

Brexit and the Status Quo Ex-Ante

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Global Research, September 22, 2017

[Defend Democracy Press](#)

Region: [Europe](#)

Theme: [History](#)

Where we are

At the end of August Britain's Labour Party formally [announced its policy](#) towards future relations with the European Union. The policy document explicitly "accepts the referendum result" and will "build a close new relationship with the EU".

The British media chose to emphasize not EU employment rights or environment protections but [Labour's alleged "U-turn"](#) on participation in the single market. The Labour commitment to remain within EU trading arrangement until formal withdrawal and perhaps beyond inspired calls for "bolder" commitments, even [to reverse the decision to leave the Union](#). For those committed to reversing Brexit, a second referendum is the preferred option, one characterized (wishfully) as "[more likely by the day](#)" and representing the "[will of the people](#)".

A second referendum would not necessarily be the most successful tactic as [Polly Toynbee has argued](#). But if by whatever means the British government were to reverse the referendum decision under what conditions might re-entry occur?

Where we were

Prior to 23 June 2017 and the May government passing legislation for formal withdrawal (invoking [Article 50 of the Lisbon Treaty](#)) British membership had several special conditions. While media attention focused on the [Thatcher rebate](#), two other specific arrangements were more important, [opt out from joining the euro](#) and [rejection of the so-called fiscal pact](#). In both cases one other government joined the British, the Danish on euro "opt-out" and the Czech in rejecting the Treaty on Stability, Coordination and Governance (TSCG).

Every non-euro country's government except Britain and Denmark must adopt the euro after 2020. Though severe instability of the euro earlier this decade sapped much of the enthusiasm for adopting it, the requirement is [embedded in EU treaties](#). The fiscal pact (TSCG) is inseparable from joining the euro zone because it is the vehicle for enforcing the Maastricht fiscal rules. Taken together, the rules and the TSCG enforcement procedures combine to make a reactionary and undemocratic policy regime as I argued in a [previous SE article](#).

Assume that as a result of a second referendum and/or a vote of parliament a British government reversed Article 50 and sought to re-establish membership. Clause 5 of Article 50 allows for that possibility — if "a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49".

[Article 49](#) states that a re-applying government shall be treated as a new applicant. Thus, to

re-enter the British government would lose its opt-out from the euro and have to adopt the TSCG. Both would be unwise and together would undermine progressive change in Britain.

Joining the euro zone involves adhering to [convergence criteria](#) and enacting laws that not merely limit policy flexibility but would lock the British government into dysfunctional economic policies. The best known of the dysfunctional policies are the strict limit on inflation, the 3% of GDP maximum for the overall fiscal deficit and the 60% of GDP maximum for the gross public debt.

The 3% rule would make countercyclical macroeconomic policy impossible, which is why no euro zone government practises it. It would also make it difficult for a Labour government to implement its policy of [funding public expenditure by borrowing](#). More dysfunctional, because it uses a technically incorrect measure, is the gross debt limit of 60% (the present British figure is almost 90%).

Another serious policy consequence of joining the euro zone would be the prohibition on national governments borrowing from their central banks. The Bank of England holds almost 30% of the British public debt, much higher than for any euro zone government (see [Smith & Weeks](#), pages 44-45). The British government's ability to borrow from itself has two great advantages: 1) it allows the Bank of England to set the interest rate on public bonds (thus preventing speculators inflating interest rates); and 2) reduces the fiscal cost of debt service (interest on Bank of England held debt goes to the Treasury).

Were EU negotiators of a re-entry application to require signing onto the fiscal pact, this would leave the British government subject to "corrective action plans [by the European Commission] which may be *imposed* on countries under the excessive imbalance procedure (EIP)" (emphasis added). No direct democratic procedure limits or oversees the European Commission's implementation of this treaty provision, which can involve rejecting a budget passed by a national legislature.

The Maastricht rules can be and are avoided, especially by governments of large countries. However, the TSCG substantially strengthened enforcement, making future non-compliance more difficult. In any case, returning with intention to bend the rules would not seem a sound basis for re-entering the EU.

An acceptable way back in?

Election of a Labour government committed to de-activating the Article 50 process offers a possible way to avoid loss of special conditions. An incoming Labour government could inform the European Commission that it intended by vote of Parliament to revoke the February 2017 legal commitment to the Article 50 procedure and return to status quo *ex ante*. It is unlikely that the Commission would agree. The Commission would fear that allowing the British government to "back-track" would in practice render invoking Article 50 a negotiating tactic for discontent governments.

As the next step in this hypothetical scenario the British government would appeal to the European Court of Justice. In defence of the argument for return on the same terms the Labour government could argue that the Article 50 deadline lay in the future and a democratically elected government should not be bound by the decision of a previous government. The British case would not be strengthened by the Labour government having supported the Article 50 vote while in opposition, though perhaps not fatally weakened.

While hardly a sure thing, this approach to re-entry offers a possible escape from the worse aspects of the EU treaties. Reapplication via Article 49 is something a progressive government should hesitate to consider.

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