

Under embargo, 1 00 pm, 27 October 2016

THE RT HON LORD OWEN SPEAKING TO THE SWISS CIVIL SOCIETY
ASSOCIATION IN ZURICH ON ‘WHICH EUROPE?’
ON THURSDAY 27 OCTOBER 2016

“An EU without the UK”

It is very difficult in October 2016 to point out all the possible consequences of Brexit since the British government has wisely decided to research carefully its next steps and announce its policy no later than the end of March 2017 when it is expected to trigger Article 50. By then the EU and the UK must have reached an agreed interpretation of Article 50.

I draw a distinction between negotiations under Article 50 which I see as flexible and exit arrangements which are fixed and need a firm timetable. The leave vote is not a conditional instruction. Under Article 50 the UK will leave as a member of WTO if there is no EU bespoke agreement.

The government will introduce UK legislation on the European Communities Act 1972 (ECA). If they are wise through one clause they will carry over all EU law into UK domestic law. That means at the outset of the negotiating process nothing will change. There will be a political commitment to not make any changes in the EEA Treaty on trading and Customs Union issues without the agreement of the EU Council of Heads of Government prior to the exit procedure being put in place.

Yet this ECA UK legislation under a fair-minded interpretation of Article 50 must enshrine the legal right for negotiations to start with other countries now on these matters. The exit timetable can, therefore, accord with the French President saying on 30 August 2016, “For France, everything must be concluded by 2019, preparation and negotiation.” but that cannot be a cliff edge.

The UK has to be able to start negotiating international trade agreements before exit. This is a non negotiable issue. So is the UK having full WTO membership in our own right. To fail to have these two issues put into operation and sanctioned under UK law in the ECA legislation would be gross negligence. Under any of the options for negotiating we must have these safeguards or we otherwise face being pushed over a cliff edge after waiting for an EU decision in 2018-9 which might prove to be unacceptable. An EU attempt to ban such arrangements while trade agreement negotiations proceed with the EU would necessitate the UK refusing to proceed under Article 50 but to exit instead under the Vienna Convention on the Law of Treaties ‘Part V: Invalidity, Termination and

Suspension of the Operation of Treaties' (Article 42- Article 72) pp. 342-349.

Separately the ECA legislation must enable other provisions after prior EU discussion to provide for a staging of the UK exit. At a minimum the UK has to have some staging on non trade issues.

For example, Legislative Provision:

1. to cut off all European Parliamentary Election expenditure and participation for UK MEPs well in advance of the election date in 2019. Also detailed financial matters relating to existing UK MEPs' future pension arrangements and other matters which should be a UK responsibility.
2. for UK citizens currently employed by EU institutions where contracts are terminated directly related to UK exit should be an accepted UK cost and having that clarified will start to create a mood of trust in Brussels.
3. settling all matters relating to the right of abode of existing EU citizens in the UK to remain in the UK as soon as possible.
4. settling all aspects of fishing and agriculture not involved in trade treaties. If we can reach agreement before 2019 why not implement? Fishing is not a bargaining counter in the way that fixed tariffs may well become. It would be helpful, in particular, if the Scottish Parliament and other devolved Assemblies were involved as soon as possible in the exercise of what must be for them devolved powers over fishing and agriculture. There are also issues in UK waters, particularly with France and Spain, over historic fishing rights. They too would be better made sooner rather than later and would help to change the atmosphere in Paris and Madrid as we start to act as good neighbours under Article 8. Also respect historic rights to self-determination as over Gibraltar.

Another example is making settlement prior to exit where people or businesses need time to make arrangements. For example, on 17 October 2016, Open Europe issued a Report 'How the UK's financial sector can continue thriving after Brexit '. It argued "if banks, for instance, were still unclear about what the future holds one year before the UK formally exits the EU, they would be forced to start making decisions - including over whether to shift part of their business elsewhere." Not just British banks would be affected, for example, 19% of Deutsche Bank's total net revenues come from the UK.

The City of London is not just a UK asset but a benefit to the whole EU. Indeed it goes beyond that to the EEA and the wider Europe. It may be necessary for the UK to accept foregoing some revenues covering 'clearing' which it has hitherto kept despite being outside the euro. But other EEA countries should recognize that the UK will have earnings from other currencies and operate under 'equivalence'.

As EU leaders go on making it abundantly clear that there can be no membership of the existing EEA (European Economic Area) without freedom of movement of labour, which is clearly not acceptable after the UK referendum to a very large part of the British electorate, it is mere point scoring for UK politicians, who are not reconciled in their heart of hearts to accepting the referendum result, to go on about voting in the House of Commons to tie the hand of the UK government to staying in the Single Market.

After all, as recently as February 2016, David Cameron's obvious need to have something substantive on free movement of labour was well known to many EU Heads of Government, particularly Merkel but she was adamantly against opening up a new negotiation on free movement of people.

It is not a remotely sensible UK negotiating position to challenge closing of the Single Market option directly. There is no reason why the UK cannot, however, at the time we are drawing up our regulations on restricting entry to discuss the similarities in the language of the Treaties under the title "sectoral adaptation" where Liechtenstein, in the EEA, is allowed as a matter of fact to run a selective system for incoming labour from the EU. This is not a mini state privilege but part of a free standing EU Treaty agreement. The rules are set out in Articles 112 and 113 of the EEA Agreement. Its formal status is in an amendment to Annex VIII cross-referenced to Annex V on free movement of workers in the Treaties. As always in the EU it is easier to build on an existing precedent than to establish a new precedent. This mechanism might be used by Switzerland to solve the problem it faces as a consequence of its 2014 referendum vote in favour of immigration limits and quotas. The concerns in Switzerland and the UK reflected in referenda are mirrored in many other countries within the EU and it is foolish to pretend otherwise. Eventually this issue will have to be grappled with and the EU's threat to cancel existing bilateral deals with Switzerland is not the best way for the EU to proceed.

Turkey is also a member of the EU Customs Union without being a member of the EU which establishes a precedent. It is another area for the UK and the EU to possibly explore as part of a UK-bespoke settlement in two specific areas. One is the automotive industry which is more integrated across EU member states than any other EU/UK manufacturing sector and it might be worth seeing if special arrangements would be feasible. The other area is Northern Ireland where special arrangements between the UK and Ireland have been place since 1922 and have been modified over time to mutual benefit. Yet any Customs Union arrangement will not be acceptable if it impairs in significant ways the UK's freedom outside the EU to negotiate bilateral trade agreements.

In the Ankara Agreement of 22 December 1995, Article 57.4¹ the EC-Turkey Customs Union Joint Committee considers policy and agreements with third parties and endeavours to find mutually acceptable solutions. On the face of it this procedure does not ban new trade agreements but seeks to reach an accommodation. Would such an accommodation be open to the UK? Could it be a transitional arrangement? The UK is likely to try for zero tariff agreements. It is claimed by Dan Lewis of the Economic Policy Center that the EU has 12, 611 different goods subject to import tariffs. 1,494 have started since 2009 and of these one third were for clothing and footwear. An EU that wants to reverse this trend and wants less protectionism would be content for the UK outside the Single Market to negotiate on trade bilaterally within a Customs Union, but I suspect they will have difficulty with the UK following Turkey.

The harsh truth on freedom of movement is if there is to be any change in the EU's position it is unlikely to come until after the elections in 2017 in the Netherlands, France and Germany. Freedom of movement is, almost everyone would agree, vital for a core Eurozone but not everyone agrees it is necessary for an EEA where some EU members will have no wish to ever be a member of the Eurozone and some may have recently left the Eurozone.

The UK cannot realistically put the EEA on the negotiating agenda unless and until there has been a prior Heads of Government political decision that free movement of labour is only necessary for Eurozone membership but not necessary for EEA membership. A change of mind on this issue, no longer obliging countries to operate free movement in the EEA, would open up immediate EEA membership for Turkey which could be of real economic importance with Turkish membership of the EU remaining their longer term aim.

We are searching now for the most acceptable procedures for controlling the admission of people who wish to enter the UK so as to be ready for when we exit. We will need the fullest possible consultation in 2017 with the EU and the Commonwealth as well as all other nations on these procedures in addition to debates in our own Parliament. This cannot be a solely EU process. People need due notice and to be able to plan forward. Legislation will be needed well before any exit in 2019.

There will be many other areas where legislation is required sooner than our exit date and to take account of longer transitional periods. In many it would be sensible to put in place new arrangements as agreement is reached and use the Lisbon Treaty powers to amend the Treaties by unanimity in the European Council. It should be possible to agree to let

¹http://www.avrupa.info.tr/fileadmin/Content/Downloads/PDF/Custom_Union_des_ENG.pdf

the EU use the procedure under Article 50 where this shortened procedure is not appropriate in which case transitional arrangements may be needed. Much of this preparatory negotiation can go on during 2017 at official level.

In my book '*Europe Restructured The Eurozone Crisis and its Aftermath*'² published in 2012, I argued for EEA reform. George Osborne as Chancellor appeared interested. The book was supported with huge coverage by the *Times* newspaper. It is what Cameron should have negotiated since 2013 when he first announced a referendum on the EU. Gradually he might have won over *all* EEA members. Norway, Iceland and Liechtenstein would have had full voting rights. Freedom of labour would not apply to all members. Turkey would have been invited to join but not have been eligible for free movement of labour. The EEA would have had its own tailored dispute settling mechanism building on the European Free Trade Association (EFTA) Court. The EEA would have been open to all in the wider Europe. Switzerland in particular would, I believe, have been able to come into the EEA and then the Balkan states would have been able to come in much sooner than into the EU which is something that might help the current problems in Bosnia-Herzegovina, Serbia and Montenegro. Perhaps that vision of a wider Europe will return when realism over the disaster that is the Eurozone forces its reform. But that may never happen and certainly is very unlikely to happen before 2019. So the dye is cast for the UK. We will exit the EU before the end of 2019.

The necessity for reform of the Eurozone was stressed by the former French Economic Minister, Macron, and the German SPD leader, Gabriel, when over two years ago they wrote:

the terrible crisis of the recent years has highlighted two clear weaknesses of Europe's architecture. The first is the end of economic convergence between EU – and, in particular, Eurozone – countries. This is not a theoretical matter: unemployment is the daily reality of millions, especially for young people. The second is about political tensions: within the member states, where anti-European forces are on the rise; and within the union itself. ... In this context and 10 years after the French 'no' to the constitutional referendum, now is the time to re-open the economic and political debate, and to fix the Eurozone as part of a greater deal for a union in which all member states find their place.

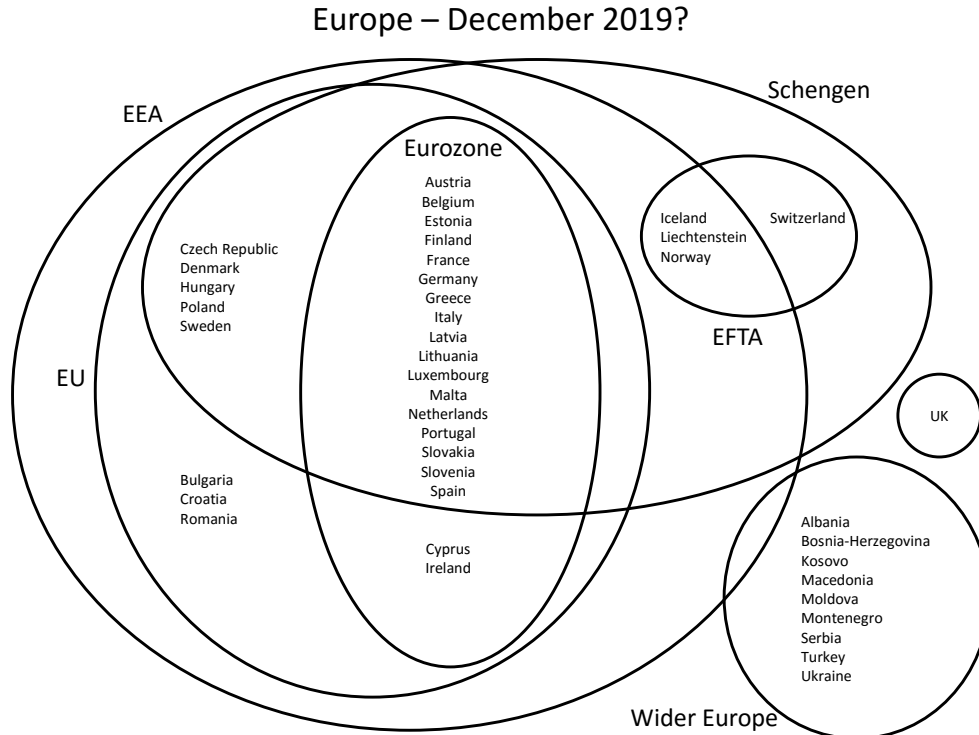
They even went as far as to comment on the euro development from 1999–2005 using a Kantian reference to the need to 'straighten what is crooked' and say how both France and Germany 'overlooked critical flaws in the architecture of monetary union that need to be decisively addressed so that the euro fulfils its promise of economic prosperity and

² David Owen, *Europe Restructured. The Eurozone Crisis and Its Aftermath* (Methuen, 2012).

prevents Europe from slipping even more into division and discontent’.

Another – and in many respects a more radical - proposal was suggested for EEA reform in the *Frankfurter Allgemeine Zeitung* on 30 July 2015 by the German finance minister, Schauble, and the Dutch finance minister, Jeroen Dijsselbloem, only days after Gabriel and Macron had written the words just quoted on the Eurozone. Both Dijsselbloem and Schäuble were responding to what they saw as an increased politicisation of the European Commission under Jean-Claude Juncker. Their restructuring would require full-scale treaty amendment and the full panoply of an Intergovernmental Conference (IGC). It would involve removing the European Commission’s existing competencies for the Single Market and placing them into a new organization. That is a far-reaching reform involving much ‘cutting back and restructuring’. In my view the EEA restructuring I have already referred to is more realistic and achievable.

The restructuring of Europe by December 2019 could look like the following diagram with the big unknown being what if any progress has been made for a Fiscal Union and a Banking Union as part of a core Eurozone and what countries will be outside the Eurozone. Sadly Eurozone reform may take much longer unless there is a crisis in which case it will be forced on Germany.



My current view remains that in keeping with the duty of loyal cooperation in Article 5

the UK can define a fair-minded interpretation of the negotiating framework ahead before invoking Article 50 no later than the end of March 2017. Also under Article 8 on good neighbourly relations the UK and the EU can lay the foundation to negotiate a mutually beneficial bespoke deal with the EU in the context of WTO. Roberto Azevedo, the head of WTO, has made it crystal clear that there will not be a trade “vacuum or a disruption” when we exit from the EU. This represents a big change from what the WTO said before the referendum. It is now clear what many of us have always said – there will be no discontinuity in membership and Azevedo has said that he and the WTO Secretariat will make the transition as smooth as possible. WTO tariffs, at present levels, are comparatively low, in the single digits and 2.4% for manufacturing. We do 65% of our current trade under these WTO rules. Outside the EU and outside the Single Market non EU trade for the UK is growing fast. We have a £30 billion annual surplus and this accounts for the majority of our trade – all under WTO rules. Why does no-one focus on the facts that our EU trade is contracting and shows a massive £60 billion deficit and is the smaller part of our trade. If the Single Market was doing so well, and was so attractive and advantageous, we should expect to be doing much better. We can make accommodations with the EU under WTO rules. EU specific deals will be mutually advantageous and not challenging the EU founding principles. Hard and soft are ludicrous terms in relation to trade. For the last 20 years I have earned my living in world markets, and been chairman of two trading companies. Politicians and bureaucrats keep forgetting that what matters is, above all, price when making a trade and that can accommodate tariffs. The next most important factor is the delivery date. Britain is a trading nation and has been for centuries. The City of London has proven its capacity to adapt to market conditions. What the referendum showed is that the people in this country have more confidence than some of its leaders and most of its politicians.

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