

Workshop: Consequences of Brexit

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Governance

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Article 50 TEU: The EU legal framework for Brexit and the road ahead

RESEARCH FELLOWS

Fabian Amtenbrink
Erasmus University Rotterdam
(Scientific Director EURO-CEFG)

Stefaan van den Bogaert
Leiden University

Matthias Haentjens
Leiden University

Markus Haverland
Erasmus University Rotterdam

Klaus Heine
Erasmus University Rotterdam

Madeleine Hosli
Leiden University

Alessio M. Paccos
Erasmus University Rotterdam

Erik Pruyt
Delft University of Technology

René Repasi
Erasmus University Rotterdam
(Scientific Coordinator EURO-CEFG)

Casper de Vries
Erasmus University Rotterdam



Erasmus
University
Rotterdam



Three key issues

- The substantive legal obligations arising from Article 50 TEU concerning the withdrawal of a Member State from the EU.
- The legal nature and scope of the UK's (legal) relationship with the EU once the act of withdrawal has been completed.
- The implications of this future legal relationship for the EU internal market law and notably the policy fields falling within the ambit of the IMCO Committee.
 - NB: Key policy choices are yet to be made by the EU and the UK.

Article 50 TEU: Withdrawing from the European Union

- Article 50 TEU provides the legal framework for the withdrawal of a Member State from the EU.
 - The withdrawal becomes a reality either from the date of entry into force of the withdrawal agreement or, in the absence thereof, two years after the UK Government gives its notification of withdrawal.
 - If no withdrawal agreement is reached, primary and secondary EU law cease to apply without any transitional legal arrangements.
 - A prolongation of the negotiation period is possible but requires a unanimous vote in the European Council.
 - No legal obligation to conclude a withdrawal agreement.

Article 50 TEU: Withdrawing from the European Union

- The wording of Article 50 TEU provides little information regarding the scope of the withdrawal agreement.
 - The agreement with the withdrawing State shall set out the arrangements for the withdrawal, ‘taking account of the framework for its future relationship with the Union’ (Article 50(2) TEU).
 - The reference to the ‘framework for its future relationship’ links the withdrawal agreement to the future framework and therefore with the policy choices to be made by the EU and the UK.
 - The withdrawal agreement does not itself define the future framework. A separate agreement is needed, which should in principle be negotiated in parallel with the withdrawal

Article 50 TEU: Withdrawing from the European Union

- Once the withdrawal has become a reality, there is way back for the withdrawing State (Article 49 TEU applies).
- However, there is disagreement as to whether the Article 50 TEU process can be reversed before the process of withdrawal is concluded.
 - On the one hand, it is argued that it can be reversed and that when the withdrawing Member State changes its mind, there is no decision to withdraw pursuant to Article 50(1) TEU. This view also draws on Articles 65-68 of the VCLT.
 - Others argue that it could not be reversed unilaterally, as such a right would not be in line with the purpose or structure of Article 50 TEU.
- NB: The UK government cannot trigger Article 50 without prior authorisation by Parliament (UK Supreme Court in

Three scenarios for the future EU-UK relationship

- The 'fall-back' option (WTO law)
 - The UK is a member of the WTO in its own right, ...
 - ... but it does not have an individual schedule of concessions, as it is part of the EU's combined schedules. It would have to negotiate one.
 - An agreement could be reached between the EU and the UK to separate the WTO commitments of the UK from those of the EU.
 - In any eventuality, the agreement of all other 163 WTO members would be needed.
- Membership of the European Economic Area (EEA)
 - The UK would need to return to EFTA in order to join the EEA.
 - EEA Agreement enables States to participate fully in large parts

Three scenarios for the future EU-UK relationship

- Tailor-made arrangements
 - There is no single ‘blueprint’ for such treaties.
 - Different options include customs unions; association agreements; stabilisation agreements; free trade agreements; economic partnership agreements; and partnership and cooperation agreements.
 - A (comprehensive) Free Trade Agreement (FTA) is the most likely scenario.
 - FTAs come with a lesser degree of sectoral coverage (notably in services) and do not give automatic access to the single market. They typically come with no obligations on free movement of people, budget contributions or legal oversight by the CJEU.

Thank you for your attention

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Prof. Dr. Fabian Amtenbrink
European Research Centre
for Economic and Financial Governance
(EURO-CEFG)

E-Mail: amtenbrink@law.eur.nl

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