

Renegotiation or EU Exit? What are the mechanics?

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UKAEL Seminar on EU Withdrawal
King's College, 28th October 2014

The political context

Conservative European Parliament election policies:-

OUR PLAN TO
DELIVER REAL
CHANGE IN
EUROPE

1. ACTION

We've stood up for Britain's interests in Europe:

- ✓ Cutting the EU budget saving British taxpayers over £8bn
- ✓ Taking Britain out of the Eurozone bailouts
- ✓ Vetoing a new EU Fiscal Treaty that didn't guarantee a level playing field for British businesses

**Cameron
forces through
first ever
EU budget cut**

Daily Express, 9 February 2013

2. RENEGOTIATION

We will renegotiate Britain's relationship with the EU, bringing **powers back to Britain** and **away from Brussels**:

- ✓ Keeping **control of our borders**
- ✓ Taking back control of **justice and home affairs**
- ✓ Securing a **better deal for British taxpayers**

**Cameron:
the EU is
not working
and we will
change it**

The Daily Telegraph, 15 March 2014

3. REFERENDUM

Once we have finished renegotiating, we will give you the final say with an **in-out referendum in 2017**.

Labour and the Lib Dems won't give you a say, while UKIP simply can't deliver.

**Cameron promises
in-out referendum on EU**

BBC News, 23 January 2013

Scenarios for UK exit from EU

Depends upon 2015 General Election outcome

- Government succeeds in renegotiation, but referendum in 2017 votes “Out”
- Government fails to achieve renegotiated arrangement it can recommend to British people
- Possible other scenarios leading to in/out referendum depending on party or parties in power

The exit mechanism ...

Article 50 of the Treaty on European Union

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. 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.

Exit mechanism (cont) ...

Article 50 TEU cont ...

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.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

....

Implications of exit mechanism

- No special constitutional requirement laid down for UK to give notification
- Art 50(2) envisages agreement on exit arrangements and continuing relationship but does not guarantee that agreement will be reached or that acceptable terms will be offered to departing State
- But under Art 50(3) exit happens anyway after 2 years even if no agreement in place. State therefore cannot be prevented or delayed from leaving
- Upshot: UK must be ready to exit without agreement if necessary, or would be obliged to swallow unacceptable terms

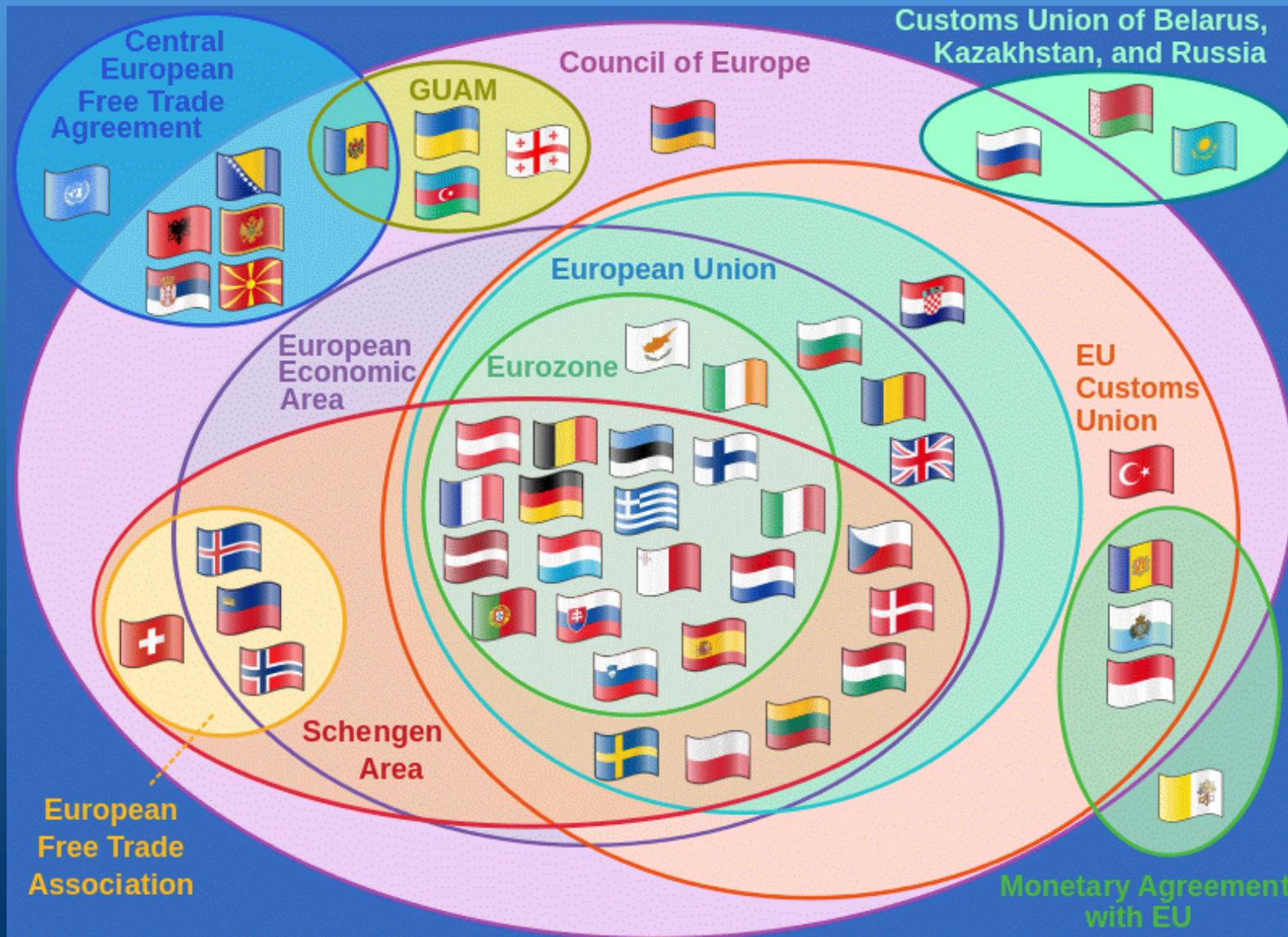
Changes to UK internal law

Amend (not repeal) European Communities Act 1972

- Section 2(1) direct effect rights and obligations will lapse automatically on exit
- Henry VIII power to legislate by SI in section 2(2) extended to cover revision and replacement after exit of directly effective and transposed EU laws. Possible “sunset” clause
- Power to substitute UK national policy for EU policy where policy area would otherwise become devolved
- Also reserve power to disapply directly effective rules within UK in advance of exit
- Clarification of legal consequences of exit: e.g. that ECJ judgments or institutional acts after exit can have no legal effect in or in relation to UK
- Immediate repeal of direct charge payment authority in s. 2(3)

European bodies 'Euler diagram'

Not up to date - but general picture still good



International Agreements

Different categories of international treaties

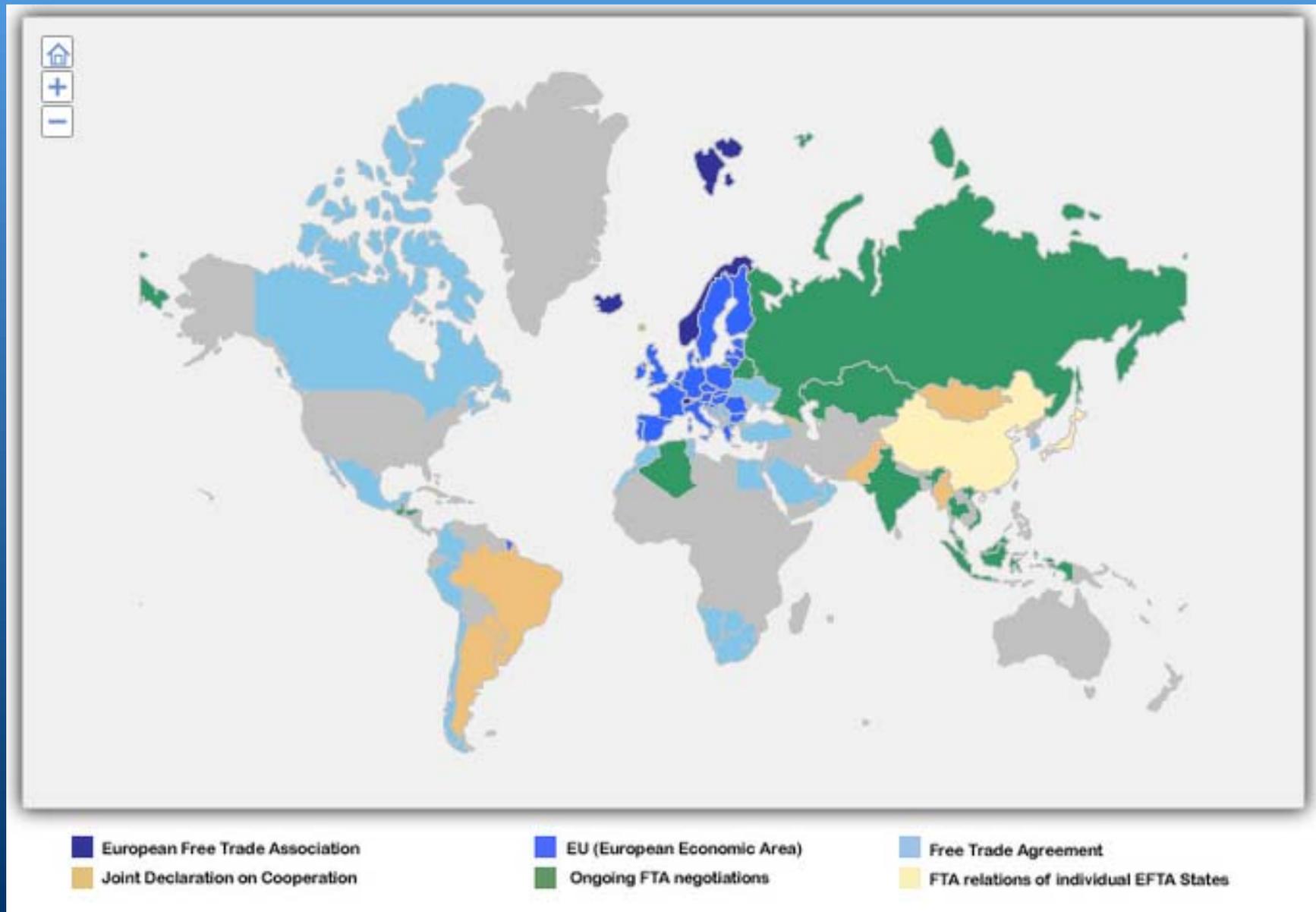
- Agreements where UK status unaffected by EU exit - e.g. UN membership
- ‘Mixed competence’ agreements where UK is party and its competence will expand when EU competence disappears - e.g. WTO Agreements
- Where EU is party, or where MS are also parties but in their capacity as such - may need to replace or revise with consent of counterparties, or may be open to signature as non-Member
- CSFP agreements

Trade Agreements

Alternatives to EU membership

- Re-apply for membership of EFTA - now Vaduz Convention
- Thereby join EFTA's network of free trade agreements with third countries, which is wider than EU's: see <http://www.efta.int/free-trade/free-trade-agreements>
- Take advantage of historic links to open negotiations with e.g. Commonwealth countries

EFTA free trade map



Trade relations with the EU

Possible bases of agreement

- European Economic Area membership - madness for UK, since “*not in Europe but ruled by Europe*”: effective compulsion to mirror EU regs and directives under Art 102 EEA; also Social Policy chapter
- UK goods exports to rest of the EU in 2012 were £150.3bn; EU's goods exports to UK for the same period were £206.1bn. Free trade agreement massively in EU's interests and the UK need not make concessions on other matters in return
- Basic model 1972 EFTA/EEC FTAs (now only applicable to Switzerland) and subsequent Swiss/EU bilateral agreements: <http://www.europa.admin.ch/themen/00500/index.html?lang=en>
- But UK relationship with EU can be looser than Swiss model

Other relations with EU and wider Europe

- Join existing multilateral conventions where appropriate - e.g. Lugano Convention complementary to Brussels Regulation
- Move from bilateral to multilateral model for relations with EU where possible
- Aim for new UK status to be open to other states as well

Renegotiation

Important points

- Free movement of persons
- Justice and Home affairs - partly repatriated through exercise of bloc opt out but more to go
- Financial services - eurozone discrimination against the City
- Employment law etc
- EU Charter of Fundamental Rights
- Many other possible issues

The End

Final thought -
Are renegotiation objectives easier to achieve via
changes to membership terms or via Article 50?