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The process of withdrawing from the European Union

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The European Union Committee

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Q in footnotes refers to a question in oral evidence.

The process of withdrawing from the European Union

CHAPTER 1: INTRODUCTION

1. The forthcoming referendum on the UK's membership of the EU has focused attention on the process whereby a Member State could withdraw from the EU. Article 50 of the Treaty on European Union (TEU), which was incorporated into the EU Treaties by the Treaty of Lisbon, and which came into force on 1 December 2009, provided for the first time an explicit right under EU law to withdraw from the EU, and a means of doing so. The full text of Article 50, which has never been invoked, is set out in Appendix 3 to this report.

2. In February 2016, the Government published a Command Paper entitled *The process for withdrawing from the European Union*,[1] the findings of which have been widely challenged by those campaigning to leave the EU. We wanted to have as clear an understanding as possible of the process whereby the UK would withdraw from the EU, should the electorate so decide on 23 June. We therefore held a public evidence session with two experts in the field of EU law: Sir David Edward KCMG, QC, PC, FRSE, a former Judge of the Court of Justice of the European Union and Professor Emeritus at the School of Law, University of Edinburgh; and Professor Derrick Wyatt QC, Emeritus Professor of Law, Oxford University, and also of Brick Court Chambers.

3. This short report sets out our findings. It considers whether Article 50 is the only means of leaving the EU, and whether a decision to withdraw from the EU can be reversed. It explains both the process for leaving the EU and the process for establishing the UK's new relationship with the EU. It assesses the influence of the EU's institutions on the negotiations. It also considers the risks of the negotiations failing, and the consequences for UK citizens living in other EU Member States, and EU citizens living in the UK, if they do. It considers the UK's participation in the EU during the negotiations, which could last many years, including whether it can assume the six-monthly EU presidency in the second half of 2017. Lastly, it looks at the role the UK and devolved legislatures might play in the negotiations, and considers the complexities of disentangling EU law from national law.

4. We have not sought to express a view on the desirability or otherwise of embarking on the process of withdrawal from the EU. Nor, while we have noted the Government's assessment of the process for withdrawing from the EU, in the Command Paper already mentioned, have we commented on the accuracy or otherwise of that assessment. Instead our conclusions, based as they are on expert evidence, are, as far as possible, neutral statements of fact. We are indebted to our witnesses for their invaluable assistance, but the conclusions reached in this report, while informed by their views, are our own.

5. **We make this report for debate.**

1 HM Government, *The process for withdrawing from the European Union* (February 2016): https://www.gov.uk/government/publications/the-process-for-withdrawing-from-the-european-union [accessed 21 April 2016]

CHAPTER 2: THE RIGHT TO WITHDRAW FROM THE EU

6. We asked our witnesses to assess the significance of Article 50's incorporation into the EU Treaties, whether other means of withdrawal remained available to EU Member States, and whether a decision by a Member State to withdraw from the EU could be reversed.

The significance of Article 50 of the Treaty on European Union

7. Sir David Edward told us that, before Article 50 came into force, a right existed to withdraw from the EU under international law, provided that all Member States agreed.[2] Professor Wyatt agreed, adding that it was "politically inconceivable" that "all the Member States but one could commit an unwilling Member State to participate in such a close economic arrangement."[3] He noted that the 1975 referendum on the UK's continuing membership of the European Economic Community was based on the assumption that the UK was entitled to withdraw from it.[4][5]

8. The significance of Article 50 lay, therefore, not in establishing a right to withdraw, but rather in defining the procedure for doing so. Sir David described it as "essentially setting out the machinery that would not otherwise be there."[6] Professor Wyatt elaborated further: "The difficulty with the position before Article 50 was that the first thing that would happen in the event of, say, a referendum vote to leave the European project would be the building of an edifice to make that possible—the agreement of procedures and the rest of it. Article 50 solves that."[7]

Is Article 50 the only means of withdrawing from the EU?

9. Within the wider debate on EU membership it has been suggested that the UK could withdraw from the EU without reference to Article 50, for example by repealing the European Communities Act 1972, which gives domestic effect to EU law. We asked our witnesses whether this would be possible. Both told us that Article 50 provided the only means of withdrawing from the EU consistent with the UK's obligations under international law.[8] A Member State could not fall back on the Vienna Convention on the Law of Treaties to avoid the withdrawal procedures in Article 50, because the Vienna Convention had to be read in the light of the specific procedures for treaty change laid down in the EU Treaties.[9]

Can a Member State's decision to withdraw be reversed?

10. We asked our witnesses whether it was possible to reverse a decision to withdraw. Both agreed that a Member State could legally reverse a decision to withdraw from the EU at any point before the date on which the withdrawal agreement took effect. Once the withdrawal agreement had taken effect, however, withdrawal was final. Sir David told us: "It is absolutely clear that

2 Q 3
3 Q 3
4 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)
5 The referendum question was: "Do you think the UK should stay in the European Community (Common Market)?". BBC On This Day, '1975: UK embraces Europe in referendum': http://news.bbc.co.uk/onthisday/hi/dates/stories/june/6/newsid_2499000/2499297.stm [accessed 21 April 2016]
6 Q 3
7 Q 3
8 Q 3; supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)
9 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)

you cannot be forced to go through with it if you do not want to: for example, if there is a change of Government."[10] Professor Wyatt supported this view with the following legal analysis:

> "There is nothing in the wording to say that you cannot. It is in accord with the general aims of the Treaties that people stay in rather than rush out of the exit door. There is also the specific provision in Article 50 to the effect that, if a State withdraws, it has to apply to rejoin *de novo*. That only applies once you have left. If you could not change your mind after a year of thinking about it, but before you had withdrawn, you would then have to wait another year, withdraw and then apply to join again. That just does not make sense. Analysis of the text suggests that you are entitled to change your mind."[11]

11. Professor Wyatt clarified that "a Member State remains a member of the European Union until the withdrawal agreement takes effect", so would continue its membership on the same legal terms as before the decision to withdraw.[12]

12. Both witnesses drew a distinction, however, between the law and the politics of such a scenario. While the law was clear, "the politics of it would be completely different", according to Professor Wyatt.[13] Likewise, Sir David did not think that the politics "were as easy as saying, 'The negotiations are over and we are back to where we started'".[14]

13. We note in this context that the Conclusions of the 18–19 February 2016 European Council, at which the terms of the 'New Settlement for the United Kingdom within the European Union' were agreed, stated that "should the result of the referendum in the United Kingdom be for it to leave the European Union, the set of arrangements referred to [regarding the 'New Settlement'] will cease to exist".[15] In other words, the outcome of the recent renegotiation of the UK's membership terms will, in the event of a vote to leave the EU, fall the moment the result of the referendum is known.

Conclusions

14. **If a Member State decides to withdraw from the EU, the process described in Article 50 is the only way of doing so consistent with EU and international law.**

15. **There is nothing in Article 50 formally to prevent a Member State from reversing its decision to withdraw in the course of the withdrawal negotiations. The political consequences of such a change of mind would, though, be substantial.**

16. **Withdrawal from the EU is final once the withdrawal agreement enters into force. Article 50 makes clear that if a State that has withdrawn from the EU seeks to rejoin, its request shall be subject to the same procedures as any other applicant State.**

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10 Q 3
11 Q 3
12 Q 3
13 Q 3
14 Q 3
15 European Council meeting (18 and 19 February 2016) Conclusions, 16 February 2016: http://data.consilium.europa.eu/doc/document/ST-1-2016-INIT/en/pdf [accessed 21 April 2016]

17. **We note that the European Council has stated explicitly that the changes to the terms of the UK's membership of the EU, agreed in February 2016, will automatically fall in the event of a vote to leave on 23 June.**

CHAPTER 3: THE WITHDRAWAL PROCESS

Notification of withdrawal

18. The decision to withdraw is taken by a Member State "in accordance with its own constitutional requirements".[16] Once the national decision has been taken, the Member State concerned is under an obligation to notify the European Council.[17] Article 50 is silent on the timing of any such notification.[18]

The negotiation process

19. Under Article 50 the parties to the negotiation would be the European Union and the withdrawing Member State. As the other party to the negotiations, the UK would be treated as a non-EU State for the purpose of Article 50. It would not therefore participate in discussions concerning the withdrawal negotiations in the European Council or the Council.

20. Professor Wyatt gave the following overview of the negotiation process under Article 50:

> "Under guidelines from the European Council,[19] the Council[20] applies the ordinary rules and sets a negotiating mandate for the Commission. The Commission will negotiate the agreement on the EU side. We have guidelines from the European Council and we have the negotiating mandate from the Council. The Council can nominate a head negotiator if it wishes, or the head of a team of negotiators. The Council can nominate a special committee that will work in conjunction with the Commission."[21]

21. At the end of the negotiations the European Parliament gives its consent to the draft withdrawal agreement,[22] after which it is signed and then concluded by the Council. If the agreement is deemed to be 'mixed' (where Member State as well as EU competences are engaged), it will have to be ratified by the Member States as well.[23] Professor Wyatt thought the agreement was likely to be mixed.[24]

22. In terms of voting procedures, the European Council agrees the guidelines by unanimity.[25] The Council agrees the negotiation mandate, in the form of negotiation directives to the Commission, by qualified majority voting (QMV).[26] Once the negotiations have concluded the European Parliament gives its consent to the draft withdrawal agreement by a majority of votes cast (our witnesses confirmed that MEPs from the withdrawing Member

16 Article 50(1) The Treaty on European Union
17 Article 50(2) The Treaty on European Union
18 Article 50(2) The Treaty on European Union
19 The European Council consists of the Heads of State or Government of the EU Member States and sets the EU's overall political direction and priorities. It has no legislative power.
20 The Council of the EU consists of ministers from the EU Member States. Together with the European Parliament it negotiates and adopts EU legislation.
21 Q 4
22 Article 50(2) The Treaty on European Union
23 Member State ratification can take several years, depending on domestic ratification procedures. As a consequence, EU agreement can be provisionally applied pending ratification by Member States. (Q 12 (Prof Wyatt))
24 Q 12
25 Article 15(3) The Treaty on European Union
26 Article 218(8) The Treaty on the Functioning of the European Union

State would be entitled to vote).[27] The Council will then agree the signature and conclusion of the withdrawal agreement by QMV, or by consensus if it is a mixed agreement.

The influence of the EU institutions

23. We asked our witnesses to gauge the influence which each of the EU institutions would exercise over the negotiations. Both thought that the Member States would exercise the greatest influence, despite the conduct of the negotiations being the responsibility of the Commission. Sir David said: "I would envisage that, formally speaking, the Commission will do the negotiations, but in the way things work I strongly suspect that the Council's internal services will also be closely involved right the way through, as well as the other Member States."[28] Professor Wyatt said that the Member States "would be in the driving seat" and would "call the important shots". He provided a helpful insight into how the Member States would exercise their influence through the Council:

> "The European Council is not going to be hands-on all the time. Who will be hands-on all the time will be the Committee of National Representatives, which is overlooking the Commission negotiations. The normal committee is the Trade Policy Committee, which I think meets once a month, but its deputies meet every week … Changing of the negotiation mandate is possible and could, and would, happen."[29]

24. Both witnesses agreed that the European Parliament's power to refuse to give consent to the draft withdrawal agreement also gave it considerable influence. The European Parliament participates in international agreements through an inter-institutional agreement with the Commission. Professor Wyatt told us that this required the Commission "to take due account of Parliament's comments throughout the negotiations", and to "explain whether and how Parliament's comments were incorporated in the texts under negotiation and if not why."[30] He concluded:

> "The fact that the EP has a power of veto gives the Commission and the Council/Member States which stand behind the Commission every incentive to take the EP's comments seriously. How will it exercise that influence? As regards the withdrawal agreement, MEPs will no doubt seek to protect the interests and vested rights of Union Citizens living in the UK. And one would hope that UK MEPs would have the same concern for UK citizens resident in other Member States."[31]

The scope and complexity of the negotiations

25. In Professor Wyatt's view the over-arching function of a withdrawal agreement would be to bridge the gap between the old EU regime and the new future relationship. The scope of the withdrawal agreement would only become clear once the nature of the withdrawing Member State's new relationship with the EU emerged.[32]

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27 Q 6 (Sir David Edward); supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)
28 Q 4
29 Q 4
30 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)
31 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)
32 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)

Acquired rights

26. One of the most complex aspects of the negotiations would be deciding which rights would qualify as 'acquired rights',[33] and putting in place transitional provisions for individuals and companies whose rights might be phased out over time. Professor Wyatt described this issue as follows:

> "It is estimated that 2 million Brits live in other EU countries … Take elderly people who have lived for 10 years in Spain. After five years, they acquired a right of permanent residence as citizens of the Union and that includes access to the Spanish healthcare system. If we leave, what do we do about vested rights? Do we recognise rights to permanent residents that have arisen? What transitional rights do we give somebody who has been working for four years in the UK and has children at school and so forth? Let us not forget that for every example in the UK there is an example of a UK citizen elsewhere. We would want to tidy that up. My guess is that the inclination of Government and Parliament would be to be generous as regards those who had already made their lives in the UK, knowing that it would be likely to be reciprocated."[34]

27. Both witnesses thought that addressing these issues would be challenging. If the new relationship involved restrictions on the free movement of people, detailed arrangements would be necessary governing the rights of EU citizens resident in the UK and of UK citizens resident in the EU acquired prior to the UK's withdrawal. The arrangements would need to cover residence rights, rights to take up employment or self-employment, and rights to health care and social security. There would also have to be an agreement on the dates from which acquired rights would be recognised, and transitional arrangements for those not qualifying for acquired rights.[35] On the other hand, if the new relationship preserved the free movement of persons, acquired rights could be maintained by a simple continuity clause.[36]

Conclusions

28. **EU Member States would retain significant control over the withdrawal negotiations, despite the Commission having responsibility for their conduct.**

29. **The European Parliament's right not to give its consent to the adoption of the withdrawal agreement would give it considerable influence.**

30. **One of the most important aspects of the withdrawal negotiations would be determining the acquired rights of the two million or so UK citizens living in other Member States, and equally of EU citizens living in the UK. This would be a complex and daunting task.**

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33 There is no single definition of acquired rights under international law; broadly, they are rights vested in individuals or companies which may withstand changes in the sovereignty or laws of a State. Acquired rights under EU law are often used to refer to EU citizenship rights, for example the right to permanent residence in another Member State.

34 Q 11

35 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)

36 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)

CHAPTER 4: THE NEGOTIATION OF A FUTURE RELATIONSHIP

Two agreements, rather than one

31. Article 50(2) TEU requires that the withdrawal agreement "take[s] account of the framework" of the withdrawing Member State's "future relationship with the Union". Sir David said that the German language version of Article 50 made plain that the "structure of future relations will already have been established at the point when withdrawal takes place."[37] Professor Wyatt agreed. He did not think that the withdrawal agreement would be able to "accommodate all the details of the future trading relationship",[38] and so both agreements would be negotiated in parallel.[39] He emphasised that: "Co-ordination between the withdrawal treaty on the one hand and the future relations treaty on the other would be important. The UK's aim would be to have a smooth transition between the past in the EU and the future in the new arrangement."[40]

32. Both witnesses agreed there would be a third negotiation: the remaining Member States would have to amend the EU Treaties to take account of the withdrawal of the Member State concerned. This would be a "housekeeping arrangement", however, and would not involve the withdrawing Member State.[41]

The negotiation process

33. Article 50 does not set out the procedure for the negotiations on the future relationship.[42] Nonetheless, in Professor Wyatt's view:

> "The essential bones of the negotiation would be the same. The Council would lay down a negotiating mandate to the Commission, which would get on with the job. Whatever the Treaty base, there would be a special committee working alongside. There would also be toing and froing between the European Parliament and the Commission."[43]

34. He thought the agreement on a future relationship would also be mixed, and so its conclusion in the Council would require consensus among the Member States.[44] If it were an association agreement,[45] that too would have to be concluded by unanimity in the Council.[46]

The influence of the EU institutions

35. Professor Wyatt thought that the influence of the Member States would be considerable, as with the withdrawal negotiations:

> "There would be deep involvement from the national Governments via the Council and the committee. Although the Commission would be

37 Q 1
38 Q 4
39 Q 4
40 Q 11
41 Q 2 (Prof Derrick Wyatt)
42 Q 4 (Prof Derrick Wyatt)
43 Q 14
44 Q 18
45 An association agreement with the EU is a comprehensive agreement (rather than limited to one area of policy) involving reciprocal rights and obligations. See further at para 37 of this report.
46 Q 12; Article 218(8) The Treaty on the Functioning of the European Union

> negotiating and there would be input from the European Parliament … it seems to me that the influence of the national Governments on the EU side would be enormous."[47]

36. Sir David thought that the degree to which Member States would be involved would depend on what was being negotiated. Spain, Portugal, the Netherlands, Belgium and Denmark would have "enormous interest" in an agreement on fisheries, for example; but many other Member States would not.[48] According to Professor Wyatt, this would allow Member States to seek trade-offs between different areas of the negotiations:

> "If I am a hypothetical east European country, with a very obvious and genuine interest in both the position of my nationals resident in the United Kingdom and the future access of the UK, I might not be interested in fisheries as such but I might want to block a deal on fisheries unless I get what I want on transition and future access for my nationals."[49]

The scope of the negotiations

37. Neither witness could be certain about the form the UK's future relationship with the EU would take. Professor Wyatt told us: "My suspicion is that it would actually be an association agreement of some kind, because we would end up with a fairly complex comprehensive agreement that would involve co-operative machinery of some sort." The agreement would be likely to include a comprehensive trade deal that would cover not only goods but banking services and insurance services.[50]

Conclusions

38. **It is likely that an agreement on the UK's future relationship with the EU would be negotiated in tandem with the withdrawal agreement. It would be in the interests of all parties to coordinate the negotiations closely.**

39. **The Member States would retain significant control over the negotiations on a future relationship. We note the potential for groups of Member States vetoing certain elements of the agreement to secure better deals on others. This could mean, in effect, that nothing would be agreed until everything was agreed.**

40. **The European Parliament would have the right to withhold giving consent to the adoption of the agreement on the new relationship, giving it considerable influence.**

47 Q 4
48 Q 4
49 Q 4
50 Q 8

CHAPTER 5: THE LENGTH OF THE NEGOTIATIONS

41. Article 50(3) TEU provides for a two-year time limit for the withdrawal agreement to enter into force, after which the "Treaties will cease to apply" to the withdrawing Member State. The two-year period can be extended by the European Council, acting unanimously. There is no limit to the length of the extension, nor to the number of times an extension can be agreed.

The likelihood of the two-year time limit being extended

42. We asked our witnesses how likely it was that the two-year time limit would be extended. Professor Wyatt thought that an extension would probably happen.[51] The incentive was "£8 billion a year in net contributions, and access to the UK market for workers and for motor cars. All the Member States in the EU believe they benefit from the internal market."[52]

43. Professor Wyatt warned, however, that "there will be huge national self-interest in moving forward in a very considered way without jumping the gun in directions that could torpedo the negotiations before they start". He saw "huge risks" to this not being achieved: "If, for example, the UK were to … insist on imposing unilateral restrictions on immigration while negotiations were going on, the climate would disintegrate."[53] His written evidence elaborated on these concerns: "in the event of a Brexit vote, there will be expectations on the part of some politicians and members of the public of immediate action to restrict EU migrants coming to the UK to work. I do not think these expectations could be accommodated." The priority throughout the negotiations should be "damage limitation".[54]

44. Sir David counselled against relying on the two-year time limit being extended:

> "Remember that other Member States have much higher priorities, such as refugees and so on. Their willingness to sit down, make concessions and go on and on beyond two years is not necessarily guaranteed. They may say, 'Right, you want to go, so please go and let us get on' … All I am saying is that each one of them has to consent to a continuation, and you cannot guarantee it. It might just be pure spite, but you cannot guarantee that that would not motivate them."[55]

The consequence of the two-year time limit not being extended

45. Article 50(3) makes clear that, if the European Council does not agree an extension before the two years has expired or a withdrawal agreement is concluded, the withdrawing State will no longer be a Member State of the EU: "we are out. We cease to be a Member State".[56]

46. Sir David confirmed that, should the UK be forced to withdraw unilaterally in this way, it would have no option but to fall back on the trading terms derived from its membership of the World Trade Organization (WTO).[57] Professor Wyatt told us the following consequences would be likely to ensue:

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51 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)
52 Q 10
53 Q 10
54 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)
55 Q 10
56 Q 10 (Sir David Edward)
57 Q 11

> "We would impose tariffs on goods almost certainly at the same level as the common external tariff. That is the tariff we impose to the outside world currently. We leave the EU; we impose those tariffs on goods coming to us. The EU would be a third country; the EU would be imposing those tariffs on us. Of course, that would cost customers; it would cost people in the shops. We cannot disarm in tariff terms, because that is our ammunition in negotiating trade in goods. We also want to negotiate trade in services, where the WTO is not very good for us … There would be tariffs between the UK and the EU, many of them not very high but some of them—as the Government pointed out—would be 10% on cars and 35% on dairy products."[58]

47. If the UK were to withdraw unilaterally, the question of recognition of acquired rights, and transitional arrangements for those without acquired rights would, initially, be handled unilaterally on each side. There would be a pressing need to take decisions on the rights of EU citizens resident in the UK and the rights of UK citizens resident in EU Member States.[59] The UK could introduce unilateral immigration controls on EU citizens, but it would be likely to liaise closely with the Commission, particularly with regard to the consequences for UK citizens in the EU. Professor Wyatt thought that "a reasonable and fair approach to acquired rights and transitional arrangements would be the likely instinct of Government and Parliament, and that would be conducive to receiving reciprocal fair treatment from the EU side, and to the prospects of negotiating a free trade agreement for the future with minimum possible rancour."[60]

48. On the EU side, individual Member States could introduce immigration controls on resident UK citizens, though the EU would have competence to legislate in due course for the movement and residence of UK citizens in the EU.[61]

49. Sir David gave the following illustrations of the complexity of the negotiations on acquired rights in the event of a unilateral withdrawal:

> "A university has an EU research funding package with provision for cross-frontier movement of research scientists, and that has a life beyond two years. What happens to that? What happens to Erasmus students? When does participation in Erasmus end? A divorced couple live in the UK and another member state with special arrangements for access to children, and particularly cross-border payment of family maintenance. What happens to that? There are cross-border investments and tax treatment of capital and revenue. There are agricultural support payments and fishing quotas. Those are just examples."[62]

50. This led Sir David to conclude that: "The long-term ghastliness of the legal complications is almost unimaginable."[63]

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58 Q 10
59 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)
60 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)
61 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)
62 Q 10
63 Q 11

Length of the negotiations, if extended

51. We asked the witnesses whether the negotiations on Greenland's withdrawal from the EU offered a guide to how long the UK's withdrawal and future relationship might take to negotiate. Professor Wyatt thought that Greenland's negotiations offered "support for the proposition that even mildly complicated negotiations can take some time to sort out—in the case of Greenland the negotiations took about two years, and the final decision came into force after three years."[64] The population of Greenland was about 55,000, and most of the negotiations were about fishing, though provision was made for transitional arrangements to cover acquired rights of residents: "On any view the UK negotiations would surely take much longer than the negotiations with Denmark over Greenland."[65]

52. Professor Wyatt drew our attention to historical data on the time taken by States to complete various trade deals.[66] The length of negotiations for agreements between the EU and non-EU countries ran from four to nine years. The length of agreements between two non-EU countries ran from just under four years to just under 10.

53. That said, he concluded that it was impossible to extrapolate with any certainty from the data available how long the negotiations would take: "These are uncharted waters, both in legal terms and political terms, and no 'weather forecast' is available." He did think it likely, however, that if the UK were to vote to withdraw:

> "it would remain a member of the EU for at least the duration of the present Parliament, while the withdrawal agreement and the future relationship agreement were being negotiated in tandem. This would be the right process, in terms of legal options, and in terms of aiming for a smooth transition between EU membership and whatever relationship lay beyond. But it would inevitably involve a period of prolonged uncertainty, without any guarantee of a trading agreement at the end of the process which would meet UK needs."[67]

Conclusions

54. **No firm prediction can be made as to how long the negotiations on withdrawal and a new relationship would take if the UK were to vote to leave the EU. It is clear, though, that they would take several years—trade deals between the EU and non-EU States have taken between four and nine years on average.**

55. **It would be in the interests of the UK and its citizens, and in the interests of the remaining Member States and their citizens, to achieve a negotiated settlement. This would almost certainly necessitate extending the negotiating period beyond the two years provided for in Article 50.**

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64 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)
65 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)
66 Open Europe, 'Would Brexit lead to "up to a decade or more of uncertainty"?': http://openeurope.org.uk/today/blog/would-brexit-lead-to-decade-or-more-of-uncertainty/ [accessed 17 April 2016]
67 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001), Q 8 (Prof Wyatt)

56. **While it is possible that the European Council would agree to an extension, the requirement for unanimity means that such agreement cannot be guaranteed.**

57. **Were no extension to be agreed, the UK would be likely to trade on World Trade Organization terms, placing tariffs on imports from the EU; the EU would place tariffs on imports from the UK; and the acquired rights of millions of individuals and companies would remain unresolved.**

CHAPTER 6: THE UK'S CONTINUING PARTICIPATION IN THE EU

Would the UK continue to be able to participate effectively in the EU?

58. We asked our witnesses to confirm that the UK would still be able to participate in EU policies and in the EU institutions and agencies pending the entry into force of the withdrawal agreement. Both confirmed that it would as a matter of law, except in decisions concerning its own withdrawal. The UK would continue to be bound by new EU legislation adopted after its decision to withdraw but before the withdrawal agreement entered into force.[68]

59. As a matter of practice, however, both thought the UK's credibility as a participant in EU decisions would be severely undermined. Professor Wyatt, for example, saw the following difficulties arising:

> "The UK would be voting on future internal EU legislation which would only affect the UK as an outside trading partner. This could lead to the UK's role being questioned as inappropriate. Continued participation in all aspects of EU activities might not be conducive to good political relations with other Member States and the EU institutions, and therefore not conducive to negotiating a future trading agreement which would meet UK requirements … A policy of selective disengagement from certain areas of activity might take place."[69]

The UK presidency of the EU in 2017

60. Nowhere would these difficulties be more evident than in the UK's assumption of the presidency of the EU in the second half of 2017.[70] Sir David said:

> "What is the interest of the United Kingdom, particularly as President of the Council, in discussing the details of a Directive that will not apply if we withdraw?"[71]

61. Sir David added that the Article 50 provision that "the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it" was "a rather vague provision that might mean, 'You get out of here; this does not concern you'."[72]

62. Professor Wyatt set out similar concerns, arguing that "there would be some air of unreality in the UK presiding over meetings most of the work of which would involve future action." Input from the UK on forward planning by the EU "would be likely to lack credibility in circumstances where the UK was shortly to leave the EU and would no doubt be preoccupied with its negotiations with the EU for a future trading relationship. The rest of the

68 Q 9
69 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)
70 The presidency of the Council rotates among the EU Member States every six months. During this six-month period, the presidency chairs meetings at every level in the Council, helping to ensure the continuity of the EU's work in the Council.
71 Q 9
72 Q 9

EU would be unlikely to share the UK's perception of the priority to be accorded to its future trading agreement."[73]

Conclusions

63. **While the UK would remain a full member of the EU over the course of the withdrawal negotiations, its credibility as a member would be severely undermined. A policy of selective disengagement from some areas of EU policy might be necessary.**

64. **The UK is scheduled to hold the presidency of the Council in the second half of 2017, but in the event of a vote to withdraw it would be disqualified, by virtue of Article 50, from chairing any Council meetings on the withdrawal negotiations—meetings that would no doubt form a significant part of the Council's activities. Were the electorate to vote to withdraw from the EU, the Government should give immediate consideration to suggesting alternative arrangements for its presidency.**

73 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)

CHAPTER 7: THE ROLE OF PARLIAMENT

The role of Parliament in overseeing the negotiations on withdrawal and a future relationship

65. Sir David explained that, as the UK Parliament was a constitutional organ of the United Kingdom, it was "for the United Kingdom to determine what part the UK Parliament plays in this and what degree of say Parliament has over the acceptability or non-acceptability of the agreement."[74]

66. Professor Wyatt told us that the future trading agreement would be "one of the most important trading arrangements that the UK had made for many years, or would be making for many years." The credibility of that agreement would depend on cross-party consensus within Parliament: "The fact of that might encourage Parliament to be more flexible about the relationship between Parliament and the Executive in the negotiation of a treaty than it would normally be."[75] He thought a political argument could be made "for a high degree of parliamentary involvement in the withdrawal process. The process and the direction of future UK relations with the EU would be of great practical and political importance to the people of the UK."[76]

The role of Parliament in implementing the agreements

67. Sir David envisaged that a great deal more than repealing the European Communities Act 1972 would be required to give effect to withdrawal in national law. The Government "would need to enact in law everything that it wanted to keep in law, which is currently either the consequence of the direct effect of the EU Treaties or, for example, the product of a Directive."[77] Under current law, national courts have to interpret implementing legislation in light of the Directive:

> "If the Directive no longer applies, the Government will have to consider, 'Do I have enough in the existing legislation for the courts to proceed without looking at the Directive, or am I to instruct the courts to construe it in the light of the Directive as if the Directive applied?' There are many nitty-gritty legal complications; it is more than simply repealing the 1972 Act."[78]

68. Professor Wyatt largely agreed. The Government would clearly have to amend the European Communities Act 1972 so that sections 2 and 3 ceased to give effect to directly applicable EU law adopted after the date of UK withdrawal. But he warned against assuming that the UK would wish to repeal all existing EU implementing legislation. Some directly applicable and non-directly applicable rules would no doubt be repealed as soon as the UK withdrew from the EU, but the rest could be left in force until reviewed, and either maintained, or repealed.[79] He noted that EU legislation was not "legislation that is imposed upon us."[80] Part of the way that UK governments

74 Q 5
75 Q 5. International treaties are laid before Parliament, usually for a period of 21 days, before they can be ratified (see Constitutional Reform and Governance Act 2010, Part 2).
76 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)
77 Q 5
78 Q 5
79 Supplementary written evidence from Prof Derrick Wyatt QC (PLE0001)
80 Q 5

had successively exercised their policies had been through the machinery of the European Union:

> "If we look at legislation on equality in the workplace or on the environment, or we look at our company law, these are not all alien mechanisms to our detriment that have been forced upon us. Many of them are pieces of legislation that are regarded as currently important and still receive strong support."[81]

69. He concluded that it would take "years for Government and Parliament properly to review the corpus of EU law, jettison what was not wanted and keep what would be wanted—in my view, the majority."[82]

The role of the devolved legislatures in implementing the withdrawal agreement

70. We asked Sir David whether he thought the Scottish Parliament would have to give its consent to measures extinguishing the application of EU law in Scotland. He noted that such measures would entail amendment of section 29 of the Scotland Act 1998, which binds the Scottish Parliament to act in a manner compatible with EU law, and he therefore believed that the Scottish Parliament's consent would be required.[83] He could envisage certain political advantages being drawn from not giving consent.[84]

71. We note that the European Communities Act is also entrenched in the devolution settlements of Wales and Northern Ireland. Though we have taken no evidence on this specific point, we have no reason to believe that the requirement for legislative consent for its repeal would not apply to all the devolved nations.

Conclusions

72. **Should the UK decide to withdraw from the EU, the UK Parliament should have enhanced oversight of the negotiations on the withdrawal and the new relationship, beyond existing ratification procedures. We will consider how best to achieve that, should the need arise.**

73. **Domestic disentanglement from EU law would require a review of the entire corpus of EU law as it applies nationally and in the devolved nations. Such a review would take years to complete.**

74. **The Government of the day might well wish to maintain a significant amount of EU law in force in national law, because it would be in the national interest to do so.**

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81 Q 5
82 Q 5
83 Q 17 ("You would have to have legislative consent from the Scottish Parliament").
84 Q 17

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The right to withdraw from the EU

1. If a Member State decides to withdraw from the EU, the process described in Article 50 is the only way of doing so consistent with EU and international law. (Paragraph 14)

2. There is nothing in Article 50 formally to prevent a Member State from reversing its decision to withdraw in the course of the withdrawal negotiations. The political consequences of such a change of mind would, though, be substantial. (Paragraph 15)

3. Withdrawal from the EU is final once the withdrawal agreement enters into force. Article 50 makes clear that if a State that has withdrawn from the EU seeks to rejoin, its request shall be subject to the same procedures as any other applicant State. (Paragraph 16)

4. We note that the European Council has stated explicitly that the changes to the terms of the UK's membership of the EU, agreed in February 2016, will automatically fall in the event of a vote to leave on 23 June. (Paragraph 17)

The withdrawal process

5. EU Member States would retain significant control over the withdrawal negotiations, despite the Commission having responsibility for their conduct. (Paragraph 28)

6. The European Parliament's right not to give its consent to the adoption of the withdrawal agreement would give it considerable influence. (Paragraph 29)

7. One of the most important aspects of the withdrawal negotiations would be determining the acquired rights of the two million or so UK citizens living in other Member States, and equally of EU citizens living in the UK. This would be a complex and daunting task. (Paragraph 30)

The negotiation of a future relationship

8. It is likely that an agreement on the UK's future relationship with the EU would be negotiated in tandem with the withdrawal agreement. It would be in the interests of all parties to coordinate the negotiations closely. (Paragraph 38)

9. The Member States would retain significant control over the negotiations on a future relationship. We note the potential for groups of Member States vetoing certain elements of the agreement to secure better deals on others. This could mean, in effect, that nothing would be agreed until everything was agreed. (Paragraph 39)

10. The European Parliament would have the right to withhold giving consent to the adoption of the agreement on the new relationship, giving it considerable influence. (Paragraph 40)

The length of the negotiations

11. No firm prediction can be made as to how long the negotiations on withdrawal and a new relationship would take if the UK were to vote to leave the EU. It is clear, though, that they would take several years—trade deals between the

EU and non-EU States have taken between four and nine years on average. (Paragraph 54)

12. It would be in the interests of the UK and its citizens, and in the interests of the remaining Member States and their citizens, to achieve a negotiated settlement. This would almost certainly necessitate extending the negotiating period beyond the two years provided for in Article 50. (Paragraph 55)

13. While it is possible that the European Council would agree to an extension, the requirement for unanimity means that such agreement cannot be guaranteed. (Paragraph 56)

14. Were no extension to be agreed, the UK would be likely to trade on World Trade Organization terms, placing tariffs on imports from the EU; the EU would place tariffs on imports from the UK; and the acquired rights of millions of individuals and companies would remain unresolved. (Paragraph 57)

The UK's continuing participation in the EU

15. While the UK would remain a full member of the EU over the course of the withdrawal negotiations, its credibility as a member would be severely undermined. A policy of selective disengagement from some areas of EU policy might be necessary. (Paragraph 63)

16. The UK is scheduled to hold the presidency of the Council in the second half of 2017, but in the event of a vote to withdraw it would be disqualified, by virtue of Article 50, from chairing any Council meetings on the withdrawal negotiations—meetings that would no doubt form a significant part of the Council's activities. Were the electorate to vote to withdraw from the EU, the Government should give immediate consideration to suggesting alternative arrangements for its presidency. (Paragraph 64)

The role of Parliament

17. Should the UK decide to withdraw from the EU, the UK Parliament should have enhanced oversight of the negotiations on the withdrawal and the new relationship, beyond existing ratification procedures. We will consider how best to achieve that, should the need arise. (Paragraph 72)

18. Domestic disentanglement from EU law would require a review of the entire corpus of EU law as it applies nationally and in the devolved nations. Such a review would take years to complete. (Paragraph 73)

19. The Government of the day might well wish to maintain a significant amount of EU law in force in national law, because it would be in the national interest to do so. (Paragraph 74)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Rt Hon. the Baroness Armstrong of Hill Top
Lord Blair of Boughton Kt, QPM
Lord Boswell of Aynho (Chairman)
Lord Borwick
Rt Hon. the Earl of Caithness
Lord Davies of Stamford
Baroness Falkner of Margravine
Lord Green of Hustpierpoint
Lord Jay of Ewelme GCMG
Baroness Kennedy of The Shaws QC
Lord Liddle
Lord Mawson OBE
Rt Hon. the Baroness Prashar CBE
Baroness Scott of Needham Market
Baroness Suttie
Lord Trees
Lord Tugendhat
Rt Hon. the Lord Whitty
Baroness Wilcox

Declarations of interest

Rt Hon. the Baroness Armstrong of Hill Top

Chair, Changing Lives (a charity based in Tyneside which may benefit from European Union funds)

Member, Advisory Board, GovNet Communications (publisher and event organiser)

Trustee, Africa Governing Initiative

Trustee, Voluntary Service Overseas

Lord Blair of Boughton Kt, QPM

Vice-Chair, The Woolf Institute for the study of relations between Jews, Christians and Muslims (a charity which may benefit from European Union funds)

Lord Borwick

Shareholdings as set out in the Register of Lords' interests

Lord Boswell of Aynho (Chairman)

In receipt of salary as Principal Deputy Chairman of Committees, House of Lords

Shareholdings as set out in the Register of Lords' Interests

Income is received as a Partner (with wife) from land and family farming business trading as EN & TE Boswell at Lower Aynho Grounds, Banbury, with separate rentals from cottage and grazing

Land at Great Leighs, Essex (one-eighth holding, with balance held by family interests), from which rental income is received

In receipt of agricultural support provision under the Common Agricultural Policy

House in Banbury owned jointly with wife, from which rental income is received

Lower Aynho Grounds Farm, Northants/Oxon; this property is owned personally by the Member and not the Partnership

Rt Hon. the Earl of Caithness

Shareholdings as set out in the Register of Lords' interests

Trustee of the Queen Elizabeth Castle of Mey Trust which owns agricultural land and benefits from CAP

Lord Davies of Stamford

Owns a flat in France (sometimes rented out)

Land let for grazing in Lincolnshire

In receipt of agricultural support provision under the Common Agricultural Policy in relation to land in Lincolnshire

Baroness Falkner of Margravine

Member, British Steering Committee: Koenigswinter, The British-German Conference

Vice President, Liberal International: The International Network of Liberal Parties

Member, Advisory Board, British Influence

Ownership of a house in Italy, jointly owned with member's husband

Member, House of Lords Foreign Policy Network

Lord Green of Hustpierpoint

Shareholdings as set out in the Register of Lords' Interests

Chair, Advisory Council for the Centre for Anglo-German Cultural Relations, Queen Mary University, London

Chair, Natural History Museum

Member, Advisory Board, Centre for Progressive Capitalism

Member, Steering Committee, Centre for Excellence in Finance, Sabanci University, Istanbul

Member, International Advisory Board, Akbank, Istanbul

Ownership of a flat in France

Lord Jay of Ewelme GCMG

Trustee, Thomson Reuters Founders Share Company

Chairman, British Library Advisory Council

Vice-Chairman, Business for New Europe

Member, Senior European Experts Group

Chairman, Positive Planet UK (British branch of a French NGO)

Baroness Kennedy of The Shaws QC

Chair, JUSTICE

Lord Liddle

Co-Chair, Policy Network and Communications Ltd (think-tank), which has received occasional sponsorship from the London office of the European Commission for events and works in partnership with the Brussels-based Federation for European Progressive Studies and other Continental think tanks

Co-author of a report which the City of London Corporation commissioned Policy Network to write on developments in thinking on the regulation of financial services in the European Union

Personal assistant at Policy Network carries out secretarial work which includes work in relation to the member's parliamentary duties

Lord Mawson OBE

Owns a house in France

Rt Hon. the Baroness Prashar CBE

Deputy Chair, British Council

Baroness Scott of Needham Market

No relevant interests

Baroness Suttie

Associate with Global Partners Governance Limited in respect of their Foreign and Commonwealth Office contract to provide mentoring and training for parliamentarians and their staff in Jordan

Trustee, Institute for Public Policy Research (IPPR)

Campaign Council Member, British Influence

Lord Trees

Chair, Moredum Research Institute, Edinburgh (independent animal health research institute) which applies for competitive research grants from the EU

Lord Tugendhat

Shareholdings as set out in the Register of Lords' Interests

Chairman, Advisory Council, European Policy Forum

Member of Advisory Council, Official Monetary and Financial Institutions Forum Limited

Member of Advisory Council of the Institute of Policy Research, University of Bath

Former Member and Vice President of the European Commission, in receipt of a pension from that Commission

Rt Hon. the Lord Whitty

Chair, Road Safety Foundation

Chair, Chesshire Lehmann Fund

Vice President, Environmental Protection UK

Vice President, Local Government Association

Vice President, Chartered Trading Standards Institute

Board Member, Smith Institute

Member, GMB

Baroness Wilcox

Shareholdings as set out in the Register of Lords' Interests

A full list of Members' interests can be found in the Register of Lords Interests http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at http://www.parliament.uk/eu-exit-process/ and available for inspection at the Parliamentary Archives (020 7219 3074).

Alphabetical list of witnesses

Sir David Edward KCMG, QC, PC, FRSE, Former Judge of the Court of Justice of the European Union	QQ 1-17
Professor Derrick Wyatt QC, Emeritus Professor of Law, Oxford University, Brick Court Chambers	QQ 1-17 PLE0001

APPENDIX 3: ARTICLE 50 OF THE TREATY ON EUROPEAN UNION

Article 50 of the Treaty on European Union provides as follows:

> "1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
>
> "2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
>
> "3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
>
> "4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it. A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
>
> "5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49."