



BRIEFING PAPER

Number 7938, 31 March 2017

Brexit: red lines and starting principles

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Summary

In speeches in January, a White Paper in February 2017 and the Article 50 letter of notice, the UK Prime Minister and Secretary of State for Exiting the EU set out their aims for the Brexit negotiations and for the UK's future relations with the EU after it has left. The UK would be global in all its endeavours, would cooperate with its EU neighbours and would like as frictionless a departure and transition as possible.

The European Parliament and European Council have published draft negotiating guidelines setting out what they want the negotiations to be about and their views on the UK's future relationship with the EU – which must not be more beneficial outside the EU than in it. The Commission negotiator has also made clear his expectations for the process and its outcome.

Their views coincide with the UK's in many respects – the need for legal certainty and for continuing security cooperation, the importance of Northern Ireland, the principle of sincere cooperation as the basis for negotiations, for example.

But there are also some areas of potential disagreement. One is whether the withdrawal agreement and an ambitious free trade agreement should be negotiated alongside each other, which is what the UK wants. The European Council draft guidelines state that an only “an overall understanding on the framework for the future relationship” could be identified during the negotiations. The “agreement on a future relationship between the Union and the United Kingdom as such can only be concluded once the United Kingdom has become a third country”. The EP draft resolution also insists that the relationship agreement be concluded with the UK as a third state after Brexit.

One noteworthy difference between the Prime Minister's January speech, the February White Paper and the Article 50 notice letter is that there is no mention in the notice letter of the earlier readiness to walk away from the EU with no agreement if the outcome of the negotiations is unsatisfactory. The Article 50 letter emphasises the need to avoid a no-deal scenario.

A proposed European Council principle that might cause concern is the requirement for agreement between the UK and Spain before any EU-UK agreement can apply to Gibraltar.

1. United Kingdom

1.1 Prime Minister's Lancaster House speech

Theresa May, in her Lancaster House speech, 17 January 2017, [The government's negotiating objectives for exiting the EU](#), set out 12 principles to guide the UK:

- Providing certainty and clarity
- Taking control of own laws
- Strengthening the Union
- Protecting UK's historic ties with Ireland and maintaining Common Travel Area
- Controlling immigration
- Securing rights for EU nationals in UK and UK nationals in EU
- Protecting workers' rights
- Ensuring free trade with European markets
- Securing new trade agreements with other countries
- Ensuring UK's pre-eminence in science and innovation
- Cooperating in fight against crime and terrorism
- Delivering a smooth, orderly Brexit

1.2 White Paper, February 2017

A White Paper in February 2017, [The United Kingdom's exit from, and new partnership with, the European Union](#), expanded on the Lancaster House speech and elaborated on UK negotiating objectives:

- engaging constructively and respectfully, in spirit of sincere cooperation
- putting UK citizens first
- aiming for comprehensive agreement with EU
- minimising disruption and giving as much certainty as possible
- emphasis on UK's relationship with Republic of Ireland and importance of Northern Ireland peace process
- beginning technical talks on detailed policy areas quickly, but prioritising the biggest challenges
- continuing to collaborate to advance and protect shared European values
- ending jurisdiction of EU Court in UK, but honouring international commitments and following international law.
- recognition that future relationship agreement will need dispute resolution mechanisms

- Devolved Administrations to be fully engaged, and specific interests of Scotland, Wales and Northern Ireland, and other parts of England secured.
- Government to work with Irish Government and Northern Ireland Executive on issues concerning economic, social and political context of land border between Northern Ireland and Ireland.
- Free Movement Directive will not apply and migration of EU nationals will be subject to UK law. New system will allow UK entry to brightest and best, students, academics; may be phased implementation so businesses can prepare for new arrangements.
- prioritising securing status of EU citizens already living in UK and of UK nationals in other Member States
- continued protection of workers' rights to give certainty and continuity to employees and employers.
- prioritising trade in goods and services, including financial services, between UK and the EU, but not membership of Single Market and no aim to adopt model adopted by other countries (EEA); working with BSI on future relationship with European Standards Organisations.
- leaving EU means leaving Euratom, but UK wants to collaborate with EU partners in science, research and nuclear energy.
- prioritising maintaining positive environment for businesses, investors and consumers, stability of data transfer
- a mutually beneficial new customs arrangement
- no more UK contributions to EU Budget, but will make appropriate contribution to any EU programmes in which UK participates.
- commitment to cooperation on cyber security and fight against terrorism
- no deal for the UK is better than a bad deal

1.3 Article 50 letter on intention to withdraw

The Prime Minister's [notice of withdrawal letter](#), 29 March 2017, summarised some of the earlier aims:

- process should deliver objectives in fair and orderly manner and avoid disruption
- UK will negotiate as one UK, taking account of devolved interests
- UK seeks "deep and special partnership" with EU in economic and security cooperation

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- failure to reach agreement would weaken cooperation in fight against crime and terrorism; this outcome should be avoided
- UK will help make sure Europe is strong and prosperous

Seven principles for discussions

The PM outlined 7 principles to help make the process smooth and successful, most of which reiterated her Lancaster House proposals:

- constructive and respectful engagement in spirit of sincere cooperation
- put citizens first
- aim for a comprehensive agreement
- minimise disruption and give certainty if possible
- pay attention to UK's 'unique' relationship with Ireland and importance of Northern Ireland peace process
- begin technical talks soon and prioritise biggest challenges
- work towards protecting shared European values

There is no mention of Theresa May's earlier readiness to walk away with no agreement if there is no satisfactory outcome to the negotiations. The Article 50 letter emphasises the need to avoid a no-deal scenario.

The Prime Minister wants the withdrawal agreement and the future partnership alongside each other, whereas the European Council and the EP insist the future relations agreement be concluded and finalised after Brexit.

2. European Council

The European Council's [draft guidelines](#), published on 31 March, define a framework for negotiations under Article 50 TEU:

Core principles

- UK should be close partner in the future
- any agreement with UK will be based on balance of rights and obligations, and ensure level-playing field.
- preserving integrity of Single Market excludes participation based on a sector-by- sector approach
- a non-EU Member without the obligations of a Member State cannot have the same rights and benefits as a Member State
- four freedoms are indivisible and there can be no 'cherry picking'.
- Union's overall objective will be to preserve its interests, those of Member States, citizens and businesses
- there will be a phased approach giving priority to orderly withdrawal
- Union will act as one, will be constructive and will strive to find an agreement
- no separate negotiations between individual Member States and UK on withdrawal matters
- main purpose will be to ensure UK's orderly withdrawal so as to reduce uncertainty and minimise disruption
- two-year timeframe set out in Article 50 TEU ends on 29 March 2019

First phase:

- settle dis-entanglement of UK from EU and from rights and obligations UK derives from commitments as Member State;
- provide as much clarity and legal certainty as possible to citizens, businesses, stakeholders and international partners on immediate effects of UK's withdrawal from EU;

Second phase:

- overall understanding on framework for future relationship could be identified, preliminary and preparatory discussions held once sufficient progress has been made in first phase on reaching satisfactory agreement on arrangements for orderly withdrawal
- To "extent necessary and legally possible", negotiations may also determine transitional arrangements which are in the interest of EU, and which may "provide for bridges towards the foreseeable framework for the future relation-ship". These

should be “clearly defined, limited in time, and subject to effective enforcement mechanisms”.

- a time-limited prolongation of EU acquis would mean existing EU regulatory, budgetary, supervisory and enforcement instruments and structures would apply

Agreement on arrangements for ‘orderly withdrawal’

- priority to agree reciprocal guarantees on status and situations of EU and UK citizens/their families, affected by Brexit. Such guarantees must be “enforceable and non-discriminatory”.
- legal vacuum and uncertainty once Treaties cease to apply to UK must be avoided and addressed.
- single financial settlement should ensure that EU and UK respect obligations undertaken before Brexit; settlement should cover legal and budgetary commitments and liabilities, including contingent liabilities.
- Regarding Good Friday Agreement, there should be “flexible and imaginative solutions” to avoid a hard border between the UK and Ireland, while respecting integrity of EU legal order; EU should recognise existing bilateral agreements and arrangements between UK and Ireland which are compatible with EU law.
- Regarding UK Sovereign Base Areas in Cyprus, bilateral arrangements between UK and Cyprus should be respected if compatible with EU law (especially regarding EU citizens resident/working in Sovereign Base Areas).
- EU with 27 Member States will continue to have rights and obligations of the Union with 28 Member States regarding international agreements. But UK will no longer be covered by agreements concluded by EU or by Member States or both (i.e. mixed agreements).
- UK should honour its share of international commitments under EU membership; there should be ‘constructive dialogue’ with UK on a possible ‘common approach towards third country partners and international organisations’.
- EU agencies and facilities in UK should be transferred.
- there should be legal certainty and equal treatment regarding any UK cases pending before EU Court of Justice and any administrative procedures pending before European Commission and Union agencies on Brexit day; need for arrangements to address ‘possibility of administrative or court proceedings to be initiated post-exit for facts that have occurred before the withdrawal date’.
- withdrawal agreement should include dispute settlement mechanisms for its application and interpretation, and

institutional arrangements allowing for measures to deal with unforeseen situations.

Preparing for framework for future EU – UK relationship

- relationship between EU and non-Member State cannot offer same benefits as EU membership, but there should be mutually beneficial 'strong and constructive ties' which go beyond trade, and other partnerships, e.g. in fight against terrorism and international crime, security and defence. These partnerships must include enforcement and dispute settlement mechanisms that do not affect EU autonomy.
- European Council is prepared to work towards an ambitious free trade agreement with UK, to be concluded after Brexit; this agreement cannot amount to participation in Single Market; it must ensure level playing field regarding competition and state aid, and include safeguards against unfair competitive advantages (e.g. through fiscal, social and environmental dumping).
- future agreements between the EU and UK cannot apply to Gibraltar without agreement between the UK and Spain.

3. European Commission

The Commission negotiator, Michel Barnier, has set out, in speeches to the EP, Committee of the Regions and other fora, some key principles:

- the four freedoms of movement for people, goods, capital and services, are indivisible
- transitional agreement must unambiguously be limited in time
- EU membership must always remain the most advantageous status
- new relationship must be based on level playing field and respect for the rules of competition
- the balance of rights and obligations agreed with non-EU countries must be taken into account
- close cooperation is desirable in defence and security.

4. European Parliament

Draft resolution

On 29 March the European Parliament's Conference of Presidents¹ endorsed a [motion for a resolution](#) drawn up by group leaders and the Constitutional Affairs Committee, in which they set out conditions for EP approval of a withdrawal agreement with the UK:

- Fair treatment of EU-27 citizens, reciprocity and non-discrimination between UK citizens living in EU and EU citizens living in UK
- UK must continue to enjoy its rights and respect its obligations under EU Treaties until it leaves, including financial commitments under current EU long-term budget
- UK must continue to accept the four freedoms, the jurisdiction of EU Court of Justice, budgetary contributions and adherence to EU's common trade policy
- UK must adhere to principle of 'sincere cooperation' in negotiations on EU legislation in other policy areas until it leaves
- UK should not have a better status outside the EU than inside
- future relationship between EU and UK could be association agreement: this would mean respecting EU standards in areas of the environment, climate change, fighting tax evasion and avoidance, fair competition, trade and social policy
- border between Northern Ireland and the Republic of Ireland
- talks can start on transitional arrangements of up to three years based on framework for future relationship between EU and UK, but only if and when good progress has been made towards the withdrawal agreement
- a future relationship agreement can only be concluded once the UK has left the EU

¹ The leaders of four EP political groups: Guy Verhofstadt (ALDE Group), Manfred Weber (PPE Group), Gianni Pittella (S&D Group), Philippe Lamberts/Ska Keller (Verts/ALE Group) and Danuta Hübner, Chair of the Committee on Constitutional Affairs.

5. Further reading

Prime Minister's [letter](#) to European Council President, Donald Tusk, announcing the UK's intention to withdraw from the EU under Article 50 TEU

Institute for Government, [Brexit Explained: the Article 50 letter](#) and [Brexit Explained: Article 218](#)

General Secretariat of the Council, European Council (Art. 50) (29 April 2017) - [Draft guidelines](#) following the United Kingdom's notification under Article, 50 TEU, 31 March 2017

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European Commission, [brexit_timeline_EN.pdf](#)

Cm 9417, [The United Kingdom's exit from and new partnership with the European Union](#), February 2017

European Council press release 160/17, [Remarks by President Donald Tusk following the UK notification](#), 29 March 2017

European Parliament Directorate General for Internal Policies, Policy Dept C: Citizens' Rights and Constitutional Affairs, [The Brexit Negotiations: an Assessment of the Legal, Political and Institutional Situation in the UK](#), March 2017

EP Policy Dept. Constitutional Affairs, [The Impact and Consequences of Brexit for Northern Ireland](#), Jonathan Tonge, University of Liverpool, 2017

Chatham House, [EU Citizens Back Their Leaders' Negotiating Stance on Brexit](#), 29 March 2017

EUObserver, 30 March 2017, [Transparency is key EU tactic in Brexit talks](#)

Open Europe, 29 March 2017, [Open Europe responds to the triggering of Article 50](#), Aarti Shankar

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EurActiv 29 March 2017, [Gabriel: No 'UK rebate' in Brexit talks](#)

Politico, 29 March 2017, [8 takeaways on Article 50 day. Theresa May's strategy? Aim high, speak softly and carry a big stick](#)

European Commission White Paper on the Future of Europe, [Reflections and scenarios for the EU27 by 2025](#), 1 March 2017

European Commission, [speech](#) by Michel Barnier, Chief Negotiator for the Preparation and Conduct of the Negotiations with the United

13 Commons Library Briefing, 31 March 2017

Kingdom, at the plenary session of the European Committee of the Regions, 22 March 2017

EP study for Committee on Constitutional Affairs, [Brexit and the European Union: General Institutional and Legal Considerations](#), Miguel Tell Cremades and Petr Novak, January 2017

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