Brexit in perspective

Episode 1: *Keep calm and negotiate*

*An inside view from Brussels*

January 2017
However unprecedented, the mechanics for withdrawal are now underway. The road will not be easy for either party. It remains to be seen whether the motto ‘united in diversity’ will hold true over the course of any future negotiations but, as things stand, the European institutions are holding firm on a resolute position towards an exit partner that is setting no clear negotiations objective. There are to be no negotiations before the formal notification of Article 50 of the Treaty on European Union (TEU), and once negotiations start the European institutions will work to preserve the interests of the remaining Members. Decades of equal partnership amongst European nations are set to be unravelled as discussions pit the United Kingdom against the remaining Member States.

2016: The year of revolt. 2017: The year of uncertainty?

Postulating outcomes over the next few months highlights that uncertainty remains the elephant in the room for many factors in a Brexit negotiation. Europe is hosting numerous elections in its Member States over the course of 2017. These range from local elections to elections for President in all parts of Europe; North to South, East to West. Of key importance will be votes in France and Germany, the traditional ‘driver states’ of the European Union. Just like in the British referendum vote on EU membership, and the recent Presidential elections in the United States, there is a question mark over likely outcomes in almost all of these popular votes.

Whereas a solid lead in the polls traditionally meant guaranteed wins, today’s political climate seems like shakier ground.

What we can be sure of however is that, whether in March or later on, the UK Government will trigger Article 50. There is then a clear process for this withdrawal of EU membership, with the expectation of a very strict – and tight – timetable, unless the parties agree to extend it as set out in paragraph 3 of Article 50.
The official “Brexit” procedure

**Triggering Article 50**

The UK formally notifies the European Council of its intention to withdraw from EU membership (“triggers Article 50”)

Phase 1: March 2017?

- European Council to adopt broad, principle based guidelines for Article 50 framework (which can be revised if needed)
- At the recommendation of the European Commission, the Council will open negotiations and nominate the Union negotiator

Phase 2: March – June 2017

- Gay Verhofstadt will act as “observer” for the European Parliament
- A dedicated Council Working Group will provide guidance for the negotiator and EU’s negotiating team on a regular basis

Phase 3: June – August 2017

- European Council formally nominate Barnier as chief negotiator and agree procedural working relationship between institutions
- Interinstitutional cooperation
  - The Article 50 Task Force (European Commission) will keep the EU27 and the European Parliament informed
  - Representatives of Donald Tusk will be present in a supporting role

Phase 4: August 2017 – October 2018

- Negotiations begin with the UK (topics include the EU budget, financial settlement, acquired rights of citizens and business and borders)

Phase 5: October 2018 – March 2019

- European Parliament, European Council and the UK to agree to any Article 50 Agreement or decide to extend the negotiations. The agreement process depends on whether it is an EU or “mixed” competency agreement

Phase 6: March 2019 – ?

- Transitional arrangement and new relationship
- OR
- Hard Brexit?

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Immediately following the announcement of the UK referendum result, the European Council took charge. The day after the referendum, a Council Task Force was created to plan the upcoming negotiations. It has been agreed that a specific ‘Brexit’ Working Group will be set up but only start after formal notification of Article 50 by the United Kingdom. In September, European Commission President Jean-Claude Juncker announced the creation of an Article 50 Task Force to lay the ground work for impending negotiations to begin. Former Internal Market Commissioner, Frenchman Michel Barnier, is to head operations with a German trade expert deputy, Sabine Weyand, guiding him through the process. The Union negotiating team will then be Commission led (by Barnier) with involvement from Council representatives.

1/ European Commission

The wider European Commission will feed input into the Article 50 Task Force through heads of European Commission departments (so-called Director-Generals) and specific “single contact points”, one additional official for each Directorate-General (department).

On 6 December, the European Commission’s Chief Brexit negotiator, Michel Barnier, delivered his opening press statement on the preparations underway at EU level for any notification of Article 50 by the UK. He took the time to outline the process which would dictate the future negotiations.

According to Barnier, if the UK notifies Article 50 in March 2017, then agreement must be reached on the leaving arrangement by October 2018. This date would then allow for ratification by the EU27 (depending on which competences the agreement covers), the UK Parliament and with the consent (a simple majority) of the European Parliament before the March 2019 deadline.

Any future transitional arrangement would then depend on whether the EU27 think that it would be useful to pursue one. Their decision will depend on what sort of relationship the UK asks for after “Brexit” (and what the other EU27 are prepared to give).

Any post-Brexit agreement will have to be concluded as with a third country. This means that new negotiations cannot start until the final Brexit process is completed (i.e. after March 2019). Outside the timing issues, we can expect a degree of balkanisation – Germany, France, Visegrad, Netherlands and Ireland, Nordics and Baltics, Southern periphery: but these groups will likely shift and change depending on the issue being discussed.

2/ Member States (European Council; Council of the European Union)

The EU27 Member States will set up a dedicated committee (Council Working Group) of dedicated officials from their Permanent Representations (which act as Member State footprints in Brussels) to cover Brexit matters. Chief Negotiator Barnier will then regularly update and discuss issues with this Working Group over the course of the Article 50 negotiations; and Sherpas (who inform the Heads of Government and States).

On 15 December, the European Council President Donald Tusk made a statement after a meeting of the EU27. Tusk outlined that the Union negotiating team will have a representative of the rotating Council Presidency, and that representatives of European Council President Donald Tusk will have a supporting role in the negotiations themselves. There will also be broad political guidelines, and more detailed directives, drafted by the Member States to give the Union negotiating team guidance over the course of negotiations.
Guy Verhofstadt was appointed by the European Parliament’s political Groups to report back on the negotiations once they get underway. This will be a restricted dialogue between Verhofstadt and the political Group heads. The Parliament’s far right EFDD Group (Europe of Freedom and Direct Democracy) nominated Nigel Farage as its own Brexit observer, causing some political complications.

On 15 December, it was agreed between the institutions that Verhofstadt will have access to the same briefings as the Council sherpas.

The United Kingdom’s “Brexit Minister” David Davis, was recently in Strasbourg to discuss negotiations with the Members of the European Parliament. During Davis’ talks with Verhofstadt the official line stood for, that Brexit talks will be completed before the 2019 European Parliament elections.

The European Parliament’s elections for President (a role with increased powers over the years) will come up for grabs in January 2017, which may see some shifting in alliances to try and secure the top spot. Expectations so far point to the centre-right EPP Group candidate, Italian Antonio Tajani, taking the position. The European Parliament is set to adopt a resolution in Spring 2017 which is expected to feed into the negotiating guidelines offered by the European Council. Issues such as the UK’s external borders (particularly with Ireland) are expected to feature. There are however some indications that tensions between political Groups are not as unified over the Brexit issues as Verhofstadt’s rhetoric implies.

The largest political Group, the EPP, is known to be less enthused about upcoming negotiations – particularly Members coming from non-Eurozone countries. They fear that without a strong non-Eurozone voice like the UK alongside them, their clout risks being reduced in EU debates.

The resolution will be an important indicator of what the European Parliament will expect in any final discussion (it has a veto over any agreement) but ultimately it will only influence the European Commission’s recommendations to the Member States about what to mandate in discussions. It is unlikely the Member States will take kindly to any perception they are being held to ransom by the European Parliament.
Assumptions about the Article 50 process

- The “negotiation period” under Article 50 will not take up the full 2 years. The Member States (EU27) will only begin to draft their guidelines for the European Commission to negotiate with after official notification is given by the United Kingdom signaling its intent to withdraw membership from the European Union. Institutional estimates expect these guidelines to be ready within three to five weeks after notification – but more cautious estimates suggest that they will not be ready until May or August 2017.

- The Article 50 negotiations will be a broad exit arrangement. Both the United Kingdom, and EU27 have said that these discussions will focus on the mechanics of withdrawal – and not the foundations of a new relationship. That agreement will come later, if at all. The Article 50 agreement will focus on issues like how to deal with budget contributions, borders, any ongoing cases in the European Court of Justice, EU building and infrastructure settlements and citizens’ rights (such as the future status of EU27 nationals in the UK; and vice versa). Depending on whether the UK indicates it wants some form of post-Article 50 agreement; any transitional arrangement will likely be more status quo (equivalence regime) than “bespoke”.

- The UK’s constitution will be of utmost importance. Core overlapping concerns for the UK, EU and other Member States will need to be handled carefully if and when the UK extracts itself from the EU framework. A core concern for Chief Negotiator Michel Barnier - and British neighbor the Irish Republic - is the implications of withdrawal on Northern Ireland. A “hard border” is a concern for both parties given the perceived backward step such a border would send about relations between the two countries; as well as for logistical security and defence implications. Even within the mainland UK, many constitutional issues – such as the status of Scotland and Wales – will likely require further clarity. These issues will not be solved quickly and may involve timely legal challenges.

- The Article 50 timetable will put pressure on a principle based negotiation. The two year – or less than two year – negotiation period will not involve any “tweaking of issues”, or reopening of complex legislation or files. There will likely be a broad sweeping approach meaning that industry will have to wait its turn if it wants to cherry pick or influence existing legislation.

- A successful Article 50 requires a constructive approach from both sides. To make any significant headway in the tight timeframe for withdrawal, there is a need for a reasoned and dispassionate discussion. The tensions are currently riding high and whilst both parties remain adamant that there is no desire to “punish” the other – the atmosphere will do nothing to foster compromise.

- Can Article 50 be revoked? The reversibility of Article 50 will likely prove increasingly important going forward. To achieve so much, in so little time, there is a risk that the UK will be pushed into revoking Article 50 – or into walking away from a last minute deal with the EU27. The ability to ‘undo’ Article 50 once triggered still needs to be legally analysed.
Article 50 process in action

1. EU steering process

The Member State representatives feed into the European Council position through their respective channels. Sherpas help to feed back and update Heads of Member States and Government on this process.

2. The European Council provides negotiating directives to provide guidance to the Union negotiators for use in the negotiating sessions.

3. Negotiating sessions take place; on the European side Michel Barnier from the European Commission takes the lead role, with representatives of Donald Tusk and the Council Presidency also present in the room. The United Kingdom’s negotiating set up is still to be defined.

4. The European Union negotiating team reports information back to the European Parliament who provide soft feedback. The team also reports back to the Council Working Party on the UK, who are consulted about developments.
In focus

European institutional framework (declared or probable)

European Council

European Commission

European Parliament

Personnelities: 1. Donald Tusk (President, European Council); 2. Didier Seeuws (Brexit Coordinator, European Council); 3. Sabine Weyand (Deputy Chief Negotiator, European Commission); 4. Michel Barnier (Chief Negotiator, European Commission); 5. Guy Verhofstadt (Chief Liaison for the European Parliament/Leader, ALDE Group); 6. Manfred Weber (Leader, EPP Group); 7. Gianni Pittella (Leader, S&D Group); 8. Syed Kamall (Leader, ECR Group); 9. Gabriele Zimmer (Leader, GUE Group); 10. Ska Keller (Co-leader, Greens Group); 11. Philippe Lamberts (Co-leader, Greens Group); 12. Jean-Claude Juncker (President, European Commission); 13. Martin Selmayr (Head of Cabinet, Jean-Claude Juncker)

The European Council will maintain control of the “Brexit” process through a set of broad negotiating guidelines – initially principle based, and then supplemented by specific “directives” (drawn up by national Ministers for the EU) containing greater detail as and when it is needed over the course of negotiations. This work is expected to be coordinated by Didier Seeuws and his internal task force team in the Council. Aside from setting the broad framework of negotiations, Member States will have a presence in the negotiation process, albeit of a less practical nature than Michel Barnier (who will negotiate on behalf of the whole European Union, not just the European Commission).

Within the European Union’s negotiating team, the lead negotiator will be Michel Barnier. A representative of the Council Presidency (who have a coordinating role for ministerial discussions on a six month rotation) will be present in the Union negotiating team and therefore directly involved with the coordination work taking place between the European Commission’s core Brexit team and the European Commission’s own departments. Representatives of Donald Tusk are also be to present, with observer status, in any negotiating rounds between Michel Barnier and the UK negotiating team. “Sherpas” (the chief foreign policy/EU policy advisors of the Prime Ministers) will brief the Heads of State or Government on what is going on.

On the European Parliament side, Guy Verhofstadt, and therefore the Conference of Presidents (heads of political Groups) are expected to receive the same level of briefing as the Member States. The European Parliament has no functional role in the negotiation process itself, but will need to give consent by simple majority to any final agreement.
As of 2017, a new Unit is to be set up in the Cabinet Office (department supporting the work of the Prime Minister and Cabinet) to cover Brexit. It will comprise civil servants from the Cabinet Office proper, the Treasury and the Foreign and Commonwealth office. Oliver Robbins is the Permanent Secretary (Department Head) under David Davis in the so-called ‘Brexit Ministry’ (DExEU). Robbins will have responsibility for supporting Cabinet in examining options for the United Kingdom’s future relationship outside the EU, with Europe, and the rest of the world as well as responsibility for the wider European and Global Issues Secretariat at the Cabinet Office. He is known to be very close to the Head of the Civil Service Jeremy Heywood.

Robbins will be joined by Alex Ellis at DExEU, current British Ambassador to Brazil. Ellis has experience both in the Permanent Representation of the UK to the European Union (covering, amongst others, enlargement issues) and in the political Cabinet of former European Commission President José Manuel Barroso.

We can expect that Robbins will be heavily influential in the advising of Theresa May on issues relating to the exit of the UK from the European Union. His strong personal connections within the Cabinet Office are likely to make him a key influence on in the Prime Minister’s thinking in the lead up to March 2017.

UK Permanent Representative Sir Ivan Rogers submitted his resignation on 3 January. Tim Barrow, a career diplomat, was announced a day later as his replacement.
A “race” against time

Brexit timeline

**EU Level**

- 16 December
  - EU 27 Informal meeting

- 15 December
  - European Council

**UK**

- 4 December
  - Italian Constitutional referendum
  - Austrian Presidential election

- January
  - Supreme Court ruling on who can trigger Article 50

- March
  - UK expected to notify intent to withdraw from EU (Art.50)

- May
  - UK local elections

- October
  - Supreme Court ruling on who can trigger Article 50

**EU 27**

- 12 February
  - German Presidential election

- 15 March
  - Netherlands general election

- 23 April
  - French Presidential election

- May
  - Italian General election

- November
  - EU 27 Informal meeting

- December
  - EU 27 Informal meeting
  - European Council Meeting (Malta)

**25 March**

EU 28 Informal Meeting
“Conclusion of a political reflection on the future of the EU” (Rome): 60th Anniversary of the Rome Treaty

**22-23 June**

European Council (Brussels)

Estimate whereby EU27 to have agreed on detailed negotiating mandate

3-5 weeks after Article 50 is triggered:

**15 December**

EU 27 Informal meeting

3-5 months after Article 50

**2017**

- January
  - Finnish Presidential elections

- September
  - Swedish general elections

- April/May
  - Hungarian legislative elections

- 2018

- October
  - EU27/UK Brexit deal needs to allow six months for ratification or parties agree to extend the negotiations

- 28 January
  - Czech Presidential elections

- April/May
  - Hungarian legislative elections

- 9 September
  - Swedish general elections

- TBC October
  - Czech Presidential elections

- TBC: October Irish Presidential elections

- TBC: UK Parliament ratification

**2019**

- TBC: EU27 ratification

- TBC: European Parliament ratification

- March 2019
  - European elections

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Glossary

EU institutions

European Council: Formation of EU Member States Heads of State and Government. They meet at least four times a year and largely set the direction for future EU integration.

European Council President: Donald Tusk (Term – 2.5 Years)

Sherpa: Personal representative of a Head of Member State or Government.

Council of the European Union: Co-legislator for European legislation, made up of ministers for the EU Member States. They typically sit in formations which correspond to their portfolios. Headed by: Rotating Member State “Presidency” of six month terms. The Presidency role is largely one of coordination and agenda setting. The “Presidency” country coordinates all levels of activity within the Council of the EU.

COREPER: Decisions made by national ministers in the Council of the EU formations are prepared by groups of national government officials (the Permanent Representatives Committee). They divide into two “ranks” of national officials.

COREPER II: Meeting of ambassadors who cover topics relating to foreign affairs, justice and home affairs and economic and financial affairs.

COREPER I: Meeting of deputy ambassadors who deal with all other areas of EU policy making.

European Commission: The EU’s civil service which drafts and enforces EU legislation.

College of Commissioners: The European Commission’s political leadership during a five year term. It compromises one President, one first Vice-President, four Vice-Presidents and twenty one other Commissioners with a policy portfolio. There is also a High Representative who represents the EU internationally.

European Commission President: The President’s role is to determine the political direction of the European Commission, organize the College of Commissioners and allocate portfolios to its other members.

Current President: Jean-Claude Juncker

European Commission Vice-Presidents: Vice-Presidents are Commissioners who have a coordination role between the work of Commissioners with portfolios that closely interlink.

European Commissioner: A member of the Commission College. They are assigned responsibility for a specific policy area and one or more Directorates-General (DGs) by the European Commission President.

Directorate-General (DG): A European Commission department akin to a national ministry.

Director-General: The most senior civil servant position heading each Commission ministry. Appointments to this position require Member State backing and are typically political in nature.

Cabinet: The political staff of the individual Commissioners who set the aims to which the Commission DG then works towards.

European Parliament: Directly elected chamber made up of 751 MEPs from all 28 Member States. These national delegates then form EU-wide political Groups which are made up from across the EU. European Parliament President: A new President will be elected in January 2017. (Term – 2.5 Years)

Article 50 Task Force: The “EU” side of the table in Brexit negotiations. Made up of political figures and civil servants from the European Commission, and representatives from Member State governments.

Council Working Group on Brexit: Formal formation for national representatives from the EU27 Member States to discuss specifics of Brexit negotiations on a rolling basis.

UK institutions

Prime Minister: Head of Government (and “First amongst equals” in the Cabinet)

Cabinet: A collective decision making body formed of the most senior Government ministers.

Cabinet Office: Civil service department which supports the Prime Minister and Cabinet of ministers.

Secretary of State: A Cabinet Minister in charge of a Government department.

Permanent Secretary: Most senior civil servant in a Government ministry. They report to the Secretary of State.

Director General: A senior civil servant who reports directly to the Permanent Secretary.

The Permanent Representation of the United Kingdom to the European Union (UKREP): A diplomatic mission from the UK to the European Union and represents the Member State in Council Working Groups. UKREP now reports directly to DExEU. UK Permanent Representative: Tim Barrow
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