

Negotiating Brexit

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Outline of presentation

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1 The requirements of Article 50 and the timetable

- A Member State (MS) may decide to withdraw from the EU ‘in accordance with its own constitutional requirements’
(Article 50, Treaty on European Union)
- The MS must notify the European Council of its intention to withdraw

1 The requirements of Article 50 and the timetable

- The Treaties cease to apply to the MS from
 - (i) date of entry into force of any withdrawal agreement, **or**
 - (ii) if no such agreement, two years after the notification is given, **unless**
 - (iii) the European Council unanimously decides to extend the period and MS agrees

1 The requirements of Article 50 and the timetable

- European Council issues guidelines for negotiations
- Negotiations proceed ‘in the light of’ the guidelines’ and Article 218 (3), TFEU
- The agreement reached should set out the arrangements for withdrawal ‘taking account of the framework’ for the MS’ ‘future relationship with the Union.’

1 The requirements of Article 50 and the timetable

- The agreement is concluded on behalf of the EU by the Council (i.e. Council of Ministers), acting by a qualified majority.
- The Council must obtain the consent of the European Parliament.
- A qualified majority means at least 72% of the members of the Council representing MSs comprising at least 65% of the population of these States. i.e. at least 20 of the MSs must vote for the agreement.

1 A possible timetable

29 March 2017	UK gives Article 50 notification
29 April 2017	European Council (EU27 format) meeting adopts guidelines for Brexit talks
May 2017	4 days after European Council meeting, the Commission presents to the Council a recommendation to open the negotiations
June 2017	Negotiations between EU and UK begin
November 2017	UK Parliament enacts Great Repeal Bill
January 2018	Discussions begin on post-Brexit trade deal
October/November 2018	Time by which a 'deal' negotiations must be agreed between UK and EU Council.
November 2018 - March 2019	EU Parliament must approve deal and UK Parliament must approve deal
29 March 2019	UK leaves the EU (subject to extension of timetable)

2 The parties in the negotiation

The UK

Responsibility for negotiations and preparation for Brexit is divided between three UK departments:

- The Department for Exiting the EU (DExEU)
- The Foreign and Commonwealth Office
- The Department for International Trade

The EU

- Chief Negotiator (Michel Barnier)
- The European Parliament
- The Commission
- 27 Member States

3 UK internal processes and requirements

- The UK Parliament is sovereign; there are no ultimate constraints on its legislative power.
- The European Union (Notification of Withdrawal) Act 2017 conferred power on the Prime Minister to notify the EU of the UK's intention to withdraw.
- Notification under Article 50 was given on 29 March 2017.
- Responsibility for negotiations and preparation for Brexit is divided between three UK departments
 - The Department for Exiting the EU (DexEU)
 - The Foreign and Commonwealth Office
 - The Department for International Trade

4 UK internal processes and requirements

- Legislation will be required to give legal effect to Brexit – the ‘Great Repeal Bill’.
- There is no statutory requirement to consult Parliament during negotiations; however,
- By convention, Ministers are accountable to Parliament.
- Ministers have stressed that they will not provide a running commentary on the Brexit negotiations.
- It is unclear how much influence the opposition, backbenchers and the Lords will have on Ministers.
- The General election result will affect the ability of Ministers to control Parliament .

4 UK internal processes - devolution

- Foreign affairs is a reserved matter in the devolution legislation .
- Therefore, in law, decisions on leaving EU and on the UK's future relationship with the EU are entirely for the UK Parliament and Government.
- There is no legal requirement to obtain the consent of devolved institutions to Brexit deal.
- Nor does constitutional convention require such consent.
- There is no requirement in law or convention that the devolved governments participate in negotiations with the EU over Brexit.
- But, Sewel convention may require consent to necessary legislation.

4 UK internal processes - devolution

- However, the PM has emphasised that the interests of all parts of the UK will be taken into account and that the devolved administrations will be full involved.
- Before the EU referendum, the input of the devolved governments to EU matters was governed by non-statutory MoUs and concordats e.g. the *Devolution: memorandum of understanding and supplementary agreement* (September 2012) and the *Concordat on Co-ordination of EU Policy Issues*:

<https://www.gov.uk/government/publications/devolution-memorandum-of-understanding-and-supplementary-agreement>

- There was a Joint Ministerial Committee (JMC) which sometimes met in European format.

4 UK internal processes - devolution

- There is now a Joint Ministerial Committee on EU Negotiations (JMC(EN)) chaired by the Secretary of State for Exiting the EU
- members include ministers from each of the UK devolved administrations.
- JMC(EN) seeks to agree a UK approach to, and objectives for, negotiations, and to consider proposals put forward by the devolved administrations.

4 UK internal processes – devolution

- The UK government has not guaranteed that all powers currently devolved will remain so after Brexit:

*4.3 As powers are repatriated from the EU, it will be important to ensure that stability and certainty is not compromised, and that the effective functioning of the UK single market is maintained. Examples of where common UK frameworks may be required include where they are necessary to protect the freedom of businesses to operate across the UK single market and to enable the UK to strike free trade deals with third countries. Our guiding principle will be to ensure that **no new barriers to living and doing business within our own Union are created** [emphasis added] as we leave the EU.*

See White paper, *Legislating for the United Kingdom's withdrawal from, the European Union* Cm 9446

4 UK internal processes – devolution

- Brexit will require amendment of the devolution legislation
 - references to EU in devolution statutes will no longer make sense
 - Competences transferred to UK level?
- Sewel convention originally requires devolved consent for legislation by UK Parliament within devolved areas.
- Subsequently extended to cover UK legislation changing the competence of the devolved assemblies.
- What if devolved assemblies refuse to grant consent?

5 The main issues – what the UK wants

1. Providing certainty and clarity
2. Taking control of our own laws
3. Strengthening the Union
4. Protecting our strong and historic ties with Ireland and maintaining the Common Travel Area
5. Controlling immigration
6. Securing rights for EU nationals in the UK, and UK nationals in the EU
7. Protecting workers' rights
8. Ensuring free trade with European markets

5 The main issues – what the UK wants

9. Securing new trade agreements with other countries
10. Ensuring the UK remains the best place for science and innovation
11. Cooperating in the fight against crime and terrorism
12. Delivering a smooth, orderly exit from the EU

White Paper, *The United Kingdom's exit from, and new partnership with, the European Union* Cm 9417

<https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper>

5 The main issues – what the EU/MS want

- **A phased approach** giving priority to an orderly withdrawal.
- **Preserving the integrity of the Single Market** excludes participation based on a sector-by- sector approach.
- **Single package** Negotiations will be conducted as a single package - nothing is agreed until everything is agreed
- **Unity** No separate negotiations between individual MS and the UK
- **Future relationship** An agreement on future relationship can only be concluded after Brexit, but an overall understanding on the future relationship could be reached during second phase of negotiations
- **Transitional arrangements** If necessary, such might be agreed. must be clearly defined, time-limited , and subject to effective enforcement mechanisms.

5 The main issues – what the EU/MS want

- **Citizens' rights** reciprocal guarantees to settle the status and situations at the date of withdrawal of affected EU and UK citizens, and their families. Guarantees must be enforceable and non-discriminatory.
- **No legal vacuum** Negotiations should seek to prevent a legal vacuum once the Treaties cease to apply to the UK
- **A single financial settlement** should ensure that the EU and the UK both respect the obligations undertaken before the date of withdrawal - covering all legal and budgetary commitments as well as liabilities, including contingent liabilities.
- **Ireland** Avoid a hard border in the island of Ireland
- **Future free trade agreement** Any future agreement should be balanced, ambitious and wide-ranging, but cannot amount to participation in the Single Market or parts thereof. It must ensure a level playing field (competition and state aid, safeguards against e.g. fiscal, social and environmental dumping).

5 The main issues – what the EU/MS want

- Future relationship cannot offer same benefits as membership.
- **Enforcement and Disputes** Future partnership must include appropriate enforcement and dispute settlement mechanisms that do not affect the Union's autonomy, in particular its decision-making procedures.

6 The wider context – Trade deals and the WTO

- UK exporters of goods and services who want to do business in Europe will have to comply with EU law.
- Any future trade deal with non-EU states will be affected by the UK's future relationship with the EU and vice-versa.
- Membership of the WTO imposes constraints, although different from those of EU law.
- The UK's current membership of the WTO depends on membership of EU.
- On leaving EU current WTO tariffs etc. would cease to apply and UK would have to apply for membership:

*“Any state or customs territory having full autonomy in the conduct of its trade policies is eligible to accede to the WTO **on terms agreed between it and WTO Members**”.* [emphasis added] Article XII, WTO Agreement

6 The wider context – Trade deals and the WTO

- WTO tariffs work on ‘most-favoured-nation’ status – all members get the best available tariff.
- WTO regime liberalises trade in goods far more than trade in services.

Further Reading

HM Govt., *The United Kingdom's exit from and new partnership with the European Union* Cm 9417 (2017)

DExEU, *Legislating for the United Kingdom's withdrawal from the European Union* Cm 9446 (2017)

Scottish Government, *Scotland's Place in Europe* (2016)

<http://www.gov.scot/Publications/2016/12/9234>

European Parliamentary Research Service, *UK Withdrawal from the European Union* (2017)

http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/599352/EP_RS_IDA%282017%29599352_EN.pdf

Europa Website: https://europa.eu/european-union/index_en

House of Commons Library Brexit pages:

<http://www.parliament.uk/business/publications/research/eu-referendum/>

House of Lords Brexit round-up:

<http://www.parliament.uk/business/lords/work-of-the-house-of-lords/lords-brexite-round-up/>