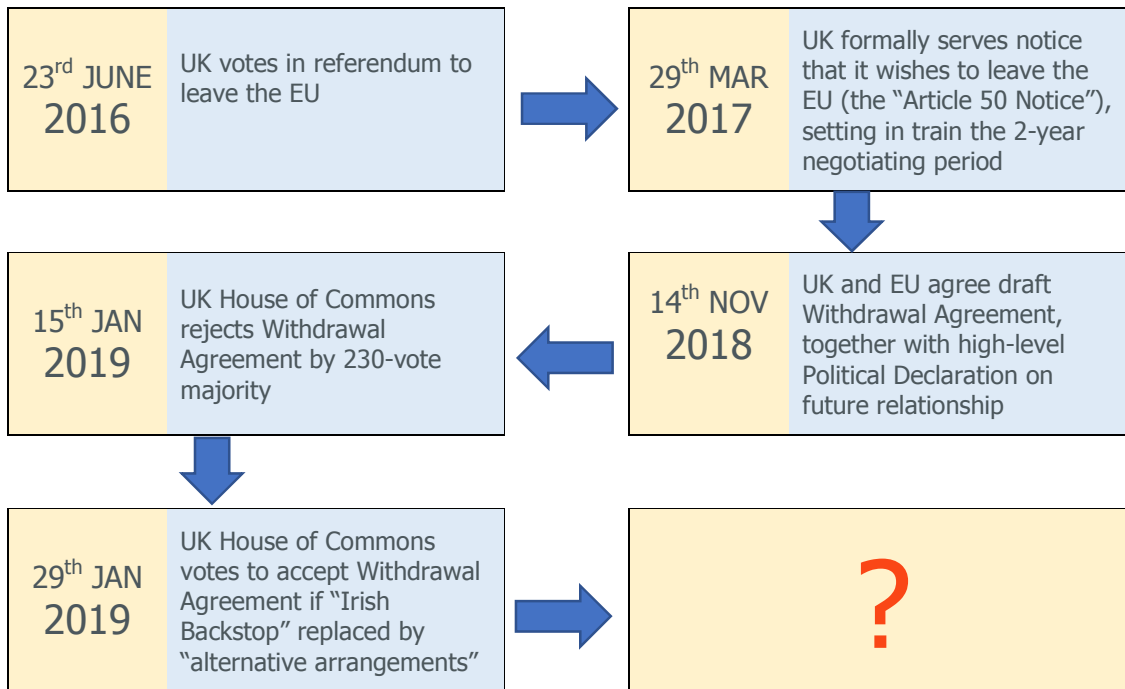


Brexit – What is going on and what does it mean for you?

The Brexit negotiations have reached a critical point. With the 29th March 2019 deadline a matter of weeks away, absolutely no-one can say with any certainty what is going to happen next. And, with so much happening and so many points-of-view, it can be hard to work out exactly where things stand and what it means for your business.

State of Play

As of 8th February (7 weeks before Brexit is due to take place), the position is as follows:



The Irish Backstop

Key to whether the UK leaves the EU with a Withdrawal Agreement is the question of the "Irish Backstop". But what is this?

The UK's only land border with any other country is between Northern Ireland and the Republic of Ireland. That border is an "open" border, with no physical infrastructure. Both the UK and EU committed to retaining an "open" border.

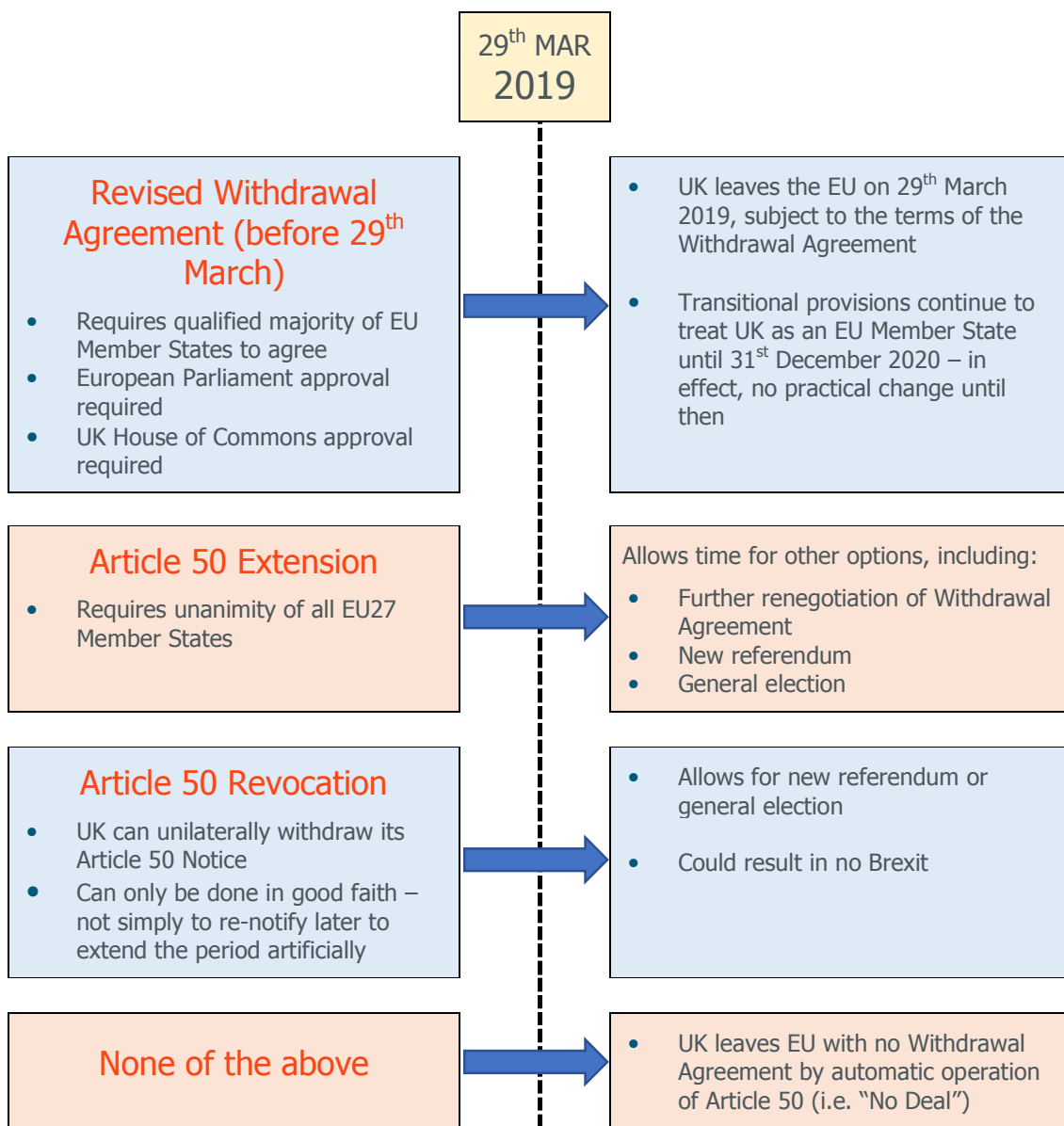
The fact that the UK and Ireland were both in the EU Customs Union and Single Market, helped avoid a border, as goods crossing the border met the same standards and were not subject to customs duties. Without regulatory alignment and a close customs arrangement, it becomes very difficult under WTO rules for either the UK or Ireland to avoid checks on imported goods.

The "Irish backstop" was created to deal with this problem. In short, it meant that, until an alternative solution could be found, either through new technological solutions or a future UK/EU Free Trade Agreement, the whole of the UK would remain in a customs union with the EU and Northern Ireland would remain governed by EU rules on goods.

So, what happens next?

On a political level, it is impossible to predict what might happen next in the Brexit negotiations. The UK government is seeking to renegotiate the Irish Backstop with the EU. Other parties are seeking to negotiate a different agreement altogether, some are advocating the case for leaving the EU with no Withdrawal Agreement (the so-called "No Deal" scenario), whilst others are pushing for a new referendum. Who will prevail is anyone's guess.

However, from a strictly legal point-of-view, we know the framework within which any developments must take place. The UK is scheduled to leave the EU on 29th March 2019 at 23:00 GMT. The following sets out what happens by operation of law.



What would “No Deal” mean?

The term “No Deal” is used as shorthand for the UK leaving the EU with no Withdrawal Agreement. This would mean the UK leaving the EU on 29th March 2019 with no arrangements in place to govern the terms of that withdrawal. Overnight, the UK will become a non-EU country. This means:

- In respect of goods, the EU and UK must apply tariffs to each other’s goods when imported.
- Goods imported between the EU and UK should also become subject to regulatory checks to ensure compliance with applicable laws.
- In respect of services, the UK will be treated in the same way as any other WTO member and will lose the right to provide some services into the EU (e.g. financial services provided under “passporting” arrangements).
- The UK will no longer be part of EU bodies such as the EU Chemicals Agency, meaning that the regulatory framework applying to the supply of certain products in the UK will be unclear at best.
- The UK will no longer be party to the EU’s Free Trade Agreements with other countries, although the UK government hopes to be able to “roll-over” a limited number of these agreements before 29th March.

The UK and EU, and individual Member States, are currently considering temporary arrangements to allow some economic activities to continue in a “No Deal” scenario, although these measures will have relatively limited effects. For example:

- The UK government has adopted a “temporary permissions regime” allowing EU financial services providers to continue providing services to UK customers whilst they apply for authorisation locally in the UK.
- The European Commission intends to adopt temporary legislation allowing UK airlines to fly into the EU from the UK (although not internally within the EU).
- The UK government intends to adopt temporary simplified procedures for imports into the UK from the EU without the need for custom checks.

Won’t there be transitional arrangements?

The Withdrawal Agreement includes transitional provisions under which the UK would continue to be treated, for most purposes, as an EU Member State until 31st December 2020 (and potentially up to 2022). If these transitional provisions come into force, most businesses will notice very little change for the duration of the transitional period.

However, if there is no Withdrawal Agreement, there are no transitional provisions.

How can my business prepare for Brexit?

The implications of Brexit are different for every single business. For some, the effects are limited. For others, Brexit presents existential difficulties. There is therefore no stock answer to what the effects of Brexit will be for each business and no “one size fits all” approach to preparation.

However, it is possible for all businesses to analyse how they might be affected by Brexit, and in particular a “No Deal” Brexit. This goes beyond simply looking at direct imports / exports between the UK and EU but also looking at all significant aspects of the business to consider whether there are any effects. These range from broad questions affecting most business sectors to very niche points of detail concerning specific EU regulatory frameworks.

For example, some of the questions we have considered with clients across sectors include:

- Are any of our long-term contracts affected by Brexit? If so, what can we do?
- Do we transfer data between the UK and EU (for example through hosting servers in other countries)? If so, what should we do to prepare for Brexit?
- Does our corporate structure involve branches of UK entities in other EU countries?
- Are we still eligible to rely on the licences we currently have in place to conduct business in the EU?
- What does Brexit mean for employees in the UK who are EU nationals?

How can BCLP help?

Our Tier 1 ranked Brexit taskforce have been helping clients to prepare for Brexit across virtually all sectors of the economy, including financial services, retail, chemicals, food, automotive and telecommunications. Examples of our work include the following:



We are ranked Tier
1 by Legal 500
2018

- **Major Retailer:** Advised on the implications of Brexit on its supply chain, the potential loss of existing EU free trade agreements and the implications of leaving the single market and customs union.
- **Financial Institutions:** Advised several European financial institutions with UK branches in relation to their Brexit contingency planning and submissions to the regulatory authorities.
- **Energy sector:** Assisted a UK-based trade association on its Brexit preparatory work, in particular in formulating its thinking for discussions with government and participated in roundtable discussions to discuss key priorities.
- **Gas distributor:** Representing a UK-based refrigerant gas distributor on the extraction of the UK from the EU gas quota regime.
- **Chemicals sector:** Advised a global chemicals supplier on contingency planning, including regulatory issues (REACH), rules of origin and the implications of the UK leaving the EU customs union.
- **Automotive parts manufacturer:** Advised on implications of Brexit for the group’s European corporate structure.

Get in touch

For further information or assistance, please get in touch with your regular contact at Bryan Cave Leighton Paisner or with Chris Bryant in our London office.



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