

## client alert

EU | BREXIT | LEGAL UPDATE

15 MARCH 2017

### ARTICLE 50 CAN NOW BE TRIGGERED, BUT WHEN?

The European Union (Notification of Withdrawal) Bill will receive the Royal Assent and pass into UK law tomorrow, 16 March. It became clear that the Bill would be passed on Monday 13 March, when, after a very brief period of 'ping pong' between the House of Lords and the Commons, the House of Lords, in accordance with constitutional convention, dropped their two proposed amendments (to guarantee the rights of EU citizens living in the UK, and to enshrine in law the Prime Minister's promise that both Houses of Parliament will have the right to approve the final deal negotiated between the UK and the rest of the EU).

#### TIMETABLE

It had been widely thought that the Prime Minister would trigger Article 50 this week, but in a statement to the House of Commons yesterday she indicated that the deadline was still the end of March. It is not clear why this week has been ruled out. One reason may be the rumoured dissent amongst Ministers and civil servants over the content of the notice: should it be a simple one line notification, tracking the wording of Article 50, or should it set out, in summary at least, some sort of negotiating position? Should it insist, for example, that the discussions regarding the terms of exit and the basis of the future relationship be held in parallel, as favoured by the UK, or consecutively, as EU Ministers have proposed? Another possible reason for the postponement is the Dutch General Election being held today, 15 March, which has taken on increased significance in light of the popularity, in the polls at least, of the far right candidate, Geert Wilders, whose manifesto includes a commitment to withdrawing from the EU. Or does the answer lie closer to home, in the actions of Scotland's First Minister, Nicola Sturgeon?

#### SCOTLAND

Scotland voted to remain in the EU by a substantial majority of 62% to 38%. In 2014, it also voted to stay in the United Kingdom by a majority of 55% to 45%. At the time, the independence referendum was described by the Scottish National Party (SNP) itself as a 'once in a lifetime opportunity'. Despite that vote against independence, the SNP won a landslide in the General Election of May 2015, winning all but one of Scotland's 62 seats in the House of Commons, and a substantial majority in the Scottish Assembly elections last year. In a speech in Edinburgh on Monday 13 March, Ms Sturgeon announced an intention to seek a second independence referendum for Scotland, relying on a manifesto statement that 'The Scottish Parliament should have the right to hold another referendum...if there is a significant and material change in the circumstances that prevailed in 2014, such as Scotland being taken out the EU against our will'. The Scottish Government officially accepted the results of the EU

referendum, but had been arguing that the UK should either stay in the single market, or seek an outcome that would allow Scotland to do so. Mrs May had committed to finding a solution that would be acceptable to 'all the devolved administrations of the UK', but has since ruled out continued membership of the single market for the UK or any part of it. Ms Sturgeon maintains that the Scottish Government's efforts at compromise have been met with a 'brick wall of intransigence'.

Under the terms of the relevant legislation, section 30 of the Scotland Act 1998, Westminster has to approve the holding of an independence referendum (by granting a so called 'section 30 Order'). Ms Sturgeon's announcement was unexpected and raises a conundrum for the Prime Minister - should she consent to a referendum which can only divert attention and dilute resources away from the Brexit negotiations, or refuse to grant a section 30 Order which will only inflame nationalist sentiment? Even if a section 30 Order is refused, the Scottish Parliament could hold an 'advisory' referendum, which would not have legislative effect, but would be extremely difficult to ignore.

## NORTHERN IRELAND

One of the other two devolved administrations in the UK, Northern Ireland, also voted to remain in the EU. Perhaps inspired by the Scottish First Minister's stance, Michelle O'Neill, the leader of the Northern Irish republican party, Sinn Fein, described Brexit as 'an economic disaster' for Northern Ireland, and called for a referendum on joining Northern Ireland with the Republic of Ireland as soon as possible. If it were passed, Northern Ireland would remain in the EU by virtue of acceding to an existing EU member, thus avoiding the problem that an independent Scotland would face: namely the 'Barosso doctrine' that a newly independent country seceding from an existing EU member does not have automatic membership of the EU.



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

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