

Box A. Article 50: withdrawing from the EU

The process for withdrawing from the EU is set out in Article 50 of the Treaty of the European Union (TEU). Any attempt to use an alternative avenue is likely to be over-ruled by the European Court of Justice, because the purpose of creating Article 50 in the Treaty of Lisbon was to create a clear mechanism for a member state to leave the EU.¹ Once a member state gives notice of its intention to withdraw to the European Council, there is a two-year period of negotiation within which to reach a settlement. The settlement is concluded by consent of the European Parliament and the EU Council by a qualified majority vote (20 of the remaining 27 member states and accounting for over 65 per cent of the total population of the remaining states) and the British government. If the settlement has not been agreed at the end of the two-year period, then either an extension to the negotiating period is agreed by unanimous consent of all other 27 member states or the UK leaves the EU without a settlement.

No country has left the EU. While Article 50 is admirably short, it is not very precise and the devil is likely to be in the detail. It is clear that the EU cannot force, or coerce, the UK to submit its Notice to Withdraw, but equally the UK cannot make any changes in trade or migration or other areas of policy which are governed by the EU until it has formally left the EU. Therefore, a prolonged delay in submitting a Notice to Withdraw extends the period by which the UK can make the changes promised during the referendum campaign. The government has indicated that it intends to submit its Notice to Withdraw in early 2017. During the two-year negotiating period, the UK will remain a full member of the EU except in regard to the EU's negotiating stance with regard to its own departure.

The Settlement Agreement is likely to be relatively short. The sort of issues that are likely to be included are cross-border arrangements, security arrangements and databases, transition arrangements, outstanding budgetary issues, legal and regulatory arrangements and an agreement on the vested rights of EU citizens and firms located in the UK and vice versa. Most importantly, the settlement must take "account of the framework of its future relationship with the EU".² This clause refers to the future economic arrangement between the UK and the EU. Note that the legal document to support this possible new arrangement would be separate to the Settlement Agreement (see below).

Unresolved legal issues

Article 50 includes the requirement that a member state must withdraw "in accordance with its own constitutional requirements".³ This is particularly interesting for the UK which famously has an unwritten constitution. This raises a number of contrasting legal opinions. There are already three legal cases against the government on the basis of lack of appropriate procedure. For example, 'Brexit means Brexit' does not give any indication of Britons' preferences for the future economic relationship with the EU. In 1975 the UK had a referendum to join the European Community as a major commitment to a new economic relationship. This government has a mandate to withdraw from the EU, but it may not have a mandate to decide the terms of the new governance arrangement with our largest economic partner.

There are several areas of disagreement. First, should the UK hold a quick general election so that political parties can present their negotiating positions to the public, or should the UK hold a late general election once the negotiation is completed and the public can agree or disagree with the proposal on offer? A late general election would have to be held before the end of the Article 50 process, so presumably before the end of 2018. But such a delay would violate the Fixed Term Parliament Act introduced by the Coalition government in 2011.⁴ Second, it may be desirable to vote in parliament before the Notice to Withdraw is submitted to the European Council, although the Prime Minister has prerogative powers in this regard. Third, can the UK rescind its notice to withdraw during the Article 50 process? It is quite possible that the EU changes to such an extent in the next two years that a different arrangement may emerge. It is probably the case that the UK could withdraw its notice to withdraw, but only with the unanimous agreement of the other member states.

Future trade agreements

If the UK does not reach an agreement with the EU on its future economic arrangements, the backstop position is the EU's Most Favoured Nation status under the World Trade Organisation (WTO). This would mean very modest tariffs on goods trade but far less access to services trade. However, the situation is somewhat complicated by the need for the UK to establish its own membership terms with the WTO as member, but no longer covered by the EU's membership. This will probably be less demanding than some suggest as the EU has not reviewed its membership terms after each round of enlargement and the WTO is unfortunately proving an ineffective enforcer of existing rules.

In all likelihood, the UK will have first to establish its new trade arrangements with the EU as the basis for agreements with other countries. Each of the UK's options involves a trade-off between degrees of access to the Single Market and control over economic policy leavers. If the UK were to remain a member of the European Economic Area (EEA), the so-called Norway model, it would

Box A. (continued)

have access to, but would not be part of, the Single Market. The UK would not have a vote on the rules and regulations of the market or access to the same court in case of disputes. EEA membership involves accepting the free movement of labour, or at least with minimal temporary restrictions. UK exports would be subject to 'rules of origin' to tax the intermediate trade from outside of the EU. This would be invasive and expensive given the trend towards global value chains.

The second option is for the UK to re-join the European Free Trade Association (EFTA). This is similar to the EEA option, but with less access to the Single Market beyond goods trade. Switzerland is the most prominent EFTA member and is required to strike bilateral treaties with the EU to secure access to the Single Market for specific services only. This carries a significant cost as many services, for example financial services, are carried out through a third country such as the UK. In 2014 the Swiss voted in favour of restricting migration. The EU has made it clear that this is incompatible with access to the Single Market. Switzerland makes a smaller per capita contribution to the EU budget than Norway to reflect the lower level of market access. The legal document setting out the future UK economic arrangement with the EU must be unanimously agreed by all remaining 27 member states and ratified in many national assemblies.

Once the UK has left the EU it will have the freedom to negotiate its own trade agreements around the world. It will no longer be covered under the existing EU Preferential Trade Agreements which cover 53 mostly developing states. It will need to negotiate separate bilateral agreements. The UK would also need to consider if, and how, to be included in the US–EU Transatlantic Trade and Investment Partnership (TTIP) and other Free Trade Agreements currently under negotiation. The UK can seek to join regional trade agreements such as the Trans-Pacific Partnership, and enter into other negotiations such as the Trade in Services Agreement (TISA).

The UK will be negotiating its own trade deals for the first time in over four decades. Yet it does so at a time when there is very little appetite for striking new multilateral trade agreements. Fifteen years after its launch, the Doha Round has fallen into abeyance and the stockpile of trade restrictions that contravene WTO agreements is rising. This climate raises challenges for the UK. According to the OECD, over half of the domestic value added of UK exports comes from the service sector. Trade agreements that deepen market access, including the right of establishment and a single rule book and mutual recognition, invariably enter into the domain of domestic policy. For example, TTIP has carve-outs for areas of national sensitivity, but its intrusion into domestic policy is deeply unpopular. Whether the UK has more success or less influence outside the EU remains to be seen.

NOTES

- 1 Greenland (an autonomous territory of Denmark with roughly the same population as Tunbridge Wells) left the EU in 1985 under Article 48 of the TEU; originally article 236 of the European Economic Community.
- 2 Article 50(1) TEU.
- 3 Article 50(1) TEU.
- 4 This can be repealed by either a two-thirds majority in parliament (very unlikely) or a vote of no confidence in the government. It is difficult for a majority government to subject itself to a vote of no confidence.

This box was prepared by Angus Armstrong (a.armstrong@niesr.ac.uk).