
Brussels Insider

Welcome to this, the first edition of Brussels Insider, brought to you by Mishcon de Reya and communications and public affairs consultancy Kreab.

In this monthly report we will bring you the latest news from Brussels: from the tone and mood of the negotiators to the statements and intentions communicated by the EU27.

Mishcon de Reya and Kreab are working together to provide clients and their businesses with comprehensive advice on the challenges and opportunities arising out of Brexit. This combination of legal and public affairs expertise, along with Kreab's presence on the ground in Brussels, lends us a holistic perspective that we believe will not only be useful to clients but necessary in the coming months of negotiations and in making the most of future relationships with the EU and UK.

If you would like to discuss any of these issues please contact your usual Mishcon de Reya contact.

Looking back in order to look forward

One week after the triggering of Article 50, it is worth spending some time looking at the key events surrounding the triggering of Article 50 on Wednesday 29 March. Important documents were issued on both sides which set the tone and establish the content and process for the upcoming talks. In effect, both sides have now put their chess pieces on the board.

The UK, as expected, has made the first move. Ambassador Tim Barrow delivered the Prime Minister's Article 50 letter to the European Council. European Council President, Donald Tusk, responded on 31 March issuing [draft negotiating guidelines](#) from EU member states to Michel Barnier, their designated negotiator in the European Commission.

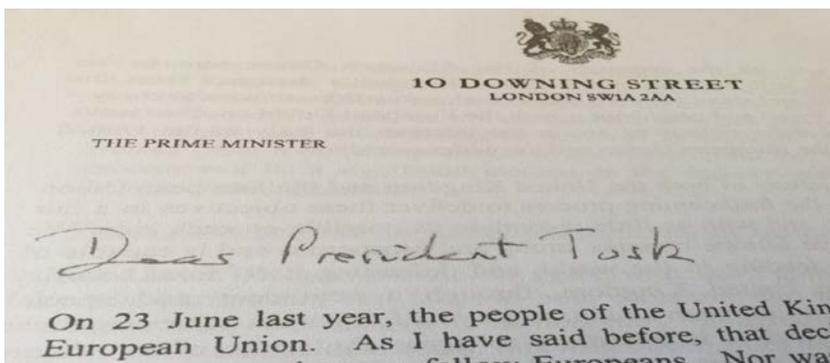
In addition to that, the UK published last week a [white paper](#) outlining how it would legislate for the UK's withdrawal from the European Union (the Great Repeal Bill). And the European Parliament has released a [draft motion](#) for a resolution on negotiations with the United Kingdom following its notification of intention to withdraw from the EU.

The key players have spoken. The chess analogies stop here. There is not just one player on the other side of the board. The UK is facing 27 Member States, over 700 members of the European Parliament, and a Commission with 33,000 civil servants, most of whom are experts in various aspects of the European Union and its legal instruments from which the UK wishes to extract itself. At the same time the UK has to keep its four nations and Gibraltar together. It must repatriate tens of thousands of European laws. It will negotiate its future position in the World Trade Organization with 163 other members. And then there are the EU's dozens of trade agreements with third countries, quite a few of which the UK will wish to replace with its own bilateral UK agreements.

So there are two points upon which nearly everyone agrees. Firstly, the challenge is complex; and secondly, much needs to be done in a short amount of time.

The Dear Don letter

It was a long time coming, but after nine months, it is fair to say that there are no surprises in the letter. And it is, according to our sources, entirely what the EU was expecting. The tone is civil and conducive to a constructive dialogue, although threatening a weakening of cooperation on crime and terrorism has not been universally appreciated.



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The Prime Minister acknowledges some important points in her letter:

- The UK will lose influence over EU rule-making;
- UK companies trading with the EU will have to align with rules agreed by institutions of which UK is no longer a part;
- The UK will continue to meet membership commitments for as long as it is a member; and
- There will be no cherry picking.

The Process

The letter acknowledges that two years to complete negotiations will be a challenge but argues that UK and EU start with already close regulatory alignment and therefore it should be possible to conclude both processes within two years. In her letter, Mrs May confirms a wish for parallel withdrawal and partnership negotiations. But in its draft guidelines, The EU talks about a phased approach to negotiations. Contrary to May's request for parallel negotiations for both the withdrawal and future relationship agreements, the Council sticks to its two-phased approach: divorce negotiations first, and only when "sufficient progress" is reached can discussions on the framework for the future EU-UK relationship start. This is an approach that several key EU leaders such as German Chancellor Angela Merkel and outgoing French President François Hollande have both supported. The Council priorities are the preservation of the interests of the EU, its Member States, citizens and businesses – with a special emphasis on the rights of EU and UK citizens. Another priority for the EU27 remains the settlement of budgetary commitments and liabilities – including "contingent liabilities" without any explicit reference to a specific amount.

There is also a request in the letter advocating for "implementation periods", which is very important for UK-based economic operators which trade in the EU. Two years is a short time period in which to negotiate and replace the thousands of existing legal and administrative structures and instruments that are in place, facilitating and enabling trade amongst member countries of the Single Market.

However, if there are transitional structures in place, both sides have to agree on dispute resolution mechanisms for these too, until the new longer-term relationship with its structures is in place. The EU states in the draft guidelines mentioned above *"Should a time-limited prolongation of Union acquis be considered, this would require existing Union regulatory, budgetary, supervisory and enforcement instruments and structures to apply."* Yet the UK Government does not seem to agree with this approach as outlined in its White Paper. *"The Great Repeal Bill will not provide any role for the CJEU in the interpretation of that new law, and the Bill will not require the domestic courts to consider the CJEU's jurisprudence. In that way, the Bill allows the UK to take control of its own laws."*

Also, the EU will not likely entertain a discussion of transitional periods until there is some sort of common understanding about the future relationship. In other words, it will not start building a bridge, until it has a good idea where it is supposed to end. This puts further pressure on UK negotiators to agree to terms quickly, or otherwise its exporters might be confronted with a cleft between such time that they have full access to the single market and the establishment of any future arrangement.

The Content

The word partnership, preceded variously by terms deep, special and future, was mentioned seven times in the six page letter from the Prime Minister. Furthermore, Prime Minister May states:

"Agreeing a high level approach to the issues arising from our withdrawal will of course be an early priority. But we also propose a bold and ambitious Free Trade Agreement between the United Kingdom and the European Union. This should be of greater scope and ambition than any such agreement before it so that it covers sectors crucial to our linked economies such as financial services and network industries."

The Prime Minister's proposition above presents a difficult challenge in the negotiations ahead. A wish to have a deep and special agreement for trading in the single market, naming special sectors, poses a problem to a European Union that does not

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encourage a pick-&-mix approach. The UK is either inside the single market and accepts the authority of its institutions, or it is outside, like Canada. She made clear again in her letter that the UK "does not seek membership of the Single Market". In that case, in order to trade goods and services, the UK will have to prove that it is 100 percent compliant with EU regulations.

The challenge is further compounded by another potential clash of red lines between the EU and the UK, as presented in the Government's White Paper on the Great Repeal Bill wherein the Bill provides "that any question as to the meaning of EU-derived law will be determined in the UK courts". The EU will have great difficulty accepting that UK courts "self assess" the UK's compliance with EU rules. This will be a major discussion point in the negotiations.

In positive news, the Council agrees to seeking an ambitious free trade agreement requested by the UK.

It's safe to say we will witness some ups and downs in relations between the two sides as they negotiate Brexit. But at the outset there appear to be two objectives that both agree wholeheartedly upon: one, that it will be positive for all involved if an agreement can be reached that enables trade and economic growth to flourish on both sides of the Channel and two, that citizens' rights have been identified as a first order priority.

We would tentatively hope that this stated desire to co-operate on these two vital considerations bodes well for a pragmatic and a sensible approach to this exercise which will impact the lives of more than 500 million Europeans, as well as many other people around the world.

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Appendix: Brexit Timeline

Date	Events (expected)	More Details
29 March	Triggering of Article 50	UK Government (Theresa May) officially invoked Article 50 through a letter of notification .
29 March	Statement by European Council and press remarks by President Tusk	The European Council (without the UK) response to the UK notification.
31 March	<u>Draft Council negotiating guidelines</u>	President Tusk to present draft guidelines to the EU27 Member States
5 April	European Parliament - <u>Non-binding resolution</u>	European Parliament (EP) plenary to adopt a non-binding motion for a resolution (led by EP Brexit coordinator Guy Verhofstadt) to feed into the Council's Guidelines.
11 April	First Sherpa meeting	Sherpa's to discuss with Perm Reps the draft guidelines and make revisions
19 April	Circulation of revised draft guidelines (1st round)	Council to circulate revised draft guidelines to Member States
24 April	Second Sherpa meeting	Sherpa's to discuss with Perm Reps draft guidelines and make amendments
25 April	Circulation of revised draft guidelines (2nd round)	Council to circulate revised draft guidelines to Member States
26 April	COREPER-27	EU Ambassadors to adopt draft guidelines
27 April	General Affairs Council (GAC-27) in Luxembourg	European affairs ministers to discuss draft guidelines and make revisions
28 April	Circulation of final (post GAC) guidelines	Council will circulate revised, final guidelines , taking into account revisions made by the GAC
29 April	European Council - <u>Guidelines</u>	European Council to adopt by consensus Guidelines defining the framework for negotiations.
Very quickly after 29 April	European Commission - <u>Recommendation</u>	EC to present to the Council a recommendation to open negotiations.
3 May		<i>Commission College meeting to agree Recommendation for Article 50 negotiating directives.</i>

Appendix: Brexit Timeline

16 May or 20 June	General Affairs Council - <u>Authorisation of the start of negotiations</u>	<ul style="list-style-type: none"> — General Affairs Council (preparing European Council meetings and coordinating the work of all Council configurations) to adopt by strong qualified majority (72% of the 27 Member States, i.e. 20 Member States representing 65% of the population of the EU27) a set of negotiating directives authorising the start of negotiations, based on the non-binding Commission Recommendation. — Council will also formally mandate the Commission and its Chief negotiator Michel Barnier to lead negotiations on behalf of the Union.
Early June 2017	<u>Negotiations begin</u>	<p>To be mainly focused on the exit agreement (including the key issues of UK's budgetary commitments, status of EU citizens living in the UK and UK citizens living in the EU) as well as the question of potential transitional arrangements and the framework for the future EU-UK relationship. However, the future EU-UK relation agreement could potentially require more time to be concluded.</p> <ol style="list-style-type: none"> 1. <u>Preparation of negotiation meetings</u>: preparatory meetings to include sherpas and/or Permanent Representative of EU27, and EP representatives. EP President to provide EP position at the beginning of European Council meetings. 2. <u>Negotiation meetings</u>: Barnier to lead negotiation meetings. Negotiations meetings to include representatives from the European Council President, a representative from the rotating Council Presidency, as well as EP Brexit coordinator Verhofstadt (but only as observer). 3. <u>Follow-up</u>: Barnier to systematically report to: the European Council, the Council and its preparatory bodies after each meeting; the EP; and to the Council Presidency (before and after each General Affairs Council meeting). European Council, Council and Coreper to control the conduct of negotiations throughout the process, with the help of a dedicated ad hoc Working Party with a permanent chair.
October/November 2018	<u>Negotiations to conclude</u>	Actual duration of negotiations to be approx. 18 months, so as to allow enough time for the agreement to be formally adopted.
At the earliest by autumn 2018 - at the latest by February 2019	<u>Exit agreement</u>	<p>The Commission to present an agreement proposal to the Council and the European Parliament, taking into account the framework of the future relationship of the UK with the EU.</p> <ul style="list-style-type: none"> — The European Parliament must give its consent, by a vote of simple majority, including Members of the European Parliament from the UK. — The Council will conclude the agreement, by a vote of strong qualified majority. — The UK must also ratify the agreement according to its own constitutional arrangements. <p><u>The EU Treaties cease to apply to the UK from the date of entry into force of the agreement.</u></p>

Appendix: Brexit Timeline

29 March 2019	<u>End of UK Membership</u>	Negotiations on the orderly withdrawal must be completed. If no agreement is reached within this period, the Treaties will cease to apply to the withdrawing Member State. <u>The Council may decide to extend that period by unanimity.</u>
Date TBC	<u>Transitional arrangements</u>	Legal concerns have been raised as regards the possibility to include transitional arrangements within the exit agreement (might require a separate international agreement between the UK and the EU27 Member States (MS) to be adopted by unanimity and ratified by all 27 MS – risking to delay the process, and potentially requiring an extension of the two-year negotiation period (by unanimity of EU27 MS).
Date TBC	<u>New relation agreement</u>	New EU-UK relations agreement likely to be separate to the exit agreement, as is quite unlikely that both agreements can be negotiated and concluded within the two-year timeframe.