

The Future of the UK

Between Internal and External Divisions

Edited by

Marius Guderjan

Imprint

© 2016

Editor: Marius Guderjan

Individual chapters in order © Marius Guderjan, Pauline Schnapper, Sandra Schwindenhammer, Neil McGarvey and Fraser Stewart, Paul Cairney, Paul Carmichael and Arjan Schakel.

Centre for British Studies
Humboldt-Universität zu Berlin
www.gbz.hu-berlin.de

Design: Sandra van Lente
Cover: Marius Guderjan
Cover picture: www.shutterstock.com

A printed version of this ebook is available upon request.

Printed by
WESTKREUZ-DRUCKEREI AHRENS KG Berlin
www.westkreuz.de



Funded by the Future Concept resources of Humboldt-Universität zu Berlin through the Excellence Initiative of the German Federal Government and its Federal States.

Contents

Foreword	4
Notes on Contributors	6
1. Between Internal and External Divisions	9
Marius Guderjan	
2. The EU Referendum and the Crisis of British Democracy	31
Pauline Schnapper	
3. Loose but not Lost! Four Challenges for the EU in the Aftermath of the British Referendum	42
Sandra Schwindenhammer	
4. European, not British? Scottish Nationalism and the EU Referendum	59
Neil McGarvey and Fraser Stewart	
5. The Future of Scotland in the UK: Does the Remarkable Popularity of the SNP Make Independence Inevitable?	71
Paul Cairney	
6. Reflections from Northern Ireland on the Result of the UK Referendum on EU Membership	82
Paul Carmichael	
7. Moving Towards a Dissolved or Strengthened Union?	102
Arjan H. Schakel	

3. Loose but not Lost! Four Challenges for the EU in the Aftermath of the British Referendum

Sandra Schwindenhammer

Just a few months ago, I was strongly convinced that the *Brexit* is not a realistic scenario. However, reality has caught up with me and with the European Union. The victory of the British Leave campaign on 23 June 2016 is a historic moment not only for the UK, but also for the EU's remaining 27 Member States. The future impact of the British referendum will depend on the new relationship between the UK and the EU. In this chapter, I will focus on some procedural, substantial, strategic and normative challenges the Brexit poses to European governance. I argue that the EU has to face four key challenges in the short and medium term in the aftermath of the British referendum:

1. Dealing with procedural uncertainty under Article 50
2. Dealing with substantial uncertainty
3. Preventing Britain becoming the first domino
4. Dealing with the enduring legitimacy crisis and new nationalisms

Challenge 1: Dealing with Procedural Uncertainty under Article 50

According to Article 50.1 of the Treaty on the European Union 'any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements' (EU 2012a, 43). One might arguably state that, at first sight, Article 50 is unambiguous and clear. The procedural requirements for withdrawal comprise three steps and the involvement of several European institutions (see Figure 1).



Figure 1. Source: European Parliament 2016, 4.

Although Article 50 sets down the procedural requirements for withdrawal, the process after the British referendum to the establishment of a new relationship between the UK and the EU will be prolonged and highly uncertain. Applying findings from the European Parliaments Briefing in February 2016, I argue that the legal framework under Article 50 involves several veto points that make the withdrawal procedure highly unpredictable and uncertain. Veto points emerge from political institutions whose members are able to block attempts at policy change. They can arise from structures that are exogenous to the executive-legislative

relationship, such as judicial review or federalism, or from specific features of individual political systems, e.g. bicameralism (Weaver and Rockman 1993, 26). Veto points vary widely across political systems. The more veto points exist, the more difficult it is to achieve a common policy outcome.

In the first step, the withdrawal process has to be initiated by a notification from the Member State wishing to withdraw to the European Council (European Parliament 2016, 3). This is what everybody in Brussels is presently waiting for. The timing of this notification is, however, entirely in the hand of the UK. On 2nd October 2016, Prime Minister Theresa May confirmed that she will trigger Article 50 by 'the first quarter of 2017'. This decision corresponds with earlier statements on the UK's likely timetable and preparatory work for Brexit by David Davies who is in charge of negotiating Britain's withdrawal from the EU:

The negotiating strategy has to be properly designed, and there is some serious consultation to be done first. Constitutional propriety requires us to consult with the Scots, Welsh, and Northern Irish governments first, and common sense implies that we should consult with stakeholders [...]. This whole process should be completed to allow triggering of Article 50 before or by the beginning of next year.

Prior to formal notification, Article 50 allows informal discussions between the country wishing to withdraw and

other Member States or EU institutions. However, it is unlikely that this will happen. In late June 2016, the German Chancellor Angela Merkel, along with the French President François Hollande and Italy's Prime Minister Matteo Renzi, insisted that there will be no formal or informal talks about the British withdrawal until the UK has officially triggered Article 50. Thus, it will also take some time until the European Council will provide the guidelines for the negotiations between the EU and the UK with the aim of concluding an agreement setting out concrete withdrawal arrangements. These arrangements should cover the departing Member State's future relationship with the EU (European Parliament 2016, 3).

The EU and the UK have a timeframe of two years to agree on these arrangements. After that, membership ends automatically, unless the European Council and the Member State concerned jointly decide to extend this period (European Parliament 2016, 4). The two-year time period has positive and negative aspects. On the one hand, one might argue that a two-year period allows for a cooling off. On the other hand, the time span leads to uncertainty and potential blackmailing (Rieder 2013, 157). According to Friel (2004, 426), the two-year rule might enable the larger Member States to control the process of withdrawal to their own benefit, perhaps even using the threat of withdrawal to force concessions from the other Member States, knowing that any putative withdrawal could itself be withdrawn before the

two-year time period has expired. I assume that the two-year time-frame will either be extended, or, since the UK knows that withdrawal will take effect in any case after two years, the negotiations will not be characterised by strong attempts to find consensus until summer 2019.

Step two of the formal withdrawal process involves the European Commission making recommendations to the Council to open negotiations with the UK. Before concluding an agreement in step three, the Council will need to obtain the European Parliament's consent (European Parliament 2016, 4). It should be noted that, whilst the British members of the European Council and of the Council will not participate in the discussions or decisions concerning the UK's withdrawal, no similar provision exists for Members of the European Parliament (MEPs) elected in the UK. Although British MEPs have to represent the collective interests of all European citizens, I assume that national loyalties will prevail in this case.

The Council has to conclude the withdrawal agreement with a so-called 'super qualified majority' (without the participation of the UK). According to Article 238.3(b) of the Treaty on the Functioning of the European Union, the super qualified majority rule is only applied in the few cases when the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy (EU 2012b, 153-154). The super qualified majority is defined as at least 72 per cent of the

members of the Council, comprising at least 65 per cent of the population of the Member States (without the withdrawing state) (European Parliament 2016, 4). The future will show in how far the super qualified majority rule will impact the withdrawal process. Unlike the accession of new Member States, the withdrawal of a Member State does not require national ratification by the remaining members (European Parliament 2016, 4). However, any treaty change or international agreement, such as a free trade agreement, that might become necessary with Brexit, will need to be ratified by the remaining 27 Member States. Whether this will happen, I am not sure. All in all, there are too many veto points to allow for a reliable forecast of the procedure under Article 50.

Challenge 2: Dealing with Substantial Uncertainty

Article 50 does not establish any substantial conditions for a Member State to be able to exercise its right to withdrawal. There is a huge lack of clarity over what will replace British EU membership, especially with regard to the UK's future Single Market access. To what extent will free trade and labour mobility between the UK and the EU continue? Will London still be Europe's leading finance centre? These are only two of the numerous questions concerning European economies. Economists have done some research on future-scenarios and the potential impact of Brexit on the UK-EU economic

relationship (see i.e. Dhingra and Sampson 2016, 5 et seq.; Global Counsel 2015, 6).

The authors differentiate several models. Under a scenario that resembles the EU-Norway relationship (*Norwegian-style model*), the UK joins the European Economic Area (EEA) and maintains full access to the Single Market, but must adopt EU standards and regulations. Although EEA members belong to the Single Market, they are not part of deeper European integration. For example, as an EEA member Norway does not belong to the EU's customs union. This means Norwegian exports must satisfy 'rules of origin' requirements to enter the EU duty-free (Dhingra and Sampson 2016, 5). The *Norwegian-style model* would not give the UK the political flexibility to justify Brexit. The UK would have to continue to pay billions in contributions to the EU without having a say in shaping the rules of the Single Market.

The *Turkish-style customs union model* avoids internal tariff barriers, with the UK adopting many EU product market regulations (Global Counsel 2016, 6). However, sector coverage would be incomplete and the UK would be required to implement EU external tariffs without guaranteed access to third markets. By contrast, the much looser *most-favoured nation model* implies that the UK's trade with the EU would only be governed by rules of the World Trade Organisation (WTO) (Dhingra and Sampson 2016, 7). The *most-favoured nation model* will likely be applied when the UK and the EU cannot agree upon any specific economic arrangement. The

model would give flexibility, but is likely to jeopardise trade and investment (Global Counsel 2016, 6). The UK's exports to the EU and other WTO members would be subject to the importing countries' most-favoured nation tariffs. This would raise the cost of exporting to the EU for UK firms (Ottaviano et al. 2014).

The most likely models are either the *Swiss-style model of bilateral accords* governing access to specific sectors of the Single Market or the comprehensive *FTA-based model* (Free Trade Agreement) (Global Counsel 2016, 4). Under the *Swiss-style model*, the UK and the EU would agree a set of bilateral accords which regulate UK access to the Single Market in specific sectors. However, the EU would be under no obligation to serve the UK everything on the menu, which means that the Swiss model would not provide the same guarantee of market access that EU or EEA membership offer (Dhingra and Sampson 2016, 6).

Under the *FTA-based model*, the UK would be free to agree FTAs independently and the UK's relationship with the EU is itself governed by an FTA. Both models – the *Swiss-style model of bilateral accords* and a comprehensive *FTA-based model* – would require prolonged negotiation followed by compromises and may still impose costs. According to Ottaviano et al. (2014, 3), trade costs after the UK leaving the EU will likely increase because of (i) higher tariff barriers between the UK and the EU, (ii) higher non-tariff barriers to trade (arising from different regulations, border controls,

etc.) between the UK and the EU, and (iii) non-participation of the UK in future steps that the EU takes towards deeper integration reducing non-tariff barriers. The last aspect is particularly important when we think of the ongoing TTIP negotiations and the question what role the UK still has to play in this process.

In early October 2016, Theresa May emphasised that the UK's negotiations with the EU will be based on 'the freedom to make our own decisions on a whole host of different matters, from how we label our food to the way in which we choose to control immigration'. In this regard she rejected the *Norwegian-style model* and the *Swiss-style model*: 'It is not, therefore, a negotiation to establish a relationship anything like the one we have had for the last 40 years or more. So it is not going to be a Norway model. It's not going to be a Switzerland model. It is going to be an agreement between an independent, sovereign United Kingdom and the European Union'. The future will show to what extent Theresa May's insistence on the principles of sovereignty and independence will hinder, and not enhance, a viable long-term solution that guarantees the free movement of goods and services between the UK and the EU. I assume that the UK's future Single Market access will be a long, uncertain and maybe costly journey, taking not two years, but ten years or more. In this regard, I am not as optimistic as David Davis (2016) who said on the UK's future access to the Single Market:

The ideal outcome, (and in my view the most likely, after a lot of wrangling) is continued tariff-free access. Once the European nations realise that we are not going to budge on control of our borders, they will want to talk, in their own interest. There may be some complexities about rules of origin and narrowly-based regulatory compliance for exports into the EU, but that is all manageable.

Challenge 3: Preventing Britain Becoming the First Domino

The third challenge refers to the potential domino effect threatening the European unity. Immediately after the British referendum, right-wing political leaders, such as Dutch politician Geert Wilders and Marine Le Pen, the head of France's Front National, called for their own votes on EU membership. The rise of right-wing populism fuels Eurosceptic positions. Negative positions towards immigrants and the bureaucratic EU elites, who, allegedly, do not listen to the concerns of ordinary people, can be found among all right-wing parties' programmes in Europe (Rooduijn 2015). Right-wing political leaders take advantage of the rising resentment over the fallout from globalisation which has widened the gap between the rich and the poor. They present themselves as the voice of Eurosceptic citizens and argue that the European political elite is arrogant, selfish, incompetent and corrupt (Rooduijn 2015, 4 et seq.).

Indeed, Euroscepticism provides a strong rationale for European citizens to vote for right-wing parties (Werts et al. 2012). Since many mainstream parties today only offer positive or appeasing messages towards European integration, citizens who are Eurosceptic, often have little other option than to vote for parties on the fringes of the political spectrum (Rooduijn 2015, 4). Is there currently a realistic threat of a 'Frexit' or a 'Nexit' posed by right-wing parties in Europe? I do not think that a majority of the national citizens in France and the Netherlands would also decide to leave the EU. It seems more likely that the EU will take a tough stance in the negotiations with the UK to set an example and prevent other countries to take the same path. Nevertheless, in order to stop right-wing populist parties from rising further, political discussions within and about Europe need to give a stronger voice to citizens that feel left behind.

Challenge 4: Dealing with the Enduring Legitimacy Crisis and New Nationalisms

From a more optimistic point of view, one might argue that the UK leaving the EU serves as a wakeup call. Brexit could be the salutary shock needed for change. Right after the British referendum, Angela Merkel said that it is now a 'turning point for Europe' and Francois Hollande suggested 'to move forward; Europe cannot act as before'. The EU suffers a lack

in input and output legitimacy. Less and less citizens participate in European elections, and many doubt that the European Commission's agenda benefits them. The institutional reforms that gradually endowed the European Parliament with more power have not managed to increase the EU's political authority. The shift from the 'permissive consensus' to the 'constraining dissensus' (Hooghe and Marks 2009) jeopardises the EU's legitimacy, hampers European integration and fuels Euroscepticism.

Efforts of further European integration had been rejected before in national referendums. In 2008, the Irish voted against the Treaty of Lisbon, and in 1992, the Danish rejected the referendum on the Maastricht Treaty in 1992. In both cases, citizens were asked to vote again after the provision of national concessions and, finally, voted in favour of the EU treaties. The two referendums serve as illustrative examples of earlier setbacks in the European integration process. They also reveal an elite-public gap and indicate the growing impact of European citizens and public opinion. The rise of Euroscepticism among European citizens shows that previous efforts to solve the democratic deficit have had limited success. Most mainstream parties are more Euro-supportive than voters and still resist politicising the European integration issue (Hooghe and Marks 2009, 21).

Eurosceptic parties on the populist right and radical left seem to be closer to the pulse of public opinion than mainstream parties. On the far left, opposition to European integration

expresses antipathy to capitalism; on the populist right, it expresses defense of national communities (Hooghe and Marks 2009, 21). Nationalism is rising along with negative public attitudes towards the EU, which put Member State politics under pressure (Schmidt 2015, 56). However, simplistic demands of regaining sovereignty and national control over policies ignore the fact that state capacities are systematically limited in times of globalisation. The golden age of statehood, ideally characterised by a complete overlap of its four basic dimensions – resources, law, legitimacy and welfare (Leibfried and Zürn 2005) – seems to be history. With its decline since the late 1970s, various functions traditionally ascribed to the nation state have dispersed into the international realm (internationalisation) and to new actors (privatisation) (Flohr et al. 2010, 4).

Conclusion

This chapter has identified the procedural, substantial, strategic and normative challenges that Brexit poses in the short and medium term to European governance. From a procedural perspective (challenge 1), multiple veto points do not allow for a reliable forecast of the procedure under Article 50. Moreover, the effectiveness of veto points highly depends on the extent to which a veto is complete, permanent and non-appealable (Weaver and Rockman 1993, 26). In the substantial dimension (challenge 2), the UK's future Single

Market access will be a long and a costly journey. The UK's 'continued tariff-free access' (Davis 2016) to the Single Market after Brexit is still a long way off. We do not know how long it will take to come to an agreement and whether the *Swiss-style model* or the comprehensive *FTA-based model* will prevail. From a strategic perspective (challenge 3), the EU will likely take a tough stance in the negotiations with the UK to prevent other countries (e.g. France or the Netherlands) taking the same path. The most pressing and important challenge for the EU is to solve its enduring legitimacy crisis (challenge 4).

In order to (re-)gain the support of the European public, the EU will have to protect, improve or create policies that contribute to more inclusiveness, transparency, fairness and accountability (input legitimacy) *and* to develop governance arrangements in a way that allow for more efficient and effective policy outcomes (output legitimacy) (Scharpf 1999). All in all, I agree with Vivian Schmidt (2015, 56) that there is still a window to solve the European legitimacy crisis and to respond to the rise of the new nationalisms – but it may not be open for long. As the EU legitimacy crisis continues and disillusionment grows, right-wing populism will become increasingly difficult to reverse. Subsequently, it will become harder to resolve the crisis with innovative ideas as polarisation will increase. Thus, to put it in a nutshell, the EU may be currently loose but it is still not lost!

References

Davis, D. (2016) *Trade Deals. Tax Cuts. And Taking Time before Triggering Article 50. A Brexit Economic Strategy for Britain*. Conservative Home, 11 July 2016. Accessed on 18 July 2016,
<http://www.conservativehome.com/platform/2016/07/david-davis-trade-deals-tax-cuts-and-taking-time-before-triggering-article-50-a-brexit-economic-strategy-for-britain.html>.

Dhingra, S. and Sampson, T. (2016) *Life after BREXIT: What are the UK's Options Outside the European Union?*. London School of Economics, Centre for Economic Performance (CEP), London.

European Parliament (2016) *Article 50 TEU: Withdrawal of a Member State from the EU*. Briefing February 2016, Strasbourg.

European Union (EU) (2012a) *Consolidated Version of the Treaty on European Union*. Official Journal of the European Union, 26 October 2012, Brussels. Accessed on 19 July 2016, http://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF.

European Union (EU) (2012b) *Consolidated Version of the Treaty on the Functioning of the European Union*. Official Journal of the European Union, 26 October 2012, Brussels.

Accessed on 27 July 2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>.

Flohr, A., Rieth, L., Schwindenhammer, S. and Wolf, K. D. (2010) *The Role of Business in Global Governance. Corporations as Norm-entrepreneurs*. Basingstoke: Palgrave Macmillan.

Friel, R. (2004) *Providing a Constitutional Framework for Withdrawal from the EU: Article 59 of the Draft European Constitution*. *International and Comparative Law Quarterly*, 53 (2): 407-428.

Global Counsel (2015) *BREXIT: The impact on the UK and the EU*. London.

Hooghe, L. and Marks, G. (2009) *A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus*. *British Journal of Political Science*, 39 (1): 1-23.

Leibfried, S. and Zürn, M. (2005) (Eds.) *Transformations of the State?*. Cambridge: Cambridge University Press.

Ottaviano, G., Pessoa, J. P., Sampson, T. and Van Reenen, J. (2014) *Brexit or Fixit? The Trade and Welfare Effects of Leaving the European Union*. London School of Economics, Centre for Economic Performance Policy Analysis. Accessed on 20 July 2016, <http://cep.lse.ac.uk/pubs/download/pao16.pdf>.

Rieder, C. M. (2013) *The Withdrawal Clause of the Lisbon Treaty in the Light of EU Citizenship: Between Disintegration and Integration*. *Fordham International Law Journal*, 37 (1): 147-174.

Rooduijn, M. (2015) *The Rise of the Populist Radical Right in Western Europe*. *European View*, 14: 3-11.

Scharpf, F. W. (1999) *Governing in Europe: Effective and Democratic?*. Oxford: Oxford University Press.

Schmidt, V. A. (2015) *The Eurozone's Crisis of Democratic Legitimacy: Can the EU Rebuild Public Trust and Support for European Economic Integration?*. *European Economy Discussion Paper No 15*, Luxembourg. Accessed on 18 July 2016,
http://ec.europa.eu/economy_finance/publications/eedp/pdf/dp015_en.pdf.

Weaver, K. R. and Rockman, B. A. (1993) *Assessing the Effects of Institutions*. Weaver, K. R. and Rockman, B. A. (Eds.) *Do Institutions matter? Government Capabilities in the United States and Abroad*. Washington: Brookings, 1-41.

Werts, H., Scheepers, P. and Lubbers, M. (2012) *Euro-scepticism and Radical Right-wing Voting in Europe, 2002–2008: Social Cleavages, Socio-political Attitudes and Contextual Characteristics Determining Voting for the Radical Right*. *European Union Politics*, 14 (2): 183-205.