



Referendum Victory! *The Road to Freedom*

How Britain can leave the European Union

By Gerard Batten MEP



On Thursday 23rd June 2016 in the Referendum on continued membership of the European Union the British people delivered an historic victory when they voted to leave. The result was as follows: **Remain 48.1%** (16,141,241 votes) and **Leave 51.9%** (17,410,742 votes). This delivered a clear and unequivocal result that must now be implemented by the British Government and Parliament.

The question now is how do we leave the European Union, by what mechanism, and how quickly can it be done? Many politicians and commentators are under the mistaken belief that Britain can only leave the EU by invoking

Article 50 of the Lisbon Treaty. Article 50 says, "*Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements*".

It then sets out a lengthy, complex and costly procedure for doing so in accordance with Article 218 (3) of the Treaty on the Functioning of the European Union. The withdrawing Member State is not allowed to participate in the discussions or decisions of the European Council (Heads of Government) or the Council (Government Ministers) on the terms of withdrawal. The whole process may take up to two years.

In fact the whole procedure can be extended indefinitely by mutual agreement of the British Government and the other 27 EU Member States. The great danger is that withdrawal could be extended beyond the next general election in 2019, and that the new government in power could refuse to implement withdrawal on the grounds that it has a new mandate.

The quickest and surest way of achieving withdrawal is for the British Government and Parliament to immediately seize the initiative and **Repeal the European Communities Act (1972)**; to return supremacy of law-making to Parliament, and to then implement the necessary measures to disentangle us from the EU's legislative web.

This method puts our Government and Parliament in control of the process and not the bureaucrats of the European Union. This short pamphlet summarises the legal basis for unconditional withdrawal and lays out a plan for making it happen.

The Legal Basis for Unconditional Withdrawal

1. In common with the majority of developed democracies the United Kingdom is a '**dualist jurisdiction**'. This means that our **international treaties** are, as such, a completely separate matter from our **law**. International treaties do not become part of our law unless expressly 'incorporated' by an Act of Parliament. It follows that, whatever a treaty may say about withdrawal, Parliament can always remove that treaty from the body of our domestic law simply by repealing its earlier Act. From that moment, the treaty becomes a purely foreign affair affecting nobody but diplomats.
2. While 'EU law' is recognised as part of English law, this is so only by force of the provisions of the **European Communities Act 1972**. 'EU law' is what constitutional lawyers call 'subordinate' or 'secondary' legislation. It is by the authority of Parliament, and Parliament alone, that 'EU law' is incorporated into our law; it follows that Parliament has the legal right to reverse that incorporation by repealing the 1972 Act at any time. Under the terms of the English Constitution,¹ the Sovereign Queen in Parliament has every right to withdraw from the EU unilaterally at any time.
3. Britain's membership of the European Economic Community in 1972 was unlawful under the English constitution. The three simplest points of the argument are: it created another legislature over the Queen in Parliament and purports the supremacy of EU legislation; it purports to bind future Parliaments contrary to a fundamental principle of the English constitution; and it establishes an alternative government by unelected foreign bodies without the consent of the British people. This argument is fully developed elsewhere.²
4. This being so, Article 50 of the EU Treaty does not bind us in international law either. Under the **Vienna Convention on the Law of Treaties**, no provision of an international treaty can override a fundamental constitutional principle of national law; moreover all treaty partners are presumed to be aware of each other's constitutional principles. Parliamentary sovereignty in the UK is one such principle, and it cannot give way to any treaty provision. Indeed, a suggestion that sovereign rights of the Queen in Parliament could be in any sense limited by an international treaty is legal nonsense. Legally it was Parliament itself that limited its rights by passing the EEC Act 1972, but it retained the constitutional power to take those rights back at any time.
5. Furthermore, **the right to national self-determination** is one of the first principles of international law – see the **Atlantic Charter**, the **UN Charter**, the **International Covenant on Civil and Political Rights**, etc. In international law, there is no end of precedents of unilateral declarations of independence: from the American Revolution to the collapse of the USSR. While all such declarations technically breached the imperial law (similar to Article 50 TEU) not only are they considered compatible with the international law – they form the very basis of international law as we know it. **International law is based on the interaction of sovereign nations, many of whom derive their legal personality precisely from unilateral declarations of independence.**
6. **To sum up, a unilateral and unconditional withdrawal would be perfectly legal both under our own Constitution, and under international law.**

Unconditional Withdrawal is in the British National Interest

Negotiations with the EU on withdrawal would be pointless, indeed counterproductive. The EU cannot permit a precedent of a successful withdrawal on beneficial terms

as this might encourage the withdrawal of more Member States. The EU would most likely try to make the negotiations as difficult as possible, ending in the most onerous terms for Britain. Article 50 of the Lisbon Treaty is a trap that countries intending to leave the European Union should not allow themselves to be drawn into.

Leaving the EU would give Britain back power over its own Trade Policy (now determined by the EU). What we should then do is deal bilaterally or even multilaterally with the **nations** of Europe, not with the EU. National governments at least have to worry about their voters, and will find it much more difficult to sacrifice their economic interests to punish us for ideological reasons.

The future of the EU looks highly uncertain. Membership of the euro, over-regulation on business, and misguided climate change legislation is destroying prosperity and jobs across Europe and chaos and civil disorder is rearing its ugly head. It is highly unlikely that the EU has any future in the long term. What we should worry about is not our future relations with the EU, but our future relations with the countries of Europe, and the World.

The Practicalities of Unconditional Withdrawal

Britain has the constitutional right to unconditional withdrawal from the EU. This would not infringe international law, and the EU has no right to impose conditions on that withdrawal. It is in our national interest to withdraw unilaterally and unconditionally.

All it would take to do it is a patriotic government and Parliament with the political will and courage to take the necessary actions. In summary these are:

- 1. Repeal the European Communities Act 1972.** The Repeal Act should also denounce the EU Treaty as void in law and re-affirm the validity of the English Constitution as recognised in Common Law prior to 1972; and declare the restoration of its three key principles: Sovereignty of the Queen-In-Parliament, The Rule of Law, and Government by Consent. From that moment, the UK shall no longer be a part of the European Union, and the supremacy of our national law shall be restored.
- 2** Repeal of the European Communities Act (1972) can be achieved very quickly: as quickly as Parliament has the will to implement it. Once the repeal of the European Communities Act is achieved Parliament can address one of the most pressing issues: uncontrolled immigration. Parliament could immediately implement measures to end the free access of all EU citizens to Britain. It could then enact laws to allow visa free access for certain economically developed countries, for example Germany, France, Holland, etc., while requiring visas from other EU member states. It would Parliament's right to choose who can come to our country and on what basis.
- 3. Unilaterally discontinue all payments to the EU Budget with immediate effect.**
- 4.** Re-claim Britain's seat in the World Trade Organisation and no longer vote as part of the EU 'bloc'. Under WTO rules normal trading relations would continue with the EU Member States. All Member States are members of the WTO and it would be illegal for the EU to impose trade barriers on the UK.
- 5.** There shall be a transitional period, during which time the entire body of EU law shall be repealed or amended, and replaced with national legislation where necessary. Under the provisions of the Repeal Act, some EU regulation may continue to apply during the transitional period, but shall no longer have supremacy over national law.
- 6.** Any future legislation that may be required to enable Britain to interact with the

European Union (if it survives) would be enacted as Acts of Parliament under the sovereign control of Parliament.

7. Britain would be in a very strong position to negotiate a trade deal with the EU, or its Member States, because they sell us far more than we sell them. Britain has a massive trading deficit with the countries of the EU. It would be against its economic interests not to negotiate a trade deal; however a deal with the EU would be a consequence of leaving not a condition.

When Britain leaves the European Union it will not be at the behest of bureaucrats, diplomats and lawyers. It will be accomplished by statesmen with the determination, courage and will to make it happen; just as the Glorious Revolution of 1688 was brought about and established the Constitutional settlement we lived under until 1973.

The terms of membership of the European Union, like so many of its policies, have been deliberately engineered in order to make them as difficult as possible to reverse. We must not be discouraged by the intended difficulty of bringing about our exit from the EU. Like the Gordian Knot (see below) this is a puzzle that can best be solved by means of bold decisive action.

¹ English Constitution, i.e. Constitution of the United Kingdom of Great Britain and Northern Ireland.

² *Inglorious Revolution* by Gerard Batten MEP and Pavel Stroilov. Published by Bretwalda Books March 2013.

Gerard Batten MEP



© Gerard Batten

Gerard Batten was first elected as a UKIP Member of the European Parliament for London in 2004, and was re-elected in 2009 and 2014.

The views in this pamphlet are those Gerard Batten and not necessarily those of the UK Independence Party.

EU membership is a Gordian Knot of a problem

When Alexander the Great invaded Asia Minor at the age of 23 in 333 BC he entered the town of Gordium and was confronted with the legend of the Gordian Knot. The legend said that anyone who could untie the convoluted and intricate knot would rule the whole of Asia. But it was a puzzle not meant to be solved. Alexander studied the problem for a short while and said, "What does it matter how I loose it?" He then severed the knot with a single blow of his sword.

Membership of the EU is meant to be a knot that cannot be untied. To set ourselves free we need to follow Alexander's example and use an imaginative, quick and powerful solution.

This short pamphlet summarises the book *The Road to Freedom* by Gerard Batten MEP and Pavel Stroilov first published in 2014 by Bretwalda Press Ltd. www.BretwaldaBooks.com

Contact

Gerard Batten **Member of the European Parliament for London**

020 7403 7174 **gerard.batten@btinternet.com**
www.gerardbattenmep.co.uk