

Article 50: The final countdown

29 March 2017

What has happened?

Prime Minister Theresa May has today formally notified the European Council President of the United Kingdom's intention to leave the European Union. Article 50 of the EU Treaty is the means by which a Member State can leave the EU. This is the first time it has ever been invoked.

Notification means that formal exit negotiations between the UK and the EU can begin, though the remaining 27 Member States (EU27) will first have to agree their own negotiating positions.

Despite its significance, today's announcement will come as no surprise to the British political establishment, institutional stakeholders in Brussels or representatives of the 27 countries that will remain members of the EU.

While the UK voted to leave the EU in a referendum that took place on 23 June 2016, Theresa May's government has used the last nine months to commence initial preparations for determining its key "asks" during the likely-arduous negotiation talks that now lie ahead.

What's next?

The clock is now ticking. Article 50 sets a strict two year timeframe for completing the exit process.

The first step is for the EU27 to adopt guidelines setting out the overall framework and principles for the negotiations. European Council President, Donald Tusk, is expected to present a draft of these guidelines over the next 48 hours. These are due to be agreed by the EU27 at an extraordinary European Council in Brussels on 29 April 2017.

Following that Summit, the European Commission – under its chief Brexit negotiator Michel Barnier – will produce detailed negotiating directives as well as a recommendation to open the negotiations with the UK. These will be approved by EU27 Ministers at a meeting of the EU's General Affairs Council, likely in May or June. The negotiations will then begin in earnest with a view to reaching a formal agreement.

While Article 50 stipulates a two year timetable, in reality a deal will need to be finalised by October/November 2018 in order to leave sufficient time for review by both the European Parliament (EP) and the UK Parliament – both of which will have the chance to cast a final vote on the package agreed.

Once the EP has provided its consent to the deal (though it can also reject it), the EU Council adopts the agreement by qualified majority (by 21 out of 27 states, which means that a single country is not able to veto the deal). As a departing member, the UK is not allowed to take part in this voting process.

The EU Treaties shall cease to apply to the UK on the date of entry into force of the withdrawal agreement. If no agreement can be found, the Treaties will automatically cease to apply within two years of Article 50 being triggered. The two year period can only be extended by a unanimous vote of all 27 Member States in the European Council.

Meanwhile in the UK, Theresa May's government is busy preparing for its departure from the EU. Last October, PM May announced plans to entrench all EU legislation into UK law through a new Great Repeal Bill that will replace the 1972 European Communities Act – the legal mechanism through which European law has hitherto become part of and, in some cases, superior to British domestic legislation. Further details of the Great Repeal Bill are expected to be published later this week.

The Bill will seek to directly replicate existing European law into British law in order to ensure these issues have a domestic legislative standing and to provide legal continuity. In common with all legislation passed through the UK Parliament, MPs and Peers (members of the House of Lords) will have the opportunity to debate the legislation before putting it to a vote.

After the Great Repeal Bill has been passed into law and the process of replication has been completed, the British Parliament will then seek to review, revise and

tweak the legislation in a manner it feels will benefit the UK in a post-Brexit landscape. The specific timetable for the precise publication of the final Great Repeal Bill remains unclear.

Who is involved?

The *European Commission* will be tasked with conducting the negotiations, under its chief Brexit negotiator Michel Barnier, a former European Commissioner and French Foreign Minister. The Commission has set up a special task force to coordinate its work.

The *European Council* – which represents the Heads of State or Government of the EU Member States – will take the final decision on the withdrawal agreement. It has appointed Belgian diplomat Didier Seeuws as its lead. Seeuws was Head of Cabinet of the first EU Council President Herman Van Rompuy.

The *Council of Ministers* - representing the full 27 Governments of the EU - will oversee the negotiating process. A dedicated working party has been established to ensure the negotiations are conducted in line with the European Council guidelines and the Council negotiating directives, and provide guidance to Barnier.

The *European Parliament* will also have a substantial role to play as it must either approve or reject the final deal. It has appointed its own Brexit lead, Belgian MEP and leader of the Alliance of Liberals and Democrats for Europe (ALDE) group Guy Verhofstadt.

For the *UK Government*, Prime Minister Theresa May will oversee all the negotiations with the Secretary of State for Exiting the European Union (DEXEU) David Davis taking a lead role in driving the intricacies of negotiations on specific topics. Inside DEXEU, Davis is supported by his deputy David Jones MP and Ministers Lord Bridges of Headley and Robin Walker MP, as well as by civil service officials in both London and Brussels



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including department head Oliver Robbins, and the UK's Permanent Representative to the EU, Sir Tim Barrow.

What will be discussed?

Article 50 negotiations will initially focus on the withdrawal of the UK from the EU rather than the future shape of the relationship.

Barnier has said that the priority for the talks will be to secure an "orderly withdrawal". He has said that finding agreement on the principles of the orderly withdrawal must come first before discussions on the future shape of the relationship between the UK and the EU. Those priority issues include the rights of EU citizens in the UK and vice versa; the UK's financial liabilities to the EU budget (the so-called 'Brexit Bill'); and finally, the new borders between the UK and the rest of the EU (particularly Northern Ireland and Gibraltar).

It is only once the principles are agreed that Barnier wants to move on to the wider question of the UK's future relationship with the EU, which will detail trading relationships, customs cooperation and guidelines on a wide range of policy issues. A whole range of commercial sectors both in the UK and EU will be looking closely for signs as to how their particular interests will be impacted by the negotiations. Several EU27 governments have already suggested that special deals for some of the UK's key sectors will not be countenanced.

In practice, the Article 50 agreement and talks on the future relationship are likely to be closely linked, with the British wanting to make as much progress as possible in providing certainty for business on the future relationship.

What does it all mean?

The hard work now begins, both for the negotiators but also for businesses which will need to closely follow the progress of the negotiations to assess their potential impact, sector by sector.

The Article 50 negotiations are likely to be a very detailed and technical process; the disentanglement of a Member State from the EU after four decades of membership will be a significant and unique challenge that has never before been attempted.

Parallel discussions on the post-Brexit deal will have a much broader policy and trade focus and are unlikely to be completed in two years. While both sides ultimately have a shared interest in an amicable settlement, issues such as the UK's financial liabilities could influence the negotiations from day one.

The final agreement setting out the future UK-EU relationship will ultimately come down to hard negotiation, politics and trade-offs.

BrexitResponseTeam@fticonsulting.com

Produced by FTI Consulting's Brexit taskforce.

For further information please contact:

Louise Harvey

+32 2 289 09 30

louise.harvey@fticonsulting.com



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