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## Brexit in the Supreme Court

### *The Supreme Court's Decision*

The UK Supreme Court yesterday decided that a parliamentary vote is needed before the UK government can trigger Brexit, dismissing the UK government's appeal against an earlier High Court decision to the same effect. Despite the constitutional significance of the Supreme Court decision, in practice a parliamentary vote should not delay Mrs May's timetable for notifying the European Council of the UK's intention to leave the EU, as Members of Parliament are unlikely to defy the referendum vote.

Notification of Brexit must be made in accordance with Article 50, which states that an EU Member State may leave the EU 'in accordance with its own constitutional requirements'. The question before the court was whether the UK constitution required the government to obtain a vote in parliament before it can trigger Article 50.

### *The High Court's Decision Upheld*

In November last year, the High Court ruled that under the UK's unwritten constitution, a fundamental principle is that parliament is sovereign. It accepted that the government has certain executive powers under its royal prerogative to enter into and exit from international treaties without first obtaining parliamentary approval. However, these powers are subject to rights created under domestic UK law. As triggering Article 50 would impinge upon rights conferred by parliament under the European Communities Act 1972 (**ECA**), the High Court reasoned that the government cannot do so in sole reliance on its executive powers; approval by parliament is a prerequisite.

Upholding the high court's ruling and dismissing the government's arguments by an eight-to-three majority, the Supreme Court decided that:

- > by enacting the ECA, parliament intended for EU law to become an independent source of UK law, so long as the ECA remained in force;
- > to withdraw from the EU would remove domestic rights granted through EU law;

- > the ECA does not provide clear wording authorising ministers to withdraw from EU treaties;
- > there is a vital difference between variations of UK law as a result of changes to EU law and variations in UK law resulting from withdrawing from EU Treaties which would remove a source of UK law; and
- > as withdrawal would remove rights under domestic law, the UK constitution requires such changes to be effected by parliamentary legislation.

### *What Happens Now?*

It has been reported that the government has already prepared draft legislation for parliamentary approval. Details of its legislative response are expected to follow shortly.

Notification of Brexit on 31 March 2017 will trigger an extendable two-year timetable for negotiations of the terms on which the UK leaves the EU. Negotiation of the EU/UK relationship post-Brexit may take longer and the UK government is proposing transitional arrangements to bridge the gap. Mrs May has made it clear that the new relationships will be based on "**bold and ambitious**" bespoke arrangements that will not include membership of the EU Single Market but will include a customs agreement.

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

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