

How will the UK exit the European Union (EU)?

Nick Jeffrey, Director – public policy at Grant Thornton, shares his thoughts on where we are with Brexit developments.

As we have seen in recent weeks, politics can move surprisingly fast and in surprising directions. That said, having just returned from a trip to Brussels (20 July), there is an emerging understanding about how some key elements of the UK's exit from the EU will proceed. This viewpoint provides some basis to speculate on how the gaps might be filled.

What is Article 50 and why is it so important?

Article 50 of the Lisbon Treaty sets a high level framework for what happens in the event that a member state wishes to leave the EU.

The exiting member state has to tell the other member states that it wishes to leave. The timing of this notification is within the gift of the leaving country. Invoking Article 50 signals the start of the leaving period to negotiate exit terms with the remaining states. Article 50 dictates a negotiation period of two years, which may be extended only with the agreement of all remaining states – see comments overleaf about what happens at the end of the negotiating period.

The European Commission's (EC), legal advice is that Article 50 notification cannot be rescinded/withdrawn, because that would undermine the principle of the two year deadline. But as we have heard many times, the law defers to politics, and if the UK wanted to withdraw its withdrawal and the EU wanted the UK to remain, the situation may change.

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What will happen before Article 50 is invoked by the UK?

I am hearing that sentiment at the EC is coming round to an understanding that it is better to start negotiations when both sides have had time to prepare, and define their goals for the negotiation. With Theresa May becoming UK Prime Minister earlier than expected, it now gives both sides an unexpected but welcome nine extra weeks to prepare internal logistics and options papers before negotiations commence in earnest.

We outsiders will observe a lot of public messaging and posturing from various parties, not all of it from informed people or those close to the negotiations. As is the way of these things, there will be private conversations between the UK and others – partly because not everyone from the British side is known to the European side. There will be a need to build relationships and trust.

There has been a lot of sympathy and sadness in Brussels about the referendum result, but also resentment and anger. As those feelings dissipate they are being replaced by pragmatism and a desire to get on with the practical work to move from an EU of 28 states to an EU of 27. There is also a need for the EC to understand what an EU of 27 means for all sorts of EU activities, and even how the EU works. For example, how will the Council of member states operate without one of the three largest states? And how will the European Parliament (EP) change without 73 UK MEPs?

There is hope that both parties to the negotiation will work to maximise the opportunities for mutual welfare.

What happens when Article 50 is invoked?

Article 50 has never been used before so the EC is still understanding how it will work in practice.

The UK remains a member of the EU until the point of withdrawal. This means it continues to enjoy the rights of EU membership such as participation in EU activities, the EU institutions and decision-making. It will not however participate in activities related to its own exit from the EU. The UK also continues to fulfil its obligations as an EU member, such as budget contributions and acting in accordance with EU rules and law.

The UK must negotiate its exit terms with the remaining member states. This is an inter-government negotiation. The EC and the EP will be vocal. The EC will provide technical assistance to the remaining member states, but it does not have a say on the exit terms. The EP will need to give its consent to the exit agreement, but it is not party to the negotiations. The exit agreement must be approved by a qualified majority¹ of the remaining states.

The exit agreement may contain whatever the negotiating parties agree to. It will likely address withdrawal terms, transitional provisions, and the future relationship between the UK and EU. The future trading relationship will be a separate, but maybe concurrent, negotiation.

Some big ticket items that need to be disentangled during the exit negotiation are: structural funding; common agricultural policy; and research funding. Some of these EU payments to UK recipients could fall due after the UK's withdrawal from the EU. Indeed, it is feasible that the exit terms may provide for some form of on-going UK collaboration or involvement in each of these areas.

¹ Qualified majority voting: allocates votes to member states in part according to their population, but weighted in favour of the smaller states

Who are the main actors in the negotiation and what roles will they play?

The European Commission:

May be thought of as the EU's civil service.

The EC will draw up a recommendation for the remaining member states on how negotiations should proceed. The group reviews, amends and approves that recommendation, and gives a mandate to a chief negotiator. The chief negotiator is normally the EC; although it might not be for the UK's exit agreement as it's an inter-government negotiation.

The EC will do the technical work to support the chief negotiator and the remaining member states. A major part of that work will be identifying all the issues that legally need to be addressed by the exit terms, such as rights and obligations of an EU member state. The EC will likely be vocal and seek to influence the negotiations, including through its President, Jean-Claude Juncker, but it does not have the right to participate in the negotiations or have power to veto or change the exit terms.

The remaining member states:

The group that the UK will be seeking agreement with.

Didier Seeuws, a Belgian diplomat currently working for the Council of member states as Director of Transport, Telecommunications and Energy, has been appointed Head of the EU Brexit Taskforce. He was chief of staff to Herman van Rompuy when he was European Council President.

The remaining member states and their economies are also affected by the UK vote to leave the EU and the related uncertainty. They therefore have a legitimate right to call for negotiations to be conducted in a timely and positive manner.

On the one hand, the remaining member states, and Germany in particular, have signalled that they want to retain a positive partnership with the UK after exit.

The UK is a large economy and therefore is attractive to them. However, it is also in the interest of the remaining member states to make it clear that leaving the EU means a significant change for the leaving country. They will seek to strike what they feel is an appropriate balance between the two. And away from the UK exit negotiation, the remaining member states will likely be working on changes to the EU which address other member state and EU citizen concerns.

One complicating factor for the remaining member states could be that individual member states may use the exit negotiation to further their own cause, using the exit negotiation as a lever.

The UK government:

A negotiating team will be led by the minister for Brexit, David Davis.

The UK government will be encouraged by UK businesses to seek as full access as possible to the EU single market. That may require some form of commitment to free movement of people, and /or EU law. Both of these issues were behind many referendum votes to leave the EU. So the UK government may well be seeking to balance one against the other. The exit terms and trade agreement will be subject to scrutiny by both those who voted to leave the EU and those who voted to remain. At the time of writing no-one has visibility on what the UK will ask for, and where the likely areas of common ground will be.

The European Parliament:

Generally pro union

The EP President, Martin Schulz, has been prominent in the press. Nonetheless, the EP has no say during the negotiations. It does though have to give its consent before the council agrees by a majority.

Is the end of the negotiation period the end of the process?

The UK's exit from the EU takes effect either when:

- a withdrawal agreement enters into force, or
- two years after invoking Article 50, notifying the European Council of its intention to withdraw (unless there is a unanimous agreement to extend the negotiations).

It is conceivable for agreement on the exit terms to be achieved inside two years, but the effective date to be at a later point, and/or subject to transitional provisions in any number of ways.

It is also conceivable that there will be no agreement. If there is no withdrawal agreement after two years and a veto on an extension period, or if the leaving state does not like the agreement, it can leave the EU without an agreement.

The chances of extending the two year negotiating period are said by some to be 'quite slim', but there could alternatively be a phased withdrawal to allow for what some have referred to as 'an orderly disentanglement'.

The other EU member states could reject a withdrawal agreement, but they could not stop the UK from leaving the EU.

Contact us

If you would like to discuss any aspect of this article in further detail please speak to your usual Grant Thornton contact or alternatively speak to Nick Jeffrey.

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