

UK Withdrawal from the EU: Brexit without tears?

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The politics of UK leaving the EU

- Starting point: desire of many (not just Conservatives) for a looser relationship with the EU
 - But want to preserve access to the Single Market (in what?)
- Hence Cameron's 'renegotiate and decide' strategy – which was always doomed to fail
 - In reality, a renegotiation would always be cosmetic (UK 1974-5, Ireland after 2008 rejection of Lisbon Treaty)
 - Assumes a round of Treaty revisions, which hasn't happened to date and which other member states want to avoid
 - Lack of clarity about the UK Govt wish-list if there were one
 - And a limit to the goodwill from other member states to increase UK membership *à la carte* – UK already outside Euro-zone, Schengen, selective opt-outs from Justice & Home Affairs pillar

UK's options if it leaves the EU

Per the Institute of Economic Affairs (Feb 2015)

- 1) Stay in the European Economic Area and join EFTA
- 2) Join EFTA but not EEA
- 3) A global free trade arrangement
- 4) Arrangements with the 'Anglosphere'
- 5) [Association agreement with EU: cf Turkey]

In reality, only 1, 2 and 5 are viable – at least in the short term

- All tie the UK to the Single Market and its laws, without any involvement in making those
- How selective might UK be able to be in choosing what to implement?

The Norway and Switzerland options

Norway

- has rejected EEC/EU membership in referendums, twice
- But is part of EFTA and EEA (and Schengen)
- So bound by most EU Single Market legislation – but has no say in formulating it

Switzerland

- Rejected EEA membership in 1992
- Still a member of EFTA
- Bilateral treaties with each of the EU-28 replicate many EU membership obligations
- Feb 2014 referendum limiting free movement of persons has put EU relations under great strain

Association agreements

Most interesting example is **Turkey**

- Formal association since 1963, customs union since 1995,
- Application for EEC accession 1987, negotiations for EU membership opened 2005 but stalled several times
- Political objections to membership (on both sides)
- Difficulties in complying with *acquis communautaire* in significant number of areas
- Customs union means ready access for exports to EU markets and considerable inward investment from EU
- But no participation in single market, particular issues about labour mobility

Further constitutional complications

- Scottish Govt demands there be support for EU withdrawal in all 4 parts of UK (England, Wales, Scotland, N Ireland) – not just a simple majority across UK
 - Inherent logic of a decentralised union state
 - Yes vote certainly likely to strain UK greatly: an opportunity for SNP to reopen Scottish independence debates
- For N Ireland, opens up issues of Good Friday Agreement and Rol's role
- Impact of ECHR and Convention rights? Will UK remain in Council of Europe?
- Loser's consent: how might unhappy No voters respond? Especially if Brexit turns out badly?

What follows a vote on UK withdrawal?

Application to use Art 50 TEU to leave

Process of negotiation – 2 years?

Simultaneous negotiations with EEA/EFTA on membership and terms? With EU on association afterward?

Domestic legislation: repeal of European Communities Act 1972

Key question: what does the withdrawal bill say about existing EU legislation?

Subsidiary question: what obligations come with EEA/EFTA membership or ‘associate’ status?

Quite likely to mean no change!

Tertiary question: what about other agreements with our neighbours?

EU law after withdrawal

Assuming no EEA membership, two options:

1. All EU law repealed, save where expressly retained (so 45 years of legislation are toast)
 1. How would one identify 'EU law'? Not just legislation made using s. 2(2) ECA
 2. A huge administrative task in time of crisis in any event
2. EU law remains in effect until repealed
 1. Avoids problem of identifying EU law and having to make immediate decision about each and every piece
 2. Power to amend primary legislation where that was the vehicle for implementation?
 3. What happens where devolved govts already have that power?

So ...

- We have no idea what will happen if there were a vote for Brexit: advocates are unclear about the effect or what follows
- EU obligations might cease to have effect altogether
- Or might be capable of being repealed or amended, when UK authorities choose to do so
- But equally might remain as external constraints thanks to terms of ongoing membership of the Single Market (and UK would have no means of changing those)
- It's incumbent on any advocates of withdrawal to spell out their proposals for what UK does afterward
 - And for voters and civil society to examine how credible those are