

The UK votes for Brexit ... from awkward partner to awkward leaver?

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Referendum Result

Leave 52%

Remain 48%

Even the promise of Germany to recognise the 3rd English goal in the 1966 World Cup final was not enough

Referendum aftermath

- PM Cameron resigns - says new PM must trigger withdrawal process (Art 50 TEU) no earlier than October - gives EU time to set out its position - make it easy or tough for the UK?
- £ collapses, UK no longer 5th largest world economy

“It is up to the British to interpret their own referendum”
(unnamed Foreign Minister quoted in the *Financial Times*)

Legal position on 24 June 2016

- UK is member of the EU and bound by the Treaties - must comply with all EU law
- EU citizens and their family members continue to have a right to move to and reside in the UK and vice versa
- UK deal of February 2016 will not be implemented
- UK remains bound until the process laid down in Article 50 of the Treaty on European Union is complete
- UK cannot withdraw from the ECHR in this period

Article 50 of the Treaty on European Union: 1: The DECISION TO WITHDRAW - two stages

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw *shall notify the European Council of its intention*. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union ...

Article 50 of the Treaty on European Union

2: The PROCESS OF WITHDRAWAL

2. ... [The withdrawal 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 ...

4. For the purposes of [paragraph 2], the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

Article 50 of the Treaty on European Union

3: THE FACT OF WITHDRAWAL

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of [paragraph 3], the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

OPTION 1: Norway - the single market option

- EEA agreement 1991 - EU 28 + Norway, Iceland, Liechtenstein (EFTA countries) - default position? <http://www.efta.int/eea>
- “Norway option” = EU Single Market - free movement, non-discrimination, competition and state aid rules AND social, environmental and consumer rules apply and regional development grants. Parallel institutional structures. Bound by CJEU rulings - disputes go to EFTA Court
- ADVANTAGE - would be negotiable but requires UK financial contribution - does not include agriculture, fisheries, tax, trade, justice and home affairs, CFSP, EMU (Schengen optional)
- DISADVANTAGE - similar to present situation but loss of influence and democratic deficit. Probably impossible for UK to choose because ‘no control’ on immigration from the EU (unnamed UK diplomat in *FT*)

ICELAND
LIECHTENSTEIN
NORWAY

EEA
COUNCIL

COUNCIL
PRESIDENCY
& EEAS

EFTA
STANDING
COMMITTEE

EEA
JOINT
COMMITTEE

EUROPEAN
EXTERNAL
ACTION SERVICE
(EEAS)

EFTA
SURVEILLANCE
AUTHORITY

EUROPEAN
COMMISSION

EFTA
COURT

COURT
OF JUSTICE

COMMITTEE OF
MPs OF THE
EFTA STATES

EEA JOINT
PARLIAMENTARY
COMMITTEE

EUROPEAN
PARLIAMENT

EFTA
CONSULTATIVE
COMMITTEE

EEA
CONSULTATIVE
COMMITTEE

ECONOMIC
AND SOCIAL
COMMITTEE

The Two-Pillar EEA Structure

OPTION 2: Canada - free trade option

- Leave EEA - negotiate FTA as part of or in parallel to withdrawal agreement - Arts 207, 218 TFEU - Commission is lead negotiator. Council QMV/unanimity? EP gives Opinion
- Canada/EU Comprehensive Economic and Trade Agreement (CETA) 2014: http://ec.europa.eu/trade/policy/in-focus/ceta/index_en.htm
- 99% of customs duties removed, no limits in access to public contracts, access to services, regulatory co-operation process, must comply with EU food and environmental rules - safeguards for health and consumer. No mutual recognition of professions. Dispute settlement panel.

ADVANTAGE: free trade not full Single Market - UK “can control borders”

DISADVANTAGE: complex and slow to negotiate. Would have to comply with EU rules to access SM. Negative impact of being outside SM. UK citz lose free movement rights and, potentially, social and consumer rights

OPTION 3: WTO option

- no bilateral trade agreement
- UK and EU members of the World Trade Organisation: <https://www.wto.org/>
- Basic rule: Most Favoured Nation trade rule = no discrimination against trade partners countries can take measures against unfair competition such as dumping; also rules against restrictions on services
- EU has exemption under Art XXIV GATT - allows it to impose customs duties
- Ministerial Council and dispute settlement process

ADVANTAGE: a clean break for those who want one

DISADVANTAGE: loss of market access, increased costs for the consumer, potential significant negative impact on GDP. UK treated like a “third country”

OPTION 4A: delay withdrawal from the EU

- is this the “Vote Leave” leaders preferred option?
- do not activate Art 50 or prolong Art 50 process - EU very unlikely to agree to a process outside Art 50
- seek to renegotiate unique UK option - mix of Swiss and Norwegian but limit on annual immigration from the EU, OR
- seek to negotiate new EU Treaty
- possible second referendum on staying in or rejoining

OPTION 5: leave and rejoin

Art 50 TEU

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

Art 49 TEU

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

Prospects

- Art 50 process is untried - almost no advance planning
- each option has its own disadvantages
- each will cause huge political and economic rupture in EU and UK
- each will be open to legal challenges
- each is likely to require a further referendum