



## The UK in Europe, Scotland in the UK? The Implications of the EU Referendum

Joint Event between the Bingham Centre for the Rule of Law and the  
University of Strathclyde

25 April 2016

### SUMMARY OF PROCEEDINGS

As part of our series of Brexit events, the Bingham Centre and the University of Strathclyde Law School jointly organised this event in Glasgow. The event consisted of two panels, one which explored the impact of a 'remain' vote, and another which considered the impact of a vote to 'leave' on the UK's relationship with the EU, and on Scotland.

**Panel 1**, chaired by Dr Christopher McCorkindale (University of Strathclyde) took up the 'remain' position. **Professor Jo Shaw** (University of Edinburgh) took the audience through several of the provisions of the agreement obtained by the Prime Minister in February. She remarked that this is the first clear statement that the EU is not uni-directional with regard to integration and that 'an ever closer union' is not a given. Though on its face the agreement makes concessions to the UK, especially in relation to migration, it is unclear at this stage how it will be implemented should the UK decide to remain a member state. It is also uncertain whether some of its provisions would withstand the scrutiny of the Court of Justice of the EU.

**Alyn Smith MEP** followed with the perspective from Brussels, remarking that the UK is setting a negative precedent for anyone who favours multilateralism, and is operating under the assumption that the problems faced in the UK are unique to the UK. Many EU member states are struggling with immigration and Single Market issues. The UK cannot claim exceptionalism indefinitely. Mr Smith also indicated that many MEPs do not see a need for the February deal. As the Government's UK Balance of Competences Review of 2012-2014 highlighted, there are very few legal problems with UK membership—the problem, rather, is political and needed to be addressed in some way by the Prime Minister.

Finally, **Professor Drew Scott** (University of Edinburgh) discussed the February agreement and considered whether further referendums might be required if the EU Treaties needed to be amended in order to implement the agreement. He pointed out that there could be a situation where Britain rejects Treaty amendments which implement the agreement because the Treaty amendment package might also include provisions of which the UK is not in favour. He further underscored that several provisions in the agreement are significant—those concerning the labour market and Eurozone governance in particular—and that there is a tension between how the UK sees the future of financial regulation domestically and the future of the Eurozone. He further questioned the detailed operation of the new 'Red Card' procedure, asking whether the Scottish Parliament has enough resources to scrutinize red-carded measures in the way they would need to be examined, and whether there would be enough time for England and Wales to properly consult with Scotland during this procedure.

**Panel 2**, chaired by Dr Sylvie Da Lomba (University of Strathclyde) considered the aftermath of a vote to leave the EU. **James Mure QC** (Axiom Advocates) spoke about the Article 50 withdrawal procedure. He pointed out that, until the process is completed and the UK is no longer an EU member state, it will still enjoy the benefits of full EU membership, and bear the obligations of such membership. He questioned what that will mean in practice for UK nationals working in EU institutions, and its impact on the UK's future presidency of the Council in July 2017. In terms of the process itself, though there is a two-year clock on the withdrawal procedure, the clock will not begin to run until the UK makes a formal notice of intent to begin the Article 50 procedure. It is unclear when such notice will be given, and it is unlikely that withdrawal will be completed within two years. The likely terms of the withdrawal agreement, especially relating to vested rights of EU national in Britain, are also uncertain, as is the role of the Scottish Parliament in the drafting of the agreement. Finally, Mr Mure questioned what happens should the UK decide that it no longer wishes to withdraw. This is not prohibited by Article 50, but would the reform deal remain on the table for continued UK-EU relations?

**Professor Michael Keating** (University of Aberdeen) outlined the three available alternative models for UK association with the EU: (1) the lone actor model based on normal World Trade Organization (WTO) rules; (2) the European Economic Area (EEA) relationship, where the UK would participate in the Single Market but have to accept all relevant EU legislation without a say in its development; and (3) the Swiss model, which is similar to the EEA model, but without access to the single market in financial services. Professor Keating concluded that the most coherent option is to return to the WTO arrangements because the other two options give away too much sovereignty and do not give the UK what it wants to have with respect to limited migration. He then outlined three possible scenarios internally in relation to the referendum outcome. First, that all UK nations would vote to leave the EU. This was thought unlikely because opinion polls show that Northern Ireland and Scotland will vote to remain. Second, that Scotland would vote to remain, but England would vote to leave—at which point he questioned whether it would be possible to keep England in the EU against its will, or whether England could hold a referendum to eject Scotland from the UK. Third, and most realistic is that Scotland would vote to remain, but England would vote to leave, at which point it is very likely that another Scottish referendum would be held. However, independence at this stage may possibly be more difficult to achieve because the new border would create many practical difficulties. Professor Keating then explored what competences might be returned to Scotland if the UK was no longer a member of the EU, for example, agriculture and the environment which were Scottish competences under devolution arrangements, but which, during EU membership, pass through UK Parliament because of the latter's need to establish a unified position on these matters in Brussels.

The final panellist, **Charles Livingstone** (Brodies LLP) discussed the practical implications of a Brexit for lawyers and their clients. He noted that, to some extent, the impact will depend on the type of EU legislation at issue, that is, whether it is directly applicable (an EU Regulation) or whether the UK was able to determine the way in which EU policies were implemented (an EU Directive). While some will be more simple to disentangle from, no matter what type of law at issue, nothing will disappear overnight. Moreover, it is possible that the UK may still have to comply with EU regulation domestically, for example, in order to do business in EU member states. Mr Livingstone highlighted, in particular, difficulties relating to competition law, state aid and intellectual property.

The presentations were followed by questions from the audience and discussion.