Brexit – How did we get here and what happens next?

On 23 June 2016 the UK Government held a referendum on whether the UK should remain or leave the EU. 51.89% of the UK population voted "leave", following which the UK served notice under Article 50 of the Treaty on European Union, triggering the process for the UK's exit from the EU.

On 13 November 2018 (almost twenty-nine months since the vote) it was reported that the terms of a draft Withdrawal Agreement had been agreed. However, the agreement must be approved by the UK Parliament, which represents a major hurdle to an orderly Brexit. Whether the Prime Minister will be able to muster sufficient support for the deal struck with the European Commission remains to be seen. Unless an extension to the notice period is agreed, the UK will leave the EU at 11pm GMT on 29 March 2019 (either with or without a deal).

In this article, we explore the key terms of the Withdrawal Agreement, what may happen next and the implications for Chamber members.

What is the exit process?

Article 50 of the Treaty on European Union sets out the mechanism for leaving the EU. It states that any Member State can *"decide to withdraw from the Union in accordance with its own constitutional requirements."* Notice was served on 29 March 2017, nine months after the EU referendum, triggering the two year time frame set out in Article 50 for the UK and the EU to negotiate a withdrawal agreement, taking account of the framework for the UK's future relationship with the EU.

What does the Withdrawal Agreement say?

The negotiations leading to the Withdrawal Agreement focussed on three main withdrawal issues, being: the status of UK citizens living in the EU and vice-versa: the financial settlement the UK will pay to the EU before it leaves; and the border arrangements required once the UK leaves the EU Customs Union (and specifically the need to avoid a hard border between Northern Ireland and the Republic of Ireland). Most of these issues were agreed between the respective UK Government and European Commission negotiating teams in December 2017. However, although the UK gave commitments in relation to the Northern Ireland border issue, there was no agreement on how these commitments would be put into practice. This has been the key stumbling block in finalising the Withdrawal Agreement and is likely to be one of the key challenges in securing a UK Parliamentary majority for the deal.

Will there be a transitional period?

The UK Government and European Commission have agreed the terms of a transitional period, which will run from 30 March 2019 until 31 December 2020. During this period, the UK would remain in the EU Single Market and the Customs Union and would continue to abide by both existing and any new EU laws. However, the UK would cease to be represented at any of the EU institutions and agencies.

The terms of the transitional arrangement are set out in the draft Withdrawal Agreement and unless the Withdrawal Agreement is approved (or the Article 50 notice period is extended), the UK will "crash out" of the EU on 29 March 2019.

What will the UK's trading relationship with the EU be post-Brexit?

The UK Government is seeking a deep and comprehensive partnership with the EU. It wants:

- to leave the EU Single Market and no longer to be bound by the Common Agricultural Policy and the Common Fisheries Policy, but to be within a free trade area for goods;
- to leave the Customs Union and gain the ability to enter into bilateral international trade agreements on the UK's own terms, including with the EU;
- not to have to accept free movement of people; and
- no longer to be subject to the jurisdiction of the Court of Justice of the EU or to make significant contributions to the EU budget.

If no trade deal with the EU is agreed, the UK and the EU will trade under the terms of the World Trade Organisation. This would mean that the EU would be obliged to impose its Common External Tariff on UK imports and the UK would be free to impose import tariffs on goods entering the UK (from the EU and elsewhere). Goods would also be subject to customs checks. Goods exported to the EU would still need to comply with EU standards.

Trading with the rest of the world

Once the UK leaves the EU, the UK will lose the benefit of the EU's free trade deals with non-EU countries. The UK is, however, in the process of working with its trading partners worldwide to put arrangements in place to apply the terms of the EU's existing free trade agreements to the UK.

If the Withdrawal Agreement is approved, the UK and the EU have agreed that the UK will be treated as if it were a Member State for the purposes of international agreements for the duration of the transitional period and the EU will seek consent from partner countries to ensure that the UK may continue to benefit from these arrangements.

What happens next?

On the EU side, the European Council will meet on 25 November to "finalise and formalise" the Withdrawal Agreement.

In the UK, while Mrs May has nominally secured the support of her Cabinet for the deal, at the time of writing, she has since been rocked by the subsequent resignation of two of her ministers, including the Brexit Secretary. Her leadership of the Conservative Party may also be tested by a "no confidence" vote. Assuming she is able to maintain a consensus within Cabinet, the Prime Minister must obtain the endorsement of a majority of MPs in Parliament.

The potential stumbling block to UK Parliament approval remains the Northern Ireland border issue. The Withdrawal Agreement envisages a "backstop" arrangement whereby, if at the end of the transitional period, no solution to the border issue has been found, a single customs territory between the EU and UK (including Northern Ireland) would be created. Under this arrangement, the UK would be required to maintain the EU's common external trade tariff. There would be no tariffs or quotas for goods traded between the EU and the UK, but the UK would be required to abide by certain EU rules (covering tax, labour, environmental protection, state aid and competition) to maintain a level playing field between the UK and EU. The backstop is unlikely to be acceptable to Brexiteers and Northern Ireland's MPs have made it clear that they are unhappy with what appears to be "different treatment" for Northern Ireland.

It seems likely MPs will be able to make amendments to the approval resolution, raising the possibility of a conditional approval for the Withdrawal Agreement, subject to the renegotiation with the EU of certain issues. However, the timetable is already very tight, with the last possible date for an agreement being the final European Council meeting on 13-14 December. The transitional period will only come into effect if the Withdrawal Agreement is approved by both sides. Unless the Article 50 Notice period were to be extended, the alternative will be a hard Brexit with no transitional period from 30 March 2019 onwards.

What does this all mean for Chamber members?

Brexit represents a tectonic shift in the UK's relationship with the EU and has significant implications for its relationships with nations beyond the bloc. For companies outside the EU looking to trade with, or invest in, the UK, the outlook remains uncertain, notwithstanding the terms of a potential withdrawal deal have now been thrashed out. The form Brexit may take will undoubtedly affect the terms, and volume, of UK trade, as well as creating logistical issues at the UK border and impacting investment in the UK. It will also influence regulation, including of goods, services and overseas investment.

What should members be doing to plan for Brexit?

Although much uncertainty remains, there are a number of practical steps companies may take to prepare for all eventualities (and in particular for the prospect of a "no-deal" Brexit). For example: reviewing and re-engineering supply chains to minimise the impact of possible tariffs and quotas; reviewing logistics arrangements, where possible renegotiating supply contracts or stockpiling goods to mitigate potential border delays; keeping on top of UK policy developments in key areas such as foreign investment controls, financial services and product regulation; and reviewing company registrations, location of staff and corporate mobility policies.

...and finally

The nature of the UK's new relationship with the EU is likely to crystalize over the coming months and we look forward to working with the Chamber to keep members abreast of these developments and ensure they are "Brexit-ready".

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