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Legal questions are at the forefront of the current debate over Britain's membership of the European Union (EU). This briefing note summarises the different kinds of law that exists between European countries and considers the positives and negatives of British withdrawal from the EU from a legal perspective.

It is important to note that there are two sets of 'higher' laws on the European continent: The European Convention on Human Rights (Council of Europe) and Community Law (European Union). The *European Convention on Human Rights* (ECHR) is a document created after the Second World War in order to protect human rights so that the atrocities of the holocaust never happen again. The Court responsible for the ECHR is the European Court of Human Rights (ECHR), which is based in Strasbourg. This Court is the final remedy for citizens of member states of the Council of Europe (47 states) who can make an application to the Court once they have gone through all legal remedies in their own countries. However, this is not EU law.

When considering the implications of a Brexit we need to focus on EU law itself. For EU Law, the Court of Justice of the European Union (CJEU) is the only Court in the EU and it is based in Luxembourg. Its main role is to be the *authoritative interpreter* of EU Law. In order to fulfil this role, the power of the Court has increased over the years, to the extent that the twin doctrines of direct effect and supremacy established the Court as the ultimate arbiter on matters of Community Law. Two cases in particular were instrumental in cementing the Court's position: (1) The *Van Gend en Loos* case of 1963 which established 'direct effect' by providing that individuals could sue the state for breach of an EU Law, and (2) the *Costa vs. ENEL* case of 1964 at which the Court directed that EU Law is supreme over national laws.



## Scenarios for a Brexit: Advantages and Disadvantages

1. *The UK should leave the EU but **remain in the EEA** (European Economic Area) like Finland, Iceland and Lichtenstein*
  - a. **Negatives (better to stay in)**
    - i. The UK will still be bound by most EU Laws, but would not have a say in their creation (as they would not be represented in the EU institutions)
    - ii. The free movement rules would still apply and so there could not be a limit on EU immigration
  - b. **Positives (better to leave)**
    - i. The UK would have 'independence' in matters relating to fisheries, energy, foreign policy and justice
  
2. *The UK should leave the EU and the EEA but **remain a part of EFTA** (European Free Trade Association) like Switzerland*
  - a. **Negatives (better to stay in)**
    - i. The free movement rules would still apply and so there could not be a limit on EU immigration
    - ii. The UK will still be bound by EU Laws relating to trade
    - iii. While the financial contribution of the UK to the EU would decrease, they would still have to pay towards the Internal Market, though it will be less than if we stayed in the EEA
  - b. **Positives (better to leave)**
    - i. The UK can negotiate, through bilateral Treaties, which areas of law they want to be subject to
    - ii. The UK will not be subject to general EU Laws if they refuse to be bound by them
  
3. *Instead of trying to negotiate a Customs Union, the UK could seek to negotiate an **FTA** (Free Trade Agreement) with the EU*
  - a. **Negatives (better to stay in)**
    - i. Businesses would lose their Internal Market rights and therefore this would be a major deterrence for companies wanting to use the UK as its European base
    - ii. It is unlikely that the UK will get this Trade Agreement easily, and will most probably have to make considerable concessions
  - b. **Positives (better to leave)**
    - i. The UK would have complete jurisdiction over its own laws and not be subject to EU Laws
  
4. *Complete withdrawal that cuts the UK off from the EU completely, making the UK rely on its **membership of the WTO** to trade with the EU (same limited access as China and the USA)*
  - a. **Negatives (better to stay in)**
    - i. All EU trade agreements would no longer be applied in the UK, causing considerable loss of trade and finance
    - ii. Businesses would lose their Internal Market rights and therefore this would be a major deterrence for companies wanting to use the UK as its European base
  - b. **Positives (better to leave)**
    - i. The UK would have complete jurisdiction over its own laws and not be subject to EU Laws
    - ii. The UK would be completely in control of its borders