

## BREXIT

DAVID EDWARD  
ICEL-CDPB BELFAST  
26 February 2016

---

---

---

---

---

---

---

---

## PLAN

- UPDATE ON THE EU-UK AGREEMENT
  - What were Mr Cameron's 'demands'?
  - What is the outcome?
  - What does the Agreement say?
- ARTICLE 50 (WITHDRAWAL) AND ITS IMPLICATIONS
- THE ALTERNATIVES

---

---

---

---

---

---

---

---

## CRITICAL DOCUMENTS AND DATES

- Cameron letter to Tusk
  - 10 November 2015  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/475679/Donald\\_Tusk\\_letter.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/475679/Donald_Tusk_letter.pdf)
- Conclusions of European Council
  - 18-19 February 2016  
<http://www.consilium.europa.eu/en/press/press-releases/2016/02/19-euco-conclusions/>
- Referendum 23 June 2016

---

---

---

---

---

---

---

---

**THE UK AGENDA  
(Mr Cameron's 'Demands')**

- ECONOMIC GOVERNANCE
- COMPETITIVENESS
- SOVEREIGNTY
- IMMIGRATION

---

---

---

---

---

---

---

---

**ECONOMIC GOVERNANCE**

- Recognition that the EU has more than one currency
- Protection of the integrity of the Single Market
- Any issues that affect all Member States must be discussed and decided by all Member States

---

---

---

---

---

---

---

---

**COMPETITIVENESS**

- Complete the Single Market
- Promote trade
- Reduce regulation

---

---

---

---

---

---

---

---

## SOVEREIGNTY

- End commitment to 'ever closer union'
- Strengthen power of national parliaments, acting, together, to stop 'unwanted legislation' – the 'red card'
- Commitment to subsidiarity
- Protection of UK position in relation to Justice & Home Affairs

---

---

---

---

---

---

---

---

## IMMIGRATION

- Excess immigration from 'new' Member States
  - Distortion of employment market
  - Cost of social security benefits, and outflow of benefits to families at home
  - Damage to new Member States because of outflow of talent
  - Fraud and sham marriages
- Solution - limitation of right to benefits for four years

---

---

---

---

---

---

---

---

## THE EDINBURGH AGREEMENT

"The Danish Compromise"  
(UN Registration no I-30685)

- "Decision of the Heads of State and Government, meeting within the European Council, concerning certain problems raised by Denmark on the Treaty on European Union ... have agreed on the following decision:
  - "Section A: Citizenship ...
  - "Section B: Economic and Monetary Union ...
  - .....
  - "Section E: This decision will take effect on the date of entry into force of the Treaty on European Union ..."

Now in Lisbon Treaty as Protocol No 22 "On the Position of Denmark"

---

---

---

---

---

---

---

---

## CONCLUSIONS

- DECISION OF HEADS OF STATE AND GOVERNMENT, meeting within the European Council, concerning *a new settlement for the United Kingdom within the EU* [to be registered with UN]
- STATEMENT concerning a draft Council Decision on specific provisions relating to the *effective management of the banking union and of the consequences of further integration of the euro area*

---

---

---

---

---

---

---

---

- DECLARATION OF THE EUROPEAN COUNCIL on *competitiveness*
- DECLARATION OF THE COMMISSION on *implementation mechanisms for*
  - *subsidiarity and*
  - *burden reduction*
- DECLARATION OF THE COMMISSION on the *indexation of child benefits 'exported' to another Member States*
- DECLARATION OF THE COMMISSION on the *"safeguard mechanism" for benefits*
- DECLARATION OF THE COMMISSION on *abuse of the right of free movement of persons*

---

---

---

---

---

---

---

---

### The Heads of State and Government declare that.

- This Decision gives legal guarantee that the matters of concern to the UK have been addressed
- The content of the Decision is fully compatible with the Treaties
- This Decision is legally binding and may be amended or repealed by common accord of Heads of State and Government
- Meetings of Eurozone ministers must respect the powers of the Council

---

---

---

---

---

---

---

---

### The Sting in the Tail

- This Decision will take effect on the date the Government of the UK informs the Secretary-General of the Council that the UK has decided to remain a member of the EU
- It is understood that, should the result of the referendum in the UK be for it to leave the EU, the set of arrangements referred to above will cease to exist.

---

---

---

---

---

---

---

---

### ECONOMIC GOVERNANCE

- No discrimination based on currency of the Member State
- Eurozone measures must respect the single market
- Non-Eurozone MS must not impede the functioning of the Eurozone
- Provisions for application of the law on the banking union to credit institutions not in the Eurozone
- Meetings of Eurozone ministers must respect the powers of the Council

---

---

---

---

---

---

---

---

### COMPETITIVENESS

- Commitment to strengthen the internal market and take steps towards better regulation and lowering administrative and compliance costs

---

---

---

---

---

---

---

---

### SOVEREIGNTY

- Recognition that the UK is not committed to further political integration.
- References to 'ever-closer union' do not offer a legal basis for extending the scope of the Treaties or secondary legislation, or alter the limits of competence

---

---

---

---

---

---

---

---

### SOVEREIGNTY (2)

- Obligation to discontinue consideration of draft legislation to which 55% of votes of national parliaments object on grounds of non-compliance with subsidiarity
- Recognition of rights of Member States under Protocols (including JHA)
- National security is the sole responsibility of the Member States

---

---

---

---

---

---

---

---

### SOCIAL BENEFITS & FREE MOVEMENT

- Member States have the right to define the fundamental principles of their social security systems and broad margin of discretion in defining and implementing social and employment policy, including setting the conditions for access to welfare benefits

---

---

---

---

---

---

---

---

### Legitimate Restrictions on Free Movement of Workers

- Public policy, public security or public health
  - Reasons of public interest recognised by case law of ECJ
    - encouraging recruitment,
    - reducing unemployment,
    - protecting vulnerable workers,
    - averting the risk of seriously undermining the sustainability of social security systems
- provided they are proportionate to the legitimate aim pursued

---

---

---

---

---

---

---

---

### Legitimate Conditions on Benefits

- Legitimate to ensure real and effective degree of connection with the labour market of the host Member State
- Provided
- Based on objective considerations
  - Independent of nationality
  - Proportionate to the legitimate aim pursued

---

---

---

---

---

---

---

---

- Rehearsal of existing rules on freedom of movement and access to social security and
- Rules to prevent abuse of rights
- Rules on public policy, public health and public security

---

---

---

---

---

---

---

---

## SECONDARY LEGISLATION

- Commission to propose legislation
  - To provide for indexation of new claims for child benefit payments where children in another Member State
  - To provide for “an alert and safeguard mechanism that responds to situations of inflow of workers from other Member States *of an exceptional magnitude over an extended period of time*, including as a result of past policies following previous EU enlargements“

---

---

---

---

---

---

---

---

## What is an “exceptional” situation?

- “on a scale that affects essential aspects of its social security system, including the primary purpose of its in-work benefits system,
- “or which leads to difficulties which are serious and liable to persist in its employment market
- “or are putting an excessive pressure on the proper functioning of its public services“

---

---

---

---

---

---

---

---

- Council could authorise limitation of non-contributory in-work benefits for a total period of four years
- Authorisation would have a limited duration and apply to EU workers newly arriving during a period of 7 years

---

---

---

---

---

---

---

---

## Article 50

- 1. Any Member State may decide to withdraw from the Union *in accordance with its own constitutional requirements*.
- 2. A Member State which decides to withdraw shall notify the European Council of its intention ... 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.* ...

---

---

---

---

---

---

---

---

- 3. The Treaties shall *cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.*
- 4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

---

---

---

---

---

---

---

---

- 5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

### NOTE !

- Membership of EU ceases automatically on the expiry of two years unless the period of negotiation is extended
- Withdrawing Member State becomes a Third Country

---

---

---

---

---

---

---

---

- No provision for change of mind during negotiation
- No provision for withdrawal of notice to withdraw
- The negotiations will concern “the arrangements for withdrawal, *taking account of* the framework for its future relationship with the Union”.
- No obligation on remaining Member States to agree specific (or any) terms

---

---

---

---

---

---

---

---

### IMPLICATIONS OF BREXIT

- EU membership has created rights and obligations for individuals (including companies, firms and other corporate bodies)
  - withdrawal from the Union would involve the unraveling of a highly complex skein of budgetary, legal, political, financial, commercial and personal relationships, liabilities and obligations;
  - these relationships, liabilities and obligations are multilateral and, in general, reciprocal and legally enforceable

---

---

---

---

---

---

---

---

- So –
- Brexit negotiations would not be solely about relations between states, but also withdrawal or modification of individual rights
- Failure adequately to protect individual rights could give rise to court actions in UK and other MS
  - Possible references to CJEU
- Outcome unpredictable
- Time-scale unpredictable

---

---

---

---

---

---

---

---

**NORTHERN IRELAND**  
**Potential Issues for UK/Ireland**

- Agriculture
- Business
- Free movement of persons
- Free movement of goods
- Social Policy
- Financial Services
- Justice
- Terrorism and organised crime
- Energy
- Trade

---

---

---

---

---

---

---

---

**ALTERNATIVES**

- The Norway option
- The Swiss option
- The Turkish option
- The Korean/Mexican option
- The WTO option
- For details, see
  - <http://www.cbi.org.uk/global-future/index.html>
  - “Britain & Europe: the End game” and briefings at [www.iiea.com](http://www.iiea.com)
  - <http://www.europarl.org.uk/resource/static/files/global-vision-paper-ir.pdf>

---

---

---

---

---

---

---

---

**UNAVOIDABLE RULES**

- Non-EU companies and firms are subject to the competition jurisdiction of the EU
  - Case 48/69 *ICI v Commission* 1972 ECR 619and may be fined heavily for abuse of a dominant position
  - Case T-201/04 *Microsoft v Commission* 2007 ECR II 3601
- Exports into EU must meet EU standards

---

---

---

---

---

---

---

---

### THE NORWAY OPTION

- Membership of EEA requires consent of EU and EEA Member States
- NB we have abandoned EFTA once before*
- Excludes CAP (including some agri-products) and CFP
- Full access to the internal market
- Complete compliance with *acquis communautaire* including free movement of persons
- Contribution to EU budget
- No seat or vote

---

---

---

---

---

---

---

---

### THE SWISS OPTION

- 7 *bilateral* agreements concluded in 1999
- 9 “ “ “ in 2004
- Over 120 agreements in force between Switzerland and the EU
  - NB “bilateral” agreements imply bilateral negotiations (*quid pro quo*)
- Agreements currently exclude CAP and services
- Swiss agreements include Schengen, taxation of savings, environment, pensions & measures to combat fraud
- Exports to EU must meet EU standards, but not exports to non-EU countries or internally
- Switzerland contributes to the EU Budget

---

---

---

---

---

---

---

---

### THE TURKEY OPTION

- Full membership of the Customs Union
  - Common external trade policy and common external tariffs
- Limited access to the single market
- Does not cover CAP or services
- But freedom to negotiate services FTAs independently of the EU

---

---

---

---

---

---

---

---

### THE KOREA/MEXICO OPTION

- Free Trade Agreements
- No contribution to the EU Budget
- No other evident advantage over the Swiss option

---

---

---

---

---

---

---

---

### THE WTO OPTION

- UK becomes a “third country” vis-à-vis EU
- Would imply tariffs on UK-EU imports and exports (subject to negotiation)
  - Could apply to 90% by value of UK exports to EU
- Limited access for services in line with GATS
- Dispute settlement through WTO dispute settlement procedures

---

---

---

---

---

---

---

---

### EXODUS 8.28

- Pharoah said: “I will let you go, that you may sacrifice to the Lord your God in the wilderness, only you shall not go very far away”

---

---

---

---

---

---

---

---