Speech by Prof. Roland Vaubel
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Withdrawal or secession is an act of decentralization. Decentralisation is the political basis of freedom. Why did freedom, the progress of science and the industrial revolution arise in Europe and not in China, India or the Ottoman Empire which around the year 1500 had been at the comparable level of development? Because Europe was politically fragmented, and the rulers were competing for people and capital – for merchants, inventors and productive religious minorities.

We owe this insight to David Hume.[1] Other classical writers like Charles Montesquieu, Edward Gibbon, Immanuel Kant, Lord Acton and Max Weber, to name just the most famous ones, have developed Hume's explanation further.[2]

Decentralisation also ensures that international and interregional differences in people's preferences are respected. Decentralisation reduces the number of those who are outvoted.

The European Union, unfortunately, is incapable of decentralising for a number of reasons.

First, each piece of EU legislation requires a proposal by the Commission. But the Commission has a vested interest in centralisation at the EU level. The Commission will not make a proposal if it expects that this will lead to a repatriation of powers. For this reason, EU legislation is a one-way street in the direction of centralisation – ever closer union.

Second, the Council is taking an increasing number of decisions – indeed most decisions – by qualified majority. This enables and actually induces the majority of the most tightly regulated and most highly taxed member states to impose their high level of regulation and taxation on the more liberal minority because, by doing so, the majority can raise their competitiveness vis-à-vis the minority. In the political economy literature this is called the "strategy of raising rivals' costs".[3] Since 1990, for example, a French-led majority coalition has introduced more than fifty EU labour

market regulations, the droit de suite directive taxing the arts market and various EU financial market regulations which undermine the international competitiveness of the City of London.[4]

Third, the European Parliament and the Court of Justice of the EU share the Commission's vested interest in centralisation. The more competencies they confer on the European Union, the larger is their own power in exercising or adjudicating the exercise of these competencies. Comparative opinion polls with MEPs and the voters show that the MEPs have a centralist bias. They do not represent the voters.[5]

The Court of Justice is biased as well. In more than two thirds of the cases to which the Commission was a party, the Court has supported the Commission, and it gives more weight to the observations of the Commission than to observations of the Council members. In the last few years, there has been at least a dozen of serious breaches of EU law[6] - especially of Articles 114, 123 and 125 TFEU. But the Court has not stopped them. Usually, the Court is not even asked because to do so would be a futile undertaking. As a result, the rule of law has broken down at the EU level.

Finally, to override the Court, the governments of the member states would have to amend the treaties. But this would require a unanimous vote by all 28 governments and ratification by their parliaments. There is almost always at least one government – say, the Belgian or the French – which sides with the Commission and the Court.

For all these reason, the dynamics of ever closer union are unlikely to be stopped. The evils of the EU construction are probably incurable.

After this long introduction, let me turn to the issue of British withdrawal. "Which way out?" Art. 50 TEU points the way. It is not ideal but it is much better than its critics say. In my view, it is important to adhere to Art. 50 for at least three reasons. First, the rule of law is precious in its own right. Second, Art. 50 will not be amended at Cameron's request. Third, if those who campaign for withdrawal create the impression that they are prepared to breach international law, this will reduce their chance of winning the referendum.

The right of withdrawal has always existed – any international treaty may be terminated even if the procedure is not specified. But the Lisbon Treaty has made this right explicit. Unfortunately, Gordon Brown has accepted a period of notice of two years. However, if the referendum and the British notification of withdrawal take place in the first half of the next Parliament, the withdrawal could follow in the second half.

After the notification of withdrawal, the UK and the EU are supposed to negotiate. The negotiations are not about whether the UK withdraws but how – on which terms. This is crystal-clear from Section 2 of Art. 50:

> "In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework of its future relationship with the Union".

The good news is that the Commission has no say in these negotiations. The Commission, it is true, may submit recommendations to the Council but the Council is free to reject them. The Commission, it is true, may be nominated as negotiator by the Council but the Council is free to nominate some other negotiator. The members of the Council are more open-minded than the Commission because each member state is a potential candidate for withdrawal as well.

The bad news is that the Council has to obtain the assent of the European Parliament. The European Parliament tends to share the interests and opinions of the Commission. Any agreement requires a qualified majority in the Council (excluding the UK) and a simple majority in the European Parliament.

Since the negotiations are not about whether but how the UK will withdraw, the UK may not revoke its notice of withdrawal if the negotiations turn out badly. The UK may only propose to extend the negotiations when the two years are over. I quote section 3 of Art. 50:

> "The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period".

However, the possibility of extending the negotiations beyond the notice period of two years could be excluded in the referendum. I expect that the Council would be very willing to prolong the negotiations because they prefer to keep the UK in the EU on present terms. There are several reasons for that:

1. The UK is a net contributor.
2. The other EU member states benefit from free trade with the UK.
3. They can outvote the UK on most issues, e.g., they can impose their level of regulation and taxation on the UK so as to improve their competitiveness.

By contrast, the *people* of the other European countries would benefit from British withdrawal to the extent that this would strengthen competition for their governments. British withdrawal would constrain their governments and, in this way, improve their freedom. Like Norway and Switzerland, the UK would offer an alternative – a much more important one.

Since the Council prefer to keep the UK in the EU, they will not negotiate in earnest before the UK has left – unless the referendum precludes any prolongation of the negotiations. It is important, therefore, that the referendum does not allow negotiations beyond two years. This means that, when submitting the notification of withdrawal, the British must be ready to leave after two years regardless of how the negotiations turn out. If the British were prepared to prolong the negotiations, any single Council member could veto the prolongation and terminate British membership because the Council would have to agree unanimously.

For the British, the attractiveness of withdrawal depends on the outside options. The British would wish to stay in the Common Market. I expect that, ultimately, the others will agree to this – either after the UK has left or, if the referendum excludes a prolongation of the negotiations, already in the negotiations.

Britain's outside option will be improved by the Treaty on Trade and Investment Protection (TTIP) which is currently being negotiated between the EU and the US. Perhaps, this is the main reason why David Cameron has initiated these negotiations. It is not clear whether TTIP would continue to apply to the UK once the UK had left the EU. This, too, would be a matter of negotiation. A working party at the World

Trade Organization has argued that, in the case of withdrawal, such treaties continue to apply to all original contracting parties. In the case of secession from a state, the Vienna Convention on the Succession of States in respect of Treaties provides for such continuing application as well. But even if the EU rejected an agreement on these lines, the UK could easily secure a similar free trade agreement with the US – probably even a better one.

Eight rounds of trade liberalization under the GATT have reduced EU external tariffs for non-agricultural products to an average of about three per cent. The EU's highly protectionist "anti-dumping" policy has never been directed against West European non-members in the past. Since the successful conclusion of the Uruguay Round in 1993, the bulk of the common agricultural policy of the EU has shifted from variable import levels to direct transfers. All these liberalizing reforms have strengthened, and will continue to strengthen, the bargaining position of any country that might consider withdrawing from the EU.

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[1] "A number of neighbouring and independent states, connected together by commerce and policy, [gives the stop] both to power and authority". (Of the Rise and Progress of the Arts and Sciences, Essays Moral, Political and Literary, 1742, e.g., edited by Eugene F. Miller 1985.)

[2] See my "A History of Thought on Institutional Competition", in: Andreas Bergh, Rolf Höijer (eds.), Institutional Competition, Edward Elgar: Cheltenham 2008.

[3] See my "Federation with Majority Decisions", Economic Affairs 24 (4), 2004, pp. 53-59, and P. Bernholz, R. Vaubel (eds.), Political Competition and Economic Regulation, Routledge: London 2007.

[4] See my "The Political Economy of Labour Market Regulation by the European Union", Review of International Organizations 3 (4), 2008, pp. 435–465.

[5] See my "The European Institutions as an Interest Group", Hobart Paper 167, The Institute of Economic Affairs, London 2009, Tables 2, 4 and 6.

[6] See my "The Breakdown of the Rule of Law at the EU Level: Implications for the Reform of the EU Court of Justice" (forthcoming).