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## The British Journal of Politics and International Relations

### **'Defend and extend': British business strategy, EU employment policy and the emerging politics of Brexit**

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## **'Defend and Extend': British business strategy, EU employment policy and the emerging politics of Brexit**

### **Introduction**

Leading sections of British business strongly advocated a 'Remain' vote throughout the EU referendum campaign. The Confederation of British Industry (CBI), the CEOs of some of the UK's largest firms and lobby groups based in the City all stressed the risk which 'Brexit' posed to investment, skills and competitiveness. The shock 'leave' vote in June 2016 therefore represented a major defeat for the 'Remain' campaign and for large swathes of British capital (Thompson, 2016: 114). In the immediate aftermath of the EU referendum, the situation from the perspective of British business seemingly deteriorated further. As sterling fell to a thirty year low, the new Prime Minister, Theresa May, pivoted rhetorically towards an economic programme which was widely condemned as inimical to the 'business interest' (Sands, 2016).

In this uncertain context, one of the key questions for analysts of British politics is how British business might attempt to regain control of the domestic agenda and thereby shape the Brexit process in line with its perceived interests. However, two obstacles stand in the way of 'mapping' how British business might seek to achieve its objectives during the course of the Brexit negotiations and beyond. First, the politics of Brexit is a 'moving target' which is highly complex, evolving rapidly and embodies a wide array of competing social and political forces. Second – and more worryingly - the existing literature is ill-equipped to interrogate the emerging relationship between British business strategy and Brexit. This is because the British politics and, more surprisingly, British political economy literatures have tended to neglect the question of business power and strategy within the UK. As such, no comprehensive study of the

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3 relation between business strategy, British politics and European integration has been  
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5 conducted.  
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8 This paper advances a distinctive account of British business strategy in relation to the  
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10 EU in the period before the June 2016 referendum. The paper is organised around two core  
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12 questions. First, in what ways has British business attempted to secure its objectives in the past  
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14 within the EU? Second, how might Brexit problematise this strategic orientation? In order to  
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16 answer these questions, the paper focuses primarily on British business strategy in relation to  
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18 EU social and employment policy (EU S&EP). Since the signing of the Maastricht Treaty, British  
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20 business interest groups have argued that the growth of EU S&EP threatens their freedom to  
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22 control labour costs (Towers, 1992: 85). Focussing on British business attempts to minimise  
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24 the impact of EU S&EP therefore provides us with a useful lens through which to identify British  
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26 business strategy in relation to European integration. Through a documentary analysis of  
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28 business submissions to the Balance of Competences review (a 2013 consultation led by the  
29  
30 Coalition government on UK-EU relations) and of policy and strategy documents from the  
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32 Confederation of British Industry (CBI) between 2010 and 2016, the paper argues that British  
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34 business has attempted to 'defend' the UK's labour market regime from EU S&EP through  
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36 deploying the formal and informal power of the British state inside the EU institutions.  
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40 This synthesis of British business and state power is in evidence beyond the field of EU  
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42 S&EP. As evidenced below, in relation to the Capital Markets Union (CMU) agenda, British  
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44 business also sought to utilise the power of British policymakers inside the EU in order to  
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46 advance their interests and to 'extend' liberalisation outwards. British business interest groups  
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48 have therefore historically attempted to 'defend and extend' a liberalising agenda through  
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50 deploying the formal and informal power of British policymakers *inside* the EU institutions. The  
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52 ability to *influence* the rules of the Single Market has been as important to British business  
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54 interest groups as *access* to the Single Market. This analysis is suggestive of a series of  
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56 dilemmas which now face British business interests as the UK embarks upon the Brexit process.  
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3 The paper proceeds as follows. The first section argues that the issue of business agency  
4 has been neglected both empirically and conceptually in the British political economy literature.  
5 The second and third sections analyse the relation between business strategy and EU S&EP,  
6 analysing how business interest groups – and in particular the CBI – sought to deploy the power  
7 of the British state within the EU in order to ‘defend’ the UK’s flexible labour market from  
8 supranational upregulation. The fourth section extends the analysis and argues that the UK’s  
9 position as a powerful member state was also an important factor in the financial sector’s  
10 approach to the CMU agenda. The fifth section outlines how the ‘leave’ vote has problematised  
11 the ‘defend and extend’ strategy of British business, generating a series of dilemmas from the  
12 perspective of British capital. The final section concludes.  
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### 23 24 **‘Capital as Agency’: British Politics and Business Representation**

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27 It is something of a truism that business is a powerful and privileged site of power  
28 within the advanced capitalist world (Crouch, 2004). Since the 1980s, capital has consistently  
29 increased its share of overall economic output relative to labour across Europe (Stockhammer,  
30 2016). Amidst this structural shift in favour of business, the UK’s liberal model of capitalism is  
31 commonly identified as a leading example of an economy which caters to the preferences of  
32 international capital. This is reflected in the UK’s comparatively low corporation tax regime, its  
33 openness to international capital flows, its limited employment protections and in its highly  
34 restrictive trade union laws. However, while the political economy literature acknowledges the  
35 structural bias of UK policy towards the preferences of internationally mobile capital, this same  
36 literature has tended to neglect the ways in which business itself embodies a crucial – if complex  
37 and often contradictory – site of *agency* within the UK and further afield.  
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51 The absence of a theorisation of business agency can be seen throughout British politics  
52 and political economy scholarship. Across these literatures, there is a strong tendency to  
53 conceptualise *the state* as a site of contestation, contingency and discursive struggle whilst  
54 treating *capital* as an external factor which conditions the terrain within which politics takes  
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3 place. For example, whilst advocates of the 'statecraft' approach have argued that the Coalition  
4 government's economic policy was driven primarily by electoral considerations (Gamble, 2014;  
5 Heppell & Seawright, 2012), this privileging of the 'electoral' sphere means that the question of  
6 how business power is organised and mobilised is not explicitly problematised. Similarly, whilst  
7 constructivist work has detailed how 'ideas' play an important role in shaping processes of  
8 social and political change within the UK and further afield (Baker & Underhill, 2015), these  
9 approaches overwhelming focus on ideational continuities and changes within formal  
10 policymaking institutions whilst neglecting the ways in which business attempts to organise  
11 itself as a collective political actor. Whilst the literature rightly points out that 'external'  
12 processes – such as 'globalisation' – can be constructed in a variety of different ways by state  
13 actors, the organisation of these 'external' forces themselves is rarely subjected to critical  
14 enquiry (see: Watson & Hay, 2003). This statist bias in the British political economy literature  
15 means that the question of business-government interactions in general and the question of  
16 corporate strategy in particular have been relatively neglected.<sup>1</sup>  
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33 Capital is not merely a 'structural constraint' on policymakers' action. It is also in an  
34 important sense an *agent* capable of organising itself collectively and making strategic  
35 interventions into social and economic relations (Streeck, 2016). We can identify three  
36 modalities through which business can organise into a relatively coherent political force. First,  
37 firms can develop their own internal 'political arms', for example by funding 'in house' lobbying  
38 units, which can attempt to shape the regulatory climate in line with the firm's perceived  
39 interests (Culpepper, 2015: 396). Informal connections between company directors or boards  
40 and government actors are another means through which individual firms can yield  
41 'instrumental power' over the legislative process (Block & Piven, 2010: 207). Second, business  
42 can seek to exert influence by utilising its 'agenda setting' power, for example through  
43 intervening within the media and by constructing its own corporate interest as congruent with  
44 the 'general' interest of society as a whole (Bell & Hindmoor, 2014; Macartney, 2008). Third,  
45 firms can organise into 'business interest groups' at the sectoral, regional, national or  
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3 supranational levels. Within a specific economic sector, clusters of firms might form 'trade  
4 associations' which represent the interests of the branch of industry to which they belong  
5 (Grant, 1993: 4).<sup>2</sup> Similarly, firms drawn from different sectors of the economy may become  
6 members of 'employer associations' which attempt to shape government policy in line with the  
7 preferences of the 'business community' (Grant, 1993). 'Peak' or 'umbrella' organisations such  
8 as the Confederation of British Industry (CBI), the Institute of Directors (IOD) or more  
9 regionally-focussed business groups such as the Chambers of Commerce fall into this category.  
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11 In what follows, it is this third form of organisation, that of business interest groups, which  
12 forms the core of the analysis of British business strategy in relation to EU S&EP policy.  
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22 UK membership of the EU produced a series of threats and opportunities from the  
23 perspective of British business. The UK's growth model has since the 1980s been underpinned  
24 by minimal employment protections relative to other advanced economies (Coates, 2001). As  
25 outlined below, the development of supranational EU S&EP after the Maastricht Treaty  
26 potentially threatened this comparative advantage. Simultaneously, the UK's leading export  
27 sectors - in particular those concentrated in financial and business services - were also well-  
28 positioned to benefit from the deepening of the Single Market. Two distinct objectives have  
29 therefore underpinned the strategic orientation of British business in relation to European  
30 integration since the 1990s: to *defend* the UK's liberal labour market regime from supranational  
31 encroachment and to *extend* a liberalising bias outwards into the wider framework of European  
32 capitalism.  
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46 In pursuit of these objectives, British business interest groups have deployed a number  
47 of strategies, including directly lobbying the Commission and exerting influence through the  
48 'umbrella' business association Business Europe (Greenwood, 2011: 69). This article focuses on  
49 a narrower but equally important dimension of British business strategy: the ways in which  
50 British business interest groups have sought to deploy the formal and informal power of UK  
51 policymakers inside the EU in order to advance a liberalising agenda. By 'formal' power, I refer  
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3 to the capacity of UK policymakers within EU institutions such as the Council and the European  
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5 Parliament to directly shape the legislative process through formal channels, either by voting or  
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7 by building liberalising alliances with other member states. By 'informal' power I refer to the  
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9 ability of UK officials to indirectly shape the policy process, for example through acting as  
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11 rapporteurs or committee chairs inside the EU institutions. As outlined in the empirical material  
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13 below, the capacity of UK policymakers to exercise these forms of power inside the EU  
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15 institutions has been a central component of British business attempts to 'defend and extend' a  
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17 liberalisation agenda within the EU. Influence over well as 'access' to the Single Market has been  
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19 a key feature of British business strategy in relation to European integration. However, Brexit  
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21 undermines this orientation, raising important questions about the relation between British  
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23 business strategy and European integration in the future.  
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27 Throughout this article 'British' business refers to firms that are either headquartered  
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29 within or have substantial operations within the UK. Of course, many British-based businesses –  
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31 such as large banks in the City of London and export-oriented production hubs in the  
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33 automotive and pharmaceutical sectors – are highly internationalised entities. However, the  
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35 national 'embeddedness' of trans-nationalised entities is of analytical significance for two  
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37 reasons. First, the UK has a distinct national regulatory regime which draws in particular forms  
38  
39 of capital. For example, the UK's common law system is amenable to financial services and  
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41 shapes the strategic orientation of internationalised firms in relation to the British state  
42  
43 important ways (Palan, 2015; Pistor, 2013). Second, the political proximity between powerful  
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45 economic sectors and the UK government is well established. For example, the 'City-Bank-  
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47 Treasury nexus' embodies a combination of public and private power which is specific to the  
48  
49 UK's institutional and political context (Ingham, 1984). With these qualifications in mind, we  
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51 can now turn to the relation between British business strategy, EU employment policy and the  
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53 emerging politics of Brexit.  
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## 55 56 **British Business and EU Social and Employment Policy** 57 58 59 60



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3 Since the relaunch of European integration in the 1980s, political groupings within the  
4 EU have argued that the development of the Single Market should be complemented by the  
5 cultivation of a 'social dimension' to EU legislation (Bailey, 2008). The need to enhance EU social  
6 and employment policy (EU S&EP) is typically justified on the grounds that a minimum floor of  
7 supranational employment standards is necessary to prevent 'social dumping' and competitive  
8 deregulation between member states (Cremers, et al., 2007: 525). The prospect of developing  
9 extensive EU S&EP was ostensibly boosted under the Delors Commission, which extended EU  
10 competence over employment and industrial relations policy and introduced qualified majority  
11 voting across a broad range of social policy areas (Forde & Slater, 2016: 594). As a result, a  
12 range of EU employment directives and regulations – since the Amsterdam Treaty embodied in  
13 Articles 151 - 161 of the TFEU<sup>3</sup> – attest to the emergence of a distinctive, albeit relatively weak,  
14 body of supranational social policy which seeks to establish a 'minimum floor' of labour  
15 protections across the EU.  
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31 The scope and effectiveness of EU S&EP should not be overstated. Despite the professed  
32 ambitions of European social democrats, profound institutional and political barriers prevent  
33 the emergence of a fully-fledged 'Social Europe' (Scharpf, 2010). 'Negative' (market) as opposed  
34 to 'positive' (social) integration has been the predominant form of EU development both before  
35 and after the signing of the Maastricht Treaty. The predominance of negative integration has in  
36 turn created a range of pressures on the welfare systems of 'coordinated market economies'  
37 whilst leaving 'liberal market economies' relatively intact (Scharpf, 2010). Nevertheless, it  
38 would be wrong to conclude that the limited development of the EU's 'social dimension' has had  
39 no impact on the EU's 'liberal market economies'. In the case of the UK, since the New Labour  
40 government opted-in to the 'Social Chapter', EU directives have had a significant impact on the  
41 form and content of UK industrial relations and employment law (Hyman, 2008). EU legislation  
42 covering working time, holiday pay, parental leave, workplace consultation rights, agency  
43 workers and acquired rights have all been transposed into UK legislation and have acted as a  
44 European 'floor' on UK employment rights.  
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3 During the Maastricht negotiations, British business groups including the CBI and the  
4 Institute of Directors (IOD) actively lobbied for an 'opt-out' from the Social Chapter (Lourie,  
5 1997). Speaking at the IOD in 1996, John Major stated to widespread applause that, "the Social  
6 Chapter should be seen for what it is - a European jobs tax, a tax on jobs by the front door and in  
7 time a tax on jobs by the back door... [it] would cost jobs and not create them...our enterprise  
8 economy is not negotiable, our economic success is too valuable to be wrecked by socialist  
9 experiments" (Major, 1996). British business interest groups' first line of defence against EU  
10 S&EP was therefore to rely upon the formal power of UK policymakers to insulate the UK's  
11 labour market regime through securing derogations from the emerging body of supranational  
12 employment law. When New Labour announced it would 'opt-in' to the EU's Social Chapter by  
13 1998, leading employer organisations joined the Conservatives in opposition to this proposal.  
14 The CBI, for example, staunchly opposed the 'opt-in' on the grounds that it would increase the  
15 bureaucratic burden on British businesses and would result in legislation ill-suited to the UK's  
16 economic model (Falkner, 1996: 10). Ian Lang, President of the Board of Trade, claimed at the  
17 time that the 'overwhelming view' of industry was "that acceptance of the social chapter would  
18 seriously damage competitiveness and employment because it would allow the United Kingdom  
19 to be out-voted on measures imposing unnecessary burdens and costs on businesses" (cited in  
20 Lourie, 1997: 19).

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41 In the event, business was unsuccessful in opposing the incorporation of the Social  
42 Chapter into UK law. As such, a primary concern for British employer organisations in relation  
43 to the EU since 1998 has been how to 'defend' the UK's flexible labour market regime by limiting  
44 the scope and domestic impact of supranational legislation. The content of EU S&EP has of  
45 course evolved considerably since 1998 and British business strategy has evolved along with it.  
46 The following section therefore focuses specifically on the period between 2010 and 2016 and  
47 identifies (i) areas of EU S&EP which British business groups have identified as particularly  
48 egregious and (b) the broad strategy which British business has adopted in order to limit the  
49 domestic impact of this legislation.  
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3 In order to establish an indicative account of British business strategy in this field, a  
4 document analysis of the Coalition government's 'Balance of Competences' (BOC) review was  
5 conducted (FCO, 2014).<sup>4</sup> One specific arm of the review focussed on EU 'Social and Employment  
6 Policy' and brought together submissions of evidence from a range of social actors, including  
7 trade unions, parliamentarians, business lobby groups, legal practitioners and NGOs (HM  
8 Government, 2014: 74). Business was well-represented in this section of the review, with  
9 submissions of evidence from the IOD, CBI, EEF manufacturers association and the Federation  
10 of Small Businesses (FSB) amongst a range of other employer organisations. In what follows,  
11 these submissions were analysed in order to establish some of the common concerns of British  
12 business in relation to the scope, content and implementation of EU S&EP in the period prior to  
13 the EU referendum.  
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26 We can identify three broad areas of common business concern in the documents. First,  
27 there was strong tendency – identified across all the submissions of evidence reviewed – to  
28 suggest that EU S&EP has too often over-stepped the 'minimalist' threshold favoured by  
29 business. The employer organisations which were studied broadly acknowledge – at least on  
30 paper – the legitimacy of some degree of 'proportionate legislation' in the field of EU S&EP (CBI,  
31 2013a; EEF, 2013: 2). For example, EEF, the manufacturers association, wrote that a "baseline  
32 of labour market regulation which prevents businesses from competing unfairly against each  
33 other" is necessary at the EU level (EEF, 2013: 2). However, the reviewed submissions were  
34 consistent in arguing that these common EU labour standards should be kept as minimalist as  
35 possible. The EEF submission goes on to warn that, "Europe's businesses are competing with  
36 other global businesses which do not have the costs and associated administrative burdens  
37 imposed in Europe", suggesting that restraining regulatory costs should be a top EU priority.  
38 More forcefully, the IOD questions the overall value of EU S&EP, claiming that attempts to  
39 impose minimum labour standards across the EU undermines competitiveness and drives  
40 employers to seek atypical labour from outside the EEA (IOD, 2013a: 3). The CBI in its  
41 submission similarly advocates cutting back on the costs of EU S&EP, claiming that 54 per cent  
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3 of its members consider continued EU activism in this area to represent a “threat to UK labour  
4 market competitiveness” (CBI, 2013a: 3). The prevailing consensus in the documents, then, is  
5 that some degree of EU S&EP is in principle permissible but that the ‘reach’ of this legislation  
6 should be strongly curtailed.  
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11 [FIGURE 1 HERE]  
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15 Second, the employer organisations consistently identified a relatively narrow but  
16 specific set of EU directives and regulations which they considered to be unduly burdensome  
17 and in need of reform. Figure 1 outlines the number of mentions accorded to different EU  
18 directives and regulations within the reviewed submissions. In each case, the graph charts  
19 whether the EU directive is referred to ‘positively’ (i.e. that it is viewed as a ‘good thing’ for  
20 business which should be maintained or extended), ‘negatively’ (i.e. that it is viewed as  
21 burdensome on business and in need of reform, either at the EU or UK levels) or that it is  
22 viewed in a ‘neutral’ light. As the graph indicates, very few EU S&EP directives are viewed  
23 ‘positively’ by the British business groups surveyed. Two areas of EU S&EP are regularly  
24 highlighted as having a ‘negative’ impact on business: the ‘Working Time Directive’ (WTD) and  
25 the ‘Agency Worker Directive’ (AWD). These directives are commonly identified as creating  
26 large ‘compliance costs’ on employer organisations (Coulter & Hancké, 2016). For example, the  
27 IOD and FSB bemoan the WTD’s requirement that ‘annual leave’ can be accrued during periods  
28 of absence (FSB, 2014: 6; IOD, 2013a: 4), whilst the British Hospitality Association highlighted  
29 the costs to small businesses of complying with the UK’s ‘opt-out’ from the 48 hour working  
30 week (BHA, 2013: 1). The threat of the UK losing its opt-out from the WTD is also frequently  
31 cited as a common concern amongst the business groups surveyed (BHA, 2013: 1; CBI, 2013a:  
32 3; IOD, 2013a: 14; LCCI, 2013: 5). A shared range of concerns can also be identified with  
33 respect to the AWD (HM Government, 2014: 39).  
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55 A third area of commonality relates to the broad strategic orientation of the employer  
56 organisations which were studied. For instance, none of the employer organisations cited  
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3 advocated either that the UK should leave the EU or that employment policy should be  
4 'repatriated' to the UK (EEF, 2013: 16).<sup>5</sup> Furthermore, the business groups surveyed advocate a  
5 similar range of broad objectives, including the need to secure 'better' – in other words more  
6 limited – EU regulation, to limit 'gold plating' and for the EU institutions to apply the principle of  
7 'subsidiarity' more consistently (HM Government, 2014). A further concern amongst the  
8 employer organisations was the threat of EU actors and institutions extending their competence  
9 over employment policy too far in the future and thereby threatening the UK's flexible labour  
10 market regime. For example, a number of the employer organisations voiced concerns around  
11 the UK's 'opt-out' from the WTD's 48 hour working week provision being repealed (HM  
12 Government, 2014). Similarly, a number of British businesses voiced concerns around the  
13 possible repeal of the AWD's 'Swedish derogation' which allows client firms to avoid paying  
14 agency workers a wage equivalent to permanently employed staff so long as the agency worker  
15 in question is employed on a 'permanent' basis with an agency firm on a 'pay between  
16 assignments' model (Forde & Slater, 2016).  
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### 32 **The CBI, business strategy and EU Employment Policy (2010 - 2016)**

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36 Rather than detailing the nuances of each business interest groups' stated priorities in  
37 the BOC review, it is instructive to focus on one 'peak' organisation as representative of British  
38 business strategy in the field of EU S&EP. In this regard, focussing on the strategic positioning of  
39 the CBI and its approach to EU S&EP is instructive. First, the CBI is the UK's largest 'peak'  
40 employers' organisation, representing 190,000 companies which together employ one third of  
41 the private sector workforce (CBI, 2015: 1; Mcrae, 2005: 14). Second, at various moments the  
42 CBI has assumed a key role either in shaping UK government policy directly in relation to the EU  
43 or formally in facilitating the transposition of EU legislation into UK law (Jensen & Snaith, 2016:  
44 1304). For example, the CBI assumed the position of a 'social partner' in the agreements  
45 necessary to drive through the AWD in UK (Forde & Slater, 2016) and also shaped the Blair  
46 government's position on the Working Time Directive (WTD) (Deakin & Wilkinson 2005: 340).  
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3 Third, as recent qualitative research has shown, the CBI's proximity to the Conservative Party  
4 and the Cameron government in the run-up to the EU referendum underline its position as a key  
5 site of business organisation and mobilisation in relation to the EU (Jensen & Snaith, 2016).  
6  
7 Analysing the CBI's strategic positioning therefore provides us with a useful lens through which  
8  
9 to interrogate the relation between British business strategy and EU S&EP in the period prior to  
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11 the EU referendum. For the research, all publicly available policy documents released by the CBI  
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13 between 2010 and 2016 were reviewed, with a specific emphasis on the CBI's approach to EU  
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15 S&EP.  
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21 Three areas of concern are consistently highlighted throughout the documents. The  
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23 CBI's first 'line of defence' against EU S&EP is to challenge 'gold-plating' by the UK government  
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25 (CBI, 2013b: 20). 'Gold-plating' refers to a situation whereby EU legislation is transposed into  
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27 UK law in a non-minimalist manner, such that the provisions of the domestic regulations go  
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29 over and above the minimum requirements of EU law (CBI, 2013; IOD, 2013; see also: HM  
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31 Government, 2014). The CBI highlighted the AWD – which aimed to secure equal pay and  
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33 conditions for agency workers with permanent employees working in an equivalent role<sup>6</sup> – as  
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35 one area which had a 'damaging impact', in part because the UK government had 'gold plated'  
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37 EU legislation (CBI, 2011). The CBI's analysis accords with that of the IOD, which in a separate  
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39 study argued that the UK government had adopted an overly-expansive definition of 'equal pay'  
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41 within the transposed legislation (IOD, 2013b: 11).<sup>7</sup> British business groups therefore appealed  
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43 in the first instance to the UK government's formal power to implement EU labour market rules  
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45 in as minimalist a fashion as possible.  
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49 Second, the CBI regularly criticised what it terms 'one size fits all' policies emanating  
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51 from the Commission which it claimed are ill-suited to the needs of the UK's flexible labour  
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53 market (CBI, 2015a: 3, 2016b: 4). As the CBI stated in its response to a Treasury enquiry, 49  
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55 per cent of its members stated that over-bearing EU regulations had a negative impact on their  
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57 business (CBI, 2016: 73). The AWD again represents a source of consternation in this regard.  
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3 For example, in *Our Global Future*, the CBI argued that the objective of the directive was  
4 misplaced in the UK context, since agency workers already received 92 per cent of equivalent  
5 employees' wages and because no 'unreasonable' restrictions on agency work existed in the UK  
6 (CBI, 2013b: 73). As such, it argued that the AWD is an unnecessary piece of legislation which  
7 costs UK businesses £1.9 billion a year in compliance costs (ibid).  
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14 Third, the CBI regularly highlights the threat of 'mission creep', whereby EU institutions  
15 overstep their 'legitimate' areas of competence and regulate in "areas that are best left to  
16 national governments" (CBI, 2015a: 2). It cites the WTD as one area in which EU S&EP had  
17 legislated too extensively and, as we shall see below, regularly highlighted the threat to business  
18 if the UK lost its 'opt-out' as the result of activism within the European Parliament and European  
19 trade unions.  
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28 An underlying tension for the CBI can be identified within the documents. Since  
29 Cameron's 'Bloomberg Speech' in 2013, the UK's position within the EU came under increasing  
30 threat (Menon, et al., 2016: 175). Throughout this period, the CBI was consistent in its support  
31 for continued EU membership, citing the benefits to British business of having unqualified  
32 access to the single market, free movement and investment flows associated with the EU (CBI,  
33 2013b). At the same time, one of its clear concerns was to 'defend' the UK's flexible labour  
34 market regime from unsolicited encroachment by the EU institutions, not least because of  
35 serious concerns about EU competence in the field of employment law within the ranks of its  
36 own membership (CBI, 2013a: 1). The CBI therefore had to balance its support for the EU with  
37 mounting a defence of the UK's 'competitive' labour market regime *vis-à-vis* EU S&EP. This  
38 conditioned the CBI's strategic orientation in a number of ways. For example, whilst some pro-  
39 business groups advocated 'repatriating' social and employment policy to the UK, the CBI  
40 warned that this was 'unrealistic' and could even lead to the 'exit door' (CBI, 2013b: 163). With  
41 its hands tied, the principal means by which the CBI sought to 'defend' the UK's labour market  
42 was not through 'repatriation' or through 'exit' but by attempting to delimit and shape EU  
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3 legislation at source; that is by intervening in the EU's legislative process itself. The CBI was  
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5 thereby driven to 'upscale' its business strategy to the supranational level in order to defend the  
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7 domestic interests of its membership.<sup>8</sup>  
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10 This 'upscaling' of British business strategy involved two core elements. On the one  
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12 hand – as predicted by neo-functionalist scholars of the EU – the CBI, along with other business  
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14 lobby groups, sought to extend its influence 'upwards' in order to shape EU S&EP through  
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16 supranational engagement (Sweet & Sandholtz, 1997). In this regard, its membership of the  
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18 European-level lobby group 'Business Europe' and increasing engagement with the Commission,  
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20 European Parliament and other EU institutions have all formed core components of the CBI's  
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22 engagement strategy. The rise of corporate lobbying at the EU level has been widely charted and  
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24 does not form the object of analysis here. Rather, a second – equally crucial – dimension of the  
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26 CBI's EU strategy should be noted. This is embodied in its attempt to deploy the formal and the  
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28 informal power of the British state within the EU in order to secure the interest of British  
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30 business in the field of EU S&EP.  
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33 The importance which the CBI attached to the role played by the British state within  
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35 the EU institutions is clearly evident throughout the reviewed documents. In its consultation  
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37 with the Treasury Committee, for example, the CBI stated that the UK had, "a powerful voice at  
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39 the table, enabling us to have influence over the rules that business has to comply with and to  
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41 achieve the reform of the European Union that the UK wants to see" (CBI, 2016c). It continues,  
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43 "by being round the table in EU institutions, the UK can help to shape the EU legislative agenda  
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45 and ensure the Commission regulates only where necessary" (CBI, 2016c). UK membership of  
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47 the EU was therefore not simply preferable because it provided business with 'access' to the  
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49 Single Market; the capacity of the UK to *shape* EU legislation through mobilising its formal  
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51 power as a member state was of equal salience to the CBI's European strategy.  
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55 The CBI identified the 'formal' voting power of the UK within the EU parliament and  
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57 Council as crucial to its European engagement strategy. In particular, the CBI emphasised the  
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3 UK's ability to build alliances with other member states in order to limit the supranational  
4 upregulation of labour standards. For example, it drew attention to Britain's status as the 'best  
5 country at building alliances' in the 2000s and its ability to secure the support of Germany and  
6 other member states in limiting the 'anti-competitive' impact of the pregnant workers directive  
7 and other labour regulations (CBI, 2016b). In its report *Choosing Our Future*, the CBI stated that,  
8 "the UK is not alone in wanting reform and by working with our European partners... we have  
9 the opportunity, right now, to achieve reform for a more outward looking, open and competitive  
10 European Union" (CBI, 2015b).

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20 In the field of EU S&EP, there is evidence that the CBI sought to shape UK policymakers'  
21 preferences in order to secure reforms which would be to the (perceived) benefit of British  
22 business. For example, in the run-up to Cameron's 'renegotiation' of the UK's membership in  
23 February 2016, the CBI pushed hard for a 'moratorium' on EU S&EP that 'stifles the EU's  
24 competitiveness' (CBI, 2016a: 10). It also consistently pressurised the British government to  
25 make the UK's WTD 'opt-out' permanent (CBI, 2013b: 171; Gordon, 2015). Central to realising  
26 the CBI's objectives, then, was its ability to shape UK policymakers' orientation within the EU  
27 and to make use of the UK's position as a powerful member state in order to further the British  
28 business agenda.

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40 As well as seeking to deploy the *formal* power of UK policymakers within the EU, the  
41 documents also reveal that the CBI was highly attentive to the ways in which UK policymakers  
42 could yield *informal* influence over EU legislation in order to shape EU S&EP in line with the  
43 interests of British business. For example, it states that, "the UK also has notable informal  
44 influence in the EU legislative process and has, for example, leveraged its ability to build  
45 alliances and use British expertise to help shape the agenda" (CBI, 2016c). At various points, the  
46 CBI explicitly argues that informal influence of this form should be strengthened. For example,  
47 in its submission to the Treasury Committee, the CBI (2016b: 14) argues that:  
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3 The potential for influence in the European Parliament is considerable when  
4 considering the power Committee chairs and rapporteurs have over the text of  
5 legislation. British MEPs must step up engagement in the law making process and  
6 represent the interests of British business. To boost UK informal influence in the EU, the  
7 UK must do more to ensure it has personnel in key positions to help frame the debate.  
8 The UK has 10% of senior management and top cabinet positions in the European  
9 Commission (the second highest), but is underrepresented in staffing across the  
10 European Parliament and European Commission generally. Despite making up 12.5% of  
11 the EU population, in 2013 UK nationals represented only 4.6% of EU Commission staff,  
12 5.8% of staff in the EU parliament and 4.3% in the Council of the EU.  
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21 (CBI, 2016b: 14)  
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24 As the above evidence suggests, 'access' to the economic benefits of the Single Market  
25 was not the CBI's only consideration. Ensuring that UK policymakers enjoyed formal and  
26 informal *influence* over the shape of EU legislation was also a key concern. We can therefore  
27 identify, at the core of the CBI's European strategy, a key underlying objective: to deploy the  
28 formal and informal power of the British state within the EU institutions in order to 'defend' the  
29 UK's flexible labour market regime and to thereby further advance a liberalising agenda.  
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#### 40 **Business strategy and Capital Markets Union (CMU)** 41

42 EU S&EP of course represent only one policy field which British business sought to  
43 shape in line with its liberalising agenda. British business interest groups' concern to 'defend'  
44 the UK's flexible labour market regime was paralleled by a second objective: to *extend*  
45 liberalisation outwards by opening-up the Single Market to the UK's large export-oriented  
46 financial and business services sectors. As was the case with EU S&EP, the UK's position as a  
47 powerful EU member state was central to business strategy in this regard. An indicative  
48 summary of recent developments around 'Capital Markets Union' (CMU) serve to illustrate this  
49 point (Quaglia et al., 2016).<sup>9</sup> CMU, launched in 2014 by the Juncker Commission, sought to  
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3 address the concern that many European firms finance their loans excessively through 'bank-  
4 based' lending. CMU aimed to develop 'alternative' forms of finance, such as equity markets,  
5 peer-to-peer lending and hedge funds, with the stated objective of increasing the supply of  
6 credit to small and medium sized enterprises (SMEs) (European Commission, 2015). Since 85  
7 per cent of the EU's hedge funds and 42 per cent of its private equity are based within the City of  
8 London, CMU represented a unique opportunity for the UK's financial sector (Quaglia, 2016b: 7).  
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16 UK policymakers and City firms played a pro-active role in shaping the development of  
17 CMU in its early stages. After an extensive consultation exercise involving key players from the  
18 UK's financial sector, Treasury officials and senior Commission staff, the House of Lords  
19 described the development of CMU as a "fillip to the UK economy and the City of London in  
20 particular" (House of Lords, 2015: 32). The report stated that, "the UK must ensure that it is at  
21 the forefront of the debate as the CMU agenda takes shape in the coming months. It will not  
22 suffice simply to react to others' proposals: the City and the Government should be active in  
23 responding to the Commission's initiative" (ibid: 32). In the early stages of CMU, the UK  
24 government therefore became a 'pace-setter' on CMU at the EU level (Quaglia, 2016a). City firms  
25 and lobby groups worked closely in collaboration with the UK government in pushing through  
26 the agenda (CBI, 2015c; CityUK, 2015). For example, a quarter of responses to the Commission's  
27 2015 CMU consultation were from UK-based financial firms whilst the then-Commissioner for  
28 CMU - UK national Jonathan Hill - convened regularly with the City on the topic (European  
29 Commission, 2017; Quaglia, 2016b). City-based firms stepped up their engagement with formal  
30 policymaking EU institutions such as the Commission, whilst the UK government was adopted a  
31 proactive approach to shaping the CMU agenda from inside the EU institutions.  
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50 Two contending visions of CMU had been advanced in its early stages. The first,  
51 supported by federalists and some Eurozone states, claimed that capital markets required  
52 deeper integration and the formation of pan-European regulatory mechanisms. The 2015 *Five*  
53 *Presidents Report*, for example, explicitly stated that the development of the CMU, "should lead  
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3 ultimately to a single European capital markets supervisor” (The European Commission, 2015).  
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5 In contrast, the UK government and British business groups were hostile to the idea that  
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7 deepened capital markets required enhanced supranational regulation. For example, Charles  
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9 Roxburgh, director-general of financial services at the Treasury, stated that attempts to create a  
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11 pan-European supervisory body were neither “necessary or desirable” and would prove to be a  
12  
13 “huge distraction” (House of Lords, 2015: 44). Similarly, a CBI report counselled against the EU  
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15 assuming an enhanced legislative role in relation to CMU, arguing for key regulatory  
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17 competences to remain at the member state level (CBI, 2015c: 3). The perception that the UK  
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19 was in the ‘driving seat’ of the CMU meant it was viewed as a ‘roadblock’ and ‘brake’ on further  
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21 integration with respect to CMU by senior EU officials (Brunsden & Barker, 2016). CMU  
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23 therefore embodied a policy sphere in which public and private business actors within the UK  
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25 could ‘extend’ their preferences for liberalisation and subsidiarity outwards into the wider  
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27 framework of EU capitalism.  
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### 30 31 **The emerging politics of Brexit and business strategy**

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34 The UK’s position as a powerful member state has been a crucial element of business  
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36 attempts to ‘defend and extend’ a liberalising agenda in the EU. Continued ‘access’ to the single  
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38 market was of course central to business support for the UK membership prior to and  
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40 throughout the referendum; but the capacity to *shape* EU legislation was also a crucial strategic  
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42 consideration. In the aftermath of the vote to ‘leave’ these channels of influence have been  
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44 fatally compromised. Brexit therefore generates a series of dilemmas from the perspective of  
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46 British capital. Policy documents released by the CBI since the referendum state that the group’s  
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48 ‘top priority’ is to achieve a ‘barrier free relationship’ with the Single Market (CBI, 2016c: 4). In  
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50 pursuit of this objective, the CBI advocates ‘regulatory harmonisation’ with the EU in order to  
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52 ensure that non-tariff barriers are kept to a minimum (CBI, 2016c: 18). However, the existing  
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54 models which guarantee this relationship – for example Norway’s membership of the European  
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56 Economic Area (EEA) – require not only product market harmonisation but also compliance  
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3 with EU S&EP. In this situation, the UK would have to comply with EU S&EP whilst being unable  
4 to 'defend' the UK's flexible labour market regime in the ways it has done in the past.  
5 Interestingly, this prospect has been anticipated by the CBI. It's report *A Whole Economy View of*  
6 *Brexit* states that, "business and government must work together to agree how to secure long-  
7 term regulatory cooperation between the EU and UK markets after the UK leaves ... [however] it  
8 is not in the UK's interests to be a rule taker. In areas such as social and employment regulation  
9 in particular, it would not be acceptable for the UK to implement laws over which is has had no  
10 say" (CBI, 2016c: 18).  
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20 In the aftermath of May's 'hard' Brexit Lancaster House speech in January 2017, it is  
21 highly unlikely – if not inconceivable – that the European Court of Justice (ECJ) will continue to  
22 have jurisdiction over the UK in the aftermath of the Article 50 process. Nonetheless, the CBI's  
23 post-Brexit positioning is indicative of an important dilemma for British business; namely, how  
24 to minimise non-tariff barriers with the remaining 27 member states whilst at the same time  
25 insulating business from unsolicited regulatory incursions by the EU. This basic dilemma is  
26 likely to continue to shape British business strategy as the politics of Brexit unfolds. Indeed, as  
27 the CBI puts it in its post-referendum strategy document *Shaping Our Future*, "UK policymakers  
28 must continue to engage on the EU legislative agenda. A long-term strategy for influencing new  
29 EU rules and standards that may still apply to UK businesses after exit will have to be  
30 established" (CBI, 2016d: 6).  
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44 Fear of becoming a 'rule taker' in the aftermath of Brexit is also evident within the UK's  
45 financial sector. A January 2017 report from the International Regulatory Strategy Group, a  
46 research and lobbying organisation funded by the City of London Corporation and the City UK,  
47 underlines this point (IRSG, 2017a). The IRSG report assesses whether 'third country regimes'  
48 (TCRs) – regulatory arrangements which grant non-EU financial firms limited and conditional  
49 access to the single market – would be an acceptable arrangement for the City. The report  
50 answers unequivocally in the negative. In particular, for 'third countries' to maintain access to  
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3 the single market, the non-EU government subject to the TCR must constantly update their  
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5 domestic regulations so as to comply with changes in EU law. As the report warns, “the UK may  
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7 end up being something of a ‘rule-taker’ – having to implement changes in its own law to follow  
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9 changes in EU law (and having less ability to influence those changes than it did as a member of  
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11 the EU)” (IRSG, 2017: 7). Regulatory ‘equivalence’ regimes are therefore viewed as a threat to  
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13 the City not merely because they provide less extensive *access* but because they also entail  
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15 compliance with rules over which the UK would have less control. Rather than endorsing TCR as  
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17 an alternative model for the City, the IRSG advocates a ‘bespoke’ agreement between the UK and  
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19 the EU which allows for ‘mutual rights of access’ (IRSG, 2017: 24). As part of this package, the  
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21 IRSG advocates the creation of an ‘independent tribunal’ – equivalent to the EFTA Court within  
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23 the EEA – which would ensure that ‘mutual access’ was guaranteed in line with ‘robust  
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25 processes and procedures’ (IRSG, 2017: 25). Placing the political and practical feasibility of  
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27 these proposals to one side, the intent behind the strategy is clear: to ‘lock in’ existing levels of  
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29 access for the City and to limit the competence of the EU to legislate with prejudice against the  
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31 UK’s financial sector in the future. The underlying objective – to ‘defend’ the City from  
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33 unsolicited supranational regulatory incursion – endures, but the legal and institutional means  
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35 to achieve this objective have altered.  
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### 39 **Conclusion**

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42 Since the signing of the Maastricht Treaty, British business has sought to ‘defend and  
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44 extend’ a liberalising agenda within the EU. A crucial component of this strategy was to deploy  
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46 the formal and informal power of UK policymakers inside the EU institutions in order to secure  
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48 pro-business reforms. As the analysis of the BOC review of EU S&EP has demonstrated, although  
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50 British business putatively accepted a ‘baseline’ of EU labour market regulation, in practice it  
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52 criticised the high compliance costs associated with various EU employment directives and has  
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54 sought to limit the scope of EU S&EP in a number of different ways. The UK’s erstwhile position  
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56 as a powerful member state - and its capacity to build alliances with a broader liberal bloc inside  
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3 the EU - has been a central component of CBI attempts to 'defend' the UK's labour market  
4 regime from supranational encroachment. UK membership of the EU has also been central to a  
5 second component of British business strategy: to *extend* liberalisation outwards and to open-  
6 up the Single Market to the UK's competitive financial and business services sectors. As outlined  
7 in relation to the CMU programme, private and public actors based within the UK were 'pace  
8 setters' in the early stages of this agenda, collectively mobilising to deepen financial market  
9 integration and to widen the City's ability to finance lending across member states (Quaglia,  
10 2016b). The question of *influence over* as well as *access to* the Single Market has therefore been  
11 a central component of British business attempts to 'defend and extend' a liberalisation agenda  
12 in the EU.  
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25 Brexit fundamentally problematises this strategic orientation. This generates a series of  
26 dilemmas from the perspective of British capital. On the one hand, both the CBI and City lobby  
27 groups have made clear that a degree of regulatory harmonisation between the UK and the EU  
28 will be necessary if a disruptive Brexit is to be averted. However, this poses the threat that the  
29 UK could become a 'rule taker', subject to regulatory incursions over which British business and  
30 UK policymakers will no longer be able to exercise control. As the CBI put it in a post-Brexit  
31 publication, "balancing regulatory equivalence with the EU with flexibility and influence over  
32 the domestic environment" will be a central objective of British business going forward (CBI,  
33 2016e). Similar concerns have exercised representatives of the UK's financial sector, who have  
34 advanced proposals to 'lock in' existing levels of access whilst retaining oversight mechanisms  
35 which would protect the City from the emergence of 'protectionist' EU legislation (IRSG, 2017a,  
36 2017b). The practicability of these proposals and the likelihood that they will secure assent  
37 from the EU institutions is of course open to question. But the logic which underpins these  
38 manoeuvres - to 'defend' the UK's liberal labour market regime and capital markets from  
39 supranational incursion - represents a continuity with pre-Brexit business strategy, albeit in a  
40 markedly reconfigured institutional, legal and political context.  
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3 The question of British business strategy and its relation to the emerging politics of  
4 Brexit offers fertile ground for future research. The victory of the 'Leave' campaign – which so  
5 clearly ran against the stated interests of powerful sections of British capital – apparently  
6 challenges the thesis that business exerts 'structural power' over the modern capitalist state  
7 (Block, 1981; Lindblom, 1977). However, recent updates of the 'structural power' thesis have  
8 emphasised the ways in which business can secure concessions from government by cultivating  
9 the *perception* that the pursuit of a certain policy will lead to disinvestment (Bell & Hindmoor,  
10 2014, 2015). Brexit may have represented a defeat for broad swathes of British capital. But  
11 heightened economic uncertainty also potentially empowers well organised business interests  
12 to push their agendas and to 'take back control' of the domestic agenda. Charting these  
13 reconfigurations in business strategy and business power therefore represents a crucial task if  
14 we are to adequately analyse and respond to the emerging politics of the Brexit conjuncture.  
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<sup>1</sup> Since the 2008 financial crisis, there has been a marked – albeit limited – increase in scholarly accounts  
57 of the 'structural power' of business. However, these accounts have tended to focus on the financial sector  
58 and the power of international banks in particular. Furthermore, the relation between business power  
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4 and EU integration remains under-studied. Although mainstream and critical variants of EU studies have  
5 focussed on the business-EU nexus, they have done so by privileging analytically the supranational scale.  
6 This means that the organisation and articulation of powerful business interests at the domestic scale and  
7 the ways in which these can condition EU integration has been neglected.

8 <sup>2</sup> Within the UK, the EEF manufacturers association, financial sector lobby groups such as the British  
9 Bankers Association and agricultural groups such as the National Farmers Union fall into this category.

10 <sup>3</sup> Treaty on the Functioning of the EU.

11 <sup>4</sup> The BOC review was a large consultation exercise led by the Coalition government between 2012 and  
12 2013 which sought to gather evidence on the EU's impact on the UK. The review covered 32 policy areas  
13 and drew on over 2,300 submissions of evidence from a variety of stakeholders

14 <sup>5</sup> As was advocated by some pro-business voices at the time.

15 <sup>6</sup> This would be subject to a 12 week qualifying period in the UK.

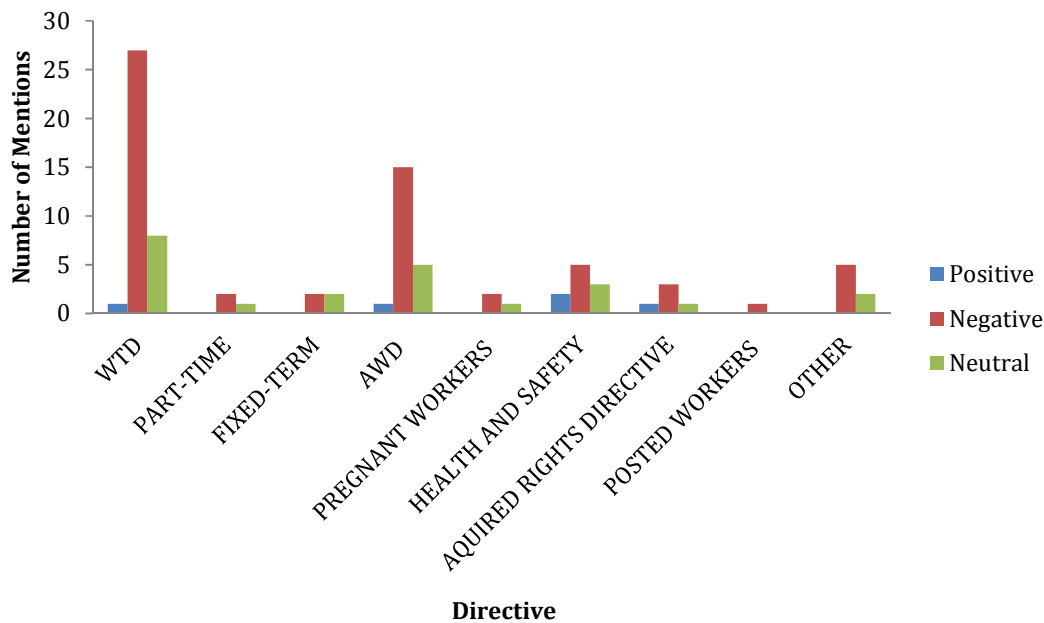
16 <sup>7</sup> The AWD sought to establish 'equal pay' between temporary and permanent workers employed in  
17 similar roles within in an organisation. In the UK case, this was subject to a 12 week qualifying period.  
18 However, as the IOD argued in a subsequent publication that the UK government's definition of 'pay' was  
19 overly-expansive, unnecessarily including bonus payments in its definition.

20 <sup>8</sup> This process of course was taking place long before the period studied here. Nonetheless, the CBI's need  
21 to advocate a 'reformed' EU became increasingly salient after Cameron's pledge to hold the EU  
22 referendum.

23 <sup>9</sup> Capital Markets Union (CMU) of course represents only one policy area where UK political actors and  
24 businesses assumed a leading role in driving through EU financial market integration and liberalisation.  
25 Other examples include the Financial Services Action Plan (Mügge, 2006, p. 1013) as well as the  
26 Lamfalussy directives in solvency markets (Quaglia, 2016b, p. 4). CMU should therefore be understood as  
27 one amongst many policy areas where British policymakers and business played an important role as  
28 'pace setters' on deepening financial markets.  
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**Figure 1: British Business Views: EU Social and Employment Policy**



Source: Balance of Competences Review: Social and Employment Policy. Submissions from employer organisations and business associations.

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