

In or Out: the EU referendum

Discussion document prepared by Richard Nabavi for Mayfield Conservatives meeting

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On the 23rd June, in accordance with the commitment in the 2015 Conservative manifesto, British voters will be able to vote in a referendum, for the first time in 40 years, to decide whether the UK stays in the EU. The question will be "Should the United Kingdom remain a member of the European Union or leave the European Union?", and the options for voters will be 'Remain a member of the European Union' or 'Leave the European Union'.

Although legally speaking the referendum result is not binding on the government, in practice there is no doubt that the result will be honoured. Within just a few months, therefore, we could be starting the process of leaving the European Union. Alternatively, if the result is Remain, it is unlikely that the issue will be revisited for many years. No wonder, therefore, that passions are running high on both sides of the argument; this is a once-in-a-generation decision which will affect many aspects of our lives.

What happens if the result is Remain?

If voters decide we should stay in the EU, then broadly things will remain as they have been since the Lisbon Treaty was ratified. The UK remains in the EU, but not the Eurozone, with full access to the Single Market. We retain a number of opt-outs, including an opt-out from the Schengen Agreement on border-free travel, and we retain the rebate which reduces our contributions to the EU budget.

In addition, the other 27 EU countries have agreed to a number of modifications and clarifications in response to David Cameron's renegotiation initiative. These include some concessions on the payment of in-work benefits to EU citizens, some protection for the UK against decisions made by the Eurozone which might discriminate against us or might damage the City, a formal acknowledgement that 'ever-closer union' does not apply to the UK, a new 'red card' system which in principle allows national parliaments to band together to block unwanted legislation, and some commitments on improving competitiveness. Giving the starting point and the difficulty of getting any agreement with 27 other countries, this might be considered a useful, albeit relatively minor, package; however, it would be fair to say that the renegotiation did not greatly alter the post-Lisbon status quo. It did, however, explicitly acknowledge that 'ever-closer union' is likely, in the future, to be concentrated on the Eurozone countries, although the Leave campaign argue that this is meaningless and that the EU will inevitably extend its reach over UK law in the medium term.

What happens if the result is Leave?

No country has ever left the EU before, although Greenland in 1985 left the EEC, and Algeria in 1962 left the European Community as a side effect of independence from France. These precedents do not provide much of a guide to what will happen if the UK decides to leave the EU.

The first stage is relatively well defined. If voters decide we should leave the EU, then the government will invoke Article 50 of the Lisbon Treaty, which sets out the mechanism for leaving:

A Member State which decides to withdraw shall notify the European Council [i.e. the council of 28 heads of government] of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

Article 50(3) sets out the timing of withdrawal. The UK would cease to be an EU Member State either at the date of entry into force of the withdrawal agreement or, 'failing that', two years after the notification of its intention to withdraw from the EU, unless the other 27 governments and the UK unanimously agree to extend that period. There is no provision for withdrawing a notice to leave once it has been invoked.

If nothing else is agreed, once we invoke Article 50 then, after two years, all the EU treaties would no longer apply to the UK and we would no longer have access to the Single Market other than the access given to any third-party country. No one seriously advocates such an outcome; in practice, it would be very much both in our interests, and in those of our EU friends, to agree some other deal to replace our EU membership and thus to allow us to trade freely with each other without tariffs and with as few non-tariff barriers as possible. Article 50 effectively gives a two-year deadline for coming up with such a deal, or else it would require unanimous consent of the UK and the other 27 countries to extend the deadline.

There are a number of possible structures for our future relationship with the EU if we do leave; those campaigning for us to leave are not united in advocating any particular structure. Although the subject is necessarily complex, in outline we can distinguish between three broad options (see table below for a summary of the features of each, compared with remaining in the EU):

Option 1: An EEA-style deal

In this option, we would join the European Economic Area (EEA) as a non-EU state, under the umbrella of the European Free Trade Association (EFTA), and rely on the existing EEA trade agreement with the EU. There are currently three EEA countries: Norway, Iceland and Liechtenstein. (This option is therefore sometimes called the 'Norway' option). This is effectively an 'off-the-peg' solution which would allow us to retain full access to the EU Single Market, both for goods and for services. In economic terms, therefore, it would represent the least disruptive change; for example, the UK car industry (which is tightly integrated with the continental car industry) would be little affected, and, crucially, our financial services industry would have full access to the EU market including so-called 'EU passporting' which allows banks, funds and other financial institutions based in the UK to trade directly with EU customers. We would not be subject to the Common Agricultural Policy, nor to the Common Fisheries Policy, and much of the non-trade-related parts of EU law would not apply. We would, however, be subject to exactly the same freedom of movement rules as we are currently; this option has no advantage in terms of controlling immigration. In addition, we would have no votes or say (other than a right to be consulted) in the formulation of those EU regulations which would still affect us.

In the EEA option, we would still pay a sum towards the EU budget, but less than as full EU members. The exact sum would be subject to negotiation; estimates of the saving vary but would probably amount to a few £bn per year.

Because the EEA agreement already exists, and the EFTA structure is already in place, this should be the quickest and easiest option to negotiate, although it might still require the consent of all 27 other EU countries and the three EEA countries as well (the exact legal position is disputed).

Note: A variant of this option is the so-called 'Swiss deal', which is fairly similar in its effects except that it was negotiated, over a number in years, in a series of bilateral agreements. Switzerland has full access to the Single Market for goods, but slightly less complete access to the Single Market for Services. Like the EEA states, it is signed up to the freedom of movement directive. It pays a slightly lower amount than Norway to the EU budget.

Option 2: A customised deal with full access to the Single Market

Alternatively, we could attempt to negotiate a new UK-only deal giving similar access to the Single Market but with different conditions from those in the EEA agreement. In practice, negotiating full tariff-free and administratively straightforward access for manufactured goods should be uncontroversial; it will be in the interests of neither side to make trade more difficult. The more contentious parts of any customised agreement would be access to the Single Market for Services, and especially Financial Services, which is particularly important for the UK given the large proportion of our economy represented by services. On the other side, freedom of movement is likely to be a key demand by some or all of the other EU countries. It is uncertain to what extent it would be possible to get a substantially better deal overall than the EEA agreement would provide, nor could it be guaranteed that any such agreement could be reached within the two-year deadline.

Option 3: A looser deal with restricted access to the Single Market

In the third broad category of options, we could accept that we will not have full access to the Single Market for Services, and in particular that we would not have 'EU Passporting' rights for the City. If we did that, then there would probably be no need to accept free movement of people; instead, we would seek to negotiate tariff-free access to the Single Market for manufactured goods only, with more limited free trade in services. This is broadly what the EU-Canada trade agreement provides for. However, the economic disruption in this option could be significant, at least for a transitional period, and it is unclear how long it would take to agree any new deal. Again, it could not be guaranteed that any such agreement could be reached within the two-year deadline. On the plus side, such a deal would give us full 'control of our borders' and would free us completely from direct interference by the EU in many other aspects of our laws and regulations.

These different options obviously have different pros and cons. The main likely features of the different scenarios are summarised in the following table:

Comparison of the different options:

<i>Feature</i>	<i>REMAIN</i>	<i>LEAVE – EEA-style deal</i>	<i>LEAVE – Customised deal</i>	<i>LEAVE – Loose deal</i>
Tariff-free access to Single Market (manufactured goods)	Yes	Yes	Yes	Subject to negotiation
Customs-free access to Single Market (manufactured goods)	Yes	Broadly yes	Unclear	No
Full access to Single Market (Services)	Yes	Yes	Unclear, but unlikely without agreeing to Freedom of Movement	No
'EU passporting' for Financial Services, allowing banks etc to sell to EU countries from London	Yes	Yes	Unclear, but unlikely without agreeing to Freedom of Movement	No
Free movement of capital between UK and EU countries	Yes	Yes	Almost certainly Yes	Almost certainly Yes
Subject to EU laws on trade and product type regulations within the UK	Yes	Broadly yes	Unclear, but would it be worth having our own, and would they be significantly different if we did?	No, but would it be worth having our own, and would they be significantly different if we did?
Subject to EU laws on trade and product type regulations when exporting to the EU	Yes	Yes	Yes	Yes
Able to negotiate our own trade deals outside the EU	No	Yes	Yes	Yes
Benefit from EU-negotiated trade deals, e.g. TTIP	Yes	No	No	No
Years of business uncertainty following referendum	None	Unclear, perhaps 1-2 years before EEA deal is agreed???	Unclear, could be up to several years	Unclear, could be up to several years
City subject to EU financial regulation	Yes	Yes for EU-related business, might optionally run parallel regulation for non-EU business	Yes for EU-related business, might optionally run parallel regulation for non-EU business	Yes for EU-related business, would probably run parallel regulation for non-EU business

<i>Feature</i>	<i>REMAIN</i>	<i>LEAVE – EEA-style deal</i>	<i>LEAVE – Customised deal</i>	<i>LEAVE – Loose deal</i>
City protected from Eurozone hegemony (e.g. requiring €-denominated clearing in Eurozone)	Partly, because of UK say in decisions, EU treaty obligations, and Cameron's deal	No	No	No
Freedom to set our own VAT rates and rules	Limited to what EU law permits	Yes	Yes	Yes
Freedom to discriminate against EU companies in public procurement	No	No	Almost certainly No	Limited by WTO rules only
Freedom to use state aid to help specific industries, e.g. steel	No	No	Almost certainly No	Limited by WTO rules only
Must adopt Euro	No, we have formal opt-out and protection from discrimination	No	No	No
Subject to Common Agricultural Policy	Yes	No	No	No
Subject to Common Fisheries Policy	Yes	No	No	No
Subject to Schengen agreement on no border controls	No	No	No	No
Subject to EU Freedom of Movement rules (immigration of EU/EEA citizens for work, study or if self-sufficient)	Yes	Yes	Probably, if we want full access to Single Market for Services	No
Subject to EU directive on right of UK residence for non-EU citizens with right to reside in another EU country	No (we have an opt-out)	No	No	No
UK citizens free to work in other EU countries with no formalities	Yes	Yes	Probably	No
UK citizens free to retire to other EU countries with no formalities	Yes	Yes	Subject to negotiation	No
UK citizens get free healthcare in EU countries when on holiday	Yes	Yes	Subject to negotiation	No

<i>Feature</i>	<i>REMAIN</i>	<i>LEAVE – EEA-style deal</i>	<i>LEAVE – Customised deal</i>	<i>LEAVE – Loose deal</i>
Ability to withhold benefits payments to EU citizens who don't work here	Yes	Yes	Yes	Yes
Ability to withhold benefits payments to EU citizens who are employed here	Limited – Cameron's deal won a limited opt-out for four years, and typically reduced rates for Child Benefit for children remaining in another EU state	No (Cameron's opt-out wouldn't apply to EEA scenario)	Yes	Yes
Subject to EU employment law, working time directive etc	Yes	No	No	No
Subject to EU justice directives, EU arrest warrant etc	Partial – we have opt-outs but have opted back in to some measures	Optional, we could decide	Optional, we could decide	Optional, we could decide
Subject to European Court of Human Rights (ECHR) rulings	Yes	Yes (obligation arises from European Convention on Human Rights, not the EU)	Yes	Yes
Subject to European Court of Justice (ECJ) rulings	Yes	No, but EFTA court has jurisdiction on EEA-trade related disputes	No, but some other body might be required to adjudicate on trade disputes	No, but some other body might be required to adjudicate on trade disputes
Influence on EU regulations affecting us and on strategic direction of EU	Full EU member, so full participation in pre-regulation discussions and EU summits, vote in EU Council, veto on Treaty Change, UK MEPs, and UK Commissioners	Right to be consulted but no votes	Probably none other than opportunity to lobby	None
Veto on new countries joining the EU	Yes	No, but we'd still have to grant them freedom of movement	No, but we might have to grant them freedom of movement	N/A
Net contribution to EU budget after rebate and payments back from EU budget	Around £8bn to £10bn per year	Would pay less, exact saving unclear but probably a few £bn per year	To be negotiated, but greater savings than EEA-style deal	Optional, we would probably pay very little except to some specific EU programmes

Richard Nabavi. All views expressed are my own.