



# BREXIT BOWL

## Your 60-second brief

The European Union (EU) is tooling up for Brexit. It is not just the United Kingdom (UK) that is preparing for the forthcoming negotiations but also the European Commission, mandated by the EU Council to negotiate terms on the EU27's behalf. Moreover, individual Member States are all preparing their own positions ahead of the crunch talks and have national Brexit task forces in place.

This month's Brexit Bowl considers the political signals sent by UK Prime Minister Theresa May at the Conservative Party conference in October and the UK High Court ruling that the British Parliament must be consulted prior to triggering Article 50.

Meanwhile in Brussels, Chief Brexit Negotiator Michel Barnier has been rapidly building his team, bringing together experienced officials from across the Commission.

In the first in a series of national overviews that we will bring to you in the Brexit Bowl, our Polish affiliate NBS Communications reviews the situation in Poland – what the country's primary concerns are with respect to Brexit, its likely stance on negotiations and how it is organising its own Brexit task force.

Brexit watchers should not assume inactivity because Article 50 has not yet been triggered. Far from it: personnel, policies and political red lines are being hammered out in the corridors of power across Europe. This is a time for businesses to prepare and consider the consequences of Brexit for their own operations.

*Louise Harvey, Head of FTI Consulting Brexit Taskforce*

## View from **LONDON**

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The start of the month saw the UK's ruling Conservative Party hold its conference in Birmingham.

Given a clear majority of Conservative Party supporters and activists had backed Brexit, Prime Minister May was under pressure to outline her plans for Brexit.

As expected, she used a series of speeches and interviews over the course of the conference to outline her intentions to come good on her promise to deliver Brexit; explaining that restrictions on immigration and defending the primacy of domestic legislation were to take priority over protections for the financial services sector during renegotiation talks.

In her closing speech to party activists, the Prime Minister pledged that the UK will invoke Article 50 – the official legal notification to its EU partners that it is going to leave the bloc – “no later than the end of March.”

Her ambitions to move forward have, however, been frustrated. At the end of October, Britain's High Court ruled the British Parliament must be consulted prior to triggering Article 50.

Making his ruling, the Lord Chief Justice The Lord Thomas of Cwmgiedd stated his view that “the government does not have power under the Crown's prerogative to give notice pursuant to Article 50 for the UK to withdraw from the European Union”. The Government has confirmed that it will appeal the judgment with a court hearing now scheduled for early December.

It is important to note that, in the UK, higher courts reverse lower court judgements routinely. That may happen here, short-circuiting the possibility of a constitutional crisis in which British parliamentarians are essentially offered the theoretical possibility of ignoring the result of a national referendum – which had been presented to the public as binding in nature.

It is true, however, that unless the Supreme Court overturns this ruling, the Government must now consult Parliament about Article 50.

The ruling comes at a difficult moment for Prime Minister May who, in recent weeks, has faced increased calls both from opposition politicians and some MPs in her own party to clarify the precise nature of Britain's negotiating position and the post-Brexit settlement her government is seeking.

The Labour leader Jeremy Corbyn has already demanded the government “bring its negotiating terms to Parliament without delay”, adding that “there must be transparency and accountability to Parliament on the terms of Brexit” while the UK Independence Party's interim leader Nigel Farage has raised fears of a “betrayal” of the majority of British voters that had endorsed Brexit in June. The ruling will only intensify calls for the government to clarify its position ahead of the March 2017 date when it had previously pledged to trigger Article 50.

Parliament will now debate the issue – although it was already clear, through the establishment of the new Brexit Select Committee and a number of additional rumoured debates, that such an opportunity was likely to be forthcoming. After the debate it remains likely that Parliament will go on to vote overwhelmingly to trigger Article 50 – whether out of respect for the electorate's vote, or because the government has a majority.

## View from **BRUSSELS**

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Former French Foreign Minister and European Commissioner Michel Barnier, in his new role as Head of the Commission's Article 50 Taskforce, is leading the EU27's Brexit HQ and will be responsible for much of the substance and the day to day negotiations.

His first priority has been to build up his team for the task ahead, which he has been doing quickly and which will soon be at full strength at approximately 20 people. The team brings together Commission officials from across the different departments, some of whom previously worked with him in Brussels. It includes Sabine Weyand, a Deputy Director-General at DG Trade, Francois Arbault, who was a Head of Unit dealing with industrial (intellectual) property as well as Nina Obermaier who was the deputy-head of the Switzerland desk at the European External Action Service. Stéphanie Riso, who joins from the department responsible for economic and financial affairs (DG ECFIN), will become the de facto Head of Cabinet to Barnier. The composition of the team also reflects the Commission's need to prepare for the comprehensive nature of the talks.

Barnier, however, hasn't been chained to his desk. He set out on a European tour in order to gauge the mood and to gain a better understanding of some the specific concerns of Member States. While none of the details of his talks have emerged, he did mention that his mandate only covers the four so-called "separation issues" and not the post-Brexit future arrangement between the EU27 and the UK. These issues are:

- the UK's financial liabilities (EU programme payments, EU staff pensions, etc.)
- the status and rights of EU nationals in Britain and British nationals in the EU
- administrative issues (including the future of EU agencies based in the UK)
- the "special situations", meaning the arrangements for Northern Ireland and Gibraltar.

The EU28 leaders met for their quarterly EU Council Summit in October – Theresa May's first as Prime Minister – and responded to her Brexit vision and desire to restrict the free movement of people with

relative equanimity. The EU27 leaders stuck to their mantra that the Single Market and freedom of movement are sacred and that as long as Article 50 is not triggered there will be no negotiations with the UK. German Chancellor Angela Merkel and French President François Hollande commented in the press that the road ahead for the British Prime Minister could be long and hard, but that was about it.

In fact, Brexit was not even on the Summit's formal agenda. The EU27 leaders had more important fish to fry, such as salvaging the free trade agreement with Canada, better known as CETA. The agreement was at the risk of being vetoed by Belgium's Walloon region parliament (which did finally approve the deal). If anything, the latter is an ominous sign for the upcoming Brexit negotiations, illustrating the sheer difficulty of striking a deal acceptable to both sides.

## View from **POLAND**

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Poland is stepping up its preparations for Brexit. Its approach is shaped by several factors, with migration, trade and political relations being the most significant.

Migration will be fundamental to Poland's stance on Brexit. According to Poland's Statistical Office, 720,000 Poles were living in the UK in 2015; 30% of all Polish migrants. That means the Polish government will be determined to not accept restrictions on the rights of its citizens living in the UK.

Trade is a second important factor determining Poland's negotiating stance. The UK is the third largest market for its exports, and the 10<sup>th</sup> largest source of imported goods. Poland's significant trade surplus with the UK means it would be unlikely to back 'hard Brexit' terms, as this could result in high tariffs on Polish exports.

Political ties are another important aspect shaping the country's position. The new Polish government views the British Tories as its major ally in Europe and both ruling parties sit together in the same European Parliament political group, the European Conservatives and Reformists. Brexit will therefore see an end to this partnership.

These factors suggest that the Polish government might support a 'Norwegian' style model for the UK's future EU relations, thereby protecting Poland's migration and trading interests. But the fact that so much of the Brexit referendum's focus was on migratory controls points to an obvious potential conflict between London and Warsaw during the negotiations.

Within Poland, the government continues with its preparations. It met business representatives and trade unions at the end of August to discuss the consequences of Brexit, and a permanent platform has now been set up by the Ministry of Foreign Affairs to continue the dialogue. A formal Brexit task force has

also been established, divided into two groups: a political committee (at the government level) and a working group (at the official level). The political committee is chaired by Witold Waszczykowski, Minister of Foreign Affairs and comprises the Minister of Development, Minister of Finance (both held by Mateusz Morawiecki), the Minister of Labour and Social Policy Elżbieta Rafalska as well as the Secretary for European Affairs Konrad Szymański. The team has been tasked with preparing Poland's formal position for the negotiations with the UK and analysing risks and opportunities of Brexit. The working group at the official level's main task is to analyse the consequences of Brexit. It is chaired by Konrad Szymański, Deputy Minister of Foreign Affairs and Secretary for European Affairs. The other representatives include Deputy Ministers for Development (Jerzy Kwieciński), Finance (Piotr Nowak), Social Policy and Labour (Marcin Zieleniecki).

Polish political debates are not, however, confined to Poland. The arrival of the new Polish government has weakened the position of Donald Tusk, the current President of the European Council, whose former party is now in opposition in Poland. The PiS (the ruling Law and Justice party) has been quite vocal that Tusk should not be re-elected as the Council President when his current term expires in 2017. The main argument raised by PiS is that Tusk has not been effective or strong enough in his role. It is therefore unlikely Warsaw will work in tandem with Tusk. Poland's row with the European Commission for not respecting the EU's fundamental rights when the government refused to accept a judgment of the Polish Constitutional Court in January has put it at odds with many other EU Member States. These are both factors which could seriously hamper its influence during the Brexit negotiations.

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