

## client alert

EU | BREXIT |

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### THE UK IS SETTING COURSE FOR A HARD BREXIT

At a speech at Lancaster House in London this morning, the Prime Minister, Theresa May, set out her plan for the Brexit negotiations. She identified what she believes were the reasons for the leave vote in June last year, and set out four principles that she believes will drive the negotiations for a new partnership with the EU. She also listed 12 objectives which she said amount to "one big goal: a new, positive and constructive partnership between Britain and the European Union". The most significant development was her confirmation for the first time that the UK will not seek membership of either the Single Market or the Customs Union.

#### THE REASONS FOR THE LEAVE VOTE

According to Mrs May the UK voted to leave the EU "not simply because [the UK's] history and culture is profoundly internationalist". She cited the different political traditions of the UK: unlike other European countries, the UK has no written constitution and relies on the principle of Parliamentary sovereignty as the basis of its constitution. The UK has only recent experience of devolved government and little experience of coalition government. The British public, according to Mrs May, "expect to be able to hold their governments to account very directly, and as a result supranational institutions as strong as those created by the European Union sit very uneasily in relation to [the U.K.'s] political history and way of life". In short, "It was a vote to restore, as we see it, our parliamentary democracy, national self-determination, and to be become even more global and internationalist in action and in spirit".

#### THE FOUR PRINCIPLES

Mrs May declared that the UK will be driven by four simple principles in the negotiation of the new relationship: "we will provide as much certainty and clarity as we can at every stage. And we will take the opportunity to make Britain stronger; to make Britain fairer and to build a more Global Britain too".

#### THE 12 OBJECTIVES

Mrs May listed 12 objectives which the government will seek to achieve in the negotiations.

## 1. Certainty

Mrs May acknowledged the need of business, the public sector and individuals for as much certainty as possible in the process and specifically undertook that the government will put the final deal that is agreed between the UK and the EU to vote in both Houses of Parliament, before it comes into force, an issue over which there had been a great deal of doubt.

## 2. Control of UK laws

The main issue here is to remove the UK from the jurisdiction of the European Court of Justice in Luxembourg. During the run up to the Referendum in June, it became apparent that a significant section of the Leave campaign were unaware of the difference between the ECJ in Luxembourg and the European Court of Human Rights in Strasbourg. In fact the removal of the UK from the jurisdiction of the ECJ is not so much an objective as an inevitable consequence of ceasing to be a member of the EU, although even that will not be immediate as the ECJ will presumably continue to be the court of appeal for all issues which arise under EU law before the ultimate exit.

## 3. Strengthen the union

One of the domestic issues confronting Mrs May in the Brexit process is that several regions of the UK, particular the devolved jurisdictions of Scotland and Northern Ireland, did not vote to leave. Mrs May said she was determined that the devolved administrations should be "fully engaged" in the process, and that "part of that will meaning working very carefully to ensure that – as powers are repatriated from Brussels back to Britain – the right powers are returned to Westminster, and the right powers are passed to the devolved administrations of Scotland, Wales and Northern Ireland". In particular she is anxious to ensure that "no new barriers to living and doing business within the United Kingdom are created". This may be an indication that she would be prepared to offer increased powers to the devolved governments, or instead a marker that there will be no exceptions to the agreed settlement: Scotland in particular is very keen to retain access to the Single Market for its exports and the migrant labour on which it relies.

## 4. Maintain the Common Travel Area (CTA) with Ireland

Upon leaving the EU, UK will acquire a land border with the EU, namely the border between the Republic of Ireland and Northern Ireland. Mrs May committed to finding a practical solution that would allow the maintenance of the CTA with the Republic of Ireland, while protecting the integrity of the United Kingdom's immigration system. This is a particularly sensitive issue, since there are extremely close links between Northern Ireland and the Republic and the removal of border checks was a highly significant indicator of the end of the sectarian troubles that Northern Ireland suffered for decades. The issue has become even more sensitive in the light of the collapse of the Northern Irish government in recent days.

## 5. Controlled immigration

A fundamental objective is for United Kingdom to regain control of the number of people coming to Britain from the EU. Mrs May acknowledged that controlled immigration can bring great benefits, but said that "when the numbers are too high, public support for the system falters".

## **6. Rights for EU nationals in Britain, and British nationals in the EU**

Mrs May stated that guaranteeing the rights of EU citizens already living in Britain and the rights of British nationals in other member states is the "right and fair thing to do", and suggested that it was only the reluctance of other member states to agree that was stopping the UK providing such reassurance immediately. She did not indicate which states were resisting such a move.

## **7. Protect workers' rights**

Mrs May stated that her government would not only protect the rights of workers as enshrined in current European legislation, but it would build on them to ensure "legal protection for workers keeps pace with the changing labour market, and that the voices of workers are held by the boards of publicly listed companies for the first time". Quite how this will be an issue in the UK's negotiations with the rest of the EU is not clear.

## **8. Free trade with European markets**

Mrs May stated categorically that she will not seek membership of the Single Market because of the insistence of European leaders that membership of the single market means accepting the "four freedoms of goods, capital, services and people". Instead, she stated, the UK will "seek the greatest possible access to [the Single Market] through a new, comprehensive, bold and ambitious Free Trade Agreement". Although not entirely unexpected this will be very disappointing for the City, although she did specifically mention that certain elements of the current Single Market arrangements, namely relating to the export of cars and lorries, and the freedom to provide financial services across national borders, might be retained, "as it makes no sense to start again from scratch when Britain and the remaining member states have adhered to the same rules for so many years". She also stated that the UK "will not be required to contribute huge sums to the EU budget". Notwithstanding that, there might be "some specific European programmes in which we might want to put participate. If so, and this will be for us to decide, it is reasonable that we should make an appropriate contribution". It is not clear how this does not amount to "having your cake and eating it" (or indeed having the butter and the butter money too).

## **9. New trade agreements with other countries**

Mrs May wants Britain "to be able to negotiate its own trade agreements. But I also want tariff free trade with Europe and cross-border trade there to be as frictionless as possible". It follows that she does not want to be part of the Common Commercial Policy or to be bound by the Common External Tariff, but she does want a UK customs agreement with the EU.

## **10. The best place for science and innovation**

Mrs May wants the UK to continue to be one of the best places in the world for science and innovation and stated that she would "welcome agreement to continue to collaborate with our European partners on major science, research, and technology initiatives".

## **11. Cooperation in the fight against crime and terrorism**

Mrs May committed a "Global Britain" to continuing to cooperate with its European partners in areas such as crime, terrorism and foreign affairs. In particular, she mentioned practical arrangements on matters of law-enforcement and the sharing of intelligence material with the UK's EU allies.

## 12. A smooth, orderly Brexit

Mrs May proposed that an agreement about the future partnership between the UK and the EU should be reached by the time the two year Article 50 process has concluded, and that a phased process of implementation should begin at that point. She specifically mentioned that this might be relevant in relation to immigration control, custom systems, criminal justice matters, and the legal and regulatory framework for financial services.

### CAN MRS MAY GET HER WAY?

Mrs May stated that she was confident that the deal she described can be achieved for a number of reasons. Firstly, because she believes that the vast majority of other EU member states want a positive relationship between the UK and the EU after Brexit. Second, she believes that the kind of agreement she is proposing is the "economically rational thing" that both Britain and the EU should aim for because of the volume of existing trade between the UK and the rest of the EU. Finally, she believes that agreement can be reached because cooperation between Britain and the EU is essential not just for trade but for the security of the EU; she cited the UK's nuclear weapons capacity, membership of the UN Security Council, the strength of its Armed Forces, and its intelligence capabilities in particular.

She described the possibility of a punitive deal that punishes Britain and discourages other countries from taking the same path, as an act of "calamitous self harm" for the rest of the EU. In her view, "no deal for Britain is better than a bad deal for Britain". She raised the prospect of the UK setting competitive tax rates to attract the world's best companies and biggest investors to Britain (and away from the rest of the EU), and changing the "basis of Britain's economic model".



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

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### CONTACT PARTNERS

#### MARGARET BOSWELL

tel. +44 (0)20 7382 5560  
margaret.boswell@gide.com

#### RUPERT REECE

tel. +44 (0)20 7382 5768  
reece@gide.com

You can also find this legal update on our website in the News & Insights section: [gide.com](http://gide.com)

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