

XVII legislatura

La Brexit, l'art. 50 del Trattato di Lisbona e i negoziati per il recesso dall'Unione

luglio 2016
n. 348



servizio studi del Senato



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a cura di: L. Briasco

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NOTA INTRODUTTIVA

1. PREMESSA

La consultazione referendaria sulla permanenza o meno del Regno Unito nell'Unione europea, tenutasi il 23 giugno 2016, si è conclusa con una maggioranza del 51,9% dei votanti favorevole alla *Brexit*. L'affluenza alle urne ha registrato una percentuale del 72,2% degli aventi diritto.

Promosso con lo [European Union Referendum Act](#) del 2015 (si vedano anche le relative [Explanatory Notes](#)), il referendum aveva carattere consultivo, ma il suo esito va considerato definitivo e non controvertibile. Come evidenziato nello *Executive Summary* del documento prodotto dal Governo britannico in vista della consultazione, [The Process for Withdrawing from the European Union](#), "Il Governo avrà l'obbligo democratico di dare pieno effetto alla decisione dell'elettorato. Il Primo Ministro ha chiarito, di fronte alla Camera dei Comuni, che **'se il popolo britannico voterà per lasciare l'Unione, vi sarà un unico seguito possibile: attivare l'articolo 50 del Trattato di Lisbona e dare il via al processo di uscita'**".

Va segnalato che, non appena gli esiti del voto sono stati resi ufficiali, **il premier Cameron ha annunciato le proprie dimissioni** nel corso di una conferenza stampa, dichiarando che al nuovo Primo Ministro spetterà il compito di condurre il negoziato sul *Brexit*.¹

2. LA REAZIONE DELLE ISTITUZIONI DELL'UNIONE E DEGLI STATI MEMBRI

2.1. La dichiarazione dei tre presidenti

Immediata è stata anche la reazione delle istituzioni dell'Unione. I Presidenti di Commissione, Parlamento europeo e Consiglio europeo, Juncker, Schulz e Tusk, hanno rilasciato una [dichiarazione congiunta](#), nella quale, accolta con dispiacere ma anche con il massimo rispetto la volontà espressa dal popolo britannico "attraverso un processo libero e democratico", invitano il Governo del Regno Unito **"a dare effetto alla decisione del popolo britannico appena possibile, per quanto doloroso possa risultare il relativo procedimento. Ogni ritardo non farebbe che prolungare inutilmente uno stato di incertezza"**. Si dicono altresì pronti a "lanciare rapidamente i negoziati con il Regno Unito sui termini e le condizioni del suo ritiro dall'Unione europea", durante i quali il Regno Unito "rimarrà un membro dell'Unione, con tutti i diritti e gli obblighi che ne derivano". Ricordano come la **"Nuova intesa per il Regno Unito nell'Unione europea"**, concordata al termine del Consiglio europeo del 18 e 19 febbraio 2016, "non

¹ Il Partito conservatore ha designato come nuovo *leader* l'attuale Ministro degli interni Theresa May, che assumerà la carica di Primo ministro il prossimo 13 luglio.

avrà effetto e cessa immediatamente di esistere"², senza che sia prevista alcuna eventuale rinegoziazione. In conclusione, i tre Presidenti esprimono l'auspicio che il Regno Unito rimanga un partner stretto dell'Unione europea in futuro, e invitano "il Regno Unito a formulare le proprie proposte in tal senso. Qualunque accordo che dovesse essere concluso con il Regno Unito in quanto paese terzo dovrà riflettere gli interessi di ambo le parti ed essere equilibrato in termini di diritti e di obblighi".

2.2. La risoluzione del Parlamento europeo

Il **Parlamento europeo** ha tenuto un dibattito sulla Brexit, e votato una **Risoluzione** (2016/2800(RSP)), nella quale:

- prende a sua volta atto del desiderio dei cittadini del Regno Unito di uscire dall'UE e sottolinea come esso debba essere pienamente rispettato, "procedendo non appena possibile all'attivazione dell'articolo 50 del Trattato sull'Unione europea (TUE);
- attende che il Primo ministro del Regno Unito notifichi l'esito del referendum al Consiglio europeo del 28 e 29 giugno, e auspica che tale notifica segni l'avvio della procedura di recesso;
- ricorda che non si potrà decidere in merito alle eventuali nuove relazioni tra il Regno Unito e l'UE prima della conclusione dell'accordo di recesso;
- invita il Consiglio a designare la Commissione quale negoziatore sull'articolo 50 del TUE;
- invita il Consiglio a modificare l'ordine delle sue Presidenze onde evitare che il processo di recesso pregiudichi la gestione delle attività correnti dell'Unione.

Il voto sulla risoluzione è stato preceduto da un lungo dibattito cui ha partecipato il Presidente della Commissione Juncker accompagnato dall'intero collegio dei Commissari, compreso il Commissario del Regno Unito, Hill, dimissionario. Ribadito l'invito al governo britannico - già contenuto nella Dichiarazione firmata con i Presidenti Tusk e Schulz - a trarre rapidamente le conseguenze del referendum e dei suoi esiti, anche per evitare il protrarsi di una situazione di incertezza politica, Juncker ha aggiunto **di aver dato istruzione a tutta la Commissione di non iniziare alcun negoziato, anche a livello informale, con i rappresentanti della controparte ("No notification, no negotiation).**

Tra i capigruppo intervenuti - Weber (PPE), Pittella (S&D), Verhofstadt (ALDE) - comune è stata la valutazione del Brexit come vittoria del populismo, e l'invito contestuale a un rilancio del progetto di integrazione europea.

² Sul Consiglio europeo di febbraio 2016 e sulla Nuova intesa per il Regno Unito nell'Unione europea, si vedano le Note su atti dell'Unione europea [n. 39](#) e [n. 43](#), del Servizio Studi del Senato.

2.3. La Dichiarazione congiunta di Germania, Francia e Italia

Lo stesso 27 giugno, in esito a un incontro trilaterale tenutosi a Berlino, il Cancelliere della Repubblica federale tedesca, Angela Merkel, il Presidente della Repubblica francese, François Hollande, e il Presidente del Consiglio dei ministri italiano, Matteo Renzi, hanno rilasciato una [Dichiarazione congiunta](#) nella quale, espresso rispetto per la decisione del popolo britannico e rincrescimento per il fatto che il Regno Unito non farà più parte dell'Unione europea, concentrano i propri sforzi sul rilancio del processo di integrazione europea, nella convinzione che l'Unione debba "rispondere alle preoccupazioni espresse dai suoi cittadini chiarendo i propri obiettivi e il proprio funzionamento".

La Dichiarazione individua tre priorità fondamentali per un'azione congiunta e approfondita, basata su obiettivi concreti:

- il **rafforzamento della sicurezza interna ed esterna**, attraverso la ricostruzione di un senso di comunità, contro il terrorismo, l'investimento nelle città contro la marginalizzazione sociale, lo sviluppo di un'autentica difesa europea;
- il **potenziamento dell'economia e il rilancio della crescita**, per combattere contro la disoccupazione e per creare nuove opportunità di lavoro, specie per i giovani, e nuovi investimenti;
- **programmi ambiziosi per i giovani**, attraverso il potenziamento dell'Iniziativa europea per i giovani e di Erasmus.

Sulla base di tali priorità, già a settembre i leader europei dovrebbero discutere le sfide comuni che i 27 Stati membri dovranno affrontare, raggiungendo subito un accordo su **progetti concreti da realizzare nei prossimi sei mesi per la crescita e la sicurezza**. I progressi conseguiti dovrebbero essere oggetto di valutazione immediata nelle riunioni del Consiglio europeo di ottobre e dicembre 2016, mentre il 60mo anniversario del Trattato di Roma, il 25 marzo 2017, rappresenterà un momento importante per riaffermare l'unità dell'Europa e l'investimento comune nel progetto europeo.

2.4. Il Consiglio europeo del 28 giugno e la Dichiarazione dei capi di Stato e di Governo

Riunitosi il 28 giugno, il Consiglio europeo, nelle sue conclusioni (punto 23), si è limitato a dare conto del fatto che "il primo ministro del Regno Unito ha informato il Consiglio europeo sull'esito del referendum tenuto nel suo paese": informativa che, vista la formula "neutra" adottata, non può in alcun modo - come auspicato invece dal Parlamento europeo nella sua risoluzione - essere equiparata a un atto di avvio della procedura di recesso.

Il 29 giugno, a esito di una riunione informale a 27, cui hanno partecipato anche i Presidenti di Consiglio europeo e Commissione, i Capi di Stato e di Governo hanno rilasciato una [Dichiarazione](#) nella quale, preso atto con rammarico degli esiti del referendum, sottolineano la necessità di rispettare la volontà espressa dal popolo britannico, e di "organizzare il recesso del Regno Unito dall'UE in modo ordinato. L'articolo 50 del TUE fornisce la base giuridica per questo processo.

Spetta al governo britannico notificare al Consiglio europeo l'intenzione del Regno Unito di recedere dall'Unione. Ciò dovrebbe essere fatto il più rapidamente possibile. Nessun negoziato è possibile prima della notifica".

Solo una volta ricevuta la notifica, il Consiglio europeo potrà adottare gli orientamenti relativi ai negoziati per un accordo con il Regno Unito, avviando così un processo nel quale "la Commissione europea e il Parlamento europeo svolgeranno appieno il loro ruolo in linea con i trattati".

Per quanto riguarda l'assetto futuro delle relazioni tra Regno Unito e UE, la Dichiarazione esprime l'auspicio "che il Regno Unito sia un partner importante dell'UE" e sottolinea come "qualsiasi accordo che verrà concluso con il Regno Unito in quanto paese terzo dovrà basarsi su una combinazione equilibrata di diritti e obblighi", ricordando altresì che, **"per avere accesso al mercato unico, è necessario accettare tutte e quattro le libertà"** (una precisazione il cui probabile scopo è sottolineare come qualunque restrizione alla libertà di circolazione dei cittadini UE nel Regno Unito comporterebbe inevitabilmente l'uscita di quest'ultimo dal mercato unico).

Infine, la Dichiarazione annuncia l'avvio di una riflessione politica "per imprimere slancio a ulteriori riforme, in linea con la nostra agenda strategica, e allo sviluppo dell'UE con 27 Stati membri": riflessione che verrà ripresa in occasione di una riunione informale che è già stata calendarizzata per il mese di settembre, a Bratislava.

Va infine rilevato come, da fonti non ufficiali ma confermate anche nel Report della House of Commons *Brexit: What Happens Next?* (v. *infra*), **il Consiglio europeo avrebbe nominato un diplomatico belga, Didier Seeuws** (già capo di gabinetto del precedente Presidente del Consiglio europeo, Herman Van Rompuy), **a capo di una "Task Force Brexit", cui sarebbe affidato il compito di negoziare il recesso del Regno Unito con i rappresentanti del Governo britannico.**

Tale nomina avrebbe generato una inevitabile tensione tra Consiglio e Commissione su chi sarà a condurre materialmente i negoziati di recesso. Il Servizio giuridico della Commissione avrebbe predisposto un parere (ancora non ufficializzato) in base al quale l'art. 50 del TUE tratterebbe "lo Stato membro che intende recedere alla stregua di uno Stato terzo", il che farebbe della Commissione stessa, in linea con il dettato dell'art. 218 TFUE, il negoziatore ideale. La posizione del Consiglio tenderebbe invece a considerare il Regno Unito - anche nel corso della procedura di recesso - come uno Stato membro a tutti gli effetti, il che renderebbe il Consiglio stesso più indicato per condurre il negoziato.

La riunione a 27 era stata preceduta, la sera del 28 giugno, da una cena dei capi di Stato e di governo con il Primo ministro britannico Cameron, **nel corso della quale si sarebbe registrata una generale convergenza da parte dei Leader - e**

al di là delle dichiarazioni ufficiali - sull'opportunità di evitare pressioni eccessive sul Governo britannico quanto all'avvio della procedura di recesso.

Il Primo ministro Cameron avrebbe altresì confermato che solo il suo successore, il quale dovrebbe assumere la carica entro e non oltre il 9 settembre, potrà decidere di attivare la procedura ex art. 50 del TUE e valutare il nuovo modello di cooperazione con l'Unione. Cameron avrebbe altresì accettato il principio per cui il negoziato potrà essere avviato solo dopo la notifica di recesso; avrebbe indicato che il Governo britannico avrebbe proposto il nome di un nuovo Commissario britannico per sostituire il dimissionario Hill³ e che gli eurodeputati britannici continueranno a essere membri a tutti gli effetti del Parlamento europeo. Avrebbe infine ammesso che occorrerà un po' più di tempo prima di assumere la decisione relativa a come gestire la Presidenza di turno del Consiglio dell'Unione europea, prevista, come noto, per il secondo semestre del 2017.

3. L'ARTICOLO 50 DEL TRATTATO E IL RECESSO DALL'UNIONE

La procedura da seguire per la *Brexit* trova il proprio fondamento nell'articolo 50 del Trattato sull'Unione europea, che conferisce espressamente ad ogni Stato membro la possibilità, conformemente alle proprie norme costituzionali, di recedere dall'Unione (**clausola di recesso, par. 1**).

Lo Stato che abbia deciso in tal senso ne deve dare notifica al Consiglio europeo, che formulerà orientamenti per la conclusione di un Accordo tra l'Unione europea e lo Stato in questione volto a definire le modalità del recesso, "tenendo conto del quadro delle future relazioni con l'Unione". Tale Accordo viene negoziato in conformità **all'articolo 218 del TFUE** - che disciplina tutti gli accordi tra Unione e paesi terzi o organizzazioni internazionali -, ed è concluso dal Consiglio che delibera a maggioranza qualificata, previa approvazione del Parlamento europeo (par. 2). **Va rilevato, in proposito, come non sia previsto alcun termine temporale per la notifica al Consiglio europeo della decisione di recesso, che rimane appannaggio dello Stato membro interessato.**

Si ricorda altresì che la procedura prevista dall'art. 218 affida al Consiglio il compito di autorizzare l'avvio dei negoziati, di definire le direttive di negoziato, di autorizzare la firma e di concludere gli accordi, designando, in funzione della materia dell'accordo, il negoziatore o il capo della squadra di negoziato dell'Unione. Il Consiglio può altresì impartire direttive al negoziatore e designare un comitato speciale che deve essere consultato nella conduzione dei negoziati.

A decorrere dalla data di entrata in vigore dell'Accordo di recesso, i trattati non saranno più applicabili allo Stato membro interessato. In mancanza di tale accordo, **essi cesseranno di applicarsi due anni dopo la notifica al Consiglio europeo** da parte dello Stato circa la sua intenzione di recedere. **Il Consiglio**

³ Cameron, l'8 luglio, ha proposto al Presidente Juncker il diplomatico Julian King come nuovo Commissario.

europeo può peraltro decidere di prolungare tale termine, deliberando all'unanimità e d'intesa con lo Stato membro interessato (par. 3). L'art. 50 non fornisce indicazioni sulla durata né sul numero delle eventuali proroghe.

Lo Stato membro che intende recedere non partecipa né alle deliberazioni né alle decisioni del Consiglio europeo e del Consiglio che lo riguardano. **Poiché non è fatto riferimento al Parlamento europeo, che è chiamato ad approvare l'Accordo di recesso (e che detiene pertanto un sostanziale potere di veto), sembra potersene dedurre che l'esclusione non si applichi ai parlamentari eletti nello Stato membro che intende recedere, ma solo ai suoi rappresentanti in sede di Consiglio e di Consiglio europeo.**

Rimane prevista la possibilità, per lo Stato membro uscito dall'Unione, di aderirvi nuovamente, ma seguendo per intero la procedura prevista dall'art. 49. **L'articolo 50 non fa invece alcun riferimento esplicito alla possibilità di ritirarsi dal meccanismo di recesso o di revocare la notifica al Consiglio europeo, né pertanto esclude a priori tali eventualità.**

L'articolo 50 del TUE rappresenta una delle novità più significative introdotte dal Trattato di Lisbona, entrato in vigore il 1° dicembre 2009: in precedenza, infatti, la possibilità per gli Stati di ritirarsi volontariamente⁴ non era contemplata dai trattati, e l'eventuale recesso di uno Stato membro poteva rientrare esclusivamente nell'ambito disciplinato dalla [Convenzione di Vienna sul diritto dei Trattati del 1969](#), che nella parte V si occupa della sospensione dei trattati internazionali⁵. **Quello del Regno Unito è il primo caso di recesso dall'Unione.** Nessuno Stato firmatario del Trattato istitutivo o di adesione ha infatti dichiarato la propria intenzione di uscire dall'UE. Si possono tuttavia segnalare alcuni casi di dipendenze territoriali o regioni ultraperiferiche che hanno lasciato l'UE. Tra essi la **Groenlandia**, che era divenuta parte della CEE con l'ingresso della Danimarca nel 1973 ma che, in esito ad un **referendum indetto nel 1979** (l'unico prima del referendum britannico del 23 giugno scorso) ha abbandonato la Comunità nel 1985⁶. In quel caso per formalizzare l'uscita si è proceduto a una modifica dei Trattati con la quale se ne è soppressa l'applicazione al territorio della Groenlandia (Trattato sulla Groenlandia).

⁴ Tale disposizione era stata inserita nella Costituzione europea e, dopo la sua mancata ratifica, è confluita nel Trattato di Lisbona.

⁵ La Convenzione disciplina due fattispecie: i trattati che contemplano la possibilità di recesso e quelli che non la prevedono. Nel secondo caso vengono previste una serie di clausole di recesso tra cui quella di un mutamento delle circostanze tale da trasformare radicalmente il peso degli obblighi che restano da eseguire in base al Trattato (clausola *rebus sic stantibus*).

⁶ Altri casi riguardano l'Algeria, che nel 1962, dichiarando la propria indipendenza dalla Francia, è uscita dal sistema comunitario, e la comunità francese d'oltremare Saint-Barthélemy, che aveva chiesto di essere svincolata dalle norme europee in virtù della lontananza dal continente e che dal 1° gennaio 2012 gode dello *status* di territorio associato all'Unione europea.

4. IL PROCESSO DI RIFLESSIONE CONDOTTO DAL PARLAMENTO BRITANNICO

Il 4 maggio 2016, in preparazione del referendum e delle eventuali conseguenze di una *Brexit*, la *European Union Committee* della Camera dei Lord ha licenziato un Rapporto intitolato [*The Process of Withdrawing from the European Union*](#), nel quale, evitando di pronunciarsi sulla desiderabilità o meno di un recesso dall'Unione, ha tentato di raggiungere "una comprensione il più chiara possibile del processo attraverso il quale il Regno Unito recederebbe dall'Unione, nel caso in cui l'elettorato decida in tal senso", basandosi tra l'altro sui pareri di due illustri giuristi: Sir David Edward, professore emerito all'Università di Edimburgo e già Giudice alla Corte di Giustizia, e Derrick Wyatt, docente alla Oxford University.

A tali documenti "preparatori" si sono aggiunti, in esito al referendum, una *Library Note* della stessa House of Lords, incentrata sul ruolo del Parlamento britannico all'interno della procedura di recesso ([*Leaving the EU: Parliament's Role in the Process*](#)), nonché un *Briefing Paper* della House of Commons, dal titolo, significativo, di: [*Brexit: What Happens Next?*](#)

Il quadro che emerge dai documenti citati è così sintetizzabile:

- **Il Governo non è legalmente vincolato a rispettare l'esito del referendum (vista la sua natura consultiva), ma è estremamente improbabile, sul piano politico, che non si attenga ai risultati del voto.** Va ricordato che, il 25 novembre, era stata depositata una petizione parlamentare nella quale si affermava: "I firmatari chiedono al Governo di Sua Maestà di stabilire una norma in base alla quale, se la percentuale a favore o contro l'uscita del Regno Unito dall'Unione risulti inferiore al 60%, e sia basata su un quorum inferiore al 75%, è necessario tenere una seconda consultazione referendaria". Dopo il referendum, il numero di firmatari della petizione è cresciuto con rapidità impressionante, fino a raggiungere, già il 30 giugno, una cifra superiore ai quattro milioni;
- L'art. 50 del TUE costituisce l'unica base giuridica e l'unica procedura per il recesso dall'Unione. In esso **non vi è nulla che impedisca a uno Stato membro di tornare sulla propria decisione di recesso** in corso di negoziato, anche se le conseguenze politiche di tale scelta sarebbero rilevanti, mentre il recesso diviene definitivo nel momento in cui il relativo Accordo entra in vigore. Vi è disparità di opinioni sulle modalità con le quali andrebbe assunta la decisione di invocare l'articolo 50 del TUE, e sulla natura delle norme costituzionali da attivare. Il Premier Cameron ha dichiarato di fronte alla House of Commons, il 27 giugno, che **attivare l'articolo 50 rientra tra le competenze del governo e rappresenta una sua decisione sovrana**; ha aggiunto di non poter garantire che la decisione sia oggetto di un voto parlamentare, demandando al Premier subentrante il compito di stabilire le procedure da seguire. Nel complesso, la decisione di invocare l'articolo 50 potrebbe avvenire in più modi, di cui due (decisione del Primo Ministro attraverso

l'utilizzo della cd. "*royal prerogative*", che gli consente di esercitare taluni poteri come rappresentante diretto della Corona, o decisione del Primo ministro in consultazione con il suo Gabinetto o dopo un pronunciamento formale dello stesso) non prevedono alcun ruolo formale per il Parlamento, mentre altri due (decisione del Primo Ministro a seguito di una risoluzione o mozione approvata in uno o in entrambi i rami del Parlamento, o decisione del Primo Ministro integrata in un nuovo atto del Parlamento) lo vedono coinvolto, seppure in differenti misure. **Poiché un'ampia maggioranza dei membri del Parlamento ha manifestato il desiderio di rimanere all'interno dell'Unione, la questione del ruolo che lo stesso parlamento avrà nell'invocare l'art. 50 acquista, ovviamente, un grande rilievo politico;**

- Anche nel caso (come si è già visto, incerto e ancora da verificare) che la responsabilità dei negoziati sia affidata alla Commissione, come espressamente richiesto dal Parlamento europeo nella sua risoluzione del 27 giugno, **gli Stati membri manterranno un forte controllo su di essi; non meno forte sarà l'influsso del Parlamento europeo**, avendo quest'ultimo potere di veto sull'adozione dell'Accordo di recesso;
- È molto probabile che, **in parallelo con l'Accordo di recesso, venga negoziato anche un accordo sulle relazioni future tra il Regno Unito e l'Unione europea. Dovrebbe infatti essere interesse comune di tutte le parti in causa assicurare un coordinamento efficace tra i due accordi**, che peraltro, vista la loro natura innegabilmente "mista", dovrebbero essere oggetto di ratifica da parte dei parlamenti nazionali;
- Vista l'assenza di precedenti specifici, non è possibile prevedere con certezza quale sarà la durata dei negoziati per l'Accordo di Recesso e per un nuovo Accordo tra UE e Regno Unito. È comunque ragionevole **prevedere che essi richiederanno diversi anni (in media, gli accordi commerciali tra l'UE e gli Stati membri richiedono, per essere finalizzati, un periodo tra i quattro e i nove anni)**, e che sarà pertanto necessario **estendere il periodo di negoziato oltre il termine di due anni previsto dall'art. 50. Tale estensione, peraltro, dovendo essere oggetto di una decisione del Consiglio europeo presa all'unanimità**, non può essere considerata a priori un passaggio scontato;
- Benché il Regno Unito rimarrebbe a tutti gli effetti membro dell'Unione durante i negoziati di recesso, la sua credibilità sarebbe seriamente minata. Potrebbe essere necessaria una politica di disimpegno selettivo da alcune politiche europee, e particolarmente problematico, per il Governo, sarebbe **esercitare la Presidenza semestrale del Consiglio dell'Unione europea, prevista per il secondo semestre del 2017**, in considerazione del fatto che, ai sensi dello stesso art. 50 del TUE, il Governo stesso non potrebbe presiedere le riunioni del Consiglio dedicate al negoziato di recesso.

5. IL CASO DELLA SCOZIA E DELL'IRLANDA DEL NORD

Altro capitolo di particolare interesse, e del quale si dà ampio conto nei documenti elaborati dalla *House of Commons* e dalla *House of Lords*, è rappresentato dalle implicazioni del referendum per Scozia e Irlanda del Nord, **territori nei quali un'ampia maggioranza dei votanti si è pronunciata per la permanenza nell'Unione europea.**

In Scozia, la percentuale di favorevoli al *remain* è stata pari al 62%, e il 24 giugno il Primo Ministro scozzese, Nicola Sturgeon, ha affermato che sarebbe "democraticamente inaccettabile" per la Scozia recedere dall'Unione contro la propria volontà, e ha espresso la volontà di esplorare tutte le opzioni disponibili per garantire la permanenza della Scozia nell'Unione europea.

Poiché peraltro la Scozia non è - in base al diritto internazionale - uno "Stato" in grado di firmare e ratificare accordi internazionali, ed essendo le relazioni internazionali riservate al Governo britannico, in base allo *Scotland Act* del 1998, **non è possibile che la Scozia stessa divenga membro dell'Unione, né che firmi un Accordo di associazione con la stessa.**

L'unica strada attraverso la quale ciò potrebbe verificarsi è quella di un secondo referendum: in tal senso sembrano muovere le dichiarazioni del Primo Ministro Sturgeon, che all'indomani della Brexit ha sottolineato come, a seguito del voto referendario sulla permanenza del Regno Unito nell'Unione europea, si sono verificate le condizioni citate nel programma elettorale dello *Scottish National Party*, laddove si esprimeva la convinzione che il Parlamento scozzese avesse "il diritto di tenere un altro referendum se... si verificano cambiamenti concreti e significativi nelle circostanze che si sono rivelate prevalenti nel 2014: per esempio, un recesso della Scozia dall'Unione europea contro la volontà del popolo scozzese".

Va peraltro ricordato che **il Parlamento scozzese non dispone del potere legislativo in materia di referendum, e che pertanto un nuovo referendum potrà aver luogo solamente previo consenso del Regno Unito.** Lo stesso referendum del 2014 si è potuto tenere solo dopo un accordo con il Governo britannico, che ha devoluto al Governo scozzese la relativa potestà per un periodo di tempo limitato, scaduto il 31 dicembre 2014.

Per quanto concerne i passi successivi a un eventuale referendum che dovesse sancire l'indipendenza della Scozia, il diritto internazionale prevede disposizioni specifiche in base alle quali uno Stato che abbia appena ottenuto l'indipendenza può aderire in modo immediato a trattati multilaterali in vigore nel proprio stesso territorio prima dell'indipendenza, limitandosi a notificare la propria volontà in tal senso (Convenzione di Vienna del 1978 sulla successione degli Stati rispetto ai trattati, art. 17).

In ogni caso, e al di là dell'applicabilità o meno della Convenzione di Vienna, una eventuale decisione sull'adesione immediata della Scozia all'Unione sarebbe di natura politica. Se tutti gli Stati membri fossero d'accordo, potrebbero trovare un modo per garantire che una Scozia indipendente erediti il posto del Regno Unito all'interno dell'Unione, **dopo un rapido negoziato che si concentri su un**

numero molto limitato di temi afferenti alla *membership* (dal contributo finanziario al bilancio dell'Unione, al numero di parlamentari europei).

Per quanto concerne invece l'Irlanda del Nord, i rapporti con il Regno Unito sono regolati dall'**Accordo di Belfast** del 1998 (meglio noto come *Good Friday Agreement*). In base a tale Accordo, spetta "al solo popolo dell'isola d'Irlanda, previo accordo tra le sue due parti e senza impedimenti esterni, esercitare il proprio diritto all'auto-determinazione". Pertanto, "se, in futuro, il popolo dell'isola d'Irlanda dovesse esercitare tale diritto pronunciandosi per un'Irlanda unita, entrambi i Governi (del Nord e del Sud) sarebbero vincolati a introdurre e sostenere presso i rispettivi parlamenti una legislazione che renda operativa tale volontà".

Più nel dettaglio, e sempre in base all'Accordo di Belfast, **spetterebbe al Segretario di Stato britannico per l'Irlanda del Nord chiedere un voto popolare, nel caso in cui "abbia la percezione che la maggioranza dei cittadini dell'Irlanda del Nord sarebbe favorevole a lasciare il Regno Unito e unirsi alla Repubblica d'Irlanda"**. Qualora il voto confermasse tale orientamento, spetterebbe ai governi britannico e irlandese introdurre e sostenere le misure legislative che lo rendano effettivo.

ALLEGATI



Joint Statement by Martin Schulz, President of the European Parliament, Donald Tusk, President of the European Council, Mark Rutte, Holder of the Presidency of the Council of the EU, Jean-Claude Juncker, President of the European Commission

Brussels, 24 June 2016

President Schulz, President Tusk and Prime Minister Rutte met this morning in Brussels upon the invitation of European Commission President **Juncker**. They discussed the outcome of the United Kingdom referendum and made the following joint statement:

"In a free and democratic process, the British people have expressed their wish to leave the European Union. We regret this decision but respect it.

This is an unprecedented situation but we are united in our response. We will stand strong and uphold the EU's core values of promoting peace and the well-being of its peoples. The Union of 27 Member States will continue. The Union is the framework of our common political future. We are bound together by history, geography and common interests and will develop our cooperation on this basis. Together we will address our common challenges to generate growth, increase prosperity and ensure a safe and secure environment for our citizens. The institutions will play their full role in this endeavour.

We now expect the United Kingdom government to give effect to this decision of the British people as soon as possible, however painful that process may be. Any delay would unnecessarily prolong uncertainty. We have rules to deal with this in an orderly way. Article 50 of the Treaty on European Union sets out the procedure to be followed if a Member State decides to leave the European Union. We stand ready to launch negotiations swiftly with the United Kingdom regarding the terms and conditions of its withdrawal from the European Union. Until this process of negotiations is over, the United Kingdom remains a member of the European Union, with all the rights and obligations that derive from this. According to the Treaties which the United Kingdom has ratified, EU law continues to apply to the full to and in the United Kingdom until it is no longer a Member.

As agreed, the "[New Settlement for the United Kingdom within the European Union](#)", reached at the European Council on 18-19 February 2016, will now not take effect and ceases to exist. There will be no renegotiation.

As regards the United Kingdom, we hope to have it as a close partner of the European Union in the future. We expect the United Kingdom to formulate its proposals in this respect. Any agreement, which will be concluded with the United Kingdom as a third country, will have to reflect the interests of both sides and be balanced in terms of rights and obligations."

STATEMENT/16/2329

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TESTI APPROVATI

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Esito del referendum nel Regno Unito

Risoluzione del Parlamento europeo del 28 giugno 2016 sulla decisione di recedere dall'UE a seguito del referendum nel Regno Unito (2016/2800(RSP))

Il Parlamento europeo,

- visto l'articolo 123, paragrafo 2, del suo regolamento,
- 1. prende atto del desiderio dei cittadini del Regno Unito di uscire dall'UE; sottolinea che la volontà espressa dalla popolazione deve essere pienamente rispettata, procedendo non appena possibile all'attivazione dell'articolo 50 del trattato sull'Unione europea (TUE);
- 2. sottolinea che si tratta di un momento cruciale per l'UE e che gli interessi e le aspettative dei cittadini dell'Unione devono essere nuovamente posti al centro del dibattito; indica che è giunta l'ora di rilanciare il progetto europeo;
- 3. sottolinea che la volontà della maggioranza dei cittadini del Regno Unito dovrebbe essere rispettata attraverso un'attuazione rapida e coerente della procedura di recesso;
- 4. sottolinea che i negoziati a norma dell'articolo 50 TUE concernenti il recesso del Regno Unito dall'UE dovranno iniziare non appena sarà stata comunicata la notifica ufficiale;
- 5. avverte che, al fine di prevenire incertezze negative per tutti e di tutelare l'integrità dell'Unione, la notifica a norma dell'articolo 50 TUE deve avvenire il prima possibile; si attende che il Primo ministro del Regno Unito notifichi l'esito del referendum al Consiglio europeo del 28 e 29 giugno; indica che tale notifica segnerà l'avvio della procedura di recesso;
- 6. ricorda che l'intesa convenuta dai capi di Stato e di governo nel febbraio 2016 subordinava la sua entrata in vigore alla decisione del Regno Unito di rimanere nell'UE; indica che tale intesa è pertanto nulla;
- 7. ricorda che non si potrà decidere in merito alle eventuali nuove relazioni tra il Regno Unito e l'UE prima della conclusione dell'accordo di recesso;
- 8. ricorda che a norma dei trattati è richiesta l'approvazione del Parlamento europeo e che tale Istituzione deve essere pienamente coinvolta in tutte le fasi delle varie procedure

concernenti l'accordo di recesso e le relazioni future;

9. invita il Consiglio a designare la Commissione quale negoziatore sull'articolo 50 TUE;
10. sottolinea che le sfide attuali richiedono una riflessione sul futuro dell'UE e che è necessario riformare l'Unione migliorandola e rendendola più democratica; osserva che, sebbene alcuni Stati membri possano decidere di procedere a un'integrazione più lenta o meno approfondita, il nucleo fondamentale dell'UE deve essere rafforzato e occorre evitare le soluzioni *à la carte*; ritiene che la necessità di promuovere i nostri valori comuni, di creare stabilità, giustizia sociale, sostenibilità, crescita e posti di lavoro, di superare la persistente incertezza economica e sociale, di proteggere i cittadini e di far fronte alla sfida della migrazione impone, in particolare, lo sviluppo e la democratizzazione dell'Unione economica e monetaria e dello spazio di libertà, sicurezza e giustizia, nonché il rafforzamento della politica estera e di sicurezza comune; ritiene pertanto che dalle riforme debba scaturire un'Unione che sia all'altezza delle aspettative dei cittadini;
11. chiede che venga definita una tabella di marcia verso un'Unione migliore, avvalendosi appieno delle opportunità offerte dal trattato di Lisbona, da integrare con una revisione dei trattati;
12. intende realizzare cambiamenti nella propria organizzazione interna per tener conto della volontà di una maggioranza dei cittadini del Regno Unito di recedere dall'Unione europea;
13. prende atto delle dimissioni del Commissario del Regno Unito e della riassegnazione del suo portafoglio;
14. invita il Consiglio a modificare l'ordine delle sue Presidenze onde evitare che il processo di recesso pregiudichi la gestione delle attività correnti dell'Unione;
15. incarica il suo Presidente di trasmettere la presente risoluzione al Consiglio europeo, al Consiglio, alla Commissione, alla Banca centrale europea, ai parlamenti nazionali e al governo del Regno Unito.

**Joint Declaration by the Chancellor of the Federal Republic of Germany,
the President of the French Republic and the President of the Council of
Ministers of the Italian Republic**

On 23 June 2016, the majority of the British people have expressed their wish to leave the European Union. Germany, France and Italy respect this decision. We regret that the United Kingdom will no longer be our partner within the European Union.

We are fully confident that the European Union is strong enough to give the right answers today. There is no time to waste.

Today we convey our strong commitment to European unity. It is our firm conviction that the European Union is essential to make our countries stronger by acting together, with our common Institutions, in order to ensure economic and social progress for our people and to assert Europe's role in the world.

For almost 60 years, the EU constitutes a unique community of rights, freedoms, law and common values. The EU enables us to safeguard our European social model which combines economic success with social protection. The EU enables us to preserve our cultural diversity. The single Market, our common policies and the Euro are unique in the world. These achievements are the foundation of our prosperity. Jointly, we campaign to promote our interests within an agenda for free and fair trade in the world. Jointly, we progress in our energy policy and jointly we contribute to global climate protection. Jointly, we contribute to stability and development in the world and promote freedom.

It is our equally firm conviction that the European Union can be brought forward again only if it continues to be built upon the support of its citizens.

Therefore, the European Union must address the concerns expressed by its people by clarifying its objectives and its functioning. It should be stronger on essential priorities, where the Europeans must join forces and be less present when the Member States are better placed to act. It remains under the democratic control of its citizens and should be better intelligible. It must act faster, in particular in delivering programs and projects which provide direct benefits to the citizens.

In a changing world, the European Union should preserve its essential acquis and focus on the challenges the Europeans face today like worldwide migration and new threats, in particular international terrorism that no single Member State can effectively overcome alone. It must also reinforce the capacity of the Europeans to respond to growing international competition while strengthening the European social market economy.

Therefore, we propose three key priorities for joint and deepened action based on concrete objectives:

- Internal and External Security: Europe is confronted with huge challenges which require strengthening its common means to protect its external borders and to contribute to peace and stability in its neighbourhood, in particular in the Mediterranean, Africa and the Middle East. We will succeed in the fight against terrorism in Europe only if we act united. Terrorism will be defeated only if we prove to be able to rebuild a sense of community; to invest in our cities against social marginalisation.

We will live up to our responsibilities if we develop our European defence and make the necessary commitments for our joint operations as well as for our military capacities and industry. The potential of a true Common Foreign, Security and Defence Policy has not yet been fully used.

- A Strong Economy and Strong Social Cohesion: Europe must keep its word on the promise of prosperity to its citizens. We need more growth to fight against unemployment and create jobs, especially for young people, as well as more investment to secure the strength of our economies in the global competition. The success of our European social and economic model, which combines economic strength and social protection requires setting the right regulatory framework ; better policies for entrepreneurship and participation of all in working life ; strengthening research, innovation and training, which play a key role since Europe's wealth is based primarily on the knowledge and the skills of its citizens ; developing the digital economy in Europe for better services, modernized industry and jobs ; exploiting the full potential of energy and climate policies protecting the environment.

For the countries sharing the euro, further steps will be necessary to strengthen growth, competitiveness, employment and convergence including in the social and tax field.

- Ambitious programmes for youth: Europe will succeed only if it gives hope to its young people. We need to strengthen European initiatives for training, entrepreneurship and access to jobs across Europe, as the Youth Employment initiative or Erasmus for students, apprentices and young professionals.

The European Union represents our common values: We strive for peace and freedom, for democracy and the rule of law, for mutual respect and responsibility, for tolerance and participation, for justice and solidarity. Today is the day to reaffirm these values.

We will propose tomorrow to the Heads of State and government and the European Institutions to launch a process according to a strict timetable and a precise set of commitments to respond to the challenges presented by the result of the UK referendum and develop concrete solutions for a good future of the EU and its citizens.

On this basis, Leaders in September should discuss the common challenges the 27 Member States are facing and the essential priorities they need to decide upon. They should also agree on concrete projects to be delivered in Europe in the next six months for growth and security. Work should begin immediately to implement the necessary initiatives. Contributions from international personalities could nourish leaders' discussions on the perspectives of Europe in a global context.

The European Council meetings in October 2016 and December 2016 will give us the opportunity to assess the progress made in that regard and give the necessary guidelines.

The 60th anniversary of the Treaty of Rome on 25 March 2017 will be an important moment to reaffirm the unity of Europe and our common commitment to the European project.

Bruxelles, 29 giugno 2016

**Riunione informale a 27
Bruxelles, 29 giugno 2016
Dichiarazione**

1. Noi, capi di Stato o di governo dei 27 Stati membri, insieme ai presidenti del Consiglio europeo e della Commissione europea, ci rammarichiamo profondamente dell'esito del referendum nel Regno Unito ma rispettiamo la volontà espressa dalla maggioranza del popolo britannico. Fino a quando lascerà l'Unione, al Regno Unito e al suo interno continuerà ad applicarsi il diritto dell'UE, per quanto riguarda sia i diritti che gli obblighi.
2. È necessario organizzare il recesso del Regno Unito dall'UE in modo ordinato. L'articolo 50 del TUE fornisce la base giuridica per questo processo. Spetta al governo britannico notificare al Consiglio europeo l'intenzione del Regno Unito di recedere dall'Unione. Ciò dovrebbe essere fatto il più rapidamente possibile. Nessun negoziato è possibile prima della notifica.
3. Una volta ricevuta la notifica, il Consiglio europeo adotterà gli orientamenti relativi ai negoziati per un accordo con il Regno Unito. Nel processo che seguirà la Commissione europea e il Parlamento europeo svolgeranno appieno il loro ruolo in linea con i trattati.

4. In futuro ci auguriamo che il Regno Unito sia un partner importante dell'UE e attendiamo con interesse che il paese dichiari le proprie intenzioni al riguardo. Qualsiasi accordo che verrà concluso con il Regno Unito in quanto paese terzo dovrà basarsi su una combinazione equilibrata di diritti e obblighi. Per avere accesso al mercato unico è necessario accettare tutte e quattro le libertà.
5. L'esito del referendum del Regno Unito crea una situazione nuova per l'Unione europea. Siamo determinati a rimanere uniti e a lavorare nel quadro dell'UE per affrontare le sfide del ventunesimo secolo e trovare soluzioni nell'interesse delle nostre nazioni e dei nostri popoli. Siamo pronti ad affrontare tutte le difficoltà che possono sorgere dalla situazione attuale.
6. L'Unione europea è una conquista storica di pace, prosperità e sicurezza sul continente europeo e rimane il nostro quadro comune. Al tempo stesso molti esprimono insoddisfazione per la situazione attuale, che sia a livello europeo o nazionale. Gli europei attendono da noi risultati migliori quanto a sicurezza, occupazione, crescita e speranza per un futuro migliore. Dobbiamo conseguire risultati al riguardo secondo modalità che ci uniscano, nell'interesse soprattutto dei giovani.
7. Per questo motivo avviamo oggi una riflessione politica per imprimere slancio a ulteriori riforme, in linea con la nostra agenda strategica, e allo sviluppo dell'UE con 27 Stati membri. Questo richiede la leadership dei capi di Stato o di governo. Torneremo sulla questione in occasione della riunione informale che si terrà a Bratislava in settembre.

Article 50 TEU: Withdrawal of a Member State from the EU

SUMMARY

The right of a Member State to withdraw from the European Union was introduced for the first time with the Lisbon Treaty; the possibility of withdrawal was highly controversial before that. Article 50 TEU does not set down any substantive conditions for a Member State to be able to exercise its right to withdraw, rather it includes only procedural requirements. It provides for the negotiation of a withdrawal agreement between the EU and the withdrawing state, defining in particular the latter's future relationship with the Union. If no agreement is concluded within two years, that state's membership ends automatically, unless the European Council and the Member State concerned decide jointly to extend this period.

The legal consequence of a withdrawal from the EU is the end of the application of the EU Treaties (and the Protocols thereto) in the state concerned from that point on. EU law ceases to apply in the withdrawing state, although any national acts adopted in implementation or transposition of EU law would remain valid until the national authorities decide to amend or repeal them. A withdrawal agreement would need to address the phasing-out of EU financial programmes and other EU norms.

Experts agree that in order to replace EU law, specifically in any field of exclusive EU competence, the withdrawing state would need to enact substantial new legislation and that, in any case, complete isolation of the withdrawing state from the effects of the EU *acquis* would be impossible if there is to be a future relationship between former Member State and the EU. Furthermore, a withdrawal agreement could contain provisions on the transitional application of EU rules, in particular with regard to rights deriving from EU citizenship and to other rights deriving from EU law, which would otherwise extinguish with the withdrawal.



In this briefing:

- The genesis and rationale of the withdrawal clause
- Substantive conditions for a withdrawal
- Procedure
- Consequences of a withdrawal and possible content of a withdrawal agreement
- Main references

Article 50 – Treaty on European Union (TEU)

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. 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 for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. 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.
4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
5. 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.

The genesis and rationale of the withdrawal clause

The right of a Member State to withdraw from the European Union was introduced for the first time with the Lisbon Treaty. Prior to that, the question of the right of withdrawal was highly controversial. Some authors had argued for the application of customary international law (*clausula rebus sic stantibus*, also established in Article 62 of the [Vienna Convention on the Law of the Treaties](#) providing for unilateral withdrawal from international treaties) within the EU framework. Moreover, several constitutional courts saw a unilateral right to withdraw from the EU as necessary in order to preserve national sovereignty.¹ Other authors denied the possibility of a Member State withdrawing unilaterally, but pointed to the role of the EU Member States as '**masters of the Treaties**', who could, in agreement, decide that a Member State can terminate its membership.

Other scholars rejected the possibility of withdrawal from the Union as a whole. The application of international law to fill in alleged gaps in the EU Treaties has been often seen as flawed, due to the specific character of the EU as a supranational organisation that drew from international law for its own creation but then established an autonomous legal order with its own rules.² Furthermore, the creation – with the Maastricht Treaty – of the European Union as a *permanent organisation*, as now reflected in Articles 53 TEU and 356 TFEU, was understood by many to exclude the possibility of voluntary withdrawal from the Treaties. The federal features of the EU and the materially constitutional content of the EU Treaties also tend to discount the possibility of a state terminating its EU membership.³

The inclusion of a right to withdraw from the Union in the Draft Constitutional Treaty was based on the premise that such a withdrawal would have been permissible anyway

through application of the general principles of international law. Therefore, a procedure under the Treaties, adjusted to the reality and needs of the EU and its Member States, instead of recurring to international law provisions, was deemed appropriate. That the introduction of the withdrawal clause was a compromise necessary in order to reach agreement on the Constitutional Treaty is clear from the [comments](#) attached to the draft provision (Article I-59) saying that it was a 'political signal to anyone inclined to argue that the Union is a rigid entity which it is impossible to leave'. The 'exit' clause was included unchanged in the Lisbon Treaty.

Greenland: no withdrawal precedent

In a referendum on 23 February 1982, Greenland decided – by 53% to 47% – to leave the then European Communities (EC). However, the 1985 'exit' of Greenland from the EC is legally speaking not a 'withdrawal' as Greenland was not a Member State of the EU but was, and remains, part of an EU Member State, Denmark. This is why its 'withdrawal' from the EC took place in the form of a **reduction of the territorial jurisdiction of the Treaties** through a Treaty change ratified by all Member States. Due to its former status as a colony and its geographical distance from the EU, Greenland became an 'associated overseas territory' (Article 204 TFEU) with special arrangements with the EU, particularly with regard to fisheries – it is given access to the single market for fisheries' products in return for EU fishermen's access to Greenland waters (Protocol 34 to the Treaties).

Substantive conditions for a withdrawal

Relevant international-law provisions cannot be applied in parallel to Article 50 TEU. Rather, the procedure and consequences of a withdrawal from the EU are now governed by EU law and no recourse to international law is possible. This is all the more important as Article 50 TEU lowers the conditions for a withdrawal as stipulated under international law. Under Article 62 of the Vienna Convention, a state party can withdraw from a treaty only if there is a fundamental change of circumstances which has occurred compared to those existing at the time of the conclusion of that treaty. In contrast, **Article 50 TEU does not establish any substantive conditions** for a Member State to be able to exercise its right to withdrawal, but only procedural requirements. Expert opinions on the legal situation prior to the introduction of the withdrawal clause arguing that a withdrawal should be *ultima ratio* and that any Treaty changes should have priority, are not reflected in Article 50 – it does not require a Member State considering a withdrawal to first seek agreement on the amendment of the Treaties before triggering the withdrawal procedure. Commentators have criticised the mere procedural character of the withdrawal clause, which does not even oblige the withdrawing Member State to state formally a reason for its decision.⁴

Procedure

The formal withdrawal process is initiated by a **notification** from the Member State wishing to withdraw to the European Council, declaring its intention to do so. The timing of this notification is entirely in the hand of the Member State concerned, and informal discussions could take place between it and other Member States and/or EU institutions prior to the notification. The European Council (without the participation of the Member State concerned) then provides guidelines for the negotiations between the EU and the state concerned, with the aim of concluding an **agreement** setting out concrete withdrawal arrangements. These arrangements should also cover the departing Member State's future relationship with the Union. The Union and the Member State wishing to withdraw have a time-frame of **two years** to agree on these

arrangements. After that, membership ends automatically, unless the European Council and the Member State concerned jointly decide to extend this period (Article 50(3) TEU).

The role of the **European Commission** in the withdrawal procedure is not entirely clear in the Treaties. According to Article 218(3) TFEU, the European Commission would make recommendations to the Council to open negotiations with the withdrawing state. As a general rule, the Commission negotiates agreements with third countries on behalf of the EU, but Article 218(3) leaves it open for the Council to nominate a different Union negotiator.

Whilst the representatives of the withdrawing state are excluded from discussions and decisions of the Council and European Council relating to the withdrawal, there are no provisions in the Treaties prohibiting the withdrawing Member State from taking part in the adoption of any other EU act during the period between its giving formal notice under Article 50 and the date of its actual withdrawal from the EU.

Before concluding the agreement, the **Council** would need to obtain the **European Parliament's consent** (Article 50(2) TEU). It should be noted that whilst, under Article 50(4) TEU, the member of the European Council or of the Council representing the withdrawing Member State does not participate in the discussions of the two institutions or in decisions concerning the withdrawal, no similar provision exists for Members of the European Parliament (MEPs) elected in the withdrawing Member State. This has led some to conclude that the Treaties therefore do not prevent MEPs elected in the Member State in question from participating either in debates in the Parliament and in its committees, or from voting on Parliament's motion to consent to the withdrawal agreement, given the role of MEPs as representing the Union's citizens as a whole and not only those of the Member State in which they were elected.⁵

The Council decides to conclude the agreement with a '**super qualified majority**', without the participation of the state concerned. The qualified majority is defined in this case as at least 72% of the members of the Council, comprising at least 65% of the population of the Member States (without the withdrawing state) (Article 238(3)b TFEU).

Ratification by Member States

Unlike the accession of new Member States to the EU, the withdrawal of a Member State does not require ratification by the remaining Member States – Article 50(1) TEU mentions (in a declaratory way) only the decision of the withdrawing state, in accordance with its constitutional requirements. However, any Treaty changes or international agreements (such as a free trade agreement) that might be necessary as a consequence of the withdrawal agreement would need to be ratified by the remaining Member States in accordance with Article 48 TEU. At the very least, Article 52 TEU on the territorial scope of the Treaties, which lists the Member States, would need to be amended, and Protocols concerning the withdrawing Member State revised or repealed.



The role of the Court of Justice

Again unlike accession treaties, the withdrawal agreement is not primary EU law, since it is concluded between the EU and the withdrawing state and not between the latter and the rest of the Member States.⁶ It is an international agreement and therefore subject to judicial review by the Court of Justice of the EU (CJEU). The Council decision to conclude the agreement could, for instance, be challenged before the CJEU through an action for annulment (Article 263 TFEU). Furthermore, some argue for the possibility that the CJEU be requested to deliver an opinion on the draft withdrawal agreement's compatibility with EU law (Article 218(11) TFEU), whereas others maintain that since Article 50 TEU refers only to Article 218(3), this would not be possible.⁷ Moreover, the domestic courts of the remaining Member States would be able to refer questions regarding the withdrawal agreement for preliminary ruling to the CJEU, whereas for the courts of the withdrawing state to have the same power, this would need to be expressly included in the withdrawal agreement.⁸

Some have proposed the use of the Article 50 procedure to force a renegotiation of a Member State's membership of the EU. In this context, the question could be posed as to whether – once a Member State has notified the European Council of its intention to withdraw from the EU, and a withdrawal agreement has been negotiated – it can, depending on the results of the negotiations, unilaterally **revoke its notification** and suspend the withdrawal procedure. Most [commentators](#) argue that this is impossible or at least [doubtful](#), from a legal point of view. Indeed Article 50 TEU does not expressly provide for the revocation of a notice of withdrawal and establishes that, once opened, the withdrawal process ends either within two years or later, if this deadline is extended by agreement.

Furthermore, it should be noted that the event triggering the withdrawal is the unilateral notification as such and not the agreement between the withdrawing state and the EU. The merely declaratory character of the withdrawal agreement for cancellation of membership derives from the fact that the withdrawal takes place even if an agreement is not concluded (Article 50(3) TEU).⁹ This does not mean, however, that the withdrawal process could not be suspended, if there was mutual agreement between the withdrawing state, the remaining Member States and the EU institutions, rather than a unilateral revocation.¹⁰

Consequences of a withdrawal and possible content of a withdrawal agreement

Under Article 50(3) TEU, the legal consequence of a withdrawal from the EU is the **end of the application of the Treaties and the Protocols thereto in the state concerned from that point on**. EU law ceases to apply in the state concerned, although any national acts adopted in implementation or transposition of EU law would remain valid until the national authorities decide to amend or repeal them. A withdrawal agreement would need to address the phasing-out of EU financial programmes and other EU norms. Experts agree that, in order to replace EU law, specifically in any field of exclusive EU competence, the withdrawing state would need to enact substantial new legislation and that, in any case, a complete isolation of the withdrawing state from the effects of the EU *acquis* would be impossible if there were to be a future relationship between the former Member State and the EU.¹¹ The rights and obligations deriving from the Treaties would therefore extinguish, at least to the extent agreed between the EU and the withdrawing state. In addition, agreements between the EU and third countries or international organisations, for example on trade, would also cease to apply to the withdrawing state, and it would thus need to negotiate alternative arrangements.

Partial withdrawal?

Some commentators have proposed exploring the use of a withdrawal agreement to establish a new type of *à la carte* EU membership for the state concerned. Limits to such an arrangement would, according to them, need to be drawn so that the process does not amount to an abuse of Article 50 TEU. This could be the case if the state's reduced obligations under EU law (as a result of the 'partial withdrawal') were not reflected in limitations to its participation in EU decision-making.¹² However, Article 50 TEU does not seem to be the right legal instrument to achieve the goal of such a 'partial withdrawal', with the state concerned remaining a Member State of the EU, not least because Article 50 adopts a 'black or white' approach. Rather, a Treaty revision is seen by academic commentators as more appropriate for such an aim.¹³

Also discussed is the question of whether a 'partial withdrawal' could refer to part of the territory of a Member State, and therefore the Member State 'as a whole' does not withdraw but part of it 'remains' in the EU. It should be noted however that the 'part of the Member State' in question would not itself be a sovereign state, and that it would never have been a formal member of the EU as a sovereign state (Article 1 TEU on the High Contracting Parties), so it could be argued that it cannot therefore 'remain' in the EU if the Member State itself withdraws.

Transitional provisions on acquired rights

The arrangements for the withdrawal could aim at attenuating its consequences, including transitional application of some EU legislation in the withdrawing state, so as to protect any individual subjective rights based on them.

As regards the rights deriving from **EU citizenship**, some scholars have argued that EU citizenship can stand alone, detached from the nationality of a Member State, so that the nationals of the state in question would keep their Union citizenship even after its withdrawal from the EU.¹⁴ This reasoning is based on the assumption that some of the nationals of a withdrawing state would lose their Union citizenship involuntarily in the case of withdrawal. This view however is not shared by the vast majority in literature, which regards EU citizenship as 'additional' to a Member-State's nationality (Article 20(1) TFEU) and without a free-standing character. Moreover, it should be noted that the decision to withdraw from the EU is taken according to the constitutional requirements of the state concerned and thus taking into account all possible consequences, including for the individual citizens of the withdrawing state.

Furthermore, some commentators believe that any contract-based rights would persist so long as the contracts remain valid,¹⁵ although it could be expected that the withdrawal agreement would address such issues, in order to guarantee legal certainty. In this context, the agreement could also seek to address the status of the withdrawing state's citizens working (or having worked) for EU institutions.¹⁶

According to Article 28(a) of the [EU Staff Regulations](#),¹⁷ 'An official may be appointed only on condition that: **he is a national of one of the Member States of the Union**, unless an exception is authorised by the appointing authority, and enjoys his full rights as a citizen;' The same applies to contractual staff. According to the Staff Regulations, an official **may be** required to resign where he ceases to fulfil the conditions laid down in Article 28(a), which includes the nationality requirement (Article 49 of the Staff Regulation).

Institutional changes

Taking into account any arrangements made in the agreement between the EU and the withdrawing state as to their future relationship, **the EU Treaties remain valid for the rest of the Member States** and any amendments required as a consequence of the withdrawal would need to be made in accordance with the procedures established in Article 48 TEU.

The **composition of the EU institutions** could be expected to change as of the day the withdrawal takes effect, with members from the withdrawing state losing their seats in the various institutions and bodies, although transitional arrangements might be required for the period immediately after that date. The regular renewal of membership of one or more institutions would of course be complicated if this fell due during an ongoing Article 50 process.

As regards the **European Parliament**, since Article 14(2) TEU sets only the maximum number of MEPs, the size of the EP could simply be reduced by the number of MEPs previously attributed to the withdrawing Member State. The seats of the state in question could be redistributed among the remaining Member States, either immediately or following the next election, although the maximum 96 seats allocated to any one Member State (reached only by Germany at present) could not be exceeded without a change of Article 14(2) TEU.¹⁸ The decision establishing the composition of the EP, including the distribution of the seats among the Member States, is adopted by the European Council on the initiative of the EP and with its consent (Article 14(2) TEU).¹⁹ As with the other aspects mentioned above, this could be dealt with within a withdrawal agreement.

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Endnotes

¹ See e.g. the [Maastricht ruling](#) of the German Federal Constitutional Court of 12.10.1993, BVerfG 89, pp. 155, 190. The Czech Constitutional Court also argued along these lines in its [ruling on the Lisbon Treaty of 3. 11. 2009](#).

² J Schwarze, 'Das allgemeine Völkerrecht in den innergemeinschaftlichen Rechtsbeziehungen', *Europarecht (EuR)* 1983, p. 1.

³ *Ibidem*.

⁴ J P Terhechte, ['Der Vertrag von Lissabon: Grundlegende Verfassungsurkunde der europäischen Rechtsgemeinschaft oder technischer Änderungsvertrag?'](#), *Europarecht* 2008, Heft 2, pp. 143, 152.

⁵ C M Rieder, ['The withdrawal clause of the Lisbon Treaty in the light of EU citizenship: between disintegration and integration'](#), *Fordham International Law Journal*, Vol. 147, 2013, pp. 147, 158. Different opinion: A Łazowski, ['Withdrawal from the European Union and alternatives to membership'](#), *European Law Review*, 2012, pp. 523, 528.

⁶ A Łazowski, 'Withdrawal from the European Union and alternatives to membership', *op. cit.*, pp. 529.

⁷ C M Rieder, 'The withdrawal clause of the Lisbon Treaty in the light of EU citizenship', *op. cit.*, p. 157.

⁸ A Łazowski, 'Withdrawal from the European Union and alternatives to membership', *op. cit.*, pp. 528, 529.

⁹ This argument is also supported by the fact that the agreement is to be concluded between the EU and the state in question on the 'arrangements for its withdrawal', establishing in particular the framework for its future relationship with the Union (Article 50(2)), but not on the withdrawal itself. While the agreement is concluded in a bilateral relationship between the Union and the withdrawing state, the withdrawal itself is of a multilateral

nature, because it takes place within the relationship of the Member States among each other. See in this sense A F. Tatham, 'Don't mention divorce at the wedding, Darling!': EU accession and withdrawal after Lisbon, A Biondi, P Eeckhout, S Ripley (eds.), *EU law after Lisbon*, Oxford 2012, pp. 128. 152.

- ¹⁰ A Łazowski, 'Withdrawal from the European Union and alternatives to membership', *op. cit.*, p. 530.
- ¹¹ P Nicolaides, '[Withdrawal from the European Union: a typology of effects](#)', *Maastricht Journal*, Vol. 20, 2013, pp. 209, 218.
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- ¹³ J-C Piris, 'Constitutional pathways: which institutional and constitutional adjustments for the United Kingdom?', [United Kingdom's renegotiation of its constitutional relationship with the EU: agenda, politics and risks](#), EP Directorate-General for Internal Policies, Policy Department C, PE 536.489, December 2015, p. 19. See in the same compendium, on a possible 'partial membership status', B de Witte, 'Partial EU membership – which legal options and scenarios?', pp. 30 *et seq.*
- ¹⁴ C M Rieder, 'The withdrawal clause of the Lisbon Treaty in the light of EU citizenship', *op. cit.*, pp. 168-172.
- ¹⁵ P Nicolaides, 'Withdrawal from the European Union: a typology of effects', *op. cit.*, p. 214.
- ¹⁶ O Dörr, 'Commentary to Article 50 TEU', *op. cit.*, para. 29.
- ¹⁷ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, as amended.
- ¹⁸ T Oliver, '[Europe without Britain – Assessing the impact on the European Union of a British withdrawal](#)', Stiftung Wissenschaft und Politik, German Institute for International and Security Affairs, Berlin, September 2013, p. 15.
- ¹⁹ See e.g. [European Council Decision 2013/312/EU](#) of 28 June 2013 redistributing the seats among the Member States while allocating seats to Croatia and not exceeding the maximum of 751 seats.

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HM Government

The process for withdrawing from the European Union

Cm 9216



The process for withdrawing from the European Union

Presented to Parliament
by the Secretary of State for
Foreign and Commonwealth Affairs
by Command of Her Majesty

February 2016



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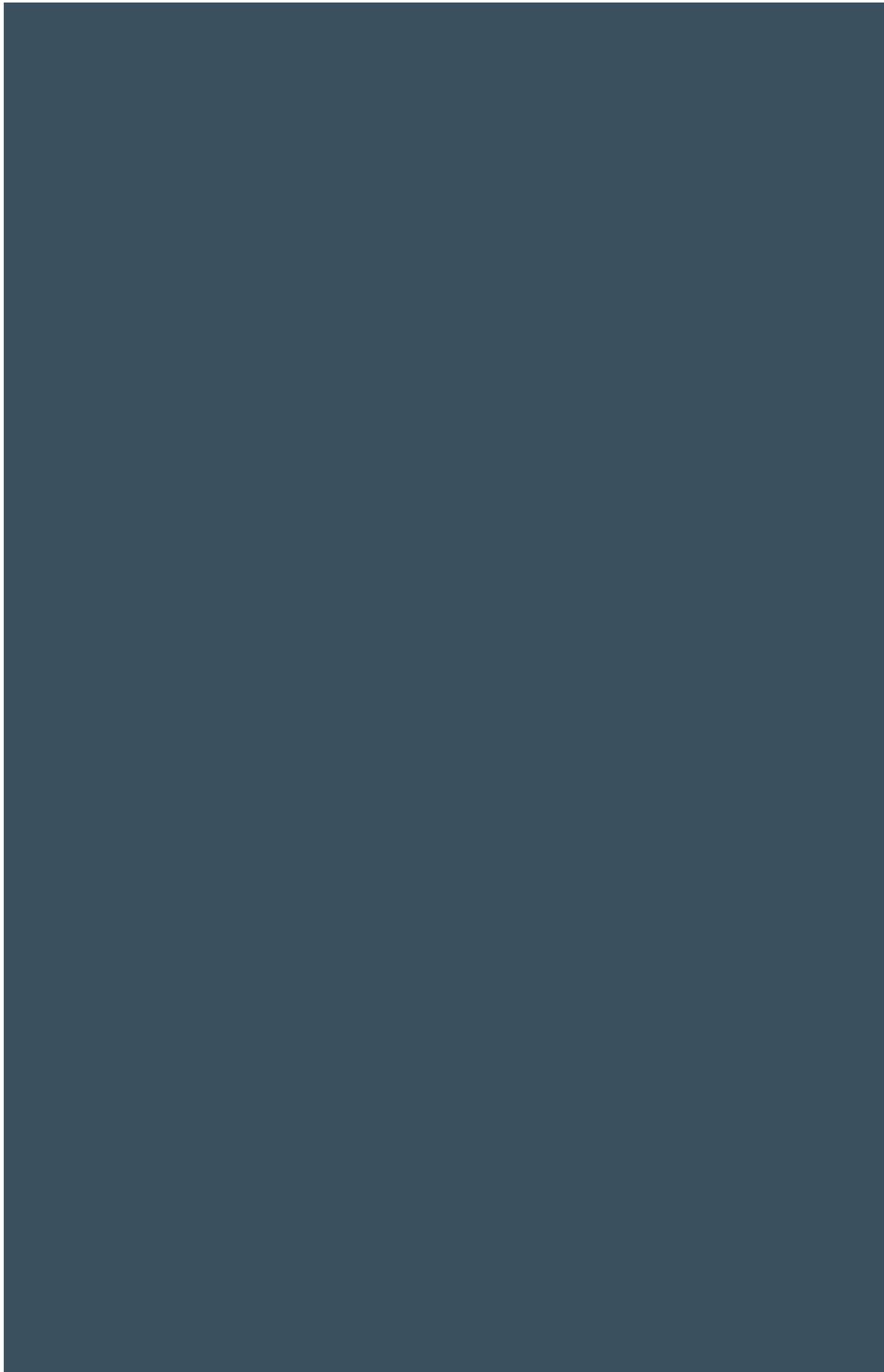
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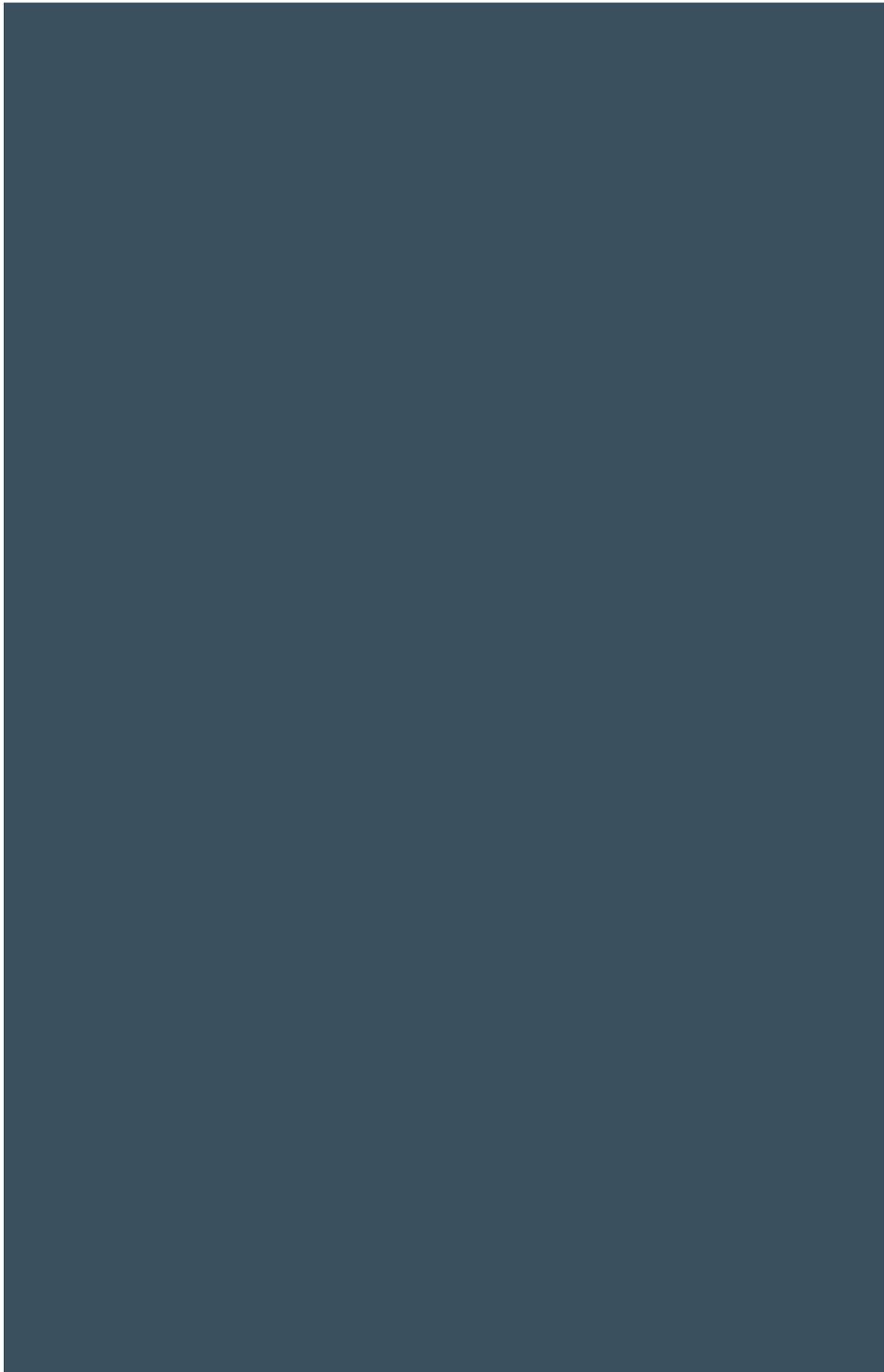
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Chapter 1 – introduction

1.1 This document sets out the process that would follow a vote to leave the European Union, and the prospects for negotiations. Alternative models for the UK's relationship with the EU after exit will be examined in a second document.



Chapter 2 – executive summary

2.1 The result of the referendum on the UK’s membership of the European Union will be final. The Government would have a democratic duty to give effect to the electorate’s decision. The Prime Minister made clear to the House of Commons that “if the British people vote to leave, there is only one way to bring that about, namely to trigger Article 50 of the Treaties and begin the process of exit, and the British people would rightly expect that to start straight away”.¹

2.2 The rules for exit are set out in Article 50 of the Treaty on European Union. This is the only lawful route available to withdraw from the EU.

2.3 But the process is unprecedented. No country has ever used Article 50 – it is untested. There is a great deal of uncertainty about how it would work. It would be a complex negotiation requiring the involvement of all 27 remaining EU Member States and the European Commission. Before negotiations could even begin, the European Commission would need to seek a mandate from the European Council (without the UK present). The withdrawal agreement would also require the consent of the European Parliament. Uncertainty during the negotiating period could have an impact on financial markets, investment and the value of the pound, and as a consequence on the wider economy and jobs.

2.4 The UK’s withdrawal from the EU would mean unravelling all the rights and obligations – from access to the Single Market, to structural funds for poorer regions, to joint action on sanctions – that the UK has acquired both during our accession to the EU and over our 40 year membership. As well as negotiating its withdrawal, the UK would also want to negotiate its post-exit arrangements with the EU.

2.5 The complexity of the negotiations, and the need for the UK to negotiate adequate access to the Single Market after it leaves the EU, would make it difficult to complete a successful negotiation before the two year deadline expired. Any extension to the two year period set out in the Treaty would require the agreement of all 27 remaining EU Member States.

2.6 If the UK was to reach the end of the two year period specified by Article 50 without having reached an agreement, and if any of the 27 other Member States vetoed an extension of this period, this would lead to the UK leaving the EU with no immediate replacement agreed, without any protection under EU law for the rights of UK business to trade on a

¹ Prime Minister’s Statement on the European Council, Hansard, 22 February 2016, Column 24.
<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160222/debtext/160222-0001.htm#16022210000001>

preferential basis with Europe or the EU's free trade agreement partners, UK citizens to live and work in Europe, or UK travellers to move about freely in Europe.

2.7 Regular EU decision-making would continue while we negotiated to leave. Our vote to leave, and the withdrawal negotiations themselves, would have an impact on our ability to affect the EU's decision-making. But we would be bound by new EU legislation up to the moment we left.

2.8 While these negotiations continued, we would be constrained in our ability to negotiate and conclude new trade agreements with countries outside the EU. The countries with which we currently have preferential trade agreements through the EU are likely to want to see the terms of our future relationship with the EU before negotiating any new trade agreements with the UK. In addition, many of our trading partners, including the United States, are already negotiating with the EU. Before they start negotiations with the UK they are likely to want those deals to conclude.

2.9 It is therefore probable that it would take an extended period to negotiate first our exit from the EU, secondly our future arrangements with the EU, and thirdly our trade deals with countries outside of the EU, on any terms that would be acceptable to the UK. In short, a vote to leave the EU would be the start, not the end, of a process. It could lead to up to a decade or more of uncertainty.

The Article 50 Withdrawal Procedure

2.10 Article 50 of the Treaty on European Union reads as follows:

Article 50

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. 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 for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. 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.
4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. 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.

2.11 The process begins when the Member State that wishes to leave notifies the European Council. The European Council, minus the departing State, then agrees by consensus the guidelines for the Commission to negotiate the withdrawal agreement. Consensus requires every Member State (minus the departing State) to vote in favour.

2.12 The final agreement would need to be agreed by both parties: the EU side and the departing Member State. On the EU side, this would require an enhanced qualified majority among the remaining Member States. This means that no single Member State could veto the deal, but that it would need to reach a critical level of support. (Specifically, it would need to be agreed by 20 out of 27 Member States, representing 65 per cent of the population).

2.13 The European Parliament would also need to approve the deal. This would require a simple majority of its 751 MEPs. (MEPs from the departing Member State would probably be allowed to vote, because at this stage it would still formally be part of the EU).

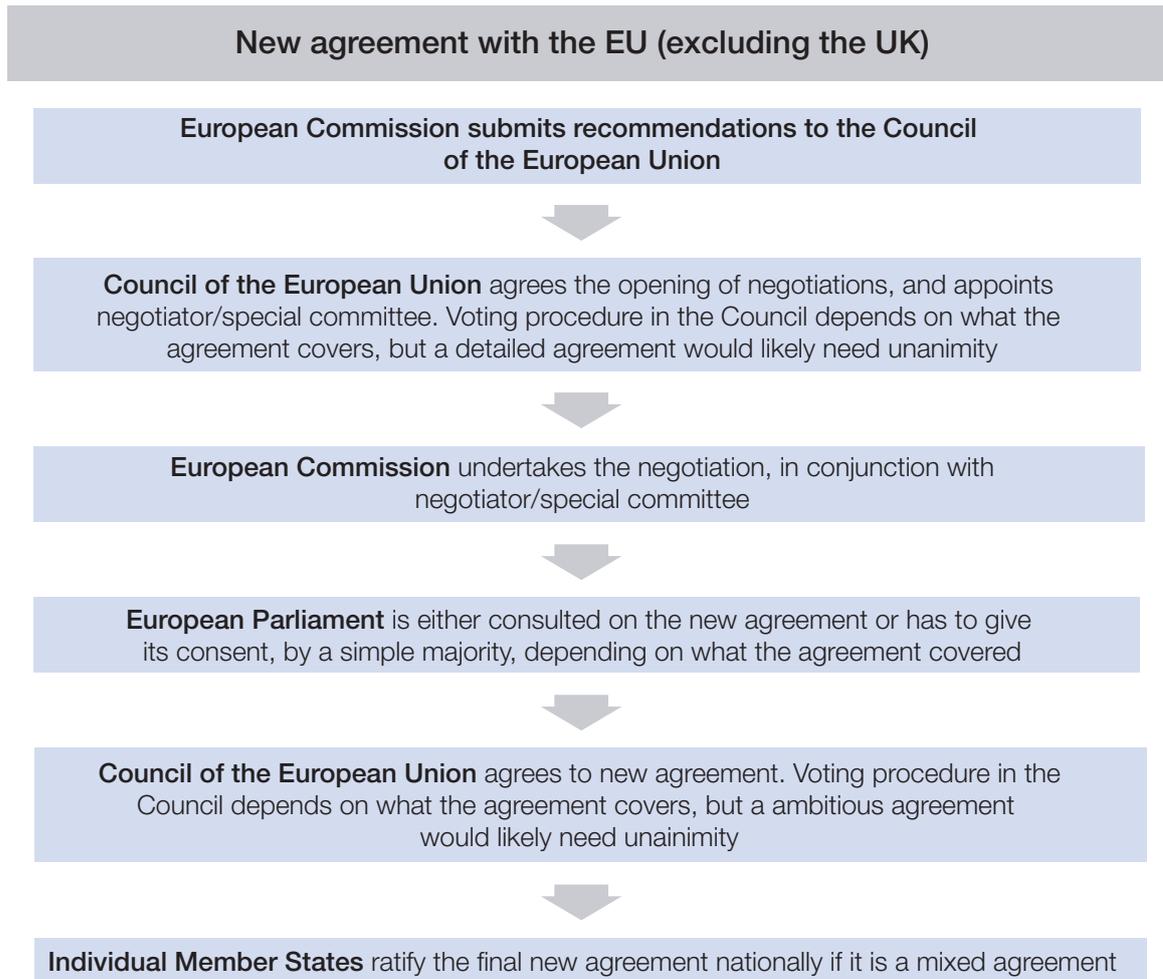
2.14 The EU Treaties would continue to apply to the departing Member State until the Article 50 agreement had entered into force, or for two years if no agreement had been reached and no extension to the two year period had been granted. A request for an extension could only be granted with the unanimous agreement of the remaining Member States.

2.15 Article 50 does not specify how much the withdrawal agreement itself should say about the future relationship between the EU and the departing Member State. Any sort of detailed relationship would have to be put in a separate agreement that would have to be negotiated alongside the withdrawal agreement using the detailed processes set out in the EU Treaties. Article 50 does not specify whether these negotiations should be simultaneous or consecutive. This would be a matter for negotiation.

Processes for negotiating withdrawal from the EU (Article 50, TEU) and for negotiating a new agreement under the Treaty on European Union (TEU)²

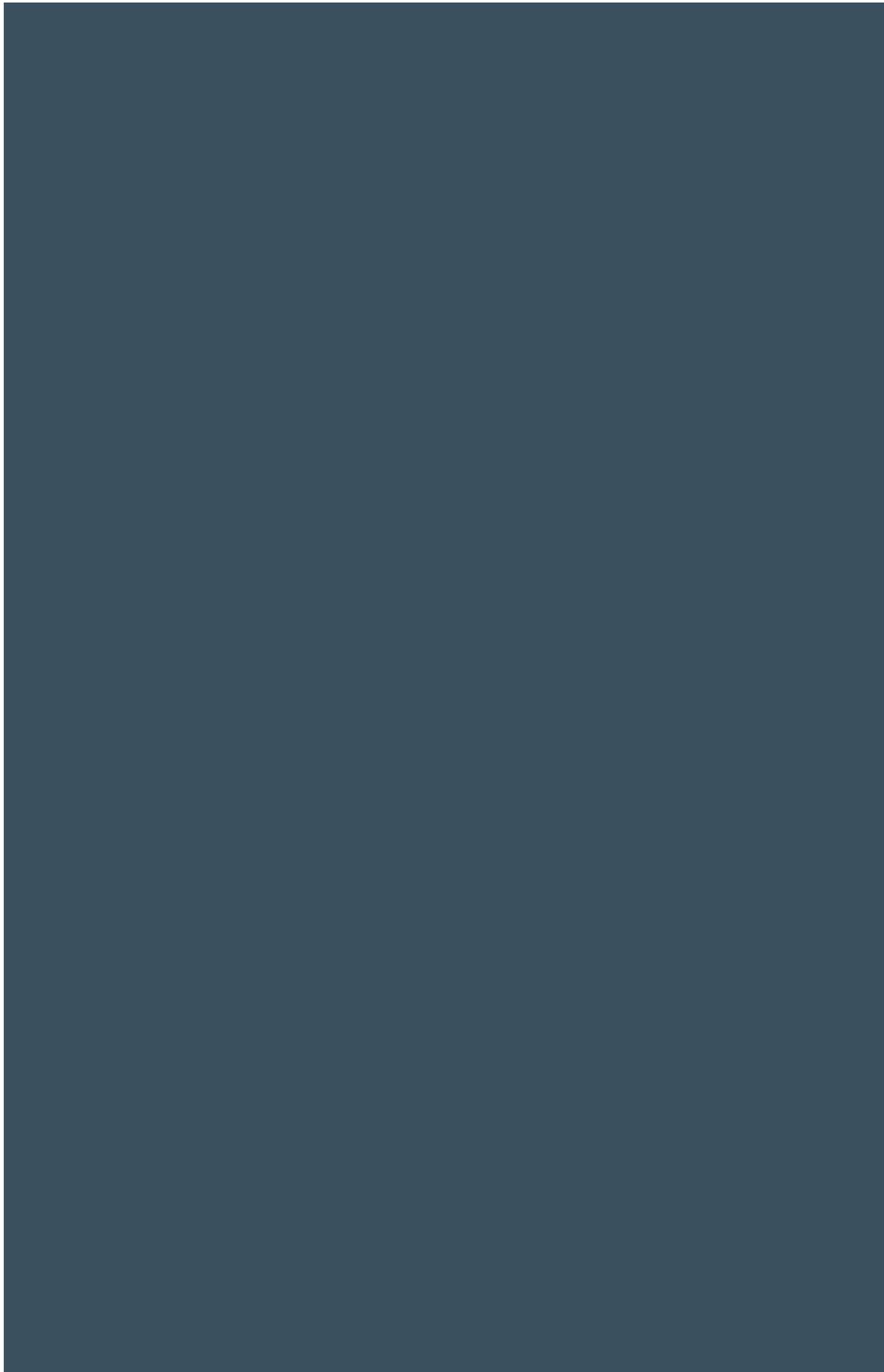


² Qualified majority voting is a system used for EU Member States to reach an agreed position. Under the Lisbon Treaty, a majority must include 55 per cent of countries, representing 65 per cent of the total EU population. But Article 50 of the Treaty on European Union stipulates that the voting rule to be used is that set out in Article 238.3(b) of the Treaty on the Functioning of the European Union, which requires 72 per cent of Member States (i.e. 20 out of the remaining 27 Member States) comprising 65 per cent of the EU population.



Timeline for possible Article 50 negotiations





Chapter 3 – Article 50: the route to withdrawal

3.1 As the Prime Minister has said, if the vote is to leave the EU, the British people would expect that process to start straight away. We would want to open a constructive negotiation with the rest of the EU in order to agree positive terms for the UK's exit and the future relationship.

3.2 The UK's membership of the EU is established by the EU Treaties, and Article 50 is the process set out in the Treaties for Member States to follow when leaving. It is the only lawful way to withdraw from the EU. It would be a breach of international and EU law to withdraw unilaterally from the EU (for example, by simply repealing the domestic legislation that gives the EU law effect in the UK). Such a breach would create a hostile environment in which to negotiate either a new relationship with the remaining EU Member States, or new trade agreements with non-EU countries.

3.3 Article 50 provides for a two year negotiation, which can only be extended by unanimity. There could be a trade off between speed and ambition. An extension request would provide opportunities for any Member State to try to extract a concession from the UK.

3.4 There is no precedent for a country withdrawing from the EU – Article 50 has never been tested.³ Trade negotiations are probably the closest equivalent in terms of complexity. Ambitious trade agreements can take up to a decade or more to agree from scoping to ratification, and sometimes take longer. For example, the EU-Mercosur Association Agreement was launched in 2000 and has yet to conclude, and the EU-Canada Trade Agreement (CETA) has taken seven years so far and still has to be ratified by the Council, the European Parliament and National Parliaments.⁴

3.5 Article 50 sets out several phases of negotiations involving the different actors on the EU side. Before talks with the EU can begin, the European Commission, which acts as the EU's negotiator, must seek the approval of the European Council (acting by consensus, minus the UK). The Commission would need to seek the approval of the Council and European Parliament at the final stage. It would need to consult both along the way. It should not be assumed that this would be straightforward given the experience of recent negotiations. For

³ Algeria seceded from France in 1962 to become an independent state outside the European Community. Greenland, an autonomous country within the state of Denmark, withdrew in 1985. These withdrawals took place before the Lisbon Treaty came into effect, and were therefore not conducted under Article 50. For Greenland, the issues were very limited, as the territory only sought Overseas Country and Territory status, rather than a full exit. Even so, withdrawal took three years: from a referendum decision in February 1982 to departure in February 1985.

⁴ Trade agreements can be applied provisionally, before national ratification.

example, the implementation of the agreed EU-South Korea deal was held up for six months because of concerns from Member States.

3.6 It is also unclear from the terms of Article 50 how far the arrangements for the UK's future relationship with the EU would be included in a withdrawal agreement. But it is likely that the scope of those arrangements would require the negotiation of a separate agreement with the EU. The precise process for negotiating that agreement would depend on its content, but an ambitious agreement could need the unanimous agreement of all 27 Member States in the Council.⁵ Any such process would clearly add to the complexity and hence, very probably, to the length of the overall negotiations. If the agreement needed unanimous agreement in the Council, it would be open to any Member State to seek to block it, or to extract a price for agreeing any element of the agreement.

3.7 A new agreement on trade and wider co-operation would require approval by each of the 27 Member States alongside the EU.⁶ If so, this would require ratification, in some cases by National Parliaments such as the French National Assembly, the German Bundestag and all seven Belgian Parliamentary Chambers.⁷ This would give every Member State a further opportunity to block the agreement for any reason.

3.8 The two year time limit could also have an impact on our ability to secure the best outcome. The China-Switzerland agreement, for example, took only three years to negotiate, but provides a relatively narrow coverage compared to the EU's new-style Trade Agreements (like EU-Canada).⁸ The UK would face a choice between seeking an extension to the two year time limit and leaving the EU without a proper arrangement in place, trying to rely on World Trade Organisation (WTO) rules until a new agreement could be reached. Only in a scenario where the UK did not seek any special access to the Single Market would negotiations be more straightforward and more easily concluded within a shorter time, but with greater economic cost.

⁵ For instance, an agreement focused solely on trade would need to be approved by the European Parliament and a qualified majority of the Council. A full association agreement that provided for trade and wider co-operation would need to be agreed by the European Parliament and unanimously by the Council.

⁶ Mixed agreements are agreements between the EU and third countries that contain matters of EU competence (for example, trade matters, which is an exclusive EU competence) and Member State competence (for example, foreign policy). Mixed agreements require ratification by both the European Union (in the Council of Ministers and the European Parliament) and by the 28 Member States in accordance with their national procedures for the ratification of such agreements. Some Member States, such as Belgium, have national rules for the ratification of such agreements that include both national parliaments and regional parliaments.

⁷ The seven chambers comprise unicameral chambers of the five parts of the federal system: French, Flemish, Walloon, German and Brussels-Capital region; plus the two chambers of the Belgian Federal Parliament.

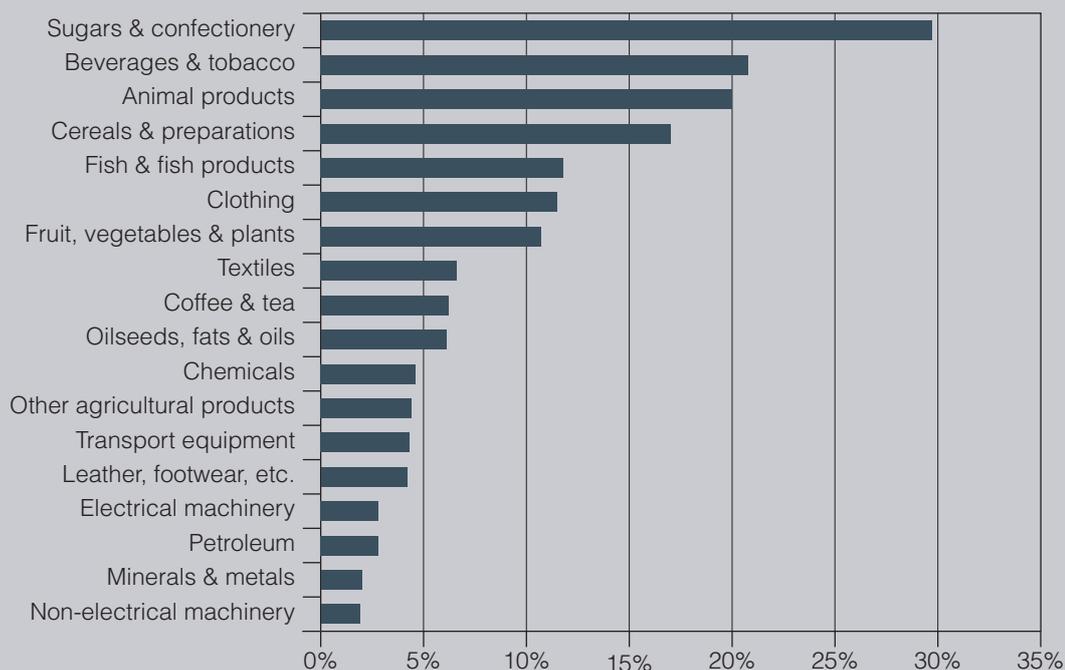
⁸ 99.7 per cent of current Chinese exports to Switzerland will immediately be exempt from tariffs, while 84.2 per cent of Swiss exports to China will eventually be exempt. It will take up to 15 years for the FTA for all tariff reductions to come into force. <http://www.seco.admin.ch/themen/00513/02655/02731/04118/index.html?lang=en>

The World Trade Organisation (WTO) route

The UK is a signatory to WTO Agreements and a WTO Member in its own right. If the UK left the EU without first securing an agreement on a new relationship, our trade relations would be governed by WTO rules. The EU would apply a range of tariffs to UK goods (these would be the ‘Most Favoured Nation’ (MFN) rates that the EU applies to all WTO members without a preferential scheme or agreement in place). Many are significant, in particular compared to the zero tariff all UK exports to the EU currently enjoy as part of the Single Market. The UK would also be bound by WTO MFN rules requiring the granting of equal market access to all WTO countries.

In the event that we leave the EU, we would need to update the terms of our WTO membership where the commitments taken have previously applied to the EU as a whole. This would not be a straightforward process as, if we leave the EU, then we would need all other WTO Members to agree how the UK will take on the rights and obligations which we have formerly taken as a part of the EU. This would mean negotiating and agreeing updated UK schedules of commitments with all 161 WTO members. And until our schedule of commitments was updated, there could be questions surrounding our rights to access WTO members’ markets, and our ability to enforce those rights.

Tariff rates applied by the EU, by broad category of goods



The EU's Most Favoured Nation applied tariff rates at Harmonised System 2-digit (aggregate) level, available at EU https://www.wto.org/english/thewto_e/countries_e/european_communities_e.htm

3.9 An extension of the two year period would require the unanimous approval of the European Council; one or more of the remaining 27 EU Member States might expect the UK to offer concessions in return. It would be an uncertain time for the UK economy and citizens, because failure to meet the deadline or agree an extension would have serious consequences for the UK – an exit without an agreement would leave a large number of important questions unresolved.

3.10 The UK would want to start negotiations as soon as possible with non-EU trade partners in particular, in order to preserve any existing level of preferential access UK companies currently get to their markets. But many of our non-EU trading partners are already negotiating with the EU, and before they started negotiations with the UK they would be likely to want those deals to conclude. Even the countries which already have a deal in place with the EU are likely to want to see the terms of our future relationship before negotiating any new trade agreements with the UK. This would make it hard to negotiate our post-withdrawal arrangement with the EU in parallel with negotiating a new set of trade deals with countries outside of the EU. And it means that lengthening the Article 50 process to secure a good outcome with the EU could delay new trade deals with countries outside of the EU.⁹

3.11 It is therefore probable that it would take up to decade or more to negotiate firstly our exit from the EU, secondly our future arrangements with the EU, and thirdly our trade deals with countries outside of the EU, on any terms that would be acceptable to the UK. This would be a long period of uncertainty, which would have consequences for UK businesses, trade and inward investment.

3.12 A considerably larger proportion of the UK economy is dependent on the EU than vice versa. This would have an impact on the dynamic of the negotiations. The EU is by a wide margin the UK's biggest trading partner. Some 44 per cent of our exports go to the EU. The UK is more reliant on exports to the EU than the rest of the EU is reliant on exports to the UK. Taken as a share of the economy, only 3.1 per cent of GDP among the other 27 Member States is linked to exports to the UK, while 12.6 per cent of UK GDP is linked to exports to the EU.¹⁰

3.13 Just as the Government would be driven by our wish to secure the best possible outcome for the UK, we should expect the remaining 27 Member States to be driven by their own national political and economic interests, and would fight for them as hard as we would for the UK's position.

⁹ The UK would need to rapidly to build up the expertise and resources to negotiate FTAs and deal with trade defence cases, having not negotiated a trade deal in 40 years. Australia and Canada employ around 200-250 people each to work on trade negotiations.

¹⁰ ONS Pink Book (November 2015), GDP data from Eurostat.

Chapter 4 – implications of withdrawal

4.1 The withdrawal negotiation would need to address a wide range of difficult issues related to withdrawal itself, and also to our future relationship with the EU. Article 50 does not set out explicitly what issues would need to be resolved and there is no precedent to draw on. The UK's relationship with the EU has built up over 40 years of membership and affects many aspects of life in the UK, and of UK citizens living across the EU; the terms of exit would have to cover the full extent of that relationship.

4.2 This would include the status and entitlements of the approximately 2 million UK citizens living, working and travelling in the other 27 Member States of the EU. They all currently enjoy a range of specific rights to live, to work and access to pensions, health care and public services that are only guaranteed because of EU law. There would be no requirement under EU law for these rights to be maintained if the UK left the EU. Should an agreement be reached to maintain these rights, the expectation must be that this would have to be reciprocated for EU citizens in the UK.

4.3 The negotiations would also have to cover the UK's access to the EU's Single Market, which currently rests on our membership of the EU, and related to that, the free movement of people.¹¹ These negotiations would be complicated: the UK would want to disentangle regulatory frameworks and establish transitional arrangements across a wide number of areas; and secure preferential access to the EU market including in sectors like financial services and car manufacturing where the UK enjoys a trading surplus.

4.4 The impact of these negotiations would have a wide and profound impact across the UK and its economy. For instance, the UK's current access to the Single Market is important for the UK's manufacturing sector. Last year, the UK exported a record number of cars (1.23 million), with more than half going to the EU market.¹² The industry directly employs 147,000 people¹³ and supports a further 300,000 jobs in the wider supply chain.¹⁴ The North-East of England has one of the highest shares of EU exports in the UK's regional

¹¹ The Council of the European Union made its view on this issue clear in December 2014: 'the free movement of persons is a fundamental pillar of EU policy... the internal market and its four freedoms are indivisible'. The full statement can be found here: <http://www.consilium.europa.eu/en/meetings/gac/2014/12/16/>

¹² Annual figures from Society of Motor Manufacturers and Traders <http://www.smmmt.co.uk/2015/12/new-car-registrations-return-to-growth-in-november/>

¹³ ONS Workforce Jobs

¹⁴ BIS analysis using ONS job multiplier estimates from Analytical Input-Output tables.

economy,¹⁵ and attracts high levels of foreign investment. Unless preferential access was agreed with the EU as part of the exit negotiations, UK car manufacturers would face a 10 per cent tariff when exporting to the EU. Moreover, over 40 per cent of components purchased by UK vehicle manufacturers are from the EU.¹⁶ These parts would become more expensive if the UK were forced to raise tariffs under WTO rules.

Case Study: The effect of an EU withdrawal on the financial services sector

If the UK were to leave the EU then the UK government would need to disentangle the regulatory framework from EU law for the financial sector. Regardless of the exit negotiations outcome this would be a large and complex task.

For most types of financial services, EU law amounts to the substantial majority of the UK's legislative framework, whether directly applicable or EU Directives transposed into UK law. EU Directives and Regulations govern the regulation – both prudential and conduct of business of all major sectors, including banking, insurance, wholesale and retail investments, provision of market infrastructure, payment, clearing and settlement systems and a host of other activities.

One consideration for the UK Government would be how to avoid regulatory gaps in the UK's domestic legislative framework once the EU Treaties ceased to apply. This would involve questions over how existing EU law could or should be adopted into domestic law.

Another consideration would be the status of UK firms whose existing business operations in other EU Member States were authorised under EU law, and of firms based in other EU Member States with operations in the UK.

Inside the EU, thanks to “passporting”, UK financial firms – including banks, insurers and asset managers – generally have the right to sell financial services and establish branches anywhere in the EU without other countries being able to impose different or additional requirements.

4.5 The UK's withdrawal from the EU would have a serious impact on UK farmers. In addition to the impact of withdrawing from the EU's Common Agricultural Policy and associated subsidy schemes, they would also lose their preferential access to the European market if the UK left the EU without a successor arrangement in place. The EU imposes an average tariff of 14 per cent agricultural imports¹⁷ from non-EU countries (including countries that have their own special trading deals with the EU, like Norway and Switzerland), with higher rates on individual items, such as dairy products (average of 36 per cent).¹⁸ UK farmers would also no longer be able to benefit from preferential access to non-EU countries secured by the EU under trade agreements.

4.6 If the UK left the EU without an agreement in place, we would lose the security benefits of our participation in a range of EU Justice and Home Affairs measures that help the fight against crime and terrorism. For example, since 2004 the European Arrest Warrant has allowed 7000 people to be extradited from the UK to face trial and has resulted in just over 1000 people being returned to the UK to face justice here. The European Criminal Records

¹⁵ HMRC Regional Trade Statistics

¹⁶ 2014 KPMG report for the Society of Motor Manufacturers and Traders: “The UK Automotive Industry and the EU”. Available online at: <http://www.smmmt.co.uk/wp-content/uploads/sites/2/SMMT-KPMG-EU-Report.pdf>

¹⁷ WTO calculated figure 2014.

¹⁸ WTO calculated tariff figures for 2014.

Information System enables us to secure information about criminal records. The Schengen Information System II operates as a ‘watch list’ through which we have access to operational data on terrorist suspects and criminals. And from 2017 we will be part of the Prüm Decisions relating to information on fingerprints and DNA.

4.7 If we were outside the EU, this co-operation would be curtailed. Aside from those States that are not in the EU but are in the Schengen border-free area, there are no precedents for non-Members being able to cooperate within these mechanisms. Even Switzerland, for example, does not have an equivalent to the European Arrest Warrant. We would also lose our status as a full member of Europol, an agency that coordinates the fight against serious and organised crime among EU countries.

There would be serious implications for Gibraltar were the UK to withdraw from the EU. Inside the EU, Gibraltarians have the right to move freely to Spain, and the right to establish a business and provide services there. But, before Spain joined the EU in 1986, the border was closed from 1969–85. If the UK left the EU, there would be no certainty that the border would remain open. The Chief Minister of Gibraltar has said that this would pose “an existential threat in economic terms” to the territory.¹⁹ The Channel Islands and the Isle of Man, which enjoy special arrangements for access to the EU, would face similar uncertainties.

Northern Ireland would be confronted with difficult issues about the relationship with Ireland. Outside the EU’s Customs Union, it would be necessary to impose customs checks on the movement of goods across the border. Questions would also need to be answered about the Common Travel Area which covers the movement of people. This could have an impact on cross-border co-operation and trade. The withdrawal of structural funds, which have helped address economic challenges, would also have an impact.

4.8 Examples of other issues that negotiations would also need to cover in the context of managing the transition, fixing the terms of exit and, fixing any future arrangement, include:

- unspent EU funds due to UK regions and farmers;
- cross-border security arrangements including access to EU databases;
- co-operation on foreign policy, including sanctions;
- transfer of regulatory responsibilities;
- arrangements for contracts drawn up in accordance with EU law;
- access to EU agencies that play a role in UK domestic law, such as the European Medicines Agency;
- transition arrangements for UK exit from EU Free Trade Agreements with third countries;
- arrangements for the closure of EU agencies headquartered in the UK;
- departure from the Single European Sky arrangement;
- access for UK citizens to the European Health Insurance Card;
- the rights of UK fishermen to fish in traditional non-UK waters, including those in the North Sea;

¹⁹ See article <http://www.politico.eu/article/brexit-would-destroy-gibraltar/>

- continued access to the EU's single energy and aviation markets; and
- the status of the UK's environmental commitments made as party to various UN environmental conventions and currently implemented through EU legislation.

4.9 Withdrawal would involve considerable implications for UK domestic legislation. The UK Parliament and the devolved administrations would need to consider how to replace EU laws, including how to maintain a robust legal and regulatory framework where that had previously depended on EU laws. Sanctions against countries such as North Korea, and for some terrorist groups or individuals, are generally adopted at the EU level rather than domestically. Many financial regulations, such as those governing prudential requirements for banks and investment funds, have direct effect from EU law.

4.10 Wider EU decision-making would not stop during the UK's exit negotiations. The current Commission has agreed a programme, which will continue through the Commission's mandate, until the middle of 2019. Key areas include issues of importance to the UK like the Single Market in services and the EU-US Trade Agreement. Europe would also continue to face challenges from outside its borders, including in the Middle East, and in Russia and Ukraine. A decision to leave would affect the UK's influence over EU decision-making, as would on-going withdrawal negotiations. But any legislation that the EU adopted would continue to apply to the UK until the moment of our withdrawal.

4.11 Some have argued that the UK could negotiate a better deal after a vote to leave after the referendum. However, the February European Council agreed that, should the result of the referendum be a vote to leave the EU, the new settlement for the UK negotiated by the Prime Minister would cease to exist. Moreover, were the UK to want to re-join the EU once it had left, Article 50 sets out that we would have to follow the regular, lengthy accession process. Entry would require agreement from all existing EU Member States. Renewed membership would be highly unlikely to replicate our current special status. This special status includes our rebate on payments to the EU budget, our opt-outs from the euro and the Schengen border-free area, our right to choose which Justice and Home Affairs arrangements we join. EU policy is to require all new Member States to commit to joining all of these.

Chapter 5 – conclusion

5.1 A vote to leave the EU would be the start, not the end, of a process. It would begin a period of uncertainty, of unknown length, and an unpredictable outcome. The broad procedural route is set out in Article 50 of the Treaty on European Union, ensuring exit is possible. But beyond procedure, nothing is agreed and nothing has been tested.

5.2 It is important, as the people of the United Kingdom prepare to make their choice, that the complexities of the steps that would follow a vote to leave are understood. There are three parts to this.

5.3 The first is the Article 50 process itself. This is the only lawful route for the United Kingdom to leave the EU and it is the one that the UK Government would follow.

5.4 As the Prime Minister has said, if the vote is to leave the EU, the British people would expect the UK Government to notify the European Council straight away that it wished to leave under the terms of Article 50.

5.5 An extension to the two year deadline would also require the unanimous agreement of all 27 remaining Member States. Without such an extension, if after two years no deal were reached, or the UK were not able to accept the deal that was offered, exit would take place automatically and without any protection for the rights of UK business to trade on a preferential basis with Europe, UK citizens to live in Europe, or UK travellers to move about freely in Europe.

5.6 The second issue at stake is the nature of the negotiations that would follow an exit vote. The UK would, at the moment Article 50 is triggered, be excluded from EU discussions on the nature of the exit negotiations. These would be settled by the remaining EU Member States.

5.7 A third consideration is the range of issues that would be affected by a vote for exit and which would be subject to negotiation with the rest of the EU during the exit process. Reaching agreement on such a wide range of issues, with a large number of negotiating partners, each of whom would seek to defend their interests, should be expected to be difficult and involve potentially unpalatable trade-offs.

5.8 Moreover, the implications are not confined to our dealings with Europe. The UK's trading relationship with countries around the world, for instance, is bound up in agreements

reached by the EU which would cease to apply to the UK on our departure from the EU. Replacements for these too would have to be negotiated.

5.9 Many UK citizens would want any negotiations to secure their continued right to work, reside and own property in other EU states, and to access public services such as medical treatment in those states. UK citizens resident abroad, among them those who have retired to Spain, would not be able to assume that these rights will be guaranteed. At the very least, any terms which the UK seeks for its own citizens would have to be offered to EU citizens wishing to come to or stay in this country.

5.10 The terms of exit would be significant for the people of Northern Ireland, and citizens of Ireland who live in, visit or work in the UK. There could be implications for the border and for cross-border trade and co-operation, which has helped strengthen relations between Northern Ireland and Ireland in recent years.

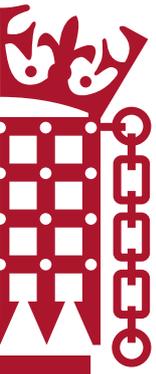
5.11 The process of withdrawing from the EU is untested, and would contain numerous elements, including the outcome of the negotiations, about which there is currently little clarity. It could lead to up to a decade or more of uncertainty.

5.12 It is important that the risk this presents is understood. It adds, in the Government's view, to the compelling case for staying in a reformed EU on the secure new terms on offer. These offer the UK a special status and the best of both worlds.

How these negotiations might affect UK citizens

UK citizens get a range of rights from our membership of the EU. If the UK were to leave the EU, all of these rights would have to be covered in a successor arrangement. If we left the EU without agreeing what would happen to these rights, it would at the least bring them into serious question, creating difficulty for UK citizens who relied on them. A selection of these rights includes:

- the right to live, work and own property in all 28 countries of the EU;
- the ability to retire to another EU country;
- the right to receive healthcare that is free at the point of use and paid for by the NHS, using the European Health Insurance Card;
- the right to vote in local elections in other EU countries;
- mutual recognition of child custody decisions across the EU;
- the use of the European Small Claims Procedure to reclaim up to €2,000 from individuals in other EU countries; and
- the right to use public services in other EU countries.



HOUSE OF LORDS

European Union Committee

11th Report of Session 2015–16

The process of withdrawing from the European Union

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The European Union Committee

The European Union Committee is appointed each session “to scrutinise documents deposited in the House by a Minister, and other matters relating to the European Union”.

In practice this means that the Select Committee, along with its Sub-Committees, scrutinises the UK Government’s policies and actions in respect of the EU; considers and seeks to influence the development of policies and draft laws proposed by the EU institutions; and more generally represents the House of Lords in its dealings with the EU institutions and other Member States.

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The Members of the European Union Select Committee, which conducted this inquiry, are:

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Evidence is published online at www.parliament.uk/eu-exit-process/ and available for inspection at the Parliamentary Archives (020 7129 3074).

Q in footnotes refers to a question in oral evidence.

The process of withdrawing from the European Union

CHAPTER 1: INTRODUCTION

1. The forthcoming referendum on the UK's membership of the EU has focused attention on the process whereby a Member State could withdraw from the EU. Article 50 of the Treaty on European Union (TEU), which was incorporated into the EU Treaties by the Treaty of Lisbon, and which came into force on 1 December 2009, provided for the first time an explicit right under EU law to withdraw from the EU, and a means of doing so. The full text of Article 50, which has never been invoked, is set out in Appendix 3 to this report.
2. In February 2016, the Government published a Command Paper entitled *The process for withdrawing from the European Union*,¹ the findings of which have been widely challenged by those campaigning to leave the EU. We wanted to have as clear an understanding as possible of the process whereby the UK would withdraw from the EU, should the electorate so decide on 23 June. We therefore held a public evidence session with two experts in the field of EU law: Sir David Edward KCMG, QC, PC, FRSE, a former Judge of the Court of Justice of the European Union and Professor Emeritus at the School of Law, University of Edinburgh; and Professor Derrick Wyatt QC, Emeritus Professor of Law, Oxford University, and also of Brick Court Chambers.
3. This short report sets out our findings. It considers whether Article 50 is the only means of leaving the EU, and whether a decision to withdraw from the EU can be reversed. It explains both the process for leaving the EU and the process for establishing the UK's new relationship with the EU. It assesses the influence of the EU's institutions on the negotiations. It also considers the risks of the negotiations failing, and the consequences for UK citizens living in other EU Member States, and EU citizens living in the UK, if they do. It considers the UK's participation in the EU during the negotiations, which could last many years, including whether it can assume the six-monthly EU presidency in the second half of 2017. Lastly, it looks at the role the UK and devolved legislatures might play in the negotiations, and considers the complexities of disentangling EU law from national law.
4. We have not sought to express a view on the desirability or otherwise of embarking on the process of withdrawal from the EU. Nor, while we have noted the Government's assessment of the process for withdrawing from the EU, in the Command Paper already mentioned, have we commented on the accuracy or otherwise of that assessment. Instead our conclusions, based as they are on expert evidence, are, as far as possible, neutral statements of fact. We are indebted to our witnesses for their invaluable assistance, but the conclusions reached in this report, while informed by their views, are our own.
5. **We make this report for debate.**

1 HM Government, *The process for withdrawing from the European Union* (February 2016): <https://www.gov.uk/government/publications/the-process-for-withdrawing-from-the-european-union> [accessed 21 April 2016]

CHAPTER 2: THE RIGHT TO WITHDRAW FROM THE EU

6. We asked our witnesses to assess the significance of Article 50’s incorporation into the EU Treaties, whether other means of withdrawal remained available to EU Member States, and whether a decision by a Member State to withdraw from the EU could be reversed.

The significance of Article 50 of the Treaty on European Union

7. Sir David Edward told us that, before Article 50 came into force, a right existed to withdraw from the EU under international law, provided that all Member States agreed.² Professor Wyatt agreed, adding that it was “politically inconceivable” that “all the Member States but one could commit an unwilling Member State to participate in such a close economic arrangement.”³ He noted that the 1975 referendum on the UK’s continuing membership of the European Economic Community was based on the assumption that the UK was entitled to withdraw from it.⁴⁵
8. The significance of Article 50 lay, therefore, not in establishing a right to withdraw, but rather in defining the procedure for doing so. Sir David described it as “essentially setting out the machinery that would not otherwise be there.”⁶ Professor Wyatt elaborated further: “The difficulty with the position before Article 50 was that the first thing that would happen in the event of, say, a referendum vote to leave the European project would be the building of an edifice to make that possible—the agreement of procedures and the rest of it. Article 50 solves that.”⁷

Is Article 50 the only means of withdrawing from the EU?

9. Within the wider debate on EU membership it has been suggested that the UK could withdraw from the EU without reference to Article 50, for example by repealing the European Communities Act 1972, which gives domestic effect to EU law. We asked our witnesses whether this would be possible. Both told us that Article 50 provided the only means of withdrawing from the EU consistent with the UK’s obligations under international law.⁸ A Member State could not fall back on the Vienna Convention on the Law of Treaties to avoid the withdrawal procedures in Article 50, because the Vienna Convention had to be read in the light of the specific procedures for treaty change laid down in the EU Treaties.⁹

Can a Member State’s decision to withdraw be reversed?

10. We asked our witnesses whether it was possible to reverse a decision to withdraw. Both agreed that a Member State could legally reverse a decision to withdraw from the EU at any point before the date on which the withdrawal agreement took effect. Once the withdrawal agreement had taken effect, however, withdrawal was final. Sir David told us: “It is absolutely clear that

2 Q 3

3 Q 3

4 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)

5 The referendum question was: “Do you think the UK should stay in the European Community (Common Market)?”. BBC On This Day, ‘1975: UK embraces Europe in referendum’: http://news.bbc.co.uk/onthisday/hi/dates/stories/june/6/newsid_2499000/2499297.stm [accessed 21 April 2016]

6 Q 3

7 Q 3

8 Q 3; supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)

9 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)

you cannot be forced to go through with it if you do not want to: for example, if there is a change of Government.”¹⁰ Professor Wyatt supported this view with the following legal analysis:

“There is nothing in the wording to say that you cannot. It is in accord with the general aims of the Treaties that people stay in rather than rush out of the exit door. There is also the specific provision in Article 50 to the effect that, if a State withdraws, it has to apply to rejoin *de novo*. That only applies once you have left. If you could not change your mind after a year of thinking about it, but before you had withdrawn, you would then have to wait another year, withdraw and then apply to join again. That just does not make sense. Analysis of the text suggests that you are entitled to change your mind.”¹¹

11. Professor Wyatt clarified that “a Member State remains a member of the European Union until the withdrawal agreement takes effect”, so would continue its membership on the same legal terms as before the decision to withdraw.¹²
12. Both witnesses drew a distinction, however, between the law and the politics of such a scenario. While the law was clear, “the politics of it would be completely different”, according to Professor Wyatt.¹³ Likewise, Sir David did not think that the politics “were as easy as saying, ‘The negotiations are over and we are back to where we started’”.¹⁴
13. We note in this context that the Conclusions of the 18–19 February 2016 European Council, at which the terms of the ‘New Settlement for the United Kingdom within the European Union’ were agreed, stated that “should the result of the referendum in the United Kingdom be for it to leave the European Union, the set of arrangements referred to [regarding the ‘New Settlement’] will cease to exist”.¹⁵ In other words, the outcome of the recent renegotiation of the UK’s membership terms will, in the event of a vote to leave the EU, fall the moment the result of the referendum is known.

Conclusions

14. **If a Member State decides to withdraw from the EU, the process described in Article 50 is the only way of doing so consistent with EU and international law.**
15. **There is nothing in Article 50 formally to prevent a Member State from reversing its decision to withdraw in the course of the withdrawal negotiations. The political consequences of such a change of mind would, though, be substantial.**
16. **Withdrawal from the EU is final once the withdrawal agreement enters into force. Article 50 makes clear that if a State that has withdrawn from the EU seeks to rejoin, its request shall be subject to the same procedures as any other applicant State.**

10 [Q 3](#)

11 [Q 3](#)

12 [Q 3](#)

13 [Q 3](#)

14 [Q 3](#)

15 European Council meeting (18 and 19 February 2016) Conclusions, 16 February 2016: <http://data.consilium.europa.eu/doc/document/ST-1-2016-INIT/en/pdf> [accessed 21 April 2016]

17. **We note that the European Council has stated explicitly that the changes to the terms of the UK's membership of the EU, agreed in February 2016, will automatically fall in the event of a vote to leave on 23 June.**

CHAPTER 3: THE WITHDRAWAL PROCESS

Notification of withdrawal

18. The decision to withdraw is taken by a Member State “in accordance with its own constitutional requirements”.¹⁶ Once the national decision has been taken, the Member State concerned is under an obligation to notify the European Council.¹⁷ Article 50 is silent on the timing of any such notification.¹⁸

The negotiation process

19. Under Article 50 the parties to the negotiation would be the European Union and the withdrawing Member State. As the other party to the negotiations, the UK would be treated as a non-EU State for the purpose of Article 50. It would not therefore participate in discussions concerning the withdrawal negotiations in the European Council or the Council.

20. Professor Wyatt gave the following overview of the negotiation process under Article 50:

“Under guidelines from the European Council,¹⁹ the Council²⁰ applies the ordinary rules and sets a negotiating mandate for the Commission. The Commission will negotiate the agreement on the EU side. We have guidelines from the European Council and we have the negotiating mandate from the Council. The Council can nominate a head negotiator if it wishes, or the head of a team of negotiators. The Council can nominate a special committee that will work in conjunction with the Commission.”²¹

21. At the end of the negotiations the European Parliament gives its consent to the draft withdrawal agreement,²² after which it is signed and then concluded by the Council. If the agreement is deemed to be ‘mixed’ (where Member State as well as EU competences are engaged), it will have to be ratified by the Member States as well.²³ Professor Wyatt thought the agreement was likely to be mixed.²⁴
22. In terms of voting procedures, the European Council agrees the guidelines by unanimity.²⁵ The Council agrees the negotiation mandate, in the form of negotiation directives to the Commission, by qualified majority voting (QMV).²⁶ Once the negotiations have concluded the European Parliament gives its consent to the draft withdrawal agreement by a majority of votes cast (our witnesses confirmed that MEPs from the withdrawing Member

16 Article 50(1) [The Treaty on European Union](#)

17 Article 50(2) [The Treaty on European Union](#)

18 Article 50(2) [The Treaty on European Union](#)

19 The European Council consists of the Heads of State or Government of the EU Member States and sets the EU’s overall political direction and priorities. It has no legislative power.

20 The Council of the EU consists of ministers from the EU Member States. Together with the European Parliament it negotiates and adopts EU legislation.

21 [Q 4](#)

22 Article 50(2) [The Treaty on European Union](#)

23 Member State ratification can take several years, depending on domestic ratification procedures. As a consequence, EU agreement can be provisionally applied pending ratification by Member States. ([Q 12](#) (Prof Wyatt))

24 [Q 12](#)

25 Article 15(3) [The Treaty on European Union](#)

26 Article 218(8) [The Treaty on the Functioning of the European Union](#)

State would be entitled to vote).²⁷ The Council will then agree the signature and conclusion of the withdrawal agreement by QMV, or by consensus if it is a mixed agreement.

The influence of the EU institutions

23. We asked our witnesses to gauge the influence which each of the EU institutions would exercise over the negotiations. Both thought that the Member States would exercise the greatest influence, despite the conduct of the negotiations being the responsibility of the Commission. Sir David said: “I would envisage that, formally speaking, the Commission will do the negotiations, but in the way things work I strongly suspect that the Council’s internal services will also be closely involved right the way through, as well as the other Member States.”²⁸ Professor Wyatt said that the Member States “would be in the driving seat” and would “call the important shots”. He provided a helpful insight into how the Member States would exercise their influence through the Council:

“The European Council is not going to be hands-on all the time. Who will be hands-on all the time will be the Committee of National Representatives, which is overlooking the Commission negotiations. The normal committee is the Trade Policy Committee, which I think meets once a month, but its deputies meet every week ... Changing of the negotiation mandate is possible and could, and would, happen.”²⁹

24. Both witnesses agreed that the European Parliament’s power to refuse to give consent to the draft withdrawal agreement also gave it considerable influence. The European Parliament participates in international agreements through an inter-institutional agreement with the Commission. Professor Wyatt told us that this required the Commission “to take due account of Parliament’s comments throughout the negotiations”, and to “explain whether and how Parliament’s comments were incorporated in the texts under negotiation and if not why.”³⁰ He concluded:

“The fact that the EP has a power of veto gives the Commission and the Council/Member States which stand behind the Commission every incentive to take the EP’s comments seriously. How will it exercise that influence? As regards the withdrawal agreement, MEPs will no doubt seek to protect the interests and vested rights of Union Citizens living in the UK. And one would hope that UK MEPs would have the same concern for UK citizens resident in other Member States.”³¹

The scope and complexity of the negotiations

25. In Professor Wyatt’s view the over-arching function of a withdrawal agreement would be to bridge the gap between the old EU regime and the new future relationship. The scope of the withdrawal agreement would only become clear once the nature of the withdrawing Member State’s new relationship with the EU emerged.³²

27 Q 6 (Sir David Edward); supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)

28 Q 4

29 Q 4

30 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)

31 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)

32 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)

Acquired rights

26. One of the most complex aspects of the negotiations would be deciding which rights would qualify as ‘acquired rights’,³³ and putting in place transitional provisions for individuals and companies whose rights might be phased out over time. Professor Wyatt described this issue as follows:

“It is estimated that 2 million Brits live in other EU countries ... Take elderly people who have lived for 10 years in Spain. After five years, they acquired a right of permanent residence as citizens of the Union and that includes access to the Spanish healthcare system. If we leave, what do we do about vested rights? Do we recognise rights to permanent residents that have arisen? What transitional rights do we give somebody who has been working for four years in the UK and has children at school and so forth? Let us not forget that for every example in the UK there is an example of a UK citizen elsewhere. We would want to tidy that up. My guess is that the inclination of Government and Parliament would be to be generous as regards those who had already made their lives in the UK, knowing that it would be likely to be reciprocated.”³⁴

27. Both witnesses thought that addressing these issues would be challenging. If the new relationship involved restrictions on the free movement of people, detailed arrangements would be necessary governing the rights of EU citizens resident in the UK and of UK citizens resident in the EU acquired prior to the UK’s withdrawal. The arrangements would need to cover residence rights, rights to take up employment or self-employment, and rights to health care and social security. There would also have to be an agreement on the dates from which acquired rights would be recognised, and transitional arrangements for those not qualifying for acquired rights.³⁵ On the other hand, if the new relationship preserved the free movement of persons, acquired rights could be maintained by a simple continuity clause.³⁶

Conclusions

28. **EUMember States would retain significant control over the withdrawal negotiations, despite the Commission having responsibility for their conduct.**
29. **The European Parliament’s right not to give its consent to the adoption of the withdrawal agreement would give it considerable influence.**
30. **One of the most important aspects of the withdrawal negotiations would be determining the acquired rights of the two million or so UK citizens living in other Member States, and equally of EU citizens living in the UK. This would be a complex and daunting task.**

33 There is no single definition of acquired rights under international law; broadly, they are rights vested in individuals or companies which may withstand changes in the sovereignty or laws of a State. Acquired rights under EU law are often used to refer to EU citizenship rights, for example the right to permanent residence in another Member State.

34 [Q 11](#)

35 Supplementary written evidence from Prof Derrick Wyatt QC ([PLE0001](#))

36 Supplementary written evidence from Prof Derrick Wyatt QC ([PLE0001](#))

CHAPTER 4: THE NEGOTIATION OF A FUTURE RELATIONSHIP

Two agreements, rather than one

31. Article 50(2) TEU requires that the withdrawal agreement “take[s] account of the framework” of the withdrawing Member State’s “future relationship with the Union”. Sir David said that the German language version of Article 50 made plain that the “structure of future relations will already have been established at the point when withdrawal takes place.”³⁷ Professor Wyatt agreed. He did not think that the withdrawal agreement would be able to “accommodate all the details of the future trading relationship”,³⁸ and so both agreements would be negotiated in parallel.³⁹ He emphasised that: “Co-ordination between the withdrawal treaty on the one hand and the future relations treaty on the other would be important. The UK’s aim would be to have a smooth transition between the past in the EU and the future in the new arrangement.”⁴⁰
32. Both witnesses agreed there would be a third negotiation: the remaining Member States would have to amend the EU Treaties to take account of the withdrawal of the Member State concerned. This would be a “housekeeping arrangement”, however, and would not involve the withdrawing Member State.⁴¹

The negotiation process

33. Article 50 does not set out the procedure for the negotiations on the future relationship.⁴² Nonetheless, in Professor Wyatt’s view:

“The essential bones of the negotiation would be the same. The Council would lay down a negotiating mandate to the Commission, which would get on with the job. Whatever the Treaty base, there would be a special committee working alongside. There would also be toing and froing between the European Parliament and the Commission.”⁴³

34. He thought the agreement on a future relationship would also be mixed, and so its conclusion in the Council would require consensus among the Member States.⁴⁴ If it were an association agreement,⁴⁵ that too would have to be concluded by unanimity in the Council.⁴⁶

The influence of the EU institutions

35. Professor Wyatt thought that the influence of the Member States would be considerable, as with the withdrawal negotiations:

“There would be deep involvement from the national Governments via the Council and the committee. Although the Commission would be

37 [Q 1](#)

38 [Q 4](#)

39 [Q 4](#)

40 [Q 11](#)

41 [Q 2](#) (Prof Derrick Wyatt)

42 [Q 4](#) (Prof Derrick Wyatt)

43 [Q 14](#)

44 [Q 18](#)

45 An association agreement with the EU is a comprehensive agreement (rather than limited to one area of policy) involving reciprocal rights and obligations. See further at para 37 of this report.

46 [Q 12](#); Article 218(8) [The Treaty on the Functioning of the European Union](#)

negotiating and there would be input from the European Parliament ... it seems to me that the influence of the national Governments on the EU side would be enormous.”⁴⁷

36. Sir David thought that the degree to which Member States would be involved would depend on what was being negotiated. Spain, Portugal, the Netherlands, Belgium and Denmark would have “enormous interest” in an agreement on fisheries, for example; but many other Member States would not.⁴⁸ According to Professor Wyatt, this would allow Member States to seek trade-offs between different areas of the negotiations:

“If I am a hypothetical east European country, with a very obvious and genuine interest in both the position of my nationals resident in the United Kingdom and the future access of the UK, I might not be interested in fisheries as such but I might want to block a deal on fisheries unless I get what I want on transition and future access for my nationals.”⁴⁹

The scope of the negotiations

37. Neither witness could be certain about the form the UK’s future relationship with the EU would take. Professor Wyatt told us: “My suspicion is that it would actually be an association agreement of some kind, because we would end up with a fairly complex comprehensive agreement that would involve co-operative machinery of some sort.” The agreement would be likely to include a comprehensive trade deal that would cover not only goods but banking services and insurance services.⁵⁰

Conclusions

38. **It is likely that an agreement on the UK’s future relationship with the EU would be negotiated in tandem with the withdrawal agreement. It would be in the interests of all parties to coordinate the negotiations closely.**
39. **The Member States would retain significant control over the negotiations on a future relationship. We note the potential for groups of Member States vetoing certain elements of the agreement to secure better deals on others. This could mean, in effect, that nothing would be agreed until everything was agreed.**
40. **The European Parliament would have the right to withhold giving consent to the adoption of the agreement on the new relationship, giving it considerable influence.**

47 [Q 4](#)

48 [Q 4](#)

49 [Q 4](#)

50 [Q 8](#)

CHAPTER 5: THE LENGTH OF THE NEGOTIATIONS

41. Article 50(3) TEU provides for a two-year time limit for the withdrawal agreement to enter into force, after which the “Treaties will cease to apply” to the withdrawing Member State. The two-year period can be extended by the European Council, acting unanimously. There is no limit to the length of the extension, nor to the number of times an extension can be agreed.

The likelihood of the two-year time limit being extended

42. We asked our witnesses how likely it was that the two-year time limit would be extended. Professor Wyatt thought that an extension would probably happen.⁵¹ The incentive was “£8 billion a year in net contributions, and access to the UK market for workers and for motor cars. All the Member States in the EU believe they benefit from the internal market.”⁵²
43. Professor Wyatt warned, however, that “there will be huge national self-interest in moving forward in a very considered way without jumping the gun in directions that could torpedo the negotiations before they start”. He saw “huge risks” to this not being achieved: “If, for example, the UK were to ... insist on imposing unilateral restrictions on immigration while negotiations were going on, the climate would disintegrate.”⁵³ His written evidence elaborated on these concerns: “in the event of a Brexit vote, there will be expectations on the part of some politicians and members of the public of immediate action to restrict EU migrants coming to the UK to work. I do not think these expectations could be accommodated.” The priority throughout the negotiations should be “damage limitation”.⁵⁴
44. Sir David counselled against relying on the two-year time limit being extended:

“Remember that other Member States have much higher priorities, such as refugees and so on. Their willingness to sit down, make concessions and go on and on beyond two years is not necessarily guaranteed. They may say, ‘Right, you want to go, so please go and let us get on’ ... All I am saying is that each one of them has to consent to a continuation, and you cannot guarantee it. It might just be pure spite, but you cannot guarantee that that would not motivate them.”⁵⁵

The consequence of the two-year time limit not being extended

45. Article 50(3) makes clear that, if the European Council does not agree an extension before the two years has expired or a withdrawal agreement is concluded, the withdrawing State will no longer be a Member State of the EU: “we are out. We cease to be a Member State”.⁵⁶
46. Sir David confirmed that, should the UK be forced to withdraw unilaterally in this way, it would have no option but to fall back on the trading terms derived from its membership of the World Trade Organization (WTO).⁵⁷ Professor Wyatt told us the following consequences would be likely to ensue:

51 Supplementary written evidence from Prof Derrick Wyatt QC ([PLE0001](#))

52 [Q 10](#)

53 [Q 10](#)

54 Supplementary written evidence from Prof Derrick Wyatt QC ([PLE0001](#))

55 [Q 10](#)

56 [Q 10](#) (Sir David Edward)

57 [Q 11](#)

“We would impose tariffs on goods almost certainly at the same level as the common external tariff. That is the tariff we impose to the outside world currently. We leave the EU; we impose those tariffs on goods coming to us. The EU would be a third country; the EU would be imposing those tariffs on us. Of course, that would cost customers; it would cost people in the shops. We cannot disarm in tariff terms, because that is our ammunition in negotiating trade in goods. We also want to negotiate trade in services, where the WTO is not very good for us ... There would be tariffs between the UK and the EU, many of them not very high but some of them—as the Government pointed out—would be 10% on cars and 35% on dairy products.”⁵⁸

47. If the UK were to withdraw unilaterally, the question of recognition of acquired rights, and transitional arrangements for those without acquired rights would, initially, be handled unilaterally on each side. There would be a pressing need to take decisions on the rights of EU citizens resident in the UK and the rights of UK citizens resident in EU Member States.⁵⁹ The UK could introduce unilateral immigration controls on EU citizens, but it would be likely to liaise closely with the Commission, particularly with regard to the consequences for UK citizens in the EU. Professor Wyatt thought that “a reasonable and fair approach to acquired rights and transitional arrangements would be the likely instinct of Government and Parliament, and that would be conducive to receiving reciprocal fair treatment from the EU side, and to the prospects of negotiating a free trade agreement for the future with minimum possible rancour.”⁶⁰
48. On the EU side, individual Member States could introduce immigration controls on resident UK citizens, though the EU would have competence to legislate in due course for the movement and residence of UK citizens in the EU.⁶¹
49. Sir David gave the following illustrations of the complexity of the negotiations on acquired rights in the event of a unilateral withdrawal:
- “A university has an EU research funding package with provision for cross-frontier movement of research scientists, and that has a life beyond two years. What happens to that? What happens to Erasmus students? When does participation in Erasmus end? A divorced couple live in the UK and another member state with special arrangements for access to children, and particularly cross-border payment of family maintenance. What happens to that? There are cross-border investments and tax treatment of capital and revenue. There are agricultural support payments and fishing quotas. Those are just examples.”⁶²
50. This led Sir David to conclude that: “The long-term ghastriness of the legal complications is almost unimaginable.”⁶³

58 [Q 10](#)

59 Supplementary written evidence from Prof Derrick Wyatt QC ([PLE0001](#))

60 Supplementary written evidence from Prof Derrick Wyatt QC ([PLE0001](#))

61 Supplementary written evidence from Prof Derrick Wyatt QC ([PLE0001](#))

62 [Q 10](#)

63 [Q 11](#)

Length of the negotiations, if extended

51. We asked the witnesses whether the negotiations on Greenland’s withdrawal from the EU offered a guide to how long the UK’s withdrawal and future relationship might take to negotiate. Professor Wyatt thought that Greenland’s negotiations offered “support for the proposition that even mildly complicated negotiations can take some time to sort out—in the case of Greenland the negotiations took about two years, and the final decision came into force after three years.”⁶⁴ The population of Greenland was about 55,000, and most of the negotiations were about fishing, though provision was made for transitional arrangements to cover acquired rights of residents: “On any view the UK negotiations would surely take much longer than the negotiations with Denmark over Greenland.”⁶⁵
52. Professor Wyatt drew our attention to historical data on the time taken by States to complete various trade deals.⁶⁶ The length of negotiations for agreements between the EU and non-EU countries ran from four to nine years. The length of agreements between two non-EU countries ran from just under four years to just under 10.
53. That said, he concluded that it was impossible to extrapolate with any certainty from the data available how long the negotiations would take: “These are uncharted waters, both in legal terms and political terms, and no ‘weather forecast’ is available.” He did think it likely, however, that if the UK were to vote to withdraw:
- “it would remain a member of the EU for at least the duration of the present Parliament, while the withdrawal agreement and the future relationship agreement were being negotiated in tandem. This would be the right process, in terms of legal options, and in terms of aiming for a smooth transition between EU membership and whatever relationship lay beyond. But it would inevitably involve a period of prolonged uncertainty, without any guarantee of a trading agreement at the end of the process which would meet UK needs.”⁶⁷

Conclusions

54. **No firm prediction can be made as to how long the negotiations on withdrawal and a new relationship would take if the UK were to vote to leave the EU. It is clear, though, that they would take several years—trade deals between the EU and non-EU States have taken between four and nine years on average.**
55. **It would be in the interests of the UK and its citizens, and in the interests of the remaining Member States and their citizens, to achieve a negotiated settlement. This would almost certainly necessitate extending the negotiating period beyond the two years provided for in Article 50.**

64 Supplementary written evidence from Prof Derrick Wyatt QC ([PLE0001](#))

65 Supplementary written evidence from Prof Derrick Wyatt QC ([PLE0001](#))

66 Open Europe, ‘Would Brexit lead to “up to a decade or more of uncertainty”?’: <http://openeurope.org.uk/today/blog/would-brexit-lead-to-decade-or-more-of-uncertainty/> [accessed 17 April 2016]

67 Supplementary written evidence from Prof Derrick Wyatt QC ([PLE0001](#)), [Q 8](#) (Prof Wyatt)

56. **While it is possible that the European Council would agree to an extension, the requirement for unanimity means that such agreement cannot be guaranteed.**
57. **Were no extension to be agreed, the UK would be likely to trade on World Trade Organization terms, placing tariffs on imports from the EU; the EU would place tariffs on imports from the UK; and the acquired rights of millions of individuals and companies would remain unresolved.**

CHAPTER 6: THE UK'S CONTINUING PARTICIPATION IN THE EU

Would the UK continue to be able to participate effectively in the EU?

58. We asked our witnesses to confirm that the UK would still be able to participate in EU policies and in the EU institutions and agencies pending the entry into force of the withdrawal agreement. Both confirmed that it would as a matter of law, except in decisions concerning its own withdrawal. The UK would continue to be bound by new EU legislation adopted after its decision to withdraw but before the withdrawal agreement entered into force.⁶⁸
59. As a matter of practice, however, both thought the UK's credibility as a participant in EU decisions would be severely undermined. Professor Wyatt, for example, saw the following difficulties arising:

“The UK would be voting on future internal EU legislation which would only affect the UK as an outside trading partner. This could lead to the UK's role being questioned as inappropriate. Continued participation in all aspects of EU activities might not be conducive to good political relations with other Member States and the EU institutions, and therefore not conducive to negotiating a future trading agreement which would meet UK requirements ... A policy of selective disengagement from certain areas of activity might take place.”⁶⁹

The UK presidency of the EU in 2017

60. Nowhere would these difficulties be more evident than in the UK's assumption of the presidency of the EU in the second half of 2017.⁷⁰ Sir David said:
- “What is the interest of the United Kingdom, particularly as President of the Council, in discussing the details of a Directive that will not apply if we withdraw?”⁷¹
61. Sir David added that the Article 50 provision that “the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it” was “a rather vague provision that might mean, ‘You get out of here; this does not concern you’.”⁷²
62. Professor Wyatt set out similar concerns, arguing that “there would be some air of unreality in the UK presiding over meetings most of the work of which would involve future action.” Input from the UK on forward planning by the EU “would be likely to lack credibility in circumstances where the UK was shortly to leave the EU and would no doubt be preoccupied with its negotiations with the EU for a future trading relationship. The rest of the

68 [Q 9](#)

69 Supplementary written evidence from Prof Derrick Wyatt QC ([PLE0001](#))

70 The presidency of the Council rotates among the EU Member States every six months. During this six-month period, the presidency chairs meetings at every level in the Council, helping to ensure the continuity of the EU's work in the Council.

71 [Q 9](#)

72 [Q 9](#)

EU would be unlikely to share the UK's perception of the priority to be accorded to its future trading agreement."⁷³

Conclusions

63. **While the UK would remain a full member of the EU over the course of the withdrawal negotiations, its credibility as a member would be severely undermined. A policy of selective disengagement from some areas of EU policy might be necessary.**
64. **The UK is scheduled to hold the presidency of the Council in the second half of 2017, but in the event of a vote to withdraw it would be disqualified, by virtue of Article 50, from chairing any Council meetings on the withdrawal negotiations—meetings that would no doubt form a significant part of the Council's activities. Were the electorate to vote to withdraw from the EU, the Government should give immediate consideration to suggesting alternative arrangements for its presidency.**

73 Supplementary written evidence from Prof Derrick Wyatt QC ([PLE0001](#))

CHAPTER 7: THE ROLE OF PARLIAMENT

The role of Parliament in overseeing the negotiations on withdrawal and a future relationship

65. Sir David explained that, as the UK Parliament was a constitutional organ of the United Kingdom, it was “for the United Kingdom to determine what part the UK Parliament plays in this and what degree of say Parliament has over the acceptability or non-acceptability of the agreement.”⁷⁴
66. Professor Wyatt told us that the future trading agreement would be “one of the most important trading arrangements that the UK had made for many years, or would be making for many years.” The credibility of that agreement would depend on cross-party consensus within Parliament: “The fact of that might encourage Parliament to be more flexible about the relationship between Parliament and the Executive in the negotiation of a treaty than it would normally be.”⁷⁵ He thought a political argument could be made “for a high degree of parliamentary involvement in the withdrawal process. The process and the direction of future UK relations with the EU would be of great practical and political importance to the people of the UK.”⁷⁶

The role of Parliament in implementing the agreements

67. Sir David envisaged that a great deal more than repealing the European Communities Act 1972 would be required to give effect to withdrawal in national law. The Government “would need to enact in law everything that it wanted to keep in law, which is currently either the consequence of the direct effect of the EU Treaties or, for example, the product of a Directive.”⁷⁷ Under current law, national courts have to interpret implementing legislation in light of the Directive:

“If the Directive no longer applies, the Government will have to consider, ‘Do I have enough in the existing legislation for the courts to proceed without looking at the Directive, or am I to instruct the courts to construe it in the light of the Directive as if the Directive applied?’ There are many nitty-gritty legal complications; it is more than simply repealing the 1972 Act.”⁷⁸

68. Professor Wyatt largely agreed. The Government would clearly have to amend the European Communities Act 1972 so that sections 2 and 3 ceased to give effect to directly applicable EU law adopted after the date of UK withdrawal. But he warned against assuming that the UK would wish to repeal all existing EU implementing legislation. Some directly applicable and non-directly applicable rules would no doubt be repealed as soon as the UK withdrew from the EU, but the rest could be left in force until reviewed, and either maintained, or repealed.⁷⁹ He noted that EU legislation was not “legislation that is imposed upon us.”⁸⁰ Part of the way that UK governments

74 [Q 5](#)

75 [Q 5](#). International treaties are laid before Parliament, usually for a period of 21 days, before they can be ratified (see Constitutional Reform and Governance Act 2010, [Part 2](#)).

76 Supplementary written evidence from Prof Derrick Wyatt QC ([PLE0001](#))

77 [Q 5](#)

78 [Q 5](#)

79 Supplementary written evidence from Prof Derrick Wyatt QC ([PLE0001](#))

80 [Q 5](#)

had successively exercised their policies had been through the machinery of the European Union:

“If we look at legislation on equality in the workplace or on the environment, or we look at our company law, these are not all alien mechanisms to our detriment that have been forced upon us. Many of them are pieces of legislation that are regarded as currently important and still receive strong support.”⁸¹

69. He concluded that it would take “years for Government and Parliament properly to review the corpus of EU law, jettison what was not wanted and keep what would be wanted—in my view, the majority.”⁸²

The role of the devolved legislatures in implementing the withdrawal agreement

70. We asked Sir David whether he thought the Scottish Parliament would have to give its consent to measures extinguishing the application of EU law in Scotland. He noted that such measures would entail amendment of section 29 of the Scotland Act 1998, which binds the Scottish Parliament to act in a manner compatible with EU law, and he therefore believed that the Scottish Parliament’s consent would be required.⁸³ He could envisage certain political advantages being drawn from not giving consent.⁸⁴
71. We note that the European Communities Act is also entrenched in the devolution settlements of Wales and Northern Ireland. Though we have taken no evidence on this specific point, we have no reason to believe that the requirement for legislative consent for its repeal would not apply to all the devolved nations.

Conclusions

72. **Should the UK decide to withdraw from the EU, the UK Parliament should have enhanced oversight of the negotiations on the withdrawal and the new relationship, beyond existing ratification procedures. We will consider how best to achieve that, should the need arise.**
73. **Domestic disentanglement from EU law would require a review of the entire corpus of EU law as it applies nationally and in the devolved nations. Such a review would take years to complete.**
74. **The Government of the day might well wish to maintain a significant amount of EU law in force in national law, because it would be in the national interest to do so.**

81 [Q 5](#)

82 [Q 5](#)

83 [Q 17](#) (“You would have to have legislative consent from the Scottish Parliament”).

84 [Q 17](#)

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The right to withdraw from the EU

1. If a Member State decides to withdraw from the EU, the process described in Article 50 is the only way of doing so consistent with EU and international law. (Paragraph 14)
2. There is nothing in Article 50 formally to prevent a Member State from reversing its decision to withdraw in the course of the withdrawal negotiations. The political consequences of such a change of mind would, though, be substantial. (Paragraph 15)
3. Withdrawal from the EU is final once the withdrawal agreement enters into force. Article 50 makes clear that if a State that has withdrawn from the EU seeks to rejoin, its request shall be subject to the same procedures as any other applicant State. (Paragraph 16)
4. We note that the European Council has stated explicitly that the changes to the terms of the UK's membership of the EU, agreed in February 2016, will automatically fall in the event of a vote to leave on 23 June. (Paragraph 17)

The withdrawal process

5. EU Member States would retain significant control over the withdrawal negotiations, despite the Commission having responsibility for their conduct. (Paragraph 28)
6. The European Parliament's right not to give its consent to the adoption of the withdrawal agreement would give it considerable influence. (Paragraph 29)
7. One of the most important aspects of the withdrawal negotiations would be determining the acquired rights of the two million or so UK citizens living in other Member States, and equally of EU citizens living in the UK. This would be a complex and daunting task. (Paragraph 30)

The negotiation of a future relationship

8. It is likely that an agreement on the UK's future relationship with the EU would be negotiated in tandem with the withdrawal agreement. It would be in the interests of all parties to coordinate the negotiations closely. (Paragraph 38)
9. The Member States would retain significant control over the negotiations on a future relationship. We note the potential for groups of Member States vetoing certain elements of the agreement to secure better deals on others. This could mean, in effect, that nothing would be agreed until everything was agreed. (Paragraph 39)
10. The European Parliament would have the right to withhold giving consent to the adoption of the agreement on the new relationship, giving it considerable influence. (Paragraph 40)

The length of the negotiations

11. No firm prediction can be made as to how long the negotiations on withdrawal and a new relationship would take if the UK were to vote to leave the EU. It is clear, though, that they would take several years—trade deals between the

EU and non-EU States have taken between four and nine years on average. (Paragraph 54)

12. It would be in the interests of the UK and its citizens, and in the interests of the remaining Member States and their citizens, to achieve a negotiated settlement. This would almost certainly necessitate extending the negotiating period beyond the two years provided for in Article 50. (Paragraph 55)
13. While it is possible that the European Council would agree to an extension, the requirement for unanimity means that such agreement cannot be guaranteed. (Paragraph 56)
14. Were no extension to be agreed, the UK would be likely to trade on World Trade Organization terms, placing tariffs on imports from the EU; the EU would place tariffs on imports from the UK; and the acquired rights of millions of individuals and companies would remain unresolved. (Paragraph 57)

The UK's continuing participation in the EU

15. While the UK would remain a full member of the EU over the course of the withdrawal negotiations, its credibility as a member would be severely undermined. A policy of selective disengagement from some areas of EU policy might be necessary. (Paragraph 63)
16. The UK is scheduled to hold the presidency of the Council in the second half of 2017, but in the event of a vote to withdraw it would be disqualified, by virtue of Article 50, from chairing any Council meetings on the withdrawal negotiations—meetings that would no doubt form a significant part of the Council's activities. Were the electorate to vote to withdraw from the EU, the Government should give immediate consideration to suggesting alternative arrangements for its presidency. (Paragraph 64)

The role of Parliament

17. Should the UK decide to withdraw from the EU, the UK Parliament should have enhanced oversight of the negotiations on the withdrawal and the new relationship, beyond existing ratification procedures. We will consider how best to achieve that, should the need arise. (Paragraph 72)
18. Domestic disentanglement from EU law would require a review of the entire corpus of EU law as it applies nationally and in the devolved nations. Such a review would take years to complete. (Paragraph 73)
19. The Government of the day might well wish to maintain a significant amount of EU law in force in national law, because it would be in the national interest to do so. (Paragraph 74)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Rt Hon. the Baroness Armstrong of Hill Top
 Lord Blair of Boughton Kt, QPM
 Lord Boswell of Aynho (Chairman)
 Lord Borwick
 Rt Hon. the Earl of Caithness
 Lord Davies of Stamford
 Baroness Falkner of Margravine
 Lord Green of Hustpierpoint
 Lord Jay of Ewelme GCMG
 Baroness Kennedy of The Shaws QC
 Lord Liddle
 Lord Mawson OBE
 Rt Hon. the Baroness Prashar CBE
 Baroness Scott of Needham Market
 Baroness Suttie
 Lord Trees
 Lord Tugendhat
 Rt Hon. the Lord Whitty
 Baroness Wilcox

Declarations of interest

Rt Hon. the Baroness Armstrong of Hill Top
Chair, Changing Lives (a charity based in Tyneside which may benefit from European Union funds)
Member, Advisory Board, GovNet Communications (publisher and event organiser)
Trustee, Africa Governing Initiative
Trustee, Voluntary Service Overseas

Lord Blair of Boughton Kt, QPM
Vice-Chair, The Woolf Institute for the study of relations between Jews, Christians and Muslims (a charity which may benefit from European Union funds)

Lord Borwick
Shareholdings as set out in the Register of Lords' interests

Lord Boswell of Aynho (Chairman)
In receipt of salary as Principal Deputy Chairman of Committees, House of Lords
Shareholdings as set out in the Register of Lords' Interests
Income is received as a Partner (with wife) from land and family farming business trading as EN & TE Boswell at Lower Aynho Grounds, Banbury, with separate rentals from cottage and grazing
Land at Great Leighs, Essex (one-eighth holding, with balance held by family interests), from which rental income is received
In receipt of agricultural support provision under the Common Agricultural Policy
House in Banbury owned jointly with wife, from which rental income is received
Lower Aynho Grounds Farm, Northants/Oxon; this property is owned personally by the Member and not the Partnership

Rt Hon. the Earl of Caithness

Shareholdings as set out in the Register of Lords' interests
Trustee of the Queen Elizabeth Castle of Mey Trust which owns agricultural land and benefits from CAP

Lord Davies of Stamford

Owns a flat in France (sometimes rented out)
Land let for grazing in Lincolnshire
In receipt of agricultural support provision under the Common Agricultural Policy in relation to land in Lincolnshire

Baroness Falkner of Margravine

Member, British Steering Committee: Koenigswinter, The British-German Conference
Vice President, Liberal International: The International Network of Liberal Parties
Member, Advisory Board, British Influence
Ownership of a house in Italy, jointly owned with member's husband
Member, House of Lords Foreign Policy Network

Lord Green of Hustpierpoint

Shareholdings as set out in the Register of Lords' Interests
Chair, Advisory Council for the Centre for Anglo-German Cultural Relations, Queen Mary University, London
Chair, Natural History Museum
Member, Advisory Board, Centre for Progressive Capitalism
Member, Steering Committee, Centre for Excellence in Finance, Sabanci University, Istanbul
Member, International Advisory Board, Akbank, Istanbul
Ownership of a flat in France

Lord Jay of Ewelme GCMG

Trustee, Thomson Reuters Founders Share Company
Chairman, British Library Advisory Council
Vice-Chairman, Business for New Europe
Member, Senior European Experts Group
Chairman, Positive Planet UK (British branch of a French NGO)

Baroness Kennedy of The Shaws QC

Chair, JUSTICE

Lord Liddle

Co-Chair, Policy Network and Communications Ltd (think-tank), which has received occasional sponsorship from the London office of the European Commission for events and works in partnership with the Brussels-based Federation for European Progressive Studies and other Continental think tanks
Co-author of a report which the City of London Corporation commissioned Policy Network to write on developments in thinking on the regulation of financial services in the European Union
Personal assistant at Policy Network carries out secretarial work which includes work in relation to the member's parliamentary duties

Lord Mawson OBE

Owns a house in France

Rt Hon. the Baroness Prashar CBE

Deputy Chair, British Council

Baroness Scott of Needham Market

No relevant interests

Baroness Suttie

Associate with Global Partners Governance Limited in respect of their Foreign and Commonwealth Office contract to provide mentoring and training for parliamentarians and their staff in Jordan

Trustee, Institute for Public Policy Research (IPPR)

Campaign Council Member, British Influence

Lord Trees

Chair, Moredum Research Institute, Edinburgh (independent animal health research institute) which applies for competitive research grants from the EU

Lord Tugendhat

Shareholdings as set out in the Register of Lords' Interests

Chairman, Advisory Council, European Policy Forum

Member of Advisory Council, Official Monetary and Financial Institutions Forum Limited

Member of Advisory Council of the Institute of Policy Research, University of Bath

Former Member and Vice President of the European Commission, in receipt of a pension from that Commission

Rt Hon. the Lord Whitty

Chair, Road Safety Foundation

Chair, Cheshire Lehmann Fund

Vice President, Environmental Protection UK

Vice President, Local Government Association

Vice President, Chartered Trading Standards Institute

Board Member, Smith Institute

Member, GMB

Baroness Wilcox

Shareholdings as set out in the Register of Lords' Interests

A full list of Members' interests can be found in the Register of Lords Interests <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <http://www.parliament.uk/eu-exit-process/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Alphabetical list of witnesses

Sir David Edward KCMG, QC, PC, FRSE, Former Judge of the Court of Justice of the European Union	QQ 1-17
Professor Derrick Wyatt QC, Emeritus Professor of Law, Oxford University, Brick Court Chambers	QQ 1-17 PLE0001

APPENDIX 3: ARTICLE 50 OF THE TREATY ON EUROPEAN UNION

Article 50 of the Treaty on European Union provides as follows:

“1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

“2. A Member State which decides to withdraw shall notify the European Council of its intention. 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 for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

“3. 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.

“4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it. A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

“5. 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.”



HM Government





Library Note

Leaving the EU: Parliament's Role in the Process

Following a vote in the referendum on 23 June 2016 in favour of the UK leaving the European Union, the Prime Minister said that this decision “must be accepted”, adding that “Parliament will clearly have a role in making sure that we find the best way forward”. Drawing on parliamentary material and recent legal and constitutional comment, this Library briefing examines what Parliament's role would be in the process of withdrawing from the European Union in several key areas:

Invoking Article 50—The Prime Minister has said it would be for his successor and his or her Cabinet to decide whether the House of Commons should have a vote on the decision to trigger Article 50, the formal process set out in the Treaty on European Union for member states to follow should they decide to leave the EU. Some legal commentators agree that prerogative powers would enable a Prime Minister to take this decision; some have suggested that Parliament could have a role, and others have gone further, arguing that prior parliamentary approval would be required before Article 50 could be invoked.

Overseeing the Negotiation Process—Formal negotiations between the UK and the European Union would not begin until the UK made a notification under Article 50 of its decision to withdraw from the EU. Parliament's involvement in overseeing or scrutinising such negotiations has not yet been set out in great detail. The chair of the House of Lords European Union Committee has called for Parliament to be “fully involved” in the process.

Ratifying Agreements—Parliament would have a statutory role in ratifying an eventual withdrawal agreement and any other international agreements arising from the negotiations if they were subject to the usual procedure for ratifying treaties. The House of Commons potentially has the power to block the ratification of a treaty indefinitely; the House of Lords does not. Under the terms of Article 50, the UK's membership would cease two years after it gave formal notification of its intention to leave, if no withdrawal agreement had come into force by that point, although the two-year period could be extended on the unanimous agreement of all EU member states.

Repealing and Reviewing Domestic Legislation—As part of the process of leaving the EU, decisions would need to be made about how to deal with existing domestic legislation passed to enable EU law to have effect in the UK, a process which the House of Lords European Union Committee has described as “domestic disentanglement from EU law”. Parliament would have an important role to play in reviewing, repealing, amending and replacing legislation, a process which is predicted by many to be complex and time-consuming. Once the UK had formally triggered Article 50, its timescales would apply independently of Parliament approving domestic legislative changes associated with leaving the EU.

Nicola Newson
Updated 4 July 2016
LLN 2016/034

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1. Introduction

Speaking in the House of Commons on 27 June 2016, David Cameron, the Prime Minister, said that the decision of the British people to leave the European Union “must be accepted, and the process of implementing the decision in the best way possible must begin”, adding that “Parliament will clearly have a role in making sure that we find the best way forward”.¹ Baroness Stowell of Beeston, Leader of the House of Lords, said that she believed there was “a particular role for the House of Lords in this period as we deliver on the clear instruction of the British people”.² She referred to the “stability” the Lords could provide by “lending our experience, knowledge and expertise to the challenges we face”, as well as the fact that the European Union Committee and its sub-committees would be “well-placed to assist the House”.

This Library briefing examines what Parliament's role would be in the process of withdrawing from the European Union in several key areas: invoking Article 50 to begin formal withdrawal negotiations with the EU; scrutinising and overseeing the withdrawal negotiations; ratifying any international agreements to come out of the negotiation process; and reviewing existing legislation. It does not specifically address the question of whether there is a case to be made for a second referendum. Nor does it cover the related question of the role of the devolved legislatures and governments; discussion of this issue is available in the House of Commons Library briefings on [Brexit: What Happens Next?](#) (24 June 2016); [EU Referendum: The Process of Leaving the EU](#) (8 April 2016); and [Exiting the EU: UK Reform Proposals, Legal Impact and Alternatives to Membership](#) (12 February 2016).

2. Invoking Article 50

Article 50 of the [Treaty on European Union](#) sets out a process for member states to follow should they decide to leave the EU. In its paper on [The Process for Withdrawing from the European Union](#), published prior to the referendum, the Government took the view that Article 50 is “the only lawful way to withdraw from the EU”, and that any action to withdraw unilaterally, such as by repealing the domestic legislation that gives EU law effect in the UK “would be a breach of international and EU law”.³ Following its inquiry into the process for leaving the EU, the House of Lords European Union Committee agreed that “the process described in Article 50 is the only way of doing so consistent with EU and international law”.⁴

¹ [HC Hansard, 27 June 2016, col 22](#) and [col 27](#).

² [HL Hansard, 27 June 2016, col 1382](#).

³ HM Government, [The Process for Withdrawing from the European Union](#), February 2016, Cm 9216, p 13. Section 3 of the House of Commons Library briefing [Brexit: What Happens Next?](#), 24 June 2016, considers arguments that have been put forward as to whether Article 50 is the only route to leaving the EU.

⁴ House of Lords European Union Committee, [The Process of Withdrawing from the European Union](#), 4 May 2016, HL Paper 138 of session 2015–16, p 5.

The terms of Article 50 are as follows:

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
 2. A Member State which decides to withdraw shall notify the European Council of its intention. 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 for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
 3. 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.
 4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.
- A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
5. 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.

Differing views have been expressed about how a decision to invoke Article 50 should be taken and what the UK's "constitutional requirements" are in this regard. While some maintain that prerogative powers would enable the Prime Minister to take this decision, some legal commentators have suggested that Parliament could have a role, and others have gone further, arguing that prior parliamentary approval would be required before Article 50 could be invoked.

In his first statement in response to the referendum result, David Cameron said he thought it was "right" that a new Prime Minister "takes the decision about when to trigger Article 50 and start the formal and legal process of leaving the EU".⁵ Mr Cameron told the House of Commons on 27 June 2016 that "the triggering of Article 50 is a matter for the British Government", and "a national sovereign decision".⁶ He said he could not guarantee that there would be a vote in the House of Commons, as the arrangements put in place would be for the new Prime Minister and his or her Cabinet to decide.⁷

⁵ Prime Minister's Office, ['EU Referendum Outcome: PM Statement'](#), 24 June 2016.

⁶ [HC Hansard, 27 June 2016, col 36](#) and [col 51](#).

⁷ [ibid, col 40](#).

Dr Alan Renwick, Deputy Director of University College London's Constitution Unit, agreed that "Parliament has no formal say over whether or when Article 50 is invoked, as this lies within the royal prerogative powers that are exercised by government".⁸ However, he also suggested that if Parliament were to pass a motion calling on the Prime Minister not to invoke Article 50, "we might nevertheless expect him (or perhaps, by then, her) to respect that", although the Prime Minister "could claim the authority of the popular vote to justify ignoring such pressure".

David Allen Green (a lawyer and writer who blogs as 'Jack of Kent') suggested that, given the UK's lack of prescriptive constitutional requirements setting out explicitly how to make a decision to exercise a power under an existing treaty, a 'decision' under Article 50(1) could take place in a number of ways in the UK context, some of which would involve a role for Parliament:

- A decision by the Prime Minister in accordance with the 'royal prerogative' (that is, in accordance with the legal fiction that the Prime Minister can exercise powers on behalf of the Crown);
- As above, but the decision being made by the Prime Minister either in consultation with his or her cabinet, or after a vote of Cabinet (or conceivably the same but with consulting the Privy Council instead);
- A decision by the Prime Minister following a resolution or motion in either House of Parliament or by both houses;
- A decision not by the Prime Minister but one embedded somehow in a new act of parliament (or a special statutory instrument or 'order in council'), or a decision made in compliance with an existing statutory instrument or similar regime; or
- Any of the above following consultation with—or even the consent of—the devolved governments of Scotland, Wales and Northern Ireland.⁹

Sionaidh Douglas-Scott, Anniversary Chair in Law at Queen Mary University of London, noted "the assumption so far" that it would be the Prime Minister who would give formal notification under Article 50, using prerogative powers.¹⁰ However, she pointed out that Parliament has a formal role in the ratification of treaties under the Constitutional Reform and Governance Act 2010 and that there would "inevitably" be a role for Parliament in the repeal of the European Communities Act (ECA) 1972. Although the "constitutional requirements are unclear", Douglas-Scott suggested that there would be at least a political requirement for Parliament to have a role:

As there is a large majority of MPs who wish to remain in the EU, the question of who determines whether/when Article 50 should be triggered is certainly relevant.

⁸ Alan Renwick, '[The Road to Brexit: 16 Things You Need to Know About the Process of Leaving the EU](#)', Constitution Unit Blog, updated 24 June 2016.

⁹ David Allen Green, '[Article 50: Where Are We Now?](#)', Jack of Kent Blog, 26 June 2016.

¹⁰ Sionaidh Douglas-Scott, '[Brexit, the Referendum and the UK Parliament: Some Questions about Sovereignty](#)', UK Constitutional Law Association Blog, 28 June 2016.

A couple of factors suggest that Parliament may need to be involved at an early stage. First, we can see a growing constitutional convention that prerogative powers are subject to parliamentary approval, as was evidenced by the Commons vote on Syria in August 2013 [...] Second, given that a Parliamentary majority will be needed to repeal/amend the ECA in any case, and that it may be some time until formal negotiations are opened, by which time there may be a new government, there will at the very least be a political requirement for parliamentary approval—a resolution, or preferably a majority vote. A parliamentary committee such as the European Scrutiny Committee might also wish to take evidence on the matter, thus delaying formal notification.¹¹

Nick Barber (Fellow in Law at Trinity College Oxford), Tom Hickman, (barrister and Reader in Law at University College London), and Jeff King (Senior Lecturer in Law at University College London) have taken the view that the Prime Minister would be unable to issue a declaration under Article 50 “without having first been authorised to do so by an Act of the United Kingdom Parliament”.¹² They argued that where the royal prerogative and statute “are in tension, statute beats prerogative”, and that “the Government cannot take away rights given by Parliament and it cannot undermine a statute”. In their analysis, triggering Article 50 would “cut across” the European Communities Act 1972 and “render it nugatory”, and would remove British citizens’ rights under the European Parliamentary Elections Act 2002 to vote and stand in elections to the European Parliament. They asserted that the Government “cannot remove or nullify these rights without parliamentary approval” as “prerogative power cannot be used to overturn statutory rights”. Barber, Hickman and King therefore concluded that: “Before an Article 50 declaration can be issued, Parliament must enact a statute empowering or requiring the Prime Minister to issue notice under Article 50 of the Treaty of Lisbon, and empowering the Government to make such changes as are necessary to bring about our exit from the European Union”.

Kenneth Armstrong, Professor of European Law at the University of Cambridge, questioned Barber, Hickman and King’s analysis, countering that “surely once you depart from parliamentary sovereignty by holding a referendum, direct democracy trumps representative democracy”.¹³ In his view, “that the withdrawal decision will have an effect on rights and duties which the UK Parliament has enacted by statute does not give Parliament the right to authorise or not to authorise a government to trigger Article 50”, but rather “it simply means that it will be for Parliament to make the necessary domestic legislative changes to give effect to changes in the UK’s international obligations”.

However, others have also argued that the principle of parliamentary sovereignty means that there would have to be parliamentary approval for a decision to invoke Article 50. In a letter to the *Times*, Charles Flint QC drew a contrast between the assumption that notification under Article 50 of the Treaty on European Union could be given without parliamentary approval and the terms of the European Union Act 2011 that “a change to the Treaty on European Union, agreed between member states, would have required approval by both referendum and by act of parliament”.¹⁴ Sir Malcolm Jack, Clerk of the House of Commons between 2006 and 2011,

¹¹ Sionaidh Douglas-Scott, [‘Brexit, the Referendum and the UK Parliament: Some Questions about Sovereignty’](#), UK Constitutional Law Association Blog, 28 June 2016.

¹² Nick Barber, Tom Hickman and Jeff King, [‘Pulling the Article 50 ‘Trigger’: Parliament’s Indispensable Role’](#), UK Constitutional Law Association Blog, 27 June 2016.

¹³ Kenneth Armstrong, [‘Push Me, Pull You: Who’s \[sic\] Hand on the Article 50 Trigger?’](#), UK Constitutional Law Association Blog, 27 June 2016.

¹⁴ *Times*, [‘EU Referendum Question Yields No Answer’](#), 27 June 2016.

endorsed Charles Flint's point, arguing that "prior to any action taken by the Government on Article 50 there should be a decision in Parliament and members should exercise their judgment, as our representatives, on a free vote".¹⁵

Lord Lester of Herne Hill, QC (Liberal Democrat) also argued in a letter to the *Times* that Article 50 made clear that "the decision to leave is subject to the UK's constitutional arrangements", which "in this case do not envisage ministers acting under the prerogative without parliamentary authority".¹⁶ In his view, Article 50 "could only be triggered in accordance with the will of Parliament expressed in an act of parliament". He suggested that if the Government disagreed, "the constitutional issue would need to be resolved by the courts". Writing in the *Guardian*, Geoffrey Robertson QC agreed that "the UK's most fundamental constitutional requirement is that there must first be the approval of its Parliament".¹⁷ He suggested that "MPs have every right, and indeed a duty if they think it best for Britain, to vote to stay".¹⁸

In an article in the *Times*, Lord Pannick, QC (Crossbench) following Barber, Hickman and King's reasoning, argued that a notification under Article 50 "would start the process by which that legislation [the European Communities Act 1972] would become a dead letter", that "the notification commits this country to new laws that will replace the 1972 Act" and that "therefore parliamentary approval is required for the Article 50 notification".¹⁹ In response to Lord Pannick's article, Lord Millett, QC (a former Lord of Appeal, currently on leave of absence from the House of Lords) argued that this interpretation "confuses international law with our domestic law".²⁰ In his view:

The [EU] treaties were not enacted and do not form part of our domestic law. They were given effect in domestic law by the 1972 Act. The exercise of our treaty rights under Article 50 will have no effect in itself in our domestic law. To complete the process of disengagement, it will be necessary to repeal the 1972 Act. But the exercise of our rights under Article 50 is a matter for the royal prerogative, since it affects the position in international law and not in domestic law.

Nevertheless, Lord Millett believed there was a political rationale for seeking parliamentary approval, since "in practice, however, it would be politically impossible to implement Article 50 without the consent of the House of Commons".

During the House of Lords debate on the Prime Minister's parliamentary statement about the referendum outcome, Lord Wallace of Tankerness, QC (Leader of the Liberal Democrats), Lord Lester of Herne Hill and Lord Elystan-Morgan (Crossbench) all asked what Parliament's role would be in any decision to trigger Article 50.²¹ Baroness Stowell said that it was "too early" for her to say, but that she saw it as "an important part of the process that Parliament has a serious opportunity in this House to debate and express its views".²²

¹⁵ *Times*, ['Parliamentary Sovereignty and Article 50'](#), 28 June 2016.

¹⁶ *ibid.*

¹⁷ Geoffrey Robertson, ['How to Stop Brexit: Get Your MP to Vote it Down'](#), *Guardian*, 27 June 2016.

¹⁸ Robertson suggested that a vote could take place on repealing the European Communities Act 1972, which he argued would have to happen "before Brexit can be triggered".

¹⁹ David Pannick, ['Why Giving Notice of Withdrawal from the EU Requires Act of Parliament'](#), *Times*, 30 June 2016.

²⁰ *Times*, ['Article 50 and the EU Referendum Decision'](#), 4 July 2016.

²¹ *HL Hansard*, 27 June 2016, cols 1385, 1396 and 1397.

²² *ibid.*, col 1387.

On 3 July 2016, the law firm Mishcon de Reya issued a press release stating that it was taking “legal steps” on behalf of a group of unnamed clients “to ensure the UK Government will not trigger the procedure for withdrawal from the EU without an Act of Parliament”.²³ The firm said it had been in correspondence with Government lawyers since 27 June 2016 on behalf of its clients “to seek assurances that the Government will uphold the UK constitution and protect the sovereignty of Parliament in invoking Article 50”. It argued that “if the correct constitutional process of parliamentary scrutiny and approval is not followed then the notice to withdraw from the EU would be unlawful”. It noted that it had retained Lord Pannick and Tom Hickman (authors of two of the articles noted above), among others, to act as counsel.

David Allen Green speculated that the legal remedy sought by Mishcon de Reya could be a ‘declaration’ on what Article 50(1) requires as a matter of English (and Welsh) law.²⁴ He pointed out that in this, there would have to be similar actions in Scotland and Northern Ireland, as it could not be assumed “that all UK jurisdictions will follow what a London court says on this”. He suggested that the litigation would go no further if the Government stated that an Act of Parliament would be required before invoking Article 50. However, were the action to proceed, and permission were granted to bring the claim, then there would be the prospect of a public hearing and then a reasoned decision on what is required by Article 50(1).

It has been suggested that the UK could withdraw from the EU without activating the Article 50 process if Parliament repealed the European Communities Act 1972.²⁵ Bernard Jenkin, Conservative MP for Harwich and North Essex, and chair of the House of Commons Public Administration and Constitutional Affairs Committee, wrote that in his view, “to leave the EU, there has to be an act of parliament: to repeal the 1972 European Communities Act (ECA)”.²⁶ He regarded a decision about how and when to use Article 50 as “a secondary matter”, and said that “it is at least debateable that it is necessary at all”, since he believed that “no international court is going to insist that the UK government must submit the UK to a process laid down in a treaty the voters have just rejected in a referendum”.

Both political and legal objections to this line of argument have been advanced. The Government argued, in its paper on the withdrawal process published prior to the referendum, that “simply repealing the domestic legislation that gives the EU law effect in the UK” would be a breach of the UK’s international obligations which would create a “hostile environment” in which to begin negotiating the UK’s future relations with EU and non-EU states.²⁷ Dominic Grieve (Conservative MP for Beaconsfield and former Attorney General) suggested that such a course of action would mean that “no reliance could henceforth be placed on our honouring any international obligation”.²⁸ Sionaidh Douglas-Scott argued that an attempt to use national legislation to revoke membership of the EU would rely on a mistaken concept of sovereignty:

It conflates parliamentary sovereignty with external sovereignty, suggesting that the UK can use Parliament and domestic law to govern its relationships with other states and

²³ Mishcon de Reya, ‘[Article 50 Process on Brexit Faces Legal Challenge to Ensure Parliamentary Involvement](#)’, 3 July 2016.

²⁴ David Allen Green, ‘[The Mishcon de Reya Legal Challenge on Article 50—Some Thoughts](#)’, Jack of Kent Blog, 3 July 2016.

²⁵ The House of Lords European Union Committee noted such suggestions in its report, *The Process of Withdrawing from the European Union*, 4 May 2016, HL Paper 138 of session 2015–16, p 4.

²⁶ Bernard Jenkin, ‘[Using Article 50 to Quit the EU Risks Making a Mockery of Britain’s Decision](#)’, *Civil Service World*, 29 June 2016.

²⁷ HM Government, *The Process for Withdrawing from the European Union*, February 2016, Cm 9216, p 13.

²⁸ Dominic Grieve, ‘[Brexiters are Proposing an Illegal EU Exit](#)’, *The Brief*, 17 June 2016.

international organisations under treaties, because of some misplaced idea of parliamentary sovereignty. That is not how national sovereignty functions in the international arena. States observe treaties and join international organisations because they know that in ceding some freedom in certain areas, they are actually gaining a greater benefit from pooling sovereignty or accepting certain obligations. There are rules set out in international law, and in treaties, as to how these obligations function and states cannot simply assert parliamentary sovereignty to circumlocute them.²⁹

3. Overseeing the Negotiation Process

Formal negotiations between the UK and the European Union would not begin until the UK had made a notification under Article 50 of its decision to withdraw from the EU. Article 50 provides for a withdrawal agreement to be negotiated, but it has been suggested that other negotiations—to agree on the UK's future relationship with the EU, and to agree trade deals with countries outside the EU—might also run in parallel, or could follow the conclusion of a withdrawal agreement.³⁰ Parliament's involvement in overseeing or scrutinising such negotiations has not yet been set out in great detail.

David Cameron announced the creation of a new EU unit in Whitehall on 27 June, bringing together officials and policy expertise from across government departments and reporting to the Cabinet.³¹ He explained that Oliver Letwin, Chancellor of the Duchy of Lancaster, would listen to the views and representations of MPs and “make sure that they are fully put into this exercise”. Yvette Cooper (Labour MP for Normanton, Pontefract and Castleford) dismissed the Prime Minister's suggestion that MPs “should just go and have an informal chat” with Mr Letwin as “extremely weak”.³² She recommended that broader arrangements should be put in place, including a cross-party Joint Committee to look at the UK's future relationship with the EU. Liam Byrne (Labour MP for Birmingham, Hodge Hill) also argued that parliamentary arrangements should be strengthened to provide oversight of the arrangements for leaving the EU.³³ In response, Mr Cameron agreed that there was a role for Parliament and the House of Commons in “set[ting] out and examin[ing], in an objective and fact-based way, the alternative models for leaving the European Union”, and said that he was open to ideas from members about whether a new Joint Committee was needed, or whether it suited existing select committees.³⁴

Prior to the referendum, the House of Lords European Union Committee took evidence about Parliament's role in overseeing any future withdrawal negotiations. Sir David Edward, a former judge of the Court of Justice of the European Union and Professor Emeritus at the School of Law, Edinburgh University, said it would be for the UK to determine “what degree of say Parliament has over the acceptability or non-acceptability of the agreement”.³⁵ Professor Derek Wyatt, Emeritus Professor of Law, Oxford University, told the Committee that a political

²⁹ Sionaidh Douglas-Scott, [‘Brexit, the Referendum and the UK Parliament: Some Questions about Sovereignty’](#), UK Constitutional Law Association Blog, 28 June 2016.

³⁰ eg HM Government, [‘The Process for Withdrawing from the European Union’](#), February 2016, Cm 9216, p 8; and Alan Renwick, [‘The Road to Brexit: 16 Things You Need to Know About the Process of Leaving the EU’](#), Constitution Unit Blog, updated 24 June 2016.

³¹ [HC Hansard, 27 June 2016, col 23.](#)

³² [ibid, col 34.](#)

³³ [ibid, col 41.](#)

³⁴ [ibid.](#)

³⁵ House of Lords European Union Committee, [‘The Process of Withdrawing from the European Union’](#), 4 May 2016, HL Paper 138 of session 2015–16, p 18.

argument could be made “for a high degree of parliamentary involvement in the withdrawal process”.³⁶ The Committee concluded that: “Should the UK decide to withdraw from the EU, the UK Parliament should have enhanced oversight of the negotiations on the withdrawal and the new relationship, beyond existing ratification procedures”.³⁷ The Committee said it would “consider how best to achieve that, should the need arise”.

Following the referendum result, Lord Boswell of Aynho, chair of the Committee, said that Parliament “must be fully involved” in the withdrawal process, to make sure that it was “transparent” and that “the Government’s long-term goals have real democratic legitimacy”.³⁸ He asked Baroness Stowell to confirm that both Houses of Parliament would be “informed and enabled so that they may make a full and constructive contribution” to the process of negotiating withdrawal and developing a future relationship with the EU.³⁹ Baroness Stowell agreed that the “expertise and knowledge” in the House of Lords would make “a strong contribution” to the process, but said she was “not in a position” to provide detail on how this would work.⁴⁰

Alan Renwick, of the Constitution Unit, stated that Parliament would “expect to be updated regularly on the negotiations and to have its views heard, perhaps through votes on specific issues”.⁴¹ Lord Lisvane (a Crossbench Member of the House of Lords, who as Sir Robert Rogers, was Clerk of the House of Commons from 2011 to 2014) speculated prior to the referendum on what the triggering of Article 50 might mean in terms of parliamentary time and activity:

A senior cabinet minister would need to be appointed to lead the negotiation process. There would be ministerial statements most days and there would probably be one or two urgent questions each day [...] because of course the issues being negotiated would cover every aspect of the work of Parliament. There may also be pressure for a dedicated question time on the whole business of negotiating the exit deal.

The immediately relevant select committees—Foreign Affairs, BIS, European Scrutiny—will, of course, swing into action. But all the departmental committees will want a finger in the pie and there may be some calls, certainly in the Commons, to set up a sort of super-committee to oversee the whole thing.

There will also be quite a lot of pressure to have parliamentary approval at different stages of the process. This could complicate the negotiations if they had to pause for the approval of Parliament at each stage.⁴²

The Constitution Unit added that in the absence of a super-committee of the type suggested by Lord Lisvane, the House of Commons European Scrutiny Committee and the House of Lords

³⁶ *ibid.*

³⁷ *ibid.*, p 19.

³⁸ House of Lords European Union Committee, [‘EU Committee Chairman Comments on EU Referendum Result’](#), 24 June 2016.

³⁹ [HL Hansard, 27 June 2016, col 1389.](#)

⁴⁰ *ibid.*

⁴¹ Alan Renwick, [‘The Road to Brexit: 16 Things You Need to Know About the Process of Leaving the EU’](#), Constitution Unit Blog, updated 24 June 2016.

⁴² Lord Lisvane, [‘In the Event of a Leave Vote Brexit Would Dominate Westminster for Years’](#), Constitution Unit Blog, 28 April 2016.

European Union Committee would “face substantial additional burdens in ensuring effective scrutiny”.⁴³

Ruth Fox of the Hansard Society echoed several of Lord Lisvane’s points about the use of questions in the Chamber to hold ministers to account, and about parliamentary committees’ involvement in scrutiny:

The scrutiny work that lies ahead will be detailed, complex and technical. MPs already struggle to effectively scrutinise financial and delegated legislation and this will add to the burden. Serious consideration therefore needs to be given to a bi-cameral solution to the scrutiny process given that peers tend to have greater appetite for and experience of such scrutiny. It would be in both Houses’ interest not to duplicate work.

In the Commons a regular ministerial question time may well be demanded, debates about the way ahead will be a regular feature and the urgent question is likely to be a key tool as backbenchers try to hold ministers to account. Similar provisions for question time and debates are likely to be requested in the House of Lords.

A stand-alone select committee or a joint committee of both Houses may be required to monitor the negotiations and decision-making, although existing departmental select committees will want to oversee their own particular departmental policy area. As a consequence we will likely see greater efforts at joint working across committees. Consideration will need to be given to how to knit together the new scrutiny work with that of existing committees that are tasked with scrutinising EU legislation, specifically the European Scrutiny Committee in the Commons and the EU Committee in the Lords.⁴⁴

4. Ratifying Agreements

Parliament would have a statutory role in ratifying an eventual withdrawal agreement and any other international agreements arising from the negotiation process(es) if they were subject to the usual procedure for ratifying treaties. Under section 20 of the Constitutional Reform and Governance Act 2010, a treaty may not be ratified unless the Minister responsible has:

- Laid a copy before Parliament;
- Published it;
- Allowed a period of 21 sitting days (beginning with the day after that on which the treaty was laid) during which either House may resolve that the treaty should not be ratified.⁴⁵

The Minister may extend the scrutiny period by up to 21 sitting days by publishing and laying before Parliament a statement to that effect before the original period expires; this can be done more than once.⁴⁶

⁴³ Nicholas Wright and Oliver Patel, [The Constitutional Consequences of Brexit: Whitehall and Westminster](#), Constitution Unit, 4 May 2016.

⁴⁴ Ruth Fox, ‘[It’s Brexit... So What Now for Parliament?](#)’, Hansard Society Blog, 24 June 2016.

⁴⁵ House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#), 2015, para 0.58.

⁴⁶ *ibid*, para 10.59.

After 21 sitting days (or the extended scrutiny period if applicable) has elapsed, the treaty may be ratified if neither House has resolved that the treaty should not be ratified. If the House of Commons resolves against the ratification of the treaty, the minister must lay a statement before Parliament explaining why the Government believes the treaty should nevertheless be ratified. This marks the start of a further period of 21 sitting days. The treaty can be ratified at the end of this period, unless the House of Commons has resolved again that ratification should not happen. In this case, the Government can lay its statement again, triggering a further period of 21 sitting days. The House of Commons Library has observed that this process could continue to be repeated, “potentially blocking a treaty indefinitely”.⁴⁷ The same does not apply if the House of Lords passes a resolution that the treaty should not be ratified. In this case, unless the House of Commons has also resolved against ratifying the treaty, the Government can proceed with ratification after laying a statement before Parliament explaining why the minister believes the treaty should be ratified. Neither House can amend a treaty as part of this process.

Under section 22 of the 2010 Act, the normal procedure outlined in section 20 “does not apply to a treaty if a Minister of the Crown is of the opinion that, exceptionally, the treaty should be ratified without the requirements of that section having been met”. In such a case, either before or as soon as practicable after the treaty has been ratified, it must be published and laid before Parliament by the minister, along with a statement explaining why the treaty is being ratified outside this process.⁴⁸ However, this exceptional procedure cannot be used if either House has already passed a resolution against ratifying the treaty (section 22(2)).

In the assessment of Dr Alan Renwick of University College London's Constitution Unit, the House of Commons would have to take account of political factors, public opinion and timing when weighing up whether to block the ratification of an eventual agreement:

[...] The large majority of MPs currently favour staying in the EU. If they want a post-Brexit deal involving substantial integration with the EU—perhaps akin to Norway's arrangements—they could potentially have the power to reject any deal that does not provide that. Whether they will do so will depend in part on the political situation and the state of public opinion at the time, both of which are highly unpredictable. It will depend also on the withdrawal timetable: if the two-year window is near to closing, rejecting the deal on the table could be very risky.⁴⁹

He has also suggested that a scenario in which the Government and Parliament were “at loggerheads over the terms of the deal” could be one in which a second referendum became “conceivable”, although he maintained that “we should presume that leave means leave”.⁵⁰

Under the terms of Article 50, the UK's membership would automatically cease two years from the date that the UK gave formal intention of its notification to leave the EU if no withdrawal agreement had come into force by that point, although the two-year period could be extended on the unanimous agreement of all EU member states.

⁴⁷ House of Commons Library, [Parliament's New Statutory Role in Ratifying Treaties](#), 8 February 2011, p 2.

⁴⁸ House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#), 2015, para 10.61.

⁴⁹ Alan Renwick, [The Road to Brexit: 16 Things You Need to Know About the Process of Leaving the EU](#), Constitution Unit Blog, updated 24 June 2016.

⁵⁰ Alan Renwick, [The Road to Brexit: 16 Things You Need to Know About the Process of Leaving the EU](#), Constitution Unit Blog, updated 24 June 2016.

The treaty ratification procedure outlined above does not apply to treaties which amend the Treaty on European Union (TEU) or the Treaty on the Functioning of the European Union (TFEU). The European Union Referendum Act 2011 provides that an act of parliament would be required in the case of any treaty which sought to amend or replace TEU or TFEU.⁵¹ In addition, a referendum would have to be held if a proposed amendment of TEU or TFEU sought to transfer power or competence from the UK to the EU. As noted above, in a letter to the *Times*, Charles Flint QC pointed out the contrast between, on the one hand, the assumption that the UK could launch the process to withdraw from the treaties without parliamentary approval, and on the other hand, the requirement under the European Union Act 2011 that the treaties cannot be amended without parliamentary approval.⁵²

5. Repealing and Reviewing Domestic Legislation

As part of the process of leaving the EU, decisions would need to be made about how to deal with existing domestic legislation passed to enable EU law to have effect in the UK, a process which the House of Lords European Union Committee has described as “domestic disentanglement from EU law”.⁵³ Parliament would have an important role to play in this process. Prior to the referendum, the Government stated that:

Withdrawal would involve considerable implications for UK domestic legislation. The UK Parliament and the devolved administration would need to consider how to replace EU laws, including how to maintain a robust legal and regulatory framework where that had previously depended on EU laws. Sanctions against countries such as North Korea, and for some terrorist groups or individuals, are generally adopted at the EU level rather than domestically. Many financial regulations, such as those governing prudential requirements for banks and investment funds, have direct effect from EU law.⁵⁴

It is the European Communities Act 1972 (ECA) that “defines the legal relationship between the two otherwise separate spheres” of national and EU law.⁵⁵ The House of Commons European Scrutiny Committee summarised its effects as follows:

[...] section 2(1) means that provisions of EU law that are directly applicable or have direct effect, such as EU Regulations or certain articles of the EU Treaties, are automatically and “without further enactment” incorporated and binding in national law without the need for a further Act of Parliament.

[...] Section 2(2), by contrast, applies to measures of EU law that are neither directly applicable nor have direct effect. This provision makes it possible to give effect in national law to such measures by secondary, or delegated, legislation, such as statutory instruments; importantly, such secondary legislation can amend an Act of Parliament

⁵¹ Foreign and Commonwealth Office, [European Union Act 2011: Explanatory Notes](#), July 2011, para 20. The European Union (Amendment) Act 2008 had previously required that any amendment to TEU, TFEU or the Treaty Establishing the European Atomic Energy Community should be approved by an Act of Parliament before the UK could ratify the amendment concerned. The 2008 Act still applies in respect of the Treaty Establishing the European Atomic Energy Community.

⁵² *Times*, ‘[EU Referendum Question Yields No Answer](#)’, 27 June 2016.

⁵³ House of Lords European Union Committee, [The Process of Withdrawing from the European Union](#), 4 May 2016, HL Paper 138 of session 2015–16, p 19.

⁵⁴ HM Government, [The Process for Withdrawing from the European Union](#), February 2016, Cm 9216, p 20.

⁵⁵ House of Commons European Scrutiny Committee, [The EU Bill and Parliamentary Sovereignty](#), 7 December 2010, HC 633-I of session 2010–12, para 11.

(section 2(4)) since the delegated legislative power includes the power to make such provision as might be made by Act of Parliament.

[...] Section 2(4) and 3(1) give effect to the doctrine of the supremacy of EU law, as interpreted by the Court of Justice, over national; and where EU law is in doubt, requires UK courts to refer the question to the Court of Justice.⁵⁶

Some EU law measures have been given effect in national law through statutory instruments made under section 2(2) of the ECA; other measures have been transposed into national law through other legislation, for example through secondary legislation made under parent acts other than the ECA. Repealing the ECA would mean that all directly applicable and directly effective provisions of EU law would automatically cease to apply, as would all secondary legislation implementing EU law via ECA section 2(2), but all primary legislation transposing EU law into domestic law would remain unaffected.⁵⁷ Richard Gordon QC and Rowena Moffatt of the Constitution Society have stated that, given the variety of different routes by which EU law has been incorporated into domestic law, “there will, to say the least, be some complexity in devising legislative drafting that is adequate to enable proper scrutiny to be given to the myriad amendments and repeals that will be needed [...] to retain those parts of EU law that the government wishes to retain”.⁵⁸ Likewise, Ruth Fox of the Hansard Society warned of the need to avoid “mistakes and anomalies that plunge people into grey areas of legal uncertainty”.⁵⁹

In its investigation into the process for leaving the EU, the House of Lords European Union Committee concluded that: “The Government of the day might well wish to maintain a significant amount of EU law in force in national law, because it would be in the national interest to do so”.⁶⁰ Equally, as Lord Lisvane has pointed out: “there will be a huge menu of policy areas [...] that will be up for discussion. In all sorts of areas, the question will be asked: ‘Just because something is done in a particular way already, do we want to go on doing it that way?’”.⁶¹

The House of Commons Library briefing [Exiting the EU: Impact in Key UK Policy Areas](#) considers in greater detail how different policy areas would be affected by the UK's leaving the EU, and what the legislative impact might be. In summary, it suggests that: “In some areas, the environment for example, where the UK is bound by other international agreements, much of the context of EU law would probably remain. In others, it might be expedient for the UK to retain the substance of EU law, or for the Government to remove EU obligations from UK statutes”.⁶² Depending on the nature of the UK's future relationship with the EU, there might be a requirement to keep some EU measures in place. For example, members of the European Economic Area implement EU legislation covering the four freedoms—the free movement of goods, services, persons and capital.⁶³

⁵⁶ House of Commons European Scrutiny Committee, [The EU Bill and Parliamentary Sovereignty](#), 7 December 2010, HC 633-I of session 2010–12, paras 12–16.

⁵⁷ Richard Gordon QC and Rowena Moffatt, [Brexit: The Immediate Legal Consequences](#), Constitution Society, 20 May 2016, p 23.

⁵⁸ *ibid*, p 22.

⁵⁹ Ruth Fox, [‘It’s Brexit... So What Now for Parliament?’](#), Hansard Society Blog, 24 June 2016.

⁶⁰ House of Lords European Union Committee, [The Process of Withdrawing from the European Union](#), 4 May 2016, HL Paper 138 of session 2015–16, p 19.

⁶¹ Lord Lisvane, [‘In the Event of a Leave Vote Brexit Would Dominate Westminster for Years’](#), Constitution Unit Blog, 28 April 2016.

⁶² House of Commons Library, [Exiting the EU: Impact in Key UK Policy Areas](#), 12 February 2016, p 11.

⁶³ European Free Trade Association, [‘EEA Agreement’](#), accessed 5 May 2016.

It has also been suggested that legislation might be necessary regarding “the precedent value of European court case law and its status in areas where a particular area of EU law was sought to be preserved in a domestic context”.⁶⁴

The House of Commons Library has summarised various options for dealing with the ECA and other legislation:

There might be some over-arching legislation saying, for example, that all UK laws implementing any EU Directive were repealed (perhaps with specified exceptions) or that they would all remain in force (again perhaps with exceptions). If the ECA were repealed, any secondary legislation based on s2(2) ECA would need to be saved from lapsing if it was to continue in force. EU Regulations, which are directly applicable (ie they do not need further implementation in the UK to come into force) will cease to have effect if the UK were to repeal the ECA.

There is no reason why EU-based UK law could not remain part of UK law, but the Government would have to make sure it still worked without the UK being in the EU.

The Government would probably come up with a mechanism for allowing changes to be made to secondary legislation (statutory instruments) made under the ECA or other ‘parent’ acts. There could also be general amendments such as replacing references to ‘the Commission’ or ‘Council’ with references to ‘the Secretary of State’.⁶⁵

A number of observers have commented on the size and complexity of this task, and the amount of parliamentary, ministerial and civil service time likely to be required. The House of Lords European Union Committee suggested that the “review of the entire corpus of EU law as it applies nationally and in the devolved nations” would “take years to complete”.⁶⁶ The Constitution Unit has expressed the view that “the size of the task [...] could overwhelm Parliament’s capacity to exercise effective legislative control”.⁶⁷ In a separate blog post, Alan Renwick of the Constitution Unit estimated that the “task of reviewing 40 years of EU and domestic legislation could take five or ten years”.⁶⁸ Sir Paul Jenkins, former Treasury Solicitor and Head of the Government Legal Service between 2006 and 2014, described the process of “unravelling 40 years of an entrenched constitutional position” as the “largest legal, legislative and bureaucratic project in British history except for a world war”.⁶⁹

Baroness Smith of Basildon, Leader of the Opposition in the House of Lords, asked whether the Government had considered a timescale for the new legislation required, and whether the current legislative programme would be withdrawn.⁷⁰ She also raised the fact that some legislation currently before Parliament, such as the Investigatory Powers Bill, was “linked to our co-operation with other EU countries”. In response, Baroness Stowell said that the

⁶⁴ Richard Gordon QC and Rowena Moffatt, [Brexit: The Immediate Legal Consequences](#), Constitution Society, 20 May 2016, p 8.

⁶⁵ House of Commons Library, [Brexit: What Happens Next?](#), 24 June 2016, p 13.

⁶⁶ House of Lords European Union Committee, [The Process of Withdrawing from the European Union](#), 4 May 2016, HL Paper 138 of session 2015–16, p 19.

⁶⁷ Nicholas Wright and Oliver Patel, [The Constitutional Consequences of Brexit: Whitehall and Westminster](#), Constitution Unit, 4 May 2016.

⁶⁸ Alan Renwick, [The Road to Brexit: 16 Things You Need to Know About the Process of Leaving the EU](#), Constitution Unit Blog, updated 24 June 2016.

⁶⁹ Matt Ross, [Brexit Will Be “Largest Legal, Legislative and Bureaucratic Project in British History”, Says Former UK Treasury Solicitor](#), Global Government Forum, 24 June 2016.

⁷⁰ [HL Hansard, 27 June 2016, cols 1383–4](#).

Government “must very much continue with [its] legislative programme”, for which it had a mandate from the 2015 general election.⁷¹

Ruth Fox of the Hansard Society has speculated that this work could once again place Parliament's procedures for scrutinising and approving delegated legislation under the spotlight:

Given the volume of legislation involved, in practice much of the heavy lifting will probably have to be done via delegation and through statutory instruments. This will empower the executive not Parliament and, given the complete inadequacies of Commons procedures for scrutinising delegated legislation, will frustrate MPs, not least because they do not currently have the power of amendment. The passage of this legislation may also be unduly complicated and time consuming given the need to determine the EVEL [English votes for English laws] designation of each new SI for scrutiny purposes.

The process may give rise, once again, to questions about the relationship between the Commons and the Lords. As things stand, the Upper House retains its right to reject statutory instruments, but does so very rarely. If the government does not enact the proposals in the Strathclyde Review then it is not inconceivable that the two Houses could clash on the detail of these SIs in future if peers feel that errors are being made in the review and amendment process. Delegated legislation, unlike primary legislation is also subject to judicial review so the door will remain open to potential legal challenges if problems arise.⁷²

As mentioned above, if the UK had triggered Article 50, then its membership of the EU would automatically cease two years from the date that the UK gave formal intention of its notification to leave the EU if no withdrawal agreement had come into force by that point, although the two-year period could be extended on the unanimous agreement of all EU member states. These provisions of Article 50 do not depend on Parliament approving domestic legislative changes associated with leaving the EU.

⁷¹ [ibid. col 1387.](#)

⁷² Ruth Fox, [‘It’s Brexit... So What Now for Parliament?’](#), Hansard Society Blog, 24 June 2016.

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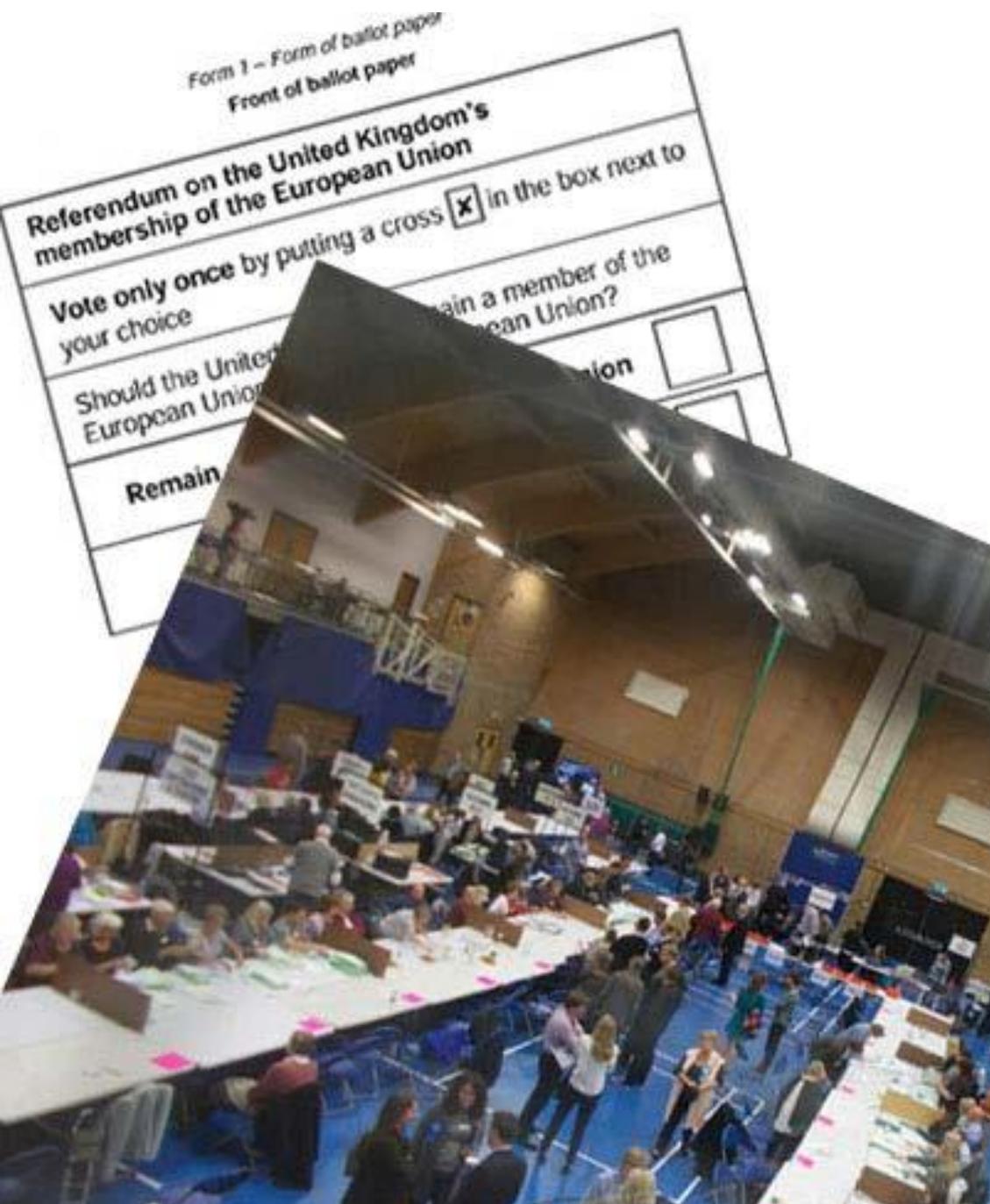
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Brexit: what happens next?

By Vaughne Miller and
Arabella Lang

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4 Brexit: what happens next?

05 May 2016.

Summary

On 23 June 2016 the UK voted in favour of leaving the European Union. Turnout was 72.2% and Leave won 51.9% of the vote across the UK. Remain won 48.1% of the vote.

The process for withdrawing from the EU is set out in Commons Briefing Paper 7551, [Brexit: how does the Article 50 process work?](#) That paper describes the procedures under Article 50 of the Treaty on European Union (TEU).

This paper considers various questions about UK withdrawal from the EU and what is likely to happen in the coming weeks and months. The issues include the method of leaving the EU, who will be negotiating and how, continuing parliamentary scrutiny of EU business and the withdrawal negotiations, and the implications of Brexit for Scotland and Gibraltar.

It supplements other Library notes published or up-dated recently which consider the outcome of the EU referendum:

- [Financial services after the referendum](#)
- [Brexit: how did the UK vote?](#)
- [Reading list on UK-EU relations 2013-16: reform, renegotiation, withdrawal](#)
- [Leaving the EU: How might people currently exercising free movement rights be affected?](#)
- [Tax after the EU referendum](#)
- [Brexit: how will it affect transport?](#)
- [Outcome of the EU Referendum](#)
- [Leaving the EU: Parliament's Role in the Process](#)
- [European Union Referendum 2016](#)

1. What will the Government do now?

1.1 Must the Government respect the vote to leave?

No, but politically it is highly unlikely that the Government would ignore the result.

David Allen Green, writing in the [Financial Times on 14 June](#), speculated about possible reasons for the Government not respecting a vote to leave:

What happens next in the event of a vote to leave is therefore a matter of politics not law. It will come down to what is politically expedient and practicable. The UK government could seek to ignore such a vote; to explain it away and characterise it in terms that it has no credibility or binding effect (low turnout may be such an excuse). Or they could say it is now a matter for parliament, and then endeavour to win the parliamentary vote. Or ministers could try to re-negotiate another deal and put that to another referendum. There is, after all, a tradition of EU member states repeating referendums on EU-related matters until voters eventually vote the “right” way.

However, other commentators thought that not respecting an out-vote would be political suicide.

A [parliamentary petition](#) calling for a second referendum was first set up on 25 November 2015. It stated:

We the undersigned call upon HM Government to implement a rule that if the remain or leave vote is less than 60% based on a turnout less than 75% there should be another referendum.

After the referendum, signatures increased dramatically. At the time of writing, there were 4,028,918 signatures.

1.2 What is the procedure for the resignation of the Prime Minister?

David Cameron has announced that he will resign as Prime Minister will not lead the UK in the withdrawal negotiations envisaged under the EU Treaties. His resignation will take place once a new Conservative Party leader has been elected. He thought that a new Prime Minister could be in place by the beginning of October. (Prime Minister’s Office, [EU referendum outcome: PM statement](#), 24 June 2016)

On 10 May 2007, Tony Blair announced his decision to stand down from the leadership of the Labour Party, triggering a leadership contest. He also announced that he would resign as Prime Minister on 27 June 2007.

The Cabinet Manual states that:

Where a Prime Minister chooses to resign from his or her individual position at a time when his or her administration has

an overall majority in the House of Commons, it is for the party or parties in government to identify who can be chosen as the successor. ([*The Cabinet Manual*](#), First Edition, October 2011, para 2.18)

This paragraph points to the following footnote:

Margaret Thatcher's resignation statement on 22 November 1990 said that she had informed Her Majesty the Queen that she did not intend to contest the second ballot of the election for leadership of the Conservative Party and gave notice of her intention to resign as Prime Minister as soon as a new leader had been elected. She formally tendered her resignation on 28 November 1990. On 10 May 2007 Tony Blair announced his intention to resign once a new leader of the Labour Party had been elected. He formally tendered his resignation on 27 June 2007. Following the 2010 general election, which took place on 6 May, Gordon Brown resigned on 11 May, by when it was clear that David Cameron should be asked to form a government.

2. What will happen in the EU and the UK in the coming months?

The UK [‘deal’](#) agreed in February 2016 on the UK in the EU will not come into force.

Although the UK has voted to leave the EU, from 24 June until the point of departure from the EU the UK is still a member of the EU. Nothing about the UK’s EU membership will change initially. Politically, however, there will be a great deal of activity in the EU institutions, in other EU Member States and in the UK.

2.1 EU action

On the one hand, the EU will continue with ‘business as usual’. The institutions will continue to discuss and adopt laws and the EU Court will continue to give preliminary rulings and decide on alleged breaches of EU law, including in cases involving the UK.

Emergency meetings

Brexit will undoubtedly be on the agenda of meetings to come and the EU institutions have held emergency meetings to consider the implications of Brexit. The Conference of Presidents (the EP President and the chairmen of the political groups in the EP) met early on 24 June. European Council President Donald Tusk, EP President Martin Schulz, Commission President Jean-Claude Juncker and Mark Rutte (holder of the EU Council’s rotating Presidency) also met on 24 June. A statement issued after the meeting said that:

We now expect the United Kingdom government to give effect to this decision of the British people as soon as possible, however painful that process may be. Any delay would unnecessarily prolong uncertainty. We have rules to deal with this in an orderly way. Article 50 of the Treaty on European Union sets out the procedure to be followed if a Member State decides to leave the European Union. We stand ready to launch negotiations swiftly with the United Kingdom regarding the terms and conditions of its withdrawal from the European Union. Until this process of negotiations is over, the United Kingdom remains a member of the European Union, with all the rights and obligations that derive from this. According to the Treaties which the United Kingdom has ratified, EU law continues to apply to the full to and in the United Kingdom until it is no longer a Member.¹

Martin Schulz said:

“Now is the time for us to behave seriously and responsibly. David Cameron has his responsibilities for his country, we have our responsibilities for the future of the EU. You can see what is happening to sterling on the markets. I don't want the same thing to happen to the euro”.²

¹ Full statement is at <http://www.consilium.europa.eu/en/press/press-releases/2016/06/24-joint-statement-uk-referendum/>

² [EUObserver, 24 June 2016.](#)

On 25 June the foreign ministers of the founding six Member States – Germany, France, Italy, Luxembourg, Belgium, and the Netherlands – met in Berlin.

European Commission

The UK's European Commissioner, Lord Jonathan Hill, [announced](#) on 25 June that he would stand down in an “orderly handover”. His resignation will take effect from effect on 15 July and Jean-Claude Juncker has given his financial services portfolio to the Latvian Commission Vice-President, Valdis Dombrovskis.

Under the EU Treaties, there is one Commissioner per Member State in the Commission, so Mr Juncker has suggested a temporary UK replacement should be appointed.³ David Cameron [said](#) on 27 June:

We should try to seek a replacement, because the fact is that we are a full, contributing and paying member of this organisation until we leave, and we should therefore have a commissioner, although I am sure that will be a challenge.

European Parliament

The European Parliament held an extraordinary plenary session on 28 June. The plenary debated a [resolution](#) assessing the outcome of the UK referendum and describing what the EU institutions, especially the EP, would do next.⁴ Mr Schulz said that under Article 50 the EP would be “fully involved” in the next steps and underlined that the EP would play an “active role” in the process. The resolution called on the UK Government to enable a “swift and coherent implementation of the withdrawal procedure” by activating Article 50 TEU. According to the resolution, David Cameron’s notification of the outcome of the referendum to the European Council of 28-29 June 2016 would “launch the withdrawal procedure”. However, this was not the case; notification is likely to be formal and in writing.⁵

Some EP groups have also asked David Cameron to invoke Article 50 TEU sooner rather than later, although there is no Treaty obligation on the PM to do so.⁶

The EP asked the Council to change the order of its presidencies so the UK would not take on the EU presidency in the middle of withdrawal negotiations, and also invited the Council to appoint the Commission as the negotiator under Article 50 TEU.

European Council

The European Council met on 28 June and discussed the outcome of the UK referendum. Donald Tusk said ahead of the meeting that “while respecting the will of the UK voters, we also have to respect our treaties; and, according to them, it is the British government who initiates the process of exit from the EU. And this is the only legal way

³ See [Commission press release, 25 June 2016](#).

⁴ Summary of debate at <http://www.europarl.europa.eu/news/en/news-room/20160628IPR34006/MEPs-call-for-swift-Brexit-to-end-uncertainty-and-for-deep-EU-reform>. The text was approved by 395 to 200, with 71 abstentions.

⁵ See section 2.2 of CBP 7551, Brexit: how does the Article 50 process work?

⁶ See also [EUObserver, 20 June 2016](#).

we have". Mr Tusk emphasised that negotiations would not start without notification, dispelling any notion that informal withdrawal talks might precede the formal negotiations.⁷

David Cameron explained the situation in the UK following the referendum, and this was followed by a first exchange of views. He also confirmed and received agreement from the other Member States that his successor would "trigger without delay" Article 50 TEU.⁸ Jean-Claude Juncker is reported to have said that the next UK Prime Minister has "a day to trigger Article 50".⁹

On 29 June, the 27 other heads of state or government met informally to discuss the political and practical implications of Brexit. They also started a debate on the future of the Union of 27 Member States: "a political reflection to give an impulse to further reforms, in line with our Strategic Agenda, and to the development of the EU with 27 Member States".¹⁰ Their statement also made clear that the UK would not have privileged access to the single market:

Any agreement, which will be concluded with the UK as a third country, will have to be based on a balance of rights and obligations. Access to the Single Market requires acceptance of all four freedoms.

Brexit taskforce

The European Council has appointed a Belgian diplomat, Didier Seeuws,¹¹ to lead a "Brexit taskforce" which will negotiate the terms and conditions of withdrawal with UK Government officials.

The Seeuws appointment is reported to have caused tension between the Council and Commission over who should lead the withdrawal negotiations. [Politico quoted](#) a leaked Commission Legal Service opinion which was that Article 50 "treats the withdrawing Member State as if it were already a third State", making the Commission the appropriate negotiator.¹² But the Council's legal position was (according to the Commission opinion) that the UK would still be an EU Member State, not a "third state" under Article 218(3) and that the Council would therefore be more appropriate. The Commission thought the Council's argument was "presentable" but "ultimately unconvincing in law".

2.2 UK action

The UK will continue to apply EU law and to participate in the making of EU law in Brussels. There is no need to give immediate notice of withdrawal under Article 50 TEU, although the Prime Minister had earlier implied that he would do so quickly in the event of a Brexit vote.

As David Cameron has said he will not lead the exit negotiations, there will now be a period of three or four months before a new prime

⁷ See [Statement](#), informal meeting of 27, 29 June 2016.

⁸ [EurActiv, 29 June 2016](#).

⁹ Ibid.

¹⁰ [Statement](#), informal meeting of 27, 29 June 2016.

¹¹ Chief of staff to former European Council president Herman Van Rompuy.

¹² [Politico, 28 June 2016](#).

minister will notify the European Council of its intention to withdraw. During this time the UK and the EU will be able to “take stock and work out who, and by reference to what strategy, the negotiations will be conducted”.¹³

New Cabinet Office unit

The Prime Minister has set up a cross-departmental EU unit. It will be headed by Oliver Letwin, who will “listen to all views and representations and make sure they are fully put into this exercise”.

The Home Office second permanent secretary Olly Robbins is the top civil servant. He will “examine all the options and possibilities in a neutral way and set out costs and benefits to enable the right decisions to be made”.¹⁴

Does the UK Parliament have a role in triggering Article 50 TEU?

Article 50 TEU states that a Member State may ‘decide’ to withdraw from the EU ‘in accordance with its own constitutional requirements’. But what are the UK’s constitutional requirements, and do they give Parliament a role?

Importantly, the EU referendum result was not in itself a ‘decision’ to withdraw from the EU, as it had no binding effect.

But whether it is the Government or Parliament that can make the decision is the subject of increasing debate. Four main options have been argued so far, ranging from using the Government’s prerogative power to requiring an Act of Parliament:

- Government’s ‘prerogative’ power: the conventional position is that the Government alone would be able to trigger under its inherent ‘prerogative power’ to conduct foreign affairs, which include the power to withdraw from a treaty or international organisation.
- Parliamentary involvement: even if there is no requirement in the UK’s constitutional arrangements for parliamentary approval of a decision to notify the EU of its intention to withdraw, there may be a political case for involving at least the House of Commons.
- Order in Council: a new argument is that the only way for Article 50 to be triggered is by the Government making secondary legislation – an Order in Council – under [section 2\(2\) of the European Communities Act \(ECA\) 1972](#), because that is how to exercise the UK’s right to withdraw.
- Act of Parliament: since the referendum result, many commentators have argued that an Act of Parliament is required before notifying the EU, for instance because the prerogative may only be used where it does not conflict with an Act of Parliament (in this case the ECA 1972).

¹³ Public Law for Everyone, [Brexit: Legally and constitutionally, what now?](#) Mark Elliott, 24 June 2016.

¹⁴ [Global Government Forum, 29 June 2016](#).

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There is more detail on these arguments in section 2.3 of another Commons Library Briefing Paper, [Brexit: how does the Article 50 process work?](#), CBP 7551.

Continuing parliamentary scrutiny of the EU

The European Scrutiny Committee's remit under [Standing Order No. 143](#) is to examine EU documents, to report on them and to consider any issue arising from such documents or related matters. The Committee will consider any EU documents resulting from the vote to leave and it will doubtless consider what else it might do in the light of circumstances at the time.

The Committee might move to light-touch scrutiny of EU documents, combined with one or more of the following:

- Oversight/scrutiny of Brexit negotiations
- Review of existing *acquis* with a view to identifying the rules/measures the UK might want to keep and those which will cease to apply
- Consideration of different Brexit models
- Further work on Article 50 TEU process or alternatives

Scrutiny of the withdrawal procedure

Ruth Fox of the Hansard Society writes:

The scrutiny work that lies ahead will be detailed, complex and technical. MPs already struggle to effectively scrutinise financial and delegated legislation and this will add to the burden. Serious consideration therefore needs to be given to a bi-cameral solution to the scrutiny process given that Peers tend to have greater appetite for and experience of such scrutiny. It would be in both Houses' interest not to duplicate work.[...]

A stand-alone select committee or a joint committee of both Houses may be required to monitor the negotiations and decision-making, although existing departmental select committees will want to oversee their own particular departmental policy area. As a consequence we will likely see greater efforts at joint working across committees. Consideration will need to be given to how to knit together the new scrutiny work with that of existing committees that are tasked with scrutinising EU legislation, specifically the European Scrutiny Committee in the Commons and the EU Committee in the Lords.

The Liaison Committee of select committee chairs currently questions the Prime Minister three times a year – they may want an increase in these sessions.

Parliament may require additional staff and support and there will, from time to time, be a need to bring in specialist expertise, which will bring its own costs. When the bicameral Banking Commission inquiry, modelled similarly to a select committee was set up a couple of years ago it consumed resources. The requirement for scrutinising our departure from the EU will be on a much greater, and longer-term scale and the resource need will therefore be

higher. Effective scrutiny will not be cheap but should not be stunted upon.¹⁵

2.3 What if Parliament does not pass legislation to implement EU withdrawal?

Parliament could vote against the adoption of any legislation linked to withdrawal - an amendment to or repeal of the European Communities Act 1972, for example - but this would not prevent the UK's exit from the EU if the UK Government had already notified the EU under Article 50 TEU. Article 50 stipulates withdrawal two years from formal notification, with or without a withdrawal agreement.¹⁶

¹⁵ [It's Brexit... So What Now for Parliament?](#) 24 June 2016.

¹⁶ Extendable only by unanimous agreement of all Member States.

3. Will EU law still have effect in the UK?

Yes, until the UK actually leaves the EU. The Government will have to repeal the European Communities Act 1972 (ECA) and decide what to do about secondary legislation implementing EU law, and directly applicable EU Regulations.

There might be some over-arching legislation saying, for example, that all UK laws implementing any EU Directive were repealed (perhaps with specified exceptions); or that they would all remain in force (again perhaps with exceptions). If the ECA were repealed, any secondary legislation based on s2(2) ECA would need to be saved from lapsing if it was to continue in force. EU Regulations, which are directly applicable (i.e. they do not need further implementation in the UK to come into force) will cease to have effect if the UK were to repeal the ECA.

There is no reason why EU-based UK law could not remain part of UK law, but the Government would have to make sure it still worked without the UK being in the EU.

The Government would probably come up with a mechanism for allowing changes to be made to secondary legislation (Statutory Instruments) made under the ECA or other 'parent' acts. There could also be general amendments, such as replacing references to 'the Commission' or 'Council' with references to 'the Secretary of State'.

The devolved legislatures would have to deal with EU legislation they have transposed into Scottish, Welsh or Northern Irish laws. It would also be necessary to amend the relevant parts of the devolution legislation, which might require a Legislative Consent Motion under the Sewel Convention.

There is more information on this in Commons Briefing Paper 7751, [Brexit: how does the Article 50 process work?](#)

4. Will immigration be affected?

4.1 What will happen to the free movement and working rights of EU/EEA citizens?

For the time being, these rights remain unchanged. The Prime Minister addressed this issue during [his statement outside Downing Street on 24th June](#):

I would also reassure Brits living in European countries, and European citizens living here, that there will be no immediate changes in your circumstances. There will be no initial change in the way our people can travel, in the way our goods can move or the way our services can be sold.

What happens in practice in the longer term will depend on the approach taken by the Government and the 27 other Member States during the UK's withdrawal negotiations. The Government did not set out what approach it would take on this issue during the referendum campaign. Its February 2016 [White Paper on *The Process for withdrawing from the European Union*](#) merely stated:

There would be no requirement under EU law for these rights to be maintained if the UK left the EU. Should an agreement be reached to maintain these rights, the expectation must be that this would have to be reciprocated for EU citizens in the UK.

It has been widely suggested that the UK and other European governments would likely favour a solution that protects the immigration rights of people already exercising their free movement rights, given the widespread disruption and administrative burden that retrospective changes could cause.

'Leave' campaigners indicated support for such an approach during the referendum campaign. [Supporters of the Vote Leave campaign said](#) that, in the event of a vote to leave the EU, "there will be no change for EU citizens already lawfully resident in the UK". It envisaged a post-Brexit immigration system in which EU citizens already living in the UK "will automatically be granted indefinite leave to remain in the UK and will be treated no less favourably than they are at present". The [Leave.eu campaign gave a similar assurance](#) during the campaign that European migrants living in the UK would not be removed in the event of a vote to leave, pledging that "Any restriction of free movement would not be implemented retrospectively".

4.2 Will Brexit open up more immigration opportunities for Commonwealth citizens?

In short, while it is possible to argue that Brexit could or should lead to enhanced visa options for Commonwealth nationals, it is not possible to state with any certainty what a post-Brexit UK immigration policy might look like, and there is no consensus on what implications Brexit could have for opportunities for Commonwealth immigration. The Government has not indicated a position on this.

Some commentators have suggested that gaining greater control over EEA immigration as a result of leaving the EU could (or should) lead to enhanced scope to prioritise Commonwealth immigration. See, for example:

- BBC News, '[Commonwealth community leaders back British exit from EU](#)', 17 February 2016
- Leave.EU, [FAQs/What about border control and immigration?](#) (undated)

However it is also worth bearing in mind that:

- The UK does not need to leave the EU in order to be able to offer more/favourable immigration opportunities to Commonwealth nationals compared to other non-EEA nationals – the UK can already do this (to the extent that we already do, see the [UK Ancestry visa](#)). However, the Government's policy ambition to reduce net migration over the course of this Parliament to the tens of thousands has required a restrictive approach to non-EU/EEA immigration, given the difficulty in restricting EU immigration flows within the context of EU law.
- The current Government has not given any indication of what any transitional immigration agreements with the EU or a post-Brexit immigration policy might look like (including whether its objective to reduce net migration to the tens of thousands would still stand)
- The nature of a future UK-EU/EEA relationship is likely to affect the extent to which the UK would be able to exercise greater control over EU/EEA immigration in the event of a Brexit (e.g. whether or not the UK became a member of the EEA but not the EU)
- It is possible that Brexit could have different implications for different visa categories – e.g. whereas restrictions on non-EU/EEA family migration might not be significantly changed, there might be changes made to work visa categories (including low-skilled work) in the event of the ending of free movement rights for EU/EEA nationals. Until now, the UK immigration system has not generally provided visa opportunities for low-skilled non-EU/EEA workers, because it has assumed that this need can be satisfied by the UK and EU/EEA workforce.
- It is possible that a post-Brexit immigration policy could lead to an increase in restrictions on EU/EEA immigration (to bring requirements into line with visa requirements for non-EU/EEA nationals), rather than a relaxing of restrictions on non-EU/EEA immigration – certainly it is not difficult to imagine that this could be the case in terms of family migration.

5. Will the UK still contribute to the EU Budget?

As long as the UK is in the EU, it will continue to pay into the EU Budget. Many commentators believe the UK's contributions to and receipts from the EU Budget will be reduced each month over the two-year period until withdrawal takes effect.¹⁷ But Allan Tatham suggested: "It's a moot point as to whether or not the withdrawing Member State would be obliged to pay its outstanding contributions to the Union or even reimburse monies to the Union".¹⁸

Any post-exit contributions will depend on what arrangement are agreed for its relationship with the EU after leaving. Members of the European Economic Area, for example, contribute to the EU Budget, so if the UK joins the EEA, it too will pay into the EU Budget. It is not clear what further costs will be incurred by the UK.

¹⁷ See, e.g. Ian Milne, [Time to Say No. Alternatives to EU Membership](#), Civitas, 2011, and Ben Clements, Institute of Economic Affairs Brexit prize finalist, "[Britain outside the European Union](#)", 2014.

¹⁸ "Don't Mention Divorce at the Wedding, Darling!: EU Accession and Withdrawal after Lisbon", from *EU Law after Lisbon*, Eds Biondi et al, 2012.

6. What are the options for Scotland?

All 32 local authority areas in Scotland voted in favour of remaining in the EU. In response, Nicola Sturgeon, Scotland's First Minister, has stated that she will 'explore all options' for protecting Scotland's position in the EU. She has also said that a second independence referendum is highly likely.

Following a motion in the Scottish Parliament mandating the Scottish Government to conduct discussions with the UK government, the other devolved administrations, the EU institutions and EU Member States "to explore options for protecting Scotland's relationship with the EU [and] Scotland's place in the single market", on 29 June the Scottish First Minister Nicola Sturgeon held talks with EP President Martin Schulz.

6.1 Could Scotland stay in the EU without the rest of the UK?

In Scotland, 62% of voters were in favour of remaining in the EU, with all Scotland's local authority areas having a majority in favour of remaining. The Scottish First Minister, [Nicola Sturgeon, said on 24 June 2016](#) that it was 'democratically unacceptable' for Scotland to be taken out of the EU against its will, and she would therefore explore all options for securing Scotland's place in the EU.

As part of the UK

Scotland is currently not a 'state' under international law capable of signing and ratifying international treaties. Nor does it have power over international relations, which are reserved to Westminster under the Scotland Act 1998:

International relations, including relations with territories outside the United Kingdom, the [European Union](and their institutions) and other international organisations, regulation of international trade, and international development assistance and co-operation are reserved matters.¹⁹

Scotland could not therefore be an EU Member State in its own right, or even sign an Association Agreement with the EU, however much either side wished for it.

Some countries and territories have a special relationship with the EU without being Member States in their own right. These '[Overseas Countries and Territories](#)' (OCTs) have duty- and quota-free access to the EU market for goods, and automatically receive better terms of trade in services and establishment. However, they do not participate directly in EU decision-making, and EU law and treaties do not apply there.

If Scotland wanted to become an OCT, the definition in the EU treaties would have to change. The current definition is that the OCTs are 'the

¹⁹ Scotland Act 1998 Sch 5 para 7.

non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom'.²⁰

When Greenland left the EU despite staying part of the Danish Realm (a kind of inverse of the current UK-Scotland situation), it became an OCT by special agreement.

As an independent country

If Scotland became independent, could it 'inherit' the UK's place in the EU or would it have to go through the whole accession process for new Member States?

There is no precedent for a devolved part of an EU Member State becoming independent and determining its membership of the EU as a separate entity – let alone in the context of the 'parent' state leaving the EU.

Under general international law, there are at least three different possibilities for a newly-independent Scotland's membership of international organisations, depending on how the break-up of the UK was categorised:

- **continuation and secession:** the rest of the UK would retain its treaty obligations and membership of international organisations, but Scotland would not;
- **separation:** both entities would retain them; and
- **dissolution:** both would lose them.

Although continuation and secession would be the most likely, the fact that the rest of the UK does not want to retain its EU treaty obligations could lead to a different outcome.

There are provisions in international law for a newly-independent state to become a party to a multilateral treaty that was in force in its territory before independence, simply by notification – but these are in a treaty which the UK has neither signed nor ratified (the 1978 [Vienna Convention on Succession of States in respect of Treaties](#), Article 17).

In any case, whatever the position under international law, a decision on Scotland's status in the EU is likely to be a political one:

- If all the EU Member States agreed, they might be able to find a way for an independent Scotland to inherit the UK's place, subject to negotiations on details of membership (including for example financial contributions and the number of MEPs to represent Scotland).
- On the other hand, EU Member States with their own domestic concerns about separatist movements might argue that Scotland should lose its membership along with the rest of the UK, and hold up or even veto any subsequent accession process.

²⁰ [TEU Art 198](#)

6.2 A second independence referendum?

‘Significant and material change in circumstances’

In her statement responding to the referendum result, Nicola Sturgeon said that a second independence referendum was highly likely. She considered that the trigger in the [SNP’s 2016 election manifesto](#) had been met. The manifesto stated:

We believe that the Scottish Parliament should have the right to hold another referendum if there is ... a significant and material change in the circumstances that prevailed in 2014, such as Scotland being taken out of the EU against our will.

The First Minister had addressed this theme in a [June 2015 speech to the European Policy Centre](#):

I have previously stated my view that if Scotland were to be taken out of Europe, despite voting as a nation to have remained, it would provoke a strong backlash among many ordinary voters in Scotland.

Quite what the result of that would be, no one knows. But I have stated before that this could be one scenario producing the kind of material change in circumstances which would precipitate popular demand for a second independence referendum.

Bluntly, I believe the groundswell of anger among ordinary people in Scotland in these circumstances could produce a clamour for another independence referendum which may well be unstoppable.

Power to call a referendum

After the EU referendum Ms Sturgeon said that the Scottish government would begin preparing legislation to enable another independence vote.

The Scotland Act 2016 did not give the Scottish Parliament law-making powers in relation to referendums, so UK consent would be required for another referendum.

Scotland’s 2014 independence referendum was called under an agreement between the UK Government and the Scottish Government to devolve the power to hold such a referendum for a limited period, ending on 31 December 2014.²¹ This was done by means of an Order made under section 30 of the Scotland Act 1998, which had to be approved by both Houses of Parliament and by the Scottish Parliament. The Scottish Parliament gained the power to set the franchise.

²¹ The [Edinburgh Agreement](#)

7. What about Gibraltar?

Gibraltar is a British Overseas Territory, but is also in the EU by virtue of the UK's membership. So a vote to leave would mean Gibraltar would leave too.

During an official visit to Gibraltar in May 2016, the UK Foreign Secretary Philip Hammond warned that Brexit would threaten the sovereignty and “seriously impair” the Government’s ability to stand up for Gibraltar, and would “also endanger Gibraltar’s future security and prosperity”.²² Brexit, he said, would be “...as big a threat to Gibraltar’s future security and Gibraltar’s future sovereignty as the more traditional threats that we routinely talk about”.²³ However, he also assured the Chief Minister, Fabian Picardo, that “Britain’s commitment to Gibraltar is absolute, it’s unshakable and it will endure whatever the decision in the referendum”.

Before the referendum many commentators believed that Brexit could mean Spain re-asserting its sovereignty bid and attempts to change Gibraltar’s status. There were reports earlier in 2016 that Spain might revive its 2002 joint sovereignty idea.²⁴ Spain’s acting Foreign Minister, José Manuel García-Margallo, said in a television interview analysing the Brexit vote that Spain would be seeking joint sovereignty over Gibraltar: “It’s a complete change of outlook that opens up new possibilities on Gibraltar not seen for a very long time”. He hoped “the formula of co-sovereignty – to be clear, the Spanish flag on the Rock – is much closer than before”.²⁵ He said in May that Spain might close the frontier with Gibraltar if the UK votes to leave the EU.²⁶ This would have a serious effect on the estimated 10,000 workers crossing the border daily.²⁷

The Minister for Europe, David Lidington, has said the Government would continue to stand by the people of Gibraltar and would never “enter into a process of sovereignty negotiations with which Gibraltar is not content”.²⁸

Fabian Picardo has already discussed with Nicola Sturgeon “giving effect to the possibility of Scotland and Gibraltar remaining in the EU, in line with the views of their respective people”.

²² [Gibraltar Chronicle, 12 May 2016](#).

²³ [Gibraltar Chronicle, 12 May 2016](#). See also [Joint Statement](#), 11 May 2016.

²⁴ [Gibraltar Chronicle, 12 May 2016](#).

²⁵ [BBC News, 24 June 2016](#).

²⁶ [The Local, 30 May 2016](#).

²⁷ “There are 10,000 frontier workers of many different EU nationalities who live in Spain but work across the border. Gibraltar has a base labour force of 22,907 workers (2013), and 32.76 per cent of these people are frontier workers, or, in other words are normally resident in Spain but employed in Gibraltar”, Iskra Mihaylova, [The Parliament Magazine, 15 April 2016](#).

²⁸ [Gibraltar Chronicle, 24 June 2016](#).

8. Can France re-negotiate the Le Touquet treaty?

The centre-right Mayor of Calais has announced that she wants the Treaty of Le Touquet to be re-negotiated. This bilateral treaty governs the 'juxtaposed' immigration controls for France and the UK.

8.1 Termination clause in the treaty

France could break the Le Touquet treaty unilaterally (even if the UK did not leave the EU).

Article 23 of the [Treaty of Le Touquet](#), establishing 'juxtaposed' immigration controls for France and the UK, contains specific rules on how the treaty can be terminated, modified or revised:

- Either France or the UK could terminate the arrangements, although the time-scales and conditions for doing so need to be agreed with the other country.
- The two parties could also agree (by exchanging diplomatic notes) to modify the treaty, apart from those provisions that need the approval of parliament.
- Either party can ask for consultations if they want to revise the treaty.

There is also a provision which allows the 'local representatives of the authorities concerned' to agree to a temporary change in the area where juxtaposed controls are operated (Article 1.5).

Moreover, under Article 24 'Each of the Contracting Parties reserves the right to take any measures necessary for the safeguarding of its sovereignty or security'.

8.2 Termination under general international law

General international law provides other circumstances in which a treaty may be terminated or suspended (see Article 60 of the 1969 [Vienna Convention on the Law of Treaties](#)). These include material breach by one of the parties, a supervening impossibility, or a substantial change of circumstances. However, these are very restrictively interpreted, and it is not possible to say whether the UK leaving the EU would trigger any of them.

9. Will there be an impact on defence and the armed forces?

The direct impact of leaving the EU on the UK armed forces is arguably minimal: the UK's ability to project military power will be largely unaffected. The UK's membership of NATO, which the Government describes as the 'bedrock' of national defence, remains unchanged.²⁹

The EU may feel the loss of the UK more acutely because the UK is one of Europe's largest military powers and is one of the few EU countries capable of taking command of a mission. A UK exit could potentially leave the EU with fewer assets and capabilities at its disposal, although the UK could choose to contribute to EU military missions as a third party state.

Arguably the biggest impact will be a reduction in the UK's ability to influence the direction of travel for European defence. Exit from the EU will remove one of the strongest voices opposing further defence integration and the creation of what is commonly called a 'European Army'. The UK has consistently resisted proposals to create a European military headquarters to avoid duplication with NATO. Might EU leaders opt to pursue this agenda more aggressively now that one of the strongest voices in opposition is leaving the Union?

The European Council will discuss new paper on foreign and security policy by the EU High Representative at the European Council on 28-29 June 2016. Also on the agenda is closer cooperation with NATO, which will also be discussed at NATO's summit in Warsaw 8-9 July 2016. The latter will focus on addressing Russian military assertion and instability along its southern flank. Five former NATO Secretaries-General warned before the referendum that Brexit would undermine NATO "give succour to the west's enemies".³⁰

Exit from the EU will not prohibit the UK from working closely with individual European nations to jointly procure equipment, exercise or deploy together on military operations. Withdrawal negotiations will decide whether the substance of two EU defence directives are retained. These directives are designed to make the EU internal defence market work better and to increase competition in the EU defence sector. Major UK defence companies argued before the vote in favour of Remain.³¹

The prospect of a second referendum on Scottish independence will reignite the debate about the location of the UK's strategic nuclear deterrent, Trident. The Scottish Government opposes its presence in Scotland. The UK Government has promised a vote on the renewal of the deterrent but no date has been given.

²⁹ [The National Security Strategy and Strategic Defence and Security Review](#), Cm 9161, November 2015. See Library briefing paper [The 2015 SDSR](#), CBP 7462, 12 January 2016 for analysis of how the SDSR affects the armed forces.

³⁰ ["EU referendum: Nato chiefs warn Brexit will 'give succour to the West's enemies'"](#) The Telegraph, 20 June 2016

³¹ ["Remaining part of the EU is better for UK companies and their employees"](#), ADS Group, 20 June 2016

10. How have other EU countries reacted?³²

10.1 Calls for other referendums

So far none of the governing parties in other EU countries has called for a referendum on EU membership. However, nationalist parties in France, Netherlands and Italy have responded to the UK result by calling for referendums of their own.

France

The leader of the French National Front, Marine Le Pen – a front-runner for the presidential elections due in spring 2017 – hailed the result a ‘victory for freedom’. She tweeted that it was time for France and all EU countries to have a referendum.

Netherlands

The Dutch far-right politician Geert Wilders, leader of the anti-immigration Freedom Party in the Netherlands, tweeted a similar response:

Hurrah for the British! Now it is our turn. Time for a Dutch referendum!

He said in a statement:

We want to be in charge of our own country, our own money, our own borders, and our own immigration policy ... As quickly as possible the Dutch need to get the opportunity to have their say about Dutch membership of the European Union.

A recent Dutch survey reportedly suggested that 54% of the population wanted a referendum. The Freedom Party is doing well in opinion polls ahead of the Dutch general election due in the spring of 2017.

Italy

Mateo Salvini, the leader of Italy's anti-immigration Northern League party, tweeted:

Hurrah for the courage of free citizens! Heart, brain and pride defeated lies, threats and blackmail. Thank you UK, now it's our turn.

A proposal for constitutional reform, on which Italians are due to vote in a referendum in autumn 2016, would lower the quorum required for a popular referendum to be valid. An [opinion poll in spring 2016](#) suggested that a majority of Italian voters wanted an EU referendum.

³² Main sources: ‘[EU referendum: Brexit sparks calls for other EU votes](#)’, BBC news online, 24 June 2016; ‘[Europe reacts to UK's vote to leave EU](#)’, ITV news, 24 June 2016; ‘[Brexit: World reacts as Britain votes to leave the EU](#)’, Al Jazeera, 24 June 2016;

10.2 Other responses

Many other EU Governments have expressed regret over the outcome. It could boost the popularity of nationalist parties in several major national elections due in 2017.

Germany

Germany's Chancellor, Angela Merkel, called the result 'a watershed moment for Europe'. She cautioned against hasty responses that could further intensify rifts in Europe, but added that the EU was strong enough to weather a Brexit.

German Foreign Minister Frank-Walter Steinmeier said the result was 'really sobering... a sad day for Europe'.

Germany is heading for federal elections in autumn 2017, with the right-wing *Alternative für Deutschland* party gaining support and the governing grand coalition (CDU/CSU and Social Democratic Party) losing popularity.

France

French President Francois Hollande said the outcome of the UK referendum presented a 'tough test for Europe', adding that negotiations over the UK leaving the EU should be swift.

France will be holding presidential elections in spring 2017. Mr Hollande could stand for a second term but is deeply unpopular; Marine le Pen is likely to get at least to the second round.

Ireland

Northern Ireland voted to remain in the EU, by 56% to 44%.

Ireland's Taoiseach (prime minister) Enda Kenny said he was 'very sorry' about the result of the referendum but that Ireland would fully respect the decision. He announced that the Dáil (Irish parliament) would be recalled on Monday 27 June to discuss its impact, and that there would be 'no immediate change to the free flow of people, goods and services between our islands'. Enda Kenny said the Dáil would publish [a summary of the key actions it will take to address the issues arising from the decision of the British electorate](#).³³

Netherlands

Dutch Prime Minister Mark Rutte said he 'deeply regretted' the decision but that 'European co-operation will have to continue'.

The Netherlands is due to hold a general election by spring 2017.

Greece

Greek Prime Minister Alexis Tsipras said that a new vision is needed for a united Europe:

The extreme choices of austerity that widened the inequality between countries of the north and south, fences and closed

borders and the denial to share the burden of the debt and migrant crises had signalled an extended crisis in Europe ... We urgently need a new vision and beginning for a united Europe - for a better Europe, more social and democratic.

Poland

Poland's Foreign Minister Witold Waszczykowski said Britain's vote to leave the EU was bad news for Europe and for Poles, adding that the EU needed to look at why it had happened:

We will be trying to use this situation to make the European politicians aware why this happened. And it happened because this concept, which was created some time ago, is no longer popular in Europe.

Czech Republic

The Czech Prime Minister Bohuslav Sobotka said the EU must change quickly in the wake of Britain's vote:

The European Union must change quickly. Not because Britain has left, but because the European project needs much stronger support of its citizens.

Europe must be more ready to act, be flexible, less bureaucratic and much more sensible to the diversity that the 27 member states represent.

Mr Sobotka added that the UK vote did not mean the end of the EU and the bloc should agree the UK's departure 'quickly and rationally'.

Finland

Finland's foreign minister Timo Soini, leader of the eurosceptic Finns party, said the result must be respected and there should be no 'retaliation' in future negotiations between the UK and the EU:

The nation has had its say ... Any retaliation and whinge is out of the question.

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