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# Navigating the Negotiations

The countdown to Brexit begins

30 March 2017

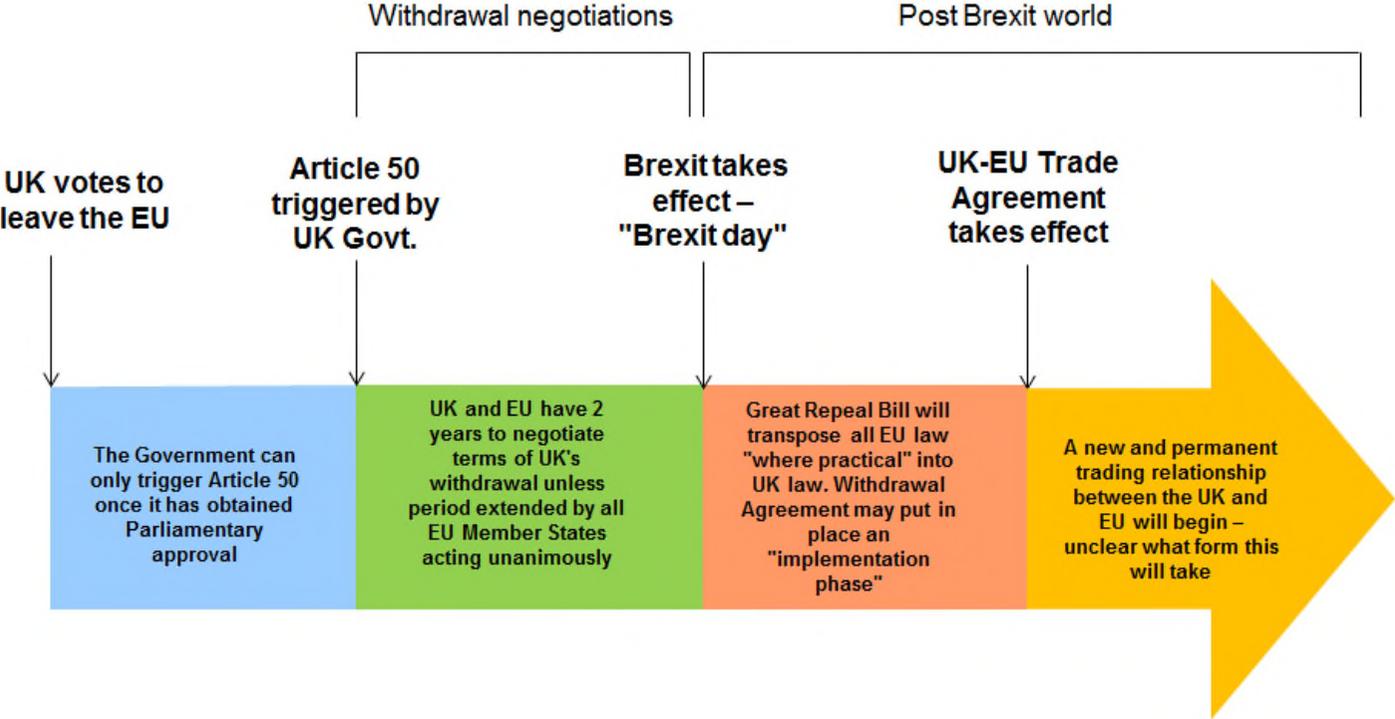
# Article 50 is triggered – what you need to know

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## Agenda

1. Summary timeline
2. The exit process
3. The parties' respective starting positions
4. How will the negotiations be conducted?
5. The “no deal” scenario
6. Are the negotiations the only show in town?
7. What should businesses be doing now?

# Summary timeline



# The exit process

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- Article 50 TEU sets out the process for exiting the EU
  1. Timing
  2. Scope

# The exit process (cont.)

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## Timing

- Withdrawal negotiations must be concluded within two years (extension requires unanimous agreement of UK and EU27)
- Until the point of withdrawal, the UK remains an EU Member State
- UK's exit at the end of the process is not dependent on a deal – but no deal would be a *"very destructive outcome leading to mutually assured damage for the EU and the UK"*

**April 2017**

European Council publishes "guidelines" (mandate) for negotiations

**May 2017 to autumn 2018**

Commission negotiates withdrawal agreement with UK on behalf of the EU

**By March 2019**

European Parliament votes on whether to approve withdrawal agreement (by simple majority)

Council of the EU (minus UK) votes on whether to approve withdrawal agreement (by super qualified majority, 72% of Member States comprising 65% of the EU population)

## The exit process (cont.)

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### Scope

- The scope of the negotiations is itself contentious
- Article 50 states withdrawal negotiations must "*take account of the framework*" for the UK's future relationship with the EU
- UK hopes to agree both withdrawal and future relationship within two years, EU currently claims they must be negotiated sequentially

#### Withdrawal

1. Unspent EU funds
2. UK's outstanding liabilities
3. Arrangements regarding private parties and obligations deriving from EU law
4. Border arrangements, particularly between Northern Ireland and the Republic of Ireland
5. Transitional arrangements
6. Dispute resolution for withdrawal process

#### Future relationship

1. Access to the Single Market
2. Customs arrangements
3. Mutual recognition of regulation
4. Future cooperation in shared projects
5. Dispute resolution for future relationship

# The parties' respective starting positions

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## The UK

- Stated objectives relatively well known and **focus on future UK-EU relationship**
  - UK control of immigration from the EU
  - An end to "direct legal authority" of CJEU in the UK
  - Ability to do trade deals with non-EU countries
  - Maximum access to the Single Market

## The EU

- Not much is known about the EU's negotiating position, beyond its **focus on the withdrawal terms**
- Barnier's four principles:
  - Preserve the unity of EU
  - Being a member of the EU comes with rights and benefits
  - No negotiation before notification
  - Cherry picking is not an option

**Both parties recognise the benefit of a transitional/implementation phase**

# The UK's 29 March notification letter

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- Sets the UK's tone for the negotiations
  - Emphasis on shared interests and values
  - Put citizens first
  - Minimise disruption and uncertainty
- Priorities
  - Confirmed the UK's objectives remain as set out in the Lancaster House speech
  - A new "deep and special partnership"
  - To negotiate new relationship alongside withdrawal
- Nod to domestic issues/audiences
  - Great Repeal Bill
  - Devolution



# A "deep and special partnership"

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## What needs to be covered

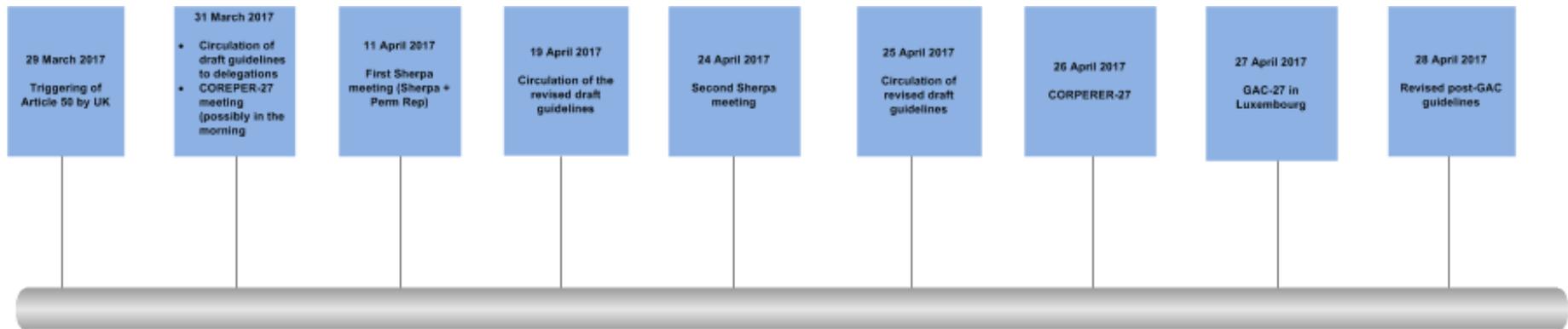
- Rights of EU and UK citizens
- "Divorce bill"
- Access to the Single Market
- Orderly transfer of regulatory regimes
- Customs arrangements
- Transitional arrangements
- Dispute resolution

***"The task before us is momentous but it should not be beyond us."***

Theresa May, March 2017

# How will the negotiations be conducted?

## Draft EU negotiating timeline March – April 2017



# How will the negotiations be conducted?

## The roles of the EU institutions

	European Commission 	Consilium 	European Parliament 
<b>Preparation</b>	Scoping exercise impact assessment (inc public consultation)		
	Commission proposes negotiation directives to the Council	Council decides to open negotiations	
<b>Negotiation</b>	Negotiations start with the partner country	Council and Parliament are informed regularly throughout the negotiations and comment	
	Negotiations are concluded		
	Text is "legally scrubbed"		
<b>Conclusion</b>	Chief negotiators initial the agreement		
	Commission proposes Council decisions on conclusion and signing of the agreement	Council gives authorization to sign and decides on provisional application (mixed agreement) If mixed agreement <ul style="list-style-type: none"> <li>• Ratification by all MS</li> <li>• Provisional application</li> </ul> Council adopts final decision to conclude agreement	Council asks EP for its approval and sends draft decision to conclude + full text of agreement to the EP Procedure of consent in the EP Vote in committee, then in plenary
	Monitor entry into force of the agreement	Agreement is published and entered into force	

# The "no deal" scenario

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## WTO terms

- UK's access to the EU severely restricted compared with EU27 Customs Union and countries with which the EU has FTAs
- Tariff barriers
  - EU tariffs apply
  - UK loses benefits of reduced tariffs with third countries under EU trade agreements
  - UK would still need to agree with EU how to split current WTO quotas
- Non-tariff barriers
  - No mutual recognition of standards
- Practicalities
  - Customs formalities

# Are the UK-EU negotiations the only show in town?

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## The Great Repeal Bill

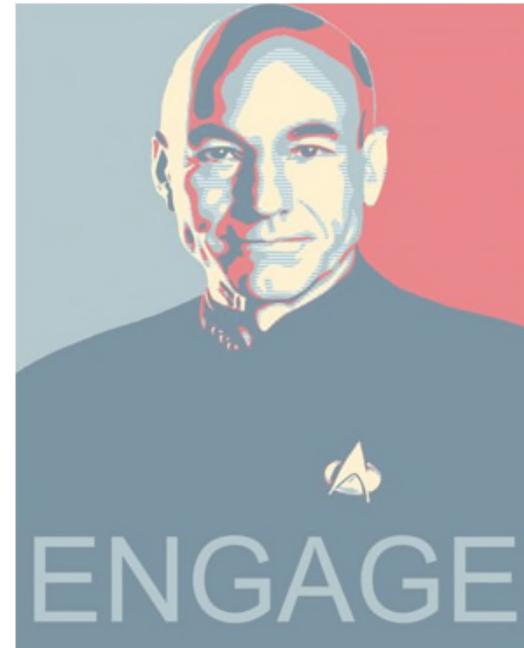
- Will convert existing EU law into domestic law "*where practical and appropriate*"
  - White Paper published today
  - A mammoth task
  - Policy choices will have to be made
  - Government expected to seek controversial delegated powers to transpose EU law itself with reduced parliamentary oversight – "Henry VIII powers"
- Businesses should monitor aspects of the transposition relevant to their operations



# What should businesses be doing now?

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- Engage early
- Engage often
- Don't forget the legislation



How Hogan Lovells  
can help



## Our Brexit resources

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**For more resources on readying your business for Brexit, including our Hogan Lovells Brexometer and latest thinking:**

- Visit our Brexit Hub at: [www.hoganlovells.com/brexit](http://www.hoganlovells.com/brexit)
- Sign up for our Brexit Bulletin
- Contact us with any questions about Brexit at:
  - [Brexit@hoganlovells.com](mailto:Brexit@hoganlovells.com) or
  - via our Brexit Taskforce [www.hoganlovellsbrexit.com/contacts](http://www.hoganlovellsbrexit.com/contacts)



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