

COVINGTON

High Court Rules That UK Government Does Not Have Power to Trigger Process of Withdrawal from EU Without Parliamentary Approval; Case Likely to Go to Supreme Court in December

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Firm General and Europe

Today, the High Court of England and Wales [held](#) that the UK Government does not have the power to trigger the process of withdrawal from the EU without first obtaining Parliamentary approval. The High Court's decision will likely be the subject of an appeal heard by the UK Supreme Court in December this year.

Article 50 of the Treaty on European Union allows a country that wants to leave the EU to notify the European Council (made up of heads of government of the member states) in order to commence the negotiation process. The negotiation process is intended to conclude with an agreement setting out the arrangements for the UK's withdrawal and the framework for the UK's future relationship with the EU.

Article 50 states that the decision to leave the EU has to be made by a member state "in accordance with its own constitutional requirements." In the aftermath of the Brexit vote, the UK government has claimed that it could trigger Article 50 at a time of its choosing and on its own authority. However, a case has been brought by a number of claimants arguing that only the UK Parliament could authorize the use of Article 50. While the case is expected to go to the Supreme Court by the end of the year, the High Court gave the initial verdict today, in favor of the claimants. The case does not concern the merits or otherwise of whether the UK should withdraw from the EU—indeed it was accepted by all parties that the political decision for withdrawal had been made.

The arguments center around what are the UK's "constitutional requirements" or their equivalent, complicated by the fact that the UK has no written constitution. The High Court, sitting in a specially constituted High Court of three judges (including two of the most senior judges in England and Wales), decided today that the UK government could not determine, on its own, when to commence the two-year process for exiting the European Union. Instead, the UK Parliament needs to authorize the use of Article 50 by passing legislation. The Court decided, in part by looking at past practice with respect to international treaties, that it was not the intention of the UK Parliament or any Act of Parliament to empower the Government to make such a decision itself.

The Government has already indicated their intention to appeal the High Court ruling directly to the UK Supreme Court, leapfrogging the Court of Appeal. The Supreme Court has already made arrangements to hear any appeal in December this year and a final decision is expected by the end of this year or early next year.

Covington's Brexit Task Force

Covington has formed a [Brexit Task Force](#) staffed by senior lawyers and advisors linking its offices in London, Brussels, and Washington to monitor events and to keep clients apprised of legal, regulatory, and policy developments.

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