

## Client Alert

### Brexit: What Happens Now?

July 1, 2016

As part of a series of updates following developments in the post-Brexit referendum landscape, we consider the potential roadmap to the U.K.'s actual withdrawal from the EU.

#### The Referendum Result

On June 23, 2016, the U.K. (comprising England, Wales, Scotland, and Northern Ireland) voted by 52 percent to 48 percent in a referendum to leave the European Union. The British Overseas Territory of Gibraltar also participated. The turn-out of eligible voters was 72 percent, a figure higher than the 66 percent participation in the general election of 2015.

While one could be forgiven for thinking otherwise, legally, the referendum has done little to change the U.K.'s relationship with the EU. Although the European Commission has confirmed the settlement achieved by David Cameron in his negotiations earlier this year will not be implemented, that settlement had not yet taken effect anyway.

Until the U.K. government "*notif[ies] the European Council of its intention*" to withdraw and in so doing invokes Article 50 of the Treaty of Lisbon, from a legal standpoint, the U.K.'s relationship with the EU remains unchanged.

Two years after this notification has been made, the Treaty on European Union and the Treaty on the Functioning of the European Union will cease to apply to the U.K. That period may only be extended if the European Council (*i.e.*, the governments of the Member States of the EU) unanimously agrees.

During that time, the U.K. will seek to negotiate a new relationship with the EU. A number of different "models" for this relationship already exist, but it is unclear at the moment which of these the U.K. will seek for itself. Nor is it possible to predict with any certainty how amenable the EU will be to the various options for future relations.

We will provide further updates on these models and the respective changes they may bring in due course.

#### The Difficult Domestic Situation

The result of the referendum is only advisory; it does not actually bind the government. It is theoretically possible, therefore, that the U.K. government will not provide a notification under Article 50. Even if it does elect to do so, it is unclear, at this stage, when this will happen. This is primarily because the domestic political backdrop is complex and fast-moving.

On the morning the result was announced, David Cameron, the current leader of the Conservative Party, stated his intention to step down as prime minister. In doing so he suggested that a new prime minister ought to be in office by the beginning of October and – significantly – that the new prime minister ought to decide when to trigger Article 50.

The Conservative Party are currently in the process of electing a new leader (and, as the majority party in the House of Commons, *de facto* prime minister); it is currently envisaged a new leader will be in place in early September, and certainly before the Conservative Party Conference at the beginning of October. The former London Mayor, Boris Johnson, was considered to be a frontrunner for the post, but on June 30 he ruled himself out of the race. That leaves the current Home Secretary, Theresa May, and Michael Gove as likely frontrunners.

Meanwhile, the current leader of the Labour Party (the main opposition party), Jeremy Corbyn, is facing a serious challenge to his leadership: on June 28, Labour Members of Parliament (MPs) passed a motion of no confidence in his leadership by 172-40.

It is very likely, therefore, that the two main political parties in England will be occupied with internal matters in the short-term.

Separately, the status of Northern Ireland and Scotland as members of the U.K. has been called into question (the former by those who have campaigned for a united Ireland, and the latter by those who desire independence). Northern Ireland voted to remain the EU with a majority of 55 percent, and Scotland with an even greater majority of 62 percent. Gibraltar voted with a majority of 96 percent to remain in the EU. Gibraltar's Chief Minister has openly stated that he is in talks with Scotland regarding a plan to stay in the EU.

In short, whoever replaces David Cameron as prime minister will be confronted with a country divided following the referendum result. That being so, he or she may feel obliged – in light of the close result of the referendum – to call a general election to secure a renewed mandate from the people. If that were to happen, it would almost certainly delay the U.K.'s invocation of Article 50 yet further. Indeed, if a general election were to be called before the end of this year, it is difficult to see the U.K. opting to trigger Article 50 until early 2017. A general election could also cause further uncertainty if no party secured a clear majority.

The situation is further complicated by the large majority of MPs from all parties who have publicly stated their opposition to Brexit.

Article 50 provides that the U.K.'s withdrawal from the EU must be "*in accordance with its own constitutional requirements.*" What this means in practice for the U.K. – with its uncodified constitution – is, like so much at present, unclear. Unlike some other jurisdictions, referenda are rarely held in the U.K. and are usually advisory only, as in this case.

Those unhappy with the result of the referendum are calling for MPs – the vast majority of whom oppose Brexit – to prevent the U.K. from leaving the EU. After all, they argue, Brexit only secured the backing of just over 37 percent of eligible voters.

MPs will potentially have multiple opportunities to do so.

For example, it has already been argued that the new prime minister will need to secure an Act of Parliament before he or she is even able to invoke Article 50. Additionally, MPs could simply choose to vote down whatever bill is eventually submitted to Parliament to repeal the European Communities Act 1972, through which the U.K. joined the precursor to the EU.

To sum up, the U.K. will likely have to resolve the many domestic issues it faces before it can invoke Article 50 from a position of relative internal stability. In fact, it seems increasingly possible that – unless the new prime minister is both prepared and able to overcome significant constitutional hurdles – such an invocation might not in fact be made at all.

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At the moment, no laws have changed, and the U.K.'s regulatory environment is the same as last week. But once the U.K.'s internal political instability has been resolved, negotiations with the EU will have to commence in earnest: influential European figures have already called upon the U.K. to initiate the process "immediately". That said, there is recognition that invoking Article 50 is a matter for the U.K., and cannot be accelerated by the EU – a point made by European Commission's competition chief Margrethe Vestager.

Although at present much is uncertain, we will provide further updates on the timing and manner of the U.K.'s departure from the EU as more details emerge in the coming weeks and months.

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Visit our [Brexit update page here](#) to read more of our series of alerts on the 2016 Brexit referendum.

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