

The politics: Article 50

Does Article 50 have to be triggered?

- No. The referendum on 23 June was purely consultative and not binding on Parliament. Parliament remains sovereign.
- The Government would require the will of Parliament before it can disapply the European Communities Act 1972. It is assumed that UK Parliament approval would therefore be required for the UK Government to trigger Article 50.
- There is EU pressure for the UK to trigger Article 50 and start exit negotiations. However, there is no legal means provided under the Lisbon Treaty to force the UK to do so. There is now widespread acceptance that both the UK and the remaining Member States need some time to make plans for a negotiation. Most commentators take the view that Article 50 will not be triggered before spring 2017. This suggests that the UK will leave the EU in 2019.
- Until the UK withdraws from the EU, the UK will maintain all the current rights and responsibilities of a Member State.

What are the chances of extending the two year negotiation period set by Article 50?

- Article 50 seeks to employ a balance between the negotiating parties. It sets a two year period for the negotiations, which can be extended with the agreement of all parties. The chances of extending that two year period are, at this point in time, slim. However, it is conceivable that the UK reaches an agreement with the EU during the two year period on the basis that the terms of which become definitive at a future date i.e. transitional arrangements are agreed.

Can Parliament block Brexit once Article 50 has been triggered?

- Once Article 50 is triggered there is no turning back under the Lisbon Treaty. EU Member States would be unlikely to consider changes to the Treaty in order to keep the UK in the EU if the UK changed its mind. There is no other legislative channel for the UK Parliament to halt the negotiations because Article 50 is part of a European Treaty and so falls outside of UK law (and therefore Parliament's remit).
- If Parliament wishes to bring a halt to negotiations, and the Government does not agree, then Parliament's only recourse would be to use the provisions in the Fixed Term Parliament Act 2011 to change Government. However, even this would only mean disrupting the UK's negotiations. It would not stop the timeline to the UK's exit, which would be fixed at two years under the Lisbon Treaty (unless EU members agree unanimously to an extension).

Can the House of Commons block a withdrawal agreement?

- If the negotiations are completed, then the withdrawal agreement will not be subject to any constitutional safeguards. However, the agreement will have to be laid before Parliament with a Government Explanatory Memorandum for 21 sitting days before it could be ratified, in which time either House could resolve that it should not be ratified.
- In practice, Parliament will struggle to overrule a Government's decision to ratify a withdrawal agreement. Even if the UK Parliament (or indeed the UK public in a second referendum) were to reject any negotiated agreement, this would not necessarily impact on the two-year timeline. If EU Member States agree not to extend the timeline, the UK's EU membership would simply lapse.

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Article 50 is the 'divorce procedure'. It triggers the UK's notification that it is ready to negotiate terms of withdrawal from the EU.



The law: a second order issue

What will happen to UK legislation?

- At this stage, it is too early to tell. The UK Government has launched a review of all legislation across Whitehall departments to identify where legislative proposals will be required in the absence of EU law. Ultimately, the outcome of this process will depend on the nature of any future relationship between the UK and the EU (for example, the extent to which the UK will maintain single market access and be required to maintain equivalent standards).

The central trade-off will be between the depth of access to the single market and the level of free movement of people that the UK is willing to accept. Some leading contenders for the Conservative Party leadership have suggested that free movement of people cannot be part of any negotiated settlement.

What about the regulatory aspects?

- Many EU Regulations are likely to remain unchanged in the UK. UK regulators do not envisage widespread reforms to major EU legislation such as Solvency II. Whilst a new Prime Minister might seek to remove some regulatory aspects (e.g. allowing EU insurers to write UK motor policies), it is hard to envisage the unwinding of, say, the Road Traffic Act in order to remove wholesale those elements related to the five EU motor directives.

Further, most UK rules are based on consumer-protection, which any new Prime Minister will be reluctant to unpick.

How much of UK law is derived from EU legislation?

- Only a small proportion of UK Acts of Parliament are derived directly from EU law, but a higher proportion of UK Acts of Parliament will contain clauses giving effect to EU laws. Whilst the figure on regulation is hotly disputed, most commentators are comfortable with using the figure of 13.3% (as quoted in a House of Commons research paper in 2015).

Will the UK continue to produce legislation before the UK exits the EU?

- Yes. There are many areas, for example, health and education, defence and direct taxation, where the UK Parliament maintains sovereignty when passing legislation. UK law making will continue in these areas.
- In areas where the EU has the policy competence, for example, fisheries and farming, financial services and state aid, the UK is unlikely to pass legislation before it formally leaves the EU. The UK Parliament may well begin the process of drafting UK law with a view to replacing EU laws but enact the legislation only once the UK has left the EU.
- It is highly unlikely that the UK will seek to breach its requirements to uphold EU law during the exit negotiation process (for example, we won't see any attempt to limit access to the UK labour market while the UK is still a full EU member).

The interplay between the law and politics will be fascinating. Whilst the legal view might be clear, there is every chance that politics brings about a different outcome.



Issues for insurers following Brexit result

ISSUES	OUTCOME
	LEAVE EU
Can firms in the UK continue to access the European single market?	<p>The UK would maintain market access in the short-term. In the medium-term it would have to renegotiate its access to the single market through a bilateral agreement with the EU.</p> <p>Firms in the UK operating FoS provisions will need to consider how their current operations would be affected by any loss of the UK's passporting arrangement. The potential for tariff barriers on insurance business would be very low under any alternative market access agreement, but non-tariff barriers (equivalence standards on UK regulations) would be a key area of concern.</p>
Access to the rest of the world	<p>Britain would be free to re-enter the WTO and commence work on its own network of FTAs. While this would create a period of uncertainty it is likely to have limited impact on cross-border insurance groups with local branch operations.</p>
Which firms are likely to feel the greatest business impact following 23 June?	<p>All businesses are likely to feel the short-term impact of increased uncertainty and the prospect of market volatility. In the long-term any loss of passporting freedoms, and the ability of UK firms to freely access the single market, will be felt differently depending on the nature of the firms' business.</p> <ul style="list-style-type: none"> ■ Domestic business only: low impact ■ Cross-border business serviced via FoE provisions: low-to-medium impact ■ Cross-border business serviced via FoS provisions: medium-to-high impact
What impact will the vote have on employment protection for workers employed in the UK?	<p>The UK would be free to withdraw from the European Social Chapter and disapply EU employment protection rules, such as the Working Time Directive. Rulings by the European Court of Justice (ECJ) would no longer apply to workers in the UK. This would potentially enable the UK to benefit from more flexible labour markets.</p>
What impact will the vote have on hiring skilled workers outside the UK?	<p>Political pressure to reduce net migration figures could result in potential constraints on ability to hire EU citizens. Firms which have workforces drawn from across the EU would need to consider potential visa arrangements. The uncertainty around working status of EU workers could also have an impact on firms attempting to attract workers from other EU countries. Conversely importing skills from the rest of the world may become easier.</p>
Regulation	<p>Firms may benefit from limited liberalisation of the UK market, particularly in wholesale markets exposed to more intense global competition. The overall cost of EU regulation – estimated by Brexit campaigners at £600m per week for the whole of the UK – could be reduced but the major elements of the legislative framework (e.g. Solvency II) would remain largely intact. Regulatory divergence between the UK and the EU could drive additional compliance and agency costs for cross-border insurers.</p>
Cost of capital	<p>A UK-styled Solvency II regime would remain broadly equivalent to EU rules. However, fulfilling the Solvency Capital Requirement could potentially become more expensive. Firms would need to consider the scale of such cost, and the likely impact on policyholder's premiums.</p>
Impact on Sterling	<p>A further devaluation of Sterling would be predicted – potentially in the order of 15-20%. This would lead to a devaluation in UK assets. The insurance sector is a major holder of UK assets, equivalent to 25% of the UK's total net worth.</p>
Impact on bond markets	<p>Spreads between the UK bond market and Eurozone would be likely to widen boosting returns to UK bondholders. The insurance (general and life) sector is one of the largest holders of UK bonds.</p>

Brexit procedure: what happens now



UK votes to leave

Negotiated withdrawal (Article 50 TFEU)

Unilateral withdrawal (UK Parliament repealing 1972 EC Act)

The negotiated withdrawal will address issues such as UK-EU budget contributions, EU-UK investments and status of EU/UK citizens.

The legal procedure for withdrawal:

1. The European Council agrees negotiating guidelines by unanimity
2. The Council of Ministers agrees the negotiation mandate for the Commission by QMV
3. The Commission will negotiate the final agreement but the national Governments will maintain oversight
4. European Parliament approves final agreement with a majority
5. Council will agree the signature and conclusion of the final agreement by QMV

2 years + extension if granted by a unanimous Council vote

Legal ambiguity



Trade deal



The UK will need to negotiate a separate future relationship with the EU. This includes questions of freedom of movement of people, goods, capital and services.

The negotiation could be started along with the withdrawal negotiation. The two negotiations are separate but could be coordinated. Optimally, the future relationship agreement is ready to be adopted when the withdrawal agreement enters into force. An important factor is if withdrawal agreement is a "mixed agreement" that covers elements of both the withdrawal and the new arrangement. This would be complicated to negotiate and may require national referendums to approve.

The negotiation procedure depends on the type of agreement (e.g. every Member State must ratify a trade deal).

Agreement fails/Time-limit expires

Withdrawal agreement concluded



Legal ambiguity (possible third party status under WTO rules)



Next steps depend on content and timing of withdrawal agreement and timing of trade negotiations. New trade arrangement may take effect immediately, there could be transitional arrangements or UK may become a 'third country'* until new relationship is in place.

* 'Third country' meaning the UK would trade with EU through WTO rules with no FTA in place

QMV: Qualified majority vote
WTO: World Trade Organisation
FTA: Free trade agreement



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