

# Brexit Insight Issue 8:

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## | BREXIT Insight

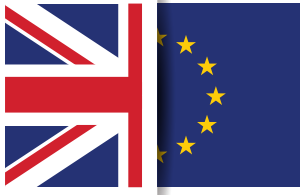


A Fortnightly Analysis for Senior Executives

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*The situation is becoming clearer. The Brexit negotiations will be conducted on the EU's terms. They will last at least four years and will be conducted in two parts; first with the UK as a member of the EU family and then with the UK as an outsider. The financial settlement, the so-called Brexit Bill, is already a contentious issue and may block progress on outlining the new EU/UK relationship. Assuming it and other potential show stoppers can be resolved then the status quo will prevail until Q2 2022. That gives a five year framework for business planning.*

## Gameplan

EU governments have their ducks in a row. Meeting for the first time in the EU27 format (Mrs May was not present) the European Council agreed a framework on 29 April for negotiating Brexit. Agreed within four minutes and expressed as “guidelines”, the framework will now be translated into “directives” to be adopted by the EU27 Foreign Ministers on 22 May. They will next be presented to Michel Barnier, their chief negotiator, as his legally binding mandate. Then, and only then, can the formal negotiations begin. This rather elaborate approach ensures strict conformity with the EU treaties.

***“Proceeding in the right order is more than a bureaucratic fad.”***

## Sequence

The overriding objective is to achieve an orderly withdrawal. The negotiations are to proceed in the right order:

- first, sorting out the disentanglement of the UK from the EU;
- then agreeing an outline of the new EU/UK relationship; and
- finally, making transitional arrangements.

## Division

Proceeding in the right order is more than a bureaucratic fad. It is high politics, on which the two sides are deeply divided. From the outset the



EU has insisted on sequential negotiations in conformity with the treaties on which it is founded. That would mean about five years of negotiations and ratifications. But the UK has consistently called for parallel negotiations in the interest of speed. That would mean two years of negotiations, which the EU side regards as a legal and political impossibility.

## Phased Approach

This battle of wills has been short-lived, being won by the EU. There will be a phased approach to the negotiations as laid down in the guidelines. The realisation that this is the way it's going to be is probably the main reason why Mrs May called a snap general election. If she hadn't, then the ratification of the UK's new relationship with the EU would almost certainly have taken place during the run-in to the general election originally scheduled for May 2020, a recipe for parliamentary chaos and political defeat.

## A Transitional Regime

The main implication of the phased approach is that there will have to be a transitional regime to avoid a legal vacuum and to provide certainty for citizens and businesses. That means we're heading into some four years of negotiations followed by a year for national ratification. So, we're looking at five years in all, running from April 2017 to March 2022. The status quo will prevail until the beginning of Q2 2022, which is some consolation for business. (The one caveat, of course, is failure to agree an orderly withdrawal with the UK falling off the cliff edge in March 2019, but the odds are against that happening).

## The Brexit Bill

The guidelines envisage the negotiations proceeding in two phases. The first phase will focus on withdrawal and deal with citizens rights, border issues and a financial settlement. The first two items are expected to be relatively non-contentious but the Brexit Bill, as it's being called, is different. It could be a show stopper because the guidelines stipulate that discussions on the new relationship cannot proceed until the first phase has recorded sufficient progress. In plain language, no financial settlement, no new deal.

## No Cherry Picking

There's more. Another potential show stopper is the Single Market. The UK is leaving it but still wants to have access for specific sectors, like financial services. The negotiating guidelines rule out UK participation on a sector by sector basis and repeat the mantra of "no cherry picking". This flies in the face of Mrs May's assurance to certain car manufacturers and is certainly at odds with the City of London's ambitions.

## The EU Court of Justice

The other big show stopper is the role of the EU Court of Justice when it comes to interpreting the future deals and resolving disputes. The guidelines are insistent that the EU must comply with its own rules as set down in the Treaties, and that includes the role of the EUCJ in resolving disputes and interpreting agreements. This is of critical importance for agreeing the transitional regime and is fundamental to the operation of any future partnership. But Mrs May wants none of it. To her,



the European Court is anathema. But the guidelines suggest another red line: no European Court, no deal.

## Parallel Universes

Here's where Germany comes in. Irrespective of the outcome of the Federal elections in October, the official line won't change much, if at all. So, Mrs. Merkel's remarks in the Bundestag on 27 April are worth parsing. She said that the UK (and by implication Mrs. May) was living in a parallel universe when it came to its overall expectations. A similar analysis was attributed to the Commission President, Jean-Claude Juncker, after he dined with Mrs. May on the previous evening. And it seems clear that President-elect Macron will follow the same line.

## Next Steps

The key date in the calendar is the 22 May 2017 when Monsieur Barnier gets his official riding instructions but realistically nothing will happen till after the UK election on 8 June 2017. In all probability, the negotiations won't get under way until mid-June when Mrs May will have put her cabinet in place. That will be interesting.

Link to [European Council \(Art. 50\) guidelines for Brexit negotiations](#)

### **Brexit Brief**

The IIEA's "Brexit Brief", edited by Anthony Brown and Andrew Gilmore will now appear fortnightly in view of the gathering pace of the negotiations. The most recent issue can be [read here](#).

### **Principles**

The guidelines are based on a number of principles which have already been published in draft form but they bear repeating because they will determine both the form and content of the negotiations ahead. First, the negotiations are to be conducted as a single package and nothing will be agreed until everything is agreed. Second, individual items will not be settled separately. Third, the EU will develop unified negotiating positions. Fourth, Member States will not engage in side deals with the UK.

### **High Politics**

National governments will remain in charge throughout the negotiations. It is they who will determine whether "sufficient progress" has been made in phase one to trigger what the UK really wants to talk about – a new trade deal with the EU. That will be a political decision, and one revolving around the size of the Brexit Bill, a matter of some importance for all Member States, but especially those receiving EU transfers. Little wonder the Brexit Bill is causing apoplexy all round.

### **Brexit Insight**

Brexit Insight will now appear fortnightly, alternating with the Brexit Brief. That means we'll be issuing updates and analysis on a weekly basis. The previous issue can be [read here](#).

The Brexit Insight is produced by the IIEA Brexit Project Group chaired by Dáithí O’Ceallaigh, former Ambassador to the UK. This issue is written by Brendan Halligan, President of the Institute.

*As an independent forum, the Institute does not express any opinions of its own. The views expressed in the article are the sole responsibility of the author.*



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