



July 2016

Brexit: The Timeline

This note addresses the timeline for the UK's exit from the EU. It is one of a series of *GTM Alerts* designed to assist businesses in identifying the legal issues to consider and address in response to the UK's referendum vote of 23 June 2016 to withdraw from the European Union.

The UK has not left the EU. It will remain a member of the EU, and EU law will continue to apply in its territory, until it formally exits.

Exit is likely to take some time. Nearly two weeks after the UK referendum vote, a number of practical, political, and legal issues are emerging that may affect the start and timing of the procedure leading up to exit.

This exit procedure is set out in Article 50 of one of the two main EU Treaties, the Treaty on European Union. It involves three main steps before exit – notification, negotiation, and approval. These steps are illustrated in a notional timeline at the end of this note and are described in more detail below, together with the issues that may affect the UK's exit date.

- 1. Notification:** Under Article 50, the UK is required to notify the European Council of its decision to withdraw from the EU, but there is no deadline for the notification.
 - **Referendum vote is not a decision:** The outcome of the 23 June referendum does not constitute a decision to leave the EU, as it is not binding – its purpose is to advise government of the will of the British people. It is very unlikely that the UK government would ignore the referendum vote, but it still needs to adopt a formal decision before formally notifying the European Council of the UK's decision to leave the EU.
 - **Appointment of new prime minister:** The present UK prime minister, David Cameron, who campaigned to stay in the EU, indicated on the morning after the referendum vote that he intended to leave office and indicated that his successor should be the one to notify the European Council. The process for electing a new prime minister is underway, but the winning candidate is not likely to be announced until 9 September (although it could be sooner).

depending on the outcome of the Conservative party process currently under way). The date of notification to the European Council is therefore likely to be after 9 September 2016.

The question then is how long the new prime minister will take to notify. This will be influenced by the following factors:

- **Preparations prior to notifying:** The candidates for prime minister disagree on how long will be needed before the UK is ready to notify. However, it is generally recognised that the successful candidate will need some time to establish the UK's negotiating stance, identify the issues to be covered in the exit terms, and select the UK's preferred framework for its future relationship with the EU. The position of the European Commission is that this framework will not be negotiated under the Article 50 process (and is unlikely to be finalised before the UK's exit), but Article 50 provides for the UK's exit terms to take the framework into account, so UK and EU negotiators will need to understand at least the broad principles of the framework before going into negotiations.
 - **Calls for a UK general election:** There have been calls for a general election before the Article 50 notification is made. None of the candidates for prime minister have embraced the idea of calling a general election prior to 2020, but if a general election is in fact held, the process leading up to it will contribute to delays in starting the Article 50 procedure.
 - **Legal challenge to a notification not approved by Parliament:** Article 50 gives a Member State the right to notify "in accordance with its own constitutional requirements." UK constitutional lawyers disagree on whether an Act of Parliament is required for the Article 50 notification or whether the UK government, using its prerogative powers, can notify without parliamentary approval. A London law firm has been instructed by an anonymous group of businesses and individuals to take legal steps to obtain government confirmation that the notification should be the subject of a full debate and a vote in Parliament. If government confirmation is not received, the next step may be legal proceedings in the High Court.
 - **Political pressure to notify early:** The President of the European Commission, Jean-Claude Juncker, has taken an aggressive stance against the UK since the referendum, stating that the UK does not have "months to meditate" on notification. The European Parliament has passed a resolution calling for a swift commencement of the exit process, and supports Mr. Juncker's position that new arrangements cannot be established prior to conclusion of exit negotiations. However, influential EU heads of state, such as Angela Merkel, recognise the need for the UK to take time to reflect and have called for a measured approach to exit and a reasonable timetable for negotiations. Their views are generally considered likely to prevail over those of Mr. Juncker, and if so, the UK is unlikely to face significant political pressure for several months.
2. **Negotiation of the UK's exit terms:** Following notification, the UK and the EU will have an initial period of up to two years to negotiate and finalise the terms of the UK's exit. Under Article 50, the negotiations can be triggered only by the UK – the EU cannot initiate them.
- **No informal discussions:** Given the uncertainty of the notification date, the possibility of informal discussions between the UK and the EU has been mooted, but rejected, by the EU. The present stance of the remaining 27 Member States and the European Commission is that there will be no negotiation without notification, although this stance could soften after a period of reflection.
 - **European Council guidelines:** The European Council will draw up guidelines for EU negotiators to follow in their discussions with the UK.
 - **Conduct of negotiations:** The European Council started the process of establishing a special taskforce to handle the UK's exit, including negotiations, by appointing Belgian diplomat Didier Seeuws as task force leader immediately following the UK's referendum vote. The Council's lead role in negotiations was disputed by the European Commission, which was approved by the European Parliament as lead negotiator on 27 June. The

dispute appears to stem at least in part from concerns regarding the aggressive approach taken by the Commission towards the UK. The outcome is likely to be that negotiations will be conducted by the EU through a hybrid team of representatives from the European Council and the European Commission, with representatives of the European Parliament looking on as observers. The picture may be further complicated by the fact that France has set up its own task force and is also seeking a lead role in the negotiations. In the meantime, the present UK prime minister has established a Brexit unit within UK government, headed by Oliver Letwin, a Conservative MP and member of the Cabinet. A new EU Unit has been set up in the Cabinet Office, led by Oliver Robbins, a senior civil servant. At this point, it appears that Mr. Letwin may be the UK's chief negotiator during the exit process, but this is subject to the decisions of the next prime minister.

- **Subject-matter of discussions:** Discussions will relate to disentanglement of the UK from the EU, which involves a large number of complex issues, two examples being financial settlement, balancing the UK's financial contributions to the EU against its liabilities, and treatment of UK nationals presently in the EU and EU nationals presently in the UK. As noted above, these negotiations concern only the unwinding of the UK's existing relationship with the EU and will be separate from any negotiations regarding the UK's future arrangements with the EU. Although there is no reason why the two sets of negotiations could not be run in parallel, it seems unlikely that their timetables will be aligned and likely that the UK will exit the EU without having concluded an agreement for many aspects of its future relationship with the EU.
- **Duration of negotiations:** It is possible that the UK and EU may come to an agreement on all relevant issues, and the UK will exit the EU, within the two-year timeframe. However, most commentators consider a two-year negotiation period to be too short, given the volume and range of issues to be resolved. This may lead the UK or EU to request an extension of the negotiation period. Any extension would require the unanimous agreement of the UK and each of the remaining 27 Member States.

3. Approvals and exit: The UK may exit the EU with or without agreed exit terms.

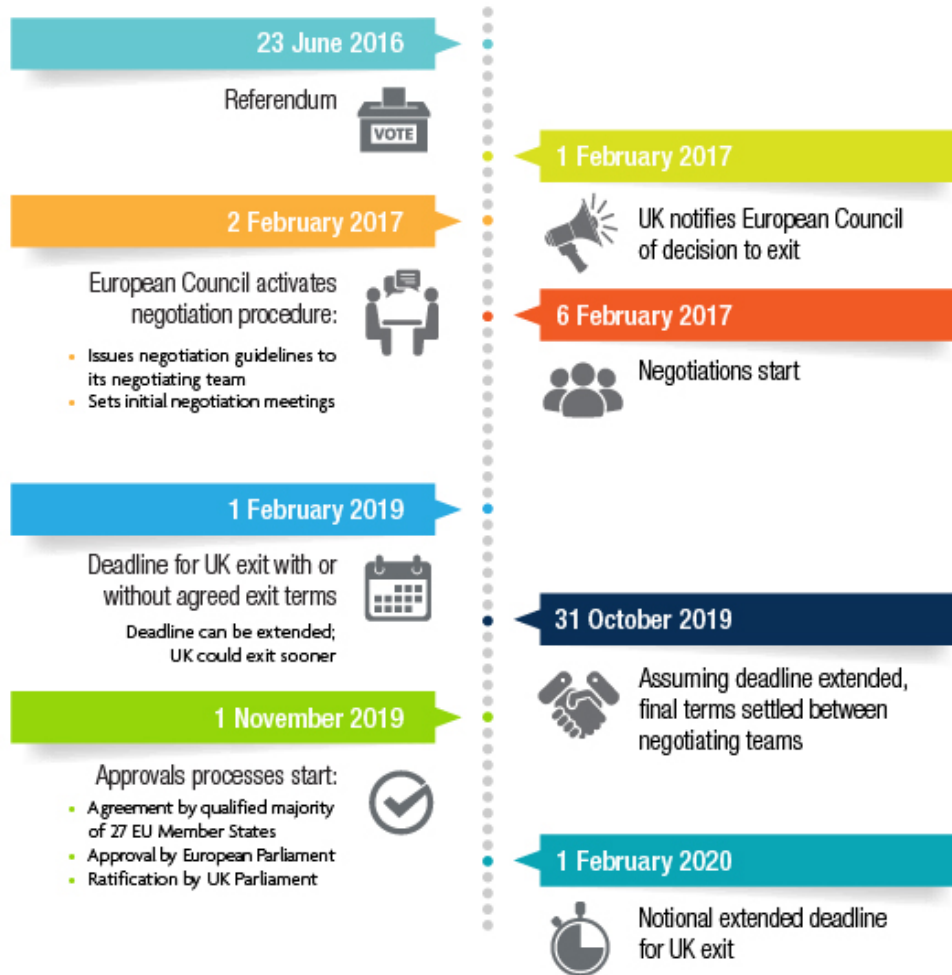
- **Without agreed terms:** If negotiations have not resulted in the UK and the EU agreeing on the UK's exit terms before the two-year term has expired and the UK decides to leave without requesting an extension, or if there is no unanimous agreement to an extension of the two-year deadline, the UK will exit the EU with no agreed terms.
- **With agreed terms, approved:** If exit terms are finalised within two years, or after an extension is granted, the UK will exit the EU after those terms have been formally approved by an enhanced qualified majority of the 27 Member States (72 percent (20 or more) of those Member States, which must represent at least 65 percent of the EU population) and ratified by the European Parliament. The terms must also be approved by the UK Parliament in the form of legislation repealing the European Communities Act 1972, and the UK government could potentially call a second referendum to help Parliament decide whether to approve the exit terms. These required approvals will all take time and are further possible delaying factors.

Some commentators have suggested that the UK should ignore Article 50 and that a simple repeal of the European Communities Act 1972 is all that is required for the UK to withdraw from the EU. The general view is that this would, at the minimum, cause difficulties for the UK in negotiations with the EU over the future UK/EU relationship.

Other commentators have suggested that the UK should wait more than a year to notify the European Council that it has decided to exit the EU. The general view is that, although the EU could then take action against the UK under Article 7 of the Treaty for prolonging uncertainty and so ignoring the values on which the EU is based, this would be unnecessarily harsh given that the UK is facing a political crisis.

Assuming 1 February 2017 as a possible notification date, the Article 50 timeline would take the following shape. However, it is unclear how the practical, political, and legal issues described above will in reality affect this timeline, so all post-referendum dates used below should be treated as entirely notional.

Notional Timeline



Further information on issues related to Brexit can be found [here](#).

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