



THE BRITISH REFERENDUM

Following the publication of

“Goodbye Europe” & “50 notions sur l’Europe”,

below are a few responses to frequently asked questions about the United Kingdom and the European Union.

What is the referendum question put to the British people?

"Should the United Kingdom remain a member of the European Union or leave the European Union?" (Remain or Leave)

When will the referendum take place?

The referendum will take place on Thursday 23rd June (elections always take place on a Thursday in the UK). Polling stations will be open from 07h00 to 22h00 GMT.

Who can vote in the referendum?

Voters have to:

- be aged 18 or over (a request to allow 16 year old to vote was rejected),
- be a British or Irish citizen living in the UK,
- be a Commonwealth citizen living in the UK who has leave to remain in the UK or who does not require leave to remain in the UK,
- be a British citizen, or Irish citizen born in Northern Ireland, living overseas who has been registered to vote in the UK in the last 15 years (citizens who have lived outside the UK for more than 15 years also do not have the right to vote in elections in the UK and thus will not be eligible to vote in the referendum) (1).

It is possible to vote in person, by post or by proxy.

- EU citizens living in the UK, even if they have been living there for a long time, will not be able to vote in the referendum.

When will the result be announced?

The count will take place during the night of 23rd June.

IF THE UNITED KINGDOM WERE TO REMAIN A MEMBER OF THE EU:

The "new settlement for the United Kingdom within the European Union", concluded the 19th February by the heads of state or government would be supposed to apply, even though its legal status is unclear.

Are the promises made within the 'settlement' with the UK to change the Treaty and legislation binding?

Concluded outside the Treaties of the European Union, tabled by the United Kingdom at the United Nations, it is presented as legally binding by the British government. The text itself makes the same claims, while also declaring it to be interpretative concerning certain points. The only certainty is that it is ambiguous. It has not however been ratified by national parliaments in the other Member States, as is often foreseen in national constitutions (in France, articles 53 and 55 of the Constitution).

The 'settlement', negotiated between the United Kingdom and the European Council, without any debate in the European Parliament or the national parliaments, contains multiple promises to change the Treaties and legislation in the future.

These changes concern three main areas:

- **sovereignty** (notably concerning the role of national parliaments in European decision making and Treaty changes, such as the removal of the reference to "ever closer union");
 - **modifications to the legislation** (secondary) concerning social benefits allocated to the citizens of other European Member States living in the UK;
 - **economic governance** (relations between euro area/non-euro area and exceptions concerning financial stability ("single rule book") as well as other financial and constitutional issues).
- The negotiation of Treaties is uncertain, as is modifying secondary legislation. Concerning legislation, even if the European Commission has made pledges to propose changes, it is the European Parliament, on an equal footing with the Council of Ministers, who would take the final decision.

For a more in-depth analysis please consult the following the note:

<http://www.sylviegoulard.eu/the-united-kingdom-the-european-union-a-clarified-relationship-or-a-fools-bargain/>

The full text of the "settlement" can be found here:

http://www.consilium.europa.eu/en/meetings/european-council/2016/02/EUCO-Conclusions_pdf/

What would be the consequences in the field of economic governance?

The question about the relationship between the Member States who are part of the Banking Union and those who are not is recurrent. The new settlement for the United Kingdom within the European Union mentions a quite particular procedure (2) in this regard: if at least one Member State not participating in the Banking Union considers a draft legislative proposal (relating to BU) currently being examined to be problematic then the European Council will "discuss" in order to find a solution which satisfactorily responds to the concerns expressed. There is no veto right, nor the possibility to block the process, but the procedure could be delayed.

- NB: Banking Union does not apply to the UK.

What rights for Europe's citizens and companies before the European Court of Justice?

Donald Tusk, President of the European Council, stated in front of the plenary of the European Parliament that "The decision concerning a new settlement is in conformity with the Treaties and cannot be annulled by the European Court of Justice."

- This however remains to be seen: only the Court of Justice can determine the scope of the settlement, for example concerning the modifications to social benefits legislation.

WHAT IF THE BRITISH WERE TO VOTE TO LEAVE THE EU

Would their departure be automatic?

Since 2009 the Treaty (art 50 TEU) foresees a formal procedure for the withdrawal of a Member State from the European Union, launched by the government of the concerned Member State notifying the European Council of its intention to withdraw.

The United Kingdom would probably do this during the European Council meeting of 28-29 June 2016.

What would be the timeframe?

Article 50 (of the Treaty on European Union) foresees a timeframe of maximum two years, from the moment when the country announces its intention to withdraw, to negotiate a withdrawal agreement. The Treaties cease to apply to the UK from the entry into force of the agreement, or a maximum of two years after the withdrawal notification, unless this deadline were to be extended with the unanimous agreement of the 27 + 1.

Is there an alternative to article 50 of the Treaty on EU?

The Treaty only foresees one withdrawal procedure (art 50 TEU) even though some in the "Leave" camp claim otherwise (e.g. Michael Gove, Justice Minister (3)).

- This is unacceptable as it would deprive European citizens, whether they are British or not, of guaranteed safeguards.

Some consider that if the British Parliament were to simply repeal the 1972 European Communities Act (which introduced the Community Acquis into British law) then European legislation would no longer apply to the United Kingdom. However, this denunciation would not affect the numerous more recent texts which have since been transposed into British law (secondary legislation). A unilateral questioning of previous agreements would probably lead to multiple legal challenges against the UK (notably in front of the European Court of Justice or even the International Court of Justice at the UN).

For further information please refer to: the House of Lords report:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503908/54538_EU_Series_No2_Accessible.pdf

What role for the European institutions in the negotiation?

The procedure foresees:

- 1) guidelines provided by the European Council;
- 2) recommendations submitted by the European Commission;
- 3) and a decision by the Council, notably designating a negotiator to represent the Union, followed by the formal negotiations;
- 4) the binding consent of the European Parliament;
- 5) a decision by the Council of Ministers, acting by a qualified majority (4).

What role for the United Kingdom and British nationals during this time?

There is no precedent. Furthermore, article 50 is vague on this issue:

1) It simply states that: "the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussion of the European Council or Council or in decisions concerning it."

- Politically it is difficult to interpret this disposition: the boundaries can be blurry between decisions which relate directly to the withdrawal agreement, and decisions concerning British interests more generally.

2) In the absence of specific provisions, some people are in favour of British MEPs continuing to sit in the European Parliament, of the Commissioner from Britain not being required to resign, nor the British judges at the Court of Justice, nor British civil servants in the European institutions.

- However, this solution does not appear to be politically acceptable: on the one hand in order to take the sovereign decision of the British people into account, and on the other hand out of respect for the other Europeans, it could be decided that the Commissioner, judges, MEPs and European civil servants coming from Britain step back from decision making roles.

See also Andrew Duff (former Liberal MEP) : [*How to leave the European Union properly*](#)

What would be the consequences?

The Union would lose an important member. It would suffer, just as the UK would also suffer.

The consequences would be serious:

- geopolitically (benefits for Putin?);
- politically (domino effect with other Member States?);
- economically (according to estimations calculated by her Majesty's Treasury (5), in two years British GDP would be reduced by between 3.6% and 6%; international organisations, such as the IMF (6) and the OECD (7), also predict negative economic consequences

In addition to the immediate consequences, it is not possible to calculate the overall negative impact withdrawal would generate.

What would be the consequences for the Single Market for Services?

- "Passporting" is a concept whereby a financial services provider, approved by one of the national authorities in one of the 28 Member States, is able to offer their services throughout the whole EU.

- The financial actors based in the City of London would lose access to the other 27 Member States.
- Clearing houses are involved in financial transactions between the buyer and the seller by taking responsibility for part of an eventual default. If a clearing house is at risk of bankruptcy then financial stability can be put at risk. In March 2015 the European Court of Justice annulled, in the name of a Single Market for 28 Member States, the "Eurosysteem oversight policy framework" which required clearing houses trading in Euro transactions to be located in the euro area.
- It is clear that this relocation requirement would be back on the table, the euro area could not take the risk of entrusting oversight for euro transactions to a third country.

What would happen to David Cameron and the British government?

The British government is divided. Twenty three ministers are calling for the United Kingdom to remain in the EU, as is the Prime Minister David Cameron. Seven ministers are campaigning to leave. The tone between the two "camps" is heated. Whatever the outcome of the referendum, the political consequences will have to be drawn and it appears likely that there will be a cabinet reshuffle.

David Cameron insists that in the case of the British public choosing to leave, he would not step down after the referendum, and that the party would reunite to respect the decision taken by the public.

- Whether or not this is a credible option remains to be seen - there is already talk of a coup planned by some MPs in favour of “Brexit” who feel that the Prime Minister needs to be replaced, even in the case of “Remain” winning the referendum.

Could a second referendum be on the cards?

David Cameron has promised that, whatever the result, there will not be a second referendum. On the other hand, some people, such as Nigel Farage (UKIP MEP), are calling for a second referendum to take place if the result is very tight.

What about the other countries in the United Kingdom other than England?

Overall the Scottish are pro-European and it is expected that they will vote largely to remain. Wales is also overall more pro-European than England. European cooperation helped to bring peace to Ireland.

- If the results of the UK referendum mean that Scotland would have to leave the EU, then it is to be expected that the Scottish would call for a second referendum concerning their independence from England, as Nicola Sturgeon declared (Scottish First Minister and leader of the Scottish National Party) (8).
- David Cameron has taken the risk of dislocating the EU and the UK.

What would happen to the EU citizens living in the UK and the British citizens living in the EU?

Approximately 1.2 million British citizens are currently living in another EU Member State, and 3 Million citizens of other EU countries are living in the UK.

At this point it is not possible to say what will happen to them. This is a subject which would surely be at the heart of withdrawal negotiations. Between the referendum and the final agreement there could be two years of uncertainty, maybe even longer. In principle, in the interim period citizens will provisionally still have the right to exercise free movement and for EU citizens to remain in the UK and vice-versa.

Would the United Kingdom hold the rotating presidency on the Council during the second half of 2017?

The current calendar foresees the United Kingdom holding the rotating presidency of the Council of the European Union between 1st July and 31st December 2017.

- Legally nothing is foreseen, but it would be absurd for a Member State which is in the process of negotiating its withdrawal to preside Council meetings.

What relations with the other European Member States (27)?

Multiple hypotheses are possible.

The United Kingdom could obtain a similar status to Iceland, Lichtenstein and Norway by joining the European Economic Area (EEA).

This would enable it to continue to benefit from the Single Market and to exchange with the Member States of the European Union, as is the case today.

- However, the rules of the Single Market would have to be respected, although the United Kingdom would no longer be involved in defining them; the free movement of people, which is something that the United Kingdom wishes to restrict, would continue.
- In the case of Norway, it also contributes to the European budget (9).

- In order to gain this status the United Kingdom would need to have the unanimous agreement of the 27 Member States of the EU, as well as those of the EEA.

The British could prioritise concluding bilateral agreements, as is the case for Switzerland.

Such agreements require the rules of the Single Market to be respected without being involved in defining them. Moreover, they do not provide full access to the Single Market, as the Swiss case illustrates: some agricultural products are subject to customs duties; trade in services is limited.

Reciprocal agreements could not be unilaterally revoked.

- The Swiss vote in 2014, concerning the free movement of people, illustrates the difficulties to renegotiate bilateral agreements.
- Switzerland considered that it was in its interest to contribute to the financing of the consequences linked to the enlargement of the EU (10).
- The negotiation of bilateral agreements between the United Kingdom and the European Union could take a long time. Any agreement reached would be subject to the consent of the European Parliament and potentially the national parliaments of the 27 Member States, if the agreement touched on national competencies.

The United Kingdom could also simply become a member of the World Trade Organisation

The United Kingdom would no longer have any privileged relations with the European Union.

Traded goods would become more expensive.

The rules of the WTO forbid differentiated treatment: the United Kingdom would not be able to take advantage of easier access to the Single Market.

Neither British citizens, nor British companies, would be able to take advantage of free movement.

- This status is not automatic: the United Kingdom has gained its current membership of the WTO through the accession of the European Union to this organisation.

What trading relations could the UK conclude with third countries outside the EU?

In any case, the United Kingdom would lose the advantages contained in trade deals concluded by the European Union with third parties and which, up until now, included them. New negotiations would take years.

- Barack Obama (11), just like the Canadian Prime Minister (12), have warned that the United Kingdom should not expect preferential treatment.

AN OVERVIEW:

	European Economic Area	Bilateral Agreements	WTO
Privileged access to the Single Market?	Subject to respecting EU rules	Subject to: - the details included in the agreement; - rules being applied	Forbidden
Influence on the rules?	No	No	No
Contribute to the EU budget?	Not excluded	Not excluded	Not excluded
Renegotiate agreements concluded by the EU with third countries?	Yes	Yes	Yes
Prerequisites in order to be able to obtain such a status?	Unanimous agreement of: - the MS of the EU - the members of the EEA	- Negotiations; - Consent of the European Parliament; - Qualified majority vote by ministers in the	- Negotiations; - Acceptance of the candidacy; - Signature of the accession protocol

For more information:

HM Government: Alternatives to membership: possible models for the United Kingdom outside the European Union
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504604/Alternatives_to_membership_-_possible_models_for_the_UK_outside_the_EU.pdf

Politico: 5 options for post-Brexit trade with Europe

<http://www.politico.eu/article/5-options-for-post-brexit-trade-with-europe-ukip-efta-single-market/>

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Given the large number of uncertainties about what will happen after the 23rd June, even in the case of the British public voting to remain in the European Union, there is a real risk of the European decision making process being completely paralysed. If all resources are focused on this sole issue, then other pressing and significant issues, such as the migration crisis, improving European competitiveness or reducing the number of Europeans at risk of poverty will not be tackled.

(1) <http://www.aboutmyvote.co.uk/upcoming-elections-and-referendums/eu-referendum>

(2) Page 28: article 1, paragraph 1

3) Michael Gove, speech, 19 April 2016, The facts of life say leave: why Britain and Europe will be better off after we vote leave: [URL:<https://d3n8a8pro7vhmx.cloudfront.net/voteleave/pages/271/attachments/original/1461057270/MG-speech194VERSION2.pdf?1461057270>]

(4) A majority of at least 72% of the Council representing the participating Member States (28 minus the United Kingdom), representing 65% of the populations of these States (article 238, paragraph 3, point b) of the Treaty on the Functioning of the European Union). Blocking minority: 8 States representing 115 million people.

(5) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524967/hm_treasury_analysis_the_immediate_economic_impact_of_leaving_the_eu_web.pdf

(6) <http://www.ft.com/intl/cms/s/0/ad066f38-008f-11e6-ac98-3c15a1aa2e62.html#axzz49fVGj8RC>

(7) <http://www.oecdilibrary.org/docserver/download/5jm0lsvdkf6k.pdf?expires=1464178658&id=id&acc-name=guest&checksum=B24A06E60954740D6688EC66EDD368FF>

(8) <http://www.theguardian.com/politics/2015/oct/16/nicola-sturgeon-new-scottish-referendum-probably-unstoppable-if-uk-votes-to-leave-eu>

(9) For further information: <http://www.eu-norway.org/eu/Financial-contribution/#.V0Wtuk1f2Uk>

(10) <https://www.eda.admin.ch/erweiterungsbeitrag/fr/home/la-contribution-suisse.html>

(11) <http://www.telegraph.co.uk/news/2016/04/21/as-your-friend-let-me-tell-you-that-the-eu-makes-britain-even-gr/>

(12) <http://uk.reuters.com/article/uk-canada-trudeau-brexit-idUKKCN0YA2YQ>