



Countdown to Brexit

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In the coming weeks, the U.K. government is expected to formally notify the European Council of its intention to withdraw from the European Union under Article 50 of the Treaty on European Union (TEU). Formal notification will start the process of withdrawal. The U.K. and the EU will have two years to negotiate withdrawal arrangements (including, potentially, a transitional agreement and an agreement on the future trading relationship between the EU and the U.K.). Formal notification could come as early as 9 March 2017 when the European Council meets in Brussels. This depends on timely passage of the European Union (Notification of Withdrawal) Bill through the U.K. parliament. Full scale negotiations are expected to begin following the Article 50 notification.

The Article 50 notification would conclude the first phase of Brexit, following the U.K.'s decision, by nationwide referendum on 23 June 2016, to leave the European Union by a margin of 51.9 percent to 48.1 percent. There has been considerable speculation during this period as to whether the U.K. would pursue a 'soft' Brexit (involving membership of the European Economic Area) or a 'hard' Brexit (involving a more complete withdrawal). The U.K. government has since established two new government departments (for Brexit and International Trade), which will oversee the withdrawal negotiations and formulate future U.K. trade policy respectively.

THE EMERGING U.K. APPROACH

The U.K. government has outlined its approach in the following 12 high level principles:

1. Providing certainty and clarity
2. Taking control of the U.K.'s own laws by ending the jurisdiction of the Court of Justice of the European Union in the U.K.
3. Strengthening the union between the constituent nations of the U.K.
4. Protecting the U.K.'s strong historic ties with Ireland and maintaining the Common Travel Area
5. Controlling immigration
6. Securing rights for EU nationals in the U.K. and U.K. nationals in the EU
7. Protecting workers' rights
8. Ensuring free trade with European markets

9. Securing new trade agreements with other countries
10. Ensuring the United Kingdom remains the best place for science and innovation
11. Cooperating in the fight against crime and terrorism
12. Delivering a smooth, orderly exit from the EU

The principles are very broad but, from a business perspective, key points include:

- ▶ **Leaving the Single Market:** the U.K. will not be seeking to retain its membership of the Single Market. Instead, it will try to negotiate a new, comprehensive free trade agreement.
- ▶ **New customs arrangement:** the U.K. prioritizes the freedom to make its own preferential trade agreements with non-EEA countries. Therefore, the U.K. does not wish to be bound by the EU's Common External Tariff or participate in the Common Commercial Policy post-Brexit.
- ▶ **Trade in goods and services (excluding financial services):** the U.K. wants to provide for trade in goods between the U.K. and the EU Member States that is "as frictionless as possible" and for the "freest possible" trade in services.
- ▶ **Trade in financial services:** the U.K. wants the freest possible trade in financial services post-Brexit through mutual cooperation agreements. Both the U.K. and the EU benefit from "passport" arrangements, with 5,000 U.K. firms and 8,000 EU firms operating in the others' territory on this basis.
- ▶ **Establish the U.K.'s own tariff schedules at the WTO:** the U.K.'s intended approach is to replicate, as far as possible, the U.K.'s existing position as an EU Member State.
- ▶ **Introduction of the "Great Repeal Bill":** this is intended to (1) repeal the European Communities Act 1972, under which EU law is incorporated into U.K. law; (2) preserve EU law in domestic U.K. law as at the date the U.K. exits the EU; and (3) enable the necessary adjustments to be made in U.K. law by secondary legislation.
- ▶ **Phased process of implementation following Brexit:** the U.K. aims to have reached an agreement about the U.K.'s future relationship with the EU by the end of the two year Article 50

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process. Following this, the U.K. believes that it is in the mutual interest of both the U.K. and the EU for a phased process of implementation of this future relationship, which will give the U.K., EU institutions and Member States as well as businesses time to prepare and adapt to the new trading and cooperation arrangements.

WHAT DOES THIS MEAN FOR THE U.K.'S FUTURE RELATIONSHIP WITH THE EU?

We set out the various potential models for the future relationship between the [U.K. and the EU in previous briefs](#). While many questions still remain, and much will depend on what the EU is prepared to concede once formal negotiations begin, there are strong indications that Brexit will take the form of either the Free Trade Agreement or World Trade Organization models. The U.K. government's preference is for the former, but the Prime Minister has hinted that the U.K. will consider trading with the EU on a third country/WTO basis if a satisfactory deal cannot be reached with the other Member States. This reflects the "hard" Brexit approach.

WHAT DOES THIS MEAN FOR BUSINESSES?

Assuming that the U.K. exits the EU in this way, some of the key implications for U.K. businesses engaging in international trade are:

- ▶ Trade between the U.K. and the EU is likely to involve some form of customs clearance process. It is probable that new documentary requirements will be introduced, such as the need for commercial invoices or possibly certificates of origin and proof of product conformity. It is too early to know what form the clearance process will take, but it is possible that an expedited electronic customs process could be negotiated to simplify trade.
- ▶ U.K. goods may be subject to EU customs duties. The level of duties will depend upon what can be agreed. If no arrangement can be reached and U.K. exports to the EU are treated in the same way as current non-EU imports, the duties could be significant.
- ▶ By leaving the Single Market, the U.K. could potentially choose to simplify existing EU product standards and consumer protection laws, leading to less red tape for U.K. businesses. However, U.K. businesses would still need to conform to EU technical regulations and standards if they wish to sell in the EU.
- ▶ The U.K. would be free to negotiate its own free trade agreements (FTAs) with non-EU countries. U.K. businesses could therefore benefit from increased access to markets outside of the EU. Some key markets that have been identified include the USA, Australia, India, China and Brazil. However, it can take several years to negotiate and implement an FTA, allowing U.K. businesses to take advantage of the opportunities presented by these markets.

- ▶ The EU has negotiated a number of FTAs with non-EU countries for preferential duty rates, such as with South Africa. The U.K. will lose the ability to benefit from these preferential rates, although this may be offset by any FTAs the U.K. can negotiate itself.

WHAT SHOULD BUSINESSES BE DOING NOW?

Businesses should continue to keep up-to-date with the changing political landscape and retain sufficient flexibility to adapt to unforeseen challenges and exploit new opportunities. Brexit will affect all businesses, whether directly or indirectly, and some key areas to consider include:

- ▶ New or increased tariffs on goods – will this affect your supply chain, particularly in respect of EU suppliers? Do you have appropriate systems in place to mitigate customs clearance inefficiencies? Do you know what your legal obligations may be in respect of imports and exports?
- ▶ New or increased restrictions on the provision of services – would this fundamentally affect your business model? What legal requirements may you need to satisfy?
- ▶ Licences or consents – do you rely on any regulatory consents or licences that may become defunct post-Brexit?
- ▶ Workforce and skills needs – how is your workforce and skills base likely to be affected by immigration changes post-Brexit, particularly in respect of EU employees or workers? Do you know who may be affected and how you will manage any new compliance requirements?
- ▶ Corporate structure – are there advantages in setting up an EU establishment post-Brexit?
- ▶ Currency fluctuations and adverse changes in macroeconomic conditions (e.g. inflation, consumer spending and borrowing costs), and how does this affect the viability of your contracts? Can you renegotiate existing contracts or, if required, are you able to effect termination in a timely manner? How can you implement effective risk management and contractual protection in new contracts?

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