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# BRIEFING

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## EUROPEAN UNION: THE CRITICAL PATH OUT OF THE EU

This paper analyses the critical path to leave the EU. It concentrates on two areas. These are winning a referendum and organising an effective and beneficial departure.

These require a clear aim and a clear plan, taking account of existing legal agreements and political realities.

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# EUROPEAN UNION: THE CRITICAL PATH OUT OF THE EU

*“The project was to be called ‘Stepping Stones’, a title suggested by Keith (Joseph), who had been much attracted by the concept of the ‘critical path’ – common in business but not in politics – which I had used to set out some of the interrelated actions needed in the run-up to a general election and, later, for the redesign of Britain’s political economy.”*

Sir John Hoskyns (Margaret Thatcher’s political strategist, 1977-1982), Just in Time

*“It brings the object in view within the sphere of the practicable and attainable, instead of leaving it within the sphere of what might be desirable, but which might have been most difficult, under all the circumstances, to have realised.”*

Gladstone on the Belgian Treaty, August 10<sup>th</sup> 1870

The critical path is necessary to establish the ‘interrelated actions’ needed to recover the UK’s status as a self-governing democracy by leaving the EU.

Winning a ‘remain’/‘leave’ referendum is a part of these actions but a referendum is a political instrument not a policy.

On what policy a referendum is won is also important.

## **Before 2015**

It is not necessary to review in detail what happened before May 2015 except to note that ‘interrelated actions’ commenced many years ago in which a large number of people played a part. First of all, membership of the EU was always the subject of criticism from long established groups such as the Campaign for an Independent Britain, the Bruges Group, etc.; then there was parliamentary opposition to the Maastricht Treaty; there was the collapse of the UK’s ERM membership and the failure of the Blair government to take the UK into the euro, and also the foundation of a specific EU withdrawalist party in the shape of UKIP.

All this eventually led to a petition to hold a referendum from Nikki Sinclair MEP and other MPs, being debated in Parliament which ended with a substantial Tory vote against the government and then David Cameron's commitment to holding a referendum on EU membership.

After the election of 2015, it was also evident that pro-EU opinion would no longer urge a vote to 'remain in' on the basis of the putative advantages of EU membership as it exists now. Most shades of pro-EU opinion now advocated reform of some sort.

In other words, supporting the EU had become a damage limitation exercise. How the electorate judged the promises and actions of the 'reformers' would be a critical factor.

## **2014/5**

Although not particularly reflected in the polls, the image of the EU in the UK has undergone a sharp deterioration in the last year.

This is due to the eurozone crisis and the imposition of EU control on the economies of Southern Europe and the saddling of these countries with enormous debts. It has revealed to those who could not previously see – especially those in the Labour Party – how the EU had become a supranational power overriding the governments and peoples of its constituent nations.

The sudden migration crisis in Central Europe, and the way it has been mishandled and the outbreak of defiance by EU member states to plans to redistribute migrants is obviously also a blow to the image of the competence of the EU but also the whole idea of 'European Values'. This issue has arrived suddenly and the political fallout has a lot further to go, damaging the whole EU project.

A further complication is the timing and progress the EU will make on its own proposals to push forward economic, financial and fiscal union in the Eurozone.

With the EU having stated these proposals, based on the 5 Presidents Report, will be brought forward in 2017 and onwards, there is a severe problem for the British government in holding a referendum with such massive changes scheduled to take place shortly after the British referendum. Either they are revealed before the referendum or after the referendum. Either way, they could be toxic to the pro-EU side.

This analysis is not concerned with David Cameron's plans and negotiations. Whether he continues with a few minor requests or expands his plan into an associate agreement of some type, the UK will remain tied to the EU even if there is exit from some EU policies.

## **The Future**

The critical path ahead centres on two areas; winning a referendum to leave and actually organising an effective and beneficial departure from the EU.

These two matters are 'interrelated'. A Clear aim on what 'leaving' means and a clear plan to attain that will not only be essential for R DAY plus 1 if there is a 'leave' vote; they will be necessary for what will then be a government in considerable disarray. This clarity of aim and plan will reflect back on the referendum campaign itself. A campaign that has a clear aim and a clear plan is a winning campaign.

## **How they do it in Switzerland**

Referendum proposals in Switzerland are drafted by those who call for the referendum but, if passed, have to be carried into effect by the Federal Swiss government.

So those winning a referendum against the advice of the government, as has happened for example in the recent minarets' referendum and the referendum on limiting the number of migrants, have to ensure that the result is actually effected.

Of course, in Switzerland the federal government can, and will, implement referendum results even if it disagrees with the result.

Three matters are of interest. These are, first, the clarity of plan which was behind the majority vote. Second, there is the method as to the meshing in of the referendum result with existing laws and treaties. Third, there is sometimes a long stop included in the referendum proposition.

The minaret vote was straightforward. The referendum was a clear instruction from the people – no more minarets – and the Federal Swiss government did not have to take account of other matters.

In the case of the referendum of April 2014 which approved limiting the number of migrants by national quotas, this also included a recognition 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 Swiss-EU agreements. The current position of the EU is to demand 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. (One should note that the referendum endorsed a limitation on the number of asylum seekers as well.)

All three aspects of Swiss referendums are, therefore, relevant to the UK EU referendum. These are the clarity of argument and plan behind the winning vote, the meshing in of the result with existing agreements and a long stop to actually enforce the result.

[The exact wording of the Swiss referendum is attached as an appendix.]

Moreover, Swiss news reports *“The bid to seal an agreement has been stalled by EU member Britain’s similar demand to limit immigration from within the EU, making it hard for the EU to offer the preferential deal for Switzerland before it has settled matters with Britain.”*

The Swiss government has made it clear on 4<sup>th</sup> December 2015 that it takes the referendum result seriously and has taken action.

*“If there is really no solution ... we would be ready for a suspension of a part or all of the bilateral agreements.”* Foreign Minister Didier Burkhalter told a news conference. Also, Swiss news reports *“The government has asked its justice department to draft unilateral curbs on immigration by March 2016 in the event that there is no breakthrough.”*

Thus the critical path outlined by the referendum proposers is being followed in Switzerland.

## The UK Referendum

It is now necessary to consider what is the current position in the UK in the critical path to winning the referendum and to organise an effective and beneficial departure from the EU taking into account the relevant matters from the Swiss referendum experience.

David Cameron has recently criticised the 'Norway Option'. His assertions were obviously inaccurate and misleading.

Superficially this appeared a strange move as the Vote Leave campaign, the Leave EU campaign and Nigel Farage and Douglas Carswell for UKIP, all stated that they did not favour the UK taking up the 'Norway Option'.

All of those spokesmen agreed more-or-less with the Vote Leave's spokesman, Dominic Cummings, *"Vote Leave does not support the 'Norway Option' for Britain. After we Vote Leave, we will negotiate a new UK EU deal based on free trade and friendly co-operation. We will end the supremacy of EU law."*

All these spokesmen have jumped right off the critical path. They have also deviated from Gladstone's advice to seek the *"practicable and attainable"*, quoted above.

The 'Norway Option', that is, joining the EFTA/EEA and, repatriating the EU acquis, is seen by its supporters as a means for the UK to stay in the Single Market while withdrawing from the political, judicial and monetary structure of the EU.

This plan removes all possible business objections to leaving the EU because business in the Single Market will be unaffected.

It is the most likely to be accepted by the EU institutions as it has been mooted in the past by Giscard D'Estang and Jacques Delors. It causes the least disturbance to the EU and the least workload for its officials.

It is in existence in Norway and Iceland, it can be taken off the shelf and implemented within the two years' negotiation period allowed under Article 50 of the Lisbon Treaty. It would mesh the 'leave' decision in with existing agreements exactly as the Swiss proposals do.

As the authors of Flexcit (a huge study led by Richard North and Robert Oulds) have advocated, it is a first step not a final destination. Future trading arrangements, after the Norway Option is implemented, would be negotiated by future British governments. It is only at this point that the Vote Leave, Leave EU, Carswell and Farage assertions will become of relevance, when they can be studied and elaborated to see if they offer value.

For full details of this exit plan, one should look up <http://www.eureferendum.com/> where Flexcit is hosted and where there are numerous linking commentaries.

### **Why Jump off the Critical Path**

Vote Leave, Leave EU, Douglas Carswell and Nigel Farage, all assert that they can negotiate a new UK-EU trade agreement by which they mean a Regional Trade Agreement under WTO (World Trade Organisation) rules but there is no evidence for this and no evidence that there has been a comprehensive study to work out how this can be done.

Regional Trade Agreements typically take many years to complete and an UK-EU RTA would be much more complicated than others in existence. If the UK left the EU Single Market without a RTA, the UK would trade with the EU under general WTO rules. This means the preferential position each has in each other's markets would cease.

The Norway Option covered the three points vital in Swiss referendums. These are a clear argument and plan, a meshing of the proposed change with existing agreements and a long stop (Article 50). It adheres to a critical path. The proposals of Vote Leave, Leave EU and UKIP are simply assertions without detail and have no timeline.

Moreover they make exactly the same mistake as the NO side made in 1975 where there was a variety of untested, unstudied aspirations which were, of course, constantly pointed out by the pro-EU forces at that time.

Leaving the critical path means that voting to leave would be a leap into the dark, to trust vague promises whose proponents cannot explain how their proposals would be *"practicable and attainable"*.

While Leave EU and UKIP are not generally considered intellectual heavyweights, it simply is unbelievable that the hard headed businessmen behind Vote Leave would countenance Dominic Cummings' jumping off the critical path.

Why should they suddenly favour an untested, unstudied and unlikely assertion as opposed to an existing, clearly demonstrated, solution which would preserve business's full position in the Single Market? Truly this assertion is beginning to resemble the prospectus of one of the enterprises proposed in 1720 at the height of the South Sea Bubble, *"For carrying on an undertaking of great advantage, but nobody to know what it is."*

The other inexplicable aspect of Vote Leave's assertion was that up till then Dominic Cummings had correctly analysed on his blog the critical path to assembling a majority to leave the EU:

- Convincing voters frightened about their jobs; that it was safe to leave;
- Explaining what life will be like after withdrawal;
- Repositioning the argument so that staying in is seen as the dangerous option.

### **A Watching Brief**

Up to now, the organisations in The Leave Alliance have maintained a watching brief as the other campaign committees have formed. They were willing to work with all withdrawalist campaigners and support any reasonable plan which had a clear aim of withdrawal.

Our preferred option was the Norway Option which kept the UK in the Single Market, left business completely unaffected and was an off the shelf existent version which could be clearly seen in the current position of Iceland and Norway. There were other options which were more complicated but would have been acceptable.



However, we are now faced with the adherence of Vote Leave, Leave EU and UKIP to hypothetical perfect deals which are not backed up by detailed study.

### **The Requirement of the Critical Path**

The critical path is not just proposing an exit plan to win the referendum, it is also about implementing a beneficial and safe exit if the referendum is won.

Plainly, on R+1 Day the Norway/Iceland Option is “*practicable and attainable*”. Negotiating a UK-EU free trade agreement ab initio would be a massive undertaking, subject to the approval of all 27 EU governments and, at present, is not put forward in any determined form. It is simply a thirty-four-word assertion. It would seem to fall under Gladstone’s dictum of “*what might be desirable but which might have been most difficult, under all the circumstances, to have realised*”.

### **The UK Constitutional Situation**

Leaving the EU has to be implemented by an executive and a Parliament whose members are 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. A decision to offer ‘no plan’ to leave will simply mean the ‘plan’ decision will be passed to the government who can interpret the decision in any way it wishes. The present composition of Parliament would facilitate this.

## **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 in favour of leaving, 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, along with effects on other international treaties, if there is no agreement on migrant quotas.

## APPENDIX

### Initiative populaire fédérale 'Contre l'immigration de masse'

#### I

La Constitution<sup>1</sup> est modifiée comme suit:

Art. 121 Titre (nouveau) Législation dans le domaine des étrangers et de l'asile

Art. 121a (nouveau) Gestion de l'immigration

<sup>1</sup> La Suisse gère de manière autonome l'immigration des étrangers.

<sup>2</sup> Le nombre des autorisations délivrées pour le séjour des étrangers en Suisse est limité par des plafonds et des contingents annuels. Les plafonds valent pour toutes les autorisations délivrées en vertu du droit des étrangers, domaine de l'asile inclus. Le droit au séjour durable, au regroupement familial et aux prestations sociales peut être limité.

<sup>3</sup> Les plafonds et les contingents annuels pour les étrangers exerçant une activité lucrative doivent être fixés en fonction des intérêts économiques globaux de la Suisse et dans le respect du principe de la préférence nationale; ils doivent inclure les frontaliers. Les critères déterminants pour l'octroi d'autorisations de séjour sont en particulier la demande d'un employeur, la capacité d'intégration et une source de revenus suffisante et autonome.

<sup>4</sup> Aucun traité international contraire au présent article ne sera conclu.

<sup>5</sup> La loi règle les modalités.

#### II

Les dispositions transitoires de la Constitution sont modifiées comme suit:

Art. 197, ch. 9<sup>2</sup> (nouveau)

9. Disposition transitoire ad art. 121a (Gestion de l'immigration)

<sup>1</sup> Les traités internationaux contraires à l'art. 121a doivent être renégociés et adaptés dans un délai de trois ans à compter de l'acceptation dudit article par le peuple et les cantons.

<sup>2</sup> Si les lois d'application afférentes ne sont pas entrées en vigueur dans les trois ans à compter de l'acceptation de l'art. 121a par le peuple et les cantons, le Conseil fédéral édicte provisoirement les dispositions d'application nécessaires par voie d'ordonnance.

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<sup>1</sup> RS 101

<sup>2</sup> L'initiative populaire ne vise pas à remplacer une disposition transitoire en vigueur de la Constitution: c'est pourquoi le chiffre de la disposition transitoire relative au présent article ne sera fixé qu'après le scrutin, en fonction de l'ordre chronologique dans lequel les différentes modifications constitutionnelles auront été acceptées. La Chancellerie fédérale procédera aux adaptations nécessaires avant publication au Recueil officiel du droit fédéral (RO).