



BREXIT: WHAT HAPPENS NEXT?

By Gavin Barrett



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Some Observations on the Operation of Article 50 TEU in the Event of a Referendum Vote in Favour of Brexit On 23 June, 2016

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Introduction

Article 50, introduced into the Treaty on European Union by the Treaty of Lisbon, sets out a mechanism for a state which wishes to end its membership of a supposedly ‘ever closer Union’. Article 50 provides

- “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.² 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.³
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 If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.”⁴

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2 Article 218(3) TFEU provides that

“The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.”

3 Article 238(3)(b) TFEU provides that [in the circumstances to which it applies] a “qualified majority shall be defined as at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.”

4 Article 49 TEU provides that

“Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member

The purpose of this contribution is to make some brief observations about the role of this article in any process of Brexit which may take place in the wake of a vote to leave the European Union on 23 June next. These observations are as follows.

1) Article 50 will be the legal mechanism used to effect UK withdrawal from the EU in the event of a vote in favour of Brexit on June 23rd

Notwithstanding some doubts having been expressed about the matter, it seems clear that Article 50 will be the mechanism used to effect UK withdrawal from the EU, if this is what the UK electorate votes for in the June 23rd referendum on Brexit.

The Treaties themselves provide for no mechanism other than Article 50, (which was introduced by the Treaty of Lisbon and originally conceived during the negotiations on the Constitutional Treaty ⁵). Merely repealing the European Communities Act 1972 (an approach suggested by some Brexit supporters ⁶) would leave practical and transitional issues undealt with, would leave the UK in violation of its obligations under international law and would create a hostile environment in which to negotiate the UK's future relationship with the remaining 27 member EU states. Direct reliance on the Vienna Convention is properly best regarded as rendered superfluous by the *lex specialis* of Article 50 itself.⁷

From a political perspective, UK voters would likely expect a reaction to voting for exit, and indeed British premier David Cameron has already committed to invoking the article in the event of a vote for Brexit.⁸ In any case, the other member states would have little incentive – and likely little interest – in negotiating with the UK unless and until Article 50 were invoked.

2) Article 50 is very far from a simple case of the UK and its neighbours thrashing out their interests in individual mutual negotiations

Article 50 involves negotiations not between the UK and other individual states but rather between the UK and the Union (represented by the Commission, but doubtless a Commission which is closely controlled by a Council-appointed committee, and through this, by the member states). The agreement must then be signed off by the Council acting by qualified majority vote.

This has consequences in that each other member state thus has only one vote out of 27. Since the Council acts by qualified majority vote, no individual state *necessarily* possesses a veto, although if the agreement turns out to be a mixed one (engaging both member state and EU competences) it will have to be both signed and ratified by all member states. (A separate agreement

of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements. The conditions of eligibility agreed upon by the European Council shall be taken into account.”

⁵ See in more detail, G. Barrett, *Creation's Final Laws: The Impact of the Treaty of Lisbon on the 'Final Provisions' of Earlier Treaties* (2008) 27 Yearbook of European Law 3. Other general examinations of this area include P. Nicolaides, *Is Withdrawal from the European Union a Manageable Option? A Review of Economic and Legal Complexities* (Bruges European Economic Policy Briefings 28 / 2013); A. Tatham, “Don't Mention Divorce at the Wedding, Darling! : EU Accession and Withdrawal after Lisbon”, Chapter 6 in A. Biondi, P. Eeckhout and S. Ripley (eds.), *EU Law After Lisbon* (OUP, Oxford, 2012), C. Rieder, “*The Withdrawal Clause of the Lisbon Treaty in the Light of EU Citizenship :Between Disintegration and Integration*” (2013) 37 Fordham International Law Journal 147; A. Lazowski, “*Withdrawal from the European Union and Alternatives to Membership*” (2012) 37 EL Rev 523.

⁶ See e.g., N. Lawson, “*Britain Outside the EU Would Stand Tall as a Free and Prosperous Nation*” The Telegraph, 10 May 2016.

⁷ See Article 54 of the Vienna Convention on the law of treaties concluded at Vienna on 23 May 1969.

⁸ See report to this effect in M. Wilkinson, “*Fragile Tory Truce Over EU Referendum Shattered as David Cameron Savages Boris Johnson*”, Daily Telegraph, 22 February 2016.

on the UK's future relationship with the European Union (as opposed to one on Brexit), should one come about, would also likely be mixed as well and thus subject to similar rules. An association agreement would also require unanimity.)

The consent of the European Parliament is also required under Article 50, putting that institution in a powerful position.

The foregoing has to be a matter of some concern to the UK's nearest neighbours, including the Ireland, which must be aware that there is no guarantee that their individual trading or other interests will prevail in such negotiations. Instead, compromises between member states and trade-offs between the various member state interests are both possible and likely, with individual member states potentially blocking agreement in one area unless they gain concessions in others. The consequence, as the House of Lords have put the matter, is that nothing will be agreed under Article 50, until everything is agreed.⁹

As regards the UK side in any future Article 50 negotiations, very little is capable of being known. In particular, it is as yet unclear even *who* would be in charge of the Government conducting the negotiations, since it is likely that the current Prime Minister, David Cameron, would have to consider defeat in this referendum as a resigning matter.¹⁰ Nor is it clear what a UK Government would strive for in any negotiations. Boris Johnson – perhaps David Cameron's most likely successor - appears to be using the Brexit vote as a means of securing better terms for remaining in the European Union.¹¹ Other Brexiteers, however would apparently prefer to exit both from the Union and the Single Market.¹²

Some factors do seem clear regarding the Article 50 negotiations, however:

- (a) the UK will be the weaker side in the negotiations because it needs access to the EU's Single European Market more than the EU needs access to its market. As Schmiedling has pointed out, Britain generates 13% of its GDP through exporting services and goods to other EU member states. Those states in contrast generate less than 4% of their own GDP through exports to the UK.¹³
- (b) The price of access to the Single European Market in negotiations will, as it has always been, necessarily be paid in the currency of sovereignty. In other words, the more sovereignty the UK is prepared to sacrifice, the greater its access will be to the Single Market. Ultimately, if the UK wants to remain in the Single Market post-Brexit, it will have far less influence on decisions in Europe because it will now have to accept rules without having a voice in how they are shaped.

The alternative option will exist that the UK can give up the Single Market and exercise sovereignty through the restriction of migration. Such an approach will, however, be accompanied by negative economic consequences.

The price of access to the Single European Market will also involve allowing equivalent access to the UK market, including via migration.

- (c) From the moment the Article 50 process starts, uncertainty concerning its outcome is likely to hang over the UK and the EU alike like a toxic cloud. This will impact on financial markets. It will affect investment. It will affect the value of the pound.

⁹ See in this regard Conclusion 39 in House of Lords European Union Committee, *The Process of Withdrawing from the European Union*, 11th Report of Session 2015–16 (HL Paper 138, 4 May 2016),

¹⁰ See N. Watt, "Cameron wouldn't last 30 seconds if he lost EU vote, says Ken Clarke", *The Guardian*, 16 April, 2016, available online at <http://www.theguardian.com/politics/2016/apr/16/cameron-wouldnt-last-30-seconds-if-he-lost-eu-vote-says-ken-clarke>

¹¹ N. Watt, A. Travis and R. Mason, "David Cameron ridicules Boris Johnson's second EU referendum idea" *The Guardian*, 22 February, 2016.

¹² See E. Cadman and H. Mance, "Michael Gove says leaving EU would mean quitting single market", *Financial Times*, 8 May 8, 2016.

¹³ H. Schmiedling, "Britain needs the EU much more than vice versa", LSE Euopp Blog available at <http://blogs.lse.ac.uk/brexitvote/2016/03/21/britain-needs-the-eu-much-more-than-vice-versa/>

- (d) The UK can be expected to look for the best deal for its voters in any Article 50 negotiations – but similar toughness can be expected from other member state governments. The fact that the French Presidential elections occur in April-May 2017 and the German federal elections occur in August-October 2017 – *i.e.*, during the two-year period foreseen for negotiations by Article 50 - seems unlikely to assist in negotiating flexibility. In addition, the need to deter other potential exiters will militate in favour of being as tough as possible in negotiations with the UK.
- (e) For the duration of the negotiations,¹⁴ the UK will remain in the EU, but in a peculiar situation, involved for example in negotiations regarding trading which will only affect it as an outsider. Its situation will be rendered all the more peculiar by its expected assumption of the Council Presidency in the second half of 2017 – which will lead to it presiding over meetings concerning matters which by the time they come to fruition, may no longer concern the UK.
- (f) Enlightened commercial self-interest on the part of the other member states might well militate in favour of a generous approach to the United Kingdom.¹⁵ However, it can not be guaranteed that the other member states would take such an approach, since the need to disincentivise Brexit-like behaviour by any other member states which might be tempted to look towards the exit door would militate strongly in favour of a tough approach being taken. (An analogy can perhaps be drawn with the strict approach adopted towards Greece by the eurozone, arguably in part motivated by very similar reasoning.) In this context too, the relatively limited nature of the concessions which other member states were prepared to make to David Cameron at the European Council in order to keep the UK a member of the Union is of interest.¹⁶

3) Once Article 50 is deployed, there will likely be a metaphorical economic gun pointed at the United Kingdom, capable of being ‘fired’ by any member state in the EU if that member state feels that it is not getting what it wants from the ongoing Article 50 Brexit negotiations.

Once Article 50 is deployed, the United Kingdom is likely to be capable of being held hostage by any member state, if that state is discontented with the course of the Brexit negotiations. This situation derives from the Article 50(3) provision that failing a withdrawal agreement and failing a unanimous decision to extend negotiations, the Treaties shall cease to apply to the UK in two years.¹⁷ The implication of this is that any individual member state can veto the extension of the negotiating period, and for any reason it wishes (although there might be reasons not to do so – Ireland, for example, could certainly not risk such a course of action, given the potentially dire economic consequences that could result). It is possible to imagine that another member state with less to lose, and which felt that an unfair approach was being taken in relation to, for example, migration or some other issue might consider this an option.

The potential consequences of this could be extremely serious for the United Kingdom (and also incidentally for countries which are highly interdependent on them in trading terms, such as Ireland) given that it seems improbable that the UK’s complex negotiations on unwinding over 40 years of UK membership will be completed within two years. The UK would then be left in the situation of enjoying only the relationship with the EU that any WTO member state has. This would involve

¹⁴ Which will be two years, unless a different date (either before or after the end of the two years) is set by the withdrawal agreement, or the member states and the UK unanimously agree to extend the two year limit set in Article 50(3) or the notice of intention to withdraw is validly withdrawn.

¹⁵ See for an optimistic analysis in this regard, R. Lea, “*The City would hold a strong hand after Brexit*”, Financial Times, 12 May, 2016.

¹⁶ See European Council conclusions, 18-19 February 2016

(Brussels, 19 February 2016 EUCO 1/16 CO EUR 1 CONCL 1) available at <http://www.consilium.europa.eu/en/press/press-releases/2016/02/19-euco-conclusions/>

¹⁷ It should be noted that an implicit veto by each member state on the Article 50 agreement would also exist if the ultimate agreement constituted a mixed agreement since any such mixed agreement would need to be ratified by all member states.

the introduction of tariffs by the EU on UK products. (By way of example, the normal rate on dairy products is in the region of 36%, that on cars at 10%). It would also involve further economic disadvantages for the UK - no preferential access to EU markets for the UK, no right for UK citizens to live in other EU member states being among the most prominent.

4) No legal consequence will ensue on 24 June (even if there may be immediate economic consequences, such as currency market turbulence). It will take at least two years for the legal consequences to be teased out and probably far more.

It is likely to take years for the withdrawal process under Article 50 to run its course – even the likely-minimum unextended two-year period for Brexit negotiations would last until mid-2018. Moreover, account needs to be taken of other negotiations such as parallel or consecutive negotiations on the UK's *future* relationship with the EU. In this context, it may be noted that trade negotiations between Mercosur and the European Union are still underway after 17 years, and the EU-Canada Trade Agreement has occupied seven years of negotiations to date. In fairness, it seems likely that both more urgency and more resources would likely attach to all negotiations linked to Brexit. However, these negotiations would also be immensely more complex than any negotiations with, for example Mercosur or Canada, involving as they would the unwinding of relationships built up over decades and the delicate task of dealing with rights acquired during the process of integration.

5) The process described in Article 50 is only part of the story

There will be far more to the negotiation of the process of UK withdrawal in the event of Brexit than the mere deployment of Article 50, and this from the perspective both of the United Kingdom and of the European Union. The potential complexity of such negotiations has already been noted.

Article 50 will be used as the vehicle for effecting the UK's exit from the EU. Such negotiations, as has already noted, would be extremely complex and very likely lengthy, given that issues such as acquired rights and interim arrangements would need to be dealt with.

However, Article 50 does not say anything about what the withdrawal agreement should say about the future relationship between the European Union and the UK. This will probably itself involve a separate agreement negotiated in parallel or after the withdrawal agreement,¹⁸ and is itself a process which could involve negotiations lasting many years. Were it cover merely trade then a process of adoption by qualified majority vote followed by the European Parliament's giving its consent would be required. Were it to be a more all-embracing document, then unanimity voting, consultation of the Parliament and ratification by all member states would be required.

This is not all.

The United Kingdom will also have to negotiate trade deals with states outside the European Union (including agreements with all non-EU WTO member states). The sheer scale of such an undertaking seems daunting in terms of the time and the effort that it would take. In addition, it seems unlikely that many other states would be willing to prioritise this exercise without first knowing what the UK's trade relationship with the EU would be.

¹⁸ This at any rate was the view of the UK Government as expressed in *The Process for Withdrawing from the European Union* (Presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs, (Cm 9216, February 2016)) and available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504216/The_process_for_withdrawing_from_the_EU_print_ready.pdf at para. 2.15 thereof.

Finally, the remaining member states, in the wake of any Brexit, would probably have to negotiate –without the UK – the EU’s own future internal institutional arrangements, which might themselves involve treaty change.

6) While the point is not absolutely clear, there seems to be no legal bar on the UK Government withdrawing its withdrawal notice under Article 50. This may be so even after a withdrawal agreement has been reached.

As the Irish, Danish, French and Dutch experiences show, second thoughts by a member state are possible, when it comes to taking the fateful step of stepping away from the process of European integration, and this even where the initial step away is taken by referendum. Legally, there does not appear to be any bar in the wording of Article 50, at least, which would prevent the United Kingdom from withdrawing its Article 50(2) notification of intention to withdraw. This may well be so, even after a withdrawal agreement has been reached. On a political level, it seems inconceivable that the other member states would not cooperate in bringing to an end a departure process which would be so clearly disadvantageous both to the EU and to the UK. Within the UK, from a democratic point of view such a step would likely need to be supported by a second referendum rejecting the terms of the Article 50 withdrawal agreement or at the very least by the election of a Government on a platform of bringing the withdrawal process to an end. The likelihood of either step happening is unclear.¹⁹

7) A member state which withdraws from the EU under Article 50 can apply to rejoin the Union again in due course.

Article 50 specifically envisages the eventuality of a member state which has withdrawn from the Union asking to rejoin, and provides that its request in this eventuality shall be subject to the procedure referred to in Article 49 TEU. As is well known, this involves the unanimous agreement of all member states – a pre-condition which is not to be taken for granted, as the UK has already experienced to its discomfort in the 1960s, when its admission was twice effectively vetoed by General de Gaulle. The prospect of a United Kingdom which leaves the European Union every applying to re-enter may seem far-fetched and a prospect far off in time. However, the disadvantages of non-membership can be expected to be considerable, and the centripetal force of European integration has over many decades proved itself to be a powerful one. It seems improbable, however, that in the event of any UK re-entry it would secure terms different to those available to any other state. In all likelihood therefore, a re-entering United Kingdom would have to join Schengen, join the eurozone and make budgetary contributions on the same scale as other members with no provision for a rebate. The irony involved in any such situation would obviously be considerable.

¹⁹ The commentator and scholar Andrew Moravcsik has argued that some such reconsideration process is inevitable. See A. Moravcsik, “*The Great Brexit Kabuki — a Masterclass in Political Theatre*”, Financial Times, 8 April, 2016. Peers has raised but simultaneously queried the legality of another possibility - the European Council, in agreement with the UK, agreeing an indefinite extension of the two-year period mentioned in Article 50(3). (See S. Peers, “*Article 50 TEU: The Uses and Abuses of the Process of Withdrawing from the EU*” EU Law Analysis, 8 December 2014 (available online at <http://eulawanalysis.blogspot.ie/2014/12/article-50-teu-uses-and-abuses-of.html>)

ANNEX

Article 50 TEU

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 218 TFEU

(ex Article 300 TEC)

1. Without prejudice to the specific provisions laid down in Article 207, agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.
2. The Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.
3. The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.
4. The Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.
5. The Council, on a proposal by the negotiator, shall adopt a decision authorising the signing of the agreement and, if necessary, its provisional application before entry into force.
6. The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement.

Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision

concluding the agreement:

(a) after obtaining the consent of the European Parliament in the following cases:

(i) association agreements;

(ii) agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(iii) agreements establishing a specific institutional framework by organising cooperation procedures;

(iv) agreements with important budgetary implications for the Union;

(v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required.

The European Parliament and the Council may, in an urgent situation, agree upon a time-limit for consent.

(b) after consulting the European Parliament in other cases. The European Parliament shall deliver its opinion within a time-limit which the Council may set depending on the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.

7. When concluding an agreement, the Council may, by way of derogation from paragraphs 5, 6 and 9, authorise the negotiator to approve on the Union's behalf modifications to the agreement where it provides for them to be adopted by a simplified procedure or by a body set up by the agreement. The Council may attach specific conditions to such authorisation.

8. The Council shall act by a qualified majority throughout the procedure.

However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article 212 with the States which are candidates for accession. The Council shall also act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the decision concluding this agreement shall enter into force after it has been approved by the Member States in accordance with their respective constitutional requirements.

9. The Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision suspending application of an agreement and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.

10. The European Parliament shall be immediately and fully informed at all stages of the procedure.

11. A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised.

Article 238 TFEU

(ex Article 205(1) and (2), TEC)

1. Where it is required to act by a simple majority, the Council shall act by a majority of its component members.
2. By way of derogation from Article 16(4) of the Treaty on European Union, as from 1 November 2014 and subject to the provisions laid down in the Protocol on transitional provisions, where the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72 % of the members of the Council, representing Member States comprising at least 65 % of the population of the Union.
3. As from 1 November 2014 and subject to the provisions laid down in the Protocol on transitional provisions, in cases where, under the Treaties, not all the members of the Council participate in voting, a qualified majority shall be defined as follows:
 - (a) A qualified majority shall be defined as at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States. A blocking minority must include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained;
 - (b) By way of derogation from point (a), where the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.
4. Abstentions by Members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.

Article 49 TEU

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements. The conditions of eligibility agreed upon by the European Council shall be taken into account.

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