BREXIT:
THE LEGAL PROCEEDINGS AND
CONSEQUENCES OF THE UNITED KINGDOM’S
WITHDRAWAL FROM THE EUROPEAN UNION.

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Laura Fargas Álvarez
2 de Juny 2017
ABSTRACT

On 23th of June 2016, a referendum was held in the UK to decide whether this country should leave or remain in the European Union. The leave option won 52% to 48%, with more than 30 million people voting. Their Withdrawal is widely known as Brexit, a combination between the words Britain and Exit. After the referendum, Britain got a new Prime Minister, Theresa May, who took over from David Cameron.

Britain, already prepared to leave the EU by March 2019, has started the negotiations on the topic and Theresa May has already promised to create the ‘Great Repeal Bill’ to incorporate all EU Law to the UK domestic law. The two main issues are the withdrawal regulation applicable to the relations before the exit dare and the negotiation with the European Union of a new legal framework to govern their future relations.

The withdrawal for the United Kingdom has already and will create legal consequences to both the UK and the European Union in big topics such as Commercial or Employment law, but most of all, in International Law and the relationship of the UK with the remaining EU members. This dissertation analyses the main aspects of the Brexit process and its legal issues.
# CONTENTS

1. **INTRODUCTION** ................................................................................................................2

2. **EUROPEAN INTEGRATION: FROM THE EEC TREATY TO TREATY ON EUROPEAN UNION, TO BREXIT** ..............................................................................................................3

3. **BREXIT: THE REFERENDUM OF 2016**
   a. **BREXIT’S CAUSES** ........................................................................................................4
   b. **BREXIT PROCESS AND POLITICAL CAMPAIGNS** ..........................................................5
      i. Stronger In ......................................................................................................................5
      ii. Vote Leave .................................................................................................................6
   c. **THE RESULTS OF THE REFERENDUM** .................................................................6
   d. **COURT CHALLENGE TO THE BREXIT PROCESS: R (Miller) v Secretary of State** .................................................................................................................................7

4. **POST-REFERENDUM: THE CURRENT SITUATION**
   a. **STARTING NEGOTIATIONS** .........................................................................................9
   b. **STEPS TO U.K. LEAVING THE EU (ART 50 TUE)** ....................................................11
   c. **THE HARD OR SOFT BREXIT DILEMMA: ALTERNATIVES TO EU MEMBERSHIP** .................................................................................................................................12
      i. European Free Trade Area ............................................................................................13
      ii. Switzerland model .......................................................................................................14
      iii. Turkey model .............................................................................................................15
      iv. World Trade Organisation ........................................................................................15
      v. The ‘Anglosphere’ ......................................................................................................16
   d. **BREXIT’S CONSEQUENCES** .........................................................................................16
      i. Economic and social consequences at a whole ................................................................16
      ii. Institutional consequences ........................................................................................17
      iii. Capital consequences ...............................................................................................18
      iv. Legal consequences ...................................................................................................19
         1. Free movement of goods .........................................................................................20
         2. Free movement of persons ....................................................................................21
         v. Consequences for Spain .........................................................................................22

5. **THE FUTURE: WHAT TO EXPECT?** ..............................................................................23

6. **CONCLUSION** ..................................................................................................................25
1. INTRODUCTION

Never in the European Union history a country has expressed its will to withdraw from the Union, until now. This is the United Kingdom’s case, which after a successful referendum on the 26\textsuperscript{th} of June 2016, has started the process to stop being a member of the EU. This has created a stand by situation where neither the EU or the UK know how to proceed further. Due to the fact a situation like this has never happened before, the practical relevance of the topic is massive.

This dissertation is aimed to explain the legal proceedings and consequences this huge event has caused and the expectations on what could happen in the future, after the negotiations have finished and the United Kingdom has successfully withdrawn from the EU.

The methodology used through the topic investigation has had the base on academic articles from both Spain and the UK plus other countries academic papers, such as the United States, to add an international perspective to the topic.

The project has been divided in two parts, a theoretical view of the history between the UK and the European Union, the circumstances that lead to the 2016 Referendum and its results and the current situation that both Britain and the Union are facing; the negotiations, court judgements on Brexit and the Alternatives to the EU Membership for the UK.

On the other hand, the second part of the dissertation is based upon the legal, economic, social, and institutional consequences both the UK and the EU with its remaining members could face, emphasizing in the effects our country, Spain, would face.

At last but not least, a final accent is made on what to expect in the future through legal and economic hypothesis on what will happen to both sides of the Brexit deal.
2. EUROPEAN INTEGRATION: FROM THE EEC TREATY TO TREATY ON EUROPEAN UNION, TO BREXIT.

United Kingdom joined the European Economic Community (EEC) in 1973, after a referendum made in 1975. From the current 28 Members of the E.U., the U.K. was one of the first ones to join, together with Denmark and Ireland, when some other members already constituted the EEC.

The EEC was found in 1957 with the signature of the Treaty of Rome\(^1\), when the UK wasn’t a party yet. Although Britain applied to join the EEC two times in 1983 and 1967, it was not until their third try that they got accepted. In the past, France did not accept Britain entering the organisation due to a great range of aspects the country had that were not compatible with Europe, as President Charles de Gaulle stated.\(^2\)

On January 1972, the UK signed the Treaty of Accession and the Parliament’s European Communities Act was enacted, establishing the UK’s entrance date to the ECC for January 1973.

In 1975, a referendum was held in the UK to know whether the country should remain in the EEC. The results lead in a support to remain in the EEC with a 67.2\% of the votes.\(^3\) Four years after the referendum, the UK opted out of the European Exchange Rate Mechanism, the precursor to the creation of the euro. In 1992, the country had to withdraw from the ERM due to a pressure to their currency, the pound sterling. Furthermore, in 1985 the country ratified the Single European Act, which was the revision of the Treaty of Rome.

Finally, in 1993 the Maastricht Treaty was ratified, and the EEC became the European Union, which made the Community evolve from an economic union to a political union. The EU is an economic and political partnership between 28 European Countries that began after the Second World War with the objective to enhance economic cooperation.\(^4\)

It is now a single market, meaning that all goods and people can move around the 28 State members freely without barriers, as if they were all one country. The EU has its own currency,

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1 ‘Into Europe’ (European Parliament Website)
2 Roberts N, ‘Emphatic NO by De Gaulle’ (The Guardian, 28\textsuperscript{th} November 1976) \(<\text{https://www.theguardian.com/world/1967/nov/28/eu.france}>\)
3 Miller V, ‘The 1974-5 UK Renegotiation of EEC Membership and Referendum’ (House of Commons Library, 13\textsuperscript{th} July 2015) Number 7253
the euro, which 19 out of the 28 states use, its own Parliament and its own set of rules in different areas such as consumer rights, environment, or transport.

In 2009, the Lisbon Treaty was enforced, updating two old treaties; The Maastricht Treaty was updated to the Treaty on European Union (TEU) and the Treaty of Rome was updated to the Treaty on the Functioning of the European Union (TFEU).

In 2012, Prime Minister David Cameron said no to the calls for a referendum on the membership to the EU. Nevertheless, the year after, he announced that a Referendum would be held if the Conservative Party was elected in 2015. With the unexpected winning of their party in 2015, the European Union Referendum Act was introduced in the Parliament to enable the referendum.

   a. BREXIT’S CAUSES

Brexit has been caused, in a way, after a failure of the Eurozone to deliver growth across its members, that caused a great amount of debt to the contracting nations together with a movement of people to the UK from southern Europe and Ireland. After the Eurozone crisis, as the UK has its own currency, the British economy went back to its initial shape way before than other European countries.

It is said that the fact a lot of European citizens moved to the UK made the Leave Vote grow through the years, caused by all the immigration. The fiscal policies created in Brussels and Frankfurt impact the UK directly and so, immigration gets higher percentages every year in Britain. “The Brexit Vote is the most significant event in Europe since the fall of the Berlin Wall: it does not augur well for a unified and prosperous Europe.”

In a way, the UK has been absorbing through the years the impact and employment shock in the European Union after the Eurozone shock, meaning workers from all the CEE states have come to find a better life in the country. After Brexit, as the UK won’t be soaking up workers from the EU, these workers will move to other EU countries.

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The three main reasons the UK voted to leave were the immigrants, the loss of sovereignty and the supposed enhance their national economy would have if they left the EU, together with the competitiveness with other countries.  

b. BREXIT PROCESS AND POLITICAL CAMPAIGNS

The rise of UKIP, the most right-wing party as an electoral power adopted a hyperglobalist and Eurosceptic posture; they opposed to the EU for being a space with too many regulations. Around 2010 they started linking their political position with against-immigration policies and they promised together with the conservative party, a referendum in 2015 if the conservatives won the elections, as they did, with absolute majority.

Emotional aspects took great part in the ‘Leave’ vote; The ‘hard feeling’ appealed to senses and getting back the control of the UK followed the aim. Not only the misfits voted in the referendum but also the most traditionalist groups.

The efficiency of the ‘Leave’ campaign to show how the experts had already talked but what really mattered was what the citizens wanted created a way of deciding the UK’s future based on intuition and the deep traditional and conservative values of society. 

i. Stronger In

Britain Stronger in Europe was the party campaigning to stay in the European Union. Backed by David Cameron and George Osborne, amongst others.

The reasons to stay in the European Union were the big boost the EU Membership gives to the country in terms of selling and buying products around the Union, free movement of goods, and as well free movement of people, not only for immigrants to arrive to the country but more for Britons to leave and travel anywhere around Europe without borders.

There is a great economic impact in the country which creates big benefits, which if Britain left the EU, would impact negatively. The security of being part in a community with other 27 members is more beneficial than being on your own.

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7 Siles-Brügge, G. ‘Consecuencias y Economía Política del Brexít’ (Universidad Pompeu Fabra, 8 Noviembre 2016) (Seminar)
8 Ibid
ii. **Vote Leave**

Vote Leave was the party who supported UK leaving the European Union. It had the backing of a lot of Conservatives such as Boris Johnson, former mayor of London, and affiliated groups such as Farmers for Britain or Britain Out and Proud.

The reasons given by Britain to leave the EU was the imposition of too many rules on them plus the amount of money their membership to the European Union cost compared to the benefits they had. Furthermore, a full control of their borders and the control on immigration is one of the first objectives of Brexit.

c. **THE RESULTS OF THE REFERENDUM**

Leave won with the 51,9% of the votes (17,410,472 million voters), against a 48.1% of citizens, a total of 16,141,241 million who vote to remain in the EU. There was a turnout of 72% of Britain voting in the polls, with big variations on vote patterns by across the country.

The ‘’Leave’’ vote won in the Rural England, Wales and small towns of the East Coast and the North East. On the other hand, ‘’Remain’’ votes came from London, university towns, more cosmopolitan areas from the South and Northern cities.

The social economic divisions appeared in the voting pattern. The percentages revealed that most citizens who wanted to Remain in the EU had higher education, higher incomes and the residents not born in the UK. Most followers of the ‘Leave’ campaign showed records of no formal qualifications, a lower median annual income, and a higher age percentages.  

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d. **COURT CHALLENGE TO THE BREXIT PROCESS: R (Miller) v Secretary of State**

Three groups of different citizens brought the interpretation by the government of the law to the High Court of England and Wales to challenge the government’s actions. The court ruled in favor of the citizens ruling the need of Parliament vote before triggering article 50 of TEU.

9 Hix S, ‘After the EU Referendum: What next for Britain and Europe?’, London School of Economics and ESRC UK in a Changing Europe Programme
The government appealed to the Supreme Court and law officers from Northern Ireland, Scotland and Wales could take part in the judgment representing their governments.  

The legal issue in this case is, as a matter of UK Constitutional Law, if the Government is entitled to give notice to leave the EU under Art 50 TEU without reference to Parliament. Can the government exercise the royal prerogative powers to trigger Art 50 TEU? Once Article 50 is triggered, the withdrawal will occur.

This means repeal of the ECA 1972, and a reduction in British citizens’ rights. Can they be taken away by anything other than an Act of Parliament? The government has said the UK joined by Act of Parliament and must leave by the Act.

High Court stated that was a pure question of law, not concerned with the merits or demerits of leaving the EU: it was a political issue. The UK will leave the EU, whatever the Supreme Court says in the end; it’s just a matter of how, when and the conditions.

The Constitutional Principles in Question are, on the one hand, what does it mean that the Parliament is Sovereign? What are the scope of the prerogative powers? They cannot be used to override legislation enacted by Parliament and restrict or remove rights.

Triggering Art 50 TEU will ultimately lead to loss of rights, and the Applicant argued that only Parliament can do that. But the government argued that the issue was of unmaking a Treaty and therefore concerned conduct of international relations which falls within the prerogative powers.

Accepted by both applicant and government that by triggering Art 50 TEU this will affect Domestic Law, this means, the repeal of ECA 1972.

The Government argued that Parliament intended that when European Communities Act was enacted in 1972, and the prerogative could be used to affect the withdrawal from the EU. The Court required to determine scope of prerogative powers.

When we focus on the rights the British citizens could lose, we found three categories. The first one would be the rights that could be capable of being replicated in the UK Law, such as the Working Time Directive, but these rights could be affected somehow and show differences, for example the lack of interpretative role for the Court of Justice of the EU.  

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10 R (Miller) v Secretary of State for Exiting the European Union, [2016] EWHC 2768  
11 Academic notes on EU Law lecture by Professor Adam Cygan (University of Leicester, 2017)
The second category of rights are the ones who are also enjoyed in other Member States, such as the free movement of goods and people. Finally, the third category leads us to the rights that cannot be replicated in UK Law, such as the rights flowing only from the EU Membership, as the right to vote in the European Parliament Elections or the right to refer to the Court of Justice of the European Union.

The Withdrawal of these rights would affect in several ways. The rights in the first category would create a material change to their existing position, such as the removal of the ability to seek authoritative preliminary ruling to the Court of Justice of the EU.

The second category rights would affect, for example, whether free movement rights belong. ¿Are they a product of the European Communities Act of 1972 or not? This act provides necessary foundation for acquisition of EU rights by UK citizens. High Court stated that the withdrawal from the EU would eliminate all rights from this category, but they concluded saying they cannot be removed by prerogative of the Parliament. Finally, the rights in the third category would be lost.

The High Court held that the Royal Prerogative could not be used to remove those rights, following prior Jurisprudential case ex parte Fire Brigade Union\textsuperscript{12} where the Secretary of State used the prerogative instead of an Act of Parliament with already covered the area. The case ruled against the Secretary of State saying their actions were unlawful due to the legitimate expectations about the enactment of the new law that the public had, and the Secretary of State failed to sign off an Act.

The Parliament’s intention was to legislate by Act to implement EU law in to the UK and to create the second category’s rights in such a way that could not be undone by the prerogative. Under ECA 1972 no prerogative power included to permit withdrawal on whose continued existence the EU law rights introduced in to domestic law (Categories one and two). The ECA 1972 gave effect to UK joining EU. This constitutional Act effectively embodied in the ECA 1972 cannot be undone through a prerogative power.

Furthermore, there is a Supreme Court Ruling on Article 50 TUE. The Secretary of State appealed in the Supreme Court and the decision was given on 24\textsuperscript{th} January 2017. It was upheld that it was necessary to create an Act of Parliament to be able to invoke article 50 of the Treaty on the European Union (TEU)

\textsuperscript{12} R V Secretary of State For The Home Department, Ex Parte Fire Brigades Union [1995] 2 AC 513
4. POST-REFERENDUM: THE CURRENT SITUATION

a. STARTING NEGOTIATIONS

The government department in charge of ‘Brexit’ set up by Theresa May is headed by David Davies, a conservative MP to take responsibility for the result of the Referendum. Furthermore, Liam Fox will be the International Trade secretary and Boris Johnson, the leader of the Leave Campaign, is the Foreign Secretary.

When article 50 of the TUE is finally triggered, the two years’ process will start to negotiate the withdrawal. Until the UK does not leave, EU Law still stands for the whole country as the membership is continued, although they will not take part in any decision making of the treaties and laws of the EU.

As it is the first time that a country wants to leave the EU, the process will take a long time. Only Greenland (Denmark oversees territory) held once a referendum in 1982 to leave but 52% of the citizens voted to remain.

The possibility of a second referendum has been considered, although it seems highly unlikely, as both conservative and labour parties have denied it considering it undemocratic to the vote of the citizens. Nevertheless, House of Commons Clerk Lord Lisvane has argued that a further referendum would be needed to ratify the deal to leave the EU.

Problems have emerged with Scotland and Northern Ireland. As for Scotland, their First Minister said that the result of the referendum is unacceptable and that she wants Scotland to stay in the single market as the country voted to Remain. Furthermore, the situation with Northern Ireland is having a very hard impact as it is argued that the whole island of Ireland should be able to vote for a reunification.

Donal Tusk, president of the European Council stated that the UK would not have access to the European Single Market unless they accepted the four fundamental freedoms in the UE: Free movement of capital, people, services, and goods. 13 Prime Minister Theresa May stated the twelve objectives her party must negotiate with the Parliament.14

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13 Heffer G, 'It's not single market a la carte' Donald Tusk tells UK it's FREE MOVEMENT or nothing’ (Daily Express, 29th June 2016) [http://www.express.co.uk/news/politics/684528/Brexit-Donald-Tusk-Britain-free-movement-access-EU-single-market-David-Cameron](http://www.express.co.uk/news/politics/684528/Brexit-Donald-Tusk-Britain-free-movement-access-EU-single-market-David-Cameron)

14 ‘Theresa May’s Brexit speech in full’ (SKY NEWS, 17th January 2017) [https://www.youtube.com/watch?v=o0rRuTFJszU](https://www.youtube.com/watch?v=o0rRuTFJszU) > accessed 20th January 2017
The main objectives were the end to European Court of Justice authority, the end of free movement of people as well as a new customs agreement excluding the common external tariff, the withdrawal from the single market or preserving existing workers’ rights.

On the past 29th of April, after the UK announced its withdrawal decision from the EU on the 29th March, the Special European Council adopted several guidelines to create the framework for the Brexit negotiations, this guidelines were not compulsory to follow but created a ground rule. The negotiating position was stablished in 28 steps: The European Union made special emphasis in keeping the UK as a close partner, the indivisibility of the four freedoms and the single market integrity, the aim to keep legal security for all citizens, firms and third parties affected by Brexit and the fact that a non-member cannot enjoy the same rights as benefits as an EU member. As the British government does not want to belong to the Single Market, there should be a commerce agreement that cannot be equal to the Single Market, as this would be against its integrity.  

After the Orientations given, on the 3rd of May, the European Commission created a Council decision authorising the Commission to open negotiations on an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union. It was very similar to the Council’s guidelines, but this time it was translated into a legal form, as the council cannot stablish rules, but the Comission does. This institution created this proposal for the Council to authorise the mandate of negotiation. The Commission was nominated as the Union negotiator and several directives were addressed to it. If by 30th March 2019 there is no agreement between the parties, the UK will cease to be a member of the EU and the European Atomic Energy Community and so, all EU laws and treaties will cease to apply.

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15 Special meeting of the European Council (art 50) (29th April 2017, Brussels) EUCO XT 20005/17
16 Recommendation for a Council decision authorising the Commission to open negotiations on an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union. (European Commission, 5th May 2017) COM (2017) 218 final
b. STEPS TO U.K. LEAVING THE EU (ART 50 TUE)

The legal framework for the voluntary withdrawal of the United Kingdom from the European Union lays on article 50 of the Treaty of the European Union (TUE). Nevertheless, two other methods could have been used.

The first and compulsory step is to trigger article 50 of TUE on which it states the proceeding of withdrawal from the European Union that a country must follow. This will invoke an agreement where the UK will have to agree the terms of the split in a period of two years.\(^\text{17}\)

<table>
<thead>
<tr>
<th>Article 50</th>
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<tbody>
<tr>
<td>1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.</td>
</tr>
<tr>
<td>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.</td>
</tr>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>

As article 19 of TEU states, The European Court of Justice has the last word when applying the law, meaning they are the only institution who can definitively pronounce on the application of article 50 TUE.\(^\text{18}\)

The royal prerogative cannot be used to change UK statutes or change the European Communities Act 1972 as stated in previous Case Law.\(^\text{19}\) The only way further is to approve an Act of Parliament. The government will also enact a Great Repeal Bill to end up the primacy of EU Law in the UK.

This Bill would not come into force until the UK successfully leaves the EU, and it is very likely that it is going to suffer problems related to the different nations in the UK such as...

\(^{17}\) Image: EUR Lex, Parliament’s research service <www.europarl.europa.eu>

\(^{18}\) Reid A, ‘Brexit begins: an overview of the legal issues’ (EU Law Analysis, 28\(^{th}\) July 2016)

\(^{19}\) R (On the Application of Bancoult) v Secretary of State For Foreign and Commonwealth Affairs [2008] UKHL 61 para 44
Scotland, which its Parliament would have to give legislative consent as the Bill would legislate on Scottish matters as well.  

There will need to be Treaty revision after Brexit to remove UK allocated votes. When UK agrees its plans for withdrawal from EU, European Council must approve them by unanimity. The veto is on political forward movement. European Council can veto decisions and must give decisions under unanimity; therefore, they could vote the UK Brexit negotiation.

The House of Commons decided on whether there was a need of an explicit Act of the Parliament to be able to invoke the article in a paper titled ‘EU treaty change: the parliamentary process of bills’ stating there is a requirement for a parliamentary Act to start the process of withdrawal, as the British Constitution is unwritten and unclear.  

On June 28th, 2016, the EU Parliament passed a motion for the UK to trigger article 50. As well, the EU Parliament stated in a note that a withdrawal from the EU ends, from then on, the application of EU Treaties in the withdrawing state.  

If the UK would like to join the EU after the process of leaving, it will have to comply with all the European Union demands without any benefits. New members, for example, are required to adopt the euro as their currency, and so the UK would have to do it in case of re-joining the union, and after complying with all the requisites, could negotiate an opt-out.

c. THE HARD OR SOFT BREXIT DILEMMA: ALTERNATIVES TO EU MEMBERSHIP

The alternatives to EU Membership are wide, with different prerogatives and a diversity of limitations. That is why the terms ‘Hard Brexit’ and ‘Soft Brexit’ have been playing an important role in the British government decisions on which model to adopt for Britain after the withdrawal from the EU.

Soft Brexit could follow a similar model as the ‘Norway Model’, which is a member of the single market and must accept free movement of people as a result. It would create a new

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21 Miller V, ‘EU Treaty change: the parliamentary process of bills’ (House of Commons Library, 15th June 2015) Number 03341
22 Poptcheva M, ‘Article 50 TEU: Withdrawal of a Member State from the EU’ (European Parliament, February 2016)
cooperation scheme in the European Economic Space, with a free movement of workers, creating a similar situation as if the UK continued in the EU.

Hard Brexit could involve the UK refusing to compromise on issue like free movement of people to maintain Access to the EU single market. There would be a loss of mutual trust between UK-EU and other countries such as France, with Marine Le Pen, would try to create similar actions like Brexit. 23

i. European Free Trade Area

This model is also called the European Free Trade Area (EFTA), and apart from Norway, countries like Iceland or Liechtenstein have adopted this model. Currently with 33 countries belonging to the Area, EFTA countries seek trade benefits without having to fully belong to the European Economic Area. The free trade relates to industrial goods, marine and agricultural products.

There are currently 24 agreements and the countries policies are coordinated with EU statements along with participation in missions from the Common Security and Defence Policy (CSDP). Their tariffs are lower than in the EU, they reach independent agreements and they have their own intergovernmental institutions: The Secretariat, the Surveillance Authority, and the EFTA Court. 24

Professor René Schwok identified some benefits that the UK would have if choosing this model, such as a lower contribution, capacity to ratify free trade agreements with more partners than the EU and bilateral agreements with the EU that would protect the British sovereignty. 25 As well, he identified inconveniences such as the application process to EFTA or the homogeneous state of the countries already belonging to the Area, with same size, economic development, and trade preferences, that might differ from the ones Britain is looking for.

Inside the EFTA model we do need to incorporate the Norway model, also known as the European Economic Area (EEA), as it is not possible to become a member of the European Economic Area without being an EFTA or an EU member.

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24 Miller V, ‘Leaving the EU – Research paper 13/42’ (House of Commons, 2st July 2013) pg 17

25 Ibid: page 19
The Norway model would allow the UK access to the internal market without being bond to the EU’s external trade agreements. It was signed in 1992 and includes the EU single market together with laws related to consumer protection, employment policies and competition. This model would require Britain to invest money in the EU through contributions to allow the free movement of people and goods.

As well, EU Law would have to be applied in several fields without the UK having to participate in the European Supervisory Authorities. It’s a regional free trade agreement that guarantees equality for all its members as well as cooperation in education, social policies, or development. This model does not include EU policies such as the customs union, the common trade policy, or the Monetary Union (EMU), although some market access is allowed.

The countries belonging to EEA do not have direct representation in the EU institutions although they can have direct influence on them, for example on EU proposals that might affect their countries. Although the Norway option seems to be the best bet for the UK, the House of Commons stated in 2013 there is a huge problem with the model, which is that the UK would have to comply and adopt EU legislation in which they haven’t been part in the making, meaning they did not get to decide about the laws they are obligated to comply, creating a democratic deficit for the country.  

ii. Switzerland model

Although Switzerland is a member of Both the European Free Trade Area and the Schengen Space (Whose members remove border and passport controls between their countries), it is not a member of the EU or the European Economic Area (EEA).

Switzerland nationals have rights of entry, residence and work inside the European Union, and give European citizens the same rights inside their country.  

In this model, negotiated bilateral agreements take huge importance to get access to the internal market in specific sectors. The UK would have to comply with some EU laws and contribute to the union, although not participating in the creation of laws.

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26 ‘Future of the European Union: UK government Policy’ (House of Commons Foreign Affairs Committee, 11th June 2013) HC 87-1 Volume I
Switzerland has created over a hundred bilateral agreements with the EU in issues like taxation of savings, environment, pensions, processed agricultural products or overland transport and civil aviation. 

iii. Turkey Model

The Turkish model is also known as Customs Union. It is an agreement in relation to goods, without services. There is an importation and exportation of goods without complying with restrictions or tariffs related to customs, with an alignment between EU and Turkish external tariffs.

With this model, UK institutions would not be able to provide services, especially financial, to the EU and Britain position would be weaker in comparison to other states that can provide services inside the EU. The UK would not contribute to EU law or be bound by it, and would not have to make any contributions to the European Union.

As Turkey, the UK would not have to comply between customs restrictions, and its firms would have to license separately in each EU member state in order to provide them financial services.

iv. World Trade Organisation

The membership to the World Trade Organisation (WTO) would impose barriers and tariffs to goods and services and the UK would not have preferential Access to any of the internal markets in the EU. The rules are imposed by WTO and the tariffs would be personal. Britain does not have to financially contribute the EU or be bound by its laws, even though the country might be required to comply with some rules.

If there would be an agreement between the EU and the UK on free trade, it would be less open than the single market, but if there is no agreement, the UK would become a member of the WTO and there would not be costs on tariffs on industrial goods. Nevertheless, some services and goods would have higher tariffs and non-tariff barriers.

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27 Buchan D, ‘Outsiders on the inside: Swiss and Norwegian Lessons for the UK’ (Centre for European Reform, September 2012) pg 7
28 Witty S, Polk D. ‘The Legal Consequences of Brexit (Harvard Law School Forum on Corporate Governance and Financial Regulation, 24th June 2016) pg 2
29 Hix S, ‘After the EU Referendum: What next for Britain and Europe?’, London School of Economics and ESRC UK in a Changing Europe Programme
v. The ‘Anglosphere’

Countries such as Canada or the United States of America, together with Australia or New Zealand have close relationships between themselves due to the resemblances between them such as the English Language, Common Law principles and their individualism or Democracy. 30

These countries create their bond thanks to their cultural links and shared projects such as the free flow of information, services and people, rather than goods, Science and technology collaborative organisations and security cooperation, states Mr. James Bennet in his book ‘The Anglosphere Challenge’. 31 The ‘Anglosphere’ countries have very close political relations as well as military communication and help.

Other historians such as Robert Conquest have stated that the fact the United Kingdom wants to withdraw from the European Union is based in the fact that way more advantages would be created if the country associates to the ‘Anglosphere’. 32

d. BREXIT’S CONSEQUENCES

Together with the actual problems between Member States, Euro Crisis, ISIS Attacks and Russian aggression, Brexit only makes things worse; without having even left those crisis, another one starts.

A situation like this has never happened before. The withdrawal of the UK from the EU is an immense shock to the European Community and there is a tremendous impact on the global standing and self-image of the European Union, together with questioning European Integrity.

i. Economic and social consequences at a whole

The fall in the value of the pound means imported goods will consequently get more expensive, such as clothing, homeware, or food.

The UK does not intend to stay in the EU single market, an option to trade between countries without having to pay tariffs, involving free movement of goods and people, had already been

30 Miller V, ‘Leaving the EU – Research paper 13/42’ (House of Commons, 2st July 2013) (pg 23)
Established in 1992 when the European Union was completed, to boost trade and create jobs and lower prices.

In terms of financial services, there is currently a very harmonised regulation, which would cease to apply after Brexit. It is said the UK would have to accept EU standards to provide financial services into the internal market.

The UK remains sovereign in terms of currency. It can exercise powers such as borrowing money for a twenty years’ period or even allowing funding for infrastructures to create new sources of economic growth. Nevertheless, the pound sterling fell to the lowest level against the American dollar since 1985. The sterling falling will create higher prices in groceries and petrol, although housing prices could lower due to lower income expectations.

The FTSE100 fell to 2007’s level, and although it recovered, Banks are starting to move staff to other European cities such as Paris or Frankfurt. 33

As for social consequences, the immediate ones were anti-immigrant attacks, especially against polish citizens, such as graffities on the Polish and Cultural association in London or personal attacks. Furthermore, hate crimes against immigrants increased a 57% in only a month. Social services would be affected in terms of citizenship in the UK, as Commonwealth nationals may be considered second-class immigrants and there would be many more concerns in immigration for EU citizens living in the UK. 34

ii. Institutional Consequences

The UK will have to continue abiding the European Court of Human Rights (ECHR) as it is not an European Union institution. Although the EU does have its own European Court of Justice, whose decisions that won’t bind the UK if it finally leaves the EU.

Institutions like the European Medicines Agency (EMA) or The European Banking Authority (EBA), based in London, would have to move out from the UK after the withdrawal from the European Union happens. The European Union wants Britain to pay for the extra moving costs of the EU Agencies from London, as it is argued the institutions should remain in the European Union. Britain disagrees stating both agencies should stay in London. 35

33 Hix S, ‘After the EU Referendum: What next for Britain and Europe?’, London School of Economics and ESRC UK in a Changing Europe Programme
35 Martin W, ‘The EU wants to add another unexpected charge to Britain’s Brexit divorce bill’ (Business Insider UK, 28th April 2017)
iii. Capital Consequences

Free movement of capital is the fourth freedom that the European Union enjoys. But what is going to happen with Canary Wharf (La City) when the UK withdraws from the EU? London could end to be the global finance centre in several years if the relationships with the EU cease. The City of London currently develops highly economic programmes, and it is said after the withdrawal from the EU, another programme would be created to fund money for the damage caused by the Brexit vote, trying to limit the damage to maintain a good level of economic growth.

It is said that the free movement of Capital won’t cease to apply even when Brexit happens due to the application of the Treaty of the European Union, and its article 63 on which it is stated the free movement of capitals is extraterritorial and so, it can be applied to a third-party state.\(^\text{36}\)

The European Medicines Agency (EMA), settled in London, has recently signed a contract for a long-term rental in the Canary Wharf offices, and there is no clause related to the breaking of the contract. This means EMA won’t be able to leave London until the full contract is finished and all the obligations between the parties have been fulfilled. In a report made by the agency itself, they stated the contract was signed in 2011 when Brexit wasn’t even foreseeable. \(^\text{37}\)

Due to this situation, the European Commission stated that the UK should cover every single cost due to its withdrawal process, for example the relocation of the agencies like EMA or EBA. The payment expected by Brussels to cover all the costs to the EU due to Brexit ups to 347.600 million euros, but could reach the 400.000 million euros depending on business rates or service charges.

The Single Rule-Book on the banking industry would cease to apply and The European Central Bank and other EU institutions would have way more power in terms of residence requirements or transactions with euro currency, in detriment of the City. \(^\text{38}\)

Being part of the EU meant lower trade barriers for the UK and it expanded bilateral trade, increasing Britain’s economy in a 30% since they joined the European Economic Community and a 50% in the 2000’s. The trade with the EU means for Britain a 13% of its national income, as well as its EU membership reduces trading costs. Free movement of capital enables UK firms

\(^{36}\) Treaty on the Functioning of the European Union (TFUE), Article 63
\(^{37}\) Martin W, ‘The EU wants to add another unexpected charge to Britain’s Brexit divorce bill’ (Business Insider UK, 28th April 2017) accessed 1\(^{st}\) May 2017
\(^{38}\) Sarmiento D, Machuca JC. ‘Brexit: Legal and Business-related consequences of the referendum’, Uría Menéndez, 2016
to invest in EU companies and raise money in Europe, which after the withdrawal, if there is no bilateral agreement between Europe and the UK, the benefits created by the investments would not exist anymore. The withdrawal will reduce trade between the UK and other countries, there would be less market integration within the EU and a fall in the British Income between a 1.3% - 2.6% 39

iv. Legal Consequences

Employment Law in the UK after Brexit would create harmonisation on labour-related laws and start being more protective towards workers than the current EU standards. Workers benefited by the Coordinating Social Security Systems Regulation would be affected. Furthermore, Self-employed workers, who currently benefit from the free movement of persons, would lose the right to provide services and the right to reside in the UK.

In terms of Litigation and Judicial Cooperation in civil and criminal matters, the UK currently enjoys an opt-out status. Nevertheless, after Brexit, the participation this country has nowadays in the EU’s judicial cooperation instruments won’t be able to exist anymore. The EU principle of mutual trust will be lost with the UK. Brussels and Rome regulations in International Private Law won’t be applied anymore and a legal vacuum would arise, having to fill it up with domestic law.

The British Courts as International litigation services would lose its potential and importance, and lose the advantages previously afforded thanks to the Brussels I regulation. All the proceedings that have already started could be extremely compromised if they want to benefit from the Judicial Police Cooperation based with the EU.40 There should be formulas to guarantee the judicial security and the equal treatment of pending judicial processes on the CJEU, as it must keep being the qualified court.41

In terms of Company Law, the loss of freedom of establishment and services would make companies who have branches or have established themselves in the UK go through serious problems. On the Special European Council (29th April 2017), it was clearly stated by the EU that there would be problems in the commercial agreements and contracts between UK-EU firms. 42


40 Ibid

41 Special meeting of the European Council (art 50) (29th April 2017, Brussels) EUCO XT 20005/17

42 Ibid
The withdrawal from the EU would allow the UK to fully control its Tax Law, especially VAT (tax on goods and services). UK tax law would not be subject to rules related to the free movement of capital establishments, persons, and services.

1. Free movement of goods

In order to talk about the free movement of goods, some concepts have to be defined:

The economic integration involves free trade and market liberalization. This means trade with countries who can supply a commodity cheaper than the UK can make, not making something domestically which will cost more to make than to buy.

The Free Trade Area involves countries agreeing to remove all custom duties between member countries but no common external customs policy, meaning countries maintain the right to charge custom duties for third countries and set their own tariffs.

The Customs Union means one custom tariff on all goods coming from 3rd countries. Within free trade area they retain the right to charge different tariffs but they have a single policy and a single tariff on all kinds of goods imported to different countries in a Customs Union.

The Common market is a more advanced concept. Introduces free movement of services, labour and capital in addition to goods. This is the next stage; If in one country there is a booming industry - it makes sense to invest capital in those countries or even move there for work.

Finally, the Common monetary and fiscal policy. In the EU many countries, but not all, have adopted the euro currency. This reduces exchange rate issues; it’s easier to trade with a single currency. The EU has a sort of fiscal policy but not a fully-fledged fiscal union.

The trade of goods is still wanted by both the EU and the UK after this country finishes its membership, seeking a positive outcome giving the UK the greatest possible access to the single market.

Theresa May argues the UK is looking for a new deal on a customs union with the EU, meaning that countries agree to impose a common tariff on goods from the countries dealing together. The UK is now part of a customs union but the changes that want to be made involving having the right to do its own trade deals with other countries.
The free movement of goods has several disadvantages such as the risk of a race to the bottom, meaning the regulatory standards would be lowered to create attractive environment, and wouldn’t be ideal as others would lower their standards as well. For example, the corporate tax in Ireland; this country charges 12.5% and the UK wants to lower the corporate tax to attract enterprises in response to Brexit. Other countries may respond by lowering their tax rates. This leads to less funding for other social policies/development in that MS.

Which goods benefit from the free movement rules? Goods which originate in the EU or goods which originate in a third country and have entered the EU and met the requirements of the common external tariff (Art 29 TFEU).

2. Free movement of persons

At some point, the benefits from the free movement of persons will be ceased in the UK for all citizens and businesses due to Brexit. The treaties that guarantee this freedom won’t be binging anymore to the UK and the businesses and citizens stablished in Spain.43

EU citizens living in the EU might be affected by Brexit in a way that EU nationals with a right to permanent residence (having lived in the UK for 5 years) would be able to stay, but all the other citizens from outside the UK would not be guaranteed to be able to stay in the country, and their rights would be subject to future negotiations.

The UK could unilaterally allow free movement of persons in order to keep some investments that have already been made and allow the freedom to provide services in Britain to EU citizens. Even if Britain makes this decision, it does not have to be reciprocal from the EU, meaning they would be able to prohibit the free movement of British citizens around the Union.44

UK citizens working in the EU would depend as well on the negotiations. If the UK decides to stay in the single market, that would involve a free movement of people, meaning British citizens could be able to work elsewhere in the EU and vice versa. On the contrary, if work permit restrictions are imposed because of a ‘hard Brexit’, both EU citizens and UK nationals would have to ask for visas to be able to work.

Brexit secretary David Davies suggested EU migrants coming to the UK after Brexit may not be given the right to stay, and the process of a cut-off would have to start to reduce migration. Theresa May also agrees in the reduction and stablishes that the key issue is if the UK will be

44 Ibid
granted entry to the single market or not, and so restrict the rights of EU citizens to live and work in the UK. She is committed to net migration, meaning the same number of citizens leaving than entering, below 100,000 a year. Currently the number is on 330,000 a year.

The possibility of needing a visa to travel around the EU seems unlikely, as UK does not want to deter tourists or put barriers to their citizens to travel to other countries.

EHIC cards, which entitles travellers to medical help to urgent treatments between countries in the EU, will depend as well to the future of the UK in the single market.

Furthermore, study abroad programs such as Erasmus+ will cease to apply to EU students wanting to study in the UK and British Students willing to spend a year abroad in the EU. As a student who has done her Erasmus+ in the University of Leicester, hardly a week went without my British colleagues worrying about not being able to enjoy such an amazing experience abroad due to Brexit. Moreover, Universities all around the UK have been advertising the situation with the Module ‘EU Law’, which will continue being a compulsory part of Law Degrees in the UK, at least until 2019.

v. Some Consequences for Spain

There will be significant legal consequences for Spanish citizens and business who are living in the UK now or want to move to the country in the future. As well, for British citizens and business who want to start a new life in Spain.

First of all, once the UK has successfully withdrawn from the EU, any agreement between the UK and the EU will be of application in Gibraltar territory only once there has been an agreement between Spain and the UK. 45

Problems appear for old citizens who want to retire to our country, Spain. Currently there is free access for the expatriates to the Spanish Hospital Treatments paid by the NHS. In case they become permanent residents in Spain, our country pays their hospital treatment.

There is around three million of EU citizens who are living in the UK and around two million of British citizens living in the EU. Spain is the country with more British Expatriates: a number oscillating between 320.00 and 800.000, as most of them are not registered in the country. Most

45 Special meeting of the European Council (art 50) (29th April 2017, Brussels) EUCO XT 20005/17
of the British citizens are retired and currently living in the southern parts of Spain, while receiving their pensions from the UK government.  

Most of them are ailed from the Spanish culture and people, creating their own ‘‘Little Britain’’ in Spain, with even their own products and newspapers, without the necessity of learning our mother tongue. Most of them are unable to vote anymore in the UK as they’ve been more than 15 years abroad and they do not even register. Only 196.000 expatriates applied to vote from a different country.

There is still no evidence of which changes will the British expatriates who live in Spain suffer, but the main problems will be centred in the legal status of their residence, the pensions, visa or the free health treatments. The maintenance of the expatriates’ rights in Spain will depend on the negotiations between London and the Spanish government, possibly ending with the UK accepting the free movement of persons, to keep guarantying the expatriate’s rights abroad.

It is difficult to know what would happen after Brexit as if Britain remains in the Single Market, the free treatments would continue, whereas if they do not stay, there would have to be individual deals with every country for Britain’s retired citizens who retire abroad.

Possible consequences for Spain would be tough, as they could create a real state crisis straight away due to the left of all the expatriates back to the UK, or even a British boycott to Spain as a touristic destination.

5. THE FUTURE: WHAT TO EXPECT?

The EU is going through an immense pressure after the Brexit vote. The significant political rupture has appeared along with other several crises such as the ISIS attacks and terrorism, Russian aggressions, or problems between EU Members.

Scotland starts getting pressure for a future Independence of the country, to be able to stay in the EU. The polls state that a 59% of the citizens support Scottish Independence, so there could

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be a possibility for a second referendum in 2019 or 2020. Nicole Sturgeon, member of the Scottish Parliament, has already started discussions with Brussels to keep Scotland in the EU.  

Northern Ireland could as well, leave the UK or made a referendum on unification with Ireland. On the Special meeting of the European Council, the EU stated that due to the exceptional circumstances of this country, with the aim to avoid a rigid border between the two Irelands, there would be a respect into the integrity of the Union, recognising the bilateral agreements between the UK and Ireland.

The position of the UK in the world could lower and be less important to the United States once it would not belong to the European Union anymore. Nevertheless, the UK would still be part of the North Atlantic Treaty Organisation (NATO), the Security Council or powerful other groups such as the G8 or the G20, where the countries with the best economies in the world belong.

The Gross Domestic Product (GDP) of the UK is expected to fall between a 2% and a 5% over the next five years, as estimated by the Treasury. Public finances have higher deficits created by the pressure of the falling tax revenues.

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48 ‘Scottish independence: Nicola Sturgeon to seek second referendum’ (BBC News, 13th March 2017) accessed 3rd May 2017
49 Special meeting of the European Council (art 50) (29th April 2017, Brussels) EUCO XT 20005/17
50 Hix S, ‘After the EU Referendum: What next for Britain and Europe?’, London School of Economics and ESRC UK in a Changing Europe Programme
6. CONCLUSIONS

As the voluntary withdrawal from the European Union requires ratifying an International Treaty, and in this case, the leaving country is the United Kingdom who has been a member of the European Union for over four decades, there is no doubt that the process is going to be long and very complex.

It is submitted that the problematic situation regarding the relationship between the UK and the other member states will create additional burdens in political, economic, and social terms. Namely, as Brexit has arisen at the same time as the ongoing crises of the Euro zone, Russian aggressions in Ukraine, as well as Terrorist attacks throughout Europe, the consequences of Brexit will increase these complications for EU member states, which could potentially lead to adverse effects for the UK as a result of the withdrawal process.

The legal framework applicable to the UK after Brexit is extremely uncertain and would have to be analysed sector by sector. It is questionable which EU rights would still be applicable for UK citizens and whether the Court of Justice would offer any form of recourse to maintain EU rights. The supremacy of EU law in the UK has been a long-debated issue, therefore one wonders whether the repeal of the European Communities Act 1972 would also revoke EU precedent which became binding, national law throughout the UK's membership. Further uncertainties are raised, depending on which position the UK elects or is subjected to after EU membership ceases, which would vary the impact of Brexit.

Optimistically, there would be an international convention between the UK and the EU which would maintain good relations and perhaps mutual recognition, which could conceivably permit the UK to remain favourable in relation to trade or free movement amongst member states. In the worst-case scenario, there would be a regression towards the UK domestic system, which could have a severe impact on the economy. Although, the impact of Brexit in the European Union is more likely to stem the development of the Single Market, as a result of negotiations and more importantly, the impact of losing the UK's contribution to fund EU policy.

Although, the repercussions of the 'Leave' vote have already started to become apparent. I am inclined to believe that there is still a long way to go through the process and the most challenging consequences are yet to appear. There is no doubt that the UK will go through difficult years of negotiations before the deal is settled, especially in terms of revoking EU Law and returning their economy back to the point where it stood before Brexit.
Personally, as a person aiming to pursue an international legal career, I hope the negotiations will bring a Soft Brexit model, allowing scope to maintain the four freedoms for British and European citizens, as Britain will receive so much help from the EU the closest they keep their relationship and benefit from former EU rights, and EU and its citizens will be able to have incredible benefits from such a powerful country in terms of employment, education, or trade.

It is difficult to understand how a withdrawal from the European Union will function and what affect it will have on the member states, as this is the first instance of a withdrawal. It is possible that Brexit will set out a withdrawal process and depending on the severity of the negotiation deal, other EU member states may follow. However, this is also a consideration that the EU will take into account, thus one expects the UK to prepare for a harsh Brexit so that other member states will remain within the Union.

Conversely, it should not be forgotten that the UK is setting precedent by its withdrawal from the European Union and even though the negotiations and legal consequences will not be easy, the referendum and the voice of a united country will make history.
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ANNEXOS

**BREXIT:**
THE LEGAL PROCEEDINGS AND CONSEQUENCES OF THE UNITED KINGDOM’S WITHDRAWAL FROM THE EUROPEAN UNION.

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CONTENTS

1. R (Miller) v Secretary of State for Exiting the European Union: Summary of the judgement of the Divisional Court

2. Prime Minister’s letter to European Council for Exiting the European Union

3. Special meeting of the European Council (art 50) (29th April 2017, Brussels) EUCO XT 20005/17

4. Recommendation for a Council decision authorising the Commission to open negotiations on an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union. (European Commission, 5th May 2017) COM (2017) 218 final
R (Miller) v Secretary of State for Exiting the European Union: Summary of the judgement of the Divisional Court

LINK FOR THE FULL JUDGEMENT:
https://www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf
R (Miller) v Secretary of State for Exiting the European Union
Summary of the judgment of the Divisional Court

References in square brackets are to paragraphs in the judgment.

The question

1. The issue before the court is whether, as a matter of UK constitutional law, the Government is entitled to give notice of a decision to leave the European Union under Article 50 by exercise of the Crown’s prerogative powers and without reference to Parliament. This is a pure question of law. The court is not concerned with and does not express any view about the merits of leaving the European Union: that is a political issue.

2. It is accepted by all sides that this legal question is properly before the court and justiciable: under the UK constitution, it is one for the court to decide [5]. It turns on the extent of the Crown’s powers under its prerogative [explained at 24-29]. The Government accepts that neither the European Union Referendum Act 2015 nor any other Act of Parliament confers on it statutory authority (as distinct from the Crown’s prerogative power) to give notice under Article 50 [67-72, 76 and 105-108].

Background

3. On 1 January 1973 the United Kingdom joined what were then the European Communities, including the European Economic Community. Parliament passed the European Communities Act 1972 (1972 Act) to allow that to happen since it was a condition of membership that Community law should be given effect in the domestic law of the United Kingdom and primary legislation was required to achieve this [1 and 36-54]. The European Communities have now become the European Union.

4. Pursuant to the European Union Referendum Act 2015 a referendum was held on 23 June 2016 on the question whether the United Kingdom should leave or remain in the European Union. The answer given was that the UK should leave [2].

5. The process for withdrawal is governed by Article 50 of the Treaty on European Union, which states that once a Member State gives notice to withdraw there is a two-year period in which to negotiate a withdrawal agreement. If no agreement is reached in this time then, subject only to agreement on an extension of time with the European Council acting unanimously, the EU Treaties shall cease to apply to that State. The Government accepts that a notice under Article 50 cannot be withdrawn once it has been given. It also accepts that Article 50 does not allow a conditional notice to be given: a notice cannot be qualified by stating that Parliament is required to approve any withdrawal agreement made in the course of Article 50 negotiations [9-17].
6. Therefore, once notice is given under Article 50, some rights under EU law as incorporated into domestic law by the 1972 Act would inevitably be lost once the Article 50 withdrawal process is completed [57-66].

The constitutional principles

7. The most fundamental rule of the UK’s constitution is that Parliament is sovereign and can make and unmake any law it chooses. As an aspect of the sovereignty of Parliament it has been established for hundreds of years that the Crown – i.e. the Government of the day – cannot by exercise of prerogative powers override legislation enacted by Parliament. This principle is of critical importance and sets the context for the general rule on which the Government seeks to rely – that normally the conduct of international relations and the making and unmaking of treaties are taken to be matters falling within the scope of the Crown’s prerogative powers. That general rule exists precisely because the exercise of such prerogative powers has no effect on domestic law, including as laid down by Parliament in legislation [18-36].

8. In the present case, however, the Government accepts, and indeed positively contends, that if notice is given under Article 50 it will inevitably have the effect of changing domestic law. Those elements of EU law which Parliament has made part of domestic law by enactment of the 1972 Act will in due course cease to have effect [76-80].

9. The central contention of the Government in the present case is that Parliament must be taken to have intended when it enacted the 1972 Act that the Crown would retain its prerogative power to effect a withdrawal from the Community Treaties (now the EU Treaties), and thereby intended that the Crown should have the power to choose whether EU law should continue to have effect in the domestic law of the UK or not [76-81].

Conclusion

10. The Court does not accept the argument put forward by the Government. There is nothing in the text of the 1972 Act to support it. In the judgment of the Court the argument is contrary both to the language used by Parliament in the 1972 Act and to the fundamental constitutional principles of the sovereignty of Parliament and the absence of any entitlement on the part of the Crown to change domestic law by the exercise of its prerogative powers [82-94, 97-104]. The Court expressly accepts the principal argument of the claimants [95-96].

11. For the reasons set out in the judgment, we decide that the Government does not have power under the Crown’s prerogative to give notice pursuant to Article 50 for the UK to withdraw from the European Union.

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.
Prime Minister’s letter to European Council for Exiting the European Union
On 23 June last year, the people of the United Kingdom voted to leave the European Union. As I have said before, that decision was no rejection of the values we share as fellow Europeans. Nor was it an attempt to do harm to the European Union or any of the remaining member states. On the contrary, the United Kingdom wants the European Union to succeed and prosper. Instead, the referendum was a vote to restore, as we see it, our national self-determination. We are leaving the European Union, but we are not leaving Europe – and we want to remain committed partners and allies to our friends across the continent.

Earlier this month, the United Kingdom Parliament confirmed the result of the referendum by voting with clear and convincing majorities in both of its Houses for the European Union (Notification of Withdrawal) Bill. The Bill was passed by Parliament on 13 March and it received Royal Assent from Her Majesty The Queen and became an Act of Parliament on 16 March.

Today, therefore, I am writing to give effect to the democratic decision of the people of the United Kingdom. I hereby notify the European Council in accordance with Article 50(2) of the Treaty on European Union of the United Kingdom’s intention to withdraw from the European Union. In addition, in accordance with the same Article 50(2) as applied by Article 106a of the Treaty Establishing the European Atomic Energy Community, I hereby notify the European Council of the United Kingdom’s intention to withdraw from the European Atomic Energy Community. References in this letter to the European Union should therefore be taken to include a reference to the European Atomic Energy Community.
This letter sets out the approach of Her Majesty’s Government to the discussions we will have about the United Kingdom’s departure from the European Union and about the deep and special partnership we hope to enjoy – as your closest friend and neighbour – with the European Union once we leave. We believe that these objectives are in the interests not only of the United Kingdom but of the European Union and the wider world too.

It is in the best interests of both the United Kingdom and the European Union that we should use the forthcoming process to deliver these objectives in a fair and orderly manner, and with as little disruption as possible on each side. We want to make sure that Europe remains strong and prosperous and is capable of projecting its values, leading in the world, and defending itself from security threats. We want the United Kingdom, through a new deep and special partnership with a strong European Union, to play its full part in achieving these goals. We therefore believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the European Union.

The Government wants to approach our discussions with ambition, giving citizens and businesses in the United Kingdom and the European Union – and indeed from third countries around the world – as much certainty as possible, as early as possible.

I would like to propose some principles that may help to shape our coming discussions, but before I do so, I should update you on the process we will be undertaking at home, in the United Kingdom.

The process in the United Kingdom

As I have announced already, the Government will bring forward legislation that will repeal the Act of Parliament – the European Communities Act 1972 – that gives effect to EU law in our country. This legislation will, wherever practical and appropriate, in effect convert the body of existing European Union law (the “acquis”) into UK law. This means there will be certainty for UK citizens and for anybody from the European Union who does business in the United Kingdom. The Government will consult on how we design and implement this legislation, and we will publish a White Paper tomorrow. We also intend to bring forward several other pieces of legislation that address specific issues relating to our departure from the European Union, also with a view to ensuring continuity and certainty, in particular for businesses. We will of course continue to fulfil our responsibilities as a member state while we remain a member of the European Union, and the legislation we propose will not come into effect until we leave.
From the start and throughout the discussions, we will negotiate as one United Kingdom, taking due account of the specific interests of every nation and region of the UK as we do so. When it comes to the return of powers back to the United Kingdom, we will consult fully on which powers should reside in Westminster and which should be devolved to Scotland, Wales and Northern Ireland. But it is the expectation of the Government that the outcome of this process will be a significant increase in the decision-making power of each devolved administration.

**Negotiations between the United Kingdom and the European Union**

The United Kingdom wants to agree with the European Union a deep and special partnership that takes in both economic and security cooperation. To achieve this, we believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the EU.

If, however, we leave the European Union without an agreement the default position is that we would have to trade on World Trade Organisation terms. In security terms a failure to reach agreement would mean our cooperation in the fight against crime and terrorism would be weakened. In this kind of scenario, both the United Kingdom and the European Union would of course cope with the change, but it is not the outcome that either side should seek. We must therefore work hard to avoid that outcome.

It is for these reasons that we want to be able to agree a deep and special partnership, taking in both economic and security cooperation, but it is also because we want to play our part in making sure that Europe remains strong and prosperous and able to lead in the world, projecting its values and defending itself from security threats. And we want the United Kingdom to play its full part in realising that vision for our continent.

**Proposed principles for our discussions**

Looking ahead to the discussions which we will soon begin, I would like to suggest some principles that we might agree to help make sure that the process is as smooth and successful as possible.
i. **We should engage with one another constructively and respectfully, in a spirit of sincere cooperation.** Since I became Prime Minister of the United Kingdom I have listened carefully to you, to my fellow EU Heads of Government and the Presidents of the European Commission and Parliament. That is why the United Kingdom does not seek membership of the single market: we understand and respect your position that the four freedoms of the single market are indivisible and there can be no “cherry picking”. We also understand that there will be consequences for the UK of leaving the EU: we know that we will lose influence over the rules that affect the European economy. We also know that UK companies will, as they trade within the EU, have to align with rules agreed by institutions of which we are no longer a part – just as UK companies do in other overseas markets.

ii. **We should always put our citizens first.** There is obvious complexity in the discussions we are about to undertake, but we should remember that at the heart of our talks are the interests of all our citizens. There are, for example, many citizens of the remaining member states living in the United Kingdom, and UK citizens living elsewhere in the European Union, and we should aim to strike an early agreement about their rights.

iii. **We should work towards securing a comprehensive agreement.** We want to agree a deep and special partnership between the UK and the EU, taking in both economic and security cooperation. We will need to discuss how we determine a fair settlement of the UK’s rights and obligations as a departing member state, in accordance with the law and in the spirit of the United Kingdom’s continuing partnership with the EU. But we believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the EU.

iv. **We should work together to minimise disruption and give as much certainty as possible.** Investors, businesses and citizens in both the UK and across the remaining 27 member states – and those from third countries around the world – want to be able to plan. In order to avoid any cliff-edge as we move from our current relationship to our future partnership, people and businesses in both the UK and the EU would benefit from implementation periods to adjust in a smooth and orderly way to new arrangements. It would help both sides to minimise unnecessary disruption if we agree this principle early in the process.
v. In particular, we must pay attention to the UK’s unique relationship with the Republic of Ireland and the importance of the peace process in Northern Ireland. The Republic of Ireland is the only EU member state with a land border with the United Kingdom. We want to avoid a return to a hard border between our two countries, to be able to maintain the Common Travel Area between us, and to make sure that the UK’s withdrawal from the EU does not harm the Republic of Ireland. We also have an important responsibility to make sure that nothing is done to jeopardise the peace process in Northern Ireland, and to continue to uphold the Belfast Agreement.

vi. We should begin technical talks on detailed policy areas as soon as possible, but we should prioritise the biggest challenges. Agreeing a high-level approach to the issues arising from our withdrawal will of course be an early priority. But we also propose a bold and ambitious Free Trade Agreement between the United Kingdom and the European Union. This should be of greater scope and ambition than any such agreement before it so that it covers sectors crucial to our linked economies such as financial services and network industries. This will require detailed technical talks, but as the UK is an existing EU member state, both sides have regulatory frameworks and standards that already match. We should therefore prioritise how we manage the evolution of our regulatory frameworks to maintain a fair and open trading environment, and how we resolve disputes. On the scope of the partnership between us – on both economic and security matters – my officials will put forward detailed proposals for deep, broad and dynamic cooperation.

vii. We should continue to work together to advance and protect our shared European values. Perhaps now more than ever, the world needs the liberal, democratic values of Europe. We want to play our part to ensure that Europe remains strong and prosperous and able to lead in the world, projecting its values and defending itself from security threats.
The task before us

As I have said, the Government of the United Kingdom wants to agree a deep and special partnership between the UK and the EU, taking in both economic and security cooperation. At a time when the growth of global trade is slowing and there are signs that protectionist instincts are on the rise in many parts of the world, Europe has a responsibility to stand up for free trade in the interest of all our citizens. Likewise, Europe's security is more fragile today than at any time since the end of the Cold War. Weakening our cooperation for the prosperity and protection of our citizens would be a costly mistake. The United Kingdom's objectives for our future partnership remain those set out in my Lancaster House speech of 17 January and the subsequent White Paper published on 2 February.

We recognise that it will be a challenge to reach such a comprehensive agreement within the two-year period set out for withdrawal discussions in the Treaty. But we believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the EU. We start from a unique position in these discussions – close regulatory alignment, trust in one another's institutions, and a spirit of cooperation stretching back decades. It is for these reasons, and because the future partnership between the UK and the EU is of such importance to both sides, that I am sure it can be agreed in the time period set out by the Treaty.

The task before us is momentous but it should not be beyond us. After all, the institutions and the leaders of the European Union have succeeded in bringing together a continent blighted by war into a union of peaceful nations, and supported the transition of dictatorships to democracy. Together, I know we are capable of reaching an agreement about the UK's rights and obligations as a departing member state, while establishing a deep and special partnership that contributes towards the prosperity, security and global power of our continent.

Yours sincerely,

[Signature]

His Excellency Mr Donald Tusk
Special meeting of the European Council (art 50) (29th April 2017, Brussels) EUCO XT 20005/17
Delegations will find attached the guidelines adopted by the European Council at the above meeting, following the United Kingdom's notification under Article 50 TEU.

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1 Following the notification under Article 50 TEU, the member of the European Council representing the withdrawing Member State shall not participate in the discussions of the European Council or in decisions concerning it.
GUIDELINES FOLLOWING THE UNITED KINGDOM'S NOTIFICATION UNDER ARTICLE 50 TEU

On 29 March 2017, the European Council received the notification by the United Kingdom of its intention to withdraw from the European Union and Euratom. This allows for the opening of negotiations as foreseen by the Treaty.

European integration has brought peace and prosperity to Europe and allowed for an unprecedented level and scope of cooperation on matters of common interest in a rapidly changing world. Therefore, the Union's overall objective in these negotiations will be to preserve its interests, those of its citizens, its businesses and its Member States.

The United Kingdom's decision to leave the Union creates significant uncertainties that have the potential to cause disruption, in particular in the United Kingdom but also, to a lesser extent, in other Member States. Citizens who have built their lives on the basis of rights flowing from the British membership of the EU face the prospect of losing those rights. Businesses and other stakeholders will lose the predictability and certainty that come with EU law. It will also have an impact on public authorities. With this in mind, we must proceed according to a phased approach giving priority to an orderly withdrawal. National authorities, businesses and other stakeholders should take all necessary steps to prepare for the consequences of the United Kingdom's withdrawal.

Throughout these negotiations the Union will maintain its unity and act as one with the aim of reaching a result that is fair and equitable for all Member States and in the interest of its citizens. It will be constructive and strive to find an agreement. This is in the best interest of both sides. The Union will work hard to achieve that outcome, but it will prepare itself to be able to handle the situation also if the negotiations were to fail.
These guidelines define the framework for negotiations under Article 50 TEU and set out the overall positions and principles that the Union will pursue throughout the negotiation. In this context, the European Council welcomes the resolution of the European Parliament of 5 April 2017. The European Council will remain permanently seized of the matter, and will update these guidelines in the course of the negotiations as necessary. Negotiating directives will be adjusted accordingly.
I. **CORE PRINCIPLES**

1. The European Council will continue to base itself on the principles set out in the statement of Heads of State or Government and of the Presidents of the European Council and the European Commission on 29 June 2016. It reiterates its wish to have the United Kingdom as a close partner in the future. It further reiterates that any agreement with the United Kingdom will have to be based on a balance of rights and obligations, and ensure a level playing field. Preserving the integrity of the Single Market excludes participation based on a sector-by-sector approach. A non-member of the Union, that does not live up to the same obligations as a member, cannot have the same rights and enjoy the same benefits as a member. In this context, the European Council welcomes the recognition by the British Government that the four freedoms of the Single Market are indivisible and that there can be no "cherry picking". The Union will preserve its autonomy as regards its decision-making as well as the role of the Court of Justice of the European Union.

2. Negotiations under Article 50 TEU will be conducted in transparency and as a single package. In accordance with the principle that nothing is agreed until everything is agreed, individual items cannot be settled separately. The Union will approach the negotiations with unified positions, and will engage with the United Kingdom exclusively through the channels set out in these guidelines and in the negotiating directives. So as not to undercut the position of the Union, there will be no separate negotiations between individual Member States and the United Kingdom on matters pertaining to the withdrawal of the United Kingdom from the Union.

3. The core principles set out above should apply equally to the negotiations on an orderly withdrawal, to any preliminary and preparatory discussions on the framework for a future relationship, and to any form of transitional arrangements.
II. **A PHASED APPROACH TO NEGOTIATIONS**

4. On the date of withdrawal, the Treaties will cease to apply to the United Kingdom, to those of its overseas countries and territories currently associated to the Union, and to territories for whose external relations the United Kingdom is responsible. The main purpose of the negotiations will be to ensure the United Kingdom's orderly withdrawal so as to reduce uncertainty and, to the extent possible, minimise disruption caused by this abrupt change.

To that effect, the first phase of negotiations will aim to:

– provide as much clarity and legal certainty as possible to citizens, businesses, stakeholders and international partners on the immediate effects of the United Kingdom's withdrawal from the Union;

– settle the disentanglement of the United Kingdom from the Union and from all the rights and obligations the United Kingdom derives from commitments undertaken as Member State.

The European Council will monitor progress closely and determine when sufficient progress has been achieved to allow negotiations to proceed to the next phase.

5. While an agreement on a future relationship between the Union and the United Kingdom as such can only be finalised and concluded once the United Kingdom has become a third country, Article 50 TEU requires to take account of the framework for its future relationship with the Union in the arrangements for withdrawal. To this end, an overall understanding on the framework for the future relationship should be identified during a second phase of the negotiations under Article 50 TEU. We stand ready to engage in preliminary and preparatory discussions to this end in the context of negotiations under Article 50 TEU, as soon as the European Council decides that sufficient progress has been made in the first phase towards reaching a satisfactory agreement on the arrangements for an orderly withdrawal.
6. To the extent necessary and legally possible, the negotiations may also seek to determine transitional arrangements which are in the interest of the Union and, as appropriate, to provide for bridges towards the foreseeable framework for the future relationship in the light of the progress made. Any such transitional arrangements must be clearly defined, limited in time, and subject to effective enforcement mechanisms. Should a time-limited prolongation of Union acquis be considered, this would require existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures to apply.

7. The two year timeframe set out in Article 50 TEU ends on 29 March 2019.

III. AGREEMENT ON ARRANGEMENTS FOR AN ORDERLY WITHDRAWAL

8. The right for every EU citizen, and of his or her family members, to live, to work or to study in any EU Member State is a fundamental aspect of the European Union. Along with other rights provided under EU law, it has shaped the lives and choices of millions of people. Agreeing reciprocal guarantees to safeguard the status and rights derived from EU law at the date of withdrawal of EU and UK citizens, and their families, affected by the United Kingdom's withdrawal from the Union will be the first priority for the negotiations. Such guarantees must be effective, enforceable, non-discriminatory and comprehensive, including the right to acquire permanent residence after a continuous period of five years of legal residence. Citizens should be able to exercise their rights through smooth and simple administrative procedures.

9. Also, the United Kingdom leaving the Union will impact EU businesses trading with and operating in the United Kingdom and UK businesses trading with and operating in the Union. Similarly, it may affect those who have entered into contracts and business arrangements or take part in EU-funded programmes based on the assumption of continued British EU membership. Negotiations should seek to prevent a legal vacuum once the Treaties cease to apply to the United Kingdom and, to the extent possible, address uncertainties.
10. A single financial settlement - including issues resulting from the MFF as well as those related to the European Investment Bank (EIB), the European Development Fund (EDF) and the European Central Bank (ECB) - should ensure that the Union and the United Kingdom both respect the obligations resulting from the whole period of the UK membership in the Union. The settlement should cover all commitments as well as liabilities, including contingent liabilities.

11. The Union has consistently supported the goal of peace and reconciliation enshrined in the Good Friday Agreement in all its parts, and continuing to support and protect the achievements, benefits and commitments of the Peace Process will remain of paramount importance. In view of the unique circumstances on the island of Ireland, flexible and imaginative solutions will be required, including with the aim of avoiding a hard border, while respecting the integrity of the Union legal order. In this context, the Union should also recognise existing bilateral agreements and arrangements between the United Kingdom and Ireland which are compatible with EU law.

12. The Union should agree with the United Kingdom on arrangements as regards the Sovereign Base Areas of the United Kingdom in Cyprus and recognise in that respect bilateral agreements and arrangements between the Republic of Cyprus and the United Kingdom which are compatible with EU law, in particular as regards safeguarding rights and interests of those EU citizens resident or working in the Sovereign Base Areas.

13. Following the withdrawal, the United Kingdom will no longer be covered by agreements concluded by the Union or by Member States acting on its behalf or by the Union and its Member States acting jointly. The Union will continue to have its rights and obligations in relation to international agreements. In this respect, the European Council expects the United Kingdom to honour its share of all international commitments contracted in the context of its EU membership. In such instances, a constructive dialogue with the United Kingdom on a possible common approach towards third country partners, international organisations and conventions concerned should be engaged.
14. The withdrawal agreement would also need to address potential issues arising from the withdrawal in other areas of cooperation, including judicial cooperation, law enforcement and security.

15. While the future location of the seats of EU agencies and facilities located in the United Kingdom is a matter for the 27 Member States to settle rapidly, arrangements should be found to facilitate their transfer.

16. Arrangements ensuring legal certainty and equal treatment should be found for all court procedures pending before the Court of Justice of the European Union upon the date of withdrawal that involve the United Kingdom or natural or legal persons in the United Kingdom. The Court of Justice of the European Union should remain competent to adjudicate in these procedures. Similarly, arrangements should be found for administrative procedures pending before the European Commission and Union agencies upon the date of the withdrawal that involve the United Kingdom or natural or legal persons in the United Kingdom. In addition, arrangements should be foreseen for the possibility of administrative or court proceedings to be initiated post-exit for facts that have occurred before the withdrawal date.

17. The withdrawal agreement should include appropriate dispute settlement and enforcement mechanisms regarding the application and interpretation of the withdrawal agreement, as well as duly circumscribed institutional arrangements allowing for the adoption of measures necessary to deal with situations not foreseen in the withdrawal agreement. This should be done bearing in mind the Union's interest to effectively protect its autonomy and its legal order, including the role of the Court of Justice of the European Union.
IV. PRELIMINARY AND PREPARATORY DISCUSSIONS ON A FRAMEWORK FOR THE UNION - UNITED KINGDOM FUTURE RELATIONSHIP

18. The European Council welcomes and shares the United Kingdom's desire to establish a close partnership between the Union and the United Kingdom after its departure. While a relationship between the Union and a non Member State cannot offer the same benefits as Union membership, strong and constructive ties will remain in both sides' interest and should encompass more than just trade.

19. The British government has indicated that it will not seek to remain in the Single Market, but would like to pursue an ambitious free trade agreement with the European Union. Based on the Union's interests, the European Council stands ready to initiate work towards an agreement on trade, to be finalised and concluded once the United Kingdom is no longer a Member State.

20. Any free trade agreement should be balanced, ambitious and wide-ranging. It cannot, however, amount to participation in the Single Market or parts thereof, as this would undermine its integrity and proper functioning. It must ensure a level playing field, notably in terms of competition and state aid, and in this regard encompass safeguards against unfair competitive advantages through, inter alia, tax, social, environmental and regulatory measures and practices.

21. Any future framework should safeguard financial stability in the Union and respect its regulatory and supervisory regime and standards and their application.

22. The EU stands ready to establish partnerships in areas unrelated to trade, in particular the fight against terrorism and international crime, as well as security, defence and foreign policy.
23. The future partnership must include appropriate enforcement and dispute settlement mechanisms that do not affect the Union's autonomy, in particular its decision-making procedures.

24. After the United Kingdom leaves the Union, no agreement between the EU and the United Kingdom may apply to the territory of Gibraltar without the agreement between the Kingdom of Spain and the United Kingdom.

V. **PRINCIPLE OF SINCERE COOPERATION**

25. Until it leaves the Union, the United Kingdom remains a full Member of the European Union, subject to all rights and obligations set out in the Treaties and under EU law, including the principle of sincere cooperation.

26. The European Council recognises the need, in the international context, to take into account the specificities of the United Kingdom as a withdrawing Member State, provided it respects its obligations and remains loyal to the Union's interests while still a Member. Similarly the Union expects the United Kingdom to recognise the need of the 27 Member States to meet and discuss matters related to the situation after the withdrawal of the United Kingdom.

27. While the United Kingdom is still a member, all ongoing EU business must continue to proceed as smoothly as possible at 28. The European Council remains committed to drive forward with ambition the priorities the Union has set itself. Negotiations with the United Kingdom will be kept separate from ongoing Union business, and shall not interfere with its progress.

VI. **PROCEDURAL ARRANGEMENTS FOR NEGOTIATIONS UNDER ARTICLE 50**

Recommendation for a Council decision authorising the Commission to open negotiations on an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union. (European Commission, 5th May 2017) COM (2017) 218 final
Recommendation for a COUNCIL DECISION

authorising the Commission to open negotiations on an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union
EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL
   • Reasons for and objectives of the proposal

According to Article 50 of the Treaty on European Union, any Member State may decide to withdraw from the Union in accordance with its own constitutional requirement and shall, if it so decides, notify the European Council of its intention.

On 29 March 2017, the United Kingdom notified the European Council of its intention to withdraw from the Union and from the European Atomic Energy Community.

Article 50 of the Treaty on European Union provides that in the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with the State wishing to leave the European Union, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.

It is recalled that the date of entry into force of the withdrawal agreement should be at the latest 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend this period in accordance with Article 50(3) of the Treaty on European Union. Failing that, on 30 March 2019 at 00:00 (Brussels time), all Union Treaties and the Treaty establishing the European Atomic Energy Community cease to apply to the United Kingdom. The United Kingdom will become a third country from the withdrawal date. On the same date, the Treaties cease also to apply to the overseas countries and territories having special relations with the United Kingdom and to the European territories for whose external relations the United Kingdom is responsible, to which the Treaties apply by virtue of Article 355 of the Treaty on the Functioning of the European Union.

The European Council adopted guidelines on 29 April 2017. In the light of these guidelines, the present Recommendation proposes that the Council authorises the Commission to open the negotiations for an agreement with the United Kingdom setting out the arrangements for its withdrawal from the European Union and from the European Atomic Energy Community, nominates the Commission as the Union negotiator, and addresses negotiating directives to the Commission.

The negotiations will be conducted in the light of the European Council guidelines, in line with the negotiating directives and with due regard to the resolution of the European Parliament of 5 April 2017. There will be a phased approach to the negotiations, as set out in the European Council guidelines. The recommended negotiating directives in Annex cover the first phase of the negotiations, which will prioritise matters which, at this stage, have been identified as strictly necessary to ensure an orderly withdrawal. Negotiating directives may be amended and supplemented as necessary throughout the negotiations, in particular to reflect the European Council guidelines as they evolve and to cover the subsequent phase of the negotiations.

An agreement on a future relationship between the Union and the United Kingdom can only be finalised and concluded once the United Kingdom has become a third country. However, Article 50 of the Treaty on European Union requires that the framework for the future relationship with the Union is taken into account in the agreement setting out the

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1 Listed in the twelve last indents of Annex II to the Treaty on the Functioning of the European Union.
arrangements for the withdrawal. To this end, as soon as the European Council decides that sufficient progress has been achieved to allow negotiations to proceed to the next phase, an overall understanding with the United Kingdom on the framework for the future relationship should be identified during the second phase of the negotiations under Article 50.

Determining transitional arrangements under the withdrawal agreement, including bridges towards the foreseeable framework for the future relationship, in the light of the progress made, depends on the identification of an understanding over the framework for the future relationship between the Union and the United Kingdom which will be determined in the second phase of the negotiations. Therefore, matters that could be part of such transitional arrangements are not covered by the present recommended negotiating directives and will be identified at a later stage. This approach will allow an efficient allocation of the limited time that Article 50 of the Treaty on European Union imposes for the conclusion of the Agreement.

In accordance with the European Council guidelines, the following core principles will apply equally to the negotiations on an orderly withdrawal, to any preliminary and preparatory discussions on the framework for a future relationship, and to any form of transitional arrangements:

– The Agreement will have to be based on a balance of rights and obligations, and ensure a level-playing field;
– Preserving the integrity of the Single Market excludes participation based on a sector-by-sector approach;
– A non-member of the Union, which does not have the same obligations as a member, cannot have the same rights and enjoy the same benefits as a member;
– Participation in the Single Market requires the acceptance of all four freedoms;
– Negotiations with the United Kingdom will be conducted as a single package. In accordance with the principle that nothing is agreed until everything is agreed, individual items cannot be settled separately. The Union will approach the negotiations with unified positions, exclusively through the channels set out in the European Council guidelines and in the negotiating directives and there will be no separate negotiations between individual Member States and the United Kingdom on matters pertaining to the withdrawal;
– The Agreement will have to respect the autonomy of the Union as regards its decision-making as well as the role of the Court of Justice of the European Union.

**Consistency with other Union policies**

The negotiations and the Agreement under Article 50 of the Treaty on European Union will fully respect the Treaties and preserve the integrity and the autonomy of the Union legal order. They will promote the values, objectives, and interests of the Union, and ensure the consistency, effectiveness and continuity of its policies and actions.

**Fundamental rights**

According to Article 6 of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, which has the same legal value as the Treaties. Moreover, fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, constitute general principles of the Union's law.
These rights, freedoms and principles will continue to be fully preserved and protected in the Union, both during the process of negotiation with the United Kingdom under Article 50 of the Treaty on European Union, and after withdrawal of the United Kingdom from the Union.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The United Kingdom has notified its intention to withdraw from the European Union. As a consequence, Article 50 of the Treaty on European Union constitutes the legal basis for the negotiation and conclusion of a withdrawal agreement. It is recalled that in accordance with Article 106(a) of the Treaty establishing the European Atomic Energy Community, Article 50 of the Treaty on European Union applies also to the European Atomic Energy Community.

According to Article 218(3) of the Treaty on the Functioning of the European Union, to which Article 50 of the Treaty on European Union refers, the Commission shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and nominate the Union negotiator.

• Proportionality

The present Recommendation proposes to the Council to authorise the opening of negotiations and to nominate the Union negotiator, as required under Article 50 of the Treaty on European Union, in conjunction with Article 218(3) of the Treaty on the Functioning of the European Union. The purpose of the negotiations under Article 50 of the Treaty on European Union will be to ensure an orderly withdrawal of the United Kingdom from the Union. As an agreement on a future relationship between the Union and the United Kingdom can only be concluded once the United Kingdom has become a third country, the negotiations will not address matters relating to the framework for the future relationship between the EU and the United Kingdom, except by taking into account that framework in the negotiations.

• Choice of the instrument

According to Article 50 of the Treaty on European Union, an agreement is to be negotiated with the United Kingdom setting out the arrangements for its withdrawal from the European Union. Article 218(3) of the Treaty on the Functioning of the European Union provides that the Commission is to submit recommendations to the Council, which shall adopt a decision nominating the Union negotiator and authorising the opening of negotiations. A Council decision is the appropriate instrument for the Council to authorize the Commission in that respect.

3. BUDGETARY IMPLICATIONS

The present Recommendation which proposes that the Council nominates the Union negotiator and authorises the Commission to open negotiations with the United Kingdom is not expected to have immediate budgetary implications, in so far as the negotiating process is concerned. The budgetary implications of the agreement under Article 50 of the Treaty on European Union, resulting from the above mentioned negotiations, will be outlined when the relevant proposals on signature and conclusion of the withdrawal agreement are presented.
4. OTHER ELEMENTS

• Detailed explanation of the specific provisions of the proposal

In Article 1 of the recommended Council Decision, the Council authorises the opening of negotiations and nominates the Commission as the Union negotiator for the agreement with the United Kingdom setting out the arrangements for its withdrawal from the Union and from the European Atomic Energy Community.

In Article 2 of the recommended Council Decision, the Council establishes that the negotiations shall be conducted in the light of the guidelines provided by the European Council and of the directives set out in the Annex.

The recommended Annex to the Council Decision sets out the negotiating directives for the following matters:

– Citizens' rights;
– Single financial settlement related to the Union budget and to the termination of the membership of the United Kingdom of the institutions or bodies established by the Treaties, as well as to the participation of the United Kingdom in specific funds and facilities related to Union policies;
– Arrangements regarding goods placed on the market and ongoing procedures based on Union law;
– Arrangements relating to other administrative issues relating to the functioning of the Union;
– Governance of the Agreement.

• Publication of the Decision and of the Negotiating Directives set out in the Annex

The Commission proposes to the Council to make public the Decision authorising the opening of negotiations for an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union and nominating the Commission as the Union negotiator, as well as the Negotiating Directives set out in its Annex.
Recommendation for a

COUNCIL DECISION

authorising the Commission to open negotiations on an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaties, and in particular Article 50 of the Treaty on European Union, in conjunction with Article 218(3) of the Treaty on the Functioning of the European Union,

Having regard to the guidelines of the European Council of 29 April 2017,

Having regard to the Recommendation from the European Commission,

Whereas:

(1) On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland notified to the European Council of its intention to withdraw from the European Union.

(2) On 29 April 2017, the European Council adopted guidelines that define the framework for negotiations under Article 50 of the Treaty on European Union and set out the overall principles that the Union will pursue throughout the negotiation.

(3) In the light of the guidelines of the European Council, the Union should negotiate and conclude an agreement with the United Kingdom setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union ('Withdrawal Agreement').

(4) The Treaties will cease to apply to the United Kingdom from the date of entry into force of the Withdrawal Agreement or, failing that, two years after the notification, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend this period.

(5) The negotiations should thus be opened immediately with a view to concluding a withdrawal agreement.

(6) On 5 April 2017, the European Parliament adopted a resolution setting out its position on the withdrawal negotiations.

(7) The Commission should be authorised to open the negotiations for a Withdrawal Agreement and should be nominated as the Union negotiator.

(8) In accordance with Article 106(a) of the Treaty establishing the European Atomic Energy Community, Article 50 of the Treaty on European Union applies to the European Atomic Energy Community.
HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to open negotiations, on behalf of the Union, for an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union and from the European Atomic Energy Community, taking account of the framework for its future relationship with the Union, and is hereby nominated as the Union negotiator.

Article 2

The negotiations shall be conducted in the light of the guidelines adopted by the European Council and in line with the negotiating directives set out in the Annex.

Article 3

This Decision is addressed to the Commission.
Done at Brussels,

For the Council
The President