

The Use of Article 50

- **Timing** - official notification to withdraw **will automatically result in the UK ceasing to be a Member State of the EU, as of two years from the date of notification**, unless:
 - 1) Withdrawal Agreement sets new date (could be set before or after deadline)
 - 2) or if UK + ALL MSs agree extended time limit (unanimously)
- **Would it be possible to *withdraw a notification to leave the EU?* – absence of wording, therefore could be argued either way** (notification to withdraw is subject to a Member State's constitutional requirements).
 - 1) Each MS has the possibility to rescind the notification according to constitution
 - 2) or Treaty gives only 2 ways to delay once the notification is given - no suggestion that this is a non-exhaustive list. Therefore the notification of withdrawal can't be rescinded.
- **Could the deadline be extended indefinitely?** – open to challenge (decided by UK +MSs unanimously):
 - 1) not ruled out
 - 2) but logic and context of Article 50 suggests that extensions of the time limit are temporary (Article 50(5)) that expressly provides for rejoining the EU after withdrawal. If the Treaty drafters had intended there to be other means to remain an EU Member State after notifying withdrawal, they would surely have said so expressly).
- **Has an important political implication:** (has been suggested) to invoke Article 50 as a means of forcing a *renegotiation* of UK membership of the EU. While it is likely that if the UK left the EU, there would be a *separate* Treaty amendment agreed by the *remaining* Member States. Triggering Article 50 in the context of a renegotiation of UK membership would immediately give leverage to all the other Member States. Even if they were willing to be fairly generous, it would look as if we were forced to agree those terms as a condition of remaining a Member State.
- **Content of the negotiations:** Article 50 provides for the negotiation of a withdrawal arrangement, **not a deal on the UK's future relationship with the EU**. Although the withdrawal treaty would aim to regulate a transition period before the treaty on the future relationship entered into force.
- **No legal obligation** for the remaining EU **to sign a free trade agreement with the UK**. Therefore the withdrawal negotiated would need to be passed by a qualified majority voting procedure by the Council. Negotiating the FTA would then require the consent of the EU institutions and ratification by all of the MSs – unanimity making the negotiation harder (FTA would be classified as a 'mixed agreement' – as FTAs usually contain rules going outside the scope of the EU's trade policy).
- **Retain Membership in EEA?** - EEA includes the free movement of persons; if UK suspended free movement? EU would likely retaliate by suspending access to the EU by the UK financial services industry etc...
- **Could UK ignore the Article 50 process** – Membership based on ECC Act, Parliament could repeal the Act. **BUT:**
 - 1) Would leave many practical details of withdrawing from the EU unresolved – reverting to membership of the EEA, would only cover trade arrangements
 - 2) Would destroy the UK's credibility as a negotiating partner with the remaining EU and rest of world
- **Could the UK leave the EU before holding the Brexit referendum?** – would give choice of EEA vs full EU membership (inc Schengen and Euro). But UK constitution has unwritten convention: major constitutional changes need to be approved by a referendum.

Annex 1: Article 50 and Associated Articles

Article 50

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

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

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

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

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

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

Article 218 (3)

3. The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.

Article 238 (3)

3. As from 1 November 2014 and subject to the provisions laid down in the Protocol on transitional provisions, in cases where, under the Treaties, not all the members of the Council participate in voting, a qualified majority shall be defined as follows:

(a) A qualified majority shall be defined as at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained;

(b) By way of derogation from point (a), when the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72% of the members of the Council representing Member States comprising at least 65% of the population of these States.

Article 49

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 assent of the European Parliament, which shall act by an absolute majority of its component members. 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. The conditions of eligibility agreed upon by the European Council shall be taken into account.