

Briefing
March 2017

Article 50 triggered: Brexit negotiations can begin

On 29 March 2017, the UK's Permanent Representative to the EU, Sir Tim Barrow, delivered the UK's notice under Article 50 of the Treaty on European Union to Donald Tusk, President of the European Council. The notice, confirming that the UK will withdraw from the EU following last year's Brexit referendum, had been signed by Theresa May on the evening of 28 March 2017. Its delivery triggers the start of a two year negotiation period between the UK and the EU on the form that Brexit will take.

EUROPEAN UNION (NOTIFICATION OF WITHDRAWAL) ACT 2017

Service of the notice followed the coming into force of the [European Union \(Notification of Withdrawal\) Act 2017](#) on 16 March 2017. The Act gave power to Theresa May to serve notice under Article 50. Proposals from the House of Lords that the Act be amended to give the UK Parliament a vote on the final withdrawal terms, to give the UK Parliament a vote on any agreement on the future relationship between the UK and EU, and to require that the rights of EU and EEA citizens who are legally resident in the UK be guaranteed, were eventually defeated and the Bill was passed in un-amended form.

CONTENT OF THE ARTICLE 50 NOTICE

As expected, the [six-page Article 50 notice](#) confirmed that the UK intends to leave the EU and the European Atomic Energy Community. Key points made by Theresa May were as follows:

- » the UK wishes to negotiate the terms of its future trade deal with the EU in parallel with negotiating the terms of its withdrawal;
- » the UK Government will publish its White Paper on the Great Repeal Bill on 30 March 2017;
- » the UK Government expects that Brexit will result in increased decision-making powers for each of the devolved administrations; and
- » a 'no deal' outcome is not desirable: the UK Government would prefer not to default to trading with the EU on WTO terms.

A number of principles for the Brexit negotiations were suggested in the notice, including constructive and respectful engagement; putting citizens first; agreeing the future deal between the UK and EU at the same time as negotiating the terms of Brexit; minimising disruption by agreeing on implementation periods; and prioritising arrangements for a "fair and open trading

environment" and dispute resolution.

Notably, particular importance was attached to maintaining the Common Travel Area between Ireland and the UK and avoiding a return to a hard border. The EU's lead negotiator, Michel Barnier, also referenced this issue in a recent speech (see further detail below).

STATEMENTS BY THERESA MAY AND DONALD TUSK

In her [statement to the House of Commons](#) following service of the Article 50 notice, Theresa May reiterated the points set out above, and emphasised the UK's intention to leave the Single Market. In particular, she focused on the UK Government's wish to negotiate the terms of its future trade deal with the EU in parallel with the Brexit negotiations.

In his [press conference](#) following service of the notice, EU Council President Donald Tusk stressed that the remaining 27 EU Member States are more determined and united than before and will remain so during the difficult negotiation period. The EU's goal is to minimise the cost of Brexit to EU citizens, businesses and Member States.

WHAT HAPPENS NEXT?

» *Negotiating Guidelines*

Donald Tusk is expected to circulate draft guidelines for the Brexit negotiations to the other 27 EU Member States on Friday 31 March 2017. Once finalised, these will be adopted at a meeting of those 27 EU Member States on 29 April 2017.

» *EU Approach*

The EU's negotiating team will be led by Michel Barnier. In a [speech](#) on 22 March 2017, he noted that:

- » a 'no deal' result is not a desired outcome from the perspective of the remaining Member States, and he intends to conduct the Brexit negotiations in an open and transparent manner - this contrasts with Theresa May's previous statements that she will not be providing continuous updates on the Brexit negotiations, but will keep the public informed of key developments;
- » guaranteeing the rights of both EU citizens living in the UK, and UK citizens living in other EU Member States, will be a priority for the EU team;
- » the UK will not be asked to pay for anything that it has not agreed to as an EU Member State, but the EU and UK "must settle the accounts" (there has been a considerable amount of media speculation in recent weeks about the UK's potential 'Brexit bill'); and
- » with particular reference to the Irish border, during the course of the negotiations regarding the UK's exit from current customs union arrangements, he will pay close

attention to anything that could interfere with dialogue and peace.

Regarding the UK's intention to leave the Single Market and the current customs union arrangements, Michel Barnier noted that the UK's future third-country status would leave it in a less favourable position than the other EU Member States. He highlighted the risk of regulatory divergence and its potential adverse effect on the Single Market.

Writing in the Financial Times on 26 March 2017, Mr Barnier also reiterated that the terms of an orderly Brexit need to be negotiated and agreed upon first, before the terms of any future trade deal can be negotiated.

» *UK Committee*

Theresa May has formed a 12-member European Union Exit and Trade Committee to lead the Brexit process. Notwithstanding the Scottish Parliament's recent vote in favour of seeking permission from the UK Government for a second independence referendum, that request is unlikely to be granted.

» *Central Bank of Ireland*

In a [speech](#) on 28 March 2017, Philip Lane, Governor of the Central Bank of Ireland, again reiterated that the Central Bank expects the mind and management of the financial services firms that it supervises to be located here, and that it is ready to broaden its range of supervisory activity as needed. He emphasised that regulatory arbitrage should not play a material role (a similar note of caution was sounded by Ed Sibley, the Central Bank's Director of Credit Institutions Supervision, in his

recent [speech](#) where he emphasised the importance of avoiding any "regulatory race to the bottom").

» *Great Repeal Bill*

The UK Government will publish a White Paper on its Great Repeal Bill this week, and we will issue a further briefing at that stage. Under the Great Repeal Bill, with effect from the date that Brexit formally takes place, the European Communities Act 1972 (which gives effect to EU law in the UK) will cease to apply and the existing body of EU law will be converted into UK law – this is with a view to providing maximum certainty at the time of Brexit as to what laws will apply immediately thereafter. Theresa May has signalled that other legislation will also be needed to address specific issues arising from Brexit.

If you have any questions on Brexit, please contact your usual Arthur Cox contact or any member of our [Brexit Team](#).

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