the UK Government’s proposals, in particular concerning competitiveness and regulatory reform, appear evidently achievable, others pose something of an existential crisis for the European integration process.

5.2 A significant barrier to the prospects of achieving such a vision is the development that has witnessed several EU Member States ruling out the potential of amending the Treaties in the short term. Therefore, the question is no longer whether or not the UK Government’s vision of Europe can be achieved, but rather whether or not such a vision is achievable without the need for Treaty change. Prime Minister David Cameron’s third proposal for EU reform on ‘Sovereignty’, as set out in his letter to the President of the European Council, Donald Tusk, called the EU to “end Britain’s obligation to work towards an ever closer union.” However, in order for this to be achieved, it would likely require a reopening of the treaty to amend wording. Nevertheless, this has not prevented the UK from securing a number of opt outs from EU integration to date.

¹⁶ House of Lords European Union Select Committee, “The referendum on UK membership of the EU”, p.15.

5.3 While it is important to note that secondary legislation can be amended without requiring a Treaty amendment, secondary legislation is open to legislative amendments, which may lead to final legislation which is not as initially promised and remains open to being overturned in the future. Thus, it is only through a primary Treaty amendment that Prime Minister Cameron's proposal to end the UK's commitment to an "ever closer union" in a "formal, legally binding and irreversible way" could be achieved. In reality, for Treaty amendments to be made would require the unanimous support of all EU members. Undoubtedly, this would be virtually impossible to achieve before the deadline set by Prime Minister Cameron, of a referendum before the end of 2017.

5.4 **CCBS sees the achievement of the UK Government's reform proposal on immigration as highly doubtful.** This proposal, which calls for restrictions on benefits for arrivals to the UK, has been labelled "highly problematic" by the European Commission Jean-Claude, as it would affect the "fundamental freedoms of our internal market" and amount to "direct discrimination between EU citizens".¹⁷ Similarly, during the House of Lords EU Select Committee Inquiry on Visions of EU Reform, whilst the Polish Ambassador to the UK, HE Witold Sobków, expressed the Polish government's shared desire to improve competitiveness and reduce red tape, he emphasised that the outcome of any negotiations must be "non-discriminatory".

5.5 The UK Government's vision for the EU translated into specific reform objectives is outlined in Prime Minister Cameron's formal letter to the President of the European Council, which set out four reform objectives. The proposals for reform under the category of "Economic Governance", which involves the protection of the single market for Britain and other non-Euro Member States is relatively unambiguous and establishes a clear indication of the UK Government's vision for Europe. However, **CCBS notes that on the remaining three reform objectives, including 'Competitiveness', 'Sovereignty' and 'Immigration', it is notably less apparent what is to be achieved.** The call for a "target to cut the total burden on business" fails to specifically set out what this target should be and what it ought to be set against. Likewise, the UK Government's call for enhancing the role of national parliaments by enabling "groups of national parliaments, acting together" to stop unwanted legislative proposals, fails to specify how this ought to be achieved within the broader framework of the European Union.

6. EU reform negotiations are a matter for the UK Government, as the government of the EU Member State. However, **CCBS notes that the devolved administrations of the United Kingdom**

¹⁷ *Politics Home*, "EU chiefs give mixed verdict on Cameron reform proposals", <https://www.politicshome.com/foreign-and-defence/articles/story/eu-chiefs-give-mixed-verdict-cameron-reform-proposals>

broadly speaking tend to be markedly less Eurosceptic than is the case in most of England.

According to a 2013 House of Commons study, 53 per cent of Scots stated they preferred to remain in the EU, compared with a third who would vote to leave, whereas in England 50 per cent said they would vote to leave the EU.¹⁸ More recently, a survey undertaken by Danske Bank in June 2015 found that in Northern Ireland 58% wished to remain in the EU, with 16% favouring to leave.¹⁹ The UK's main Eurosceptic party, UKIP, gained the largest percentage of votes in the UK's European Parliament election in May 2014 with 27.5 per cent over all, whereas in Scotland they achieved 10.46 per cent of the vote. Moreover, the EU's Regional Development Funding has historically benefited Scotland, Wales and Northern Ireland, more so than it has England. Indeed, while the UK as a whole is a net-contributor to the EU budget, Northern Ireland and Wales are net recipients. As a result, both devolved administrations, particularly Northern Ireland, stand to lose out significantly if the UK withdraws from the EU and such funding avenues are not replaced by enhanced central government funding. Given the importance of the agricultural sector to Northern Ireland's economy, the significance of EU Common Agricultural Policy cannot be overlooked. Indeed, according to Northern Ireland's Minister for Agriculture and Rural Development, Michelle O'Neill MLA, in 2014 Northern Ireland farmers received around £295 million under CAP. Minister O'Neill recently noted that "farmers in the North would have been much worse off without this EU funding, which, of course, would disappear in a Brexit situation. Outside the EU, funding for agriculture would fall, unless the Treasury provided additional funds. We all know that the British Government have long wanted to reduce the funding going to farmers. This would be to the detriment of all our farmers".²⁰

6.1 While each of the devolved administrations have expressed some opposition to the UK Government's vision of Europe, the Scottish Government expressly set out (within its 'Scotland's Agenda for EU Reform') its dissatisfaction with the proposed renegotiation of Britain's EU membership, opposition to an EU membership referendum and belief that EU reform can be achieved without Treaty change. In contrast to the UK Government's position on its renegotiation and proposed referendum, this document noted that "the Scottish Government greatly values Scotland's position within the EU and is committed to exerting as much influence as possible over the future direction of the EU with the aim of reconnecting the EU with its citizens".²¹ Moreover, it is

¹⁸ House of Commons Library, "Leaving the EU", Research Paper 13/42 (July 2013),

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP13-42#fullreport>

¹⁹ <https://danskebank.co.uk/en-gb/About-the-bank/Bank-in-brief/Economic-Research/Pages/NI-EU-Opinion-Poll.aspx>

²⁰ Northern Ireland Assembly Hansard, Tuesday 24 November 2015,

<http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2015/11/24&docID=250211>

²¹ The Scottish Government, "Scotland's Agenda for EU Reform", p.2,

<http://www.gov.scot/Resource/0045/00458063.pdf>

demonstrated that “the vast majority of the electorate in Scotland – as evidenced by the results in Scotland for the elections to the European Parliament – do not support the Eurosceptic agenda championed by others in the UK and beyond”.²² Accordingly, **CCBS believes that the UK Government has largely set out on a path of renegotiation and referendum without the explicit support of all the devolved administrations.**

6.2 However, **CCBS notes its serious concerns regarding the ability of the Northern Ireland Executive to formally express an agreed position on the UK Government’s vision for the EU.** Given the consociational nature of the devolved administration in Northern Ireland, which means a power-sharing Executive composed of political parties with opposing views on several fundamental policy issues, it is likely that – unlike the other devolved administrations – a common position on EU reform will not be forthcoming, and instead the positions of individual political parties represented in the Northern Ireland Assembly and its relevant Committees will have to be garnered.²³ In this regard CCBS welcomes the efforts of the House of Lords EU Select Committee and its Chairman in canvassing views from the Committee for the Office of the First Minister and Deputy First Minister and other political representatives, and hopes that those views will be considered by the UK Government.

6.3 Given what it considers to be a lack of general engagement in Northern Ireland with the UK Government’s vision for reform and membership of the EU, CCBS has been fostering the debate with political representatives, as well as with other organisations and citizens. In terms of political engagement to date and views on the UK Government’s proposed reforms, there is an understandable lack of clarity since – as political representatives here have noted – there is an equal lack of detail provided by the UK Government in relation to what those reforms will consist of.²⁴ However, although the political parties in Northern Ireland have been somewhat slow in entering the debate, some general positions have been taken recently. Representatives of the Democratic Unionist Party, such as its MEP, Diane Dodds, have pointed to the party’s tradition as Eurosceptic, and have described the Prime Minister’s proposals for reform of the EU as lacking ambition. The leader of the Ulster Unionist Party, meanwhile, has similarly suggested

²² “Scotland’s Agenda for EU Reform”, p.2.

²³ The Northern Ireland Executive has an agreed vision for Europe, as set out in its “European Priorities 2014-15”, which predates the UK Government’s moves for reform of the EU. That vision is to “Participate in Europe in a positive, outward and forward looking manner and to become a preferred region of choice for partnership working and within which to live, work, study and invest” (p.3), <http://www.ofmdfmi.gov.uk/european-priorities-2014-2015.pdf>

²⁴ We are not referring here to either the Traditional Unionist Voice or UKIP-NI, whose stated position is for immediate withdrawal from the EU.

that the proposed reforms are unambitious, but also that he could not foresee any circumstances where his party would be advocating for the UK to leave the EU.²⁵ The Alliance Party, Social Democratic and Labour Party, and Sinn Fein, have all to differing degrees stated their opposition to a Brexit, with Sinn Fein also positioning itself in opposition to the general tenor of the UK's vision for the EU in terms of limiting its focus to the operation of the Single Market to the perceived detriment of social protections.

6.4 Other stakeholder groups in Northern Ireland, such as the business and agricultural sectors, have voiced their concerns over a possible UK exit from the EU, suggesting that the UK Government should not insist on its proposed reforms at the cost of membership. However, the CBI (Northern Ireland) sees the need for reform of the EU, stating that it wants the Northern Ireland Executive to "Speak with one voice in arguing that Northern Ireland's economic future is best served by continuing to be a member of a reformed European Union".²⁶ For the CBI, such reforms would mean an EU "focussing on facilitating growth and jobs rather than lifestyle regulation or employment law",²⁷ which is largely in tune with the UK Government's proposals for measures to increase EU competitiveness and reducing the regulatory burden on businesses. Meanwhile, whilst Wesley Aston, Chief Executive of the Ulster Farmers Union, has stated that there is insufficient clarity on the progress of the UK Government's negotiations with the EU, its sectoral representation in Brussels has voiced its priorities for EU reform and some of its concerns. For the agricultural sector, therefore, there is a recognised need for the EU to "seek better approaches to regulation" and to "only regulate as a measure of last resort", but it "would be deeply concerned if the agriculture sector's ability to recruit non-UK born workers was compromised as a result of any changes to the free movement of labour in place across the EU".²⁸

7. It is the view of the Centre for Cross Border Studies that the UK Government has, to date, failed to sufficiently consider the views of the devolved administrations, who occupy the role of key stakeholders in the UK's future relationship with Europe. Indeed, any renegotiation of the UK's place in or out of the EU will undoubtedly have a significant impact on all parts of the United Kingdom. Moreover, renegotiation is likely to have a major impact upon Northern Ireland, largely

²⁵ These statements were made at an event co-hosted by the Northern Ireland Assembly and Business Trust and Queen's University Belfast in the Northern Ireland Assembly on 16 November 2015, "Brexit, how could it affect Trade, Agriculture and Investment?"

²⁶ CBI, "Punching above our weight: 12 steps to create a more prosperous Northern Ireland", p.4, http://img.en25.com/Web/CBIOracleEloquaDatabase/%7Bc56a0113-04cb-477f-b225-1b60a0873572%7D_CBI_Northern_Ireland_Manifesto_-_Autumn_2015.pdf

²⁷ "Punching above our weight", p.6.

²⁸ NFU, "EU Referendum: UK farming's relationship with the EU", p.20, <http://www.nfuonline.com/assets/52824>

due to the sharing of a land border with another EU Member State and the current freedom of movement between jurisdictions, which enables cross-border trade and social development.

7.1 The report by House of Lords European Union Select Committee assessing the reform process contained a recommendation that the Government fully engage with the devolved institutions, to ensure that they are closely involved in negotiations so that the specific interests of the nations of the UK are taken into account. In response the UK Government noted that, in addition to Ministerial engagements on this issue, EU reform would “now be a standing item for discussion at the meetings of the Joint Ministerial Committee”.²⁹ However, given that after Prime Minister Cameron’s letter to President of the European Council launched the UK Government’s formal renegotiation process, there now exists a greater immediacy to ensure that views of the devolved administrations are fully considered and represented in this process. At a public seminar at Queen’s University Belfast on 26 November 2015, in response to a question from Chairman of the House of Lords European Union Select Committee, Lord Boswell, on the representation of Northern Ireland’s interests in the renegotiation process, Northern Ireland’s Finance Minister, Arlene Foster MLA, noted her hope that the Minister for Europe [David Lidington MP] “would engage more fully with Northern Ireland Ministers so that he has a full understanding of the implications here”.

7.2 The UK Government has to date made insufficient effort to fully engage with the views of the devolved administrations and stakeholders in the devolved nations on the issue of EU renegotiation. Perhaps nowhere has this been more in evidence than with the exercise of the ‘Review of the Balance of Competences’. On 12 July 2012 the UK’s Coalition Government committed itself to audit the balance of the EU’s competences in order to assess how these affect national interests. This commitment led to an unprecedented exercise which today offers the most comprehensive assessment to date of the EU, known as the ‘Balance of Competences Review’. In short, the Review, which comprises 32 volumes and 3,000 pages of evidence, submitted by over 1,500 sources, including the devolved administrations and other key stakeholders, queries whether or not the present competences of the EU are excessive. According to the Command Paper the Review was intended to inform policy and public debate concerning the UK’s place in Europe. However, Prime Minister Cameron’s speeches in Bloomberg in January 2013, and Staffordshire in November 2014, had already set the tone for Government policy on EU reform before the Review had published all of its reports.

²⁹ Her Majesty’s Government, “House of Lords European Union Committee: The referendum on UK membership of the EU: assessing the reform process: Government Response”, <http://www.parliament.uk/documents/lords-committees/eu-select/EU%20Referendum/HMG-response-to-HoL.pdf>

7.3 Given that Northern Ireland is the only region in the United Kingdom that shares a land border with another EU member state, **CCBS is extremely concerned that the UK Government has not actively sought the involvement in the process of intended renegotiation of EU membership of actors with significant and longstanding experience of cross-border cooperation with Ireland.** CCBS, along with bodies such as the three cross-border local authority networks,³⁰ have intimate knowledge of the extent to which UK membership of the European Union has – through cross-border cooperation – enabled socio-economic development in Northern Ireland and Ireland, as well as the obstacles that remain to exploit the benefits of cross-border trade and other activity. Moreover, such organisations will also have informed views of how the proposed reforms would affect cross-border cooperation and economic flows. Therefore, it is incumbent upon the UK Government that it actively seeks the involvement in the process of other actors beyond the political representatives in the devolved institutions and academics.

7.4 In sum, given the profound implications for the nations of the UK of a referendum on membership of the EU, **it is vital that the Government engage further with the devolved institutions during the negotiation process.** Failing this, **it is difficult to see how the legitimacy of devolved governance can be sustained if vitally important decisions on EU membership are taken without formal consultation and consensus between the UK government and the devolved administrations.**

Is the UK Government's vision shared by others in Europe?

8. In light of its own interactions with EU institutions and of publicly expressed opinions by representatives of those institutions, **it is the view of CCBS that in the UK Government's proposed areas for reform of economic governance and competitiveness, the view will be that progress is already being made in these by the EU. In relation to the issues of sovereignty and immigration, however, CCBS considers that there is little prospect of the EU institutions supporting the UK Government's position, particularly as regards to immigration.** But the overriding sense to date is one of frustration at the lack of detail provided by the UK Government on its proposals, which means that European institutions and other EU Member States cannot themselves provide similarly detailed reactions to the UK's proposed reforms.

8.1 The UK Prime Minister has repeatedly recognised that a successful Eurozone will benefit both Euro and non-Eurozone members, and that the UK Government will not stand in the way of the

³⁰ The three local authority cross-border networks are: the East Border Region (<http://www.eastborderregion.com/>), the Irish Central Area Border Network (<http://www.icban.com/Home>), and the North West Cross Border Region Group (<http://www.nwrcbg.org/>).

developments that are already underway in relation to economic governance of the Eurozone. However, whilst progress in this area may eventually require Treaty change, it is highly unlikely that EU institutions and Eurozone Member States will work towards this in time to meet the UK Prime Minister's requirement for "legally binding principles that safeguard the operation of the Union for all 28 Member States".³¹ Although steps towards deeper integration of the Economic and Monetary Union and the development of accompanying governance structures have been proposed, there is still a lack of consensus among the Member States involved and the European institutions on the speed with which these will be put in place. Therefore, given the absence of an agreed definitive timetable for the implementation of proposed developments in the governance structures of the Eurozone, **it will be extremely difficult for the UK to achieve any legally binding principles in this area that would require Treaty change**, although it will be more realistic to obtain reassurances that non-Eurozone Member States will not be prejudiced by any such developments.

8.2 CCBS considers that there is general consensus among EU institutions and Member States in relation to the UK Government's vision for the EU relating to competitiveness, especially since this is a priority area for the Commission. Indeed, in his letter to the President of the European Council, the UK Prime Minister recognises that progress is being made on this issue, stating that "the United Kingdom welcomes the current European Commission's focus on supporting economic growth and scaling back unnecessary legislation", and that it "also welcomes the new trade strategy". In the absence of any further detailed proposals from the UK Government, therefore, it is highly likely that there will be agreement on what would be a restatement of "a clear long-term commitment to boost the competitiveness and productivity of the European Union and to drive growth and jobs for all".³²

8.3 It is the view of CCBS that of the three proposals regarding the question of sovereignty as outlined in the UK Prime Minister's letter to the President of the European Council, success is only likely in relation to the implementation of the commitment to subsidiarity. Currently, and in the absence of further details provided by the UK Government, there is little prospect of agreement on the part of the EU institutions and Member States over the other two proposals – a legally-binding and irreversible "opt-out" for the UK on working towards an ever closer union, and the introduction of a legislative blocking mechanism for national parliaments. In terms of the former, the likelihood is that the UK Government will be reminded of the June 2014 conclusions of the European Council, which stated that "the concept of ever closer union allows for different paths of integration for different countries, allowing those that want to deepen integration to move ahead,

³¹ Letter to Donald Tusk.

³² Letter to Donald Tusk.

while respecting the wish of those who do not want to deepen any further”.³³ As to the latter, whilst there may be a degree of sympathy among Member States in relation to the power of national parliaments and the perception of the European Parliament’s lack of legitimacy, this will not translate in the form of revision to existing Treaties. Instead, what may be attainable is the reinvigoration of existing mechanisms, whereby the European Commission would automatically drop legislative initiatives upon receipt of a “yellow” or “orange” card, as well as supporting measures for increased inter-parliamentary cooperation.

8.4 CCBS considers that there is no prospect that the UK Government will be afforded any reforms on EU immigration that would in any way undermine the fundamental principle of free movement. Both EU institutions and Member States have voiced strong opposition to any UK measures that would effectively discriminate between UK citizens and citizens of other EU Member States. While there may be some sympathy to reinforce measures to tackle illegitimate abuse of free movement, the UK Prime Minister’s proposal to impose on non-UK EU citizens a four-year residency qualification for in-work benefits and social housing is viewed as fundamentally undermining the principle of free movement and as a form of unfair discrimination. There is a view that underlying the UK Government’s proposals on EU immigration is its vision of the European Union as simply a Single Market for the free movement of goods, capital and services, but not for the free movement of people. This is seen in the UK Government’s support for the continued enlargement of the EU, but only insofar as it would create a larger market for UK goods and not a larger pool of possible EU migrants to the UK.

9. CCBS believes that the question of consensus on the long-term future of the EU must not be judged in terms of the degree to which the 27 other Member States move towards the UK’s vision, but rather on how all 28 Member States can continue to work towards a Europe with increased economic, social and territorial cohesion, and that this can be done in different ways according to the specific context of each Member State or region. The fact that the European Union is already made up of Eurozone members and non-Eurozone members does not necessarily signify a two-speed Europe, but rather that the non-Eurozone members have legitimately opted for working towards the goal of a more prosperous Europe in a manner best-suited to them. **Where a Europe of different approaches becomes unfeasible is where one or more Member States begin to “cherry-pick” from the EU’s agreed overall objectives.** These are the conditions that would foster mistrust between Member States and undermine the ability to engage in mutually beneficial cooperation.

³³ General Secretariat of the Council, “European Council 26/27 June 2014 Conclusions”, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/143478.pdf

10. **CCBS considers that the future of the UK's place within the European Union cannot be guaranteed if it is dependent on all other Member States accepting proposals that are considered detrimental to the founding principles of the EU and dictated by a UK referendum timetable that is not compatible with the priorities of other Member States.** However, the UK can secure and reinvigorate that place if it is prepared to recognise and assist in taking forward developments already underway within the EU that are in line with and owe much to the UK's vision for reform. These include initiatives in the areas of economic governance of the Eurozone and the competitiveness agenda. In other areas, such as the role of national parliaments and the ability to block European legislative initiatives, the UK Government will have to help in strengthening existing mechanisms that will avoid the need for Treaty change. Finally, its future place within the EU will depend on its drawing back from moves that would represent an unacceptable challenge to the principle of free movement.