

CHAPTER 4: THE NEGOTIATION OF A FUTURE RELATIONSHIP

Two agreements, rather than one

31. Article 50(2) TEU requires that the withdrawal agreement “take[s] account of the framework” of the withdrawing Member State’s “future relationship with the Union”. Sir David said that the German language version of Article 50 made plain that the “structure of future relations will already have been established at the point when withdrawal takes place.”³⁷ Professor Wyatt agreed. He did not think that the withdrawal agreement would be able to “accommodate all the details of the future trading relationship”,³⁸ and so both agreements would be negotiated in parallel.³⁹ He emphasised that: “Co-ordination between the withdrawal treaty on the one hand and the future relations treaty on the other would be important. The UK’s aim would be to have a smooth transition between the past in the EU and the future in the new arrangement.”⁴⁰
32. Both witnesses agreed there would be a third negotiation: the remaining Member States would have to amend the EU Treaties to take account of the withdrawal of the Member State concerned. This would be a “housekeeping arrangement”, however, and would not involve the withdrawing Member State.⁴¹

The negotiation process

33. Article 50 does not set out the procedure for the negotiations on the future relationship.⁴² Nonetheless, in Professor Wyatt’s view:

“The essential bones of the negotiation would be the same. The Council would lay down a negotiating mandate to the Commission, which would get on with the job. Whatever the Treaty base, there would be a special committee working alongside. There would also be toing and froing between the European Parliament and the Commission.”⁴³

34. He thought the agreement on a future relationship would also be mixed, and so its conclusion in the Council would require consensus among the Member States.⁴⁴ If it were an association agreement,⁴⁵ that too would have to be concluded by unanimity in the Council.⁴⁶

The influence of the EU institutions

35. Professor Wyatt thought that the influence of the Member States would be considerable, as with the withdrawal negotiations:

“There would be deep involvement from the national Governments via the Council and the committee. Although the Commission would be

37 [Q 1](#)

38 [Q 4](#)

39 [Q 4](#)

40 [Q 11](#)

41 [Q 2](#) (Prof Derrick Wyatt)

42 [Q 4](#) (Prof Derrick Wyatt)

43 [Q 14](#)

44 [Q 18](#)

45 An association agreement with the EU is a comprehensive agreement (rather than limited to one area of policy) involving reciprocal rights and obligations. See further at para 37 of this report.

46 [Q 12](#); Article 218(8) [The Treaty on the Functioning of the European Union](#)