

## **Brexit and Article 50 of the Treaty on European Union**

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The EU referendum results have been clear: with a difference of more than 1 million votes, the Britons have decided to start running the mechanism that will put an end to their stay in the EU after more than 40 years. A new period of undetermined length will now begin aiming to set the framework for the relations between the UK and the EU. Until then, the UK will be a member of the EU to all intents and purposes and have their rights and obligations accordingly. The EU law will still be enforceable and the case law of the CJEU will keep shaping the correct application of EU law. UK citizens will still have the EU citizenship rights and the principles of free movement and prohibition of discrimination based on nationality, including the freedom of movement of persons between the UK and the other EU Member States.

The results of the consultation are not legally binding. There is however no doubt that the political mandate of the citizenship has been very clear and the UK Government's stance during the Brexit negotiations cannot be any different. Article 50 of the Treaty on European Union sets forth a specific procedure for the withdrawal from the EU. This mechanism will be activated as soon as the UK notifies the European Council its express intention to withdraw. This first requisite is not subject to a specific period, that is, there is no obligation to notify the intention before a certain date. As neither the UK nor the EU law lay down this obligation, this requisite will be fulfilled when the UK Government finds it convenient, be it in some weeks or in some months. Consequently, the process might finally be led by the Prime Minister to be elected next autumn as David Cameron has announced his resignation after summer. In any case, the decision should not be too much delayed given the uncertainty of the current situation.

The withdrawal of the UK will take place two years after the notification at the latest. However, this period could be modified in two cases. In the first one, given the complexity of the negotiations, the European Council could unanimously, and with the support of the UK, extend the deadline to agree upon the withdrawal conditions.

The second possibility refers to the entry into force of the international agreement regulating the UK withdrawal within these two years. This would imply that the UK has had enough time to negotiate with the other Member States and EU institutions about the conditions and deadlines, and the agreement following the negotiations has been signed and entered into force. The agreement should be adopted by the Council on behalf of the EU and acting by a qualified majority, after obtaining the consent of the European Parliament. It must nevertheless be said that two years is a short period for all these conditions to be successfully fulfilled. For the deadline to be postponed some opinions state that the UK should postpone the notification of its withdrawal with the aim to design a negotiation strategy and even sound out the stance of the other EU Member States.

It must be noted that the international agreement on the UK withdrawal is not the same agreement that will legislate on the relations between the UK and the EU after the withdrawal. In practice these two agreements are closely linked. Most probably the first one will regulate aspects such as the conditions of the transition period before the second one enters into force. In any case, depending on the nature of the agreement regulating the relations after the withdrawal the ratification conditions will be substantially different... but this is another matter.