

## UK Triggers Brexit Process

March 29, 2017

Firm General and Europe

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Today, the UK Prime Minister, Theresa May, formally triggered the process of the UK's withdrawal from the EU ("Brexit") by invoking Article 50 of the Treaty on European Union. This is the first time an EU Member State has used the Article 50 mechanism. This marks the beginning of the two-year period in which an arrangement for Brexit must be agreed and finalized. If no agreement is reached—and if there is no unanimous agreement among all other EU Member States to extend the two-year period—the UK will cease to be a member of the EU with no replacement or transitional arrangement in place. The letter triggering Article 50 has been described by Prime Minister May as "one of the most important documents in [the UK's] recent history and will start to deliver the result of the referendum and set the tone for [the UK's] new relationship with Europe and the world."

Separate to the process of withdrawal, the UK Government is expected to publish a White Paper tomorrow setting out its plan for the UK regulatory environment after Brexit. It has previously set out its initial Brexit Strategy in a White Paper on February 2, 2017. It is anticipated that the UK Government will introduce draft legislation in the form of the "Great Repeal Bill" that will, far from repealing EU law, enshrine into UK law all EU law that is in force on the day of Brexit. Thereafter, the UK Government will review the 19,000 legislative acts derived from EU law and seek to either amend, repeal, or maintain those laws.

### Next Steps

Despite the UK triggering the process for Brexit, formal negotiations between the UK and EU will not start yet.

- The President of the European Council (which consists of heads of state and government of the Member States), Donald Tusk, will distribute his draft response to Prime Minister May's letter and the draft Brexit guidelines among the leaders of the EU Member States excluding the UK by the end of the week. These guidelines will set out, at a high level, the EU's ambitions for the Brexit negotiations. It could take some weeks for the other 27 EU Member States (the "EU-27") to reach consensus on these ambitions in order to start the more formal process.
- On April 29, 2017, a summit of the European Council—but without the UK—will meet to discuss Brexit. At this meeting, the EU-27 will agree guidelines for the European Commission's Brexit negotiating team.
- Once these guidelines are agreed, the European Commission will publish and propose to the Council of the European Union (which represents Member States' governments at a level below the head of state or government) the draft negotiation mandate. This will be more detailed and technical, as compared to the European Council ambitions, and

will likely set out recommendations for each area under negotiation as part of Brexit. The Commission will conduct a scoping exercise and compile an impact assessment (which may include a public consultation) before proposing the negotiating mandate. We understand that the majority of this work has already been done.

- The Council of the European Union must then approve the Commission's draft mandate. Only then can the European Commission begin the negotiations; and they may wait until the final outcome of the French presidential election is known on May 7, 2017. Negotiations may therefore only begin in May or June 2017. The German parliamentary elections in September may also influence negotiations. As such, the period after these elections will be critical.
- The negotiations must also be completed in good time to allow the Council and the European Parliament to ratify the deal—and to allow for any further changes to be negotiated, should these prove necessary. In practice, this means they must be completed in the last quarter of 2018. Indeed, the lead negotiator for the European Commission, Michel Barnier, has called for talks to be completed by October 2018.

### What to Expect

There is still considerable uncertainty as to how the negotiations will be structured, and what can be expected in terms of both procedure and substance over the next two years. Specifically, the question of “sequencing or parallelism” is unclear—i.e., will the exit and new trade relationship be negotiated in sequence or in parallel. On April 5, 2017, the European Parliament will vote on a draft resolution on Brexit. A leaked copy of the draft resolution indicates that European negotiators only intend to conclude the future UK-EU relationship after the UK has withdrawn from the EU, but that arrangements for the UK's withdrawal will take account of the proposed framework for the future UK-EU relationship.

Once talks start, it is expected that they will focus initially on:

- “citizens' rights”: the rights of EU nationals living in the UK and British individuals living and working in the EU;
- the “exit bill”: what, if any, payments the UK will have to make to the EU's budget to cover current and future liabilities;
- the EU's external border;
- clarification of the status of the UK's international commitments made as an EU Member State (e.g., as part of EU trade deals with third countries); and
- legal certainty for legal entities, including companies.

In her letter to Donald Tusk, UK Prime Minister Theresa May also called for a Free Trade Agreement establishing the future relationship between the UK and the EU be negotiated in parallel with the Article 50 talks, and completed within the same two-year time frame. The European negotiators are unlikely to begin such negotiations immediately, and certainly not until the process for the Article 50 talks is agreed. Such agreements typically take a decade to negotiate, and even given the current integration of the UK regulatory regime into the EU's, it is unlikely that a Free Trade Agreement will be reached—and ratified by the EU and its Member States—in this time frame.

It is hoped a deal on the UK's exit from the EU can be reached, approved, and ratified in good time before the end of the Article 50 two-year period, on March 29, 2019. Whether this timeframe is achievable remains to be seen. As part of the exit negotiations, the two sides are likely to seek a transitional arrangement to be applied in the likely event a final deal cannot be reached within this timeframe. The leaked draft European Parliament resolution (see above) indicates that the EU will seek to limit the scope of any such transitional deal in both its scope and duration—of no more than three years.

### Implications for Business

Our Brexit Task Force is staffed by senior lawyers and advisors across London, Brussels, and Washington. We monitor events and keep clients apprised of legal, regulatory, and policy developments. We can advise clients across a wide range of businesses and industries on the impact and implications of Brexit, including on strategic policy and regulatory issues pertaining to:

- **Employment and Immigration:** the employment status of EU nationals in the UK, and UK nationals in the EU; workforce planning and minimizing the impact of the Brexit vote on both employee relations and the wider business;
- **Corporate:** deal opportunities created by the fall in the value of the British pound; the likely effect of Brexit on a number of corporate structures established in EU legislation; how to structure EU-UK joint ventures or projects to protect against the likely consequences of Brexit for EU-specific corporate structures;
- **Data Protection:** the UK's implementation of the GDPR; EU-UK data flows after Brexit, including negotiations on a UK-EU "Privacy Shield"; advising on status of UK corporate "main establishments" and Binding Corporate Rule programs post-Brexit;
- **Regulatory Integration:** risks to business of regulatory fragmentation; the likelihood of securing bespoke agreements for specific sectors, such as pharmaceuticals, air transport, and financial services; strategies to advocate EU-UK regulatory integration in specific fields with UK and EU decision makers;
- **Cross-border Supply Chains and EU-UK Trade:** the likely form of an EU-UK Free Trade Area and its implications for trade, manufacturing, and supply chains; work to protect the free flow of goods by region (e.g., special economic zones, sectorial agreements in the free trade area), including public policy and regulatory advice to secure such arrangements;
- **International Trade:** the likely effect of the models adopted for Brexit on future UK trading relationships with the EU, U.S., and other jurisdictions; the consequences of the UK's likely position outside the EU Customs Union on rules of origin; restructuring trade flows to minimize disruption and identify opportunities in the models for post-Brexit UK-EU trade arrangements; support and outreach in UK-EU trade negotiations.

We are also advising clients on sector-specific issues, including life sciences, IT and technology, and financial services.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Europe practice:

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Please [click here](#) to view Sebastian Vos's interview on CNBC's Squawk Box on March 29, 2017, where he discusses the upcoming Brexit negotiation process.

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

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