

# Article 50 Treaty on European Union: Questioning the Adequacy of the Key to Exiting the European Union

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## Abstract

*On 23rd June 2016, the United Kingdom electorate voted to leave the European Union, and much legal and political debate has been instigated since. The legal mechanism dictating the process for withdrawal from the EU is found in Article 50 Treaty on European Union (TEU). However, having never been utilised before, it has been placed under scrutiny, promulgated much debate, and has been the subject of criticism. This paper identifies and examines such critique, utilising the UK's withdrawal as a case study, whilst critically analysing the debates that have ensued concerning the fitness of Article 50 TEU. It is ultimately contended that the provision remains fit for the purpose of providing a process for the withdrawal of a Member State from the EU, despite the fact that omissions within Article 50 TEU have led to various political ambiguities.*

## I. Introduction

The decision of the United Kingdom ('UK') to leave the European Union ('EU' or 'Union') exposed the political and legal weaknesses in the EU Treaties' processes for withdrawal from the Union. As a result, Article 50 Treaty on European Union<sup>1</sup> ('TEU')

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<sup>1</sup> Consolidated Version of the Treaty on European Union [2010] OJ C83/01 (TEU).

has been extensively criticised for the lack of clarity it presents in establishing a process for withdrawal.<sup>2</sup> This paper, however, principally argues that Article 50 TEU is fit for purpose for the primary reason that it has formally established a legal framework enabling a Member State to withdraw from the Union. Prior to the Treaty of Lisbon, it had not been clear whether withdrawal from the Union was possible without an express Treaty provision providing an avenue to do so; Article 50 TEU thus provided clarity on the issue.<sup>3</sup> Yet, it is admitted that Article 50 TEU falls short of addressing various political and legal issues comprehensively, subsequently exposing ambiguities that would arise upon withdrawal. This paper seeks to assess the adequacy of Article 50 TEU as a mechanism for withdrawal by working through its subsections and analysing the issues that arise within them. Ultimately it is suggested that, despite some deficiencies, Art 50 TEU is adequate for its purpose, particularly given the lack of useful precedent in respect of withdrawal.<sup>4</sup>

The analysis in this paper will show that unilateral withdrawal under Article 50(1) TEU is neither politically nor economically viable despite legal arguments suggesting otherwise.<sup>5</sup> Moreover, it will be demonstrated that the legal implications arising from the constitutional question as to whom triggers Article 50 TEU within the withdrawing Member State have not been directly caused by the provision itself, but rather by the ambiguities of the UK's constitutional model. Second, the political uncertainties that arise due to the lack of clarity of Article 50(2) TEU, pertaining to the content of the withdrawal agreement, are analysed. It is submitted that the failure to provide any guidance on how to undertake this staggeringly complex exercise is detrimental as it provides no guidance, nor principle, in which the manner of the withdrawal negotiations is to be conducted. Thereby leaving the negotiations to be conducted solely in the

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<sup>2</sup> Hannes Hofmeister, "Should I Stay or Should I Go?" - A Critical Analysis of the Right to Withdraw from the EU' (2010) 16(5) ELJ 589, 589.

<sup>3</sup> Adam Lazowski, 'Withdrawal from the European Union and Alternatives to Membership' (2012) 37(5) ELRev 523, 524.

<sup>4</sup> Phedon Nicolaides, 'Is Withdrawal From The European Union A Manageable Option? A Review of Economic and Legal Complexities' (*Bruges European Economic Policy Briefings*, May 2013) available at <http://aei.pitt.edu/58466/1/beep28.pdf?> accessed 18 December 2016.

<sup>5</sup> Allan Tatham, "Don't Mention Divorce at the Wedding, Darling": EU Accession and Withdrawal after Lisbon' in Andrea Biondi, Piet Eckhout, and Stefanie Ripley (eds), *EU Law After Lisbon* (OUP 2012) 128 - 154.

political sphere risking a favourable deal to be thwarted by political tensions which have already begun to unfold.<sup>6</sup> In comparison, it is recognised that this lack of clarity resembles that of Article 49 TEU, regarding accession to the EU.<sup>7</sup> This seems to suggest that both provisions leave the criteria for accession and secession to the discretion of Member States; these are to be determined within a political sphere rather than in rigid legal provisions. Third, despite its criticism for being unrealistically short, the two-year withdrawal period under Article 50(3) TEU is upheld as being appropriate and praised for being flexible. Additionally, it is submitted that Article 50(3) TEU correctly omits to provide guidance on how the EU *acquis* ought to be dealt with in the UK when it departs from the Union. Fourth, the political conundrum caused by the lack of clarity of Article 50(4) TEU relating to the role of Members of the European Parliament (MEPs) during negotiations is addressed, acknowledging that the provision ought to have been clearer in this respect. Finally, it is argued that the ambiguity relating to rescission of withdrawal under Article 50 TEU is, in practice, unlikely to be entertained.

## II. The Articles

### A. Article 50(1) TEU

A legal issue which arose from the UK's decision to withdraw from the EU is whether Article 50(1) TEU permits for unilateral withdrawal. The provision provides that a departing Member State can withdraw 'in accordance with its own constitutional requirements,'<sup>8</sup> from which it has correctly been interpreted by academics that the UK could have unilaterally withdrawn from the Union by simply repealing the European Communities Act (ECA) 1972.<sup>9</sup> Indeed, the principle of parliamentary sovereignty<sup>10</sup> provides that the UK government could have legally unilaterally withdrawn from the Union by repealing the ECA 1972.

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<sup>6</sup> BBC News, 'Theresa May Accuses EU of Trying to Affect UK Election' (BBC News, 3 May 2017) available at <http://www.bbc.co.uk/news/uk-politics-39787353> accessed 31 July 2017.

<sup>7</sup> TEU (n 1) art 49.

<sup>8</sup> TEU (n 1) art 50(1).

<sup>9</sup> Tatham (n 5) 132.

<sup>10</sup> Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution* (8<sup>th</sup> edn, Macmillan 1982) xxxvi.

However, upon acknowledging that the Union is the world's biggest trading block, and in light of the economic and legal ties that the UK has with the Union, the 'possibility of unilateral withdrawal [was] a mere theoretical proposition.'<sup>11</sup> Indeed, the UK Prime Minister, Theresa May, asserted Britain's ambition to remain a 'global trading nation.'<sup>12</sup> Thus in recognition of the economic and political realities, the UK acknowledged the need to establish a favourable withdrawal agreement with the Union which guarantees continued access to the internal market because it (the Union) is likely remain one of the UK's main trading partners post-withdrawal.<sup>13</sup> The alternative, exiting the Union unilaterally, would be political suicide as it would 'destroy the UK's credibility as a negotiating partner' and it would promote sour relations with its European counterparts, thereby hindering the UK's ability to strike an economically beneficial deal with the Union.<sup>14</sup> In recognition of this, Mrs May invoked Article 50 TEU as the method of withdrawing from the Union, as it would arguably be the only way in which the UK and the Union would remain on good terms post-withdrawal.<sup>15</sup>

Even though this issues seems to now be settled for the UK, the question of whether unilateral withdrawal is an option for the remaining Member States still stands. It may be that the UK's method of withdrawal paves the way for withdrawing Member States in the future, who can utilise this method of withdrawal as guidance. However, one would wonder what economic and political repercussions would be endured if the alternative method of withdrawal were to be adopted. Indeed, total seclusion in an era of globalisation would certainly be a bold move but one would also question whether the outcome of a unilateral withdrawal, as opposed to withdrawal via Article 50 TEU, would

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<sup>11</sup> Adam Lazowski, 'EU Withdrawal: Good Business for British Business?' (2016) 22(1) EPL 115, 117.

<sup>12</sup> Chris Giles and Katie Martin, 'Theresa May Vows UK Will not Withdraw from Global Role After Brexit' (*Financial Times*, 19 January 2017) available at [www.ft.com/content/9415b692-de23-11e6-9d7c-be108f1c1dce](http://www.ft.com/content/9415b692-de23-11e6-9d7c-be108f1c1dce) accessed 17 April 2017.

<sup>13</sup> Lazowski (n 9) 116.

<sup>14</sup> Steve Peers, 'Article 50 TEU: The Uses and Abuses of the Process of Withdrawing from the EU' (*EU Law Analysis*, 8 December 2014) available at <http://eulawanalysis.blogspot.co.uk/search?q=Article+50+TEU%3A+The+uses+and+abuses+of+the+process+of+withdrawal+from+the+EU> accessed 16 April 2017.

<sup>15</sup> Owen Bowcott, 'Theresa May Does Not Intend to Trigger Article 50 This Year, Court Told' (*The Guardian*, 19 July 2016) available at [www.theguardian.com/politics/2016/jul/19/government-awaits-first-legal-opposition-to-brexit-in-high-court](http://www.theguardian.com/politics/2016/jul/19/government-awaits-first-legal-opposition-to-brexit-in-high-court) accessed 29 December 2016.

really be different as both methods result in exiting the EU? It is submitted that the distinction between both is the manner in which the withdrawal is conducted as this crucially establishes the future relations between the withdrawing Member State and the Union. It is opined that unilateral withdrawal would result in the departing state fighting for economic survival and therefore, although Article 50(1) TEU created legal debate by providing a plausible method of unilateral withdrawal, such arguments are politically and economically inviable.<sup>16</sup> As such, Article 50(1) TEU is considered fit for purpose in this respect.

Another indirectly related legal issue which has been mistakenly purported to have arisen from Article 50(1) TEU relates to which institution within a Member State – government or parliament – can trigger withdrawal.<sup>17</sup> Article 50(1) TEU is clear in stating that the UK ‘may decide to withdraw...in accordance with its own constitutional requirements’.<sup>18</sup> Yet, legal uncertainty arose questioning whether the UK government could trigger Article 50 TEU on its own, or whether parliament needed to be consulted first.<sup>19</sup> This lack of clarity was reflected in the legal debate that ensued in *R v Miller* (UKSC).<sup>20</sup> However, such legal haze should not be misconstrued by blaming Article 50(1) TEU as its direct cause.

Critically, this issue can directly be attributed to the ambiguities arising from the UK’s constitutional model, which Article 50(1) TEU has merely brought to light.<sup>21</sup> Indeed, it is not the role of Article 50(1) TEU, an international Treaty provision, to dictate the domestic requirements which a Member State needs to fulfil in order to initiate

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<sup>16</sup> Tatham (n 5) 132.

<sup>17</sup> Mark Elliot and Hayley J Hooper, ‘Critical Reflections on the High Court’s Judgment in *R (Miller) v Secretary of State for Exiting the European Union*’ (*UK Constitutional Law Blog*, 7th November 2016) available at <https://ukconstitutionallaw.org/2016/11/07/mark-elliot-and-hayley-hooper-critical-reflections-on-the-high-courts-judgment-in-r-miller-v-secretary-of-state-for-exiting-the-european-union/> accessed 27 April 2017.

<sup>18</sup> TEU (n 1) art 50(1).

<sup>19</sup> Elliot and Hooper (n 16).

<sup>20</sup> [2017] UKSC 5, [2017] 2 WLR 583.

<sup>21</sup> Michael Gordon, ‘Brexit: A Challenge for the UK Constitution, of the UK Constitution?’ (2016) 12(3) *EuConst* 409, 411.

withdrawal. As such, it is submitted that Article 50(1) TEU is perfectly adequate for the purpose of providing the process by which a Member State can withdraw from the Union.

## B. Article 50(2) TEU

A significant political issue raised by Article 50(2) TEU relates to the lack of clarity as to the contents of the withdrawal agreement. Article 50(2) TEU states that ‘the Union shall negotiate and conclude an agreement with [the UK] ... taking account of the framework for its future relationship with the Union ...’.<sup>22</sup> This has caused political confusion as to what substantive content will be contained within the withdrawal agreement, and to what extent future relations ought to be taken into account when conducting negotiations. Various academics have construed the provision to mean that the contents will solely cover technical arrangements to ensure an orderly withdrawal, including, for example, arrangements of residency rights, if any, of UK citizens living in the EU and EU citizens living in the UK.<sup>23</sup> However, it is submitted that this argument is flawed on the basis that it simply ignores the Treaty requirement that negotiations ought to take into account future relations.<sup>24</sup>

In contrast, another interpretation of Article 50(2) TEU suggests that the withdrawal agreement must be concluded as a mixed agreement; covering technical arrangements ‘and’ also taking future relations into account by covering a comprehensive range of competencies.<sup>25</sup> This would be an incredibly complex exercise which would include creating a completely ‘new set of institutional and substantive provisions,’ as well as ‘tailor-made protocols’ to govern EU-UK relations in the future.<sup>26</sup> This would merely be the beginning. The myriad of practical issues that arise in relation to this interpretation of Article 50(2) TEU do not fall within the scope of this paper due to their immense

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<sup>22</sup> TEU (n 1) art 50(2).

<sup>23</sup> Editorial Comments, ‘Withdrawing from the “Ever Closer Union”?’ (2016) 53(6) CML Rev 1491, 1494.

<sup>24</sup> TEU (n 1) art 50(2).

<sup>25</sup> Lazowski (n 3) 532.

<sup>26</sup> *ibid.*

density.<sup>27</sup> Still, it is noteworthy that if this latter interpretation of Article 50(2) TEU is adopted, Article 50(2) TEU catastrophically fails to provide any guidance on how to undertake this staggeringly complex exercise. However, this latter interpretation, which is now generally accepted in academia, is difficult to reconcile with the two-year withdrawal period prescribed under Article 50(3) TEU because international agreements on this scale in the past have, on average, taken seven years to settle.<sup>28</sup>

Taking into account these practical issues, it is submitted that the withdrawal agreement must take the form of a mixed agreement because Article 50(2) TEU prescribes that the agreement struck takes future relations into account. However, it will most likely offer a provisional arrangement with regard to future relations, leaving the details of the post-withdrawal relationship between the EU and UK to be ratified in a second, separate agreement. It is likely that this agreement will take years if not decades to conclude. Ultimately, it is admitted that the subsection suffers from the defect of being unduly vague, and in the future ought to be amended to provide general guidance on which key areas – be it the single market, citizens' rights, or security – negotiations need to, at minimum, address.

Comparatively, Article 49 TEU bears striking resemblance to Article 50 TEU in that it similarly fails to outline the contents to be discussed in an accession agreement. In fact, it was only through several rounds of different countries' accession into the Union that a comprehensive list of factors to be considered, alike the ones mentioned above, was provided via the Copenhagen Criteria. These criteria established a detailed and structured approach to the process of accession.<sup>29</sup> It is submitted that such measures similarly ought to be determined under a political sphere between the parties involved for the withdrawal process, not via Article 50 TEU. This is because withdrawal concerns unique economic, legal, and political circumstances that would be specific to the departing Member State and the EU at the time of departure. This would facilitate the

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<sup>27</sup> Lazowski (n 3) 528 for some of the complex legal issues that would need to be consulted within a mixed agreement.

<sup>28</sup> Editorial Comments, "True is it That We Have Seen Better Days" (2016) 53(4) CML Rev 875, 876.

<sup>29</sup> Nicolaides (n 4) 7.

process of withdrawal by providing a set of guidelines that identify key issues that need be dealt with in any withdrawal agreement. However, it is further asserted that due to the distinctive nature of alternative agreements between the EU and other countries, such as Switzerland and Denmark,<sup>30</sup> a universal list of criteria, such as the Copenhagen Criteria, would not be able to be applied uniformly to determine the content of negotiations for the UK withdrawal agreement.

Instead, such criteria ought to serve as guidelines which must be consulted and dealt with, but to which emphasis on specific issues would ultimately be left to the discretion of either party. It is asserted that the presence of such guidelines would aid the efficiency and certainty of the process of withdrawal as it would, at minimum, identify the key contents from which the EU and the UK would deal with in their bespoke agreement. It would not be suitable for Article 50(2) TEU, a static piece of legislation, to dictate the substantive content to be covered under the EU-UK withdrawal agreement as has been implied by academics.<sup>31</sup> As such, it is asserted that Article 50(2) TEU remains fit for purpose but has, however, raised political questions which are not readily answerable.

### C. Article 50(3) TEU

Another prominent political issue is whether the two-year withdrawal period stipulated under Article 50(3) TEU is long enough for withdrawal negotiations to be concluded. As remarked by Professor Dougan, international trade agreements are incredibly complex and tend to many years to conclude.<sup>32</sup> Thus, Article 50(3) TEU has drawn criticism for specifying an unrealistically short time limit, especially due to the fact that further delay would likely be caused by the lack of clarity as to the content and type of agreement to be struck under Article 50(2) TEU.<sup>33</sup> Furthermore, practical implications such as future elections, including the German election in September 2017, are likely to stall

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<sup>30</sup> Tatham (n 5) 169.

<sup>31</sup> Lazowski (n 3) 532.

<sup>32</sup> Michael Dougan, 'Brexit Means Brexit Means What Exactly?' (26 October 2016) 15:19 – 16:10 <[www.youtube.com/watch?v=asJLxqGjYrM](https://www.youtube.com/watch?v=asJLxqGjYrM)> accessed 29 December 2016.

<sup>33</sup> Tatham (n 5) 128.

proceedings and further prolong the withdrawal process.<sup>34</sup> It is therefore accepted that Article 50(3) TEU can be considered to be overly optimistic in setting this two-year deadline.

However, Article 50(3) TEU should be praised for its flexibility in permitting an extension of the withdrawal period by mutual consent, thereby taking into account these considerations.<sup>35</sup> Moreover, in contrast to Article 49 TEU, whereby a time limit has been omitted, causing countries such as Turkey to have taken decades to reach an agreement with the Union,<sup>36</sup> Article 50(3) TEU avoids procedural procrastination, thereby encouraging a swift departure.<sup>37</sup> Indeed, an extended time limit, as impliedly proposed by academics, would cause further disruptions and delay to negotiations as there would inevitably be a turnover of actors from the UK.<sup>38</sup> It is thus asserted that Article 50(3) TEU establishes an appropriate time limit within which to conclude a withdrawal agreement, despite accusations of its unrealistic length. Indeed, it is opined that the two-year period for withdrawal negotiations provides an adequate amount of time to reach an agreement and in doing so limits the time of uncertainty endured by both the EU and UK. A shorter time limit would simply not be feasible to reach an agreement as it would not provide enough time to discuss the complex issues that would arise upon withdrawal. Furthermore, in providing a safeguard mechanism to allow prolonged negotiations should the circumstances call for it, it is asserted that Article 50(3) TEU considers the political reality of the situation and is therefore entirely fit for purpose. However, in doing so, the provision opens itself to criticism on the grounds that it permits for an indefinite extension, thereby leaving the departing state in a state of uncertainty for a potentially unlimited period.

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<sup>34</sup> Dougan (n 31) 12:32 – 12:58.

<sup>35</sup> TEU (n 1) art 50(3) states that the withdrawal period is two years ‘unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period’.

<sup>36</sup> Nicolaides (n 4).

<sup>37</sup> Lazowski (n 3) 527.

<sup>38</sup> Tatham (n 5) 128.

A further legal implication of Article 50(3) TEU is what becomes of the EU *acquis* in the UK post-withdrawal. The provision clearly states that the ‘Treaties shall cease to apply to the State in question.’<sup>39</sup> Yet, it has been criticised because this would create damaging legal vacuums in the UK, whereby vast areas of law previously regulated by the EU would leave organisations and citizens unsure of their legal rights.<sup>40</sup> However, as remarked by Lazowski, withdrawal from the EU would not ‘*per se* detach the UK from EU law’<sup>41</sup> because it would merely cause the EU Founding Treaties to cease to apply, and the jurisdiction of the European Court of Justice (ECJ) to cease to exist in the UK, leaving all the secondary Union legislation to remain applicable to the UK.<sup>42</sup>

The critical question which Article 50(3) TEU does not answer is how the UK ought to deal with the outstanding secondary legislation which would remain applicable to the UK upon departure. However, being an international provision designed to regulate the process of withdrawal, it is submitted that it is not the duty of the provision to dictate what occurs with secondary Union legislation in the withdrawing state. This is because it should not decide on behalf of the UK how it ought to deal with this remaining secondary legislation. This is a domestic matter which ought to be decided by the UK government and parliament, and agreed with by the Union.

Furthermore, Article 50(3) TEU simply cannot predict the type of withdrawal agreement that will be struck between the EU and the UK. For example, whether the UK would remain fully and legally integrated within the single market of the EU, or completely isolate itself from Union legislation in want of greater autonomy. As such, it is submitted that this should not be determined by Article 50 TEU, but instead under a political sphere, as it will be influenced by the extent of continued integration between the Union and the UK post-withdrawal. In fact, Mrs May has already endorsed the UK’s approach

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<sup>39</sup> TEU (n 1) art 50(3).

<sup>40</sup> Dougan (n 31) 13:55 – 14:35.

<sup>41</sup> Lazowski (n 9) 121.

<sup>42</sup> *ibid.*

to ceasing the application of secondary Union legislation via the Great Repeal Bill.<sup>43</sup> Rather ironically, the Bill, when passed, will retain all secondary Union legislation by converting it into domestic UK law, maintaining its enforcement throughout the UK so as not to create a legal vacuum.<sup>44</sup> It is only through the passage of time that secondary Union legislation will be replaced one by one, Directive by Directive, and Regulation by Regulation, thereby disentangling the UK legal system from that of the Union. Thus, it is submitted that it is not the duty of Article 50(3) TEU to go further than it does in providing guidelines as to what occurs to the Union acquis in the UK, and as such is fit for its purpose.

#### D. Article 50(4) TEU

A significant political issue raised by Article 50(4) TEU concerns the impact of the process of withdrawal upon institutional actors of the Union. Specifically, this section analyses the role of UK MEPs throughout the process of withdrawal. It is recognised that various other actors, institutions, and programmes, including, for example, UK citizens working in the EU and vice-versa, the European Medical Agency (which resides in London), and the Erasmus student exchange programme, have likewise been omitted from the provision. This arouses similar questions as to how to deal with each upon withdrawal, but the latter are not covered within the scope of this paper.

Whilst the UK members of the European Council and Council of Ministers are precluded from participating in discussions relating to withdrawal, Article 50(4) TEU is silent on the role of MEPs in this respect. Article 50(4) TEU has therefore been criticised for failing to provide guidance on whether UK MEPs have the right to be involved in the

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<sup>43</sup> Josh May, 'Read in Full: Theresa May's Conservative Conference Speech on Brexit' (*Politics Home*, 2 October 2016) available at [www.politicshome.com/news/uk/political-parties/conservative-party/news/79517/read-full-theresa-mays-conservative](http://www.politicshome.com/news/uk/political-parties/conservative-party/news/79517/read-full-theresa-mays-conservative) accessed 29 December 2016.

<sup>44</sup> Department for Exiting the European Union, 'Legislating for the United Kingdom's withdrawal from the European Union' (Gov.uk, 30 March 2017) available at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/604516/Great\\_repeal\\_bill\\_white\\_paper\\_accessible.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604516/Great_repeal_bill_white_paper_accessible.pdf) accessed on 27 April 2017.

process of providing consent under Article 50(2) TEU.<sup>45</sup> However, it is submitted that such critique is not warranted because guidelines display that UK MEPs are entitled to vote in the event of a withdrawal pursuant to Rule 82 of the European Parliament's Rules of Procedure.<sup>46</sup>

Additionally, Article 50(4) TEU has been criticised for encouraging strategic behaviour, as it supposedly permits UK MEPs to use their position as a bargaining chip by withholding their consent.<sup>47</sup> It is, however, submitted that such critique is neither legally nor politically viable. This is primarily because UK MEPs would be bound by the principle of sincere cooperation enshrined under Article 4(3) TEU, since the UK would remain a Member State throughout the withdrawal process, which means that they would be bound by law to cooperate in the process.<sup>48</sup> Furthermore, promoting sour relations leading up to the establishment of a post-withdrawal relationship with the Union would not be in the interests of either party involved.<sup>49</sup> Ultimately, Article 50(4) TEU omits specification on the role of UK MEPs. As such, it is acknowledged that the provision ought to have been drafted more completely to avoid political debate, particularly in respect of other Union actors. However, it is argued that, with regard to UK MEPs, this is immaterial because guidance has already been provided on the matter elsewhere. It is thus submitted that the provision is adequate.

## E. Article 50(5) TEU

Finally, a legal issue which has arisen is whether Article 50 TEU permits for rescission from withdrawal. In stating that the only method of re-joining the Union after withdrawal is via Article 49 TEU, Article 50(5) TEU provides a warning of the

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<sup>45</sup> Nicolaides (n 4) 11.

<sup>46</sup> European Parliament, 'Rules of Procedure' (2014) Title II, Ch7, Rule 82; Darren Harvey, 'What Role for the European Parliament under Article 50 TEU?' (*EU Law Analysis*, 14 July 2016) available at <http://eulawanalysis.blogspot.co.uk/2016/07/what-role-for-european-parliament-under.html> accessed 18 December 2016.

<sup>47</sup> Tatham (n 5) 151.

<sup>48</sup> TEU (n 1) art 4(3); Carlos Closa, 'Secession from a Member State and EU Membership: The View from the Union' (2016) 12(2) *EuConst* 240, 250.

<sup>49</sup> Hofmeister (n 2) 589.

irreversibility and severity of withdrawal. However, it remains unclear whether this applies immediately upon the triggering of Article 50 TEU. Article 50(3) TEU, however, states that the 'Treaties shall [emphasis added] cease to apply...two years after the notification'<sup>50</sup> (barring the unanimous decision to extend this period). This definitive language is interpreted as insinuating, admittedly under narrow interpretation, that once notification is given to the European Council, rescission from withdrawal is not possible.<sup>51</sup> Yet, political debate has ensued, with the European Council President, Donald Tusk, taking the view that the UK could legitimately abort the withdrawal process following a genuine change of intention.<sup>52</sup> Indeed, after all, the UK would remain a Member State throughout the process of withdrawal.

More recently, European Parliament President Antonio Tajani, further asserted that it would be possible for the UK government, after the general election on 8 June 2017, to withdraw their decision to trigger Article 50 TEU should UK voters change their mind about the Brexit referendum.<sup>53</sup> However, such an argument seems far-fetched and rather hopeful when considering that the election was based on a whole array of domestic issues, not solely relating to Brexit. It is therefore opined that it is unreasonable and politically impossible to overhaul the decision of the referendum taken on 23 June 2016 to leave the Union through this national election. It is asserted, rather cynically, that the Brussels bureaucrats are attempting to persuade the UK to change its mind about leaving the Union in fear of the detrimental impact it may have on the EU and the influence it may provoke in encouraging other Member States to withdraw from the Union. Indeed, if Marine Le Pen had won the recent French election to become President of the French Republic, it would have not seemed unreasonable to think that France too, would have sought to exit the EU. In such circumstances, albeit hypothetical, the economic and political integrity and unity of the Union would necessarily have come under question.<sup>54</sup>

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<sup>50</sup> TEU (n 1) art 50(3).

<sup>51</sup> As argued in *R v Miller* (UKSC) (n 19) 11.

<sup>52</sup> Editorial Comments (n 22) 1496.

<sup>53</sup> Dan Roberts and Lisa O'Carroll, 'EU leader: UK would be welcomed back if voters overturn Brexit' (*The Guardian*, 20 April 2017) available at <[www.theguardian.com/politics/2017/apr/20/european-parliament-will-welcome-britain-back-if-voters-veto-brexit](http://www.theguardian.com/politics/2017/apr/20/european-parliament-will-welcome-britain-back-if-voters-veto-brexit)> accessed 26 April 2017.

<sup>54</sup> James Rothwell and Henry Samuel, 'When is the French Presidential Election 2017, How does It Work and Who are the Candidates?' (*The Telegraph*, 22 April 2017) available at

Academics have, however, suggested that the political barriers preventing rescission of withdrawal for the UK would be too great.<sup>55</sup> This is because a second referendum would be required, which a substantial proportion of UK citizens would not accept, as it would call into question the democratic legitimacy of the UK's political system.<sup>56</sup> Furthermore, it is now widely regarded that the UK population have accepted the result and that the task of withdrawing from the EU must be carried out.<sup>57</sup> Ultimately, it is asserted that Article 50 TEU does not permit rescission from withdrawal, but has nonetheless caused political debate due to lack of express direction on the issue. When taking into account political reality, however, rescission is improbable.

### III. Conclusion

Having considered the various legal and political issues discussed in this paper, it is asserted that Article 50 TEU is fit for its purpose of providing a procedural framework for withdrawal. Having said that, it is recognised that some issues have arisen due to the lack of clarity of Article 50 TEU, but that is not to say that this reflects its so-called 'poor' drafting, as its criticisms seem to suggest.<sup>58</sup> Departing from the Union will entail a 'staggeringly complex process of disentanglement,'<sup>59</sup> and the political and legal implications that have arisen out of the process are merely those that would be faced in any case of withdrawal. What is more, the lack of precedent for withdrawal on the scale of the proposed UK 'Brexit' has added to the uncertainty revolving around the issues discussed in this paper. Ultimately, the UK's withdrawal will be utilised as an example from which we can learn and impose amendments to the process of withdrawal under Article 50 TEU in the future. For now, however, given the circumstances, it is asserted

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<sup>55</sup> [www.telegraph.co.uk/news/0/french-presidential-election-2017-does-work-candidates/](http://www.telegraph.co.uk/news/0/french-presidential-election-2017-does-work-candidates/) accessed 26 April 2017.

<sup>56</sup> Dougan (n 31) 41:00 – 41:49.

<sup>57</sup> *ibid* 41:49 – 42:45.

<sup>58</sup> Ashley Kirk, Malcolm Coles and Charlotte Krol, 'EU referendum results and maps: Full breakdown and find out how your area voted' (*The Telegraph*, 24 February 2017) available at <http://www.telegraph.co.uk/news/0/leave-or-remain-eu-referendum-results-and-live-maps/> accessed 26 April 2017.

<sup>59</sup> Hofmeister (n 2).

<sup>59</sup> Editorial Comments (n 22) 875.

that Article 50 TEU provides a reasonable process for a Member State to withdraw from the Union. For that reason alone, it is suitable and fit for purpose.