The UK’s ‘Exit Bill’

Post-Brexit Options for the UK: Combining Legal and Economic Analysis

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The Stakes

- European Commission: UK’s exit bill is €60 billion

- PM Theresa May, 17 Jan 2017, Lancaster House

“And because we will no longer be members of the Single Market, we will not be required to contribute huge sums to the EU budget. There may be some specific European programmes in which we might want to participate. If so, and this will be for us to decide, it is reasonable that we should make an appropriate contribution. But the principle is clear: the days of Britain making vast contributions to the European Union every year will end.”
To Pay or not to Pay

- Steve Baker, 28 March: ‘The legal position is that there’s no basis on which to compel us to pay any bill.’

- Nick Clegg, 28 March: ‘If you run up a tab behind a bar, for years and years and years, and you haven’t paid when you want to leave, you settle up.’

- German Finance Ministry, 28 March: ‘Any Article 50 agreement will have to include the UK’s assurances that it will honour the financial commitments it undertook as an EU member state.’

- Alex Stubb, 29 March: ‘The UK’s negotiating hand is by definition weak. All the EU has to decide is the bill and the time of exit. The rest is altruism.’
Future contributions vs. the exit bill

- Distinguish between future contributions to the EU and the settling of accounts
- Focus on the UK’s financial obligations on withdrawal from the EU
- Leave aside possible payments to access to the single market and future participation in EU programmes (e.g. ERC)
<table>
<thead>
<tr>
<th>Categories of Financial Obligations</th>
<th>Commission’s case</th>
<th>UK’s Share</th>
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<tbody>
<tr>
<td>1. Budgeted commitments prior to Brexit (reste à liquider)</td>
<td>Strong</td>
<td>£29-36 billion</td>
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<td>2. Promises of funding after Brexit</td>
<td>Medium</td>
<td>£17-21.5 billion</td>
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<td>3. Pensions for EU officials</td>
<td>Strong</td>
<td>£7.6-9.5 billion</td>
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<tr>
<td>4. Contingent liabilities: guarantees and loans</td>
<td>Medium</td>
<td>£9.5-11.9 billion</td>
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Source: Figures from Barker (2017)
Negotiating Dynamics

- EU27: resolve the UK’s financial obligations as a precondition for trade and transitional agreement

- UK: defer until the end, and link with future trade relations

- Bargaining position shaped by broader factors: e.g. who has more to lose from no withdrawal agreement (BATNA)

- Unclear what the UK could give in return for a compromise on financial commitments
‘On the basis of the legal opinions we have considered we conclude that, as a matter of EU law, Article 50 TEU allows the UK to leave the EU without being liable for outstanding financial obligations under the EU budget and related financial instruments, unless a withdrawal agreement is concluded which resolves this issue.” (para. 135).
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.
Article 70 (1) VCLT ("Consequences of the termination of a treaty")

Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

(a) releases the parties from any obligation further to perform the treaty

(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.
The relationship between Art 50 and Art 70

- Article 50 as an example of a withdrawal clause

- Does Article 50 supplant Article 70?
  - Yes, according to the House of Lords
  - Doubtful that complete contracting out of CIL

- Three VCLT provisions on withdrawal

- Only partial *lex specialis*; Article 50 focuses on procedure, Art 70(1)(b) on substance

- Presumption that no contracting out of CIL
“The jurisdiction of the CJEU over the UK would also come to an end when the EU Treaties ceased to have effect. Outstanding payments could not, therefore, be enforced against the UK in the CJEU.” (para. 133).
The legacy cost of the UK’s membership likely a contentious element of the negotiations

Could derail negotiations

But only ca 2.5% of UK annual GDP: compromise to spread over 6 years, with annual payments of €7-10 billion; could be presented as the global cost of Brexit