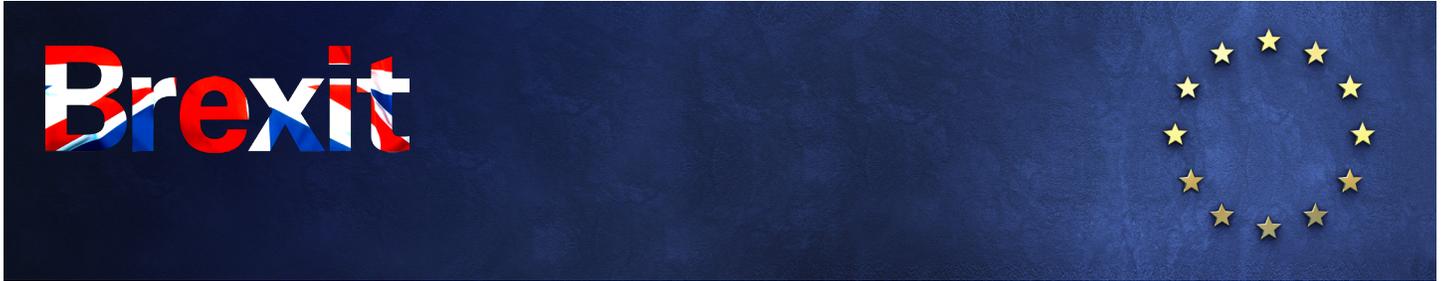


# UK Serves Notice of Withdrawal From the EU, Triggering Two-Year Negotiation Period

Skadden

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UK Prime Minister Theresa May today served formal notification of the UK's intention to withdraw from the European Union (EU) pursuant to Article 50 of the Treaty of Lisbon. This action commences a period of up to two years for negotiating the UK's withdrawal terms.

Prime Minister May also has expressed a desire to reach an agreement on the UK's future relationship with the EU by the end of the two-year period. Any extension of this period would require the unanimous approval of the UK and the remaining 27 EU member states (the EU-27). The EU initially indicated that it would not want to begin discussions on a UK-EU deal until the Article 50 withdrawal agreement has been concluded. However, it now appears likely that negotiations on this future deal could start before the two-year deadline if agreement has already been reached on key issues, such as the UK's budgetary obligations to the EU and the status of EU citizens currently resident in the UK and UK citizens now resident in the EU.

It is also not clear exactly when the EU will be ready to commence negotiations with the UK. There will need to be further meetings of the EU-27 to approve the Commission's negotiating mandate, which can only be finalised once the content of the UK's notification letter is known. This could mean that serious negotiations can only start in mid-May or early June 2017.

Article 50 provides neither a detailed framework for negotiations nor any guidance on the terms of a member state's departure from the EU. This will be the first time Article 50 has been tested since it came into force in late 2009.

## Key Players

In addition to the prime minister, the UK's chief Brexit negotiator will be David Davis, Secretary of State for Exiting the European Union. Liam Fox, the Secretary of State for International Trade, and Boris Johnson, the Secretary of State for Foreign and Commonwealth Affairs, will also have roles in negotiating the future relationship with the EU.

The following four EU institutions will play significant roles in the Brexit negotiations:

- The **European Commission** is the EU's executive body. It is the only institution with the authority to initiate legislation in most areas, although it draws on input from a variety of other bodies.
- The **Council of the EU** represents EU member states' governments. It is where ministers, below the level of head of state or government, from each EU member state meet to adopt laws and co-ordinate policies. Along with the European Parliament, the Coun-



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the Council plays a key role in negotiating and approving EU legislation and international agreements. Under Article 50 of the Lisbon Treaty, the Council may conclude a withdrawal agreement with an EU member state by qualified majority, but the 27 EU heads of state and governments have decided that they will approve the Commission's negotiating mandate, as well as the final withdrawal agreement with the UK, by unanimity.

- The **European Council** defines the general political direction and priorities of the EU. It consists of the heads of state or government of the EU member states, together with its president and the president of the European Commission. It does not negotiate or adopt EU laws.
- The **European Parliament** is a directly elected legislature, comprising 751 Members of the European Parliament (MEPs) elected by citizens of the 28 EU member states. Its role in the legislative process is to scrutinise, amend and vote on legislation. An agreement under Article 50 needs the consent of the European Parliament.

The European Council will determine the high-level guidelines for the negotiations, the Council of the EU will approve a more detailed, technical mandate and the European Commission will take primary responsibility for the negotiations.

The European Commission, European Council and Parliament have each appointed the following lead Brexit negotiators:

- **Michel Barnier**: a former vice president of the European Commission and former French minister, who has been appointed by the Commission as its lead negotiator for Brexit talks. Once negotiations begin, his team will lead talks with the UK representatives. Until then, Barnier's team will lead preparations for the negotiations — including preparing the Commission's draft mandate for the negotiations.
- **Didier Seeuws**: a Belgian diplomat who has been appointed by the European Council to lead its task force on Brexit. He is likely to have a key role in advance of and during the negotiations, co-ordinating the position of different EU member states and determining the European Council's guidelines for negotiations, and overseeing the European Commission's work as it carries out the negotiations. Seeuws may chair the special committee of EU member state representatives appointed to oversee the negotiations for the Council.
- **Guy Verhofstadt**: a former Belgian prime minister and MEP, who has been elected by the European Parliament to act as its representative during negotiations.

## The Negotiation Process

Unpicking a myriad of treaties and other agreements covering thousands of sectors and subjects will not be a straightforward task. The withdrawal process will likely involve multiple stages, and the latest signals from the UK government appear to indicate some acceptance of the need for a transitional, or implementation, period during which a significant amount of EU legislation will continue to apply in the UK until the jurisdiction of EU agencies and courts can be replaced by national bodies.

EU member states will have various opportunities to influence and contribute to the negotiation process. Bilateral meetings with European Council President Donald Tusk are one way of making views clear early in the process, before negotiations begin. When the European Council drafts the guidelines for the negotiations, it will again work closely with EU-27 representatives. Additionally, the European Commission will continue to report back to the Council of the EU during the course of the negotiations, so EU-27 representatives will be kept informed of progress.

## Issues to Resolve

Public statements made by the UK government so far indicate it is unwilling to compromise on three "red lines": (1) ending the free movement of workers between the UK and the EU, (2) stopping UK contributions to the EU budget, and (3) (subject to recent indications of a willingness to accept transitional arrangements) ending the jurisdiction of the European Court of Justice and regaining full control over new UK legislation. On its part, the EU will look to protect the four fundamental "freedoms" that define the EU — the free movement of workers, goods and capital as well as the right of establishment and freedom to provide services.

Three of the most important issues that the negotiators may look to resolve with greater urgency at the early stages are (1) the future status of EU citizens in the UK and of British citizens in the EU, (2) the creation of a free trade area in goods, and (3) the issue of the UK's residual budgetary obligations to the EU. A host of other issues also may be resolved quickly if the parties agree to an "equivalence" approach, for example with respect to air transport ownership and traffic rights, energy, nonfinancial services, energy, and intellectual property. More complex issues that will require greater time, such as the approach taken to mutual rights of access for financial services, may be covered by a "continuation clause" that would allow the status quo to continue for a limited period of time until full agreement is reached on equivalence or another access arrangement. The UK



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government has indicated that it will seek to minimise the risk of any unlimited transitional periods following April 2019 by working toward a finite phased process of implementation. Prime Minister May has suggested this process may be tailored sector by sector, with the aim of allowing businesses an opportunity to plan and prepare for the new post-Brexit arrangements.

Before the Article 50 negotiation period expires, the UK Parliament also is expected to enact a “Great Repeal Bill” that will transpose existing EU law into domestic law. This will effectively preserve the legal status quo at the time of exit, after which the UK government and Parliament will decide which parts to keep, change or remove.

## Status of EU Law

EU law will continue to apply in the UK until it ceases to be a member of the EU. The UK will continue to abide by EU treaties and laws, but it is expected to take a back seat on certain decisions being made by the EU.

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