

EU Renegotiation

Briefing:

Associate Membership of the
EU and David Cameron's
Reform Proposals



EU Renegotiation Briefing: Associate Membership of the EU and David Cameron's Reform Proposals

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Published in November 2015 by

The Bruges Group, 214 Linen Hall, 162-168 Regent Street, London W1B 5TB

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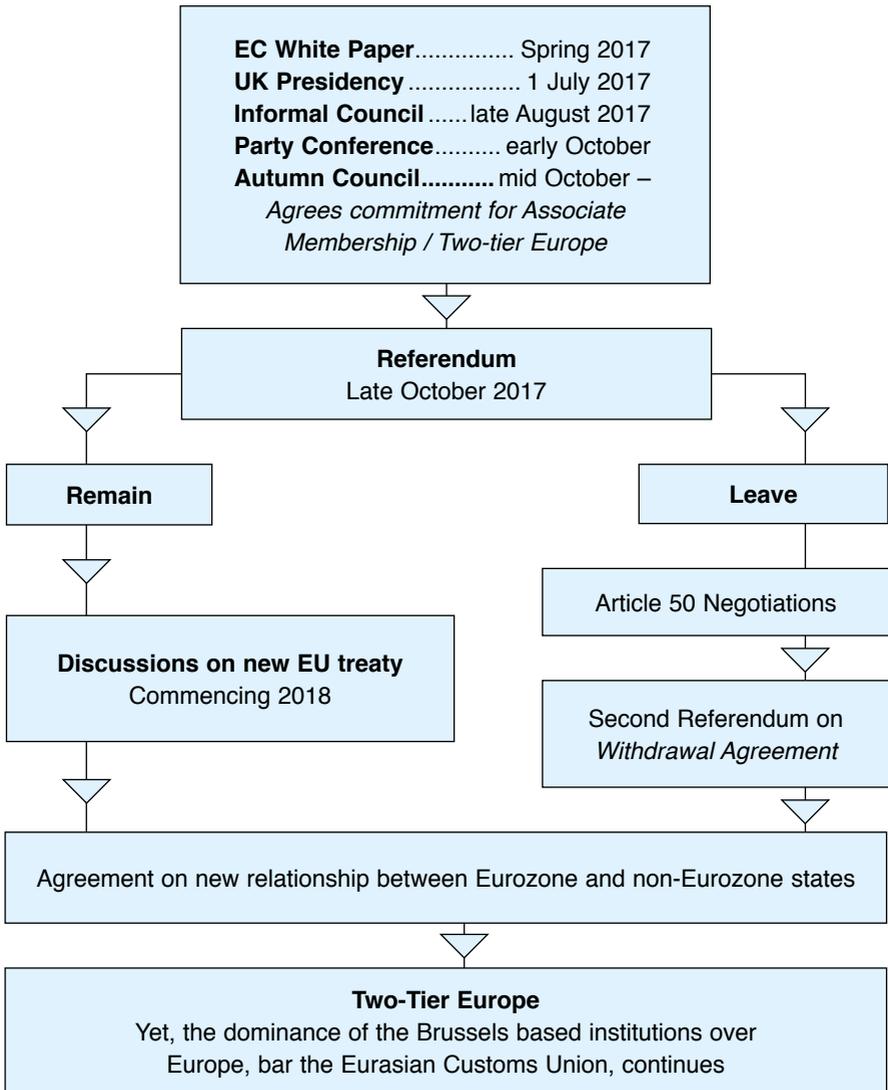
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The Path Towards Associate Membership / Two-Tier Europe

A second referendum in the event of a leave vote would confirm this status.



**This is a Win/Win scenario for those ‘Eurosceptics’
that advocate a middle-way.**

EU Renegotiation Briefing:

Associate Membership of the EU and David Cameron's Strategy

Prior to the referendum being held David Cameron will present to the British public proposals for reform of the EU, heralding a new British model of membership. This will include proposals for the creation of a two-tier Europe, where there will be a distinct divergence between the Eurozone (core Europe) and the outer non-Eurozone states. This is the essence of what David Cameron claims he is negotiating. It means the UK accepting what has become known as 'Associate Membership' of the EU. This new status may be rebranded as the 'British Model'.

The so-called renegotiation is nothing more than David Cameron acquiescing to the EU's demands, and failing to defend the British national interest. The UK will be told to accept this second-class status. The bogus renegotiation is, in reality, merely the acceptance of an existing EU plan which will turn the UK into a second-class member of the EU. Although ever-closer Union will no longer apply to Britain ultimately the UK will lose money, influence and power.

The Prime Minister is simply engaged in an exercise of managing expectations. In on current terms is an option that no longer exists, full integration with the newly emerging core EU by becoming part of the Eurozone is beyond the pale, yet an associate status is the worst of both worlds. The two-tier EU package that Cameron will try to sell to the electorate is little more than him blundering into a new relationship where we lose influence but will still be bound by many of the existing obligations of EU membership. David Cameron will be forced to accept these changes. The result of this so-called renegotiation will be the Prime Minister signing up to a federalist plan that will allow the Eurozone to centralise but the UK will be excluded from the centre of the EU, isolating Britain still further. What is more, the two-tier EU will most probably become a two-speed EU. Where the UK, and the other non-euro EU members, are cajoled by the core into standardising their policies with the core Eurozone states.

1. Where does the idea of Associate Membership come from?

- The idea was first proposed by former MEP Andrew Duff in 2006 as a way of reviving the (by then) defeated EU Constitution. It was a '*...strategy for resolving the British problem*'.
- Subsequently it has been proposed in the Spinelli Group paper: '*A Fundamental Law of the European Union*', published in 2013 (see Annexes I and II for more detail on the contents of that paper).^{1 2}
- The original Duff plan for achieving associate status proposed that Associate Membership could be achieved either through a new and specific Article(s) in the Treaties or through the Member State first leaving the EU (utilising Article 50) then re-negotiating from the outside the 'new' Associate status.

2. What is Associate Membership?

- In short, the answer is: it's not entirely clear as to what it is at this stage. The longer answer is that the Spinelli Group paper sets out some high-level and vague parameters as to what it might mean. However, its detailed meaning will be down to the specific terms negotiated by the state wanting to take-up Associate status. As part of those parameters the Spinelli Group paper suggest some basic rules and arrangements that Associate Membership requires any state seeking such a status to agree to (See Annex II for more details).
- Associate Membership - in the context of the UK Government's attempts at renegotiation and the changes needed because of the Euro-zone crisis - could mean:
 - A formalisation of the status-quo i.e. an acknowledgement in the fundamental law of the EU that as the Member States in the Euro-zone integrate further - along the lines envisaged in the Five Presidents Report (see Annex III for more details) - the remaining non-Euro-zone Member States will *de facto* have a different position vis-a-vis the Euro states and that this should be reflected *de jure*.
 - The confirmation of the status-quo but incorporating the minor re-negotiation efforts of the UK Government.³ This, currently, seems the most likely outcome.

1 The Spinelli Group is an initiative launched in September 2010, led by Guy Verhofstadt, Daniel Cohn-Bendit, Sylvie Goulard and Isabelle Durant, followed by Andrew Duff and Jo Leinen as co-chairmen of the MEP-Spinelli Group. The Group aim to inject a federalist momentum into the political decisions and policies of the European Union. The group is named after the former Italian Communist, EU-federalist thinker and MEP Altiero Spinelli.

2 It was published by the German Federalist organisation Bertelsmann Stiftung.

3 The UK Government appears to be making four broad re-negotiation demands of the EU:

- Something more akin to EEA membership, with those holding Associate status only being formally subject to EU competence on Single Market issues or indeed some Single Market issues. The extent of the Associate Member's involvement/ subjection with/ to Single Market rules and the other so called 'flanking' issues which EEA members are subject to, appears to be down to specific terms agreed by the EU and the Associate Member. However, this more radical option is incredibly unlikely (given the Government's currently limited re-negotiation aims) and so can probably be dismissed.

3. The politics of Associate Membership

- Associate Membership already has a clear and growing momentum behind it, as a result of the need to further integrate the Eurozone, the Five Presidents Report, the '*A Fundamental Law*' paper and the work of current and former MEPs Guy Verhofstadt and Andrew Duff (both Spinelli Group board members).
- Jean-Claude Juncker will issue a white paper in 2017 outlining the need for a new Treaty, which is highly likely to follow the plans set out in the '*A Fundamental Law*' paper.
- Cameron will no doubt claim that the Associate Membership idea is a novel one that it is a fundamental shift in the UK's position, protecting the UK in-perpetuity from the risks of EU integration and placing the UK on a different trajectory to the core EU.

4. Initial thoughts on the consequences of Associate Membership for the UK

- The Spinelli Group paper contains many vague terms about 'respecting and promoting the Union's values'. How these translate into a binding agreement for Associate Membership is any ones guess. Therefore most of what can be said at the moment about Associate Membership but also what it could mean, if the UK Government had an ambitious re-negotiation strategy, is largely conjecture.
- The first two (most likely re-negotiation) options outlined in section 2 raise (as yet) unanswered questions about the UK's position on a range of EU policy areas.

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- An exemption for the UK from the part of the preamble of the Treaties stating the aim of the EU is 'ever closer union'.
 - An explicit statement that the euro is not the official currency of the EU, making it clear that Europe is a multi-currency union.
 - A new 'red card' system to enable groups of Member State Parliaments the authority to stop unwanted Directives and Regulations being passed and perhaps existing ones removed from the *acquis*.
 - A new structure for ensuring that the nine countries that are not in the euro-zone are not dominated by the 19 member states that are (this may involve particular protections for the City of London).

For example, the Spinelli Group propose the ending of the 'opt-ins' and 'opt-outs' that various Member States currently have in order to create a cleaner and more clearly delineated relationship between full members of the EU and those who are not. This raises significant questions about the position of the UK and the numerous 'opt-outs' and 'opt-ins' that the UK has e.g. in the areas of policing, criminal and civil justice and immigration. What view will the UK Government take in regards to continued EU competence in these areas is not clear. However, for those who believe in self-government and international co-operation and not supra-national control the fear has to be the answer will be disappointing.

- The details given in the Spinelli Group report say little about to what extent Associate Members can deviate from the common commercial policy i.e. the common external tariff and regain their seat on the WTO and other international bodies. This question also extends to those areas of policy where the EU, under the Lisbon Treaty, has authority to make international agreements on behalf of Member States.
- The most likely situation for the UK, under Associate Membership, will be Britain locked into a two-tier union as a second class member with what is likely to be even less influence over decisions in areas where the EU has competences.
- Despite the uncertainties and risks due to the vagueness of the language in the draft proposed Treaty, if full advantage was taken of the leeway that seems to be there in the Spinelli Group proposal, there is the potential for Associate Membership to significantly reduce the UK's entanglements with the EU across a range of policy areas, albeit not all.

5. Be careful what you wish for...

In the current political climate the Associate Member status will be an easy sell for the Prime Minister and George Osborne. Many Eurosceptics have already conceded the idea that a formalised two-tier EU is desirable. This gives David Cameron an excellent opportunity to use the British Presidency of the EU, commencing on 1st July 2017, to adapt the EU's proposals as a statement for reform prior to the EU referendum. A commitment from the other EU leaders to include these changes in the forthcoming treaty negotiations will be lodged with the UN to increase their standing. This, however, is merely a PR exercise as it is not legally binding and will only restate the principles that the EU wants the UK to adopt.

Some Eurosceptics desire to triangulate by embracing the reform meme (also advocated by Europhiles) not only makes leaving the second best option, but may also lead to leave campaigners falling into the trap of discussing the minutiae of what David Cameron claims to have delivered. This will both confuse and bore the electorate preventing the positive case for leaving from receiving an adequate airing. Plus concentrating too heavily on the so-called renegotiation allows others to set the agenda. Indeed, some Eurosceptics are giving the Prime Minister a freehand until his negotiations are complete.

In his own ploy at triangulation David Cameron will pose as a Eurosceptic acknowledge that criticisms of the EU are well founded but claim that his, in reality the EU's new concept of Associate Membership / two-tier Europe, as also proposed by many leavers, is the answer to those mutually agreed problems.

More worryingly still is that it creates hostage to fortune. Leave campaigners have, by publically advocating a reformed and two-tier relationship with the EU, will have trouble opposing it if they have been calling for such a new relationship.

Whilst such positioning does create a hostage to fortune, it does create a win/win scenario for its advocates. Either the Government wins the referendum which goes onto negotiate the sign-up to the new relationship advocated by the leavers. Or the leave campaign will be able to claim that they have 'forced' the Government into negotiating the bold and radical hard-fought victory of securing a two-tier Europe and Associate Membership, perhaps finally known by a different name (free-trade Europe). As we know, this is actually according to the EU's own timetable for reform and would happen regardless. Please note even Europhiles have embraced the call for reform.

The idea for a referendum on the withdrawal agreement, in the event that the leave campaign is successful in the first referendum, presents the government with the opportunity of going back to the British people if they voted 'incorrectly' the first time. This time presenting concrete plans, rather than just promises, for a new associate status with the remainder of the EU.

Other leave campaigners prefer the short term strategy of mocking the Cameron negotiation and claiming it will deliver nothing. That is a complete failure to manage the electorates' expectations. It will only succeed in magnifying the final success of the 'renegotiation' making it seem like a great achievement. Delivered with little time for the leave campaign to dissect the agreement and expose the truth.

6. The Problems with Associate Membership

There will be no *status-quo*; the EU will be reformed. Due to the limits of integration for some and the continued desire for ever-closer Union amongst others the EU will be changing. The question then becomes what relationship is best for Britain, but as there will be little concrete agreement on what Associate Membership will mean, it ultimately becomes a matter of trust; whether or not it will address properly the widely acknowledged problems of EU membership.

The so-called renegotiation is nothing more than David Cameron acquiescing to the EU's demands, and failing to defend the British national interest. Turning the UK into a second class member where we will lose money, influence and power.

Many of the bogus arguments used by the Europhiles, and some Eurosceptics, against retaining the UK's participation in the European Economic Area (less influence, many of the obligations etc.) will apply to the new status that David Cameron will be forced to accept.

The Prime Minister is merely engaged in an exercise of managing expectations. Remaining in the EU on current terms is an option that no longer exists, full integration with the newly emerging core EU by becoming part of the Eurozone is beyond the pale, but an associate status is the worst of both worlds. The package that Cameron will try to sell the public is little more than him blundering into a new sub-optimal relationship where we lose influence but have many of the obligations that we have at present. He will be signing up to a federalist plan that further excludes the UK from the core EU.

The only logical conclusion is to reject these far from satisfactory reforms and vote to leave. But will leave campaigners accept this is happening and if they do are they prepared to destroy the illusion that Cameron and Osborne can deliver for the UK?

Annex I: Spinelli Group paper - 'A Fundamental Law of the European Union'

The proposal for 'A Fundamental Law of the European Union' requires a comprehensive revision of the Treaty of Lisbon. It argues for turning the European Commission into a democratic constitutional government but keeping to the current system of the Commission initiating laws, which are then enacted jointly by the Council (representing the Member States) and the European Parliament, representing the citizens.

The key changes proposed in the paper are:

- 'Ever closer union' defined as federal union of states.
- Constitutions of EU states must respect EU values.
- Commission becomes the EU government, appointed by and answerable to the legislature i.e. Council and Parliament.
- Limited right of legislative initiative to Council and Parliament.
- European Council redefined as the lead formation of the Council of Ministers.
- Rotating Council presidency abolished: each formation elects its own chair.
- Commission becomes smaller, nominated by its President.
- Certain number of MEPs elected in pan-EU constituency on transnational lists.
- Wide extension of ordinary legislative procedure.
- Widening the jurisdiction of Court of Justice.
- Easier access for citizens to Court of Justice.
- Ending rigid unanimity for future treaty change and entry into force.
- Ending opt-outs in justice and home affairs.
- Creation of an Associate Membership.
- EU tax revenue to finance EU spending.
- Additional budget for the eurozone.
- Common economic policy focussed on sustainable growth.
- Fiscal solidarity to complement fiscal discipline.
- New powers for European Parliament in economic and employment policy.

- National parliaments get a say in excessive deficit procedure.
- Wider powers for European Central Bank.
- Permit sharing of sovereign debt under strict conditionality.
- Lifting prohibition on approximation of national laws.
- Modernisation of common policies.
- Right of assent for Parliament on all international agreements.

Annex II: more details about Associate Membership

- The proposed new Treaty would create a new type of membership called Associate Membership. Article 137 of the proposed draft Treaty establishes the concept of Associate Membership.
- Subject to some basic requirements and rules the detail of any particular country's Associate Membership would appear to be agreed on a case-by-case basis. As the paper states :

'The Fundamental Law creates a new category of associate membership for any member state which chooses not to join the more federal union. Each associate state would negotiate its own arrangement with the core states. Rights and duties would have to be clear. Institutional participation would necessarily be limited. Continued allegiance to the Union's values would be required, but political engagement in the Union's objectives would be reduced'.⁴

- Protocol No 9 of the proposed draft Treaty proposed by the Spinelli Group sets out more of the details of Associate Membership of the Union:
 - Article 2 lays down the minimum obligations of Associate Members i.e. they have to 'respect and promote the values and the principles of the Union and the Charter of Fundamental Rights' and not obstruct the business of the EU.
 - Article 3 provides for the relationship between the associate and full member states. The details of which are up for negotiation but any action by the Associate Member cannot prejudice key tenets of the remaining integrating Union.

4 Spinelli Group (2013). 'A Fundamental Law of the European Union', pg 20.

- Articles 4 and 5 sets down some principles around the institutional engagement of Associate Members, including when Parliamentarians and Ministers from an Associate Member may participate in the EU legislative process albeit with the specific modalities to be agreed in the Association agreement; a requirement for the Associate Member to recognise the jurisdiction of the Court of Justice of the European Union (CJEU) and when an Associate Member's judge may participate in a CJEU hearing.

Annex III: The Five Presidents Report

- The Five Presidents are: Jean-Claude Juncker, Donald Tusk, Jeroen Dijsselbloem, Mario Draghi, and Martin Schulz. The Presidents were those of the European Commission, the Council, the Eurogroup, the European Central Bank and the President of the European Parliament.
- The report was published in June 2015.
- The report sets out plans for completing the EU's economic and monetary union (EMU) in three stages by 2025, with the aim of dealing with many of the 'flaws' exposed by the crisis in the original design of EMU. It follows the Four President's Report published in 2012.
- The report has five elements:
 - Economic Union, with Member States obliged to set up 'Competitiveness Authorities and more co-ordinated economic policies' and stronger implementation of the Macroeconomic Imbalance Procedure.
 - Financial Union through single bank supervision, resolution and deposit insurance. The first is already in place, the second due to come into place in 2016 and the latter to be brought in through the creation of a European Deposit Insurance Scheme. The Capital markets Union (already announced) is also part of the plans for financial union.
 - Fiscal Union. Establishing an advisory European Fiscal Board to coordinate and complement existing national fiscal councils with analysis, at European level, of how budgets perform against the economic objectives set out in the EU fiscal governance framework. A common macroeconomic stabilisation function to help deal with 'shocks' and a European Fund for Strategic Investments.

- Accountability and Institutions. Consolidation of the institutional position with greater parliamentary involvement and control with unified external representation for EMU, including a stronger position for the Euro-group. Consideration of a future 'Euro-Treasury' as 'more decisions will need to be taken collectively'.
- The social dimension. More 'upward convergence' in President of the Commission Jean-Claude Juncker's words is needed to ensure better labour market and 'social performance'. This is the 'other side of the coin' to the economic convergence outlined in the report.
- These changes are to happen in three stages:
 - Stage 1 - July 2015 - 30 June 2017: using existing instruments and the current Treaties to boost competitiveness and structural convergence, achieving responsible fiscal policies at national and euro area level.
 - Stage 2 - completing EMU: in the second-half of 2017 the more far-reaching changes will be proposed and introduced in order to make the 'convergence process' more binding e.g. through a set of commonly agreed legally established benchmarks for convergence.
 - Stage 3 - by 2025: all the changes fully implemented.

THE BRUGES GROUP

The Bruges Group is an independent all-party think tank. Set up in February 1989, its aim was to promote the idea of a less centralised European structure than that emerging in Brussels. Its inspiration was Margaret Thatcher's Bruges speech in September 1988, in which she remarked that "We have not successfully rolled back the frontiers of the state in Britain, only to see them re-imposed at a European level...". The Bruges Group has had a major effect on public opinion and forged links with Members of Parliament as well as with similarly minded groups in other countries. The Bruges Group spearheads the intellectual battle against the notion of "ever-closer Union" in Europe. Through its ground-breaking publications and wide-ranging discussions it will continue its fight against further integration and, above all, against British involvement in a single European state.

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