The UK exit from the EU: the likely process

Chris Bates

September 2016
The EU referendum result
23 June 2016

**Leave**
Vote share **51.9%**
17,410,742 VOTES

**Remain**
Vote share **48.1%**
16,141,241 VOTES

Electorate 46,501,241
Turnout 72.2%

**England**
Leave 53.4% vs Remain 46.6%

**Scotland**
Leave 38% vs Remain 62%

**Wales**
Leave 52.5% vs Remain 47.5%

**Northern Ireland**
Leave 44.2% vs Remain 55.8%

**London**
Leave 40.1% vs Remain 59.9%
Where do we go from here?

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Article 50 Treaty on European Union

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.
Article 50 Treaty on European Union: key questions

- What are the UK constitutional arrangements for giving the Article 50 notice?
- When will the UK serve the notice under Article 50?
- Can the UK and the EU negotiate in advance of the Article 50 notice?
- Can the UK withdraw the notice after it has been given?
- Is it likely that the negotiating period will be extended?
- What can be included in the withdrawal agreement?
- Can the UK agree a free trade / other long-term agreement at the same time?
- Who must approve the withdrawal agreement before it is signed?
- Can the agreement come into force after the two year period expires?
- Can the agreement include transitional provisions?
Long-term agreement and third countries

UK-EU Long-term Agreement(s)

No specific Treaty provision covering long-term agreement

May be negotiated under existing powers in Treaty e.g. for common commercial policy

Recent timetable for negotiating FTAs 4-10 years

This negotiation different: not negotiating to increase market access

UK government capacity issues

Comprehensive agreement requires Council, European Parliament and possibly Member State ratification

Third countries

Re-establish UK position in WTO

Replace 50+ existing EU FTAs

Replace existing EU mutual recognition or substituted compliance arrangements

EU-UK transitional provisions do not affect third countries

Treaty restricts UK’s ability to conclude 3rd country agreements while still a Member State

Other countries will ‘wait and see’
The UK exit from the EU: an illustrative timeline

**Article 50 agreement**
- UK gives Art 50 notice
- Sign Art. 50 agreement*
- Art. 50 agreement in force (UK exits EU)

**Long-term agreements**
- Negotiate long-term agreements between UK and EU
- Ratification (as needed)
- Transitional period?
- Sign long-term agreements*
- Long-term agreements in force

**Third countries**
- UK negotiates and concludes agreements and other arrangements with third countries
- EU negotiates and concludes agreements and other arrangements with third countries

**Resetting UK & EU legislation**
- UK laws to prepare for UK exit
- UK laws to prepare for long-term agreements
- EU laws to prepare for UK exit
- EU laws to prepare for long-term agreements

* Agreements subject to EU Parliament and Council approval and UK Parliamentary process under Constitutional Reform and Governance Act 2010.
UK government key players

Theresa May
Prime Minister

Boris Johnson
Foreign Secretary
Foreign and Commonwealth Office

Philip Hammond
Chancellor
HM Treasury

David Davis
Department for exiting the European Union

Liam Fox
Department for International Trade

Tom Scholar
Perm Sec, HMT

Oliver Robbins
Perm Sec, DExEU

Charles Roxburgh
Second Perm Sec, HMT

Catherine Webb
Dir Market Access and Budget, DExEU

Katharine Braddick
Director, Financial Services, HMT
EU member state and EU key players

Angela Merkel
German Chancellor
(Elections October 2017)

Donald Tusk
President of the European Council

Jean-Claude Juncker
President of the European Commission

Michel Barnier
European Commission Chief Negotiator

Martin Schulz
President European Parliament

François Hollande
French President
(Elections May 2017)

Piotr Serafin, Chief of Staff of President Donald Tusk

Didier Seeuws, European Council, Special Task Force on the UK

Hubert Legal (France): Council Legal Director

Martin Selmayr, Head of Cabinet of President Juncker

Alexander Italianer, EC Secretary-General

Luis Romero Requena, Commission Head of legal services

Guy Verhofstadt
Brexit negotiator
European Parliament

Sir Julian King (UK)
European Commissioner for the Security Union (designate)
Initial positions

“There cannot be freedom of movement of goods, free movement of capital, free movement of services if there isn't a free movement of people.” – President Hollande, reported 21 July 2016

“we need to make sure that we don’t allow Britain to keep the nice things, so to speak, related to Europe while taking no responsibility” - German economy minister Sigmar Gabriel, reported 28 August 2016

“We are listening to the UK, we are listening to Britain what it actually wants and then we will give the right response” – Chancellor Merkel, reported 20 July 2016

“I'm looking at this with an open mind... I think we should be developing the model that suits the United Kingdom and the European Union. Not adopting, necessarily, a model that is on the shelf already” – Prime Minister May, reported on 27 July 2016

“Brexit means Brexit... that means no second referendum, no attempts to sort of stay in the EU by the back door” – Prime Minister May, reported on 31 August 2016
Financial services perspective on potential outcomes

**EEA or EEA-like agreement**

- Norway model
- Maximises continuity: e.g. passports continue
- **But**
  - Freedom of movement of workers
  - Contributions to EU budget
  - Required to apply EU laws with no vote

**“EEA minus”**

- Treaty based mutual recognition
- Institutionalised cooperation
- Addressing GATS issues

**Conventional trade relationship**

- Risks of disruption to existing business
  - GATS/conventional FTAs do little for cross-border financial services
  - Non-EU firms face ‘patchwork’ of national licensing regimes
  - Limited unilateral relief under some EU/national legislation (e.g. MiFIR)

**“Canada plus”**

- Alternative bilateral financial services framework
Impact on the US

- New mutual recognition arrangements needed with UK
- Future for the EU-US Financial Regulatory Forum: dialogue to triologue?
- Role of the FSB and other international organisations
- Impact on relative roles of London vs New York as financial centres
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