



October 2016

## **Brexit: 100 Day Update**

2 October 2016 fell on the 100<sup>th</sup> day from the UK's referendum vote to leave the EU. It also marked Theresa May's first Conservative party annual conference as Prime Minister and her first major speech on Brexit, in which she announced the timing of Brexit negotiations with the EU and plans for legislation that will reform UK laws to address some of the implications of Brexit.

### **Start of Brexit Negotiations – By End of March 2017**

Mrs May announced that the UK will start the process of exiting the EU no later than the end of March 2017, putting an end to speculation that the UK government might wait until autumn 2017, after the outcome of the French and German elections is known.

### **Exit Date – Unclear; March/April 2019 at the Earliest**

The date on which the exit process is started will influence the date of Brexit. The process is governed by Article 50 of the Treaty on European Union and starts with a formal letter to the European Council, notifying it of the UK's decision to leave the EU. This triggers an initial two-year deadline before which the EU and UK must negotiate the terms on which the UK will exit the EU and ratify those terms. This deadline can be extended only if the UK and the other 27 EU Member States unanimously agree.

The general view is that an extension of two to three years may be required, because untangling the UK's relationship with the EU involves a huge volume of issues that are likely to take much longer than the initial two-year time frame to negotiate and resolve. There is, however, some political sentiment favouring a swift exit within the two-year time, so a compromise between political objectives and practical realities may be necessary.

## **No Pre-Negotiations**

Mrs May has proposed informal discussions prior to the UK's Article 50 notice being served, to facilitate the formal Article 50 negotiations and minimize disruption to business. However, in a statement welcoming confirmation of the timing of the UK's Article 50 notice, the President of the European Council, Donald Tusk, made it clear that the EU has not changed its original "no negotiation without notification" stance.

## **Court Proceedings – 13 October**

In the meantime, 13 October will see the start of proceedings in the English High Court, before the Lord Chief Justice, involving a number of challenges to the UK government's view that the Prime Minister has the prerogative power to decide when to serve the UK's Article 50 notice without the approval of Parliament. It is anticipated that the Court's decision and the outcome of any appeal, which will be direct to the Supreme Court, will be known before March 2017.

## **Repeal of European Communities Act 1972**

Mrs May also announced plans for a "Great Repeal Bill", for the repeal of the 1972 European Communities Act (ECA). Under the ECA, EU law was established as part of the UK's legal systems and EU law was given supremacy over national laws. Although the Bill will be debated in Parliament next year and will be adopted before the date on which the UK leaves the EU, it will not take effect until the date of Brexit. From the date of Brexit:

- > existing EU law will be preserved in UK legislation until the government has had an opportunity to assess individual EU laws and decide whether to retain, amend or remove them,
- > but new EU law, including the decisions of the European Court of Justice, will not form part of national laws.

## **Future Relationship Between the EU and the UK**

The UK's future relationship with the EU will be negotiated separately from the UK's exit terms and is not provided for within the Article 50 process – although the UK's exit terms will be required to take account of the framework of the new relationship.

Mrs May did not elaborate in her speech on the nature and scope of the UK's future relationship with the EU. However, she referred to the UK's future as a "fully independent, sovereign nation" and made it clear that her priorities are to ensure that UK businesses have maximum freedom to trade and operate in the EU's Single Market, subject to the UK having full control over immigration and the UK's laws not being subject to the decisions of the European Court of Justice. These comments confirm earlier suggestions that the UK is likely to seek to negotiate a bespoke agreement with the EU and is unlikely to seek to remain part of the Single Market, for example, as a member of the European Economic Area.

## **Conclusion**

Mrs May has provided a degree of certainty as to the start of the Brexit process, although the possibility of an extension of the Article 50 timetable means that the date of Brexit itself is not fully predictable. The Great Repeal Bill will provide some legal certainty and continuity in the short to medium term, until the individual EU laws that form part of the UK's legal systems at the time of exit can be properly assessed. However, significant uncertainty remains in relation to the terms the UK will ultimately negotiate for its future relationship with the EU.

Further information about issues relating to Brexit can be found [here](#).

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