COUNTDOWN TO THE REFERENDUM:

A series of articles by Matrix that will explore a number of legal topics surrounding the UK referendum on 23 June 2016.

10: Remaining and Reforming the EU

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Synopsis

- *Looks at potential reform of the EU, if the UK remains, and assesses the role that "EU reform" has played in the referendum campaigns.*
- *Discusses the various significant crises currently facing the EU; and whether the UK is capable of playing a positive role in resolving those.*
- *Lastly, sets out "Ten good reasons to remain – and five bad reasons to leave".*

"I think that the Government are right to apply to join the European Economic Community … We might well play a great part in these developments to the profit of not only ourselves, but of our European friends also."

Sir Winston Churchill, August 1961

"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, Secretary of State for Foreign and Commonwealth Affairs, July 2012, launching the "Balance of Competences" review

"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."

Philip Hammond, Secretary of State for Foreign and Commonwealth Affairs, evidence to the EU Select Committee, January 2016

1. The EU Referendum debate as it has developed has revolved around three issues:

    a. The alternatives to membership of the EU;

    b. The impact on the UK economy of leaving the EU; and

    c. A narrowly nationalistic agenda devoted to 'taking back control' over the law and immigration.

2. In our series of articles, we have looked at several topics that lie at the heart of this debate: sovereignty; the Settlement Agreement negotiated by the Prime Minister; election law issues; the likely course of events if there were a vote to leave; the possible impact on immigration from the EU; the impact on security; effects on professional football; and the relationship between the constituent parts of the UK.

3. In this final article, I look at an important issue that should have been at the heart of the debate but has been largely ignored by both sides, the future reform of the EU if the UK remains. The centrality of this issue was noted by the EU Select Committee in its detailed consideration of the process leading up to the Settlement Agreement and the campaign in *The EU Referendum and EU Reform*, in which it called on the Government to lead the campaign with a broad and inclusive discussion of the issues. That suggestion has been very largely ignored by both sides, in a campaign that has been dominated by negative campaigning against the perceived weaknesses of the opposing side of the argument.

4. Given the clear and significant economic and strategic advantages to the UK of remaining in the EU, the central issues for the UK in determining its future relationship with the EU should be:

    a. Whether the EU itself is capable of dealing with the various significant crises that it currently faces; and

    b. If so, whether the UK is capable of playing a positive role in that process.

5. Although these issues were in principle central to the Prime Minister's strategy of negotiation followed by an In/Out referendum, pursued consistently since the start of 2013, the Remain campaign has hardly mentioned the issue of ongoing EU reform since the Settlement Agreement was signed. Ironically, the issue has been raised from time to time by the Leave campaign, with negative answers to both questions. However, the issue of the reform of the EU has not been central to the debate on either side.

Reform and the referendum

6. There are many reasons for the UK to have joined and to remain in the EU; and many benefits to UK citizens and businesses from membership: see the brief summary at the end of this article (and a much more detailed and fully referenced explanation can be found in the Report on the Lawyers IN for Britain website).

7. Conversely, a central issue and difficulty for the Leave campaign is the lack of any clear idea of what might happen if the UK did decide to reverse the diplomatic and economic policies that it has pursued for over 40 years. This issue is addressed in a separate article, *Brexit 'rough' or 'smooth'*, and, again in much greater detail, in the Lawyers IN for Britain Report, *The UK and the EU: Benefits, Misconceptions and Alternatives*.

8. The Leave campaign has however sought to turn the tables on the issue by arguing that there are also significant risks to the UK from staying in the EU. In particular:

    a. Campaigners such as Michael Gove and Daniel Hannan MEP have argued that the UK is 'shackled to a corpse', that the EU is a dying institution that is holding the UK back; and

    b. Boris Johnson has added his saucy rhetoric to the issue by arguing that, even if the EU does reform, it will be uncomfortable for the UK to remain a member: "too constricting in some places but dangerously loose in others".

9. There are two obvious answers to these criticisms on their face:

    a. Although it currently faces several crises that are indeed partly of its own making, the EU is in fact an exceptionally dynamic institution that has developed rapidly and continuously over almost fifty years to become the largest trading block in the world and a major force for international cooperation not only in Europe but globally. This was clearly explained

and recognised by the US President, Barack Obama, in his recent visit to Europe.

b. The Johnson jibe is equally inept – although the UK has a distinctive set of priorities that make it in some way an awkward member of the EU, an international institution inevitably involves a degree of compromise for its members, and the UK has negotiated a complex series of derogations and opt-outs that make its membership of the EU exceptionally flexible and accommodating. The suggestion that it has imposed an undue restriction on UK economic or political development over the period since 1973 is impossible to sustain. This is confirmed by many expert reports that have been prepared in preparation for the Referendum.

The EU and reform

10. It has been a refrain of those campaigning to leave that the EU has departed from its original scope and that it has, in effect, overreached itself. Michael Gove and others have also sought to suggest that the EU is an outmoded form of institution and that the future belongs to a resurgence of European nationalism.

11. In 1990, when Margaret Thatcher fell from power, her famous "No, no, no" statement in the House of Commons denounced the following proposals said to originate from her arch nemesis, Jaques Delors: '*the European Parliament to be the democratic body of the Community, the Commission to be the executive and the Council of Ministers to be the senate*'. . These are not the issues now.

12. There are three fundamentally different issues that have, individually and collectively, created a crisis for the EU since 2008:

    a. The Eurozone since the financial crash;

    b. The operation of the Schengen area since the Arab Spring and the rise of IS; and

    c. Accession and integration of the new Member States of Eastern Europe (and the possibility of further accession, including, most controversially, Turkey).

13. In each case, the issue is partly self-inflicted, partly the result of external shocks.

14. In addition, the underlying issues that pre-occupied Margaret Thatcher, while less urgent, do still need to be addressed:

a. What is the right balance between national democratic sovereignty and international cooperation within the EU? And, in particular,

b. Can the specific international agenda of the UK be accommodated within the constitutional structures of the EU, including its opt outs from the single currency and Schengen?

15. None of these issues is finally decided and the EU is in the process of actively addressing them all. It is certainly premature to suggest that a way forward cannot be found for each of these problems, or that the UK would benefit if any one of them failed to be addressed satisfactorily.

16. It is strongly in the interests of the UK as well as the wider international community that satisfactory solutions are found to these difficult problems. As such, it would be perverse for the UK to leave the EU with a view to *undermining* efforts to resolve them and thereby weakening or even destroying the EU.

Is the UK capable of playing a positive role in the process of reform?

17. The three crises that have beset the EU can only be addressed by collective action. In each case, the UK is particularly well placed to play a constructive role:

a. The UK has unique expertise in relation to financial services and financial regulation and the Bank of England has already been heavily involved in the design of financial regulation throughout the EU. There has been a currency union with Scotland since 1707 and there was a currency union with Ireland from 1801 until, effectively, 1979.

b. The crisis of the Schengen area can only be addressed by international cooperation – again, the UK has unique diplomatic experience and historic relationships with the key international players that make it a natural leader in resolving the underlying problems of the Middle East in cooperation with the other EU Member States and the wider international community. And there has been a Free Travel Area between the UK and Ireland since 1923.

c. Finally, it would be a strange and self-defeating approach for the UK to step back from the issues of accession and integration that are being addressed by the EU, particularly since the major expansion of its membership. Again, it would be natural for the UK to play a leading role on this issue, to ensure that the difficulties of integration of the Eastern European States and any further accession are managed effectively and

without causing undue disruption to the existing Member States. Putting it simply, it would hardly increase UK protections for it to give up its veto over Turkish accession or the terms on which new members generally were admitted, by ceasing to be a member of the EU.

18. So far as the traditional UK agenda of retained national identity, deregulation and competitiveness is concerned, the Settlement Agreement is a helpful restatement of those priorities incorporated into a binding international agreement. That Agreement also confirms the role of national Parliaments, the legitimacy of concerns over free movement and the veto rights of the Member States over further accession.

19. It should also be remembered that the Settlement Agreement is complementary to the UK's existing opt outs from the single currency and Schengen, and earlier commitments to increased competitiveness and deregulation within the single market – the unanimous endorsement of its terms by all 28 Member States is the icing on the cake, not the cake itself.

20. A further curiosity of the Leave Campaign would be that all these gains would be lost if we voted to leave the EU, undermining rather than promoting the process of EU reform to which the UK has been committed for so many years:

    a. The Settlement Agreement would cease to exist.

    b. The Bank of England would have no standing to protect UK interests within the EU.

    c. The UK would have no influence or veto over EU policy in relation to immigration or accession.

21. Finally, although the United Kingdom is generally regarded as the most reluctant member of the EU, it should not be forgotten that the UK has a specific agenda of enhancing cooperation within the single market, particularly in relation to the free movement of services, as the quotation from the current Foreign Secretary at the start of this article makes clear.

22. Overall therefore, the need for EU reform, at least when viewed from the particular perspective of the UK itself, in fact further confirms rather than calls in question the need for UK to remain a member of the EU.

Annex: ten good reasons to remain – and five bad reasons to leave.

Five benefits for the UK

(I) The UK is ***economically better off*** in the single EU market – this is the clear view of (for example) the IMF, the World Bank, the WTO, the G20, the Institute for Fiscal Studies, the Bank of England, HM Treasury, all our allies and all the Prime Ministers of this country since 1990 (not to mention the Chancellor of the Exchequer).

(II) The UK is ***more influential*** as one of the most powerful members of one of the three global economic powers.

(III) The UK is ***more secure*** as a leading partner in a system of international cooperation within the EU.

(IV) The UK is ***more effective*** acting through the EU to address global problems such as climate change, protection of fundamental rights and world trade.

(V) The UK is ***more united*** in that Scotland, Wales and Northern Ireland have specific and very strong reasons to stay in the EU.

Five benefits for the EU

(VI) The EU is ***more influential*** with the UK as a leading member.

(VII) The EU is ***more effective*** given the UK's military and diplomatic standing.

(VIII) The EU is ***more competitive*** because of the UK's commitment to efficiency and competitiveness as key components of a modern economy.

(IX) The EU is ***more realistic and pragmatic*** - given the UK's incremental approach to the development of international cooperation.

(X) The EU is ***more united*** – the UK leaving the EU would threaten the stability and coherence of the EU.

Five bad reasons to leave

(XI) '*Leaving would make us more sovereign*'

- No, we would have less ability to influence the rules that most affect us both within the EU and globally; and we have not given up our national sovereignty anyway.

(XII) '*Leaving would save us money*'

- No, there would be economic harm that would far outweigh any financial savings; and most of the 'savings' would need to be paid for anyway in a different form. There would also be tremendous additional costs to the UK civil service in seeking to manage the legal and administrative changes that would be needed to undo over 40 years of work.

(XIII) '*Leaving would restrict economic migration from the other Member States*'

- No, we could not in practice negotiate such an arrangement with the EU without very serious economic harm; that would be politically extremely difficult both internally and in negotiations with the EU; and we do control our borders anyway.

(XIV) '*Leaving would undermine the EU and promote a resurgence of nationalism within Europe and beyond*'

- Possibly, but that would be a very bad outcome for the UK that would make us less influential and secure; the Balkanisation of Europe is not a strategic objective of the UK.

(XV) '*Leaving would further the political career of Boris Johnson*'

- Possibly, though far from certainly, and his conduct in the Referendum campaign has confirmed that he would not be a suitable leader for the UK in any negotiations with the EU or the US.

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Further information

Find out more about our EU law team at Matrix at matrixlaw.co.uk/practice-areas/eu-law/.