

BRENTRY: Could The UK Rejoin The EU?

Hello, my name is Vincent Power and I'm from A&L Goodbody. In this brief podcast I explore the question of whether the United Kingdom could rejoin the European Union despite having left. Could the UK rejoin the European Union?

Could we move from Brexit to Brentry? That is to say the reentry of Britain to the European Union. Indeed of course it would not just be Britain, i.e. Scotland, Wales and England which would rejoin but also Northern Ireland, Gibraltar and the two UK sovereign bases in Cyprus which also slipped out of the EU silently on 31 of January 2020.

The simple answer is yes, they could rejoin the EU. The more complex answer is that it would be very difficult. Indeed the longer the UK is out of the EU the harder it will be to rejoin because the EU will evolve and we're probably acquiring new powers which some in the UK could find very difficult to accept.

So it's useful maybe to unpack the problem into its constituent parts. First, relatively few states ever leave international organisations. Many threatened to do, for example Indonesia threatened to leave the United Nations because Malaysia was joining the UN Security Council but it stayed.

When states do leave international organisations there's usually a good reason. For example, the UK left the European Free Trade Association under Article 42 of the EFTA convention because the UK was then joining the European communities on the 1 of January 1973.

Sometimes states leave for political reasons. For example, the United States left the International Labor Organisation in 1977. Ireland left the British Empire or the Commonwealth as Zimbabwe was suspended and then withdrew from the Commonwealth but has since reapplied to join.

The United States withdrew from the UN Human Rights Council in 2018. And indeed of course in 2020 the United States under President Trump announced that it was leaving the World Health Organisation, something which the Soviet Union also threatened in 1949.

And Canada left the World Trade Organisation in 2013 because the organization had appointed Robert Mugabe of Zimbabwe to a leadership position in the organization. So fundamentally, states do leave international organisations, but it's relatively rare.

Secondly, many states which leave then rejoin. They rejoin the organizations which they have left. A change in leadership or circumstances usually ensures that it's politically possible to rejoin. For example, in regard to President Trump's threat on the 7 of July 2020 to leave the World Health Organisation, President-elect Joe Biden has said that he will renounce the threatened withdrawal on the very first day of office.

So there will only be a gap of 197 days from the threatened withdrawal to the renunciation of the withdrawal. But it can take longer. France rejoined the NATO military command after a gap of 43 years.

Rejoining is, however, usually only a matter of a few years. For example, the US rejoined the International Labour Organisation after three years. So the second point is, yes, states do leave, but they usually rejoin.

So thirdly, could the UK just simply rejoin the EU? And Article 50, do you remember that infamous or famous Article 50 that everyone spoke about but few had ever read? Article 50 of the Treaty and the European Union actually contemplated this possibility of a state such as the UK rejoining. And Article 50, paragraph 5 states, '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.' And that is the rub.

That cryptic remark referring to Article 49 hides a great deal. When Article 50, paragraph 5 says, '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,' it means that there is no revolving door for the UK.

It simply cannot re-enter. It cannot, like, Bobby Ewing in the television series Dallas, who left the series, but then reappeared out of the shower, and everyone pretended that nothing had happened. Now, if you can remember Dallas, you're of a certain age, or if you're not that old, then you clearly have been watching too much daytime television.

Anyway, the upshot is that the UK has to reapply like any other state. It has to convince its member states, or its fellow member states, that it would be committed to the values of the EU. The European Parliament and the national parliaments of the then existing member states must be notified of its application.

Moreover, and this is really important, the EU's European Council, all the Prime Ministers of the member states, plus the President of France, must unanimously approve the UK's accession. That's not new, but that need for unanimity was exactly why it took the UK 12 years to join in the first place.

De Gaulle's France simply vetoed the UK's accession. And while many states would welcome the UK backward, open arms, it is not inevitable that all states would always do so, and much turns on the circumstances at the time.

Remember, it requires unanimity. And while divorcees, sometimes we marry, they usually marry other people. So perhaps the UK might try to create other international organisations. But if it wanted to rejoin the EU, all the then member states, and I reiterate, all the then member states, would have to be convinced that the UK was going to stay. And this time it was to be forever.

But there is another complication. When a state joins or accedes to the EU, it must accept all of the laws of the EU as they stand at that time. It's called accepting the *acquis*, the *acquis Communautaire*. That is to say all the law which has been literally acquired or obtained at that time, more accurately all the law in the EU which has been adopted at that time. So an exceeding state must take EU law as it finds it and abides by it.

So when Ireland joined in 1973, Ireland had to accept the EU law as it was at that time. Now there can be some exceptions and carve outs, that's certainly possible, but it would be at the margins, warden at the centre.

And the chances are that the EU will integrate further in the next few years, particularly because the UK, which was often a break on EU integration, will not be around to stop it integrating further.

Brexiters might say that while the British cat is away, the federal mice will play. Therefore, the longer the UK is away, and the more the EU integrates, the more difficult it will be for the UK to rejoin. Unless, of course, the consequences of Brexit are so negative for the UK that it feels the need to rejoin despite the political price to pay.

If it were to do so, then the UK's businesses and citizens would reacquire all the rights and privileges which they would have lost as a result of Brexit, but there would also have to be a sharing of sovereignty, and probably a deeper sharing of sovereignty, because the EU would be integrated even further.

So the UK rejoining is not impossible, but it would be more difficult than many people would imagine.