

client alert

EU | BREXIT |

19 JANUARY 2017

THE TIMING OF BREXIT

In the aftermath of Prime Minister Theresa May's landmark speech on Tuesday 17 January (the Lancaster House speech), very few of us are left clinging to the belief (or hope) that Brexit may never happen. But the question of when it will happen, and whether Parliament can block it, remain to be decided.

CAN PARLIAMENT BLOCK BREXIT?

In the Lancaster House speech, Theresa May made a commitment that Parliament will have an opportunity to vote on the final Brexit agreement. Specifically, she said that "the Government will put the final deal that is agreed between the UK and the EU to a vote in both Houses of Parliament, before it comes into force".

This vote is different from the vote which is currently the subject of litigation before the Supreme Court (the Miller case). That vote relates to the decision to trigger Article 50 of the Lisbon Treaty, which will mark the formal start of the two year period of negotiations between the UK and the EU. The vote promised by the Prime Minister in the Lancaster House speech will be held at the end of the negotiation period, on the outcome of the negotiations.

Mrs May did not provide any detail on the nature of the vote, beyond the statement quoted above, but the House of Commons Library has produced some excellent guidance (<https://secondreading.uk/brexit/brexit-and-parliament-deal-or-no-deal/>) which notes that without Mrs May's promise, there would be no legal requirement for approval of the Brexit agreement, since under the relevant legislation (the snappily named Constitutional Reform and Governance Act 2010 or CRaGA) most treaties don't require the approval of Parliament.

If Mrs May intends that the Government will apply the CRaGA procedures even though it is not legally required to, the Commons could, in theory at least, postpone ratification of the final agreement indefinitely, or at least beyond the end of the two year negotiation period. However that would be somewhat self-defeating for the Remain contingent, since the UK might then have to leave the EU without any withdrawal agreement (the ultimate "hard Brexit"), unless some way were found to rescind the triggering of Article 50, which could probably only be achieved with unanimous agreement of all 27 member states.

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As the timeline below indicates, there are a number of variables to be taken into account when determining the likely timing of the eventual departure of the UK from the EU. No date has yet been announced for the Supreme Court to hand down its decision in the Miller Case, although it is thought it should be available by the end of January at the latest. The Court is widely expected to uphold the ruling of the High Court, and confirm that a vote of both Houses of Parliament must be obtained before the Government can trigger Article 50. Despite the fact that a large majority of Lords and MPs voted against leaving the EU, it is also widely expected that Parliament will acknowledge the Referendum result as expressing the will of the people, and vote in favour. However the clarification in the Lancaster House speech that Brexit not only means Brexit but actually hard Brexit may make MPs, and more particularly members of the House of Lords, less inclined to accept that the Government has a clear mandate to proceed. If the Supreme Court's decision is delayed for one reason or another, or the Government fails to get a vote in favour of Article 50 on the first attempt, it may not be feasible for the Prime Minister to trigger Article 50 by the end of March as she promised she would in her speech to the Conservative Party Conference in September last year.

A delay in triggering Article 50 might not be a bad thing from Mrs May's point of view. There are a number of important elections in EU member states in the next few months, the results of which can be expected to influence the negotiating position of the EU. The results of the elections in France and Germany in particular are likely to be significant, but the elections in The Netherlands and Italy will also be influential. The two year negotiation period is already very tight; Britain's Permanent Representative to the EU, Sir Ivan Rogers, recently resigned after expressing the view that the exit negotiations would be more likely to take ten years. There is a risk that the first six months of negotiations may be wasted if there is a significant change in the political balance of power in Europe during that period. Many believe that in any event an extension of the two year period will be necessary because of the range of issues that need to be discussed and agreed upon, and their significance. But Mrs May will be anxious to have the negotiations concluded before the next UK General Election on 7 May 2020, a date fixed by statute which would require repeal or amendment to postpone.

BREXIT TIMELINE

By end January 2017 (anticipated)	Decision of the Supreme Court in the Miller Case
By 30 March 2017 (if Miller Case appeal unsuccessful)	Vote of Parliament to approve the triggering of Article 50
By 31 March 2017 (if Miller Case appeal successful or Parliament votes in favour)	Article 30 is triggered
1 April 2017	Formal negotiations with the EU commence
7 May 2017	French Presidential Elections
24 September 2017	German Federal Elections
By 30 March 2019	Vote of Parliament to approve the negotiated exit deal

31 March 2019 (midnight)	UK ceases to be a member of the EU (unless an extension of the negotiation period is agreed)
1 April 2019	The whole of EU law in force on 31 March 2019 (the <i>acquis</i>) is imported into UK law. Possible commencement of transitional provisions.
7 May 2020	UK General Election (unless Fixed Term Parliaments Act 2011 is repealed/amended)



Check out our dedicated **Gide / Brexit** LinkedIn page to learn more about the consequences and legal implications of Brexit.

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