

Brexit negotiations launch confirmed for Monday, 19 June

EU Negotiating directives for the first phase of Brexit negotiations

In a Joint statement yesterday (15 June) David Davis, UK Secretary of State for Exiting the EU and Michel Barnier, the European Commission's Chief Negotiator confirmed that the launch of Article 50 negotiations will begin on Monday 19 June. This ended speculation that the start of talks would be delayed following the result of the UK election where the Prime Minister Theresa May lost her parliamentary majority.

The General Affairs Council (GAC) of the EU, meeting in EU27 format on 22 May, formally authorised the opening of Brexit negotiations with the UK. Following this EU Chief Negotiator Barnier proposed 19 June for the first negotiating session.

The GAC agreed on the negotiating directives to begin the talks, based on recommendations presented by the European Commission on 3 May and built on guidelines agreed on by the European Council (Art 50) - on 29 April 2017. These negotiating directives relate only to the first phase of the negotiations, which will deal with the issues necessary for the orderly withdrawal of the UK from the EU. The first phase aims to provide clarity and legal certainty and to settle the disentanglement of the UK from the EU.

Once the European Council deems sufficient progress has been made, the negotiations will proceed to the next phase focussed on 'an understanding of the future relationship' between the EU and the UK. An actual agreement on a future relationship can only be concluded after the UK has left the EU and becomes a 'third country'.

Key issues to be covered in the first phase negotiations:

Citizens' rights:

Citizens' rights are identified as the first priority of the negotiations, with the Council of the EU stating, *'The rights of citizens are at the very top of our agenda and we aim for an ambitious solution, where those affected continue to enjoy their rights.'* The aim is to agree guarantees to protect the rights of EU and UK, and their family members that are affected by Brexit. Following the Directive, the Commission published a [Working paper on Citizens' Rights](#) on 24 May, outlining its position in full. The Directive and Working Paper state:

- guarantees should be reciprocal and based on equal treatment (including the right to permanent residence after five years of legal residence);
- workers, self employed persons, and students will be among the citizens covered;

- guarantees should protect residence rights and free movement, as well as all the rights attached to them (including health care);
- rights should be protected for the lifetime of the persons concerned;
- rights should apply to persons who at the date of entry into force of the withdrawal enjoyed rights relating to free movement under Union law.

Agreement on citizens' rights will be without prejudice to Common Travel Area arrangements between the UK and Ireland.

Financial settlement:

The EU27 want agreement on a single financial settlement, stating that the 'Union and the UK should both respect in full the financial obligations resulting from the whole period of the United Kingdom membership in the Union.' Following the Directive, the Commission published a [Working paper on Financial Settlement](#) on 24 May, outlining its position in full. The Directive and Working paper state that the Financial Settlement will include:

- ongoing activities while the UK remains in the EU, e.g. the EU budget, European Investment Bank (EIB), European Central Bank (ECB);
- specific costs related to its withdrawal e.g. relocation of EU agencies based in the UK;
- a calculation of the total amount and a schedule of payments, as well as further rules and arrangements to address specific issues.

Further to this, the Working Paper sets out the Methodology for calculating the UK obligations to the Union budget and states that the payments related to the Financial Settlement must follow a schedule aimed at mitigating the impact of the UK withdrawal on the Union budget and member states. The actual schedule and practical modalities for the payment of the Financial Settlement should be defined in the second phase of negotiations.

A key issue on the financial side will be making good on the EU 2014-2020 long-term budget, which involves significant commitments for investment funding in the newer EU member states. Failure to reach agreement with the UK would also have knock on impacts for the contribution of other member states.

The situation of Ireland:

The EU has committed to continuing to support peace, stability and reconciliation on the island of Ireland. The Directives state that a deal should:

- **not undermine the Good Friday Agreement;**
- **avoid the creation of a hard border** on the island of Ireland - calling for "flexible and imaginative solutions" to this issue;
- note the right of residents of Northern Ireland who hold Irish citizenship to continue to enjoy their rights as EU citizens;
- **recognise existing bilateral agreements** e.g. the Common Travel Area (if in conformity with EU law);
- address Issues arising from Ireland's unique geographic situation, including **the transit of goods** (to and from Ireland via the UK).

Goods placed on the market and procedures based on EU law:

The negotiating directives for the first phase also cover other issues where arrangements are needed to reduce uncertainty and avoid a legal vacuum. For example, if a product is already placed on the single market before the withdrawal, it should be ensured that it can remain in the market afterwards.

The GAC states that other matters where there may be a need to reduce uncertainty or avoid a legal vacuum, such as services, will require and be covered by future negotiating directives (and still to be drafted).

Negotiating Principles

- **A phased approach**

Negotiations will follow a multi-phased approach and two phases have been confirmed so far. However, it is not clear if additional phases will be required.

- **The principle that nothing is agreed until everything is agreed**

Negotiations will be approached as a single package and individual items will therefore not be settled separately. Each phase will aim to gain agreement on specific issues, but nothing is settled until everything is agreed in full.

- **Terms and conditions apply**

The Council Directive states that the negotiating directives may be amended and supplemented as necessary throughout negotiations, in particular to reflect the European Council guidelines as they evolve.

- **Balance of rights and obligations**

The Agreement must be based on a **balance of rights and obligations**, to ensure a level playing field.

- **Integrity of the Single Market**

The **Single Market for goods and services cannot be fragmented** and access cannot be granted on a sector by sector basis.

- **Benefits of membership**

A non-member of the EU **cannot enjoy the same rights and benefits** as a member.

- **Authority**

The **Decision-making autonomy** of the EU as well as of the **European Court of Justice** must be respected. The **European Council** is the body which determines when sufficient progress has been made in negotiations- only once their opinion is clear will the talks progress to a second phase of discussion on a transitional deal and future relationship.

Second phase – transitional arrangements and the future relationship

At this stage there is very little clarity on what the second phase of negotiations will seek to achieve in detail.

Transitional arrangements may be agreed in order to avoid a cliff-edge scenario. Following the result of the UK election there is increased focus on what these transitional arrangements might be, with some in the UK suggesting a significant transition period during which the UK stays in the single market and customs union. It is clear that any transitional arrangement must be clearly defined, limited in time and subject to effective enforcement mechanisms.

An identification of an understanding over the framework for the future EU-UK relationship and preparations for a possible future **EU-UK free trade agreement** (FTA) may also take place in the second phase.

Further Information:

Ibec will continue to engage with the Permanent Representation of Ireland to the EU and the Council of the EU and Commission task forces in Brussels as these important negotiations get underway.

For further detail and analysis please consult the latest edition of our newsletter - [Ibec Europe and Global Focus – 3](#) - and our website – www.ibec.ie/europe. Ibec's Brexit guide and toolkit and other material can also be accessed via our dedicated portal at www.ibec.ie/brexit, which we encourage you to visit regularly.