



In brief: leaving the European Union

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The *Treaty of Lisbon* provided for Member States to leave the EU if they wanted to. Article 50 of the Treaty on European Union (TEU), as amended by the Lisbon Treaty, sets out a procedure for a voluntary withdrawal from the Union according to a State's "own constitutional requirements".

Withdrawing from the EU would not be easy, however, and would not mean a simple return to the *status quo* before the UK joined the then European Economic Community (EEC) in 1973. EU law is part of UK law and its enactment has given UK citizens, companies and state authorities certain rights and obligations; changing or removing them would not be straightforward.

A number of complex issues would need to be resolved through negotiations with the other EU Member States. These would include a new relationship with the Common Agricultural and Common Fisheries Policies, revised trade rules with EU Member States and with third parties, changes to the arrangements for the free movement of workers throughout the EU and EEA areas, to name but a few. The UK would probably negotiate transitional arrangements to take account of these and other matters, and then establish a new relationship with the EU.

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1 Mechanism for leaving the EU

The Treaty of Lisbon provided for Member States to leave the EU if they wanted to. [Article 50 of the Treaty on European Union \(TEU\)](#), as amended by the Lisbon Treaty, sets out a procedure for a voluntary withdrawal from the Union according to a State's "own constitutional requirements". A State wishing to withdraw must notify the European Council, which will consider the matter and set out negotiating guidelines. The Union will conduct negotiations with the State on this basis, and will conclude an agreement setting out the arrangements for withdrawal and taking into account "the framework for its future relationship with the Union." The Council of Ministers, having obtained the consent of the EP, will conclude the agreement, acting by a Qualified Majority Vote (QMV – roughly two-thirds). The withdrawing state will not participate in discussions or decisions about it in the European Council or the Council of Ministers.

The withdrawing state will be released from its obligations under the Treaties upon entry into force of the withdrawal agreement, OR two years after its notification to the European Council. This period may be extended by unanimous agreement.

There is no mention of ratification of the withdrawal agreement by Member States, but it is likely that this would be necessary, for the same reason that accession agreements have to be ratified by all the states concerned before they can enter into force. Just as accession of new members has implications for the institutions, so withdrawal of an existing member would have a similar impact. This would not supersede the provision for a two-year time period.

Article 8 on the EU's relationship with its neighbours may be relevant to the nature of the withdrawal agreement, since the withdrawing state would remain a part of the Union's immediate environment. The explanatory notes from the Convention Praesidium in 2003 argued that this removed the need to create a special associate status for withdrawing states.

The explanatory notes on the *Treaty Establishing a Constitution for Europe*, which never came into force but where the withdrawal article first appeared, gave the rationale for the two approaches to withdrawal in the Lisbon Treaty Article (by agreement or after at least two years):

The Praesidium considers that, since many hold that the right of withdrawal exists even in the absence of an explicit provision to that effect, withdrawal of a Member State from the Union cannot be made conditional upon the conclusion of a withdrawal agreement. Hence the provision that withdrawal will take effect in any event two years after notification. However, in order to encourage a withdrawal agreement between the Union and the State which is withdrawing, Article I-57 [now I-60] provides

for the possibility of extending this period by common accord between the European Council and the Member State concerned.

Under Article 50(5), if a State which has withdrawn from the Union asks to rejoin, it must re-apply under the procedure referred to in Article 49. In other words, it will be dealt with as if it were a new applicant, with no automatic right to rejoin and no special advantages.

2 Consequences of withdrawal

Withdrawal from the EU would not simply return the UK to the pre-1973 status quo. The mechanics for EU withdrawal might no longer be difficult, but disengaging from the EU would not be straightforward, and could well involve a long and difficult negotiation. The EU Treaties have created a whole network of rights and obligations, not only between Member States, but also for nationals of those States. Among the matters which would need to be addressed would be the following:

- Nationals of other Member States have rights under the Treaties directly enforceable in our courts in relation to such matters as free movement of workers, free movement of goods, freedom of establishment etc. UK nationals have corresponding rights in relation to other Member States. Rights acquired under the Treaty would have to be respected. According to Sir Gerald Fitzmaurice:

It is an accepted rule of treaty law that the termination of a treaty, for whatever cause and in whatever way, can only affect its continuing obligations, and cannot *per se* affect or prejudice any right already definitively and finally acquired under it, or undo or reverse anything effected by any clause of an executed character in the treaty.¹

A.D. McNair states that “any right already definitively and finally acquired under it” would include, for these purposes:

... not only rights acquired at the time of, and as a result of, the conclusion of a treaty, but also rights which a party has acquired later, for itself or for its nationals, during the currency of the treaty and before termination [or, presumably, withdrawal], in pursuance of a power conferred on it by the treaty.²

Thus, any rights which a State has acquired against the other Member States and vice versa, prior to the termination or withdrawal, would continue to be effective, and any which arise or continue after that date, would not.³ McNair expressed it as follows:

In so far as the provisions of a treaty have already been executed and have had their effect before the termination, they have passed beyond the sphere of the operation of the termination; for instance ... new rights and statuses have been created which, although they owe their origin to the treaty, have acquired an existence independent of it; the termination cannot touch them. On the

¹ *The law and procedure of the International Court of Justice*, 1986

² A.D. (Lord) McNair, *The Law of Treaties*, p 532, fn 4

³ This the position taken in *Oppenheim's International Law*, Ninth Edition, p 1311, para 657), which states that it “...releases the parties from any obligation to perform the treaty further, and does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination [or the withdrawal]”.

other hand, other provisions take the form of continuing obligations and operate *de die in diem* so long as the treaty remains in existence ... upon termination, no further rights of this type can accrue. If we may borrow the terminology of English law, this is difference between executed and executory obligations.⁴

McNair also stated that these rights, in these circumstances, would be 'protected' by the "well-recognised principle of respect for acquired rights".

- It would not be possible to withdraw from the Common Agricultural Policy (CAP) overnight without causing enormous disruption for farmers. The UK would probably have to negotiate some transitional arrangements while an alternative regime was being put in place. Similar problems would have to be dealt with in relation to projects, joint ventures etc, for example in the field of research, which are being funded by the EU as part of a long-term programme.
- The UK has become a party, through its EU membership, to innumerable Treaties with third countries, mainly, but not entirely, in the commercial field. A great many of these would probably need to be renegotiated to take account of UK withdrawal from the EU.
- The future financing of the EU has been planned on the basis of continuing UK membership and there would almost certainly be long and complicated negotiations involved in settling the financial account between the UK and the EU.
- There would be many loose ends to tie up, such as the position of UK nationals working in the EU institutions, the European Schools, the position in relation to outstanding claims of various kinds arising out of UK membership of the EU.
- Finally, there would be the complex task of deciding which parts of UK law deriving from the EU, whether directly from the terms of the Treaty or from Regulations or Decisions adopted under it, or indirectly from Directives, should be preserved and which parts repealed.

No doubt all these problems could be resolved given time, resources and willingness on the part of all Member States come to an agreement, but it would be a daunting prospect for any Government contemplating withdrawal. Some sort of alternative relationship with the EU (perhaps like that of Switzerland's?) would probably have to be put in its place and matters settled in that context. While this might simplify negotiations to some extent, the difficulty of devising acceptable alternative arrangements cannot be underestimated.

3 Further reading

- Patrick Minford's assessment of UK membership of the EU, entitled "[Should Britain Leave the EU? An Economic Analysis of a Troubled Relationship](#)". See especially the "[Introduction, Summary and Conclusions: Why the UK should Renegotiate or Leave the EU](#)"

⁴ Ibid p 531.

- Swiss Federal Department of Foreign Affairs (FDFA) Federal Department of Economic Affairs (FDEA) June 2006, [Information file on the Europe 2006 Report \(unofficial translation\)](#)
- *European Movement Policy Paper 4* “[Relegated to the Second Division? Why Associate Membership of the EU would be bad for Britain](#)”, Diana Wallis MEP, July 2005
- “Public Support for the European Union: Cost/Benefit analysis or perceived cultural threat?” Lauren McLaren, 2002
- Library [Research Paper 10/62](#), “[How much legislation comes from Europe?](#)” 13 October 2010