

The effects of leaving the EU on legal and financial services

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Matrix

1. The effect of leaving the EU would certainly generate some complicated legal problems but the important question is the overall effect on the UK economy. That is the real question tonight, not only for London but for the UK as a whole.

Three points:

- **The value of the single market and the lack of credible alternatives**
- **Freedom to provide services**
- **Financial and legal services**

The value of the single market and the lack of credible alternatives

“We are committed to playing a leading role in the European Union in order to advance our national interest. The single market is one of the greatest forces for prosperity the continent has ever known and that is why we will continue to push an ambitious programme of deepening the single market while seeking to reduce unnecessary burdens in EU legislation”. [William Hague, Foreign Secretary, July 2012, launching ‘Balance of Competences Review’].

2. You might expect Lord Lamont, as a former Tory Chancellor, to agree not only with William Hague but also with: all 4 PM’s since 1990 (and indeed Lady Thatcher, who campaigned strongly both for UK membership and for the internal market programme); the present Tory Chancellor; and the G20; and the IMF; and the World Bank; and the OECD; and HM Treasury; and the Bank of England; and the specific advice of our closest and most powerful ally, the USA.

3. Instead, I am not sure if he endorses what has been unflatteringly but essentially accurately been described as the ‘Utopian rubbish’ put out by Michael Gove yesterday, or with the unpromising and unedifying contributions of the Mayor of London: calling the President of the USA a hypocrite; describing the EU as ‘crap’; and dismissing his opponents’ arguments by using expressions such as ‘boloney’, ‘nickers’ and ‘bollocks’ rather than by advancing any sensible arguments.

4. As has become increasingly obvious this week, the Leave campaign needs to answer two critical issues:

- a. Does it favour pursuit of ‘sovereignty’, ‘control of immigration’, and refusal to contribute to the EU budget as its key objectives, even if that

leads to substantial loss of access to the single market? This might reasonably be called the Turkish or Russian option. It seems to be the approach favoured by UKIP and Nigel Farage, and now apparently Michael Gove. You might call it the Rough Approach.

- b. Or does it favour a Smooth Approach, retention of the benefits of single market access so far as possible - even if that means that the UK is: bound to accept its rules; and to contribute to its costs; and to abandon its considerable influence over those rules; and to abandon the rights of the UK and its businesses to enforce them in other Member States; and (probably) also to give up its current extensive opt-outs from those rules? This could be called the Norwegian or Swiss option.

5. Neither of these options is at all credible but it is still unclear even what the Leave campaign is proposing let alone whether it could be achieved.

Freedom to provide services

6. The rights to establish service businesses in other Member States, and to provide cross-border services within the EU, are two of the elements of the single market that are most valuable to UK businesses. They are based on a major deregulation agenda: (i) mutual recognition of national authorisations between Member States; (ii) reductions to the minimum of national authorisation requirements; (iii) non-discrimination on grounds of nationality; and (iv) effective and enforceable rights of appeal where authorisation is refused or where unfair conditions are imposed.

7. These are very important legal rights on which our service industries rely heavily in expanding their businesses throughout the EU. In financial services, the solution that has been adopted is known as 'passporting' but similar issues arise across the service sector.

8. The need to protect our vital interests in relation to the supply of services, approximately 80% of our economy, appears to have passed the Leave campaign by. But it was clearly identified by the Foreign Secretary, Philip Hammond, in his evidence to the EU Select Committee on 26 January 2016:

"I agree very much that we want to see completion of the single markets in services, financial services in particular, but also the digital single market and the single market in energy. All those things are clearly very much in Britain's interests ... Britain is the country with the largest services sector in the European Union, so it is very much to our advantage to be in a European Union that has a single market in services as well as in goods."

9. To date, Leave campaigners have responded to criticisms of the lack of clarity about what it is they are seeking to achieve by saying: two things:

- a. the Germans and French will wish to sell washing machines and cheese to the UK, so that it will be easy to reach a new trading agreement with the EU; and
- b. the UK is the 'fifth largest economy in the world', and could therefore easily and quickly reach an alternative trading arrangement, both with the EU and with other countries.

10. However, the desire to sell us washing machines and cheese would certainly not guarantee the freedom to provide services, where we currently enjoy a large trade surplus – certainly not if we sought to impose discriminatory quotas or visas on EU nationals wishing to enter the UK. Compare Mexico or Canada trying to negotiate a favourable trade deal with the USA while at the same time restricting the rights of US nationals to enter their country.

Legal and financial services

11. Financial and legal services are two economic sectors where, together with the USA, the UK leads the world – and where London is still the leading international centre.

12. So far as the legal profession is concerned, there are a number of concerns:
- a. Harm to the City would be harm to the legal profession, whose most valuable clients are the leading financial institutions and their major customers.
 - b. Neither freedom of establishment nor freedom to provide services would be guaranteed or protected for non-members of the EU – they can only be guaranteed by establishment within the EU.
 - c. The UK is not only the foremost centre for international finance, but also for international dispute resolution – that is underpinned to a substantial degree by the common rules on enforcement and jurisdiction of the EU – there is no guarantee that this would remain in place under any revised trading relationship.
 - d. Finally, loss of influence over the development of EU law – just as the UK is much the largest non-euro Member State, exerting considerable influence over financial regulation through the Bank of England, so it is much the largest common law jurisdiction, with substantial influence over the development of the EU legal and judicial system.

13. [An independent report for the Law Society at the end of 2015, conducted by Oxford Economics, reached conclusions that are very similar to those reached for the overall British economy by the UK Treasury this week:

- a. providers of legal services would be disproportionately affected by any adverse economic effects resulting from UK departure from the EU;
 - b. the longer term effects were adverse on all the scenarios that they considered plausible; and
 - c. on the worst case scenario, UK growth in the legal sector to 2030 could be reduced by £1.7bn, equivalent to the current turnover of the four largest UK firms combined.]
14. In summary, leaving the EU would be bad for the UK economy; bad for banks and bad for banking; and bad for lawyers and bad for law.