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Brexit and How the EU Can Help the UK With Some Decision-making
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When UK voters went to the polling stations on June 23 this year, many people who voted to leave the EU did not expect to win the referendum. For them, the key issues were to stop the unrestricted flow of people from other EU countries into the UK and to abolish the supremacy of EU legislation over UK laws. The Brexiteers won and the UK is set to leave the EU after having joined in 1973.

The UK will be formally deemed to have left the EU two years after triggering Article 50 of the Treaty of Lisbon. This treaty became law in December 2009 and Article 50 has never been invoked. Prime Minister Theresa May told the country that she will invoke Article 50 by the end of March 2017 which would mean that Britain would leave the EU no later than April 2019. Mrs. May became an MP in 1997 and much of what she has done has led to her being called the Deaf Ostrich. After the referendum she was advised to allow Parliament to debate the outcome of the referendum. She did not take that advice.

In 1961, Britain first made an application to join the erstwhile named European Common Market (later the European Economic Community and then the European Union), which was rejected. From 1969, it took three years for Britain to negotiate membership and in 1972 Parliament passed the European Communities Act which allowed the then Prime Minister, Edward Heath to sign up to membership in Brussels.

When the six founding European states created the European Economic Community in 1957 they did so in the form of an international treaty (known as the Treaty of Rome; the Treaty of Lisbon and the Treaty of Maastricht merely fine-tuned some of the agreements) which was binding between them. That treaty also created the European Court of Justice. In an important ruling in 1964, the Court said that the states had agreed to limit their sovereign rights in the areas covered by the treaty and could not adopt national laws which were incompatible with European law. This principle of 'primacy' or supremacy of EU law has been accepted and applied by national courts including the UK courts. This is what Brexiteers want to overturn: by leaving the EU, the UK will no longer accept the primacy of EU law.

In a referendum in 1975 the UK electorate voted to stay in the EEC under renegotiated terms of entry. But in 2016 the tables were turned.

After facing the potential disgrace and humiliation of a government defeat, Mrs. May finally agreed to a debate in Parliament over the Brexit negotiating strategy. This concession did not go as far as specifying that MPs should get a formal vote on Article 50 or any Brexit deal. However, it did mean there would have to be a substantive parliamentary debate on No 10's

strategy at a later date before the UK embarked on Brexit. For most people, this meant the House of Commons would have to broadly approve the negotiating position before Article 50 could be invoked. Once again, Mrs. May ignored this and she said after the debate that it was the government's prerogative to decide on when to trigger Article 50. Members of Parliament disagreed saying that seeing as it was an Act of Parliament, not a governmental decision, which allowed the Prime Minister to sign the entry form, it should be an Act of Parliament allowing the government to invoke Article 50. Then again Mrs. May ignored the advice of wise colleagues and, as a result, the court was asked to adjudicate.

On November 2, the judgment came: the High Court said that the Prime Minister cannot activate Article 50 of the Lisbon Treaty without the approval of Parliament. Mrs. May immediately launched an appeal to the Supreme Court and she is sticking to her plan to apply formally for an EU exit by the end of March. Why does she not want Parliament to approve the triggering of Article 50? The answer is that in debating the subject of invoking Article 50, she will have to outline what are the goals of the negotiating team facing the EU and she does not wish to put her cards on the table before she has negotiated that deal. Not only that, but with Parliament being allowed to approve the triggering of Article 50, the Commons will have eroded some of the power she has come to like. Well, we have all seen where that goes. Just think Putin and Erdogan to name a couple who have too much of it.

With these considerations in mind, one has to wonder what Mrs. May will do if the Supreme Court upholds the High Court ruling. The Brexiteers would just love it if she asked the European Court of Justice to over-rule the judgment of a UK court. Can you imagine the hypocrisy of asking the European Court to over-rule a judgment of a UK court thereby enabling Britain to avoid being subject to the supremacy of the European Court? At the moment, that is permitted but what for nickname would Theresa end up with? The erudite editor of the IRL will offer a prize for the best suggestion….