

Heidelberg National Model United Nations Conference 2017

European Council Study Guide

Letter from the Chairs

Dear Delegates,

We are delighted to welcome you to the European Council Simulation at the 7th Heidelberg National MUN Conference. We hope that this study guide will provide you with an initial overview about the topic we will address during the conference. Consider this study guide as a starting point for further subsequent research. Since the number of delegates is limited, we will have the opportunity to address one of the most intricate questions of international politics as to date: the Brexit. The personal benefits taken from this conference will largely depend on each delegates' level of preparation. We thus hope that you will grasp the opportunity of emerging yourself in this topic and acquaint yourself with your assigned countries' interests and position in-depth. Good preparation will be key for a successful weekend and prepare the ground for challenging as well as interesting discussions with your co-delegates.

Please do not hesitate to contact us if you have any further questions regarding the committee's procedures or topic of discussion.

We look forward to meeting and working with you in Heidelberg.

Yours sincerely,

Juliana and Lucas



I. EUROPEAN COUNCIL: COMMITTEE INTRODUCTION

The European Council (EC) is one of the European Union's (EU) main organs. It currently consists of the EU member states' 28 Heads of State and Government, the EC's President, the President of the Commission as well as the High Representative of the Union for Foreign Affairs and Security Policy. The EC was formally established under the Treaty of Lisbon in 2009.

According to Article 15 (2) of the Treaty of the European Union (TEU), the EC serves to provide the necessary impetus for the EU's development and to define the EU's general political directions and priorities. The EC is thus unable to negotiate or to adopt policies. It does, hence, not serve as a legislative body of the EU. The EC's role is rather to provide a forum in which the member states' Heads of State and Governments can discuss topics of relevance and agree on strategic frameworks in order to take the measures that are necessary for the EU's future. Its decisions – so called conclusions – are adopted unanimously, except when provided differently in the EU Treaties.

II. INTRODUCTION AND HISTORY OF THE PROBLEM

Ever since David Cameron took office in 2010, one of his main challenges was to address the steady increase of EU critics within the UK, the UK Independence Party (UKIP) as the critics' frontrunner. As time and Cameron's time in office proceeded, voices in favor of a referendum regarding the question of the EU membership got louder and higher in number.

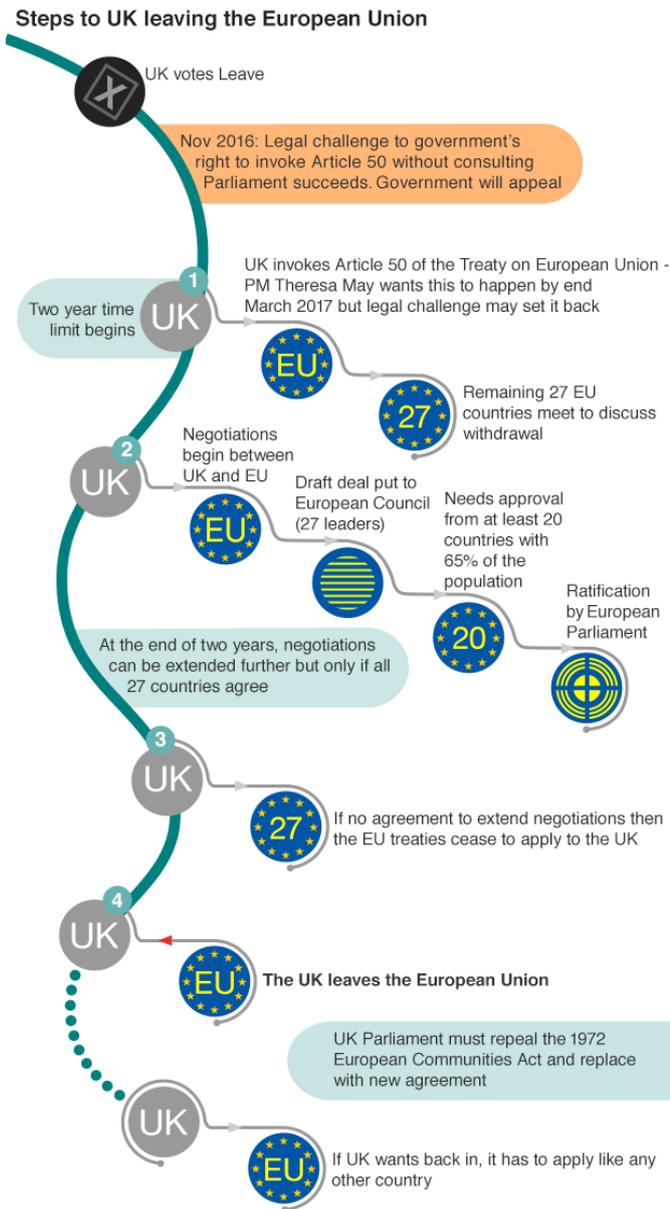
As a consequence, Cameron promised the UK's people not only to enter into negotiations with the remaining 27 member states concerning important reforms of the UK's EU membership, but also to hold a referendum regarding said membership, if he were reelected in 2015. Key concerns of the UK included among others the treatment of non-Euro countries, the lowering of bureaucracy to strengthen competitiveness, more flexibility for the member states to act at their own pace, the possibility to refer EU competences back to the national level and questions of the EU's democratic legitimacy.

Cameron's negotiations with the other EU members lead to a consensus, resulting in the "New Settlement for the United Kingdom within the European Union" in February 2016. People supportive of the EU in the UK hoped that this agreement would appease the critical voices and constitute a new basis for the UK's EU membership. Nonetheless, Cameron set the date for the referendum to be held on 23rd June 2016.

And the people of the UK have spoken. 52% of the votes casted call for the UK to leave the EU. Following this historic referendum, the UK is now faced with the question on how to proceed.



Article 50 TEU lays down the ground rules for leaving the EU:



(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.

Article 50 TEU deals with the procedural aspect of the “withdrawal agreement”. The withdrawal agreement must mainly address the withdrawal’s technicalities as for example: questions of contributions to and receipts from the EU, withdrawal of civil servants working in EU institutions, possible relocations of EU agencies, addressing the acquired rights of British nationals living in other member states and vice versa the rights of EU citizens living in the UK.



But the material questions pertaining to the future political and economic relationship between the EU and the UK must be dealt with in separate treaties. Hence, the EU and the UK have to draft a coherent framework consisting of multiple agreements in order to finalize the UK's exit and to establish their future relationship.

III. DISCUSSION OF THE PROBLEM

The three main aspects that must be addressed within the legal framework therefore include: the secession's implications for the European Union's citizens' right – for those residing in the UK and for British citizens residing in other member states –, the economic relationship between the UK and the EU and, finally, their future foreign relations.

Account must be taken of the fact that the EU is a unique economic and political union between 28 sovereign countries. It was created following World War II in a peace keeping effort. With only economic cooperation as its starting point it developed into a political union, tackling issues such as security, environmental matters and migration.

These developments notwithstanding, the EU's cornerstone still is the concept of the EU as a Single Market. This means that the territories of all member states form a common trade area, put differently, with respect to economic matters no borders exist within the EU. The objective is to remove all regulatory obstacles to the free movement of goods, services, people and capital. Its goal is to strengthen competition and trade within its territory, in order to improve efficiency, to raise the quality goods, to lower prices and to open up more markets.

This stands in contrast to the opposite trade model where every country imposes their own tariffs on imports, can set up quotas and generally all forms of physical and regulatory barriers and standards to promote national produce and disadvantage foreign products on their market. In that case, trade deals must then be concluded bilaterally in contrast to the single market, wherein the EU negotiates deals that have effect for all member states. The disadvantages compared to a Single Market are thus differing product-specific standards, border inspections, possibly disadvantageous public procurement rules and varying tariffs. Hence, trade is slowed¹ and bureaucracy and administration for every individual intending to trade increases.

¹ According to the Financial Times, a treasury paper found trade in goods was 73% higher between EU member states than it would be in a free trade area, while trade in services is was 16% higher. Similarly, the OECD found that access to the single market was 60% higher than it would be if the parties only relied on WTO rules.

„The EU single market: How it works and the benefits it offers“, Financial Times, Web.

<<https://www.ft.com/content/1688d0e4-15ef-11e6-b197-a4af20d5575e>>.



A. IMPACT ON EUROPEAN UNION'S CITIZENS' RIGHT

Following Article 9 TEU and Article 20 (1) of the Treaty on the Functioning of the European Union (TFEU) every person holding the nationality of a member state shall be citizen of the Union. By way of the European Citizenship the EU grants its citizens a long list of rights, among others the right to move and reside freely within the territory of other member states, the right to vote and to stand as a candidate in municipal elections in the member state in which they reside as well as the right to diplomatic protection in the territory of a non-EU state by the authorities of another member state.

More rights result from the EU's Single Market. Policies to guarantee and safeguard the free movement of goods, services, people and capital also cover areas such as pensions, health care and social security.² In addition, the constant harmonization of national laws, rules and product-specific standards initiated the process of liberalizing monopolistic public utility markets.

The secession of the UK will therefore affect both British nationals residing in other member states and enjoying said rights as well as EU citizens living and working in the UK. The task will be to find amicable solutions for the people currently living and working abroad and the future status of European citizens within the UK and vice versa once the secession comes into effect.

B. ECONOMIC RELATIONSHIP BETWEEN UK AND THE EU

As mentioned *supra*, the EU's Single Market treats the EU as one territory with no internal borders regarding trade matters. In order to ensure this Single Market structure, the EU is vested with the exclusive competence to regulate customs, competition law and the policies regarding foreign trade.

Single Market

Following the UK's secession, competences that have previously been conferred to the EU will hence be transferred back to the UK. The question remains: What will happen to the legislation that has been passed so far? What parts should be upheld, renegotiated in its entirety or simply annulled? That is, if the UK retains access of the Single Market.

If not, other possibilities could for example include a free trade area like the EEA/EFTA. Similar to the Single Market, there are no tariffs, taxes or quotas on goods and/or services between the countries that are part of the free trade area. Depending on the negotiations certain good and/or services might, however, be exempted from this regulation. Furthermore, imported goods would still need to comply with the national law of the state importing the goods.

Another possibility would be for the UK to only enter into a Customs Union with the EU. This would mean the application of common tariffs and taxes to goods imported from outside the union. Therefore, once customs have been cleared in one member of the Customs Union, goods can be

² For example by means of the EU Social Security Coordination (see <http://ec.europa.eu/social/main.jsp?catId=26&langId=en>).



transported to other members of the Customs Union without additional tariffs. That is, if the UK were to enter a Customs Union.

Further possibilities and their implications regarding the Single Market will be referred to *infra*.

Competition Law

The UK and EU also face many questions regarding competition law. It must, however, be noted that UK competition law has for some time been modelled to the EU system.³ Depending on the subsequent UK legislation and if it will decide to join the EEA/EFTA this could mean that no significant changes will be required. Nonetheless, before this the UK and the EU27 will first have agree on transitional policies.

In terms of enforcement, the problem of parallel investigations exists and possible objectives for the future relationship need to be addressed. At the moment, concurrent proceedings between national competition authorities and the commission or between two national competition authorities are impossible or highly unlikely due to EU legislation and the close network between European competition authorities that allows for an informal and flexible distribution of cases.

C. The Brexit's implications for both the UK's and the EU's foreign relations

Regarding foreign relations there are two key areas that will be greatly affected by the UK's exit from the EU: First, the UK's trade relations with other states inside and outside the EU. Second, the UK's position in international negotiations in general. And lastly, the existence and extent of collaboration in security and defense matters as it's currently in place under the EU's umbrella.

Turning to the first aspect: Besides losing unrestricted access to the EU's Single Market, the UK loses preferential access to 53 markets outside the EU with which the EU has Free Trade Agreements.⁴ Negotiating new Free Trade Agreements will take many years, since many countries, such as the US and Canada, are currently negotiating trade deals with the EU which they will want to close first, before initiating negotiations with the UK. And before any trade deals are in place, the UK's trade with other countries is governed by WTO rules. This means that the UK faces heavy costs to its trading relationships with other countries.

Addressing the second aspect, the UK loses the possibility of using the EU's economic and political weight in the international arena regarding a multitude of interests. Nonetheless, the UK's global influence will not wane since it still is one of the UN Security Council's five permanent members. Yet, the UK will lack the EU's force when it comes to furthering the UK's interests by means of economic or political sanctions against other countries. But on the other hand, the EU will lose the UK's influence on the UN Security Council. Both the UK and the EU, hence, have a keen interest in implementing cooperative mechanisms, in order to effectively pursue common global interests in the future.

³ The UK competition law is mandated to be compatible with EU competition law as applied by the Commission and the European Court of Justice.

⁴ For an comprehensive overview see http://ec.europa.eu/trade/policy/countries-and-regions/agreements/index_en.html.



At last, the Brexit poses many questions with regard to the UK's and EU's security and defense policy. The EU has put in place an extensive defense and security apparatus among member states. This includes not only law enforcement cooperation and facilitation by means of EU agencies, but also real-time data sharing. Regarding the latter, the Prüm Convention, for example, not only governs the real-time sharing of data on the movement of suspected terrorists and criminals, vehicle registrations, fingerprints and DNA records, but also the deployment of sky marshals on flights between signatory states or joint police controls. The UK will also have to negotiate its further engagement with Europol⁵ and Eurojust⁶. Moreover, questions of military cooperation between the UK and the EU arise, since the UK formed part of the EU's institutional frameworks regarding the cooperation of the member states' armed forces.⁷

D. IV. The UK's alternatives to EU membership

Against the background of these political and economic challenges, the most difficult aspect of the exit negotiations is to agree on the institutional framework that will govern the EU's and the UK's relations. Based on the pattern of existing relationships between the EU and third countries, three main relationship models appear feasible: The Norway model, a negotiated bilateral agreement and the WTO membership.

The “Norway model”

The Norway model gives the UK considerable but not complete access to the free-trade Single Market. For one the UK would still be outside the EU's Customs Union, meaning that all trade in goods between the UK and EU is subject to regular customs procedures. Consequently, British companies must prove that their products are either made inside the EEA, or that they comply with the EU's product-specific rules, in order to benefit from preferential tariff rates. Moreover, the UK would be excluded from the Single Market for agricultural produce. Products in these sectors would be subject to tariff rates.⁸ Also, the UK would have to accept the free movement of people. The EU has repeatedly affirmed that the access to the Single Market is only given in exchange for the free movement of people. This means that EEA and EU nationals living and working in the UK must have the right to access benefits, including unemployment allowances, sickness benefit and housing benefit.

⁵ The EU's law enforcement agency that handles criminal intelligence and combating serious international organized crimes by means of cooperation between relevant authorities of the member states (see <https://www.europol.europa.eu>).

⁶ Eurojust is an EU agency dealing with judicial cooperation in criminal matters (see <http://www.eurojust.europa.eu/Pages/home.aspx>).

⁷ For instance the Common Security and Defense Policy (see https://eeas.europa.eu/topics/common-security-and-defence-policy-csdp_en).

⁸ 64 per cent of the UK's fish exports and 73 per cent of vegetable exports go to the EU (see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504604/Alternatives_to_membership_-_possible_models_for_the_UK_outside_the_EU.pdf, p. 17 at 3.7).



Furthermore, the UK would remain subject to many EU rules. Norway, for instance, is obliged to ensure its domestic law compliance with any legislation that is part of the EEA Agreement.⁹ This obligation not only covers sector-specific product and service rules, but also cross-cutting legislation in fields such as competition policy, State Aid and intellectual property. But above all, the UK would have no vote or veto on the creation of those rules.

In addition, the Norway model would oblige the UK to make considerable financial contributions in return for gaining access to the Single Market. Norway makes financial contributions to the EU programs in which it participates. What is more, Norway pays grants to poorer EU member states each year. The size and nature of these grants is renegotiated periodically.

Regarding foreign relations, the UK would have to conclude its own trade and investment deals with countries outside the EU. Besides, the UK would not have an automatic right to participate in wider EU cooperation on police and criminal justice. Similar to Norway, the UK would have to negotiate a separate bilateral agreement with the EU regarding its engagement with Europol and Eurojust, as well as the Prüm Decisions. The same goes for ECRIS to which Norway is not a member.

Negotiated bilateral agreements

If the UK and EU cannot agree on an agreement similar to the “Norway model”, the second alternative is to conclude bilateral agreements on trade and non-economic matters. The ways in which bilateral agreements can be done differ. Such agreements typically offer limited access to the Single Market by offering some combination of tariff-free trade, open access to the service markets and guarantees that companies operating in these markets are treated in a fair and non-discriminatory way. Yet, they rarely establish a Customs Union or address non-tariff barriers. Regarding bilateral agreements, guidance can be drawn from the EU’s agreements with Switzerland – which go furthest in replicating the benefits of EU membership – and the newly negotiated agreement with Canada.

Nonetheless, regulating all aspects through bilateral agreements is complicated. For instance, Switzerland has negotiated over 100 individual agreements with the EU, covering market access in different sectors. If the relation between the UK and the EU will be governed by a multitude of bilateral agreements, the UK’s level of access to the Single Market will most likely depend on its willingness to open its own market.

For example, an agreement such as the one in place between the EU and Switzerland would only give the UK partial market access. However, the market would still be limited regarding the trading of financial and legal services.¹⁰ But the UK would not necessarily have to accept the free movement of people (although Switzerland has a treaty in place regarding the free movement of people). As in the Norway model, the UK would, however, still have to implement many of the EU’s

⁹ Norway has had to incorporate nearly three-quarters of all EU laws into its own domestic legislation (see http://www.eu-norway.org/Global/SiteFolders/webeu/NOU2012_2_Chapter_1.pdf, p. 6).

¹⁰ Services account for almost 80 per cent of the UK economy (see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504604/Alternatives_to_membership_-_possible_models_for_the_UK_outside_the_EU.pdf, p. 28 at 3.39).



rules, without any voice or veto. And, the UK would most likely – same as Switzerland – have to make financial contributions to the EU.

If one turns to the agreement between the EU and Canada for guidance, it must be borne in mind, that a Free Trade Agreement involves a detached relationship with the EU. This entails fewer obligations on the one hand, but less access to the Single Market on the other. The EU's Free Trade Agreements vary with respect to Single Market access and other regulations which is why there is no common denominator for Free Trade Agreements. The most sophisticated Free Trade Agreement – the Comprehensive Economic and Trade Agreement with Canada – goes further than any existing EU trade deals. Yet, negotiations took seven years and the agreement faces major obstacles within the EU's member states.

All in all, relying on bilateral agreements require difficult choices and major concessions on both sides of the table.

The WTO-only Model

If no other agreement is reached, the economic relations between the UK and EU will be governed by WTO rules. This constitutes the most definitive break with the EU since the result would be no preferential access to the Single Market, no wider cooperation on crime or terrorism and no obligations to make financial contributions or to grant the right of free movement of people.

The EU member states and the UK would probably introduce reciprocal tariffs on good, leading to heavy costs to their trading relationships. What is more, WTO rules entail that neither the UK nor the EU could offer each other better market access than that offered to all other WTO members. Reverting to trading relationships under WTO rules would thus have serious consequences for companies, consumers, jobs and prices.

In all likelihood, negotiations regarding non-economic issues would also suffer from an unamicable solution regarding the UK's and EU's trading relationships.

IV. Conclusion

The UK's exit from the EU involves a multitude of matters which need to be addressed. It will be the delegates' task to develop a coherent framework, while bearing in mind their countries' interests. Although many aspects speak in disfavor of the UK, the member states of the EU must be wary of the fact that they, too, lose a valuable member of the EU. The framework must thus aim at providing maintaining cooperative and effective relationship between the UK with regard to political as well as economic matters.



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