

P.R.I.M.E. Finance
Panel of Recognized International Market Experts in Finance

The Reality of Brexit



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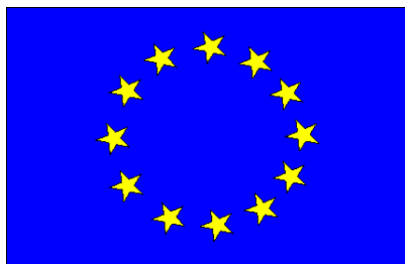
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- Alternate Member of the Administrative Board of Review (ABoR), [European Central Bank \(ECB\)](#); Professor of EMU law, [University of Amsterdam](#); Independent Consultant: EMU law, banking regulation, [RS Law & Society Consulting B.V.](#); Assessor, [Belgian Competition Authority](#).
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Brexit - Four reflections, three projections and a personal note

1. The United Kingdom was an eccentric member with many opt-outs
2. The New Settlement for the UK within the EU
3. The Brexit referendum had many flaws
4. The referendum culminates years of political and media EU bashing



The UK's many opt-outs under EU law

- ❑ **Opt-out from single currency** (together with Denmark; other States are legally bound to adopt the euro complying with convergence criteria)
[Protocol No. 15 to TFEU]
- ❑ **Opt-out from Schengen border-free travel arrangements** (with Ireland)
[Article 67(2) TFEU and Protocols No. 19 and 20 to TFEU]
- ❑ **Opt-out from the Area of freedom, security and justice** (with Ireland, Denmark)
[Articles 67-89 TFEU; Protocol No. 21 to TFEU]
- ❑ **Clarification of application of Charter of Fundamental Rights of the European Union** (with Poland)
[Protocol No. 30 to TFEU]
- ❑ **Cease to apply as from 1 December 2014 “a large majority of EU acts and provisions in the field of police cooperation and judicial cooperation in criminal matters adopted before entry into force of Lisbon Treaty while choosing to continue to participate in 35 of them”**
[Article 10(4) and (5) of Protocol No. 36 to TFEU]
- ❑ **Social chapter** (Major government opt-out revoked by Blair government)



A New Settlement for the United Kingdom within the European Union

- ❑ Conclusions of the European Council of 18-19 February 2016
- ❑ [Decision of the Heads of State or Government, meeting within the European Council](#) – contents to be reflected in EU law once UK notifies European Council it “has decided to remain a member of the [EU]”; after EU referendum, Settlement lapsed.
- ❑ Special positions for UK in four areas ‘agreed’ (blackmailed):
 1. [Economic governance](#) – EU is multiple currency area; London’s position
 2. [Sovereignty](#): not committed to further political integration; “ever closer union” no basis for extensive interpretation of EU powers
 3. [Social benefits and free movement of persons](#): restrictive interpretation of current law, amendments to secondary law include an alert and safeguard mechanism (to counter “pull factor arising from a Member State’s in-work benefits regime”)
 4. [Competitiveness](#), regulatory burden reduction and subsidiarity.

The Brexit referendum had many flaws

- ❑ **Consultative** referendum – Parliament is ‘sovereign’
[not in an EU Member State, where EU law takes precedence]
- ❑ Excluded: EU nationals living in UK (who do have participation rights in local and EP elections, on the basis of EU law), with the exception of Irish, Cypriots and Maltese, as Commonwealth privileged, and UK nationals living elsewhere in the EU; voting age: 18
- ❑ Without a qualifying threshold on turnout and outcome
(compare with requirements for calling industrial action):
72.2 % turnout Leave 51.89% Remain 48.11 %
“Will of the people”: 37% of electorate wanted UK to leave
- ❑ Without prior clarity on the alternatives (single market, customs union)
- ❑ Without prior agreement on how to treat different outcomes among the UK’s four nations (England, Scotland, Wales, Northern Ireland)

The referendum culminates years of political and media EU bashing

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 Islamist militant on a stolen plane in Tripoli
FALL OF GIANTS BY KEN FOLLETT FOR £1 AT WHSmith
 SEE PAGE 25
 YOUNGER FRENCH, NOT STREET FIGHTERS ONLY, COLLUSIVE SUBJECT TO AVAILABILITY

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 NOW 10p CHEAPER THAN THE DAILY MAIL AND THE TIMES
CAMERON'S DEAL IS A JOKE
 ● No control over our borders
 ● Migrants will still get benefits
 ● Brussels carry on calling the shots
Brussels meddlers in another assault on our way of life
 By Nathan Rao
 THE British way of life is under fresh threat from the EU as it targets the nation's retailers, tourists and even lawmakers.
 Campaigners last night warned their fury as Brussels bureaucrats unveiled their latest plan to erode the "lifestyles and choices of ordinary people."
 One labelled the EU meddlers as Luddites who have only revealed their economic ignorance as most high-velocity airlines are more efficient than the planned replacements.
 It will mean a cut in the number of airlines with routes above the rare EU limit of 1,000 seats a day to cut energy usage.
 The permitted wattage will be almost halved again from September 2015 so the limit is reduced to 500 seats.
 Dozens of other everyday appliances could have the power slashed out of them too and some scrapped altogether if new rules are brought in around climate change.
 A report - published by Delors and commissioned by the European Commission, the EU's executive body - sets out plans to look at the
 YOU TO PAGE 2

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 Dawn French: How pain and betrayal fired her ambition
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 Dawn French: How pain and betrayal fired her ambition

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 Gets ankle tag for

DAILY MAIL
 My guilt at missing what being a mother is truly about SARAH VINE
 PM hails EU 'reforms' but critics say they'll do nothing to curb migration and will trigger years of benefits chaos
THE GREAT DELUSION!
 COMMENT
 DAVID Cameron stood accused of delusion and selling Britain short last night when he hailed a deal to keep Britain in the EU.
 He said the deal would mean that the UK would not have to give up its right to control its own borders.
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THE SUN
 BRITAIN'S BEST-SELLING PAPER
OUR DEAL TURN
Who do EU think you are kidding Mr Cameron?
 ● HE CAVES IN OVER BENEFITS ● 'BRAKE' ON LAWS IS BOGUS ● NO CONTROL OF OUR BORDERS

QUEEN SUCKS
QUEEN BACKS BREXIT
 EXCLUSIVE: BOMBERSHILL CALM OVER EUROPE VOTE
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Cameron and Europe

Three projections: 1. **Continuity**

- ❑ Substantive EU norms will/may continue to apply
- ❑ When adopted as English (Scottish) law by implementing directives, these rules stay until abrogation
- ❑ When applying by virtue of directly applicable EU law, rules may be adopted as UK law at the exit date
- ❑ Abrogation requires rule-by-rule assessment of their usefulness/acceptability/palatability
- ❑ CJEU compliant case law may only deviate over time
- ❑ CJEU case law continues to apply to UK nationals in EU
- ❑ Where UK opts into EU (R&D, defense, intelligence): EU or similar rules will apply (e.g. privacy guarantees)
- ❑ UK bound by global standards (Basel, FSB, IOSCO, FTAF)

Three projections: 2. **Disentanglement: complex and messy**

- ❑ Expect an all-encompassing, complex and messy divorce procedure
- ❑ Citizenship (citizen of the world) EU citizenship) . unsuitability of Art. 50
- ❑ Jurisdiction and recognition
- ❑ Euro settlement location requirement
- ❑ Passporting rights (financial sector)
- ❑ Equivalence of third countries regulation and supervision; see:
Commission Implementing Decision [CID] 2014/908/EU of 12 December 2014,
amended by CID (EU) 2016/2358 of 20 December 2016
http://ec.europa.eu/finance/general-policy/docs/global/equivalence-table_en.pdf
(22 December 2016)
<http://www.eba.europa.eu/-/eba-updates-recommendation-on-the-equivalence-of-supervisory-regimes> (17 January 2017)
- ❑ **Lots of disputes to settle: expect litigation, arbitration, expert advice.....**

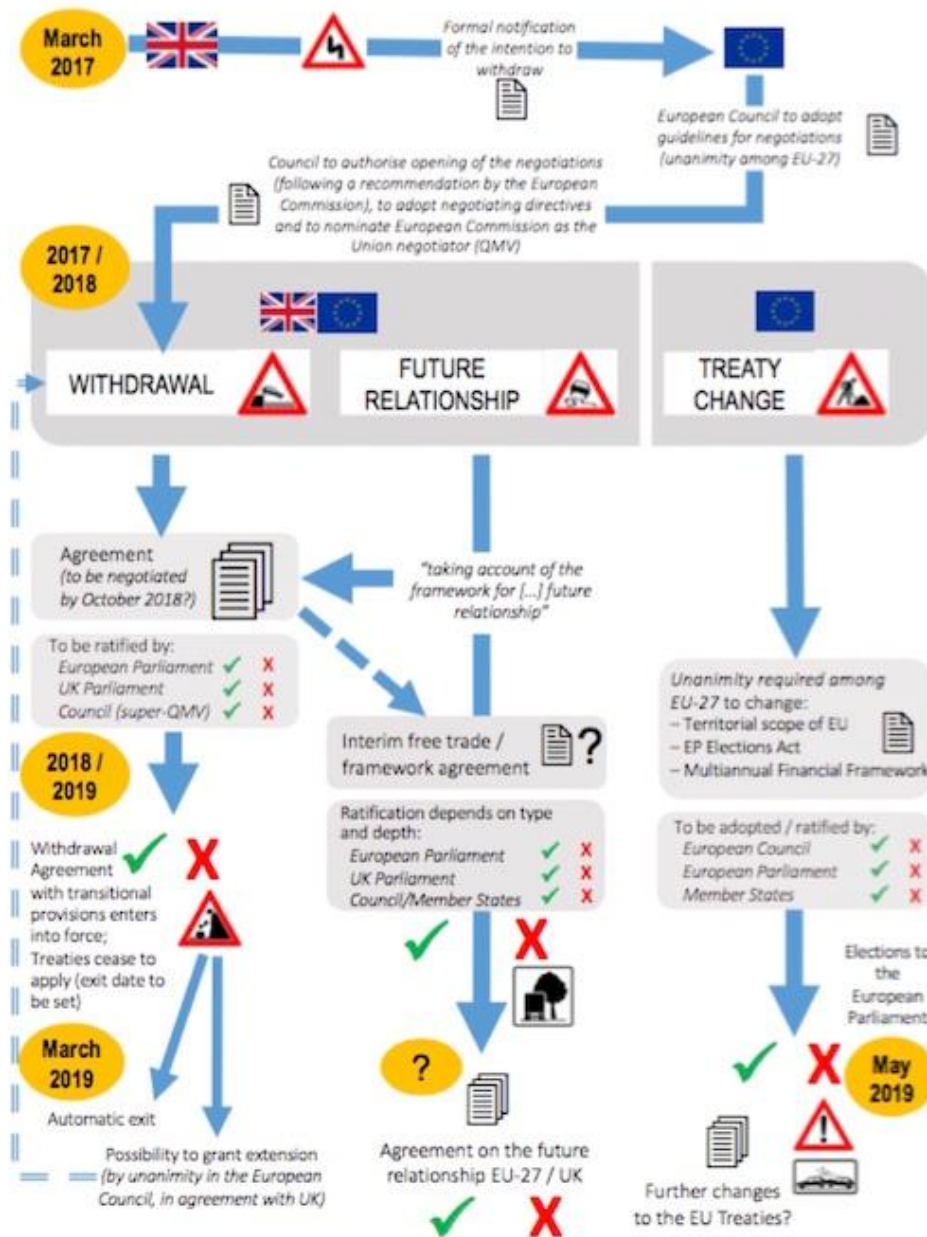
Article 50 TEU (≠ Lisbon Treaty)

- TEU provision introduced in latest reform of Treaties (Lisbon Treaty, 2009)
- Procedural: notification to European Council > EU/UK agreement “setting out arrangements for its withdrawal, taking account of the framework for its future relationship with the Union” > ratification by EU (European Parliament consent; Council QMV) and UK
- International agreement with third countries (Article 218 TFEU): Council by QMV plus EP consent BUT: ‘mixed agreements’ affecting issues that do not fall under exclusive EU competence [common commercial policy: Article 3(1)(c) TFEU] require ratification by all national parliaments, sometimes even regional ones [Belgium]: > 30!

Article 50 Treaty on European Union

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.

NEGOTIATING BREXIT



23-01-2017

Quelle: Valentin Kreiling, Sophia Becker und Laura Maria Wolfstädter, *Brexit: Verhandlungsphasen und Verlaufsszenarien eines Dramas in drei Akten*, Jacques Delors Institut - Berlin, Policy Paper, 16. Dezember 2016

Three projections: 3. Long-term loss for all

- More regulatory discrepancies, while the Single Rulebook is not so single as yet
- Increased bureaucracy, less free movement
- Less British influence, practice, spirit in EU
- EU splintering targeted by some // UK divisions
- Increased importance of regions
- Reversibility of Article 50 notification?
- Brexit accepted by the 48%?
- Re-joining the Union in an outer circle? (Article 49)

A personal note

- What can we do, as individuals or together?
- Reflection, self knowledge
- Action, if needed

