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BREXIT – NEXT STEPS FOLLOWING THE TRIGGERING OF ARTICLE 50

Background

On 29 March 2017, the UK notified the European Council of its intention to withdraw from the EU, pursuant to Article 50 of the *Treaty of the European Union* (**Article 50**). This starts the formal process of the UK's exit from the EU, kick-starting a two year period for the UK and the EU to negotiate the terms of the UK's exit.

There are still many questions about what happens next – both in terms of the UK's future relationship with the EU, and the future shape of the EU itself. With that in mind, this article summarises the next steps in the “Brexit” process, and the recent European Commission White Paper on the Future of Europe.

Brexit – the timeline for withdrawal

Article 50 specifies a two year period in which the UK and EU will need to negotiate the terms of the UK's exit. This two year period is extendable only by the unanimous agreement of the European Council.

British Prime Minister Theresa May has set out her timetable and has indicated that the UK's withdrawal will not be affected by a failure to reach a deal with the EU – “*no deal for Britain is better than a bad deal for Britain*”. On this basis, the UK could cease to be a member of the EU by 30 March 2019 (subject to an extension being agreed).

In her 29 March 2017 letter to the President of the European Council providing notice of the UK's intention to withdraw from the EU, Theresa May set out the process being undertaken in the UK to give effect to Brexit.¹ This includes legislation to both repeal the European Communities Act 1972, and to address other issues related to the UK's withdrawal from the EU, as well as publishing a White Paper to consult on how the UK Government will design and implement the legislation. In the same letter, the British Prime Minister also expresses a desire for the UK to build a “*new deep and special*

1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604079/Prime_Ministers_letter_to_European_Council_President_Donald_Tusk.pdf

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partnership with a strong European Union”, and proposes a set of principles aimed at ensuring that the withdrawal negotiations are as “*smooth and successful as possible*”. These principles include engaging with each other constructively and respectfully, working towards securing a comprehensive agreement, and continuing to work together to advance and protect shared European values. In her letter, the British Prime Minister also acknowledges the EU’s position that the four freedoms are indivisible and that no “cherry picking” will be possible.

Following receipt of the Article 50 notice, the next step now for the European Council (excluding the UK) is to agree guidelines for the EU’s negotiating mandate. These are expected to be approved at a meeting of the European Council (without the UK) on 29 April 2017.² The Council of the European Union will then authorise the commencement of the negotiations and nominate the EU negotiator. Although the Council’s formal appointee is yet to be decided, the European Commission is widely expected to be the EU body responsible for conducting the withdrawal negotiations. The Prime Minister of Malta (the holders of the rotating presidency of the Council until June 2017) has estimated that it will turn its negotiating mandate over to the European Commission within four to six weeks of an Article 50 notice.

It seems highly likely that the UK will seek to engage in parallel bilateral discussions with key EU Member States. However, the negotiations will formally take place between the UK and the institutions of the EU itself and, as such, there may be resistance to the UK engaging in bilateral discussions with individual Member States.

By March 2019, the terms of the negotiated withdrawal agreement with the UK will need to be agreed at both the UK and EU levels. If they are to be in force on the date of exit, any agreements on future trade deals or some form of “transitional arrangements” will also need to be agreed within that timeline.

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Who will need to approve the final deal?

EU	UK
From the EU perspective, approval will be required of both: (a) the European Parliament (by a simple majority); and (b) the European Council (excluding the UK and by enhanced qualified majority voting). Insofar as any future trade deal or any “transitional arrangement” ³ constitutes a so-called “mixed agreement”, then the EU’s approval will also require sign-off by all the remaining 27 EU Member States (and relevant regions thereof ⁴).	From a UK perspective, the final deal – covering not only the withdrawal arrangements but also the future relationship with the European Union – is expected to be put to a vote of both houses of Parliament. ⁵ However, if the UK Parliament does not vote to accept the final deal, the UK Government has indicated that it would be willing to withdraw from the EU with no deal at all. ⁶

3 These are agreements between the EU and international parties which affect issues within the competence of both the EU and the Member States. Since such agreements affect issues reserved to the Member States they require the approval of each Member State (as well as the approval of the EU itself) before they can be enacted.

4 For example, Belgium has five regional parliaments, from whom approval is required for certain trade deals. This proved problematic in October 2016 when the Parliament of Wallonia voted to block the EU and Canada trade agreement, known as ‘CETA’. While the Parliament of Wallonia eventually voted to approve CETA, its initial rejection of the deal threatened to derail the entire trade agreement.

5 Speech by Theresa May, UK Prime Minister, 17 January 2017.

6 Statement to the House of Commons by David Jones, Minister of State at the Department for Exiting the EU, on 7 February 2017.

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Brexit – who will be responsible for the negotiations?

EU Team	UK team
<p>Under Article 218(3) of the <i>Treaty of the European Union</i>, the European Commission shall submit recommendations to the Council of the European Union, which will adopt a decision authorising the opening of negotiations and nominating the EU negotiator or the head of the EU negotiating team. The formal appointee of the Council of the European Union is yet to be decided, and it is expected that this appointment will only be made following the triggering of Article 50.</p> <p>However, the European Parliament has passed a resolution inviting the European Council to appoint the European Commission as negotiator on Article 50. In the meantime, each of the European Council, European Commission and European Parliament have appointed their own respective heads of Brexit negotiations – whether they are charged with leading the negotiations or not, each of these</p>	<p>Theresa May, has established two new UK Government departments that will play a key role in negotiating the UK's withdrawal from the EU:</p> <ul style="list-style-type: none">• Department for Exiting the EU: led by David Davis MP, will lead negotiations with the EU on behalf of the UK, as well as any potential bilateral negotiations with specific EU Member States. Its role includes:<ul style="list-style-type: none">– Developing policy to support the UK's negotiations to leave the EU and to establish the future relationship between the EU and the UK.– Working closely with stakeholders on what the approach to negotiations should be.– Leading and co-ordinating cross-government work to “<i>seize the opportunities and ensure a smooth process of exit on the best possible terms</i>”.

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EU Team	UK team
<p>EU bodies will have a role to play in the outcome of the negotiations:</p> <ul style="list-style-type: none">• Didier Seeuws (Head of the European Council Special Task Force on the UK).• Michel Barnier (Chief negotiator, European Commission Taskforce for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 of the TEU).• Guy Verhofstadt (former Belgian Prime Minister and now the European Parliament's representative on Brexit matters).	<p>It is, however, also envisaged that policy briefs in certain key areas will be delegated to other departments (for example, HM Treasury will be involved in policy on financial services, while the Home Office will likely lead on freedom of movement).</p> <ul style="list-style-type: none">• Department for International Trade: led by Liam Fox MP, will develop and negotiate free trade agreements and market access deals with non-EU countries, and also manage the UK's relationship with the WTO. In this role, the department will be supported by the Foreign & Commonwealth Office (led by Boris Johnson MP), which remains responsible for economic diplomacy and certain other functions relevant to trade. It is also likely that the Department for International Trade will have a role, co-ordinating input into trade negotiations from key policy owners across government.

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European Commission's White Paper on the Future of Europe

On 1 March 2017, the European Commission published its “*White Paper on the Future of Europe: Reflections and Scenarios for the EU27 BY 2025*” (the **White Paper**). The White Paper reflects on the future challenges that Europe faces over the next decade – including the economy, regional instability and Brexit. The purpose of the White Paper is to start a discussion among the (post-Brexit) 27 EU Member States (the **EU27**) around the future direction of the EU.⁷

Five possible future scenarios

The White Paper is prefaced on the assumption that the EU27 should move forward, together, as a Union. It then considers five possible scenarios that illustrate the potential state of the EU by 2025. These scenarios are intended to be illustrative only rather than a comprehensive list of potential models for the EU of the future.

Scenario 1: Carrying On

The EU27 continues on its current course, with a focus on delivering a positive reform agenda in the spirit of: (a) the European Commission's New Start for Europe from 2014 – which proposed post-financial crisis measures to ‘*renew the European Union on the basis of an Agenda for Jobs, Growth, Fairness and Democratic Change*’; and (b) the 2016 Bratislava Declaration which unanimously re-affirmed the EU27's ongoing commitment to the EU.

Scenario 2: Nothing but the Single Market

Scenario 2 would see the EU27 become gradually re-centred on key aspects of the single market, in the event that Member States are increasingly unable to find common ground on policy areas. Cooperation on new issues of common concern will more often need to be managed bilaterally, while regulatory burdens would be gradually reduced by removing two pieces of existing legislation for every new proposed initiative.

⁷ An unofficial (leaked) draft resolution of the European Parliament dated 28 March 2017, indicates that the White Paper (among other things) may serve as a basis for the remaining 27 EU Member States (the EU27) to reflect on how, in light of Brexit, they can better address current challenges, as well as their efforts to “*make the European Project more effective, more democratic and closer to their citizens*”.

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Scenario 3: Those Who Want More Do More

Member States who would want to do more together in certain policy areas (for example, defence or internal security) would be permitted to do more. This would manifest in one or more 'coalitions of the willing' emerging. However, there would be no impact on the status of other EU27 Member States (nor their ability to do more together over time, should they so desire).

Scenario 4: Doing Less More Efficiently

The EU27 focuses its attention and limited resources on delivering more at a fast pace in certain 'priority' policy areas. Conversely, the EU27 will do less in respect of areas which are not considered to have an added value. The White Paper suggests that this could mean a greater focus on areas such as innovation, trade and the management of borders and defence, and less focus (or ceasing to act altogether) on regional development, or parts of employment and social policy. A potential difficulty in adopting this scenario, however, would be for the EU27 to find common ground regarding which policy areas should be (de)prioritised.

Scenario 5: Doing Much More Together

Scenario 5 represents a far greater level of integration between Member States, whereby they share power, resources and decision-making to a greater extent across the board. This would result in greater cooperation between Member States, and decisions at the European level would be both agreed, and implemented, at a faster rate. Adopting such a scenario could, however, risk alienating those parts of society that consider that too much power has been taken away from individual Member States.

The scenarios represent varying degrees of co-operation between EU Member States; specifically, Scenario 2 ('Nothing but the Single Market') and Scenario 5 ('Doing Much More Together') illustrate either end of the spectrum of far more, versus far less, co-operation. To this end, the European Commission does not express any clear preference for a specific scenario – indeed, it acknowledges that there are potential advantages and disadvantages associated with each.

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Next steps

The White Paper sets out a timeline of key next steps and events starting from the publication of the paper in March 2017, through to the European Parliament elections of June 2019. These include:

- Future of Europe debates, to be held in Parliaments, cities and regions across the EU.
- The European Commission publishing various papers throughout 2017, presenting a range of ideas, scenarios and proposals across a number of areas, specifically: the social dimension of Europe (April); harnessing globalisation (mid-May); the deepening of the economic and Monetary Union (end of May); the future of European Defence (early June); and the Future of EU Finances (end of June).

These ideas will be taken forward in President Juncker's September 2017 State of the Union speech, with preliminary conclusions being drawn at the December 2017 European Council. Ultimately, it is intended that these efforts will assist the EU27 in deciding upon a course of action to be unveiled in the lead up to the June 2019 European Parliament elections.

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This material is for general information only and is not intended to provide legal advice.

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