

The process of withdrawal from the European Union

Great Britain's path to European Union membership and the Brexit



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September 2017

UNIVERSITY OF TWENTE.



WESTFÄLISCHE
WILHELMS-UNIVERSITÄT
MÜNSTER

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Executive summary

On June 23 2016 a referendum in Great Britain decided that Great Britain was going to leave the European Union. Withdrawal is unprecedented, no country has ever left the European Union. This research therefore has as its aim to find out what the withdrawal process from the European Union entails. Since the Treaty of Lisbon of 2009, accession to the EU is governed by Article 49 TEU and withdrawal by Article 50 TEU. In comparison to accession, withdrawal does not have many fixed rules and regulations, the Article is not very comprehensive. This, in combination with the deep political and economic integration of member states with the European Union, makes for withdrawal being a complex process. This is also especially the case from a legal perspective, with the amount of EU law being incorporated into domestic law that needs to be dealt with. Historically, the UK has been an ‘awkward partner’ to the EU and the UK-EU relationship has been difficult from the start. Ultimately, this led to the 2016 referendum on membership and the March 29 2017 invoking of Article 50 TEU. The Brexit process then officially commenced and negotiations between the UK and the EU got underway. These negotiations and the whole withdrawal process so far show that Great Britain was not well prepared for a possible withdrawal from the EU and show how much has to be done in a relatively short two-year timeframe.

List of abbreviations

AFSJ	Area of Freedom, Security and Justice
Brexit	Britain's exit from the European Union (Combination of 'Britain' and 'exit')
CAP	Common Agricultural Policy
CEEC	Central and Eastern European Countries
CFP	Common Fisheries Policy
EAEC	European Atomic Energy Community (also called Euratom)
EAW	European Arrest Warrant
EC	European Communities
ECA	European Communities Act
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
ECU	European Currency Unit
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
EMU	Economic and Monetary Union
EP	European Parliament
EU	European Union
Europol	European Union Agency for Law Enforcement Cooperation
IGC	Intergovernmental Conference
JHA	Justice and Home Affairs
MP	Member of Parliament
OCT	Overseas Countries and Territories
QMV	Qualified Majority Voting
SEA	Single European Act
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UKIP	United Kingdom Independence Party
VCLT	Vienna Convention on the Law of Treaties
WTO	World Trade Organization

Chapter 1. Introduction

The first chapter will serve as an introductory chapter presenting the subject and research questions of the thesis, explaining the motivation behind the thesis, and relevance of the research. It will first sketch the background for this thesis after which the main research question will be formulated on the basis of this. The last part of this introduction will elaborate on the structure of the thesis and the methodology.

1.1 European integration and Great Britain

The Second World War damaged the European continent extensively. Directly after the War there were calls for European cooperation and integration as a way to undo the continent of the damages that Nazism had brought. In 1957 the Treaty of Rome was signed which created the European Economic Community (EEC), consisting of six countries: Belgium, The Netherlands, France, Italy, Germany and Luxembourg (Gilbert, 2012). In the 1970s and 1980s more European countries joined the group and in 1992 with the signing of the Maastricht Treaty, the European Union (EU) was formally established (Dinan, 2005). The signing of the Maastricht Treaty was a crucial point in the European integration process and was a big leap forward in the cooperation between the countries. It can be seen as the beginning of the EU enlargement policy, which resulted in a European Union of 28 countries in 2017, from twelve in 1992. Over the years, the Maastricht Treaty was amended and in 2009 the new Treaty of Lisbon entered into force. The Treaty of Lisbon reformed the EU and made it more compatible for the large Union it had become. The Treaty of Lisbon consisted of the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), which together form the constitutional basis of the current European Union (Devuyst, 2012).

After its establishment the EEC quickly became a successful trading block and Great Britain wanted to benefit from it as well. They applied to join the EEC in 1961 and in 1967, but both applications were vetoed by France. The third application was successful and Great Britain became a European Communities (EC) member in 1973. The British government was not happy with the entry agreement and therefore renegotiations started in 1974. In 1975 there was a referendum on continued membership of the EC as well, in which 67% of the people voted to stay in the EC (Dinan, 2005). In the 1980s and 1990s the British relationship with the EC remained problematic and Great Britain became more and more isolated from the other member states. In addition, Euroscepticism grew and Eurosceptic parties became more popular within Great Britain. In 2013 Prime Minister David Cameron announced that a Conservative government would hold an in/out referendum on European Union membership before the end of 2017, if elected again in 2015 (Cameron, 2013). After the conservative party won the 2015 elections with a majority, the European Union Referendum Act was introduced to enable the referendum. Although Cameron promised to hold a referendum, he himself was a proponent of remaining in the European Union. Therefore he renegotiated a deal with the EU in February 2016, in the hopes of the country voting to remain in the EU (Weiss & Blockmans, 2016).

The referendum was held on 23 June 2016. The European Union looked to Great Britain with trepidation of what was going to happen. The possible withdrawal from Great Britain was a new phenomenon for the European Union because ever since the beginning of the closer European cooperation, no country had left the Union.¹ Rather unexpectedly, 51.9% of the people voted for Great

¹ With the exception of Greenland, which acceded as a county of the Kingdom of Denmark in 1973, even though they were against membership. When Greenland acquired home rule, they were able to leave the EU and to this end held a referendum and withdrew from the EU in 1985. For further information on Greenland's withdrawal, see chapter 3.1 Exit before Brexit.

Britain to leave the European Union and ‘Brexit’² was in the making (BBC, 2016). In the direct aftermath of the referendum Cameron resigned and Theresa May became the new Prime Minister. Now that Great Britain had decided to leave the EU, things had to be set in motion to make this happen. To this end, a ‘Brexit Bill’ was passed in Great Britain, after which May triggered Article 50 TEU (the withdrawal provision of EU law) on March 29 2017 (May, 2017b). The withdrawal process then officially commenced and negotiations between Great Britain and the European Union started.

1.2 Research Question

The first section of this introduction shortly described the origins of the European Union and Great Britain’s membership. The British exit from the European Union marks the first time that a country has decided to withdraw from the close-knit group of countries that is the European Union. Withdrawal is unprecedented and therefore in this research, the main research question will be:

What does the withdrawal of Great Britain from the European Union entail?

The withdrawal from the European Union from Great Britain will be used as a case study in this thesis. Withdrawal from an international organization like the European Union is very complex and therefore withdrawal can be called a process. Because of the deep integration, member states are very much intertwined with the Union and withdrawal will require a lot of national (institutional) changes. The EU and its member states are also very much interwoven with regard to law, which is another part of the complexity of withdrawal. Significant in this process is also to look at accession and membership, because it shows the ways in which EU member states are entangled with the EU. Since the withdrawal from Great Britain is ongoing, this thesis will not analyze the whole withdrawal process, but it will mainly focus on the withdrawal process up to this point in time, with July 2017 as its end point.

1.3 Structure and methodology

The answer to the above mentioned research question will be formed by answering four sub-questions. To formulate a comprehensive answer to the research question, preliminary questions about accession and withdrawal need to be answered first, which will be done in chapters 2 and 3 through content analysis. Afterwards, chapters 4 and 5 will be a case study on Great Britain’s accession to the European Union, their membership and the Brexit.

The first sub-question will be answered in chapter 2 and is the following:

What does the process of accession to the European Union encompass?

This sub-question looks at the history of European Union enlargement, from the beginning of the European Coal and Steel Community (ECSC) and the European Economic Community (EEC) in the 1950s to the present, when we have a European Union of 28 countries (for now). For the history of

² Brexit is a portmanteau of the words ‘Britain’ and ‘exit’. It is commonly used to describe the British withdrawal from the European Union.

European Union enlargement the book by Dinan *Ever closer union: an introduction to European integration* is important, as well as chapters from *The Oxford handbook of the European Union*, which is edited by Jones, Menon and Weatherill. This chapter will also deal with rules of accession and the procedures that come with it. To this end, it takes an in-depth look at Article 49 of the Treaty on the European Union, which provides the legal basis for any European state to join the European Union. For a closer look at Article 49, among others, the article by Fortunato *Article 49 [accession to the Union]* will be used, which originates in the book *The Treaty on the European Union (TEU): a commentary*. In addition to that, the article *'Don't mention divorce at the wedding, Darling!': EU accession and withdrawal after Lisbon* by Tatham will be used, as well as the book *EU External relations law* by Van Vooren and Wessel. Furthermore, the chapter shortly touches upon the concepts of Europe à la Carte, differentiated integration and opt-outs from EU regulations and policies. This will be done with the aforementioned book by Van Vooren and Wessel and the official website of EU law, eur-lex.europa.eu.

After the first sub-question dealt with accession to the European Union, the second sub-question will focus on withdrawal from the European Union. The corresponding question that will be answered in chapter 3 is:

How is withdrawal governed by the EU treaties?

The chapter starts off with withdrawal on a smaller scale, namely Greenland. Greenland joined the EU along with Denmark in 1973, but voted to leave through a referendum in 1982. The case of Greenland will be looked at in detail, to see how the withdrawal process was and if there is something to be learned from it. To this end, articles from, among others, Krämer *Greenland's European Community (EC)-Referendum, background and consequences* and Harhoff *Greenland's withdrawal from the EC* will be used. Greenland withdrew from the EC in 1982, but the first time a provision on withdrawal was in a treaty, was in the Constitutional Treaty in the early 2000s. Before this explicit provision was in the treaties some scholars say that the right to withdraw could be derived from international law, especially from the Vienna Convention on the Law of Treaties, which will be shortly discussed in this chapter. Currently, the legal basis of withdrawing from the European Union is governed by Article 50 of the Treaty on the European Union. Therefore, article 50 will be looked at in more detail, for which the before-named book *The Treaty on the European Union (TEU): a commentary* and specifically the chapter by Wyrozumska will provide useful. The process and procedure of withdrawal will also be discussed on the basis of, among others, articles from Devuyst. Article 50 TEU is not without its challenges and problems, which will be discussed in the third part of the chapter. To this end articles from, among others, Hillion *Accession and withdrawal in the law of the European Union*, Hofmeister *'Should I stay or should I go?' – A critical analysis of the right to withdraw from the EU* and Lazowski *Unilateral withdrawal from the EU: realistic scenario or a folly?* will be used.

The third sub-question, which will be answered in chapter 4, is the first part of the case study on Great Britain, and is the following:

What have been characteristics of UK membership to the European Union?

This chapter will show how British membership came into being and how it evolved through the years. First, the long process of British accession to the EEC will be discussed, with the two French vetoes. For this part, amongst others, the book by George (1994) *An awkward partner: Britain in the EC* will be used, as well as the books by Young (1993) *Britain and European Unity* and Gowland & Turner (2000) *Reluctant Europeans: Britain and European integration 1945-1998*. These books will be used

throughout the rest of the chapter as well. The second part of the chapter deals with the concept of Parliamentary sovereignty in Great Britain and the European Communities Act of 1972, which made it possible for the UK to become an EC member. Here the book by Barnett (1998) *Constitutional and Administrative law*, Turpin (1999) *British Government and the Constitution* and the article *The British Way* by Dashwood (2001) are leading. The third part of the chapter looks at the period from the end of the 1970s to the middle of the 1990s in which Margaret Thatcher made her mark on the relationship between the EU and the UK. Here previously mentioned books will be used, as well as the book by Young (1998) *This blessed plot. Britain and Europe from Churchill to Blair*. The fourth part of the chapter looks at another politician who made his mark on UK-EU relations but in another fashion as Thatcher had done, Tony Blair. The working paper *New labour and the EU 1997-2007* by Bulmer will be used in addition to previously mentioned books and articles. The fifth part of the chapter then looks at the period prior to the referendum of June 23 2016, which will be done with, amongst others, articles by Daddow (2012) *The UK media and 'Europe'* and by Oliver (2015) *To be or not to be in Europe: is that the question? Britain's European question and an in/out referendum*. In addition, speeches, statements and European Union and UK Government documents will be used.

The fourth sub-question will be answered in chapter 5 and is the second part of the case study on Great Britain, which deals with the Brexit. The corresponding question here is:

What is the Brexit process like and what could be the future of UK-EU relations?

This chapter will look at the aftermath of the referendum of June 23 2016 until the Repeal Bill of July 2017. The chapter starts off with the first six months after the referendum in which Prime Minister David Cameron resigned and Theresa May became the new British Prime Minister. The second part will discuss the Miller Case which is a court case on whether parliamentary approval would be needed for invoking Article 50. It will also look at the Government's 'Brexit Bill' and the invoking of Article 50 on March 29 2017. The third part of the chapter looks at the period after March 29 until the Repeal Bill of July 2017 in which the first rounds of talks between Great Britain and the EU take place. The fourth part of the chapter then looks at the future of UK-EU relations and possible alternatives for membership. This chapter is largely based on Government and EU documents, as well as newspaper articles and speeches and statements of key players in the Brexit process. This is supplemented with articles by, among others, Craig (2016) *Brexit: a drama in six acts* and for the part on alternatives for membership, articles from, among others, Piris (2016) *If the UK votes to leave: the seven alternatives to membership* and Lazowski (2012) *Withdrawal from the EU & alternatives to membership*.

The final chapter, chapter 6, is the concluding chapter of this thesis. The chapter will firstly answer the main research question and reflect on the findings. The second part sets out the limitations of the research, after which the third part looks at potential future research. In addition, the thesis is finished around six months after Article 50 TEU has been invoked by Great Britain, therefore this chapter will also shortly look at what happened since July 2017.

Chapter 2. Membership of the European Union

In order to perform the case study in chapters 4 and 5, it is important to first look at the process of accession. The sub-question to be answered in this chapter is *what does the process of accession to the European Union encompass?* Looking at the process of accession shows the complexity of becoming an EU member as well as the (institutional) changes that are necessary in a state in order to become a member. In addition, it shows how rules and procedures of accession have become more intricate over time with further integration. This chapter starts off by giving an overview of the history of European Union enlargement, from the 1950s to the present. After this, the chapter looks at accession rules and procedure and also touches upon the subject of opt-outs and differentiated integration.

2.1 History of European Union enlargement

This section of the chapter will focus on the history of European Union enlargement. After the Second World War, a group of European Countries decided to cooperate more closely together. European integration was seen as a way to undo the European continent of the damages that were brought to it by Nazism in the War. On May 9 1950, the French Foreign Minister Robert Schuman launched the so-called ‘Schuman-plan’, a plan for a European supranational cooperation, which was originally thought out by Jean Monnet (Segers, 2009). The countries that were interested were the Netherlands, Belgium, Luxembourg, West-Germany, France and Italy. They decided to work together in the area of coal and steel, the industries that were of great importance for recovery but that had also played a vital part in the success of Nazi-Germany in the Second World War (Reynolds, 2001; Segers, 2009). On April 18 1951 the countries signed the Treaty of Paris, which created the European Coal and Steel Community (ECSC), which came into effect through ratification in August 1952 (Rittberger, 2012; Segers, 2009).

Since the closer cooperation in the fields of coal and steel proved beneficial and successful, the countries decided to expand their cooperation into different fields. They tried to come to a new agreement at the Conference of Paris in October 1956, but the discussions about a common market were not successful. However, because of international tensions with the situation in Hungary in 1956 and the Suez-crisis, the countries pushed through for new negotiations. These negotiations proved more fruitful and therefore in January of 1958 the Treaties of Rome came into effect, which included the establishment of the European Economic Community (EEC) and the European Atomic Energy Community (EAEC, also called Euratom). The European Economic Community encompassed greater economic integration with the intention of creating a common market and customs union. The European Atomic Energy Community had as its goal to achieve energy independence for the six countries (Segers, 2009; Dinan, 2005). The general objective was ‘*to contribute to the formation and development of Europe’s nuclear industries, so that all the Member States can benefit from the development of atomic energy, and to ensure security of supply*’.³

The Treaties of Rome had also defined the general objective of working together in the area of agriculture. Therefore in 1962 the Common Agricultural Policy (CAP) was introduced. Also in the 1960s four countries applied to join the European Economic Community: Britain, Norway, Denmark and Ireland. Negotiations did not run smoothly, but in June of 1970 accession negotiations with the four countries started. Entry negotiations for Great Britain resulted in the Act of Accession winning parliamentary approval in October 1972. The other three applicants voted for or against accession via

³ Treaty establishing the European Atomic Energy Community (Euratom). 25-03-1957. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:xy0024>.

referendum. In Denmark 63% voted in favor of accession and in Ireland 83% voted in favor of accession. The economies of Denmark and Ireland were so interwoven with the member states, that it would hurt them economically if they stayed out. In Norway, 54% voted against accession, so Norway did not join the other three countries in accession to the EEC in January 1973 (Dinan, 2005).

The EEC grew to nine countries from the original six. In June 1975 Greece applied to join and accession negotiations began a year later, after which Portugal applied in March 1977 and Spain in July 1977. These countries were all newly established democratic regimes, which sought to join the EEC for, among other things, strengthening their international relations and their position in Europe. Greece joined the EEC in January 1981, however the negotiations with Portugal and Spain were more difficult and therefore took more time. One of the main problems was that the economies of the countries were very different from those of the existing EEC members. Portugal's main industry was textiles, whilst Spain's was agriculture, and both relied heavily upon fisheries, which is to this day still a disputed subject. Both countries were also relatively poor and Spain had a relatively large population. One of the other major issues with Spain was that if Spain acceded, the agricultural area of the EEC would grow by 30% which would put a strain on the CAP. Some of the existing member states therefore had some doubts and issues with letting Spain and Portugal join. Over the span of a couple of years and lots of negotiations and discussion, an agreement was reached and Spain and Portugal joined the EEC in January 1986 (Dinan, 2005).

In 1993 the Treaty of Maastricht entered into force, which created the European Union and was one of the biggest treaty changes in the history of the European cooperation. It amended the treaty establishing the EEC and also the treaties establishing the ECSC and the EAEC. In addition, it adopted a pillar-structure in which different parts of the Union were accommodated. The pillars were a useful structure, because not every policy area had the same kind of decision-making mechanisms. Also, the Treaty of Maastricht finalized the common single market with the freedoms of movement of goods, services, people and money. It also laid out the plans for a future single currency (Laursen, 2012; Dinan, 2005). On March 26 1995, the Schengen agreement came into effect between Belgium, France, the Netherlands, Luxembourg, Germany, Portugal and Spain. This meant that people with nationalities of those countries could travel to the other countries without passport control. Two years later, in 1997 the Treaty of Amsterdam came into effect. It built on the Maastricht Treaty with regard to reforming European Union institutions. In 2001, the Treaty of Nice was signed, which came into effect in 2003. It, among other things, reformed the Maastricht Treaty in the area of enlargement, which enabled further eastward expansion of the European Union (Dinan, 2005).⁴

The late 1980s and the early 1990s were uncertain and eventful times for Europe. The Berlin Wall fell in 1989, the Soviet-Union collapsed in 1991 and a lot of countries in Central and Eastern Europe therefore found independence for the first time in decades. Around that time, a lot of countries applied to join the EU. Austria, Finland and Sweden joined the EU in 1995, negotiations seemed simple because the countries were economically stable and had good administrative structures. Also, they were already members of the European Free Trade Association (EFTA)⁵, which means that they had already adopted parts of the EU's *acquis communautaire* (Dinan, 2005).⁶ Most other new applicants were newly

⁴ Treaty of Nice, OJ C80 (2001).

⁵ The European Free Trade Association (EFTA) is an intergovernmental organization which was established in 1960 to promote free trade and economic integration within its member states. Most of the original members withdrew from EFTA when they became EU members, so EFTA currently has four members (Iceland, Liechtenstein, Norway and Switzerland). For further information see www.efta.int.

⁶ The *acquis communautaire* is the body of common rights and obligations that is binding on all EU member states. It includes the content, principles and political objectives of the Treaties. In addition it includes secondary legislation adopted to implement the Treaties as well as the jurisprudence of EU courts. It also includes declarations and resolutions adopted by the EU and international agreements concluded by the EU and its member states in relation to union policies. The *acquis* needs to be fully accepted by candidate countries before they can join the EU. European Commission. (n.d.). *Acquis*. https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/acquis_en.

established independent states in Central and Eastern Europe which not yet had stable administrative systems and were relatively poor. The accession negotiations were therefore long and difficult. Already in the beginning of the 1990s the EC/EU started to ‘prepare’ these countries for future membership by offering them additional assistance and political and economic packages through association agreements. On May 1 2004 the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia, Cyprus and Malta joined the European Union. All countries, except for Cyprus, approved the membership via a referendum (Dinan, 2005).

These years of negotiations and discussion had caused an ‘enlargement fatigue’ in the European Union (Dinan, 2005). Euroscepticism was noticeable in a lot of countries since the 1990s. In addition, the likely impact and consequences of such large expansions were sinking in in the member states. Enlargement had and has profound effects on a wide range of policies and institutions (Dinan, 2005). Enlargement did not come to a halt however. On January 1 2007 Bulgaria and Romania joined the European Union. Accession negotiations with both countries had already started in the late 1990s. It took those countries longer than the previous ten to comply with European Union rules and regulations, so it was almost 12 years after they applied that they became members. Croatia had applied for EU membership in 2003 and was a candidate country since 2004. They eventually joined the EU on July 1 2013, after 66% of Croatians voted in favor of EU accession (Dinan, 2005).⁷

2.2 Accession rules

The second section of the chapter will focus on the official rules in becoming a European Union member. As we have seen in the previous part, the first European Union expansion already took place in 1973, with the accession of Great Britain, Denmark and Ireland. Over the years, 19 other countries have joined the European Union after those first three, resulting in a European Union consisting of 28 member states since 2013. Currently, accession to the European Union is governed through Article 49 of the Treaty on the European Union.⁸ The current Article 49 has been amended by the different treaties through the years, from the original text of Article 237 of the Treaty of Rome. The Treaty of Rome was the founding Treaty for the European Economic Community, the predecessor of the current European Union. Article 237 of the Treaty of Rome was the following:

‘Any European State may apply to become a member of the Community. It shall address its application to the Council, which shall act unanimously after obtaining the opinion of the Commission.

The conditions of admission and the adjustments to this Treaty necessitated thereby 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.’⁹

This is a quite basic piece of text, which does not include a lot of specific or strict rules and procedures for becoming a member of the (then) EEC. It was decided that the conditions of admission and the possible inherent adjustments to the Treaties were to be subject of an agreement between the member states and the state that applied to become a part of the EEC (Fortunato, 2013; Tatham, 2012).¹⁰

⁷ European Union. (n.d.). EU member countries in brief. https://europa.eu/european-union/about-eu/countries/member-countries_en.

⁸ Treaty of Lisbon, Article 49 TEU, OJ C306 (2007).

⁹ Treaty establishing the European Economic Community, Article 237, Treaty of Rome (1957).

¹⁰ Treaty establishing the European Economic Community, Treaty of Rome (1957).

At the Copenhagen European Council of 7 and 8 April 1978, the member states decided to issue a declaration of democracy, stating that *'respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership of the European Communities'*.¹¹ The Treaty of Rome called for *'the ever closer union among the people of Europe'*, which is why the member states decided to strengthen the values that they thought were of the utmost importance and they wished to see in possible future members (Maresceau, 2003).

The Single European Act (SEA) of 1986 was the first real revision of the Treaty of Rome, which had as its aim to *'add new momentum to the European integration and to complete the internal market'*.¹² With regard to accession, the SEA enhanced the powers of the European Parliament. The SEA included the requirement that Parliament had to give consent when an association agreement was to be concluded.¹³ The Treaty of Maastricht of 1992, which led to the establishment of the European Union, also slightly changed the original Article 237 of the Treaty of Rome. Article O of the Treaty on European Union of 1992, is the following:

'Any European State may apply to become a Member of the Union. It 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.'*¹⁴

Before the Treaty on European Union of Maastricht, countries that wanted to become a member of the Union had to sign the three founding treaties. Besides Article 237 EEC, these were Article 98 ECSC and Article 205 EAEC. Article O of the Treaty of Maastricht replaced this and therefore a member state acceded simultaneously to all the treaties on which the EU was based (Tatham, 2012; Fortunato, 2013).

At the Copenhagen European Council of 1993, official conditions for accession to the European Union were established, which became known as the 'Copenhagen Criteria'. The Copenhagen criteria were extended at the 1995 Madrid European Council. The first Copenhagen criterion is a political one and reads *'Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'*. The emphasis on democracy was likely added because the countries that joined the EC in the 1980s (Greece, Spain and Portugal) were under authoritarian rule till right before they joined. The second criterion is an economic one that states that countries wishing to join need to have *'a functioning market economy and the capacity to cope with competition and market forces in the EU'*. If a country does not have a functioning market economy it would disrupt the functioning of the EU internal market. The third criterion has to do with EU legislation and reads *'the ability to take on the obligations of membership, including the capacity to effectively implement rules, standards and policies that make up the body of EU law, and adherence to the aims of political, economic and monetary union'*. Basically, this third criterion meant that a country needed to accept the official EU *acquis communautaire* (Van Vooren & Wessel, 2014; Hillion, 2015).¹⁵

¹¹ Presidency Conclusions of the Copenhagen European Council, June 21-22, 1993.

¹² Single European Act, OJ L169/1 (1987).

¹³ Single European Act, OJ L169/1 (1987).

¹⁴ Treaty of Maastricht on European Union, OJ C191/1, 1992. Article O.

¹⁵ Eur-Lex. (n.d.). Accession Criteria (Copenhagen Criteria). http://eur-lex.europa.eu/summary/glossary/accesion_criteria_copenhagen.html?locale=en.

One year after the conditions for accession to the EU were formally established, at the Essen European Council in December 1994, the ‘pre-accession strategy’ was launched. This strategy has as its aim, amongst others, to prepare the so-called CEECs (Central and Eastern European Countries) for fulfilling the conditions of membership. It was a way to start integrating the associated countries in Central and Eastern Europe into the EU internal market. The launch of the ‘pre-accession strategy’ had another aim, which was not only to prepare the associated countries, but also the EU itself for the accession of so many new countries (Maresceau, 2003; Van Vooren & Wessel, 2014). To this end, the Amsterdam European Council of 1996 was called for, which resulted in the Amsterdam Treaty of 1997. This Treaty introduced an important paragraph which was to be used in later EU treaties as well. It included in Article 6(1) the following sentence ‘*The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States*’.¹⁶ The addition of this sentence meant that the respect for these values was not only a condition for membership, but now a condition for application for membership as well (Tatham, 2012; Fortunato, 2013).

The next extensive changes were brought to the Treaties with the Treaty of Lisbon that was signed on December 13 2007 and came into effect on December 1 2009. With the enlargements since the Treaty on Maastricht of 1992, the EU now had 27 member states. Because of this increase in number of member states it was necessary to adapt the European institutions and decision-making procedures to be able to deal with a Union of 27. This Treaty change thus was intended to reform the structure and functioning of the European Union. The Lisbon Treaty was divided into two parts, the Treaty on the European Union and the Treaty on the Functioning of the European Union.¹⁷ With regard to accession to the European Union, since 2009 this is governed by Article 49 of the Treaty on the European Union. This article identifies some of the requirements that applying states have to meet before they can join the EU. The first sentence of Article 49 is:

‘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.’¹⁸

From this first sentence we can identify that the first requirement is that the applicant must be a state and the second requirement is that it must be a European state. The third requirement is that the European state must respect the values of Article 2 TEU. This article states:

‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’¹⁹

The fourth sentence of Article 49, describes another important requirement that an applicant state has to meet:

‘The conditions of eligibility agreed upon by the European Council shall be taken into account.’²⁰

¹⁶ Treaty of Amsterdam, OJ C340 (1997).

¹⁷ Treaty of Lisbon, OJ C306 (2007).

¹⁸ Treaty of Lisbon, Article 49 TEU, OJ C306 (2007).

¹⁹ Treaty of Lisbon, Article 2 TEU, OJ C306 (2007).

²⁰ Treaty of Lisbon, Article 49 TEU, OJ C306 (2007).

These conditions of eligibility are the before-mentioned Copenhagen Criteria, which also include the EU's *acquis communautaire*.

2.3 Accession procedure

The third section of this chapter will take a closer look at the accession procedure in becoming an EU member. A country that wants to apply to become an EU member first has to notify the European Parliament and national Parliaments of its application (second sentence of Article 49 TEU). This formal notification is preceded by lengthy political discussion and different stages of candidanship (which will be explained later). The applicant state then addresses its application to the Council of Ministers. The Council then consults the Commission, which delivers a detailed opinion on the extent to which the applicant state fulfills the accession criteria at that moment in time, and receives consent of the European Parliament (third sentence of Article 49 TEU). If the Council agrees, negotiations are opened with the help of a negotiation framework that has been proposed by the Commission. This negotiation framework consists of 35 chapters which are divided according to policy fields.²¹ The negotiations deal with adoption, implementation and enforcement of the EU's *acquis*, which is an extensive process that can take years to complete. Negotiations take place between ministers and ambassadors of the different EU government institutions and the candidate country. During these negotiations, applicant states are supported by the EU through different methods and measures, which have as their goal to help the state effectively integrate and incorporate the EU's *acquis* (Van Vooren & Wessel, 2014).²²

In this process of negotiations, the applicant state, the Commission and the Council are always in contact with each other. There are regular process reports and strategy papers et cetera to help come to an agreement on each chapter. If the negotiations are successful and possible necessary reforms are completed, an agreement is made between the applicant state and the Member States, as stated in the fifth sentence of Article 49 TEU:

*'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.'*²³

All Member States have to ratify the agreement. Important to note here is that the European Union itself is not a party, the accession treaties of countries are part of EU primary law, thus the agreements are made between all the states (Fortunato, 2013; Van Vooren & Wessel, 2014). This is stated in the last sentence of Article 49 TEU: *'This agreement shall be submitted for ratification by all the contracting states in accordance with their respective constitutional requirements'*.²⁴ When the accession agreement is ratified by all Member States, a date is set for the entry into force of the accession treaty. From that moment on, all the provisions of the original Treaties and the acts adopted by the institutions before the date of accession, are binding on the new Member State. This, which is also called *ratione temporis*, has to be interpreted broadly, meaning that it also encompasses future effects arising from legal situations that came into being before the date of entry into force of the treaty itself (Fortunato, 2013). From the

²¹ For more information on the negotiation framework and the different chapters, see: https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en.

²² Treaty of Lisbon, Article 49 TEU, OJ C306 (2007) and European Commission. (n.d.). Conditions for membership. https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en.

²³ Treaty of Lisbon, Article 49 TEU, OJ C306 (2007).

²⁴ Treaty of Lisbon, Article 49 TEU, OJ C306 (2007).

date of entry into force, the newly acceded state is also allowed to fully take part in all of the EU's institutions. In the period between the signing of the Treaty and the entry into force date, the applicant state can receive the status of 'observer', meaning that they cannot vote on anything, but they are allowed to join meetings and speak or comment on draft proposals or initiatives et cetera (Fortunato, 2013).²⁵ In addition, the language of the new Member State becomes an official EU language (in accordance with Art. 55 TEU) and a language of EU law. Also, the citizens of the new Member State become European citizens and holders of the rights that accompany that (Fortunato, 2013).²⁶

Although this procedure seems rather straightforward, it is a lot more complex than it might seem. Since the European Union is deeply integrated, countries that are prospective members have to make radical national changes to comply with European Union rules and regulations. In addition, in certain policy areas member states give away part of their sovereignty to be able to make EU-wide decisions. Countries transfer competences to the European Union, such as competition rules for the internal market or with regard to a customs union. These radical national changes are among the main challenges of EU membership. In becoming an EU member, a prospective country has to change the way its parliament works and divide the powers of Parliament in new ways. In addition, a country often has to make constitutional changes to be able to incorporate all of the EU *acquis*. Also, a country has to make national judiciary changes to be able to incorporate the European Union law into their national judiciary system. Some prospective countries also have or had to reform their public administration systems to comply with EU obligations. This was especially the case for the countries that joined the EU since 2004 or want to join currently. A lot of those countries were newly democratic states which did not have a fully functioning public administration system that could incorporate EU rules and regulations and at the same time work against possible corruption (Blockmans, 2006).

These changes that a country that wants to join the EU have or had to make will come to light in the next chapter on withdrawal as well. This is the case because some of the changes that were made have to be reversed, which is the case for Great Britain and the Brexit in the later chapters as well.

As stated earlier, there are different stages of candidateness in becoming an EU member. In these different stages, countries are called either 'candidate countries' or 'potential candidates'. A country can be granted candidate status by the European Council based on the recommendation of the European Commission. It is usually the case that countries with candidate status are in the process of integrating EU legislation into their national law. It is important to note that being a candidate country does not imply a right to automatically join the EU. Granting a country candidate status can be conditional upon continued efforts in certain areas (Van Vooren & Wessel, 2014). Currently, there are five candidate countries: Albania, The Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey. With Montenegro, Serbia and Turkey formal accession negotiations have already started, with the other two countries they have not (yet). Two states are so-called 'potential candidates' for EU membership, meaning that they not yet fulfil the requirements for EU membership. These countries are Bosnia and Herzegovina and Kosovo. Bosnia and Herzegovina has been a potential candidate since the Thessaloniki European Council Summit of June 2003. Since 2000, the EU has been involved in Kosovo.²⁷

²⁵ European Commission. (n.d.). Accessing countries. https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/accessing-countries_en.

²⁶ For further information on the effects of entry into force on the institutions and the representation of a new Member State, see Fortunato, S. (2013). Article 49: Accession to the Union. In Blanke, H-J. & Mangiamelli, S. (Ed.), *The Treaty on the European Union (TEU): a commentary* (1357-1383). Springer-Verlag: Berlin & Heidelberg.

²⁷ Further information on the candidate countries and their involvement with the European Union, see https://ec.europa.eu/neighbourhood-enlargement/node_en.

2.4 Differentiated integration

The fourth section of this chapter will focus on differentiated integration, which is a kind of collective noun used for ‘*the general mode of integrations strategies which try to reconcile heterogeneity within the European Union*’ (Stubb, 1996). A lot of names are given to these strategies, such as Europe à la Carte, variable geometry or multi-speed Europe. Differentiated integration is a constant creator of tensions within the European Union. These concepts, as well as opt-outs and the concept of enhanced cooperation, are shortly discussed in this chapter to show that the concepts exist and are an important issue within the EU, especially with regard to Great Britain.

The concept of Europe à la Carte refers to the idea of a non-uniform method of European integration in which European countries can select EU policies and involve themselves fully in these policies, while they disregard other policies, as if you are choosing what you want from a menu. Another term for this idea is variable geometry, which means that different countries within the European Union would integrate at different levels. In addition, the term multi-speed Europe is the same idea but then integration would happen at different speeds instead of levels.²⁸

Over the years the extent and scope of membership of the EU have changed. At the start of the closer European integration, you were either a member or you were not. When more countries joined, things got more complex and drawing up agreements between the existing member states and prospective member states took a long time. That is not to say that they do not take a long time currently, but with the first few accessions, every aspect of membership was discussed. When in the 1990s EU enlargement became an official EU policy, that changed to a certain extent. Still there were extensive discussions between the EU and applicant states, but the applicant states were obliged to accept the entire *acquis communautaire* for example, when with the first couple of accessions, there were negotiations.

This leads to another term which is ‘opt-outs’, which are an exception to the rule and were used until the 1990s as a ‘tool’ or a ‘response’ to the unwillingness of some member states to integrate further. Opt-outs are when a country does not wish to join the other countries in a particular EU policy field, it can opt-out of that policy field and not take part. Currently there are four European countries that have these opt-outs: Great Britain, Ireland, Denmark and Poland. Denmark has opted out of the Economic and Monetary Union (EMU), defence and the Area of Freedom, Security and Justice (AFSJ). Poland has opted out of the EU Charter of Fundamental Rights and parts of the Charter are therefore not applicable there. Ireland has opted-out of the Schengen Agreement and the AFSJ. The country with the most opt-outs and which is also the most relevant for this thesis, is Great Britain. Great Britain has opted out of the Schengen Agreement, the EMU, the AFSJ and the EU Charter of Fundamental Rights.²⁹ With the Area of Freedom, Security and Justice they have the liberty to participate on a case-to-case basis. Besides being an opt-out, participating or not participating in the EMU is a form of differentiated integration as well.

Since a lot of countries have joined the EU since 2000, with the fifth enlargement of 2004, it was stated in the accession treaties with the new member states that the new member states would not be given an option to permanently derogate from the *acquis communautaire* and that they could not opt-out of the EMU or Schengen (Van Vooren & Wessel, 2014). Although the countries cannot opt-out of these policies anymore, with some countries other arrangements were made so that they could join the

²⁸ Eur-Lex. (n.d.). Europe ‘à la carte’. http://eur-lex.europa.eu/summary/glossary/europe_a_la_carte.html, Eur-Lex. (n.d.). ‘Variable-geometry’ Europe. http://eur-lex.europa.eu/summary/glossary/variable_geometry_europe.html and Eur-Lex. (n.d.). ‘Multi-speed Europe’. http://eur-lex.europa.eu/summary/glossary/multispeed_europe.html.

²⁹ Eur-Lex. (n.d.). Opting out. http://eur-lex.europa.eu/summary/glossary/opting_out.html and Eur-Lex. (n.d.). United Kingdom: EMU opt-out clause. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:125060>.

European Union. For example, Romania and Bulgaria did not fulfill all the requirements regarding border control and management and therefore border checks were still in place with those countries.

Although currently it is not possible anymore to opt-out from certain policy fields, in 2013 a procedure of enhanced cooperation was put in place, which is governed by Article 20 TEU. The procedure of enhanced cooperation entails that a minimum of nine EU countries are allowed to establish advanced integration or cooperation in an area within the structures of the EU, but without the involvement of the other EU countries. This, to a certain extent, allows a form of multi-speed Europe where a group of countries wishing to pursue a goal can do so without those that are opposed holding it back. This could be seen as a method to resolve or prevent stalemates, which are occurring more and more since there are now 28 member states instead of the twelve that were there in 1992. Without this procedure, a proposal could be blocked by one individual country or a small group of countries. The procedure of enhanced cooperation has to be authorized by the Council, but only after a proposal from the Commission and the consent of the European Parliament (Blanke, 2013).³⁰³¹

2.5 Conclusion

The aim of this chapter was to look at the process of accession which shows the complexity of becoming an EU member. The corresponding question was *what does the process of accession to the European Union encompass?* This chapter has given an overview of the history of EU enlargement, from the cooperation of six countries in the 1950s to a European Union of 28 member states in 2017. As we have also seen in this chapter, accession rules and procedure have changed over the years. From the 1990s on, EU enlargement became an official EU policy. This included setting up official rules and a more detailed procedure for accession. From these strict rules and elaborate procedure, it is made clear that the impact that membership has on a country and its national structure is enormous. In addition, it is very complex because of all the changes a country has to make internally to become an EU member. Currently, accession to the European Union is governed by article 49 TEU. This chapter gave an in-depth look at the article which gives a short overview of the steps that a country needs to take and rules that it needs to comply with to become an EU member. The process of accession thus encompasses a lot of strict rules and procedures a country has to comply with to be able to become an EU member. The chapter also touched upon the subject of differentiated integration, opt-outs and enhanced cooperation. Some EU countries such as Great Britain have opt-outs from certain policy fields like for example the EMU or Schengen. In 2013 the procedure of enhanced cooperation was put in place, which allows a minimum of nine EU countries to establish advanced integration or cooperation in an area within the structures of the EU, without the involvement of the other EU countries. This is a form of differentiated integration, which could provide to be beneficial for the future of EU integration.

³⁰ Eur-Lex. (n.d.). Enhanced Cooperation. http://eur-lex.europa.eu/summary/glossary/enhanced_cooperation.html?locale=en.

³¹ For further reading on enhanced cooperation see Blanke, H.-J. (2013) Article 20 [enhanced cooperation]. In Blanke, H.-J. & Mangiamelli, S. (Ed.), *The Treaty on the European Union (TEU): a commentary* (787-830). Springer-Verlag: Berlin & Heidelberg.

Chapter 3. Withdrawal from the European Union

This third chapter has as its aim to look at how withdrawal is governed in the EU and what the rules and procedure for withdrawal are. The sub-question to be answered in this chapter is *how is withdrawal governed by the EU treaties?* This chapter starts off with the case of Greenland, the first ever withdrawal from the then European Community. The second part of the chapter looks at how Article 50 TEU came into being and how withdrawal was dealt with before there was an explicit provision on withdrawal in the treaties. Some scholars say that a right to withdraw could be derived from international law, in particular from the Vienna Convention on the Law of Treaties. Afterwards, Article 50 TEU and the process and procedure of withdrawal will be looked at in more detail. In addition, the third part of the chapter discusses problems and challenges with Article 50 TEU.

3.1 Exit before Brexit

This first section of the chapter will look at Greenland, which could be said to be the first ever country that withdrew from the European Union (then EC), although on a much smaller scale than Brexit. Greenland is one of the largest islands in the world, however only has a small population of about 56.000 people (Worldbank, 2015). It has in one way or another associated with the European continent for almost a thousand years. Greenland became a Danish colony in the nineteenth century and after a new constitution was passed in Denmark in 1953, Greenland became a part of Danish realm with equal rights and elected representatives in the Danish parliament (Harhoff, 1983). Since Greenland was officially a part of Denmark, it joined the European Communities together with Denmark in 1973. However, in a referendum held a year earlier, 70.3% of voters in Greenland voted against accession. It is said that the majority in Greenland voted against European Community membership because they were suspicious about the EEC fisheries policy that was in the making (Krämer, 1982). Greenland's economy is for the most part based on fishery and the fishing industry, therefore a common fisheries policy that might restrict their fisheries freedoms were a point of concern for Greenland. In the first years of their EEC membership, Greenland received substantial contributions from the EEC to develop the island economically. The EEC also worked to preserve Greenland's fishing interests, by for example allowing a zone of 12 miles around the coast to be totally reserved for Greenlandic fishermen, while the normal range at that time was between three and six miles. In addition, they were given free entry of (mainly) fish products into the Common Market of the EC (Krämer, 1982).

Even though EEC membership proved beneficial in some aspects, Greenland still was not happy with being 'forced' to accede to the EEC by Denmark. This unhappiness with Denmark resulted in a movement that called for more autonomy for Greenland to make their own decisions. Eventually this led to the introduction of 'home rule' in Greenland on May 1 1979. Home rule consisted of Greenland establishing their own regional parliament and the transfer of local legislative and executive power from the Danish to the Greenlandic authorities. Greenland was then still very much intertwined and involved with Denmark, but they were able to make the decision to hold a new referendum on EEC membership in 1980, would take place in 1982 (Harhoff, 1983; Krämer 1982). The Danish government still represented Greenland in matters of foreign policy, but they stated that they would respect the result of a referendum. On February 23 1982 the population of Greenland voted to withdraw from the EC. The question that was asked in the referendum was "do you want Greenland to remain a part of the European Communities?" to which 12.615 people voted 'no', which was 52% (Harhoff, 1983; Krämer, 1982). This figure is much lower than at the previous referendum, so it could be the case that the EC tactics to contribute to Greenland's economy were successful. However, a small majority voted in favor to leave

the EC and Denmark's government had stated to respect the referendum outcome, so it began negotiations with the EC on Greenland's withdrawal (Krämer, 1982).

The Greenlandic government requested to withdraw from the EC, therefore the Danish government requested the Council to amend the Treaties in order to allow for the withdrawal of Greenland. There were no real precedents for such a request and the Treaties did not contain rules about the withdrawal of a member state or a part of a member state. This fact did however not exclude the possibility of withdrawing. It seemed that the possible withdrawal was accepted by the other EC member states since there were no protests (Krämer, 1982; Tatham, 2012). The only small objection that arose was against the European Communities itself and not against the withdrawal of Greenland. A couple of Members of Parliament objected to the fact that the EC agreed relatively quickly and easily to such a withdrawal (Tatham, 2012). Although there was little objection, the future arrangements and relationship between Greenland and the EC needed to become clear. It was decided that it would be best to request the Council to amend the Treaties to allow for the withdrawal of Greenland and for its transfer to the status of OCT, Overseas Countries and Territories.³² The Council asked the Commission and the European Parliament for their opinions and in the spring of 1983 they both responded favourably. The Council then asked the Commission to provide detailed practical proposals with respect to fishery issues, such as catch possibilities, authorization of fishing vessels from member states and quotas.³³ At the end of 1983 the Danish government entered into negotiations with the other member states, after which agreement was reached in 1984. The Treaties were then amended, based on Article 236 EEC, which stated that member states can consent to alteration or amendment of the existing Treaties. This had then to be ratified by all member states and ultimately took effect on February 1 1985, with the withdrawal of Greenland from the EC (Tatham, 2012; Friel 2004).³⁴

The withdrawal of Greenland could be seen as a precedent for the impending Brexit. However, the two cases might not be that similar when you look at them in detail. Greenland is a very large island, but with only a population of about 56.000 people. In addition, Greenland's economy consisted almost entirely of fishing and fish-industry, so basically only one product and market. The island is not closely linked to the European continent on a cultural, social, climatic, ethnic or economic level. And maybe most important, Greenland's withdrawal was no real secession, it was more a redefinition of the territory of the Kingdom of Denmark (Friel, 2004; Tatham, 2012; Harhoff, 1983). Since there are a lot of differences between the cases, are there lessons that can be learned from this first withdrawal from the EC? I am inclined to say no. The two cases are so very different and on such different scales, that it is not really clear what could be similarities or lessons to be learned. The withdrawal of Greenland from the EC took place in 1985 and had no profound effects on the EC. No large population loss, no changes needed to be made in voting processes and the number of Danish MP's stayed the same (Friel, 2004; Tatham, 2012). Also, Greenland's relationship with the EU is good. Denmark chose to not ask for a unilateral withdrawal from the EC, but it sought approval from its fellow member states. All the member states agreed and there was no real protest against Greenland's withdrawal (Friel, 2004; Tatham, 2012).

Even though there are so many differences between the withdrawal of Greenland and the impending withdrawal of Great Britain, it is important to note that the withdrawal negotiations and the withdrawal process for Greenland took about three years. The timespan stated in Article 50 TEU is two years. It took three years to negotiate a deal with Greenland even though they have a small population and only one market and product that needed to be negotiated. In addition, during the negotiations, the EC consisted of only ten member states in comparison to the 28 there are now. Furthermore, the level

³² For further information on Greenland and its OCT status, see Harhoff (1983) and Krämer (1982). For current information on Greenland's relationship and arrangements with the EU see ec.europa.eu/europeaid/regions/octs_en.

³³ For more information on the arrangements and the Treaty and Council Regulations, see Treaty amending, with regard to Greenland, the Treaties establishing the European Communities OJ L 29/1 (February 1985).

³⁴ Treaty amending, with regard to Greenland, the Treaties establishing the European Communities, OJ L 29/1 (1985).

of integration is higher and more complex now than it was more than 30 years ago. This raises the question if the two year time-span mentioned in Article 50 TEU will be feasible.

3.2 Withdrawal rules and procedure

In this second part of the chapter the focus lies on withdrawal rules, the process and procedure. As we have seen in the previous part when Greenland wanted to withdraw from the European Union there were no provisions in the Treaties that dealt with secession. Only since the Treaty of Lisbon came into effect in 2009 is there a provision in the Treaties that explicitly deals with withdrawal: Article 50 TEU. Wyrozumska (2012) names three possible explanations for the lack of a provision for withdrawal in the Treaties before the Treaty of Lisbon. The first one is the mere negligence of the drafters of the Treaties. A second explanation could be that the lack of a withdrawal provision might reflect the intention of the drafters to preclude a right to withdraw. The third explanation mentioned by Wyrozumska is the one she considers most probable, namely that the lack of a provision on withdrawal in the Treaties was to discourage the member states from withdrawal rather than deny the existence of the possibility of withdrawal.

As said before, currently withdrawal from the European Union is governed by Article 50 TEU. How did this Article come into being? The Treaty of Rome does not speak about withdrawal. It does however lay down in Article 240 that the Treaty is concluded for an unlimited period. This is also the case in Article 312 of the European Communities and Article 51 TEU from the Treaty of Nice. According to Harhoff (1983) these Articles therewith imply that unilateral withdrawal is illegal. There is a debate between scholars about the legality and possibility of unilateral withdrawal. It is said that the right to withdraw can be derived from international law. Wessel (2016) states that *'one could argue that in the absence of specific rules, general treaty law would form the applicable legal basis'*. In this case the Vienna Convention on the Law of Treaties (VCLT) from 1969 is important. According to Wyrozumska (2012), although not all the EU member states are party to the VCLT, the Convention is recognized as *'reflecting in many areas the customary international law, including many provisions on the termination of treaties'*. Article 54 from the VCLT states that *'the termination of a treaty or the withdrawal of a party may take place: (A) in conformity with the provision of the treaty; or (B) at any time by consent of all the parties after consultation with the other contracting states'*.³⁵ Article 54 is basically what happened in the case of Greenland, but states nothing about unilateral withdrawal from a Treaty. Article 56 of the VCLT states that if a treaty has no provision regarding termination or withdrawal, an implicit right to withdraw can be derived if *'it is established that the parties intended to admit the possibility of denunciation or withdrawal'* or *'a right of denunciation or withdrawal may be implied by the nature of the treaty'*.³⁶ That a right of denunciation is implied by the nature of the treaty might not really be applicable to the EU treaties because of the deep integration, the previously named articles 240 Rome, 312 EC and 51 TEU Nice, and the characteristics of the European Union (Harhoff, 1983; Berglund, 2006). A third relevant article of the VCLT is Article 62, which states that a fundamental change of circumstances compared to when the treaty was signed could be a legitimate reason – in particular cases – to withdraw unilaterally from a treaty (Berglund, 2006; Harhoff, 1983; Wyrozumska, 2012).³⁷ Wyrozumska (2012) concludes with regard to the VCLT that, under normal circumstances, unilateral withdrawal from the EC/EU is not admissible under the law of treaties.

³⁵ Vienna Convention on the Law of Treaties, article 54 (23 May 1969).

³⁶ Vienna Convention on the Law of Treaties, article 56 (23 May 1969).

³⁷ Vienna Convention on the Law of Treaties, article 62 (23 May 1969).

The ongoing debate leaves us no clear answer as to whether a right to unilaterally withdraw can or cannot be derived from international law, some say it can, some say it cannot. Before withdrawal was explicitly mentioned in the Treaties therefore the most probable way to withdraw would be to get the consent of all the other member states, as we have seen in the case of Greenland. The first time a provision regarding withdrawal was included in official EU documents, was in the Treaty establishing a Constitution for Europe. At the Laeken European Council of December 14-15 2001, it was decided that in view of the planned EU expansion, institutional reform should take place in the EU. Work was started to create a European Constitution which was supposed to replace all the existing treaties. A provision regarding withdrawal was included in the Constitutional Treaty as Article I-60. It was included to clarify the situation and uncertainty regarding withdrawal and it also introduced a procedure for a possible future withdrawal (Wyrozumska, 2012). The inclusion of a withdrawal clause in the Constitution for Europe was met with some opposition. The Commission was afraid that including a withdrawal clause would allow for member states to blackmail each other by threatening to leave. They also argued that withdrawal would make it possible for Eurosceptic states to withdraw but still benefit from the economic advantages that the EU brings by remaining in the European Economic Area (EEA). Some countries, such as Ireland and Denmark were also opponents of the inclusion of a withdrawal clause because they were afraid that it would work as an incentive for Eurosceptic groups in their respective countries (Wyrozumska, 2012; Berglund, 2006).

The Constitution was signed by the member states on October 29 2004. Eighteen member states ratified the Constitution, however, France and The Netherlands voted against ratification in a referendum. The reaction to this rejection was that the European Council of June 16-17 2005 called for 'a period of reflection'. Serious work toward a new treaty to replace all previous treaties started in 2007 when Angela Merkel took over the presidency of the European Council. The new treaty would become the Treaty of Lisbon, since it was officially signed by all the member states on December 13 2007 in Lisbon (Devuyst, 2012).³⁸ Article I-60 was replaced by Article 50 of the Treaty on the European Union. The content and wording is very much similar. Article 50 knows only small changes, which are of textual nature, for example the Articles it refers to. The first line of Article 50 states the following: '*Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements*'.³⁹ This first paragraph indicates a requirement, namely that the withdrawal has to be in accordance with constitutional requirements, but it does not require a member state to state a reason.

The procedure to withdraw is stated in Article 50.2. First, a member state that has decided to withdraw has to notify the European Council of its intention. The Union shall then negotiate and conclude an agreement with the state, based on the guidelines provided by the European Council. The agreement sets out the arrangements for the withdrawal, taking account of the framework for the member state's future relations with the EU. The agreement shall then be negotiated in accordance with Article 218(3) TFEU. The agreement shall afterwards be concluded - on behalf of the Union - (new in comparison to Art. I-60) by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament. The procedure thus involves all the decision-making institutions of the European Union (Wyrozumska, 2012).⁴⁰

What happens once the agreement is concluded is stated in Article 50.3 and 50.4. Article 50.3 states the following:

³⁸ For more detailed information on the Constitutional Treaty, see Devuyst, Y. (2012). The constitutional and Lisbon treaties. In Jones, E., Menon, A. & Weatherill, S. (Ed.). *The Oxford Handbook of the European Union* (163-178). Oxford: Oxford University Press.

³⁹ Treaty of Lisbon, Article 50 TEU, OJ C306 (2007).

⁴⁰ Treaty of Lisbon, Article 50 TEU, OJ C306 (2007).

*'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 decided to extend this period.'*⁴¹

The possibility to extend the dedicated period is included to encourage a withdrawal agreement between the withdrawing state and the EU. What would happen when no agreement is reached is not mentioned in the article, however it would mean adjustments to the Treaties for the EU. Article 50.4 then deals with the representatives of the withdrawing member states in EU institutions. It states that:

*'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.'*⁴²

This means that, although representatives of the withdrawing state may not participate in the discussions, they will still be there and will also still be able to join the decision-making in the European Council and Council if it deals with matters that are not connected to its withdrawal. The Article does not speak of participation in other EU institutions. The fifth paragraph of Article 50 deals with the 'right to rejoin'. A member state that has withdrawn from the European Union has no automatic right to rejoin, the state must apply to rejoin subject to the procedure that is referred to in Article 49 TEU (Wyrozumska, 2012; Lazowski, 2012).

Now that we have looked at Article 50 TEU in more detail, it is interesting to compare it shortly to Article 49 TEU on EU accession. One of the biggest procedural differences is that a withdrawal agreement is an agreement between the European Union and the withdrawing country. Article 50 does not reference the ratification of the agreement with other member states, whereas to become an EU member the agreement has to be ratified by all the member states. In addition, the role of the EU institutions is different. Under Article 49 the Commission has to be consulted to provide an opinion, under Article 50 that is not the case and the Council can decide without consulting the Commission. Another difference is that with Article 50 a time limit of two years is set, which is not the case under Article 49. Also, in the case of a country joining the EU, the decision is made unanimously, but with withdrawal it will be done according to a qualified majority (Nicolaides, 2013; Wyrozumska, 2012).

3.3 Challenges and problems with Article 50 TEU

Since the beginning of the inclusion of a provision for withdrawal in EU rules and regulations, there has been discussion about the provision itself. In this part of the chapter the challenges and problems with Article 50 TEU will be looked at. As we have seen in the previous part of the chapter, in the work towards a European Constitution a provision on withdrawal was included for the first time. Issues and problems were raised with the draft version and the final version (Article I-60 TCE), however Article I-60 TCE and Article 50 TEU are almost completely similar, at least in content. That means that although issues were raised, no changes have been made to the Article which leaves us with challenges and problems with the current Article.

⁴¹ Treaty of Lisbon, Article 50 TEU, OJ C306 (2007).

⁴² Treaty of Lisbon, Article 50 TEU, OJ C306 (2007).

First, one of the main problems that is frequently mentioned by scholars is the wording of Article 50 TEU. The provisions can be interpreted in more than one way and are therefore not straightforward and in addition, the actual wording of the Article is said to be incomplete or unclear (Lazowski, 2012; Hillion, 2015; Friel, 2004 ; Hofmeister, 2010).

Secondly, the two-year period that is mentioned in Article 50 (3) TEU, is seen as too short for all the matters that need to be dealt with (Herbst, 2006; Lazowski, 2016a). As we saw with the case of Greenland, the negotiations took three years and that was just a small (part of a) country with one main economy. In chapter 5.3 and 6.4 this problem is shown for Great Britain. An option is included in Article 50 (3) to extend the negotiation period. However, it remains unclear as to with how much time and how many times this period can be extended (Lazowski, 2016a).

A third important issue that is raised is the fact that Article 50 (4) sets out that 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, however it is silent as to representatives of the withdrawing state in other institutions. For example to what extent the Members of Parliament (MPs) can participate and vote. Consent from Parliament is needed to conclude the withdrawal agreement, thus MPs from the withdrawing state might be able to have some influence there, which is also the case for representatives in other institutions. The Article does not define the status of the member state in the two-year negotiation period and the withdrawing member state could therefore, through different ways, influence decisions or agreements that would be beneficial for its own future (relationship with the EU) (Hillion, 2015; Friel, 2004; Hofmeister, 2010; Tatham, 2012; Wyrozumska, 2012).

A fourth problem is the fact that Article 50 is unclear about the (legal) consequences of a withdrawal. What will happen to EU employees which are nationals of the withdrawing member state, or EU citizens residing in the withdrawing state or what would happen with the EU offices located in the withdrawing state (which is shown in chapter 5.3). Article 50 is also silent about what happens with ongoing projects that involve the withdrawing state (Hofmeister, 2010; Herbst, 2006).

A fifth problem is that it is unclear from Article 50 if it is possible to revoke the notification of withdrawal within the two-year period (Herbst, 2006; Wessel, 2017; Hofmeister, 2010). It is stated in Article 50 (5) that a state that wants to rejoin after withdrawal has to go through the procedure of Article 49 TEU, but technically if a notification is revoked within the two-year period, the state is still a member of the EU.

A sixth issue arising from Article 50 TEU is that the inclusion of a provision on withdrawal in the treaties could be used as some sort of bargaining chip or a threat. This is especially the case with some of the larger member states who could then maybe control the process of withdrawal for their own benefit or use withdrawal as a threat to force concessions from the other member states. Also, once withdrawal is used as a threat or has actually happened, it could serve as an 'example' and therefore encourage other member states to leave as well (Hillion, 2015; Tatham, 2012; Friel, 2004). Hofmeister (2010) also states that Article 50 favours the larger states over the smaller states. He says that large and economically powerful states have more negotiating power than smaller states and could therefore significantly influence the content of a withdrawal agreement to their advantage.

In addition to all previously named problems, a seventh problem is the fact that the withdrawal provision is silent on institutional and procedural changes that have to take place within the EU when a state leaves. A withdrawal would alter the composition of EU institutions (Hofmeister, 2010; Friel 2004). A withdrawal would also alter the territory and the borders of the Union, however, it is not stated in Article 50 that all the member states need to ratify the agreement. The agreement is concluded by the Council and therefore the agreement might reflect the needs and interests of the Union as a whole to a greater extent than those of the member states (Hillion, 2015; Wyrozumska, 2012).

Hofmeister (2010) writes about the problems and challenges that arise from Article 50 TEU. However, he says that it can be argued that most of the problems could be dealt with in the withdrawal agreement. Actually, a lot of the problems that are mentioned have to be dealt with in the withdrawal agreement, thus a withdrawal agreement is very important. What could be problematic is that a withdrawal agreement is not obligatory, therefore it could be the case that a lot of these important issues are not dealt with at all. The risk of not reaching an agreement will probably be very low, because it would be in the best interest of both parties to come to an agreement, according to Hofmeister. Hillion (2015) sees the problems as well, but with regard to the incompleteness or imperfection of the Article as it is, he says *‘the imperfection of the procedure reflects the uncertainty of the implications of an exit, and the necessity to leave room to cater for the particular needs of the situation. Perhaps the lack of clarity is also a way to avoid making the clause too user-friendly and thereby encouraging its use’*.

3.4 Conclusion

The aim of this chapter was to find out how withdrawal from the European Union works. The corresponding question was *how is withdrawal governed by the EU Treaties?* We have seen that Greenland withdrew from the EC in 1985. There were no provisions in the EC treaties on withdrawal in the EC treaties then, but since Greenland was a part of the Kingdom of Denmark, this withdrawal was more a redefinition of the territory of Denmark than a real withdrawal, therefore this was not a problem. It is said that a right to unilaterally withdraw could be derived from international law through the use of the Vienna Convention on the Law of Treaties, but this idea is contested. In the early 2000s a provision of withdrawal was included for the first time in the draft European Constitution, but the Constitution was not ratified by all member states. Only since the Treaty of Lisbon, which came into effect in 2009, a right to withdraw is officially included in the Treaties. Withdrawal is governed by Article 50 TEU. In this chapter this Article was looked at in detail and criticism on the Article has been discussed as well. For example, Article 50 TEU prescribes a two year time period for withdrawal, however, as we have seen in the case of Greenland, this timeframe might not be feasible for a withdrawal.

Chapter 4. Great Britain's path to EU membership and the referendum

This fourth chapter is the first of two chapters that deal with the case study on Brexit. The leading sub-question in this chapter is *what have been characteristics of UK membership to the European Union?* This chapter wants to make clear how British membership came into being and how it evolved through the years. This is done because it shows the level of integration between Great Britain and the EU as well as the troubled relationship. The chapter starts with British accession to the EU (then EEC), which was a long process. The second part deals with the concept of parliamentary sovereignty in Great Britain and the European Communities Act, which made it possible for the UK to become an EC member. The third part of the chapter looks at the period from the end of the 1970s to the middle of the 1990s in which Margaret Thatcher made her mark on the relationship between the EU and the UK. The fourth part of the chapter looks at another politician who made his mark on UK-EU relations but in another fashion as Thatcher had done, Tony Blair. The fifth part of the chapter then looks at the period prior to the referendum of June 23 2016. What we will see in this chapter is that the relationship between the UK and the EU has been troubled and rocky from the beginning. It reached its lowest point during the Thatcher years and seems to have had a revival during the Blair years after which the relationship seems to stagnate again. We will also see how Great Britain managed to create a 'personalized membership' with the EU and that, despite the troubled relationship, Great Britain played an important role in the development of the European Union.

4.1 A troubled path to accession

The Second World War brought chaos to the European continent. Some countries reacted to this chaos by cooperating together in certain policy areas and the European Coal and Steel Community was born. However, Great Britain did not participate in this cooperation from the beginning. Great Britain had for decades – or maybe centuries - been a dominant state in the world order with their vast empire. After WWII the British therefore continued to define their foreign policy in global terms. Their commitments were to the Commonwealth and to their relations with the United States, not to closer relations with West European countries (Segers, 2007; Davies, 1997; Young, 1993). The British government declined the invitation to participate in the negotiations that led to the creation of the ECSC and later the EEC. When the six states that formed the EEC began to discuss extending the common market, the British government briefly took part in the discussions, but decided to withdraw. They had no interest in political integration in Europe and did not want to give up sovereignty to common institutions. In the 1950s the economic growth rate of Western European countries was high. This was also the case in Britain, but the other states were performing better, partly because of the economic cooperation. Economies were expanding, but Britain soon faced serious problems. There were multiple balance of payment crises since imports expanded faster than exports, and inflation rose rapidly as well. In addition, the British industry suffered from labour shortages (George, 1994; Young, 1993).

To counteract the economic problems, Great Britain, together with Austria, Denmark, Norway, Portugal, Sweden and Switzerland, founded the European Free Trade Association (EFTA). The aim of the organization was free trade in goods between its member states. It stood in contrast to the EEC which had a political component as well, whilst the EFTA was just economically driven (Barnett, 1998; Davies, 1997).⁴³ In 1961 the British Government saw little future in relying on just the EFTA and the

⁴³ European Free Trade Association. (n.d.). About EFTA. www.efta.int.

Commonwealth and therefore in August decided to apply to become a member of the EEC (Dinan, 2005; Young, 1993; Gowland & Turner, 2000). According to Gowland & Turner (2000) the decision to apply was not made enthusiastically, but '*out of a reluctant recognition that it represented the lesser of two evils*' (enter the EEC on the terms of the founders or not enter and risk more economic and political problems). When the negotiations started in 1962, key issues proved to be the Commonwealth and agriculture. Negotiations progressed slowly, partly because of the fact that British policies on agriculture were incompatible with those of the Common Agricultural Policy (CAP) of the EEC. The negotiations came to an abrupt halt when in a press conference on January 14 1963 the French President Charles De Gaulle vetoed the British application saying that British membership would change the nature of the EEC too much. Even though the other five countries were still in favour of British membership, no country dared to oppose France because of its importance in the EEC (Young, 1993; Dinan, 2005; George, 1994; Ludlow, 2012).

In the years following the veto, the EEC continued to develop and flourish while Britain was still struggling. The new government therefore decided to apply to the EEC for a second time, but this application was vetoed by De Gaulle as well. In December 1967 EEC ministers agreed to shelve the British application for the time being (Young, 1993; George, 1994; Dinan, 2005). In 1969 De Gaulle resigned his position as France's President and Pompidou took over his leadership. In contrast to De Gaulle, Pompidou seemed more favourable to Great Britain becoming an EC member. The British government called for reactivating its application, which was honored after a summit meeting in The Hague in 1969. In June 1970 Edward Heath became Britain's Prime Minister. In comparison to Prime Ministers Macmillan and Wilson before him, he was much more pro-EEC and less pro-US. According to George (1994) '*Heath was the only Prime Minister to have been fully committed to the idea of the European Communities*'. Heath believed that becoming an EC member would transform Britain's economic future for the better. His approach to EC membership therefore was to gain entry first and then sort out the difficulties (George, 1994; Young, 1993). During the entry negotiations four main issues were discussed: the Pound Sterling and its role as reserve currency, access to the Community for Commonwealth products, the size of the British contribution to the Community's budget and agriculture. Negotiations were brought to a close in June 1971 and Great Britain became an EC member on January 1 1973 (George, 1994; Dinan, 2005; Young, 1993; Gowland & Turner, 2000).⁴⁴

In 1974 Heath lost the general elections and Harold Wilson became Prime Minister again. The new government did not agree with the accession agreement that Britain signed with the EC (which was not surprising since the entry terms were far from ideal), therefore in April 1974 renegotiations were opened. There were four key issues that were to be renegotiated that were similar to the issues during the entry negotiations: reform of the CAP, access to the community for Commonwealth products, state aid and the size of the British contribution to the EC budget (George, 1994; Dinan, 2005; Gowland & Turner, 2000).⁴⁵ During the renegotiations, a campaign had started in Great Britain in preparation for

⁴⁴ The first issue that was discussed in the entry negotiations was the Pound Sterling and its role as a reserve currency. The Pound had been devalued in 1967 which was a plus, but the real issue with the Sterling was only solved after West-Germany decided to float its Deutschmark in May of 1971. This upset France because it could be seen as a setback in the hopes of creating an economic and monetary union within the EC. A second issue was the Commonwealth and especially Caribbean sugar and New Zealand Dairy products. The problems regarding Commonwealth products was already smaller than they had been in 1961, but they were only really solved in the renegotiations. A third issue had to do with the size of British contribution to the Community's budget. This was for example because of contributions to CAP, which together with agriculture is a fourth issue. The British system was almost opposite to what the CAP entails; CAP worked with guaranteed prices while the British system worked with free prices. The CAP meant a price increase for food in Britain. Another issue with CAP was that Britain was a net importer of food so they would benefit really little from the agricultural fund which dominated the payments to the Community's budget. Because of this issue, negotiations stalled and only came into motion again after Heath had constructive talks with Pompidou in May of 1971 (George, 1994; Dinan, 2005; Young, 1993; Gowland & Turner, 2000).

⁴⁵ For more information on the renegotiations, see George, S. (1994). *An Awkward Partner: Britain in the European Community*. Oxford: Oxford University Press, Young, J. (1993). *Britain and European Unity, 1945 – 1992*. New York: St. Martin's Press, Dinan, D. (2005). *Ever closer union: an introduction to European integration*. Hampshire: Palgrave

the referendum that was to be held on June 5 1975. This referendum was promised by the Labour Party during the 1974 elections and asked the question whether Great Britain would remain a member of the European Communities. The referendum had a turnout of 64.6% of the electorate. 67.2% of the people voted for staying in the EC, while 32.8% voted against (George, 1994; Gowland & Turner, 2000).⁴⁶

The renegotiation process and subsequent referendum weakened the standing of Great Britain in Europe. According to George (1994) during the renegotiation process there was a '*spirit of irritation and impatience with Britain that had been growing within the EC since its accession*'. He also states that Britain was too late at the negotiation table. With this he means that if Great Britain had been involved in the European cooperation since the beginning in the 1950s, the terms which they had to agree with upon accession to the EC could have been more favourable to them. The other member states were already familiar with the integration and its effects and the institutions reflected their interests and policies. The institutions and policies in place did not really suit Britain and therefore the first years of membership were a period of adjustment. Great Britain also had interests outside of Europe (with the Commonwealth) which did not really fit well into the EC framework (George, 1994; Gowland & Turner, 2000). The process of accession to the EEC since the early 1960s shows that the relationship of Britain with the EC has been troubled from the start.

4.2 The power of the British Parliament

As we have seen in chapter 2 on accession, becoming part of the European Communities, and now European Union, involves taking over EU legislation and incorporating that with domestic law. The legal order that has been established by the EC is that EU law has primacy over the law of the member states, which means that it limits sovereign rights of the member states. Great Britain's domestic constitutional law required some fundamental adjustments to be able to allow for EU law to take effect in Britain (Dashwood, 2001; Barnett, 1998; Turpin, 1999). This is the case because Great Britain has a dualist approach to international law. This means that it regards the systems of national and international law as separate. If international law has to enter into national law, Parliament has to enact domestic legislative action. This entails that EC law could have no effect in Great Britain, until Parliament enacts a statute that says so (Barnett, 1998).

The ultimate principle of the legal order of Great Britain is the sovereignty of Parliament. The statutes that Parliament enacts have primacy over all other forms of law and it is therefore the duty of the courts to obey them. The powers of Parliament are unlimited and illimitable in Great Britain. There is just one thing that Parliament cannot do and that is bind itself for the future. It would also be impossible because the British courts must always give effect to the latest statute or Act of Parliament. Therefore if a Parliament would bind itself, the next Parliament could dissolve this. In addition, Parliament does not have to justify its statutes and acts, it can basically do 'whatever it wants' (Dashwood, 2001; Barnett, 1998; Schütze, 2012). A.V. Dicey conceptualized this as follows in 1885:

*'The principle of Parliamentary sovereignty means neither more nor less than this, namely that Parliament thus defined has, under the English constitution, the right to make or unmake any law whatever: and, further, that no person or body is recognized by the law of England as having a right to override or set aside the legislation of Parliament.'*⁴⁷

Macmillan and Gowland, D. & Turner, A. (2000) *Reluctant Europeans: Britain and European integration 1945-1998*. Harlow: Pearson Education Limited.

⁴⁶ For more information on the referendum, see George, S. (1994). *An Awkward Partner: Britain in the European Community*. Oxford: Oxford University Press.

⁴⁷ As quoted in Schütze, R. (2012). *European Constitutional Law*. Cambridge: Cambridge University Press.

In order for the EC treaties to have effect in Great Britain upon accession in 1973, the European Communities Act (ECA) was adopted in 1972, which facilitated the direct application of EC law in the legal orders of Great Britain from the moment of accession. Section 4-12 of the ECA dealt with specific alterations of laws that were immediately necessary upon accession. Sections 2 (1), 2 (2), 2 (4) and 3 (1) are the most fundamental parts of the Act (Dashwood, 2001; Barnett, 1998; Turpin, 1999). These sections specify the duties and rights which were directly applicable or effective to be given legal effect within Britain (section 2 (1)). In addition, the sections state that the executive has the power to give effect to obligations from the Community (section 2 (2)). Also, existing and future enactments are to be interpreted and have effect (section 2 (3)) and the meaning or effect of Treaty provisions is to be decided according to Community law (section 3 (1)) (Barnett, 1998). Important to note is that law that is made applicable by section 2 remains Community law and is therefore a separate identity, it does not become part of British law, but is enforced together with the law of the British courts (Turpin, 1999). This is the case because, as said, the ultimate principle of the British legal order is the sovereignty of Parliament. With the European Communities Act it was possible for the statuses of Parliament and the Community law to co-exist (Dashwood, 2001). A full version of the mentioned sections of the ECA can be found in appendix 4.

There have been multiple cases in which British national law and the Community law clashed. One of the most testing ones for the ECA was the *Factortame* case in the 1980s. In short, this case entailed that the British Parliament had passed the Merchant Shipping Act in 1988 (which revised previous Acts) to protect its domestic fishing industry and British territorial waters against foreign companies and fishing fleets. *Factortame*, a Spanish fishing company, did not comply with these renewed rules and requirements. Therefore they brought a case against Great Britain to the ECJ that the new British law had breached EC law. The European Court of Justice (ECJ) confirmed that the Act was incompatible with EU law and that the fishermen's rights were violated. The British courts accepted this judgment and the House of Lords concluded as well that EU law were to prevail over domestic law, therefore British courts should look to Community Law and not Acts of Parliament in the event of incompatibility (Turpin, 1999; Dashwood, 2001; Barnett, 1998).⁴⁸

4.3 British isolation and a personalized membership

When Margaret Thatcher became Prime Minister of Great Britain in 1979, people initially thought that this would mean that the British relationship with the EC would improve since the Conservative Party was considered to be more pro-European than the Labour Party. However, it soon turned out that this was not the case. Thatcher's relationship with the EC was inconsistent; as much as she was pro-EC in some regards, she was even more anti-EC in others. Thatcher did not like compromise or consensus, which in the EC was not a handy personality trait (Gowland & Turner, 2000; Young, 1998; George, 1994). Her negotiation style was not well liked by other European leaders and she is said to have '*a total inability to see the other side's point of view*' (Gowland & Turner, 2000) and according to Young (1998) '*a triumphant lack of sensitivity to other people's problems*'. In addition, she seemed more focused on the British relationship with the United States than on the relationship with the EC (Gowland & Turner, 2000).

⁴⁸ For more information on *Factortame* and other cases, see Turpin, C. (1999). *British Government and the Constitution: texts, cases and materials*. London: Butterworths, Dashwood, A. (2001). *The British Way: the Cohabiting with Community Law*. In Kellerman, A., Zwaan, de, J. & Czuczai, J. (Ed.). *EU enlargement. The Constitutional impact at EU and national level*. The Hague: T.M.C. Asser Press and Barnett, H. (1998). *Constitutional and Administrative Law*. London: Cavendish.

As we have seen in chapter 4.1, the size of British contributions to the EC budget had been an issue both in the entry negotiations as well as in the renegotiations. Thatcher ‘inherited’ this problem, which came to be called the British Budgetary Question. During the renegotiations in 1975 it was agreed that the European Commission had to design a ‘correcting mechanism’ which would prevent member states from paying too much into the EC, as well as calculating budgetary rebates (Dinan, 2005; George, 1994; Young, 1993; Gowland & Turner, 2000). Thatcher rejected several rebate offers that were made by the EC. At the Fountainebleau European Council of June 1984 the issue was finally solved when it was agreed that Great Britain would receive a rebate of one billion ECU for 1984 and then 66% of the difference between the VAT contributions of Britain to the budget and its receipts from the budget in 1985 and following years.⁴⁹ Agreement was reached after concessions on both sides with regard to agricultural spending being reined in and the increase of the EC’s own resources from 1% to 1.4% of the value-added tax collected in each of the member states (Dinan, 2005; George 1994).⁵⁰

The difficulties between Great Britain and the EC in the first years of Thatcher being Prime Minister can be seen as a continuation of the issues and not so smooth relationship between Great Britain and the EC as they were before Thatcher. However, there seemed to be light at the end of the tunnel. Now that large issues were solved, the path seemed clear for a ‘relaunch’ of Europe and working towards closer cooperation and unity. Thatcher’s view on this was ambiguous; on the one hand she disapproved of institutional reform and handing over sovereignty, but on the other hand she was very much in favour of the Common Market for goods and capital and closer cooperation in the area of foreign policy and security (Gowland & Turner, 2000). It was decided in 1985 that in order to have a good-working single market, European institutions had to be reformed. To this end an Intergovernmental Conference (IGC) was convened to draft a new European treaty. Thatcher initially spoke out against an IGC but was outvoted, after which she, rather surprisingly, decided to commit to participate constructively in the work of the IGC because her general objective still was the creation of a single market. Out of this IGC the Single European Act (SEA) was born (Ludlow, 2012; Gowland & Turner, 2000). Although the SEA was not quite in line with British ideas on the future of the EC, Thatcher did a great deal of work and the SEA was accepted by the British Government relatively easily. In the years immediately following the SEA, people were generally positive about its implications, which however turned into disillusionment in later years (Gowland & Turner, 2000; Young, 1998). According to Young (1998) it was typical for Thatcher, as well as almost all British politicians before her, to ignore certain things they did not like by pretending they did not really exist. He quotes Thatcher on this: *“I wish they would talk less about European and political union. The terms are not understood in this country. In so far as they are understood over here, they mean a good deal less than some people over there think they mean”*.

In the years directly following the SEA, Thatcher’s period of ‘EC-positiveness’ however seemed to have come to an end. She eyed the developments following from SEA with increasing suspicion and also hostility. At the College of Europe in Bruges on 20 September 1988, Thatcher gave a speech in which she gave her views on the EC and the British relationship with the EC. She set out the long history of Britain and Europe and the important role of Britain in European history. She then stated that *“the community is not an end in itself. Nor is it an institutional device to be constantly modified according to the dictates of some abstract intellectual concept. Nor must it be ossified by endless regulation”*. Here she stated again that she sees no use in institutional reform, which she also did in the run up to the SEA.

⁴⁹ ECU stands for European Currency Unit, which from 1979 until 1999 was the currency unit of the European Communities: ‘a standard monetary unit of measurement of the market value/cost of goods, services, or assets in the European Communities’. Retrieved from [http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:European_currency_unit_\(ECU\)](http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:European_currency_unit_(ECU)).

⁵⁰ More information on the British Budgetary Question can be found in George, S. (1994). *An Awkward Partner: Britain in the European Community*. Oxford: Oxford University Press and Dinan, D. (2005). *Ever closer union: an introduction to European integration*. Hampshire: Palgrave Macmillan.

She then set out her ‘guiding principles’ for the future of Europe in which she said the following about European identity: “*Europe will be stronger precisely because it has France as France, Spain as Spain, Britain as Britain, each with its own customs, traditions and identity. It would be folly to try to fit them into some sort of identikit European personality*”. A sentence that is wholly in line with the general attitude of Britain towards the EC from the beginning. In addition she said that “*working more closely together does not require power to be centralised in Brussels or decisions to be taken by an appointed bureaucracy*”. After which probably the most famous line is stated: “*we have not successfully rolled back the frontiers of the state in Britain only to see them reimposed at a European level, with a European super-state exercising a new dominance from Brussels*”.⁵¹ As one could expect, the speech was met with anger, not only by other EC members but also by some within Britain. The speech affected the British relationship with the other EC members negatively (Young, 1998; Gowland & Turner, 2000).

In addition to the tense relations between Thatcher and other EC members, at the end of the 1980s Thatcher started to have domestic problems as well, which ultimately led to her resignation in November 1990. She was succeeded by John Major, a conservative as well, who wanted to put ‘Britain at the heart of Europe’ instead of being isolated as they had become under Thatcher. His policies however were quite in line with Thatcher’s, with the creation of the single market and widening instead of deepening of the EC as focal points. His prime ministership (1990-1997) was marked by the Maastricht Treaty of 1992 and the opt-outs he managed to negotiate there. The Maastricht negotiations and Treaty were an important stage in the creation of an Economic and Monetary Union (EMU). Major obtained an opt-out on the EMU, which said that Great Britain was not obliged to participate in the third stage of the EMU and consequently join the Euro, meaning it thus kept total control over its own economic and monetary policy. This was specified in Protocol number 25 on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland, which was annexed to the Treaty establishing the European Community.⁵² A second opt-out had to do with the social chapter. In 1989 eleven of the twelve member states had concluded a ‘social charter’, which was to be formally put into a treaty at Maastricht. The social chapter dealt with for example worker’s pay and health & safety regulations. Major thought that this would bring with it enormous costs for British industries and that it would sacrifice jobs as well. After tiresome negotiations, an agreement was reached to drop the social chapter from the draft treaty but to annex it as a protocol on which Great Britain could opt-out (George, 1998; Young, 1998; Heegde, 2012).

Major did not do as he had planned, putting Britain at the heart of Europe, and he did not manage to improve UK-EU relations very much during his seven years as Prime Minister. Thatcher has had a difficult and inconsistent relationship with the EC. On certain issues she was very stubborn which aggravated the other members and stalled further EC integration. However, she did put a stamp on the development of the EC when she constructively worked on the creation of the SEA. Despite this, in general, Great Britain became more isolated from the EC during the Thatcher years and Major continued on this track. Despite his good intentions, he managed to start the creation of a British ‘personalized membership’ with the European Union when he negotiated opt-outs from the Maastricht Treaty.

4.4 Towards a better relationship with the European Union

This chapter so far shows that Great Britain’s relationship with the EU had been difficult from the start. Thatcher managed to isolate Britain from the European continent and Major transformed the different

⁵¹ For the whole speech, see Thatcher, M. (1988, September 20). Speech to the college of Europe. Retrieved from <https://www.margareththatcher.org/document/107332>.

⁵² Currently, Treaty of Lisbon. OJ C 306, 17.12.2007. Protocol no. 15 on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland.

relationship that Britain has had with the EU from other member states with the opt-outs from the Maastricht Treaty. In 1997, after seventeen years of Conservative Party leadership in Britain, the Conservative Party suffered its worst defeat in more than a century and Tony Blair from the Labour Party became the new British Prime Minister. Labour taking office was met with enthusiasm on the European continent. In contrast to the Conservatives before him, Blair was much more pro-EU and he was intent on creating ‘a people’s Europe’ and to pursue a constructive European policy. In addition, he wanted to establish some sort of British ‘leadership’ in the EU (Gowland & Turner, 2000).

When Labour came to power, the preparations for the Amsterdam Treaty were almost finished. Blair seemed to continue the tone of personalized membership that Major had set in the Maastricht negotiations by negotiating opt-outs in Amsterdam as well. In the Amsterdam Treaty the Schengen agreement that abolished border controls at mutual borders between European member states was incorporated into the EU framework. It was argued that since Great Britain is an island nation it would be more difficult to control their borders and prevent illegal immigration and therefore they wanted to opt-out from Schengen.⁵³ In addition, Great Britain opted-out of the Area of Freedom, Security and Justice (AFSJ). The AFSJ is created to offer EU citizens a high level of protection and to ensure the free movement of people in Europe. Great Britain obtained the right to flexibly opt-out of legislation regarding matters relating to Justice and Home Affairs (the ‘third pillar’ of the Maastricht Treaty). Great Britain can therefore opt-out or opt-in to legislation and initiatives on a case-by-case basis.⁵⁴ In the lead-up to the Amsterdam Treaty it became clear that Blair had some similarities in his ideas to both Thatcher and Major. Blair was also against further deepening integration of the EU, however, he made more concessions than his predecessors did. He gave in to slight additional powers for the European Parliament and a reduction in the power of veto and more use of qualified majority voting (QMV) in certain policy areas. In addition, he decided to opt-in to the social Chapter that Major had opted out from in 1992. Blair stated that the Amsterdam Treaty protected British national interests regarding defence, foreign policy and immigration (Gowland & Turner, 2000; Dryburgh, 2010; George, 1994; Young, 1998).

In addition to the further development of the personalized membership of Great Britain with the EU, it was noticeable during the Presidency of the EU that Great Britain held from January to June 1998, that Britain had not yet lost its status as ‘awkward partner’ or isolated member state (Bulmer, 2008; Gowland & Turner, 2000). The presidency was dominated by the EMU and enlargement negotiations.

⁵³ Currently, this opt-out is established under Protocol 19 of the Lisbon Treaty. In Article 4 of Protocol 19 it is stated that ‘Ireland and the United Kingdom of Great Britain and Northern Ireland may at any time request to take part in some or all of the provisions of the Schengen acquis’ (Treaty of Lisbon, OJ C 306, 17.12.2007, protocol 19) That means that if they would like to participate in a certain provision they can. For example this happened in 1999, when Great Britain wanted to participate in matters relating to Police Security and Judicial cooperation (OJ L 131, 1 June 2000. Council Decision of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis.). Article 5 of Protocol 19 further details that within three months of the publication of a proposal or initiative which builds upon the Schengen acquis, the UK has to notify the Council if it does not wish to take part in the measure and thus opt-out. If Great Britain does not opt-out within those three months, it will be automatically bound (Treaty of Lisbon, OJ C 306, 17.12.2007, protocol 19).

⁵⁴ This is laid down in Protocol 21 of the Lisbon Treaty ‘on the position of the United Kingdom and Ireland in respect to the Area of Freedom, Security and Justice’ (Protocol 21, OJ C 306, 17.12.2007, Lisbon Treaty). The flexibility of the opt-out is very beneficial to Great Britain. According to a British Government document about the AFSJ and Schengen, cooperation in the field of Justice and Home Affairs can, amongst other things, help tackle border crime and enhance security. If a proposal is being presented to the council, Great Britain may choose within three months, whether it wishes to participate in the measure. If Great Britain notifies the council of its intention to participate it may not opt-out of that measure at a later time. However, if Great Britain does not wish to participate, it can still hold a seat at the negotiating table although it has no vote. Great Britain can also indicate that it wishes to participate at a later stage, the Commission then has to approve this and can, together with the Council, impose conditions on Great Britain (Protocol 21, OJ C 306, 17.12.2007, Lisbon treaty) and United Kingdom Government. (2017, October 7). JHA opt-in protocol and Schengen opt-out protocols. Retrieved from <https://www.gov.uk/government/publications/jha-opt-in-and-schengen-opt-out-protocols--3>.

It was a peculiar position for Blair and British Chancellor Gordon Brown to be in, because in the role of presidency of the EU they chaired all the meetings, which meant also the meetings on the third phase of EMU in which the UK did not participate. Brown therefore was not allowed to chair the inaugural meeting of the Euro-XI group on June 4 and Blair was not involved in choosing the European Central Bank (ECB) president as well. This was a hotly debated issue between the French, Dutch and Germans and Blair had to play 'referee', but he had no real say. With regard to enlargement negotiations, there were no problems as Blair was a proponent of enlargement (as said, widening instead of deepening of the EU), and negotiations with prospective member states commenced smoothly on March 31 (Ludlow, 1998; Henderson, 1998; Duke, 1998; Gowland & Turner, 2000).

The UK presidency of the EU was linked to Blair's domestic political agenda regarding the role of Britain in the EU and the redefinition of UK-EU relations. In general, it can be said that the UK presidency of the EU had been successful, however it had not involved innovative developments on the EU level or fundamentally transformed UK-EU relations. It was an efficient presidency, which was good for the perception of Great Britain in the EU. In comparison to Major and Thatcher, Blair was seen as a Prime Minister who took the EU seriously and wanted to be involved in its development.⁵⁵ Blair managed to 'normalize' the relationship between Great Britain and the other member states to a certain extent. It was no longer a 'hostile' partnership as it had sometimes been under Thatcher and Blair had managed to let Great Britain not become isolated in the course of the Treaty reform discussions. Great Britain was also more involved in major EU developments (with for example enlargement) than they had been previously (Ludlow, 2010; Gowland & Turner, 2000; Dryburgh, 2010).

After the first couple of years of Blair as Prime Minister had been focused on UK- EU relations, his second term as Prime Minister from 2001 on seemed more focused on UK-US relations. This shows again that UK-US relations stayed important, even though the relationship with and involvement in the EU was then greater than ever before. Blair supported the US' 'war on terror' which started after the 9/11 attacks in New York. The 'war on terror' and the subsequent invasion of Iraq in 2003 divided the member states of the EU with some, such as Blair, backing the US and some that were against the Iraq invasion. According to Bulmer (2008) the war on terror and the Iraq invasion overshadowed the economic developments and the EU enlargement that took place in 2004. It also damaged Blair's domestic popularity. He managed to get re-elected in 2005 but his parliamentary majority had shrunk drastically. In addition he began to lose the backing of his own party, which did not see Blair as an 'electoral asset' anymore, in part because of issues surrounding the Iraq invasion of 2003. From July to December of 2005 Great Britain again had the Presidency of the EU. The objectives and goals were less ambitious than they had been in 1998 and the Presidency was also less influential and successful than the 1998 Presidency had been. Because of the aforementioned issues, in September of 2006, Blair announced that he would step down within 12 months. Gordon Brown succeeded him on June 27 2007 (Bulmer, 2008).

In the ten years that Blair had been Prime Minister of Great Britain he managed to change the UK-EU relations for the better, especially in comparison to his predecessors. As said, already in his first term Blair was able to 'normalize' UK-EU relations. He also managed for Britain to not be isolated in the EU anymore and Great Britain was definitely not always the 'odd one out' or the awkward partner that always seemed to be working against everybody else in the EU. Blair did however develop the personalized membership of Great Britain with the EU further with the opt-outs he obtained in the Amsterdam Treaty negotiations. Blair was looking for a leading role for Great Britain in the EU, which success remains doubtful, but he was a big proponent of enlargement and cooperation on security and

⁵⁵ For more information on the UK presidency of the EU see Ludlow, P. (1998). The 1998 UK Presidency: a view from Brussels. *Journal of Common Market Studies*, 36 (4), 573-583, Henderson, D. (1998). The UK Presidency: an insider's view. *Journal of Common Market Studies*, 36 (4), 563-572 and Gowland, D. & Turner, A. (2000) *Reluctant Europeans: Britain and European integration 1945-1998*. Harlow: Pearson Education Limited.

defence in which he had always been trying to seek a leading role for Britain amongst the EU member states. Within the UK however, the Euroscepticism that had always been there in Great Britain since the beginning of UK membership to the EEC in 1973, was still present. Blair had not been able to change the domestic consensus on Europe and therewith managed to silence Eurosceptics in Great Britain, Euroscepticism was still very much present (Bulmer, 2008; Daddow, 2013, Gowland & Turner, 2000).

4.5 Domestic challenges and a referendum

In the last decade or so, Euroscepticism has been on a rise, not only in Great Britain but also in the rest of Europe. In Great Britain, Euroscepticism used to be an issue within political parties, but in the 1990s it became an issue between parties as well. The most well-known Eurosceptic political party is the United Kingdom Independence Party (UKIP), the fourth party in the UK, which began to make headway in the later 2000s (Oliver, 2015a; Oliver, 2015b; Smith, 2012). A difference between most countries and Great Britain regarding the issue of Euroscepticism is the role that the media plays. The image of the EU in Great Britain is for a large part formed by the media, which have generally been quite Eurosceptic. The European Union is often set in a bad light and the focus is on the supposedly high costs of the EU and the way EU interference affects Britain negatively. This is in part why political parties such as UKIP have become more popular over time (Daddow, 2012). Oliver (2015b) states that the political and media debate in Great Britain *‘has been largely negative, even hostile, and sometimes xenophobic’*. Daddow (2012) argues in his article *‘The UK media and ‘Europe’: from permissive consensus to destructive dissent’* that the media in Great Britain suffer from the ‘Murdoch effect’. Robert Murdoch has built a media empire in Great Britain starting in the 1960s. He owns a lot of newspapers which generally send out a ‘Eurosceptic message’. According to Daddow *‘Murdoch’s deep ideological and commercial interest in influencing European policy at the national level has transformed a long-established and not intrinsically unhealthy British suspicion of ‘things Continental’ into an alarmist call to arms against ‘Europe’ through tabloid sensationalization and scare stories about the ‘Brussels’ effect on everyday life in Britain’*. Murdoch affected the way in which media reported on Europe immensely and media reporting negatively about European affairs has become ‘normal’ (Daddow, 2012).⁵⁶

In the election campaign and coalition agreement negotiations between the Conservative Party and the liberal democrats in 2010, Europe was an important issue. It was specified in the agreement that future Treaties of the EU would be subject to a referendum, which was established with the European Communities Act of 2011. However, the promised referendum on the 2009 Lisbon Treaty did not come into fruition; new Prime Minister David Cameron stated that a referendum would only take place when the Lisbon Treaty would be amended so that new powers would be granted to the EU (Craig, 2016). Cameron’s government was under pressure from the start, from Eurosceptic backbenchers but also from UKIP which was becoming more popular. As a way to solve the problems and win back Conservative electoral support, Cameron gave the now ‘famous’ speech at Bloomberg on January 23 2013 (Jensen & Snaith, 2016; Craig, 2016). In this speech Cameron stated that he thought it was time to *“settle the European question in British politics”* and he promised a referendum on membership of the European Union before 2017, but only after he had arranged a new deal on membership of Great Britain with the EU. In addition, a referendum could only take place if the Conservative Party won the 2015 general elections outright (Cameron, 2013). In his speech he did not really specify what the content of the negotiations with the EU would be, which led to speculation. Many wondered as well if a referendum

⁵⁶ For more information on the media and Great Britain, the Murdoch effect and its contribution to Euroscepticism in Great Britain, see Daddow, O. (2012). The UK media and ‘Europe’: from permissive consensus to destructive dissent. *International Affairs*, 88 (6), 1219-1236.

would be a solution. For example Oliver (2015a) says that a referendum would not solve or address all the issues that are there. For the referendum to answer the British 'European question', the debate would need to encompass also the UK's constitutional arrangements, identity, party politics, political economy, responses to globalizations, and place in a changing wider Europe. He says that the question will remain and that it will change through the generations, but it would require constant renegotiation and management. The British referendum '*should be a means to an end, not an end in itself*' (Oliver, 2015a). Glencross (2015) also states that a referendum on membership cannot solve all the issues surrounding Europe in Great Britain. He says that the referendum is presented as a simple solution to a complex problem but that the reality is that it cannot solve the Europe question, and it also should not solve the question.

After the speech of January 2013, it became apparent that Cameron's referendum promise did little to solve the problem or refute the tensions. There was still a lot of pressure on Cameron from Eurosceptics and UKIP's popularity was still growing. It is said that Cameron did not expect to win the 2015 elections outright and opinion polls at the time seemed otherwise as well (Craig, 2016). The referendum promise might have been more of a ploy to hold his party together, pro-Europeans and Eurosceptics alike, and manage the tensions both inside and outside the party. It might also have been to try and strengthen his position for bargaining et cetera with the leaders of other EU member states (Jensen & Snaith, 2016; Kroll & Leufen, 2016; Oliver, 2015b). However, the Conservative party did manage to win the 2015 general elections with a majority, which meant that some legal change was necessary for a referendum to become a reality. That is why in December 2015 the European Referendum Act was put in place, which made it possible for a referendum to be held in Great Britain on whether to remain an EU member (Craig, 2016).

In the European Council of October 2015 it was decided that Cameron had to put his exact negotiation matters into writing. The content of the negotiations became clear in the Chatham House speech of November 10 2015 and the corresponding letter to Donald Tusk, the President of the European Council. Cameron sets out four main areas on where Great Britain was seeking reforms. He said that the precise means and detailed legal proposals are a matter for the negotiation (Cameron, 2015). It is said that this is a negotiation strategy of the Cameron government. If Cameron had demanded significant precise reforms than that might have worked against him, not only on a European level but also domestically. If he did not aim too high beforehand, he could make sure that the outcome of the negotiations could be sold as a success in Great Britain (Kroll & Leuffen, 2016). The four main areas for reform all had to do with the overlapping term 'flexibility' and were: economic governance, competitiveness, sovereignty and immigration (Cameron, 2015). With regard to economic governance Cameron stated that Great Britain is looking for legally binding principles that safeguard the operation of the EU for all the 28 states, both Euromembers and non-Euromembers as to that the changes Eurozone countries make will not damage the non-Euro countries. To this end he wanted a safeguard mechanism that ensured that certain principles are respected and enforced. The second area of reform had to do with competitiveness. Cameron said that the burden of existing regulation is too high and he would like to see a target to cut the total burden on businesses. All the different proposals, promises and agreements on the Single Market, trade and cutting regulation should be put into a clear long-term commitment. The third area is sovereignty, in which he had three proposals: (a) to end Britain's obligation to work towards an ever closer union (in a legally binding and irreversible way), (b) to enhance the role of national parliaments by proposing a new arrangement where groups of national parliaments, acting together, can stop unwanted legislative proposals, and (c) the EU's commitments to subsidiarity fully implemented with clear proposals to achieve that. The fourth area dealt with immigration. Cameron said that the pressure of free movement is not sustainable for Great Britain. He wants to restore a 'sense of fairness' to the immigration system as to reduce the current very high level of population flows within the EU into the UK. He therefore wanted to ensure that when new countries accede to the EU, free movement

will only apply if and when their economies have converged closely with existing member states. Also, he wanted to crack down on the abuse of free movement by making sure that people coming to Britain from the EU must live and contribute for four years before they qualify for in-work benefits or social housing. In addition, child benefits should not be allowed to be sent overseas (Cameron, 2015).

Negotiations were opened in December and draft conclusions were published on February 2 2016. European Council President Tusk stated that he was convinced that the proposal would be a good basis for compromise. Tusk further said that “*the clear objective is to have an agreement of all 28 at the February European Council. To succeed we will all need to compromise. To fail would be compromising our common future*” (Tusk, 2016). In the European Council of 18-19 February 2016, agreements were reached and afterwards the conclusions were published. The first area of negotiation was economic governance. The Conclusions stated that there should be no discrimination against non-Eurozone countries. In addition, non-Eurozone members would not face financial losses due to Eurozone arrangements and discussions on matters that would affect all EU member states, must involve all member states, whether with or without the Euro as their currency. The second area of negotiation dealt with competitiveness. The Conclusions stated that the EU and its members ‘must enhance competitiveness’ and take steps to lower the regulatory burden on businesses. The Commission would also review the EU *acquis* for compliance with subsidiarity and proportionality and would consult national parliaments. On the third area of sovereignty, the Conclusions stated that Great Britain would not be committed to further political integration and that the concept of ‘ever closer union’ would not apply to Great Britain. A ‘red-card’ procedure would also be put in place whereby 55% of national parliaments will be able to prevent further discussion in the Council of EU legislative proposals, where they believe power should lie with national legislatures. The fourth area of social benefits and free movement is a more complex one. The Conclusions acknowledged the position of Great Britain on restricting free movement rights with future enlargement but did not specify anything in that regard. It did clarify the interpretation of current EU rules, including that member states may take action to prevent abuse of rights or fraud, such as marriages of convenience, and that in assessing the potential threat of an individual’s behaviour, member states may take into account the individual’s past conduct and act on preventative grounds. The Commission and member states will improve efforts to prevent abuse and fraud. Also, the free movement rights of non-EU family members of EU citizens would be restricted by amendments made to the free movement directive. It would also put in place an ‘emergency brake’ to limit full access to in-work benefits by newly arrived EU workers if a member state is experiencing an ‘exceptional situation’, for which Great Britain met the criteria. It also gives an option to member states to index exported child benefits to the conditions of the member state where the child lives (Lang & Miller & Harari & Kennedy & Gower, 2016).⁵⁷

The agreement would only become effective on the date that the British government would inform the Secretary-General of the European Council that Great Britain has chosen to remain an EU member. If Great Britain would vote no at the referendum, the set of arrangements would cease to exist. The conclusions were called ‘New Settlement for the United Kingdom within the European Union’. It could only be amended by unanimous agreement of all member states. Since the Settlement is compatible with the EU treaties it would not have to be ratified by the member states. Certain aspects concerning economic governance and sovereignty would need to be ratified as Treaty changes in the future (Weiss & Blockmans, 2016; Lang & Miller & Harari & Kennedy & Gower, 2016). In a speech at the end of the European Council, Cameron claimed to have achieved “*the best of both worlds*” for Great Britain. The new deal transformed the EU into an “*enrichment opportunity*” for Great Britain, which it “*could benefit from or ignore depending on its usefulness*” (BBC, 2016c; Weiss & Blockmans, 2016). That a deal with

⁵⁷A new settlement for the United Kingdom within the European Union. Extract of the conclusions of the European Council of 18-19 February 2016, C69 1/01. 23.02.2016.

Great Britain was made, showed the willingness of other EU member states to keep Great Britain in the European Union. The deal provided Cameron with the political capital he needed to set a referendum date and start his campaign for staying inside the European Union. According to Weiss and Blockmans (2016) the deal is important for other reasons as well, for example because it marks a '*watershed acknowledgement*' that integration in the EU is not a one-directional process of an 'ever closer union', but member states can walk different paths. In addition, it sets a precedent '*whereby one member state successfully held the rest of the EU to ransom until its demands were met*'. Also, the deal laid down the commitment that secondary EU legislation will be changed or adapted at the time of the next revision.⁵⁸

On February 20 Cameron announced that the referendum would be held on June 23. In the referendum campaign that followed, the economy, immigration and sovereignty were the main subjects. In general, most of the major parties, businesses, trade unions and international organizations were in favour of remaining in the EU. The Conservative party was split, with Cameron campaigning for remaining in the EU and others such as Boris Johnson campaigning to leave (Hobolt, 2016). The official government stance on the future of Great Britain and the EU was that the UK's national interests were best served if the UK would remain an EU member and '*the unique nature of our membership of the EU gives the UK a special status within the organisation: a status that no arrangement outside the EU could match. This is the best of both worlds – offering us key benefits for jobs and growth that we could not have outside the EU, but the freedom to choose not to take part in other activities, which are not in the UK's interest*' (HM Government, 2016a). With regard to the economy, the leave-campaign said that Great Britain would be better off outside the EU, because then they would be able to seal their own trade and partnership deals with other countries. They also focussed on the supposed costs of the EU for Great Britain. However, most economists and financial institutions pointed out the disadvantages of Great Britain outside the EU (Craig, 2016). In addition, the International Monetary Fund in a statement in May 2016 found out that because there was uncertainty over the outcome of the referendum, this already had an impact on investment and economic activity fell to the weakest levels in three years. With regard to immigration, the Leave camp tapped in to the public's concerns about immigration, just as UKIP had been doing. With regard to sovereignty, the Leave camp portrayed the EU and Brussels as a machine imposing rules on the member states against their will. What they did not show however is that even though Great Britain would be out of the EU in the case of Brexit, if Great Britain would want to do business with the EU they would still have to comply with all the rules and regulations, although they would not have a say in what those rules would be (Craig, 2016). In addition, the Leave campaign did not present a scenario for what would happen after Brexit. On June 23 2016 the referendum took place and British voters had to answer the question 'Should the United Kingdom remain a member of the European Union or leave the European Union?'. On June 24 2016 the referendum results were officially announced. The turnout of the referendum was 72.2% and 51.9% voted to leave, whilst 48.1% voted to stay in the EU. Britain thus would leave the European Union (BBC, 2016a; Electoral Commission, 2016).

In this part of the chapter we have seen that the relationship between the UK and the EU which was normalized under Blair, has stagnated since 2010. Euroscepticism and domestic and internal party difficulties caused Cameron, pressured to find a solution to the problems, to not see any other option than promising a referendum on membership. That the other member states were willing to negotiate with Great Britain on a deal first, shows the willingness of the EU to keep the Union together. The Settlement can be seen as a further deepening of the personalized membership that Great Britain had developed with the EU as well. The Settlement and subsequent referendum campaign also make

⁵⁸ A new settlement for the United Kingdom within the European Union. Extract of the conclusions of the European Council of 18-19 February 2016, C69 1/01. 23.02.2016.

painfully clear again that Great Britain is not an EU member out of ideological perspectives, but purely economic ones.

4.6 Conclusion

In this chapter the aim was to make clear how British membership came into being and how it evolved through the years. The corresponding question in this chapter was *what have been characteristics of UK membership to the European Union?* We have seen that the road to accession was a difficult one with two vetoes on the application and shortly after accession renegotiations on the entry terms as well. The relationship between Great Britain and the EU worsened during the Thatcher years and Britain became isolated from the other member states. In the 1990s the personalized membership of Britain with the EU really started to develop with opt-outs. The UK-EU relations changed for the better and became normalized and friendlier under Blair. However, Euroscepticism and domestic and internal (party) struggles ultimately led to the promise of a referendum on EU membership and finally to the referendum in which it was decided that Great Britain would be leaving the EU. Great Britain got the reputation as an ‘awkward partner’ early on and has not really lost this reputation, although both Thatcher and Blair had important roles in EU development with regard to the SEA and enlargement. Another thing that became more and more clear is that Great Britain is an EU member purely for economic reasons and nothing else. Political integration has been counteracted from the beginning and British leaders tried to push for widening of the EU instead of deepening and further (political) integration. The chapter also touched upon the importance of the concept of Parliamentary sovereignty for Great Britain. Since the beginning the British governments had issues with handing over sovereignty to the EU and its institutions and ultimately the importance of Parliamentary sovereignty in the UK can be said to have been one of the push factors of the Brexit. There are thus five main characteristics which can be subtracted from this chapter, which are: the difficult UK-EU relationship, personalized membership, being a member for economic reasons instead of ideological reasons, widening instead of deepening of the EU and the importance of parliamentary sovereignty.

Chapter 5. The Brexit

The fourth chapter ended with the Brexit referendum in Great Britain of June 23 2016. This fifth chapter picks up where we have left of with the leading question *what is the Brexit process like and what could be the future of UK-EU relations?* The first part will look at the first six months after the referendum. The second part deals with the Miller case and the invoking of Article 50 TEU. Afterwards, the third part looks at the start of the official Brexit process up until July 2017. The fourth part of the chapter looks at possible alternatives for EU membership.

5.1 The withdrawal of Great Britain: the first six months

On June 24 2016 the referendum results were officially announced. The turnout of the referendum was 72.2%, of which 51.9% voted to leave, whilst 48.1% voted to stay in the EU (BBC, 2016a; Electoral Commission, 2016). Britain had thus voted to leave the European Union. A direct effect of the referendum was the resignation of David Cameron on June 24 and in addition, the Pound Sterling plunged to its lowest rate in three decades (Kennedy, 2017; Stewart, Mason & Syal, 2016). The big question that had to be answered was: what now? The results were there and the majority of people voted to leave the EU, so what were the consequences of this vote? For this, it would seem logical to go back to the European Referendum Act of 2015, which made it possible for a referendum to take place in Great Britain on membership. However upon reading it is clear that there is nothing in the Act on what happens after the results are in, it only deals with everything up to and including the referendum.⁵⁹ The European Communities Act of 1972 which made it possible for the UK to enter the EU, also does not say anything about a procedure for withdrawal.⁶⁰ Since there is nothing on what to do next in the Referendum Act or the ECA, one could go back to Article 50 TEU which, as we have seen in chapter 3, makes withdrawal from the European Union possible. Article 50 states that the member state that wants to withdraw should notify the European Council of its intentions, after which negotiations for a withdrawal could take place. If a withdrawal agreement could not be reached, after two years, the Treaties will cease to apply. This Article thus states what is to happen in the long-run but not what should happen in the short term.⁶¹

On July 13 Theresa May became the new Prime Minister after a couple of weeks of uncertainty of who would succeed Cameron with also Boris Johnson and others in the race. When May declared her candidacy she said “*Brexit means Brexit*”. May named David Davis as Secretary of State for Exiting the European Union (Craig, 2016; Kennedy, 2017). In his role as Secretary, Davis is responsible for the work of the Department for Exiting the European Union. He will be working with the Parliament and other relevant parties on the approach Great Britain will take in the withdrawal negotiations with the EU. In addition, he will also be conducting the negotiations with the other EU countries (gov.uk, 2016a). His main negotiating partner from the EU is Michel Barnier, who was named ‘Chief negotiator in charge of leading the European Commission’s taskforce for the Preparation and Conduct of the Negotiations with the UK under Article 50 TEU’ by European Commission President Juncker on July 27 2016 (European Commission, 2016).

On September 16 the European Council met officially for the first time without Great Britain in Bratislava. At the meeting, the 27 EU member states discussed and assessed the common future of the

⁵⁹ European Referendum Act 2015. Retrieved from <http://www.legislation.gov.uk/ukpga/2015/36/contents/enacted>.

⁶⁰ European Communities Act 1972. Retrieved from http://www.legislation.gov.uk/ukpga/1972/68/pdfs/ukpga_19720068_en.pdf.

⁶¹ Treaty of Lisbon, Article 50 TEU, OJ C306 (2007).

European Union now that one state had decided to leave, as well as the political consequences of a Brexit for the EU (European Council, 2016). Three weeks later, on October 2, Prime Minister May stated at the Conservative Party's annual conference that she was planning to invoke article 50 TEU by the end of March 2017. In addition, she announced that there would be a so-called Great Repeal Bill which would repeal the 1972 European Communities Act (Elgot, 2016; Penny & Morales, 2016; BBC, 2016b). This Bill was one of the most important next steps according to Secretary Davis, when he made a statement in the House of Commons on October 10 on the next steps in leaving the EU.⁶² He said that the Government wants to “*deliver an exit in the most orderly and smooth way possible, delivering maximum certainty for businesses and workers*” (Davis, 2016). On November 21 Davis and Barnier met for the first time in Brussels. This meeting was not to negotiate the Brexit, but it was a first acquaintance where they agreed that formal talks would not start before Great Britain had invoked Article 50 TEU. In addition, they decided to work towards an ‘orderly withdrawal’. Davis also met with Guy Verhofstadt, who is the Brexit negotiator for the European Parliament (Ross & Hayden, 2016). Barnier met with the other member states to discuss a possible timeline for Brexit as well. He stated that a deal had to be concluded by the second half of 2018 if May triggered Article 50 by the end of March 2017 (Simenas & Wishart, 2016). As we have seen in chapter 3.3, many questioned if a two-year period would be feasible. Barnier seems to think it is possible, which is also what Brexit Secretary Davis has said in Parliament when he was asked if the negotiations could be completed within two years (Penny, 2016).

5.2 The Miller Case and invoking Article 50 TEU

As we have seen in previous chapters, Parliament is an important institution in Great Britain. After the Brexit referendum the question arose whether parliamentary approval would be needed for invoking Article 50 TEU. The Government had made it clear that it intended to trigger Article 50 TEU without the involvement of Parliament through the use of the Royal Prerogative.⁶³ The Government wanted to do this so as to avoid the more ‘EU-friendly’ people to have their say. In October 2016 the case was brought before the High Court and the Court's judgment was delivered in November. The High Court declared that the Government did not have the power to invoke Article 50 without input of Parliament. The Government appealed against this judgment before the Supreme Court, the highest Court in Great Britain, which held a hearing on December 5-8. The Supreme Court spoke their judgment in the ‘R (on the application of Miller and Dos Santos) v Secretary of State for Exiting the European Union case’ and dismissed the appeal of the Government on January 24 2017. It ruled by a majority of eight to three that the Government must seek an act of Parliament to trigger Article 50. It was stated that withdrawal from the EU would make fundamental changes to constitutional arrangements within Great Britain, which can only be made by Parliament according to the UK Constitution (Supreme Court, 2016; Supreme Court, 2017; Peers, 2017).⁶⁴

Since Prime Minister May had announced earlier that she intended to invoke Article 50 before the end of March 2017, she had to try to quickly get a bill through Parliament. Before a bill can become an Act of Parliament, it needs majority support from both Houses of Parliament, which can take time. Two days after the judgment of the Supreme Court, the Government published a bill of 137 words long

⁶² More on the Great Repeal Bill in chapter 5.3.

⁶³ The Royal Prerogative is basically a power that the Prime Minister and the Government have to make decisions without consulting the Parliament first on certain matters relating to defence, national security and foreign affairs. They have, for example, the power to negotiate and ratify international treaties (Barnett, 1998). It has to be noted here however that with regard to the EU, the only way this is possible is because of the European Communities Act of 1972, which is described in chapter 4.2. For more information on the Royal Prerogative, see Barnett, H. (1998). *Constitutional and Administrative Law*. London: Cavendish.

⁶⁴ For more information on the ‘Miller Case’ see <https://www.supremecourt.uk/news/article-50-brexit-appeal.html>.

entitled ‘European Union (notification of withdrawal) Bill’. It says that ‘*The Prime Minister may notify under Article 50(2) of the Treaty on European Union, the United Kingdom’s intention to withdraw from the EU*’ and ‘*This section has effect despite any provision made by or under the European Communities Act 1972 or any other enactment*’ (UK Parliament, 2017a; Buckle, Ross & Morales, 2017). In a fairly short time, the Bill came through the House of Commons, after which the House of Lords began debating on the Bill on February 20 (Kennedy, 2017; Buckle, Ross & Morales, 2017). The House of Lords proposed two amendments on March 1 and March 7 to protect the rights of EU nationals to remain living in Britain when the UK leaves the EU and to guarantee Parliament a ‘meaningful vote’ on the outcome of exit negotiations, which could then possibly be vetoed (Ross, Morales & Penny, 2017; Ross & Morales, 2017). Their amendments were overturned by the House of Commons however and on March 13 Parliament officially passed the Bill without amendments (O’Donnell & Penny, 2017; BBC, 2017b). On March 16 the Queen signed the Bill into law (BBC, 2017a; May, 2017b).

In the first couple of months in her position as Prime Minister, May had never been very explicit about the ‘blueprint’ of her idea of Brexit. The discussion was about Brexit being ‘hard’ or ‘soft’ and she repeatedly stated that immigration, withdrawing from the European Court of Justice (ECJ) and trade were the main priorities. On January 17 2017 May gave a speech at Lancaster House in London in which she laid out the Government’s Brexit ambitions in more detail. She also confirmed that both Houses of Parliament would have a say on the final deal that is to be agreed between the UK and the EU before it comes into force. She further stated that she does not want Great Britain to be a member of the Single Market and the priority would be to seek a “*bold and ambitious*” free trade agreement with the EU (May, 2017a). The Government’s plan, according to the January 17 speech, consist of twelve core objectives, which were explained in more detail in the ‘White Paper on Brexit’ which was published on February 2, after pressure from legislators and Parliament, as well as pressures stemming from the judgment in the Miller case (Penny, Morales & Ross, 2017). The White Paper is entitled ‘The United Kingdom’s exit from and new partnership with the European Union’. According to a statement from Brexit Secretary Davis in the House of Commons on February 2 on the publication of the White Paper, it confirms the Prime Minister’s vision of “*an independent, truly global UK and an ambitious future relationship with the EU*” (Davis, 2017a). The twelve core objectives are:

1. Providing certainty and clarity about the negotiations.
2. Taking control of our own laws and bring an end to the jurisdiction of the CJEU.
3. Strengthening the Union through securing a deal that works for the entire United Kingdom.
4. To protect the ties and Common Travel Area with Ireland.
5. Controlling immigration, controlling the number of people that come into the UK.
6. Securing the rights for EU nationals in the UK and UK nationals in the EU as early as possible.
7. Protecting worker’s rights.
8. Securing the freest and most frictionless trade possible in goods and services between the UK and the EU.
9. Securing new trade agreements with other countries
10. Ensuring that Great Britain remains the best place for science and innovation.
11. Cooperating in the fight against crime and terrorism with the EU and to uphold justice across Europe.
12. Delivering a smooth and orderly exit from the EU with a phased process of implementations (HM Government, 2017).⁶⁵

⁶⁵ More detailed information on the twelve core principles can be found in HM Government. (2017, February 2). The United Kingdom’s exit from and new partnership with the European Union. Retrieved from <https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper>.

According to Davis all the objectives amount to one goal which is “*a new, positive and constructive partnership between Britain and the EU, that works in our mutual interest*” (Davis, 2017a). The White Paper also reiterates the statement that a withdrawal agreement will be reached within two years “*we want to have reached an agreement about our future partnership by the time the two year Article 50 process has concluded*” (HM Government, 2017).

As we saw earlier, the Government’s European Union (notification of withdrawal) Bill was passed by Parliament in March. This was just in time for the promised invoking of Article 50 before the end of March. On March 29 the Permanent Representative of the United Kingdom in the European Union, Sir Tim Barrow, handed President of the European Council Donald Tusk the letter, signed by May on March 28, which invoked Article 50 (Asthana & Mason, 2017). In the letter May (2017b) stated “*I hereby notify the European Council in accordance with Article 50(2) of the Treaty on European Union of the United Kingdom’s intention to withdraw from the European Union*”. Included in the intention to withdraw from the EU was also an explicit intention to withdraw from the European Atomic Energy Community. In the letter May also spoke about the negotiations between the UK and the EU on a future partnership and she also laid down her proposed principles for the discussions (May, 2017b).

5.3 Start of the Brexit process and the Repeal Bill

With the official announcement and notification to the European Council that Great Britain wanted to withdraw from the European Union, the Brexit process had officially started. Since Article 50 prescribes a two-year period for coming to a withdrawal agreement, the date that Great Britain will officially leave the European Union is set for 29 March 2019. As we have seen, David Davis in his position as Secretary of State for Exiting the European Union is the main Brexit negotiator on the British side, besides from the Prime Minister of course. They are accompanied by Oliver Robbins, Permanent Secretary of the Department for Exiting the EU, who was Senior EU advisor to May when she first became Prime Minister. Sir Tim Barrow, who delivered the withdrawal letter to Tusk in his role as UK’s ambassador to the European Union, is also on the UK negotiation team. In addition, May appointed a Cabinet Committee which oversees the negotiations. The Committee tasked with the EU exit and trade negotiations consists of David Davis, Chancellor Phillip Hammond, Foreign Secretary Boris Johnson and Home Secretary Amber Rudd (Institute for Government, 2017a; BBC, 2017c; Department for Exiting the EU, 2017a; Department for Exiting the EU, 2017b).⁶⁶

European Council President Donald Tusk issued a statement on March 29 in a reaction to the letter from May. In this statement he said that he was not happy with the UK’s intention to withdraw and that he “*misses the UK already*”. Furthermore, he stated that he would share a proposal on negotiation guidelines with the other member states, which were to be adopted by the European Council on April 29 (Tusk, 2017). A statement from the European Council was also published on March 29 in which the European Council stated that it would approach the withdrawal talks with Great Britain in a constructive way and that it will strive to come to an agreement and have Great Britain as a close partner for the future (European Council, 2017). With regard to the negotiations with Great Britain, the EU institutions have appointed their lead negotiators. As we have seen Michel Barnier has been appointed by the European Commission. In addition to Barnier, Sabine Weyand was named the European Commission’s Deputy Chief Negotiator. From the European Council the President Donald Tusk is the main negotiator and spokesperson. The Council of the European Union has appointed Didier Seeuws, who will be tasked with the positions of the 27 member states and with shaping the long-term

⁶⁶ More information can be found on the Department for Exiting the European Union website, <https://www.gov.uk/government/organisations/department-for-exiting-the-european-union>.

relationship with Great Britain. The European Parliament has appointed Guy Verhofstadt to act as its representative (Institute for Government, 2017b; BBC, 2017c).

The negotiation guidelines that were adopted by a Special European council on April 29 2017 set out the overall positions and principles in light of which the European Union, which is represented by the European Commission, will negotiate with Great Britain. The guidelines state that the 27 Member States ‘will keep its unity and act as one’ during the negotiations. It also stated four core principles for the negotiations, which are that the European council:

- reiterates their wish to have the UK as a close partner,
- reiterates that any future deal will need to be based on a balance of rights and obligations and ensure a level playing field,
- stresses that the integrity of the single market must be preserved, which means the four freedoms are indivisible and excludes any cherry-picking,
- states that a non-member cannot enjoy the same rights and benefits as a member (European Council, 2017a).

After the negotiation guidelines were adopted, the EU Council met again on May 22 in a so-called General Affairs Council to make the necessary arrangements for starting the negotiations, such as adopting a decision that would authorise the beginning of the official negotiation talks with Great Britain. The Council also adopted a set of negotiating directives that sets out the official EU position for the first phase of the negotiations. Important in this first phase would be to have an orderly withdrawal which includes the rights of EU citizens in the UK and UK citizens in the EU, a financial settlement and Ireland. In addition, preparations for the first round of talks began and a dedicated working party was created to assist the Council and the Committee of Permanent Representatives on all matters related to the British withdrawal (European Council, 2017b).

The first round of talks on Brexit commenced on June 19 2017, which officially started the negotiations between Great Britain and the European Union. Since withdrawal is unprecedented and it is not really described anywhere what the process should look like, the first day was dominated by laying foundations for future discussion. An agreement was reached on the terms that would guide the negotiations, in a document called ‘Terms of Reference for the Article 50 TEU negotiations’. The document dealt with the negotiation structure, negotiating texts and other documents, languages that would be used and public messaging.⁶⁷ On the first day Davis and Barnier also discussed citizen’s rights, on which a detailed paper was to be published by the British Government a week later to share the UK’s approach to the issue with the other member states. It was further agreed that a meeting between Davis and Barnier (including their negotiating teams) would take place every month (European Commission, 2017; Department for Exiting the EU, 2017c; Davis, 2017b). Davis stated after the meetings that “*today marks the start of a journey, for the United Kingdom and for the European Union. There is a long way to go, but we are off to a promising start*” (Davis, 2017b). After the first round of talks on Brexit, there was a European Council meeting as well on June 22 and 23 in which the UK took part. Important issues on the agenda were, of course Brexit, as well as counterterrorism and climate change, issues that will remain important to the EU also after Brexit (May, 2017c; European Council, 2017c). The EU27 (the European Union without Great Britain) also spoke about relocating EU institutions that are located in London: the European Medicines Agency and the European Banking Authority. A decision on the relocation will be made, by vote, in November 2017 (European Council, 2017d).⁶⁸ In the first round of

⁶⁷ For further details on the terms agreed, see European Commission. (2017, June 19). Terms of Reference for the Article 50 TEU negotiations. Retrieved from https://ec.europa.eu/commission/sites/beta-political/files/eu-uk-art-50-terms-reference_agreed_amends_en.pdf.

⁶⁸ More on this decision in European Council (2017, June 22). Procedure leading up to a decision on the relocation of the European Medicines Agency and the European Banking Authority in the context of the UK’s withdrawal from the Union. Retrieved from <http://www.consilium.europa.eu/en/meetings/european-council/2017/06/22-23/>.

talks two of the problems with Article 50 that were mentioned in chapter 3.3 have already been discussed; the rights of citizens and the relocation of EU offices located in the withdrawing state.

The second round of talks took place from July 17-20. There were four main issues that were discussed at this meeting; citizen's rights, a financial settlement, issues surrounding Ireland and other withdrawal matters. Three sub-negotiation groups were established to cover citizens' rights, the financial settlement and other separation issues. The issues with Ireland and the governance of the withdrawal agreement will not be addressed in sub-groups. With regard to citizens' rights, some progress was made and talks would be continued in the next meeting. In addition, a joint paper will be published on the matter. With regard to the financial settlement, it is important that the mutual obligations are clear, which will need some further work. On the matters relating to Ireland and Northern Ireland mechanisms were discussed to preserve the Common Travel Area and the rights that are associated with that. Discussions also took place on separation issues such as Euratom and legal cases that are pending before the European Court of Justice (Davis, 2017c; Barnier, 2017a; Department for Exiting the European Union, 2017d).

In chapter 5.1 we have seen that May announced a so-called Great Repeal Bill that would repeal the 1972 European Communities Act. A White Paper on the Great Repeal Bill was published on March 30 2017, one day after the withdrawal notification. Davis (2017d) said in a statement that for a smooth and orderly exit, the Great Repeal Bill is of great importance. The ECA will be repealed by the Bill on the day that Great Britain leaves the EU. However, it is not enough to just repeal the ECA since that would create large gaps in the law with regard to matters that are currently regulated by EU law. The Bill therefore will also convert certain parts of EU law into UK law. In addition, the Bill will create the necessary powers to correct the laws that do not operate appropriately once the UK has left the EU, so that the UK legal systems continue to function correctly outside of the EU (Department for Exiting the European Union, 2017e). On June 21 the Queen gave a speech in which she announced the 'European Union (Withdrawal) Bill', after which it was published by the Government on July 13 entitled 'the Repeal Bill'. The Bill has to pass through Parliament, so July 13 was also the day that the Bill was introduced in the House of Commons for the First Reading. The Bill then has to go through a Second Reading on September 7 2017, after which there will be a Committee Stage, a Report Stage and a Third Reading. If this process is finished, the Bill will go to the House of Lords, where it will pass the same steps. Then, possible amendments will be considered by both houses after which the Bill can be given Royal Assent (UK Parliament, 2017b).

In chapter 4.2 we have seen that the European Communities Act of 1972 gave effect to EU law in Great Britain and that it incorporated the EU law into the UK domestic legal order. Since in the British legal order the sovereignty of Parliament is the ultimate principle, this Act was necessary to make it possible for Acts of Parliament and Community Law to co-exist. As we have seen through the years, EU law has supremacy over UK law in case of conflict. The Repeal Bill will reverse the EU supremacy, so that Parliament is totally sovereign again and UK law regains its supremacy on the day that Great Britain leaves the European Union (UK Parliament, 2017c). Although the repealing of the European Communities Act is important, it is actually just a small part of the Repeal Bill. The gaps that will appear in UK law when the ECA is repealed is the more difficult part that takes up most of the Repeal Bill text. We saw in chapter 4.2 that sections 2(1), 2(2), 2(4) and 3(1) were the most fundamental parts of the Act. However, the Great Repeal Bill only refers back to sections 2(1) and 2(2). Section 1 of the Repeal Bill simply states *'The European Communities Act 1972 is repealed on exit day'*. Section 2 of the Repeal Bill refers back to section 2.2 of ECA which stated that the executive has the power to give effect to obligations from the Community. Section 2 of the Repeal Bill states that *'EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day'*, in which *'EU-derived domestic legislation'* means *'any enactment that is made under section 2.2 of ECA, but it does not include any enactment contained in the ECA'*.

Section 4 of the Repeal Bill refers back to section 2.1 of the ECA. Section 4 states that ‘*any rights, powers, liabilities, obligations, restrictions, remedies and procedures*’ which, immediately before exit day are either ‘*recognized and available in domestic law by virtue of section 2.1 of ECA*’ or ‘*enforced, allowed and followed accordingly*’, continue on and after exit day to be recognized and available in domestic law (UK Parliament, 2017c).⁶⁹

From these referrals in the Repeal Bill, we can conclude that not all parts of the ECA will be repealed. The parts in which it says that EU law has supremacy over UK law are the main areas that will be repealed. The Repeal Bill thus states in broad terms what will happen with regard to the ECA and the EU law in UK law, but it is not specific and extensive enough to deal with all matters relating to UK and EU law in the future. Since repealing the ECA and transforming EU law into UK law is such a large undertaking, one could wonder if the Repeal Bill might be too simplified and if it is thought through enough. In addition, the Repeal Bill will repeal the ECA on the day that Great Britain will leave the EU, but this timeframe might not be feasible for all the work that has to be done. Besides this, the future relationship between Great Britain and the EU, that has yet to be determined, will be very important for which parts of the EU law in the UK will be repealed. It is said by the British Government that they do not want too many disruptions for businesses et cetera, therefore the question is which parts of EU law will stay in place. To repeal all EU law would be enormously labour intensive.

5.4 The future of UK-EU relations

Now that the Brexit process is on its way and the first couple of rounds of negotiations have taken place, it is interesting to look at possible future UK-EU relations. It is possible that the outcome of the negotiations will be agreed on in a withdrawal agreement, which Article 50 TEU accommodates for. However, it could also be the case that the withdrawal agreement will be more of an ‘exit deal’ and that the precise future relationship between the EU and the UK will be agreed on in another official document. Since Article 50 is uncharted territory it is not clear what will happen exactly. With two of the options mentioned below, the European Economic Area (EEA) and the European Free Trade Association (EFTA), a withdrawal agreement would not suffice and another treaty would have to be concluded with that organization (Piris, 2016; Craig, 2016; Lazowski, 2016b).

Ever since the promise to hold a referendum of Cameron in January of 2013, people have speculated about what could be a possible future relationship between Great Britain and the European Union. Two of the most mentioned options are Great Britain becoming a part of the EEA (also called the Norway model), or the so-called Swiss model. The EEA is the model which is most integrated with the Single Market and is what Piris (2016) called ‘the simple option’. It is ‘simple’ because the legal framework that is necessary already exists and the economic relationship with the EU would not change much, except for EEA countries being outside of the CAP and the Common Fisheries Policy (CFP). If Great Britain would become part of the EEA it would pay almost as much as it pays now to the EU budget, it would have to continue with the free movement of labour and it would have to apply all the Single Market rules and regulations with the difference that the UK would have no say in them. Great Britain would only be involved in decision-shaping at the earliest stages. The UK would also be subject to the EFTA Court instead of the European Court of Justice. If the UK wants to become a part of the EEA, it has to sign an accession treaty which would have to be ratified by all the 30 EEA member states, which is the EU member states and Norway, Iceland and Liechtenstein. The second option is the so-called Swiss model. Switzerland has a unique relationship with the EU consisting of more than 100 bilateral agreements and it is part of the Single Market for goods, but only limited for services. In this

⁶⁹ European Communities Act 1972. Retrieved from <http://www.legislation.gov.uk/ukpga/1972/68/contents>.

case complying with EU regulations in the Single Market for goods is necessary, as well as accepting the free movement of people. Switzerland is not bound by judgments of the ECJ or EFTA Courts, however Switzerland does have to contribute financially for being allowed to trade in the EU Single Market. The EU is not happy with the current model and is negotiating a new relationship (Piris, 2016; HM Government, 2016b; Wessel, 2017; Lazowski, 2012; Institute for Government, 2017c).

Besides the EEA and the Swiss Model there are basically four other options. One of those options is becoming part of the EFTA while staying out of the EEA. This would lead to only few economic advantages however, seeing that the trade agreement with the EU only covers some fish and agricultural products and no services. Another option is also called the Turkish model of a customs union. Great Britain would then be able to trade with the EU tariff-free and would thus have access to the single market in goods, however it would have to accept the EU's common external tariff. EU rules and regulations have to be adopted as well without having a say in them. Turkey does not have access to service markets and does not benefit from EU trade agreements with other countries. A fifth option is agreeing on a Free Trade Agreement (FTA) with the EU, in which tariffs would be lower than the international World Trade Organization (WTO) standards. Payments would have to be made into the EU budget and the free movement of labour has to be accepted as well. Great Britain would also have to adopt future EU laws on the internal market and have to apply rules on, amongst others, health and safety and competition policy. A sixth option is making no agreement and relying on justt WTO rules when trading. This means that tariffs would be applied and there would be no bilateral agreements to promote trade. In addition, it would restrict access to the market in services. Trading deals with other countries also have to be agreed since Great Britain would not be able to rely on any of the EU trading deals with other countries and customs controls at borders need to be re-established (Piris, 2016; Institute for Government, 2017c; HM government, 2016b).

With all the above mentioned options it is the case that if Great Britain wants to have access to the Single Market it would have to comply with EU rules and regulations, without really having a say in them. The EEA would be the simple option with the most access to the Single Market, but has as its downside, in addition to complying with the rules without having a say, the free movement of labour and payments into the EU budget. A model like the Swiss model could look attractive to Great Britain, but since the EU is not happy with the current model it is not likely to happen. In the Chatham House speech in 2015, then Prime Minister David Cameron also touched upon the subject of future UK-EU relations. He dismissed both the Norwegian and the Swiss model, saying that with the Norwegian model, *“Europe’s political interference would actually grow, rather than shrink”*, because of all the rules and regulations that Norway has to adopt, which where more than 10.000 in twenty years (Cameron, 2015).

None of the options mentioned above thus seem to be a great fit for Great Britain. There is a seventh option, which is not an existing option, but is a new customized relationship between Great Britain and the European Union. This seems to be the option that Great Britain is aiming for as well. Both May and Davis have said in speeches and statements that the UK will be looking for a new arrangement with the EU that would facilitate the freest and most frictionless trade in goods as possible (Davis, 2017a; May, 2017a). This is also what is being discussed in a recent Government document called ‘Future customs arrangement: a future partnership paper’. It states that the Government believes that there are two kinds of approaches; a highly streamlined customs arrangement or a new customs partnership with the EU. In addition, a transition period is mentioned to help minimize disruptions and provide certainty for businesses and individuals (UK Government, 2017).

If a customized relationship is what will come into being, it will be dependent on the negotiations between Great Britain and the European Union. What would be key elements in such a customized relationship? Great Britain’s aim would of course be to keep policies that would benefit the national interest, while getting rid of policies that are contrary to British interests. Based on the research up till now, from an economic perspective, one of the main subjects would be the Single Market. Trade

is very important for the UK economy and having access to the internal EU market would be very beneficial to Great Britain seeing that UK-EU trade takes up almost half of British total imports and exports. Prime Minister May has stated that Great Britain will not remain a member of the Single Market, so they have to find another way to still be allowed as much access as possible (2017a). Important to note here is that the UK does not like the free movement of people part of the internal Market, so they would want to get rid of that aspect. In addition to the free movement of people, the UK has historically had issues with both the Common Agricultural Policy (CAP) as well as the Common Fisheries Policy (CFP), so they would want to get rid of those policies as well.

From a legal perspective, an important issue will be the role of the Courts. The UK will want a relationship with the EU in which no EU Court would have any say in the UK. In addition, the status of EU citizens in the UK and UK citizens in the EU is important, as well as the status of British citizens working for EU institutions. This is also apparent from the fact that this was one of the first and main points in the negotiations between the UK and the EU. Besides the status of citizens, the relationship with Ireland and Northern Ireland is an issue. As we have seen mechanisms were discussed already in the second round of negotiations to preserve the Common Travel Area and the rights that are associated with it.

From a policy perspective cooperation in matters relating to Justice and Home Affairs is of importance. As we have seen in chapter 4, Great Britain has the ability to opt-in or opt-out to legislation and initiatives in JHA matters on a case-by-case basis. They would like to keep this arrangement as close to what it is currently like. Cooperation on matters relating to Justice and Home Affairs is important to national but also international security. For example Europol, the law enforcement agency of the EU, or the European Arrest Warrant (EAW), which allows for EU states to issue warrants requesting another member state to surrender a person within 90 days. The EAW has proven to be very effective and beneficial to the UK since its establishment in 2004. The UK would therefore like to remain part of such a policy or obtain a very close alternative. In addition to Justice and Home Affairs, immigration is another subject that has proven to be important both in the path leading up to the referendum, as well as in the Brexit process. One of the twelve core objectives that we have seen in chapter 5.2 was controlling immigration. The UK in the 1990s had opted out of the Schengen agreement that abolishes border controls and takes care of the free movement of people. However, as with the JHA they currently have the ability to opt-in to policies that they deem beneficial. The UK therefore would like to search for an agreement in the negotiations with the EU in which they would have full control over their own borders but could work together in international projects that would benefit the UK.

Of course there are many other important issues that need to be discussed in the withdrawal negotiations between Great Britain and the European Union. But with regard to the path leading up to the referendum and the period leading up to and after the invoking of Article 50 in March of 2017 the above mentioned subjects from an economic, legal and policy perspective are amongst the subjects that will be negotiated first because they are focal points for Prime Minister May and the Brexit negotiators from Great Britain.

5.5 Conclusion

The aim of this chapter was to look at the Brexit process from the referendum of June 23 2016 until the Repeal Bill of July 2017. In addition it looked at alternatives to EU membership. The corresponding question in this chapter was *what is the Brexit process like and what could be the future of UK-EU relations?* Since withdrawal from the EU is unprecedented, it is not clear what will happen exactly (and when) and there is little guidance from Statutes and Treaties. The Miller case was one of the first key

moments in Great Britain after the referendum in which it was questioned whether the Government would need approval from Parliament to invoke Article 50. As we have seen a judgment was delivered and a 'Brexit Bill' was approved, after which Prime Minister May invoked Article 50 on March 29 2017 and the official Brexit process began. The British Government published the so-called Repeal Bill in July 2017 which will repeal the ECA 1972 and will bring EU law into UK law and therewith end the supremacy of EU law and Courts over British law and Parliament. In addition, both Great Britain and the EU have established negotiating teams and the first two rounds of negotiation talks have taken place in June and July 2017. What is noticeable in the Brexit process so far, is that no real thought had been given in Britain as to what was to happen when people voted to leave the EU in the 2016 referendum. Consequences of a withdrawal from the EU were not thought of or set out. What we saw in this chapter as well, is that withdrawal is especially difficult from a legal perspective, because of the degree of integration between Great Britain and the EU and the enormous amount of EU law that is in place in Great Britain. The negotiations with the EU have only been underway for a short time, therefore complexities of the withdrawal are just becoming clearer and new problems keep popping up.

With regard to future UK-EU relations, Great Britain has roughly seven options to choose from of which six are already existing models. The simplest option would be for Great Britain to become part of the EEA to maximize access to the EU internal market. However it is more likely that Great Britain will aim for a customized (customs) relationship with the EU of which the precise terms and regulations have to be agreed on in future negotiations.

Chapter 6. Conclusion

This final chapter will be the concluding chapter which aims to answer the main research question *what does the withdrawal of Great Britain from the European Union entail?* This will be done in chapter 6.1, after which chapter 6.2 will discuss the limitations of the research and 6.3 will give suggestions for future research. Chapter 6.4 then shortly looks at the current state of affairs in Great Britain, roughly six months after Article 50 was invoked.

6.1 Great Britain and withdrawal from the European Union: final conclusions

In order to answer the main research question, four sub-questions were formulated of which the answers together form the answer to the main research question. The first two chapters dealt with preliminary questions about accession and withdrawal to and from the European Union, which were necessary to be able to look at Great Britain's accession and withdrawal processes in chapters 4 and 5. The aim of this thesis was to look at what the withdrawal of Great Britain from the European would entail. We have seen throughout this thesis that withdrawal is a very complex process. This was already shown in chapter 2, where we saw what the rules and procedure are for accession, which got more and more intricate over time. Chapter 2 answered the first sub-question, which was *what does the process of accession to the European Union encompass?* The aim in this chapter was to give an overview of the history of EU enlargement, accession rules and accession procedure. The chapter gave an overview of EU enlargement from the 1950s and shows how accession rules and procedure have changed over the years. In the 1990s official rules and a more detailed accession procedure were established. Currently, accession is governed by article 49 TEU, of which the chapter gave an in-depth look. Article 49 TEU provides a short overview of the steps that a country needs to take and the rules that it needs to follow and comply with to become an EU member, such as accepting the entire EU *acquis communautaire*. The accession rules and procedure have an enormous impact on the national structure of a country.

In addition to the complexity of accession to the European Union, before the Treaty of Lisbon of 2009, the option of withdrawal from the EU was never really thought of. There were no provisions in the EU treaties that explicitly dealt with withdrawal. Sub-question 2 therefore was *how is withdrawal governed by the EU treaties?* This question was answered in chapter 3. We have seen that Greenland withdrew from the EU in the 1980s. However, since Greenland is officially a part of the Kingdom of Denmark, it was not a real withdrawal from a member state but more of a redefinition of the territory of an EU member state. Currently, withdrawal is governed by Article 50 TEU, which is why this chapter took an in-depth look at this Article. There has been quite a lot of criticism on the Article, which was discussed in the chapter as well. The chapter thus looked at how a withdrawal would work, and it concluded that since Article 50 TEU is not comprehensive enough to direct a withdrawal from A to Z, a withdrawal agreement between the EU and the departing state will be very important.

After chapters 2 and 3 showed the complexities of accession and withdrawal, the focus shifted to Great Britain. Chapter 4 answered sub-question 3 which was *what have been characteristics of the UK membership to the European Union?* This chapter had as its aim to look at how British membership of the EU came into being and how British membership evolved through the years with the referendum as its culmination. Accession to the EU was a long and difficult process for Great Britain. The problems were not over when Britain had finally become a member however. The chapter looks at two British politicians that have marked the evolution of British EU membership, Thatcher, who was Prime Minister from 1979-1990 and Blair, who was Prime Minister from 1997-2007. With the accession process and in the Thatcher years you could speak of prejudiced coexistence between the UK and the EU. Relations

were tense and Great Britain became isolated from the other member states. In the 1990s with Blair becoming Prime Minister, the UK-EU relationship seemed to become friendlier. Blair was more focused on improving UK-EU relations and for Britain to be in a leading role in Europe instead of being an isolated member. Although the relationship between the UK and the EU improved during the Blair years, Euroscepticism gained more and more headway in the UK. This, in combination with domestic challenges, ultimately led to a more strained relationship between the UK and the EU and to Prime Minister David Cameron promising a referendum on continued EU membership before 2017. The chapter also showed that Britain created its own personalized membership with the European Union, which really started with the opt-outs they obtained from the Treaty of Maastricht and the Treaty of Amsterdam in the 1990s. Five main characteristics were subtracted, which were: the difficult UK-EU relationship, personalized membership, being a member for economic reasons instead of ideological reasons, widening instead of deepening of the EU and the importance of parliamentary sovereignty.

After chapter 4 showed the troubled relationship and personalized membership of Great Britain with the EU, chapter 5 had as its aim to make clear what the Brexit process was like from the day after the referendum of June 23 until the Repeal Bill that was published in July 2017 and to look at possible models for future UK-EU relations. The corresponding sub-question here was therefore *what is the Brexit process like and what could be the future of UK-EU relations?* Since withdrawal from the EU is unprecedented, it is not clear what exactly will happen and when it will happen, and there seems to be little guidance from Statutes and Treaties. After the referendum, it was questioned whether the Government would need approval from Parliament to invoke Article 50. As we have seen, a judgment was delivered by the Supreme Court that the Government did need approval from Parliament and a 'Brexit Bill' was published. After the Bill was approved, Prime Minister May invoked Article 50 on March 29 2017 and the official Brexit process began. Both Great Britain and the EU have established negotiating teams and the first two rounds of talks have taken place in June and July 2017. Great Britain also published the so-called Repeal Bill in July 2017 which will repeal the ECA 1972 and will bring EU law into UK law and therewith end the supremacy of EU law and Courts over British law and Parliament. The chapter also looked at possible future relations between Great Britain and the EU. Great Britain has roughly seven options to choose from of which six are models that already exist. The simplest option would be for Great Britain to become part of the EEA to maximize access to the EU internal market. However, it is more likely that Great Britain will aim for a customized (customs) relationship with the EU of which the precise terms and regulations have to be agreed on in future negotiations.

Chapter 2 thus showed how accession to the EU works with all the rules and procedures. Chapter 3 did the same for withdrawal. These chapters combined show how complex it is to become an EU member, but also to withdraw from the EU. It almost seems like accession to the European Union is less complex than withdrawing from the European Union. This is the case because accession has fixed rules and regulations and requirements that a country has to fulfil to be able to become an EU member. Withdrawal is unprecedented and there are few rules and regulations which make for a complex process. Depending on the length of the membership, a country has far-reaching integration and intertwining with the EU. With the decision to withdraw everything has to be untangled.

With regard to the far-reaching integration and intertwining with the EU, this is especially complex from a legal perspective; EU law is totally interwoven with domestic law. Therefore, in case of withdrawal, the withdrawing state has to make a choice between keeping parts of EU law but transfer it to domestic law or start all over again. This might be even more complicated in the case of Great Britain since it has a different political tradition than most other EU member states. As we have seen in chapter 4.2, Great Britain has a dualist approach to international law, which means that it regards the systems of national and international law as separate. In addition, the ultimate principal of the legal order of Great Britain is the sovereignty of Parliament. Therefore, to be able to accede to the EC, Great Britain had to create a legal framework to be able to integrate the EU legal framework in the domestic one, which was

done through the European Communities Act of 1972. This Act will be repealed by the Bill of July 2017, however just repealing the Act is not sufficient because it would leave large gaps in places which used to be regulated by EU law. Furthermore, the EU is an important trading partner and to be able to keep trading, EU rules and regulations need to be met. Therefore Great Britain will have to decide if there are EU laws they want to keep, for example with regard to EU trade regulations.

Parliamentary sovereignty could be said to be one of the push factors for Brexit. All throughout the British accession process and membership the question of sovereignty arose. Especially when sovereignty had to be handed over to EU institutions to further EU integration. Great Britain has never been a proponent of political integration in the EU, they became an EU member purely from a benefit perspective. The EU for Great Britain has nothing to do with ideology, it is a project which should be beneficial to the UK's national interests. Great Britain should benefit from EU membership, especially economically and in the area of security. A variable geometry Europe would therefore be what Great Britain would really want, a sort of Europe à la Carte, in which they could pick and choose in which parts they want to cooperate. The personalized membership that was created with the opt-outs is a version of this, but it was not enough. With the renegotiations and subsequent Settlement that Cameron reached with the EU in February of 2016, it was also said that Great Britain would not have to be a part of further political integration and 'the ever closer union'. However, people still voted that they wanted to leave the EU in the referendum in June. Other important push factors that came up in the run-up to the referendum were immigration, the EU budget and overall EU interference. We have seen in chapter 4 that the payments to the EU budget had been a lengthy problem since accession. The view that is created in Great Britain by, among others, the media, is that the EU costs Great Britain a lot of money while there are no real benefits. In chapter 4 we have also seen that Great Britain has an opt-out to the Schengen agreement, so for EU standards they have quite a lot of control over their borders. Still, immigration is an important subject in Great Britain, which Eurosceptic parties like UKIP 'use' to gain popularity.

Besides this and the fact that Great Britain has historically been an 'awkward partner' to the EU, Great Britain also helped shape and develop the European Union. We have seen in chapter 4 that Thatcher was an important force behind the creation of the SEA, of which the creation of the single market was a core element. In addition to SEA, Great Britain had also pushed for enlargement of the EU since the beginning and especially under Blair. This had to do in part with the idea of widening instead of deepening of the European Union that almost all British Prime Ministers were a proponent of.

Now that the Brexit process has commenced, the question arises if it will be easier for Great Britain to leave the EU, than it would be for another member state, because of the personalized membership that they have created. Because of the opt-outs with for example the AFSJ, it could be the case that withdrawal would be smoother in those areas. The answer to this question can only really be given after Brexit has taken place, and actually best if another member state would chose to withdraw as well. Intuitively, you would say that the personalized membership will make it easier to withdraw, but despite negotiations going smoother in those opt-out areas perhaps, there are enough other stumbling blocks.

Looking at the first few months of the Brexit process of Great Britain, one could ask if Brexit might actually be more politically challenging than technically challenging. What we have seen in the Brexit process from the beginning is that not much thought was given to the consequences of a Brexit or what would happen after the UK decided to leave the EU. No regulations were put in place before the referendum to deal with the outcome and aftermath. This first period of the Brexit process shows that withdrawal is very complex and actually would benefit from extensive preparations on the side of the withdrawing state. It could also be said that with regard to future relations between the UK and the EU and the withdrawal agreement, British expectations might be set too high. What the British

Government put out that they want to achieve in the position papers, does not show a realistic view on the future of UK-EU relations, at least not from an EU perspective. This could be said to be quite typical in the history of the UK-EU relationship, with the personalized membership that the UK has created and the fact that the UK wanted to further integration with for example the creation of the Single Market in the 1980s, however political integration or institutional reform was not seen as necessary. Great Britain in general might have a slightly too simplistic view of the European Union and what it means to be an EU member or what it means to withdraw. Included in this simplistic view are ideas about future relations with the EU as well. Great Britain would like to retain as much of their influence, however, they want to adopt their own rules and regulations instead of complying with the EU rules and regulations.

6.2 Limitations of the research

The aim of this research was to look at the process of withdrawal from the European Union. Since membership and accession in chapter 2 and 3 have answered important preliminary questions and chapters 4 and 5 were a case study on Brexit, the research has been quite extensive. However, the scope of the research made it necessary to select certain areas to focus on. In addition, since the withdrawal process is unprecedented, no comparison can be made to other withdrawal processes. The question can be asked then as well if this research is generalizable, because chapters 4 and 5 were specifically focussed on Great Britain. Besides this, the official withdrawal process only recently started, therefore the main focus in this research has been on what had to happen to make it possible for the withdrawal process to start and on the first months of the withdrawal process.

6.3 Future research

As we have seen, the Brexit process is far from over. With regard to further or future research options, it could be very interesting to follow the negotiations closely. In addition, the possible withdrawal agreement would also be very intriguing, as well as what will be decided on future relations between Great Britain and the European Union. When Brexit has taken place, it would also be interesting to look at the process again. What were key points in the negotiations, key moments in the withdrawal process and what were the bottlenecks? It would then also be useful or informative to analyse if the withdrawal process of Great Britain from the EU could serve as a blueprint for possible future withdrawals. If another country decides to withdraw from the EU, one can look at how withdrawal went with Great Britain and what lessons can be learned from the British withdrawal.

6.4 Six months later

Negotiations and discussions on the future relations between Great Britain and the EU are currently taking place. The aim of both parties, at the moment, seems to be to come to an ‘orderly withdrawal’ and a withdrawal agreement. However, as we have seen in chapter 5.4 a withdrawal agreement could not include all forms of possible future relationships between Great Britain and the EU and another document might be needed to take care of that part of the withdrawal. Since the Repeal Bill and second round of talks of July 2017, there has been a third round of talks on August 28-31. In the lead-up to the third round of talks, position papers have been published by Great Britain on issues relating to

withdrawal. The third round of talks followed up with the subjects of the second round: citizen's rights, a financial settlement, the withdrawal agreement and other separation issues. Barnier said in a statement after the third round of negotiations that no decisive progress was made on the main subjects but progress has been made on the issue of the Common Travel Area with Ireland (Barnier, 2017b). He also said that *"the UK wants to take back control, it wants to adopt its own standards and regulations. But it also wants to have these standards recognized automatically in the EU. That is what UK papers ask for. This is simply impossible. You cannot be outside the Single Market and shape its legal order"* (Barnier, 2017b).

Some progress has thus been made, but the negotiations are not easy. Both Barnier and May have said that the pace of negotiations may have to be stepped up (Barnier, 2017b; BBC, 2017d). The current schedule is that meetings take place once a month, but time is passing quickly and in this tempo the deadline of March 2019 might not be reached. In theory, to be able to reach the March 2019 deadline, there is roughly 18 months to negotiate, so that would be until the autumn of 2018. By February 2019 the European Parliament should have given its consent on the withdrawal agreement and the Council should conclude the agreement, after which the deadline of March 2019 can be reached. If this is not the case then Great Britain could ask for an extension of the two-year timeframe, but it would not be ideal for both parties if the negotiations drag on, and it is said that the British Government does not want to ask for an extension (Cowburn, 2017). Nothing is being discussed yet about the future of UK-EU relations after Brexit. One can imagine that these discussions will also take up a lot of time, so it will probably be beneficial for both parties to step up the pace of the negotiations.

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Appendix 1. The Member States of the European Union

Year of entry	Countries
1 January 1958	Belgium France Germany Italy Luxembourg Netherlands
1 January 1973	Denmark Ireland United Kingdom
1 January 1981	Greece
1 January 1986	Portugal Spain
1 January 1995	Austria Finland Sweden
1 May 2004	Cyprus Czech Republic Estonia Hungary Latvia Lithuania Malta Poland Slovakia Slovenia
1 January 2007	Bulgaria Romania
1 July 2013	Croatia

This information was retrieved from https://europa.eu/european-union/about-eu/countries_en#tab-0-1.

Appendix 2. Article 49 TEU

This is Article 49 of the Treaty on the European Union (Art. 49 TEU) that deals with joining the European Union and the accession process. It provides the legal basis for any European state to join the European Union.

Article 49

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 consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

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.

Retrieved from

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Appendix 3. Article 50 TEU

This is Article 50 of the Treaty on the European Union (Art. 50 TEU) that deals with withdrawal from the European Union.

Article 50

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.

Retrieved from

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Appendix 4. The European Communities Act of 1972

These are sections 2 (1), 2 (2), 2 (4) and 3 (1) of the European Communities Act of 1972:

2.-(1) All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed accordingly ; and the expression "enforceable Community right " and similar expressions shall be read as referring to one to which this subsection applies.

(2) Subject to Schedule 2 to this Act, at any time after its passing Her Majesty may by Order in Council, and any designated Minister or department may by regulations, make provision- (a) for the purpose of implementing any Community obligation of the United Kingdom, or enabling any such obligation to be implemented, or of enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Treaties to be exercised; or

(b) For the purpose of dealing with matters arising out of PART I or related to any such obligation or rights or the coming into force, or the operation from time to time, of subsection (1) above; and in the exercise of any statutory power or duty, including any power to give directions or to legislate by means of orders, rules, regulations or other subordinate instrument, the person entrusted with the power or duty may have regard to the objects of the Communities and to any such obligation or rights as aforesaid.

In this subsection " designated Minister or department " means such Minister of the Crown or government department as may from time to time be designated by Order in Council in relation to any matter or for any purpose, but subject to such restrictions or conditions (if any) as may be specified by the Order in Council.

(4) The provision that may be made under subsection (2) above includes, subject to Schedule 2 to this Act, any such provision (of any such extent) as might be made by Act of Parliament, and any enactment passed or to be passed, other than one contained in this Part of this Act, shall be construed and have effect subject to the foregoing provisions of this section ; but, except as may be provided by any Act passed after this Act, Schedule 2 shall have effect in connection with the powers conferred by this and the following sections of this Act to make Orders in Council and regulations.

3.-(1) For the purposes of all legal proceedings any question as to the meaning or effect of any of the Treaties, or as to the validity, meaning or effect of any Community instrument, shall be treated as a question of law (and, if not referred to the European Court, be for determination as such in accordance with the principles laid down by and any relevant decision of the European Court).

Retrieved from:

http://www.legislation.gov.uk/ukpga/1972/68/pdfs/ukpga_19720068_en.pdf.

Appendix 5. Chronology of Brexit



23 January 2013	●	Bloomberg Speech
10 November 2015	●	Chatham House Speech and letter to Tusk
17 December 2015	●	European Referendum Act
19 February 2016	●	New Settlement for the UK within the EU
23 June 2016	●	The Referendum
13 July 2016	●	May new British Prime Minister
24 January 2017	●	Miller Case Judgment
2 February 2017	●	White Paper on Brexit
29 March 2017	●	Article 50 TEU invoked by May
19 June 2017	●	First round of Brexit talks
13 July 2017	●	Repeal Bill published
17 July 2017	●	Second round of Brexit talks
28 August 2017	●	Third round of Brexit talks
29 March 2019	●	Brexit?