

Brexit: clarity is essential before the UK pulls the Article 50 trigger

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About the research

On June 23, 2016, the UK voted by a margin of 52% to 48% to leave the European Union (EU). In the wake of the referendum result, much attention has focused on Article 50. Article 50 was introduced by the Treaty of Lisbon in 2009. It is intended to provide for the orderly withdrawal of States from the EU. It has never been invoked. Its meaning is opaque.

Dr Phil Syrpis' research highlights the key EU law questions surrounding the operation of Article 50 and underlines the fact that many of the questions relating to the process of withdrawal from the EU are unresolved. Dr Syrpis claims that the provision should be interpreted in a way which ensures that the UK is best able to maintain a working relationship with the EU after withdrawal, and which enables a settlement to be reached which as far as possible protects the interests of citizens of the EU.

This briefing examines the uncertainty inherent in the Article 50 process, which relates to both the negotiation process and the content and scope of any withdrawal agreement. Clarification of the EU law questions is essential before the Article 50 trigger is pulled.

The UK and the EU should agree on the withdrawal process in advance of the decision to pull the Article 50 trigger, in order to reduce the risk of litigation.

Interpreting EU law

- Orderly withdrawal from the EU is only possible via Article 50. Moreover, even if Article 50 is used, it is only possible for withdrawal to be orderly if a clear legal framework is established.
- The decision to trigger Article 50 is for the UK to take, in accordance with its own constitutional requirements. These are far from clear, in particular in relation to the role of Parliament, and the situation as regards Scotland and Northern Ireland.
- The European Council guidelines envisaged in Article 50(2) have the potential to clarify the EU law framework. However, it is not clear that these will emerge before the trigger is pulled. Whether via these guidelines, or via informal (pre-)negotiations relating to the process, several key questions (see overleaf) should be resolved before the UK decides whether and when to pull the trigger.
- Only the negotiation process between the UK and the EU can clarify what leaving the EU actually entails. During this time both the UK and the EU will see economic and political change.
- Towards the end of the negotiation period, it will be possible for the UK to make an informed choice; either a) to reverse its notification and remain within the EU, b) to accept the negotiated deal, or c) to exit the EU without a deal. Parliament will of course be involved in the UK's decision, and consideration should be given to allowing the people to have a further say, either via a general election or a second referendum.

Key questions

i) Is it possible to reverse an Article 50 notification or otherwise stop the process?

It is argued that the process should be interpreted to be reversible. It is, for example, possible to envisage the following scenario. A decision to trigger Article 50 provokes turmoil in a Member State. A general election follows. A decisive majority is attained by parties advocating remaining within the EU. In such circumstances, it would arguably be unreasonable to hold the State to the commitment to negotiate a withdrawal agreement from the EU, and then afford it the opportunity to apply for readmission under Article 49. It would be far simpler to allow the withdrawal process to be stopped.

ii) What is the scope of the withdrawal agreement?

Article 50 envisages a distinction between the withdrawal agreement and the future relationship between the UK and the EU. It is accepted that the withdrawal agreement must 'bridge the gap' between the old and the new, and deal with issues surrounding the acquired rights of individuals and companies which might, over time, be phased out. It is argued here that the European Council should commit to negotiations with the UK in relation not only to a narrow withdrawal agreement, but also to a broader agreement on the future relationship between the UK and the EU. These negotiations may take more than two years. The European Council should commit to extending the time period if necessary. This is possible, but only with the unanimous agreement of all the Member States.



Further information

You can read articles by Dr Syrpis on this topic:

[*Once the UK triggers Article 50 to start Brexit, can it turn back?*](#)

The Conversation

[*What next? An analysis of the EU law questions surrounding Article 50 TEU: Part One*](#)

Eutopia Law

[*An analysis of the EU law questions surrounding Article 50 TEU: Part Two*](#)

Eutopia Law

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