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Waiting for Brexit: The Legal and Political Implications of the British EU Referendum

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The result of the EU referendum in the UK introduces considerable uncertainty to the process of European integration as well as to British politics and the UK's relationship with the European Union. Although the referendum is non-binding, its political consequences almost rule out the possibility of the UK not triggering the withdrawal procedure from the EU (Article 50). The difficulty in the decision to proceed is that doing so immediately commences the two-year timeframe for negotiations between the EU-27 and the departing state, which significantly reduces the UK's chances of leaving with good conditions. The British government will therefore first seek to initiate informal talks about possible options for an agreement before invoking Article 50, although some EU states have already ruled out this approach.

On June 24, the EU woke to a new economic and political reality. Contrary to last-minute polls, predictions by bookmakers and investors, the British by a vote of 51.9% to 48.1% decided they want to withdraw from the European Union. Markets slumped and the value of the British pound reached its lowest level since the 1980s. The biggest stock indexes recorded large losses. The referendum results led Prime Minister David Cameron to announce his resignation, with three months' lead and timed for the October 2016 Conservative Party Conference, where a new prime minister should be appointed.

At the same time and contrary to his earlier pledges, Cameron decided to leave the decision to trigger Article 50 of the Lisbon Treaty, which initiates the procedure for withdrawal from the EU, to the next PM. Although this delay makes it more difficult for businesses and investors to minimise losses as a result of uncertainty, it broadens the political room to manoeuvre for the next prime minister. The new leader of the Conservative Party, and thus the candidate for prime minister, may be determined by his or her views on invoking Article 50 and likely tactics in the negotiations with the EU. An additional factor in the politics of the moment is the role of Scotland, where "Remain" was up by 62% to 38%. First Minister of Scotland Nicola Sturgeon has announced that Scotland now will consider the possibility of blocking the UK's withdrawal from the EU and, if that fails, she will organise another referendum on Scottish independence. A previous vote in 2014 kept the UK whole. Given Scotland's stance, the chance of a controlled and orderly Brexit will likely be very difficult to implement.

Withdrawal: Legal Provisions vs. Political Reality. According to Article 50, a Member State wishing to leave the EU should formally inform the European Council about its intention, thus activating negotiations on a withdrawal agreement. The treaty does not, however, state when the announcement should be made, for example, after a referendum like in the UK.

Theoretically, the UK government can delay notification for several years while retaining the full rights of membership of the EU. One solution in which the UK remains a member and negotiates a "draft" agreement on leaving the EU, followed by notification under Article 50 would increase Britain's chances of getting a better deal. This possibility, however, has been already dismissed by Germany, France and Italy The UK government may also give up the idea to leave the EU at all. In that case, the EU cannot draw up any legal or institutional consequences for the UK.

While from a legal point of view British referendums in general are only consultative and do not oblige the government to adhere to the results, it is difficult to imagine that Cameron's successor (likely a supporter of leaving the EU) would not respect the verdict of the people. However, the Eurosceptic Tory branch represented by "Leave" campaigners Boris Johnson and Michael Gove clearly shows no intention to trigger Article 50, counting on that move to give it room to negotiate satisfactory EU-UK relations outside of the treaty framework. This unfounded hope that the EU would offer the UK some better conditions than those negotiated by Cameron in the February agreement known as the "new settlement"[1] might only serve as proof of their ignorance of EU law and/or their lack of recognition of the mood in Brussels. It might also be because the shocked Brexiteers want to buy time to prepare a coherent "exit strategy," which they, light-hearted as they were, had not prepared beforehand. Finally, it might also have dawned on them that the withdrawal procedure itself will put them at a huge disadvantage. Under Article 50, the UK will not be allowed to participate in debate and decision-making by the European Council and the Council of the EU on the terms of the withdrawal. The qualified majority necessary to achieve agreement on the UK exit will be calculated from the 27 remaining member states.

It is also not clear whether or to what extent the withdrawal agreement would specify the terms of the future EU–UK relationship. In the first place, it will refer to setting up transitional provisions related to crucial aspects of mutual relations, such as the status of EU immigrants in the UK, Britons in other EU states, the future of British staff at EU institutions or London's influence on EU regulations during the withdrawal period. Article 50 does not, however, oblige the EU to sign a new trade agreement or any other for that matter with the UK and states only that the withdrawal arrangement should take into account "the framework for the country's future relationship" with the Union. The fuzzy wording of this provision permits a variety of scenarios, not only for an exit procedure but also for a future EU–UK relationship. Moreover, while the withdrawal agreement may be reached by a qualified majority vote in the EU Council, any new agreement on allowing the UK access to the single market will require ratification by all of the remaining Member States, and may possibly be subject to consent through referendums.[2] For this reason, the UK itself should take interest in an arrangement in which the withdrawal agreement does not contain too many details about its future relationship with the EU because it will not be allowed to help decide them. In other words, it is in the interest of the UK to negotiate the terms of withdrawal and—either in parallel or subsequently under a separate procedure—to open talks with the EU on a new model for mutual relations.

The Reaction of the EU and its Member States. A few hours after the announcement of the referendum results, the heads of the EU institutions, together with the current Dutch presidency issued a statement urging the British government to rapidly implement the will of the voters. They noted that a delay in activating Article 50 would unnecessarily prolong uncertainty. It also confirmed earlier statements that there would be no renegotiation of the February agreement.

The firm declaration by the EU representatives should be seen as a test of the credibility of the British authorities, who tried the patience and tarnished the goodwill of the other 27 members during the negotiations of the February agreement. The concessions the UK obtained were hardly acceptable to the other EU governments (including Poland's) but nevertheless they were presented to their electorates as a quest for equivalence and not as favouring one state over the others. The result of the British referendum, however, made the biggest EU states realise that flexibility may only encourage others in Europe to take similar attempts to negotiate exemptions from EU policies by using a referendum as blackmail. In light of the presidential elections in France in 2017 and the growing popularity of the Eurosceptic National Front, the French government will seek to punish Britain for its "abdication" of the legacy of its EU membership.

In Germany, where parliamentary elections will also take place in 2017, two contradictory trends compete—the desire to reconcile economic interest in maintaining ties with the UK (Germany records large surpluses in trade in goods, capital and services) and the strategic objective of weakening its own Eurosceptics from the party Alternative for Germany (AfD) and maintaining EU unity. It can be expected that, at least in the first phase of the negotiations, the second option will prevail, yet with Chancellor Angela Merkel attempting to mitigate the urge to "punish Britain" and striving for a solution allowing for a change of the British decision to leave the EU. Naturally, Merkel's position may be the closest to Poland's approach to Brexit. It should be assumed that the delay in the British withdrawal from the EU is in Poland's interest. Due to the latter's strong economic and migration ties to the UK as well as their close political visions of EU integration, the Polish government will be seeking arrangements that will secure a special kind of relationship between the UK and the EU in the potential future negotiations.[3]

[1] K. Borońska-Hryniewiecka, "A Win-Win Situation? What to Make of the EU-UK Deal," *PISM Strategic File*, nr 3 (84), February 2016, www.pism.pl/Publications/PISM-Strategic-Files/PISM-Strategic-File-no-3-84.

[2] "Mixed" agreements dealing with areas where competences are shared by Member States and the EU (e.g., the single market) require ratification of national parliaments.

[3] "Probable EU-UK relationship after Brexit. Perspectives of Germany, France, Italy, Spain and Poland," *PISM Report*, May 2016, www.pism.pl/Publications/PISM_Report/Propable_EU-UK_Relationship_after_Brexit.