

BRIEFING

THE EU REFERENDUM R-DAY PLUS 1 and R-DAY PLUS 100

Scotland – Winning a referendum does not mean ‘leaving’

Winning a ‘leave’ majority in a EU referendum does not mean that the UK automatically ‘leaves’ the EU, nor does it define the post-exit relationship the UK would have with the EU.

The opinion of the government and Parliament

The overwhelming fact about the EU referendum is that, on R-Day plus 1, a ‘leave’ vote in a referendum would be announced to Parliament where it is unlikely that more than 5 percent of the membership would have voted to leave. Unlike the case in Scotland, the executive decision and the legislative endorsement to ‘leave’ does not lie in any way with outsiders. It is solely a case for the British government and the UK Parliament.

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There is no devolved government representing the 'leave' side although any government would be well advised to constitute an advisory body of the main 'leave' organisations. Of course, the EU institutions are also involved in the exact shape of UK withdrawal but the knotty questions of continuing EU membership and the currency, which apply in the case of Scottish independence, are not relevant in this scenario. At the end of it all, the EU institutions would not, and could not, prevent UK withdrawal.

What would the reaction of the UK Parliament be, assuming that the bulk of Conservatives, Labour, Liberal Democrats and Scottish and Welsh Nationalists, all endorse a 'remain' vote on the basis of what David Cameron offers?

Of course, there has been a shift of opinion, even in the government and the pro-EU parties. They are no longer urging a vote to 'remain in' on the basis of the putative advantages of EU membership as it is. Practically all now advocate reform of some sort. Indeed, it is likely that David Cameron's offer will be a dressed up associate second class relationship, but still in the EU. Both the eurozone crisis and the immigration crisis have brought into focus exactly what the nature of the EU actually is, a supranational government which in crucial areas takes no account of the democratic legitimacy of elected national governments.

Thrown into this speculation is the determination of the EU institutions to create even more centralisation in Brussels on the basis of the 5 Presidents Report with a move to Treaty change being considered in 2017 onwards.

The exact interaction of this with the actions of a British government, which is under orders from the electorate to leave, but does not wish to do so, is highly unclear.

How they do it in Switzerland

If one was a believer in the pure expression of the democratic will, or happened to live in Switzerland, it would be comforting to think that the UK government would look at the arguments and propositions put forward by those wishing to leave and would then implement a 'withdrawal' strategy following a 'leave' vote.

This is the practice of Swiss governments even when they disagree with the popular vote, such as the ban on minarets. They implement the referendum decision. A first consideration is to consider how the federal Swiss government would react and one of the deciding factors is the clarity of argument behind the majority vote in the referendum. A second which applies in Switzerland and will apply in the referendum result in the UK is meshing in with existing agreements. But the minaret vote was straightforward. The referendum was a clear instruction from the people – no more minarets – and the Swiss government did not have to take account of other opinions.

In the case of the referendum of April 2014 which approved limiting the number of migrants by quotas, this also included a provision that Switzerland would have to

renegotiate its bilateral accord with the EU on the free movement of people by 2017 or else revoke it. The Foreign Minister, Didier Burkhalter, said: *“The people have decided and the government will implement the decision for the best of the country.”* The EU objected strongly and threatened to end all other bilateral agreements, as it was entitled to do by the bilateral agreements. The current position of the EU is demanding Switzerland call a new referendum by the end of 2016. So, in this referendum case, there has not yet been an outcome and the vote of the electorate has not been implemented. In September, on a visit to Berne, Angela Merkel asked for negotiations to continue.

Clarity of strategy

The clarity of strategy could be based on notifying withdrawal under Article 50 of the Lisbon Treaty and negotiating a pull-out from the political, judicial and monetary structure and the common policies of the EU, while remaining in the Single Market and coming to friendly transitional arrangements (These would include incorporating the existing *acquis* into UK law.) There are, of course, variations on this, such as a Swiss position, a WTO relationship or an Australian-style mutual recognition relationship. These would mesh the result of the vote in with existing agreements and would probably be acceptable to the EU institutions.

But, of course, all this has to be implemented by an executive and a Parliament which is likely to have voted the other way.

It is not simply a case of replacing the existing government by a government which would be made up of supporters of ‘leaving’. That putative government, and a Parliament to support it, does not exist. This is unlike the situation in 1975 when Harold Wilson made it plain he would implement either an IN or OUT vote and would be able to command the votes in Parliament to do so.

What is being asked is for the executive and the legislative to implement a crucial and massive change which they have overwhelmingly voted against.

One can speculate about what actions might be taken by a government in this position. There might be a promise to ‘negotiate’ harder in fresh negotiations while drawing attention to the fact that 40 percent plus of the electorate may have voted to stay in. This would, no doubt, be coupled with a promise of another referendum on the outcome of the fresh negotiations. Something like the Danish double referendum in the past might follow. Another possibility is for the government to call a general election and fight it on a similar basis, calling for ‘untied hands’ to negotiate the people’s will but possibly coming up eventually with EU-lite and, again, possibly asking for that to be endorsed in a further referendum.

Decisions to take

Two things are clear.

First, those who wish to leave must put forward a clear aim and a clear plan to leave which would be the yardstick of clarity by which the government is judged and which cannot be ignored. Those who call for referendums in Switzerland are well aware of this and are very careful to couch the referendum question and decision in such a way it cannot be ignored.

Second, to maintain any sort of respect for the popular vote, an Article 50 notice must be served by R-Day + 100. That gives the government ample time to get its negotiating position in order. The negotiations to implement the popular vote will then take place against a long stop; Britain leaving the EU after two years. This is the kind of long stop used in the Swiss referendum where the free movement of EU citizens into Switzerland will be revoked if there is no agreement on migrant quotas.