

The Brexit Clock Has Started— What Happens Next?

IN SHORT

Background: By a referendum on 23 June 2016, the United Kingdom voted to leave the European Union.

What's Happening: On 29 March 2017, the UK gave formal notification of its intention to withdraw from the EU. This triggers Article 50 of the Treaty on the European Union, opening the negotiations for the UK's exit from the EU.

Looking Ahead: The UK and the EU have until March 2019 to negotiate withdrawal, absent a unanimous agreement to extend negotiations.

The United Kingdom and the remaining European Union Member States ("EU-27") will negotiate the terms of the UK's withdrawal—and likely its future relationship with the EU—over the course of the next two years. European Council President Donald Tusk is reported to have said that the EU will respond to the UK notice within 48 hours. It does not appear that that response will set out much, however—the EU-27 will not sit down and agree on their negotiating position until late April. The negotiation process will conclude either once a withdrawal agreement is approved by the European Council (requiring 72 percent of Member States in favour, representing 65 percent of the EU-27 population) and by the EU-27 and UK Parliaments, or at the end of March 2019, unless all Member States unanimously agree to extend negotiations.

The UK will remain a member of the EU throughout the negotiation process. This entitles the UK to participate in EU activities and decision-making, and it binds the UK to EU law, including decisions by the Court of Justice of the European Union ("ECJ"). The UK will not have the right to participate or vote on any EU decision concerning Brexit and will not be permitted to conclude new trade agreements with countries outside the EU. Other Member States or the European Parliament may block a proposed withdrawal agreement; however, the UK is free to leave the EU unilaterally without a withdrawal agreement in place. Exit without a withdrawal agreement would leave the UK without a number of guarantees, including the rights of UK businesses and citizens in Europe.

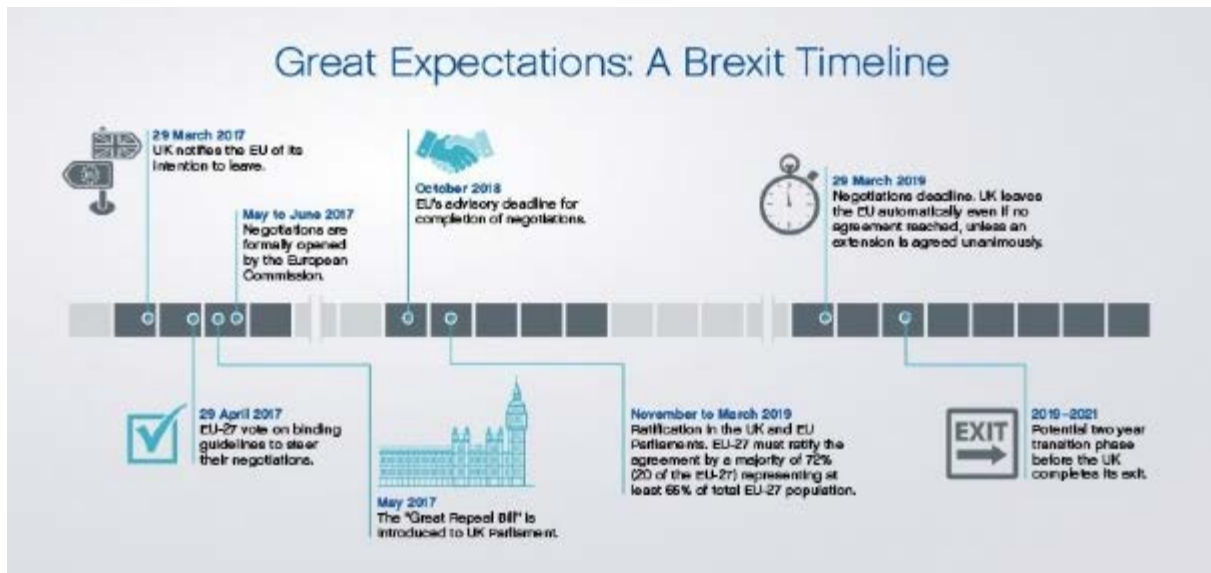
It is widely observed that the withdrawal agreement is unlikely to include the full terms of the UK's future relationship with the EU. On average, the EU takes four to seven years to negotiate a trade deal. The UK Government has raised the option of a two-year transition phase after the withdrawal agreement has come into force and before the UK enters into its new post-Brexit relationship with the EU. European Parliamentary elections in May 2019 may provide sufficient pressure to conclude negotiations within the two-year deadline; it is unclear whether the UK would take part in those elections.



In the absence of a bespoke deal, on exit the UK will default to trading with the EU under the auspices of the World Trade Organisation.



Great Expectations: A Brexit Timeline



Immediate Issues to Address

Trade. The UK Government has committed to leaving the EU's Single Market. In the absence of a bespoke deal, on exit the UK will default to trading with the EU under the auspices of the World Trade Organisation. The UK would be subject to the same tariffs and restrictions as any other third party that does not have its own bilateral trade agreement with the EU.

EU Budget Contributions. The UK is a substantial net contributor to the EU budget, providing approximately 12 percent of total Member State resources. Contributions will continue until the UK's withdrawal is complete. The UK Government has concluded that Article 50 allows the UK to leave without being liable for outstanding contributions, a position with which the EU is likely to disagree.

Rights of Citizens. The UK Government has refused to guarantee the status of EU-27 citizens in the UK until the status of British citizens in other Member States is assured. Negotiations with the EU will need to address residence and employment rights, as well as access to health care and pensions. In the absence of an agreement, UK and EU citizens will be subject to the immigrations laws of the state where they reside.

European Courts. The Government has stated its intention to end the ECJ's jurisdiction in the UK. The UK's so-called "Great Repeal Bill" will come into force on the day that the UK completes its withdrawal from the EU, at which point EU law will no longer have primacy over UK law, and EU regulations will cease to have direct effect in the UK.

It is unclear whether the ECJ will have jurisdiction to review ongoing cases originating in the UK, or oversight of any withdrawal or transitional agreements between the UK and the EU. The UK's participation in a number of arrangements, including the Unified Patent Court, requires that it submit to the ECJ's jurisdiction.

Open Skies Agreement. The EU's open skies agreements entitle UK airlines to operate throughout the EU, as well as in a number of third countries including the United States. The UK will therefore have to ensure that, after Brexit, its airlines continue to access current airspace, either by way of bilateral agreements with each of the relevant countries and the EU, or by opting into existing EU agreements.

Euratom. The UK will leave Euratom, a legally separate institution which governs nuclear energy in Europe. Post-Brexit, the UK will be responsible for regulating its civilian nuclear activity and ensuring the continued supply of nuclear fuel. Internationally accepted safety measures and new bilateral agreements will need to be put in place pre-Brexit.

1. The United Kingdom will negotiate the terms of its withdrawal from the European Union with the body's remaining Member States. This process is expected to take two years and could be extended by agreement.
2. Throughout the negotiations, the UK remains a member of the EU. The UK has the option of withdrawing unilaterally but would do so without a number of guarantees.
3. The withdrawal agreement probably will not cover the full terms of the UK's future relationship with the EU. The notion of a two-year transition phase, beginning after the agreement has come into force, has been mentioned.
4. Key issues to address include trade agreements and tariffs, EU budget contributions, citizenship rights, the ECJ's jurisdiction in the UK, the operation of UK-based airlines and nuclear energy regulation.



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