

Brexit Essentials: After the EU Referendum - two different worlds

The outcome of the forthcoming referendum on the UK's membership of the EU remains highly uncertain. What is clear is that the decision will lead to very different outcomes for the UK depending on whether the electorate decides to stay in or leave.

This article sets out our predictions for the short-term consequences for the UK following the vote. Imagining a timetable is, of course, speculative. Scenarios in addition to or instead of those discussed below are possible.

Consequences of a vote to leave

A vote to leave would raise many questions including that of when the Government would give notice to withdraw from the EU. Article 50 of the Treaty on European Union allows a member state to decide to withdraw 'in accordance with its own constitutional requirements'. The manner in which a member state decides to deliver an article 50 notice is, therefore, a matter for its own domestic constitution.

The timing of delivery of an article 50 notice is largely a political rather than a legal question. In principle, the UK Government could deliver an article 50 notice without legislation soon after a 'Leave' vote. This would trigger the start of the two year period to exit under article 50, which cannot be extended without the unanimous agreement of the European Council.

Until the article 50 notice is delivered, the formal negotiation procedure under article 50 cannot begin. That is not to say that there could not be discussions with the Commission, the Council or individual member states beforehand, although

arguably neither the Commission nor the Council would be empowered to make any commitments regarding a future settlement with the UK outside the article 50 process (at least not without the agreement of all member states).

Alternative scenarios for delivery of the article 50 notice, following a 'Leave' vote on 23 June, might include:

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| Scenario 1 | Almost immediate delivery of the notice (i.e. within a month of a 'Leave' vote) |
| Scenario 2 | Delivery in autumn 2016 |
| Scenario 3 | Delivery in autumn 2017 |

The Prime Minister's stated preference appears to be Scenario 1, i.e. delivering an article 50 notice within a month, even within days, of a vote to leave. No doubt, having had a popular vote to leave there will be significant political pressure not to delay, although this may be affected by how the markets, economy and political parties respond to the vote.

The House of Commons is scheduled to be in recess from 15 to 27 June and again from 21 July to 5 September 2016¹. The Government might therefore wait until Monday 27 June to announce its intentions to Parliament before initiating the process, or recall Parliament before that date.

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An alternative would be to delay delivery of the notice and spend some time - perhaps days or months - working out a plan for the steps the UK would need to take leading up to exit. That time could be used to agree the framework of omnibus domestic legislation affirming EU legislation implemented in the UK and making consequential changes to UK legislation to provide as much certainty as possible as to UK law at the point of exit.

There may also be an incentive only to initiate the exit process after the French presidential elections in April/May 2017 and the German federal elections in autumn 2017 - both of which otherwise have the potential to slow down or postpone exit negotiations.

Estimates as to how long would be required to complete a controlled (as opposed to a chaotic) exit negotiation vary widely. The Government has stated that (although this is disputed by the Leave side) it is *'probable that it would take up to decade or more to negotiate firstly our exit from the EU, secondly our future arrangements with the EU, and thirdly our trade deals with countries outside of the EU, on any terms that would be acceptable to the UK. This would be a long period of uncertainty, which would have consequences for UK businesses, trade and inward investment'*ⁱⁱ.

This estimate does not take into account any delay in delivering the article 50 notice. Ideally, any exit process would be completed within the current Parliament.

Legislation would, of course, be required to deal with the consequences of the UK's withdrawal. The length of the exit negotiation period will depend, among other things, on whether the Government asks Parliament to 'affirm' all EU law that has been implemented in the UK (whether in

the form of directly effective EU regulations or UK legislation implementing EU directives) or seeks to disapply it or to propose alternative law. 'Affirmation', perhaps the simpler option, would still involve numerous consequential amendments to UK legislation (e.g. amendments to provisions which refer to the UK being a member of the EU or are based on this being the case). It is hard to see how all of these amendments could be dealt with in an 'omnibus' manner by means of a general deeming provision in a single piece of legislation.

Consequences of a vote to stay

If the UK were to vote to remain in the EU, the longer-term practical and operational implications would be less significant. That is not to say that the status quo will apply - the 'new settlement for the UK within the EU' documented in a Decision of the Heads of State or Government of 19 February 2016 will need to be implementedⁱⁱⁱ.

That Decision will become effective if the UK government informs the Council that the UK has voted to remain a member of the EU. It may be amended or repealed only by the agreement of all of the 28 EU leaders. Technically, the Decision is not an act of the European Council as an institution, but rather of the 28 Heads of State or Government acting in their own name. This means the Decision can be registered as an international treaty and, accordingly, may become a legally binding agreement between the signatories under international law (as opposed to EU law).

The Decision itself does not change current EU law, but certain elements of the reform package envisage either future change to EU Treaties^{iv} (which require ratification in all member states and could take several years) or new EU legislation. The implementation of the Decision will involve the

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Commission, the Council, and the ordinary legislative procedure of the European Parliament. The Court of Justice may also need to be consulted.

The Government's White Paper gives some indication of the protracted and probably complex process that awaits following a vote to stay in the EU: *'The European Commission has committed to bring forward new legislation where it is needed to implement the UK's new settlement. These European Commission proposals will be agreed jointly by the Council and the European Parliament. The UK will also pass domestic legislation to underpin this settlement.'*^v

A 'stay' or a 'leave' vote in the UK might lead to demands from other member states for treaty change that would distract attention away from any process to entrench the new settlement, or exit negotiations, with the UK.

This article forms part of a series of briefings from Slaughter and May covering the essential aspects and implications of the UK's referendum on EU membership.

ⁱ <http://www.parliament.uk/about/faqs/house-of-commons-faqs/business-faq-page/recess-dates/>

ⁱⁱ See para. 3.11 of the Government publication:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504216/The_process_for_withdrawing_from_the_EU_print_ready.pdf

ⁱⁱⁱ See the following House of Commons Library Briefing for a discussion on how the settlement will be implemented:
<http://researchbriefings.files.parliament.uk/documents/CBP-7524/CBP-7524.pdf>

^{iv} It includes a commitment that member states will, at the next opportunity, and subject to compliance with their respective constitutional requirements and the procedures in the EU Treaties, amend the EU Treaties to entrench the reforms.

^v Para 2.4.

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