

# BREXIT



Implications for the EU and Sweden

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*SIEPS, Stockholm, 21 June 2017*

## Preface

In November 2016 the Swedish Institute for European Policy Studies (SIEPS) was commissioned by the government to analyse how the EU's institutions and the balance between the remaining member states will be affected when the United Kingdom withdraws from the EU. It was also part of the assignment to specifically assess the consequences of the withdrawal for Sweden and what working methods should be used for the purpose of ensuring Sweden's continuing influence in the EU.

In the report, SIEPS looks at possible consequences for the EU's institutions, the balance of power as a whole and at a line of argument about possible consequences for the EU's development and for Sweden. The work was conducted by a group at SIEPS consisting of Jonas Eriksson, Tom Hansson, Jakob Lewander, Eva Sjögren, Göran von Sydow, Anna Wetter Ryde and Pernilla Wredenfors. During the year, SIEPS will continue to work on the consequences of Brexit and more publications can be expected. Please note that the report in English is a translation, the original report was written in Swedish.

Stockholm, 21 June 2017.

Eva Sjögren  
Director

## Glossary and explanations

ALDE	Alliance of Liberals and Democrats for Europe (European Parliament)
Coreper	Committee of Permanent Representatives in the European Union
DEU	Decision-making process of the European Union (data set)
EBA	European Banking Authority
ECB	European Central Bank
ECR	European Conservatives and Reformists (European Parliament)
EDA	European Defence Agency
EEAS	European External Action Service
EEA	European Economic Area
EFDD	Europe of Freedom and Direct Democracy (European Parliament)
EFSM	European Financial Stabilisation Mechanism
Ecofin	Economic and Financial Affairs Council
EMU	Economic and Monetary Union
ENF	Europe of Nations and Freedom (European Parliament)
EP	European Parliament
EPP	European People's Party (European Parliament)
EC	European Council
ERMII	European Exchange Rate Mechanism
ESM	European Stability Mechanism
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EU	European Union
CJEU	Court of Justice of the European Union
FDP	Freie Demokratische Partei (German party)
TFEU	Treaty on the Functioning of the European Union
G/EFA	The Greens-European Free Alliance (European Parliament)
CSDP	Common Security and Defence Policy
GUE-NGL	European United Left – Nordic Green Left (European Parliament)
CFSP	Common Foreign and Security Policy
MEP	Member of the European Parliament
LibDems	Liberal Democrats (British party)
PESCO	Permanent Structured Cooperation
RK	Government Offices of Sweden (Regeringskansliet)
S&D	Progressive Alliance of Socialists and Democrats (European Parliament)
UKIP	United Kingdom Independence Party (British party)

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## 1. Introduction

### 1.1 Background

Besides Brexit, there are a number of other factors that affect EU cooperation and that will be important for the union's development. However, in spite of all the other changes that are occurring in parallel, SIEPS has limited this study to the consequences of Brexit – for the EU's institutions and for Sweden. In the report we have not discussed how the actual negotiations on the British withdrawal will proceed, nor what outcome these will result in. However, it has been a necessary assumption for the analysis that the United Kingdom will de facto leave the EU and thereby not participate in the EU's institutions. Since the EU is a political system under constant development, the question of the extent to which Brexit reinforces or weakens tendencies that are already under way in the EU cooperation has been included in part of the analysis.

SIEPS' main conclusion is that the United Kingdom – both directly and indirectly through the EU institutions – has made an impact on the union's development as a whole and in particular in policy areas that are important for Sweden. The British have also had an important role in ensuring that the EU acts only within the limits of the competences conferred upon it by the member states. At the same time, the analysis shows that there are signs that in recent years the British have withdrawn somewhat from the EU arena. Even though it is a major and unique event for a country to leave the EU, we should remember that the EU is a deeply institutionalised cooperation and decisions take time. In the short term, therefore, no revolutionary changes in the EU are probable because of Brexit. On the other hand, future discussions without the United Kingdom at the table will look different, not least in terms of the balance between the EU27 and the eurozone. There is clear evidence that the United Kingdom has been very important for Sweden in the EU, so Brexit will involve some particularly large challenges from the Swedish point of view. Sweden's work with the EU will therefore need to be adapted to the new circumstances, so as to ensure their future influence in the EU, both in day-to-day negotiations and also in matters of more long-term significance.

### 1.2 Approach

In performing its assignment, SIEPS has made use of existing research and other material. As a complement to this, a couple of external researchers were appointed, whose data have been used in the report. This refers primarily to analysis of the balance between the member states in the Council of Ministers, work that will be published in its entirety in the spring. SIEPS has interviewed the available Coreper I and Coreper II ambassadors who have represented Sweden in Brussels since membership was achieved in 1995. Finally, there have also been interviews with a number of senior EU civil servants.

## 2. The European Commission

### 2.1 The Commission's role

The European Commission is the EU's executive body and works in the interests of the whole union. The mandate to set the agenda and be an engine of European integration has formed the basis of the Commission's role. The Commission's position has frequently been discussed in EU research. One central issue has been whether it can best be described as a policy leader that promotes a common European interest or rather as an administrator with largely bureaucratic tasks (Nugent and Rhinard, 2017).

Article 17 of the Treaty on the European Union (TEU) states that:

The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.

Treaty amendments have also affected the Commission's role and to a certain extent infringed on its position. With the Lisbon Treaty, the European Council, the other agenda-setting body, became a formal EU institution. General scepticism about power being transferred to Brussels has also affected which issues the Commission chooses to promote (Bailer, 2006). A number of policy areas seem to some extent to be "sated" compared to how they were at the start of the EU. In addition the European Commission's task as guardian of the treaty has become more complex, and monitoring its implementation and better legislation are demanding ever greater resources (Bauer and Kassim, 2016).

Power has become even more centralised in the European Commission. In the present Commission, much of the influence is concentrated around the president, Jean-Claude Juncker. As one of those interviewed put it: "The Commission today is much more presidential than previous commissions. In principle, everything comes from the president's cabinet and the general secretariat." Centralisation is also derived from Juncker's appointment as president in the *Spitzenkandidat* process in connection with the elections to the European Parliament in 2014, which he utilised as a mandate to drive through the ten-point programme on which he was elected. Juncker's statement that he leads a *political* commission gives an indication of how the Commission president sees the Commission's role, as a policy leader and agenda setter.

What effects, then, can Brexit be expected to have on the Commission as an institution? The most obvious and tangible consequence is that the Commission will no longer have a commissioner from the United Kingdom. But what consequences can be expected in the longer term?

## 2.2 The member states' influence in the Commission

Studies of how member states influence the institutions indicate that the more financial and administrative resources a country has, the more power it has to affect the EU institutions. The United Kingdom has been one of the most active countries in influencing the Commission, the Council president and the European Parliament. A member state's size, administrative capacities and number of years as an EU member are significant in terms of its ability to influence the institutions. The number of "national" civil servants in the Commission also has a positive influence on a member state's ability to obtain information in advance (Panke, 2012).

In this context it is also important to bear in mind that there are different kinds of influence: formal, informal, positive and negative. In some cases the influence may be about getting the EU *not* to look at an issue – the lack of EU legislation can then be seen as an achievement in the same way as success in another question may be that the EU proceeds with legislation. In this respect, the British have been successful in guarding the limits of the EU competences (Menon and Salter, 2016).

## 2.3 The British mark on the Commission

According to Figure 2.1, there are currently 1,126 Britons working in the Commission. That represents 2.8 per cent of the total number. The number of Britons in the civil servant categories fell from 928 in 2005 to 674 in 2016. In the higher AD grades (administrators) the British are relatively well represented and they have two directors general – of the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs and the Directorate-General for Taxes and Customs. The first of these is especially important for the United Kingdom, given the importance the United Kingdom places on the internal market, and there are 36 Britons there (compared with 100 French, 91 Germans and 15 Swedes) (European Commission, 2016a; 2106b; 2106c).

What these numbers do not say, but which has stood out in SIEPS' interviews, is that the British civil servants in Brussels are considered to be skilful and competent. This is different from the general suspicion that has characterised the United Kingdom's relationship with the Commission and that has been expressed, among other things, in a preference for weak Commission presidents. The interviewees also mention that the United Kingdom, by having people centrally placed, including as national experts, has been able to influence the Commission. "The civil servants have great significance, not least in the Commission because it has the right of initiative." From the Swedish point of view, it is interesting to note the comments about the fact that the British civil servants have been important for Sweden's influence. "The British civil servants pursue the same lines as Sweden does, and we will lose influence if they disappear." "Britons in the Commission have been somewhat over-represented among the civil servants who have been important partners and contacts for Sweden in the EU system. They have an attitude as civil servants and in relation to the institutions that is similar to ours."

**Figure 2.1 Officials, Temporary Agents and Contract Agents by First Nationality**

	United Kingdom	Germany	France	Sweden
Salaried staff:	1,126 (3.8%)	2,157 (7.2 %)	3,058 (10.2 %)	553 (1.8%)
AD grades	674	1,378	1,331	327
AD 16	4	7	2	1
AD 15	14	13	15	5
AD 14	45	64	75	7
Director General	2	4	6	3

Source: European Commission (2016a, 2016b and 2016c). Note: Heads of Units: AD 9–14, Directors: AD 14–15 and Directors General: AD 15–16

However, influence is not just about the number of civil servants in the Commission. The Commission today has more of an Anglo-Saxon and Northern European character, unlike the French model around which it was organised from the beginning. According to the interviews, the British have worked towards scientific evidence and better regulation. The Commission has also moved in the direction of becoming, in most parts, an English-speaking institution (Leigh, 2016).

The United Kingdom has also made its mark on the Commission's agenda through a liberal market view that has acted as a counterbalance to a number of other countries. What has clearly emerged from the interviews is the role that the British have played in the development of the internal market. Another theme that has emerged is the significance of the British for the EU's trade policy and the consensus with Sweden on budget issues.

## 2.4 The Commission after Brexit

So does the Commission need to change its rules to adapt to the absence of Britain? The system for nominating the Commission president could be indirectly affected by Brexit. The United Kingdom has been one of the main opponents of the *Spitzenkandidat* process, stressing instead the role of the member states in nominating the Commission president. With Brexit, the opposition to the *Spitzenkandidat* process will be less vocal, but since the system is already in use the selection process will likely remain in place for the European Parliament election in 2019 anyways.

After the United Kingdom's withdrawal, the country will no longer have a commissioner in Brussels. But how much real influence does a commissioner have and how "national" is it? Even though the commissioners do not represent their countries, it is still of importance for the member states who they send to Brussels and what portfolio is assigned. In this respect the British have succeeded in getting important portfolios on a number of occasions, most recently the post of Commissioner for Financial Issues.

The situation for the British civil servants in the EU institutions after Brexit are currently being looked into. From one of the interviews it is clear that at present this is unclear and a number of civil servants are as a result investigating the possibility of changing citizenship. According to staff surveys in the Commission, the atmosphere among civil servants has generally deteriorated, which is due to a number of factors: increasing nationalism in Europe, crises in key issues for the EU, an intergovernmental focus in EU decision-making, talk of crisis and collapse for the EU, terrorism and security issues, increasing numbers of appointments on

a contract basis, which has worsened the spirit amongst colleagues, and stagnating salary levels (Leigh, 2016). Even though the message from the EU is that the Brits will be treated in the same way as civil servants from other countries, in reality it will probably be difficult for the British to advance. The interviews confirm this: “It is very probable that career opportunities will cease. There will not be Britons in leading positions in the institutions in future.” “There will be little support for Britons leading important departments. Nobody will be fighting for their promotion.”

However, the mark made by the British on the Commission’s organisation will probably remain. Even with the British gone, the English language will continue to be an official language, through the member states Malta and Ireland.

How, then, will Brexit affect the Commission’s agenda? In the short term, it will probably not be evident from the agenda that the British are not there, apart from all issues relating to the United Kingdom’s new relationship with the EU, of course. A big part of the agenda is tied up in long programmes and is thus relatively fixed. But the Commission could still be affected by the fact that a large, liberal market country is no longer making its voice heard in questions involving free trade, the internal market, better legislation, a restrictive attitude in budget issues, limitation of support for agriculture and support for enlargement (Leigh, 2016). However, this development is very much dependent on what happens in other member states and outside the union.

As regards the Commission’s role as guardian of the treaty, when the United Kingdom leaves, the EU will lose a member state that has been consistently reliable in terms of implementation of legislation (Zuleeg, 2014).

## 2.5 Conclusions for Sweden

From a Swedish point of view, it will be important to secure Swedish presence in the Commission. This applies especially to priority areas for the government where the British have also played an important role in policy development. It is also important for a country of Sweden’s size to constantly monitor the Commission’s role in general as guarantor of equal treatment of the EU’s member states.

## 3. The European Parliament

### 3.1 Introduction

For the European Parliament (EP) one direct effect of Brexit will be that the 73 British members will leave the assembly. That will have consequences for the political balance in the EP and for the composition of the party groups. There is also the question of what to do with the distribution of mandates once the 73 British members have gone.

This section will attempt to illustrate the British influence in the EP, the changes in the party groupings as a result of Brexit and how to solve the question of what to do with the British mandates after withdrawal.

The European Parliament has gradually taken a greater role in EU legislative work. After the Lisbon Treaty, many more areas fell within the ordinary legislative procedure, which gives the parliament a role resembling that of the Council of Ministers. Thus, the real legislative power has increased. The parliament also exercises a control function over the EU's executive power and has power over the EU's budget. Previously, in the absence of formal authority, the parliament tended to adopt a strategy of blocking decisions so as to obtain concessions (Farrell and Héritier, 2003). It is striking that, after having achieved greater real power, the parliament has tended to use it to influence the decision-making process at an earlier stage. It has become normal to adopt legislation at the first round of proceedings (Tallberg et al., 2011). Through this extended role, the political composition of the European Parliament now has great significance for the EU.

### 3.2 The British contribution

The European Parliament, one of the purely supranational institutions, bases its work on party groups and party political membership. The members are elected from on national lists in accordance with national rules, although the development is towards a more Europeanised electoral system. The work in the parliament is organised within the framework of party groupings. It is thus more difficult to discuss the influence the United Kingdom has had in the European Parliament as a *member state*, because that depends on what parties and individual members are referred to. As regards the European Parliament as an *institution*, the British view on this has been somewhat mixed. On the one hand, the United Kingdom has been cautious or critical of movement towards a United States of Europe, in which the parliament would have a more central role. On the other hand, inspiration has been found from the British tradition of parliamentarianism to further strengthen the democratic control of the EU. Also, many leading British European parliamentarians have had leading roles in developing the European Parliament into the considerably more significant institution that it is today.

In a treaty context, the British have often expressed the view that the EU's democratic deficit would be better remedied by stronger national democratic control of the EU than by a stronger European Parliament. An extended role for national parliaments to be able to control and block legislation at European level was also one of the requirements for a changed EU that the former British prime minister David Cameron presented in connection with the agreement between the British and the EU in February 2016 that preceded the referendum (hereinafter the *February agreement*).

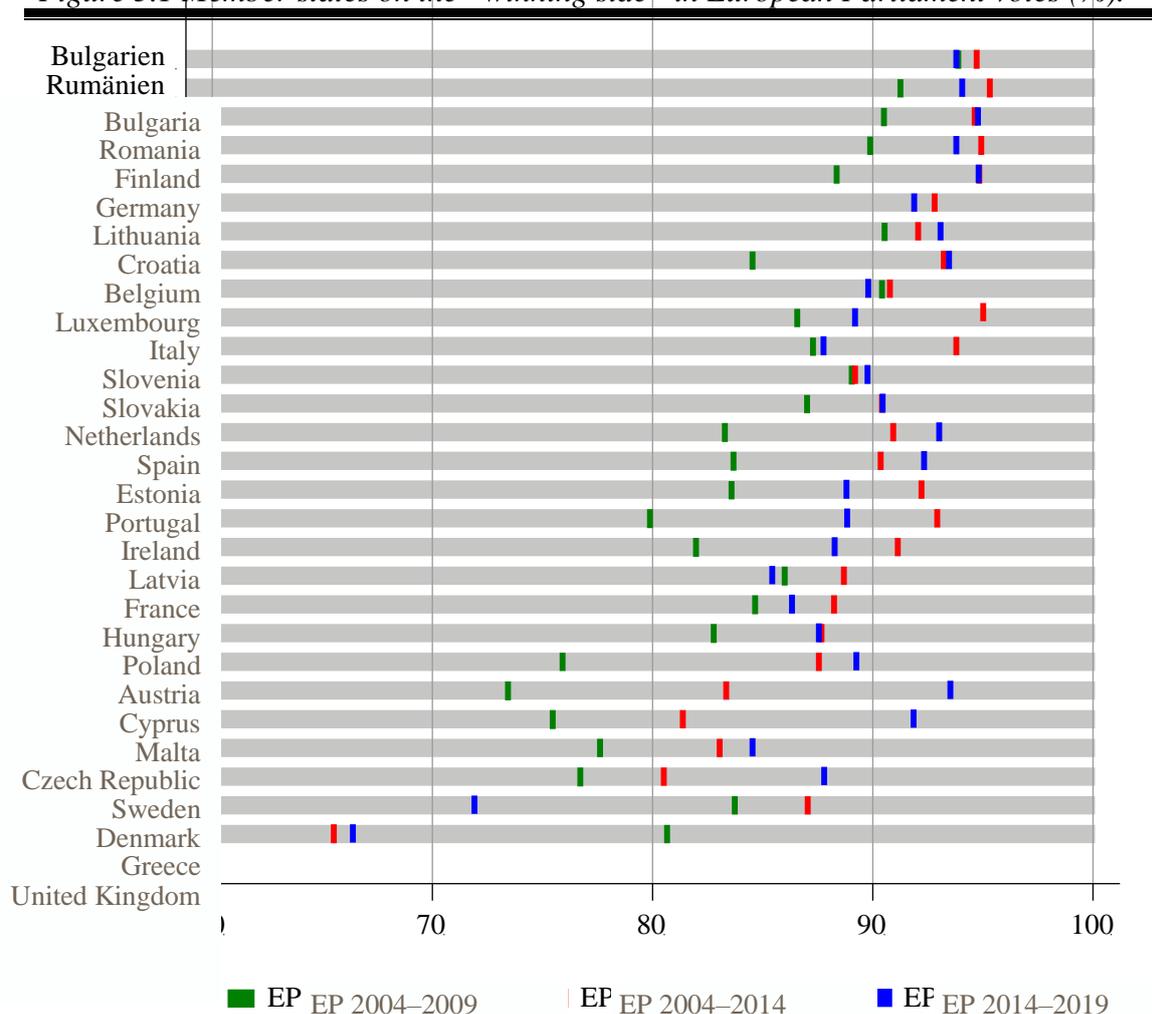
As previously stated, perhaps the most central effects of Brexit will be the changes in the composition of the party groups. With the extended role of the European Parliament in EU legislation, a greater focus has been placed on the committees. This means that the party groups have great influence since they have a central role, for example, in the distribution of chair and rapporteur duties (Mamadouh and Ranio, 2003). However, if we look at how often parliamentarians from the various countries found themselves on the “winning side” in different votes, we see that in recent years the British MEPs are the national delegation that has been on the losing side more often than any other (see Figure 3.1 on the next page). It is important to note that the average for being on the winning side is very high, approximately 85 per cent. This is because there is a tangible tendency towards consensus in the parliament. There is, however, some variation: the Finnish parliamentarians have been on the winning side in 93 per cent of the votes, compared with the British 71 per cent (Hix, Hagemann and Fratescu, 2016).

The key to understanding this is that voting in the EP is mainly done in party groups. It is interesting to note how a change occurred after the 2004–2009 mandate period. The British Tory party’s departure from the EPP group in 2009 was a key factor, as was the changed composition of the British parliamentarians. As the United Kingdom Independence Party (UKIP) has grown – and the Labour Party and Liberal Democrats (LibDems) have weakened – the British delegation has changed and has moved from the centre of the EP towards the right. The liberal ALDE group has most frequently tended to tip the balance in the EP and has been on the winning side in almost 90 per cent of the votes, with the EPP and S&D groups close behind. Of the British parliamentarians, only Labour and the Liberal Democrats belong to any of the large party groupings.

### 3.3 Contributions by British parliamentarians

It is not entirely easy to decide which nationalities in the European Parliament have done most to set the tone. It is, however, significant that almost 10 per cent of the parliament consists of British seats. This means that over the years a great many important posts have been held by Britons. Since 2004 two Britons have been vice-presidents (Edward McMillan-Scott and Diana Wallis), four have been group leaders (Graham Watson, Martin Callanan, Nigel Farage and Syed Kamall) and ten have chaired committees. Overall in the years since 2004, the British have been over-represented in leading positions in the parliament. This is at the same time an expression of the fact that large member countries tend to be especially well represented in leading parliamentary positions.

Figure 3.1 Member states on the “winning side” in European Parliament votes (%).



Source: Hix, Hagemann and Fratescu (2016). Note: A member state’s delegation of parliamentarians is counted as being on the “winning side” in a vote if the majority of the delegation’s MEPs voted with the majority of the parliament as a whole.

One important function of the European Parliament is that of rapporteur for a certain legislation and research shows how this role has gradually become more important (Settembri and Neuhold, 2009). Hix et al. show how parliamentarians from large countries and from older member states tend to have more such tasks. In the case of the United Kingdom there was a reduction in the numbers after 2009, something that Hix et al. partly link to the British delegation consisting to a greater extent of UKIP members, a party that does not seek the rapporteur role.

All in all, it is not possible to maintain that British parliamentarians do not have a significant role in the EP. Members from large parties tend to have good prospects of being nominated for important roles, especially those who represent one of the large party groupings. There has been, however, a tendency towards fewer influential positions in recent years, which is linked to which party groups the British have become more dominant in.

### 3.4 Party groups undergoing change

If the British left the European Parliament that is sitting today, this would have considerable effects. Most Britons with important roles in the parliament have a positive attitude towards free trade, free markets etc. The majority (60 per cent) of British parliamentarians are on the centre-right or right: the Tories in the ECR and UKIP in the EFDD group. At the same time, British Labour members have been more cautious about stronger regulation than many of their party colleagues from other member states. Labour has always been one of the largest parties in the S&D and accounts for around ten per cent of the party group members. This grouping would therefore be considerably weakened and the differences between the parliament's largest groupings would increase. Chrysogelos argues how this could also shift the balance within the S&D from a Western/Nordic inner group, currently with 72 MEPs, to a stronger role for the socialist parties from the Mediterranean countries (currently 74, including France).

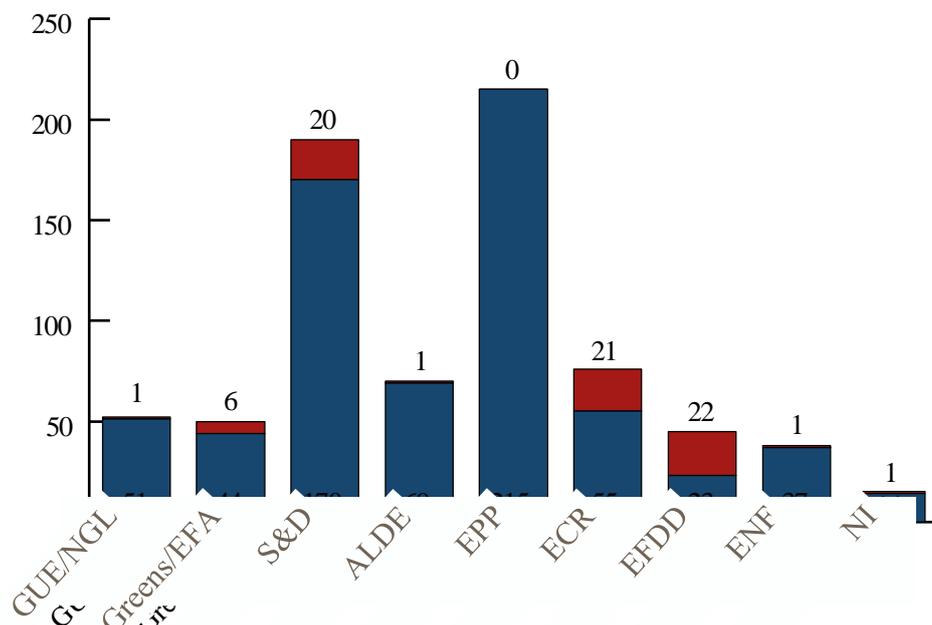
*Figure 3.2 The party groups of British parties in the EP.*

Party	Number of MEPs	% in 2014 election	Party grouping	Swedish party in the grouping
UKIP	20	26.6	EFDD	SD
Tories	20	23	ECR	-
Labour	20	24.4	S&D	SAP, FI
Greens	3	6.9	G/EFA	MP
Plaid Cymru	1	0.7	G/EFA	MP
SNP	2	2.4	G/EFA	MP
LibDems	1	6.6	ALDE	L, C
Sinn Féin	1	1	GUE-NGL	V
Ulster Unionist	1	0.5	ECR	-

Source: The European Parliament. Note: Three British MEPs were not in groupings in January 2017, with one independent in the ENF.

As the Tories left the EPP in 2009, there will be no effect at all on the parliament's largest party grouping. The ECR group was created when the Tories decided to leave the EPP, a grouping they had been members of since 1992. The British dominance in this grouping has been very evident. After each election to the European Parliament there has been a significant shift in the various party groupings to the right of the EPP. The EFDD also has a tangible British presence since UKIP is a dominant force in this grouping, with almost half its mandates. Without UKIP it would disappear or need to regroup. The parties to the right of the EPP currently account for 23 per cent of the seats in the EP, which would fall to 19 per cent. There are certain requirements for becoming a party grouping: at least 25 members from at least seven member countries. The ENF could only be formed a year into the present mandate period, and withdrawals and changes could cause some groupings to be dissolved and others to be formed.

Figure 3.3 Changes in party groups after Brexit.



Source: The European Parliament

It is not impossible that further changes could occur after Brexit. There may be a possible consolidation of the strongly EU-critical parties with a radical right wing, populist character. If the ECR and EFDD find it difficult to create their own groupings, this would make it easier for the ENF to attract new members. The small but very central party grouping ALDE has long had the British LibDems as one of its two main parties, the other being the FDP of Germany. Since expansion, ALDE has shrunk in size, but has maintained its central position. If the British left the present parliament, this would weaken the grouping further (but note that both the LibDems and the FDP have done badly in recent elections).

### 3.5 Effects on policy

Even though the balance of power between the party groupings will be changed by Brexit, it is not entirely clear how this will affect political interaction in the EP. The EPP will clearly be the largest grouping and the S&D will be significantly weakened. At the same time, the majorities are such that neither a clear centre-left nor a centre-right majority can be formed. If the ECR should be dissolved, there are several parties that could move to the EPP, thereby further strengthening it.

The main pattern during the current mandate period is the large coalition or super-large coalition across blocks. Also, although unity within the party groupings is surprisingly large, it is noticeably less so in the farther right groupings. It is therefore not a simple matter to calculate how voting would go. Based on studies by VoteWatch, there is, however, reason to believe that the British influence, in the form of a certain Euroscepticism and market liberalism, would be weakened in the parliament as a whole. This may be expressed, for example, in less understanding of such standpoints during the legislation process. Hix et al. have taken up a couple of areas in recent years where a British withdrawal would very probably have affected

the outcome. According to Hix et al., there would have been 1) greater regulation for companies, 2) weaker copyright protection, 3) larger member state contributions to the EU budget, 4) stronger support for tax harmonisation and higher taxes on financial transactions and 5) less support for nuclear power (Hix, Hagemann and Frantescu, 2016).

### 3.6 The EP of the future

A further effect that is worth noting is dependent on which model is used for handling the 73 seats that the British parliamentarians are leaving. This will have great significance for the way in which the parliament functions. As can be seen from the analysis above – on the assumption that the next election result would reflect that of 2014 – and with regard to the so-called *Spitzenkandidaten* process, it is worth noting that if the election proceeds with the same practice that was established in 2014, i.e. the largest party grouping in the EP election is given the opportunity to promote its leading candidate to the position of president of the European Commission, then in all probability the next Commission president will also come from the EPP. This is, of course, an assumption that may change: both regrouping and cooperation between party groups in the wake of the election result could change these basic assumptions. Moreover, the practice used in the 2014 election – with the largest party grouping being asked first about the post of Commission president – may be modified. However, since the greatest opposition to *Spitzenkandidaten* came from the United Kingdom, we may imagine that this will be a less controversial process in the 2019 election.

What happens to the United Kingdom's 73 mandates when the country leaves the EU is a major and important question for the future. The Treaty states that the parliament's mandates may not exceed 750, plus the president. The number at present is 751. The method of distributing the mandates is known as *degressive proportionality*, which means that small member states are over-represented in relation to their population size, while the opposite applies to large member states. There is a ceiling so that no member state can have more than 96 mandates, which at present only affects Germany.

Article 14:2 of the Lisbon Treaty determines how the mandate distribution works:

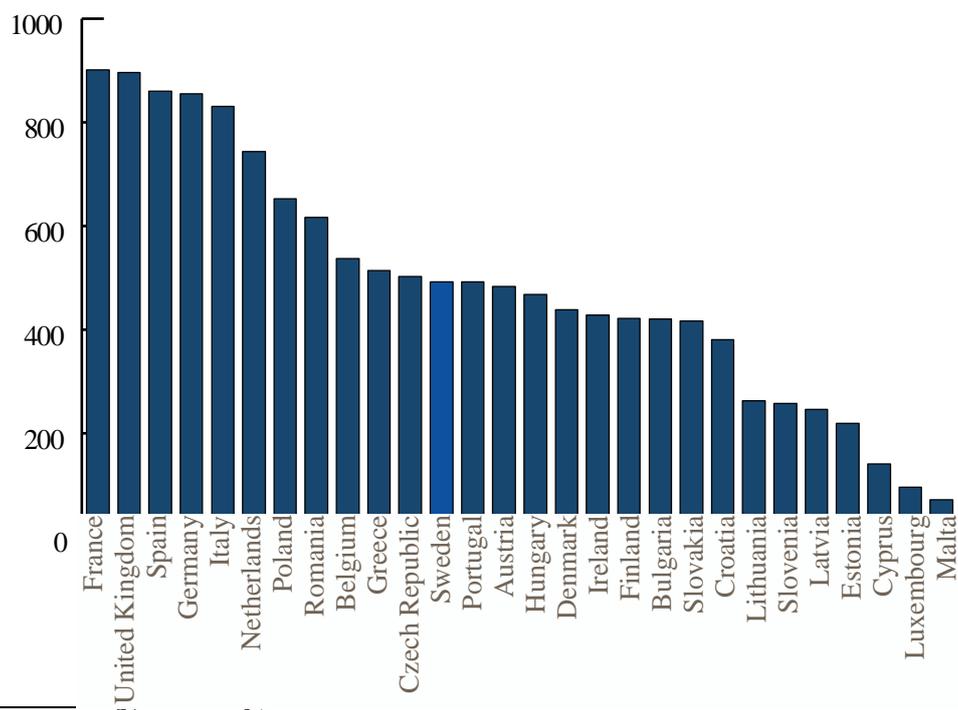
The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed seven hundred and fifty in number, plus the President. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats.

The European Council shall adopt by unanimity, on the initiative of the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles referred to in the first subparagraph.

An important aspect in relation to article 14:2 is that it is on the *initiative* of the European Parliament that a change of the parliament's composition may occur.

The European Parliament is the only directly elected institution at European level. At the same time, it is recognised through the degressive proportionality formula that certain populous member states shall not be able to dominate the parliament to an excessive extent. As a former EP rapporteur on election procedure, the British liberal Andrew Duff states that the outcome is a system that “reflects a giant historical compromise between the international law principle of the equality of states and the democratic motto of ‘One person, one vote’” (Duff, 2014).

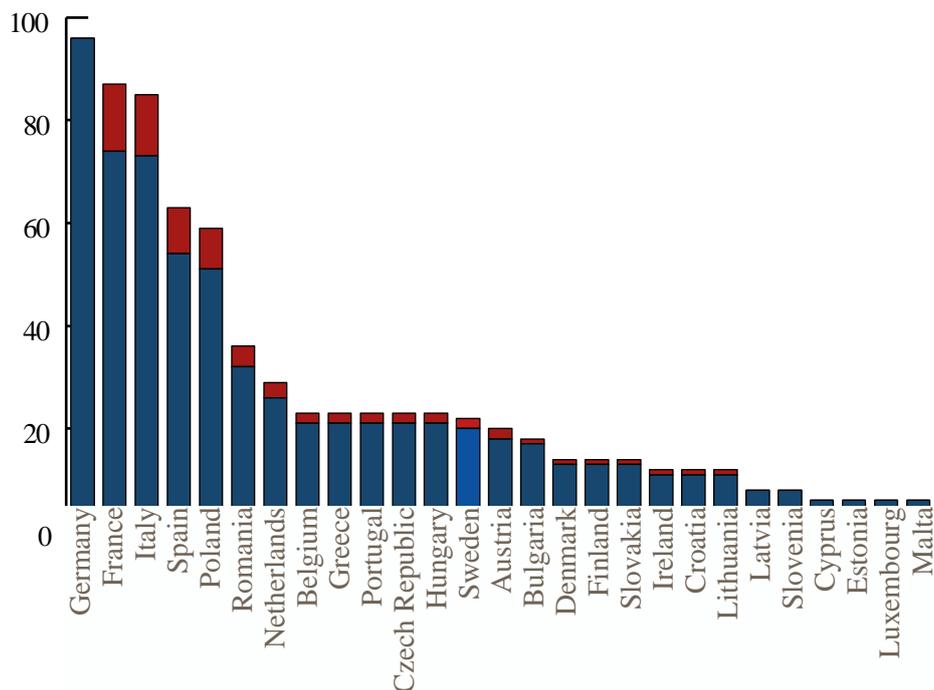
Figure 3.4 Population per mandate in the European Parliament.



Source: Kalcik and Wolff (2017)

The process for arriving at the present form of mandate distribution has been far from straightforward. With the gradual expansion of the EP's role and with the recurrent demand to strengthen the EU's democratic legitimacy, there are those who believe that Brexit offers an opportunity to arrive at better representativeness in the parliament. There is also a suggestion to use the 73 British mandates to create pan-European lists and mandates (Duff, 2016a). As can be seen from the figure below, the present parliament is hardly proportional. The number of voters per seat in the European Parliament varies from fewer than 100,000 for Malta to almost 900,000 for the most populous member states.

Figure 3.5 Distribution of seats after Brexit according to population size.



Source: Hurka (2016)

There are ways of handling the 73 empty seats within the treaty and there are ways that would require a treaty amendment, including Duff's proposal for transnational lists (Duff, 2016a). If we stay with proposals for how allocation could be done within the treaty, we can say that what seems to be the simplest politically possible solution would quite simply be to reduce the parliament to 678 seats. However, the problem with this solution is that it would increase disproportionality considerably. A new study from Bruegel (Kalcik and Wolff, 2017) uses two measurements for disproportionality, Gini and malapportionment (inadequately or unfairly proportional distribution of representatives in a legislative assembly). The study shows how a single decision to reduce the parliament's size would considerably increase disproportionality. An even distribution of the 73 mandates between member states increases disproportionality even further.

Figure 3.6 Distribution of seats to the EU countries according to the Cambridge compromise.

	<i>EP without the United Kingdom</i>			<i>Cambridge compromise 639 seats</i>				<i>Cambridge compromise 736 seats</i>			
	Pop.%	Seats	%	Seats	%	Diff	Pop./seats	Seats	%	Diff	Pop./seats
Germany	18.5%	96	14.2%	96	15.0%		855854	96	13.0%		855854
France	15.0%	74	10.9%	79	12.4%	5	843818	96	13.0%	22	694392
Italy	13.6%	73	10.8%	73	11.4%		831035	89	12.1%	16	681635
Spain	10.4%	54	8.0%	57	8.9%	3	814709	70	9.5%	16	663406
Poland	8.5%	51	7.5%	47	7.4%	-4	807813	58	7.9%	7	654607
Romania	4.4%	32	4.7%	27	4.2%	-5	731851	33	4.5%	1	598787
Netherlands	3.8%	26	3.8%	24	3.8%	-2	707463	29	3.9%	3	585487
Belgium	2.5%	21	3.1%	18	2.8%	-3	627214	21	2.9%		537612
Greece	2.4%	21	3.1%	17	2.7%	-4	634913	20	2.7%	-1	539676
Czech Republic	2.4%	21	3.1%	17	2.7%	-4	620814	20	2.7%	-1	527692
Portugal	2.3%	21	3.1%	17	2.7%	-4	608314	20	2.7%	-1	517067
Sweden	2.2%	20	2.9%	16	2.5%	-4	615689	19	2.6%	-1	518475
Hungary	2.2%	21	3.1%	16	2.5%	-5	614405	19	2.6%	-2	517394
Austria	2.0%	18	2.7%	15	2.3%	-3	580031	18	2.4%		483360
Bulgaria	1.6%	17	2.5%	13	2.0%	-4	550291	15	2.0%	-2	476919
Denmark	1.3%	13	1.9%	12	1.9%	-1	475604	13	1.8%		439019
Finland	1.2%	13	1.9%	12	1.9%	-1	457276	13	1.8%		422101
Slovakia	1.2%	13	1.9%	12	1.9%	-1	452188	13	1.8%		417404
Ireland	1.0%	11	1.6%	11	1.7%		423503	12	1.6%	1	388211
Croatia	0.9%	11	1.6%	10	1.6%	-1	419067	11	1.5%		380970
Lithuania	0.6%	11	1.6%	9	1.4%	-2	320951	9	1.2%	-2	320951
Slovenia	0.5%	8	1.2%	8	1.3%		258024	8	1.1%		258024
Latvia	0.4%	8	1.2%	8	1.3%		246120	8	1.1%		246120
Estonia	0.3%	6	0.9%	7	1.1%	1	187992	7	1.0%	1	187992
Cyprus	0.2%	6	0.9%	6	0.9%		141387	7	1.0%	1	121188
Luxembourg	0.1%	6	0.9%	6	0.9%		96042	6	0.8%		96042
Malta	0.1%	6	0.9%	6	0.9%		72401	6	0.8%		72401
<b>Total</b>		1 678	1	639	1	-39		736	1	58	

Source: Kalcik and Wolff (2017). Note: The European Parliament's distribution of seats for the EU27 with 1) the present distribution, 2) the Cambridge compromise with a total of 736 seats and 3) the Cambridge compromise with a total of 639 seats. The table shows the population proportion, the number of seats in each scenario, the number of seats in the EP, the difference with the present distribution and the relationship between the population and the number of seats. Italic text shows where the number of seats does not increase with the population.

A distribution of the 73 seats according to the present formula would also increase disproportionality. The proposal for how degressive proportionality would work comes from a number of mathematicians within the framework of the so-called Cambridge compromise, which was produced in 2011. But although the parliament expressed support for the compromise, a “pragmatic solution” was instead chosen in which mandates were distributed so that no member state would gain any new mandates and none should lose more than one.

The Bruegel study compares various alternatives that could be used within the framework of the formula given in the Cambridge compromise. It is clear that, although the parliament represents citizens, the member states may look differently on the question of representativeness in the European Parliament of the future. The larger countries may suggest that the level of representativeness should be reduced, while the smaller member states, on the other hand, may express the risk that the larger countries will have far too much dominance in the parliament.

### 3.7 Conclusions

The composition of the parliament has a mainly *indirect* significance for Sweden as a member state. The parliament has become ever more important as a legislator and the majority situation is of significance. The parliament was changed between the formation of the ECR and the EFDD, but what happens next with these party groupings is unclear. What we do know is that the S&D is losing a significant national delegation. Even though in left-right terms the British members of the parliament are mainly on the right, what will happen to this balance is unclear. The withdrawal of the British will weaken the Eurosceptic forces and reduce the liberal market tone, but the consequences are difficult to predict because they will depend on how the groupings are formed. In the slightly longer term there is i) the important question of how the parliament should consider what best to do with the 73 empty seats, ii) how the British withdrawal affects the co-called *Spitzenkandidat* process in 2019 and, more generally, iii) what support exists for a strengthened role for the European Parliament in the future.

## 4. The Council of Ministers

### 4.1 Introduction

The Council of Ministers is the central decision-making arena for the member states in the EU. Together with the European Council, this is the arena where the member states and their preferences are most clearly seen. The European Parliament's gradually increasing power as a co-legislator is a change that has clearly affected the Council of Ministers. When it comes to the effects of Brexit on the balance between the member states, the Council of Ministers (also called the Council) is one of the most interesting institutions to study.

The successive enlargements have changed the council's functionality. Against expectations, the enlargements have not weakened the decisiveness of the council. As Van Aken (2012) shows, fluctuations over time in the *quantity* of decisions taken in the council have had more to do with external factors and election cycles. Adaptation of rules, new coalition patterns and adaptation of new member states explain why enlargements do not have a negative effect on the quantity of legislation. In recent years, however, a reduction of legislative activity can be seen, which is also something that the European Commission has sought during the present mandate period.

As one of the "big three" member states, the imprint that the United Kingdom has made on the council's way of working may be expected to be considerable. The analyses of civil servant networks in the council's various working groups that Naurin and others have conducted on a number of occasions systematically show that the big three member countries – France, Germany and the United Kingdom – are distinguished by having a much higher network capital (measured as mutual contact frequency with other member states) (Naurin and Lindahl, 2014). Research also shows how the big three countries play an important role in negotiations (Thomson, 2011), which can also be seen in the European Council (Tallberg, 2007). Systematic studies of many decision-making processes show, however, that the big countries do not get what they want any more often than others. One important explanation of this is that the "big three" do not often have common interests, which means that the outcomes must be expressed as a compromise (Thomson, 2011). That one of the big member states is now leaving will certainly be significant, but the question is in what way and to what extent?

The question we begin this section with is what impression the British have made in the Council of Ministers. There follows a section about the significance the British exit has for Sweden. Sweden has often seemed – and been perceived as by others – the United Kingdom's best friend in the EU. There is then a discussion on how the council's work and political outcome would have changed if the British had not participated. In this context, reference is made to research about decision-making in the council and changes in the networks of the council. There is then a discussion of what changes in the council as a whole may be expected to follow from the British withdrawal. The new voting rules in the Lisbon Treaty came into full force on 1 April 2017, and thereby also the double majority principle (at least 55 per cent of the member states whose combined population represents at least 65 per cent of the EU population). Finally, we discuss what consequences the British withdrawal has for the balance of power between the countries in the council.

## 4.2 The United Kingdom in the Council of Ministers

The council handles a range of issues and the work is done in complex negotiating situations on several levels. The political agenda and assumptions also change over time. It can thus be difficult to explain what a country's contribution consists of. However, a number of central British contributions to European integration emerge from our interview material with the former EU ambassadors. As a major power – albeit with rather constraining opinion at home – the British have influenced the EU, sometimes as a reluctant collaboration partner, but also occasionally as a pragmatic problem solver.

One aspect that emerged from the interviews is that action in the Council of Ministers has been greatly affected by the domestic political context. During Sweden's earliest years of EU membership, Prime Minister John Major's last Tory government was in power and a general order had gone out not to be constructive in EU work. With the change to the first Labour government under Tony Blair, the strategy changed to being instead a "pragmatic player", with the consequence that the British were a constructive and very influential power. Under Gordon Brown's last Labour government – and not least in connection with the financial crisis and David Cameron's Tory government (2010–2016) – there was a return to being more and more obstructive, and then to gradually withdrawing from cooperation. We can partly already see the effects of Brexit on the Council of Ministers, which now works on the assumption that the British will leave the union.

There are two contrasting images of the United Kingdom to weight up: on the one hand, a constructive and pragmatic partner; on the other, a sometimes obstructive force. As a constructive player in council work, the United Kingdom was considered to have a sober-minded approach based on fact-based positions. With their linguistic advantage, the British had the ability to find the right formula for resolving conflicts. The well-developed British government apparatus embraces a large and skilful body of civil servants who have helped to establish early and clear positions, formulated so as to give negotiators great room for manoeuvre. During these periods there was also great confidence between the Brussels representation and London, something that is presented as a recipe for achieving influence.

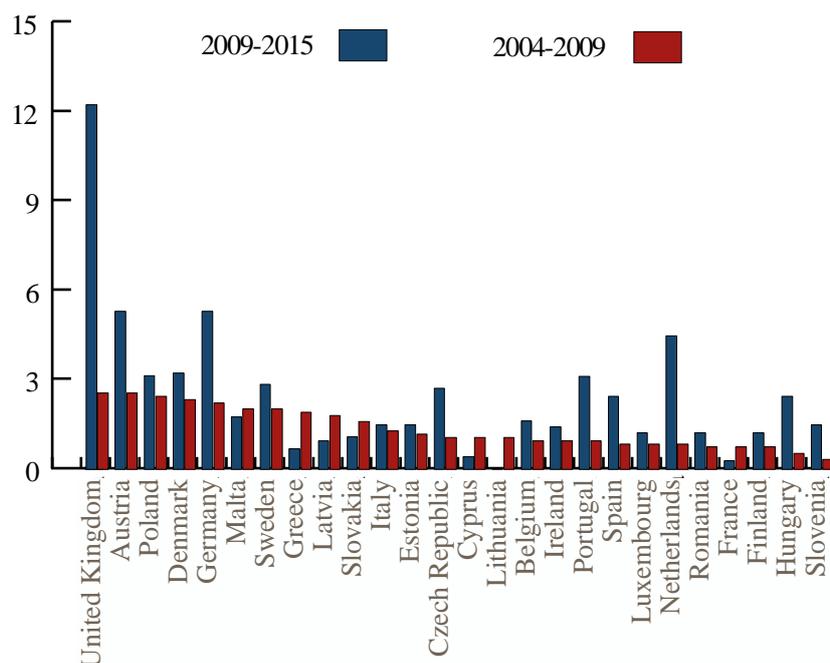
The majority of those interviewed also believe that, with their liberal market views, the British have played a vital role in the development of the internal market, competition policy, deregulation, trade policy, expansion, and foreign and security policy. Important from the Swedish point of view has been the budget-restricting force. The United Kingdom has also had a great influence on working methods and approaches within the EU; it has been a driving force for better legislation, such as by means of consequence analyses and requirements for scientific support.

The research also shows that the United Kingdom has gradually become more and more isolated. In many policy areas the qualified majority is the rule for decisions, but in practice unanimity is often achieved in the council. Disputed legislation (where one or more member states vote against or abstain from voting) is still found in all policy areas; the more redistribution the decision concerns – in agricultural policy, for example – the more strong preferences arise in the council (Van Aken, 2012). The Van Aken study of contested voting up until 2010 shows that the United Kingdom gradually became more isolated. The study also shows that northern and larger member states object more often than do southern and new

member states. After the expansion of 2004, the United Kingdom voted increasingly often against the majority and gradually became more of an “outlier” (Van Aken, 2012).

In their studies, Hix, Hagemann and Fratescu have also seen a clear difference in the actions of the British in the council in recent years. During the period 2009–2015 the United Kingdom was the member state that was most frequently on the losing side in votes in the council (see Figure 4.1).

*Figure 4.1 Percentage of votes where a member state is in the minority.*



Source: Hix, Hagemann and Fratescu (2016)

It is worth noting, however, that in the past 12 years the United Kingdom has voted yes in as many as 97 per cent of cases. In other words, the voting statistics do not tell the whole story. The interviews indicate that voting behaviour in the council is partly explained by a strong norm of quite simply not voting against the majority. The council members do not wish to find themselves on the losing side in a vote and negotiations are aimed at getting the majority to go as far as possible so as to achieve unanimity. It is also natural to normally vote *for* the final compromise. If, in any policy area, a member state negotiates actively but then often votes no, this inevitably leads to a lessening in the other members’ interest in actively involving that member state in future negotiations. There is a kind of basic logic in council negotiations with a qualified majority as the decision rule. There are obviously occasions when member states need to make it clear at home that they do not accept a compromise. The changes between the periods 2004–2009 and 2009–2015 are no less notable. The areas that were especially opposed by the British were budget, foreign policy and aid. On the other hand, it was not the most frequently opposing country with regard to the internal market, legal issues, transport, the environment or fisheries (Hix, Hagemann and Fratescu, 2016).

The data above provides support for the observations from the qualitative interviews of a member state that has distanced itself from the EU. At the same time, it is important to point out that in later periods the United Kingdom has voted with the winning side in 86.7 per cent of the votes.

It should also be added that in some of the most fast-growing policy areas on the EU's agenda (economic policy, the legal area, Schengen etc.) the United Kingdom does not participate since it has negotiated opt-outs. Thus one interpretation that can be made of these factors is that the United Kingdom has already started to distance itself from the Council of Ministers.

### 4.3 What would the decisions of the council have been like without the United Kingdom?

One way of judging the effects of Brexit is to start to analyse those policy areas where the British have had a clear influence. There is relatively strong agreement between the interviewed EU ambassadors that trade policy will be negatively affected from Sweden's point of view when the United Kingdom leaves the EU. Internal market questions and foreign and security policy were also mentioned by several. However, the interviews confirm that the British have already left the cooperation and that in many other areas they have never cooperated at all, for example with regard to the Schengen collaboration and legal and domestic issues.

Studies have tried in various ways to find out *how* the member countries arrive at a decision. Huhe, Naurin and Thomson investigated 3312 disputed issues that were decided by the council up until 2008 (Huhe, Naurin and Thomson, 2017). The study shows that the countries that have positioned themselves closest to the United Kingdom are Sweden, the Netherlands, Ireland and Denmark. And the closest of all was Sweden. This period precedes many important changes in the EU, with the euro crisis as the prime example, but also the above-mentioned reversal in British European policy. The study is based on interviews held over a period of around ten years with more than 350 civil servants in the decision-making processes, with all member countries and the supranational institutions being positioned on the various issues. Every issue was investigated in detail and all member states and the supranational institutions' positions were determined, as well as the salience that each attached to the issue. This data material (DEU) has been used in many studies of decision-making in the EU. The imminent study by Huhe, Naurin and Thomson asks what the outcome of these decision-making processes would have been if the United Kingdom had not been a member. The study estimates the number of cases where the outcome would have been different without the British presence, and for the issues where it would have made a difference the question is asked: how much?

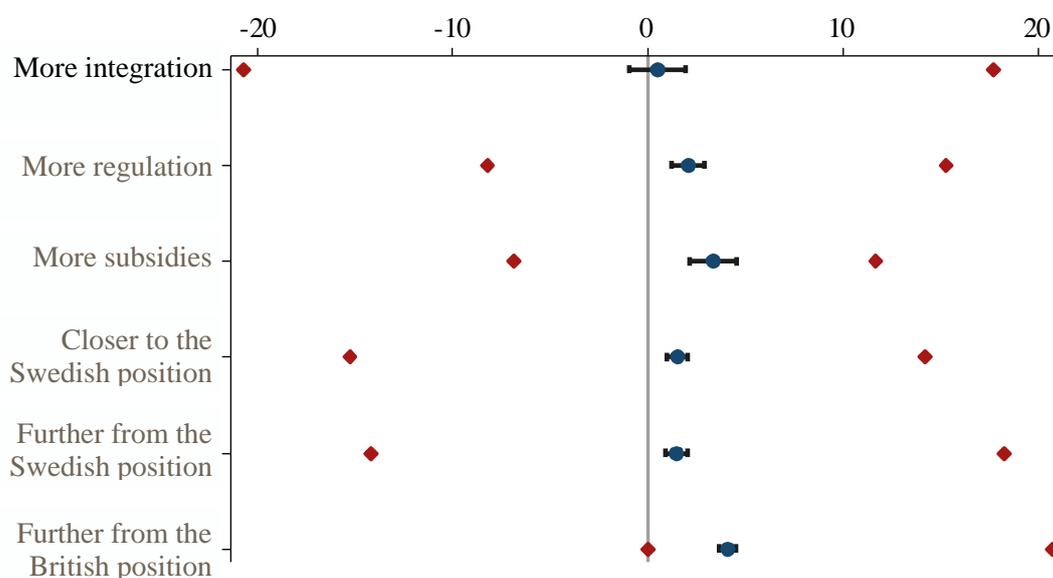
The researchers come to the conclusion that regardless of whether a method is used that concentrates on *procedure* or on *negotiation*, the effect of an EU without the United Kingdom would have been *very modest*. According to the *procedure model*, 90–95 per cent of the outcome of the processes would have been the same. The key to understanding how decision-making works in this model is how the majority changes through the member state or states that constitute the pivot for creating a majority or a blocking minority. Huhe, Naurin and Thomson refer in their detailed analysis to several issues where a British withdrawal would have led to either an unchanged or a different outcome. They also find a few counter-intuitive cases where the outcome would have been *closer* to the British position. In summary, their case studies show that the outcome according to a procedural model could change in various processes after Brexit. In summary, the most important result is that in the 236 cases that the model could be applied to, only 13 would have had a different outcome. This is usually explained by saying that if the United Kingdom were removed the balance of power in the council would be unchanged. In 19 cases the balance of power is changed by removing the United Kingdom, but this had no effect on the outcome. The analysis shows that a British withdrawal would have had a greater effect in an EU with 15 members than in today's EU.

A supplementary analysis has also been made of whether it would have affected the outcome if the new voting rules in the Lisbon Treaty had been used (55 per cent of member states and 65 per cent of the population). The results show that this would not have been the case. In 95 per cent of the issues the outcome would have been identical (Huhe, Naurin and Thomson, 2017).

In the *bargaining model*, which is based on how decisions are reached through compromises and negotiations, the outcome is automatically changed if one player is removed. This model differs from the procedural model and, according to many, offers a more realistic description of how the council works. In previous studies the model has also proved to be more accurate in predicting outcome. In this model, the outcome would be affected in 85 per cent of the cases studied. In the other 15 per cent the United Kingdom had no position or was indifferent to the outcome. In the cases where a British withdrawal would have had an effect, the difference is small, however. The difference in terms of policy would, however, have been *extremely limited* if the United Kingdom had not participated: 4 points on a policy scale from 0 to 100.

Even though the difference is thus small if the British are removed, there is a clear *direction*. In terms of policy direction, expressed simply these small changes could have led to legislation with more regulation and more subsidies. There is, however, no support for whether we would have had more or less European integration without the United Kingdom. Sweden, followed by the Netherlands, Ireland and Denmark, have taken positions closest to that of the United Kingdom. Mediterranean countries such as Spain, Greece and Italy have been furthest from the United Kingdom. As can be seen from the figure below, the outcome would have been *closer to Spain's position but further away* from that of Sweden. This is no surprise, given that Sweden is the country that has most often taken the same or a similar position to that of the United Kingdom (see Figure 4.2). Similarly, it is natural for the outcome to be further away from the British position. Thus the conclusion is that without the United Kingdom the effect on the outcome of legislation would favour countries such as Spain but disadvantage a country such as Sweden.

**Figure 4.2 Outcome on the direction of policy without the United Kingdom.**



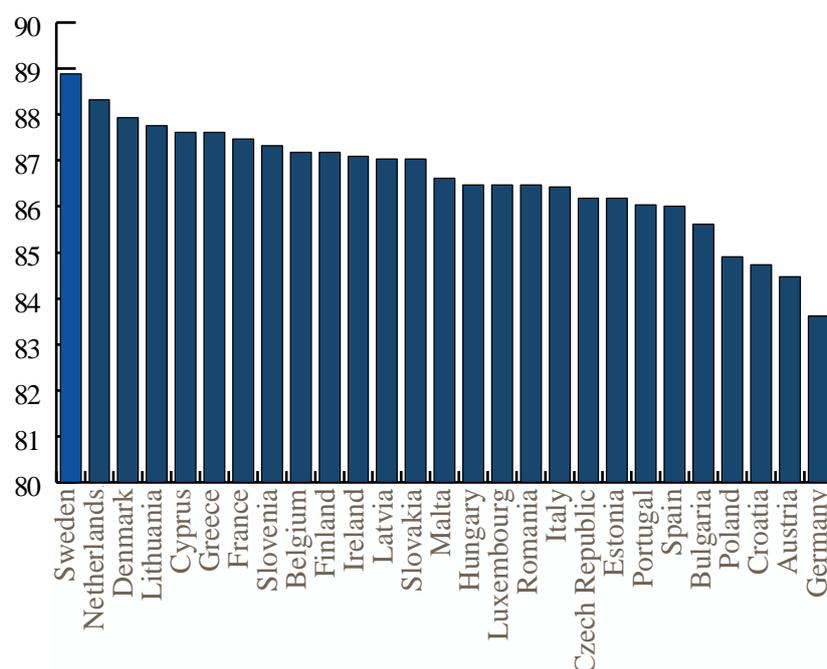
Source: Huhe, Naurin and Thomson (2017). Note: Positive values (higher than zero) indicate an outcome that gives more integration, more regulation and higher subsidies, and is closer to the Spanish position, but further from the Swedish position. Circles indicate the average effect of Brexit; lines indicate 95 per cent confidence interval. Diamonds are the values for the minimum and maximum effects found in data. Source: Huhe, Naurin and Thomson (2017, imminent).

#### 4.4 Sweden's best friend?

Sweden is considered by many to be closely allied to the United Kingdom. Hix, Hagemann and Fratescu also show that this is the case when we look at voting patterns in the council during the period 2009–2015. Sweden is the member state that *most frequently* votes in the same way as the United Kingdom. Sweden votes the same way as the United Kingdom in almost nine out of ten votes. As has been pointed out, the variation is small. The country that votes the same as the United Kingdom least often is Germany, but even so Germany votes the same as the United Kingdom in almost 84 per cent of the votes.

In our interview material, the argument that the United Kingdom has been of great significance for Sweden is a recurring theme. An ally is especially important when a smaller country has an extreme position in an issue that is important to that country but where the other countries are relatively distant.

*Figure 4.3 The United Kingdom's allies; percentage of votes 2009–2015.*



Source: Hix, Hagemann and Fratescu (2016)

According to one interview, Sweden was embraced by the British almost immediately after joining the EU and was thus in the British camp at an early stage. Analyses and experiences were offered in a way that did not happen in Paris or Berlin. During the early years, therefore, Sweden was dependent on the United Kingdom and “put too many eggs in the British basket”. This in turn affected other member states’ view of Sweden. One of the interviewees believes that when it came to negotiation tactics, it appeared that Sweden was firmly in the British camp and not of interest for discussions.

While the majority of those interviewed believed that the British role and misgivings about the effects of Brexit are exaggerated, all but possibly one placed great emphasis on the United Kingdom’s role from the Swedish point of view with regard to both the Council of Ministers and other institutions. Firstly, there is a shared basic view on what the EU is and should be. Sweden, the United Kingdom and Denmark chose to join for similar rational, economic reasons (see, for example, Chopin and Lequesne, 2016). The British have acted as a substantial counterweight to member states that had a stronger belief in, for example, market regulation and political centralisation. Secondly, there is a shared view on a wide range of policy areas, such as the internal market, the budget, agricultural policy, climate policy, trade policy and foreign policy. Thirdly, the United Kingdom as a non-euro country has been a guarantee of Ecofin keeping its relevance in relation to the euro group. In light of the above, it is quite clear that the British withdrawal will be a setback from the Swedish point of view.

One of those interviewed maintains that after Brexit the EU will have lost a horizontal force that has influenced processes from the earliest stages until policy is hammered together and implemented. It is considered important that there has been such a force that has shared the Swedish view in many areas, as well as in the more basic issues of what the EU is and should be. The British have asked good questions, they have had good legal support and they have

been able to dig up cases that affect everyone. “The presence of a large, serious country that thinks like we do – that is something big.”

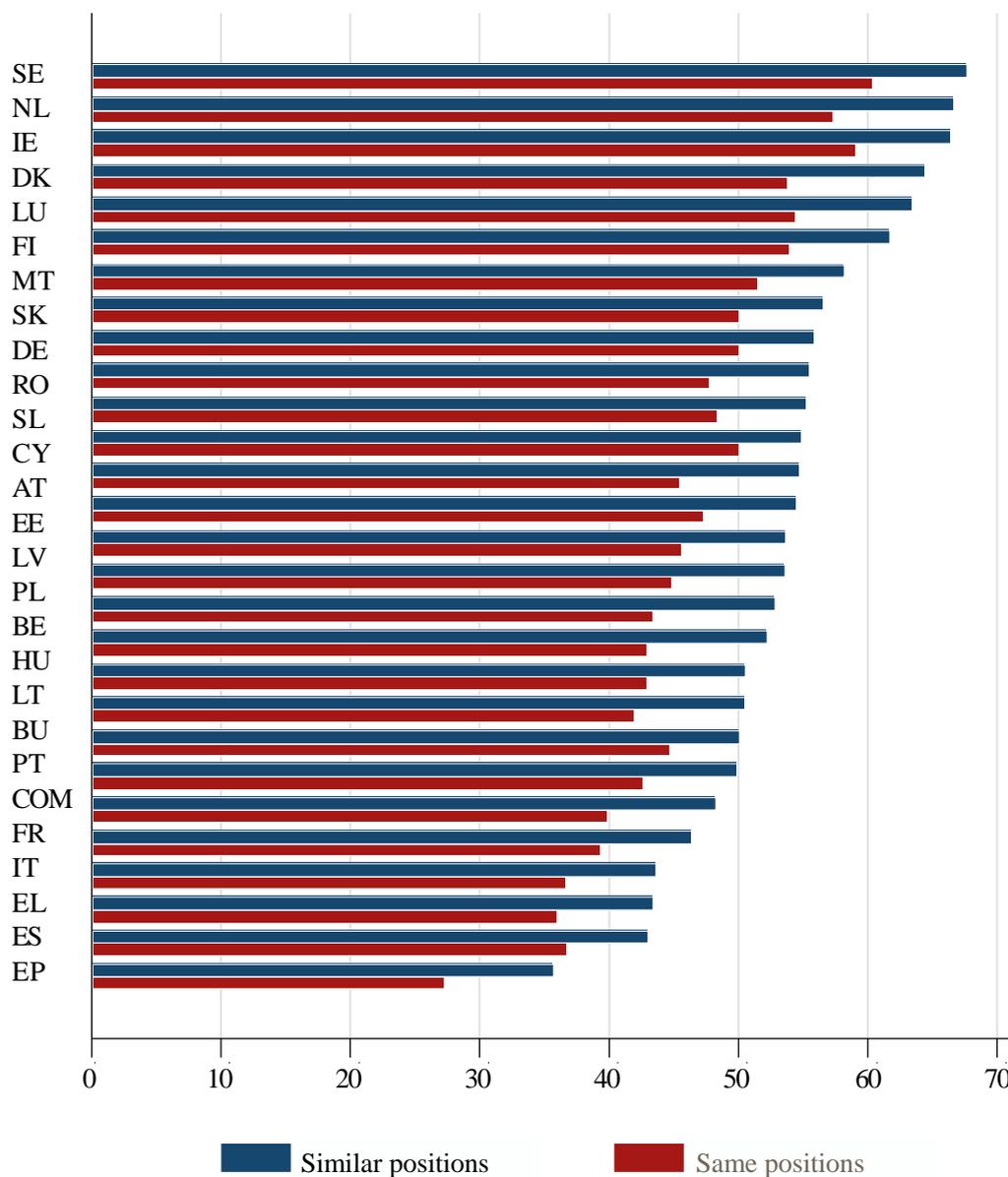
More in-depth studies of the work of the EU legislative process also show that Sweden deserves its reputation as Britain’s best friend. Earlier research shows that there are no clearly fixed collaborations in the council, but rather that this is decided from issue to issue (Thomson, 2011). At the same time there are clear patterns for how the member states *position themselves* in important issues. Data shows that in 331 controversial issues that were studied, the member states take up to a varying degree positions that are the same as, or similar to, the United Kingdom. As Figure 4.4 on the next page shows, Sweden is the member state that most often takes a position that is the same as, or similar to, the United Kingdom.

It is important to note that this survey only covers as far as 2008. As noted above, there is much to indicate that a change has occurred in the British attitude to the EU since that time. At the same time it is difficult not to conclude, even if the methods are different, that the investigation of voting patterns in the council referred to above also shows that Sweden is the member state that, more often than any other, takes up a position similar to that of the British. The conclusion therefore is that even though the effects of Brexit on the collaboration patterns in the council are not entirely evident, we can say that they will be noticeable for Sweden, especially when the United Kingdom leaves the EU.

#### 4.5 Networks in the council

Decisions and positions are not, however, the only things of significance for understanding the way the council works. In the networks that make up the EU’s decision-making processes, it is possible to perceive lines of cooperation and possibilities for sharing information and negotiating around issues. A series of surveys of network capital in the council’s working groups throws up some interesting patterns (see Naurin and Lindahl, 2014, among others). Previous surveys have shown that, in relation to its size, Sweden has an uncommonly high network capital (measured as mutual contact frequency with other member states). Even after the euro crisis arose, Sweden exceeded expectations. A high network capital is an important resource in negotiations, because it leads to opportunities for spreading and obtaining information and building alliances (Naurin and Lindahl, 2014).

**Figure 4.4 Percentage with positions the same as, or similar to, the United Kingdom.**



Source: Huhe, Naurin and Thomson (2017). Note: Similar positions refers to when member states take a position that is 20 points more or less than the United Kingdom on a standardised policy scale of 0–100.

If a member state has strong network centrality, it has a strategic ability to quickly and easily link together a great number of member states. On the basis of the latest two surveys (2012 and 2015) of civil servants from all member states, Huhe, Naurin and Thomson have performed a study of how Brexit could affect the networks in the council structures. The study analysed network relationships in the council's working groups and committees, studying the cooperation networks in 11 committees and working groups (the most high-profile committees are included). The respondents were asked which of the other member states' representatives they most often collaborated with. The data material consists of two questionnaire surveys from 2012 and 2015 and covers 474 respondents from all member states. The study compares the member states' network centrality with the United Kingdom as a member, compared with a situation where the United Kingdom has left the EU. It is important to note that the results show

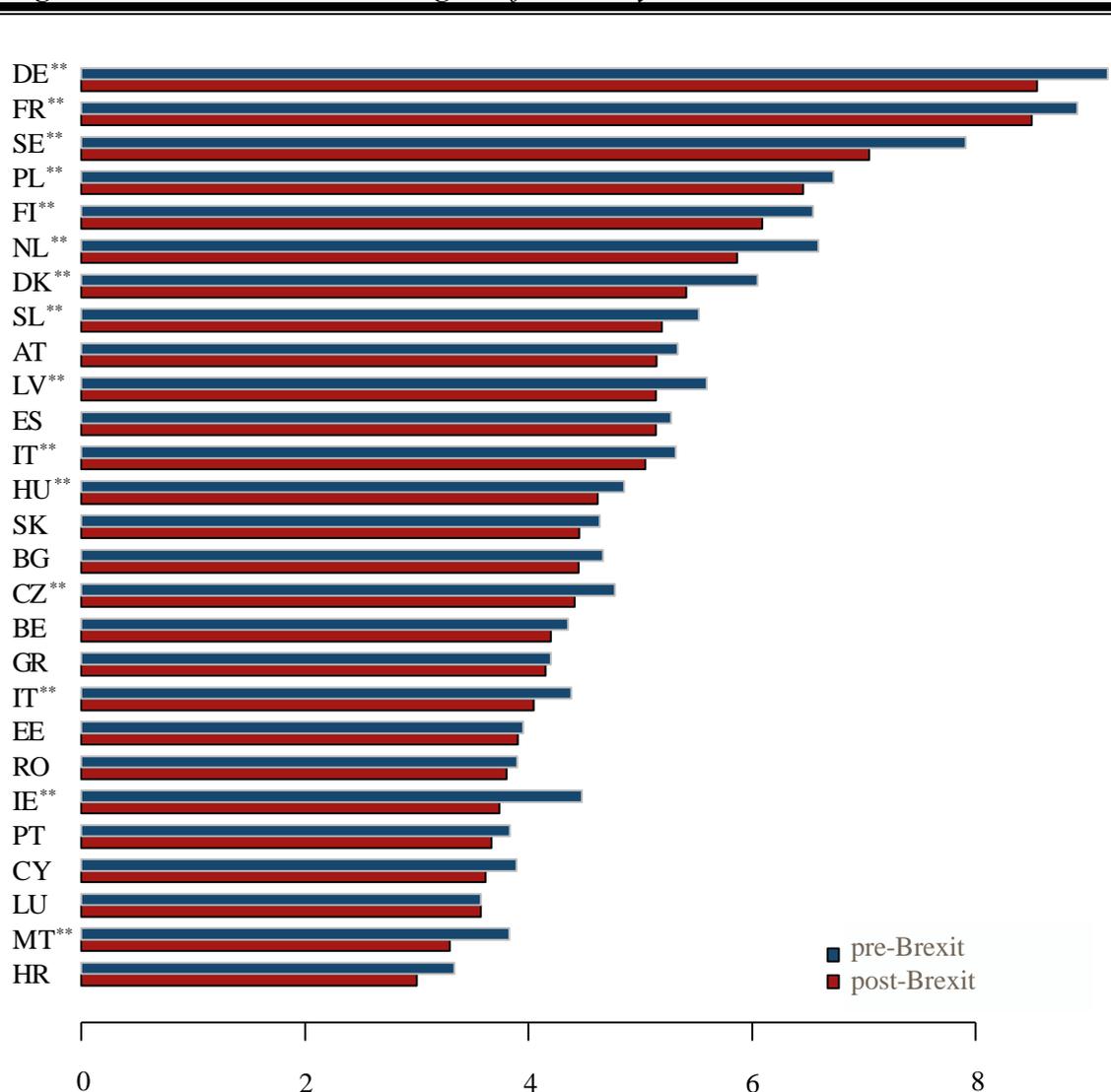
the challenges facing the member states after Brexit and do not take into account any later changes of strategic behaviour. The study's results indicate a number of effects of the United Kingdom's withdrawal from the EU's network dynamics and decision-making processes.

One aspect that was considered is network centrality according to three forms of measurement: "degree, closeness and betweenness". These measurements provide answers to questions on both direct and indirect patterns of cooperation. As far as effectiveness is concerned, the ability to gather several member states that would otherwise be far apart from each other has a positive influence on the effectiveness of decision-making processes. However, if one party is removed from this dynamic, this could have the effect of splitting the system, since a number of member states are drawn apart from each other in the absence of the cement that held them together. Building new circles that replace links to other member states is costly in terms of both time and resources.

One important result from the study is that some member states will be more affected than others. These are Sweden, Ireland, the Netherlands and Denmark. They have strong direct network links to the United Kingdom (*degree*) that they cannot at present compensate for through other available indirect links (*closeness*). In more concrete terms, the number of network steps between Sweden and other member states increases with Brexit. Another, equally important, result is about the ability to bridge gaps between other member states. When the United Kingdom withdraws, some member states will be strengthened in this respect. These are primarily the large member states of Germany, France and Poland, which will strengthen their centrality in the network dynamic. As mentioned above, there is also an effectiveness factor to bear in mind in network relationships with a British withdrawal. The study indicates that Brexit will increase the distance between a number of member states and thereby weaken the networks' effectiveness, unless the member states find other network relationships that compensate for the United Kingdom.

The figure below presents the results that measure the member states' degree of centrality in all committees and working groups. The results show the degree of centrality obtained by each member state pre-Brexit (blue) and post-Brexit (red). A couple of aspects are central: Brexit will have a real and tangible impact on the network dynamic. Fifteen out of 27 member states will be affected to an appreciable and significant extent. Those most affected will be member states with high network centrality and, as previously mentioned, Sweden, the Netherlands, Ireland and Denmark will be the most affected. Some countries will not be affected to any great extent at all: Austria, Belgium, Greece and Spain.

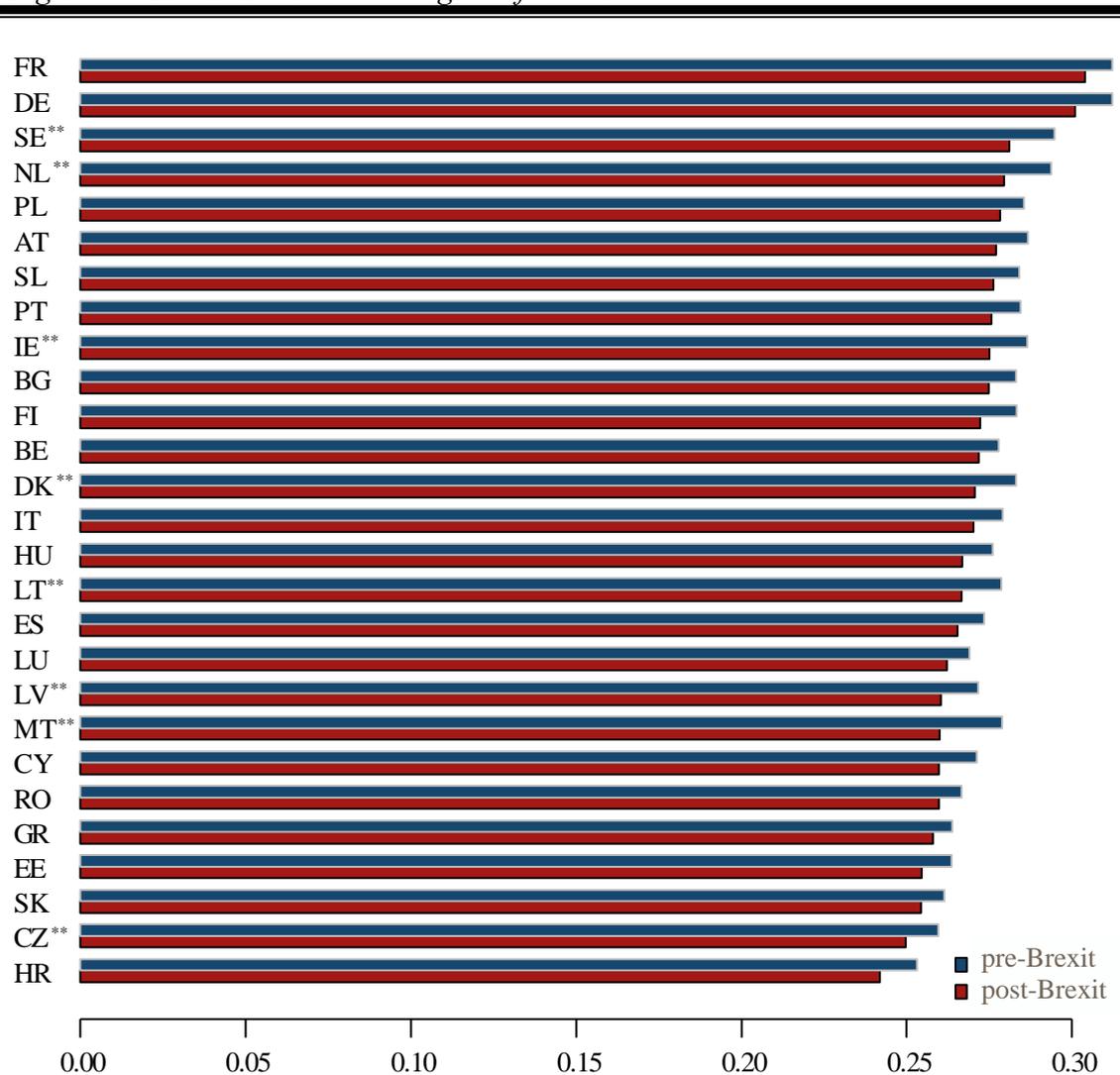
Figure 4.5 The member states' degree of centrality.



Source: Huhe, Naurin and Thomson (2017)

In terms of member states' ability to come into contact with other – in a diplomatic sense – distantly located member states, the figure below shows that Brexit does not generate the same impact as in the previous figure. Only nine member states are negatively and significantly affected and their already close bonds mitigate the effect of the United Kingdom's withdrawal. However, Sweden, Ireland, the Netherlands, Denmark and Malta are the most affected, which tells us that these member states' ability to reach and cooperate with other member states that they do not initially have direct links to is highly dependent on the United Kingdom.

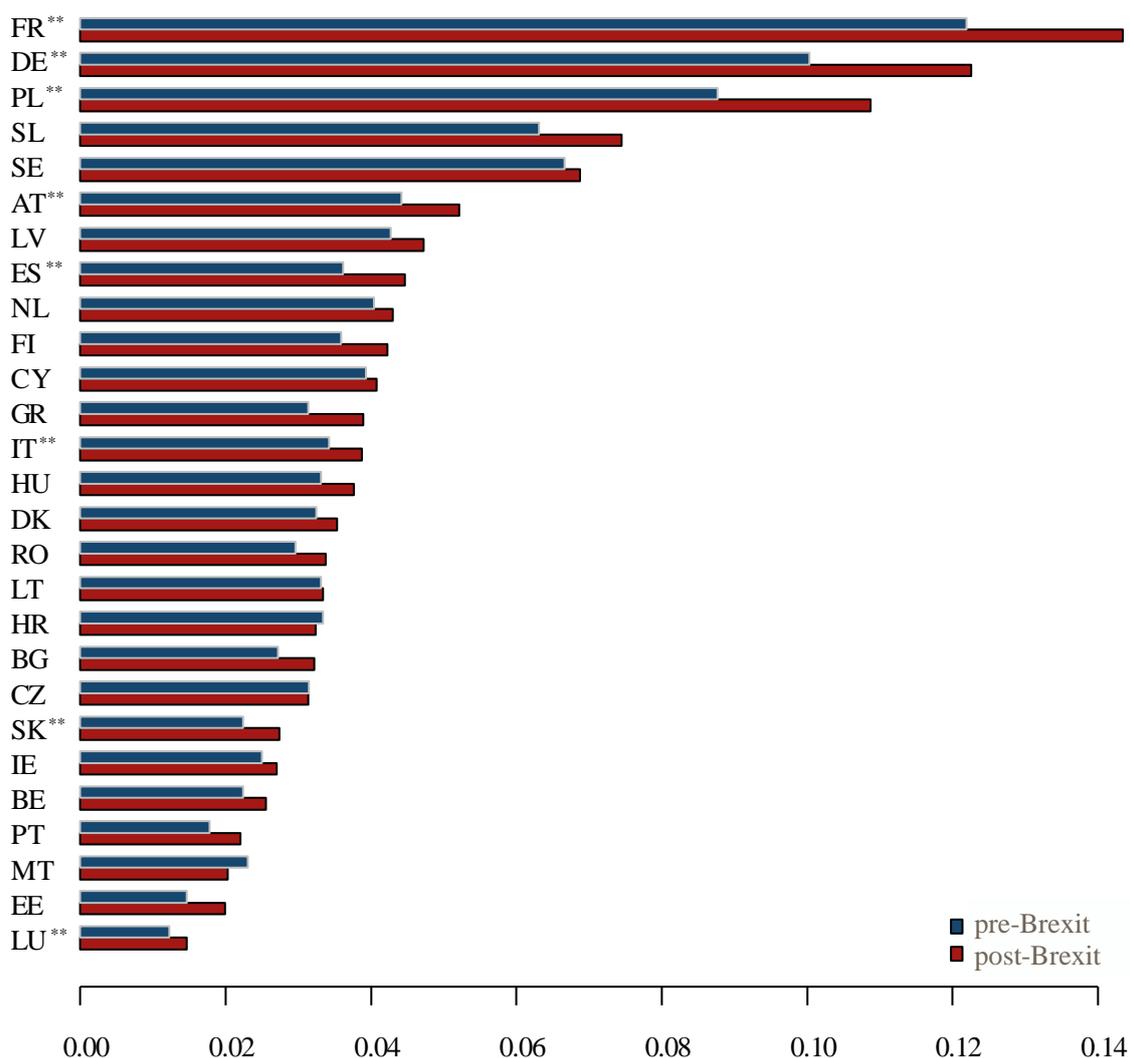
Figure 4.6 The member states' degree of closeness.



Source: Huhe, Naurin and Thomson (2017)

The next figure shows a kind of “reciprocity” – that is to say, a member state’s strategic location as an intermediary between different member states. The figure below clearly shows that some member states play a vital role in this regard: France, Germany and Poland. The figure also shows that Brexit will significantly strengthen “intermediary centrality” in eight member countries, especially France, Germany and Poland.

Figure 4.7 Changes in the member states' "betweenness" (reciprocity).



Source: Huhe, Naurin and Thomson (2017)

The network that represents the EU's cooperation and contact points will naturally be affected when such a central player as the United Kingdom withdraws. These networks form the basis for the exchange of information, negotiations on standpoints and eventually the creation of alliances and consensus building on issues. The situation will change. Some member states' centrality will be increased in the wake of Brexit – Poland, Germany and France – while others will be a greater distance away from other member states and will see their centrality reduced because of Brexit: Sweden, Ireland, the Netherlands, Malta and Denmark.

As well as an analysis of changes for the individual member states, an analysis was performed of networks as such in the working groups. Three forms of measurement were applied: the networks' density, transitivity and average path length. The first measurement, density, measures the length of (potential) direct ties in a network. The networks' density falls with Brexit, but there are variations: in working groups where the United Kingdom has been especially central. With regard to transitivity, which measures the occurrence of local clusters

in the network, the conclusion is that clear instances of regional clusters/groups will remain after Brexit.

One interesting result in relation to the council's overall functionality after Brexit is seen with the measurement of average path length. The basis is that if dispersed networks are to function effectively, there must be ways for dissimilar parties to reach each other. The basic idea is to find out how many parties you need to communicate through in order to make contact with a distant party. This average path length is likely to increase considerably after Brexit. This suggests that after Brexit the council's networks will become ever more separate. In order to maintain effectiveness, the member states will need to change their networks to compensate for the British withdrawal.

In summary, the conclusion of the analysis of networks in 11 committees and working groups is that these will remain as regional clusters after Brexit but will be more outstretched and therefore possibly less effective.

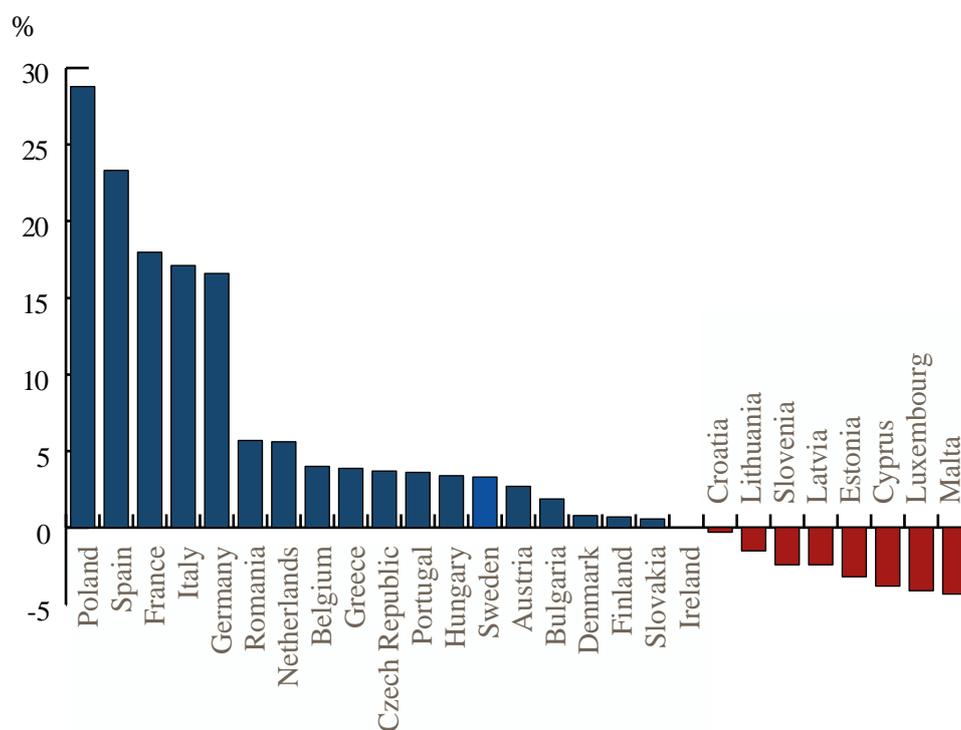
#### 4.6 Voting power after Brexit

The British withdrawal coincides with the new voting rules in the council. With the Lisbon Treaty, new voting rules have been introduced that say that a majority requires 55 per cent of the member states (15 states in the EU27) comprising at least 65 per cent of the EU population. These rules mean that the voting strength of the large member countries is further reinforced. For Germany the new rules mean a near doubling of the relative inflow of votes (Tallberg et al., 2011). The effects of Brexit have recently been studied in two reports that both make use of various mathematical indices to study voting power in the Council of Ministers. Kirsch (2016) uses the Banzhaf index, which, simply put, shows how often a given member state's vote is decisive in changing the outcome of a vote. According to Kirsch's calculations, when the United Kingdom leaves the EU, the relative voting power of the remaining *large* member states will *increase*, at the *expense* of the *smaller* member states. According to the index, the big winner is Poland, whose increase in power corresponds to almost 29 per cent compared with the situation before Brexit. According to this calculation, Sweden's position also improves (see Figure 4.8).<sup>1</sup>

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<sup>1</sup> Kirsch (2016) has also calculated what would happen if Scotland became an EU member after Brexit. If Scotland should become a member, all the smaller member states (with fewer than ten million inhabitants) would win increased voting power according to the calculations.

Figure 4.8 Power shifts in the Council of Ministers after Brexit according to the Banzhaf index.

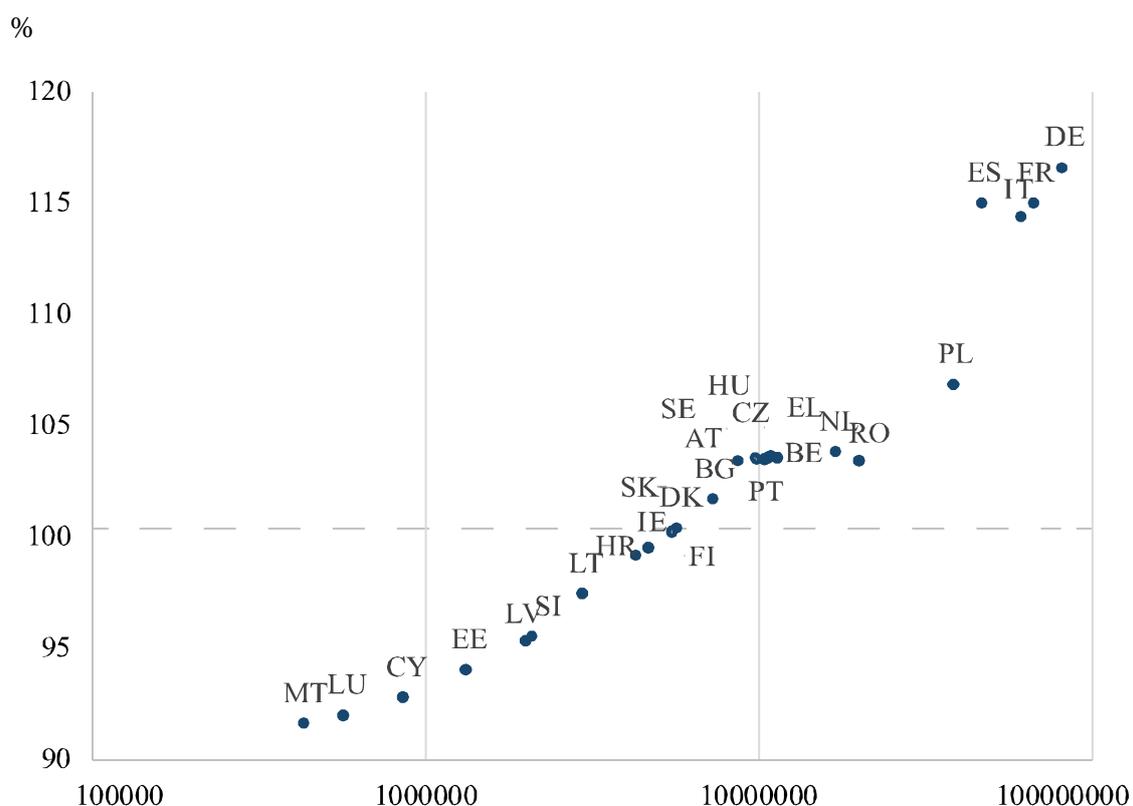


Source: Kirsch (2016)

Kóczy (2016) uses instead the Shapley-Shubik index, which mainly differs from the Banzhaf index through the different weighting of coalitions. However, the differences in terms of final results are small. Kóczy's calculations also reflect the results of Kirsch (2016): the majority of member states win from Brexit, while the position of the smaller member states is weaker than if the United Kingdom had remained in the EU (see Figure 4.9 on the next page). The Shapley-Shubik index has been frequently used in the literature to calculate the member states' allocations from the EU budget<sup>2</sup> and in this respect there are even more countries that lose from Brexit. The reason is that the EU budget will then be smaller because, in spite of rebates, the United Kingdom has been a major net contributor. According to the calculations, member states with fewer than 6 million inhabitants could lose as much as 10 per cent in relation to the present distribution, while countries with a population of between 6 and 20 million (Sweden and the Netherlands) are still ahead. France, Italy, Germany and especially Spain are the big budget winners in these calculations.

<sup>2</sup> See, for example, Widgrén (2006)

Figure 4.9 Population and power shift after Brexit according to the Shapley-Shubik index.



Source: Kóczy (2016).

In summary, the available calculations of voting power in the council show that it is primarily the larger member states that gain voting power. Since the new voting rules include population sizes, the future population trends of member states will also be significant. It should also be added that it is important to remember that voting power does not in itself generate a specific influence, but is mainly about where member states position themselves in different issues.

#### 4.7 Conclusion

Interviews and other studies indicate the United Kingdom's changing role in the EU over time and how the British have gradually tended to be on the losing side in votes. They have also become more isolated in their positions. At the same time the studies show that the outcome of decision-making processes would not often have been significantly different. The direction of policy would have been different in some areas, however. Exactly as was expressed in the interviews, there are results that indicate that the outcome without the British presence would have meant more regulation and higher subsidies. Perhaps surprisingly, it cannot be said that without the British presence decisions would have led to more or less integration. This does not mean that the outcome would automatically be the same in the future. Moreover, the dynamic of the Council of Ministers is very much bound up with what issues are on the agenda. As has been noted, the British do not at present participate in many of the central policy areas that are developing strongly.

As for the overall functionality of the Council of Ministers after Brexit, the tendencies are somewhat contradictory. On the one hand, there is the fact that the British find themselves on the losing side more often than others and the views from the interviews that the British have not infrequently taken up extreme positions. This would indicate that the council would gain somewhat more homogeneous preferences, which could make decision-making easier. On the other hand, analysis of the network data shows what a central player the United Kingdom has been in networks and that the functioning of these may deteriorate – at least until the member states have found new forms after the British exit.

From Sweden's point of view, it is clearly a closely allied partner that is leaving the EU. Exactly as was expressed in the interviews, all surveys show that Sweden tends to be close to the United Kingdom. This applies both to the actual voting and also to the positions that have been taken up during the decision-making processes. There, Sweden is the country most like the British. Brexit will also have a tangible effect on Sweden's network capital. When the British leave, Sweden will not only lose a close partner but also an important "bridge" to other member states in the network. A key task in ensuring Sweden's future influence in the EU after Brexit will therefore be to intensify efforts and ensure that there are resources available to establish close new relationships with other member states.

One aspect that came up in several interviews with the EU ambassadors was the balance between member states in the council. Several of those interviewed mentioned the Franco-German axis and also believe that the balance between these large countries will be disturbed when the British leave. This leads on to what happens to constellations and so-called like-minded groups that operate within the various political arenas – and which, according to some, will dominate work in the council to an even greater extent. Popular constellations and individual countries among those interviewed include the Nordic countries, the Netherlands, the Baltic States and Germany. Germany is pointed out as a key player in the future, but many of those interviewed question the country's ability to act in the council. They frequently mention the difference between the German leadership in the EU at the top level in the European Council and in the council's lower formations. The results of the analyses of networks in the council indicate that the large remaining member states will have ever-increasing central significance. Similarly, the formal calculations of changes in voting power in the council indicate that the larger countries will gain voting power after Brexit. It will therefore be important for smaller states to cement ties and networks with larger states, which, besides being important players in themselves, can also function as "bridges" in cooperation as a whole.

It is not possible to say for certain how the member states will come to interact in the council. An important aspect of Brexit for Sweden is the relationship between the EU27 and the Eurozone. This has not been discussed in this section, but will be discussed in detail in Section 8. What is clear is that, to safeguard its influence in the EU, Sweden must actively take positions on both the issues and on patterns of cooperation. Obviously future national elections will have great significance for what governments are formed and this in turn will have a bearing on how cooperation is developed, including in the council. However, much indicates a prominent role for the more populous member states, especially the most populous. It is, however, important to point out, just as the network analyses and interviews have, that it might be risky to only invest in certain strengthened bilateral relationships. EU cooperation covers many areas and in future, as now, effective work in the EU will be based on being able to maintain many different relationships in an alert and strategic manner. Each decision in the council is based on broad compromises between member states. It is therefore not enough to point out certain countries

as potential partners in cooperation. The analyses show, however, that it is Sweden and a number of other geographically close countries that will tend to lose most when the United Kingdom leaves the EU. One might envisage strengthening ties with these countries and forming like-minded groups where the need arises. But sometimes the opposite strategy – of seeking relationships with more distant countries – may be preferable. This is obviously decided by what we wish to achieve. Regardless of strategy, there should also be resources for EU work in both the short and the long term. It is also important to maintain a coherent and consistent European policy if we are to be a credible participant.

## 5. The Court of Justice of the European Union

### 5.1 Introduction

Until it becomes clear what future relationship the United Kingdom will have with the EU, it is very unclear what effect Brexit will have on the Court of Justice of the European Union (CJEU). To some extent this applies to the other EU institutions investigated in this report, but at present we probably know least about the effect of Brexit on the CJEU. The reason is that, although the United Kingdom is withdrawing from the EU, it is probable that membership will be replaced by a new type of trade agreement. It is also likely that such an agreement would be subject to some form of court to decide disputes between the parties. One example of such an agreement is the EEA Agreement, which is very closely connected with the EU's internal market. For this reason there is a specific EFTA court and the EFTA countries also have intervention status in the CJEU.

As described below, the CJEU's interpretation method means that it is sufficient for countries to have some form of opportunity of presenting their views in the CJEU to influence the development of EU law. If a British intervention in a future case, which is presented within the framework of a future trade agreement that the country has with the EU, offers the solution that is preferred by the CJEU, this intervention status in the CJEU can give the country influence over the development of EU law, even though the United Kingdom is no longer a member. This may appear to be odd, but we should remember that the CJEU's interpretation method is based on which legal solution is judged to be best in the light of how the CJEU interprets the EU treaties. Having said this, most of this section will be dedicated to showing that the CJEU is a political arena and that it is therefore important to think strategically about how the member states use the court. Not least, the example of the United Kingdom shows that the country has a good insight into what possibilities a member state has, to make its voice heard in the court.

This section begins by investigating the opportunities that member states have, to influence the development of EU law through interaction in the CJEU. In parallel with this, we explain how the United Kingdom has used the court during its time as a member. Finally, we discuss what effect Brexit could have on the CJEU and how Sweden can relate to the CJEU to help ensure that the development of EU law follows a desired path from the point of view of Swedish interests.

### 5.2 Member countries' opportunities to influence the development of EU law in the court

#### 5.2.1 Proceedings on invalidity

According to article 263 of the Treaty on the Functioning of the European Union (TFEU), the member states, the European Parliament, the Council of Ministers and the European Commission are entitled to initiate proceedings in the Court of Justice of the European Union and ask it to investigate the legality of the EU legislators' enactments. This provision means that the CJEU is the institution that decides whether the EU legislators' enactments are consistent with the content of the treaties on which the EU member states have agreed.

This section describes how many cases decided by the CJEU since Sweden became an EU member have been about the validity of legislation.<sup>3</sup> The statistics have been produced because the member states' invalidity cases reflect what issues are so central to these countries that they have chosen to turn to the CJEU to have their legality tested. It should be pointed out however that there are other reasons why member countries choose to raise an invalidity case in the CJEU and why they may choose not to, even though it may be a key issue for them. The statistics should therefore be treated as an indication that the member states have been dissatisfied with union legislation. There are also situations where countries may be obliged to raise certain cases in the CJEU because their parliament requires it.

Figure 5.1 on the next page shows that Spain is the country that most frequently takes cases on invalidity to the CJEU and contests the validity of EU legislation, with almost one case per year.<sup>4</sup> After Spain comes the United Kingdom, followed by Germany, France, the Netherlands and Italy. Sweden is in seventh place, but it should be added that the Swedish cases were raised only a few years after Sweden joined the EU and concerned how fishing quotas in the membership treaty should be interpreted. Since 1999, Sweden has not brought any cases in the CJEU relating to the validity of EU directives and regulations..<sup>5</sup>

The United Kingdom has brought 4 invalidity cases on labour law,<sup>6</sup> 4 cases on borders, information and security<sup>7</sup> and 2 contesting the legality of the establishment of EU agencies.<sup>8</sup> Otherwise there has been 1 case on agriculture and fisheries,<sup>9</sup> one on services/establishment,<sup>10</sup> one on exports to third-party countries<sup>11</sup> and finally one on transport.<sup>12</sup> If we compare the invalidity cases brought by the United Kingdom and Spain, the British cases cover a wider range of policy areas. 12 of the 20 Spanish cases were about legislation on agriculture.

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<sup>3</sup> Note that decisions are excluded from the statistics.

<sup>4</sup> The statistics were produced by means of searches for invalidity cases on the CJEU website.

<sup>5</sup> It should be pointed out that Sweden brought cases on invalidity for decision in the CJEU on 5 occasions during 1995–2016.

<sup>6</sup> C-84/94, C-431/11, C-656/11 and C-81/13.

<sup>7</sup> C-217/04, C-77/05, C-137/05 and C-482/08.

<sup>8</sup> C-77/05 and C-270/12.

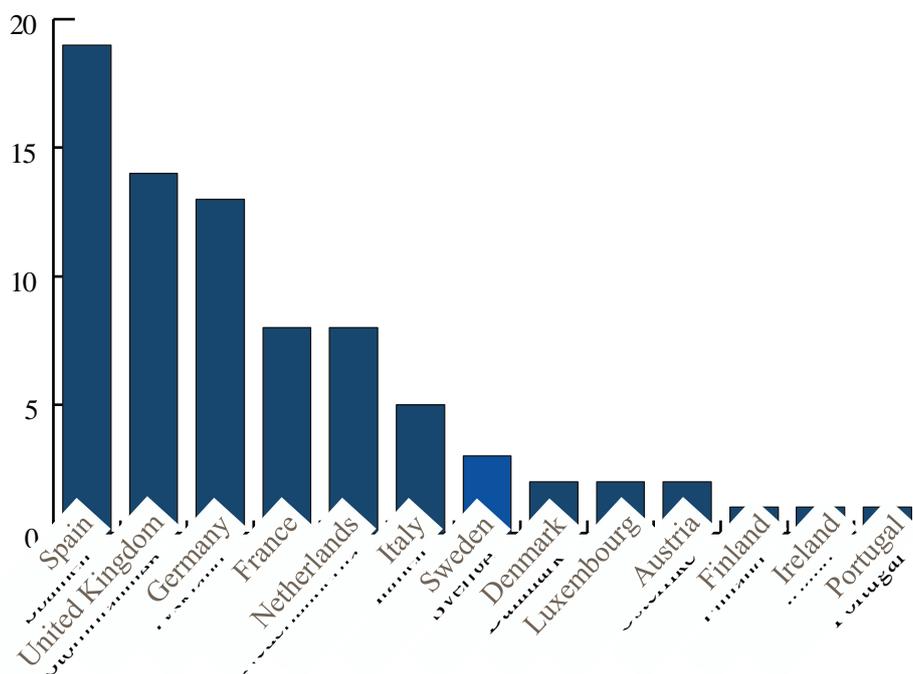
<sup>9</sup> C-66/04.

<sup>10</sup> C-507/13. The CJEU wrote off the case.

<sup>11</sup> C-150/94.

<sup>12</sup> C-121/14.

*Figure 5.1 Invalidity cases (on legislation) during the period 1995–2016*

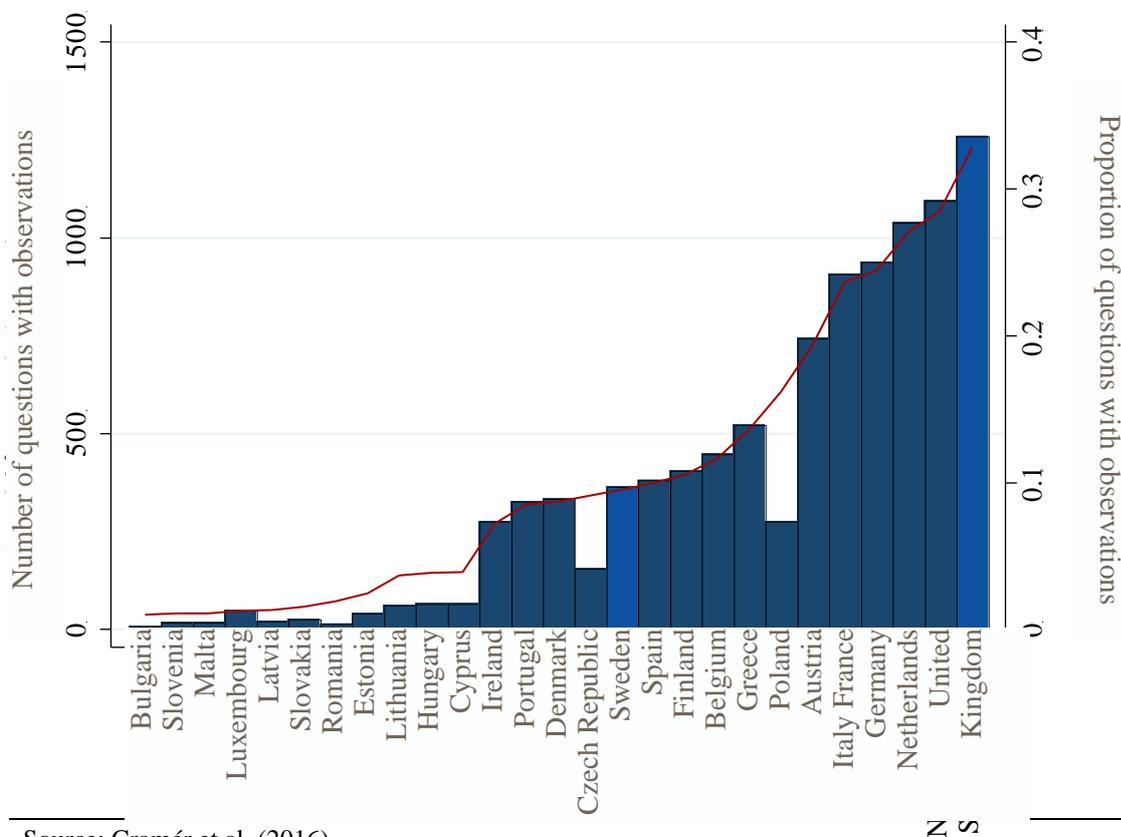


Source: Sieps.

### 5.2.2 Member states' observations in connection with preliminary references

According to the CJEU protocol 3, article 23, member states are entitled to present written observations to the court on how they believe the legal question should be resolved. Thus the proceedings give the member countries the opportunity to present their views on how EU law should be interpreted in the case in question. According to Cramér et al. (2016) (see Figure 5.2 on the next page) the United Kingdom is the country that most frequently presents viewpoints on legal questions within the framework of article 267 of TFEU (request for preliminary references). The data collection that forms the basis for the report's conclusions includes a qualitative coding of 3,845 legal questions put before the CJEU during the period 1997-2008. The study does not consider the number of observations from member countries but the number of viewpoints on the legal questions. In other words there may be many viewpoints on legal issues within one observation.

Figure 5.2 Member states' observations 1997–2008

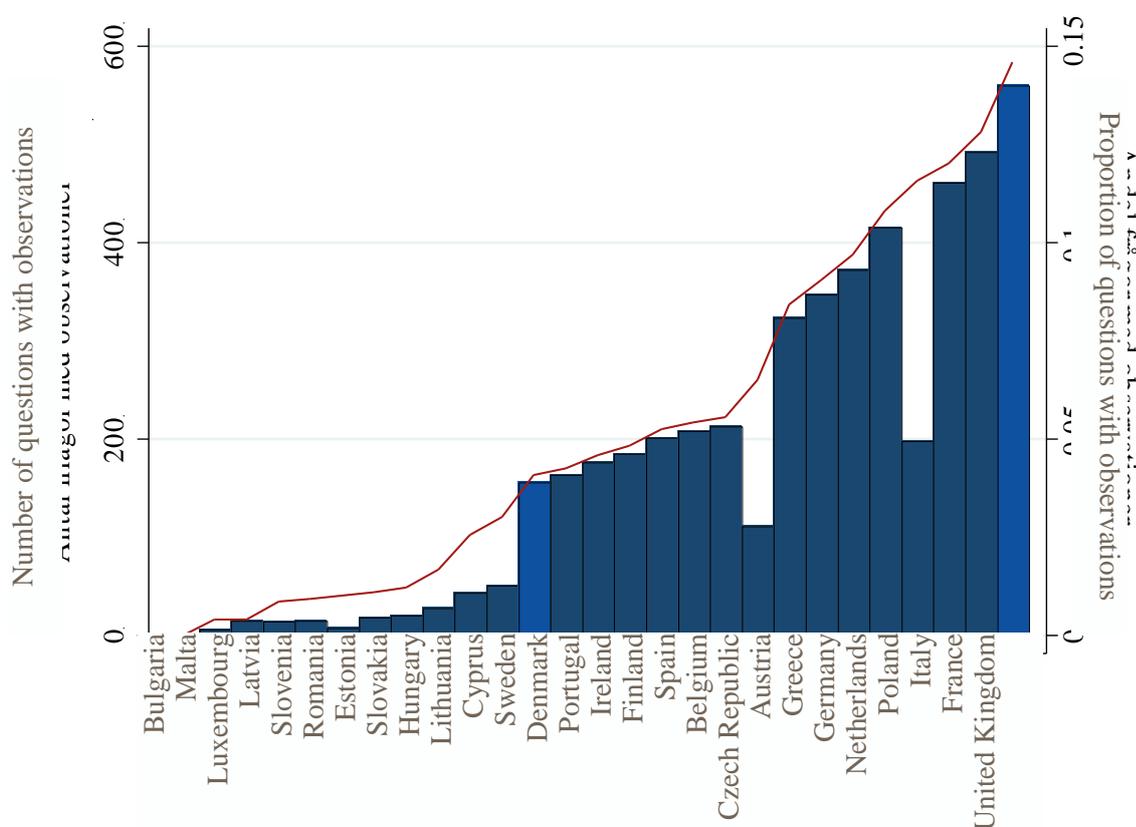


Source: Cramér et al. (2016).

The statistics show that the British government is most active in terms of both observations on cases that come from its own courts and in questions on cases that are referred to the CJEU from other countries' courts (compare Figure 5.3 on the next page). The statistics indicate that the United Kingdom treats the CJEU as a kind of political arena, in which participants are given the opportunity to influence the development of EU law.

The study also shows a pattern in how the member states and EU institutions interpret EU law from their own specific perspectives. The report makes a distinction between on the one hand "More Europe" and on the other hand "Maintain national sovereignty". The two preferences have been interpreted by analysing and qualifying the observations in the cases studied. The researchers identified a not unexpected difference between the EU institutions' preference for *More Europe* and the member states' preference for *Maintain national sovereignty*.

Figure 5.3 Member states' observations in external advance decisions, 1997-2008

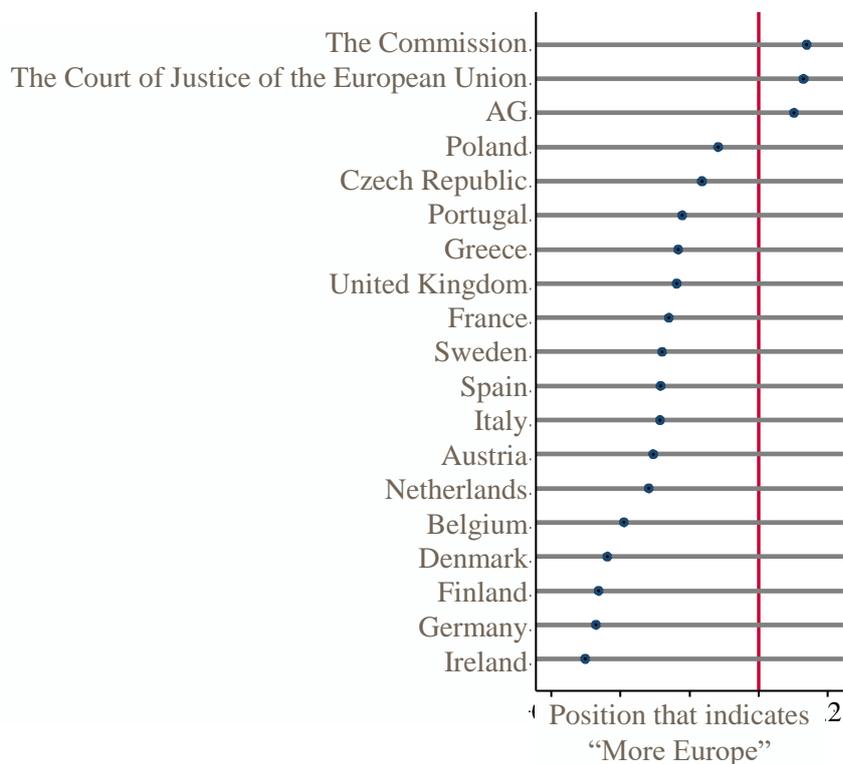


Source: Cramér et al. (2016).

According to the statistics, it is Poland that is most for *More EU* (approximately -1 mean value) while Ireland and Germany are the strongest for *Maintain national sovereignty* (approximately -5 mean value). The United Kingdom is close to Sweden (approximately -3 mean value). Other countries that are relatively close to Sweden and the United Kingdom are France, Spain, Italy, Austria and the Netherlands.

The authors have not been able to determine why a member state prefers *More Europe* or *Maintain national sovereignty*. The only clear pattern is that newer member states tend to prefer *More Europe* compared with older member states. There are also some interesting differences between like-minded member states. Ireland is the strongest for *Maintain national sovereignty* (-6 mean value) and is thus some distance away from the United Kingdom. From a Nordic perspective, Sweden is the strongest for *More Europe* while both Denmark's and Finland's viewpoints have rather preferred *Maintain national sovereignty* (between -4 and -5 mean value).

*Figure 5.4 Mean values of member states' views on European integration, 1997–2008*



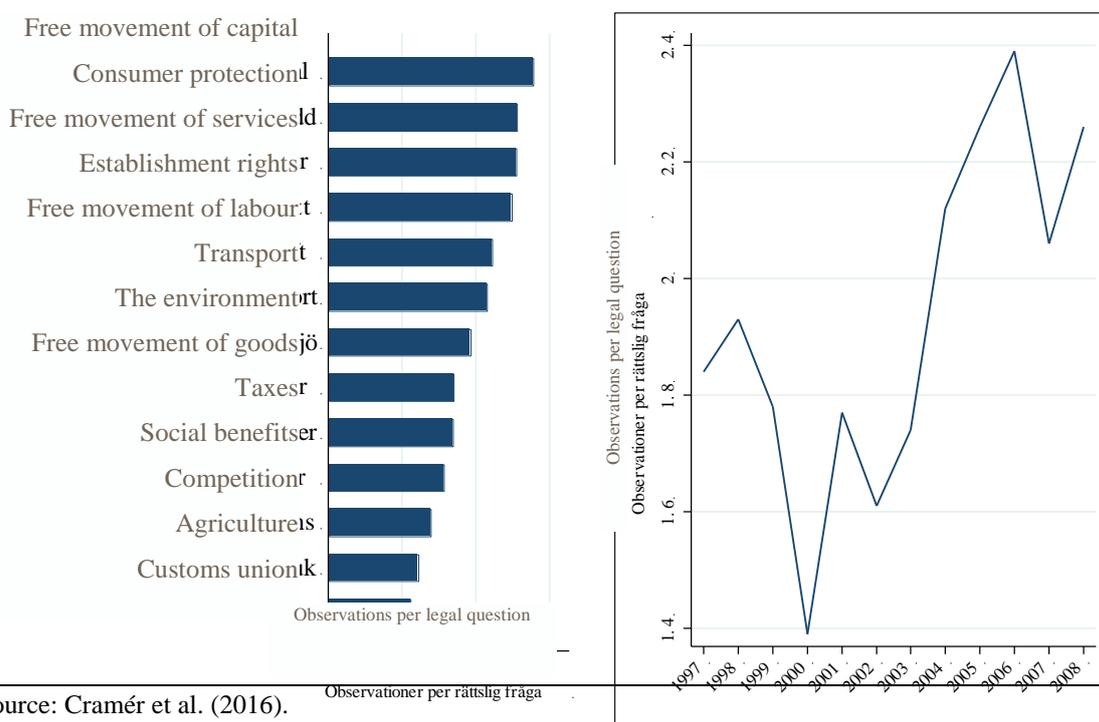
Source: Cramér et al. (2016).

The report has also studied which policy areas have led to most observations from member states (see Figure 5.5 on the next page). The CJEU has received most viewpoints on the free movement of capital, followed by consumer protection, free movement of services, establishment rights, free movement of labour, transport, the environment, free movement of goods, taxes, social rights, competition, agriculture and finally the customs union.

### 5.2.3 Preliminary references

According to article 267 of the TFEU, the CJEU is authorised to deliver preliminary references on the interpretation of treaties and the validity and interpretation of secondary legislation that are decided by the union's institutions, bodies and offices. When such a case arises in a court in a member state, the court may request the CJEU to give a preliminary reference. If such a question arises in the highest court in the member country, the national court is obliged to ask the CJEU for an advance decision. The purpose of this procedure is to create a kind of dialogue between the national courts and the CJEU about the application of EU law.

Figure 5.5 Number of observations by date and policy area, 1997–2008

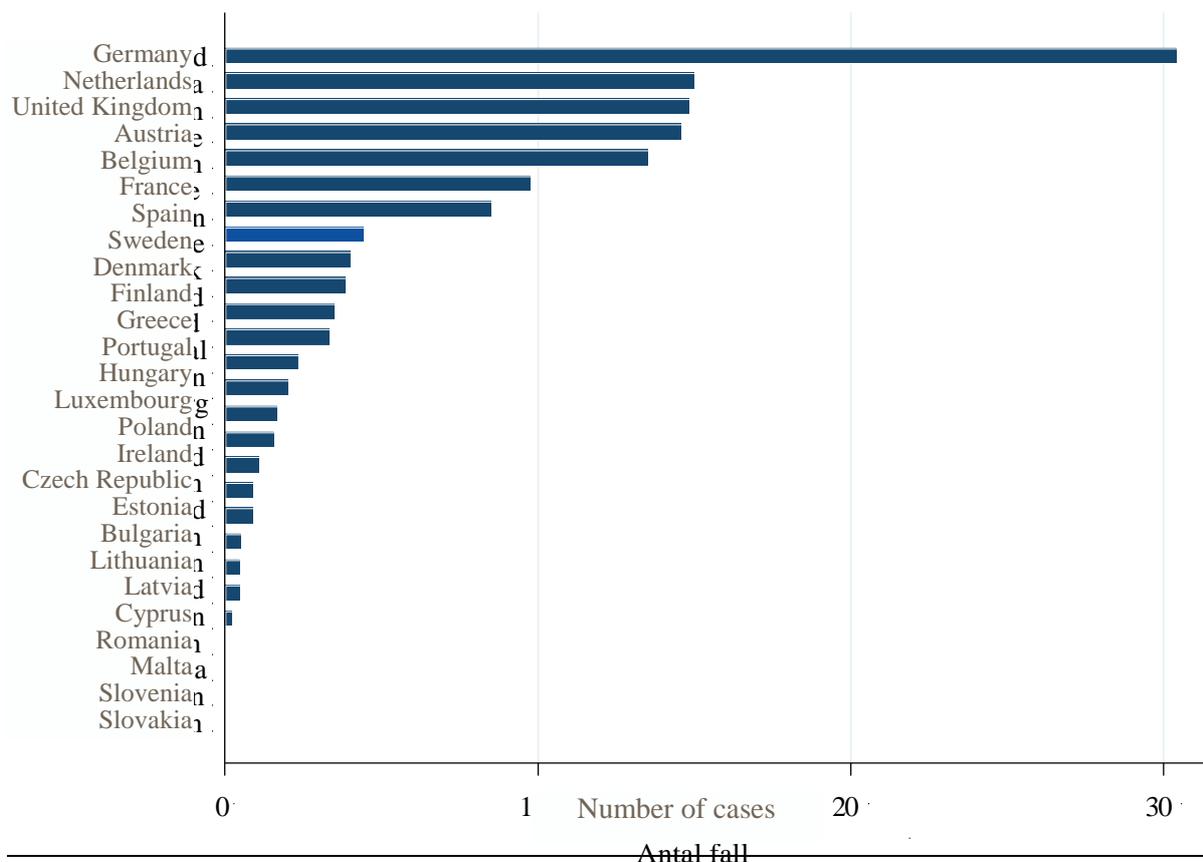


Source: Cramér et al. (2016).

Figure 5.6 on the next page shows that the German courts most often ask the CJEU for a preliminary reference, followed by the Netherlands and then the United Kingdom. Italy and perhaps surprisingly Austria are also high in the statistics. The reason why Austria is surprising is that the country's population is relatively small in comparison with the other member states. Unlike the statistics for annulment cases and observations, the population of the member states can explain variations in requested preliminary references from the national courts, since to a certain extent the number of cases in the courts reflects the size of the population.

Bernitz (2016) notes that in the last five years the Swedish national courts have more frequently requested preliminary references from the CJEU compared with the previously studied period (cf. Bernitz, 2010), and believes this does not appear to be entirely satisfactory. The author considers that, bearing in mind the population size, Sweden hardly reaches the average for all member states when it comes to obtaining preliminary references.

Figure 5.6 Number of preliminary references per member country, 1997–2008



Source: Cramér et al. (2016).

### 5.3 The United Kingdom's view on important Swedish cases in the CJEU

Since the purpose of SIEPS' commission form the government is to increase understanding of how Brexit could affect Sweden, this section describes the cases where the United Kingdom has had a standpoint on cases presented to the CJEU from Sweden.

The Swedish annulment cases, with the exception of the early fisheries cases mentioned above, are about openness in the EU's decision making and legal processes. The cases brought to the CJEU by Sweden have primarily been about testing the validity of such decisions. Bringing cases about access to the EU institutions' documents is a clear priority for Sweden. The regulation on which Sweden bases its legal processes was negotiated with great success during the Swedish presidency in 2001.<sup>13</sup>

The Swedish cases were about the individual's opportunity of gaining access to documents concerning proposed legislation<sup>14</sup>, about access to documents affecting legal processes<sup>15</sup>, and about access to documents created by member countries<sup>16</sup>. It can be confirmed that in all cases

<sup>13</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

<sup>14</sup> C-39/05P, the so-called Turco case.

<sup>15</sup> C-506/09P, the MyTravel case and C-514/07P, the API case

<sup>16</sup> C-64/05P, the IFAW case.

brought by Sweden concerning the individual's access to documents from EU institutions, the United Kingdom has intervened on the opposite side of the Swedish party.

#### 5.4 Analysis and discussion

That courts are important arenas for political influence is nothing new. This was established already by Robert Dahl in 1957, who showed the American Supreme Court's great influence on the USA's legislation (Dahl, 1957). In Sweden however it seems to have been more difficult for the idea of courts as important political arenas to break through into public debate (Leijon and Karlsson, 2013). Researchers have partly explained this by pointing out that the absence of a constitutional court in Sweden has meant that the demarcation lines between politics and the law rarely lead to a conflict. ., The Council of Legislation has only a weak mandate *ex ante* to examine the proposed legislation. The fact that this examination is made before the adoption of legislation is believed to reduce the risk of legal conflicts in the application of the law. *Ex post* the Swedish courts can only make concrete judicial review..

Our study shows that the United Kingdom is one of the member countries that often gives input to the CJEU on the interpretation of EU law. This input comes from the annulment cases that the country puts forward, the viewpoints on legal questions raised by the British government in connection with preliminary references and through the British national courts' relatively high level of requests for preliminary references sent to the CJEU. As previously mentioned, only the difference in the number of requests for preliminary references can be explained by the countries' varying population sizes. As regards the other channels to influence in the CJEU, theoretically the member countries have an equal opportunity to make their voices heard in order to influence the development of EU law, since they have the same standing in the CJEU.<sup>17</sup> (On the other hand, and for natural reasons, the countries' size affects the resources they have available to exercise influence in various legal contexts.) In principle therefore, all member countries should have as great an interest in allowing the CJEU to test questions that are important for them, if the country has anything to gain from the legal test.

When the differences in how the member countries use the CJEU are great, it could indicate the presence of structural differences in how they look upon their interaction with the CJEU and further how they organize their interaction.. We discuss below some possible explanations arising from the academic discussion about the CJEU.

One possible reason why the United Kingdom has relatively often approached the CJEU requesting a legal examination is that liberal market countries tend to benefit from the CJEU's case law. Scharpf (1999; 2010) shows that the CJEU's case law more often results in market promoting rather than market restricting measures. Through its legal practice the CJEU has strengthened the rights of the individual through promoting liberal policies, at the expense of market restricting measures and the member states' opportunities for redistribution policies. According to Scharpf, this development first took off when the United Kingdom, Ireland and Denmark joined the EU in 1973, because the entry of these countries affected the political dynamic. The author also believes that it cannot be shown that it is the judges' preferences that promote an integration-friendly case law direction (that is to say it is not the existence of liberal market judges who influence the development of EU law towards liberalisation), but rather the circumstance that the "liberalisation model" is built into the system. One example of

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<sup>17</sup> The only exception in terms of the countries' standing in the CJEU is that the six largest member countries, including the United Kingdom, have permanent advocates general, while the other advocates general are appointed on equal terms between the smaller member states on a rotating system.

this is that the questions that are sent to the CJEU usually represent those containing a conflict of interests that directly affects European integration (Scharpf, 1999; 2010). This may be about companies that wish to establish themselves in other member states and therefore challenge the national rules in the CJEU. The conclusion is that the battery of questions to the CJEU rarely reflect interests that support national law. But even though the United Kingdom is one of the more liberal market member countries, the CJEU's answer has not always been satisfactory from the British point of view. This does not however seem to have prevented the country from bringing cases to the CJEU.

It should also be pointed out that not everyone agrees that the CJEU has clearly dedicated itself to creating market-promoting law. There is also a view that the CJEU is an example of an international body being able to play an important role in some areas in embedding a social element into trans national trading regimes. According to Caporaso and Tarrow (2009) workers' rights, where the CJEU legal practice has forced through protection for the social interests of EU migrants, is a good example of this. The researchers show, albeit with the support of a limited number of cases, how the CJEU has forced member states to open up not only their labour markets but also their social security systems to EU migrants and their families. As has been seen in the Brexit debate, the United Kingdom is strongly critical of the development of rights in the area of social security.

In jurisprudential discussion of the law, the CJEU's integration friendly and market promoting contribution is explained in a somewhat different way than in the political discussion, even though the conclusions are similar. From a legal point of view, one is reminded that EU law, and especially the treaties, is the result of a negotiation process with the effect that it contains many imprecise provisions and general objectives that must be concretised in the actual application of the law (Hettne, 2008). The CJEU has solved this by applying its own interpretation method, which includes the so-called purpose oriented or teleological interpretation method. Thus the CJEU has said that it will consider not only the wording of the provision *but also its context and the purposes for which it strives*.<sup>18</sup> As has been mentioned, there is nothing contradictory in this description compared with the idea that shows that the CJEU's case law has benefited liberal market states. Rather, these perspectives coincide, since both spring from the idea that the liberal market model is built into the system.

That the United Kingdom has a good reputation in the CJEU is supported by interviews SIEPS has had with persons employed both inside and outside the CJEU. Some of them support their perception with the argument that the country brings forward important cases of principle that, while they may indeed be in the country's own interests, also often concern the framework of the EU's authority. They also believe that the British in the CJEU are significantly skilled in presenting legal arguments. This could be due to their *common law* system and although this legal tradition is not notably visible in the CJEU's decisions, its way of emphasising the case law rather than the enacted secondary legislation is at the basis of the legal argument in the CJEU's own interpretation method. This is due to the treaty articles lacking a precise content, which means that the treaty is regarded as a dynamic instrument that is intended to develop over time. According to common law traditions, decisions of a court are based on the precedence of previous experience and the court should allow the actual circumstances to test the law's legitimacy (Gordley, Von Mehre and Taylor, 2006).

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<sup>18</sup> See Marek, case 292/82.

Whether one is on the side of the CJEU in its interpretation method and conclusions in actual decisions or not, it is indisputable that according to the treaty it is the CJEU that has the last word when it comes to interpreting the EU treaties, including how secondary legislation relates to them. During the period being studied (1995–2016) the United Kingdom has excelled in asking the CJEU to test how EU legislation relates to primary law. The United Kingdom's leaving the EU may mean that fewer questions about the application of legal grounds and the proportionality of legislation are investigated by the CJEU. Ultimately this may be negative for the EU's legitimacy, that is to say if the decision makers are stretching the boundaries of the treaty in a way that is not supported by EU citizens.

Finally, something must be said about the differences in legal culture that exist in the member states that may explain how they use the CJEU. As has been mentioned, Sweden is one of the member states whose constitutional system means that judicial power has little say in it, relatively speaking. In other member states, political decisions are constantly challenged by a balancing judicial power. The German example is the most extreme, since the German constitutional court has exceptional powers to test legislation. It is perhaps not so odd then that Sweden speaks in a low voice in the CJEU when it comes to testing legislation. One reason may be lack of political will to let the CJEU make a legal test of political decisions, another reason may be a lack of resources for action.

## 5.5 Conclusions

As mentioned above, the United Kingdom has been active in the CJEU, which inevitably means that Brexit will reduce the total activity of member states in the CJEU, given that the gap will not be filled by any other member state compensating for the loss of the British activity. The section indicates that the United Kingdom's withdrawal will be noticed in the cases that the CJEU has to decide, even though it is not likely that there will be marked differences. In this way, the legal practice of the CJEU may also be affected, even though only marginally. One concrete effect on case law will probably be that fewer cases involving the limits of the EU's authority, including whether the actions of the EU are proportional, are expected to be referred to the court as annulment cases. Although the British annulment cases are not many in number compared with other member countries, they are typical of the UK's continuous efforts to keep the EU "in check" by challenging the limits of the EU's authority in the court. In other words the United Kingdom appears to use the CJEU as an institution for balancing political power, in a classic power sharing perspective, where a central part of its activity is to check that the EU does not exceed the authority given to it by treaty. Even though many member countries are not used to allowing political decisions to be tested by the judicial power, all member countries should use the structures for demanding responsibility that are available in the EU in cases where the EU's authority may be suspected of misuse. According to EU law, the CJEU has the role of testing the legality of EU legislation.

In order to give effect to such legal examination by the court, it is vital that there are structures in the member states for capturing discussions at the negotiation stage in cases that may seriously question whether the negotiated actions lie within the EU's authority, are proportional and are in accord with the subsidiarity principle and the EU Charter for fundamental rights. After closer examination and assessment of these cases, the question should be sent to the national political level for a decision on whether a legal examination should be requested by the CJEU.

In relation to the argument on the CJEU's role in the EU's constitutional system, it is worth reminding ourselves of the importance of all member states making an independent legal analysis of the commission's legislative proposals. That this question is linked to Brexit is shown by the statements that the British civil servants have brought legal competence, especially to the negotiating tables of the Council of Ministers. It is important that this legal analysis is not lost in the basis for negotiation, especially if the intention is to counter that political decisions are subjected to the CJEU's examination. The government should preferably, like the British representatives, perform thorough and independent legal analyses of its negotiating standpoints and have them included in the negotiators' instructions. To strategically relate to the CJEU's previous legal practice at the negotiation stage strengthens the Swedish standpoint and facilitates any sequel in the CJEU, since the court seeks in its decisions coherent solutions in relation to legal precedence.

## 6. The European Council

### 6.1 Influence in the European Council

The European Council provides the EU with a direction through its guidelines for the EU. After the United Kingdom's withdrawal, the European Council will meet as a constellation of 27 heads of state and government, instead of 28.

Article 15.1 of the TEU states that:

The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.

Further, article 15.3 states that:

The European Council shall meet twice every six months, convened by its President. When the agenda so requires, the members of the European Council may decide each to be assisted by a minister and, in the case of the President of the Commission, by a member of the Commission. When the situation so requires, the President shall convene a special meeting of the European Council.

Which states are successful in the European Council? Studies show that the negotiating power of heads of government in the European Council can be derived from three sources: the member state's structural and issue-specific power, the institutional environment and the head of government itself. The member state's cumulative power is defined by its territory, population, economic power, military capacities, political stability and administrative power, as well as the issue-specific power that is defined as its resources, commitment and alternatives for action in a defined area. The distribution of power is also affected by the institutional environment; unanimity gives all member states the same formal right to block proposals. The heads of government can also personally strengthen or weaken the negotiating power of the member state that they represent. Statements from participants in the European Council indicate that it is the first dimension – structural power – that is the most decisive. The states with the biggest advantages are thus France, Germany and the United Kingdom (Tallberg, 2007).

In recent years the United Kingdom has withdrawn more and more from the EU, which became even clearer under Prime Minister David Cameron. One description that is sometimes used to describe the United Kingdom in an EU context is “an awkward partner”, which could also be applied to its role in the European Council. The interviews confirm the image that the United Kingdom in recent years has become quite isolated and is sometimes perceived as awkward.

In recent years the European Council has dealt with crises more than anything, firstly the economic and financial crises and lately the refugee question. The United Kingdom has not played a dominant role here, largely because of its opt-outs in these areas.

Even though the British have not played any decisive role in recent years' crisis management, it is difficult to ignore the United Kingdom's importance and size in the foreign and security policy area. The interviews also confirm that the British have played an important role in EU foreign policy.

## 6.2 The balance of power in the European Council after Brexit

After Brexit the European Council will bring together 27 heads of state and government instead of 28, and one of the union's biggest members will be gone. Who can expect to lose or benefit from this? It is not that easy to answer this, since developments will depend on which heads of state and government will represent their member states in the European Council and what crises is on the table.

As said in the interviews, Germany's central role in the EU, especially in the European Council, is currently undisputed, although the image of Germany becomes somewhat more multifaceted if we look at day-to-day negotiations in the council. Germany's role as crisis manager in recent years cannot be ignored, and has become more tangible since the economic and financial crises that began in 2008, and Chancellor Angela Merkel is the dominant force at present. The German-French axis has been described by many as somewhat weakened in recent years, but it is still there.

At first glance it appears that Germany – as one of the large remaining countries – will strengthen its role after Brexit. It has, however, benefited from the United Kingdom in a number of questions, not least budget issues (Zuleeg, 2014). Germany is also an economic power, but cannot measure up to the United Kingdom as a foreign and security policy player. Both Germany and France have also used the United Kingdom as a balancing power between them (Oliver, 2014). However, the total picture that emerges from the interviews is that German influence will probably continue after Brexit. "Germany's role will be stronger and everyone will have to relate to this."

In the longer term, Brexit may affect the balance of power and thus also which issues will be promoted within the EU. The power centre in the EU may move both southwards and eastwards (Zuleeg, 2014) and the division of member states into different blocks within the EU – for example between north and south, east and west, free trade countries against more protectionist countries – may be reinforced (Oliver, 2014).

## 6.3 Conclusions for Sweden

For Sweden's part it is more difficult to assess the direct consequences of the United Kingdom's absence from the European Council. The dynamics are highly dependent on which heads of state and government represent their respective member states and what issues are discussed. If issues arise where the United Kingdom has had very similar views to Sweden, the obvious consequence is that a large country's vote is simply no longer there as support. For the foreseeable future, therefore, the absence of the British will probably be most noticeable for Sweden in the area of foreign policy.

## 7. European External Action Service

### 7.1 Introduction

The United Kingdom has been of central significance for the formation and development of the European External Action Service, EEAS. It is therefore highly relevant to ask what the consequences of the British leaving the EU will be for the EEAS. The EEAS is the EU's diplomatic organisation in the global arena and the executor of the Common Foreign and Security Policy (CFSP) through civil and military crisis management.

### 7.2 The European External Action Service EEAS

Article 27:3 of the Lisbon Treaty defines the EEAS' role as:

When the union's high representative fulfils his or her mandate, he or she shall have the support of a European external action service. This department shall collaborate with the member states' diplomatic services and shall consist of civil servants from affected departments within the council's secretariat general and the commission, as well as persons sent from the national diplomatic services of the member states.

The external action service consists of civil servants from the Council of Ministers and the European Commission, as well as outstationed diplomats from the member states. The EEAS must have the support of the states in order to represent the union, which means that coordination must be balanced between the member states and other EU bodies. Decisions that affect external relationships are normally taken as unanimous decisions by the Council of Ministers.

According to the Lisbon Treaty the EEAS' task is to cooperate with the member states' foreign services but not to replace them. More precisely it says "Unnecessary overlapping of working tasks, positions and resources in relation to other structures should be avoided" (European Council, 2010). This is entirely in line with the United Kingdom's interest in safeguarding its international influence and ensuring that this is not undermined by the EU acting as an autonomous global entity. The EU's external role is very much an area under development, being formulated by the member states and EU institutions (Shahin, 2016). What then has the United Kingdom contributed and what kind of voice will disappear after Brexit?

### 7.3 The United Kingdom's significance for EEAS and the CFSP

The interviews indicate that the United Kingdom's significance for EEAS is firstly based on the high quality of the British diplomats, who have also taken up high positions in the organisation, which has therefore come to be characterised by British know-how and thinking. Secondly the United Kingdom's action in its concrete input to the Common Foreign and Security Policy has been of significance for EEAS work. Since external relations are so much based on unanimity, the consciousness of the importance of good preparations and the acknowledged skill that marks the British civil servants is something that is valued (European Policy Centre, 2016).

Through Catherine Ashton, the first head of EEAS, the United Kingdom had influence in its development. Ashton led the initial development of EEAS and was also a key player in the Iran negotiations and the dialogue between Belgrade and Pristina. The British have been a central force in the development of the EU's joint foreign policy, in both an institutional and a substantial sense. As has emerged from the interviews, the United Kingdom simultaneously worked against too much integration in the area and a deepening of defence cooperation:

... the British knew that nothing that impinges on NATO's role should occur within the EU, but at the same time the British have encouraged a stronger profile for the EU in which they have also taken on a driving force role in questions on everything from Afghanistan and Africa to relations with Latin America.

#### 7.3.1 Concrete input

The United Kingdom was one of the central architects and instigators in the introduction of the Common Security and Defence Policy, largely as a result of the Balkan conflict in the 90s. The United Kingdom has also been an important participant and contributor in common defence interests, especially in the early joint efforts in the West Balkans and also recently in combating piracy in the Horn of Africa. The United Kingdom also had an important role in the setting up of sanctions against Syria and has clearly acted for agreement in the EU's sanction policy against Russia (Koenig, 2016). Just like Sweden, the United Kingdom has also made significant contributions to expansion policy. Since Prime Minister David Cameron took over however, the United Kingdom has distanced itself from joint defence matters and now makes the smallest military contribution of the five largest member states. In terms of civilian assignments, the United Kingdom is behind Germany, the Netherlands, Poland, Sweden, France and Finland. This has involved a greater British focus on bilateral arrangements and NATO. In the Council of Ministers too, the United Kingdom has hindered increased military cooperation and integration within the framework of permanent structured cooperation, *Pesco*<sup>19</sup> (Shahin, 2016).

### 7.4 The United Kingdom's relationship with and attitude to EEAS

The United Kingdom's relationship with EEAS is no different in principle or a conceptual sense than that with other policy areas that affect the EU. Research that has compared EU member states' relationship with EEAS indicates that the United Kingdom states that EEAS must be at the service of the member states and the intergovernmental logic should control the work of the foreign service. This means ensuring a balance between maintaining intergovernmental influence over EEAS' activities and a sufficiently distant position from which the United Kingdom can devote itself to its own global activities. When EASS was introduced the United Kingdom emphasised that no institutional provisions, or future provisions, should be permitted to limit the member states' own initiatives abroad. At the same time the United Kingdom has frequently expressing an active opposition to a more autonomous joint foreign policy.

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<sup>19</sup> *Permanent Structured Cooperation*.

The British starting point is that EEAS takes on a leading role in cases where the United Kingdom has minimal influence alone (climate policy, trade, Iran's nuclear weapon programme, the Arab Spring, the Kosovo conflict and strategic cooperation with Brazil and China). According to the British, EEAS should also not duplicate - and risk replacing - the United Kingdom's global diplomatic network. Neither should the EU develop new abilities in the area of the Common Security and Defence Policy (CSDP) and thereby compete with NATO, which according to the United Kingdom would drain the country's already stretched and limited resources. The United Kingdom has also been on guard against initiatives intended to develop or strengthen EEAS' core areas, be it budget increases, EU representation in international organisations or consular competences (Balfour, Frontini and Raik, 2013). The United Kingdom has concentrated on - and succeeded in - filling key positions within EEAS while in 2011 blocking no fewer than 70 EU statements containing the formula "on behalf of the EU and member states ...". The EU's high representative for foreign and security issues – at present Federica Mogherini – must always agree with other member states on statements that refer to external representation, which the United Kingdom also constantly states (Shahin, 2016).

The EU's external relations permit the United Kingdom to strengthen its already global influence while simultaneously being able to influence and form colleagues' positions. In this context EEAS should be understood as an intergovernmental arena for strengthening British interests (European Policy Centre, 2016). A key part of the United Kingdom's foreign policy has been to safeguard its special relationship with the USA, while in terms of the EU's external relations "assuming leadership in European international policy for the governments that lack an effective voice in Washington or their own active foreign policy and laying claim to the mid point between the USA and the EU" (Balfour, Carta, and Raik, 2015).

## 7.5 EEAS without the United Kingdom - changes to latch onto

### 7.5.1 Consequences for EEAS

The United Kingdom's significance for EEAS in terms of material resources and competence is considerable. The United Kingdom has many personnel placed in strategic positions in EEAS (see Table 7.1) and the country's defence material potential can only be matched by France. The same can be said of the global reach and personnel strength in the British Foreign Office. As noted in one of the interviews, after Brexit, France becomes the only EU member with a seat on the UN Security Council. It remains to be seen whether this means that the EU will concentrate its focus on regional stability at the expense of more global issues.

Figure 7.1 Proportion of British personnel compared with total EEAS personnel

	Civil servants and TA			SNE	CA	Total
	AD	AST	AST/SC			
Britons in headquarters	33	14	1	26	5	79
Britons in delegations	33	6	0	2	4	45
Total Britons	66	20	1	28	9	124
EEAS personnel in headquarters	557	423	32	371	170	1,553
EEAS personnel in delegations	390	187	0	66	224	867
Total EEAS personnel	947	610	32	437	394	2,420

Source: EEAS. Note: SNE refers to "Seconded National Experts"; CA refers to "Contract Agents"; TA refers to "Temporary Agents"; AD refers to "Administrators"; AST refers to "Assistants"; and AST-SC refers to "Secretaries and Clerks".

At the end of June 2016, the head of EEAS Federica Mogherini presented the EU's global strategy (EEAS, 2016). This document is taken as justification that there is unity between the EU's 28 member states and that the United Kingdom played an important role in developing the strategy. Neither has the approach changed in spite of the outcome of the British referendum. An important aspect of Brexit in terms of EEAS and EU global strategy is the new intergovernmental power and interest relationships that are released when as important a member state as the United Kingdom leaves the EU. Because the room for manoeuvre in the EU's external relations is relatively limited, Brexit will primarily affect EEAS' ability to take a more prominent position and represent the EU in contexts where the United Kingdom has previously been a braking and intractable force. The United Kingdom's ability to influence and have a leading role in other EU countries' foreign policy attitudes will also be limited.

Nicole Koenig, a researcher in political science and international relations, has put the British withdrawal into perspective and points to the United Kingdom's limited willingness in recent years to put its foreign and security policy resources at joint disposal. Thus Brexit initially involves a setback for the EU's *potential* power. However in terms of diplomacy there is much to indicate that the United Kingdom and the EU will continue to cooperate. Koenig (2016; p. 7) believes that "[t]here has thus been a gap between the UK's significant power resources and its willingness to use them in the framework of the EU."

### 7.5.2 Institutional dynamics in EEAS

Initially Brexit will create a certain political vacuum, which will be filled by new power constellations that draw the political content in new directions. Few countries can match the United Kingdom's ability to take a leading role and exercise influence among the small but like minded states. The uncertain developments in the USA could in this context be at least as important a factor for EEAS' policy development as Brexit. Also in 2017 there are parliamentary and presidential elections in Germany and France respectively and the outcome of the latter could have important consequences for the policy areas that greatly affect EEAS, such as relations with Russia and Ukraine. Sweden is very clear in its attitude to the joint sanction policy against Russia, and in this question the United Kingdom has been an important ally.

In what ways will the United Kingdom continue to participate in the EU's foreign and security policy? The Brexit process has not yet been initiated, although the preliminary positions have begun to be seen.

The security policy cooperation has so far been kept outside the political initiatives. There is however a risk that the foreign and security policy questions could be used as levers in negotiations.

The external policy is mainly conditional on the dynamics between the member states, and EASS has previously been criticised for being far too determined by "the big three". Brexit accentuates further the Franco-German axis, especially with regard to EEAS given the United Kingdom's former balancing function. There are general elections in Germany and France in 2017. If the result of these elections is marked by continuity in EU cooperation, the previous policy and the concentration around Germany and France as engines will be evident. Although the United Kingdom's withdrawal could in itself create room for manoeuvre, the smaller number of large powers in foreign policy issues could also generate the opposite effect, since the member states that in principle oppose sanctions against Russia and duplication of NATO structures would not wish such a concentration around Germany and France, for example. The Common Foreign and Security Policy appears to be consolidated around smaller core groups, while EEAS is strengthened as a diplomatic organisation.

### 7.5.3 Conclusions for Sweden

It emerged from the interviews that Sweden should seek to mobilise resources to fill any vacuum that arises in personnel with Swedes. Brexit also means that one of the three large member states is leaving EEAS. Of these three, the United Kingdom is perhaps the one with the greatest global impact. The United Kingdom's absence, together with global developments in general, could increase demands for strong autonomy for EEAS with similarly increased material and a substantial authority. Brexit therefore accentuates the need for actively taking a position and participation by Sweden in advance of the continued development of EEAS.

## 8. Sweden and the EMU

### 8.1 Introduction

The British withdrawal from the EU breathes new life into the question of how Sweden's EU influence is affected by not being a full member of the Economic and Monetary Union (EMU). Without the opt-outs negotiated by the United Kingdom and Denmark in connection with the Maastricht Treaty, the TFEU maintains that every member state should introduce the euro as its currency as soon as the so-called Maastricht criteria<sup>20</sup> are fulfilled. In a number of convergence reports since the 1990s, the Commission has confirmed that Sweden does not fulfil the Maastricht criteria, since changes are still required in the Riksbank Act and since Sweden does not participate in the European Exchange Rate Mechanism (ERMII). However, it is of importance that both these aspects depend on active *non-decisions*. Many of those interviewed believe that Brexit therefore leads to an *even more* exposed Swedish position.<sup>21</sup>

The chapter begins with a review of the consequences for the EMU of the crisis measures of recent years, including the United Kingdom's role. The next section describes the coming agenda on the basis of the Five Presidents' Report. Leaving aside how realistic some of the proposals are, this is the nearest that we come to a vision of the future. Above all, we are interested in how the report was received in Sweden and the United Kingdom. Then follows a review of the literature and what those interviewed by SIEPS had to say about concrete future risks of being outside the euro in the light of Brexit. The chapter ends with conclusions.

### 8.2 The effects of the financial crisis and the United Kingdom's role

Both the research (see, for example, Naurin and Lindahl, 2009 and 2014) and all the interviewees' experience of day-to-day EU work indicate that the early misgivings about a loss of Swedish EU influence have so far come to nothing. Although several interviewees say that the perception in Ecofin was that euro-related issues had been decided in advance in the Eurogroup, no such effects appeared evident in *other* issues. Neither did the common currency give any reason for anxiety during the first years of the euro: the legislative pace, with the exception of the watering down of the Stability and Growth Pact (SGP) in 2005, was relatively calm.

However, when the effects of the financial and economic crises provoked a fiscal crisis in the euro area in 2010, three major lessons were learned, the consequences of which are still not easy to get an overall view of (see Calmfors, 2017):

1. The first insight was that the SGP needed to be strengthened and also combined with European rescue funds. The first aspect led to the so-called six and two packs and the

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<sup>20</sup> Among other things, low inflation, sound public finances, stable exchange rates (ERMII) and low interest rates.

<sup>21</sup> Several legal experts have stated that with these non-decisions Sweden has been guilty of breaching the rules of the EU treaties; see, for example, Beuckers and van der Sluis (2015), Louis (2004) and Bernitz (2002). After the crisis measures of recent years, many of which go hand in hand with membership of the EMU, the obligation to join the EMU seems to be less self-evident; see Beuckers and van der Sluis (2015).

Fiscal Compact (see below), while the latter aspect is primarily about the European Stability Mechanism (ESM).

2. The *scope* of the SGP had also been too limited. It was shown that macroeconomic imbalances could also lead to fiscal crises, which happened, for example, in Ireland and Spain because of excessive borrowing in the private sector. Consequently, macroeconomic monitoring was also introduced into the pact.
3. The third lesson was about the need to prevent new financial crises and break the vicious circle between fiscal crises and bank crises. The result is the Banking Union, with *i.a.* a Single Supervisory Mechanism (SSM) and a Single Resolution Mechanism (SRM).

The crisis management in 2010–2015 gives some valuable insight into the United Kingdom's role as an EU member. Several of those interviewed mention the bridge loan given to Greece in expectation of payment of an ESM loan in summer 2015.<sup>22</sup> The Eurogroup wanted the loan to come from the joint European Financial Stabilisation Mechanism (EFSM), which caused quite a stir in the UK. According to one of those interviewed, there were two main reasons behind the reaction: firstly, it was felt that the matter had been settled beforehand in the Eurogroup and then sneaked in through the “back door” on Ecofin's agenda without the other countries having been clearly informed in advance; secondly, there had been agreement some years before in the European Council (2010) that the EFSM should not be used to relieve individual euro countries once the ESM was in place.

In the end it was after all the EFSM that financed the bridge loan. The British action had simultaneous effects: the EFSM regulation was revised, ensuring “that no financial (direct or indirect) liability will be incurred by the Member States which do not participate in the single currency” (the Council, 2015a; 2015b). If nothing else, this incident demonstrates the need for Ecofin to monitor the Eurogroup meetings, so as to detect any decision that may have an effect beyond the euro area.

Another event mentioned in the same interviews was to do with capital requirements. Here too British and Swedish interests coincided, because both sought tougher capital requirements than those agreed on in Ecofin. It is shown that the United Kingdom was active in this matter, but on the other hand it cannot be ruled out that Sweden would have secured tougher requirements without the United Kingdom's help.

Moloney (2016) gives two further examples of British interventions that should be mentioned here, for reasons that will become clear below. Firstly, the United Kingdom played a decisive role in establishing that the rule of “double simple majority” – that is to say, a simple majority of countries that participate in the Banking Union plus a simple majority of countries outside the Banking Union – should apply to voting on certain matters in the European Banking Authority (EBA) supervisory board. The second example concerns a case in the CJEU in which the United Kingdom (with support from Sweden) successfully challenged that the ECB (supported by Spain and France) had the right to require that euro clearing<sup>23</sup> should be handled by clearing organisations located in euro countries.

There are cases where Sweden, as a non-euro country, has been helped by other countries in EMU-related issues without the United Kingdom having been involved. Beuckers and van der Sluis (2015) mention the question of representation for non-euro countries when euro country

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<sup>22</sup> See, for example, BBC (2015). See also Open Europe (2015).

<sup>23</sup> Clearing refers to all activities within the framework of a transaction, from an undertaking being given until the transaction has been settled.

heads of state and government meet in the so-called Euro Summits. The initial draft was amended in a direction that was positive for Sweden through combined pressure from the euro countries Finland and Germany and non-euro countries Denmark, Poland and Hungary.

It is also informative to look into a case where the United Kingdom played an important *negative* role for all involved. In December 2011 the then prime minister, David Cameron, chose to use his veto in the European Council against including what became the Fiscal Compact<sup>24</sup> in the TFEU. Cameron wished, in exchange for a yes, to receive guarantees that the British financial sector would be protected from tougher market regulation. The result of the veto was that the Fiscal Compact was placed outside the TFEU and was signed by all member states except the United Kingdom and the Czech Republic. This event shows that the political price of a veto in this context risks being very high, while the practical gains are close to zero.<sup>25</sup>

One of those interviewed mentioned a more general aspect of the British EU membership: London's role as the world's financial centre means that the United Kingdom carries particular weight in financial market issues. In cases where the views of Sweden and the United Kingdom coincide, it would be quite uncontroversial to say that an important ally is disappearing. On the other hand, a couple of those interviewed think that Sweden and the United Kingdom have diverged in recent years, as the British willingness to introduce new financial market legislation has waned.

### 8.3 Reactions to the agenda for the future in London and Stockholm

The financial crisis has given rise to several new suggestions for how the EMU should be completed.<sup>26</sup> Here we take as our starting point the "Five Presidents' Report: Completing Europe's Economic and Monetary Union", issued by the presidents of the Commission, the European Council, the Eurogroup, the ECB and the European Parliament (Juncker et al., 2015). Considering its ownership and that the report was published relatively recently, this is at present the most important source of information about the agenda for the future. How realistic the more extreme proposals are is open to discussion; first and foremost it is of interest to compare the reactions that the report provoked in Stockholm and London, primarily in the House of Lords (2016),<sup>27</sup> the Swedish Government (2015) and the Swedish Riksdag (2015).

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<sup>24</sup> Treaty on Stability, Coordination and Governance in the Economic and Monetary Union.

<sup>25</sup> See, for example, Hancox (2014) for a more in-depth description. See also Moloney (2016).

<sup>26</sup> See, for example, Duff (2016b), Fabbrini, Hirsch Ballin and Somsen (2016), Pisani-Ferry et al. (2016), Wahl (2016) and Wyplocz (2016). An earlier version of the Five Presidents' Report was Van Rompuy (2012).

<sup>27</sup> This is not therefore the British government's express response to the report, but at the same time it is the nearest we have to an official and relatively detailed reaction.

*Figure 9.1 The Five Presidents' Report*

<i>Stage and schedule</i>	<i>Content in condensed form</i>
2015–2017: <i>Immediate steps</i>	<ul style="list-style-type: none"> <li>• <i>Economic union</i>: introduce Competitiveness Authorities; strengthen implementation of Macroeconomic Imbalance Procedure; strengthen the European semester and focus more on employment and social issues.</li> <li>• <i>Financial union</i>: set up bridge financing mechanism for the Single Resolution Fund (SRF); reach agreement on Common Insurance Scheme; streamline ESM recapitalisation; launch the Capital Markets Union.</li> <li>• <i>Fiscal union</i>: introduce an advisory European Fiscal Board for independent assessment of the euro countries' budgets in terms of objectives and recommendations.</li> <li>• <i>Political union</i>: strengthen democratic legitimacy, for example by revamping the European semester, with increased parliamentary control and coordination; reinforce the steer of the Eurogroup, with combined external representation for the euro area. The Fiscal Compact, the Euro Plus Pact and the SRF are included in the TFEU.</li> </ul>
2017–2025: <i>Completing the EMU architecture</i>	<ul style="list-style-type: none"> <li>• <i>Economic union</i>: formalise and make more binding the convergence processes.</li> <li>• <i>Fiscal union</i>: set up a macroeconomic stabilisation function for the euro area.</li> <li>• <i>Political union</i>: integrate the ESM into EU law framework and set up a euro area treasury.</li> </ul>
No later than 2025: <i>A deep and genuine EMU</i>	<ul style="list-style-type: none"> <li>• Discussion paper on the content of the final stage to be published by the Commission in Spring 2017.</li> </ul>

Source: Juncker *et al.* (2015)

The report was published in June 2015 and describes three stages that would in ten years complete or establish economic, financial, fiscal and political union (see Figure 9.1). The first stage requires no treaty amendments and is about completing the Banking Union and sharpening existing measures for the budget policy of the euro countries.<sup>28</sup> Stage two, which is in many respects vague, is called the completion of the EMU. Here, among other things, a macroeconomic stabilising function was to be introduced for the euro area, while common and potentially legally binding guidelines could be introduced for improving convergence between the euro countries. The third stage, a “deep and genuine EMU”, was to be detailed further in a discussion paper from the Commission in late spring 2017.

It was pointed out by both the House of Lords (2016) and the Swedish Government (2015) that a functioning EMU is also of benefit to the UK and Swedish economies. Hence, both countries welcomed, for example, the proposals regarding the Banking and Capital Markets Union. The House of Lords (2016) was also positive about the proposal for a Common Insurance Scheme and a financial backstop for the Single Resolution Fund.

Both sides also noted that future initiatives should guarantee the integrity of the Single Market and be kept open to non-euro countries. Concerns were expressed about the still rather vaguely

<sup>28</sup> Work on national productivity boards has already begun. The boards have responsibility for diagnosing and analysing the development of productivity and competitiveness. Other EU countries are “encouraged” to introduce similar boards; see the Council (2016b). The European financial policy board has already been introduced by the Commission; see European Commission (2015). The House of Lords (2016) has questioned their independence.

described fiscal union and scepticism about the ability of the rules to manage the future convergence of the euro countries in the economic policy. There was further agreement that further centralisation of the making of decisions risked undermining the democratic legitimacy of the EMU project. As regards the more concrete proposals, both London and Stockholm were sceptical or negative about a new common supervision of the capital markets.

Against the background of the vagueness of the Five Presidents' Report about the outline of the more long-term aspects of the EMU, the reactions were also, for obvious reasons, cautious and not particularly concrete. There is, however, a great deal of similarity in the way in which the report was received. On the one hand, there was recognition of the necessity of allowing the euro countries to resolve their problems in a way that would benefit the whole of Europe; on the other hand, centralisation of decision-making and institutions – whether for risk sharing or risk reduction – was seen as occurring in a way that was unacceptable. It could, for example, be about avoiding adding further layers of rules into an already complex system, or avoiding incentives that lead to increased risk taking among the participating countries.

## 8.4 Participants, risks and consequences for Sweden's relationship with the euro

### 8.4.1 The effect of the EMU rules on non-euro countries

Concerns have been expressed on several occasions that non-euro countries would be negatively affected by the growing body of EMU rules, for example in the European Council (2012), in the UK competence review 2012–2014 (HM Government, 2014a and 2014b) and in the February agreement of 2016 between the United Kingdom and the EU. Craig and Markakis (2016) argue that the concerns can be divided into three categories. The first is about non-euro countries being negatively affected by legislation decided in the Eurogroup. There were also concerns that the positions of the Eurogroup would continue to converge and lead to more and more issues being decided before they reached Ecofin, that is, that there would be problems stemming from *caucusing*. A third concern is that the balance of power will continue to shift towards the Eurogroup at the expense of Ecofin, with the probability that the latter institution risks becoming increasingly irrelevant. We would add to these a fourth aspect that is important from a Swedish point of view, which is related to the EMU's long-term development.

#### *A concern about discrimination*

A concern that has proved to be partly justified is that decisions within the Eurogroup can affect non-euro countries without their having the opportunity to participate in decision-making. One example of when this has been felt to occur is the case we mentioned above, when the ECB wanted financial instruments expressed in euro to only be cleared in clearing organisations based in euro countries. This would in many ways create “a single market within the Single Market” (Craig and Markakis, 2016; p. 24).

As mentioned above, the General Court chose to reject the ECB's action in the case of clearing instruments, but on the grounds that the ECB *lacked the competence*.<sup>29</sup> This comes to the heart of the matter: Single Market-related decisions that have a negative effect on non-euro countries, in connection with measures relating to the euro, would not be able to occur if the ECB and

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<sup>29</sup> The United Kingdom of Great Britain and Northern Ireland (supported by Sweden) versus the European Central Bank (supported by Spain and France), T-496/11, EU:T:2015:133.

other institutions *acted within the competence that they have been delegated by the TFEU*. The case also shows that member states should actively ensure that such cases do not arise and not refrain from using the CJEU to counter them (see also section 5).

#### *A concern about caucusing*

The voting rules post-2014 imply that the euro countries on their own can muster a qualified majority, with or without the UK. In other words, the non-euro countries could be overridden in the Council of Ministers in all issues decided by a qualified majority, as long as the Eurogroup was in agreement. The UK competence review expressly warned that the euro countries' respective positions could converge as a consequence of common problems and common fora.<sup>30</sup> That the Eurogroup is expected to have its own permanent president as part of the future agenda, and endeavours to establish joint external representation, is certainly expected to lead in the same direction.

At the same time, this must be set against what we know about the countries' actual positions. The experience to date is that in most issues the Eurogroup shows a higher degree of internal divergence than is seen, for example, between Sweden and countries such as the Netherlands and Germany. Craig and Markakis (2016; p. 23) argue that the position of the euro countries is often "the result of hard fought battles, reflective of cross-cutting interests of euro states in relation to economic issues, there being even less reason as to why they should share a common interest on issues of social policy, employment or immigration."

This view is also confirmed by almost all the interviewees. According to one of the interviewees, one very concrete example of this was that early in the crisis there arose a north-south dimension in the Eurogroup, where the "north" group wanted risk reduction (such as budget discipline) before considering discussing the risk-sharing measures (such as joint deposit guarantees) that the "south" group wished to pursue. Several also mention a more general splintering of the Eurogroup as a fact, while confirming that the non-euro countries are also a disparate group.<sup>31</sup>

#### *A concern about further shift of power from Ecofin to the Eurogroup*

A closely related issue to caucusing is about a continuing shift in the balance of power from Ecofin to mainly the Eurogroup and to the ECB, and more specifically that this movement would be strengthened by Brexit. This contention is empirically relatively well established: the power of the Eurogroup and the ECB *has* increased, both *de facto* and *de jure* (Craig and Markakis, 2016). It is also reasonable to believe that this trend is *strengthened* by Brexit: those interviewed by SIEPS have been almost unanimous on this point.<sup>32</sup> To this can be added that support for the basic argument increases if/when additional countries become full EMU members and the number of non-euro countries shrinks.

<sup>30</sup> The view is that this can lead to "the fragmentation of the Single Market with barriers erected between its euro area and non-euro area constituents" (HM Government, 2014b; p. 107). The competence review regarding the EMU also sees position convergence as a real danger (HM Government, 2014a).

<sup>31</sup> One interviewee describes the group as follows: Denmark has an exemption but still partly participates through membership of ERMII; Bulgaria, Croatia and Roumania wish to join in; Poland, the Czech Republic and Hungary cannot decide and Sweden must join in but does not want to.

<sup>32</sup> One concrete aspect mentioned in two interviews was that the euro countries wish to discuss financial risks and bank regulation within the euro system, for which reason the joint supervisory mechanism is chosen as a forum rather than the European Systemic Risk Board (ESRB). The relevance of the pan-European institutions could thus be further reduced when the United Kingdom is gone.

Even though it cannot be denied that Brexit further marginalises the non-euro countries, Adler-Nissen (2016) believes that there are three aspects that indicate that Sweden and the other outsider countries can and should maintain their present strategy towards the euro countries:

1. Many of the present non-euro countries will remain so for the foreseeable future. The door must remain open for those who stand outside involuntarily. As long as this applies, the reach of the euro countries is limited in matters that do not concern the Single Market. In the light of the sceptical attitude in Poland, the Czech Republic and Hungary, this is likely to continue for the foreseeable future.
2. Many of the euro countries, such as Germany, the Netherlands and Estonia, are anxious not to alienate the outsider countries. They wish to preserve an open Single Market in which barriers to trade continue to be lifted. In the absence of the British liberal economic voice, presumably the Swedish and Danish commitment to free trade will be even more valuable.
3. There is also continuing scepticism in many euro countries about continued euro integration. Moreover, the populist movements that have gained ground recently may affect the course of events, at least in the near future.

#### *A concern about the long-term development of the EMU*

One aspect that Sweden may find more worrisome after Brexit is the long-term development of the EMU. The British attitude to the EMU has in one way been quite uncomplicated, in that the decision to remain outside the euro in practice has been regarded as irreversible. There has also been an ambivalence towards EU membership, something that was greatly reinforced by, and reached its high point during, the euro crisis. As we have seen, there was anxiety about the potential effects of the crisis measures on the future integration process. The Swedish context differs in that full EMU membership is today regarded as a non-issue for the foreseeable future, while attitudes to EU membership have gradually stabilised (see, for example, Berg and Bové, 2016). This adds yet another layer to the dilemma that political scientist Magnus Jerneck (2013; p. 9) describes as follows:

In terms of a sovereignty calculus, Sweden risks arriving at a position in the longer term with weakened offensive as well as diminished defensive power, a position that the country wished to avoid as an aspiring EU member. The Swedish national democratic system will in principle have complete decision-making rights over a limited number of issues, while at the same time being tangibly affected by economic policy decisions in the euro zone, because of the close economic integration in the EU.

Regardless of whether the future processes are mainly about *muddling through*, taking *big integration leaps* or something in between (see Chapter 9), there is relative political unity in Sweden about there being strong benefits from ensuring that the functionality of the euro is preserved. Political and institutional developments pertaining to the euro can be quite radical, which means that a proactive approach should be chosen for the purpose of influencing the development in a direction that is attractive for Sweden.<sup>33</sup> This in turn requires a vision to be established about how the future EMU *should* be put together, which instruments will be needed and how these would best be constructed. This is no easy matter but requires an analysis that is beyond the scope of the present report.

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<sup>33</sup> For example within the framework of the euro top meetings. According to article 12 (3) of the finance pact, contracting countries that do not have the euro as their currency are invited in to discussions about “changes to the euro area’s overall architecture and the basic rules that will be applied to it in the future”.

#### 8.4.2 Possible protection against future risks

In addition to the aspects illustrated above, there are other possible forms of protection against marginalisation risks after Brexit. One possible instrument is special voting rules designed to protect the interests of the outsider countries. As mentioned above, voting in the EBA's supervisory board may imply the use of a "double simple majority". In addition to voting rules, the EBA regulations also lay down that the composition of the administrative board should be balanced and represent the entire Union; and that it should include at least two countries that are not part of the Banking Union (see European Parliament and Council, 2010).

There is also legislation in the Banking Union that shows how the relationship between euro and non-euro countries can be structured in the future within given policy areas. The SSM and SRM are only automatically valid for euro countries, while non-euro countries can choose to participate by entering into a *close collaboration*. This is done between the ECB and the relevant national authority. The ECB can issue instructions to the relevant responsible national agency, which must carry them out. If the member state in question should not be in agreement with the supervisory board's instructions, it can ask the ECB to dissolve the close collaboration. The ECB also has the possibility of dissolving the collaboration if a participating non-euro country advises that it is not bound by the ECB's instructions.

There was also a proposal in the February agreement that would give member states outside the Banking Union the possibility of slowing down the legislation process. If any of these countries opposed an issue decided by a qualified majority, and on the basis of the principles stated in the February agreement, that member state could request that the Council deliberate the issue. The Council should then "do everything in its power" to reach a solution. The issue *could* then be taken up by the European Council, but the relevant text in the February agreement expressly states that these proceedings could not hinder the EU's ordinary legislative proceedings.

The actual value of this measure in the February agreement was doubtful, since at best it could only be considered a "break" rather than a "brake" (Craig and Markakis, 2016). It is also reasonable to suppose that the euro countries would treat with great scepticism any future proposals that involved non-euro countries being able to hinder proposals, whether these were about the EMU's future structure or the more day-to-day legislation. They would rather present alternatives that increased the incentive for the outsider countries to involve themselves more in the joint currency, so that they would have a better chance of becoming full members in the future.

A fourth way of reducing the risk of unforeseen diffusion effects is to increase transparency in the Eurogroup. Several of those interviewed mentioned that they had sought to gain insight into the meetings of the Eurogroup through contacts with its secretariat. A greater degree of transparency would make it easier for the non-euro countries to find out what is being discussed and it would also counter any tendency in the Eurogroup to settle things in advance in a way that could be of disadvantage to the non-euro countries. The present rules ensure to a certain extent that the remaining member states are kept informed and there is further work under way in the Eurogroup working group (Eurogroup, 2016a).

When it comes to Sweden's actions in relation to the EMU, several of those interviewed mentioned the importance of being on guard so that future agreements and cooperation do not have a negative effect on the Single Market, that they are kept open for the entire EU27, and

that they do not spill over in a way that affects Sweden's fiscal and monetary policies. In other words, there is good reason to give the greatest possible support to the work of increasing the transparency of the Eurogroup. One way of securing influence is of course to consider participation in present and future open collaborations.

A further issue of relevance to this discussion that was mentioned in some interviews is about which member state will take the lead in the group of non-euro countries once the UK leaves the EU. This question involves many aspects to consider. For example, a constructive leadership of the group could mean that the influence over the future agenda increases. At the same time, the basic assumptions of a constructive leadership could hinder more destructive tendencies that could be imagined with a different country taking the lead. If, on the other hand, the leader attempts to act mainly as a blocking force and takes on a generally negative attitude to the continued integration of the euro countries, there could instead be a negative effect on influence. In any case, the question should be considered and given the attention it deserves before Brexit becomes a fact.

## 8.5 Conclusions

Both in the literature and in the interviews there is broad agreement that Brexit will weaken Ecofin in relation to the Eurogroup. Several of the EU ambassadors added that many of the euro-related questions passed to Ecofin had already been settled in advance by the Eurogroup. That Ecofin is already a weakened body will hardly be alleviated when a country like the UK, with its size and its significant financial sector, leaves the Union.

At the same time, it is difficult to concretise what will be the political effects. Besides the future dominance of the Eurogroup, the concerns have mostly been about discrimination against non-euro countries and caucusing in the Eurogroup. The literature often points out that there are many weaknesses in these arguments. There is protection in the TFEU against acts that discriminate against non-euro countries and the euro countries are far from being so united that caucusing (in the near future) can be seen as a serious threat to non-euro countries in any credible way. We may also state that the power shift from Ecofin to the Eurogroup is already an established fact. For example, the boundary when the euro countries can muster a qualified majority has already been crossed.

There is also agreement among those interviewed that Swedish influence in the EU, *in general terms*, has not been affected in a negative way because Sweden has been outside the euro, something that also receives a certain amount of support from the research. At the same time, it must be stated that the way the UK acted during the crisis was to Sweden's advantage in many issues. This applies not least to the national flexibility that could be achieved in terms of capital requirements and other matters relating to documents within the Banking Union framework. Reactions to the Five Presidents' Report also indicate that in many respects, when it comes to the further development of the EMU, the United Kingdom would have been an important ally.

The absence of the United Kingdom will also have concrete consequences for the resources available to monitor the Eurogroup's work and, especially in the Council of Ministers and CJEU, counter proposals that are seen as negative for the Single Market or the future development of EU policy. Brexit could somewhat weaken the balance between alliance building and the ability to be a constructive party in continuing to build the EMU on the one

hand, and monitoring and putting a brake on any initiative from the Eurogroup that could have negative effects for Sweden on the other.

A closely related aspect that calls for continued analysis concerns Sweden's attitude to the EMU's long-term development. How Sweden is to relate to concrete aspects of the euro countries' continued integration – not just in considering proposals that can already be foreseen, but also and more importantly in their formulation before they have reached the proposal stage – should be thoroughly investigated. These issues certainly would have been highly relevant even *without* a British withdrawal but it cannot be denied that the UK, like no other non-euro country, would have had the potential to influence developments in a more favourable direction for Sweden.

## 9. Institutional balance and future integration models

### 9.1 Introduction

The previous sections have analysed the effects of Brexit on EU institutions. This section will attempt to discuss what effects the withdrawal could have on the balance between the institutions and the future integration model. The EU is a political system that is constantly developing. The consequences of the British withdrawal must therefore be analysed based on the institutional development that is ongoing regardless of that withdrawal. One interesting question is whether these tendencies will be strengthened or weakened by Brexit. There are also a number of external factors that will have great significance for future developments, as will political developments in the remaining member states. The analysis below focuses on the consequences of Brexit for the institutional balance and the EU of the future.

There is a great deal that indicates that the United Kingdom has already lost its commitment to EU cooperation and other member states have partly begun to act on the basis that the United Kingdom is no longer an active member. Thus to some extent the effects of Brexit are already becoming visible. The long-term consequences are more about how the union could develop without the United Kingdom. The future relationship between the United Kingdom and the EU could of course also influence the development of the union. In this report SIEPS has not considered what the possible outcome of the negotiations might be since this is outside our brief. However, the starting point for the analysis has been that the United Kingdom's withdrawal means that the British no longer participate in the EU's institutions or to any great extent contribute to the EU budget.

Immediately after the British referendum, a discussion began about the break-up of the EU. Brexit would lead to a domino effect, more countries would leave the union and finally the EU would cease to exist. Thus far, however, none of the other 27 member states has declared an intention of leaving or of renegotiating the terms of membership. In the continuing analysis, SIEPS therefore assumes that the EU will consist of 27 member states and that, at least until the next major treaty amendment, the existing rules and conditions will continue to apply.

### 9.2 Tendencies

Within the framework of the analyses that have been performed on the consequences for the individual institutions there is a constant theme: the British emphasis on national sovereignty and intergovernmental cooperation. British resistance, which has certainly varied over the course of time, is perceived as a relatively early withdrawal from European integration. This critical question, the argument about the scope of integration and the consequences for national self-determination, has frequently been brought up by the British in the European decision-making processes. Brexit is occurring against a context of great change. Some of the institutional, constitutional and political change processes are difficult to clearly separate from the possible consequences that specifically relate to the British withdrawal. At a general level, however, it is worth mentioning that, with the reservation that variations and exceptions both exist, the British presence in the European institutions has influenced the dynamic and the occurrence of certain arguments and attitudes. Naturally many other parties may endeavour to fill the opening vacuum, but one strong-voiced and influential player will probably influence

the future dynamic. As one of the interviewees responded when asked what effect Brexit would have on the institutional balance in the EU:

None as such, there are ongoing trends that have an effect, not because of Brexit. The European Council has been gradually strengthened in recent years as it became an instrument for crisis management. Many of the issues were so sensitive nationally that they had to be handled at the highest level. This development has been clear since the euro crisis and has nothing to do with Brexit.

If we look at the general tendencies for the EU as a political system there are several parallel tendencies, some pointing in one direction and some in another. The EU has grown from 15 member states at the time Sweden joined in 1995 to the present 28. New areas of collaboration have arisen; developments relating to foreign policy and justice and home affairs have been particularly tangible. There is also a tendency towards a more intergovernmental style. The EU is characterised by developments that occur at different speeds and the use of both opt-outs and deeper collaboration increases this tendency (Koenig, 2015). There is a tendency to emphasise subsidiarity, which has become stronger with the new roles for the national parliaments. A somewhat stronger national resilience follows from political changes and from a gradually more pronounced Eurosceptic public opinion. The EU leadership, especially the Commission, has sought to respond to this through tougher prioritising and clearer work relating to better regulation. A clearer preparation of proposals is sought, including through consultation processes. That is a tendency towards parliamentarisation at EU level through the European Parliament's clearer connection to the Commission as well as its generally increased power. Finally, there is also a tendency towards delegation in the form of a developed comitology proceeding as well as the creation of considerably more EU agencies.

### 9.3 The balance between the institutions

On the basis of the arguments above and the previous sections, there is reason to reflect on whether Brexit affects the *balance* between the institutions. One way of approaching this question, greatly simplified, is to look at what the British attitude to treaty amendments has been. Generally speaking, this is about a reluctance when it comes to further transfer of authority to the European level. To simplify somewhat, the last genuinely active contribution to a major change in the EU in terms of authority that had a clearly British stamp on it was the creation of the internal market and increased use of the qualified majority as a rule for decision, changes that primarily occurred in the Single European Act and were completed in Maastricht. Since then the United Kingdom has prioritised a more intergovernmental interpretation of what the EU should be. In several treaty amendment processes and debates on the future since membership, Sweden has taken a similar position to that of the United Kingdom. Both countries have tended not to want great changes and integrating steps (see, for example, Johansson and von Sydow, 2011). This does not, however, apply to the requirement for special opt-outs (Moravcsik, 1999). This attitude probably indicates that resistance to a further strengthening of the purely supranational institutions (the EP, the Commission and the CJEU) is lessening. It should be mentioned, however, that over time the British have welcomed a supranational investigation of both the court and the Commission. The February agreement of 2016 between the EU and the United Kingdom made much of the United Kingdom in future not having to feel bound by the treaty's objective of creating "an ever closer union among the peoples of Europe", which is laid down in the first article of the Lisbon Treaty. As a consequence of the result of the referendum, this agreement is no longer valid. Opinions are also divided over whether this exemption would have had any practical significance. What it does signal, however, is that the

United Kingdom, if it had voted to stay in the EU, would very probably have had a much more cautious and possibly isolated role in the debates about the EU's future.

In terms of the institutional balance between the agenda-setting institutions, the European Council and the Commission, the so-called new intergovernmentalism (Puetter et al., 2013) has been stressed in recent research. This new intergovernmental tone means that since the end of the 1990s the European Council has had a stronger role as a result of the policy areas that have arisen, outside or partly outside the community method, since the Maastricht Treaty. The European Council's role has developed into being a forum not just for high-level issues but also for handling ongoing issues (Puetter, 2013). With the Lisbon Treaty the European Council also gained the status of an institution with a permanent president. There is a paradox in European integration since the Maastricht Treaty, in the sense that the EU's policy areas are growing in number, while the member states are simultaneously anxious about transferring more legislative power to the EU level.

Other research indicates that the Commission is still an important player, not least in terms of power over the agenda. This means that the Commission has remained strong and has even increased its influence in some areas, for example the economic area, as a result of the action taken during the economic and financial crises (Princen and Rhinard, 2006). As regards the Commission, resistance against the institution that *leads* and *drives* integration may lessen. The United Kingdom was, for example, among the most vociferous opponents of introducing the procedure whereby the Commission's president was to be appointed in a way that took into account the result of the election to the European Parliament, the so-called *Spitzenkandidat* process. It is highly probable that less of this opposition will now be heard.

There are forces that are pushing for a more leading role for the Commission and a stronger European Parliament, something that runs on a more federally inspired track. In line with the European Parliament's increased power over legislation and the European Council's more prominent position, the Council of Ministers now has a somewhat changed role. At the same time it cannot be ignored that the preconditions for achieving joint decisions depend on the possibility of creating at least qualified majorities in the Council of Ministers. Based on historical experience of positioning in the EU's political spaces, the conditions for achieving such decisions must be assumed to be better when an important player that has often taken an extreme position disappears. This in turn could have consequences for the remaining member states that have been close to the United Kingdom's extreme position. This is the case with Sweden, and there may be reason in some policy areas to look again at the Swedish position for the purpose of avoiding becoming marginalised in the future. At the same time, the counterfactual analysis of decisions in the council (Section 4) showed that political outcomes and compromises would only have changed to a limited extent if the British had not been members. The analysis also showed that if the British are removed from these decisions, there is no marked effect to indicate that we would have had more or less integration today. It should, however, be added that, as shown earlier, the United Kingdom has often successfully influenced the political agenda in the early stages of the decision-making process so that undesirable issues have not reached the negotiating table.

There are also a number of central policy areas on the union's agenda where the United Kingdom has already positioned itself outside, which means that we must assume that opposition in these areas will not be changed by Brexit.

## 9.4 Opt-outs, flexible union and control of the EU

Through its unwillingness to participate in all stages of integration, the United Kingdom has driven through the opportunity for member states to use opt-outs. In many of the areas that have grown strongly in recent decades (the euro and the economic policy, the domestic area etc.) the United Kingdom does not participate. This, together with the increased opportunities for some member states to go ahead in deeper collaboration, has contributed to an EU that moves at different speeds. It is unlikely that this trend will disappear (Grabbe and Lehne, 2016). It should be added that the United Kingdom, through its size and strength, has been able to push for this practice to be established (Moravcsik, 1999). Some discussions about the EU since Brexit have maintained that it would be more difficult for smaller member states in particular to seek opt-outs from new initiatives or provisions. This would be so as to create more coherence and loyalty (see the European Parliament, 2017). There is, however, a parallel and opposite discourse that the EU should be developed into a more flexible union in which member states themselves, according to their own will, can decide in which areas they wish to collaborate.

Another tendency that has been mentioned above but has only been partly dealt with previously in the report is about the stronger emphasis on *controlling* the EU. The United Kingdom has pushed for an extended role for national parliaments and subsidiarity control in the EU. Proposals in this area were also included in the February agreement between the United Kingdom and the EU in 2016. It is probably unlikely that discussion on an extended role for national parliaments will cease as a result of Brexit. It is, however, worth noting that, ahead of the forthcoming discussions on future institutional arrangements for the EU, we have lost a strong proponent of the increased importance of national governments, a position also taken by Sweden.

## 9.5 New dynamic before forthcoming discussions on the future

It follows from the argument above that, ahead of major discussions about how the future of the EU should develop, including future treaty amendments, a new dynamic is likely to be introduced after Brexit. The “big three” have historically been of great significance when major decisions have been taken about the union’s future (Moravcsik, 1999). We have repeatedly mentioned that in many respects the United Kingdom has taken a rather different attitude to the EU in recent years. This would indicate that the British have also distanced themselves from discussion about the future. Somewhat mixed assessments emerged from the interviews as to whether Brexit would lead to the resumption of a Franco-German axis or whether Germany alone would take a much more central role in major political fora such as the European Council. As regards formal changes to the power of member states in the EU, it is worth mentioning that large member states will have an increased role in the Council of Ministers. Analysis of *networks* in the council also shows an extended role for the large member states.

At present, future treaty amendments are distant, but if we look at recent decades, new treaties have been negotiated at regular intervals, partly to give a new direction but also to codify established practice. It is difficult to say what such a future discussion would be like, but there is reason to state that the British voice, with its caution and intergovernmental approach, will be missing. This does not in itself mean that the EU will make a federal jump, although there are political forces that see Brexit as an opportunity for a further step. More Eurosceptic political forces that oppose such a direction exist in many member states. Germany, which is pointed out by many as a strong leader in Europe, has, according to many observers, moved from a previous passion for the more supranational aspects of the collaboration to a more

intergovernmental position (Janning and Möller, 2016). Angela Merkel said in a speech in 2010 that the future of Europe lay in a “new union method”, the coordinated action of member states, rather than a supranational community method (Merkel, 2010).

The many crises of recent years have meant that large and influential countries have taken a more prominent role as the European Council has become a central forum for crisis management. There is no reason to believe that Brexit essentially changes this, at least not in the near future. Thus in the future too the political agenda will be largely decided by external factors that are especially difficult to assess.

To summarise, it is difficult to determine how the balance *between* the institutions will be affected by Brexit. We can, however, say that when the British *basic viewpoint* on the EU disappears, the focus of the different institutions’ roles will change. The Commission, the European Parliament and the CJEU have all been subject to some criticism from the United Kingdom. Intergovernmentalism, opt-outs and the control of authority are some of the British preferences that have made a mark on the EU. Member states with a similar view of the EU will probably need to sharpen their own analytical abilities, arguments and presence in order to get their views across. As noted especially in the section on the CJEU, the British influence in this respect has been significant and has played an important role.

A major question for the future with a bearing on the balance between different institutions – but also on the balance between different groupings of member states – that could be affected by Brexit has been covered in detail in previous sections: relationships between the eurozone and the rest of the EU. If demands are raised for further institutional development within the framework of matters that mainly affect the common currency, this also has significance for existing institutions. One question that recurred during the eurozone crisis was about how better to ensure parliamentary control, both at EU level and nationally. For example, proposals have been put forward about introducing a special parliament for the eurozone, as well as for some form of European finance ministry (Enderlein et al., 2016; Kreilinger and Larhant, 2016). These ideas would naturally also have consequences for the other members. That the largest member country outside the eurozone is leaving the union changes the balance between the eurozone and the E27. For member states that do not have the euro in particular, this is a significant question to be addressed. An EU that even more clearly moves at different speeds probably means that the value of entering into a discussion about the future will differ.

The former Legal Counsel of the European Council, Jean-Claude Piris, published a book in 2012 in which he outlined a two-speed future for the EU. He makes an important distinction that is worth noting that a two-speed Europe is not the same thing as a two-class or two-tier Europe. The speeds refer to a situation in which everyone is striving for the same goal but the difference lies in the tempo at which they move towards the goal. An EU in two distinct classes or tiers refers to a situation in which these two tiers are permanent and fixed (Piris, 2012:7). The question of how the countries that at present have not introduced the euro as a currency address their future role in the EU/EMU could be significant for how this discussion is formulated. If non-eurozone countries declare themselves to be permanently outside the currency, this could give rise to a tendency towards an EU in two distinct permanent groups. In light of Brexit, there were also voices raised that it would be *desirable* if other member states that do not wish further integration quite simply left the union or at least found other forms (L’Echo, 2017; The Guardian, 2017). The long-term perspective may be needed, even to arrive at a standpoint in the short term.

## 9.6 Scenarios for the EU of the future

Below follow three scenarios for the EU of the future. These are lines of development that recur in discussions about the EU of the future and are not exclusively about Brexit. At the same time we can look upon the British withdrawal as an opportunity to reflect on the more long-term *direction* that the EU could take. There is much at present to indicate that there will be no great treaty amendment projects begun in the immediate future. But since the treaty will need to be amended once the United Kingdom has left, the British withdrawal offers a possibility of making some changes at the same time (Fabbrini, 2016). The appetite for basic change in the EU depends on external factors as well as political developments in the member states. According to this assessment, major changes to the political majorities in the remaining 27 member states would probably be of greater significance for the EU of the future than Brexit. It may also be of value to illustrate what possible long-term lines of development recur in the debate, in spite of everything (see, for example, von Sydow, 2014).

### *The great leap forward*

Firstly, the British withdrawal may be seen by some as a golden opportunity to move the EU, and not least the eurozone, forward without the British opposition. One purpose may be to set right the unclear mix of authority that leads to difficulties with accountability at the right level. Proposals to create a European federation arise at regular intervals. There are recurring arguments for an EU moving at various speeds with a clear core (Fischer, 2000). One of the more recently developed proposals for a federal Europe was put forward in 2013 by the so-called *Spinelli group*. Their proposal also included a well-developed argument for a solution for those members that did not wish to be full members of the EU but to participate through some form of association. In the federal vision, there should be a clear distribution of authority so that voters are clear about what is decided at which level and that those elected could be held accountable at the level where decisions were actually made (Habermas, 2011; Duff, 2016b). Opposition to federal ideas is naturally strong. Comprehensive treaty amendments would also be needed and it is far from easy to create this clear distribution of authority between the central state and the member states. Problems that are handled at EU level are often pushed forward in harmony with the big issues of the time.

### *Renationalisation*

Secondly, some draw the conclusion that the EU should now be considerably less comprehensive and that renationalisation should occur. This scenario actually contains two very different forms of renationalisation: the withdrawal of member states and rolling back authority. These two ideas are actually very different in their logic. Thus renationalisation can occur in a radical form – that is to say, through further withdrawals, or by means of returning some authority to the member states. Naturally demands for withdrawal from other member states depend on political development and whether EU critical parties win in the member states. Voices for change in the EU and/or the return of authority can be heard from many quarters (Financial Times, 2016). One problem has been in identifying what issues should best be returned to a national level and how best to do this. Problems tend to be solved at European level because the problems are in common.

David Cameron's first step in his new European policy was to compile a comprehensive "competence review" of what should be returned to national policy. To put it simply, the conclusion was that the distribution between the EU and the United Kingdom was reasonable.

There was reason to believe that the EU had certain authority for a reason. Exactly as was the case with the British competence review and the approaching withdrawal, there is reason to believe that the closer to the matter we get, the more embedded and institutionalised the collaboration appears. Similarly it can be pointed out that although the British government had some of its demands met in the February agreement in 2016, it is not certain that another member state that wished to “negotiate itself out” of certain parts in the future would have any great success.

With this experience fresh in our memories, it seems unlikely that further member states would engage in any comprehensive review of competence for the purpose of renationalising authority that has presently been assigned to the EU. It appears, then, that the immediate effect of Brexit for the EU is somewhat less than is sometimes stated. Any shifts in the power balance and political preferences must be judged to have most importance with regard to *new* legislation. Modifying existing legislation can of course be done, but it is worth mentioning that the EU is a deeply *institutionalised* collaboration with inherent *inertia*. Thus the typical “British imprint” on European integration, which has been discussed in the report, does not automatically disappear when the British leave. Active choices from the remaining member states would be needed to arrive at such a change. Bearing in mind the negotiations that preceded the February agreement in 2016 between the United Kingdom and the EU – and the aftermath of the British referendum – it is, paradoxically enough, the British themselves who have been most anxious to change the content of the internal market’s rules, something that was not accepted by other member states.

### *Muddling through*

The third alternative is to continue to manage to get along on the present path, which seems to be the most likely scenario for the near future. In this scenario the integration process continues according to existing models, but some further reluctance regarding the *pace* of the integration may be a likely development.

One way to modify the third alternative would be to attempt to apply even more flexibility for the member states than is the case today. The EU is already being developed at more than one speed, but it may be that in future this could be more of a guideline and, for example, mean that groups of countries voluntarily commence a so-called deeper collaboration in certain areas. Some think that the image of an EU that forces compromises, followed by strictly applied observance of the rules, could become less prominent in this way. Instead the countries would have more room for manoeuvre to pick the parts they want and accountability occurs nationally. This would also be a way of handling the national differences in a union of 27 member states.

Critics of such a future point out that the EU’s success calls for just the opposite, that the common rules, package solutions and compromises are exactly what has made the EU into the comprehensive collaboration it is today and that experience of a voluntary approach without sanctions has not been successful (Grabbe and Lehne, 2016).

In this report we have not had to assess or give recommendations on how Sweden should address this (or which European policy issues Sweden should pursue), but as we perceive the present government’s preferences in relation to Brexit, they are based on firstly safeguarding the E27 and that the EU as a whole functions in the future. For example, Prime Minister Stefan Löfven said at the EU committee meeting in September 2016 that “it is important for the government that the EU stands united. Now is not the time for treaty amendments or more

supranationalism, instead what we need is simply an EU that functions and that delivers on the issues that people expect” (Riksdagen, 2016). Even though there are no formal opt-outs for Sweden with regard to the EMU, the question of Swedish EMU entry does not appear to be topical either now or in the foreseeable future. This means that a central issue for the future for Sweden, in relation to the development of the EU as a whole, will be to ensure that the conditions for being a full and influential member of the EU without the euro can remain (see also von Sydow, 2014; Jerneck, 2014).

## 9.7 Discussion

Even though the basic assessment is thus that in the near future the EU will “manage to get along”, there is a need to create a further assessment of these possible lines of development and attempt to actively create independent ideas about what would be a desirable development, and what possible positive and negative consequences there may be for Sweden in the various scenarios. Jerneck writes that “the prospects for promoting a policy of ideas in the debates about the future will be weakest if one is located in Europe’s fringes, where moreover the risk of being drawn in by centrifugal forces is greater than in the centre” (Jerneck, 2014:56). As noted earlier in the report, many of those interviewed have warned that Sweden has become far too associated with the United Kingdom. Similarly, in day-to-day EU work it will be important to widen the areas of contact and to obtain a clearer picture of what is worth striving for in both the short and the long term. It will be important for Sweden to have a well-thought-out attitude to the trend towards clearer groupings and speeds within the EU. As noted in the previous section, this is especially important in relation to the deepening of the EMU.

The assignment from the government included analysing the working methods and approaches that should be used for the purpose of ensuring Sweden’s influence in the EU. In relation to the more long-term consequences of Brexit and the future development of the EU, the conclusion is that Sweden should engage itself more actively in these issues, both at home and in interaction with others. The ability to analyse and assess change tendencies should be further evaluated so as to be able to be a proactive party in these discussions. It is also vital to be an active party in discussions about the future at an early stage. With regard to treaty changes as a result of the British withdrawal, it is important to quickly form well-founded impressions of what would be more or less desirable in such a process. In terms of which fora/collaborations one should support, it is important to seek close collaboration with those member countries that are perceived to be close to Sweden. This should not, however, stand in the way of seeking broader and/or unorthodox fora for exchanging ideas and reflection (see also Section 10). In discussions about the future of the EU it is especially important for smaller member states to be clear about which policy areas need more integration and where continual national self-determination is seen as especially valuable. It is also important to have well-founded assessments and preferences on future institutional development. As with other EU work, the assessment is that these are strengthened by good preparation and endorsement work at home.

Sweden should also endeavour to broaden and safeguard its relations with more member states and to be more active in terms of interaction with the supranational institutions. Our analysis points to a potentially ever more prominent role for the member states that are already influential. It is therefore particularly important to establish a functioning collaboration with many of these. It appears probable that the large member states, and especially Germany, will have a central role in the EU in future. At the same time it is worth mentioning that forms of collaboration need to vary between different areas and on different occasions, and also that the future EU consists of 27 member states, which means that a number of relationships should be

maintained. It is said that the EU is moving towards stronger internal regionalisation with groups of like-minded member states working more closely. There are, for example, areas for doing this within the framework of so-called enhanced cooperation. If the Swedish standpoint is that the EU27 should be held together, this should be taken into consideration when initiating new and closer collaborations, especially when they take on a more institutionalised form. With closer informal collaborations too, the *purpose* should be considered; sometimes they can be a good way forward, sometimes the opposite. Consideration can also be given to the *time* in the political cycle at which different initiatives are most appropriate. Attempting to influence the *agenda* together in certain constellations offers a possibility. At the same time the majorities in the council should naturally be considered as the time for decisions approaches. European integration is going on at several levels at the same time and in a large number of fora. For this reason it is also difficult to prescribe any particular attitude that suits all situations. It is thus important to remember that the choice of the *form* of a collaboration should be the result of a discussion about *what* one wishes to achieve. It is at the same time important to connect together more long-term issues and priorities with the more short-term issues. Finding functioning systems for making these priorities and getting them to be operational is important.

## 10. Swedish negotiating experience

SIEPS' assignment from the government with regard to Brexit included analysing "working methods and approaches to be used for the purpose of ensuring Sweden's influence in the EU". What requirements the future will bring is difficult to see, but one way of answering the question about methods and approaches for ensuring Sweden's influence is to draw valuable lessons from experience. What has worked during 20 years of Swedish membership? The recipe for the success from the past is after all the best we have at our disposal as a preparation for the future.

"The most important factors for explaining negotiating power are a country's size, population and GDP", according to the Legal Counsel of the European Council, Jean-Claude Piris (Tallberg, 2008; p. 689). Small and medium-sized member states can, however, compensate for their lack of more decisive formal power. Tallberg et al. express this well in their report "Power in Europe": "To summarise, research shows that small and medium-sized states have influence in the EU's legislative process and that there are ways for them to compensate for their lack of formal power. The key is to be active in the legislative process, to concentrate on a few issues and thereby prepare coordinated and well-thought-out positions, as well as actively creating coalitions. A necessary precondition for the small and medium-sized states in terms of obtaining influence is therefore the ability of the national administration to develop a position on a legislative proposal at the right time and to prepare the representatives at both civil servant and ministerial level before the negotiations in the Council of Ministers."

The report's summary concurs with the picture that SIEPS has developed through the interviews that were held with Swedish Coreper I and Coreper II ambassadors who have been active in Brussels during Sweden's time as an EU member. This section is primarily based on these interviews. The lessons learnt from the ambassadors would be relevant in a European Union with the United Kingdom still as a member. Since an EU without the United Kingdom means new challenges for Sweden, there is, however, a need to fine-tune the machinery so as to secure Swedish influence.

### *Clear standpoints – a basic precondition*

The first, self-evident, but sometimes neglected basic precondition for influence is to know what you wish to achieve. Many point out that this is absolutely the most important thing – to define Sweden's position *in concrete terms* and then be active as early as possible. It is also a precondition for being able to collaborate with other member states – knowing what you want. Experience shows that there are some obvious examples of breakthroughs for Swedish positions that have been based on clear prerequisites from the Swedish side and that have been followed by a high level of activity. During the Swedish presidency in 2001, enlargement, for example, was promoted very deliberately, and later resulted in the major enlargement of 2004. Seemingly against all odds, Sweden also pushed through the regulation on Public Access to the Institutions documents. Both are profile issues for Sweden where the position was clear and very proactive work laid the foundation for a result. Even though Sweden had power over the agenda from its presidency in 2001, it was still significant that Sweden had very clear positions on the matter.

### *Swedish positions in a European context*

Many of those interviewed spoke of the importance of thinking in a European context when formulating which issues to promote. It is obviously not enough to argue strictly from a Swedish perspective, one must also *look at other member states' interests* and formulate what one wishes to achieve in substance in a way that also makes it interesting to others. The rotating presidency has been a useful lesson for Sweden here. Thorough knowledge of other member states' positions and driving forces is a basic precondition not only for a successful presidency but also for being an influential member state. Enhanced knowledge of other member states has continued for a period of time after both Swedish presidencies, but is something that needs to be refilled in a strategic manner.

#### *The ability to prioritise in both large and small issues*

A relevant question to address with regard to other member states' interests is the ability in negotiations to be able to *prioritise what is important* and the preparedness to be able to drop something when this is in the interests of another member state in exchange for support for something that is of more interest for Sweden. Many of those we have interviewed believe there is room for constant improvement. Since one can never achieve everything in a negotiation, it is important to identify what is important as early as possible, promote this consistently and have a mandate to drop matters that are of less interest to Sweden but of significance for someone else. It is important for the EU representation in Brussels to receive instructions from the government that refer to the negotiations at hand and nothing else. There are examples of instructions that seem intended as a compromise between various political interests at home – within the government or between the government and the Riksdag – rather than relating to the negotiations. It is nothing new that there are different interests to be weighed up at home and obviously political differences must be resolved at political level. However, what many of those interviewed point out is that when this happens it is important not to lose focus on what a realistic outcome of negotiations in Brussels might be; the opposite can undermine Swedish influence.

#### *Secure the important axis between the Swedish Government Offices and representation in Brussels*

The permanent representation in Brussels is the extended arm in EU work of the Government Offices of Sweden (Regeringskansliet). In addition to the representatives participating in negotiation work, the civil servants of the representation have the important job of closely following developments in the EU institutions and reporting home. Several interviews point to the importance of trusting and open discussion between “Brussels” and “Stockholm”. It is in the meeting between what Sweden ultimately *wishes* to achieve and what is *realistic* to achieve that the most effective negotiating strategies in every single issue can be hammered out and Swedish influence maximised. Here too both presidencies have represented key periods of learning and there is consensus on the importance of securing continuing and effective collaboration between the Regeringskansliet and the EU representation in Brussels.

#### *The importance of fact-based or scientifically supported positions and analysing national implementation in good time*

As has been seen in the report, the British have been successful due to their frequently fact-based and/or scientifically supported positions. Sweden too has successfully pushed issues that have *scientifically supported positions*. Many also express the importance of fact-based argument in day-to-day negotiation work and stress the need for *close collaboration with the*

*Swedish authorities* during the preliminary work at home, because it is often in these authorities that the expert knowledge lies. Issues regarding the implementation of EU legislation can also be identified at an early stage through the authorities. Concrete examples of what consequences legislation can have in reality, from stakeholder organisations as well as those at local or regional level, can also be of great help in day-to-day negotiation work. The initiatives taken by the government after the study “The EU at Home” (the Government, 2016b) can therefore also be positive in this context.

One example of where science played a decisive role, taken from the first year of Swedish membership, is the proposal promoted by Sweden to prohibit antibiotics as growth-promoting additives in animal feed, something that was ultimately intended to protect public health. This may appear to be a technical issue, but it is also an example of when Sweden has succeeded in getting an issue onto the agenda by means of *collaboration between politics, the authorities, research and industry*. Much of the Swedish initiative proceeded by degrees all the way to the decision, an example of an issue that Sweden has promoted and continues to promote on scientific grounds. Moreover the cross-border logic is evident, since resistance to antibiotics is difficult to handle nationally (Edqvist and Borge Pedersen, 2001).

#### *Collaboration with other member states*

After the British referendum it was relevant to ask the question who would replace the United Kingdom as “Sweden’s closest ally” in the EU. However, a somewhat more complex picture emerged from the interviews with regard to the collaboration with other member states. The overall answer to how Sweden should collaborate with others was “it depends”. Which member states it is logical to collaborate with is not something static, but is obviously also affected by political developments in both Sweden and other countries.

Several of the Ambassadors point out that in most terms Germany must now be regarded as the engine of EU collaboration. Germany is thus an important player in the future, not least at the level of top politics. At the same time we must remember that day-to-day legislative work paints a different picture. Some also mention the importance of Sweden deepening Nordic-Baltic collaboration, for the purpose of being part of a larger group and therefore harder to ignore when the larger powers in the EU take the initiative. Moreover, intergovernmental initiatives, especially at heads of state and government level, have increased in recent years.

If we consider day-to-day negotiation work, the most recommended strategy is to corroborate with as many member states as possible. There are obviously types of issues where there are more or less fixed and like-minded groups, but the most successful negotiating strategy is still to work with the greatest possible number of countries and to be ready to work with those one might not normally collaborate with. Here many take the view that there is reason to be more *open to new constellations*, not least after Brexit.

#### *Early influence – Swedish civil servants in the EU’s institutions*

Sweden has also been successful through *placing its civil servants in the EU’s institutions*, albeit and for natural reasons on a smaller scale than is the case with the United Kingdom. Towards the end of the 1990s Sweden placed national environmental experts in the European Commission, who lacked such expertise in certain sectors. A number of national experts, mostly from the authorities, held strategic positions in the Commission and their work laid the foundations for EU chemicals legislation and was significant in the development of the EU’s

environmental legislation in general (Kronsell, 2002). Sieps believes that there is reason today to remember this example of a deliberate Swedish strategy that had a clear impact on policy development and which largely succeeded by means of expertise in the right place at the right time. Another area that can be mentioned is foreign policy, as a number of Swedish civil servants have had, and continue to have, important positions in both the Commission and the European External Action Service.

Sweden is at present relatively well represented at managerial level in the Commission. In terms of those coming up from below, the position is weaker. The number of Swedish national experts has also declined to an almost dramatic extent and Sweden has far fewer now than previously. As early as 2001 Statskontoret (the Swedish Agency for Public Management) investigated on its own initiative the Swedish presence in terms of national experts in the Commission. They found there were 40–45 Swedish experts in the Commission (Statskontoret, 2001), while today the number is 12 (European Commission, 2017). Statskontoret also found that the experts that Sweden sent were largely the result of which ministry or agency could find the financial resources, rather than which policy area was a priority for Sweden. Statskontoret also found that the ministries and agencies lacked clear routines for either preparing a new national expert or making best use of their new-found knowledge when they returned – a picture that still seems to apply today.

#### *Need for a Swedish presence in the EU capitals*

In a time of rapid changes, the need for information about developments in and between the EU's member states increases. There is also an increasing intergovernmental tendency in the EU, which also makes the capitals more important players in the European arenas, especially at heads of state and government level. With a permanent president of the European Council, self-initiated top-level meetings between member states in constellations that do not necessarily include everyone have become more common. The interviews also confirm that there is a continuing need for a *Swedish presence in the EU capitals*.

#### *Protect and develop the institutional "EU memory"*

Several interviewees mentioned the importance of a high level of competence among both civil servants and politicians. Some said that the quality of a country's central administration was also a decisive factor for influence. Having good knowledge of the rules of the game, both legally and politically, as well as expertise in the issues is a basic requirement for successfully exerting influence. Here too the Swedish presidencies in 2001 and 2009 have been useful periods for raising competence. But because presidencies now occur less often, as a result of the increased number of member states, the competence must constantly be secured.

How to handle personnel with EU experience from Brussels when they return home is an issue that is still something of a problem more than 15 years after Statskontoret's report. This applies not just to national experts, which were the subject of Statskontoret's report, but also those returning from other positions in the EU machinery and from the Swedish representation in Brussels. It is a recurring question – how to ensure that EU competence is taken care of and thus also prevent the situation arising where returning civil servants find that their career progress has been delayed by several years in Brussels. This could in turn weaken the possibilities of *attracting the best forces to service in Brussels*, which many have said is important to prevent.

*Develop negotiating competence in EU law*

There is a great need for competence in EU law, not least because of the loss of competence that is expected to arise when the British negotiators are no longer at the table. This is about knowledge of the CJEU's interpretation methods and legal practice. Legal argument can be a successful tool for achieving what is desired politically from a negotiation and there is room for improvement here.

*Organisational questions to consider*

The general picture from the interviews is that there is strong support for the way in which EU issues are currently organised in the Regeringskansliet. The EU ambassadors mention the move of EU coordination from the Ministry of Foreign Affairs to the Prime Minister's Office as something positive. However, a number of organisational issues can be identified where improvements could be considered.

EU competence in central administration needs to be maintained and strengthened, not least competence in EU law. Inspiration can be taken from the preparations for the Swedish presidencies in 2001 and 2009, where ambitions for EU issues were clearly raised and resources were found. There is reason for a renewed EU focus after Brexit.

The question of taking better care of returning EU competence is often discussed but no real solution has been found. The key may be to create more rotation between personnel in the Brussels representation, EU coordination roles in the Regeringskansliet, the bilateral embassies in the EU countries, government agencies and the EU institutions.

The fastest way to strengthen the Swedish presence in priority areas for Sweden is by means of seconded national experts. Since Britons are likely to disappear from important positions, there are particular reasons for Sweden to consider increasing the presence of Swedish national experts in important areas for Sweden. One way of facilitating this is to centralise planning, financing and follow-up in the Regeringskansliet and to ensure that sufficient resources are available.

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## Conclusions

In November 2016 the Swedish Institute for European Policy Studies (SIEPS) was commissioned by the government to analyse how the EU institutions and the balance between remaining member states would be affected by the United Kingdom's withdrawal from the EU. As a part of the assignment, SIEPS were also to specifically assess the consequences of withdrawal for Sweden and to consider what working methods and approaches should be used to ensure Sweden's influence in the EU.

There are numerous factors, besides Brexit, that affect the workings of the EU and which will be decisive for the development of the union, Taking into consideration the short time frame for the assignment, SIEPS has not been able to consider these external changes in any greater detail, rather the study has been limited to the consequences of Brexit – for the EU's institutions and for Sweden. We have not analysed how the actual negotiations of the British withdrawal will proceed, nor what the outcome of these will be. A necessary assumption for the analysis has been that the United Kingdom will de facto leave the EU and subsequently no longer participate in the EU's institutions. Since the EU is a political system under constant development, the question of the extent to which Brexit reinforces or weakens current trends in the EU has been included in part of the analysis.

For this report SIEPS has used existing research and other material. In addition to this, a couple of external researchers have been engaged, whose material have been used in completing the report, primarily in the analysis of the balance between the member states in the Council of the European Union. That data will also be published on its own later this year. SIEPS has also interviewed the Coreper I and Coreper II ambassadors who have represented Sweden in Brussels since Sweden joined the union in 1995. Finally, interviews have also been held with a number of senior EU civil servants.

SIEPS' main conclusion is that the United Kingdom – both directly and indirectly through the EU institutions – has made an impact on the Union's development as a whole and in particular in policy areas that are important for Sweden. The United Kingdom has also had an important role in ensuring that the EU acts only within its competences. At the same time, this analysis shows that there are signs that in recent years the United Kingdom has withdrawn somewhat from the EU. Even though it is a major and unique event for a country to leave the EU, the EU is a deeply institutionalised cooperation with an inherent robustness. As a result, in the short run, no upheavals in the EU are to be expected because of Brexit. On the other hand, discussions on the future of the EU could look different without the United Kingdom at the table, not least in terms of the balance between the EU27 and the eurozone. There is evidence that the United Kingdom has been very important for Sweden in the EU and Brexit will be particularly challenging in this regard. Sweden's EU strategy will thus need to be adapted to new circumstances to ensure future influence in the EU, both in day-to-day negotiations and in matters of more long-term significance.

### Consequences for the institutions

The obvious arena for the member states are the Council of Ministers and the European Council, where heads of state and government meet. Legislative proposals are primarily discussed in the various constellations of the Council of Ministers. The European Council is the EU's primary crisis manager and deals with pressing political issues. In recent years the European Council

has also gained a more prominent role. How has the United Kingdom made its mark on the Council of Ministers and the European Council? This report shows that British influence in both institutions has varied over time, from constructive and pragmatic to at times a reluctant member state.

Research shows that influence in the *European Council* is dependent on a country's size and institutional capacity. But influence is also dependent on the personal qualities and expertise of the head of government. In recent years the United Kingdom has not been perceived as particularly constructive in the European Council. An exception to this, for Sweden, is in terms of foreign policy in some aspects. The United Kingdom have not participated to any great extent in the crisis management of recent years, which is a natural consequence of the opt-outs that it has in the area of asylum and migration policies, among others. In other words, the effects of Brexit depend on which issues are on the European Council's agenda in future. For the foreseeable future, the absence of the United Kingdom will probably be most visible in foreign policy.

Also in the *Council of Ministers* the United Kingdom's commitment has varied. Many of the interviewees mentioned the British' effective working methods in the Council of Ministers during the United Kingdom's more constructive periods. The British have argued well, often with the support of clear and factually based positions. With their linguistic advantage, they have been able to find the right formulations to resolve various issues at the negotiating table. Also, other member states have benefited from the United Kingdom's analytical competences in the legal field.. The value of having a member state at the negotiating table that monitors the EU competences and the development of EU law should not be underestimated.

In various ways, the United Kingdom has also influenced the *Commission*, both in terms of working methods and the Commission's priorities. What will the consequences be for the Commission when the United Kingdom leaves? In the short term the EU's agenda will not be significantly affected, since it is already set in terms of long-term programmes and is therefore relatively fixed. In the longer term, the EU's priorities may be affected by the fact that a large country is no longer making its voice heard in terms of, for example, the value of free trade and the internal market. From a Swedish point of view, to put it simply, Brexit means that a large country that has frequently promoted issues that have been in line with Swedish priorities will no longer be there to influence the Commission.

The United Kingdom has also been an active member state in the Court of Justice of the European Union, *CJEU* by constantly challenging the boundaries of EU's competences. One interesting question is how the development of EU law might be affected when a member state is no longer referring legislation to the court to test whether it has been adopted on the correct legal basis – something that the United Kingdom has done repeatedly. In such a circumstance, the CJEU would only have cases referred to it from the EU's own institutions. There is good reasons for Sweden to consider a more active role towards the CJEU in the future. In practice this is about finding appropriate methods for identifying situations where legislation has been adopted on questionable or incorrect grounds. In such cases there should be an active political decision on whether the issue should be referred to the CJEU, the institution that is to test whether the EU's measures are consistent with the treaties.

The United Kingdom has not just monitored whether the EU has acted within its competences, but has also, through observations made in connection with preliminary rulings, contributed with legal arguments to the CJEU. These have in turn made a mark on CJEU decisions and

influenced the development of EU law. The significance of the CJEU for the development of EU law is sometimes overlooked, and in light of Brexit a more active role for Sweden should be considered.

One obvious consequence of Brexit is that the number of *British civil servants* in all the EU's institutions will gradually decline. This is a development that has already started: the number of Britons in important positions has declined in recent years. This applies to the Commission, the Council of Ministers, the European Parliament, the CJEU and the European External Action Service (EEAS). Many of the interviewees believe that the absence of skilled British civil servants will be a general loss for the institutions. Over the years the British civil servants has also made its mark on *how* the institutions work, and contributed to the strong position of English as a working language.

The EEAS is relatively new and is the EU's diplomatic instrument on the global arena, with the task of implementing the Common Foreign and Security Policy. The United Kingdom has been a key player in the development of the EEAS and has, through its military capacity, its diplomatic network and knowledge, also influenced EU policy. When the United Kingdom leaves the EU, this could mean a loss for those member states who want to keep an intergovernmental approach to foreign policy.

For the *European Parliament*, the direct effects of Brexit will be about what happens when the British delegation of 73 mandates is removed. This represents almost 10 per cent of the Members of the European Parliament. Also in the EP, studies indicate a general trend of a gradually declining British influence: in recent years British Members of the European Parliament have had a more peripheral role in the EP than previously, fewer Britons have chaired committees and fewer Britons have been rapporteurs for important legislative proposals. The European Parliament is organised into party groups and the balance between the groups will be affected when the British Members of the European Parliament leaves. The EPP, currently the largest group, no longer house the British Conservatives, so Brexit will have no effect on this group. The S&D, the second largest group, includes 20 British Labour members. Brexit will thus weaken the S&D and the gap between the two largest groups will increase to the EPP's benefit. Other party groups with a large number of Britons include the recently formed ECR (20 Tory members) and the EFDD (20 UKIP members). What happens to the United Kingdom's 73 mandates when the country leaves the EU is an important and unsolved question. This in turn may affect the future political balance in the European Parliament, including the number of Swedish members.

As regards the *political direction* of the EU, the interviewees gave an almost unanimous picture of the British contribution. This has mainly been about the development of the internal market, competition policy, trade policy, better legislation, enlargement, and foreign and security policy. From the Swedish point of view, it has also been valuable that the British have been a force for budget restriction. It should be pointed out, however, that the immediate effect of the British withdrawal will be less than is sometimes expressed. Any shift in the balance of power and political preferences will apply mostly to new legislation. Modifying existing legislation can of course be done, but the EU is a deeply institutionalised collaboration and changing either legislation or legal practice takes time. Thus the typical "British imprint" on political content, which has been discussed in the report, does not automatically disappear when the British leave. Active choices from the remaining member states are needed to arrive at such a change.

## The institutional balance

How will Brexit affect the *balance between the EU's institutions*? Within the framework of the analyses that have been performed on the consequences for the individual institutions there is a recurring theme: the British emphasis on national sovereignty and intergovernmental cooperation. The United Kingdom has generally favoured a more intergovernmental interpretation of what the EU should be.

Also, Brexit is happening in the context of an institutional development that is already under way and in which there are parallel trends. On the one hand, the EU can be characterised as increasingly moving at different speeds, not least because of the increased use of enhanced cooperation and opt-outs. Subsidiarity is also mentioned more frequently, including through a strengthened role for the national parliaments. On the other hand, there are changes in a more supranational direction, through the increasing power of the European Parliament and because the president of the Commission is now appointed on the basis of the elections to the European Parliament.

As has been mentioned, the United Kingdom's constant resistance to more supranational cooperation and the constant scrutiny of EU competences have made a mark on the institutional balance. This could have consequences over time, at the same time as the appetite for a great federal leap is not considered very big at present.

## The balance between the member states

Sweden is the member state that has most often voted with the United Kingdom. This has been the case in almost nine out of ten votes since 2009. Statistics also show that in recent years the British have more frequently been on the losing side. The British withdrawal also coincides with the new voting rules in the Council. Calculations based on the new voting rules show that it is mainly the large member states that will have increased voting power, which they already gained through the Lisbon Treaty.

Voting behaviour in the Council is partly explained by a strong norm of not voting against the majority. The Council members do not wish to find themselves on the losing side in a vote and negotiations are aimed at getting the majority as close to the leading position. It is then also natural to vote *for* the final compromise. If, in any policy area, a member country negotiates actively but then often votes no, this inevitably leads to a decreased interest in actively involving that member state in future negotiations. This is a kind of basic logic in council negotiations with a qualified majority as the decision rule. There are obviously occasions when member states need to make it clear at home that they do not accept a compromise.

Studies have tried in various ways to find out how the member countries arrive at a decision. In the study by Huhe, Naurin and Thomson, which will be published by SIEPS later this year, a analysis was made of around 300 controversial issues that have been decided by the Council up until 2008, and the question asked was whether the outcomes would have been different if the United Kingdom had not been a member. The study is based on interviews conducted with civil servants over a period of more than ten years. According to the model used in the analysis, the effect on the outcome if the United Kingdom had not been a member would have been modest. In terms of policy direction, these small changes could have led to legislation with somewhat greater regulation. The study also shows that Sweden's, followed by the Netherlands', Ireland's

and Denmark's positions have been closest to the British, while the Mediterranean countries such as Spain, Greece and Italy have been on the opposite side.

Another way of analysing how member states act in the Council is to study how they collaborate with each other. Earlier studies have shown that Sweden, in relation to its size, has an unusually high network capital (a tool for measuring how civil servants in working groups in the council value collaboration with counterparts from other countries). A high *network capital* is an important resource in negotiations, because it leads to opportunities to obtain and spread information and build alliances. If a member state has strong *network centrality*, it has a strategic ability to quickly and easily link together a great number of member states. Interviews were held with more than 400 civil servants from all the member states (2012 and 2015) and the network circumstances in a number of the council's working groups and committees were analysed. The study compares the member states' network centrality with the United Kingdom as a member to a situation where the United Kingdom has left the EU. In other words: will the ability of the member states to quickly establish contact with others be affected of Brexit? The study discovers both direct and indirect collaboration patterns in the council, but it is important to remember that the study does not take into account any changes in the strategic behaviour of the member states after Brexit. The study's results are still of interest and show which countries are most affected by Brexit. Sweden, Ireland, the Netherlands and Denmark have strong direct network links to the United Kingdom, which cannot at present be compensated for through available indirect links with other member states. In more concrete terms, we can say that the number of network steps between Sweden and other member states will increase with Brexit.

Another important result deals with the ability to bridge distances between other member states. When the United Kingdom withdraws, some member states will be strengthened in this respect. It is primarily the large member states of Germany, France and Poland that will strengthen their centrality in the network dynamic. In other words, the study indicates that Brexit will increase the distance between several member states. This could weaken the effectiveness in the Council if the member states do not find other network relationships to compensate for the vacuum left by the United Kingdom.

To summarise, from Sweden's point of view, Brexit means that a closely allied partner will be leaving the EU. This is confirmed by our interviews and all the studies that show that Sweden tends to be close to the United Kingdom. This applies both to the actual voting and also to the positions that have been held during the legislative processes. In this context, Sweden is the country that has been most like the British. When the British leaves, Sweden will not only lose a close partner but also an important bridge to other member states. A key task in ensuring Sweden's future influence will therefore be to intensify work on and ensure that there are resources available for establishing close new relationships with other member states. It is important to note – and this is shown in both the network analysis and the interviews – that it can be risky to limit the investment to certain strong bilateral relationships. EU cooperation covers many areas and in the future, as well as now, effective work in the EU will still be based on being able to maintain many different relationships in an observant and strategic manner. The analysis shows that Sweden and a number of geographically close countries will tend to lose most when the United Kingdom leaves the EU. Strengthening links with these countries could therefore be a successful strategy. But sometimes the opposite strategy – seeking relationships with more distant countries – may be the way forward.

## Sweden and the EMU

Another issue regarding the balance between member states that is made more relevant by Brexit is the relationship between the euro and non-euro countries. With Brexit, the group of non-euro countries will lose its most important member. Ecofin will be weakened in relation to the euro group, although the effects are difficult to concretise. Even before Brexit, the euro countries are able to muster on their own a qualified majority in the council. Thus, in theory they can as a group override the non-euro countries. However, even though much is currently settled in advance within the euro group, the euro countries do not vote alike on all issues.

One tangible and concrete effect of the British withdrawal is that the monitoring of the euro group's work will diminish and this will affect all the non-euro countries. Brexit could weaken opportunities for monitoring or delaying euro group initiatives that may be discriminatory.

Will a weakened Ecofin, then, have a negative effect on Swedish influence in other EU policy areas? There are indications that the influence in other policy areas thus far has been relatively unaffected by Sweden being outside the EMU. This may also be the case after Brexit, but remaining outside gives good reason to take the EMU issue as a whole seriously and to establish a long-term Swedish strategy for how best to handle the deepening of the EMU. A further conclusion, in terms of consequences for Sweden, is that the very extensive and close monitoring that the UK has performed historically to make sure that the deepening of the EMU is not having negative effects on non-euro countries – primarily in the European Council, Council of Ministers and CJEU – will simply disappear. The question of how adequate monitoring can be sustained and what role Sweden could play in the group of outsider countries needs to be analysed further.

## Negotiating experiences from Sweden's EU membership

Analysis has shown that Sweden will face challenges in the aftermath of Brexit. The interviews concluded reveal some of the experiences and lessons that can be drawn from around 20 years of Swedish membership. These are general recommendations that are valid also without Brexit, but in times when the Swedish EU machinery needs further fine-tuning, there are reason to remind ourselves of what experiences has demonstrated to work.

- A basic prerequisite for influence is to clearly define Sweden's position in concrete terms and then be active as early as possible.. To know what you want is also a precondition for being able to collaborate with other member states. Many have commented on the importance of taking the European context into account – of thinking in European terms – when formulating what to promote at an early stage of the process, not least in relation to the Commission.
- It is important to show understanding of other member states' interests, in order to be listened to. It is also important to prioritise in negotiations in order to exchange gain support on more central interests for Sweden. There is always room for improvement here. Analysis of the consequences of Brexit also shows an increasing need to develop collaboration with other member states, and to do this, knowledge and information about other member states must be improved constantly.
- Fact-based and scientifically supported arguments have proved to work well in negotiations. Functioning collaboration between the Government Offices of Sweden and the Swedish

administrative authorities in ongoing EU work is a prerequisite. Improved EU law arguments can also be a successful tool for being successful in negotiations. Strengthened competence of EU law should be seriously considered.

### Organisational questions to consider:

- There are examples where Sweden has successfully had an impact by, for example, putting experts into EU institutions in the right place at the right time. The fastest way to strengthen the Swedish presence in the Commission is by means of seconded national experts. At the start of 2000 there were 40–45 Swedish national experts in the Commission; in 2017 there are 12. This dramatic fall begs the question of whether a stronger presence of Swedish national experts in priority areas should not be considered. One way of facilitating this is to centralise both planning, financing as well as follow-up in the Government Offices of Sweden
- Experience also shows the importance of an open and trustful discussion between the permanent representation in Brussels and the Government Offices of Sweden in Stockholm. It is in the meeting between what Sweden ultimately wishes to achieve and what is realistic to achieve that the most effective negotiating strategies in every single issue can be agreed upon and Swedish influence maximised. The question of taking better care of the EU competence that civil servants bring back from Brussels is often discussed but no real solution seems to have been found. One way forward could be to create more rotation between the services at the Brussels representation, the EU coordination units in the Government Offices of Sweden, the Swedish embassies in the EU countries, the government agencies that deal with a lot of EU issues and the EU institutions.

### The future of the EU

Finally, discussions of the EU's future has also intensified following the outcome of the British referendum. We can distinguish three main scenarios in the debate about the future. The first concerns the “great leap”. The British withdrawal may be seen by some as a golden opportunity to move the EU, and not least the eurozone, forward and strengthen the supranational institutions without British opposition. The second possible development is “renationalisation”. This could occur in a radical form – i.e., through further withdrawals, or by means of returning some competences to the member states. The final alternative is “muddling through”, which means simply continuing along established lines. Here integration would continue, but a certain reluctance regarding the pace of integration may be a probable development.

SIEPS has worked on the assumption that Sweden wants to protect the cohesion of the EU27 and that the question of Swedish EMU membership is not a topic for the foreseeable future. In terms of the more long-term consequences of Brexit and the future development of the EU, the conclusion is that Sweden should engage itself more actively, both at home and in interaction with others. For the purpose of being a proactive party in both the discussion on the future of the EU and in daily negotiations, more resources should be available to analyse and assess trends and changes, including the issue of a deepened EMU.

## Appendix List of interviews

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