

**EFTA Court –
Spring Conference 2017**

Brexit: A view from the Bundestag

Novotel Luxembourg-Kirchberg



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Mitglied des Deutschen Bundestages





Formalities:

- Referendum 23 June, 2016: „Leave“-campaign won by 51,9 % to 48,1 %
- UK to invoke Article 50 of the Treaty on the European Union on 29 March, 2017
- EU special summit 29 April, 2017, decided on guidelines
- Council Decision to authorise EU-Commission to open negotiations with UK on an agreement to set out the arrangements for its withdrawal from the EU on 3 May, 2017
- May initiates snap-election in UK on 8 June, 2017; Result: Tories loose majority, less support for May´s announcement to accept a „hard Brexit“ if needed
- Start of EU-UK negotiations for Brexit on 19 June, 2017



Negotiation Process:

Once the two year time limit begins...

- Negotiations between UK and EU
- Draft deal put to European Council (EU-27)
- Needs approval from at least 20 countries with 65 % of the population
- Ratification by the European Parliament
- If no agreement to extend negotiations then EU treaties cease to apply to the UK

UK leaves the EU

- UK Parliament must repeal the 1972 European Communities Act and replace with the agreement



Negotiation Process (as planned by the EU and now agreed upon by the UK):

- Phase 1 (June – October/ Fall 2017):

- Future status of EU citizens in UK und UK citizens in EU, incl. residence, family reunification, pension claims, ...
- Financial liabilities

When these fields are settled – start of next phase...

- Phase 2 (approx. Fall 2017):

- Questions of future relationship
- Economic relationship – Free Trade Agreement?
- Research and Education
- Common security and defence policy
- ...



Negotiations

Expected Treaties:

- Exit conditions between EU and UK
 - financial aspects
 - legal aspects
 - administrative aspects (e.g. re-location of EU agencies, currently located in UK)
- Future relationship of EU and UK
 - Free Trade Agreement
- attempt of UK to strike individual deals with single EU member states (failed)
- Future relationship between EU-27



Legal Perspective

Points of Discussion in Negotiations:

- Interim arrangements for EU procedures
 - which were implemented before the exit-process had been started
 - and which are significant beyond the exit
 - relevant for all policy areas
- Current ECJ cases
 - Continuing participation of British judges?
 - Effect for UK
 - under EU law?
 - under UK law? (persuasive authority for sure and no repeal of old ECJ case law)
- Significance of former and future ECJ case law for UK - decision by UK alone
 - Former ECJ case law to remain in force
 - Future ECJ case law probably persuasive authority



Points of Discussion (continuation):

- Legal questions:
 - Future effectiveness of current EU-Patents and Trade-Marks in UK
 - Future participation of UK in EU patent protection law?

- Situation of corporations (which are based on national English law and which have their real seat in the EU)?
 - „Limited (Ltd.)“
 - „Public Limited Company (PLC)“
 - „Limited Liability Partnership (LLP)“
 - Freedom of establishment will be erased and replaced by a third-country status
 - *GbR* (company constituted under civil law) or
 - *OHG* (general partnership)
 - Special rules for repatriation?



Points of Discussion (continuation):

- Future situation of European Public Companies (SE)?
 - their branches in EU-27?
- European Economic Interest Grouping (EEIG/ EWIV)?



Political Perspective

Major Points of Conflict:

1. Conflict of Interests:

UK sits on both sides of the table (in lobby organizations, too!):

- negotiation party (as counterpart of the EU)
- Current status as EU-member state



Major Points of Conflict (continuation):

2. Financial Obligations

- Financial obligations between UK and EU (bilaterally)
 - method of calculation?
 - Legal reports of UK parliament to deny any obligations (February and March 2017)
 - EU insists on UK obligations
 - subject to regulation in exit agreement

- Financial obligations towards third parties
 - not as a member state, but as a single unit parallel to the EU
 - joint and several liability!
 - not subject to potential agreement between EU and UK



Major Points of Conflict (continuation):

3. Jurisdiction:

- ECJ remains competent for
 - interpretation of questions regarding the exit
 - interpretation of a potential exit agreement
 - potentially for decades!
- Alternatives to ECJ's competence for the future
 - New EU Multilateral Investment Court (like CETA)
 - „Classic“ Investor-State-Dispute-Settlement (e.g. ICC)
 - British Courts (unconstitutional under German law)
 - EFTA-Court



Major Points of Conflict (continuation):

4. Transition period:

- How long will the transition period be?
- „Cherry-Picking“ for certain industry sectors?
- Compensation scheme for states and industries relatively more disadvantaged by Brexit than others?



Possible Consequences for Germany:

- Reform of social benefit system for EU citizens residing in Germany (included the question of indexing of child benefits)
- Relocation of EU agencies to Germany (EBA to Frankfurt; EMA to Bonn)?
- Burden on German and EU economy?
- Reform of EU budget with possible higher obligations for Germany and other member states; possible budget cuts
- Strengthening of EU competences
- ...

Due to the upcoming elections in September possible democratic rights of participation of the German Bundestag and the German government might be constrained in a critical phase of the negotiations!



In the Media:

- 16 March, 2017, Frankfurter Allgemeine Zeitung, S. 6:
“Auch nach dem Brexit haftet London
weiter für EU-Schulden”/ Von Heribert Hirte
- 20 March, 2017, Bildzeitung, S. 1:
“EU-Angst vor britischen Maulwürfen”/ Von Kai Weise
Heribert Hirte: man kann “nicht zwei Herren dienen”

<http://www.bild.de/politik/ausland/brexit/eu-maulwuerfe-50915934.bild.html>

- 27 March, 2017, Financial Times:
“Angela Merkel toughens her position on Brexit”

Heribert Hirte: “a breakdown over finances would “rule out any chance” of negotiating the future UK-EU relations agreement”

<https://www.ft.com/content/4855afce-10a4-11e7-b030-768954394623?mhq5j=e3>



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Thank you for your attention!

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