

Parliament's role in the Brexit negotiations: Article 50 and beyond

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If the recent high court ruling on Brexit is upheld, then MPs in the UK Parliament will have to approve the decision to trigger Article 50 and begin the process for leaving the European Union. But how would this vote actually take place and what influence will Parliament have over the negotiations? Based on a recent report, [Sara Hagemann](#) assesses Parliament's role in Brexit, noting that with Westminster also obliged to transpose into domestic law all the EU law which currently has direct effect in the UK, the political and legal headaches caused by Brexit have only just begun.



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What are the implications of the court ruling that parliamentary approval is required for triggering the UK's departure from the European Union? The story dominated media headlines for several days – with the frightening suggestion by some of the tabloids that the judges proved to be 'enemies of the people' since the court ruling will doubtless complicate the government's plans for withdrawal from the EU.

The case is now pending a further decision by the Supreme Court, and much depends on what is concluded at that stage – with the hearing taking place around 8-9 December and an outcome expected in early January. In the meantime, an [important report by UK in a Changing Europe](#) investigates in detail the way Brexit might happen, and considers the role and influence Parliament can have on the negotiations – both with regards to the approval of the Article 50 text if the ruling from the High Court last week is upheld by the Supreme Court, and with regards to the vast volume of legislation that will follow.

Parliament's approval of Article 50 could tie the government's hands from the outset

As we argue in the report, it really cannot be overstated how important this case will be for the Brexit negotiations but also for the UK constitutional order more broadly. At the core of the court's decision will be a decision about whether simply opening negotiations under Article 50 alters existing statutory obligations and responsibilities or compromises individual rights granted by statute. If it does, parliamentary assent will be required. Otherwise, it will not.

If the arguments against the government are successful and parliamentary assent is required at the outset, Parliament may be able to tie the Government's hands in the negotiations – requiring it to commit to certain legal arrangements or instruments and demanding powers of oversight for parliamentary committees during the negotiations. If the challenge is unsuccessful, none of this will happen.

But even if the court case comes out in favour of parliamentary assent, MPs will need to carefully consider that any demands imposed on the government from the outset will have to also be acceptable to its EU partners – parliamentary approval of Article 50 cannot lead to an open battle in Parliament with no consideration of the EU's priorities and interests in finding a deal. After all, the Article 50 text and subsequent agreement of a UK-EU relationship will be negotiated between the UK government and the remaining EU countries, and the UK's negotiation hand is already very weak in this game!

Moreover, all parties should keep in mind that the triggering of Article 50 is only the beginning of a longer process: actual withdrawal will require several steps, and parliamentary approval of the Article 50 text would no doubt influence the government's current dilemma regarding how specific the Article 50 notification should be regarding subsequent negotiations.

Parliament therefore needs to prepare its tactics for both the short- and longer term objectives regarding Brexit – but also for the role and influence it wishes to embody beyond current Brexit dilemmas: what lies ahead will no doubt test the UK's constitutional and legal frameworks to their limits.

Parliament's role beyond Article 50

The important question of what role Parliament should play in overseeing negotiations *after* Article 50 has been triggered is also still to be determined. Ministers, including David Davis, have made clear that Parliament will be consulted and allowed to engage with the negotiations. Yet, the nature of that process and the degree to which Parliament will be involved pre- or post-fact is a matter of dispute. So far, the impression is one of a marginalised Parliament if the government gets its way – but again, this may change if the Supreme Court ruling confirms the judgment from last week.

Nevertheless, even if Parliament does get to play a more prominent role, there is very little precedent on which it can base its work regarding scrutinising UK-EU negotiations as the two Houses of Parliament do not normally play a role in scrutinising treaty negotiations and are usually just involved in the ratification of treaties. Lack of timely access to negotiating texts has been a perennial parliamentary complaint in previous EU treaty renegotiation episodes, and the UK parliament enjoys fewer scrutiny powers in EU affairs than many of the member states on the continent.

Yet, pressure is mounting on the government for including Parliament more closely in the actual negotiations, in particular as a decision has been made on the EU side regarding the European Parliament's role in scrutinising the Brexit negotiations handled by the European Commission and the EU Council. But it is important to stress that parliamentary scrutiny is not a matter of absolutes: parliamentary involvement can come in several forms and degrees depending on the issue – and whether it is of a legislative nature or general oversight. In terms of volume, the overarching Parliamentary measures are likely to be relatively few: passage of the 'Great Repeal Bill' to repeal the 1972 European Communities Act; ratification of the UK-EU withdrawal agreement required by Article 50 of the Treaty on European Union; and ratification of whatever UK-EU agreement or agreements may be reached to govern post-Brexit relations. The Article 50 text would be added to this list depending on the Supreme Court verdict.

Compared to these overarching measures, by far the bigger task will be transposing into domestic law all the EU law which currently has direct effect in the UK, and amending the body of UK legislation which gives effect to EU law so that it can stand independently. The planned 'Great Repeal Bill' may give only blanket authority for these tasks. Legislative amendments will also be required if there are to be policy changes made possible because the relevant policy area has been repatriated to the UK, although legally these changes could not be made before Brexit occurs.

Taken together, this body of work is widely regarded as the largest legislative task the UK Parliament has ever undertaken. The political and legal headaches caused by Brexit have only just begun.

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Note: This article originally appeared at [UK in a Changing Europe](#). It gives the views of the author, not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

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